

# City Council Regular Meeting Agenda

January 21, 2025 at 6:00 PM

Jeni Arndt, Mayor Emily Francis, District 6, Mayor Pro Tem Susan Gutowsky, District 1 Julie Pignataro, District 2 Tricia Canonico, District 3 Melanie Potyondy, District 4 Kelly Ohlson, District 5 City Council Chambers
300 Laporte Avenue, Fort Collins
& via Zoom at
https://zoom.us/j/98241416497
Cablecast on FCTV
Channel 14 on Connexion
Channel 14 and 881 on Xfinity

Carrie Daggett City Attorney Kelly DiMartino City Manager Delynn Coldiron City Clerk

# PROCLAMATIONS & PRESENTATIONS 5:00 PM

#### A) PROCLAMATIONS AND PRESENTATIONS

PP 1. Declaring January 26-February 1, 2025 as National Catholic Schools Week.

#### REGULAR MEETING 6:00 PM

- B) CALL MEETING TO ORDER
- C) PLEDGE OF ALLEGIANCE
- D) ROLL CALL
- E) CITY MANAGER'S AGENDA REVIEW
  - City Manager Review of Agenda
  - Consent Calendar Review, including removal of items from Consent Calendar for individual discussion.
- F) COMMUNITY REPORTS None.
- G) PUBLIC COMMENT ON ANY TOPICS OR ITEMS OR COMMUNITY EVENTS (Including requests for removal of items from Consent Calendar for individual discussion.)

Individuals may comment regarding any topics of concern, whether or not included on this agenda. Comments regarding land use projects for which a development application has been filed should be submitted in the development review process\*\* and not to Council.

• Those who wish to speak are required to sign up using the online sign-up system available at www.fcgov.com/council-meeting-participation-signup/

- Each speaker will be allowed to speak one time during public comment. If a speaker comments on a particular agenda item during general public comment, that speaker will not also be entitled to speak during discussion on the same agenda item.
- All speakers will be called to speak by the presiding officer from the list of those signed up. After everyone signed up is called on, the presiding officer may ask others wishing to speak to identify themselves by raising their hand (in person or using the Raise Hand option on Zoom), and if in person then will be asked to move to one of the two lines of speakers (or to a seat nearby, for those who are not able to stand while waiting).
- The presiding officer will determine and announce the length of time allowed for each speaker.
- Each speaker will be asked to state their name and general address for the record, and, if their comments relate to a particular agenda item, to identify the agenda item number. Any written comments or materials intended for the Council should be provided to the City Clerk.
- A timer will beep one time and turn yellow to indicate that 30 seconds of speaking time remain and will beep again and turn red when a speaker's time has ended.

[\*\*For questions about the development review process or the status of any particular development, consult the City's Development Review Center page at https://www.fcgov.com/developmentreview, or contact the Development Review Center at 970.221.6760.]

#### H) PUBLIC COMMENT FOLLOW-UP

# I) COUNCILMEMBER REMOVAL OF ITEMS FROM CONSENT CALENDAR FOR DISCUSSION CONSENT CALENDAR

The Consent Calendar is intended to allow Council to spend its time and energy on the important items on a lengthy agenda. Staff recommends approval of the Consent Calendar. Agenda items pulled from the Consent Calendar by either Council or the City Manager will be considered separately under their own Section, titled "Consideration of Items Removed from Consent Calendar for Individual Discussion." Items remaining on the Consent Calendar will be approved by Council with one vote. The Consent Calendar consists of:

- Ordinances on First Reading that are routine;
- Ordinances on Second Reading that are routine;
- Those of no perceived controversy:
- Routine administrative actions.

#### 1. Consideration and Approval of the Minutes of the January 7, 2025 Regular meeting.

The purpose of this item is to approve the minutes of the January 7, 2025 Regular meeting.

Second Reading of Ordinance No. 001, 2025, Amending Chapters 15 and 23 of the Code of the City of Fort Collins Relating to Small Cell Contractors and Provider Bond Requirements for Operating in the Public Right-of-Way.

This Ordinance, unanimously adopted on First Reading on January 7, 2025, presents a recommendation from the City Planning Development Team to:

1. Increase the bond requirements for all contractors working in the public right-of-way. These bond amounts have not been updated since 1998.

- 2. Increase the bond requirements for boring contractors stems from damage caused by telecommunication providers to underground facilities.
- 3. Create a performance bond requirement for all small cell facility installations.
- 3. Second Reading of Ordinance No. 002, 2025, Authorizing the Conveyance of a Temporary Construction Easement on Whitewater Park to Public Service Company of Colorado for Construction of Infrastructure Improvements at the Poudre River Regulator Station H-111-A.

This Ordinance, unanimously adopted on First Reading on January 7, 2025, authorizes the conveyance of a Temporary Construction Easement (the TCE) on 0.469 acres (the "TCE Area") being a portion of City property presently known as the Poudre River Whitewater Park and located at 201 East Vine Drive. The TCE will be used by Public Service Company of Colorado d/b/a Xcel Energy ("Xcel") for required infrastructure improvements at the Poudre River Regulator Station H-111-A.

This Agenda Item Summary addresses questions raised by Council on First Reading; see underlined areas.

4. Second Reading of Ordinance No. 003, 2025, Repealing and Reenacting Chapter 2, Article II, Division 3 of the Code of the City of Fort Collins Pertaining to Appeals Procedure.

This Ordinance, unanimously adopted on First Reading on January 7, 2025, incorporates process improvements to the procedures for addressing appeals and other questions of final decisions that are appealable to Council. The City Code changes address previously identified concerns with the current Council appeals procedure as discussed among Council, administrative staff, hearing officers, City boards and commissions, and members of the public. The City Code changes also clarify the processes and offer different routes for different types of questions on review.

5. First Reading of Ordinance No. 004, 2025, Vacating the Riverbend Court Right-of-Way and Approving Easements.

The purpose of this item is to vacate the public right-of-way at Riverbend Court and create drainage, utility, access, and emergency access easements over the property.

6. First Reading of Ordinance No. 005, 2025, Approving the First Amendment to the PUD Master Plan Development Agreement for the Montava Planned Unit Development Overlay and Master Plan.

The purpose of this item is for Council to consider the First Amendment to the Planned Unit Development (PUD) Master Plan Development Agreement for the Montava PUD Overlay and Master Plan between the City and the Developer. The amendment would extend the five (5)-year contingency for closing of the Developer's purchase from the Anheuser-Busch Foundation for two (2) additional years.

This item is a quasi-judicial matter and if it is considered on the discussion agenda it will be considered in accordance with the procedures described in Section 2(d) of the Council's Rules of Meeting Procedures adopted in Resolution 2024-148.

7. Resolution 2025-004 Approving the First Amendment to the Development Agreement to Secure Public Benefits for Development of the Montava Planned Unit Development Master Plan.

The purpose of this item is to consider the First Amendment to the Development Agreement to Secure Public Benefits for Montava Planned Unit Development (PUD) Master Plan (Public Benefits Agreement) between the City and the Developer. The amendment would extend the five (5)-year contingency for closing of the Developer's purchase from the Anheuser-Busch Foundation for two (2) additional years.

This item is a quasi-judicial matter and if it is considered on the discussion agenda it will be considered in accordance with the procedures described in Section 2(d) of the Council's Rules of Meeting Procedures adopted in Resolution 2024-148.

#### **END OF CONSENT CALENDAR**

- J) ADOPTION OF CONSENT CALENDAR
- **K) CONSENT CALENDAR FOLLOW-UP** (This is an opportunity for Councilmembers to comment on items adopted or approved on the Consent Calendar.)
- L) STAFF REPORTS None.
- M) COUNCILMEMBER REPORTS
- N) CONSIDERATION OF ITEMS REMOVED FROM THE CONSENT CALENDAR FOR INDIVIDUAL DISCUSSION
- O) CONSIDERATION OF ITEMS PLANNED FOR DISCUSSION

The method of debate for discussion items is as follows:

- Mayor introduced the item number and subject; asks if formal presentation will be made by staff
- Staff presentation (optional)
- Mayor requests public comment on the item (three minute limit for each person)
- · Council questions of staff on the item
- · Council motion on the item
- · Council discussion
- · Final Council comments
- · Council vote on the item

Note: Time limits for individual agenda items may be revised, at the discretion of the Mayor, to ensure all have an opportunity to speak. The timer will buzz when there are 30 seconds left and the light will turn yellow. It will buzz again at the end of the speaker's time.

8. First Reading of Ordinance No. 006, 2025, Making Supplemental Appropriations, Appropriating Prior Year Reserves and Authorizing Transfers of Appropriations for the West Elizabeth Corridor Final Design and Related Art in Public Places.

The purpose of this item is to appropriate additional design/project development funds in the amount of \$5.539M for advancing the design to 100% for the entire corridor, necessary scope additions and design changes such as protected bike/ped infrastructure, BRT routing revisions and right-of-way services. The West Elizabeth travel corridor is currently the highest priority

pedestrian/alternative mode corridor for improvement in the City and was highlighted in City Plan and the Transit Master Plan. This appropriation would follow the same minimum grant/local match ratio of 80/20 that would apply to the Small Starts grant. The local funding source identified for the local match is the "2050 tax." Details of the amounts requested for the grant funds and local match fund appropriation are included in the Background/Discussion section of this AIS.

- 9. Items Relating to Adopting Landscaping Amendments to the City Code and Land Use Code.
  - A. First Reading of Ordinance No. 007, 2025, Amending Chapter 12 of the Code of the City of Fort Collins to Revise Soil Loosening and Amendment Requirements.
  - B. First Reading of Ordinance No. 008, 2025, Repealing and Reenacting Section 5.10.1 of the Land Use Code and Amending Definitions in Section 7.2.2 of the Land Use Code to Advance Adopted City Policy Goals to Reduce Water Usage in Landscapes to Comply with State Law and to Clarify and Reorganize Landscaping, Tree Protection, and Irrigation Standards.

The purpose of this item is to adopt City Code and Land Use Code amendments related to landscape and soil that help to address Council's adopted priorities for 2021-2023.

The proposed amendments to the Land Use Code are designed to minimize water consumption in landscaping for most new and redeveloped properties; they would not apply to single-unit, duplex, and accessory dwelling unit housing types. The code amendments ensure compliance with Colorado Senate Bill 24-005 (SB 24-005), which prohibits specific landscaping practices.

The proposed City Code amendments on soil amendment and soil loosening requirements aim to enhance clarity for applicability and allow soil amendments to be tailored to specific site conditions, which will support successful vegetation establishment and long-term growth.

10. First Reading of Ordinance No. 009, 2025, Amending the Land Use Code to Align with Two Adopted State House Bills Concerning Accessory Dwelling Units and Parking for Multi-Unit Dwellings and to Clarify and Correct Certain Provisions.

The purpose of this item is to propose revisions, clarifications, and organization to the Land Use Code provisions that address specific areas that are the subject of two Colorado State House Bills passed last year. HB24-1152 requires the ability to build an ADU in more areas of the City, and HB24-1304 removes the minimum parking requirements for new multi-unit and residential mixed-use development. This item also includes clean-up to the Land Use Code.

- P) RESUMED PUBLIC COMMENT (if applicable)
- Q) OTHER BUSINESS
  - OB 1. Possible consideration of the initiation of new ordinances and/or resolutions by Councilmembers.

(Three or more individual Councilmembers may direct the City Manager and City Attorney to initiate and move forward with development and preparation of resolutions and ordinances not originating from the Council's Policy Agenda or initiated by staff.)

# OB 2. Consideration of an Executive Session to Discuss Real Property Acquisition and Sale:

"I move that Council go into executive session to discuss with appropriate City staff potential acquisition and sale of real property for potential court, maintenance and transportation facilities and similar uses, as permitted under:

- City Charter Article Roman Numeral Two, Section 11(3),
- City Code Section 2-31(a)(3) and
- Colorado Revised Statutes Section 24-6-402(4)(a)."

#### R) ADJOURNMENT

Every regular Council meeting will end no later than midnight, except that: (1) any item of business commenced before midnight may be concluded before the meeting is adjourned and (2) the Council may, at any time prior to adjournment, by majority vote, extend a meeting beyond midnight for the purpose of considering additional items of business. Any matter that has been commenced and is still pending at the conclusion of the Council meeting, and all matters for consideration at the meeting that have not yet been considered by the Council, will be deemed continued to the next regular Council meeting, unless Council determines otherwise.

Upon request, the City of Fort Collins will provide language access services for individuals who have limited English proficiency, or auxiliary aids and services for individuals with disabilities, to access City services, programs and activities. Contact 970.221.6515 (V/TDD: Dial 711 for Relay Colorado) for assistance. Please provide advance notice. Requests for interpretation at a meeting should be made by noon the day before.

A solicitud, la Ciudad de Fort Collins proporcionará servicios de acceso a idiomas para personas que no dominan el idioma inglés, o ayudas y servicios auxiliares para personas con discapacidad, para que puedan acceder a los servicios, programas y actividades de la Ciudad. Para asistencia, llame al 970.221.6515 (V/TDD: Marque 711 para Relay Colorado). Por favor proporcione aviso previo cuando sea posible. Las solicitudes de interpretación en una reunión deben realizarse antes del mediodía del día anterior.

Fi	ile	<b>Atta</b>	chr	nen	ts	for	Item:
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PP 1. Declaring January 26-February 1, 2025 as National Catholic Schools Week.



#### **PROCLAMATION**

**WHEREAS**, since 1974, National Catholic Schools Week is the annual celebration of Catholic education in the United States; and

**WHEREAS**, it starts the last Sunday in January and runs all week, which in 2025 is January 26 through February 1; and

**WHEREAS**, the theme for National Catholic Schools Week 2025 is "Catholic Schools: United in Faith and Community;" and

**WHEREAS**, schools typically observe the annual celebration week with Masses, open houses and other activities for students, families, parishioners and community members; and

**WHEREAS**, through these events, schools focus on the value Catholic education provides to young people and its contributions to our church our communities and our Nation; and

**WHEREAS**, each day a different entity is celebrated: Sunday, our school parish; Monday, our Nation; Tuesday, vocations; Wednesday, our community; Thursday, our students; Friday, our faculty, staff and volunteers; and Saturday, our families.

**NOW**, **THEREFORE**, I, Jeni Arndt, Mayor of the City of Fort Collins, do hereby proclaim January 26 through February 1, 2025, as

#### NATIONAL CATHOLIC SCHOOLS WEEK

**IN WITNESS WHEREOF**, I have hereunto set my hand and the seal of the City of Fort Collins this 21st day of January, 2025.

	Mayor	
ATTEST:		
City Clerk		

#### File Attachments for Item:

1. Consideration and Approval of the Minutes of the January 7, 2025 Regular meeting.

The purpose of this item is to approve the minutes of the January 7, 2025 Regular meeting.

## January 21, 2025

## **AGENDA ITEM SUMMARY**



City Council

**STAFF** 

Delynn Coldiron, City Clerk

**SUBJECT** 

Consideration and Approval of the Minutes of the January 7, 2025 Regular meeting.

**EXECUTIVE SUMMARY** 

The purpose of this item is to approve the minutes of the January 7, 2025 Regular meeting.

**STAFF RECOMMENDATION** 

Staff recommends approval of the minutes.

**ATTACHMENTS** 

1. Draft Minutes, January 7, 2025

#### **January 7, 2025**

#### COUNCIL OF THE CITY OF FORT COLLINS, COLORADO

#### **Council-Manager Form of Government**

Regular Meeting – 6:00 PM

# PROCLAMATIONS AND PRESENTATIONS 5:00 PM

#### A) PROCLAMATIONS AND PRESENTATIONS

None scheduled.

#### REGULAR MEETING 6:00 PM

#### B) CALL MEETING TO ORDER

Mayor Jeni Arndt called the regular meeting to order at 6:00 p.m. in the City Council Chambers at 300 Laporte Avenue, Fort Collins, Colorado, with hybrid participation available via the City's Zoom platform.

#### C) PLEDGE OF ALLEGIANCE

Mayor Jeni Arndt led the Pledge of Allegiance to the American Flag.

#### D) ROLL CALL

**PRESENT** 

Mayor Jeni Arndt

Mayor Pro Tem Emily Francis

Councilmember Susan Gutowsky

Councilmember Julie Pignataro

Councilmember Tricia Canonico

Councilmember Melanie Potyondy

Councilmember Kelly Ohlson

STAFF PRESENT

City Manager Kelly DiMartino

City Attorney Carrie Daggett

City Clerk Delynn Coldiron

#### E) CITY MANAGER'S AGENDA REVIEW

City Manager Kelly DiMartino provided an overview of the agenda, including:

- No changes to the published agenda.
- Items 1-6 on the Consent Calendar are recommended for adoption.

None.

# G) PUBLIC COMMENT ON ANY TOPICS OR ITEMS OR COMMUNITY EVENTS (Including requests for removal of items from Consent Calendar for individual discussion.)

John Ramstead spoke in favor of the Connexion Workers Coalition stating that not recognizing the union sends a message that Council and the City Manager are against unions. Ramstead opposed placing the item on the ballot and stated the employees have come together and want to bargain for their rights. Additionally, Ramstead supported placing an item on the ballot similar to Denver's 2U initiative to make forming unions easier. Ramstead encouraged Council to reconsider allowing video as part of public comment.

Kimberly Conner stated Council and our community are being complicit in the genocide occurring in the Middle East and that by remaining silent, Council is responsible for death and homelessness. Conner stated the war is not separate from our community and we are all responsible for what is occurring. Conner urged Council to approve a ceasefire resolution and arms embargo.

Christina Swope encouraged Council to ask the City Manager to recognize the Connexion Workers Coalition and to honor the legislation that was passed in Denver. Swope stated the voters of Colorado want workers to be able to bargain with employers regarding quality-of-life issues without fear of retaliation. Swope stated Fort Collins should set a precedent in this regard and approve a union without requiring it to go to a ballot.

Nicholas Sahwin noted he is a Connexion tech support worker and organizer of the union. Sahwin encouraged Council to develop a ballot measure like Denver's that would enable Fort Collins voters to weigh in on this issue. Sahwin stated there may be no option other than a strike should employee unions not be recognized and asked Council and City leadership to start communicating with the union.

Michael May asked Council to pass a resolution and encourage the City Manager to recognize the Connection Workers Coalition.

Casey Johns asked the City to recognize the Connexion Workers Coalition and stated a framework should be established to make this easier for other groups that want to organize.

Kaori Keyser stated it is important for the City to recognize the Connexion Workers Coalition and begin to develop a framework like Denver's. She stated the cost of doing this would not be too impactful to the City's budget and would ensure workers' voices are heard.

Jonesy Winchell spoke in support of recognizing the Connexion Workers Coalition and stated the City should develop a framework like Denver's.

August-Carter Nelson spoke in support of recognizing the Connexion Workers Coalition and stated Council should care about its employees in addition to its constituents.

Adam Hirschhorn provided comments on various pictures he provided and discussed nuclear war and related impacts.

Jonah Salehi noted he is a co-chair of DSA Fort Collins and asked Council and the City to recognize the Connexion Workers Coalition. Salehi commented on the training staff attended about creating environments where unions are not needed. Salehi stated workers will continue to unionize and this is Council's opportunity to put in place a framework to make this happen more easily. Salehi stated the only thing that should go to the ballot should be a framework like Denver's.

Kevin Caffrey, Northern Colorado Labor Council president, stated the bottom line is that people ne to make a livable wage and it is appropriate for Council, which has approved raises for its directory reports, to consider the Connexion workers and recognize their union.

Greg Zoda stated Denver's measure related to unions was an electoral victory and urged Council to recognize the Connexion Workers Coalition now and to start working on a framework to make creating unions easier in the future.

Harper Axelman spoke in support of Fort Collins recognizing the Connexion Workers Coalition and urged the City to start engaging with these employees and to place something on the ballot like what was done in Denver.

Public comment concluded at 6:28 p.m.

#### H) PUBLIC COMMENT FOLLOW-UP

Councilmember Potyondy asked if representatives from the Connexion Workers Coalition are continuing to converse with City leadership about their identified collective bargaining unit and the percentage of workers who are participating. City Manager DiMartino replied she has not received any recent information, but noted some of that information cannot be requested by the City per legal requirements. She stated staff will follow-up with legal information regarding what types of requirements exist for Council and City leadership.

#### I) COUNCILMEMBER REMOVAL OF ITEMS FROM CONSENT CALENDAR FOR DISCUSSION

Councilmember Ohlson withdrew Item Nos. 2, First Reading of Ordinance No. 001, 2025, Amending Chapters 15 and 23 of the Code of the City of Fort Collins Relating to Small Cell Contractors and Provider Bond Requirements for Operating in the Public Right-of-Way, and 3, First Reading of Ordinance No. 002, 2025, Authorizing the Conveyance of a Temporary Construction Easement on Whitewater Park to Public Service Company of Colorado for Construction of Infrastructure Improvements at the Poudre River Regulator Station H-111-A, from the Consent Calendar.

#### J) CONSENT CALENDAR

1. Consideration and Approval of the Minutes of the December 17, 2024 Regular meeting.

The purpose of this item is to approve the minutes of the December 17, 2024 Regular meeting.

Approved.

2. First Reading of Ordinance No. 001, 2025, Amending Chapters 15 and 23 of the Code of the City of Fort Collins Relating to Small Cell Contractors and Provider Bond Requirements for Operating in the Public Right-of-Way.

The purpose of this item is to present a recommendation from the City Planning Development Team to:

- 1. Increase the bond requirements for all contractors working in the public right-of-way. These bond amounts have not been updated since 1998.
- 2. Increase the bond requirements for boring contractors stems from damage caused by telecommunication providers to underground facilities.
- 3. Create a performance bond requirement for all small cell facility installations.

Removed from Consent Calendar for individual consideration.

3. First Reading of Ordinance No. 002, 2025, Authorizing the Conveyance of a Tempor Construction Easement on Whitewater Park to Public Service Company of Colorado Construction of Infrastructure Improvements at the Poudre River Regulator Station H-111-

The purpose of this item is to authorize the conveyance of a Temporary Construction Easement (the "TCE") on 0.469 acres (the "TCE Area") being a portion of City property presently known as Poudre River Whitewater Park and located at 201 East Vine Drive. The TCE will be used by Public Service Company of Colorado d/b/a Xcel Energy ("Xcel") for required infrastructure improvements at the Poudre River Regulator Station H-111-A.

Removed from Consent Calendar for individual consideration.

4. Resolution 2025-001 Authorizing the Mayor to Execute an Intergovernmental Agreement with Larimer County concerning the Livermore Conservation Project.

The purpose of this item is to seek authorization to enter into an Intergovernmental Agreement (IGA) with Larimer County for the Livermore Conservation Project. The project will conserve four ranches totaling 4,897 acres within the Laramie Foothills/Mountains to Plains Priority Area. The County would be the lead on this project and hold the conservation easements on the properties.

#### Adopted.

5. Resolutions 2025-002 Finding Substantial Compliance and Initiating Annexation Proceedings for the Heritage Annexation.

The purpose of this item is to determine substantial compliance and initiate annexation proceedings for the Heritage Annexation, a voluntary annexation located northeast of the intersection of International Boulevard and Mexico Way. The Applicant has submitted a written petition requesting annexation of 24.84 acres and zoning into the Employment (E) zone district, which is consistent with the City of Fort Collins Structure Plan Map and the most recently adopted (December 2023) East Mulberry Plan.

This annexation request is in conformance with the State of Colorado Revised Statutes as they relate to annexations, the City of Fort Collins City Plan, and the Larimer County and City of Fort Collins Intergovernmental Agreement Regarding Growth Management.

#### Adopted.

6. Resolution 2025-003 Authorizing the Initiation of Exclusion Proceedings of Annexed Properties Within the Territory of the Poudre Valley Fire Protection District and Authorizing an Intergovernmental Agreement with Said District.

The purpose of this item is to authorize the City Attorney to file a petition in Larimer County District Court to exclude the property annexed into the City in 2024 from the Poudre Valley Fire Protection District (the "District") in accordance with state law. The property affected by this Resolution is the I-25 & Mulberry Annexation. Colorado Revised Statutes Section 32-1-502 requires an order of exclusion from the District Court to remove the annexed property from special district territories. The property has been receiving fire protection services from the Poudre Fire Authority and will continue to do so. The City Attorney's Office files the petition in Larimer County District Court each year seeking exclusion for all properties annexed in the previous year that should be removed from the District to avoid double taxation.

#### Adopted.

Mayor Pro Tem Francis moved, seconded by Councilmember Potyondy, to approve the recommended actions on items 1-6, minus 2 and 3, on the Consent Calendar.

The motion carried 7-0.

**K) CONSENT CALENDAR FOLLOW-UP** (This is an opportunity for Councilmembers to comment on items adopted or approved on the Consent Calendar.)

None.

#### L) STAFF REPORTS

None scheduled.

#### M) COUNCILMEMBER REPORTS

Mayor Jeni Arndt

• Commented on difficulties with Parks and Recreation program sign-up and commended the Atzlan employees who have been working on the issue.

# N) CONSIDERATION OF ITEMS REMOVED FROM THE CONSENT CALENDAR FOR INDIVIDUAL DISCUSSION

2. First Reading of Ordinance No. 001, 2025, Amending Chapters 15 and 23 of the Code of the City of Fort Collins Relating to Small Cell Contractors and Provider Bond Requirements for Operating in the Public Right-of-Way.

The purpose of this item is to present a recommendation from the City Planning Development Team to:

- 1. Increase the bond requirements for all contractors working in the public right-of-way. These bond amounts have not been updated since 1998.
- 2. Increase the bond requirements for boring contractors stems from damage caused by telecommunication providers to underground facilities.
- 3. Create a performance bond requirement for all small cell facility installations.

Councilmember Ohlson suggested looking for other items such as this that may need to be updated, noting this has not been updated since 1998. He then read from the second page of the AIS about a contractor being unable to complete a job that was referenced and the potential penalties for which the City would be responsible. He asked whether the job was completed. Ken Zetye, Chief Construction Inspector, stated there was a serious threat the company in question would not be able to finish the work due to circumstances outside the City's control; however, the project is now nearly complete, and staff is confident the project will be completed.

Councilmember Ohlson stated if the City would have been responsible for paying the \$800,000, he wondered if the \$250,000 being requested was adequate. Zetye replied it is \$250,000 per boring contractor, and in this case, there were six or seven contractors; therefore, the amount is sufficient.

Mayor Pro Tem Francis moved, seconded by Councilmember Pignataro, to ad Ordinance No. 001, 2025, Amending Chapters 15 and 23 of the Code of the City of Formula Collins Relating to Small Cell Contractors and Provider Bond Requirements for Operating in the Public Right-of-Way, on First Reading.

The motion carried 7-0.

3. First Reading of Ordinance No. 002, 2025, Authorizing the Conveyance of a Temporary Construction Easement on Whitewater Park to Public Service Company of Colorado for Construction of Infrastructure Improvements at the Poudre River Regulator Station H-111-Δ

The purpose of this item is to authorize the conveyance of a Temporary Construction Easement (the "TCE") on 0.469 acres (the "TCE Area") being a portion of City property presently known as Poudre River Whitewater Park and located at 201 East Vine Drive. The TCE will be used by Public Service Company of Colorado d/b/a Xcel Energy ("Xcel") for required infrastructure improvements at the Poudre River Regulator Station H-111-A.

Councilmember Ohlson commented on the fact that the Whitewater Park land was initially transferred to the City's Parks Department in 1987 to be included as part of the Gustov-Swanson Natural Area and asked if that ever actually occurred. Raime Lanham, Business Support for Real Estate Services, replied the land was part of a nature area prior to the official formation of Natural Areas and noted there is not a great deal of documentation about when or how the transfer occurred.

Councilmember Ohlson questioned the transfer of the land, specifically noting the Natural Areas ballot measure requires renumeration. Lanham reiterated this was prior to Natural Areas.

Councilmember Ohlson requested additional follow-up prior to Second Reading.

Ralph Campano, Real Estate Services Manager, stated the property was acquired through several different deeds and this particular area was transferred to the City from the former Light and Power Division, and at the time, the Parks Department and Natural Areas Department were under the same umbrella. He stated he has yet to find any records relating to the formal transfer of the property, but assumed it was to be used for park purposes.

Councilmember Ohlson requested follow-up as to why the Xcel facility must look like the provided renderings and suggested there may be an opportunity to improve the aesthetics.

Councilmember Ohlson noted the AIS indicated that a review from the Parks and Recreation Board was not required, but suggested the Board may have had some questions and should have been involved.

Mayor Pro Tem Francis moved, seconded by Councilmember Gutowsky, to adopt Ordinance No. 002, 2025, Authorizing the Conveyance of a Temporary Construction Easement on Whitewater Park to Public Service Company of Colorado for Construction of Infrastructure Improvements at the Poudre River Regulator Station H-111-A, on First Reading.

The motion carried 7-0.

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Item 1.

7. First Reading of Ordinance No. 003, 2025, Repealing and Reenacting Chapter 2, Article II, Division 3 of the Code of the City of Fort Collins Pertaining to Appeals Procedure.

The purpose of this item is to incorporate process improvements to the procedures for addressing appeals and other questions of final decisions that are appealable to Council. The City Code changes address previously identified concerns with the current Council appeals procedure as discussed among Council, administrative staff, hearing officers, City boards and commissions, and members of the public. The City Code changes also clarify the processes and offer different routes for different types of questions on review.

Kim Meyer, Principal City Planner, stated this item is a recommendation from City staff for a Code amendment to improve the procedures for addressing appeals.

Heather Jarvis, Assistant City Attorney, summarized the proposed changes, including clarification and narrowing of the standing required to file an appeal, separating processes between the appeals of interpretation and application of the Code versus fair hearing questions, fee updates, and additional process changes. Jarvis noted the proposed changes include allowing for fair hearing issues to be determined at the administrative level. Additionally, one of the process changes includes a shortened timeline.

**PUBLIC COMMENT** 

None.

#### COUNCIL DISCUSSION

Councilmember Ohlson stated he does not want the process to change to the point of discouraging people to bring appeals forward and opposed the phrase related to the appeal process creating unrealistic expectations.

Councilmember Ohlson questioned whether all types of communication have been included in the list of participation for identifying individuals with standing to file an appeal. Assistant City Attorney Jarvis replied there is no requirement that the communication occur in a certain form and the appeal must only relate to issues raised before the original decision maker. City Attorney Daggett noted the process is set to ensure that any information given to the decision maker, regardless of form, makes a person eligible to file an appeal.

Related to process improvements, Councilmember Ohlson asked about the screening review to verify whether an appeal is valid and expressed concern the City organization could throw out an appeal. Assistant City Attorney Jarvis noted the Code includes a list of items that will guide the screening review. Additionally, she noted the phrase related to the appeal process creating unrealistic expectations does not appear anywhere in the code language.

Councilmember Potyondy noted it is often unclear to residents that Council is acting in a different capacity when considering appeals and must solely consider Code requirements. She expressed support for the changes to make the appeals process more user-friendly and quicker. She also supported the inclusion of the pre-appeal conference to help set people up for success in the process.

Councilmember Pignataro commended staff for their work and supported the compressed timeline. She asked how quickly corrections could be made if some unintended consequences of these changes are found. Assistant City Attorney Jarvis confirmed that corrections could be made simply with an additional ordinance and noted any appeal in process would be governed by the ordinance in effect at the time.

Item 1.

Page 18

Councilmember Gutowsky stated these changes will assist appellants to navigate the procland asked who will be completing the screening reviews. Assistant City Attorney Jarvis replied the screening review will be done by an administrative decision maker appointed by the City Manager and the completeness review, which will occur within two working days of appeal submittal, will be done by a representative from the City Clerk's Office. She noted new evidence will not be considered in appeals to help reduce confusion.

Mayor Pro Tem Francis moved, seconded by Councilmember Pignataro, to adopt Ordinance No. 003, 2025, Repealing and Reenacting Chapter 2, Article II, Division 3 of the Code of the City of Fort Collins Pertaining to Appeals Procedure, on First Reading.

Councilmember Canonico commended staff for their work to make this process clean and transparent and stated the changes will make the City government more efficient and professional.

Mayor Arndt concurred with Councilmember Canonico's comments.

Mayor Pro Tem Francis also thanked staff and commended the transparent process. She noted Council plays a different role when considering appeals and stated these changes are important to help clarify that fact.

The motion carried 7-0.

#### P) OTHER BUSINESS

OB 1. Possible consideration of the initiation of new ordinances and/or resolutions by Councilmembers.

None.

#### Q) ADJOURNMENT

There being no further business before the Council, the meeting was adjourned at 7:19 p.m.

	Mayor
ATTEST:	
City Clerk	

#### File Attachments for Item:

2. Second Reading of Ordinance No. 001, 2025, Amending Chapters 15 and 23 of the Code of the City of Fort Collins Relating to Small Cell Contractors and Provider Bond Requirements for Operating in the Public Right-of-Way.

This Ordinance, unanimously adopted on First Reading on January 7, 2025, presents a recommendation from the City Planning Development Team to:

- 1. Increase the bond requirements for all contractors working in the public right-of-way. These bond amounts have not been updated since 1998.
- 2. Increase the bond requirements for boring contractors stems from damage caused by telecommunication providers to underground facilities.
- 3. Create a performance bond requirement for all small cell facility installations.

January 21, 2025

#### AGENDA ITEM SUMMARY

City Council



#### **STAFF**

Ken Zetye, Engineering Construction Inspection Manager Brad Buckman, City Engineer

#### **SUBJECT**

Second Reading of Ordinance No. 001, 2025, Amending Chapters 15 and 23 of the Code of the City of Fort Collins Relating to Small Cell Contractors and Provider Bond Requirements for Operating in the Public Right-of-Way.

#### **EXECUTIVE SUMMARY**

This Ordinance, unanimously adopted on First Reading on January 7, 2025, presents a recommendation from the City Planning Development Team to:

- 1. Increase the bond requirements for all contractors working in the public right-of-way. These bond amounts have not been updated since 1998.
- 2. Increase the bond requirements for boring contractors stems from damage caused by telecommunication providers to underground facilities.
- 3. Create a performance bond requirement for all small cell facility installations.

#### STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

#### FIRST READING BACKGROUND / DISCUSSION

Council is empowered and directed by Article II, Section 5(b) and Section 14, of the City Charter to provide for all essential administrative functions and public services related to street maintenance and provide for all licenses and permits for regulatory purposes.

On October 20, 1998, Council adopted Ordinance No. 180, 1998, which created an overall license to be known as a "Right-of-Way Contractors License," which license must be supplemented with an endorsement for the specific type of construction work proposed to be performed by the contractor.

The Right-of-Way Contractors License was designed to fully cover the City's administrative costs in processing the applications and includes a bonding requirement to adequately protect the City in City Code Section 15-363 Bond required.

The bond requirements for a contractor performing work in the City right-of-way has not been updated to address repairs to City property caused by small cell providers or their contractors when they abandon a project and fail to repair existing damages. The City encountered this exposure when a cellular service provider was going through a process of financial and contractual changes and were unable to complete the contract to build small cell facilities in the public right-of-way in Fort Collins. It was determined that the repair work in the right-of-way would have cost the City approximately \$800,000 if the parties decided not to complete their obligations. The current bonding structure is insufficient and will likely place financial responsibility on the City to repair damaged property. The major telecommunications companies are working in the City right now to upgrade their facilities by providing cellular and fiber optic data service, making it increasingly more likely that there will be unresolved damage and necessary repairs to City property. The potential exposure is an unmanaged financial risk. The proposed code changes will help decrease the potential of the City being left with damaged infrastructure if a telecommunications company does not honor their obligations to repair the damage they have created in installing their facilities.

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None.

#### **BOARD / COMMISSION / COMMITTEE RECOMMENDATION**

None.

**PUBLIC OUTREACH** 

None.

#### **ATTACHMENTS**

1. Ordinance for Consideration

# ORDINANCE NO. 001, 2025 OF THE COUNCIL OF THE CITY OF FORT COLLINS AMENDING CHAPTERS 15 AND 23 OF THE CODE OF THE CITY OF FORT COLLINS RELATING TO SMALL CELL CONTRACTORS AND PROVIDER BOND REQUIREMENTS FOR OPERATING IN THE PUBLIC RIGHT-OF-WAY

- A. The City of Fort Collins, as a home-rule municipality, is authorized by Article XX, Section 6 of the Colorado Constitution, the provisions of state statutes, and its City Charter to develop and implement policies and ordinances regulating the development of land within the City.
- B. The City Council is empowered and directed by Article II, Section 5(b) and Section 14, of the City Charter to provide for all essential administrative functions and public services related to street maintenance and provide for all licenses and permits for regulatory purposes.
- C. On October 20, 1998, the City Council adopted Ordinance No. 180, 1998, which created an overall license to be known as a "Right-of-Way Contractors License," which license must be supplemented with an endorsement for the specific type of construction work proposed to be performed by the contractor.
- D. The Right-of-Way Contractors License was designed to fully cover the City's administrative costs in processing the applications and includes a bonding requirement to adequately protect the City in City Code Section 15-363 Bond required.
- E. In 2017 in response to Federal Communications Commission ("FCC") rulemaking and state statutory revisions affecting local control over wireless communication facilities, the City Council adopted Ordinance No. 143, 2017 adding Chapter 23, Article VII of the City Code to create a permitting process for small cell telecommunications facilities located in public highways.
- F. The number of telecommunications companies working in the City right-ofway is increasing and the risk of unresolved damages and necessary repairs to City property is likely.
- G. The bond requirements for a contractor performing work in the City right-ofway has not been updated to address repairs to City property since 1998 and the current bond requirement is insufficient to adequately protect the City.
- H. The proposed code changes will help decrease the City's be exposure to a significant financial risk to repair damaged infrastructure caused by contractors.

- I. Based on the foregoing, it is the desire of the City Council to amend Chapters 15 and 23 of the Code of the City of Fort Collins Relating to Small Cell Contractors and Provider Bond Requirements for Operating in the Public Right-of-Way.
- J. The proposed City Code amendments are the best interest of the citizens of Fort Collins.

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. Section 15-363 of the Code of the City of Fort Collins is hereby amended to read as follows:

#### Sec. 15-363. – Bond required.

All license applications shall be accompanied by a license and permit bond executed by a reliable surety company with a rating of "A-" or better. The bond certificate provided to the City shall be an original (not a copy) or an electronic file electronically sealed by the surety. Except for applications to bore in the public right-of-way, the bond shall be in the amount of one hundred thousand dollars (\$100,000) or as otherwise set forth in a Supplemental Site License as provided in § 23-177(d). Applicants applying to bore for utilities in the public right-of-way shall provide a bond of two hundred fifty thousand dollars (\$250,000). All bonds shall be continuous, with a minimum cancellation notice of sixty (60) days. In the event a bond is canceled, the license and any related permitting will be immediately revoked and no further work will be allowed to occur; however, the bond, even though canceled, must remain effective through the warranty period associated with all previously completed work items.

Section 2. Section 23-172 of the Code of the City of Fort Collins is hereby amended to read as follows:

#### Sec. 23-172. - Definitions.

The following words, terms, and phrases, when used in this Chapter, shall have the meanings below:

. . .

Supplemental Site License (SSL) shall mean a site-specific sub-license issued under the general authority granted in the MLA, containing authorization for installation and operation of an identified SCF at a specific address.

. . .

Section 3. Section 23-175 of the Code of the City of Fort Collins is hereby amended to read as follows:

#### Sec. 23-175 - Operational standards.

. . .

- (d) Legal access. The applicant shall warrant and represent for all SCF permit applications that the applicant has entered into a master license agreement for any public highway affected by the application providing legal access to/from the SCF and the utilities necessary to operate and maintain the facility, and, where applicable, permission to attach the SCF from the owner of the pole.
- (e) Operation and maintenance.

. . .

(7) In the event of conflict between the requirements of this subsection (e), a master license agreement, and/or an SSL, the master license agreement shall have priority.

. . .

Section 4. Section 23-177 of the Code of the City of Fort Collins is hereby amended to read as follows:

# Sec. 23-177- Application, review procedures and requirements for small cell facilities in the public highways.

. . .

- (d) Submittal requirements and review procedures for SCFs permit applications shall be reviewed pursuant to the following procedures:
  - (1) Elements

. . .

h. Proof of bonding and insurance satisfying the requirements of § 23-19 for any SCF installation that entails excavation of a public highway, in an amount determined in the Engineer's judgment under § 23-175(g); and

. . .

Section 5. Section 23-178 of the Code of the City of Fort Collins is hereby amended to read as follows:

#### Sec. 23-178. - Standards for approval.

- (a) Administrative approval. An applicant for a SCF permit shall be subject to administrative review as set forth in § 23-177.
- (b) Notwithstanding the approval of an application for collocation or a new non-cityowned structure as described herein, all work performed on SCFs must be completed in accordance with applicable building and safety requirements of the City.
- (c) As required in the Engineer's judgment under § 6-175(g), any application for an SCF permit and at the time of requesting an SSL, an applicant shall be required to carry adequate insurance and establish performance bond(s) for the entire scope of make-ready work it will perform, including work it will perform on facilities owned by existing cellular providers, as required in the same manner for other right-of-way, utility, and excavation projects under this Code.

Introduced, considered favorably on first reading on January 7, 2025, and approved on second reading for final passage on January 21, 2025.

	Mayor	
ATTEST:		
City Clerk		

Effective Date: January 31, 2025

Approving Attorney: Yvette Lewis-Molock

#### File Attachments for Item:

3. Second Reading of Ordinance No. 002, 2025, Authorizing the Conveyance of a Temporary Construction Easement on Whitewater Park to Public Service Company of Colorado for Construction of Infrastructure Improvements at the Poudre River Regulator Station H-111-A.

This Ordinance, unanimously adopted on First Reading on January 7, 2025, authorizes the conveyance of a Temporary Construction Easement (the TCE) on 0.469 acres (the "TCE Area") being a portion of City property presently known as the Poudre River Whitewater Park and located at 201 East Vine Drive. The TCE will be used by Public Service Company of Colorado d/b/a Xcel Energy ("Xcel") for required infrastructure improvements at the Poudre River Regulator Station H-111-A.

This Agenda Item Summary addresses questions raised by Council on First Reading; see underlined areas.

January 21, 2025

### AGENDA ITEM SUMMARY

City Council



#### **STAFF**

Raime Lanham, Business Support III Jonathan Piefer, Lead Real Estate Specialist Missy Nelson, Senior Technical Project Manager

#### **SUBJECT**

Second Reading of Ordinance No. 002, 2025, Authorizing the Conveyance of a Temporary Construction Easement on Whitewater Park to Public Service Company of Colorado for Construction of Infrastructure Improvements at the Poudre River Regulator Station H-111-A.

#### **EXECUTIVE SUMMARY**

This Ordinance, unanimously adopted on First Reading on January 7, 2025, authorizes the conveyance of a Temporary Construction Easement (the TCE) on 0.469 acres (the "TCE Area") being a portion of City property presently known as the Poudre River Whitewater Park and located at 201 East Vine Drive. The TCE will be used by Public Service Company of Colorado d/b/a Xcel Energy ("Xcel") for required infrastructure improvements at the Poudre River Regulator Station H-111-A.

This Agenda Item Summary addresses questions raised by Council on First Reading; see underlined areas.

#### **STAFF RECOMMENDATION**

Staff recommends adoption of the Ordinance on Second Reading.

#### FIRST READING BACKGROUND / DISCUSSION

#### CITY PROPERTY

Poudre River Whitewater Park ("Whitewater Park") is comprised of approximately 11.12 acres, more or less, being all of Lot 1 of the Plat of Poudre River Whitewater Park recorded July 17, 2018, at Reception No. 20180043314, Clerk and Recorder's Records, Larimer County, Colorado, save and except 4.091 acres known as the Main Parcel of the Powerhouse Energy Campus Lease.

Whitewater Park was initially acquired by the City in several transactions throughout multiple decades to be used by City Light and Power. The land comprising a majority of the TCE Area was conveyed to the City by Clarence Darras, Administrator for C.J. Darras, Deceased, in the Deed dated October 6, 1955, as recorded at Book 1004, Page 65, Clerk and Recorder's Records, Larimer County, Colorado. The remaining lands within the TCE Area were dedicated to the City by Public Service Company of Colorado in that certain Deed of Dedication dated August 10, 2017, recorded at Reception No. 20170056675, Clerk and Recorder's Records, Larimer County, Colorado.

The area in question was purchased by Light & Power in 1955, and ownership and management of unearea was subsequently transferred to the Parks and Recreation Department in 1987, being five years prior to the formal creation of the Natural Areas Department in 1992. Whitewater Park was formally created in 2019 and is currently managed by the Parks Department. No Natural Areas funds were used to purchase the land involved in the TCE Area.

#### **XCEL PROPERTY**

The Poudre River Regulator Station H-111-A (the "Regulator Station") is located entirely on Lot 3 of the Plat of Poudre River Whitewater Park recorded July 17, 2018, at Reception No. 20180043314, Clerk and Recorder's Records, Larimer County, Colorado, and is entirely surrounded by Whitewater Park.

The Regulator Station parcel was conveyed to Colorado-Wyoming Gas Company, being a predecessor to Xcel, by LeEtta May Marshall in the Quit Claim Deed dated January 21, 1964, recorded at Book 1234, Page 586, Clerk and Recorder's Records, Larimer County, Colorado.

As the Regulator Station is entirely surrounded by Whitewater Park, there are five easements across Whitewater Park that service the Regulator Station; three underground gas transmission easements, one underground electric transmission easement, and one shared access easement.

Xcel intends to access the TCE Area and Regulator Station via the easement conveyed by the City to Public Service Company of Colorado, in that certain Shared Access Easement Deed and Agreement dated August 22, 2017, recorded at Reception No. 20170056673, Clerk and Recorder's Records, Larimer County, Colorado, which provides for the repair and restoration of any damaged areas on City Property.

Xcel also intends to conduct a portion of the work for the Project within the boundaries of that certain Right of Way Easement from the City to Colorado-Wyoming Gas Company dated September 25, 1962, recorded at Book 1183, Page 485, Clerk and Recorder's Records, Larimer County, Colorado (the "Intake Easement").

#### THE PROJECT

The purpose of the Project is to comply with US Department of Transportation Pipeline and Hazardous Materials Safety Administration (PHMSA) "Mega Rule" regulations, which requires that natural gas operators ensure pipelines in their system meet specific guidelines to improve record keeping activity and safety. The updates would not increase capacity or supply of the current natural gas distribution system.

The Regulator Station operates to reduce pressures of the incoming natural gas utility line that feeds the City of Fort Collins. The facility operates autonomously and, due to redundancy of the natural gas system, can be taken off-line without loss of service to the community. The proposed Project would allow for a continued supply of safe and reliable energy to existing customers.

The majority of work for the Project, including any excavation, shall be conducted within the boundaries of the Regulator Station and the Intake Easement. The primary purpose of the TCE is for the storage and staging of materials and equipment.

The main components of the Project are the removal and replacement of natural gas utility infrastructure, including approximately 210 linear feet of above-ground piping, 145 linear feet of below ground piping, an in-line heater, valves, fittings, and other operational components. The Project also includes removal of approximately 420 square feet of unused concrete foundations, the depths of which are unknown. Removal of the foundations include backfilling to match existing, surrounding grades. Approximately 230 linear feet of new below-ground piping and 75 linear feet of above-ground piping will be installed along with valves, fittings, insulating kits, and other operational components. Most of the existing fence surrounding the Regulator Station will remain in place. A portion of the fence will be removed temporarily during construction and will be re-erected upon completion.

#### THE TCE

The TCE Area surrounding the Regulator Station will be used to store equipment and materials throughout construction of the Project. However, portions of the TCE Area may require vegetation removal and stripping as well as segregation of topsoil for use in reclamation. The TCE will provide that any damaged surface areas, including any trees or shrubs, will be restored in accordance with City plans, specifications, and requirements. Xcel has provided a Reclamation Plan Draft ("Reclamation Plan") that has been approved by Forestry and Parks staff, which will be finalized prior to the commencement of construction.

Although the construction phase of the Project is currently estimated to be 10-12 weeks, the initial TCE term will be for twelve (12) months, with an option to extend for an additional twelve (12) months, and the TCE will contain provisions permitting entry for any additional time necessary to ensure compliance with the Reclamation Plan.

Although portions of park pathways will be closed only during the construction period, all parking spaces and secondary access routes throughout the park will remain open throughout the entire term of the TCE.

#### **ENVIRONMENTAL IMPACT**

The overall impact to Whitewater Park would be relatively minimal and temporary. Temporary impacts are anticipated to be minor and mainly limited to revegetation activities and infrequent maintenance. However, other potential temporary impacts include surface water runoff during precipitation events, groundwater discharge during construction, avian habitat disruption, and restoration of Whitewater Park to its preconstruction condition. The site will be routinely inspected following application of seed and mulch to ensure reclamation success.

SURFACE WATERS: Potential impacts to the Poudre River will be minimized using best management practices during construction and through reclamation. Conditions outlined in the Floodplain Use Permit and Erosion Control Materials required by the City will be followed to further protect water quality.

VEGETATION: Temporary construction staging will likely disturb existing vegetation, but disturbances will be contained to the proposed TCE Area. Large trees will be protected from construction impacts. Smaller trees and shrubs installed by Parks have been inventoried and Xcel will repair or replace any damages in accordance with the Reclamation Plan. Following construction, the disturbed areas will be restored with vegetation to match the existing species on site. The Reclamation Plan includes requirements for seed mix, application rates, and soil preparations or amendments.

WETLANDS: An informal wetland delineation was performed by a wetland scientist in the Spring of 2024. Construction staging will not occur within any areas that were identified as potential wetlands.

WILDLIFE: Impacts to protected wildlife are expected to be negligible.

If vegetation removal will occur within the nesting season for migratory songbirds, a qualified avian biologist will conduct nest surveys. During a preliminary raptor and eagle survey conducted in 2024, no raptor/eagle nests were encountered. Another raptor/eagle nest survey will be conducted prior to construction in 2025 to ensure there are no active nests within the Colorado Parks and Wildlife recommended buffer distances of the Project. Additional wildlife surveys may be performed if deemed necessary by the City of Fort Collins.

#### CITY PERMITTING AND COORDINATION

FORESTRY: Xcel and Parks have coordinated with Forestry on inventory of vegetation and restoration plans.

#### **Applicable Permits**

FLOODPLAIN USE PERMIT: Required for temporary construction activities within the 100-year floodplain of the Poudre River. Xcel has discussed the Project with the City's floodplain management team throughout the design process and is working toward applying for and securing a Floodplain Use Permit.

ELECTRICAL PERMIT: Xcel plans on updating existing exterior and internal light fixtures which does not require an electrical permit, but the lighting plan will be confirmed by the Zoning Department that it meets current Land Use Code lighting standards.

PARKS PERMIT: Xcel has worked closely with Parks during the design of the Project, and Parks will also issue a permit for the Project, as required by City Code.

TRAFFIC CONTROL PERMIT: Xcel will obtain a Traffic Control Permit for the construction of the Project. For the duration of construction, a portion of the paved interior walkaways located within Whitewater Park will be closed to accommodate construction equipment and vehicles. However, all parking spaces and secondary access routes throughout the park will remain open during construction. A map of the proposed closure locations is included as an attachment hereto.

#### **Permits, Not Applicable**

The following permits and approvals were reviewed and determined by the City to be not applicable based on the proposed scope of Xcel's work:

BUILDING PERMIT: The Building Department advised that no building permits are required for he Project. There will be no construction or deconstruction of the existing utility buildings on site. Portions of the existing fence will be removed temporarily to accommodate construction. Removed sections of fence will be reinstalled unless infeasible, and if replacement is required, it will be done so with the same material and height and in the same location.

EROSION CONTROL MATERIALS: This project is within the City's Municipal Separate Storm Sewer System (MS4) Permit Area and subject to all applicable rules and regulations. Currently this Project requires no erosion control material submittal. In accordance with City Code Section 26-498, the construction areas must be swept and maintained to prevent dirt, saw cuttings, concrete wash, trash & debris, landscape materials and other pollutants from the potential of leaving the site and entering the storm sewer during the duration of the project. If complaints are received or site observation of the project indicates that pollutants are discharged off site, the City may require the project to install erosion and sediment control measures.

LOCATION & EXTENT OR DEVELOPMENT REVIEW: City of Fort Collins Planning Department reviewed the Project scope and advised that neither a formal development review nor the L&E review would be required as the scope of the work does not meet the definition of development.

VARIANCE APPROVALS: Park Planning and Development is in discussions with the Xcel team to address the existing security fencing. Depending on the outcome, appropriate building permits and/or variances will be applied for by the Xcel group.

AIR QUALITY: City and County air quality specialists have concluded that no air quality concerns will results as part of the Project.

#### **ALTERNATIVE LOCATION ANALYSIS**

No alternative location was considered due to the nature of the Project.

#### **CITY FINANCIAL IMPACTS**

Other than staff time and other expenses reimbursable to the City by Xcel, there is no cost to the City associated with the TCE. However, the City will be charging Xcel for the fair market value of the TCE (the "Easement Value") and a flat fee to address expenses incurred as a direct result of this Project (the "Cost Recovery Fee"). The Easement Fee and the Cost Recovery Fee will be paid prior to the City's execution of the TCE.

Real Estate Services staff completed an internal Reconnaissance Valuation to determine the Easement Value, with price per square foot at the lower end of the recent sales range due Flood Plain and Flood Way designations. City staff estimates the Easement Value to total \$8,169, and the Cost Recovery Fee will be set at \$4,000.

#### **BOARD / COMMISSION / COMMITTEE RECOMMENDATION**

The current policy for seeking Parks and Recreation Board approval is limited to large and impactful land purchases, sales, or policies, because the duties of Parks and Recreation Board relate to "rules, regulations, policies and administrative and budgetary matters". This Agenda item for a temporary easement was evaluated to show minimal or no impact on the underlying uses of Whitewater Park. When temporary easements on Parks properties have minimal impact on the underlying property's purpose and function, updates to the board are optional based on meeting agenda time and availability.

The Parks and Recreation Board staff liaison has been advised of the TCE, and Park Planning and Development staff will provide an update on this item at the January Parks and Recreation Advisory Board meeting. The City's Planning and Zoning Departments have reviewed the Project and determined that the project does not rise to the level of Development Review.

#### **PUBLIC OUTREACH**

None.

#### **ATTACHMENTS**

First Reading attachments not included.

- 1. Ordinance for Consideration
- 2. Exhibit A to Ordinance

ORDINANCE NO. 002, 2025
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE CONVEYANCE OF A TEMPORARY
CONSTRUCTION EASEMENT ON WHITEWATER PARK TO
PUBLIC SERVICE COMPANY OF COLORADO FOR
CONSTRUCTION OF INFRASTRUCTURE IMPROVEMENTS AT
THE POUDRE RIVER REGULATOR STATION H-111-A

- A. The City's Whitewater Park is comprised of approximately seven acres, spanning the Poudre River east of College Avenue and south of East Vine Drive.
- B. The Public Service Company of Colorado ("Xcel Energy") owns a parcel of land entirely contained within the City's Whitewater Park that is used for its Poudre River Regulator Station H-111-A (the "Regulator Station"). The Regulator Station operates to reduce pressures of the incoming natural gas utility line that provides natural gas to the community.
- C. Xcel Energy seeks one temporary construction easement ("the Easement") from the City over a portion of City's Whitewater Park property. Xcel Energy will use the Easement to store and stage materials and equipment as it removes and replaces aboveground and in-ground piping and other infrastructure that serves the Regulator Station. The Easement will provide that any damaged surface areas, including any trees or shrubs, will be restored in accordance with City requirements.
- D. The Easement consists of 0.469 acres. A legal description for the Easement is attached hereto as Exhibit "A" and incorporated herein by this reference.
- E. City staff estimate that the fair market value of the Easement is \$8,169. The City will charge Xcel Energy \$8,169 for the Easement, in addition to a \$4,000 fee for work by City staff to develop and execute the Easement.
- F. Section 23-111 of the City Code authorizes the City Council to dispose of interests in real property owned in the name of the City provided that the City Council first finds, by ordinance, that such disposition is in the best interests of the City.

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

- Section 1. The City Council finds that granting the Easement to Xcel Energy on the terms and conditions described herein is in the best interests of the City.
- Section 2. The City Council authorizes the Mayor to execute such documents as are necessary to convey the Easement to Xcel Energy on terms and conditions consistent with this Ordinance, together with such additional terms and conditions as the City Manager, in consultation with the City Attorney, determines are necessary or

appropriate to protect the interests of the City, including, but not limited to, any necessary changes to the legal descriptions of the Easement, as long as such changes do not materially increase the size or change the character of the interests to be conveyed.

Introduced, considered favorably on first reading on January 7, 2025, and approved on second reading for final passage on January 21, 2025.

	Mayor	
ATTEST:		
City Clerk	<u> </u>	

Effective Date: January 31, 2025 Approving Attorney: Ted Hewitt



#### Legal Descriptions and Depictions of the TCE Area (Page 1 of 3)

Sheet 1 of 3

#### **EXHIBIT B - H-111 REG. STATION** TEMPORARY CONSTRUCTION EASEMENT

A parcel of land lying in the northwest one-quarter (NW1/4) of Section 12, Township 7 North, Range 69 West, of the 6th Principal Meridian, County of Larimer, State of Colorado, being a portion of Lot 1, plat of POUDRE RIVER WHITEWATER PARK, County of Larimer Records, described as follows:

Beginning at the northeast corner of Lot 3, said plat of POUDRE RIVER WHITEWATER PARK;

Thence S00°22'09"W, 76.99 feet, along the east line of said Lot 3;

Thence S89°42'52"W, 86.81 feet, along the south line of said Lot 3;

Thence N49°07'17"W, 17.35 feet, along the southwest line of said Lot 3;

Thence N00°22'09"E, 66.71 feet, along the west line of said Lot 3;

Thence N89°37'51"W, 1.87 feet, along the south line of that 20 foot wide Shared Access Agreement as described in Reception Number 20170056673, Larimer County Records;

Thence N00°20'37"E, 4.37 feet;, along the west line of said Shared Access Agreement;

Thence along a curve to the left, having a radius of 12.23, a central angle of 54°00'44", a length of 11.53 feet and a chord that bears N25°39'53"W, 11.11 feet, along said south line;

Thence along a curve to the left, having a radius of 33.00 feet, a central angle of 58°19'47", a length of 33.60 feet and a chord that bears N80°06'38"W, 32.16 feet, along said south line;

Thence along a curve to the right, having a radius of 127.03 feet, a central angle of 14°04'00", a length of 31.19 feet and a chord that bears S77°45'42"W, 31.11 feet, along said south line;

Thence N80°05'17"W, 29.52 feet;

Thence S39°50'02"E, 145.53 feet; Thence N88°44'10"E, 123.50 feet, to the southeast line of said Lot 1;

Thence N56°43'09"E, 165.50 feet, along said southeast line;

Thence N33°16'51"W. 50.00 feet:

Thence S56°43'09"W, 84.60 feet;

Thence N61°07'32"W, 137.55 feet, to the east line of that 30 foot wide Utility Easement as described in Reception Number 20170056676, Larimer County Records;

Thence S00°20'37"W, 45.67 feet, along said east line, to the east line of said Share Access Agreement;

Thence along a non-tangent curve to the right having a radius of 77.00 feet, a central angle of 12°25'39", a length of 16.70 feet and a chord that bears \$05°49'08"E, 16.67 feet, along said east line, to the north line of said Lot 3:

Thence S89°37'51"E, 59.97 feet, along said north line, to the Point of Beginning. 469387 acres) more or less.

As shown and described on Exhibit B Sheet 3 of 3 attached hereto and made a part hereof.

All lineal distance units are represented in U.S. Survey Feet.

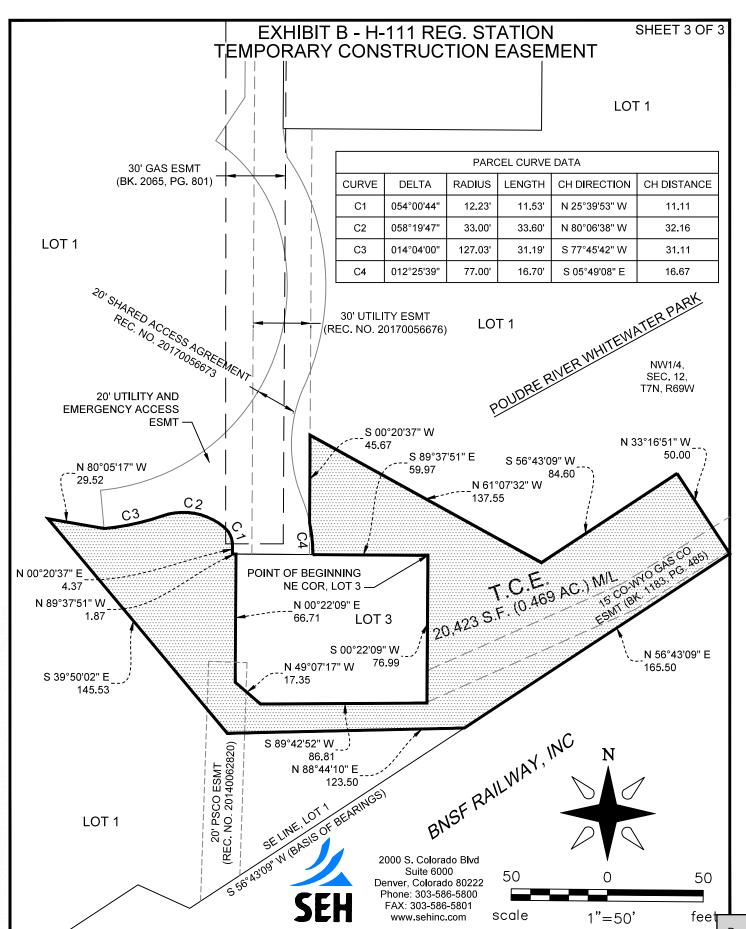
For the purposes of this description, bearings are based on said plat of POUDRE RIVER WHITEWATER PARK

Item 3.

Short Elliott Hendrickson Sheet 2 of 3

The author of this description is Monte L. Sudbeck, PLS 38503, prepared on behalf of SEH, 2000 S Colorado Blvd, Suite 6000, Denver, CO 80222, on December 16, 2024, under Job No. 178293-20.0, for Public Service Company of Colorado, and is not to be construed as representing a monumented land survey.





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#### File Attachments for Item:

4. Second Reading of Ordinance No. 003, 2025, Repealing and Reenacting Chapter 2, Article II, Division 3 of the Code of the City of Fort Collins Pertaining to Appeals Procedure.

This Ordinance, unanimously adopted on First Reading on January 7, 2025, incorporates process improvements to the procedures for addressing appeals and other questions of final decisions that are appealable to Council. The City Code changes address previously identified concerns with the current Council appeals procedure as discussed among Council, administrative staff, hearing officers, City boards and commissions, and members of the public. The City Code changes also clarify the processes and offer different routes for different types of questions on review.

#### **AGENDA ITEM SUMMARY**

City Council



#### STAFF

Carrie Daggett, City Attorney
Heather Jarvis, Assistant City Attorney
Kim Meyer, Interim Community Development and Neighborhood Services, Director

#### **SUBJECT**

Second Reading of Ordinance No. 003, 2025, Repealing and Reenacting Chapter 2, Article II, Division 3 of the Code of the City of Fort Collins Pertaining to Appeals Procedure.

#### **EXECUTIVE SUMMARY**

This Ordinance, unanimously adopted on First Reading on January 7, 2025, incorporates process improvements to the procedures for addressing appeals and other questions of final decisions that are appealable to Council. The City Code changes address previously identified concerns with the current Council appeals procedure as discussed among Council, administrative staff, hearing officers, City boards and commissions, and members of the public. The City Code changes also clarify the processes and offer different routes for different types of questions on review.

#### STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

#### FIRST READING BACKGROUND / DISCUSSION

During 2021 through 2024 staff and Council processed several appeals wherein Council sat as a quasi-judicial body to consider appeals of final decisions of boards, commissions, or other decision makers. Experiences and concerns from these many appeals has identified many possible improvements.

On November 14, 2023, Council held a work session to discuss the current state of the appeals process. The work session reviewed and discussed various elements of that process that might be updated to create a more fair, consistent, and simple appeals system. That November 2023 work session resulted in direction to staff to present a range of alternatives and possible solutions to Council to simplify and streamline the process, provide a better experience for all parties and community, and investigate some specific elements of the current process that might impact our current state.

On August 27, 2024, a second work session provided specific feedback on issues and elements of the current process, including who is the appropriate decision maker, who has standing to appeal, what are the allowable grounds for appeal, whether there should be multiple levels of appeals, what evidence and arguments are allowed, and some process improvements.

On December 10, 2024, at third work session on this topic, staff proposed updates and revisions to the overall process and decision makers at different levels to simplify the appeals process for the community, staff, and Council. Attached to this AIS is a version showing the proposed changes marked as highlights and strike-outs to the existing code. The alterations between the Code presented December 10, 2024 and the Code presented with this agenda item are identified in red.

The Ordinance shows a version of the code without the changes tracked, as the Ordinance repeals the existing Code in its entirety and replaces it with the revised Code. A summary of the Code changes that are proposed is as follows:

- Standing to appeal / participation. An appellant must have participated in the original hearing/decision by providing oral or written comments to the original decision maker. The proposed Code defines both an "eligible person" and an "appeal party," distinguishing between the eligible person who participated in the original decision and the appeal party who is an eligible person who registers with the City Clerk their intention to participate in an appeal. These Code changes also remove receipt of an original hearing notice as a basis for eligibility and replace the term "party-in-interest" with the more specific term "eligible party."
- Two routes. The proposed Code creates two routes for an eligible person to raise questions about a final decision.
  - Council appeal. One route for an eligible person to raise questions about a final decision is the Council appeal route wherein Council will examine questions of interpretation and application of City Code. The fee for an appeal is raised in the proposed Code from \$100 to \$250.
  - Fair hearing review. Another route for an eligible person to raise questions about a final decision is an administrative route wherein an appointee in the City Manager's Office will examine alleged procedural defects, such as questions of whether the appellant was given a fair hearing as those grounds are described in the existing code. The fee for such an administrative review is \$100.
- Permitted grounds for appeal: issues of interpretation and application of City Code. The
  proposed Code allows appeal to Council only on issues raised with the original decision maker and
  that are questions of interpretation and application of City Code. The appeal must be based solely on
  the existing record, with no new evidence.
- **Process improvements.** Several process improvements the proposed Code introduces are a completeness review, screening review, materials submission requirements, a pre-hearing conference, and a shortened time frame in which to schedule an appeal hearing.
  - Completeness review is a review of a submitted notice of appeal for completeness—to ensure the person submitting the appeal qualifies as an eligible person, to confirm that the listed code provisions are relevant, and to determine that all the required notice of appeal information has been properly provided. An appeal party has the option to cure an incomplete application before it is dismissed as incomplete.
  - Screening review is a screening of the notice of appeal to ensure it raises questions narrow in focus that relate directly to the record of the decision being appealed. The screen will ensure the stated grounds were introduced at an original hearing/decision process and will determine that all persons joining the appeal qualify as eligible persons, that the appeal is legally sufficient and raises a valid interpretation or application of Code issue based on the record, and that no new evidence was submitted.
  - Appeals pre-hearing conference is a conference the City Clerk convenes not fewer than four days before an appeal hearing to respond to questions and concerns of all appeal parties together.

- Materials submission requirements clarify the specificity appeal parties must provide in the
  notice of appeal and opposing party response, and also clarify the deadline for submitting a
  presentation version of the appeal party's argument.
- Appeal hearing scheduling must be between fourteen and thirty-five days after the deadline for appeal party registration has elapsed.
- The proposed Code specifies the composition of the record on appeal, eliminates the organized site
  visit, clarifies time allotments for appeal parties during the appeal hearing, and provides times when
  the City Clerk will post submitted materials.

At the December 2024 work session, Council was interested when the appeal fee was last set. The date the existing appeal fee of \$100 was last set was 1990 (Ordinance No. 023, 1990). The fee in the proposed code is increased to \$250.

#### **CITY FINANCIAL IMPACTS**

There will be minimal costs to codify the changed Code, and when an appeal or fair hearing review is filed in the future, the administrative costs incurred that were previously unremunerated will be more adequately covered with the updated fees.

#### **BOARD / COMMISSION / COMMITTEE RECOMMENDATION**

None.

#### **PUBLIC OUTREACH**

Appeal parties and members of the community have provided feedback about the process.

#### **ATTACHMENTS**

First Reading attachments not included.

1. Ordinance for Consideration

# ORDINANCE NO. 003, 2025 OF THE COUNCIL OF THE CITY OF FORT COLLINS REPEALING AND REENACTING CHAPTER 2, ARTICLE II, DIVISION 3 OF THE CODE OF THE CITY OF FORT COLLINS PERTAINING TO APPEALS PROCEDURE

- A. Chapter 2, Article II, Division 3 of the City Code establishes a process whereby parties directly affected by the quasi-judicial decisions of City boards and commissions and certain other City decision makers may be appealed to the City Council.
  - B. The City Council has periodically amended these provisions of the Code.
- C. Several procedural issues have arisen during recent appeals that have prompted City staff and City Council to further review the appeal processes to identify additional amendments that will:
  - Eliminate ambiguities in certain provisions;
  - Clarify who is eligible to appeal and require registration of a party's intent to participate in an appeal;
  - Require matters on appeal before Council to be questions of interpretation and application of Code about issues raised during the original decision;
  - Create a completeness review and screening review to ensure a notice of appeal contains the required information and raises viable questions for the hearing before Council;
  - Create an administrative review process for fair hearing issues;
  - Update the appeal fee and insert a fee for the fair hearing administrative review process; and
  - Make certain other procedural changes to enhance the fairness and efficiency of appeal hearings and fair hearing reviews.
- D. The City Council believes that it is in the best interests of the City to repeal the existing Appeals Procedure at Chapter 2, Article II, Division 3 of the City Code and reenact Chapter 2, Article II, Division 3 of the City Code to adopt an Appeals Procedure that includes amendments, improvements, and updates to the processes and procedures for appeals and questions of procedural defects.

In light of the foregoing Recitals, which the Council hereby makes and adopts as determinations and findings, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS that Chapter 2, Article II, Division 3 of the Code of the City of Fort Collins is hereby repealed and reenacted as follows:

#### **CHAPTER 2 - ADMINISTRATION**

#### ARTICLE II - CITY COUNCIL

### Division 3 Appeals Procedure

#### Sec. 2-45. Appeals generally.

An appeal of any final decision expressly appealable to City Council under other provisions of this Code, including the Land Use Code, shall be initiated by an eligible party and decided in the manner set forth in this Division. Any action taken in reliance upon any decision of an original decision maker that is subject to review or appeal under this Division shall be solely at the risk of the person(s) taking such action until all appeal rights related to such decision have been exhausted, and the City shall not be liable for any damages arising from any such action.

#### Sec. 2-46. Definitions.

The following words, terms and phrases, when used in this Division, shall have the meanings ascribed to them in this Section:

Appeal party means an eligible person who has taken steps necessary under Section 2-52(a) and been verified under Section 2-52(b) to participate in an appeal.

Appellant means one or more eligible persons appealing a decision from an original decision maker to the City Council by the filing of a notice of appeal.

Appellant representative means the individual designated in a notice of appeal as the contact person for all matters related to that appeal.

Applicant means the person who or organization that submitted the application to the original decision maker whose decision has been appealed.

Decision maker, administrative means the designee of the City Manager who performs fair hearing reviews under Section 2-48 and notice of appeal screening under Section 2-51.

Decision maker, original means the board, commission or other decision maker the final decision of which is the subject of an appeal or a request for administrative review.

*Eligible person* means a person who or organization that has standing to appeal the final decision of an original decision maker. Such standing to appeal shall be limited to the following:

- (1) The applicant;
- (2) Any party holding an ownership or possessory interest in the real or personal property that was the subject of the decision of the original decision maker whose action is to be appealed;

- (3) Any person who or organization that provided written comments to the appropriate City staff for delivery to the original decision maker before or at the hearing on the matter that is to be appealed;
- (4) Any person who or organization that appeared before and provided comments to the original decision maker at the hearing on the action that is to be appealed;
- (5) The City Council as represented by the request of a single member of the City Council.

Evidence means any information, whether in verbal, audio, written, graphic, or other form, presented at the appeal hearing to support or refute a particular proposition or conclusion. Evidence does not include argument as to how information offered as evidence should be viewed by the City Council.

Final decision means the action of an original decision maker when no further rehearing is available before that original decision maker; provided, however, that a recommendation to the City Council from a board, commission or other decision maker shall not be considered as a final decision of that board, commission or other decision maker.

New evidence means any evidence, relating to the proposal or application that was the subject of final decision by an original decision maker, that was not provided or presented at the hearing or as part of the record before that original decision maker. New evidence does not include evidence in the record that has been modified, highlighted, underlined, italicized or otherwise marked to emphasize certain portions of writings or graphics presented to the original decision maker as long as any modified graphic presented to the City Council at the appeal hearing is accompanied by a reference to the location of the original material in the record of the decision being appealed.

## Sec. 2-47. Appeal of final decision permitted; effect of appeal; grounds for appeal; limit on subject matter of appeal.

- (a) Initiating an appeal. Any eligible person may appeal to the City Council the final decision of any original decision maker to which this appeal procedure applies in the manner provided in this Division by the filing a notice of appeal with the City Clerk within fourteen (14) calendar days after the decision that is the subject of the appeal. A separate process for seeking administrative review of fair hearing issues is provided in Section 2-48. Fair hearing review is separate from and may be in addition to an appeal.
- (b) Grounds for appeal. Except for appeals by members of the City Council, the permissible grounds for appeal shall be limited to allegations that the original decision maker failed to properly interpret and apply relevant provisions of the Code and Charter in deciding particular aspects of the decision raised by an eligible person for consideration by the original decision maker.
- (c) Limit on subject matter of appeal. Allegations of appeal must follow from issues raised before the original decision maker. Issues not raised in connection with the original decision are deemed waived and are not subject to appeal.

- (d) Councilmember appeals. Appeals filed by members of the City Council must include a statement of each specific question to be considered on appeal rather than allegations of error.
  - (1) Upon the filing of any such appeal, the director of the affected City service area shall identify the specific Code provisions that may pertain to the specific questions raised by the appeal and shall provide the information to the City Clerk before the date that the notice of hearing on the appeal is to be mailed under Section 2-52 of this Division.
  - (2) The City Clerk will include said information with the notice of hearing.
  - (3) Councilmembers who file an appeal may participate in hearing an appeal in the same manner as they participate in hearing appeals filed by other eligible persons.

## Sec. 2-48. Administrative fair hearing review of final decision permitted; effect of fair hearing determination.

- (a) Fair hearing review. Any eligible person may seek administrative review of procedural defects in connection with the final decision of an original decision maker to which this Division applies by filing a request for fair hearing review with the City Clerk within fourteen (14) calendar days after the decision that is the subject of the requested review.
- (b) Fair hearing issues. Procedural defects subject to review include those matters constituting an alleged failure to conduct a fair hearing in that:
  - (1) The original decision maker exceeded its authority or jurisdiction as contained in the Code or Charter:
  - (2) The original decision maker substantially ignored its previously established rules of procedure;
  - (3) The original decision maker considered evidence relevant to its findings that was substantially false or grossly misleading;
  - (4) The original decision maker improperly failed to receive all relevant evidence offered by the appellant; or
  - (5) The original decision maker was biased against the appellant by reason of a conflict of interest or other close business, personal or social relationship that interfered with the original decision maker's independence of judgment.
- (c) Review process.

- (1) The request for fair hearing review shall be on a form provided by the City Clerk, shall be signed by all persons joining the request for review, and must include documentation to substantiate the grounds for the review sought, such as evidence in the record, new evidence relevant to the issues under review, and written arguments explaining the allegations.
- (2) If the eligible person seeking the fair hearing review is not the applicant, the City Clerk will notify and provide a copy of the request for review to the applicant within two (2) working days of receiving the request for review.
- (3) The applicant may file a written summary of facts and arguments and any documentation to oppose the allegations no later than five (5) working days after the City Clerk's notice of the request.
- (4) The administrative decision maker may review any information received from the requesting party, applicant, City staff, or other source that the administrative decision maker considers relevant to evaluate the allegations of procedural defects, including the original decision and supporting documents internally, potentially requesting additional information or clarification.
- (d) Fair hearing/procedural defect determination.
  - (1) The administrative decision maker will review all information received and any other information obtained by the administrative decision maker related to the allegations, and will make findings and conclusions as to the issues raised no later than five (5) working days after receipt of the request, unless the request was made by the a party other than the applicant, in which event the administrative decision maker will issue a decision no later than five (5) working days after receipt of the applicant's response.
  - (2) If the administrative decision maker determines that no procedural defect raised a significant question as to whether the decision under review was based on a fair hearing, the administrative decision maker will provide written notice of that determination to the requesting party and to the applicant.
  - (3) If the administrative decision maker determines that a procedural defect occurred that raises a significant question as to whether the decision under review was based on a fair hearing, the administrative decision maker will remand the matter for rehearing.
  - (4) If the administrative decision maker determines that on remand the original decision maker will be unable to provide a fair rehearing or will be unable to provide a fair rehearing because a quorum will not be available, the administrative decision maker must remand the matter for rehearing to a qualified, alternative decision

maker. Additionally, the administrative decision maker may remand the matter for rehearing to a qualified, alternative decision maker if the public confidence in the decision on remand would be better served than remand to the original decision maker.

- (e) Effect of fair hearing determination. If the administrative decision maker remands the matter for rehearing, any notice of appeal that was filed on the same matter will be automatically cancelled without prejudice and the appeal fee will be refunded.
- (f) Fair hearing review fee. In all fair hearing reviews, the person requesting review must remit to the City Clerk with the request a fee of one hundred dollars (\$100). No fair hearing review will begin until the fee has been received by the City Clerk. Any fair hearing review for which the fair hearing review fee has not been paid before the deadline for the filing of the fair hearing review will be rejected as untimely.
- (g) Final decision. Any fair hearing review decision under this Section is final and is not subject to further municipal review or appeal.

#### Sec. 2-49. Notice of appeal; no new evidence.

- (a) Form of appeal notice. The notice of appeal must be on a form provided by the City Clerk, must be signed by all persons joining the appeal and must include the following:
  - (1) The action of the original decision maker that is the subject of the appeal;
  - (2) The date of the action;
  - (3) The name, address, telephone number and the basis for the person's qualification to appeal as an eligible person;
  - (4) In all appeals except those filed by members of City Council, the grounds for the appeal, including specific allegations of error of interpretation or application of relevant and specific provisions of Code or the Charter;
  - (5) A summary of the facts contained in the record on appeal (no new evidence) that support the appeal allegations, separated into support for each separate allegation, including where in the record (such as the minute number in a recording, or page and line number in a document) the appellant raised the issue(s) before the original decision maker;
  - (6) A written summary of the appellant's argument accompanied by specific references to applicable material in the record (no new evidence), separated into argument for each separate allegation;
  - (7) The name, address, email address, and phone number of the appellant representative who is authorized to receive notice required to be mailed by the City to the appellant and an indication of the appellant representative's preferred means of contact. In the case of an appeal filed by more than one (1) person, the name, address, email address, and telephone number of one (1) appellant representative

who is authorized to receive, on behalf of all persons joining the appeal, any notice required to be mailed by the City to the appellant under this Division and an indication of the appellant representative's preferred means of contact; and

- (8) Any other information required by the City Clerk.
- (b) Limit on submittal. No materials other than that specified in Subsection (a) of this Section are allowed to be included in or attached to the notice of appeal or submitted by the appellant at any time, except for presentation materials as allowed in Section 2-54(d).
- (c) Appeal fee. In all appeals, except those filed by members of the City Council, the appellant must remit to the City Clerk with the notice of appeal a fee of two hundred fifty dollars (\$250). No appeal will be reviewed for completeness or sufficiency until the appeal fee has been received by the City Clerk. Any appeal for which the appeal fee has not been paid before the deadline for the filing of the appeal will be rejected as untimely. If a fair hearing review was filed on the same matter and the administrative decision maker remands the matter for rehearing, the appeal for the same matter will be automatically cancelled without prejudice and the appeal fee will be refunded.

#### Sec. 2-50: Completeness review.

- (a) Review by Clerk. Within three (3) working days of receiving the notice of appeal and appeal fee, the City Clerk will review the notice of appeal in consultation with the City Attorney for completeness and sufficiency.
- (b) Scope of completeness review. Completeness includes any obvious defects in form or substance, confirmation that the person(s) submitting the appeal qualifies as an eligible person (the person has standing to raise the appeal), confirmation that the listed code provisions are relevant, and determination that all items in Section 2-49 have been properly provided.
- (c) City Clerk action on incomplete appeal.
  - (1) If a notice of appeal is incomplete, the City Clerk will promptly notify the person authorized to receive notice that the notice of appeal is incomplete and will specify the incomplete items.
  - (2) Within three (3) working days of being notified the notice of appeal is incomplete, the notice of appeal may be resubmitted with the incomplete items cured.
  - (3) If the notice of appeal is not resubmitted, or if the resubmitted notice of appeal is determined, after additional review, to be incomplete, the appeal shall be terminated, the City Clerk will provide notice to the appellant representative, no further action will be taken on the notice of appeal, and the City Clerk will return to the applicant the appeal fee, less a ten percent (10%) administrative fee.
- (d) Complete appeal forwarded for screening. When an appeal has been determined to be complete and the appeal fee has been paid, the City Clerk will promptly forward the appeal to the administrative decision maker for screening. When an appeal has been determined to be complete, the City Clerk will also order assembly of the relevant record and thereafter will make it available to the appeal parties.

#### Sec. 2-51: Screening review.

- (a) Scope of screening. If a notice of appeal is determined to be complete, whether initially or after resubmittal, the administrative decision maker will review the subject matter of the appeal to determine whether:
  - (1) all persons joining in the appeal are eligible persons;
  - (2) each ground for appeal was raised before the original decision maker;
  - (3) each ground for appeal is legally sufficient and raises a valid interpretation or application issue;
  - (4) each ground for appeal has merit based on clearly established evidence in the record of the original decision; and
  - (5) no new evidence was submitted.
- (b) Screening review process. The administrative decision maker may review any information received as part of the notice of appeal, or in the record of the original decision, that the administrative decision maker deems relevant to evaluate the appeal allegations.
- (c) Screening determination.
  - (1) The administrative decision maker will review all information received and any other information obtained by the administrative decision maker related to the allegations, and will make findings and conclusions as to the sufficiency of the appeal and each allegation on appeal no later than ten (10) working days after receipt of the notice of appeal, except if a simultaneous fair hearing review was filed under Section 2-48, the ten (10) working days' time for completing the screening review does not begin until after the fair hearing review is determined.
  - (2) If the administrative decision maker determines that the appeal or any allegation asserted in the appeal is not proper, does not raise legally cognizable issues for review, or has no merit based on clearly established evidence in the record of the original decision, the appeal or those allegations will not be presented to the City Council for review and will be dismissed.
- (d) Notification of decision. Upon completion of the screening determination, the administrative decision maker will notify the appellant and the applicant of the determination and those appeal allegations that remain active will be set for hearing and appeal party registration will proceed as described in Section 2-52.
- (e) Posting of appeal materials. The City Clerk will promptly post on the appeal page of the City's website the notice of appeal and screening determination of the administrative decision maker, and the information will be made part of the record on appeal and will be available for public inspection in the Office of the City Clerk.

(f) Final decision. The screening determination under this Section is final and is not subject to further municipal review or appeal.

## Sec. 2-52. Appeal party registration/scheduling of the hearing/pre-hearing conference/ consolidation of appeals/no *ex parte* contacts.

- (a) Appeal party registration. Within fourteen (14) calendar days after the complete and screened notice of appeal is posted on the City's website, any eligible person who intends to be an appeal party must register with the City Clerk using a form provided by the City Clerk as follows:
  - (1) The eligible person(s) who signed the notice of appeal is deemed an appeal party by virtue of filing a complete notice of appeal.
  - (2) An eligible person who is not the appellant but wishes to be an appeal party in support of the appeal must do so through the appellant and as part of the appellant's presentation and argument on the appeal.
  - (3) An eligible person who wishes to be an appeal party opposed to the appeal must submit:
    - i. a statement of how the person qualifies as an eligible person;
    - ii. a summary of the facts contained in the record on appeal (no new evidence) that oppose the appellant's appeal allegations, separated into support for each separate allegation;
    - iii. a summary of the appeal party's argument accompanied by references to applicable material in the record, separated into argument for each separate allegation; and
    - iv. the name, address, email address, and phone number of the person and an indication of the person's preferred means of contact.
- (b) Verification. Within two (2) working days of receiving the registration submittal the City Clerk will review the submittal and confirm the registrant is an eligible person before the person is deemed an appeal party.
- (c) Posting of appeal materials. Upon verification of any appeal party opposed to the appeal under Subsection (b) of this Section, the City Clerk will promptly post the summary of facts filed by the verified appeal party and any attached information on the City's website, and the information will be made part of the record on appeal and will be available for public inspection in the Office of the City Clerk.
- (d) Scheduling of the hearing. After screening of an appeal is complete and the deadline for appeal party registration has elapsed, the City Clerk will identify a possible date for the hearing on the appeal as early as reasonably practicable but no fewer than fourteen (14) and no more than thirty-five (35) calendar days after-the-deadline for appeal party registration has elapsed and their appeal materials are posted on the City's website under Subsection (c) of this Section. The City Clerk will also identify a possible date for the pre-hearing conference under Subsection (f) of this Section.

- (1) Before scheduling the hearing, the Clerk will notify the appeal parties of the possible hearing date or dates and the possible pre-hearing conference date or dates.
- (2) The appeal parties must respond within two (2) working days to inform the City Clerk if they believe they have an unavoidable conflicts that makes attendance impossible at such date, or dates.
- (3) The City Clerk will set the hearing date at a time that takes into account the unavoidable conflicts identified to the extent reasonably practicable.
- (e) Posting of hearing notice. The City Clerk will post on the appeals page of the City's website and will mail to the appeal parties written notice of the date, time and place of the hearing and the pre-hearing conference no more than five (5) working days after setting the date of the hearing. Said notice shall also include a copy of the notice of appeal (excluding attachments, which shall be available as provided in Section 2-51(e)).
- (f) Pre-hearing conference. Not fewer than four (4) working days before the scheduled appeal hearing, the City Clerk will convene a meeting with the appeal parties to provide information and respond to questions about the appeal hearing process. Any questions the City Clerk receives outside of the pre-hearing conference will be addressed at the pre-hearing conference so that all appeal parties may receive the same information.
- (g) Consolidation of appeals. All appeals regarding the same decision will be consolidated and scheduled together to be heard in a single hearing. Council may in its discretion by majority vote at the time of the scheduled hearing separate the hearing process for individual appeals as provided under Section 2-53(e).
- (h) Extension. At any time before the expiration of the time for Council to hear an appeal under Subsection (d), the City Manager may in the event of scheduling difficulties or notice defects request that Council approve by motion or resolution the extension of the time for hearing an appeal for a specified period.
- (i) No ex parte contact. To afford all eligible persons a fair opportunity to respond to the information upon which the City Council is to base its decision on appeal, and to preserve the impartiality of Councilmembers hearing the appeal, all Councilmembers who intend to participate in hearing the appeal shall, to the extent reasonably possible, avoid communications with appeal parties and members of the general public regarding the merits of the appeal before the hearing on the appeal, and all appeal parties and the general public must avoid communications with Councilmembers regarding the merits of the appeal.

#### Sec. 2-53. Procedure at the hearing.

- (a) Hearing order. At the hearing on the appeal by the City Council, the presentation of argument on the merits of the appeal shall be made in the following order and for the times set forth below, subject to modification of time and scope allowed as may be established at the discretion of the Mayor or a majority vote of the Council:
  - (1) Presentation by City staff explaining the appeal hearing process, the nature of the appeal or appeals, and the decision being appealed;

- (2) Comments by Councilmembers who have inspected the site of their own accord regarding the date of the inspection and any observations of the site they believe may be relevant to the Council's determination of the appeal;
- (3) Consideration of any procedural issues identified under Subsection (c) below:
- (4) Presentation of argument by the appellant for up to twenty (20) minutes or such other time as City Council allots;
- (5) Presentation of argument by any appeal party opposed to the appeal for a total of up to twenty (20) minutes or such other time as City Council allots;
- (6) If one or more appeal parties has argued to oppose the appeal, rebuttal presentation by the appellant for up to ten (10) minutes or such other time as City Council allots;
- (7) Rebuttal presentation by any appeal party opposed to the appeal for a total of up to ten (10) minutes or such other time as City Council allots;
- (8) Councilmember questions of City staff and appeal parties; and
- (9) Motion, discussion and vote by the City Council.
- (b) Allocation of time. Factors to be considered in determining whether to modify the period of time for the presentation of argument on the merits of an appeal shall include, but not be limited to, the complexity of the issues raised in the notice of appeal, the length of the record on appeal, the potential impact that the determination of the appeal may have on the community at large and the number of appeal parties who wish to address the Council with regard to the merits of the appeal.
- (c) Procedural matters. Before hearing the presentation of argument on the merits of the appeal, the Mayor may, in the Mayor's discretion, establish a separate period of time during which the Council may first consider and the Mayor may determine, subject to override by the Council by majority vote, any procedural issues related to the hearing of the appeal, including, but not limited to, objections regarding the possible introduction or exclusion of certain evidence, whether to separate any consolidated appeals of the same decision by different appellants, the period of time to be allowed for presentation of argument and rebuttal on the merits of the appeal and any concerns or objections related to the record on appeal.
- (d) No cross-examination. No person making a presentation to the City Council shall be subject to cross-examination except that members of the City Council and the City Attorney may inquire of such person for the purpose of eliciting information and for the purpose of clarifying information presented.
- (e) Consolidation of hearings. In the event of multiple appeals involving the same decision of an original decision maker that have been consolidated in accordance with Section 2-52(g), the Mayor, in the Mayor's discretion, may modify the procedure contained in Subsection (a) of this Section to expedite the hearing of such appeals, while still ensuring that each appellant can make that appellant's own case and that appeal parties for and against each appeal will have equal time.

#### Sec. 2-54. Record on appeal; written materials; evidence.

- (a) Basis for decision. The City Council shall consider an appeal based upon the record on appeal, the relevant provisions of the Code and Charter and any other applicable legal authorities, the grounds for appeal cited in the notice of appeal, the arguments made by appeal parties at the hearing on the appeal, and the City staff report and presentation prepared for the appeal; provided, however, that issues raised during the presentation of argument but not within the allowable scope of the appeal shall not be considered by the City Council in deciding the appeal.
- (b) Record provided. The record provided to the City Council shall include the following:
  - (1) All exhibits, including, without limitation, all writings, drawings, maps, charts, graphs, photographs and other tangible items received or viewed by the original decision maker at the proceedings;
  - (2) A verbatim transcript of the proceedings before the original decision maker unless the decision was not made a hearing (such as a decision by a department director). The cost of the transcript shall be borne by the City.
  - (3) If available, a video recording of the proceedings before the original decision maker. The cost of reproducing any such video recording for review by the City Council shall be borne by the City. Additional copies shall be provided to appeal party requesting the same within a reasonable period of time before the date for hearing the appeal, at a cost not to exceed the actual reproduction costs incurred by the City.
  - (4) A copy of the notice of appeal and screening determination.
  - (5) A copy of all appeal party submittals admitted under Section 2-52(c).
  - (6) A copy of notice of the appeal hearing.
  - (7) City staff presentation required under Subsection (d) of this Section and appeal parties' presentations.
- (c) Restriction on new evidence. No new evidence shall be presented to the City Council before or during an appeal hearing, and no new evidence shall be considered on appeal, except:
  - (1) When offered by City staff or parties-in-interest in response to questions presented by Councilmembers at the hearing on the appeal; or
  - (2) When offered by Councilmembers after inspecting the site of the project development plan or other proposal that is the subject of an appeal.
- (d) Staff summary and materials. City staff shall prepare for Council consideration the record as described in Subsections (a) and (b) of this Section, together with a staff agenda item summary and presentation materials, which shall become part of the record of the appeal hearing. Staff shall also provide to the Council the notice of appeal and all attachments to it.

- (e) Submittal of party presentations required. Any appeal party wishing to submit a presentation of their previously submitted written facts and argument must submit the presentation to the City Clerk in digital form and in hard copy no later than noon on the working day before the day of the appeal hearing. By the end of the working day before the day of the hearing, the City Clerk will post any presentation materials received in accordance with this Subsection. Any appeal party may provide a true and accurate hard copy of any such presentation to be provided to the Council at the hearing, and to City staff and the other appeal parties, so long as no fewer than twenty (20) such copies are brought to the hearing for distribution.
- (f) Objections as to evidence. Any appeal party who believes that evidence has been improperly offered or introduced into the appeal hearing may, at any time during the hearing, interrupt the proceedings and object to the Council's consideration of such evidence. If such an objection is made, the Mayor shall rule on the objection, after consultation with the City Attorney if necessary, and the evidence shall either be received and considered by the Council or disregarded by the Council in accordance with the ruling of the Mayor.
- (g) Procedural rulings. The Mayor's ruling on any other procedural issue raised during the course of the hearing may be overridden by a majority of the Council.
- (h) Objections waived if not raised at hearing. The failure of an appeal party to make an objection at the hearing as to a procedural matter shall constitute a waiver of the same by that appeal party for the purpose of any judicial review of the Council's decision.

#### Sec. 2-55. City Council decision on appeal.

- (a) Council determination. In considering an allegation that a board, commission or other decision maker failed to properly interpret and apply the relevant provisions of the Code or Charter asserted under Subsection 2-49(b) of this Article, the City Council shall determine how such provisions should, in the City Council's judgment, be applied to the evidence contained in the record of the appeal hearing.
- (b) Appeal outcome. At the conclusion of such hearing, the City Council shall uphold, overturn or modify the decision of the original decision maker, and may impose such conditions as the Council determines appropriate to further the purposes of or compliance with the standards governing the decision; provided, however, that the City Council may also remand the matter for rehearing for the original decision maker to receive and consider additional information with regard to any issue raised on appeal. Any such remand shall include direction from the City Council to the original decision maker as to the issues to be considered at the rehearing.
- (c) Final action by resolution. No later than the date of its next regular meeting, the City Council shall adopt, by resolution, findings of fact in support of its decision. The date of passage of such resolution shall be the date of final action of the City Council for the purpose of any subsequent judicial review of the decision of the City Council.
- (d) Amendment of resolution. After adoption of the resolution required under Subsection (c) of this Section, the Council may amend the resolution at any time to clarify or correct it, or to modify the decision to resolve a related legal dispute or to bring the

decision into compliance with federal, state or local law, including the Charter and Code of the City of Fort Collins, provided:

- (1) At least fourteen (14) days before consideration of any such amendments, written notice that the Council will consider such amendments must be mailed to the last known address of the appeal parties who appeared at the related appeal hearing.
- (2) Persons entitled to notice of the consideration of amendments shall have an opportunity to comment at the time of such consideration.

#### Secs. 2-56—2-70. Reserved.

Introduced, considered favorably on first reading on January 7, 2025, and approved on second reading for final passage on January 21, 2025.

	Mayor	
ATTEST:		
City Clerk		

Effective Date: January 31, 2025 Approving Attorney: Heather N. Jarvis

#### File Attachments for Item:

5. First Reading of Ordinance No. 004, 2025, Vacating the Riverbend Court Right-of-Way and Approving Easements.

The purpose of this item is to vacate the public right-of-way at Riverbend Court and create drainage, utility, access, and emergency access easements over the property.

#### January 21, 2025

#### **AGENDA ITEM SUMMARY**

City Council



#### **STAFF**

Tim Dinger, Civil Engineer II Will Flowers, Sr. Specialist Real Estate Services

#### **SUBJECT**

First Reading of Ordinance No. 004, 2025, Vacating the Riverbend Court Right-of-Way and Approving Easements.

#### **EXECUTIVE SUMMARY**

The purpose of this item is to vacate the public right-of-way at Riverbend Court and create drainage, utility, access, and emergency access easements over the property.

#### STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

#### **BACKGROUND / DISCUSSION**

The Liberty Common School is currently working on two separate Site Plan Advisory Review (SPAR) processes. The first SPAR proposes an interior remodel of the existing office at 1825 Sharp Point into a charter junior high school building. The second SPAR process will include the construction of a new junior high school building with the footprint as shown on the attached Phase 2 proposed site plan. This proposed building would conflict with the public right-of-way (ROW) of Riverbend Court.

Riverbend Court does not provide any necessary connectivity to other neighborhoods or streets, but it does provide access to the surrounding properties. Liberty Common School (specifically LCS BUILDING CORP) owns all surrounding properties (Parcel numbers 8720214901, 8720206903, 8720105906, 8720105008, 8720105010, 8720105007 and 8720105004). There are existing utilities in the area of Riverbend Court; so, Riverbend Court does require public drainage, utility, access and emergency access easements. The ROW can be vacated for the proposed building to be constructed in the future, and the drainage, utility, access and emergency access needs will be dedicated to the City as easements. The second Liberty Common SPAR later this year will address the drainage and utility design and will also reconfigure the access. Riverbend Court will be a privately-owned and maintained road, and the new school building will replace much of the road. The future construction plans to relocate existing utilities, and at that time the easements can be vacated.

#### **CITY FINANCIAL IMPACTS**

None.

#### **BOARD / COMMISSION / COMMITTEE RECOMMENDATION**

According to the SPAR process under Colorado Revised Statutes § 22-32-124(1.5)(a), the Planning and Zoning Commission provided comments on November 21, 2024, for the Liberty Common School Expansion Site Plan Advisory Review application (# SPA240002) to the Liberty Common School governing board. At its December 19, 2024, meeting, the Commission further discussed the matter and Liberty Common's agreement to address the Commission's recommendations.

#### **PUBLIC OUTREACH**

Adjacent property owners were sent certified mail notifications on October 16, 2024.

#### **ATTACHMENTS**

- Ordinance for Consideration
- 2. Exhibit A to Ordinance Liberty Common Phase 2 proposed site plan
- 3. Exhibit B to Ordinance right-of-way vacation
- 4. Exhibit C to Ordinance access, utility, drainage easement
- 5. Exhibit D to Ordinance emergency access easement
- 6. Vicinity Map

## ORDINANCE NO. 004, 2025 OF THE COUNCIL OF THE CITY OF FORT COLLINS VACATING THE RIVERBEND COURT RIGHT-OF-WAY AND APPROVING EASEMENTS

- A. The plat of the Prospect Industrial Park, April 25, 1979, recorded in the Larimer County Records at Reception Number 303647, Book 1947 Page 20, included dedication to the public of right-of-way for Riverbend Court.
- B. Liberty Common School (specifically LCS BUILDING CORP) owns all the properties surrounding Riverbend Court (Parcel numbers 8720214901, 8720206903, 8720105906, 8720105008, 8720105010, 8720105007, and 8720105004).
- C. Liberty Common School is proceeding through site plan review processes, proposing to expand its school facilities, including building a new junior high school building.
- D. The existing right-of-way is not compatible with the proposed school development, including proposed school traffic patterns and the proposed new building, which will be situated atop Riverbend Court, as illustrated in the proposed site plan in Attachment A, attached hereto and incorporated herein.
- E. Riverbend Court does not provide any necessary connectivity to other neighborhoods or streets, but it does provide access to the surrounding school properties. There are existing utilities in the area of Riverbend Court; so, Riverbend Court does require drainage, utility, access and emergency access easements.
- F. Liberty Common School has requested that the City vacate the Riverbend Court right-of-way described in Attachment B, attached hereto and incorporated herein, and has explained justification for the request.
- G. Liberty Common School will dedicate new easements, described in Attachments C and D, attached hereto and incorporated herein, to continue the public drainage, utility, access and emergency access in the area of Riverbend Court.
- H. In accordance with City Code Section 23-115(d), pertinent City staff, potentially affected utility companies, emergency service providers and affected property owners in the vicinity of the right-of-way have been contacted, no objection has been reported to the proposed vacation, and the City Engineer recommends approval of the right-of-way vacation.
- I. In accordance with City Code Section 23-115(e), the Planning Development and Transportation Director recommends approval that the Riverbend Court right-of-way be vacated.

J. Vacating the Riverbend Court right-of-way will not prejudice or injure the rights of the residents of Fort Collins.

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. The City Council hereby finds and determines that the Riverbend Court right-of-way dedicated via the Prospect Industrial Park plat, more particularly described in Attachment B, is no longer needed for right-of-way purposes, except for public drainage, utility, access, and emergency access, and that it is in the public interest to vacate the same.

Section 2. The City Council hereby finds and determines that public drainage, utility, access and emergency access in the area of Riverbend Court remains needed and is in the public interest, and Council hereby approves City acceptance of the easements provided in Attachments C and D.

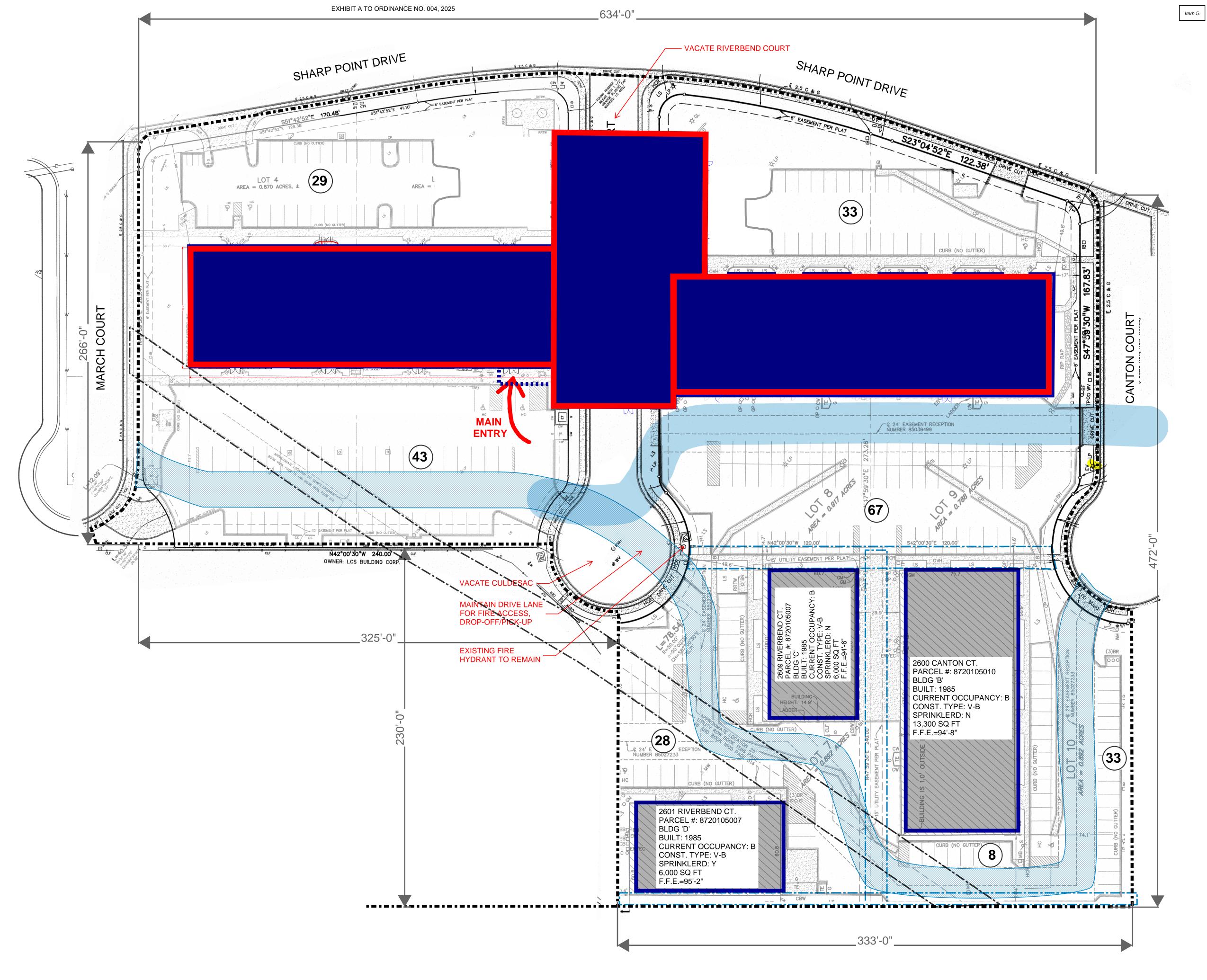
Section 3. The Riverbend Court right-of-way dedicated via the Prospect Industrial Park plat is hereby vacated, abated and abolished, provided that this vacation shall not take effect until the easements provided in Attachments C and D are accepted by the City and recorded with the Larimer County Clerk and Recorder and until this Ordinance takes effect and is recorded with the Larimer County Clerk and Recorder.

Section 4. In accordance with City Code Section 23-115(f), title to the Riverbend Court right-of-way vacated by this ordinance shall vest in accordance with Colorado Revised Statutes Section 43-2-302.

Introduced, considered favorably on first reading on January 21, 2025, and approved on second reading for final passage on February 4, 2025.

ATTEST:	Mayor
City Clerk	-

Effective Date: February 14, 2025 Approving Attorney: Heather N. Jarvis



CONCEPTUAL SITE PLAN - PROPOSED JUNIOR HIGH SCHOOL

scale: 1" = 30'-0"

10.10.2024 N

#### **PROPERTY DESCRIPTION**

A tract of land, being shown and described as Riverbend Court on the plat of Prospect Industrial Park recorded April 25, 1979 as Book 1947 at Page 20 at Reception No. 303647 of the Records of Larimer County, located in the Northeast Quarter (NE1/4) of Section Twenty (20), Township Seven North (T.7N.), Range Sixty-eight West (R.68W.) of the Sixth Principal Meridian (6th P.M.), City of Fort Collins, County of Larimer, State of Colorado and being more particularly described as follows:

**COMMENCING** at the North Quarter corner of said Section 20 and assuming the North line of the Northwest Quarter of said Section 20 as bearing North 89°02'00" West, as platted, a distance of 2649.40 feet and with all other bearings contained herein relative thereto;

THENCE South 13°48'33" East a distance of 1642.39 feet to the Northeast corner of Lot 5 of said Prospect Industrial Park and to the beginning point of a non-tangent curve and to the **POINT OF BEGINNING**;

THENCE along the arc of said non-tangent curve concave to the Southwest a distance of 92.31 feet, said curve has a Radius of 636.13 feet, a Delta of 08°18'53" and is subtended by a Chord bearing South 39°57'10" East a distance of 92.23 feet to the Cusp of a Curve;

THENCE along the arc of a non-tangent curve concave to the South a distance of 25.19 feet, said curve has a Radius of 15.00 feet, a Delta of 96°12'47" and is subtended by a Chord bearing North 83°54'07" West a distance of 22.33 feet to a Point of Tangency;

THENCE South 47°59'30" West a distance of 237.45 feet to a Point of Curvature;

THENCE along the arc of a curve concave to the Southeast a distance of 12.09 feet, said curve has a Radius of 15.00 feet, a Delta of 46°11'13" and is subtended by a Chord bearing South 24°53'54" West a distance of 11.77 feet to a Point of Reverse Curvature;

THENCE along the arc of a curve concave to the Northeast a distance of 237.69 feet, said curve has a Radius of 50.00 feet, a Delta of 272°22'26" and is subtended by a Chord bearing North 42°00'30" West a distance of 69.23 feet to a Point of Reverse Curvature;

THENCE along the arc of a curve concave to the North a distance of 12.09 feet, said curve has a Radius of 15.00 feet, a Delta of 46°11'13" and is subtended by a Chord bearing North 71°05'06" East a distance of 11.77 feet to a Point of Tangency;

THENCE North 47°59'30" East a distance of 240.68 feet to a Point of Curvature;

THENCE along the arc of a curve concave to the West a distance of 24.11 feet, said curve has a Radius of 15.00 feet, a Delta of 92°06'06" and is subtended by a Chord bearing North 01°56'27" East a distance of 21.60 feet to the **POINT OF BEGINNING**.

Said described parcel of land contains 23,313 Square Feet or 0.535 Acre, more or less  $(\pm)$ , and is subject to any rights-of-way or other easements of record or as now existing on said described parcel of land.

#### **SURVEYORS STATEMENT**

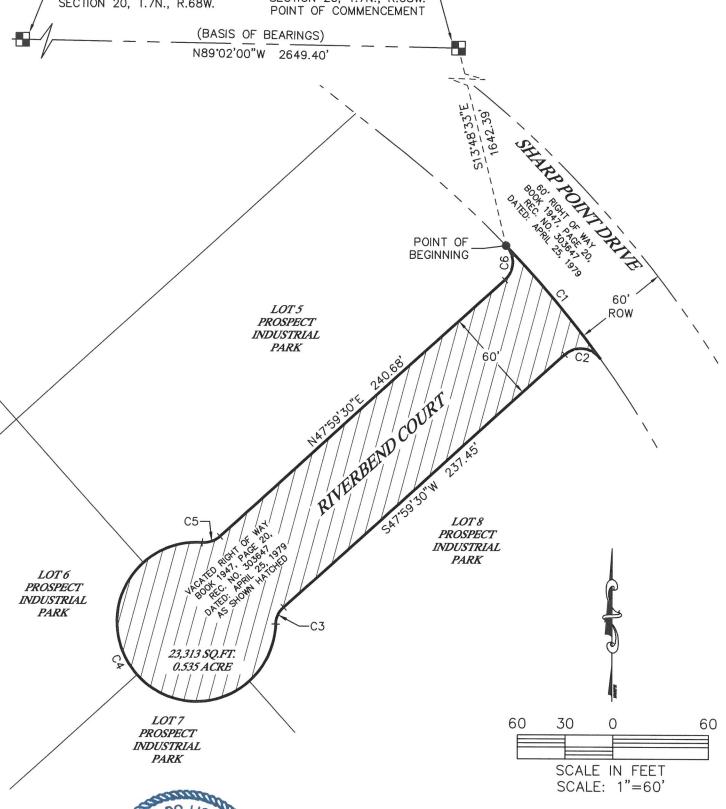
I, Paul B. Groves, a Colorado Licensed Professional Land Surveyor do hereby state that this Property Description was prepared under my personal supervision and checking, and that it is true and correct to the best of my knowledge and belief.

Paul B. Groves - on behalf of King Surveyors Colorado Licensed Professional

Land Surveyor #38209

KING SURVEYORS

650 East Garden Drive Windsor, Colorado 80550 (970) 686-5011



38209 50 1/15/25 44

Paul B. Groves — On Behalf Of King Surveyors Colorado Licensed Professional Land Surveyor #38209

	CURVE TABLE				
CURVE	LENGTH	RADIUS	DELTA	CHORD	CH BEARING
C1	92.31'	636.13'	818'53"	92.23'	S39°57'10"E
C2	25.19'	15.00'	96'12'47"	22.33'	N83°54'07"W
C3	12.09'	15.00'	46"11'13"	11.77'	S24*53'54"W
C4	237.69'	50.00'	272'22'26"	69.23'	N42°00'30"W
C5	12.09'	15.00'	46"11'13"	11.77'	N71°05'06"E
C6	24.11'	15.00'	92'06'06"	21.60'	N01'56'27"E

NOTE: This exhibit drawing is not intended to be a monumented land survey. Its sole purpose is as a graphic representation to aid in the visualization of the written property description which it accompanies. The written property description supersedes the exhibit drawing.

NOTICE: According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon. (13-80-105 C.R.S. 2012)



#### KING SURVEYORS

650 E. Garden Drive | Windsor, Colorado 80550 phone: (970) 686-5011 | fax: (970) 686-5821 email: contact@KingSurveyors.com

PROJECT NO:20240494

**DATE:** 12/20/24

CLIENT: LCS BLDG CORP DWG: 20240494VACROW

DRAWN: CSK CHECKED:

#### DEED OF DEDICATION OF EASEMENT

KNOW ALL PERSONS BY THESE PRESENTS: That the undersigned LCS Building Corporation, a Colorado nonprofit corporation ("Grantor"), being the owner of certain real property in Larimer County, Colorado legally described as provided in Exhibit "A" attached hereto and by this reference made a part hereof, in the Larimer County Records, in consideration of Ten Dollars (\$10.00) in hand paid, receipt of which is hereby acknowledged, and other good and valuable consideration, does hereby dedicate, transfer, and convey to the City of Fort Collins, Colorado, a Municipal Corporation ("City"), whose mailing address for purposes of this deed is P.O. Box 580, Fort Collins, CO 80522, for public use forever a permanent easement for access, utilities, and drainage in the City of Fort Collins, County of Larimer, State of Colorado, more particularly described on Exhibit "B" attached hereto and by this reference made a part hereof (the "Easement").

The City's rights under the Easement include the right to install, operate, access, maintain, repair, reconstruct, remove and replace within the Easement public improvements consistent with the intended purpose of the Easement; the right to install, maintain and use gates in any fences that cross the Easement; the right to mark the location of the Easement with suitable markers; and the right to permit other public utilities to exercise these same rights. Grantor reserves the right to use the Easement for purposes that do not interfere with the full enjoyment of the rights hereby granted.

The City is responsible for maintenance of its own improvements and for repairing any damage caused by its activities in the Easement, but by acceptance of this dedication, the City does not accept the duty of maintenance of the Easement, or of improvements in the Easement that are not owned by the City. Grantor will maintain the surface of the Easement in a sanitary condition in compliance with any applicable weed, nuisance or other legal requirements.

Except as expressly permitted in an approved plan of development or other written agreement with the City, Grantor will not install on the Easement, or permit the installation on the Easement, of any building, structure, improvement, fence, retaining wall, sidewalk, tree or other landscaping (other than usual and customary grasses and other ground cover). In the event such obstacles are installed in the Easement, the City has the right to require the Grantor to remove such obstacles from the Easement. If Grantor does not remove such obstacles, the City may remove such obstacles without any liability or obligation for repair and replacement thereof, and charge the Grantor the City's costs for such removal. If the City chooses not to remove the obstacles, the City will not be liable for any damage to the obstacles or any other property to which they are attached.

The rights granted to the City by this Deed inure to the benefit of the City's agents, licensees, permittees and assigns.

[SIGNATURES ON FOLLOWING PAGE]

Witness our hands and seals this Oday of Dell, 2024.
Grantor:
By: Total Class
Title: Pies, Deat
Name and Address:
Rotos C. Kos
2003 E HALLONY Rd,
Surte 300
ATTEST: Post 611 is > Co
By: LOMOLO CASEN 80520
Title: TRANSACTION SPECIALIST
State of COLORADO
County of LARIMER)
The foregoing instrument was acknowledged before me this 20 day of December, 2024
by PETER KAST as PRESIDENT, andas
<del></del>
Witness my hand and official seal.
My commission expires: July 22, 2026  Tomoko Olsen NOTARY PUBLIC
STATE OF COLORADO NOTARY ID 20144019193
Notary Public AlMission Expires July 22 2076
,

Acknowledged and agreed by the undersigned, U.S. Bank Trust Company, National Association.

Witness my hand and seal this // day of December, 2024.

Trustee: U.S. Bank Trust Company, National Association

Bv:

Title: Vice #resident

Name and Address:

Mike McGuire

950 17th St, DN-CO-5GCT

Denver, CO 80202

ATTEST:

Title: Secretary

State of <u>COLORADO</u>)

SS

County of DENVER

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of December, 2024, by Mike McGuire as <u>Vice president</u>.

Witness my hand and official seal.

My commission expires: June 19, 2020

JENNIFER M PETRUNO NOTARY PUBLIC STATE OF COLORADO NOTARY ID 20144024524

Page 65

•	by the Director of Community Development and ection 6.2.5 of the Land Use Code of the City of Fort
Collins thisday of	_, 202
	Brad Buckman, City Engineer
	as delegee for the Director of Community  Development and Neighborhood Services
4.775.07	
ATTEST:	
9	
City Clerk	

#### **ATTORNEY'S CERTIFICATION**

I hereby certify that the forgoing Deed has been duly executed as required pursuant to Section 6.3.3 (C)(3)(a) through (e) inclusive of the Land Use Code of the City of Fort Collins and that all persons signing this Deed on behalf of a corporation or other entity are duly authorized signatories under the laws of the State of Colorado. This Certification is based upon an examination of the records of the Clerk and Recorder of Larimer County, Colorado as of the date of execution of the deed and other information discovered by me through reasonable inquiry and is limited as authorized by Section 6.3.3(C)(3)(f) of the Land Use Code.

Attorney: David P. Kunstle Address Sparks Willson, P.C.

24 South Weber Street, Suite 400

Colorado Springs, CO 80903

Registration No. 28710 Date: December 20, 2024

#### **EXHIBIT A TO DEED OF DEDICATION OF EASEMENT**

**Property Legal Description** 

LOTS 5, 6, 7, AND 8 PROSPECT INDUSTRIAL PARK, ACCORDING TO THE PLAT RECORDED APRIL 25, 1979 IN BOOK 1947 AT PAGE 20, COUNTY OF LARIMER, STATE OF COLORADO

#### **EXHIBIT B TO DEED OF DEDICATION OF EASEMENT**

(Easement Description – Attached)

#### PUBLIC ACCESS, UTILITY & DRAINAGE EASEMENT DESCRIPTION

A tract of land, being shown and described as Riverbend Court on the plat of Prospect Industrial Park recorded April 25, 1979 as Book 1947 at Page 20 at Reception No. 303647 of the Records of Larimer County, located in the Northeast Quarter (NE1/4) of Section Twenty (20), Township Seven North (T.7N.), Range Sixty-eight West (R.68W.) of the Sixth Principal Meridian (6th P.M.), City of Fort Collins, County of Larimer, State of Colorado and being more particularly described as follows:

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Said described parcel of land contains 23,313 Square Feet or 0.535 Acre, more or less ( $\pm$ ), and is subject to any rights-of-way or other easements of record or as now existing on said described parcel of land.

#### **SURVEYORS STATEMENT**

I, Paul B. Groves, a Colorado Licensed Professional Land Surveyor do hereby state that this Property Description was prepared under my personal supervision and checking, and that it is true and correct to the best of my knowledge and belief.

Paul B. Groves - on behalf of King Surveyors
Colorado Licensed Professional
Land Surveyor #38209

KING SURVEYORS 650 East Garden Drive Windsor, Colorado 80550

Windsor, Colorado 8 (970) 686-5011



Paul B. Groves — On Behalf Of King Surveyors Colorado Licensed Professional Land Surveyor #38209

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60

30

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SCALE IN FEET SCALE: 1"=60'

60

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#### KING SURVEYORS

650 E. Garden Drive | Windsor, Colorado 80550 phone: (970) 686-5011 | fax: (970) 686-5821 email: contact@KingSurveyors.com

PROJECT NO:20240494 DATE: 12/13/2024 CLIENT: LCS BLDG CORP DWG: 20240494PAUDE DRAWN: CSK CHECKED: P

#### DEED OF DEDICATION OF EASEMENT

KNOW ALL PERSONS BY THESE PRESENTS: That the undersigned LCS Building Corporation, a Colorado nonprofit corporation ("Grantor"), being the owner of certain real property in Larimer County, Colorado legally described as provided in Exhibit "A" attached hereto and by this reference made a part hereof, in the Larimer County Records, in consideration of Ten Dollars (\$10.00) in hand paid, receipt of which is hereby acknowledged, and other good and valuable consideration, does hereby dedicate, transfer, and convey to the City of Fort Collins, Colorado, a Municipal Corporation ("City"), whose mailing address for purposes of this deed is P.O. Box 580, Fort Collins, CO 80522, for public use forever a permanent easement for emergency access in the City of Fort Collins, County of Larimer, State of Colorado, more particularly described on Exhibit "B" attached hereto and by this reference made a part hereof (the "Easement").

The City's rights under the Easement include the right of emergency vehicles and personnel to access the Easement; the right to designate the Easement as a fire lane with the enforcement of provisions required through said designation of a fire lane; and the right to cite, ticket, and/or tow vehicles and/or remove obstructions within the Easement that prevent and/or restrict the maintaining of emergency access. Grantor reserves the right to use the Easement for purposes that do not interfere with the full enjoyment of the rights hereby granted.

The City is responsible for maintenance of its own improvements and for repairing any damage caused by its activities in the Easement, but by acceptance of this dedication, the City does not accept the duty of maintenance of the Easement, or of improvements in the Easement that are not owned by the City. Grantor will maintain the surface of the Easement in a sanitary condition in compliance with any applicable weed, nuisance or other legal requirements.

Grantor will not install on the Easement, or permit the installation on the Easement, of any building, structure, improvement, fence, retaining wall, sidewalk, tree or any other obstruction that would negatively impact the ability of emergency vehicles and personnel to utilize the Easement as intended, designed and approved. In the event such obstacles are installed in the Easement, the City has the right to require the Grantor to remove such obstacles from the Easement. If Grantor does not remove such obstacles, the City may remove such obstacles without any liability or obligation for repair and replacement thereof, and charge the Grantor the City's costs for such removal. If the City chooses not to remove the obstacles, the City will not be liable for any damage to the obstacles or any other property to which they are attached.

The rights granted to the City by this Deed inure to the benefit of the City's agents, licensees, permittees and assigns.

[SIGNATURES ON FOLLOWING PAGE]

Witness our hands and seals this ${\displaystyle rac{t\mathcal{O}}{L}}$ day	of <u>Vel</u> , 202 4.
Gran By: _	tor:
Titlez	2/25, Dreug
Name	e and Address:
<u>- 30</u>	2016 300 (Rd.
ATTEST:	+ 6= 111, 5, 60 Soses
By: TOMORO OLSEN	2052g
Title: IRANSACTION SPECIALIST	•
State of COLORADO ) ss County of LARINER )	
The foregoing instrument was acknowledg by PETER KAST as PRESIDENT	ed before me this 20 <sup>44</sup> day of December, 202 <u>4</u> , and as
Witness my hand and official seal.	
My commission expires: July 22	Tomoko Olsen NOTARY PUBLIC STATE OF COLORADO NOTARY ID 20144019193 MY COMMISSION EXPIRES July 22 2024.
/ Mofary Public ∽	· · · · · · · · · · · · · · · · · · ·

Acknowledged and agreed by the un	dersigned, U.S. Bank Trust Company, National Association.
Witness my hand and seal this 193	day of December, 2024.
	Trustee: U.S. Bank Trust Company, National Association
	Ву:
	Title: Vice President
	Name and Address:
	Mike McGuire
	950 17th St, DN-CO-5GCT
	Denver, CO 80202
ATTEST: By: Whole Lindded Title: Secretary	
State of <u>COLOR ADD</u> )  ss	
County of DENVER	ħ
The foregoing instrument was acknowledged Mike McGuire as Vice Presiden:	wledged before me this <u>19</u> day of December, 2024, by
Witness my hand and official seal.	JENNIFER M PETRUNO NOTARY PUBLIC STATE OF COLORADO
My commission expires: June	19, 7026 NOTARY ID 20144024524 MY COMMISSION EXPIRES 08/19/2028
Noterview	blic P

	the Director of Community Development and ction 6.2.5 of the Land Use Code of the City of Fort
Collins thisday of,	202
	De ID de la Citation
	Brad Buckman, City Engineer as delegee for the Director of Community
	Development and Neighborhood Services
ATTEST:	
City Clerk	

#### **ATTORNEY'S CERTIFICATION**

I hereby certify that the forgoing Deed has been duly executed as required pursuant to Section 6.3.3 (C)(3)(a) through (e) inclusive of the Land Use Code of the City of Fort Collins and that all persons signing this Deed on behalf of a corporation or other entity are duly authorized signatories under the laws of the State of Colorado. This Certification is based upon an examination of the records of the Clerk and Recorder of Larimer County, Colorado as of the date of execution of the deed and other information discovered by me through reasonable inquiry and is limited as authorized by Section 6.3.3(C)(3)(f) of the Land Use Code.

Attorney: David P. Kunstle Address Sparks Willson, P.C.

24 South Weber Street, Suite 400 Colorado Springs, CO 80903

Registration No. 28710

Date: December 20, 2024

#### **EXHIBIT A TO DEED OF DEDICATION OF EASEMENT**

**Property Legal Description** 

LOTS 5, 6, 7, AND 8 PROSPECT INDUSTRIAL PARK, ACCORDING TO THE PLAT RECORDED APRIL 25, 1979 IN BOOK 1947 AT PAGE 20, COUNTY OF LARIMER, STATE OF COLORADO

#### **EXHIBIT B TO DEED OF DEDICATION OF EASEMENT**

(Easement Description – Attached)

#### EMERGENCY ACCESS EASEMENT DESCRIPTION

A tract of land, being shown and described as Riverbend Court on the plat of Prospect Industrial Park recorded April 25, 1979 as Book 1947 at Page 20 at Reception No. 303647 of the Records of Larimer County, located in the Northeast Quarter (NE1/4) of Section Twenty (20), Township Seven North (T.7N.), Range Sixty-eight West (R.68W.) of the Sixth Principal Meridian (6th P.M.), City of Fort Collins, County of Larimer, State of Colorado and being more particularly described as follows:

**COMMENCING** at the North Quarter corner of said Section 20 and assuming the North line of the Northwest Quarter of said Section 20 as bearing North 89°02'00" West, as platted, a distance of 2649.40 feet and with all other bearings contained herein relative thereto;

THENCE South 13°48'33" East a distance of 1642.39 feet to the Northeast corner of Lot 5 of said Prospect Industrial Park and to the beginning point of a non-tangent curve and to the **POINT OF BEGINNING**;

THENCE along the arc of said non-tangent curve concave to the Southwest a distance of 92.31 feet, said curve has a Radius of 636.13 feet, a Delta of 08°18'53" and is subtended by a Chord bearing South 39°57'10" East a distance of 92.23 feet to the Cusp of a Curve;

THENCE along the arc of a non-tangent curve concave to the South a distance of 25.19 feet, said curve has a Radius of 15.00 feet, a Delta of 96°12'47" and is subtended by a Chord bearing North 83°54'07" West a distance of 22.33 feet to a Point of Tangency;

THENCE South 47°59'30" West a distance of 237.45 feet to a Point of Curvature;

THENCE along the arc of a curve concave to the Southeast a distance of 12.09 feet, said curve has a Radius of 15.00 feet, a Delta of 46°11'13" and is subtended by a Chord bearing South 24°53'54" West a distance of 11.77 feet to a Point of Reverse Curvature;

THENCE along the arc of a curve concave to the Northeast a distance of 237.69 feet, said curve has a Radius of 50.00 feet, a Delta of 272°22'26" and is subtended by a Chord bearing North 42°00'30" West a distance of 69.23 feet to a Point of Reverse Curvature;

THENCE along the arc of a curve concave to the North a distance of 12.09 feet, said curve has a Radius of 15.00 feet, a Delta of 46°11'13" and is subtended by a Chord bearing North 71°05'06" East a distance of 11.77 feet to a Point of Tangency;

THENCE North 47°59'30" East a distance of 240.68 feet to a Point of Curvature;

THENCE along the arc of a curve concave to the West a distance of 24.11 feet, said curve has a Radius of 15.00 feet, a Delta of 92°06'06" and is subtended by a Chord bearing North 01°56'27" East a distance of 21.60 feet to the **POINT OF BEGINNING**.

Said described parcel of land contains 23,313 Square Feet or 0.535 Acre, more or less ( $\pm$ ), and is subject to any rights-of-way or other easements of record or as now existing on said described parcel of land.

#### **SURVEYORS STATEMENT**

I, Paul B. Groves, a Colorado Licensed Professional Land Surveyor do hereby state that this Property Description was prepared under my personal supervision and checking, and that it is true and correct to the best of my knowledge and belief.

Paul B. Groves - on behalf of King Surveyors Colorado Licensed Professional

Land Surveyor #38209

KING SURVEYORS

650 East Garden Drive Windsor, Colorado 80550 (970) 686-5011



LOT 7

PROSPECT INDUSTRIAL PARK

Paul B. Groves — On Behalf Of King Surveyors Colorado Licensed Professional Land Surveyor #38209

CURVE TABLE					
CURVE	LENGTH	RADIUS	DELTA	CHORD	CH BEARING
C1	92.31'	636.13'	8'18'53"	92.23'	S39*57'10"E
C2	25.19'	15.00'	96'12'47"	22.33'	N83*54'07"W
С3	12.09'	15.00'	46"11'13"	11.77'	S24°53'54"W
C4	237.69'	50.00'	272'22'26"	69.23'	N42°00'30"W
C5	12.09'	15.00'	46"11'13"	11.77'	N71°05'06"E
C6	24.11'	15.00'	92°06'06"	21.60'	N01°56'27"E

60

30

0

SCALE IN FEET SCALE: 1"=60'

60

NOTE: This exhibit drawing is not intended to be a monumented land survey. Its sole purpose is as a graphic representation to aid in the visualization of the written property description which it accompanies. The written property description supersedes the exhibit drawing.

NOTICE: According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon. (13-80-105 C.R.S. 2012)



#### KING SURVEYORS

650 E. Garden Drive | Windsor, Colorado 80550 phone: (970) 686-5011 | fax: (970) 686-5821 email: contact@KingSurveyors.com

PROJECT NO:20240494 DATE: 12/13/2024 CLIENT: LCS BLDG CORP DWG: 20240494EAE

DRAWN: CSK CHECKED: P

### RIVERBEND COURT VICINITY MAP



#### File Attachments for Item:

6. First Reading of Ordinance No. 005, 2025, Approving the First Amendment to the PUD Master Plan Development Agreement for the Montava Planned Unit Development Overlay and Master Plan.

The purpose of this item is for Council to consider the First Amendment to the Planned Unit Development (PUD) Master Plan Development Agreement for the Montava PUD Overlay and Master Plan between the City and the Developer. The amendment would extend the five (5)-year contingency for closing of the Developer's purchase from the Anheuser-Busch Foundation for two (2) additional years.

This item is a quasi-judicial matter and if it is considered on the discussion agenda it will be considered in accordance with the procedures described in Section 2(d) of the Council's Rules of Meeting Procedures adopted in Resolution 2024-148.

**January 21, 2025** 

#### AGENDA ITEM SUMMARY

City Council



#### **STAFF**

Clay Frickey, Planning Manager

#### **SUBJECT**

First Reading of Ordinance No. 005, 2025, Approving the First Amendment to the PUD Master Plan Development Agreement for the Montava Planned Unit Development Overlay and Master Plan.

#### **EXECUTIVE SUMMARY**

The purpose of this item is for Council to consider the First Amendment to the Planned Unit Development (PUD) Master Plan Development Agreement for the Montava PUD Overlay and Master Plan between the City and the Developer. The amendment would extend the five (5)-year contingency for closing of the Developer's purchase from the Anheuser-Busch Foundation for two (2) additional years.

This item is a quasi-judicial matter and if it is considered on the discussion agenda it will be considered in accordance with the procedures described in Section 2(d) of the Council's Rules of Meeting Procedures adopted in Resolution 2024-148.

#### STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

#### **BACKGROUND / DISCUSSION**

On February 18, 2020, Council approved the Montava PUD Master Plan and Montava PUD Overlay by Ordinance No. 014, 2020. In connection with the PUD Master Plan, Council also approved the PUD Master Plan Development Agreement (Development Agreement) by Ordinance No. 015, 2020. The Development Agreement primarily addresses the twenty-five (25)-year extended vested rights period and other terms of development within the Montava PUD Overlay and Master Plan.

The Development Agreement envisions Montava's acquisition of approximately 844 acres from the Anheuser-Busch Foundation and an additional 108 acres via an exchange with the Poudre School District, with the resulting property being developed in phases subject to the PUD Master Plan, the Development Agreement and the accompanying Public Benefits Agreement. The Development Agreement contains a contingency requiring the closing of Montava's purchase from the Anheuser-Busch Foundation within five (5) years after the agreement's effective date of March 13, 2020.

Item 6.

Montava has submitted four development applications for phases within the PUD Master Plan, of which must be approved prior to the Anheuser-Busch Foundation closing. Montava has encountered complicated issues in finalizing long-term solutions for ditch crossings, ditch modifications and stormwater management causing years of delay and erosion of the original five (5)-year contingency period. While Montava continues to pursue resolution, Montava requests that the Council grant a two (2)-year extension of the five (5)-year contingency period to allow additional time to resolve the issues and close on the purchase to prevent a termination of the Development Agreement.

The City and Montava are authorized to amend the Development Agreement without the consent of the Anheuser-Busch Foundation or the Poudre School District, although both entities are advised of this request.

CITY	FIN	ANCIAL	_ IMPA	CTS
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None.

#### **BOARD / COMMISSION / COMMITTEE RECOMMENDATION**

None.

#### **PUBLIC OUTREACH**

None.

#### **ATTACHMENTS**

- 1. Ordinance for Consideration
- 2. Exhibit A to Ordinance

## ORDINANCE NO. 005, 2025 OF THE COUNCIL OF THE CITY OF FORT COLLINS APPROVING THE FIRST AMENDMENT TO THE PUD MASTER PLAN DEVELOPMENT AGREEMENT FOR THE MONTAVA PLANNED UNIT DEVELOPMENT OVERLAY AND MASTER PLAN

- A. Montava is a Planned Unit Development (PUD) established under Transitional Land Use Code Divisions 2.15 and 4.29 for a section of rural and agricultural land next to the Anheuser-Busch facility in northeast Fort Collins, modeled after a village-style development for the wide variety of land uses planned. The development intends to include a variety of housing, amenities and public spaces. The proposal calls for a complete, connected community with new neighborhoods, parks, schools, a town center, urban agriculture, businesses and transportation connections.
- B. On February 18, 2020, Council approved the Montava PUD Master Plan and Montava PUD Overlay by Ordinance No. 014, 2020. On February 18, 2020, Council also approved, in connection with the PUD Master Plan, the PUD Master Plan Development Agreement (Development Agreement) by Ordinance No. 015, 2020.
- C. The Development Agreement primarily addresses an extension from three (3) to twenty-five (25) years of the vested rights period, because vested property rights are normally valid for up to three (3) years under Transitional Land Use Code Section 2.2.11(C)(2) unless an extended period of vested rights is granted as memorialized in a development agreement City Council adopts by ordinance.
- D. The Development Agreement also addresses other terms of development within the Montava PUD Overlay and Master Plan. The Development Agreement envisions the Montava developer's (the "Developer") acquisition of approximately 844 acres from the Anheuser-Busch Foundation and an additional 108 acres via an exchange with the Poudre School District, with the resulting property being developed in phases subject to the PUD Master Plan, the Development Agreement and the accompanying Public Benefits Agreement.
- E. The Development Agreement at Subsection V.C.1. contains a contingency requiring the closing of the Developer's purchase from the Anheuser-Busch Foundation within five (5) years after the agreement's effective date of March 13, 2020, and if the closing does not occur before the end of the five (5) years, the Development Agreement shall automatically terminate and thereafter be of no force or effect.
- F. The Developer has encountered complicated issues in finalizing long-term solutions for ditch crossings, ditch modifications and stormwater management causing years of delay and erosion of the original five (5)-year contingency period.
- G. The Developer has submitted four (4) development applications for phases within the PUD Master Plan, one (1) of which must be approved before the Anheuser-Busch Foundation closing.

- H. While the Developer continues to pursue resolution, the Developer requests that the Council grant a two (2)-year extension of the five (5)-year contingency period to allow additional time to resolve the issues and close on the purchase to prevent a termination of the Development Agreement.
- I. Under Section V.J. of the Development Agreement, the City and the Developer are authorized to amend the Development Agreement without the consent of the Anheuser-Busch Foundation or the Poudre School District; although, both entities are advised of this request.
- J. There will not be financial impact on the City for extending the existing deadline.
- K. It is in the best interest of the City to extend the contingency upon the closing of the Developer's purchase from the Anheuser-Busch Foundation, because extending the contingency upon the closing time should facilitate development pursuant to the Development Agreement and ultimately the Developer's significant investments in public infrastructure improvements.

In light of the foregoing Recitals, which the Council hereby makes and adopts as determinations and findings, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS:

- Section 1. The First Amendment to the Development Agreement to extend the contingency period upon the closing of the Developer's purchase from the Anheuser-Busch Foundation from five (5) years after the effective date of the Development Agreement to seven (7) years after the effective date of the Development Agreement is hereby approved by the City Council.
- Section 2. The Mayor is authorized to execute the First Amendment to the Development Agreement on behalf of the City in substantially the same form attached to this Ordinance as Exhibit A.
- Section 3. A copy of this Ordinance with all attachments shall be recorded in the Office of the Larimer County Clerk and Recorder promptly after the effective date of this Ordinance with all recording fees paid by the Developer.

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пет	n.

Introduced, considered favorably on first reading on January 21, 2025, and approved on second reading for final passage on February 4, 2025.

	Mayor	
ATTEST:		
City Clerk		

Effective Date: February 14, 2025 Approving Attorney: Heather N. Jarvis

## FIRST AMENDMENT TO PUD MASTER PLAN DEVELOPMENT AGREEMENT FOR THE MONTAVA PLANNED UNIT DEVELOPMENT OVERLAY AND MASTER PLAN

THIS FIRST AMENDMENT TO PUD MASTER PLAN DEVELOPMENT AGREEMENT FOR THE MONTAVA PLANNED UNIT DEVELOPMENT OVERLAY AND MASTER PLAN (the "First Amendment") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by and between the CITY OF FORT COLLINS, COLORADO, a municipal corporation of the State of Colorado ("City"); and MONTAVA PARTNERS, LLC, a Colorado limited liability company ("Montava"), as successor to HF2M, INC., a Texas corporation ("HF2M"). City and Montava may be referred to individually, each as a "Party," or collectively, the "Parties."

#### **RECITALS**

- A. City and HF2M entered into the PUD Master Plan Development Agreement for the Montava Planned Unit Development Overlay and Master Plan on May 23, 2020 (the "Original Agreement"), together with U.S. BANK NATIONAL ASSOCIATION, as successor in interest to U.S. BANK AS CORPORATE TRUSTEE OF THE ANHEUSER-BUSCH FOUNDATION, a Missouri charitable trust ("Foundation") and POUDRE SCHOOL DISTRICT R-1, a political subdivision of the State of Colorado ("School District"); the Foundation and School District being collectively referred to herein as "Owners." The Effective Date of the Original Agreement was March 13, 2020.
- B. HF2M assigned all of its obligations, rights, title, interest in and to the Original Agreement to Montava effective March 8, 2021.
- C. The closing of the sale of the Foundation Property to Montava has been delayed by unforeseen complications thus creating a risk that the Foundation Contingency in Subsection V.C.1 of the Original Agreement cannot be satisfied within the time frame originally envisioned.
- D. The Parties wish to enter into this First Amendment for the purpose of amending the Foundation Contingency to extend by two (2) years the time period within which the sale of the Foundation Property to Montava must occur.
- E. The Original Agreement may only be amended by the City and Montava without the consent of the Owners; Montava has not granted the right to consent to this First Amendment to any successor or assigns.
- NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements contained herein, such consideration being acknowledged as sufficient and of significant value to the Parties, the Parties agree as follows.

#### AMENDMENT TO ORIGINAL AGREEMENT

- A. <u>Incorporation of Recitals</u>. The foregoing Recitals are incorporated herein as material terms.
- B. <u>Definitions</u>. Capitalized terms not otherwise defined herein shall retain the meanings set forth in the Original Agreement.
- C. <u>Foundation Contingency</u>. The Parties acknowledge that the Original Agreement provides that should the Foundation Contingency not occur within five (5) years after the Effective Date, or by March 13, 2025, the Original Agreement shall automatically terminate, and the Parties agree that it is reasonable and in the best interests of the general welfare of the City to extend the deadline for satisfaction of the Foundation Contingency by an additional two (2) years.
- D. <u>Amendment of Foundation Contingency</u>. The Parties therefore agree to amend Subsection V.C.1 of the Original Agreement to read as follows:

<u>Foundation Contingency.</u> The Parties hereto expressly agree that this Agreement is contingent upon the closing of the sale of substantially all of the Foundation Property to the Developer pursuant to the terms of the Foundation Agreement within seven (7) years after the Effective Date. If such closing does not occur by such date, this Agreement shall thereupon automatically terminate and thereafter be of no force or effect, and the Parties hereto shall be released from all obligations hereunder.

E. <u>Amendment of Notices</u>. The Parties agree to amend Subsection V.Q. of the Original Agreement to replace the Developer's contact information to read as follows:

If to Developer: Montava Partners, LLC

ATTN: Max Moss

430 N. College Ave. Suite 410

Fort Collins, CO 80524 Email: max@montava.com

With copies to: Brownstein Hyatt Farber Schreck, LLP

ATTN: Claire N.L. Havelda 675 15<sup>th</sup> Street, Suite 2900

Denver, CO 80202

Email: chavelda@bhfs.com

F. <u>Original Agreement</u>. The Original Agreement remains in full force and effect, as amended by this First Amendment.

- G. <u>First Amendment Effective Date</u>: This First Amendment shall be effective on the tenth day following final passage by the City Council of the ordinance approving the First Amendment.
- H. <u>Counterparts</u>. This First Amendment may be executed in counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same amendment.
- I. <u>Recordation</u>. The City shall record this Agreement in the Larimer County Records, and Montava shall pay the cost of the same.

IN WITNESS WHEREOF, the Parties agree to the terms and conditions of this First Amendment described above effective as of the First Amendment Effective Date.

CITY:	CITY OF FORT COLLINS, COLORADO, a Municipal Corporation
	By:
	Date:
APPROVED AS TO FORM:	
Heather N. Jarvis, Assistant City Attorne	е <b>у</b>
ATTEST:	
Delynn Coldiron, City Clerk	

#### EXHIBIT A TO ORDINANCE NO. 005, 2025

MONTAVA:		MONTAVA PARTNERS, LLC, a Colorado Limited liability company	
	Ву:	CAMERON INVESTMENTS L.C., an Idaho limited liability company, Manager	
	Ву:	Richard P. Clark, Manager	
		Date:	
ATTEST:			
Drinted name Title			
Printed name, Title			

#### File Attachments for Item:

#### 7. Resolution 2025-004 Approving the First Amendment to the Development Agreement to Secure Public Benefits for Development of the Montava Planned Unit Development Master Plan.

The purpose of this item is to consider the First Amendment to the Development Agreement to Secure Public Benefits for Montava Planned Unit Development (PUD) Master Plan (Public Benefits Agreement) between the City and the Developer. The amendment would extend the five (5)-year contingency for closing of the Developer's purchase from the Anheuser-Busch Foundation for two (2) additional years.

This item is a quasi-judicial matter and if it is considered on the discussion agenda it will be considered in accordance with the procedures described in Section 2(d) of the Council's Rules of Meeting Procedures adopted in Resolution 2024-148.

January 21, 2025

#### AGENDA ITEM SUMMARY

City Council



#### **STAFF**

Clay Frickey, Planning Manager

#### **SUBJECT**

Resolution 2025-004 Approving the First Amendment to the Development Agreement to Secure Public Benefits for Development of the Montava Planned Unit Development Master Plan.

#### **EXECUTIVE SUMMARY**

The purpose of this item is to consider the First Amendment to the Development Agreement to Secure Public Benefits for Montava Planned Unit Development (PUD) Master Plan (Public Benefits Agreement) between the City and the Developer. The amendment would extend the five (5)-year contingency for closing of the Developer's purchase from the Anheuser-Busch Foundation for two (2) additional years.

This item is a quasi-judicial matter and if it is considered on the discussion agenda it will be considered in accordance with the procedures described in Section 2(d) of the Council's Rules of Meeting Procedures adopted in Resolution 2024-148.

#### STAFF RECOMMENDATION

Staff recommends adoption of the Resolution.

#### **BACKGROUND / DISCUSSION**

On September 25, 2018, Council approved the Consolidated Service Plan for Montava Metropolitan District Nos. 1-7 (Service Plan) to govern the Montava Metro Districts by Resolution 2018-083. Thereafter, in 2020, Council approved the Montava PUD Master Plan and the PUD Master Plan Development Agreement for the development of approximately 844 acres to be acquired from the Anheuser-Busch Foundation and an additional 108 acres to be obtained via an exchange with the Poudre School District. In connection with the approval of the PUD Master Plan, Council approved by Resolution 2020-007 the Development Agreement to Secure Public Benefits for Montava Planned Unit Development Master Plan (Public Benefits Agreement) for the purpose of securing the Developer's delivery of certain "Public Benefits" described in the Service Plan as: (i) large-scale comprehensive master planning; (ii) new urbanism; (iii) agri-urban development; (iv) zero energy ready homes; (v) non-potable water system; and (vi) affordable/workforce housing. The Public Benefits Agreement meets both the spirit of the Metro District Policy and helps the City achieve its strategic objectives.

The Public Benefits Agreement contains a contingency requiring the closing of Montava's purchase from the Anheuser-Busch Foundation within five (5) years after the agreement's effective date of March 25, 2020. Montava has submitted four development applications for phases within the PUD Master Plan, one of which must be approved prior to the Anheuser-Busch Foundation closing. Montava has encountered

Item 7.

complicated issues in finalizing long-term solutions for ditch crossings, ditch modifications and stormwater management causing years of delay and erosion of the original five (5)-year contingency period. While Montava continues to pursue resolution, it is also requesting that the Council grant a two (2)-year extension of the five (5)-year contingency period to allow additional time to resolve the issues and close on the purchase to prevent a termination of the Public Benefits Agreement.

The City and Montava are authorized to amend the Public Benefits Agreement without the consent of the Anheuser-Busch Foundation or the Poudre School District, although both entities are advised of this request.

·
CITY FINANCIAL IMPACTS
None.
BOARD / COMMISSION / COMMITTEE RECOMMENDATION
None.
PUBLIC OUTREACH
None.
THORE.

- 1. Resolution for Consideration
- 2. Exhibit A to Resolution

**ATTACHMENTS** 

## RESOLUTION 2025-004 OF THE COUNCIL OF THE CITY OF FORT COLLINS APPROVING THE FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT TO SECURE PUBLIC BENEFITS FOR DEVELOPMENT OF THE MONTAVA PLANNED UNIT DEVELOPMENT MASTER PLAN

- A. Montava is a Planned Unit Development (PUD) established under Transitional Land Use Code Divisions 2.15 and 4.29 for a section of rural and agricultural land next to the Anheuser-Busch facility in northeast Fort Collins, modeled after a village-style development for the wide variety of land uses planned. The development intends to include a variety of housing, amenities and public spaces. The proposal calls for a complete, connected community with new neighborhoods, parks, schools, a town center, urban agriculture, businesses, and transportation connections.
- B. On September 25, 2018, Council approved the Consolidated Service Plan for Montava Metropolitan District Nos. 1-7 (Service Plan) to govern the Montava Metro Districts by Resolution 2018-083. Thereafter, on February 18, 2020, Council approved the Montava PUD Master Plan and Montava PUD Overlay by Ordinance No. 014, 2020, and the PUD Master Plan Development Agreement by Ordinance No. 015, 2020, for the development of approximately 844 acres to be acquired from the Anheuser-Busch Foundation and an additional 108 acres to be obtained via an exchange with the Poudre School District.
- C. In connection with the approval of the PUD Master Plan, Council approved by Resolution 2020-007 the Development Agreement to Secure Public Benefits for Montava Planned Unit Development Master Plan (Public Benefits Agreement, at Reception No. 20220022462) for the purpose of securing the Montava developer's (the "Developer") delivery of certain "Public Benefits" described in the Service Plan as: (i) large-scale comprehensive master planning; (ii) new urbanism; (iii) agri-urban development; (iv) zero energy ready homes; (v) non-potable water system; and (vi) affordable/workforce housing. The Public Benefits Agreement meets both the spirit of the Metro District Policy and helps the City achieve its strategic objectives.
- D. The Public Benefits Agreement at Subsection II.G. contains a contingency requiring the closing of the Developer's purchase from the Anheuser-Busch Foundation within five (5) years after the Public Benefits Agreement's effective date of March 25, 2020, and if the closing does not occur before the end of the five (5) years, the Development Agreement shall automatically terminate and thereafter be of no force or effect.
- E. The Developer has encountered complicated issues in finalizing long-term solutions for ditch crossings, ditch modifications and stormwater management causing years of delay and erosion of the original five (5)-year contingency period.

- F. The Developer has submitted four (4) development applications for phases within the PUD Master Plan, one (1) of which must be approved before the Anheuser-Busch Foundation closing.
- G. While the Developer continues to pursue resolution, it is also requesting that the Council grant a two (2)-year extension of the five (5)-year contingency period to allow additional time to resolve the issues and close on the purchase to prevent a termination of the Public Benefits Agreement.
- H. Under Section II.H. of the Development Agreement, the City and the Developer are authorized to amend the Development Agreement without the consent of the Anheuser-Busch Foundation or the Poudre School District; although, both entities are advised of this request.
- I. There will not be financial impact on the City for extending the existing deadline.
- J. The City Council finds and determines that the adoption of this resolution advances the public's health, safety, and welfare by ultimately facilitating the Developer's delivery of the agreed upon Public Benefits.

In light of the foregoing Recitals, which the Council hereby makes and adopts as determinations and findings, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS:

- Section 1. The First Amendment to the Public Benefits Agreement to extend the contingency period upon the closing of the Developer's purchase from the Anheuser-Busch Foundation from five (5) years after the effective date of the Public Benefits Agreement to seven (7) years after the effective date of the Public Benefits Agreement is hereby approved by the City Council.
- Section 2. The Mayor is authorized to execute the First Amendment to the Public Benefits Agreement on behalf of the City in substantially the same form attached to this resolution as Exhibit A.
- Section 3. A copy of this resolution with all attachments shall be recorded in the Office of the Larimer County Clerk and Recorder promptly after the effective date of this resolution with all recording fees paid by the Developer.

Passed and adopted on January 21, 2025.

	Mayor	
ATTEST:		
City Clerk		

Effective Date: January 21, 2025 Approving Attorney: Heather N. Jarvis

### FIRST AMENDMENT TO DEVELOPMENT AGREEMENT TO SECURE PUBLIC BENEFITS FOR MONTAVA PLANNED UNIT DEVELOPMENT MASTER PLAN

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT TO SECURE PUBLIC BENEFITS FOR MONTAVA PLANNED UNIT DEVELOPMENT MASTER PLAN (the "First Amendment") is made and entered into this \_\_\_\_\_\_ day of \_\_\_\_\_\_, 2024, by and between the CITY OF FORT COLLINS, COLORADO, a municipal corporation of the State of Colorado ("City"); and MONTAVA PARTNERS, LLC, a Colorado limited liability company ("Montava"), as successor to HF2M, INC., a Texas corporation ("HF2M"). City and Montava may be referred to individually, each as a "Party," or collectively, the "Parties."

#### **RECITALS**

WHEREAS, City and HF2M entered into the Development Agreement to Secure Public Benefits for Montava Planned Unit Development Master Plan on December 11, 2020 (the "Original Agreement"), together with U.S. BANK NATIONAL ASSOCIATION, as successor in interest to U.S. BANK, AS CORPORATE TRUSTEE OF THE ANHEUSER-BUSCH FOUNDATION, a Missouri charitable trust ("Foundation") and POUDRE SCHOOL DISTRICT T-1, a political subdivision of the State of Colorado ("School District"); the Foundation and School District being collectively referred to herein as "Owners." The Effective Date of the Original Agreement was March 25, 2020;

WHEREAS, HF2M assigned all of its obligations, right, title, interest in and to the Original Agreement to Montava effective March 8, 2021;

WHEREAS, the closing of the sale and conveyance of the Foundation Property to Montava has been delayed by unforeseen complications thus creating a risk that the Foundation Contingency in Subsection II.G of the Original Agreement cannot be satisfied within the time frame originally envisioned;

WHEREAS, the Parties wish to enter into this First Amendment for the purpose of amending the Foundation Contingency to extend by two (2) years the time period within which the fee-title conveyance of the Foundation Property to Montava must occur; and

WHEREAS, the Original Agreement may be amended only by the City and Montava without the consent of the Owners; Montava has not granted the right to consent to this First Amendment to any successor or assigns.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements of the Parties contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows.

#### AMENDMENT TO ORIGINAL AGREEMENT

- 1. <u>Incorporation of Recitals</u>. The foregoing Recitals are incorporated herein as material terms.
- 2. <u>Capitalized Words and Terms</u>. Capitalized words and terms not otherwise defined in this First Amendment shall retain the meaning given to them in the Original Agreement or in the Service Plan.
- 3. <u>Foundation Contingency</u>. The Parties acknowledge that the Original Agreement provides that should the fee-title conveyance of the Foundation Property to Montava not occur within five (5) years after the Effective Date, or by March 25, 2025, the Original Agreement shall automatically terminate, and the Parties agree that it is reasonable and in the best interests of the general welfare of the City to extend the deadline for satisfaction of the Foundation Contingency by an additional two (2) years.
- 4. <u>Amendment of Foundation Contingency</u>. The Parties therefore agree to amend Subsection II.G of the Original Agreement to read as follows:

Foundation Contingency. The Parties hereto expressly agree that this Agreement is contingent upon the Foundation's fee-title conveyance of record of the Foundation Property to the Developer pursuant to the terms of the Foundation Agreement within seven (7) years after the Effective Date. Because the legal description of the Foundation Property in Exhibit A has not been surveyed, it may need to be further verified by survey before the Foundation conveys the Foundation Property to the Developer; therefore, the Parties acknowledge and agree that the exact number of acres and boundaries of the Foundation Property to be conveyed under the Foundation Agreement may change and any such reasonable changes shall not affect the satisfaction of this contingency so long as substantially all of the Foundation Property currently described in Exhibit A is conveyed by the Foundation to the Developer. If such closing does not occur by such date, this Agreement shall thereupon automatically terminate and thereafter be of no force or effect, and the Parties hereto shall be released from all obligations hereunder.

5. Amendment of Notices. The Parties agree to amend Subsection II.P. of the Original Agreement to replace the Developer's contact information to read as follows:

If to Developer: Montava Partners, LLC

**ATTN: Max Moss** 

First Amend PBA Draft 01-14-25 32376472.1

#### **EXHIBIT A TO RESOLUTION 2025-004**

430 N. College Ave. Suite 410 Fort Collins, CO 80524 Email: max@montava.com

With copies to:

First Amend PBA Draft 01-14-25 32376472.1 Brownstein Hyatt Farber Schreck, LLP

ATTN: Claire N.L. Havelda 675 15<sup>th</sup> Street, Suite 2900

Denver, CO 80202

Email: chavelda@bhfs.com

- 6. <u>Original Agreement</u>. The Original Agreement remains in full force and effect, as amended by this First Amendment.
- 7. <u>First Amendment Effective Date</u>: This First Amendment shall be effective upon the adoption of a resolution of the City Council approving the First Amendment.
- 8. <u>Counterparts</u>. This First Amendment may be executed in counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same amendment.
- 9. <u>Recordation</u>. The City shall record this First Amendment with the Larimer County Clerk and Recorder, and Montava shall pay the cost of the same.

IN WITNESS WHEREOF, the Parties agree to the terms and conditions of this First Amendment described above effective as of the First Amendment Effective Date.

CITY:	a Municipal Corporation
	By:
APPROVED AS TO FORM:	Date:
Heather N. Jarvis, Assistant City Attorney	
ATTEST:	
Delynn Coldiron, City Clerk	

#### **EXHIBIT A TO RESOLUTION 2025-004**

MONTAVA:		MONTAVA PARTNERS, LLC, a Colorado Limited liability company	
	Ву:	CAMERON INVESTMENTS L.C., an Idaho limited liability company, Manager	
	Ву:	Richard P. Clark, Manager	
		Date:	
ATTEST:			
Printed name, Title			

#### File Attachments for Item:

8. First Reading of Ordinance No. 006, 2025, Making Supplemental Appropriations, Appropriating Prior Year Reserves and Authorizing Transfers of Appropriations for the West Elizabeth Corridor Final Design and Related Art in Public Places.

The purpose of this item is to appropriate additional design/project development funds in the amount of \$5.539M for advancing the design to 100% for the entire corridor, necessary scope additions and design changes such as protected bike/ped infrastructure, BRT routing revisions and right-of-way services. The West Elizabeth travel corridor is currently the highest priority pedestrian/alternative mode corridor for improvement in the City and was highlighted in City Plan and the Transit Master Plan. This appropriation would follow the same minimum grant/local match ratio of 80/20 that would apply to the Small Starts grant. The local funding source identified for the local match is the "2050 tax." Details of the amounts requested for the grant funds and local match fund appropriation are included in the Background/Discussion section of this AIS.

January 21, 2025

#### **AGENDA ITEM SUMMARY**

City Council



#### **STAFF**

Spencer Smith, Special Projects Engineer Monica Martinez, PDT Finance Manager

#### **SUBJECT**

First Reading of Ordinance No. 006, 2025, Making Supplemental Appropriations, Appropriating Prior Year Reserves and Authorizing Transfers of Appropriations for the West Elizabeth Corridor Final Design and Related Art in Public Places.

#### **EXECUTIVE SUMMARY**

The purpose of this item is to appropriate additional design/project development funds in the amount of \$5.539M for advancing the design to 100% for the entire corridor, necessary scope additions and design changes such as protected bike/ped infrastructure, BRT routing revisions and right-of-way services. The West Elizabeth travel corridor is currently the highest priority pedestrian/alternative mode corridor for improvement in the City and was highlighted in City Plan and the Transit Master Plan. This appropriation would follow the same minimum grant/local match ratio of 80/20 that would apply to the Small Starts grant. The local funding source identified for the local match is the "2050 tax." Details of the amounts requested for the grant funds and local match fund appropriation are included in the Background/Discussion section of this AIS.

#### **STAFF RECOMMENDATION**

Staff recommends adoption of the Ordinance on First Reading.

#### **BACKGROUND / DISCUSSION**

#### **Grant Funding Background**

The City has been awarded the following grants for design and construction:

- \$1.5M MMOF (Multimodal Options Funding)
  - o 30% design (COMPLETED)
- \$2.5M MMOF (Multimodal Options Funding)
  - Final design (ONGOING)
- \$10.7M RAISE (Rebuilding American Infrastructure w/ Sustainability and Equity)
  - o Construction of Foothills Transit Station and Roundabout (Overland/Elizabeth)

#### West Elizabeth Corridor Project Status

With the Foothills Transit Station and Overland/West Elizabeth roundabout construction funded by the RAISE grant, those elements were removed from the City's most recent Small Starts grant project rating submittal. Removing those elements of the corridor from the Small Starts project scope should improve the project rating scores and the City's chances of being recommended for Small Starts funding. Those scope items that were removed from the Small Starts application are no longer eligible for Federal Transit Administration Capital Investment Grant (CIG) funding, which applies only to the Small Starts scope. Several of the items discussed in the following paragraphs are related to the RAISE scope and the funding for those items is being requested as local funds and not CIG grant funds.

- 60% Design Completed June 2024
- 100% Design of RAISE scope Fall 2025
- 100% Design of CIG corridor –Fall 2026

#### Additional Funding Request Details

The amount budgeted for the final design of the W. Elizabeth BRT Corridor was \$2,500,000, which was estimated during the 30% design phase.

During the 60% design phase, several scope additions were identified that were not included in the final design budget initially. Those additional scope items include the Transit Maintenance Facility Expansion, EV charging infrastructure, driver restroom facility and cathodic protection relocation designs at the Foothills Transit Station, street lighting design on CSU's main campus, transit technology CDOT approval process, CLOMR (Conditional Letter of Map Revision), Laurel and Meldrum intersection improvements and BRT routing optimization. The total estimated cost of these new scope additions is \$1,750,000. There were also requested scope additions focused on protected infrastructure that were not anticipated during the 30% design, such as a protected roundabout at Overland Trail and W. Elizabeth, protected intersections and raised protected bike lanes. The prioritization of the protected infrastructure came from City and CSU leadership and staff who had attended the ThinkBike Workshop presented by the Dutch Cycling Assembly. As the design progresses to completion, funding will be needed to prepare for right-of-way acquisition for the corridor. Right-of-way services has been estimated at \$2,020,000.

Additional design funding in the amount of \$3,500,000 is being requested to finalize plans and bid documents to 100% for the entire corridor, BRT corridor routing revision (to maximize ridership for Small Starts grant project rating). Right-of-way services fees are also being requested as part of this appropriation. The following table provides a summary of the scope items and estimated costs.

Item	Amount
EV Charging Design	\$19k
Transit Station Restroom	\$142k
Cathodic Protection Relocate	\$50k
Transit Maintenance Facility Expansion	\$525k
CSU Campus Street lighting	\$15k
CDOT Transit Technology Approvals	\$73k
BRT Routing Revisions	\$926k
Additional Survey	\$15k
CLOMR/Floodplain	\$53k
Laurel/Meldrum Intersection	\$141k
100% Design/Bid Documents	\$1.5M
PM/Coordination/Meetings	\$45k
Right-of-way	\$2.02M

#### **CITY FINANCIAL IMPACTS**

The requested funding breakdown is as follows:

Funding	Amount
Capital Investment Grant (CIG) (to be appropriated in the Capital Projects Fund)	\$4,066,400
2050 Transit Tax – CIG Local Match (to be transferred to the Capital Projects Fund)	\$1,016,600
2050 Transit Tax – RAISE Project (to be transferred to the Transit Services Fund)	\$441,000
2050 Transit Tax – Art in Public Places contribution (based on both local match amounts above)	\$14,576
Supplemental Appropriation	\$5,538,576

Staff is recommending appropriation of the City's final design local match for several reasons:

- The project funds are highly leveraged in that CSU has contributed significant funding to the project and the City has been awarded a RAISE grant (\$10.7M) for construction of the Foothills Transit Station and Overland/W. Elizabeth roundabout.
- Having a completed final design and this project at a "shovel ready" status could help secure construction funding.
- In line with guiding themes and principles of the City Strategic Plan:
  - Multimodal Transportation & Public Transit
  - Equity, Inclusion and Diversity
  - o Environmental Sustainability

#### **BOARD / COMMISSION / COMMITTEE RECOMMENDATION**

This item was presented to the Council Finance Committee (CFC) at the January 2, 2025 Council Finance meeting. CFC was supportive of the appropriations. Draft minutes of the CFC January 2, 2025 meeting are attached.

#### **PUBLIC OUTREACH**

None.

#### **ATTACHMENTS**

- 1. Ordinance for Consideration
- 2. January 2, 2025 CFC Meeting Minutes (Draft)
- 3. Presentation

# ORDINANCE NO. 006, 2025 OF THE COUNCIL OF THE CITY OF FORT COLLINS MAKING SUPPLEMENTAL APPROPRIATIONS, APPROPRIATING PRIOR YEAR RESERVES AND AUTHORIZING TRANSFERS OF APPROPRIATIONS FOR THE WEST ELIZABETH CORRIDOR FINAL DESIGN AND RELATED ART IN PUBLIC PLACES

- A. The City has identified the West Elizabeth Street travel corridor as the highest priority pedestrian and alternative travel mode area for improvement in the City as highlighted in City Plan and the Transit Master Plan. The corridor functions as a critical three-mile link for students accessing Colorado State University's Main and Foothills campuses, and as a growing business and multi-family housing district.
- B. The West Elizabeth Corridor Final Design Project (the "Project") established the vision for multimodal improvements along the West Elizabeth Corridor and bus rapid transit ("BRT") service with an emphasis on connectivity between the Colorado State University ("CSU") Foothills Campus on the west and CSU's Main Campus on the east; improving transit (including BRT stations), vehicle lanes and walking and biking pathways; and fostering existing business and future infill and redevelopment to accommodate the growing number of diversity of users in the corridor.
- C. In 2020, the City initiated the design process for the West Elizabeth corridor with the Colorado Department of Transportation (Resolution 2020-072; Ordinance No. 097, 2020) and CSU (Resolution 2020-071) using funding from a Multimodal Options Funding ("MMOF") grant (\$1.5M) from the North Front Range Metropolitan Planning Organization ("NFRMPO"), and designs for the Project were 30% complete in 2022.
- D. In 2023 the City proceeded forward with the final 100% design and outreach using additional funding from a MMOF grant (\$2.5M) from the NFRMPO (Ordinance No. 069, 2023, Resolution 2023-041).
- E. The City has also been awarded a Rebuilding American Infrastructure with Sustainability and Equity ("RAISE") grant (\$10.7M) for construction of the Foothills Transit Station and Roundabout at Overland and West Elizabeth.
- F. With the Foothills Transit Station and Overland/West Elizabeth roundabout construction funded by the RAISE grant, those elements were removed from the City's most recent Small Starts grant project rating submittal.
- G. Those items that were removed from the Small Starts application are no longer eligible for Federal Transit Administration Capital Investment Grant ("CIG") funding, which funding applies only to the Small Starts scope. Removed items are related to the RAISE scope, and the funding for those items is being requested as local funds and not CIG grant funds. Those items include the 60% design completed in June of 2024, the 100% design of the transit items in the scope of the RAISE grant anticipated

for the Fall of 2025, and the 100% Design of the CIG corridor – anticipated for the Fall of 2026.

- H. The amount budgeted for the final design of the West Elizabeth BRT Corridor was \$2,500,000, which was estimated during 30% design. During the 60% design phase, several scope additions were identified that were not included in the final design budget initially.
- I. The additional identified scope additions include the Transit Maintenance Facility Expansion, electric vehicle charging infrastructure, driver restroom facility and cathodic protection relocation designs at the Foothills Transit Station, street lighting design on CSU's main campus, transit technology Colorado Department of Transportation approval process and the process for Conditional Letter of Map Revision, Laurel and Meldrum intersection improvements and BRT routing optimization. The total estimated cost of these new scope additions is \$1,750,000.
- J. Since the 30% design, there have also been scope additions focused on protected infrastructure, such as a protected roundabout at Overland Trail and West Elizabeth, protected intersections, and raised protected bike lanes. The prioritization of the protected infrastructure came from City and CSU leadership and staff who had attended the ThinkBike Workshop presented by the Dutch Cycling Assembly.
- K. As the design progresses to 100% completion, funding will also be needed to prepare for right-of-way acquisition for the corridor. Right-of-way services have been estimated at \$2,020,000.
- L. Additional design funding in the amount of \$3,500,000 is needed to finalize plans and bid documents to 100% for the entire corridor, including the BRT corridor routing revision to maximize ridership for Small Starts grant project rating. Right-of-way services fees are also needed as part of this appropriation.
- M. Article V, Section 9 of the City Charter permits the City Council, upon recommendation of the City Manager, to make a supplemental appropriation by ordinance at any time during the fiscal year, provided that the total amount of such supplemental appropriation, in combination with all previous appropriations for that fiscal year, do not exceed the current estimate of actual and anticipated revenues and all other funds to be received during the fiscal year.
- N. The City Manager has recommended the appropriations described herein and determined that these appropriations are available and previously unappropriated from the Capital Projects fund and will not cause the total amount appropriated in the Capital Projects fund to exceed the current estimate of actual and anticipated revenues and all other funds to be received in this fund during this fiscal year.
- O. Article V, Section 9 of the City Charter permits the City Council, upon the recommendation of the City Manager, to make supplemental appropriations by ordinance

at any time during the fiscal year from such revenues and funds for expenditure as may be available from reserves accumulated in prior years, notwithstanding that such reserves were not previously appropriated.

- P. The City Manager has recommended the appropriation described herein and has determined that this appropriation is available and previously unappropriated from the 2050 Tax Parks Rec Transit Our Climate Future ("OCF") tax funds and will not cause the total amount appropriated in the 2050 Tax Parks Rec Transit OCF fund to exceed the current estimate of actual and anticipated revenues and all other funds to be received in this fund during this fiscal year.
- Q. Article V, Section 10 of the City Charter authorizes the City Council, upon recommendation by the City Manager, to transfer by ordinance any unexpended and unencumbered appropriated amount or portion thereof from one fund or capital project to another fund or capital project, provided that the purpose for which the transferred funds are to be expended remains unchanged, the purpose for which the funds were initially appropriated no longer exists, or the proposed transfer is from a fund or capital project in which the amount appropriated exceeds the amount needed to accomplish the purpose specified in the appropriation ordinance.
- R. The City Manager has recommended the transfer of \$1,016,600 from the 2050 Tax Parks Rec Transit OCF fund to the Capital Projects fund, the transfer of \$441,000 from the 2050 Tax Parks Rec Transit OCF fund to the Transit Services fund and the transfer of \$14,576 from the 2050 Tax Parks Rec Transit OCF fund to the Cultural Services and Facilities fund and determined that the purpose for which the transferred funds are to be expended remains unchanged.
- S. Article V, Section 11 of the City Charter authorizes the City Council to designate in the ordinance when appropriating funds for a federal, state or private grant or donation, that such appropriation shall not lapse at the end of the fiscal year in which the appropriation is made, but continue until the earlier of the expiration of the federal, state or private grant or the City's expenditure of all funds received from such grant.
- T. The City Council wishes to designate the appropriations herein from the Federal Transit Administration CIG for the Project as appropriations that shall not lapse until the expiration of the grant or the City's expenditure of all funds received from such grant.
- U. This Project involves construction estimated to cost more than \$250,000 and, City Code Section 23-304 requires one percent of these appropriations to be transferred to the Cultural Services and Facilities fund for a contribution to the Art in Public Places program ("APP program").
- V. City Code Section 23-304(a) provides, "If any construction project is partially funded from any source which precludes a work of art as an object of expenditure of such funds, the appropriation for works of art shall be equal to one (1) percent of the portion of

the estimate project cost that will be funded from the project funding sources that are not so restricted."

- W. A portion of the funds appropriated in this Ordinance for the Project are ineligible for use in the APP program due to restrictions placed on them by the Federal Transit Administration, the source of these funds. Therefore, the local match of \$1,457,600 has been used to calculate the contribution to the APP program.
- X. The amount to be contributed to the APP program in this Ordinance is \$14,576.
- Y. The appropriations in this Ordinance benefit public health, safety, and welfare of the residents of Fort Collins and the traveling public and serve the public purpose of improving multimodal transportation infrastructure, safety, and accessibility within the City.

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

- Section 1. There is hereby appropriated from new revenue or other funds in the Capital Projects fund the sum of FOUR MILLION SIXTY-SIX THOUSAND FOUR HUNDRED DOLLARS (\$4,066,400) to be expended in the Capital Projects fund for the West Elizabeth Corridor Final Design Project.
- Section 2. There is hereby appropriated from prior year reserves in the 2050 Tax Parks Rec Transit OCF fund the sum of ONE MILLION SIXTEEN THOUSAND SIX HUNDRED DOLLARS (\$1,016,600) to be expended in the 2050 Tax Parks Rec Transit OCF fund for transfer to the Capital Projects fund and appropriated and expended therein for the West Elizabeth Corridor Final Design Project.
- Section 3. There is hereby appropriated from prior year reserves in the 2050 Tax Parks Rec Transit OCF fund the sum of FOUR HUNDRED FORTY-ONE THOUSAND DOLLARS (\$441,000) to be expended in the 2050 Tax Parks Rec Transit OCF fund for transfer to the Transit Services fund and appropriated and expended therein for the West Elizabeth Corridor Final Design Project.
- Section 4. The appropriations herein for the Federal Transit Administration Capital Investment Grant Program are hereby designated, as authorized in Article V, Section 11 of the City Charter, as appropriations that shall not lapse at the end of this fiscal year but continue until the earlier of the expiration of the grant or the City's expenditure of all funds received from such grant.
- Section 5. There is hereby appropriated from prior year reserves in the 2050 Tax Parks Rec Transit OCF fund the sum of ELEVEN THOUSAND THREE HUNDRED SIXTY-NINE DOLLARS (\$11,369) to be expended in the 2050 Tax Parks Rec Transit

OCF fund for transfer to the Cultural Services and Facilities fund and appropriated and expended therein to fund art projects under the APP program.

Section 6. There is hereby appropriated from prior year in the 2050 Tax Parks Rec Transit OCF fund the sum of TWO THOUSAND NINE HUNDRED FIFTEEN DOLLARS (\$2,915) to be expended in the 2050 Tax Parks Rec Transit OCF fund for transfer to the Cultural Services and Facilities fund and appropriated and expended therein for the operation costs of the APP program.

Section 7. There is hereby appropriated from prior year reserves in the 2050 Tax Parks Rec Transit OCF fund the sum of TWO HUNDRED NINETY-TWO DOLLARS (\$292) to be expended in the 2050 Tax Parks Rec Transit OCF fund for transfer to the Cultural Services and Facilities fund and appropriated and expended therein for the maintenance costs of the APP program.

Introduced, considered favorably on first reading on January 21, 2025, and approved on second reading for final passage on February 4, 2025.

ATTEST:	Mayor
City Clerk	_

Effective Date: February 14, 2025 Approving Attorney: Heather N. Jarvis



Finance Admini
215 N. Mason
2nd Floor
PO Box 580
Fort Collins, CO 80522
970.221.6788

**970.221.6788** 970.221.6782 - fax fcgov.com

Council Finance Committee Hybrid Meeting
CIC Room / Teams
January 2, 2025
4:00 - 6:00 pm

Council Attendees: Mayor Arndt, Emily Francis, Kelly Ohlson

Staff: Tyler Marr, Gretchen Stanford, Denzel Maxwell, Dianne Criswell, Ginny Sawyer,

Terri Runyan, Max Valadez, Drew Brooks, Joe Wimmer, Randy Bailey, Trevor Nash, Monica Martinez, Spencer Smith, Dana Hornkohl, Josh Birks, Victoria

Shaw, Joe Wimmer, Zack Mozer, Josh Birks, Carolyn Koontz

Other: Kevin Jones, Chamber of Commerce

Meeting called to order at 4:00 pm

Approval of minutes from the December 5, 2024, Council Finance Committee meeting. Motion made to approve by Kelly Ohlson and seconded by Emily Francis. Approved via roll call.

## A. Bloom Filing One Transportation Capital Expansion Fee Major Reimbursement

Dana Hornkohl, Director, Civil Engineering Monica Martinez, Planning Development & Transportation Finance Manager Josh Birks, Deputy Director, Sustainability Services

#### **EXECUTIVE SUMMARY**

The Bloom Filing One development ("Bloom") is located on the north side of Mulberry Street, west of Greenfields Drive. Bloom's metro district has funded street improvements to Greenfields Drive, International Boulevard, Sykes Drive, Donella Drive, and Delozier Road to City standards as part of Bloom's development plans and development agreement for and permitted for construction under Bloom's Development Construction Permit. Per Section 24-112 of the City Code, these improvements are eligible for reimbursement from Transportation Capital Expansion Fee (TCEF) funds for the oversized, non-local portion for construction and right-of-way dedication. Staff is recommending appropriations totaling \$2,069,417 from TCEF funds.

This total appropriation of \$2,069,417 includes the cost of parkway (landscaping and irrigation) of Greenfields Drive and International Boulevard, which has not been fully constructed and is planned to be completed in summer of 2025. This cost was agreed to by Staff to be \$44,249 and this amount would not be reimbursed to the metro district until the construction is completed and Staff has provided acceptance of the same.

#### GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED

• Do Finance Committee members support an off-cycle appropriation of Transportation Capital Expansion Fee fund reserves to reimburse the Bloom's metro district for its construction of Greenfields Drive, International Boulevard, Sykes Drive, Donella Drive, and Delozier Road?

## **BACKGROUND/DISCUSSION**

## **TCEF Program**

The TCEF Program (formerly Street Oversizing), instituted by ordinance in 1979, was established to manage the construction of new arterial and collector streets, and is an "Impact Fee" funded program. The TCEF Program determines and collects impact fees from development and redevelopment projects. The collection of these impact fees contributes funding for growth's related share towards City Capital Projects, including the City's Active Modes Plan, and reimburses development for constructing roadway improvements above the local street access standards. Section 24-112 of the City Code allows for reimbursement for the construction of collector and arterial streets.

Bloom Filing One is a development on the north side of Mulberry Street and west of Greenfields Drive, directly east of the East Ridge/Mosaic development. This reimbursement is for the construction above the local street access standards of Greenfields Drive (2-lane arterial), International Boulevard (2-lane arterial), Sykes Drive (collector), Donella Drive (collector), and Delozier Road (collector) as part of Bloom Filing One. As part of Bloom's Filing One development agreement, the developer or its metro district (whichever party pays for the work) is eligible for reimbursement. Both the Bloom developer and Bloom's Metro District agree that the Bloom Metro District as the entity that funded the improvements is entitled to this reimbursement.

Portions of roadway, landscaping, and sidewalk for Greenfields Drive and International Boulevard, and portions of roadway for Sykes Drive, Donella Drive, and Delozier Road are eligible for reimbursement depicted in Attachment 1 "Location of Improvements Constructed" and itemized between City (TCEF) and local responsibility in Attachment 2 "Final Bid Tab of Quantities and Total Cost for Improvements". Also included as part of the eligible reimbursement is the land value for right-of-way dedication beyond the local street access standards.

Staff has reviewed the documentation and agrees that the requested reimbursement meets the requirements under City Code Section 24-112 for appropriation from TCEF funds. There are presently adequate funds in TCEF to reimburse the metro district and Staff recommends reimbursement in the amount of \$2,069,417.

While this reimbursement is considered routine as part of the Code obligations under the TCEF Program, this request is coming before Council Finance Committee because of the large dollar amount outside of the typical 2-year budgeting process. TCEF reimbursements were formerly anticipated and appropriated through the 2-year budgeting process. As part of the process improvements identified first in the 2021 budget, the TCEF Program now categorizes TCEF reimbursements as "Major" and "Minor" reimbursements, with "Major" developer reimbursements brought to Council individually rather than predicting what reimbursements are needed on a 2-year basis.

This proposed reimbursement is the fourth request under this process with Council Finance Committee having reviewed Northfield in 2022, Waterfield in 2023, and Water's Edge in 2024. As part of Council Finance Committee's input for both Northfield and Water's Edge, Council Finance Committee supported TCEF reimbursing these developers instead of their respective metro districts reimbursing them. Both the Northfield and Water's Edge developers provided affidavits from their respective metro districts committing that their

metro districts would not reimburse them, meaning that both Northfield and Water's Edge would not "double dip" and be reimbursed twice for its costs. (Waterfield does not have a metro district.)

Similarly to Northfield and Water's Edge, Bloom has metro districts that were established with City Council approving the consolidated service plan for Mulberry Metropolitan Districts Nos. 1-6 by adoption of Resolution 2019-050 on April 16, 2019. Unlike Northfield and Water's Edge, it is not the developer of Bloom that is seeking reimbursement, it is the metro district seeking reimbursement as the entity that funded the improvements. By reimbursing the metro district directly, there is not a similar concern that existed with both the Northfield and Water's Edge developers being potentially reimbursed from both their metro districts and TCEF.

## **DISCUSSION / NEXT STEPS;**

## GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED

Do Finance Committee members support an off-cycle appropriation of Transportation Capital Expansion Fee
fund reserves to reimburse the Bloom's metro district for its construction of Greenfields Drive, International
Boulevard, Sykes Drive, Donella Drive, and Delozier Road?

\$2,069,417 is the full TCEF appropriation

Emily Francis; what is the timeline for the rest of the bike lanes? only on half – is that normal?

Tyler Marr; it is normal for a developer to do part and then finish later – we have different property owners along the roadway

Kelly Ohlson; regarding the 'double dipping' – seemed to come as a surprise – someone was going to check to see but the players have now changed. Still going to follow up - I don't believe in metro districts for residential developments. (referenced articles from The Denver Post regarding Metro Districts from a few years ago). If I buy in to that development, will I know where my Metro District dollars (almost double property taxes) are going? Who is paying for the collectors and the arterials?

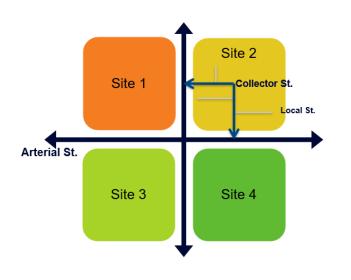
Josh Birks; what extra taxes are paying for – service plan – requires that there be disclosure – the process leading up to buying a home when the Metro District organization documents must be made available for home buyers. They would need to go through that process the same way as for reading their HOA documents. It is fully transparent in those documents as to what things will be paid for. It will require a buyer to do a little work to find that, but it is made available to them as part of the homebuying process. Many metro districts also provide web sites where the try to translate those documents into a more user-friendly format. It is all discoverable.

Kelly Ohlson; is this process cleaner now and not prone to abuse?

Josh Birks; the process of reimbursing the TCEF dollars to the Metro District is cleaner than reimbursing TCEF dollars to the developer. Often, the Metro District is the entity that is providing the funding to build the streets, so it makes sense for them to receive the reimbursement and transfer that on to the developer. This path doesn't allow for the double reimbursement to happen.

## How are TCEF Fees Used?





- Reimbursement to Developers for constructing improvements beyond "local street"
- Contributions to Capital Projects
  - Complete Streets
    - Transportation Capital Projects Prioritization Study
  - Multimodal Improvements
    - Active Modes Plan
  - Intersections/Signals

4

Slide #4 - How are TCEF Fees Used? (see above)

Kelly Ohlson; overall and in the future, why doesn't the developer have to at least pay 50% - it looks like the development is creating the need for the collector.

Dana Hornkohl; why the collector split is what it is - some communities do not reimburse for collectors.

Emily Francis; what happens if we say they are NOT eligible?

Dana Hornkohl; the ordinance allows for Council to make the decision to not reimburse.

Tyler Marr; we would probably risk the development builder not building these oversized streets.

Emily Francis; what is the oversizing?

Dana Hornkohl; it is often the bike lane(s), sidewalks to a specific width and the buffering space to accommodate on street parking if needed and the additional width for capacity that TCEF pays for the new street and the city would be responsible. It is looking at the Master Street Plan and the traffic impact – as part of the development review process – to look at those streets now as opposed to the future - it is cheaper to right size those streets now instead of later. Only for the oversizing of the vehicular capacity and the active modes – bike lanes, etc.

Kelly Ohlson; just to be clear – the developer is responsible for a decent size sidewalk and the bike lane. There is no oversizing to those.

Dana Hornkohl; there can be additional sidewalk width and there can be additional buffer depending on what the traffic impact analysis indicates. Most of the additional capacity is for vehicles.

Tyler Marr; I think Kelly Ohlson's question is very interesting around collectors versus arterials.

Kelly Ohlson; more of a fairness question

Mayor Arndt; with a deal like this, what percentage of the TCEF are we reimbursing? They pay TCEF fees and then if they build above and beyond and then we reimburse them.

Dana Hornkohl; I don't know that answer is for Bloom specifically, but I will find out and circle back.

Mayor Arndt; the TCEF fees that were proposed and then we were like, no, stay with inflation. Just curious about how it works. I am fine with this today as this seems to be a pattern and standard procedure. I would be willing to think about how we go forward in this area.

Monica Martinez; it would be a larger percentage now, because construction costs have gone up so much and we haven't been increasing to match those necessarily. This is a really saliant point for TCEF specifically, if we don't increase in tandem with what we anticipate actual costs to be, we are more likely to run ourselves in a situation where we will have to ask ourselves will we are able to reimburse.

Mayor Arndt; then in a way we are subsidizing that way.

Kelly Ohlson; if everyone got reimbursed 100% then you don't do the other things as the whole idea is to create this pot of money that goes into some other things like new bike lanes. It would be nice when we review these to know what percentage of the fees someone paid in that they are getting reimbursed. That should be standard.

Tyler Marr; I think we can pull examples of what TCEF paid for in a development and what the development holistically paid for TCEF fees. I do think it is a more of a pay as you go system. The fees we are likely appropriating in this instance were probably paid by previous developments. My hunch is that Bloom has paid very little in TCEF to date.

Kelly Ohlson; it would be great if someone could explain this to us in a one or two pager.

## B. West Elizabeth Matching Funds

Spencer Smith, P.E., Engineering – Special Projects Engineer Monica Martinez, Planning Development & Transportation Finance Manager

#### SUBJECT FOR DISCUSSION

West Elizabeth Corridor Final Design – Capital Investment Grant (CIG) Project Development Funds and Local Match Appropriation

## **EXECUTIVE SUMMARY**

The West Elizabeth travel corridor is currently the highest priority pedestrian/alternative mode corridor for improvement in the City and was highlighted in City Plan and the Transit Master Plan.

Additional design/project development funds in the amount of \$5.52M are being requested for advancing design to 100% for the entire corridor, necessary scope additions and design changes such as protected bike/ped infrastructure, BRT routing revisions and Right-of-Way services. The appropriation would follow the same minimum grant/local match ratio of 80/20 that would apply to the Small Starts grant. The local funding source identified for the local match is the "2050 tax". Details of the amounts requested for grant fund and local match fund appropriation are included in the Background/Discussion section of this AIS.

## GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED

Is Council Finance Committee supportive of an out of cycle supplemental appropriation of Capital Investment Grant (CIG) Project Development funds and the required local match for completion of 100% design for the West Elizabeth Enhanced Travel Corridor & Right of Way Services?

#### **BACKGROUND/DISCUSSION**

**Grant Funding Background** 

The City has been awarded the following grants for design and construction:

- \$1.5M MMOF (Multi-Modal Options Funding)
  - 30% design (COMPLETED)
- \$2.5M MMOF (Multi-Modal Options Funding)
  - Final design (ONGOING)
- \$10.7M RAISE (Rebuilding American Infrastructure w/ Sustainability and Equity)
  - o Construction of Foothills Transit Station and Roundabout (Overland/Elizabeth)

#### West Elizabeth Corridor Project Status

With the Foothills Transit Station and Overland/West Elizabeth roundabout construction funded by the RAISE grant, those elements were removed from the City's most recent Small Starts grant project rating submittal. Removing those elements of the corridor from the Small Starts project scope should improve the project rating scores and the City's chances of being recommended for Small Starts funding. Those scope items that were removed from the Small Starts application are no longer eligible for CIG funding, which applies only to the SmalStarts scope. Several of the items discussed in the following paragraphs are related to the RAISE scope and the funding for those items is being requested as local funds and not CIG grant funds.

- 60% Design Completed June 2024
- 100% Design of RAISE scope Fall 2025
- 100% Design of CIG corridor –Fall 2026

## **Additional Funding Request Details**

The amount budgeted for the final design of the W. Elizabeth BRT Corridor was \$2,500,000, which was estimated during 30% design.

During the 60% design phase, several scope additions were identified that were not include in the final design budget initially. Those additional scope items include the Transit Maintenance Facility Expansion, EV charging infrastructure, driver restroom facility and cathodic protection relocation designs at the Foothills Transit Station, street lighting design on CSU's main campus, transit technology CDOT approval process, CLOMR (Conditional Letter of Map Revision), Laurel and Meldrum intersection improvements and BRT routing optimization. The total estimated cost of these new scope additions is \$1,750,000. There were also requested scope additions

focused on protected infrastructure that were not anticipated during the 30% design, such as a protected roundabout at Overland Trail and W. Elizabeth, protected intersections and raised protected bike lanes. The prioritization of the protected infrastructure came from City and CSU leadership and staff who had attended the ThinkBike Workshop presented by the Dutch Cycling Assembly. As the design progresses to completion, funding will be needed to prepare for Right-of-Way acquisition for the corridor. Right-of-Way services has been estimated at \$2,020,000.

Additional design funding in the amount of \$3,500,000 is being requested to finalize plans and bid documents to 100% for the entire corridor, BRT corridor routing revision (to maximize ridership for Small Starts grant project rating). Right-of-Way services fees are also being requested as part of this appropriation. The following table provides a summary of the scope items and estimated costs.

Item	Amount
EV Charging Design	\$19k
Transit Station Restroom	\$142k
Cathodic Protection Relocate	\$50k
Transit Maintenance Facility Expansion	\$525k
CSU Campus Street lighting	\$15k
CDOT Transit Technology Approvals	\$73k
BRT Routing Revisions	\$926k
Additional Survey	\$15k
CLOMR/Floodplain	\$53k
Laurel/Meldrum Intersection	\$141k
100% Design/Bid Documents	\$1.5M
PM/Coordination/Meetings	\$45k
Right-of-Way	\$2.02M

The requested funding breakdown is as follows:

Funding	Amount
Capital Investment Grant (CIG)	\$4,046,000
2050 Transit Tax	\$1,460,000
Supplemental Appropriation	\$5,520,000

Staff is recommending appropriation of the City's final design local match for several reasons:

- The project funds are highly leveraged in that CSU has contributed significant funding to the project and the City has been awarded a RAISE grant (\$10.7M) for construction of the Foothills Transit Station and Overland/W. Elizabeth roundabout.
- Having a completed final design and this project at a "shovel ready" status could help secure construction funding.
- In line with guiding themes and principles of the City Strategic Plan:
  - Multimodal Transportation & Public Transit
  - Equity, Inclusion and Diversity
  - Environmental Sustainability

## **DISCUSSION / NEXT STEPS;**

#### **GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED**

Is Council Finance Committee supportive of an out of cycle supplemental appropriation of Capital Investment Grant (CIG) Project Development funds and the required local match for completion of 100% design for the West Elizabeth Enhanced Travel Corridor & Right of Way Services?

Mayor Arndt; I think I need to recuse myself from this topic as we just closed on a property on West Elizabeth. I haven't checked with the City Attorney yet but would rather be safe than sorry.

#### **ACTION ITEM**

Kelly Ohlson; could we get something in writing of what our best estimates are? The total cost of this project to the best of our ability and as part of that, who has already and how much is left and who is going to pay for that – the federal government, state government or us. I am going to support this.

Spencer Smith; are you talking about the construction piece or the whole thing?

Kelly Ohlson; the whole thing. I went along with Max because it was important to a lot of people. I had questions about the long-term cost and the direct costs. Are we ever planning on doing an analysis of how it has worked?

Tyler Marr; I think we have that in buckets for example, ridership both pre and post pandemic. Then there is the question of did we incentivize what we wanted to through construction alone? I don't think I have seen this in a holistic fashion, but I think we can pull that together.

Kelly Ohlson; I would like to see the final Max cost when that is available. I am supportive of this but wondering why we are paying for lights on the CSU campus.

Tyler Marr; those conversations remain on going with CSU leadership and management around how we want to split both operations and potential local match. I think we are making progress on that.

Emily Francis; I am supportive but have a couple questions; What is a Capital Investment Grant?

Monica Martinez; they have different grant types; Capital Improvement Grant (CIG) is the type of grant we would be eligible for due to our size as an organization. Basically, we have to apply for the CIG funds which is where we would get the largest chunk of our grant funding. The FTA did come back to us about a year and a half ago and said we had \$8M and we know you are still in the application process, but we would like to give this to you. We have a portion of the grant funding before it is approved.

Emily Francis; is the EV charging design for buses only or also for cars?

Spencer Smith; the charging is just for the buses - on route charging

Emily Francis; would the restrooms be public or just for drivers?

Spencer Smith; the restrooms would be just for the drivers.

Kelly Ohlson; the bathroom thing is new?

Spencer Smith; it didn't get captured on the 30% design but was identified as we came to 60% design.

Emily Francis; I took a tour, and the original question was whether it would just be a turnaround for the buses or an actual stop for the drivers.

## **OTHER BUSINESS;**

Gretchen Stanford; just wanted to get come clarity around follow up memos for Council Finance. Would you like to receive those as part of the regular Thursday packet or separately?

Kelly Ohlson; I would prefer a stand-alone memo, but I don't care when we get them.

Meeting adjourned at 4:51 pm





West Elizabeth 100% Design City Council

# **Council Direction Sought**



# Is City Council:

✓ Supportive of an out of cycle supplemental appropriation of Capital Investment Grant (CIG) Project Development funds

## and

✓ The required local match for completion of 100% design for the West Elizabeth Enhanced Travel Corridor & Right of Way Services?

# **Project Overview**





# **Project Features**

- 3 miles connecting CSU campuses and MAX
- Increased frequency along the corridor (AM peak: 7.5 minutes)
- Raised, protected bike lanes
- ADA compliant sidewalks

- Floating bus stops (bike lanes separated from vehicular traffic)
- Protected intersection
- Protected roundabout
- Electric buses

# **Project Updates and Status**



## 60% Design Completed (June 2024)

## **Design Split Into Two Components:**

- Foothills Transit Station and Overland/Elizabeth Roundabout (RAISE Scope)
  - Construction Funded w/ RAISE Grant
  - 100% Design Summer 2025
- Remaining Corridor (CIG Corridor)
  - Seeking Small Starts Grant for Construction Funding
    - Separated from RAISE Scope to Improve Project Rating
  - 100% Design Spring 2026



# **Remaining Design Schedule**



## **RAISE Grant Portion (Foothills Transit Station and Overland Trail Protected Roundabout)**

		20	25			20	26			20	27			20	28	
Task	Q1	Q2	Q3	Q4												
90% Design																
Bid Documents																
ROW Acquisition																
Environmental Clearances																
Bidding																
Construction																

# Remaining Design Schedule (cont.)



## **Remaining Corridor Portion (Overland Trail to Mason Street)**

		20	25			20	26			20	27			20	28	
Task	Q1	Q2	Q3	Q4												
Rerouting BRT 30% Design (Constitution Ave to Shields St)																
90% Design																
Bid Documents																
ROW Acquisition																
Environmental Clearances																
Bidding																
Construction																

# **Reason for Additional Design Costs**



## **Previously Appropriated Funds**

- \$2.5M Original Final Design Budget
  - Estimated during 30% Design

## Supplemental Appropriation Request – using a portion of \$8M CIG Funds

- Federal Transit Administration has made a portion (\$8M) of future potential Small Starts grant funding available for planning and development for the project
- \$3.504M Additional Ask for Final Design Fee
  - Includes the final design items for the RAISE project
- \$2.02M Ask for Right of Way Services
- \$5.524M Total Supplemental Appropriation Request

# **Breakdown of Additional Design Costs**



## **New Scope Additions - \$1.75M**

Not included in initial final design scope/fee

- Foothills Transit Station (\$211k) part of RAISE scope (Local Funding Only)
  - EV Charging Design
  - Restroom Facility
  - Cathodic Protection Relocation Design
- Transit Maintenance Facility (TMF) Expansion (\$525k)
  - Expansion of existing TMF on Portner Rd. to accommodate electric BRT buses
- Street Lighting (Plum St., Myrtle St. and CSU Transit Center) (\$15k)
- Transit Technology CDOT Approval Process (\$73k)
  - Systems Engineering Analysis and Transit Signal Priority Communication Specification
- Rerouting to Constitution/Plum/City Park (\$926k)
  - Requires additional design, data collection and environmental clearance efforts

# Breakdown of Additional Design Costs (cont.)



## Advance Corridor Design to 100% - \$1.754M

- Includes some tasks removed or reduced from initial final design scope
- Consultant rates were increased between 30% and final design phase (approx. 20%)
- Additional Survey (\$15k)
- Conditional Letter of Map Revision (CLOMR) (\$53k)
- Laurel and Meldrum Intersection (\$141k)
- Final Design/Bid Documents (\$1.5M)
- Project management/meetings/coordination (\$45k)

## Right-of-Way - \$2.02M

- Professional Services (appraisals, consulting, City RES oversight, etc.)
- RAISE Scope (Local Funding Only) \$230k

# **Funding Summary**



Funding	Amount
Capital Investment Grant	\$4,066,400
2050 Transit Tax – CIG Local Match	\$1,016,600
2050 Transit Tax – RAISE Project	\$441,000
Supplemental Appropriation	\$5,524,000

# **Council Direction Sought**



# Is City Council:

✓ Supportive of an out of cycle supplemental appropriation of Capital Investment Grant (CIG) Project Development funds

## and

✓ The required local match for completion of 100% design for the West Elizabeth Enhanced Travel Corridor & Right of Way Services?

## File Attachments for Item:

## 9. Items Relating to Adopting Landscaping Amendments to the City Code and Land Use Code.

A. First Reading of Ordinance No. 007, 2025, Amending Chapter 12 of the Code of the City of Fort Collins to Revise Soil Loosening and Amendment Requirements.

B. First Reading of Ordinance No. 008, 2025, Repealing and Reenacting Section 5.10.1 of the Land Use Code and Amending Definitions in Section 7.2.2 of the Land Use Code to Advance Adopted City Policy Goals to Reduce Water Usage in Landscapes to Comply with State Law and to Clarify and Reorganize Landscaping, Tree Protection, and Irrigation Standards.

The purpose of this item is to adopt City Code and Land Use Code amendments related to landscape and soil that help to address Council's adopted priorities for 2021-2023.

The proposed amendments to the Land Use Code are designed to minimize water consumption in landscaping for most new and redeveloped properties; they would not apply to single-unit, duplex, and accessory dwelling unit housing types. The code amendments ensure compliance with Colorado Senate Bill 24-005 (SB 24-005), which prohibits specific landscaping practices.

The proposed City Code amendments on soil amendment and soil loosening requirements aim to enhance clarity for applicability and allow soil amendments to be tailored to specific site conditions, which will support successful vegetation establishment and long-term growth.

**January 21, 2025** 

## AGENDA ITEM SUMMARY

City Council



#### **STAFF**

Katie Collins, Water Conservation Specialist Kathryne Marko, Environmental Regulatory Affairs Manager

## **SUBJECT**

Items Relating to Adopting Landscaping Amendments to the City Code and Land Use Code.

## **EXECUTIVE SUMMARY**

A. First Reading of Ordinance No. 007, 2025, Amending Chapter 12 of the Code of the City of Fort Collins to Revise Soil Loosening and Amendment Requirements.

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The proposed City Code amendments on soil amendment and soil loosening requirements aim to enhance clarity for applicability and allow soil amendments to be tailored to specific site conditions, which will support successful vegetation establishment and long-term growth.

### STAFF RECOMMENDATION

Staff recommends adoption of the Ordinances on First Reading.

## **BACKGROUND / DISCUSSION**

Since 2021, Utilities Environmental Regulatory Affairs, Utilities Water Conservation, Planning, and Forestry staff have collaborated to draft amendments to the Land Use Code and City Code that respond to three 2021-2023 Council priorities:

- #14 Effective soil amendment policies and compliance (water usage)
- #19 Xeriscape installations Increase rebates and education, fewer green lawns with new development

#28 Improving tree policies

The goal of this work has been to develop codes that contribute to the development of landscapes well-equipped to survive, even thrive, despite a changing climate and finite resources.

When paired with community education and outreach, codes in support of resilient landscaping practices ensure that both our community and our landscapes are better equipped to face challenges such as rising water costs, rising temperatures, and water restrictions during periods of water shortage. This approach aligns with community values and the following strategies outlined in City Plan and Our Climate Future.

City Plan: Principal LIV 9: Encourage development that reduces impacts on natural ecosystems and promotes sustainability and resilience.

- Efficiency And Resource Conservation
- Outdoor Water Use
- Urban Heat Island Effect

City Plan: Principle ENV 6: Manage water resources in a manner that enhances and protects water quality, supply and reliability.

- Water Conservation and Efficiency
- Droughts and Vulnerability

City Plan: Principle ENV 8: Create and maintain a safe, healthy and resilient urban forest.

Health of the Urban Forest

Our Climate Future: BIG MOVE 3 Climate Resilient Community: People, buildings, watersheds and ecosystems are prepared for the threats of climate change.

- Expand and enhance water efficiency programs and incentives
- Integrate climate resilience considerations into city strategic and operational plans

Two near-term projects will have direct ties to this project. These project relationships are summarized below.

- Fort Collins Streetscape Standards Update (expected by January 1, 2026): Updates to include compliance with SB 24-005, which restricts high-water grass in streetscapes, and refinement of existing standards that reflect lessons learned since standards were first introduced 11 years ago.
- Land Use Code Phase 2 (expected 2025): Additional amendments in Land Use Code Section 5.10.1
  are likely to include updates to tree mitigation and preservation.

## **Proposed Code Amendments**

Staff researched industry standards and practices in comparable communities to develop Land Use Code and City Code amendments that promote sustainable, water-wise landscape practices well-suited to Fort Collins. The final set of proposed amendments complies with SB 24-005 and reflects engagement with community, industry partners, staff, Boards and Commissions, and Council. Amendments in Land Use Code Section 5.10.1 also reflect reorganization for improved readability. Ordinance No. 008, 2025, contains a clean version of the reenacted Land Use Code Section 5.10.1 and the amended definitions in Section 7.2.2. Also attached to this AIS is a redlined version of Section 5.10.1 to show the changes to existing Code and the reorganization.

SB 24-005 was signed into law on March 15, 2024, and prohibits installation of "nonfunctional" high-water turfgrass, artificial turf, and invasive species on commercial development after January 1, 2026. Environmental Planning, Utilities, and Planning staff, in consultation with the City Attorneys' office, have evaluated the proposed code changes for compliance with the new statute and have concluded that the changes conform code to the statutory requirements. The following summarizes sections of the proposed Land Use Code amendments that meet the minimum requirement of the law.

- LUC 5.10.1 (D)(2) and (2)(c) Irrigated turf grass with a high-water requirement, such as Kentucky bluegrass may only be planted in areas of high use or traffic. This may include areas or spaces used for recreation, civic, or community purposes such as playgrounds, sports fields, picnic grounds, amphitheaters, active portions of parks, and golf course playing areas. All other areas, including parking lots and medians, are prohibited.
- LUC 5.10.1 (D)(2)(d) No artificial turf may be included in any landscape plan except for athletic fields of play where athletes practice or compete in a sport or game.
- LUC 5.10.1 (D)(2)(i) In addition to parkways, which were already included in this section, rights-of-way
  and transportation corridors also are required to be landscaped in accordance with the Larimer County
  Urban Area Street Standards.
- LUC 5.10.1 (E)(2)(a) No invasive plant species may be included in any landscape plan.

Considering Council's stated priorities, Fort Collins community values and sense of place, and the building of landscapes that are "smart from the start," staff recommend additional code amendments to minimize unintended consequences from SB 24-005. These additional amendments are summarized below.

- LUC 5.10.1 (D)(2)(a) More than 50% of a landscape area must be covered with living plants at maturity. A minimum plant coverage requirement limits large expanses of unplanted landscaping to provide environmental benefits such as habitat and cooling and to avoid landscaping that does not fit the aesthetic of Fort Collins.
- LUC 5.10.1 (D)(2)(c) In addition to the limitation on high-water requirement turf grass, turf grass species
  with a moderate-water requirement, such as turf-type tall fescue, may only be planted in areas of high
  use or traffic. Plant water requirements are defined by the City of Fort Collins Plant List.
- LUC 5.10.1 (D)(2)(c) Low-water requirement irrigated turf grass that is native grasses or grasses that have been hybridized for arid conditions may be planted in any space, as appropriate, and not contingent on use.
- LUC 5.10.1 (D)(3)(a) The maximum water budget for a landscape may not exceed 11 gallons/square foot (GPSF) once landscaping is established. The water budget chart, as mandated by the Land Use Code to be included as part of all landscape plans, provides reviewers with a clear overview of the expected water usage categorized by hydrozone and gives greater flexibility to landscape plan development vs. restricting Kentucky Blue Grass to a certain percentage of area. This standard further supports lower water-use landscapes, which may not be achieved with SB 24-005 alone; interpreting post-occupancy use of turf at the time of development review is challenging and could be inaccurate, resulting in non-functional areas that were previously designated as functional uses. The current standard limits a water budget to 15 GPSF.
- City Code 12-132 (a) Proper soil treatment is the first and most crucial step in establishing healthy vegetation and ensuring long-term landscape success and sustainability of water-efficient landscapes. The proposed amendments to City Code for soil amendment and loosening increase general clarity for easier understanding and implementation. A key clarification is the exemption for very small projects (less than 1,000 square feet), ensuring the requirements are appropriately applied.
- City Code 12-34 The proposed soil amendment standard introduces greater flexibility and improved outcomes by considering the specific plant types and native soil characteristics. The existing City Code terms mandate a basic soil amendment in all situations, which can sometimes be unnecessary or even harmful to plant establishment.

- City Code 12-132 (a) Currently, vegetation establishment and maintenance in Natural Habitat Burner
  Zones (NHBZ) are governed by a 3-year adaptive management and restoration plan outlined in
  development agreements. This existing framework provides adequate detail and oversight. To enhance
  clarity in program responsibilities, under the proposed amendments to City Code, NHBZs would be
  exempt from the soil amendment and loosening requirements.
- LUC 5.10.1 (D)(1)(c) For the short-term and long-term survivability of trees, tree watering during
  development, dedicated non-overhead irrigation, and a limit to the consecutive planting of trees of the
  same cultivar are all proposed. Additional amendments aimed at enhancing tree mitigation and
  preservation will be introduced during Land Use Code Phase 2. These updates will align with ongoing
  evaluations and the upcoming adoption of the Urban Forest Strategic Plan, titled "Rooted in
  Community."

## **Impact Analysis**

The following sections provide an assessment of estimated impacts that the proposed code amendments will have on projects and development activities.

## Landscape and Water

To assess the potential impact of the amendment on landscape trends and water demand, staff reviewed plans for 21 recent development projects.

Based on review of the 21 projects, most designs are already limiting use of high-water grass to functional areas in the landscape, such as in common spaces for recreating within a multi-family complex, which would be in alignment with the proposed code. Four of the projects did not incorporate high-water use grass in the landscape design at all. High-water grass was found in the street parkways of all landscape plans with detached sidewalks. According to SB24-005, such grass in parkways is deemed nonfunctional. The Land Use Code refers all streetscape landscaping standards to an appendix in the *Larimer County Urban Area Street Standards* which will be updated in 2025 to comply with the requirements of SB24-005.

Landscape water budgets are calculated by multiplying the area of each landscape hydrozone by the gallons per square foot (GPSF) assumptions provided in the Water Budget Chart in Land Use Code 5.10.1. The current Land Use Code mandates a landscape water budget of 15 GPSF averaged across the entire landscape. The proposed amendment seeks to reduce the cap to 11 GPSF. Plant selection is what influences the water budget. The majority of native, and many and non-native, grasses, perennials and shrubs are considered to have a very low or low water need, requiring just 3 – 8 GPSF of supplemental irrigation per season. Kentucky bluegrass is considered a high hydrozone plant, needing 18 GPSF of supplemental irrigation per season. An 11 GPSF water budget can be achieved, and even include a large total area of functional bluegrass, by balancing the high hydrozone landscape areas with lower water use hydrozone areas. Review of project water budgets indicated a noticeable trend toward lower water demand with nearly half of the projects – 9 out of 21 – already meeting the proposed 11 GPSF limit.

Aesthetic appeal is an important factor to consider. While the Land Use Code and City Code amendments must comply with SB 24-005 landscaping restrictions, the bill provides flexibility in finding alternatives. Incorporating best practices, such as requiring living landscapes, may preserve the unique character and curb appeal of Fort Collins, ensuring continuity and compatibility between new and existing landscapes. Without these measures, there is a risk of extensive hardscaping, which lacks climate resilience and could exacerbate environmental challenges.

## Cost

Implementing landscape standards that reduce water use may entail higher initial installation costs depending on design. However, these investments can yield significant financial benefits that include both immediate returns through reduced water development fees, such as water supply requirements or plant

investment fees depending on the water district, and long-term paybacks through lower water bull-instelly, the financial advantages of these standards can outweigh the initial investment, leading to more sustainable and economically viable development practices.

Staff engaged two local landscape architecture firms – BHA Design and Norris Design - to assess the cost implications of proposed amendments to the landscape code. Each firm conducted a case study on one local commercial property currently in compliance with existing landscape code. For each property, two three-alternative landscape designs were developed to meet the proposed code amendments. Under these alternatives, most areas previously suitable for high-water grass were replaced with a combination of native grass and low water use planting beds. Some areas remained high-water grass if they served a function. The cost analyses include installation costs, plant investment fees, water supply requirement fees, long-term maintenance expenses, and water bills to determine the overall financial impact of the proposed changes. Per unit costs were provided by local contractors. Table 1 summarizes the comparison of cost estimates for landscape treatments that comply with the proposed amended code versus those that comply with the current code. These estimates were calculated using the average of all installation and maintenance cost figures provided by professionals, and 2024 Fort Collins Utilities water rates and fees.

Table 1. Cost Comparison, Fort Collins Utilities Rates and Fees

Landscape Design	Average gallons per square foot (GPSF)	Annual Water Demand (gallons)	Installation & Water fees	Annual Maintenance & Water Cost
Small Commercial Land	lscape (20,000 sq.f	ft.)		
Current code- compliant plan	15	309,890	\$195K	\$3,900
Alternative 1: Shrub Heavy	10.7	222,500	+ \$39K	(\$270)
Alternative 2: Shrubs and Native Grass	10.4	215,020	(\$2K)	(\$290)
Alternative 3: Native Grass Heavy	7.8	161,755	(\$43K)	(\$460)
Multi-Family Landscape	(200,000 sq.ft.)			
Current code- compliant plan	12.9	2.6M	\$1.8M	\$37K
Alternative 1: More Shrubs	10.9	2.2M	(\$37K)	(\$1,200)
Alternative 2: More Native Grass	10.5	2.1M	(\$174K)	(\$1,500)

The upfront cost of a landscape is largely influenced by landscape design. Planting beds are most expensive to install, followed by high-water grass, then native grass areas. In cases when developers choose to install more planting bed areas in place of what historically may have been planted with high-water grass, the total installation cost will be greater. The added cost of planting beds may be balanced by the lower cost to install native grass when including both in a landscape design. The added expense of more planting bed area may also be mitigated by reduced development fees that may be dependent on the calculated water demand of the property, depending on the water district. Certain water development fees in service areas of Fort Collins Utilities and the East Larimer County Water District (ELCO) are influenced by landscape water demand. Fort Collins Loveland Water District (FCLWD) development fees are not impacted by water demand. The impact of this is illustrated in Table 2.

Trees are significant investments in both human health and environmental value. Ensuring their proper establishment and growth is crucial. As landscapes transition away from irrigated turf that historically provided supplemental water to trees, dedicated drip irrigation systems are necessary to ensure tree health and longevity. Without this supplemental watering, trees are at greater risk of stress, decline, and potential

loss—an outcome that carries both environmental and financial costs. Drip irrigation systems offer targeted water delivery directly to the root zone, encouraging a deep and healthy root structure, reducing water waste and increasing water efficiency compared to traditional irrigation methods. While this is an added upfront cost of approximately a couple thousand dollars per zone (where you may have a few trees to tens of trees on a given zone), it mitigates the long-term expenses associated with tree removal and replacement, which can be thousands of dollars per tree. A dedicated drip irrigation system can also protect and preserve trees as valuable green infrastructure during periods of drought or water shortages where overhead irrigation is required to be extremely reduced or turned off and trees reliant on overhead irrigation must be hand watered to keep alive, if drip irrigation isn't provided. The return on investment of each irrigated tree is obtained within a few years, especially when trees are kept healthy and thriving into the future - omitting the costs of removal and replacement.

Long-term costs are also influenced by landscape design. Overall, data and feedback from landscape contractors and site managers indicate there may be little net difference in maintenance cost of landscapes with far less high-water grass compared to similar sites with significant area of high-water grass. This may be attributed to the high variability of tasks required to maintain the different types of landscape area, as well as the frequency of visits for the different areas. For example, high-water grass areas require weekly visits for mowing during the growing season. A shrub bed area requires fewer visits per year, but warrants expensive, infrequent maintenance, such as replenishing mulch and weeding. As for annual water costs, regardless of water provider, landscapes that require less water have lower annual water costs. The cost savings becomes more significant overtime as water rates increase.

Table 2. Fort Collins Water Providers Cost Estimates Compared to Baseline Landscape (2024 Rates)

Table 2. Full Cullins						
	Installation &	Water Develor	oment Fees	Annual Wate	r & Maintena	ance Cost
<u>Landscape</u>	Fort Collins	<u>ELCO</u>	FCLWD	Fort Collins	ELCO	FCLWD
<u>Design</u>	<u>Utilities</u>			<u>Utilities</u>		
Small Commercial	l Landscape (2	0,000 sq.ft.)				
Current code-	\$195K	\$224K	\$211K	\$3,900	\$5,000	\$4,200
compliant plan						
Alternative 1:	+ \$39K	+ \$30K	+ \$57K	(\$270)	(\$600)	(\$370)
Shrub Heavy						
Alternative 2:	(\$2K)	(\$10K)	+ \$18K	(\$290)	(\$650)	(\$400)
Shrubs and						
Native Grass						
Alternative 3:	(\$43K)	(\$53K)	(\$12K)	(\$460)	(\$1,000)	(\$630)
Native Grass						
Heavy						
Multi-Family Land	scape (200,000	<u>) sq.ft.)</u>				
Current code-	\$1.8M	\$1.9M	\$1.9M	\$37K	\$45K	\$38K
compliant plan						
Alternative 1:	(\$37K)	(\$140K)	+ \$46K	(\$1,200)	(\$2,800)	(\$1,700)
More Shrubs						
Alternative 2:	(\$174K)	(\$268K)	(\$76K)	(\$1,500)	(\$3,200)	(\$2,000)
More Native						
Grass						

Soil amendment and loosening requirements already exist in the City Code, and the proposed amendments does not significantly alter these requirements, so no widespread impact is expected. A change in the proposed City Code amendments allows for alternative soil amendments that consider site characteristics. However, choosing this option is not mandatory. Other proposed amendments clarify existing City Code language and are beneficial for ensuring proper soil preparation, which is essential for the success and growth of the installed vegetation.

## **Implementation**

Code amendments are just one aspect of the overall program improvements. Equally important is the need to verify and enforce compliance with the new standards and requirements, as well as to provide education and outreach to the community and industry partners.

Staff conducted an evaluation of resource needs by analyzing historical development application data to estimate the time required for key activities, including education and outreach, plan review, site inspections, and enforcement of the new standards. While no additional resources are being requested in conjunction with these code amendments at this time, it is anticipated that future budget proposals—whether mid-cycle or as part of the regular budget process—will include requests for funding to support two full-time employees (FTEs). One FTE will be dedicated to landscaping, while the other FTE will focus on soil amendments and soil loosening.

Staff will continue to implement existing processes, monitor progress, and explore opportunities to improve efficiency. The current level of service includes the following oversight activities to ensure conformance with the proposed requirements:

- Plan Review: Review of all irrigation plans, water budget tables, and landscape plans before construction.
- **Soil Documentation**: Collection of soil certificates and amendment receipts and infrequent investigative field inspections performed if indicated by the submittal documents.
- **Irrigation Audit**: Post-construction inspection to ensure the irrigation system aligns with approved plans and standards.
- **Zoning Inspection**: Verification of plant counts and other landscaping elements after construction is complete.

Approving the code amendments, even without additional FTEs, is a critical step toward advancing Council priorities and meeting State law requirements. Staff remains committed to optimizing current processes to ensure progress while planning for necessary future resource allocation.

#### **CITY FINANCIAL IMPACTS**

No additional resources are being requested with these code amendments, but future budget proposals may include funding requests for two full-time employees.

## **BOARD / COMMISSION / COMMITTEE RECOMMENDATION**

The August 15, 2024, regular meeting, the Water Commission recommended Council approve the code amendments.

At the December 19, 2024, hearing, Planning and Zoning Commission voted 6-1 in support of the proposal and recommended Council approval. The Commission expressed that the Commission believes the proposal meets State requirements and is consistent with the water conservation goals of the City and for that reason, the Commission supports the proposal and recommends City Council approval. In making this recommendation, the Commission suggested Council consider the following:

- 1. Proposal not to omit landscape requirements specific to vehicle display lots, as they are different than a regular parking lot. **Staff Response**: Landscape requirements specific to vehicle display lots have now been retained in the proposed Code amendments.
- Impact of requiring dedicated irrigation zones for trees, particularly on affordable housing projects. Staff
  Response: Dedicated irrigation to trees remains as a proposed code amendment. The rationale for
  this recommendation is included in the Impact Analysis section of this report.

3. Landscape escrow requirements contained in the proposed Code language should be carefully reviewed for clarity and reasonableness. **Staff Response**: The proposed Code amendments now include clarification and a description of how the escrow works.

The Planning and Zoning Commission passed motions with additional recommendations as follows:

- That the Fort Collins Planning and Zoning Commission in its capacity as an advisor on planning matters
  to City Council express support for the adoption of City Code amendments regarding soil amendment
  and soil loosening; and
- That the Fort Collins Planning and Zoning Commission in its capacity as an advisor on planning matters to City Council advise that the proposed Land Use Code amendments may require augmented staff to fully implement the proposed changes. The Planning and Zoning Commission encourages City Council to examine opportunities to fully implement the proposal. **Staff Response**: Two positions were considered in the '25 '26 Budget and were not funded.

#### **PUBLIC OUTREACH**

From the end of 2021 throughout 2024, staff hosted several engagement opportunities, communicated through email and social media, targeting the public and industry partners. Staff sought and received feedback from developers, homebuilders, landscape professionals, landscape architects, real estate professionals, property managers, nurseries and wholesalers, and sod growers. Some notable engagement milestones include the following:

- Online survey: 929 completed surveys, 5,878 comments
- Social media: 37 comments on boosted posts
- 166 unique visits on OurCity webpage
- Focus groups, workshops, and one-on-ones with industry partners
  - 56 total attendees at 14 virtual events
  - 20+ one-on-one requests

Staff visited and kept up communication with several Boards and Commissions including Water Commission, Planning and Zoning Commission, Natural Resources Advisory Board, Downtown Development Authority, and Parks and Recreation Board.

Overall, the feedback was in support of reducing the occurrence of high-water grass in new development, limiting barren landscaping, and promoting best practices for soil preparation. Feedback also reflected overwhelming support and encouragement of more community education and engagement opportunities, and incentives for resilient landscaping for new development and existing properties.

This proposal initially included provisions to regulate single-unit residential landscapes and a limit on turf area by percentage. However, based on feedback primarily from landscape industry professionals, both provisions have been removed from the current proposal. Concerns persist regarding the restriction on artificial turf, particularly regarding suitable alternatives for high-traffic areas. There are also concerns about to the aesthetic impact of increased native grass areas, including the variable success and potentially lengthy establishment period of native grasses in some landscapes.

Engagement with internal departments and industry partners – including landscape contractors, designers, architects, and developers – has been a priority in the update of commercial landscape standards. These stakeholders have demonstrated strong support for this initiative. Their detailed reviews and feedback have been essential in developing language that is both clear and implementable. Contributions were made through various channels including focus groups, workshops, individual consultations, mock development review sessions, and polling.

Item 9.

Following adoption, staff will continue to work with internal and community partners to communicate meanendments and work through implementation strategies. Departments and applicants involved in the development review process will be most impacted by these amendments. Utilities Community Engagement and Education teams will continue to be a critical partner to supporting new regulations. Existing water demand management programs, such as the Xeriscape Incentive Program, will continue to educate and support current residential and commercial property owners in converting high-water use grass to more resilient landscaping. New or reimagined projects and programs that educate, incentivize, or regulate resilient landscape practices from conceptual review all the way to long-term landscape maintenance are currently being evaluated as part of the ongoing Water Efficiency Plan update.

## **ATTACHMENTS**

- 1. Ordinance A for Consideration City Code
- 2. Ordinance B for Consideration Land Use Code
- 3. Section 5.10.1 Landscaping and Tree Protection Amendments (redlined)
- 4. Consultant Alternatives and Impact Analysis
- 5. Consultant 2023 Landscape Code Audit
- 6. Consultant 2022 Landscape Best Practices Report
- 7. Previous Council Memos
- 8. Colorado Senate Bill 24-005
- 9. Water Commission Meeting Minutes, August 15, 2024
- 10. Presentation

# ORDINANCE NO. 007, 2025 OF THE COUNCIL OF THE CITY OF FORT COLLINS AMENDING CHAPTER 12 OF THE CODE OF THE CITY OF FORT COLLINS TO REVISE SOIL LOOSENING AND AMENDMENT REQUIREMENTS

- A. The City has historically imposed certain requirements related to the loosening of soil areas and incorporation of appropriate soil amendments in areas to be planted in order to, among other things, enhance soil water storage capacity, improve conditions for plant growth, increase water infiltration, and reduce water runoff.
  - B. Such requirements are located in Chapter 12, Division 2 of City Code.
- C. Pursuant to City Council priority 14 (Effective soil amendment policies and compliance (water usage)) of the 2021-23 Council Priorities and direction from City Council at a January 10, 2023, work session, City staff completed a review of such existing requirements.
  - D. City staff have proposed revisions to such requirements as set forth below.

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS that Chapter 12, Article VII., Division 2 of the Code of the City of Fort Collins is hereby deleted in its entirety and replaced with the following:

#### **Division 2 Soil Amendment**

## Sec. 12-130. Purpose.

The provisions of this Section are intended to enhance soil water storage capacity, improve conditions for plant growth and reduce water runoff.

## Sec. 12-131. Definitions.

The following words, terms and phrases, when used in this Section, shall have the meanings ascribed to them in this Section:

Certificate of occupancy shall mean a certificate of occupancy as described in the building code of the City as adopted in Chapter 5, Article II, Division 2, or any other document issued by the City to authorize occupation of new improvements constructed pursuant to a building permit.

Soil amendments shall mean compost, peat, aged manure or such other organic or inorganic material as may be approved by the Utilities Executive Director as appropriate to meet the objectives of this Section.

Top soil shall mean a friable mixture of sand, silt and clay particles, each within the following limits:

Sand (0.05- 2.00 mm	<del>)</del>	Maximum 75%	Minimum 20%

Silt (0.002-0.05 mm)	Maximum 60%	Minimum 5%
Clay (less than 0.002 mm)	Maximum 30%	Minimum 5%

Top soil shall have an organic matter content of greater than five (5) percent and a pH between 6.0 and 8.0, and shall be free from noxious weeds and roots, salts, clay lumps, any nonsoil materials such as rock, concrete, brick chips, or building materials, foreign matter, and any chemical, biological or radiological contaminants.

## Sec. 12-132. Regulations.

- (a) Except as otherwise provided below, the holder of any building permit shall, as a condition of the issuance of a certificate of occupancy, prepare any area in which any plant materials, including but not limited to grass, seed, flowers, shrubs or trees, are expected or intended to be installed, prior to installation of any plant materials in that area, as follows:
  - (1) The soil in such areas shall be thoroughly loosened to a depth of not less than eight (8) inches; and
  - (2) Soil amendments shall be thoroughly incorporated into the soil of such areas to a depth of at least six (6) inches by tilling, discing or other suitable method, at a rate of at least three (3) cubic yards of soil amendment per one thousand (1,000) square feet of area to be planted, unless at least four (4) inches of loose top soil has been placed on the area after completion of construction activity on top of not less than four (4) inches of loosened subgrade soils. Documentation of the content and quantity of the soil amendments and top soil placed in an area, prepared by the commercial source of the material or a qualified soils testing laboratory, shall be submitted in connection with the certification required in Subsection 12-132(b) below.
- (b) Prior to the issuance of any certificate of occupancy, the prospective recipient of such certificate of occupancy shall submit written certification to the Utilities Executive Director that all planted areas, or areas to be planted, have been thoroughly loosened and the soil amended, consistent with the requirements set forth in this Section.
- (c) In the event that the Utilities Executive Director determines that compliance with this Section is rendered unreasonably difficult by weather or seasonal conditions, the Utilities Executive Director may temporarily suspend the application of this requirement, contingent upon the provision by the prospective recipient of such arrangements, guaranties or assurances as the Utilities Executive Director determines to be adequate to ensure compliance.
- (d) In the event that the Utilities Executive Director determines that compliance with this Section in a specific area is unreasonably difficult as a result of site conditions such as, for example, an excessively steep gradient or a very narrow side lot, the Utilities Executive Director may waive the application of this requirement for such area.
- (e) The Utilities Executive Director or City Manager may inspect any property in order to determine compliance with the requirements of this Section as a condition of issuance of any certificate of occupancy.

(f) Payment of any administrative fee established by the City Manager for the purpose of recovering the costs of administering and enforcing the requirements of this Section shall be required as a condition of issuance of any building permit, excluding any building permit where it can be shown that no areas within the project limits will be disturbed by construction activities and planted with vegetation.

## **Division 2 - Soil Loosening and Amendment**

## Sec. 12-130. - Purpose.

The provisions of this Section are intended to enhance soil water storage capacity, improve conditions for plant growth, increase water infiltration, reduce water runoff, and improve stormwater quality.

## Sec. 12-131. - Definitions.

The following words, terms and phrases, when used in this Section, shall have the meanings ascribed to them in this Section:

Certificate of occupancy shall mean a certificate of occupancy as described in the building code of the City as adopted in Chapter 5, Article II, Division 2, or any other document issued by the City to authorize occupation of new improvements constructed pursuant to a building permit.

## Plant materials shall mean living vegetation.

Soil amendments shall mean materials added to soil to improve soil properties for the purpose of optimal plant growth. Soil amendments may include the following: gypsum, limestone, sulfur, aluminum sulfates, humates, organic matter, mulches, compost, soil conditioners, mycorrhizal inoculum or bio-stimulants or such other as appropriate to meet the objectives of this Division.

Soil testing shall mean technical analysis by a professional soil testing lab to determine composition and characteristics of soil.

Topsoil shall mean soil that is: a friable mixture of sand, silt, clay, and organic particles; free from building, construction, or other foreign materials; free of any chemical, biological or radiological contaminants; and within the following limits:

Sand (0.05- 2.00 mm)	Maximum 75%	Minimum 20%
Silt (0.002-0.05 mm)	Maximum 60%	Minimum 5%
Clay (less than 0.002 mm)	Maximum 30%	Minimum 5%
Organic Material	Minimum 3%	Maximum 10%
(Organic Material /		
Sample)		
<mark>pH</mark>	6	8
Electrical Conductivity	0	<mark>2.0</mark>

millimhos / cm)		
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Topsoil Stockpiling Practices shall mean those practices to preserve the quality of topsoil comprising of the top four (4)-six (6) inches of existing soils, stored in piles from two (2)-four (4) feet high and for a duration of less than twelve (12) months.

## Sec. 12-132 Soil Loosening and Amendment Requirements.

- (a) Applicability. The requirements of this Division shall apply to any property outside of a Natural Habitat Buffer Zone defined in the Land Use Code that:
  - (1) is included any development review process under the Land Use Code and has over one thousand (1,000) square feet of area where plant materials will be installed; or
  - (2) requires a building permit that is associated with a certificate of occupancy and has over one thousand (1,000) square feet of area where plant materials will be installed.
- (b) Soil Loosening Standards. Except as provided in this subsection (b) or pursuant to § 12-134, in any location where plant materials are expected or intended to be installed, soils shall be thoroughly loosened to a depth of at least eight inches, except as follows:
  - (1) In areas where new tree plantings are expected or intended to occur, the soil shall be loosened to the extent of, roughly two (2) to three (3) times the diameter of the planted root ball and minimum of six (6) feet extending radially from the tree trunk and loosened to a depth equivalent to the root ball;
  - (2) Soil shall not be loosened within a certain distance from the face of existing trees based on the tree trunk's diameter at breast height as set forth in the following table; and

Tree Trunk		0" to	10" to 14"	<mark>15" to 19"</mark>	Over 19"
Diameter at Breast		<mark>9"</mark>			
Height (Inches)					
Area From Face of	<u>5'</u>		<mark>10'</mark>	<mark>12'</mark>	<mark>15'</mark>
Tree with No Soil					
Loosening (feet)					

- (3) In any areas where existing vegetation remains and was not compacted or disturbed from construction or related activities, the soil shall only be loosened with an aeration or no-till method.
- (c) Soil Amendment Standards.

- (1) Except as provided in this subsection (c) or pursuant to § 12-134, in any location where plant materials are expected or intended to be installed, the soil shall be amended at a rate of at least three (3) cubic yards of soil amendment over one thousand (1,000) square feet, which shall be well mixed into the top four (4) inches of the soil.
- (2) Soils amendments shall not be required for the following:
  - a. In areas where new or existing trees are located, and no other vegetation will be under the tree canopy;
  - b. In areas where Low Impact Development stormwater quality infrastructure is located; or
  - c. Existing soils that are topsoil, as proven by soil testing. Such topsoil may be stripped and stored using Topsoil Stockpiling Practices for reapplication to the site. When reapplied, at least four inches of reclaimed topsoil shall be applied.

# Sec. 12-133 Compliance.

- (a) The requirements of this Division shall be met prior to the issuance of any certificate of occupancy. Except as provided in § 12-134, no certificate of occupancy shall be issued until compliance is established pursuant to this Subsection.
- (b) Proof of compliance shall be submitted to the Utilities Executive Director, and shall include documentation of the completion of the soil loosening and amendment requirements of this Division and any soil testing results and related documentation, if applicable. The Utilities Executive Director may establish forms for this purpose.
- (c) The Utilities Executive Director may enter any property subject to this Division for the purpose of evaluating whether the property is in compliance.
- (d) The Utilities Executive Director shall review the proof of compliance and, in writing, approve, approve with conditions or deny that the soil loosening and amendment requirements of this Division have been met.

# Sec. 12-134 Variance Procedure for Soil Loosening and Amendment Requirements.

- (a) Notwithstanding the provisions of this Division, pursuant to this section, the Utilities Executive Director may grant variance requests to modify: the soil loosening standards of § 12-132(b); the soil amendment standards of § 12-132(c); and the compliance deadline of § 12-133(a).
  - (1) An applicant seeking such a variance shall complete and file with the Utilities Executive Director an application accompanied by any required filing fee

as determined by the Utilities Executive Director. The Utilities Executive Director shall prepare a form of such application identifying for the applicant all of the necessary information for the Utilities Executive Director to evaluate the variance request, which shall include, at minimum, an analysis of the requested variance.

- (2) The Utilities Executive Director may perform any appropriate investigations regarding the application, including requests for additional information from the applicant. If the Utilities Executive Director finds that all of the following conditions are met, the Utilities Executive Director may grant a variance request, subject to terms and conditions, to modify the soil loosening standards of § 12-132(b), the soil amendment standards of § 12-132(c) or the compliance deadline of § 12-133(a) as applied to a particular property:
  - a. The variance is appropriate based on all known facts, will substantially further the purposes of this Division, and is in the best interests of the City;
  - b. Where the variance request is to modify the soil loosening standards of § 12-132(b) or the soil amendment standards of § 12-132(c) for the particular property, the modification is needed to address unique soil, hydrological, or topographical conditions of the property; or to facilitate native plants; and
  - c. Where the variance request is to modify the compliance deadline of § 12-133(a), the modification is needed due to weather or seasonal conditions, labor shortages, or needs of the plant materials to be installed.
- (3) If the variance request is granted, the variance shall be set forth in the writing and shall include any terms and conditions the Utilities Executive Director deems appropriate to further the purposes of this Division. If the variance includes a modification of the soil loosening standards of § 12-132(b) or the soil amendment standards of § 12-132(c), the modified standards shall be stated. If the variance includes a modification of the compliance deadline of § 12-133(a), a new deadline shall be stated and terms and conditions may include the City's right to withhold other permits sought by the applicant until the particular property is in compliance with the variance. Failure of the applicant to comply with a granted variance shall be deemed a violation of City Code pursuant to § 1-15.
- (4) In the event the variance request is denied, the Utilities Executive Director shall notify the applicant in writing of the denial and state the reasons therefor.

Introduced, considered favorably on first reading on January 21, 2025, and approved on second reading for final passage on February 4, 2025.

	Mayor	
ATTEST:		
City Clerk	<del></del>	

Effective Date: February 14, 2025 Approving Attorney: Eric Potyondy ORDINANCE NO. 008, 2025
OF THE COUNCIL OF THE CITY OF FORT COLLINS
REPEALING AND REENACTING SECTION 5.10.1 OF THE LAND USE
CODE AND AMENDING DEFINITIONS IN SECTION 7.2.2 OF THE LAND
USE CODE TO ADVANCE ADOPTED CITY POLICY GOALS TO
REDUCE WATER USAGE IN LANDSCAPES AND TO CLARIFY AND
REORGANIZE LANDSCAPING, TREE PROTECTION, AND IRRIGATION
STANDARDS

- A. On May 27, 2024 the revised Land Use Code went into effect, which Code City Council adopted by reference pursuant to Ordinance No. 055, 2024.
- B. The Land Use Code Section 5.10.1 provides standards and requirements for landscaping, tree protection, and irrigation design and installation for developments.
- C. The Land Use Code Section 7.2.2 defines terms used throughout the Land Use Code.
- D. Three 2021-2023 City Council priorities pertain to matters addressed in Land Use Code Section 5.10.1 and related definitions: #14 Effective soil amendment policies and compliance (water usage), #19 Xeriscape installations Increase rebates and education, fewer green lawns with new development and #28 Improving tree policies.
- E. Community values and the strategies outlined in City Plan and Our Climate Future pertain to matters addressed in Land Use Code Section 5.10.1 and related definitions, including City Plan Principle LIV 9: Encourage development that reduces impacts on natural ecosystems and promotes sustainability and resilience; City Plan Principle ENV 6: Manage water resources in a manner that enhances and protects water quality, supply and reliability; City Plan Principle ENV 8: Create and maintain a safe, healthy and resilient urban forest; and Our Climate Future: BIG MOVE 3 Climate Resilient Community: People, buildings, watersheds and ecosystems are prepared for the threats of climate change.
- F. Colorado Senate Bill 24-005 prohibits specific landscaping practices and installations as of January 1, 2026.
- G. For the City to comply with House Bill 24-005 and to comport with its priorities and values, the existing Land Use Code Section 5.10.1 Landscaping and tree protection and related definitions in Section 7.2.2 must be amended as set forth in this Ordinance.
- H. On August 15, 2024, the Water Commission on a unanimous vote recommended that Council adopt the proposed changes set forth in this Ordinance.

- I. On December 19, 2024, the Planning and Zoning Commission on a vote of 6 to 1 (Sass opposed) recommended that Council adopt the proposed changes set forth in this Ordinance.
- J. Concurrently by separate ordinance (Ordinance No. 007, 2025), City Code provisions for soil loosening and amendment requirements are also being amended.
- K. A goal of the code changes in this Ordinance and Ordinance No. 007, 2025 is to develop codes that contribute to the development of landscapes well-equipped to survive, even thrive, despite a changing climate and finite resources.
- L. This Ordinance amends the Land Use Code that was adopted by reference in Ordinance No. 055, 2024. However, the amendments contained in this Ordinance are set forth in their entirety herein, rather than adopted by reference.

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. ARTICLE 5 GENERAL DEVELOPMENT AND SITE DESIGN, DIVISION 5.10 LANDSCAPING AND TREE PROTECTION, Section 5.10.1, Landscaping and tree protection is hereby repealed and reenacted to read as follows:

# 5.10.1 LANDSCAPING AND TREE PROTECTION

- (A) Applicability. This Section applies to all developments that include landscaping, new or existing trees, or both landscaping and new or existing trees (except for development on existing lots for single- and two-unit detached dwellings and accessory dwelling units) within the designated "limits of development" ("LOD") and natural habitat buffer zones established according to Section 5.6.1 (Natural Habitats and Features).
- (B) Purpose. The intent of this Section is to require preparation of a landscape, tree protection, and irrigation plan (hereinafter "landscape plan") that demonstrates a comprehensive approach to landscaping that incorporates City plans for the appearance and function of the neighborhood or district, the development, buildings, and the pedestrian environment, while creating or maintaining a diverse significant canopy cover and using water efficiently.
- (C) General Standard. All developments to which this Section applies must submit a landscape plan that incorporates City plans for the appearance and function of the development while creating or maintaining a diverse significant canopy cover and using water efficiently and that promotes reductions in outdoor water use by selecting low water plant materials, improving soil, and exploring non-potable irrigation sources. All landscaping, tree protection and planting, and irrigation must be installed according to approved landscape plans. For the Director or Director's designated staff focused in the

applicable area of forestry, landscape, or irrigation to approve a landscape plan it must comply with the standards throughout this Section and must:

- Protect existing trees and natural features;
- (2) Provide a diverse and resilient tree canopy cover;
- (3) Reinforce and extend existing patterns of outdoor spaces and vegetation;
- (4) Enhance the pedestrian environment of the development and neighborhood;
- (5) Create visual interest year-round, complementing the architecture of a development and attracting attention to building entrances and other focal points;
- (6) Reinforce spatial definition of outdoor spaces and circulation patterns;
- (7) Screen areas of low visual interest or visually intrusive site elements;
- (8) Lend privacy where appropriate;
- (9) Promote compatibility and buffering between and among dissimilar land uses; and
- (10) Ensure long term health of landscaping through best practices for maintenance and irrigation.
- (D) **Landscape Planning and Design**. Any landscape plan required must meet at least the standards in this Subsection.
  - (1) Tree Planting.
    - (a) **Purposes**. These standards are meant to establish urban tree canopy in available and appropriate spaces. Urban tree canopies are used to define and connect spaces and corridors or other features along the street. All the following elements contribute to this. Useful urban tree canopy benefits include:
      - (I) Beautification;
      - (II) Reducing erosion and stormwater runoff;
      - (III) Mitigating air pollution;
      - (IV) Reducing glare and heat build-up;
      - (V) Aiding water conservation in irrigated landscaping;
      - (VI) Creating continuity within and between individual developments;
      - (VII) With other landscape elements, screening and mitigating potential conflicts between activity areas and other site elements;
      - (VIII) Accommodating views and functions such as active recreation and storm drainage; and
        - (IX) Defining and enhancing outdoor spaces.
    - (b) Minimum Tree Stocking Requirements. All developments must establish groupings of trees along all city streets, in and around parking lots, and in landscape areas shown in the landscape plan. These stocking requirements outline the required minimum tree canopy and are in addition to requirements for preserving existing trees, parking lot landscape requirements and required tree mitigation. These stocking requirements are not intended to limit additional tree plantings in any remaining portions of the development. Required tree stocking comprises:

- (I) Parking lot landscaping in accordance with the parking lot landscaping standards as set forth in this Section and in Section 5.9.1, Access, Circulation and Parking;
- (II) Street tree planting in accordance with the Larimer County Urban Area Street Standards and the street tree planting as defined in Subsection (D)(1)(e) below;
- (III) Tree planting in all landscape areas within sixty-five (65) feet of any building or structure as further described below. Landscape areas shall be provided in adequate numbers, locations and dimensions to allow full tree stocking to occur along all areas of high use or high visibility sides of any building or structure. Such landscape areas shall extend at least seven (7) feet from any building or structure wall and contain at least fifty-five (55) square feet of nonpaved ground area:
- (IV) Planting cutouts, planters, or other landscape areas for tree planting shall be provided within any walkway that is ten (10) feet or greater in width adjoining a vehicle use area that is not covered with an overhead fixture or canopy that would prevent growth and maturity. Any tree planting cutouts in walkways must be at least thirty-two (32) square feet, except in the Downtown District where tree cutouts shall mimic or exceed existing design or character to adjacent Street Frontage Types as provided in Section 2.4.1;
- (V) Full tree stocking under this Subsection (D)(1)(b) shall mean formal or informal groupings of trees planted according to the following spacing dimensions depending on species and desired degree of shading of the ground plane:

Table 5.10.1-(1) - Spacing

Tree Type	Minimum/Maximum Spacing
Canopy shade trees	30'—40' spacing
Coniferous evergreens	20'—40' spacing
Ornamental trees	20'—40' spacing

- (VI) Exact tree locations and spacings may be adjusted at the option of the applicant to support patterns of use, views and circulation as long as the minimum tree stocking requirement under this Subsection (D)(1)(b) and the minimum species diversity requirement under Subsection (D)(1)(c) are met; and
- (VII) Canopy shade trees must constitute at least fifty percent (50%) of all tree plantings. Trees required in Subsections (D)(1)(b)(I) or (II)

above may be used to contribute to this standard. If additional trees beyond the minimum tree stocking and mitigation requirements under this Section are planted, the additional trees must meet the minimum species diversity requirement but are not subject to the fifty percent (50%) canopy shade requirement.

(c) Minimum Tree Species Diversity. To prevent uniform insect or disease susceptibility and eventual uniform senescence within a landscape planned area or in the adjacent area or the district, species diversity is required, and extensive monocultures are prohibited. No more than three (3) consecutive trees of the same cultivar or variety may be planted in a row, including corners and groupings. The following minimum requirements apply to any landscape plan.

Table 5.10.1-(2) - Species Diversity Table

Number of trees on site	Maximum percentage of any one species		
10—19	40%		
20—39	30%		
40—59	20%		
60 or more	10%		

- (d) Tree Species and Minimum Sizes. The City Forester shall provide a recommended list of trees that are acceptable to satisfy the requirements for landscape plans, including approved canopy shade trees that may be used as street trees.
  - (I) **Minimum Size.** The following minimum sizes shall be required (except as provided in Subsection (D)(1)(d)(II) below):

Table 5.10.1-(3) – Minimum Size Table

Type	Minimum Size
Canopy Shade Tree	2.0" caliper balled and burlapped or equivalent
Evergreen Tree	6.0' height balled and burlapped or equivalent
Ornamental Tree	1.5" caliper balled and burlapped or equivalent
Shrubs	5 gallon or adequate size consistent with design intent or 1 gallon may be permitted if planting within the Critical Root Zone of existing trees

Any tree plantings that are in addition to those that are made as part of the approved landscape plan are exempt from the foregoing size requirements.

(II) Reduced Minimum Sizes for Affordable Housing Projects. In any affordable housing project, the following minimum sizes shall be required:

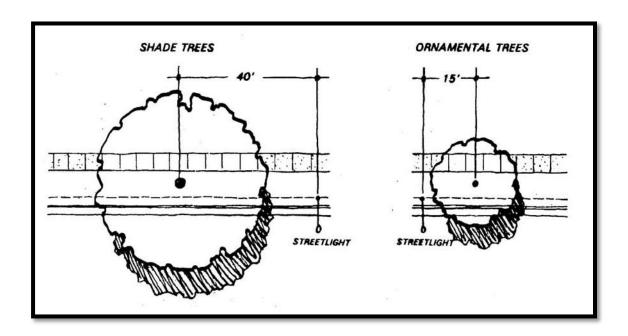
Table 5.10.1-(4) – Affordable Housing Minimum Tree Size Table

Туре	Minimum Size
Canopy Shade Tree	1.0" caliper container or equivalent
Evergreen Tree	4.0' height container or equivalent
Ornamental Tree	1.0" caliper container or equivalent
Shrubs	1 gallon
	1.25" caliper container or equivalent
tree on a Local or Collector	
street only	

- (e) Street Trees. Planting of street trees shall occur in the adjoining street right-of-way, after first obtaining a street tree permit (free of charge) from the Forestry Division as stated in Fort Collins Municipal Code Article 3, Section 27-31. Except as described in Subsection (D)(1)(e)(II) below, the street tree plantings in connection with the development shall occur as described in Subsections (D)(1)(e)(I) through (V) below:
  - (I) Wherever the sidewalk is separated from the street by a parkway, canopy shade trees shall be planted at thirty-foot to forty-foot spacing (averaged along the entire front and sides of the block face) in the center of all such parkway areas. If two (2) or more consecutive residential lots along a street each measure between forty (40) and sixty (60) feet in street frontage width, one (1) tree per lot may be substituted for the thirty-foot to forty-foot spacing requirement. Such street trees shall be placed at least four (4) feet away from the edges of driveways and alleys and separated from streetlights and utilities lines as required in Subsection (D)(1)(f) below.
  - (II) Wherever the sidewalk is attached to the street in a non-standard way or in a manner that fails to comply with the *Larimer County Urban Area Street Standards*, canopy shade trees shall be established in an area ranging from three (3) to seven (7) feet behind the sidewalk at the spacing intervals as required in Subsection (D)(1)(e)(I) above. Wherever the sidewalk is attached to the street and is ten (10) feet or more in width, or extends from the curb to the property line, canopy shade trees shall be established in planting cutout areas of at least thirty-two (32) square feet at thirty-foot to

- forty-foot spacing, except in the Downtown District where tree cutouts shall mimic or exceed existing design or character to adjacent Street Frontage Types as provided in Section 2.4.1.
- (III) Ornamental trees shall be planted in substitution for the required canopy shade trees where overhead lines, fixtures, and underground utilities may prevent normal growth and maturity. Ornamental trees shall be placed at least fifteen (15) feet away from any streetlight as required in Subsection (D)(1)(f) below.
- (IV) Wherever existing ash trees (Fraxinus species) are in the adjoining street right-of-way, the applicant must coordinate and obtain an onsite analysis with the City Forester to determine replacement canopy shade trees either through shadow planting or other emerald ash borer mitigation methods. The City Forester is available also to recommend shadow planting or emerald ash borer mitigation methods for existing ash trees on private property.
- (V) In any multi-phase development plan, all street trees per phase must be planted at once rather than on a lot by lot over time to the maximum extent feasible; and such planting may only occur after the irrigation is functioning and right-of-way turfgrass, if present, is established. The City Forester, through conversations with the landscape contractor and applicant, makes the final decision as to what timing is feasible. Street trees must only be planted during shoulder seasons, March through June, and September through November, to avoid the hottest and coldest periods of the year.
- (f) Utilities and Traffic. Landscape, utility and traffic plans shall be coordinated. Minimum dimension requirements for the most common tree/utility and traffic control device separations are shown below. Exceptions to these requirements may occur, as approved by the Director, where utilities or traffic control devices are not located in their standard designated locations. Tree/utility and traffic control device separations shall not be used as a means of avoiding the planting of required street trees. Required separations are:
  - (I) Forty (40) feet between shade trees and streetlights. Fifteen (15) feet between ornamental trees and streetlights. (See Figure 5.10.1-(1).)

Figure 5.10.1-(1) – Tree/Streetlight Separations



- (II) Twenty (20) feet between shade and/or ornamental trees and traffic control signs and devices.
- (III) Ten (10) feet between trees and water or sewer mains.
- (IV) Six (6) feet between trees and water or sewer service lines.
- (V) Four (4) feet between trees and gas lines.
- (VI) Street trees on local streets planted within the standard abutting utility easement may conflict with utilities. Additional conduit may be required to protect underground electric lines.
- (2) Landscape Area Treatment. Landscape areas shall include all areas on the site, including entryways, that are not covered by buildings, structures, paving, impervious surface, or patios. Landscape areas shall consist only of landscaping, which includes any combination of living plants, and may include built features such as fences, benches, works of art, reflective pools, fountains, or the like. Landscaping shall also include irrigation systems, mulches, topsoil, soil preparation, revegetation, and the preservation, protection, and replacement of existing trees.
  - (a) **Coverage**. Not counting trees, more than 50% of a landscape area must be covered with living plants at maturity. The Director may approve an exception to this requirement if a determination is made that an area is too small for living landscape material and for irrigation to be reasonably feasible.

- (b) **Grouping and Placement**. A landscape plan must group landscape materials based upon hydrozone and irrigated accordingly (as described under Subsection(D)(3) of this Section and based on light (e.g. full sun, shade, partial sun) requirements.
- (c) Irrigated Turf grass. Irrigated turf grass areas may only be planted according to planned use. Any landscape plan that includes irrigated turf grass must indicate the intended use of all turf grass areas.
  - (I)Irrigated turf grass with a high water requirement may only be planted according to planned use, only in areas or spaces used for recreation or for civic or community purposes. Such purposes may include playgrounds, sports fields or other athletics programming, picnic grounds, amphitheaters, portions of parks, and playing areas of golf courses. Such purposes do not include, and irrigated turfgrass with a high water requirement must not be planted in, parking lots or medians. Irrigated turf grass with a high water requirement may only be planted for recreation, civic or community purposes and is limited to areas of heavy foot traffic. Irrigated turf grass with a high water requirement refers to high- or moderate-hydrozone sod forming grasses including species such as Poa pratensis (Kentucky bluegrass), and turf-type tall fescue (Festuca arundinacea) and their varieties and cultivars. See the hydrozone table (Table 5.10.1-(5)) at Subsection (D)(3) of this Section for descriptions of hydrozones.
  - (II) Irrigated turf grass shall not be installed in contiguous areas smaller than seventy-five (75) square feet to avoid water waste that occurs through overspray on small areas.
  - (III) Irrigated turf grass species with a low water requirement may be located on a site as appropriate for the species and planned activity. Well-maintained irrigated turf grass with a low or very-low water requirement according to hydrozones in Table 5.10.1-(5) at Subsection (D)(3) of this Section or the City of Fort Collins Plant List and that also does not meet the definition of "turf" set forth in C.R.S. 37-60-135(2)(i) and well-maintained regionally adapted or native grass species are not subject to the irrigated turf grass limits in Subsection (D)(2)(c)(I) of this Section.
- (d) Artificial Turf and Plants. No artificial turf or artificial plants may be included in any landscape plan or installed. The Director may approve an exception to allow artificial turf to be installed on an athletic field of play if the installation is not prohibited under C.R.S. 37-99-103 and if the Director determines the use is appropriate, the use does not add pollutants that could cause environmental impairment, and

- alternatives are not reasonable. Any exception to allow artificial turf must be noted in the landscape plan.
- (e) **Ecologically Sensitive Areas**. Non-native plants must not be planted near ecologically sensitive areas, such as natural habitat buffer zones (NHBZs) and natural areas, if the species or variety is deemed by the Director to be likely to spread into that sensitive area.
- (f) Mulched Planting Beds.
  - (I) Shrub and ground cover planting beds shall be separated from irrigated turf grass with a high water requirement by edging or other physical divider or a commitment on the landscape plan to maintain a shovel-cut edge to define the space that is being maintained.
  - (II) Shrub and ground cover planting beds shall have the majority of exposed soil areas covered with mulch.
  - (III) Mulch must be organic or inorganic mulch. To the extent that any inorganic mulch is used, the total coverage area of inorganic mulch must not exceed fifty percent (50%) of the total landscape areas. Mulching around trees is excluded from this fifty percent (50%) calculation.
  - (IV) Synthetic-based inorganic mulches, including plastic- or rubber-based mulches are not permitted.
- (g) Foundation Plantings. Exposed sections of building walls that are in high-use or high-visibility areas of the building exterior shall have planting beds at least seven (7) feet wide placed directly along at least fifty (50) percent of such walls, except:
  - (I) Where pedestrian paving abuts a commercial building with trees and/or other landscaping in cutouts or planting beds along the outer portion of the pedestrian space away from the building;
  - (II) Where exceptional situations unique to the development hinder the applicant's ability to comply with fire code or building code requirements while also adhering to a strict application of this standard.
- (h) **Buffering Between Incompatible Uses and Activities.** In situations where the Director determines that the arrangement of uses or design of buildings does not adequately mitigate conflicts reasonably anticipated to exist between dissimilar uses, site elements or building designs, one (1) or more of the following landscape buffering techniques shall be used to mitigate the conflicts:

- (I) Separation and screening with plant material: planting dense stands of evergreen trees, canopy shade trees, ornamental trees or shrubs:
- (II) Integration with plantings: incorporating trees, vines, planters or other plantings into the architectural theme of buildings and their outdoor spaces to subdue differences in architecture and bulk and avoid harsh edges;
- (III) Establishing privacy: establishing vertical landscape elements to screen views into or between windows and defined outdoor spaces where privacy is important, such as where larger buildings are proposed next to side or rear yards of smaller buildings;
- (IV) Visual integration of fences or walls: providing plant material in conjunction with a screen panel, arbor, garden wall, privacy fence or security fence to avoid the visual effect created by unattractive screening or security fences; and/or
- (V) Landform shaping: utilizing berming or other grade changes to alter views, subdue sound, change the sense of proximity and channel pedestrian movement.
- (i) Street Parkways, Rights-of-Way, Transportation Corridors. All adjoining street parkways, street rights-of-way, and transportation corridors must be landscaped in connection with the development in accordance with the *Larimer County Urban Area Street Standards* and in accordance with state law, including C.R.S. 37-99-103.
- (j) Slopes. Retaining walls, slope revetment or other acceptable devices integrated with plantings shall be used to stabilize slopes that are steeper than 3:1. If structural soil tests performed on the subject soils indicate steeper slopes are stable without the above required protection, then the maximum slope allowed without the above required protection may be increased to the maximum stated in the soils report or 2:1, whichever is less steep.
- (k) Visual Clearance or Sight Distance Triangle. Except as provided in Subsections (D)(2)(k)(I) and (II) below, a visual clearance triangle, free of any structures or landscape elements over twenty-four (24) inches in height, shall be maintained at street intersections and driveways in conformance with the standards contained in the Larimer County Urban Area Street Standards.
  - (I) Fences shall not exceed forty-two (42) inches in height and shall be of an open design.

(II) Deciduous trees may be permitted to encroach into the clearance triangle provided that the lowest branch of any such tree shall be at least six (6) feet from grade.

# (I) Exceptions.

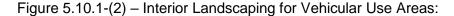
- (I) Agricultural Use. If outdoor space is maintained in active agricultural use, the landscape surfaces and ground cover standards above shall not apply.
- (II) Streetscapes attached to a property are subject to *Larimer County Urban Area Street Standards* and are not considered as part of the total landscape area of a property for computing percentages under the standards in this Subsection.
- (III) All streetscapes intended to be turned over to the Parks Department after development must conform to Parks Department standards. Landscaping plans must also be reviewed and approved by the Parks Department before approval, regardless of the water district.
- (3) **Water Budget and Hydrozones**. Landscape plans must also contain estimated water use, including:
  - (a) Maximum Not to Exceed. A water budget chart that shows the total annual water use. Total annual water use once landscaping is established must not exceed an average of eleven (11) gallons/square foot/year for each water tap.
  - (b) **Hydrozones.** A hydrozone plan view diagram that identifies each hydrozone category assigned per planted area and that sums the total area of each category per hydrozone. The hydrozone plan view diagram shall provide an accurate and clear visual identification of all hydrozones using easily distinguished symbols, labeling, hatch patterns, and relationships of hydrozone plan elements.

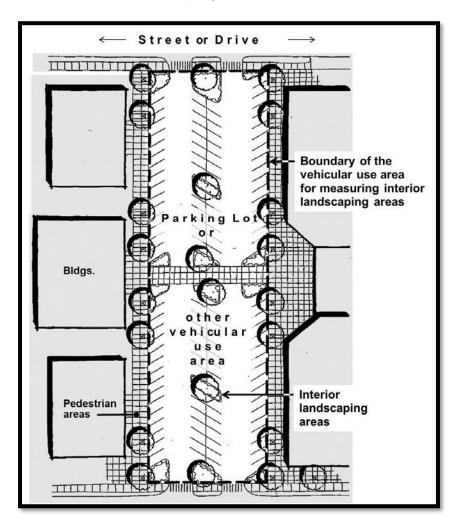
Hydrozones are defined in Section 7.2.2 and according to the following categories: Table 5.10.1-(5) – Hydrozones

HYDROZONE	WATER CONSUMPTION PER YEAR
High Hydrozone	18 gallons/square feet/year
Moderate Hydrozone	14 gallons/square feet/year
Low Hydrozone	8 gallons/square feet/year
Very Low Hydrozone	3 gallons/square feet/year

- (4) Parking Lot Perimeter Landscaping. Parking lot perimeter landscaping (in the minimum setback areas required by Section 5.9.1(J)(Access, Circulation and Parking) and irrigation shall meet the following minimum standards in addition to the other requirements in this Section:
  - (a) Trees shall be provided at a ratio of one (1) tree per twenty-five (25) lineal feet along a public street and one (1) tree per forty (40) lineal feet along a side lot line parking setback area. Trees may be spaced irregularly in informal groupings or be uniformly spaced, as consistent with larger overall planting patterns and organization. Perimeter landscaping along a street may be located in and should be integrated with the streetscape in the street right-of-way.
  - (b) Screening. Parking lots with six (6) or more spaces shall be screened from abutting uses and from the street. Screening from residential uses shall consist of a fence or wall six (6) feet in height in combination with plant material and of sufficient opacity to block at least seventy-five percent (75%) of light from vehicle headlights for the entire length of the parking lot. Screening from the street and all nonresidential uses shall consist of a wall, fence, planter, earthen berm, plant material or a combination of such elements, each of which shall have a minimum height of thirty (30) inches. Such screening shall extend a minimum of seventy percent (70%) of the length of the street frontage of the parking lot and also seventy percent (70%) of the length of any boundary of the parking lot that abuts any nonresidential use. Openings in the required screening shall be permitted for such features as access ways or drainage ways. Where screening from the street is required, plans submitted for review shall include a graphic depiction of the parking lot screening as seen from the street. Plant material used for the required screening shall achieve required opacity in its winter seasonal condition within three (3) years of construction of the vehicular use area to be screened.
- (5) Parking Lot Interior Landscaping. Six percent (6%) of the interior space of all parking lots with less than one hundred (100) spaces, and ten percent (10%) of the interior space of all parking lots with one hundred (100) spaces or more shall be landscape areas. (See Figure 5.10.1-(2)). All parking lot islands, connecting walkways through parking lots and driveways through or to parking lots shall be landscaped and irrigated according to the following standards in addition to the other requirements in this Section:
  - (a) **Visibility**. To avoid landscape material blocking driver sight distance at driveway-street intersections, no plant material greater than twenty-four (24) inches in height shall be located within fifteen (15) feet of a curb cut. This requirement does not apply to trees, for which visibility requirements are provided in Subsection (D)(2)(k)(II) of this Section.
  - (b) **Maximized Area of Shading**. Landscaped islands shall be evenly distributed to the maximum extent feasible. At a minimum, trees shall be planted at a ratio of at least

- one (1) canopy shade tree per one hundred fifty (150) square feet of internal landscaped area with a landscaped surface of live plants with mulch, as appropriate.
- (c) **Landscaped Islands**. In addition to any pedestrian refuge areas, each landscaped island shall include one (1) or more canopy shade trees, be of length greater than eight (8) feet in its smallest dimension, include at least eighty (80) square feet of ground area per tree to allow for root aeration, and have raised concrete curbs.





(d) **Walkways and Driveways**. Walkways through parking lots, as required in subsection 5.9.1(C)(5)(a) (Walkways), shall have one (1) canopy shade tree per forty (40) lineal feet of such walkway planted in landscape areas within five (5) feet of such walkway. Driveways through or to parking lots shall have one (1) canopy shade tree per forty (40) lineal feet of and along each side of such driveway, in landscape areas within five (5) feet of such driveway.

- (e) **Parking Bays** shall extend no more than fifteen (15) parking spaces without an intervening tree, landscape island or peninsula.
- (f) **Engineering**. Detailed specifications concerning parking lot surfacing material and parking lot drainage detention are available from the City Engineer.
- (6) Screening. Landscape and building elements shall be used to screen areas of low visual interest or visually intrusive site elements (such as trash collection, open storage, service areas, loading docks and blank walls) from off-site view. Such screening shall be established on all sides of such elements except where an opening is required for access. If access is possible only on a side that is visible from a public street, a removable or operable screen shall be required. The screen shall be designed and established so that the area or element being screened is no more than twenty percent (20%) visible through the screen.

Screening Materials. Required screening shall be provided in the form of new or existing plantings, walls, fences, screen panels, topographic changes, buildings, horizontal separation or a combination of these techniques.

- (7) Landscaping of Vehicle Display Lots. Vehicle display lots for vehicle sales and leasing (as those terms are defined in Article 7) that abut an arterial or collector street shall feature landscaped islands along the street at an interval not to exceed every fifteen (15) vehicles or one hundred thirty-five (135) feet, whichever is less. Each landscaped island shall comply with the requirements of 5.10.1(E)(5)(c).
- (E) Landscape Materials, Maintenance and Replacement.
  - (1) **Soil Preparation.** To the maximum extent feasible, topsoil that is removed during construction activity shall be conserved for later use on areas requiring revegetation and landscaping. Soil amendments shall be incorporated as appropriate to the existing soil and the proposed plant material and in accordance with the requirements of Subsection (K) of this Section.
  - (2) **Plant Materials**. Plant material shall be selected from the *City of Fort Collins Plant List* maintained by the Director. The *Plant List* contains plants determined by local resources to be appropriate for local conditions.
    - (a) No invasive plant species may be included in a landscape plan or installed in a development.
    - (b) A landscape plan proposing a plant that is not included on the *Plant List* may be approved by applicable decision-making staff if the applicant verifies on the landscape plan that the plant is well adapted to the Fort Collins climate and site conditions and is not a noxious weed according to Colorado Department of Agriculture or a weed under City Code Section 20-41.

- (3) **Plant Quality.** All plants shall be A-Grade or No. 1 Grade, free of any defects, of normal health, height, leaf density and spread appropriate to the species as defined by the latest version of the *American Standard for Nursery Stock*.
- (4) Maintenance. Trees and vegetation, irrigation systems, fences, walls and other landscape elements shall be considered as elements and infrastructure of the development in the same manner as parking, building materials and other site details. The applicant, landowner or successors in interest shall be jointly and severally responsible for the regular maintenance of all landscaping elements in good condition. Required maintenance includes, but is not limited to, the following:
  - (a) Perform regular elimination of weeds, pruning, mowing to an appropriate height, deadheading, replacement of dead plant material, and replenishment of mulch surfaces.
  - (b) Maintain all landscaping free from disease, pests, weeds, and litter, and all landscape structures such as fences and walls shall be repaired and replaced periodically to maintain a structurally sound condition.
  - (c) Use best practices for integrated pest management to protect pollinators and other living organisms, as well as best practices for prioritizing water quality, that improve the health of landscapes and soils.
  - (d) Preserve and protect trees and the critical root zone (CRZ) designated for preservation. Preserving and protection includes but is not limited to avoiding damage to the tree and CRZ. Damaging actions include but are not limited to backing into a tree, excavating or trenching in the CRZ, storing heavy equipment on the CRZ, and overpruning.
    - (I) Damage to a tree or CRZ that interferes with the long-term health of the tree requires mitigation according to the Tree Mitigation Requirements under Subsection (G) of this Section.
    - (II) Naturally fallen trees or trees found to be a threat to public health, safety or welfare are exempt.
- (5) **Replacement.** Any landscape element that dies, or is otherwise removed, shall be promptly replaced based on the requirements of this Section.
- (6) **Mitigation**. Healthy, mature trees that are removed by the applicant or by anyone acting on behalf of or with the approval of the applicant shall be replaced per Subsection (F) to mitigate the loss of value of existing canopy. The applicant shall select either the City Forester or a qualified landscape appraiser to determine such

- loss based upon a fair market value appraisal of the removed tree, using the resources listed in Subsection (F) of this Section.
- (7) **Revegetation**. When the development causes any disturbance within any natural area buffer zone, revegetation shall occur as required in Subsection 5.6.1(E)(2) (Development Activities Within the Buffer Zone) and subsection 5.10.1(F) (Tree Preservation and Mitigation).
- (8) **Restricted Tree Species.** City Forestry Division shall provide a list of specified tree species that shall neither be planted within the LOD, nor in the adjoining street right-of-way. For example, no ash trees (Fraxinus species) shall be planted due to the anticipated impacts of the emerald ash borer.
- (9) **Prohibited Tree Species**. For prohibited species refer to Chapter 27, Article II, Division 1, Sec. 27-18 of the Fort Collins Municipal Code.
- (10) **Mulch**. In addition to the requirements under Subsection (D)(2)(f) of this Section, the following standards apply:
  - (a) Mulch for Trees. All trees must have organic mulch placed and replenished as needed at a depth of two (2) to four (4) inches for a minimum of a three (3) foot radius mulch ring or under a tree grate. This includes trees planted in rock cobble planting beds.
  - (b) Mulch for Other Landscaping. Mulch must be placed and replenished as needed to maintain complete coverage of the soil surface with a minimum depth of two (2) to four (4) inches of mulch. Mulch shall be maintained at these minimum depths in planting beds to conserve soil moisture and control weeds, with careful placement and adjustment of depth near plant stems as needed to allow unimpeded plant establishment and vigorous growth.
- (F) **Tree Preservation and Mitigation.** Existing significant trees (six (6) inches and greater in diameter) within the LOD and within NHBZs must be recorded in a tree inventory and preserved to the extent reasonably feasible and may help satisfy the landscaping requirements of this Section as set forth above. Such trees shall be considered "protected" trees within the meaning of this Section, subject to the exceptions contained in Subsection (F)(2) below. Streets, buildings and lot layouts shall be designed to minimize the disturbance to significant existing trees. All required landscape plans, demolition plans, grading plans, building plans, engineering plans, and utility plans shall accurately identify the locations, species, size and condition of all significant trees, each labeled showing the applicant's intent to either remove, transplant or protect.

Where the City determines it is not feasible to protect and retain significant existing tree(s) or to transplant them to another on-site location, the applicant shall replace such tree(s) according to the following requirements and shall satisfy the tree planting standards of this Subsection.

To the extent reasonably feasible, mitigation trees shall be planted on the development site or, if not reasonably feasible, in the closest available and suitable planting site on public or private property. The closest available and suitable planting site shall be selected within one-half (½) mile (2,640 feet) of the development site, subject to the following exceptions. If suitable planting sites for all the replacement trees are not available within one-half (1/2) mile (2,640 feet) of the development, then the City Forester shall determine the most suitable planting location within the City's boundaries as close to the development site as feasible. If locations for planting replacement trees cannot be located within one-half (1/2) mile of the development site, the applicant may, instead of planting such replacement trees, submit a payment in lieu to the City of Fort Collins Forestry Division to be used to plant replacement trees to plant replacement trees as close to the development site as possible. The fair market value payment in lieu mitigation fee per tree is determined by the City Forester using the current editions of the Council of Tree and Landscape Appraisers' Guide for Plant Appraisal, the industry's international standard and best practice and may be adjusted annually based on market rates. Payment must be submitted before a Development Construction Permit or other required permit or pre-construction approval is issued, as applicable.

- (1) Mitigation Trees. A significant tree that is removed shall be replaced with not less than one (1) nor more than six (6) replacement trees sufficient to mitigate the loss of contribution and value of the removed significant tree(s). The applicant shall coordinate with the City Forester to determine such loss based upon an onsite tree assessment, including, but not limited to, shade, canopy, condition, size, aesthetic, environmental and ecological value of the tree(s) to be removed. Mitigation trees shall meet the following minimum size requirements unless otherwise determined by the City Forester:
  - (a) Canopy Shade Trees: 2.0" caliper balled and burlap or equivalent.
  - (b) Ornamental Trees: 2.0" caliper balled and burlap or equivalent.
  - (c) Evergreen Trees: 8' height balled and burlap or equivalent.
- (2) **Exemptions.** Trees that meet one (1) or more of the following removal criteria shall be exempt from the requirements of this subsection unless they meet mitigation requirements in Section 5.6.1(E)(1) of this Code:
  - (a) Dead, dying or naturally fallen trees, or trees found to be a threat to public health, safety or welfare;
  - (b) Trees that are determined by the City to substantially obstruct clear visibility at driveways and intersections;
  - (c) Siberian elm less than eleven (11) inches diameter-at-breast-height (DBH) and Russian-olive or ash (*Fraxinus* species) less than eight (8) inches DBH;

- (d) Russian-olive, Siberian elm, and ash (all Fraxinus species) of wild or volunteer origin, such as those that have sprouted from seed along fence lines, near structures or in other unsuitable locations.
- (3) **Depiction of Street Trees.** All existing street trees that are located on City rights-of-way abutting the development shall be accurately identified by species, size, location, and condition on required landscape plans, and shall be preserved and protected in accordance with the standards of subsection (G).
- (G) Tree Protection Specifications. The following tree protection specifications shall be followed for all projects with protected existing trees. Tree protection methods shall be delineated on the demolition plans and development plans.
  - (1) No Disturbance. Within the drip line of any protected existing tree, there shall be no cut or fill over a four-inch depth unless a qualified arborist or forester has evaluated and approved the disturbance.
  - (2) **Pruning.** All protected existing trees shall be pruned to the City of Fort Collins Forestry Division standards.
  - (3) **Protective Barriers.** Prior to and during construction, barriers shall be erected around all protected existing trees with such barriers to be of orange construction or chain link fencing a minimum of four (4) feet in height, secured with metal T-posts, no closer than six (6) feet from the trunk or one-half (½) of the drip line, whichever is greater. Concrete blankets, or equivalent padding material, wrapped around the tree trunk(s) is recommended and adequate for added protection during construction. There shall be no storage or movement of equipment, material, debris or fill within the fenced tree protection zone.
  - (4) Chemicals and Harmful Materials. During the construction stage of development, the applicant shall prevent the cleaning of equipment or material or the storage and disposal of waste material such as paints, oils, solvents, asphalt, concrete, motor oil or any other material harmful to the life of a tree within the drip line of any protected tree or group of trees.
  - (5) **No Attachments.** No damaging attachment, wires, signs, or permits may be fastened to any protected tree.
  - (6) Ribboning Off. Large property areas containing protected trees and separated from construction or land clearing areas, road rights-of-way and utility easements may be "ribboned off," rather than erecting protective fencing around each tree as required in Subsection (G)(3) above. This may be accomplished by placing metal t-post stakes a maximum of fifty (50) feet apart and tying ribbon or rope from stake-to-stake along the outside perimeters of such areas being cleared.

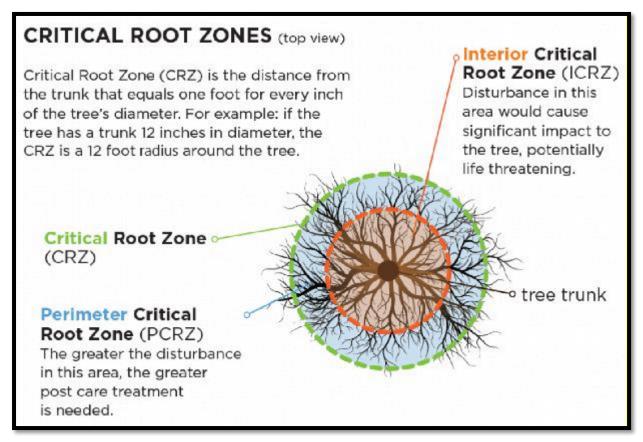
- (7) Soil Disturbances. Soil disturbances in proximity to trees must comply with the distances in Table 5.10.1-(6) below, Tree Diameter to Soil Disturbance Distance. Soil disturbances include, but are not limited to, soil loosening or amending, augering or boring, tunnelling, irrigation installation, or excavation within the critical root zone (CRZ). Soil loosening and amending shall be pursuant to City Code Section 12-132.
- (8) Underground Facilities Installations. The installation of utilities, irrigation lines or any underground fixture requiring excavation deeper than six (6) inches shall be accomplished by boring under the root system of protected existing trees at a minimum depth of twenty-four (24) inches and not directly under the trunks of trees. The auger distance is established from the face of the tree (outer bark) and is scaled from tree DBH as described in the chart below. Low pressure hydro excavation, air spading or hand digging are additional tools/practices that will help reduce impact to the tree(s) root system when excavating at depths of twenty-four (24) inches or less. Refer to the CRZ diagram, Figure 5.10.1-(3), for root protection guidelines. The CRZ shall be incorporated into and shown on development plans for all existing trees to be preserved.

Table 5.10.1-(6) – Tree Diameter to Soil Disturbance Distance Table

Tree Diameter at Breast Height (Inches)	0" to 9"	10" to 14"	15" to 19"	Over 19"	
Soil Disturbance Distance from Face of Tree* (Feet)	5 feet	10 feet	12 feet	15 feet	

\*The soil disturbance distance shall be measured from the edge of disturbance to the face of the tree.

Figure 5.10.1-(3) - Critical Root Zone Diagram.



- (9) Watering During Development. All existing trees within the plan must be watered using irrigation or hauled water sources throughout the duration of the development process and all development activities to sustain and improve tree health and survivability, under the following schedule: watered weekly at a minimum of forty (40) gallons per week March through October, and monthly at a minimum of forty (40) gallons per month November through April when temperatures are above forty degrees (40°).
- (H) **Irrigation**. Irrigation systems must be designed, operated, and maintained to prioritize water conservation and water efficiency. Systems should be designed to water deeply and infrequently to develop greater drought tolerance.
  - (1) **Automatic Irrigation.** Provision shall be made for permanent, automatic irrigation of all plant material, with the following exceptions:
    - (a) Plantings that do not require any irrigation beyond establishment. For such plantings, any new or existing automatic irrigation should not be routed to these plantings and should be established by tank watering or otherwise as noted on the landscape plan. Trees are not considered "plantings that do not require any irrigation beyond establishment."

- (b) Natural areas or other areas within a development where natural features onsite obviate the need for irrigation.
- (c) Trees and other plants used to landscape a residential local street parkway abutting lots for detached single-unit dwellings, where manual watering is intended.
- (d) Mitigation trees planted off-site where it may not be feasible to install dedicated irrigation for that singular purpose.
- (e) Landscaping adjacent to certain street frontage types, such as Storefront and Mixed Use, or within special taxing districts such that landscaping and irrigation may be the responsibility of an entity other than the individual property owner.
- (2) Irrigation Plan Specifications. For any development within the City, an irrigation plan as part of the landscape plan must be submitted to and approved by the Director, and by the Parks Department if a streetscape to be turned over to the City is involved, before a building permit is issued, or if no building permit is required, then before commencement of construction. Any major deviation from an approved irrigation plan, resulting from construction, requires an as-built amendment to the irrigation plan. As determined by the Director, minor redevelopment or change of use projects may not be required to submit an irrigation plan as part of the landscape plan. In such cases, a written statement shall be submitted describing the type of irrigation system proposed. The irrigation plan shall incorporate the City of Fort Collins Irrigation System Standards for Water Conservation set forth in this Subsection. The irrigation plan must include a water use table organized by irrigation zone for each irrigation tap, corresponding to the hydrozone plan view diagram and aligning with the water budget chart in the landscape plan (Subsection(D)(3) of this Section), and showing the total annual water use. The irrigation plan must also depict on the hydrozone plan view diagram in each watering area by hydrozone, the location/point of irrigation tap connections with the water system, the proposed peak gallons per minute and tap size for each tap, and the layout of irrigation main lines proposed. In addition, as provided below in Subsection (I) of this Section, the irrigation system must be inspected for compliance with the approved irrigation plan before the issuance of a Certificate of Occupancy.
- (3) **Irrigation System Standards for Water Conservation.** The City of Fort Collins Irrigation System Standards for Water Conservation are as follows:
  - (a) Irrigation Methods and Layout.
    - (I) The irrigation system shall be designed according to the hydrozones shown on the landscape plan and shall perform as provided in the water budget chart.

- (II) Each zone shall irrigate a landscape with similar site, soil conditions and plant material having similar water needs. To the extent reasonably feasible, areas with significantly different solar exposures shall be zoned separately.
- (III) Trees, including street trees, turf and non-turf areas shall be irrigated on separate zones. Dedicated non-overhead, surface or subsurface irrigation must be installed for all new trees and existing trees within the plan, except as provided in Subsection (H)(1) above.
- (IV) On steep grades, an irrigation method with a lower precipitation rate shall be used in order to minimize runoff, and, to the extent reasonably feasible, these areas shall be zoned separately.
- (V) No combination of drip, micro-sprays, sprayheads or rotors shall be used together or combined on the same zone.
- (VI) The irrigation method shall be selected to correlate with the plant density. Drip irrigation or bubblers shall be used for sparsely planted trees and shrubs, and rotors, sprayheads and multi-jet rotary nozzles shall be used for turfgrass.

# (b) Equipment Selection.

- (I) To reduce leakage of water from the irrigation system, a master shutoff valve shall be installed downstream of the backflow device to shut off water to the system when not operating.
- (II) For irrigation systems that are on a combined-use tap, with a water meter installed upstream to measure total water use, the installation of an irrigation-only submeter must be installed. The purpose of the submeter is to enable the owner and landscape maintenance contractor to monitor water use for irrigation. The submeter is not for billing purposes. The cost of installation and maintenance of a submeter, if used, would be borne by the owner of the property and not by the City. All such submeters would have to be installed in accordance with the specifications established by the City.
- (III) Irrigation controllers shall be "smart" controllers, using climate-based or soil moisture-based technology, selected from the WaterSense labeled irrigation controllers list issued by the United States Environmental Protection Agency from time-to-time and available at the City of Fort Collins Utilities Water Conservation Department.

Controllers shall be installed and programmed according to manufacturer's specifications.

- A data input chart for the Smart Controller, including the precipitation rate from the audit, shall be posted at each irrigation controller.
- b. Within six (6) weeks of the installation of new irrigated turf grass sod or seed, the irrigation schedule shall be reduced and set to a normal seasonal watering schedule.
- (IV) An evapotranspiration (ET) sensor or weather monitor shall be installed on each irrigation controller according to manufacturer's specifications in a location to receive accurate weather conditions.
- (V) Sprinklers and nozzles shall meet the following requirements:
  - a. The type of sprinkler and associated nozzles shall be selected to correlate with the size and geometry of the zone being irrigated.
  - b. Sprinklers shall be spaced no closer than seventy-five percent (75%) of the maximum radius of throw for the given sprinkler and nozzle. Maximum spacing shall be head-to-head coverage.
  - c. Coverage arcs and radius of throw for turf areas shall be selected and adjusted to water only turf areas and minimize overspray onto vegetated areas, hard surfaces, buildings, fences or other nonlandscaped surfaces.
  - d. Sprinklers, bubblers or emitters on a zone shall be of the same manufacturer.
  - e. Sprayheads in turf areas shall have a minimum three-and-one-half-inch pop-up riser height.
  - f. Sprayheads on a zone shall have matched precipitation nozzles. Variable Arc Nozzles (VAN) are not acceptable for ninety degree (90°), one hundred eighty degree (180°) and three hundred sixty degree (360°) applications. High-Efficiency Variable Arc Nozzles (HE-VAN) are acceptable only in odd-shaped areas where ninety degree (90°), one hundred eighty degree (180°) and three hundred sixty degree (360°) are not applicable.
  - g. Nozzles for rotors shall be selected to achieve an approximate uniform precipitation rate throughout the zone.

- h. All sprayheads and rotors shall be equipped with check valves. Sprayheads shall also have pressure-regulating stems.
- (VI) Pressure-compensating emitters shall be used for drip irrigation. For sloped areas, a check valve shall be installed, and the drip line shall be parallel to the slope.
- (VII) Remote control valves shall have flow control.
- (VIII) A backflow prevention assembly shall be installed in accordance with local codes. All backflow assemblies shall be equipped with adequately sized winterization ports downstream of the backflow assembly.
- (IX) Properties with single or combined point of connection flows of two hundred (200) gpm or greater shall have a control system capable of providing real-time flow monitoring and the ability to shut down the system in the event of a high-flow condition.

## (c) Sleeving.

- (I) Separate sleeves shall be installed beneath paved areas to route each run of irrigation pipe or wiring bundle. The diameter of sleeving shall be twice that of the pipe or wiring bundle.
- (II) The sleeving material beneath sidewalks, drives and streets shall be PVC Class 200 pipe with solvent welded joints.

#### (d) Water Pressure.

- (I) The irrigation system designer shall verify the existing available water pressure.
- (II) The irrigation system shall be designed such that the point-ofconnection design pressure, minus the possible system pressure losses, is greater than or equal to the design sprinkler operating pressure.
- (III) All pop-up spray sprinkler bodies equipped with spray nozzles shall operate at no less than twenty (20) psi and no more than thirty (30) psi.
- (IV) All rotary sprinklers and multi-stream rotary nozzles on pop-up spray bodies shall operate at the manufacturer's specified optimum performance pressure.

- (V) If the operating pressure exceeds the manufacturer's specified maximum operating pressure for any sprinkler body, pressure shall be regulated at the zone valve or sprinkler heads.
- (VI) Booster pumps shall be installed on systems where supply pressure does not meet the manufacturer's minimum recommended operating pressure for efficient water distribution.
- (e) Sprinkler Performance Audit.
  - (I) A sprinkler performance audit shall be performed by a landscape irrigation auditor who is independent of the installation contractor, and who is certified by the Irrigation Association (a nonprofit industry organization dedicated to promoting efficient irrigation). Sprinkler systems that are designed and installed without irrigated turf grass areas are exempt from this requirement.
  - (II) The audit shall include measurement of distribution uniformity. Minimum acceptable distribution uniformities shall be sixty percent (60%) for spray head zones and seventy percent (70%) for rotor zones. Sprinkler heads equipped with multi-stream rotary nozzles are considered rotors.
  - (III) Audit results below the minimum acceptable distribution uniformity as set for the Subsection (H)(3)(e)(II) above require adjustments and/or repairs to the irrigation system. These corrections will be noted on the irrigation as-builts and the test area re-audited until acceptable efficiency/results.
  - (IV) The audit shall measure the operating pressure for one (1) sprinkler on each zone to determine whether the zone meets the above pressure requirements.
  - (V) A copy of the sprinkler performance audit shall be submitted to and approved by the City before issuance of a certificate of occupancy.
- (I) Landscape and Irrigation Installation and Escrow. All landscaping and irrigation shall be installed according to sound horticultural practices in a manner designed to encourage quick establishment and healthy growth. Except as provided herein, no certificate of occupancy is authorized to be issued for any building on any portion of a property required by this Section to have a landscape plan, unless all landscaping has been installed and maintained according to an approved landscape plan for the property, all irrigation has been installed and maintained according to an approved irrigation plan for the property, and:

- (1) If such landscaping and irrigation installations have not been completed, a certificate of occupancy may be issued upon the receipt by the City of surety in the form of an acceptable bond, cash deposit, or equivalent conditioned on and guaranteeing the installation of the entire landscaping shown on the approved landscaping plan and the irrigation system shown on the approved irrigation plan or the installation pursuant to an approved phasing plan.
  - (a) The surety must be in the amount of one hundred twenty-five percent (125%) of the estimated cost of the landscaping installation, irrigation installation, or both as applicable, determined by an executed contract to install the landscaping, irrigation, or both, or by adequate appraisals of the cost.
  - (b) Any surety provided pursuant to this requirement shall be released upon an inspection by the City verifying installation is completed or certification issued by a landscape contractor not involved in the installation that the required landscaping program and irrigation system have been completed and maintained in accordance with the landscape plan.
- (2) For a non-potable system intended to be turned over to the Parks Department, the amount of the surety may be reduced after installation is completed, to twenty-five percent (25%) of the actual cost of such system, and the system must be warrantied and maintained for five (5) years. If the non-potable system fails, a potable tap shall be supplied at no cost to the City.
- (J) **Soil Loosening and Amendment.** For any development project, before installation of any plant materials, including but not limited to grass, seed, flowers, shrubs, or trees, the soil in the area to be planted shall be loosened and amended in a manner consistent with the requirements of City Code Section 12-132, regardless of whether a building permit is required for the specific lot, tract or parcel in which the area is located. A certification consistent with the requirements of City Code Section 12-133 shall be required for the area to be planted. A variance to modify the soil loosening standards of Section 12-132(b); the soil amendment standards of Section 12-132(c); or the compliance deadline of Section 12-133(a) may be applied for as set forth in City Code Section 12-134.
- (K) **Alternative Compliance**. Upon request by an applicant, the decision maker may approve an alternative landscape plan that may be substituted in whole or in part for a landscape plan meeting the standards of this Section.
  - (1) Procedure. Alternative landscape plans shall be prepared and submitted in accordance with submittal requirements for landscape plans. Each such plan shall clearly identify and discuss the modifications and alternatives proposed and the ways in which the plan will better accomplish the purposes of this Section than would a plan that complies with the standards of this Section.
  - (2) Review Criteria. Staff focused in the applicable area of forestry, landscape, or irrigation must provide a recommendation as to whether to approve an alternate plan. To approve an alternative plan with a staff recommendation, the decision maker must determine that the proposed alternative plan accomplishes the

purposes of this Section equally well or better than would a plan that complies with the standards of this Section.

Section 2. ARTICLE 7 RULES OF MEASUREMENT and DEFINITIONS, DIVISION 7.2 DEFINITION, SECTION 7.2.2 DEFINITIONS is hereby amended to read as follows:

. . .

#### **DIVISION 7.2 DEFINITION**

. . .

#### **SECTION 7.2.2. DEFINITIONS.**

. . .

Hydrozone shall mean an area within thea landscape defined by a groupingwhere a group of plants requiring a with similar amount of water to sustain health water needs is located. For details on how this is measured, refer to Subsection 5.10.1(D)(3). For the purposes of this Code, hydrozones are divided into the following four (4) categories:

- (A) Very low hydrozones include plantings that need supplemental water when first planted, but little or none once established.
- (B) Low hydrozones include plantings that generally do not require more than three (3) gallons per square foot of supplemental water per year. These plantings require additional water during plant establishment or drought.
- (C) Moderate hydrozones include plantings that generally require ten (10) gallons per square foot of supplemental water per year.
- (D) High hydrozones include plantings that generally require eighteen (18) gallons per square foot of supplemental water per year.

. . .

Invasive plant species shall mean a plant that is a noxious weed or listed as a watch list species according to Colorado Department of Agriculture or is a plant that is not native to the state and that:

(A) Is introduced into the state accidentally or intentionally;

- (B) Has no natural competitors or predators in the state because the state is outside of their competitors' or predators' range; and
- (C) Has harmful effects on the state's environment or economy or both.

. . .

Mulch, inorganic shall mean loose material not derived from living matter placed on the soil surface for the purposes of retaining soil moisture and controlling weeds, including gravel, crushed rock and river rock.

Mulch, organic shall mean loose material derived from formerly living sources placed on the soil surface for the purposes of retaining soil moisture and controlling weeds, including shredded bark and wood chips.

. . .

Native in context with vegetation, grass, or plant shall mean any plant identified in Fort Collins Native Plants: Plant Characteristics and Wildlife Value of Commercial Species, prepared by the City's Natural Resources Department, updated February 2003. a plant species that occurs or could occur naturally in Fort Collins or in Colorado without the direct or indirect influence of human actions.

. . .

Urban tree canopy shall mean the layer of leaves, branches, and stems of trees that cover the ground when viewed from above.

Introduced, considered favorably on first reading on January 21, 2025, and approved on second reading for final passage on February 4, 2025.

	Mayor	
ATTEST:		
City Clerk		

Effective Date: February 14, 2025 Approving Attorney: Heather N. Jarvis

#### Item 9.

AIS ATTACHMENT - REDLINED SECTION
5.10.1 Landscaping and Tree Protection
Amendments



# **ARTICLE 5**

# General Development and Site Design

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### **ARTICLE 5**

### General Development and Site Design

DIVISION 5.10 LANDSCAPING AND TREE PROTECTION

#### 5.10.1 LANDSCAPING AND TREE PROTECTION

- (A) **Applicability.** This Section shall apply applies to all developments that include landscaping, new or existing trees, or both landscaping and new or existing trees (except for development on existing lots for single- and two-unit detached dwellings and accessory dwelling units) within the designated "limits of development" ("LOD") and natural habitat buffer zones established according to Section 5.6.1 (Natural Habitats and Features).
- (B) **Purpose.** The intent of this Section is to require preparation of a landscape, and tree protection, and irrigation plan-plans (hereinafter "landscape plan") that ensure-demonstrates a comprehensive approach to landscaping that incorporates City plans for the appearance and function of the neighborhood or district, the development, buildings, and the pedestrian environment, while creating or maintaining a diverse significant canopy cover and using water efficiently is created, diversified and maintained so that all associated social and environmental benefits are maximized to the extent reasonably feasible. These benefits include reduced erosion and stormwater runoff, improved water conservation, air pollution mitigation, reduced glare and heat build-up, increased aesthetics, and improved continuity within and between developments. Trees planted in appropriate spaces also provide screening and may mitigate potential conflicts between activity areas and other site elements while enhancing outdoor spaces, all of which add to a more resilient urban forest.
- (C) **General Standard.** All developments to which this Section applies shall—must submit a landscape and tree protection plan, and, if receiving water service from the City, an irrigation plan, that incorporates City plans for the appearance and function of the development while creating or maintaining a diverse significant canopy cover and using water efficiently and that promotes reductions in outdoor water use by selecting low water plant materials, improving soil, and exploring non-potable irrigation sources. All landscaping, tree protection and planting, and irrigation must be installed according to approved landscape plans. For the Director or Director's designated staff focused in the applicable area of forestry, landscape, or irrigation to approve a landscape plan it must comply with the standards throughout this Section and must: (1) reinforces and extends any existing patterns of outdoor spaces and vegetation where practicable, (2) supports functional purposes such as spatial definition, visual screening, creation of privacy, management of microclimate or drainage, (3) enhances the appearance of the development and neighborhood, (4) protects significant trees, natural systems and habitat, (5) enhances the pedestrian environment, (6) identifies all landscape areas, (7) identifies all landscaping elements within each landscape area, and (8) meets or exceeds the standards of this Section.
  - (1) Protect existing trees and natural features;
  - (2) Provide a diverse and resilient tree canopy cover;
  - (3) Reinforce and extend existing patterns of outdoor spaces and vegetation;
  - (4) Enhance the pedestrian environment of the development and neighborhood;

- (5) Create visual interest year-round, complementing the architecture of a development and attracting attention to building entrances and other focal points;
- (6) Reinforce spatial definition of outdoor spaces and circulation patterns;
- (7) Screen areas of low visual interest or visually intrusive site elements;
- (8) Lend privacy where appropriate;
- (9) Promote compatibility and buffering between and among dissimilar land uses; and
- Ensure long term health of landscaping through best practices for maintenance and irrigation.

#### [NOTE: This heading for Subsection (D) was previously Subsection (E).]

(D) Landscape Standards Planning and Design. All development applications shall include Any landscape plans that required must meet at least the following minimum standards: in this Subsection.

#### [NOTE: This Subsection (D)(1) was previously Subsection (D).]

- (1) Tree PlantingStandards.
  - (a) **Purposes**. These standards are meant to All developments shall establish groves and belts of trees along all city streets, in and around parking lots, and in all landscape areas that are located within fifty (50) feet of any building or structure in order to establish at least a partial urban tree canopy in available and appropriate spaces. Urban tree canopies are used to define and connect spaces and corridors or other features along the street. All the following elements contribute to this. Useful urban tree canopy benefits include:
    - (I) Beautification;
    - (II) Reducing erosion and stormwater runoff;
    - (III) Mitigating air pollution;
    - (IV) Reducing glare and heat build-up;
    - (V) Aiding water conservation in irrigated landscaping;
    - (VI) Creating continuity within and between individual developments; The groves and belts may also be combined or interspersed
    - (VII) wWith other landscape areas in remaining portions of elements, screening and mitigating potential conflicts between activity areas and other site elements; the development to
    - (VIII) accommodateAccommodating views and functions such as active recreation and storm drainage;— and
      - (IX) Defining and enhancing outdoor spaces.
  - (b) Minimum Plantings/Description Tree Stocking Requirements. All developments must establish groupings of trees along all city streets, in and around parking lots, and in landscape areas shown in the landscape plan. These tree standards stocking requirements outline the required at least a minimum tree canopy and are in addition to requirements for preserving existing trees, parking lot landscape requirements and required tree mitigation. These stocking requirements but are not intended to limit additional tree plantings in any remaining portions of the development. Groves and belts of trees shall be rRequired as followstree stocking comprises:
    - (I) pParking lot landscaping in accordance with the parking lot landscaping standards as set forth in this Section and in Section 5.9.1, Access, Circulation and Parking;

- (II) sStreet tree planting in accordance with the Larimer County Urban Area Street

  Standards or otherand the street tree planting as defined in sSubsection-(2)(b) or
  (c) (D)(1)(e) below;
- (III) "full tTree stocking" shall be required planting in all landscape areas within fifty (50)sixty-five (65) feet of any building or structure as further described below. Landscape areas shall be provided in adequate numbers, locations and dimensions to allow full tree stocking to occur along all areas of high use or high visibility sides of any building or structure. Such landscape areas shall extend at least seven (7) feet from any building or structure wall and contain at least fifty-five (55) square feet of nonpaved ground area; except that any
- (IV) planting cutouts in walkways shall contain at least sixteen (16) square feet.

  Planting cutouts, planters, or other landscape areas for tree planting shall be provided within any walkway that is twelve (12)ten (10) feet or greater in width adjoining a vehicle use area that is not covered with an overhead fixture or canopy that would prevent growth and maturity. Any tree planting cutouts in walkways must be at least thirty-two (32) square feet, except in the Downtown District where tree cutouts shall mimic or exceed existing design or character to adjacent Street Frontage Types as provided in Section 2.4.1;
- (V) Full tree stocking under this Subsection (D)(1)(b) shall mean formal or informal groupings of trees planted according to the following spacing dimensions depending on species and desired degree of shading of the ground plane:

Table 5.10.1-(1) – Spacing

Tree Type	Minimum/Maximum Spacing
Canopy shade trees	30'—40' spacing
Coniferous evergreens	20'—40' spacing
Ornamental trees	20'—40' spacing

- (VI) Exact tree locations and spacings may be adjusted at the option of the applicant to support patterns of use, views and circulation as long as the minimum tree planting stocking requirement under this Subsection (D)(1)(b) and the minimum species diversity requirement under Subsection (D)(1)(c) is are met; and
- (VII) Canopy shade trees shall must constitute at least fifty—(50) percent (50%) of all tree plantings. Trees required in subparagraphsSubsections (a) or (b) (D)(1)(b)(I) or (II) above may be used to contribute to this standard. If additional trees beyond the minimum tree stocking and mitigation requirements under this Section are planted, the additional trees must meet the minimum species diversity requirement but are not subject to the fifty percent (50%) canopy shade requirement.

#### [NOTE: This Subsection(D)(1)(c) was previously (D)(3).]

(c) **Minimum Tree Species Diversity**. To prevent uniform insect or disease susceptibility and eventual uniform senescence on a development site within a landscape planned area or in the adjacent area or the district, species diversity is required, and extensive monocultures are

prohibited. No more than three (3) consecutive trees of the same cultivar or variety may be planted in a row, including corners and groupings. The following minimum requirements shall apply to any development landscape plan.

Table 5.10.1-(2) - Species Diversity Table

Number of trees on site	Maximum percentage of any one species
10—19	<del>50%<mark>40%</mark></del>
20—39	33% <mark>30%</mark>
40—59	<del>25%</del> 20%
60 or more	<del>15%</del> 10%

#### [NOTE: This Subsection (D)(1)(d) was previously (D)(4).]

- (d) **Tree Species and Minimum Sizes**. The City Forester shall provide a recommended list of trees<del>, which shall be</del> that are acceptable to satisfy the requirements for landscape plans, including approved canopy shade trees that may be used as street trees.
  - (I) **Minimum Size.** The following minimum sizes shall be required (except as provided in subparagraph (5) Subsection (D)(1)(d)(II) below):

Table 5.10.1-(3) - Minimum Size Table

Type	Minimum Size
Canopy Shade Tree	2.0" caliper balled and burlapped or equivalent
Evergreen Tree	6.0' height balled and burlapped or equivalent
Ornamental Tree	1.5" caliper balled and burlapped or equivalent
	5 gallon or adequate size consistent with design
	intent or 1 gallon may be permitted if planting within the Critical Root Zone of existing trees

Any tree plantings that are in addition to those that are made as part of the approved landscape plan are exempt from the foregoing size requirements.

(II) Reduced Minimum Sizes for Affordable Housing Projects. In any affordable housing project, the following minimum sizes shall be required:

Table 5.10.1-(4) - Affordable Housing Minimum Tree Size Table

Туре	Minimum Size
Canopy Shade Tree	1.0" caliper container or equivalent
Evergreen Tree	4.0' height container or equivalent
Ornamental Tree	1.0" caliper container or equivalent
Shrubs	1 gallon
Canopy Shade Tree as a street tree on a Local or Collector street only	1.25" caliper container or equivalent

#### [NOTE: This Subsection (D)(1)(e) was previously D(2).]

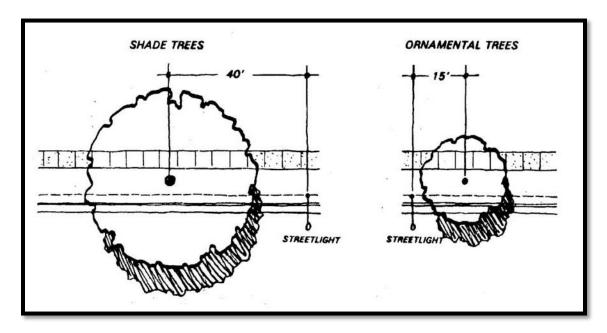
- (e) **Street Trees**. Planting of street trees shall occur in the adjoining street right-of-way, after first obtaining a street tree permit (free of charge) from the Forestry Division as stated in Fort Collins Municipal Code Article 3, Section 27-31. eExcept as described in subparagraph Subsection (D)(1)(e)(bII) below, the street tree plantings in connection with the development by one (1) or more of the methods shall occur as described in subparagraphs Subsections (D)(1)(e)(aI) through (dV) below:
  - (I) Wherever the sidewalk is separated from the street by a parkway, canopy shade trees shall be planted at thirty-foot to forty-foot spacing (averaged along the entire front and sides of the block face) in the center of all such parkway areas. If two (2) or more consecutive residential lots along a street each measure between forty (40) and sixty (60) feet in street frontage width, one (1) tree per lot may be substituted for the thirty-foot to forty-foot spacing requirement. Such street trees shall be placed at least eight (8) four (4) feet away from the edges of driveways and alleys, and forty (40) feet away from any streetlight and to the extent reasonably feasible, be positioned at evenly spaced intervals and separated from streetlights and utilities lines as required in Subsection (D)(1)(f) below.
  - (II) Wherever the sidewalk is attached to the street in a non-standard way or in a manner that fails to comply with the *Larimer County Urban Area Street Standards*, canopy shade trees shall be established in an area ranging from three (3) to seven (7) feet behind the sidewalk at the spacing intervals as required in subsection (a) (D)(1)(e)(I) above. Wherever the sidewalk is attached to the street and is ten (10) feet or more in width, or extends from the curb to the property line, canopy shade trees shall be established in planting cutout areas of at least sixteen (16)thirty-two (32) square feet at thirty-foot to forty-foot spacing, except in the Downtown District where tree cutouts shall mimic or exceed existing design or character to adjacent Street Frontage Types as provided in Section 2.4.1.
  - (III) Ornamental trees shall be planted in substitution for the required canopy shade trees required in subsection (D)(2)(a) and (b) above where overhead lines, and fixtures, and underground utilities may prevent normal growth and maturity. Ornamental trees shall be placed at least fifteen (15) feet away from any streetlight as required in Subsection (D)(1)(f) below.
  - (IV) Wherever existing ash trees (Fraxinus species) are in the adjoining street right-of-way, the applicant shall must coordinate and obtain an onsite analysis with the City Forester to determine replacement canopy shade trees either through shadow planting or other emerald ash borer mitigation methods. The City Forester is available also to recommend shadow planting or emerald ash borer mitigation methods for existing ash trees on private property.
  - (V) In any multi-phase development plan, all street trees per phase must be planted at once rather than on a lot by lot over time to the maximum extent feasible; and such planting may only occur after the irrigation is functioning and right-of-way turfgrass, if present, is established. The City Forester, through conversations with

the landscape contractor and applicant, makes the final decision as to what timing is feasible. Street trees must only be planted during shoulder seasons, March through June, and September through November, to avoid the hottest and coldest periods of the year.

#### [NOTE This Subsection (D)(1)(f) was previously Subsection (K).]

- (f) **Utilities and Traffic.** Landscape, utility and traffic plans shall be coordinated. The following list sets forth mMinimum dimension requirements for the most common tree/utility and traffic control device separations are shown below. Exceptions to these requirements may occur, as approved by the Director, where utilities or traffic control devices are not located in their standard designated locations, as approved by the Director. Tree/utility and traffic control device separations shall not be used as a means of avoiding the planting of required street trees. Required separations are:
  - (I) Forty (40) feet between shade trees and streetlights. Fifteen (15) feet between ornamental trees and streetlights. (See Figure 35.10.1-(1).)

Figure 35.10.1-(1) – Tree/Streetlight Separations



- (II) Twenty (20) feet between shade and/or ornamental trees and traffic control signs and devices.
- (III) Ten (10) feet between trees and water or sewer mains.
- (IV) Six (6) feet between trees and water or sewer service lines.
- (V) Four (4) feet between trees and gas lines.

(VI) Street trees on local streets planted within the eight-foot-widestandard abutting utility easement may conflict with utilities. Additional conduit may be required to protect underground electric lines.

#### [NOTE: This Subsection (D)(2) was previously (E)(2).]

- (2) Landscape Area Treatment. Landscape areas shall include all areas on the site, including entryways, that are not covered by buildings, structures, paving, or impervious surface, or other outdoor areas including play areas, plaza spaces, patios, and the like. Landscape areas shall consist only of landscaping, which includes any combination of living plants, and may include built features such as fences, benches, works of art, reflective pools, fountains, or the like. Landscaping shall also include irrigation systems, mulches, topsoil, soil preparation, revegetation, and the preservation, protection, and replacement of existing trees. The selection and location of turf, ground cover (including shrubs, grasses, perennials, flowerbeds and slope retention), and pedestrian paving and other landscaping elements shall be used to prevent erosion and meet the functional and visual purposes such as defining spaces, accommodating and directing circulation patterns, managing visibility, attracting attention to building entrances and other focal points, and visually integrating buildings with the landscape area and with each other.
  - (a) **Coverage**. Not counting trees, more than 50% of a landscape area must be covered with living plants at maturity. The Director may approve an exception to this requirement if a determination is made that an area is too small for living landscape material and for irrigation to be reasonably feasible.
  - (b) **Grouping and Placement**. A landscape plan must group landscape materials based upon hydrozone and irrigated accordingly (as described under Subsection(D)(3) of this Section and based on light (e.g. full sun, shade, partial sun) requirements.
  - (c) **Irrigated Turf grass**. Irrigated turf grass areas may only be planted according to planned use. Any landscape plan that includes irrigated turf grass must indicate the intended use of all turf grass areas.
    - (I) Irrigated turf grass with a high water requirement may only be planted according to planned use, only in areas or spaces used for recreation or for civic or community purposes. Such purposes may include playgrounds, sports fields or other athletics programming, picnic grounds, amphitheaters, portions of parks, and playing areas of golf courses. Such purposes do not include, and irrigated turfgrass with a high water requirement must not be planted in, parking lots or medians. Irrigated turf grass with a high water requirement may only be planted for recreation, civic or community purposes and is limited to High-use-areas shall be planted with irrigated turf grass of heavy foot traffic. Irrigated turf grass with a high water requirement refers to high- or moderate-hydrozone sod forming grasses including species such as Poa pratensis (Kentucky bluegrass), and turftype tall fescue (Festuca arundinacea) and their varieties and cultivars. See the hydrozone table (Table 5.10.1-(5)) at Subsection (D)(3) of this Section for descriptions of hydrozones. Nonirrigated shortgrass prairie grasses or other adapted grasses that have been certified as Xeriscape landscaping may be established in remote, low-use, low visibility areas.

- (II) Irrigated turf grass shall not be installed in contiguous areas smaller than seventyfive (75) square feet to avoid water waste that occurs through overspray on small areas.
- (III) Irrigated turf grass species with a low water requirement may be located on a site as appropriate for the species and planned activity. Well-maintained irrigated turf grass with a low or very-low water requirement according to hydrozones in Table 5.10.1-(5) at Subsection (D)(3) of this Section or the *City of Fort Collins Plant List* and that also does not meet the definition of "turf" set forth in C.R.S. 37-60-135(2)(i) and well-maintained regionally adapted or native grass species are not subject to the irrigated turf grass limits in Subsection (D)(2)(c)(I) of this Section.
- (d) **Artificial Turf and Plants**. No artificial turf or artificial plants may be included in any landscape plan or installed. The Director may approve an exception to allow artificial turf to be installed on an athletic field of play if the installation is not prohibited under C.R.S. 37-99-103 and if the Director determines the use is appropriate, the use does not add pollutants that could cause environmental impairment, and alternatives are not reasonable. Any exception to allow artificial turf must be noted in the landscape plan.
- (e) **Ecologically Sensitive Areas**. Non-native plants must not be planted near ecologically sensitive areas, such as natural habitat buffer zones (NHBZs) and natural areas, if the species or variety is deemed by the Director to be likely to spread into that sensitive area.
- (f) Mulched Planting bBeds.
  - (I) Shrub and ground cover planting beds shall be separated from irrigated turf grass with a high water requirement by with edging or other physical divider or a commitment on the landscape plan to maintain a shovel-cut edge to define the space that is being maintained. and
  - (II) Shrub and ground cover planting beds shall have the majority of exposed soil areas covered with mulch.
  - (III) Mulch must be organic or inorganic mulch. To the extent that any inorganic mulch is used, the total coverage area of inorganic mulch must not exceed fifty percent (50%) of the total landscape areas. Mulching around trees is excluded from this fifty percent (50%) calculation.
  - (IV) Synthetic-based inorganic mulches, including plastic- or rubber-based mulches are not permitted.
- (g) **Foundation Plantings**. Exposed sections of building walls that are in high-use or high-visibility areas of the building exterior shall have planting beds at least five (5)seven (7) feet wide placed directly along at least fifty (50) percent of such walls, except:
  - (I) wWhere pedestrian paving abuts a commercial building with trees and/or other landscaping in cutouts or planting beds along the outer portion of the pedestrian space away from the building;

(II) Where exceptional situations unique to the development hinder the applicant's ability to comply with fire code or building code requirements while also adhering to a strict application of this standard.

#### [NOTE: This Subsection (D)(2)(h) was previously (E)(1).]

- (h) Buffering Between Incompatible Uses and Activities. In situations where the Director determines that the arrangement of uses or design of buildings does not adequately mitigate conflicts reasonably anticipated to exist between dissimilar uses, site elements or building designs, one (1) or more of the following landscape buffering techniques shall be used to mitigate the conflicts:
  - (I) Separation and screening with plant material: planting dense stands of evergreen trees, canopy shade trees, ornamental trees or shrubs;
  - (II) Integration with plantings: incorporating trees, vines, planters or other plantings into the architectural theme of buildings and their outdoor spaces to subdue differences in architecture and bulk and avoid harsh edges;
  - (III) Establishing privacy: establishing vertical landscape elements to screen views into or between windows and defined outdoor spaces where privacy is important, such as where larger buildings are proposed next to side or rear yards of smaller buildings;
  - (IV) Visual integration of fences or walls: providing plant material in conjunction with a screen panel, arbor, garden wall, privacy fence or security fence to avoid the visual effect created by unattractive screening or security fences; and/or
  - (V) Landform shaping: utilizing berming or other grade changes to alter views, subdue sound, change the sense of proximity and channel pedestrian movement.
- (i) **Street Parkways, Rights-of-Way, Transportation Corridors**. All adjoining street parkways, street rights-of-way, and transportation corridors must shall be landscaped in connection with the development in accordance with the *Larimer County Urban Area Street Standards* and in accordance with state law, including C.R.S. 37-99-103.
- (j) **Slopes**. Retaining walls, slope revetment or other acceptable devices integrated with plantings shall be used to stabilize slopes that are steeper than 3:1. If structural soil tests performed on the subject soils indicate steeper slopes are stable without the above required protection, then the maximum slope allowed without the above required protection may be increased to the maximum stated in the soils report or 2:1, whichever is less steep.

#### [NOTE: This Subsection (D)(2)(k) was previously Subsection (L).]

(k) Visual Clearance or Sight Distance Triangle. Except as provided in Subparagraphs (1) and (2) Subsections (D)(2)(k)(I) and (II) below, a visual clearance triangle, free of any structures or landscape elements over twenty-four (24) inches in height, shall be maintained at street intersections and driveways in conformance with the standards contained in the Larimer County Urban Area Street Standards.

- (I) Fences shall not exceed forty-two (42) inches in height and shall be of an open design.
- (II) Deciduous trees may be permitted to encroach into the clearance triangle provided that the lowest branch of any such tree shall be at least six (6) feet from grade.

#### (I) Exceptions.

- (I) Agricultural Use. If outdoor space is maintained in active agricultural use, the landscape surfaces and ground cover standards above shall not apply.
- (II) Streetscapes attached to a property are subject to *Larimer County Urban Area*Street Standards and are not considered as part of the total landscape area of a property for computing percentages under the standards in this Subsection.
- (III) All streetscapes intended to be turned over to the Parks Department after development must conform to Parks Department standards. Landscaping plans must also be reviewed and approved by the Parks Department before approval, regardless of the water district.

### [NOTE: All of this Subsection below was distributed among the other Subsections within this Section.]

Water Conservation. Landscape plans shall be designed to incorporate water efficient techniques.

- (m)-Landscape designs shall be designed according to the xeriscape landscaping principles described as follows:
  - (I)—Plan and design. Plan for how people will use and interact with the landscape. Group landscape materials accordingly based upon hydrozone.
  - (II) Landscape arrangement. Provide a cohesive arrangement of turf, plants, mulch, boulders and other landscape elements that support the criteria in Section 5.

    10.1(H).Landscape elements shall be arranged to provide appropriate plant spacing and grouping and to avoid a disproportionate and excessive use of mulch areas.
  - (III) Appropriate use of turf. Limit high water use turf to high-traffic areas where turf is functional and utilized.
  - (IV) Appropriate plant selection. Selected plants shall be well-adapted to the Fort Collins climate and site conditions. Plants shall be grouped according to water and light requirements.
  - (V) Efficient irrigation. Design, operate and maintain an efficient irrigation system. Select equipment appropriate to the hydrozone. Water deeply and infrequently to develop greater drought tolerance.

- (VI)—Soil preparation. Incorporate soil amendments appropriate to the soil and the plant material. Soil preparation must be in accordance with City of Fort Collins Municipal Code 3..2.1.
- (VII) Mulch. Maintain a minimum depth of three inches of mulch in planting beds to conserve soil moisture and control weeds, with careful placement and adjustment of depth near plant stems as needed to allow unimpeded plant establishment and vigorous growth.
- (VIII) Maintenance. Provide regular maintenance including but not limited to weeding, pruning, mowing to an appropriate height, deadheading, replacement of dead plant material, and replenishment of mulch surfaces.
- (IX) Xeriscape principles do not include or allow artificial turf or plants; paving of areas not used for walkways, patios or parking; excessive bare ground or mulch; weed infestations; or any landscaping that does not comply with the standards of this section.

#### [NOTE: This Subsection (D)(3) was previously (E)(3)(b).]

- (3) Water Budget and Hydrozones. Landscape plans shall include must also contain estimated water use, including:
  - (a) Maximum Not to Exceed. A water budget chart that shows the total annual water use, which shall Total annual water use once landscaping is established must not exceed an average of fifteen (15)eleven (11) gallons/square foot/year for each water tap.
  - (b) **Hydrozones.** A hydrozone plan view diagram that identifies each hydrozone category assigned per planted area and that sums the total area of each category per hydrozone. The hydrozone plan view diagram shall provide an accurate and clear visual identification of all hydrozones using easily distinguished symbols, labeling, hatch patterns, and relationships of hydrozone plan elements.

Accurate and clear identification of all applicable hydrozones are defined in Section 7.2.2 and according to using the following categories:

Table 5.10.1-(5) – Hydrozones

HYDROZONE	WATER CONSUMPTION PER YEAR
High Hydrozone	18 gallons/square feet/year
Moderate Hydrozone	14 gallons/square feet/year
Low Hydrozone	8 gallons/square feet/year
Very Low Hydrozone	3 gallons/square feet/year

#### [NOTE: This Subsection (D)(4) was previously (E)(4).]

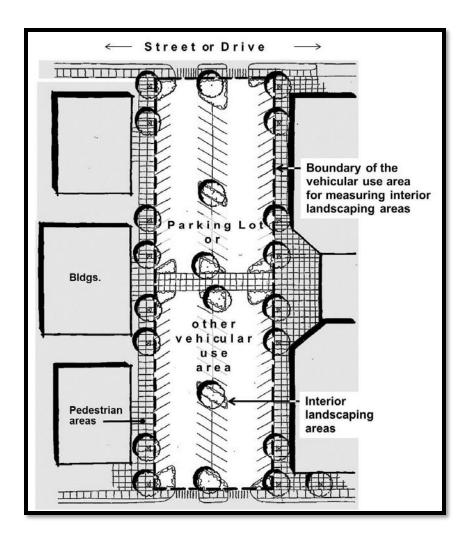
(4) **Parking Lot Perimeter Landscaping**. Parking lot perimeter landscaping (in the minimum setback areas required by Section 5.9.1(J)(Access, Circulation and Parking) and irrigation shall meet the following minimum standards in addition to the other requirements in this Section:

- (a) Trees shall be provided at a ratio of one (1) tree per twenty-five (25) lineal feet along a public street and one (1) tree per forty (40) lineal feet along a side lot line parking setback area. Trees may be spaced irregularly in informal groupings or be uniformly spaced, as consistent with larger overall planting patterns and organization. Perimeter landscaping along a street may be located in and should be integrated with the streetscape in the street right-of-way.
- (b) Screening. Parking lots with six (6) or more spaces shall be screened from abutting uses and from the street. Screening from residential uses shall consist of a fence or wall six (6) feet in height in combination with plant material and of sufficient opacity to block at least seventy-five (75) percent (75%) of light from vehicle headlights for the entire length of the parking lot. Screening from the street and all nonresidential uses shall consist of a wall, fence, planter, earthen berm, plant material or a combination of such elements, each of which shall have a minimum height of thirty (30) inches. Such screening shall extend a minimum of seventy (70) percent (70%) of the length of the street frontage of the parking lot and also seventy (70) percent (70%) of the length of any boundary of the parking lot that abuts any nonresidential use. Openings in the required screening shall be permitted for such features as access ways or drainage ways. Where screening from the street is required, plans submitted for review shall include a graphic depiction of the parking lot screening as seen from the street. Plant material used for the required screening shall achieve required opacity in its winter seasonal condition within three (3) years of construction of the vehicular use area to be screened.

#### [NOTE: This Subsection (D)(5) was previously (E)(5).]

- (5) **Parking Lot Interior Landscaping.** Six (6)-percent (6%) of the interior space of all parking lots with less than one hundred (100) spaces, and ten (10)-percent (10%) of the interior space of all parking lots with one hundred (100) spaces or more shall be landscape areas. (See Figure ±5.10.1-(2)). All parking lot islands, connecting walkways through parking lots and driveways through or to parking lots shall be landscaped and irrigated according to the following standards in addition to the other requirements in this Section:
  - (a) **Visibility**. To avoid landscape material blocking driver sight distance at driveway-street intersections, no plant material greater than twenty-four (24) inches in height shall be located within fifteen (15) feet of a curb cut. This requirement does not apply to trees, for which visibility requirements are provided in Subsection (D)(2)(k)(II) of this Section.
  - (b) Maximized Area of Shading. Landscaped islands shall be evenly distributed to the maximum extent feasible. At a minimum, trees shall be planted at a ratio of at least one (1) canopy shade tree per one hundred fifty (150) square feet of internal landscaped area with a landscaped surface of turf, ground cover perennials or mulched shrub plantingslive plants with mulch, as appropriate.
  - (c) Landscaped Islands. In addition to any pedestrian refuge areas, each landscaped island shall include one (1) or more canopy shade trees, be of length greater than eight (8) feet in its smallest dimension, include at least eighty (80) square feet of ground area per tree to allow for root aeration, and have raised concrete curbs.

Figure <del>15.10.1-(2)</del> – Interior Landscaping for Vehicular Use Areas:



- (d) **Walkways and Driveways**. Connecting wWalkways through parking lots, as required in subsection 5.9.1(C)(5)(a) (Walkways), shall have one (1) canopy shade tree per forty (40) lineal feet of such walkway planted in landscape areas within five (5) feet of such walkway. Driveways through or to parking lots shall have one (1) canopy shade tree per forty (40) lineal feet of and along each side of such driveway, in landscape areas within five (5) feet of such driveway.
- (e) **Parking bB**ays shall extend no more than fifteen (15) parking spaces without an intervening tree, landscape island or landscape peninsula.
- (f) **Engineering**. Detailed specifications concerning parking lot surfacing material and parking lot drainage detention are available from the City Engineer.
- (6) **Screening.** Landscape and building elements shall be used to screen areas of low visual interest or visually intrusive site elements (such as trash collection, open storage, service areas, loading docks and blank walls) from off-site view. Such screening shall be established on all sides of such elements except where an opening is required for access. If access is possible only on a side that is visible from a public street, a removable or operable screen shall be required. The screen shall be designed and established so that the area or element being screened is no more than twenty (20) percent (20%) visible through the screen.

Screening Materials. Required screening shall be provided in the form of new or existing plantings, walls, fences, screen panels, topographic changes, buildings, horizontal separation or a combination of these techniques.

(7) Landscaping of Vehicle Display Lots. Vehicle display lots for vehicle sales and leasing (as those terms are defined in Article 7) that abut an arterial or collector street shall feature landscaped islands along the street at an interval not to exceed every fifteen (15) vehicles or one hundred thirty-five (135) feet, whichever is less. Each landscaped island shall comply with the requirements of 5.10.1(E)(5)(c).

#### [NOTE: This Subsection (E) was previously Subsection (I).]

- (E) Landscape Materials, Maintenance and Replacement.
  - (1) **Topsoil Soil Preparation.** To the maximum extent feasible, topsoil that is removed during construction activity shall be conserved for later use on areas requiring revegetation and landscaping. Organic sSoil amendments shall also be incorporated as appropriate to the existing soil and the proposed plant material and in accordance with the requirements of Section 5.5.5 Subsection (K) of this Section.
  - (2) **Plant Materials**. Plant material shall be selected from the *City of Fort Collins Plant List*-created maintained by Fort Collins Utilities Customer Connections Department and adopted by the Director. The *Plant List* contains plants determined by local resources to be appropriate for local conditions. The Director may approve plants not included on the list upon a determination that such plants are well suited for the local climate.
    - (a) No invasive plant species may be included in a landscape plan or installed in a development.
    - (b) A landscape plan proposing a plants that is not included on the *Plant IList* may be approved by applicable decision-making staff if the applicant verifies on the landscape plan that the plant is well adapted to the Fort Collins upon a determination that such plants are well suited for the local climate and site conditions and is not a noxious weed according to Colorado Department of Agriculture or a weed under City Code Section 20-41.
  - (3) **Plant Quality.** All plants shall be A-Grade or No. 1 Grade, free of any defects, of normal health, height, leaf density and spread appropriate to the species as defined by the latest version of the *American Association of Nurserymen standards Standard for Nursery Stock*.

#### [NOTE: The previous Subsection (E)(4) that existed here was moved into its own Subsection (I).]

(4) **Maintenance**. Trees and vegetation, irrigation systems, fences, walls and other landscape elements shall be considered as elements and infrastructure of the project development in the same manner as parking, building materials and other site details. The applicant, landowner or successors in interest shall be jointly and severally responsible for the regular maintenance of all landscaping elements in good condition. Required maintenance includes, but is not limited to, the following:

- (a) Perform regular elimination of weeds, pruning, mowing to an appropriate height, deadheading, replacement of dead plant material, and replenishment of mulch surfaces.
- (b) Maintain Aall landscaping shall be maintained free from disease, pests, weeds, and litter, and all landscape structures such as fences and walls shall be repaired and replaced periodically to maintain a structurally sound condition.
- (c) Use best practices for integrated pest management to protect pollinators and other living organisms, as well as best practices for prioritizing water quality, that improve the health of landscapes and soils.
- (d) Preserve and protect trees and the critical root zone (CRZ) designated for preservation. Preserving and protection includes but is not limited to avoiding damage to the tree and CRZ. Damaging actions include but are not limited to backing into a tree, excavating or trenching in the CRZ, storing heavy equipment on the CRZ, and overpruning.
  - (I) Damage to a tree or CRZ that interferes with the long-term health of the tree requires mitigation according to the Tree Mitigation Requirements under Subsection (G) of this Section.
  - (II) Naturally fallen trees or trees found to be a threat to public health, safety or welfare are exempt.
- (5) **Replacement.** Any landscape element that dies, or is otherwise removed, shall be promptly replaced based on the requirements of this Section.
- (6) **Mitigation**. Healthy, mature trees that are removed by the applicant or by anyone acting on behalf of or with the approval of the applicant shall be replaced per Subsection (F) with not less than one (1) or more than six (6) replacement trees sufficient to mitigate the loss of value of the removed tree existing canopy. The applicant shall select either the City Forester or a qualified landscape appraiser to determine such loss based upon ana fair market value appraisal of the removed tree, using the most recent published methods established by the Council of Tree and Landscape Appraisers. Larger than minimum sizes (as set forth in subsection (D)(1) above) shall be required for such replacement trees resources listed in Subsection (F) of this Section.

#### [NOTE: This Subsection (E)(7) was previously Subsection (M).]

- (7) **Revegetation**. When the development causes any disturbance within any natural area buffer zone, revegetation shall occur as required in paragraphSubsection 5.6.1(E)(2) (Development Activities Within the Buffer Zone) and subsection 5.10.1(F) (Tree Preservation and Mitigation).
- (8) Restricted Tree Species. City Forestry Division shall provide a list of specified tree species that shall not-neither be planted within the limits of development and LOD, nor in the adjoining street right-of-way. For example, no ash trees (Fraxinus species) shall be planted due to the anticipated impacts of the emerald ash borer.
- (9) **Prohibited Tree sSpecies**. For prohibited species reference to Chapter 27, Article II, Division 1, Sec. 27-18 of the Fort Collins Municipal Code.

- (10) Mulch. In addition to the requirements under Subsection (D)(2)(f) of this Section, the following standards apply:
  - (a) Mulch for Trees. All trees must have organic mulch placed and replenished as needed at a depth of two (2) to four (4) inches for a minimum of a three (3) foot radius mulch ring or under a tree grate. This includes trees planted in rock cobble planting beds.
  - (b) Mulch for Other Landscaping. Mulch must be placed and replenished as needed to Amaintain complete coverage of the soil surface with a minimum depth of three-two (2) to four (4) inches of mulch. Mulch shall be maintained at these minimum depths in planting beds to conserve soil moisture and control weeds, with careful placement and adjustment of depth near plant stems as needed to allow unimpeded plant establishment and vigorous growth.

#### [NOTE: This Subsection (F) has remained Subsection (F).]

(F) **Tree Preservation and Mitigation.** Existing significant trees (six (6) inches and greater in diameter) within the LOD and within natural habitat buffer zones NHBZs shall must be recorded in a tree inventory and preserved to the extent reasonably feasible and may help satisfy the landscaping requirements of this Section as set forth above. Such trees shall be considered "protected" trees within the meaning of this Section, subject to the exceptions contained in sSubsection (F)(2) below. Streets, buildings and lot layouts shall be designed to minimize the disturbance to significant existing trees. All required landscape plans, demolition plans, grading plans, building plans, engineering plans, and utility plans shall accurately identify the locations, species, size and condition of all significant trees, each labeled showing the applicant's intent to either remove, transplant or protect.

Where the City determines it is not feasible to protect and retain significant existing tree(s) or to transplant them to another on-site location, the applicant shall replace such tree(s) according to the following requirements and shall satisfy the tree planting standards of this SectionSubsection.

To the extent reasonably feasible, replacement-mitigation trees shall be planted on the development site or, if not reasonably feasible, in the closest available and suitable planting site on public or private property. The closest available and suitable planting site shall be selected within one-half (½) mile (2,640 feet) of the development site, subject to the following exceptions. If suitable planting sites for all of-the replacement trees are not available within one-half (½) mile (2,640 feet) of the development, then the City Forester shall determine the most suitable planting location within the City's boundaries as close to the development site as feasible. If locations for planting replacement trees cannot be located within one-half (½) mile of the development site, the applicant may, instead of planting such replacement trees, submit a payment in lieu to the City of Fort Collins Forestry Division to be used to plant replacement trees to plant replacement trees as close to the development site as possible. The fair market value payment in lieu mitigation fee per tree is determined by the City Forester using the current editions of the Council of Tree and Landscape Appraisers' *Guide for Plant Appraisal*, the industry's international standard and best practice and may be adjusted annually based on market rates. Payment must be submitted prior to thebefore a Development Construction Permit issuance or other required permits or pre-construction approval is issued, as applicable.

(1) Mitigation Trees. A significant tree that is removed shall be replaced with not less than one (1) or more than six (6) replacement trees sufficient to mitigate the loss of contribution and value of the removed significant tree(s). The applicant shall coordinate with the City Forester to determine

such loss based upon an onsite tree assessment, including, but not limited to, shade, canopy, condition, size, aesthetic, environmental and ecological value of the tree(s) to be removed.

Replacement Mitigation trees shall meet the following minimum size requirements unless otherwise determined by the City Forester:

- (a) Canopy Shade Trees: 2.0" caliper balled and burlap or equivalent.
- (b) Ornamental Trees: 2.0" caliper balled and burlap or equivalent.
- (c) Evergreen Trees: 8' height balled and burlap or equivalent.
- (2) **Exemptions.** Trees that meet one (1) or more of the following removal criteria shall be exempt from the requirements of this subsection unless they meet mitigation requirements in Section 5.6.1(E)(1) of this Code:
  - (a) dDead, dying or naturally fallen trees, or trees found to be a threat to public health, safety or welfare;
  - (b) **t**Trees that are determined by the City to substantially obstruct clear visibility at driveways and intersections;
  - (c) Siberian elm less than eleven (11) inches diameter-at-breast-height (DBH) and Russian-olive or ash (*Fraxinus* species) less than eight (8) inches DBH;
  - (d) Russian-olive, Siberian elm, and ash (all Fraxinus species) of wild or volunteer origin, such as those that have sprouted from seed along fence lines, near structures or in other unsuitable locations.
- (3) **Depiction of Street Trees.** All existing street trees that are located on City rights-of-way abutting the development shall be accurately identified by species, size, location, and condition on required landscape plans, and shall be preserved and protected in accordance with the standards of subsection (G).

#### [NOTE: This Subsection (G) has remained Subsection (G).]

- (G) **Tree Protection Specifications.** The following tree protection specifications shall be followed for all projects with protected existing trees. Tree protection methods shall be delineated on the demolition plans and development plans.
  - (1) **No Disturbance.** Within the drip line of any protected existing tree, there shall be no cut or fill over a four-inch depth unless a qualified arborist or forester has evaluated and approved the disturbance.
  - (2) **Pruning.** All protected existing trees shall be pruned to the City of Fort Collins Forestry Division standards.
  - (3) **Protective Barriers.** Prior to and during construction, barriers shall be erected around all protected existing trees with such barriers to be of orange construction or chain link fencing a minimum of

- four (4) feet in height, secured with metal T-posts, no closer than six (6) feet from the trunk or one-half (½) of the drip line, whichever is greater. Concrete blankets, or equivalent padding material, wrapped around the tree trunk(s) is recommended and adequate for added protection during construction. There shall be no storage or movement of equipment, material, debris or fill within the fenced tree protection zone. A tree protection plan must be submitted to and approved by the City Forester prior to any development occurring on the development site.
- (4) **Chemicals and Harmful Materials.** During the construction stage of development, the applicant shall prevent the cleaning of equipment or material or the storage and disposal of waste material such as paints, oils, solvents, asphalt, concrete, motor oil or any other material harmful to the life of a tree within the drip line of any protected tree or group of trees.
- (5) **No Attachments.** No damaging attachment, wires, signs, or permits may be fastened to any protected tree.
- (6) **Ribboning Off.** Large property areas containing protected trees and separated from construction or land clearing areas, road rights-of-way and utility easements may be "ribboned off," rather than erecting protective fencing around each tree as required in subsection (G)(3) above. This may be accomplished by placing metal t-post stakes a maximum of fifty (50) feet apart and tying ribbon or rope from stake-to-stake along the outside perimeters of such areas being cleared.
- (7) **Soil Disturbances.** Soil disturbances in proximity to trees must comply with the distances in Table 5.10.1-(6) below, Tree Diameter to Soil Disturbance Distance. Soil disturbances include, but are not limited to, soil loosening or amending, augering or boring, tunnelling, irrigation installation, or excavation within the critical root zone (CRZ). Soil loosening and amending shall be pursuant to City Code Section 12-132.
- (8) **Underground Facilities Installations.** The installation of utilities, irrigation lines or any underground fixture requiring excavation deeper than six (6) inches shall be accomplished by boring under the root system of protected existing trees at a minimum depth of twenty-four (24) inches and not directly under the trunks of trees. The auger distance is established from the face of the tree (outer bark) and is scaled from tree diameter at breast height DBH as described in the chart below. Low pressure hydro excavation, air spading or hand digging are additional tools/practices that will help reduce impact to the tree(s) root system when excavating at depths of twenty-four (24) inches or less. Refer to the Critical Root Zone (CRZ) diagram, Figure 25.10.1-(3), for root protection guidelines. The CRZ shall be incorporated into and shown on development plans for all existing trees to be preserved.

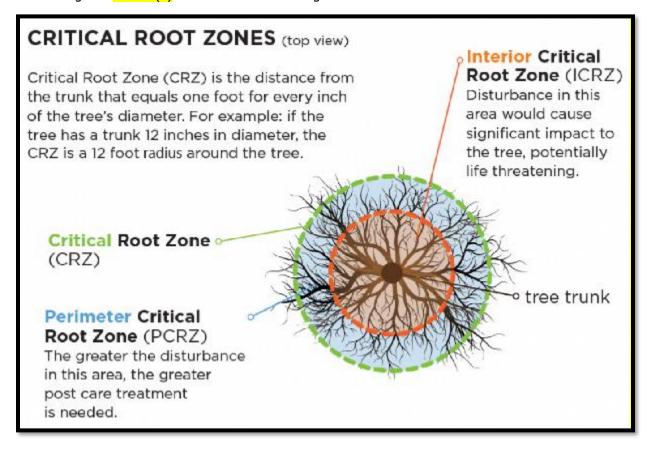
Table 5.10.1-(6) – Tree Diameter to Soil Disturbance Distance Auger Distance Table:

Tree Diameter at Breast Height (Inches)	0" to 9"	10" to 14"	15" to 19"	Over 19"				
Soil Disturbance Distance from Face of Tree* (Feet)	5 feet	10 feet	12 feet	15 feet				
*The soil disturbance distance shall be measured from the edge of disturbance to the face of the tree.								

Tree Diameter at Breast Height	Auger Distance From Face of Tree
<del>(inches)</del>	<del>(feet)</del>
<del>0-2-</del>	<del>1-</del>
3-4-	<del>2</del>

<del>5-9-</del>	5
<del>10-14-</del>	<del>10-</del>
<del>15-19 -</del>	<del>12</del>
Over 19	<del>15</del>

Figure 25.10.1-(3) - Critical Root Zone Diagram.



- (9) **Watering During Development.** All existing trees within the plan must be watered using irrigation or hauled water sources throughout the duration of the development process and all development activities to sustain and improve tree health and survivability, under the following schedule: watered weekly at a minimum of forty (40) gallons per week March through October, and monthly at a minimum of forty (40) gallons per month November through April when temperatures are above forty degrees (40°).
- (8) Placement and Interrelationship of Required Landscape Plan Elements. In approving the required landscape plan, the decision maker shall have the authority to determine the optimum placement and interrelationship of required landscape plan elements such as trees, vegetation, turf, irrigation, screening, buffering and fencing, based on the following criteria:
  - a. protecting existing trees, natural areas and features;
  - b. enhancing visual continuity within and between neighborhoods;

- **c.** providing tree canopy cover;
- **d.** creating visual interest year-round;
- e- complementing the architecture of a development;
- **f.**—providing screening of areas of low visual interest or visually intrusive site elements;
- g- establishing an urban context within mixed-use developments;
- **h.** providing privacy to residents and users;
- i. conserving water;
- i- avoiding reliance on excessive maintenance;
- k- promoting compatibility and buffering between and among dissimilar land uses; and
- **I.** establishing spatial definition.

#### [NOTE: This Subsection (H) was previously Subsection (J).]

- (H) **Irrigation**. Irrigation systems must be designed, operated, and maintained to prioritize water conservation and water efficiency. Systems should be designed to water deeply and infrequently to develop greater drought tolerance.
  - (1) **Automatic Irrigation.** Provision shall be made for permanent, automatic irrigation of all plant material, with the following exceptions:
    - (a) Plantings that do not require any irrigation beyond establishment. For such plantings, any new or existing automatic irrigation should not be routed to these plantings and should be established by tank watering or otherwise as noted on the landscape plan. Trees are not considered "plantings that do not require any irrigation beyond establishment."
    - (b) Natural areas or other areas within a development where natural features onsite obviate the need for irrigation.
    - (c) Trees and other plants used to landscape a residential local street parkway abutting lots for detached single-unit dwellings, where manual watering is intended.
    - (d) Mitigation trees planted off-site where it may not be feasible to install dedicated irrigation for that singular purpose.
    - (e) Landscaping adjacent to certain street frontage types, such as Storefront and Mixed Use, or within special taxing districts such that landscaping and irrigation may be the responsibility of an entity other than the individual property owner.

- (2) Irrigation Plan Specifications. For any development provided water within the City, a final an irrigation plan as part of the landscape plan shall must be submitted to and approved by the Director, and by the Parks Department if a streetscape to be turned over to the City is involved, prior to the issuance of the before a building permit is issued, or if no building permit is required, then prior tobefore commencement of construction. Any major deviation from an approved irrigation plan, resulting from construction, requires an as-built amendment to the irrigation plan. As determined by the Director, minor redevelopment or change of use projects may not be required to submit an irrigation plan as part of the landscape plan.; iIn such cases, a written statement shall be submitted describing the type of irrigation system proposed. The irrigation plan shall incorporate the City of Fort Collins Irrigation System Standards for Water Conservation set forth belowin this Subsection. The irrigation plan must include a water use table organized by irrigation zone for each irrigation tap, corresponding to the hydrozone plan view diagram and aligning with the water budget chart in the landscape plan (Subsection(D)(3) of this Section), and showing the total annual water use. The irrigation plan must also depict on the hydrozone plan view diagram in each watering area by hydrozone, the location/point of irrigation tap connections with the water system, the proposed peak gallons per minute and tap size for each tap, and the layout of irrigation main lines proposed. In addition, as provided below in Subsection (I) of this Section, the irrigation system must be inspected for compliance with the approved irrigation plan before the issuance of a Certificate of Occupancy.
- (3) **Irrigation System Standards for Water Conservation.** The City of Fort Collins Irrigation System Standards for Water Conservation are as follows:
  - (a) Irrigation Methods and Layout.
    - (I) The irrigation system shall be designed according to the hydrozones shown on the landscape plan and shall perform as provided in the water budget chart.
    - (II) Each zone shall irrigate a landscape with similar site, soil conditions and plant material having similar water needs. To the extent reasonably feasible, areas with significantly different solar exposures shall be zoned separately.
    - (III) Trees, including street trees, Tturf and non-turf areas shall be irrigated on separate zones. Dedicated non-overhead, surface or subsurface irrigation must be installed for all new trees and existing trees within the plan, except as provided in Subsection (H)(1) above.
    - (IV) On steep grades, an irrigation method with a lower precipitation rate shall be used in order to minimize runoff, and, to the extent reasonably feasible, these areas shall be zoned separately.
    - (V) No combination of Ddrip, micro-sprays, sprayheads and or rotors shall not be used together or combined on the same zone.
    - (VI) The irrigation method shall be selected to correlate with the plant density. Drip irrigation or bubblers shall be used for sparsely planted trees and shrubs, and rotors, sprayheads and multi-jet rotary nozzles shall be used for turfgrass.

- (b) Equipment Selection.
  - (I) To reduce leakage of water from the irrigation system, a master shut-off valve shall be installed downstream of the backflow device to shut off water to the system when not operating.
  - (II) For irrigation systems that are on a combined-use tap, with a water meter installed upstream to measure total water use, the installation of an irrigation-only submeter should be considered must be installed. The purpose of the submeter would be enable the owner and landscape maintenance contractor to monitor water use for irrigation. The submeter would is not be used for billing purposes. The cost of installation and maintenance of a submeter, if used, would be borne by the owner of the property and not by the City. All such submeters would have to be installed in accordance with the specifications established by the City.
  - (III) Irrigation controllers shall be "smart" controllers, using climate-based or soil moisture-based technology, selected from the WaterSense labeled irrigation controllers list issued by the United States Environmental Protection Agency from time-to-time and available at the City of Fort Collins Utilities Water Conservation Department. Controllers shall be installed and programmed according to manufacturer's specifications.
    - a. A data input chart for the Smart Controller, including the precipitation rate from the audit, shall be posted at each irrigation controller.
    - b. Within six (6) weeks of the installation of new landscaping irrigated turf grass sod or seed, the irrigation system Smart Controllers schedule shall be reduced and set reset to the a normal seasonal watering schedule.
  - (IV) An evapotranspiration (ET) sensor or weather monitor shall be installed on each irrigation controller and installed according to manufacturer's specifications in a location to receive accurate weather conditions.
  - (V) Sprinklers and nozzles shall meet the following requirements:
    - a. The type of sprinkler and associated nozzles shall be selected to correlate with the size and geometry of the zone being irrigated.
    - b. Sprinklers shall be spaced no closer than seventy-five (75) percent (75%) of the maximum radius of throw for the given sprinkler and nozzle. Maximum spacing shall be head-to-head coverage.
    - c. Coverage arcs and radius of throw for turf areas shall be selected and adjusted to water only turf areas and minimize overspray onto vegetated areas, hard surfaces, buildings, fences or other non-landscaped surfaces.
    - d. Sprinklers, bubblers or emitters on a zone shall be of the same manufacturer.

- e. Sprayheads in turf areas shall have a minimum three-and-one-half-inch pop-up riser height.
- f. Sprayheads on a zone shall have matched precipitation nozzles. Variable Arc Nozzles (VAN) are not acceptable for ninety degree (90°), one hundred eighty degree (180°) and three hundred sixty degree (360°) degree-applications. High-Efficiency Variable Arc Nozzles (HE-VAN) are acceptable only in odd-shaped areas where ninety degree (90°), one hundred eighty degree (180°) and three hundred sixty degree (360°) are not applicable.
- g. Nozzles for rotors shall be selected to achieve an approximate uniform precipitation rate throughout the zone.
- h. All sprayheads and rotors shall be equipped with check valves. Sprayheads shall also have pressure-regulating stems.
- (VI) Pressure-compensating emitters shall be used for drip irrigation. For sloped areas, a check valve shall be installed, and the drip line shall be parallel to the slope.
- (VII) Remote control valves shall have flow control.
- (VIII) A backflow prevention assembly shall be installed in accordance with local codes. All backflow assemblies shall be equipped with adequately sized winterization ports downstream of the backflow assembly.
- (IX) Properties with single or combined point of connection flows of two hundred (200) gpm or greater shall have a control system capable of providing real-time flow monitoring and the ability to shut down the system in the event of a high-flow condition.

#### (c) Sleeving.

- (I) Separate sleeves shall be installed beneath paved areas to route each run of irrigation pipe or wiring bundle. The diameter of sleeving shall be twice that of the pipe or wiring bundle.
- (II) The sleeving material beneath sidewalks, drives and streets shall be PVC Class 200 pipe with solvent welded joints.

#### (d) Water Pressure.

- (I) The irrigation system designer shall verify the existing available water pressure.
- (II) The irrigation system shall be designed such that the point-of-connection design pressure, minus the possible system pressure losses, is greater than or equal to the design sprinkler operating pressure.

- (III) All pop-up spray sprinkler bodies equipped with spray nozzles shall operate at no less than twenty (20) psi and no more than thirty (30) psi.
- (IV) All rotary sprinklers and multi-stream rotary nozzles on pop-up spray bodies shall operate at the manufacturer's specified optimum performance pressure.
- (V) If the operating pressure exceeds the manufacturer's specified maximum operating pressure for any sprinkler body, pressure shall be regulated at the zone valve or sprinkler heads.
- (VI) Booster pumps shall be installed on systems where supply pressure does not meet the manufacturer's minimum recommended operating pressure for efficient water distribution.
- (e) Sprinkler Performance Audit.
  - (I) A sprinkler performance audit shall be performed by a landscape irrigation auditor who is independent of the installation contractor, and who is certified by the Irrigation Association (a nonprofit industry organization dedicated to promoting efficient irrigation). Sprinkler systems that are designed and installed without irrigated turf grass areas are exempt from this requirement.
  - (II) The audit shall include measurement of distribution uniformity. Minimum acceptable distribution uniformities shall be sixty (60) percent (60%) for spray head zones and seventy (70) percent (70%) for rotor zones. Sprinkler heads equipped with multistream rotary nozzles are considered rotors.
  - (III) Audit results below the minimum acceptable distribution uniformity as set for the sSubsection (H)(3)(e)(II) above require adjustments and/or repairs to the irrigation system. These corrections will be noted on the irrigation as-builts and the test area re-audited until acceptable efficiency/results.
  - (IV) The audit shall measure the operating pressure for one (1) sprinkler on each zone to determine whether the zone meets the above pressure requirements.
  - (V) A copy of the sprinkler performance audit shall be submitted to and approved by the City before issuance of a certificate of occupancy.

#### [NOTE: This Subsection (I) was previously Paragraph (I)(4).]

(I) Landscape and Irrigation Installation and Escrow. All landscaping and irrigation shall be installed according to sound horticultural practices in a manner designed to encourage quick establishment and healthy growth. All landscaping in each phase shall either be installed or the installation shall be secured with a letter of credit, escrow or performance bond for one hundred twenty-five (125) percent of the value of the landscaping prior to the issuance of a certificate of occupancy for any building in such phase. Except as provided herein, no certificate of occupancy is authorized to be issued for any building on any portion of a property required by this Section to have a landscape plan, unless all landscaping has been installed and maintained according to an approved landscape plan for the property, all

irrigation has been installed and maintained according to an approved irrigation plan for the property, and:

- (1) If such landscaping and irrigation installations have not been completed, a certificate of occupancy may be issued upon the receipt by the City of surety in the form of an acceptable bond, cash deposit, or equivalent conditioned on and guaranteeing the installation of the entire landscaping shown on the approved landscaping plan and the irrigation system shown on the approved irrigation plan or the installation pursuant to an approved phasing plan.
  - (a) The surety must be in the amount of one hundred twenty-five percent (125%) of the estimated cost of the landscaping installation, irrigation installation, or both as applicable, determined by an executed contract to install the landscaping, irrigation, or both, or by adequate appraisals of the cost.
  - (b) Any surety provided pursuant to this requirement shall be released upon an inspection by the City verifying installation is completed or certification issued by a landscape contractor not involved in the installation that the required landscaping program and irrigation system have been completed and maintained in accordance with the landscape plan.
- (2) For a non-potable system intended to be turned over to the Parks Department, the amount of the surety may be reduced after installation is completed, to twenty-five percent (25%) of the actual cost of such system, and the system must be warrantied and maintained for five (5) years. If the non-potable system fails, a potable tap shall be supplied at no cost to the City.

#### [NOTE: This Subsection (J) was previously Subsection (O).]

(J) **Soil Loosening and Amendments.** For any development project, prior to before installation of any plant materials, including but not limited to grass, seed, flowers, shrubs, or trees, the soil in the area to be planted shall be loosened and amended in a manner consistent with the requirements of City Code Section 12-132(a), regardless of whether a building permit is required for the specific lot, tract or parcel in which the area is located. A certification consistent with the requirements of City Code Section 12-132(b)12-133 shall be required for the area to be planted. A variance to modify the soil loosening standards of Section 12-132(b); the soil amendment standards of Section 12-132(c); or the compliance deadline of Section 12-133(a) may be applied for as This requirement may be temporarily suspended or waived for the reasons and in the manner set forth in City Code Sections 12-132(c) and (d)12-134.

#### [NOTE: This Subsection (K) was previously Subsection (N).]

- (K) **Alternative Compliance**. Upon request by an applicant, the decision maker may approve an alternative landscape and tree protection plan that may be substituted in whole or in part for a landscape plan meeting the standards of this Section.
  - (1) Procedure. Alternative landscape plans shall be prepared and submitted in accordance with submittal requirements for landscape plans. Each such plan shall clearly identify and discuss the modifications and alternatives proposed and the ways in which the plan will better accomplish the purposes of this Section than would a plan which-that complies with the standards of this Section.
  - (2) Review Criteria. Staff focused in the applicable area of forestry, landscape, or irrigation must provide a recommendation as to whether to approve an alternate plan. To approve an alternative plan with a staff recommendation, the decision maker must find determine that the proposed alternative plan accomplishes the purposes of this Section equally well or better than would a plan which that complies with the standards of this Section.

Item 9.

In reviewing the proposed alternative plan for purposes of determining whether it accomplishes the purposes of this Section as required above, the decision maker shall take into account whether the alternative accomplishes the functions listed in Subsection (C)(1) through (7) and Subsection (H) of this Section and demonstrates innovative design and use of plant materials and other landscape elements.





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- **01** Baseline Landscape Plan
- **02** Low Water Use Landscape Type A
- O3 Low Water Use Landscape Type B
- **04** Summary Data
- O5 Cost Estimates + Assumptions

FORT COLLINS COMMERCIAL LANDSCAPE DEVELOPMENT STANDARDS

# Multifamily Landscape & Irrigation Analysis

### **BASELINE LANDSCAPE PLAN**







### LOW WATER USE LANDSCAPE PLAN TYPE A



20%

40%

60%

18,302

202,870

3 Gal/SF/Yr

10.54

0%

80%

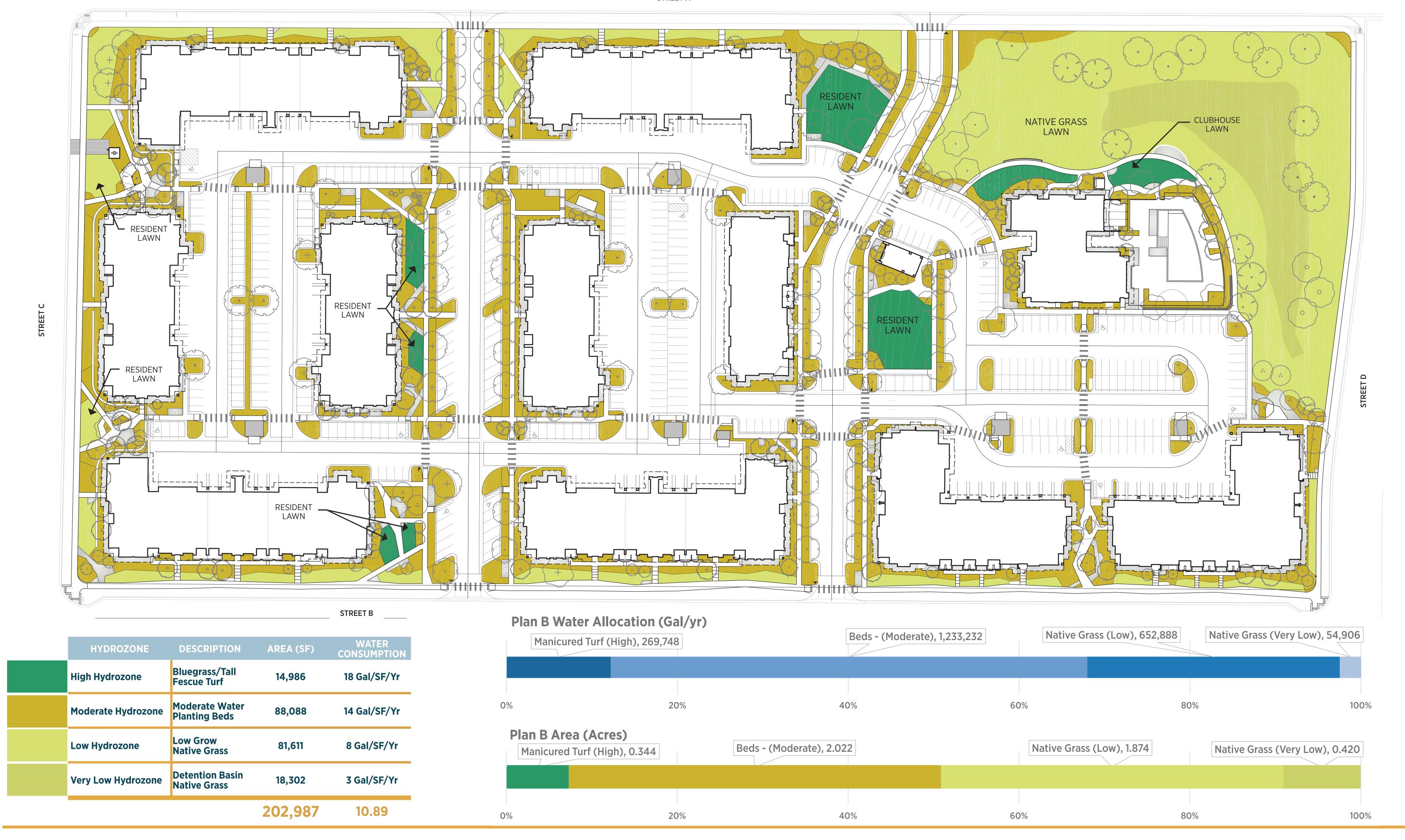


100%

Very Low Hydrozone

### LOW WATER USE LANDSCAPE PLAN TYPE B



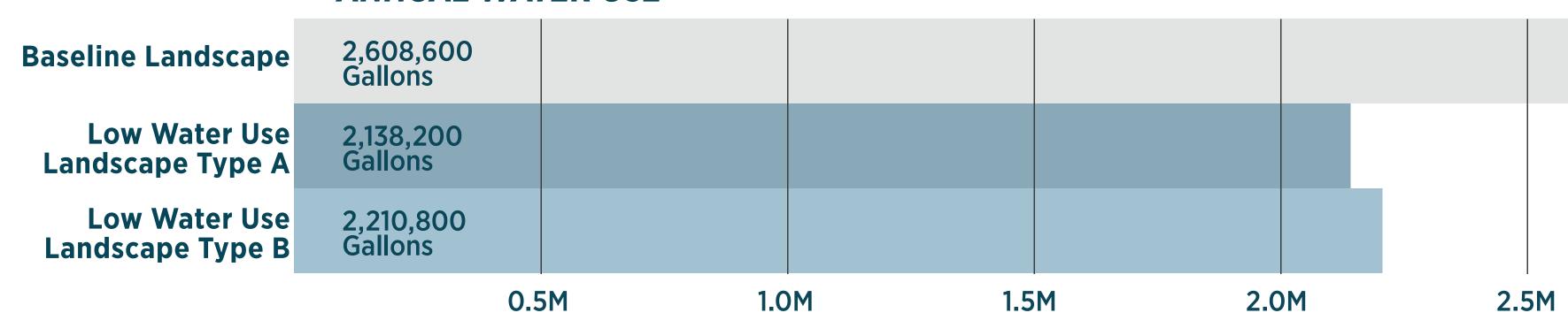






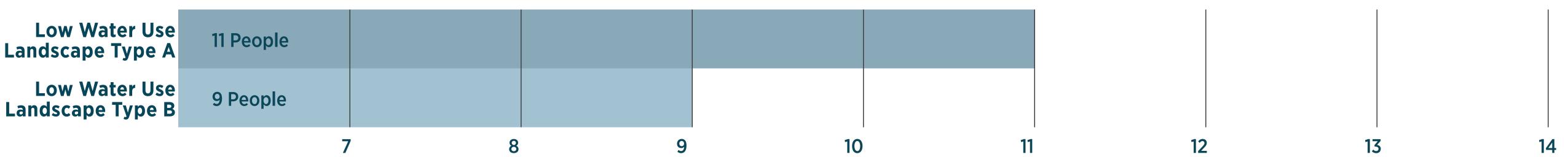


### ANNUAL WATER USE



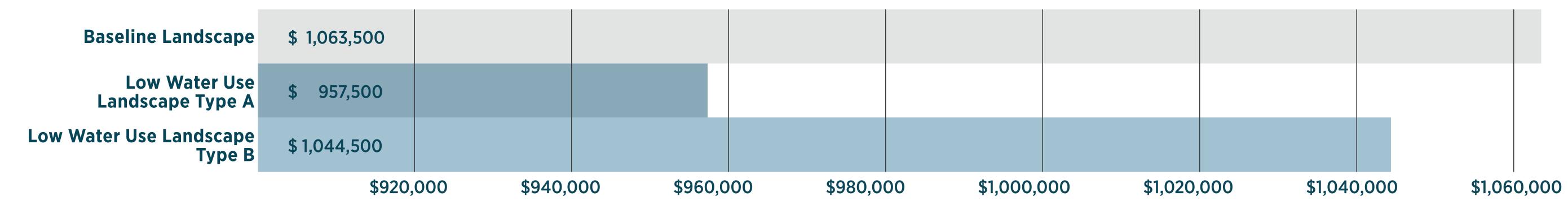


## INCREMENTAL HUMAN IMPACT THE ADDITIONAL NUMBER OF PEOPLE ABLE TO BE SUPPORTED WITH THE ANNUAL WATER USE SAVINGS

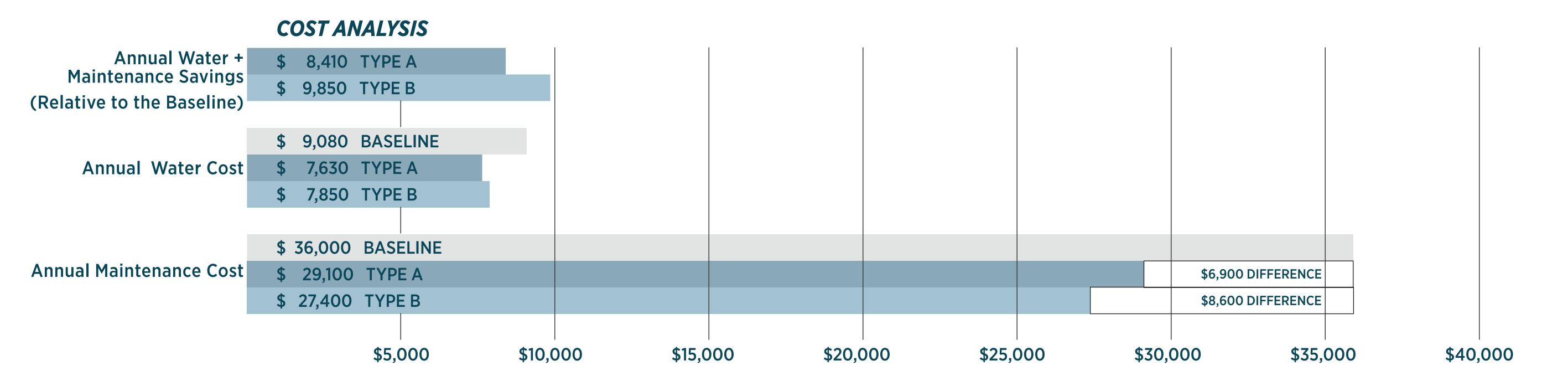




### COST OF INSTALLATION - PLANTING AND IRRIGATION







### Item 9.

### **Baseline Plan**

### PLANTING & IRRIGATION

Item	Quantity	Unit	Unit Cost	Extension
Manicured Turf (bluegrass/fescue blend)	63,876	sf	\$ 4.50	\$ 287,442
Planting Beds (mulch + plants at medium density)	72,861	sf	\$ 8.50	\$ 619,319
Low Grow Native Grass (turf alternative)	47,985	sf	\$ 2.10	\$ 100,769
Native Grass (detention basin area)	18,302	sf	\$ 1.80	\$ 32,944
Irrigation Point of Connection & Controller	1	ls	\$ 20,000.00	\$ 20,000
Specialty Irrigation (tree drip zone)	3	ea	\$ 1,000.00	\$ 3,000
Total SF	203,024		TOTAL	\$ 1,063,473
	Price/SF			\$ 5.24

### Low Water Plan Type A

### **PLANTING & IRRIGATION**

Item	Quantity	Unit	Unit Cost	Е	xtension
Manicured Turf (bluegrass/fescue blend)	16,987	sf	\$ 4.50	\$	76,442
Planting Beds (mulch + plants at medium density)	72,818	sf	\$ 8.50	\$	618,953
Low Grow Native Grass (turf alternative)	94,763	sf	\$ 2.10	\$	199,002
Native Grass (detention basin area)	18,302	sf	\$ 1.80	\$	32,944
Irrigation Point of Connection & Controller	1	ls	\$ 20,000.00	\$	20,000
Specialty Irrigation (tree drip zone)	10	ea	\$ 1,000.00	\$	10,000
Total SF	202,870		TOTAL	\$	957,340
	Price/SF			\$	4.72

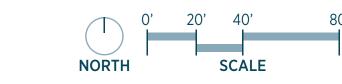
### **Low Water Plan Type B**

### **PLANTING & IRRIGATION**

Item	Quantity	Unit	Unit Cost	I	Extension
Manicured Turf (bluegrass/fescue blend)	14,986	sf	\$ 4.50	\$	67,437
Planting Beds (mulch + plants at medium density)	88,088	sf	\$ 8.50	\$	748,748
Low Grow Native Grass (turf alternative)	81,611	sf	\$ 2.10	\$	171,383
Native Grass (detention basin area)	18,302	sf	\$ 1.80	\$	32,944
Irrigation Point of Connection & Controller	1	ls	\$ 20,000.00	\$	20,000
Specialty Irrigation (tree drip zone)	4	ea	\$ 1,000.00	\$	4,000
Total SF	202,987		TOTAL	\$	1,044,512
	Price/SF			\$	5.15

### Assumptions

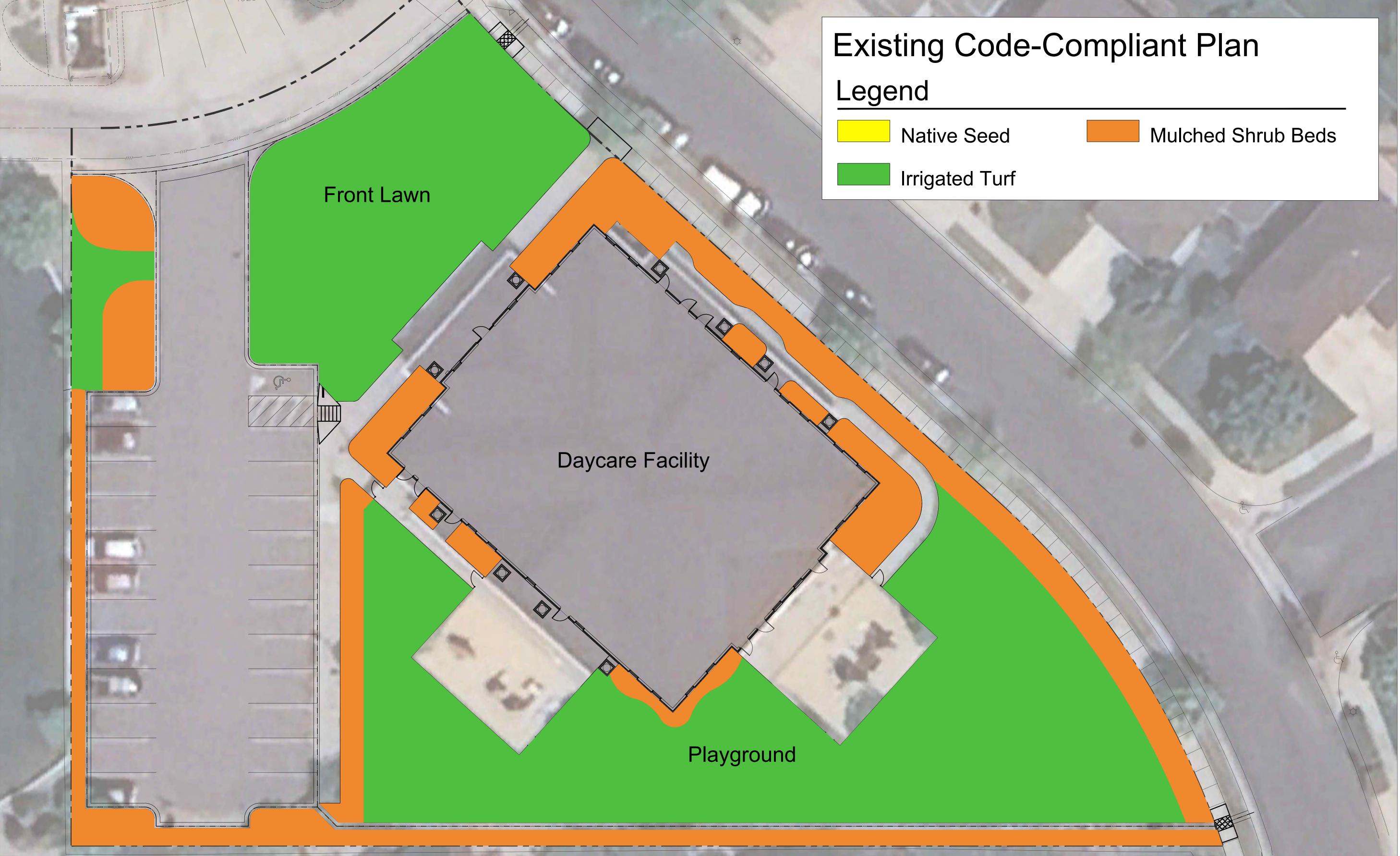
- 1. Unit costs utilized for estimating are based on Norris Design's industry knowledge in collaboration with development and construction partners.
- 2. Ultimate landscape material cost, cost of water, maintenance costs, and landscaping methods are all subject to change.
- 3. Water consumption per year from Table 5.1.1-(5) Hydrozones, LUC Article 5 (08/14/24 draft)
- 4. Water cost rates from 2024 City of Fort Collins Utilities Water, Wastewater & Stormwater Rates chart.
- 5. Annual maintenance costs estimated including: turf mowing, native grass mowing, turf weed control, over-seeding, aeration, fertilization, and planting bed weed control.
- 6. Renovations costs estimated including: soil preparation/tilling, irrigation system retrofit, seeding, and erosion control.
- 7. Demolition costs include herbicide treatment for turf replacement and irrigation inventory.
- 8. Excluded costs: Tree plantings, design consulting services, material delivery fees, permit fees, lighting and electrical work, utilities, and site furnishings.
- 9. These estimates represent an opinion of cost at the time of publication.





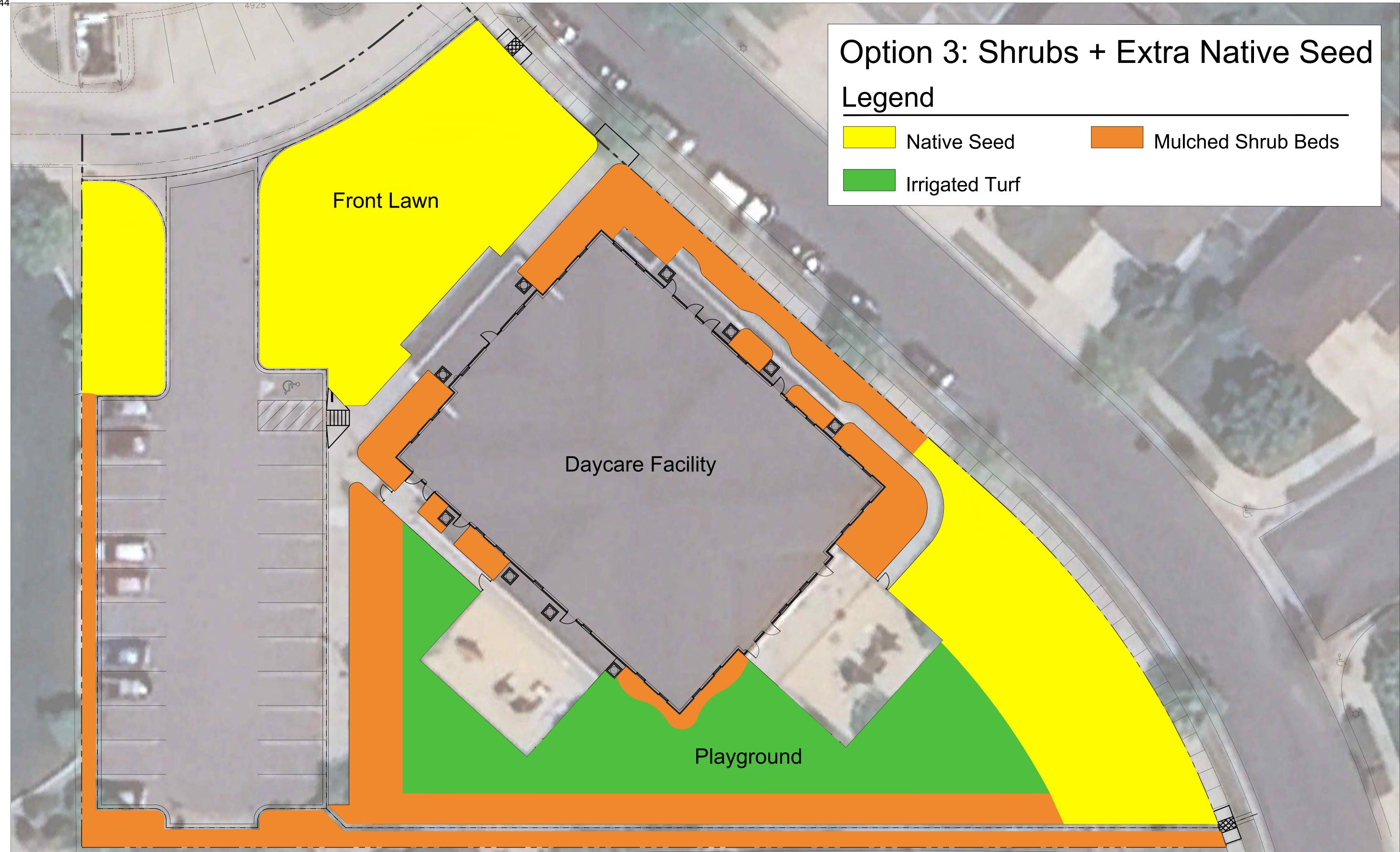
BHA Design Inc

Landscape Code Impact Analysis



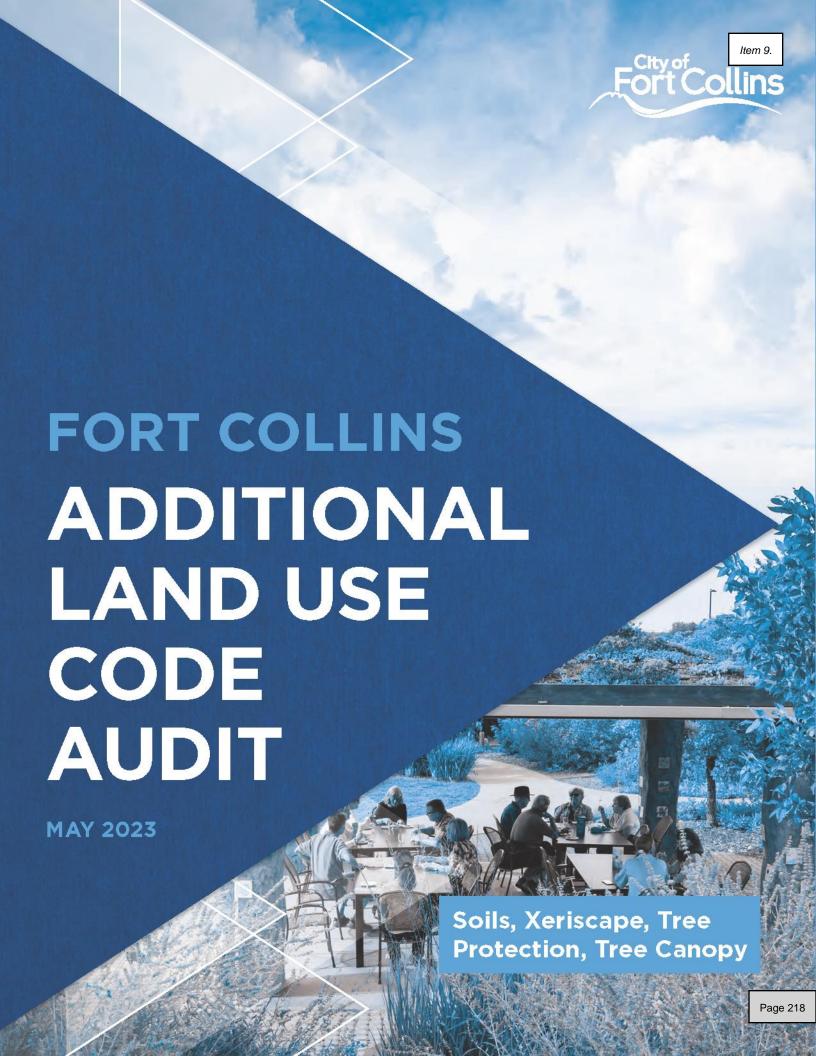
Option 1: Shrub Heavy Legend Native Seed Mulched Shrub Beds Irrigated Turf Front Lawn Daycare Facility Playground

Option 2: Shrubs + Native Seed Legend Mulched Shrub Beds **Native Seed** Irrigated Turf Front Lawn Daycare Facility Playground



Item 9.

Existing Code-C	•								
Hydrozone	Rate (gal/sf/yr)	Area (sf)	Water Use (gal)		Installation Costs	SF Co	ost Area (sf)	Total Cost	
High	18	14,429	259,722		Irrigated Turf w/ Spray Irrigation	\$	2.75 14,429	\$39,680	
Medium	14	0	0		Mulched Shrub Beds w/ Drip Irrigation	\$ 1	2.67 6,271	\$79,454	
Low	8	6,271	50,168		Native Seed w/ Spray Irrigation	\$	1.58 0	\$0	
Very Low	3	0	0						
				Annual Water Use	Total:		20,700	\$119,133	
Total:		20,700	309,890	15.0 gallons/sf/year					
Option 1: Shrub	b Heavy								
Hydrozone	Rate (gal/sf/yr)	Area (sf)	Water Use (gal)		Installation Costs	SF Co	ost Area (sf)	Total Cost	
High	18	5,690	102,420		Irrigated Turf w/ Spray Irrigation	\$	2.75 5,690	\$15,648	
1edium	14	0	0		Mulched Shrub Beds w/ Drip Irrigation		2.67 15,010	\$190,177	
Low	8	15,010	120,080		Native Seed w/ Spray Irrigation	\$	1.58 0	\$0	
ery Low	3	0	0						
-				Annual Water Use	Total:			\$205,824	73% h
otal:		20,700	222,500	10.7 gallons/sf/year					
Omtion Or Church	bs + Native Seed								
Hydrozone	Rate (gal/sf/yr)	Area (sf)	Water Use (gal)		Installation Costs	SF Co	ost Area (sf)	Total Cost	
ligh	18	6,877	123,786		Irrigated Turf w/ Spray Irrigation	\$	2.75 6,877	\$18,912	
1edium	14	0	0		Mulched Shrub Beds w/ Drip Irrigation	\$ 1	2.67 9,953	\$126,105	
.ow	8	9,953	79,624		Native Seed w/ Spray Irrigation	\$	1.58 3,870	\$6,115	
ery Low	3	3,870	11,610		•				
				Annual Water Use	Total:			\$151,131	27% h
otal:		20,700	215,020	10.4 gallons/sf/year					
Option 3: Shrub	bs + Native Seed								
Hydrozone Tabl	le				Installation Costs	SF Co	ost Area (sf)	Total Cost	
ligh	18	4,408	79,344		Irrigated Turf w/ Spray Irrigation	\$	2.75 4,408	\$12,122	
1edium	14	0	0		Mulched Shrub Beds w/ Drip Irrigation		2.67 6,707	\$84,978	
OW	8	6,707	53,656		Native Seed w/ Spray Irrigation		1.58 9,585	\$15,144	
ery Low	3	9585	28,755			-	-,	<del>+,</del>	
•			.,	Annual Water Use	Total:			\$112,244	-6% I
otal:		20,700	161,755	7.8 gallons/sf/year					
Total:		20,700	161,755	7.8 gallons/sf/year					



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#### **Part 1: Introduction and Overview**

## **About the Project**

Since 2020, Clarion Associates has been assisting the City of Fort Collins to implement its Nature in the City (NIC) initiative. To date, that support has included:

- Collaboration with Fort Collins staff to identify four areas of initial focus:
  - Establishing common terms and definitions for the NIC implementation effort;
  - Clarifying and quantifying NIC standards by type and location;
  - O Strengthening "edge" standards where possible; and
  - o Encouraging other innovative approaches as opportunities arise.
- Preparation of a first Land Development Code Audit to identify barriers to implementing different components of the initiative in these four areas.
- Preparation of draft text amendments to the Land Development Code (LDC) to implement the following aspects of the NIC initiative:
  - o Requirements for inclusion of common open space;
  - O Limits on impervious surfaces in new development; and
  - Requirements that certain types of development earn at least a minimum number of points is a new <u>Nature in the City Score</u> system, which provides numerous flexible options related to site and building design.
- Expansion of the NIC effort to research four additional topics related to the goals and visions of Nature in the City, namely:
  - Soil amendments to ensure that new vegetation survives, thrives, and provides maximum environmental and experiential benefits;
  - Xeriscape practices to reduce outdoor water consumption without compromising the public experience of being in nature or the environmental benefits that healthy vegetation provides;
  - Tree protection during site work and construction phases and during the creation of landscaping and planting plans for the proposed development and redevelopment; and
  - Tree canopy enhancement in order increase public perception of nature, increase shading, and reduce the impacts of urban heat islands over time.
- Preparation of an Additional Best Practices Report summarizing our findings and examples of recommended practices in each of these four additional areas. During the preparation of the

report, to avoid repetition of similar materials, we consolidated our research and recommendations on the tree protection and tree canopy enhancements into a single section, and that three-topic structure is carried forward in this document.

### **About this Document**

This document supplements the first LUC Audit prepared in 2020 to reflect the findings of the Additional Best Practice Report on the three additional topic areas. Like the first Audit, and at staff's request, this document does not recommend specific regulatory language to adopt but indicates what types of regulatory changes will be needed and where in the LUC structure those changes will need to appear. In large part, this approach reflects the fact that another consultant has been retained to update the entire Land Use Code, the specific regulatory language to implement the NIC program needs to be consistent with the structure and terminology developed by the lead code consultants, and that work is still in process. We recommend that the findings of this Additional LUC Audit (as well as the first Audit and our first round of Draft Code Amendments) be provided to the lead code consultant for use in their drafting process.

#### **Part 2: Code Audit Focus Areas**

#### 1. Soil Amendments

This section identifies potential changes to the Municipal Code to support compliance and enforcement of existing soil amendments regulations and provide additional flexibility to applicants where possible to reflect site-specific considerations.

# **Current Standards and Challenges**

Unlike most other topics addressed during the NIC process, Fort Collins' soil amendment regulations are found in both the Land Use Code and the Municipal Code. The relevant regulations are shown below:

#### Land Use Code Section 3-8-21, Soil Amendments

For any development project, prior to installation of any plant materials, including but not limited to grass, seed, flowers, shrubs or trees, the soil in the area to be planted shall be loosened and amended in a manner consistent with the requirements of City Code Section 12-132(a), regardless of whether a building permit is required for the specific lot, tract or parcel in which the area is located. A certification consistent with the requirements of City Code Section 12-132(b) shall be required for the area to be planted. This requirement may be temporarily suspended or waived for the reasons and in the manner set forth in City Code Sections 12-132(c) and (d).

#### Municipal Code Section 12-132, Soil Amendment

- (a) Except as otherwise provided below, the holder of any building permit shall, as a condition of the issuance of a certificate of occupancy, prepare any area in which any plant materials, including but not limited to grass, seed, flowers, shrubs, or trees, are expected or intended to be installed, prior to installation of any plant materials in that area, as follows:
  - (1) The soil in such areas shall be thoroughly loosened to a depth of not less than eight (8) inches; and
  - (2) Soil amendments shall be thoroughly incorporated into the soil of such areas to a depth of at least six (6) inches by tilling, discing or other suitable method, at a rate of at least three (3) cubic yards of soil amendment per one thousand (1,000) square feet of area to be planted, unless at least four (4) inches of loose top soil has been placed on the area after completion of construction activity on top of not less than four (4) inches of loosened subgrade soils. Documentation of the content and quantity of the soil amendments and topsoil placed in an area, prepared by the commercial source of the material or a qualified soils testing laboratory, shall be submitted in connection with the certification required in Subsection 12-132(b), below.
  - (b) Prior to the issuance of any certificate of occupancy, the prospective recipient of such certificate of occupancy shall submit written certification to the Utilities Executive Director that all planted areas, or areas to be planted, have been thoroughly loosened and the soil amended, consistent with the requirements set forth in this Section.
  - (c) In the event that the Utilities Executive Director determines that compliance with this Section is rendered unreasonably difficult by weather or seasonal conditions, the Utilities Executive Director may temporarily suspend the application of this requirement, contingent upon the provision by the prospective recipient of such arrangements, guaranties or assurances as the Utilities Executive Director determines to be adequate to ensure compliance.
  - (d) In the event that the Utilities Executive Director determines that compliance with this Section in a specific area is unreasonably difficult as a result of site conditions such as, for example, an excessively steep gradient or a very narrow side lot, the Utilities Executive Director may waive the application of this requirement for such area.
  - (e) The Utilities Executive Director or City Manager may inspect any property in order to determine compliance with the requirements of this Section as a condition of issuance of any certificate of occupancy.
  - (f) Payment of any administrative fee established by the City Manager for the purpose of recovering the costs of administering and enforcing the requirements of this Section shall be required as a condition of issuance of any building permit, excluding any building

permit where it can be shown that no areas within the project limits will be disturbed by construction activities and planted with vegetation.

These provisions commingle substantive regulations (Subsection (a)) with opportunities for flexibility or relief from those regulations (Subsections (c) and (d)) and procedures to administer the regulations (Subsections (b), (e), and (f)).

## **Recommended Changes**

## **Reorganization for Clarity**

The content currently contained in Section 12-132 of the Municipal Code should be reorganized into the following three new subsections for clarity:

- Section 12-132: Substantive Soil Amendment Standards
- Section 12-133: Flexibility and Relief
- Section 12-134: Administration and Enforcement

#### **Substantive Soil Amendment Standards**

This revised Section should include current Subsection 12-132(a) but with the following changes:

- The text of Subsection 12-132(a) should be revised to clarify that it applies when soil has not been tested to identify deficiencies.
- As alternatives to the requirement of Subsection (a), add provisions allowing the following:
  - If topsoil that has been tested and confirmed to meet the minimum soil amendment standards, allow the topsoil to be stored on site (using best storage practices) and then reapplied to the site after subgrade soils have been loosened;
  - If topsoil has been tested and found not to meet the minimum sold amendment standards, allow the topsoil to be stored on site (using best storage practices), amended to bring it up to those minimum standards, and then reapplied to the site after subgrade soils have been loosened.
- As exceptions to the requirements of Subsection (a), the revised Section could include the following:
  - To avoid damage to root systems, remove the require for soil amendment in areas around new and existing trees, provided that topsoil in those areas has been loosened following construction activities;
  - To avoid potential erosion and pollution, do not require soil amendments within 25 feet of any perennial waterway; and
  - o To encourage the retention of existing vegetation and their established root systems, do not require soil amendments in areas where existing vegetation is retained.
  - To simplify administration, do not require soil amendment in planting areas smaller than 1,000 square feet in areas.

## **Flexibility and Relief**

Add a new Section 12-133 consolidating provisions related to available flexibility. These
provisions will allow soil amendment requirements to be tailored to the specific needs of each
site and will remove common barriers to compliance. This new Section should include current
Subsections 12-132(c) (temporary delays due to weather conditions) and (d) (waivers due to
impracticability).

In addition, this new Section should include the following provisions:

- On larger projects, where the applicant for a Certificate of Occupancy is unrelated to the entity
  responsible for installing landscaping, allow Certificates of Occupancy to be issued even if
  required soil amendments have not been installed, provided that one of those entities has
  provided the City financial guarantees or other assurances that the soil amendments will be
  completed when landscaping is installed.
- In site areas where (a) site compaction did not occur during construction, and (b) required or
  planned landscaping will be installed as plug installations, container plantings, overseeding
  applications, or xeriscaping, allow soil aeration or other no-till soil treatments as an
  alternative to soil amendments.

#### Administration and Enforcement

Add a new Section 12-134 consolidating provisions related to administration and enforcement
of the revised regulations. This new Subsection should include current Subsections 12-132(b)
(written certification of performance), (e) (allowance of inspections), and (f) (administrative
fee payment).

In addition, the new Subsection should include the following provisions:

- Applicants should be allowed to document compliance with the regulations through submittal of photos along with soil amendment load tickets or affidavits.
- Simplify the inspection process by conducting a single inspection to verify soil amendment, tilling depth, and other standards are addressed.
- Establish the amount of the administrative fee already authorized by Subsection 12-132(f) and begin collecting that fee.

Importantly, because the provisions of current Section12-130 through 132 are only relevant to landscaping and all other landscaping provisions are located in the LUC, we recommend that those provisions (as modified by the changes listed above) be relocated from the Municipal Code to the Land Use Code. They should appear as a new general landscaping standard (applicable to all required landscaping) as a new Subsection 3.2.1(E)(4) Soil Amendments. Subsequent subsections should be renumbered accordingly.

# 2. Xeriscaping

This section focuses on issues identified by City staff related to landscaping and water conservation following review of the Additional Targeted Best Practices Report (May 2022) and internal discussions.

## **Current Standards and Challenges**

These recommendations build on, and should be coordinated with, the current LUC regulations on landscaping, irrigation, and water conservation. More specifically, they build on the following current LUC regulations:

#### Section 3.2.1(E) Landscape Standards

. . .

- "(3) Water Conservation. Landscape plans shall be designed to incorporate water-efficient techniques.
  - "(a) Landscape designs shall be designed according to the xeriscape landscaping principles described as follows:
    - (1) Plan and design. Plan for how people will use and interact with the landscape. Group landscape materials accordingly based upon hydrozone.
    - (2) Landscape arrangement. Provide a cohesive arrangement of turf, plants, mulch, boulders, and other landscape elements that support the criteria in Section 3.2.1(H). Landscape elements shall be arranged to provide appropriate plant spacing and grouping and to avoid disproportionate and excessive use of mulch areas.
    - (3) Appropriate use of turf. Limit high water-use turf to high-traffic areas where turf is functional and utilized.
    - (4) Appropriate plant selection. Selected plants shall be well adapted to the Fort Collins climate and site conditions. Plants shall be grouped according to water and light requirements.
    - (5) Efficient irrigation. Design, operate and maintain an efficient irrigation system. Select equipment appropriate to the hydrozone. Water deeply and infrequently to develop greater drought tolerance.

. . .

- (9) Xeriscape principles do not include or allow artificial turf or plants; paving of areas not used for walkways, patios, or parking; excessive bare ground or mulch; weed infestations; or any landscaping that does not comply with the standards of this section.
- (b) Landscape plans shall include:
  - 1. A water budget chart that shows the total annual water use, which shall not exceed an average of fifteen (15) gallons/square foot for the landscape.
    - a. Accurate and clear identification of all applicable hydrozones using the following categories:

High Hydrozone	18 gallons/square feet/season
Moderate Hydrozone	10 gallons/square feet/season
Low Hydrozone	3 gallons/square feet/season
Very Low Hydrozone	0 gallons/square feet/season

#### Section 3.2.1 (J) Irrigation

- "(1) Provision shall be made for permanent, automatic irrigation of all plant material, with the following exceptions:
  - (a) plantings that do not require any irrigation beyond establishment.
  - (b) trees and other plants used to landscape a residential local street parkway abutting lots for single-family detached dwellings."

. . .

- "(3) The City of Fort Collins irrigation system standards for water conservation are as follows:
  - (a) Irrigation methods and layout:
    - 1. The irrigation system shall be designed according to the hydrozones shown on the landscape plan.
    - 2. Each zone shall irrigate a landscape with similar site, soil conditions and plant material having similar water needs. To the extent reasonably feasible, areas with significantly different solar exposures shall be zoned separately.
    - 3. Turf and non-turf areas shall be irrigated on separate zones.
    - 4. On steep grades, an irrigation method with a lower precipitation rate shall be used in order to minimize runoff, and, to the extent reasonably feasible, these areas shall be zoned separately.
    - 5. Drip, micro-sprays, spray heads and rotors shall not be combined on the same zone.
    - 6. The irrigation method shall be selected to correlate with the plant density. Drip irrigation or bubblers shall be used for sparsely planted trees and shrubs, and rotors, sprayheads and multi-jet rotary nozzles shall be used for turfgrass.

# **Recommended Changes**

# **Limits on Amounts of Irrigated Turf**

Although existing standards limit the total annual water use on a given site to an average of 15 gallons/square foot/year for each water tap, there are currently no limits on the amount of residential and commercial sites on which irrigated turf can be installed. The 2020 LUC Code Audit addressed this shortcoming directly, stating that the City should:

"Make water conservation standards stronger by requiring a minimum percentage of qualifying native or xeric plantings, and by restricting the overall amount of turf grass allowed in the context of landscaping and open space requirements;"

We recommend that limits similar to those applied in some comparison communities be included, both to reduce water demand and to encourage the installation of more natural landscapes consistent with the NIC program goals. These limits should be integrated as a new Subsection 3.2.1(E)(3)(c), Limitations on Irrigated Turf, and should include the following content:

- On non-residential properties (including commercial, institutional, and industrially zoned lands) irrigated turf shall be limited to no more than 30 percent of the total landscaped area, not to exceed a maximum of 10,000 square feet of irrigated turf on the lot or parcel.
- On residential properties (including both single-family and multi-family development) irrigated turf shall be limited to (a) no more than 30 percent of any area front yard area, and (b) no more than 1,000 sq. ft. of the lot or parcel.
- In order to avoid water waste that occurs through overspray on small areas, on both residential and non-residential properties irrigated turf shall not be installed:
  - o In contiguous areas smaller than 300 sq. ft.; or
  - o In parkway areas between the sidewalk and street.

While the current LUC regulations do not apply to detached single-family homes, it is important that the revised regulations do so, since that land use often occupies more than one-half of the developed land. Because a substantial portion of Fort Collins occupied by this one land use, requiring that single-family homes install more natural landscaping suitable for survival in Colorado's climate without irrigation can make a large contribution to the NIC goals of more frequent and consistent exposure to natural environments. The Additional Best Practices Report documents the ways in which cities such as Aurora, Castle Rock, and Albuquerque have already imposed similar limitations on irrigated turf.

In addition, the LUC should be revised to clarify what level of development or redevelopment should trigger the application of these turf limits. We recommend that they apply to:

- All projects involving the construction of new primary buildings on vacant land;
- All redevelopment involving the expansion of the gross floor area of an existing primary building by more than 25 percent;
- All redevelopment expanding the number of parking spaces on a lot or parcel by more than 25 percent; and
- All redevelopment involving changes to the exterior of primary structures in which the total
  value of building permits exceeds 25 percent of the current fair market value of the property,
  as shown in current property tax records.

For internal consistency, Subsection 3.2.1(J)(1) should be revised by the addition of a Subsection (c) clarifying that the general requirement for installation of landscape irrigation systems does not

apply to areas where irrigation is prohibited pursuant to proposed new Subsection 3.2.1(E)(3)(c) above.

In addition, for internal consistency, Subsection 3.2.1(E)(2) should be deleted, as it contains inconsistent provisions regarding the installation of irrigated turf.

## **Water Conservation and Irrigation**

Increasing the exposure of Fort Collins residents to natural environments will require that more of the landscaping installed in the future be water conserving or xeric landscaping, and that any irrigation installed for non-turf landscaping be highly water efficient. The City's current standards for irrigation installation and design are found in Section 3.2.1(J), and could be strengthened and better aligned with the NIC goals and vision by:

- Removing the Subsection 3.2.1(J)(1)(b) exemption from irrigation for trees and other plants
  used to landscape a residential local street parkway abutting lots for single-family detached
  dwellings. In most cities, these types of frontages make up a significant percentage of overall
  street frontage, and ensuring that trees and vegetation planted in these areas have a high
  likelihood of survival would make a major contribution to the achievement of NIC goals;
- Adding a new Subsection 3.2.1(J)(3)(a)7 requiring that drip irrigation be installed for all new trees in parkways and front yard areas and whenever the submittal of a landscaping plan is required;
- Clarifying where and when the water efficient irrigation equipment and design standards in Section 3.2.1(J)(3) apply. More specifically, clarifying:
  - Whether they apply to all irrigation installed on single-family detached dwelling lots (many cities would not do so because of limited administrative and enforcement capacity); and
  - Whether they apply to redevelopment projects. We recommend they apply in the same situations where the irrigated turf limits described above apply.

Although some have suggested that the LUC contain a prohibition on overhead irrigation (i.e., non-drip irrigation) between 10:00am and 6:00pm to reduce evaporation, Clarion does not recommend including such a standard in the LUC. This type of standard is likely to change over time and vary by season, weather, and drought events. These types of operational standards are generally adopted in a City Council resolution or regulation that is then cross-referenced in the Code.

To achieve this level of flexibility:

• A new LUC Subsection 3.2.1(J)(4), Overhead Watering Restrictions, could be added to clarify that City Council can, by resolution, limit the hours when overhead watering (i.e., non-drip irrigation) may occur, and that a violation of that resolution is a violation of the LUC. If further detail is needed, the new subsection could also state that unless and until the City Council adopts such a resolution, overhead watering is prohibited between 10:00am and 6:00pm.

As a corollary to the recommendation above, Fort Collins may want to remove some of the highly detailed standards in Subsections 3.2.1(J)(3)(b) Equipment Selection, (c) Sleeving, (d) Water

Pressure, and (E) Sprinkler Performance Audit from the LUC and instead list them in a regulatory administrative manual. These standards are significantly more detailed than those found in many newer codes and could require significant changes over time if irrigation technology and best practices advance. It is generally significantly easier and quicker to update a City Council-authorized manual of technical standards that is maintained outside the Code than to update the Code itself.

Although a suggestion was made to include a prohibition on overhead watering between 10:00 am and 6:00 pm to reduce evaporative water losses, we generally do not recommend including such a provision in the LUC. Most communities include those types of operational restrictions in a technical manual or document cross-referenced in the code, because the specifics times of watering restrictions may change over time, and it is easier to amend technical standards outside the code than to make amendments to the code itself.

## **Landscape Materials**

Although Subsection 3.2.1(E)(3)9 states that xeriscape principles do not include artificial turf and plants, staff noted that this standard is often interpreted to apply only to developments implementing xeriscaping, instead of to all scenarios. In addition, while Subsection 3.2.1(D)(3) includes species diversity requirements for trees, there is no similar requirement for shrubs, grasses, ground covers, or other required plantings. Because plants indigenous to Colorado are generally relatively drought-resistant, provisions that require the use of drought-resistant species will help ensure that installed landscaping survives drought events and the ability to experience nature remains uninterrupted. To further increase exposure of Fort Collins residents to nature throughout the city, the current prohibition on artificial turf should be clarified and requirements for species diversity and the use of drought-resistant species should be strengthened. This will require the following changes to Section 3.2.1(I), Landscape Materials.

- Add a new Subsection 3.2.1(I)(10) stating that the use of artificial turf and plants are prohibited in any area required to be landscaped.
- Add a new Subsection 3.2.1(I)(11) stating that in any area required to be landscaped, the landscape materials shall (a) comply with the tree diversity provisions in Section 3.2.1(D)(3) and (b) ensure that each landscaped area between 500 and 1,000 sq. ft. in size contains at least two species of shrubs, and that each landscaped area larger than 1,000 sq. ft. in size contain at least one additional shrub species for each additional 1,000 sq. ft. or part thereof.
- Subsection 3.2.1(I)(2) already requires that plant materials be selected from the *City of Fort Collins Plant List* created by Fort Collins Utilities Customer Connections Department, and we assume that list requires the use of many native, Waterwise, and drought-resistant species. If it does not, then the list should be revised to do so. We do not recommend that Subsection 3.2.1(I)(2) be revised to reference drought-resistant species separately, since that could create confusion as to whether that requirement is in addition to or may conflict with the City's cross-referenced *Plant List*. Most newer land use codes do not try to list all required or encouraged species, but instead include them in a cross-referenced manual outside the Code.

• In addition, the list of prohibited tree species in Municipal Code Section 27-18 should be incorporated into the *Plant List*, or LUC 3.2.1(I)(2) should be revised to also cross-reference the prohibition. In general, all of the information listing prohibited and permitted tree species should be found in one place to make that information easier to find and to simplify updating that information the future.

In addition, experiencing natural areas along the Front Range generally involves exposure to a significant amount of living (rather than inorganic) material. The LUC currently contains very few standards addressing how non-turf areas are to be landscaped and could be strengthened by requiring a minimum amount of landscape material. When combined with the current tree diversity standards and the recommended shrub diversity standards, requirements for at least a minimum amount of live material in these areas could make a significant contribution to the experience of nature in Fort Collins.

• Add a new Subsection 3.2.1(E)(2)(f) stating that not less than 50 percent of the surface of each landscaped be covered with live landscaping or plant material at maturity. Renumber the current Subsection 3.2.1(E)(2)(f) to (g).

Please note that the first NIC Audit of the LUC in 2020 also recommended that the new Common Open Space regulations include the following text:

"All common open space areas required to be vegetated or landscaped pursuant to this section or pursuant to other requirements of the Land Development Code shall use native, non-invasive, and xeric or low water use plant species to the maximum extent practicable."

## **Streetscape**

The applicability of streetscape standards is often a source of confusion in land use regulation, because it is unclear whether parkway areas (generally those areas between a detached sidewalk and the curb) are subject to general landscaping standards applicable to private property, or are instead subject to separately adopted streetscape standards generally designed to be applied when a street is created, widened, or reconstructed. In many communities, it depends on who owns the parkways; privately owned parkways are subject to the landscaping standards in zoning regulations and publicly owned parkways are subject to separately adopted streetscape standards. We assume this is the case in Fort Collins, but this source of confusion should be clarified as the City's new Land Use Code as drafted. Because the use of turf on privately owned parkways was addressed above, this section will address separately adopted parkway standards related to the creation, widening, or reconstruction of streets.

Most of the City's streetscape standards appear in Appendix C of the Larimer County Urban Area Street Standards, although there are also numerous references to the Prospect Road Streetscape Program. To maximize exposure to Nature in the City, each of the streetscape standard documents applicable in the City or the Urban Area should be made consistent with the recommendations for private property listed above. If they do not already do so, the streetscape standards should be revised to clarify that the following LUC provisions and recommendations discussed above apply to publicly owned parkways and medians.

- The prohibition on the use of irrigated turf. Currently, both cool season long grasses (Kentucky Bluegrass, Tall Fescue, Perennial Ryegrass, and Wheatgrass) and warm season native short grasses (Buffalograss and Blue Grama) are permitted to be planted in parkways, which is inconsistent with the recommendations for private property above.
- The requirements for use of drip irrigation and high efficiency irrigation equipment;
- The prohibition on the use of artificial turf and plants;
- The requirements for tree and shrub diversity; and
- The requirement to select plants from the *City of Fort Collins Plant List* created by Fort Collins Utilities Customer Connections Department.

## 3. Tree Protection and Tree Canopy Enhancement

This section of the Audit focuses on regulations related to tree protection and tree canopy enhancement based on staff and consultant discussions following review of the Additional Targeted Best Practices Report (May 2022). Staff identified ten themes to be addressed in this Additional LUC Audit.

- Tree inventories required prior to conceptual review;
- Tree preservation during construction;
- Tree preservation for single-family residential development (including ADUs and carriage houses);
- Ash tree preservation;
- Heritage tree program;
- Street tree escrow for right-of-way tree establishment;
- Species diversity requirements;
- Parking lot heat island mitigation;
- Tree mitigation; and
- Penalty for tree removal after commercial development.

In addition to the ten themes identified for Forestry Division, this portion of the audit addresses one key definition that needs to be addressed in order to achieve the goals of the Nature in the City program.

# **Current Standards and Challenges**

The current Fort Collins regulations related to these topics are listed below.

#### **Section 5.1.2 Definitions**

• Tree, significant shall mean any tree with a DBH of six inches or more.

#### **Section 3.2.1(D)(1)(c)** "Full tree stocking" means:

In all "landscape areas" within 50 feet of any building or structure.

- "Landscape areas" occur along all high use or high visibility sides of any building or structure—extending at least seven feet from any building or structure wall and containing at least 55 square feet of nonpaved ground area.
- For street trees:
  - o Planting cutouts in walkways shall contain at least 16 square feet.
  - Planting cutouts, planters, or other landscape areas for tree planting shall be provided within any walkway that is 12 feet or greater in width adjoining a vehicle use area that is not covered with an overhead fixture or canopy that would prevent growth and maturity.
- Full tree stocking shall mean formal or informal groupings of trees planted according to the following min./max. spacing dimensions:
  - Canopy shade trees 30'—40' spacing
  - o Coniferous evergreens 20'-40' spacing
  - Ornamental trees
     20'—40' spacing
- Exact locations and spacings may be adjusted at the option of the applicant to support
  patterns of use, views, and circulation as long as the minimum tree planting requirement is
  met.
- Canopy shade trees shall constitute at least 50 percent of all tree plantings.
- Trees required for parking lot landscaping and street trees may be used to contribute to this standard.

#### Section 3.2.1(D)(2) Street Trees

Planting of street trees shall occur in the adjoining street right-of-way, except as described in subparagraph (b) below, in connection with the development by one (1) or more of the methods described in subparagraphs (a) through (d) below:

- (a) Wherever the sidewalk is separated from the street by a parkway, canopy shade trees shall be planted at thirty-foot to forty-foot spacing (averaged along the entire front and sides of the block face) in the center of all such parkway areas. If two (2) or more consecutive residential lots along a street each measure between forty (40) and sixty (60) feet in street frontage width, one (1) tree per lot may be substituted for the thirty-foot to forty-foot spacing requirement. Such street trees shall be placed at least eight (8) feet away from the edges of driveways and alleys, and forty (40) feet away from any streetlight and to the extent reasonably feasible, be positioned at evenly spaced intervals.
- (b) Wherever the sidewalk is attached to the street in a manner that fails to comply with the Larimer County Urban Area Street Standards, canopy shade trees shall be established in an area ranging from three (3) to seven (7) feet behind the sidewalk at the spacing intervals as required in Subsection (a) above. Wherever the sidewalk is attached to the street and is ten (10) feet or more in width, or extends from the curb to the property line, canopy shade trees shall be established in planting cutout areas of at least sixteen (16) square feet at thirty-foot to forty-foot spacing.

- (c) Ornamental trees shall be planted in substitution for the canopy shade trees required in Subsection (D)(2)(a) and (b) above where overhead lines and fixtures prevent normal growth and maturity. Ornamental trees shall be placed at least fifteen (15) feet away from any streetlight.
- (d) Wherever existing ash trees (Fraxinus species) are in the adjoining street right-of-way, the applicant shall coordinate and obtain an onsite analysis with the City Forester to determine replacement canopy shade trees either through shadow planting or other emerald ash borer mitigation methods.

#### Section 3.2.1(D)(2)(d)

Wherever existing ash trees (Fraxinus species) are in the adjoining street right-of-way, the
applicant shall coordinate and obtain an onsite analysis with the City Forester to determine
replacement canopy shade trees either through shadow planting or other emerald ash borer
mitigation methods.

#### Section 3.2.1(D)(3), Minimum Species Diversity

To prevent uniform insect or disease susceptibility and eventual uniform senescence on a development site or in the adjacent area or the district, species diversity is required, and extensive monocultures are prohibited. The following minimum requirements shall apply to any development plan.

Number of trees on site	Maximum percentage of any one species
10—19	50%
20-39	33%
40—59	25%
60 or more	15%

#### Section 3.2.1(D)(4) Parking Lot Perimeter Landscaping

Parking lot perimeter landscaping (in the minimum setback areas required by Section 3.2.2(J), Access, Circulation and Parking, shall meet the following minimum standards:

- (a) Trees shall be provided at a ratio of one (1) tree per twenty-five (25) lineal feet along a public street and one (1) tree per forty (40) lineal feet along a side lot line parking setback area. Trees may be spaced irregularly in informal groupings or be uniformly spaced, as consistent with larger overall planting patterns and organization. Perimeter landscaping along a street may be located in and should be integrated with the streetscape in the street right-of-way.
- (b) Screening. Parking lots with six (6) or more spaces shall be screened from abutting uses and from the street. Screening from residential uses shall consist of a fence or wall six (6) feet in height in combination with plant material and of sufficient opacity to block at least seventy-five (75) percent of light from vehicle headlights. Screening from the street and all nonresidential uses shall consist of a wall, fence, planter, earthen berm, plant material or a combination of such elements, each of which shall have a minimum height of thirty (30)

inches. Such screening shall extend a minimum of seventy (70) percent of the length of the street frontage of the parking lot and also seventy (70) percent of the length of any boundary of the parking lot that abuts any nonresidential use. Openings in the required screening shall be permitted for such features as access ways or drainage ways. Where screening from the street is required, plans submitted for review shall include a graphic depiction of the parking lot screening as seen from the street. Plant material used for the required screening shall achieve required opacity in its winter seasonal condition within three (3) years of construction of the vehicular use area to be screened.

#### Section 3.2.1(D)(5) Parking Lot Interior Landscaping

As required in Subsection 3.2.2(M)(1) Access, Circulation and Parking, six (6) percent of the interior space of all parking lots with less than one hundred (100) spaces, and ten (10) percent of the interior space of all parking lots with one hundred (100) spaces or more shall be landscape areas. (See Figure 1). All parking lot islands, connecting walkways through parking lots and driveways through or to parking lots shall be landscaped according to the following standards:

- (a) Visibility. To avoid landscape material blocking driver sight distance at driveway-street intersections, no plant material greater than twenty-four (24) inches in height shall be located within fifteen (15) feet of a curb cut.
- (b) Maximized Area of Shading. Landscaped islands shall be evenly distributed to the maximum extent feasible. At a minimum, trees shall be planted at a ratio of at least one (1) canopy shade tree per one hundred fifty (150) square feet of internal landscaped area with a landscaped surface of turf, ground cover perennials or mulched shrub plantings.
- (c) Landscaped Islands. In addition to any pedestrian refuge areas, each landscaped island shall include one (1) or more canopy shade trees, be of length greater than eight (8) feet in its smallest dimension, include at least eighty (80) square feet of ground area per tree to allow for root aeration, and have raised concrete curbs.

#### [Drawing not reproduced]

- (d) Walkways and Driveways. Connecting walkways through parking lots, as required in Subsection 3.2.2(B)(5)(a), Walkways, shall have one (1) canopy shade tree per forty (40) lineal feet of such walkway planted in landscape areas within five (5) feet of such walkway. Driveways through or to parking lots shall have one (1) canopy shade tree per forty (40) lineal feet of and along each side of such driveway, in landscape areas within five (5) feet of such driveway.
- (e) Parking bays shall extend no more than fifteen (15) parking spaces without an intervening tree, landscape island or landscape peninsula.

#### Section 3.2.1(F) Tree Preservation and Mitigation

Existing significant trees (six (6) inches and greater in diameter) within the LOD and within
natural habitat buffer zones shall be preserved to the extent reasonably feasible and may help

satisfy the landscaping requirements of this Section as set forth above. Such trees shall be considered "protected" trees within the meaning of this Section, subject to the exceptions contained in Subsection (2) below. Streets, buildings, and lot layouts shall be designed to minimize the disturbance to significant existing trees. All required landscape plans shall accurately identify the locations, species, size, and condition of all significant trees, each labeled showing the applicant's intent to either remove, transplant, or protect. Where it is not feasible to protect and retain significant existing tree(s) or to transplant them to another onsite location, the applicant shall replace such tree(s) according to the following requirements and shall satisfy the tree planting standards of this Section. To the extent reasonably feasible, replacement trees shall be planted on the development site or, if not reasonably feasible, in the closest available and suitable planting site on public or private property. The closest available and suitable planting site shall be selected within one-half ( $\frac{1}{2}$ ) mile (2,640 feet) of the development site, subject to the following exceptions. If suitable planting sites for all of the replacement trees are not available within one-half (1/2) mile (2,640 feet) of the development, then the City Forester shall determine the most suitable planting location within the City's boundaries as close to the development site as feasible. If locations for planting replacement trees cannot be located within one-half (½) mile of the development site, the applicant may, instead of planting such replacement trees, submit a payment in lieu to the City of Fort Collins Forestry Division to be used to plant replacement trees to plant replacement trees as close to the development site as possible. The payment in lieu mitigation fee per tree is determined by the City Forester and may be adjusted annually based on market rates. Payment must be submitted prior to the Development Construction Permit issuance or other required permits.

- (1) A significant tree that is removed shall be replaced with not less than one (1) or more than six (6) replacement trees sufficient to mitigate the loss of contribution and value of the removed significant tree(s). The applicant shall coordinate with the City Forester to determine such loss based upon an onsite tree assessment, including, but not limited to, shade, canopy, condition, size, aesthetic, environmental and ecological value of the tree(s) to be removed. Replacement trees shall meet the following minimum size requirements unless otherwise determined by the City Forester:
  - (a) Canopy Shade Trees: 2.0" caliper balled and burlap or equivalent.
  - (b) Ornamental Trees: 2.0" caliper balled and burlap or equivalent.
  - (c) Evergreen Trees: 8' height balled and burlap or equivalent.
- (2) Trees that meet one (1) or more of the following removal criteria shall be exempt from the requirements of this subsection unless they meet mitigation requirements provided in Section 3.4.1(E)(1) of this Code:
  - (a) Dead, dying or naturally fallen trees, or trees found to be a threat to public health, safety, or welfare;
  - (b) Trees that are determined by the City to substantially obstruct clear visibility at driveways and intersections;

- (c) Siberian elm less than eleven (11) inches DBH and Russian-olive or ash (Fraxinus species) less than eight (8) inches DBH;
- (d) Russian-olive, Siberian elm, and ash (all Fraxinus species) of wild or volunteer origin, such as those that have sprouted from seed along fence lines, near structures or in other unsuitable locations;
- (3) All existing street trees that are located on city rights-of-way abutting the development shall be accurately identified by species, size, location, and condition on required landscape plans, and shall be preserved and protected in accordance with the standards of Subsection (G).

#### **Section 3.2.1(G) Tree Protection Specifications**

The following tree protection specifications shall be followed to the maximum extent feasible for all projects with protected existing trees. Tree protection methods shall be delineated on the demolition plans and development plans.

- (1) Within the drip line of any protected existing tree, there shall be no cut or fill over a four-inch depth unless a qualified arborist or forester has evaluated and approved the disturbance.
- (2) All protected existing trees shall be pruned to the City of Fort Collins Forestry Division standards.
- (3) Prior to and during construction, barriers shall be erected around all protected existing trees with such barriers to be of orange construction or chain link fencing a minimum of four (4) feet in height, secured with metal T-posts, no closer than six (6) feet from the trunk or one-half (½) of the drip line, whichever is greater. Concrete blankets, or equivalent padding material, wrapped around the tree trunk(s) is recommended and adequate for added protection during construction. There shall be no storage or movement of equipment, material, debris or fill within the fenced tree protection zone. A tree protection plan must be submitted to and approved by the City Forester prior to any development occurring on the development site.
- (4) During the construction stage of development, the applicant shall prevent the cleaning of equipment or material or the storage and disposal of waste material such as paints, oils, solvents, asphalt, concrete, motor oil or any other material harmful to the life of a tree within the drip line of any protected tree or group of trees.
- (5) No damaging attachment, wires, signs, or permits may be fastened to any protected tree.
- (6) Large property areas containing protected trees and separated from construction or land clearing areas, road rights-of-way and utility easements may be "ribboned off," rather than erecting protective fencing around each tree as required in Subsection (G)(3) above. This may be accomplished by placing metal t-post stakes a maximum of fifty (50) feet apart and tying ribbon or rope from stake-to-stake along the outside perimeters of such areas being cleared.
- (7) The installation of utilities, irrigation lines or any underground fixture requiring excavation deeper than six (6) inches shall be accomplished by boring under the root system of protected

existing trees at a minimum depth of twenty-four (24) inches. The auger distance is established from the face of the tree (outer bark) and is scaled from tree diameter at breast height as described in the chart below. Low pressure hydro excavation, air spading or hand digging are additional tools/practices that will help reduce impact to the tree(s) root system when excavating at depths of twenty-four (24) inches or less. Refer to the Critical Root Zone (CRZ) diagram, Figure 2, for root protection guidelines. The CRZ shall be incorporated into and shown on development plans for all existing trees to be preserved.

Tree Diameter at Breast Height (inches)	Auger Distance From Face of Tree (feet)
0-2	1
3-4	2
5-9	5
10-14	10
15-19	12
Over 19	15

#### Section 3.2.1(I) Landscape Materials, Maintenance and Replacement

• • •

- (5) Maintenance. Trees and vegetation, irrigation systems, fences, walls, and other landscape elements shall be considered as elements of the project in the same manner as parking, building materials and other site details. The applicant, landowner or successors in interest shall be jointly and severally responsible for the regular maintenance of all landscaping elements in good condition. All landscaping shall be maintained free from disease, pests, weeds and litter, and all landscape structures such as fences and walls shall be repaired and replaced periodically to maintain a structurally sound condition.
- (6) Replacement. Any landscape element that dies, or is otherwise removed, shall be promptly replaced based on the requirements of this Section.

# **Recommended Changes**

#### **Definitions**

The definition of "full tree stocking" in Section 4.3.2(D)(1)(c) is not a commonly used term in either zoning or in the landscaping profession outside of Fort Collins and is unlikely to be understandable to Fort Collins residents. In addition, the embedded definition of "landscape areas" is apparently intended to apply only in the context of "full tree stocking" but could easily be confused or misunderstood to be a general definition to other LUC uses of this common term (where it would not be applicable and could undermine the intent of the landscaping regulations.

• The definition of "full tree stocking" should be avoided if possible or should be clarified and simplified to be more understandable to residents and landscapers, and regulatory text should be removed. In general, definitions should only define terms, and related regulations

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- should appear in the regulatory standards applicable to the activities and places referred to in the definition.
- The use of a second, inconsistent, definition of "landscape area" should be avoided if possible. If that is not possible, then it should be either grouped near the general definition of that term so the difference is clear, or the general definition of "landscape area" should include a cross-reference to this term so that the reader understands that Fort Collins uses the term in two different ways.

#### **Tree Preservation**

For clarity, this portion of the report groups together recommendations on several themes identified by staff related to the preservation of existing trees prior to and during the development process, including:

- Tree inventories;
- Tree preservation during construction;
- Tree preservation for single-family residential development;
- Ash tree preservation; and
- Heritage tree program.

## **Tree Inventory**

In many communities, well-intentioned regulations for to protect existing trees are undermined by lack of knowledge of what trees are on a particular property before development or redevelopment of the property is proposed or a concept plan or site plan is submitted. As recognition of the value of mature trees for carbon dioxide absorption, heat island mitigation, and the experience of nature has increased in recent years, some communities have adopted requirements that a tree inventory be prepared and presented to staff at the first concept plan meeting, so that protection of those trees can be better integrated into site design. In order to be effective, requirements for tree inventories need to clarify that not only the number and location, but the type, size, and health of the tree need to be shown, and should clarify that the City may compare the inventory to existing available aerial photography in order to verify the accuracy of the inventory.

A few cities have gone further to require that no trees may be removed (except those that are create public health or safety hazards or a risk of disease transmission to other trees) for a defined period of time following the inventory, or following concept review of a proposed development, in order to allow time for processing of subsequent applications. In our experience, however, regulations prohibiting removals during these preliminary stages of development are rare.

Because the removal of existing mature trees that could potentially be incorporated into site design would significantly undermine the goals of the Nature in the City program, we recommend that a tree inventory requirement be incorporated into the LUC. To be effective, we also recommend that the LUC include limits on overlot grading and tree removal for a period of time

prior to concept or site plan submittal or require more-than-mitigation for any tree removal in the final site plan.

- The LUC should clarify that a tree inventory describing the number, location, type, size, and health of existing trees on the property is required before Concept Review (or before the submittal of a Preliminary Design Plan or other site plan) unless waived by the Director based on the availability of recent aerial photography of the site or known site conditions. The detailed requirements for the inventory should be contained in a technical manual outside the LUC to allow for easier updating as technology changes without the need for a formal code amendment. For consistency with current Subsection 3.2.1(F)(3), this new provision should require that the inventory also include all street trees located on public property abutting the development lot or parcel. This new provision could appear as either:
  - An addition to Subsection 2.2.1(A)(3), Concept Plan Submittal; or
  - An addition to Subsection 3.2.1(C), General Standards, preceding the text that requires the submission of a landscaping plan.
- Revise Subsection 3.2.1(F), Tree Protection and Mitigation, to break up the very long introductory paragraph into more readable subsections, and to add a new first subsection prohibiting overlot grading and tree removal for a period of one year prior to Concept Plan submittal, and that if the City determines that has occurred, the applicant may be required to mitigate any removal of significant trees at up to twice the rate stated in current Subsection 3.2.1(F)(1).

# **Tree Protection During Construction**

Sections 3.2.1(F) and (G) together require that all significant trees over six inches in diameter within the LOD and within natural habitat buffer zones be preserved to the extent reasonably feasible and allows those preserved trees to be used to satisfy other landscaping requirements. Trees required to be protected are shown on development construction plans (DCPs) and building permits. Section 3.2.1(G) lists the ways in which those trees must be protected, and those requirements are fairly typical of many tree protection ordinances.

Like many communities, however, Fort Collins does not have the staff or resources to monitor all development sites to ensure that existing trees that are required for preservation are protected from damage during the development process. Staff reports that many trees are in fact being damaged during this process. This suggests the need for a better approach that allows the City to confirm tree protection measures are in place prior to and throughout construction in order to minimize impacts to trees.

To address these weaknesses, we recommend the following changes:

We assume that the introductory text of Section 3.2.1(F) that applies mitigation standards to
the LOD and natural habitat buffers implies that significant trees (and other trees) outside
those areas may not be removed (since that would be a disturbance of the site). However, if
that is not how this provision is currently interpreted, Section 3.2.1(F) should be revised to

clarify that tree removal outside the LOD would constitute unauthorized site disturbance. In addition, if there are any development approvals that do not include the designation of a Limit of Disturbance on the development property, revise Section 3.2.1(F) to include all significant trees on the entirety of that development parcel.

- For clarity, and to distinguish the content of this Section from that of the previous Section addressing long-term tree preservation, Section 3.2.1(G) should be retitled "Tree Protection During Construction."
- For readability, the long introductory text in Section 3.2.1(F) should be broken into smaller, labeled, subsections, each addressing a different requirement.
- Expand the applicability of Section 3.2.1(G)(1) to require that fencing be installed one foot beyond the dripline of each protected tree, and to clarify that chain link fencing or wooden slat fencing be required (not just plastic construction fencing).
- Revise Division 2.14.1, Enforcement, to note that provisions of the LUC may be enforced
  through the issuance of stop work orders. As an alternative, this section could be replaced
  with a cross-reference to general code enforcement powers in the new LUC, and those powers
  could include stop work orders in the list of possible enforcement tools for all violations of the
  code.
- Revise Division 2.14.2, to require an initial site inspection to confirm compliance with any preconstruction requirements (including but not limited to tree protection and mitigation requirements) before any overlot grading or site preparation may occur.
- Revisit the schedule of penalties in Section 3.8.16 to ensure that the applicable penalty for failure to protect significant trees during construction, and for unauthorized removal of trees, are large enough to deter those actions. See the discussion on Tree Removal Mitigation and Penalties below.

#### **Residential Tree Preservation**

Section 3.2.1, Landscaping and Tree Protection, exempts from all of its provisions "development on existing single-family detached dwellings", which is true of many landscaping regulations in other communities. Because residential land makes up over 57 percent of the developed land area in Fort Collins, this exemption has a significant impact on the ability of the City to protect existing trees and tree canopy. The impact of this exemption has been compounded in recent years by increased allowance of Accessory Dwelling Units (ADUs), which could lead to the removal of additional trees in order to accommodate new construction of detached ADUs. The marginal contribution of ADUs to tree removal, however, is a much lower threat to maintenance of existing trees than the blanket exemption of all single-family detached dwelling lots from all provisions of Section 3.2.1.

In most communities, similar exemptions are driven primarily by the fact that the community has inadequate staff capacity to inspect and monitor the removal or planting of trees on so many individual residential lots, as well as the political reluctance to interfere with activities in this popular form of U.S. housing. Because of the impact of this exemption on the NIC goals, it may be time to revisit this exemption, or at least to limit it to smaller, more affordable lots that help protect the City's affordable housing stock.

We recommend that the City consider the following changes to Section 3.2.1:

- Limit the single-family detached housing exemption to requirements for installation of new landscaping, but make those lots subject to the tree protection requirements of Sections 3.2.1(F) and (G); or
- Limit the single-family detached housing exemption to lots under 5,000 square feet in area; or
- Require the designation of Limits of Development (within which tree protection provisions would apply) on all residential single-family detached lots over 5,000 square feet in area.

Because of the potential contribution of ADUs to more affordable housing, we do not recommend a separate program for protection of individual trees during the ADU process unless or until the broader weaknesses in the current exemptions listed above have been considered.

#### **Ash Tree Preservation**

Although Emerald Ash Borer (EAB) is present in Fort Collins and has been impacting Ash trees (Fraxinus species) in the community, the Forestry Division believes that many existing Ash trees continue to contribute to the urban tree canopy and provide benefits to the community. Because they are generally mature trees with significant tree canopy, their preservation (where possible) would contribute to needed tree diversity, and because the risks of spreading the EAB is not limited to those Ash trees located in the street right-of-way, their protection on private property would also contribute to achievement of Nature in the City goals and objectives. When Ash trees are located in the street right-of-way adjacent to a proposed development property, Section 3.2.1(D)(2)(d) requires coordination with the City Forester and possible protection or mitigation measures, but those same protections do not apply to Ash trees located on private property.

To address this issue, we recommend that the City:

• Establish a new Subsection 3.2.1 (E), Ash Tree Protection and Mitigation, that contains the text of Section 3.2.1(D)(2)(d) modified to apply to Fraxinus species located on both private and public property. As an alternative, the City could retain the regulations in current Section 3.2.1(D)(2)(d) and create a parallel provision applicable to private property as a new Subsection 3.2.1(F)(4).

# **Heritage Tree Program**

Although Fort Collins current regulations protect "significant trees," those trees are only required to be preserved "to the extent reasonably feasible," and when that that is not the case, on- and off-site mitigation by up to six trees as well as payment of an in-lieu fee are available. Because of the higher value of larger trees to carbon dioxide absorption, heat island mitigation, and the perception of Nature in the City, some communities have gone further to create additional protections for very large trees. Often this takes the form of a heritage tree designation and program with higher standards for preservation, higher levels of required approval for removal, and stricter or higher requirements for mitigation. In addition to establishing those higher standards, creation of a heritage tree program would require Fort Collins to establish criteria for designation of heritage trees and a process for designating them.

The protection of heritage trees, beyond standards like those for existing significant trees, is not typical. Instead, heritage tree programs are often voluntary and intended to encourage preservation and maintenance through pride of ownership. In some cases, participation in a heritage tree program is incentivized through City efforts to support heritage tree maintenance.

Because of the importance of Nature in the City goals within Fort Collins planning process, we recommend that the City consider the following changes:

- Retitle Section 3.2.1(F) as "Significant Tree Protection and Mitigation," creating a new Section 3.2.1(G) titled "Heritage Tree Protection and Mitigation," and re-lettering the following Subsections accordingly.
- Redefining significant trees to be those between four- and 10-inches diameter at breast height (DBH) that do not otherwise meet the definition of a heritage tree.
- Defining heritage trees as those larger than 10 inches DBH as well as those that the City Forester determines (a) contribute to the historic character of a designated historic landmark or districts, (b) are associated with a notable person or historic event, (c) are landmarks in the community, or (d) have horticultural significance due to rarity in the community.
- Clarifying that the City Forester may initiate an application for designation of a heritage tree
  on any property, a private property owner may initiate an application to designate a heritage
  tree on property he or she owns, and that Planning Commission approval would be required
  following a public hearing in either case. Any member of the community may contact the City
  Forester to informally recommend a heritage tree, but the Forester is not obligated to
  investigate or act on each such recommendation.
- Establishing a list and GIS layer for designated heritage trees.
- Offering that care and maintenance of designated heritage trees shall be provided by the City, and at City expense, if requested by the property owner.
- Providing that a heritage tree may only be removed if preservation of the tree would result in the value of the property for uses listed as permitted uses in its current zoning district being reduced by 25 percent or more, as established by an appraisal acceptable to the City, unless the City approves zoning changes or development variances needed to offset the diminution in value.
- In addition, to provide a significant incentive for preservation of larger old trees, Subsection 3.2.1(F) could be revised to provide that the preservation of each "significant tree" shall create a credit of two inches of DBH for each DBH of the preserved tree against tree plantings required by other landscaping regulations. Although resulting in fewer total DBH in new tree plantings, some cities conclude that the benefits of preserving larger trees are worth this tradeoff.

# **Tree Planting**

This section addresses themes identified by staff related to the provision and planting of trees, including:

Escrow for street tree establishment;

- Species diversity; and
- Parking lot heat island mitigation.

#### **Escrow for Street Tree Establishment**

Fort Collins currently requires planting of street trees generally every 30 to 40 feet along streets. In cases where the street features an attached sidewalk "that fails to comply with the Larimer County Urban Area Street Standards," trees are then required to be planted behind the sidewalk at the same spacing intervals. The City also enforces standards that require trees to be set back from driveways and alleyways by eight feet and from streetlights by 40 (shade trees) or 15 (ornamental trees) feet.

Although it often takes three to five years for a street tree to become fully established, the current warranty period for street improvements is only two years. Currently, standards are applied during the development approval process (at the time of planting), which makes enforcement easier because the City has leverage over the issuance of development permits. For large new developments, street tree permits are issued after installation, not establishment. However, staff notes that required trees are often not well-maintained following development leading to many trees that die and require removal (and that should require replacement) between the end of the warranty period but before trees become established.

Other communities that have addressed this issue sometimes require that an escrow fund be created to replace trees that die during a specified period of time after the warranty is released. However, monitoring and maintenance of escrow accounts tends to be complex and time consuming and is more often limited to high-cost infrastructure such as roads and utilities. To avoid the cost and complexity of operating an escrow program, other communities simply require that the property owner (not the applicant or developer) remains responsible for the continued survival or the replacement) of street trees and all other landscaping required to be installed as a condition of site approval. Fort Collins already has those regulations in place in Sections 3.2.1(I)(5) and (6). Rather than establishing an escrow program to guarantee the survival of street trees until fully established, we recommend that the City focus on more pro-active enforcement of those existing regulations. Enforcement details are an administrative matter subject to staffing and budget constraints and should not be codified in the LUC.

# **Tree Species Diversity**

Currently, Section 3.2.1(D)(3) of the LUC states that required trees meet a certain level of species diversity for the overall site, depending on the number of trees on the site, in order to reduce the creation of monocultures that increase the chances of disease spread and other arboriculture challenges. Forestry Division staff have recommended increasing the standards for overall species diversity as shown in the following table. Based on recent development codes that we have researched or authored, Clarion is not aware of a "standard" approach to species diversity, and we have no objection to replacement of the current standards with the proposed requirements shown in the table. We note that both the current and proposed requirements for species diversity are more detailed than those used in many other communities.

Number of Trees on Site	Current Percent of Any One Species (Max.)	Proposed Percent of Any One Species (Max.)
10-19	50%	40%
20-39	33%	30%
40-59	25%	20%
60+	15%	10%

Forestry Division staff have also noted that the current standard only requires diversity based on the number of trees on the entire development site, and therefore does not require diversity among new street tree plantings, all of which could be of the same species as long as the required mix of species was achieved elsewhere on site. The City and County of Denver currently requires that no more than two consecutive street trees of the same species may be planted in a continuous row, including around corners and in groupings, in order to provide particular protection against disease for the most visible evidence of urban forestry (i.e., along public streets).

Fort Collins staff requested that Clarion assess the viability of a similar standard (no more than three consecutive trees of one species) in the new LUC. Our research suggests that, despite a historic preference for consistent rows of trees of a single species along parkways and other highly visible street frontages, the advantages of street tree diversity requirements outweigh their disadvantages, primarily because of the risk that a new disease or blight (such as the Ash borer or the Chestnut blight) could rapidly eliminate a public and environmental value that took decades to grow and mature, and because that risk is avoidable at little cost. We would therefore support a strengthened standard for street tree diversity but would not recommend that stricter standards be applied to all tree plantings on a development site because of the difficulty of monitoring and enforcement over time. This change could be achieved by the following:

 Revise Section 3.2.1(D)(3) by relabeling the current standards as Subsection (a) and adding a new Subsection (b) requiring that no more than two adjacent street trees be of the same species.

# **Parking Area Heat Island Reduction**

LUC Sections 3.2.1(D)(4) and (5) include relatively detailed requirements for the installation of trees along the perimeters of, and in the interiors of, parking lots. This approach is relatively new for the City and replaces previous standards that were vague and required the City to negotiate for quality parking area layouts and landscaping elements. Installation of generous landscaping in larger surface parking lots is important to achieving the Nature in the City goals, both because the views of large expanses of uninterrupted asphalt create an experience almost the opposite of natural areas, but because unshaded expanses of asphalt create significant heat islands that are inconsistent with the cooler temperatures experienced outside of urban areas. For these reasons,

we assume that Fort Collins wants to be a leader in avoiding unshaded surface parking lots as new development and redevelopment occurs.

Although no two medium or large cities appear to regulate parking lot landscaping in the same way, Fort Collins' current standards are generally consistent with those found in newer land development codes, with a few exceptions. Many of the key terms used in the current LUC are undefined and could be applied more effectively and consistently if those definitions were added. In addition, while the levels of tree planting required are fairly consistent with those found for medium to high density areas, they are lower than those applied in some suburban areas. An increasing number of cities vary not only the number of parking spaces required, but also the amount of parking lot landscaping required, based on the level of "urbanism" existing or desired in different parts of the city. Finally, some newer codes include requirements for the installation of "terminal islands"—planted islands dividing the end of each row of parking spaces from drive aisles and driveways, which also tends to spread out required tree plantings and increase the amount of surface asphalt they shade.

To address these weaknesses, the LUC could be amended as follows:

- Revise Section 5.1.2, Definitions, to include clear definitions accompanying graphics for
   "landscaped island," "landscaped peninsula," "pedestrian refuge," "driveway," "parking
   space" and "terminal island." Ensure that the definition of "landscaped island" includes a
   "terminal island." Currently, it is unclear if a driveway includes both vehicle access points
   to/from a street and drive aisles between parking stalls. In addition, it appears that the terms
   "parking spaces" and "parking stalls" are used interchangeably, and we recommend using
   only one term consistently throughout the LUC.
- When defining "landscape islands," require that they be designed as swales below the level of
  the parking surface, so that stormwater flows into these areas rather than off the parking lot
  into engineered stormwater systems. While freestanding curb stops can still be required to
  protect landscaping from damage by cars, the elimination of continuous curbing and
  artificially elevated landscaped areas helps promote a more natural appearance for parking
  areas, as well as allowing for natural filtration and treatment of at least part of stormwater
  falling on the parking lot.
- Add a new Subsection 3.2.1(D)(5)(b) to add a provision requiring the creation of terminal islands to separate the end of each row of parking space from driveways and internal drive aisles and requiring that the terminal island extend the full length of the parking space that it abuts.
- Consider revising Subsection 3.2.1(E)(5) to provide that in Fort Collins lower intensity zoning districts i.e., those with a more suburban character a minimum of 14 percent of the interior of parking lots with more than 100 spaces be landscaped.

# **Tree Removal Mitigation and Penalties**

This section of the Audit addresses themes identified by staff related to the removal and mitigation of removed trees, including:

- Tree mitigation; and
- Penalty for tree removal after commercial development.

## Tree Removal Mitigation

Over the past years, Fort Collins has experienced the illegal removal of required trees by commercial developments, and Forestry Division staff have noted that the LUC penalty for doing so does not deter this behavior or provide the City with the resources to mitigate the damage of illegal removals to the experience of Nature in the City. If the removed tree was a "significant tree," Section 3.2.1(F) requires mitigation with between one and six trees, but staff indicates that often only one mitigation tree is required. For smaller trees, no mitigation is required or enforced. Replacements for significant trees removed must meet the minimum size requirements of Section 3.2.1(D)(4), but those are not related to the size of the tree removed. The result is often the loss of an established, healthy tree and the planting of a new tree that is years from being able to replace the shade and quality of the removed tree. The current LUC requires on-site mitigation, but where not feasible mitigation trees may be planted within one-half mile of the development site. In rare cases, the City allows payment in lieu as determined by the City Forester.

We understand that Fort Collins' Forestry Division staff are currently in the process of drafting a detailed proposal for LUC changes to address these weaknesses, but we will limit our recommendations to those often found in newer development codes in other communities. Generally, these provisions try to address the illegal removal of trees that were required to be planted or were required to be preserved because they are shown on approved site plans and are necessary for compliance with landscaping standards.

The weaknesses identified above could be addressed by the following revisions to the LUC during the code rewrite process.

- Because of the priority that Fort Collins places on the experience of Nature in the City, the
  definition of a "significant tree" should be revised to apply to all trees over four inches DBH.
  The four-inch DBH standard is currently used by the City of Boulder. The definition of
  "significant tree" in Section 5.1.2 would need to be revised accordingly.
- Because of the importance of larger trees to carbon dioxide absorption, heat island
  prevention, and the NIC goals, Section 3.2.1(F) should be revised to require mitigation at a
  two-inches-per-DBH-inches of each significant tree removed. This would require
  documentation of not just the location but also the DBH of each existing tree shown on an
  approved site plan.
- In addition, Section 3.2.1(F), Tree Preservation and Mitigation, should be revised to add a Subsection requiring mitigation for removal of any tree under two inches DBH shown on an approved site plan and necessary for compliance with the City's landscaping standards or the conditions of site plan approval to be mitigated on an inch-to-inch, rather than tree-to-tree basis.

• The current requirement for on-site mitigation if possible, and for plantings within one-half mile if that is not feasible, is similar to that used in other communities. However, this regulation could be strengthened by requiring that the off-site mitigation be as close as reasonably practicable to the subject site, and by clarifying that those mitigation plantings can occur in the parkways on public-rights-of-way that do not currently comply with street tree standards (with the permission of the City).

## **Penalty for Tree Removal after Commercial Development**

While most newer development codes focus on mitigating the impacts of illegal tree removal through stronger mitigation standards, some communities have also adopted enhanced financial penalties to encourage the practice. While these are not common, they are usually limited to cases of illegal tree removal on multi-family, commercial, mixed-use, industrial, and institutional properties. They generally do not apply to single-family or low-density residential properties because of the difficulty of monitoring and enforcing tree removal on properties where the existing trees have not been documented (and because of the political unpopularity of enforcement actions against these types of properties).

As an example, the City of Seattle, Washington, imposes a financial penalty based on the size of the illegally removed tree and equal to three times the environmental value of the removed tree to the community. However, our discussions with Seattle staff suggest that the fine is rarely enforced and may not be effective in discouraging illegal tree removal. In general, we believe that even very high monetary penalties may not be effective in discouraging tree removals that are motivated by market driven development opportunities that create much greater value to the property owner, and that focusing on strengthening enforcement and mitigation regulations may be more effective in minimizing reductions in tree canopy due to illegal tree removals. While it is useful to periodically revise zoning enforcement penalties to ensure that they are internally consistent, that they compound daily after notice from the City and a reasonable period to cure the violation, and high enough to encourage prompt action by the landowner after they begin to accrue, we do not recommend an increase in tree removal penalties separate from a thoughtful periodic update process.

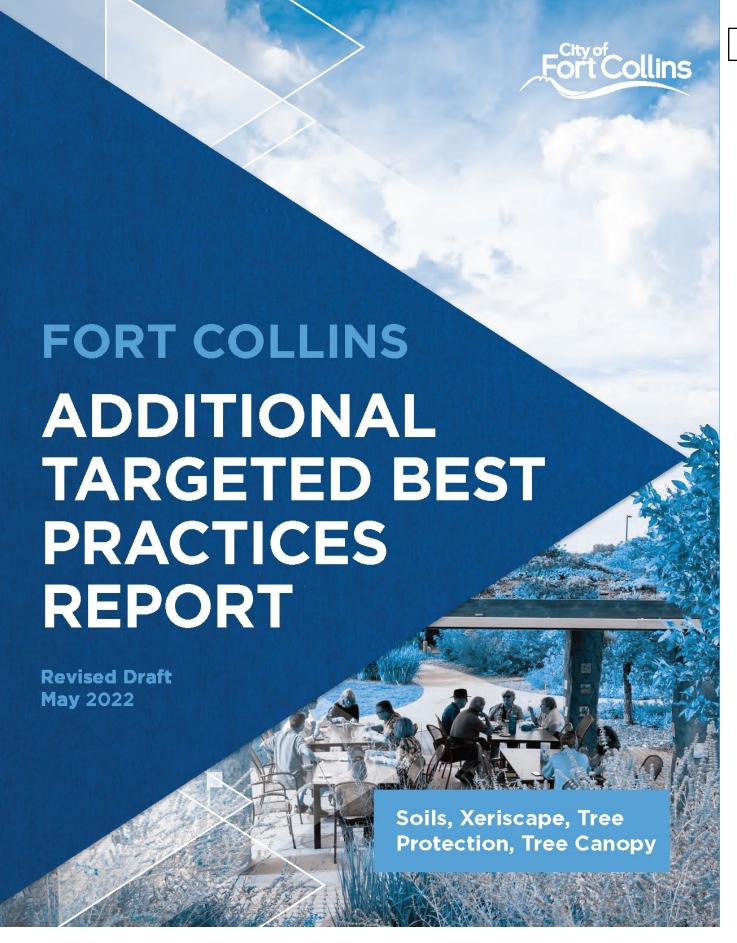
#### 4. Additional Recommendations

We also recommend the following changes to the LUC and the Municipal Code to further promote the Nature in the City program.

- The purpose statement for the Landscaping and Tree Protection regulations in Section 3.2.1(B) does not clearly reflect the goals of the Nature in the City initiative and should be revised to do so. The purpose statement could be strengthened by explicitly referencing the City's intent to increase tree survival rates, to protect and expand tree canopy, to reduce unauthorized removal of trees before and after construction, to reduce damage to trees during construction, and conserve water, and to avoid the creation of monocultures.
- The requirements for obtaining permits related to trees in public places described in Municipal Code Sections 27-31 and 27-32 should be cross-referenced in LUC Section 3.2.1, in

- order to put private property owners on notice that City approval may be required to alter trees on a public parkway adjacent to their property (and that they may not understand is on public property).
- The duties of each property regarding trees on their property contained in Municipal Code Section 27-57 and 27-58 should also be cross-referenced in LUC Section 3.2.1, as many property owners may be unfamiliar with those duties.

Item 9.



Fort Collins Nature in the City Additional Best Practices Report

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# Fort Collins: Nature in the City

# Additional Targeted Best Practices Report May 2022

# **Background**

Since 2020, Clarion Associates has been assisting the City of Fort Collins to implement its Nature in the City (NIC) initiative. To date, that support has included:

- Preparation of a Land Development Code Audit to identify barriers to implementing different components of the initiative;
- Finalizing definitions of several key terms that are often used loosely, but which need to be defined objectively in order to be used in regulatory documents like the Land Development Code; and
- Preparation of draft text amendments to the Land Development Code to implement the following aspects of the NIC initiative:
  - Requirements for inclusion of <u>common open space</u>;
  - o Limits on impervious surfaces in new development; and
  - Requirements that certain types of development earn at least a minimum number of points is a new <u>Nature in the City Score</u> system, which provides numerous flexible options related to site and building design.

Before the proposed regulatory changes were included in the Land Development Code, however, the City asked that Clarion Associates prepare additional research on Best Practices to promote the NIC goals in four discrete areas:

- 1. <u>Soil amendments</u> to ensure that new vegetation survives, thrives, and provides maximum environmental and experiential benefits;
- 2. <u>Xeriscape practices</u> to reduce outdoor water consumption without compromising the public experience of being in nature or the environmental benefits that healthy vegetation provides;
- 3. <u>Tree protection</u> during site work and construction phases and during the creation of landscaping and planting plans for the proposed development and redevelopment; and
- 4. <u>Tree canopy</u> enhancement in order increase public perception of nature, increase shading, and reduce the impacts of urban heat islands over time.

To identify these best practices, Clarion Associates agreed with the City staff to:

- Focus on regulations or incentives suitable for inclusion in a Land Development Code or related regulations – rather than advisory policy statements or plans that do not have regulatory effect;
- Identify up to 20 communities across the United States for detailed web-based research on these four topics;
- Focus the research on soil amendment and xeriscape on communities in the Rocky Mountain west, because of the unique dry climate and soil conditions in this region;
- Make initial contact with each community to confirm the accuracy of published regulations and incentives, as well as the continued enforcement and effectiveness of those regulations.
- Refine the list of research communities to eliminate those where initial contacts suggest
  that further research would not be fruitful, and if possible, replace them with other
  communities where regulation and incentives appear to be more effective.

After this additional research program was initiated in late 2021, initial contacts revealed that several communities have integrated or overlapping regulations for tree protection and tree canopy protection. In order to reflect these Best Practices accurately, we combined these two topics into a single inquiry and agreed to research a larger number of target communities in that combined category.

After contacting, eliminating, and substituting communities as described above, our initial research and interviews focused our Best Practices research on the following communities:

- Soil Amendments: Denver, CO; Thornton, CO; Castle Rock, CO; Brighton, CO; and Greeley, CO.
- Xeriscape: Aurora, CO; Castle Rock, CO; Las Vegas, NV; San Antonio, TX; and Tucson, AZ.
- Tree Protection and Canopy Enhancement: Boulder, CO; Bloomington, IN; Fort Wayne, IN; Lake Forest Park, WA; Madison, WI; Portland, OR; Reno, NV; San Antonio, TX; and Seattle, WA.

This document includes Clarion Associates' recommended Best Practices in each of these areas, subject to internal discussion with the City as to which of the recommended practices would best "fit" with the City's goals and administrative systems. "Best Practices" is, of course, a subjective term, and professionals often differ about what is "best" and why. For this report, we focused on the following factors to identify those regulations that we think are worthy of additional consideration by Fort Collins:

- The <u>clarity and understandability</u> of the regulations to both staff and citizens;
- The <u>administrability</u> of the regulation—i.e., whether the regulation can be efficiently implemented, monitored, and enforced with reasonable levels of effort by City staff; and

 The host community's comments on the <u>effectiveness</u> of the regulation in achieving its purpose.

Within each topic area, we single out a few communities with regulations that we think best meet these criteria. We also identify additional cities whose regulations or incentives include a provision, incentive, or approach that is worthy of additional consideration. We have termed the first group "Best Practices" and the second group "Additional Valuable Practices." In several cases, even those communities that meet these criteria stated that their regulations, procedures, and enforcement mechanisms were imperfect and provided suggestions for improvements that would make them mor effective.

## **Soil Amendments**

This section summarizes information from communities that require soil amendments to be added to new landscaping to ensure the proper growth and survival of vegetation. Soil amendments also help conserve water, because newly installed landscaping typically needs to be irrigated more than established landscaping. By increasing the probability that newly planted material survives, the use of soil amendments can help reduce long-term water demand.

#### **Best Practices**

### Thornton, CO

Thornton's development code (Chapter 18 of its City Code) establishes basic soil amendment requirements. All landscape areas, except for side yards not visible from public areas and rear yards of singe-family dwellings, are required to be amended with at least four cubic yards of organic amendment per 1,000 square feet of ground, and the amendments must be tilled at least six inches into the soil. Sec. 19-538(a)(4).

The code references <u>Section 800</u>, <u>Landscape Improvements</u>, of the Thornton Standards and Specifications document, which imposes additional obligations on developers. Prior to the addition of soil amendments, applicants are required to remove all construction debris from the soil, including large rocks, concrete, asphalt, and soil clods; all building materials such as boards, insulation, shingles, rebar, wire, and grading stakes. Applicants must then rip the soil to a minimum depth of 12 inches if it has been compacted by heavy machinery or by working it while wet, in rows no greater than 18 inches apart. Ripping operations must be timed to commence when soil moisture is adequate enough to allow penetration but is not wet or muddy.

The soil amendments are required to be incorporated throughout the landscape areas, not just around areas where trees and shrubs are planted. At least four cubic yards must be distributed across the soil surface in a uniform 1½ inch depth and incorporated into the top eight inches of

soil with a rototiller capable of tilling to eight inches in depth.<sup>1</sup> Additional soil amendments are required for City-maintained landscapes and metropolitan district parks (six cubic yards per 1,000 square feet, distributed to two-inch depth) and for landscaped medians (27 cubic yards, distributed to a 36 inch depth).

Compliance with the regulations is assessed at three inspections performed during the landscape installation process:

- The first inspection takes place prior to soil amendment and tilling and looks for the presence of weeds, especially noxious weeds.
- The second inspection involves a review of the soil amendment before it is tilled into the soil.
- Finally, after tilling and fine grading, the third inspection reviews the prepared soil to
  ensure it was tilled to the required eight inches, and for overall quality and absence of
  construction debris.

In addition, the developer/applicant may be required to provide City staff soil amendment load tickets and affidavits that confirm soil amendments have been installed for a set of dwellings before the construction of the next phase of dwellings is authorized.

## **Primary Contacts**

Grant Penland, Planning Director, <a href="mailto:gpenland@ci.thornton.co.us">gpenland@ci.thornton.co.us</a>; Warren Campbell, Current Planning Manager, <a href="mailto:wcampbell@ci.thornton.co.us">wcampbell@ci.thornton.co.us</a>;

#### **Denver Water**

#### **Soil Amendment Program**

The requirements of Denver Water's Soil Amendment Program are clearly identified on its website.

- The reasons for amending soil are explained in plain language understandable by the public and contractors.
- Areas larger than 300 square feet must incorporate soil amendments before landscaping is installed.
- The standards encourage (but do not require) that organic compost meeting at least Class II standards be installed, lists Class II compost suppliers, and includes a table listing the chemical requirements for Class I and Class II compost (shown below):

<sup>&</sup>lt;sup>1</sup> While the City's development code requires tilling down to six inches, the Standards and Specification document, which is incorporated into the code by reference, states that tilling is required down to eight inches.

Minimum Stability Indicator	CLASS I Stable — Very Stable	CLASS II Stable
рН	6.0 - 8.0	6.0 - 8.2
Ag Index (Nutrients/Na+CI)	Must report	Must report
Soluble Salts	Maximum 5 mmhos/cm	Maximum 10 mmhos/cm
Carbon/Nitrogen Ratio	< 12	< 18
Ammonia-N/Nitrate-N	< 4	< 6
Bulk Density (lbs/CY)	Must report	Must report
Primary, Secondary, Trace Elements	Must report	Must report
Organic Matter; Moisture Content (% / CY)	Must report	Must report

- Four cubic yards of compost per 1,000 square feet of permeable areas (including tree lawns and permeable portions of rights-of-way adjacent to the property, which are often owned by the City rather than individual property owners) roto-tilled to a depth of four to six inches, except in the following situations:
  - Two cubic yards of compost per 1,000 square feet of permeable area are required for native grass areas (subject to Denver Water confirmation of seed mix); and
  - o Twelve cubic yards per 1,000 square feet are required for amended topsoil.
- The contractor must supply an invoice or load ticket showing that a specific soil amendment product was being delivered to the subject property address, as well as a map showing the square footages of areas required to be amended, and if native grasses are to be installed, a sample of the seed mix. Denver Water can then confirm that the amount of soil amendment was adequate for the area required to be amended and can provide phone or e-mail confirmation that the requirement had been met.
- Water service to the property can be withheld until Denver Water has confirmed that adequate amendment product had been delivered to the property.
- Site inspections are not required, but contractors are warned that spot inspections might occur.
- Although the requirements are publicized as a cost-saving measure for property owners, who would experience higher rates of plant survival, its primary interest is the associated water savings through more effective water absorption and reduced runoff.

As a regional water utility, Denver Water has regulatory authority to enforce the requirements against property owners only when water service is being installed, and even then its capability to do so is limited. The various jurisdictions served by Denver Water have a broad range of landscaping requirements, and many of the governments' land use and other regulations incorporate only limited water conservation controls and few if any soil amendment requirements. Denver Water works with local governments to encourage landscape regulations

similar to those included in the agency's soil amendment program, and staff is hopeful more consistent regulations will be adopted by local governments over the next several years.

To the (limited) extent that they are enforced, Denver Water's actions to enforce the soil amendment requirements are taken against the landscape contractors who install the landscaping materials. This is similar to the approach used by many cities to enforce sign regulations (i.e., require licensing of sign contractors and make them responsible for compliance with the regulation with the knowledge that violating the regulation could result in suspension or revocation of their license to install signs).

Although the soil amendment program indicates that spot site inspections may take place, Denver Water staff reported that inspections generally have not occurred for the past six years. Previously, when spot inspections did take place, inspectors found that around 95 percent of contractors complied with the requirements. Compliance with the requirement to provided receipts is generally high, although new development projects are more likely to comply than redevelopment projects, and compliance is higher from large developers than from smaller contractors who redevelop individual single-family properties. Overall, the resources devoted to administration of the soil amendment program occupy about 0.5 FTE of staff time.

In an effort to encourage compliance, Denver Water does not charge fees for participation in its soil amendment program.

### **Primary Contact**

Austin Kcmarik, Water Conservation Specialist, <a href="mailto:Austin.Krcmarik@denverwater.org">Austin.Krcmarik@denverwater.org</a>

#### **Other Valuable Practices**

#### Castle Rock, CO

The Town of Castle Rock landscaping and irrigation standards are contained in its <u>Landscape</u> and <u>Irrigation Criteria Manual</u>, which is adopted by reference into the <u>Municipal Code</u>. Sec. 1.13 of the Manual defines Soil Amendment as "Organic material added to the soil to improve texture, moisture holding capacity, nutrient capacity, water and air infiltration." Sections 4.4.1 through 4.4.3 of the Manual includes specific provisions for how to amend soil that are mandatory for all new developments and changes to landscaping. The provisions require that:

- A soil analysis to be conducted by professional soil scientist to evaluate texture, exchange capacity, conductivity, organic matter, and acidity along with nitrogen, potassium, phosphorus, zinc, iron, copper, manganese, and lime content in the soil.
- Stripping and stockpiling of indigenous topsoil during construction for successful plant material establishment
- At least four cubic meters of amended soil added per 1,000 square feet planting areas for turf, trees, shrubs, perennials, and annuals.

- Soil amendments material to be compost, which is defined as a "fully finished, stabilized, and mature product, derived from organic materials such as leaves, grass clippings, wood chips, and other yard wastes. Finished compost is dark and crumbly, does not resemble the original contents, and has an earthy smell. Acceptable compost will not contain any human or animal waste." Staff emphasized that the inclusion of any amount of "hot compost" (compost that has not fully broken down) is prohibited, and that on occasion they have required contractors to remove inappropriate soil amendment from the surface and install replacement amendments that meet Town standards.
- As an exception to the requirement of compost as defined above, soil amendments for native seed areas to be consistent with detail #17 in the Castle Rock <u>Temporary Erosion</u> <u>and Sediment Control Manual</u>. The Town may require written documentation of the types and amounts of soil amendments installed.
- Where soil amendments are required, soil that is roto-tilled to a minimum depth of six inches, and rocks, debris, and clods greater than ¾-inch diameter must be removed (except that dry land seed areas may include clods up to two inch diameter).

Castle Rock pairs these requirements with a robust inspection regime. Single-family detached and attached, duplex, triplex, and fourplex residential properties) are inspected once, after the soil amendment has been added, the soil tilled, and the site graded. Multifamily and nonresidential properties are inspected twice. The first inspection takes place after the soil amendment has been added to ensure that an adequate amount has been used. The second inspection takes place after tilling and grading.

Staff believes compliance with the requirement for adding soil amendment is high, particularly for nonresidential buildings, since the compost is relatively inexpensive and providing the required amount (or even a little more) is less expensive than pausing construction while fixing the work and awaiting reinspection. The high compliance rate is also attributed to Castle Rock's consistent inspection process and withholding certificates of occupancy until inspections have been completed.

The Town's water conservation programs are managed by a four-person team, including the water efficiency supervisor, a technician who handles the rebate programs and inspections, an inspector, and an office assistant who manages administration, scheduling, and customer contact. Currently, the site inspections are conducted by an inspector who is a seasonal employee who works four days per week (0.8 FTE), generally from May through October or November. Three other members manage the administration of the programs, including potential updates to the regulations to address any necessary changes. This staff has been managing about 1,000 residential inspections and 50-60 permits per year.

Residential projects pay a \$45 inspection fee. For each required reinspection, the fee doubles, which discourages landscape contractors from scheduling inspections before they are ready.

For commercial projects, compliance with the soil amendment regulations is confirmed through the irrigation permit inspection process. The permit inspection fee is \$610, with a reinspection fee of \$110 if necessary.

#### **Primary Contact**

Rick Schultz, Water Efficiency Supervisor, 720-733-6027

## Greeley, CO

<u>Section 24-804, Plant Specifications</u>, of the Greeley Development Code includes non-regulatory Xeric Guidelines and offers a reduction in raw water requirements for applicants whose landscaping plans include these elements.

- Guideline (d)4 states: "Incorporate soil amendments and use of organic mulches that reduce water loss and limit erosion. All plant areas should receive soil amendments of at least 3 cubic yards per 1,000 square feet."
- Guideline 5(e) provides that: "Prior to the installation of turf-grass and/or other plant
  materials in areas that have been compacted or disturbed by construction activity, such
  areas shall follow soil amendment procedures pursuant to Title 20 and the Water and
  Sewer lawn installation specifications."

<u>Section 14, Vegetation and Irrigation</u>, of the City's Construction Standards for water detention areas provides detailed standards that could be applied to mandatory soil amendment ordinances.

- Compost is defined as: 100% humus rich organic matter. The compost shall be a well decomposed, stable, weed free organic matter derived from agricultural, food, or industrial residuals; biosolids (treated sewage sludge); yard trimmings, or sourceseparated or mixed solid waste.
  - Product must be certified as fully composted at a permitted solid waste processing facility.
  - Product must be registered with the Colorado Department of Agriculture and approved for use on Colorado Certified Organic Farms by the Division of Plant Industry of the State of Colorado.
  - Product shall contain no solid particle greater than one-half inch in length or diameter and be free from un-composted or non-stabilized wood bulking agents.
  - Product shall contain no substances toxic to plants and shall be reasonably free
     (<1% by dry weight) of man-made foreign matter.</li>
  - The compost shall possess no objectionable odors and shall not resemble the raw material from which it was derived.

- In addition, the applicant shall provide the City a signed statement that the compost has been texted and meets the following standards:
  - Organic Matter Content: 30 70% (dry basis)
  - Soluble Salt Concentration (EC paste test): 5 dS (mmhols/cm) or less (as received)
  - PH range: 5.5 to 8.0 (as received)
  - o Final carbon to nitrogen ratio: 20:1 or less.
  - Nutrient Content (dry weight basis): N 1% or above, P 1% or above, K 0.5% or above.
  - Bulk Density: 800 1,000 pounds/cubic yard
  - Moisture Content: 35% 55%

#### **Primary Contact**

Sean Chambers, Director of Water & Sewer, <a href="mailto:sean.chambers@greeleygov.com">sean.chambers@greeleygov.com</a>; Paul Trombino, Public Works/Construction Standards, <a href="mailto:Paul.Trombino@Greeleygov.com">Paul.Trombino@Greeleygov.com</a>.

#### **Brighton, CO**

<u>Article 8, Landscape and Site Design</u>, of Brighton's Land Use and Development Code establishes requirements for water-conserving landscaping:

- All landscape plans are required to incorporate soil amendments and use organic mulches that reduce water loss and limit erosion.
- Plant areas are encouraged to receive soil amendments of at least three cubic yards per 1,000 square feet.

City staff reported that though these soil amendment provisions are included in the city's development regulations and apply to all development projects, they are typically not enforced. There are no provisions in the code requiring an applicant to demonstrate that soil amendments have been acquired or installed. Most site inspections take place after the soil has been prepared and sod and other landscaping materials installed, and evaluations for compliance are limited to whether the landscaping is consistent with the regulatory requirements, not the specifics of soil amendment installation.

#### **Primary Contact**

Louis Morris, Project Coordinator, 303-655-2243, lamorris@brightonco.gov.

#### **Other Communities**

In addition to the programs listed above, we reviewed development codes, landscaping and engineering criteria, and related manuals and regulations for Westminster and Greenwood Village but did not identify regulatory approaches or standards of sufficient detail or difference from those described above to justify inclusion in this report. While a number of Front Range communities' land development codes, engineering standards, or park and recreation manuals refer to requirements for including soil amendments in the design and construction of detention areas, we view these as public works standards rather than regulations intended to apply to general landscaping.

# Xeriscaping

#### **Best Practices**

This section identifies three communities that incorporate low-water-use landscaping requirements in their land use regulations and that offer robust turf rebate programs to reduce the number of water-intensive grasses and plants used in residential yards and commercial spaces the City will want to consider. Five other valuable practices are included for further consideration.

#### Castle Rock, CO

# **Background**

The Town of Castle Rock has taken aggressive steps to promote and require water conservation. Its landscaping regulations limit the types of turf that can be incorporated in new development, and also operates two key programs that offer financial rebates to existing residential and commercial property owners who implement specific low-water-use landscaping techniques.

#### **Landscaping Regulations**

Castle Rock's <u>landscaping regulations</u> limit the amount of high-water-use landscaping material that may be installed. High-water-use grasses such as Kentucky bluegrass and similar turf are prohibited, and other types of turf are also restricted. Single-family and two-family lots that are 7,000 square feet or less in area are allowed to have turf over no more than 30 percent of the lot. Lots larger than 7,000 square feet in area up to 17,000 square feet may have turf over no more than 20 percent of the lot. Lots larger than 17,000 square feet in area may have turf over no more than 20 percent of the lot, up to a maximum of 5,000 square feet of turf.

Staff reports that they are developing updated regulations for new development that would prohibit turf in front yards and limit the turf area in the back yard to a maximum of 500 square feet. These proposed changes are part of the Town's continuing efforts to reduce its water consumption from an average gallons per capita per day (GPCD) of 118 today to 100.

### **Coloradoscape Renovation Program**

Castle Rock's <u>Coloradoscape Renovation</u> water-wise landscaping program is an effort to encourage property owners to convert water-intensive landscaping into water-wise landscapes. It provides incentives to current landowners to redesign their landscaping to be more water-efficient in ways that are similar to the Town's regulations for new development. The program uses a variety of tools to encourage participation, including rebates, educational classes, and the opportunity to water landscaping on days that would otherwise not be permitted. The details of this program include:

- A rebate of \$1.20 per square foot of turf removed on any existing development (not new construction) that use Castle Rock water services. The City's water service area extends beyond City limits in some cases, so some unincorporated properties are also able to participate.
- For residential customers, a minimum of 400 square feet (or the entire area of the yard, if smaller) must be removed to qualify for a rebate. The City sets a maximum rebate payment of \$1,800, which translates to an eligible turf area of 1,500 square feet.
- Nonresidential customers are also limited to a maximum rebate amount of \$1,800 for removal of 1,500 square feet of turf.
- The replacement landscaping may be zero-water use or require a small amount of water, consistent with the multiple landscaping options available through the Coloradoscape program.
- To qualify for the rebate, nonresidential properties are required to have at least 50 percent of the landscaped area be made up of healthy, irrigated turf. Areas with dead or unhealthy turf are deducted from the eligible square footage. The purpose of this provision is to ensure the program is effective in reducing water usage, and not for beautifying unirrigated landscaping.
- In addition to the rebate incentives, applicants are required to participate in a Water-Wiser workshop to learn how to maintain a low-water yard effectively. Those who complete the workshop are exempt from complying with the City's regulations that restrict watering to once every three days.
- Following the final inspection, compliance with the xeriscape standards is maintained by adjustments to the property's water irrigation budget. Like many communities, Castle Rock Water uses a tiered structure, Tier 1 is the lowest fee schedule, Tier 3 the highest, and Castle Rock Water imposes a surcharge for water use in excess of the Tier 3 cap. Tier 1 rates are charged for indoor uses, and Tier 2 rates are charged for irrigation. The water budget for Tier 2 is established by reference to the monthly water needs of the irrigated plant material on the site. Typically, when a turf lawn is replaced with xeriscape, the water needed for landscaping declines substantially, and the Tier 2 water budget is reduced accordingly. If water is used for irrigation in excess of the water budget, the higher Tier 3 rates or surcharge fees are imposed.

In 2021, the City noted that participation was modest. There were 48 residential properties that participated in *Coloradoscape*; 38 additional properties received an initial inspection but did not qualify for the program or did not complete the sod replacement process. Four nonresidential properties participated in *Coloradoscape*, with four additional properties not qualifying for or completing the process.

City staff also noted that the *Coloradoscape* program is labor-intensive because it requires two site visits by City staff in order to complete the rebate process. One visit occurs before turf removal to demonstrate compliance with the terms of qualification. The second visit occurs after turf removal and new landscaping installation in order to ensure the final result meets City standards. Staff noted that accommodating property owner schedules and providing enough Water-Wiser workshop sessions has been a challenge. In addition, some applicants who are not eligible for the program (generally because they do not have existing high-water-use landscaping) apply anyway, increasing administrative burden required to inspect the property and confirm that the non-eligibility. The program also has a modest budget and available funds can be quickly exhausted.

The residential application can be found <a href="here">here</a>; the nonresidential application be found <a href="here">here</a>.

## **Smart Irrigation Controller System**

Castle Rock's second incentive program is a rebate program for updating irrigation system controllers to Smart Evapotranspiration (ET) irrigation controllers. Smart controllers automate watering by adjusting the watering schedule based on the current moisture content of the soil and local weather. This results in reduced run off and creates money-saving water efficiency benefits to landowners.

Residential and nonresidential development are eligible to receive a rebate for installing Smart ET irrigation controllers through the voluntary <u>Smart Irrigation Controller Rebate</u> program. Participation in a Water-Wiser workshop is required to be eligible for these rebates.

Residential property owners can receive a rebate to cover 50 percent of the price of a Smart controller, up to \$200, while nonresidential property owners qualify for rebates to cover 50 percent of the cost of up to five controllers.

#### **Primary Contact**

Rick Schultz, Town of Castle Rock Water Efficiency Supervisor, 720-733-6027

#### Aurora, CO

Aurora has decided that lush, green lawns of Kentucky bluegrass require levels of that the City cannot continue to serve over the long run. Aurora has adopted regulations and financial incentive programs that act as "carrots and sticks" to encourage implementation of xeriscape principles and the use of other water-conservation techniques on landscaping throughout the community.

## **Landscaping Regulations**

Aurora's Unified Development Ordinance (UDO) includes extensive water-conservation measures, a fact that is emphasized by the title of a key chapter of the UDO, "Landscape, Water Conservation, Storm Water Management."

Section 4.7.3, General Landscaping Standards, integrates water-conservation measures throughout all required site landscaping. All shrubs, perennials, groundcovers, and ornamental grasses, and 75 percent of all annuals and trees, are required to be selected from the city's Water-wise Plant List, a xeriscaping fact sheet maintained by the Colorado State University Cooperative Extension, or other Water-wise or xeriscape plant material references. The list of eligible materials is currently being updated. Except for playfields and golf courses, cool-season grass sod and seed is limited to 33 percent of a site's landscaped area, and all cool-season grasses must generally be contiguous. Separate irrigation hydrazone areas are required for water-conserving areas versus non-water-conserving areas.

Section 4.7.4 prohibits private covenants that purport to invalidate the xeriscaping provisions in the UDO.

Section 4.7.5 incorporates additional specific landscaping requirements relating to water conservation. Single-family detached and duplex dwellings on lots 4,500 square feet or larger may install no turf at all, or may install between 400 and the lesser of 40 percent or 1,000 square feet of turf, provided that the turf areas are continuous. Homeowners can choose to follow Water-wise options that allow additional landscaping flexibility. Rock or inorganic mulches may be used in the front yard if a Water-wise option is chosen, and permeable pavers such as brick and natural stone can be used on up to 40 percent of the landscape area if a xeric or no-turf option is used. In all cases, rear yards on single-family and duplex lots with no public view may include no more than 45 percent turf. If the rear yards are visible to the public (for example, in a through lot), the front-yard standards apply.

An image from the UDO of a suggested front-yard landscaping configuration is included below.



Compliance with the landscaping regulations is verified during zoning inspections. Irrigation systems are also inspected and are required to comply with regulations in the Aurora Engineering Standards Manual.

Staff is proposing amendments to the UDO to further limit the use of high-water grasses. This summer, the City Council is anticipated to consider a proposal to prohibit the use of coolseason turf in the front yards of all new houses, as well as in tree lawns or curbside landscaped areas.

#### **Water-Wise Landscaping Program**

To incentivize residents to retrofit their properties to avoid water-intensive landscaping, Aurora Water created the <u>Water-Wise Landscaping Rebate Program</u>, which includes detailed manuals on compliance for both residential and commercial properties. The program pays residents to eliminate water-intensive varieties of turf such as Kentucky bluegrass and fescue and promotes the exclusive use of xeric landscaping for all plants included in the landscape design.

Aurora offers a rebate up to \$3,000 for residential lawns from which at least 500 square feet of water-intensive grass is removed. The proposal for removal must include at least 60 percent of the water-intensive grass located in a front or side yard and visible to the public. The rebate is calculated using pre-tax material (not labor) costs, verified by inspection of receipts for materials purchased, as well as the amount by which the water bill is reduced after one growing season. Unlike other communities that determine rebate amounts based on the square footage of converted landscaping, Aurora's program reimburses property owners for documented money spent on the plants and materials purchased to be installed in their place.

Sixty-five percent of the rebate is paid after final installation, and the remaining 35 percent is paid following one growing season if the property owner demonstrates that actual water use is less than 110 percent of the recommended xeric water use amount.

As part of the program, applicants are required to enroll in the "Know Your Flow" program which educates about the appropriate levels of indoor and outdoor water use.

The landowner establishes eligibility for the rebate by providing photographs of the existing healthy turf, which also must be visible to the public, and by submitting a proposed alternative landscape design. Previously, the City also reviewed the landowner's existing water use to ensure the project would result in a reduction of water use, but it stopped doing so because the water use could reflect underwatering of areas of landscape other than the turf.

The program provides <u>free design services</u> for property owners and offers optional virtual and in-person Water-wise landscaping classes on how to tend to low-water landscaping and how to save water and money. Staff noted that Aurora would be moving to a new program in which applicants take a design class and work with instructors to develop a design for their own site, with the goal of making the design process a little more efficient.

A separate rebate program is offered for large and commercial properties. The commercial rebate covers all documented material (not labor) costs for the approved project, based on a schedule of item-by-item rebate amounts, up to a maximum of \$15,000. Half of the rebate is paid upon final installation and approval of the system, and the remaining half in two equal installments after each of the next two growing seasons documenting water use less than 110 percent of the xeric recommended water use amounts. All approved participants are required to participate in the Large Property Variance Program, which provides monthly emails that evaluate the site's actual water usage based on recommended water consumption. This information is designed to help participants monitor their water efficiency and may identify any scheduling adjustments required to ensure receipt of the remaining rebate payments.

Previously, under both the residential and commercial programs, two inspections were required. The first inspection took place after plants and irrigation had been installed to confirm everything had been installed according to plans. The second and final inspection was performed after issues identified in the initial inspection are addressed and the mulch is installed. However, the City recently eliminated the second inspection, as being generally not necessary or helpful to ensure compliance with the program.

The City reports that the program has been successful with commercial properties. By contrast, it has underperformed in residential neighborhoods, with fewer than 25 rebates issued to single-family residences in the last year, a low level of participation even on a per-capita basis. Staff suggested that the low participation rate is a function of the complexity of the program, the high cost of re-landscaping even with the Water-Wise rebate, and the fact that the rebate covers only material costs (and not labor costs).

#### **Xeric Landscaping Credit Program**

To incentivize the implementation of xeric landscaping, Aurora also created a Xeric Landscaping Credit program. The program is designed to encourage the use of xeric landscaping that does

not require irrigation in so-called "z-zones." Implementation of zero-water landscaping includes the installation of an irrigation meter that is used only while the native xeric plants are acclimating to their new environment. After the plants have matured and no longer require watering, the irrigation meter is removed from the z-zone. Other portions of the landscaping may continue to be irrigated and permanent irrigation meters remain in place for those areas. This allows savings in initial landscaping installation costs for developers and encourages them to install native, low-water landscapes in common areas watered by irrigation meters. This program is only available to new irrigation-only connections. Existing residential and commercial meters that measure indoor and outdoor use are not eligible. Irrigation meters can be installed in both new residential and commercial properties, and the cost of the connection charges varies based on the type of landscape on the property:

- Irrigation systems for non-water conserving landscapes can be connected a rate of \$3.05/sq. ft. (or \$30,500 for 10,000 square feet of landscaped area).
- Irrigation systems for water-conserving landscapes can be connected at a rate of \$1.63/sq. ft. (or, \$16,300 for 10,000 square feet of landscaped area).
- In a z-zone, the irrigation system can be connected for no cost, subject to a \$20,000 deposit that is refunded after the three-year establishment period has run and the irrigation system is removed.

The following conditions must be met to establish a z-zone and qualify for the irrigation refund:

- The developer must express interest early on in the building process.
- The developer must submit a hydrozone map as part of the landscaping plan that delineates no-water, low-water, and high-water areas. If there are multiple irrigation meters, each must be clearly indicated on this map.
- The hydrozone map is paired with a <u>water budget</u> that applies during the xeric plants' three year establishment period. The budget allows for a maximum amount of water that should be used to establish the xeric landscaping. It also employs a reduced assessment for the gallons of water used. However, if the number of gallons used surpasses the maximum allowed amount of water, the assessment rate will be higher.
- After three years, Aurora Water will use the irrigation meter readings to determine whether the xeric landscaping was watered according to the water budget.
- If successful in complying with the water budget and establishing xeric landscaping, the irrigation meter is removed and the \$20,000 deposit refunded.

If landscape development is occurring in phases, the responsible parties must contact Water Conservation and submit a phasing map.

Staff stated that the program was paired with significant increases in the City's tap fee for outdoor-only use and that it has been highly successful, with a significant reduction in highwater-use grasses on new development and an increase in native grasses.

### **Administrative Support**

Overall, water conservation staff—part of the City's Water Department, which is funded separate from the City's general fund—consists of nine full-time employees and up to 15 seasonal employees. One person is responsible for managing the City's rebate programs. Several staff perform inspections, in addition to other duties.

## **Primary Contact**

Tim York, Water Conservation Supervisor, City of Aurora, tyork@auroragov.org 303-326-8819

#### Albuquerque, NM

#### **Landscaping Regulations**

The City's water conservation measures relating to landscaping are not located in its Integrated Development Ordinance, but in <u>City Code Sec. 6-1-1</u>, <u>Water Conservation Landscaping and Water Waste</u>. These regulations limit the amount of landscaping that can use high-water-use turf. Non-city owned properties other than golf courses and single-family residences may cover only 20 percent of the landscaped area with high-water-use turf and other restricted plants, with a minimum of 300 square feet and a maximum of 3,000 square feet allowed. In addition, the ordinance voids homeowners' association restrictions or covenants that restrict the use of xeriscape.

According to staff, while existing single-family dwellings are excluded from the landscaping regulations, new single-family home developments must comply, so a developer who is preparing a 60-lot single-family subdivision is subject to the high-water-use turf restrictions. Staff also reports that existing single-family dwellings have made great strides in reducing overall water usage, measured by both external irrigation use and internal water use, so updating the turf regulations to include existing single-family development has not been a priority.

# **Rebate Administration**

The Albuquerque Bernalillo County Water Utility Authority ("Water Authority") has a variety of incentive programs. These programs are operated by a staff including six full-time employees and four seasonal employees. Staff includes an administrator who processes applications, answers customer calls, and answers questions; a xeriscape inspector whose full-time job is to inspect sites applying for xeriscape rebates (about three to four inspections per day), and conservation specialists who focus on overall water conservation measures with homeowners' associations and multifamily developments. The Water Authority also uses a contractor who provides leak audits, inspections, and water management tools to their large users.

#### **Xeriscape Rebate Program**

The Water Authority has a Xeriscape Rebate program that provides a rebate on a water utility bill if the customer replaces traditional landscaping with low-water use xeriscaping. The program has existed for almost 20 years and has resulted in the conversion of 4,700 single-family residential and 600 commercial properties to low-water landscaping. In total, 10 million square feet of turf have been replaced with xeric landscaping. Currently, about 400,000 square feet of landscaping is converted to xeriscaping each year, and staff hopes a recent increase in payments from \$1 to \$2 per square foot of high-water-use turf removed and replaced will increase participation to 1,000,000 square feet per year.

There is no minimum removal requirement, as the goal to replace as much aging, water-intensive landscaping with xeric landscaping as possible. While applicants sometimes do not understand that they are required to have healthy living turf to qualify for the rebate, staff try to interpret the requirement leniently to encourage removal of turf and implementation of higher-quality xeric landscaping. In addition, large turf removal projects may be done in phases.

Eligibility for the rebate is confirmed through two inspections:

- The first inspection can occur before an application is filed and involves a site visit from a Water Authority staff member who measures the area, provides landscaping tips, and estimates a potential rebate amount. Alternatively, the first inspection can occur after the application is submitted, with staff visiting the site to ensure that the current landscaping proposed to be removed consists of healthy, spray-irrigated turf.
- The second inspection occurs after the xeric landscaping is installed. During this inspection, staff verifies that the plants included in the landscaping plan are installed on the property. The required number of plants is determined by reference to a point system that assigns a certain number of points to each plant, and the final landscaping must meet a certain number of points. (For example, to convert 1,000 sf of turf, the applicant must install 500 points of plants, and a low-water-use tree might be worth 50 points). The inspector also confirms that at least 50 percent of the area for which a grass removal rebate is awarded is covered with xeric plants, and that only drip irrigation (if any) is installed.

Water Authority staff noted that the approved xeric plant list is flexible and that it is easy to satisfy the plant requirements because the plant list includes 270 plants that are native to New Mexico. In addition, Water Authority staff contact participants one year following the final inspection to offer a consultation by an irrigation specialist. Participants who later are suspected of overwatering may be contacted, but no other enforcement actions are taken following final approval.

This program is notable for its relatively high reimbursement rate compared to other systems and its successful track record. Staff said they expect that the recent increase in reimbursement rates will incentivize more participation in the program.

# **Tree-Bate Program**

The Water Authority also offers a Tree-Bate Program that offers customers 25 percent off the cost of professional tree care services or for the purchase of a new low- or medium-water use tree from the <a href="Water Authority Xeriscape Plant/Tree List Guide">Water Authority Xeriscape Plant/Tree List Guide</a>. The maximum rebate for residential customers is \$100 per year while nonresidential customers are eligible for up to \$500 per year in rebates.

#### **Rainwater Harvesting Rebate**

Under this program, the Water Authority provides rebates to property owners that acquire barrels and cisterns to capture rainwater for use in irrigation or other purposes. The rebate amount increases with the capacity of the barrel or cistern:

- \$25 for 50–149 gallons in rain barrel or cistern capacity
- \$50 for 150–299 gallons
- \$75 for 300–499 gallons
- \$100 for 500–999 gallons
- \$125 for 1000–1499 gallons
- \$150 for more than 1500 gallons

## **Efficient Irrigation Rebate Programs**

The Water Authority offers five <u>Efficient Irrigation Rebates</u> for the installation of water-saving irrigation controllers, sensors, pressure regulators, and sprinkler bodies and nozzles. These rebate programs were just instituted in 2020, and represent a change from the Water Authority's prior focus on incentivizing indoor efficiency. About 150 households take advantage of the program each year.

- The WaterSense Smart Irrigation Controller Rebate offers 25 percent of the cost of irrigation controllers (up to \$100 for residential and \$500 for nonresidential customers)
- The Smart Flow Sensors Rebate offers 25 percent of the cost of smart flow sensors (up to \$100 for residential and \$500 for nonresidential customers). These sensors communicate the flow rate of water to the WaterSense irrigation controller to help with leak detection.
- The Smart Pressure Regulators Rebate offers 25 percent of the cost of smart pressure regulators (up to \$100 for residential and \$500 for nonresidential customers). Smart Pressure Regulators (from a specific list of qualified products) are important for optimizing delivery of water via sprinkler or drip irrigation to landscaping. This allows for consistent water distribution throughout the irrigated area.

- The WaterSense Pressure Spray Sprinkler Bodies Rebate offers a \$4.00 rebate per sprinkler body with no annual limit. These WaterSense sprinkler bodies reduce water waste by optimizing the rate of water expenditure to efficiently cover the landscape.
- The Smart High Efficiency Rotating Sprinkler Nozzle Rebate offers a \$2.00 rebate per nozzle with no annual limit. These smart nozzles apply the water stream at a lower rate which allows the water and nutrients to better penetrate the soil.

# **Water Smart CPR Program**

The Water Authority also offers a <u>Water Smart Customized Performance Rebate (CPR) Program</u> to commercial customers. This program incentives landowners to update and improve existing irrigation systems with smart irrigation systems that can save as much as 100,000 gallons of water per year. This rebate program is performance-based to incentivize greater water savings. A customer qualifies for \$10 in rebates for every 748 gallons of water saved per year. The maximum rebate is \$50,000 or 50 percent of project costs, whichever is lower, and may include costs such as materials, hardware, and software.

Landowners who apply for the program and whose applications are approved are assigned a "CPR concierge" to guide them through the process of acquiring and installation the irrigation system. The smart irrigation system must be installed within six months after the application is approved, and the applicant must submit receipts for the cost of implementing the upgrades. Within 30 days of completion, the property owner must schedule the post-installation inspection where project cost estimates are revised based on inspection findings. The final rebate amount is determined after 12 billing cycles (one year) after project completion, and the rebate is then applied to the water bill. The property owner must commit to sustaining the project for five years or until the property title is transferred, whichever occurs first. About 150 landowners participate in the program annually.

#### **Customer Outreach**

To target areas where significant water savings may be possible, the Water Authority does targeted outreach to the top five percent of water users within each ZIP code. This outreach includes offers for a free consultation to determine ways to save water, such as changes to the landscaping, changes to the irrigation schedule (over-watering is a common problem), and simple changes to the irrigation system such as replacing spray bodies. Of the approximately 5,000 landowners contacted each year, about 100 reach out to the Water Authority for watersaving advice, while others reduce water usage on their own. About 100,000 email addresses are subscribed to the Water Authority's newsletter, called "505 Outside," and the Water Authority does other advertising such as outdoor billboards and television ads.

#### **Primary Contact**

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#### **Other Valuable Practices**

#### Tucson, AZ

Due to its location in the Sonoran Desert, the City of Tucson has implemented a host of water conservation measures, including several relating to landscaping. The City's Unified Development Code (UDC) includes restrictions on the types of plants that may be used in landscaping (Section 7.6.4, Landscape Standards), and those regulations have been effective in replacing existing water-intensive vegetation with more drought-tolerant varieties.

In general, all plants must be chosen from the Arizona Department of Water Resources' low water use/drought tolerant plant list, which includes only those plants that can survive in the Sonoran Desert without using significant water resources. Areas that have been graded and seeded must use Native Seed List approved species listed in the City's technical standards. The landscaped area must also be designed to take advantage of storm-water runoff and/or include a water-conserving irrigation system.

Other plants may be installed only in defined "oasis areas" that will return maximum benefit in terms of cooling, aesthetic pleasure, and exposure to people, or for special uses such as public parks and botanical gardens. In multifamily residential developments, only five percent of the site, 100 square feet per dwelling unit, or eight percent of the open space (whichever is greater) may be a designated oasis area. For all other uses, no more than 2.5 percent of the site may be an oasis area. Oasis areas are encouraged to be located near main buildings, active use areas, pedestrian areas, and outdoor seating and gathering areas.

Although the City's restrictions limiting the use of turf to oasis areas and other water-conservation landscaping requirements do not apply to single-family dwellings, staff reports that the conservation ethos in Tucson is strong and that turf is rarely found in the front yards of single-family homes.

City staff noted that this program requires fairly intensive administration due to the need for regular inspection and enforcement. When applicants have trouble complying with the detailed specifications of the code, staff work to ensure that the landscaping meets the intent and purpose of the ordinance. Tucson Water has spearheaded public outreach to educate property owners on the requirements. Staffing continues to be a challenge both for public outreach and enforcement of the regulations. There is only one staff member who reviews landscape plans for compliance with regulations (although the City plans to hire more) and only three inspectors. The final constructed landscaping and trees are not always installed or maintained consistent with the approved plans, and the City is not aggressive about enforcing compliance.

A <u>Green Storm Water Infrastructure</u> fee of \$0.13/100 cubic feet (748 gallons) of water, first assessed in 2020, raises about \$3 million per year to help divert and harvest storm drainage from public streets and parking lots to vegetated water harvesting areas. The City has also

recently instituted a requirement that captured rainwater supply 50 percent of landscaping irrigation needs.

Staff reports that the overall program has been successful and that Tucson ranks high in water conservation among Arizona municipalities.

## **Primary Contact**

Anne Warner, Lead Planner, Planning and Development Services, Landscape/NPPO Section, anne.warner@tucsonaz.gov

#### Scottsdale, AZ

## **Land Use Regulations**

<u>Section 49-245</u> of the Scottsdale Code of Ordinances sets forth limitations on water intensive landscaping and turf areas for new schools, churches, resorts, hotels, motels, and cemeteries, and <u>Section 49-246</u> does the same for new multi-family residential, commercial/industrial, and nonresidential uses.

- Section 49-245 requires that all new facilities limit water intensive landscaping and turf
  areas, with the majority of landscaping required to be from the <u>Arizona Department of Water Resources' Low Water Use Plant List</u>. Churches and schools are required to limit
  water-intensive landscaping to 15 percent of the total lot area, while resorts (including hotels and motels) are limited to between five and 10 percent of the total lot area.
- Sec. 49-246 requires that all new commercial and industrial sites limit the use water
  intensive landscaping and turf areas to 10 percent of the lot area for sites 9,000 square
  feet or less. For larger sites, the first 9,000 square feet are limited to 10 percent waterintensive plants and the remainder of the site is limited to five percent water-intensive
  plants. For these uses, all plants installed must comply with the Low-Water Use Plant
  List.

Notwithstanding the lack of regulations prohibiting turf use on single-family residential property, staff generally does not see excessive turf installed on new single-family residential development. In addition, the northern part of the City (which is where much recent development has occurred) includes land designated as Natural Area Open Space which cannot be developed or irrigated. Most turf is found in South Scottsdale, which has long been developed and where the incentive programs are the approach used to encourage a transition to more water-conserving landscaping.

#### **Rebate Programs**

The City also offers a variety of rebate programs that are codified in <u>Section 49-243</u> of the City's ordinances. A single-family residential property can receive \$1 per square foot of turf removed, with a maximum rebate of \$5,000 and a minimum turf removal requirement of 500 square feet.

The turf must be replaced with City approved low-water-use plants and other compatible landscaping material, and the City's Water Conservation Staff are required to verify eligibility before turf is removed. Rebates are not paid until the replacement landscaping is installed. The current rules require that the first 1,000 square feet of replacement landscaping is the homeowner's choice, but the second 1,000 square feet has to be a xeriscape landscape with 25 percent mature plant coverage. Existing plants, including high-water plants but excluding turf, can be used to meet the plant coverage standard. While the program terms and conditions state that the landscaping may be inspected in the future for continued compliance, in practice those have not occurred.

New rules scheduled to be implemented July 1, 2022, will change some of the rebate program rules. The 500 square foot minimum will be eliminated and the rebate amount will increase to \$2 per square foot, although the maximum rebate will remain \$5,000. The revised rules may include a requirement that sprinkler heads be decommissioned for the second 1,000 square feet of landscaping as well.

Three staff members have been performing inspections, and the City has recently hired two additional inspectors. At times, the pre-inspection is performed using photography provided by the applicant, but other times an inspector visits the site. There is at least one in-person inspection for each rebate.

Staff reports that about one-third of those who enter the program are awarded a rebate. Some enter the process but never complete it or do not comply with the program terms (e.g., they want to install more artificial turf than the program allows). About 150 are awarded rebates each year, although staff is hopeful the increase in rebate and the removal of the minimum turf requirement will increase participation.

Multi-family residential and commercial properties can receive rebates for a minimum of 2,000 square feet of turf removal. Properties with up to 10,000 square feet are eligible for up to \$10,000 in rebates (limit one per year and two per lifetime), and properties with more than 20,000 square feet of turf are eligible for up to \$20,000 in rebates and one per lifetime. Staff reported that fewer than 10 landowners participated in the program in 2021. However, with an increase in water bills scheduled to take place in November, staff expects increased interest in the program. While only six homeowners' associations reached out to participate in watersaving programs in fiscal 2021, in the first six months of the current fiscal year 40 homeowners' associations have contacted the City.

Incentives are also offered for removal of pool and spas. While not often used, staff reports that it is often cost-effective for homeowners with aging pools who would have to pay as much or more to repair or remodel the old pool. The City offers \$200 plus \$1 per square foot of pool removed.

Rebates for installation of a WaterSense irrigation controller are also offered. For single-family residential properties, the maximum is \$250 per controller or the cost of the controller, if less; multi-family and commercial properties, as well as nonresidential common areas, are eligible for rebates for up to 50 irrigation controllers, at a maximum rebate of \$400 per controller.

#### **Primary Contact**

Elisa Klein, Water Conservation Program Supervisor eklein@scottsdaleaz.gov

#### San Antonio, TX

The City of San Antonio uses a combination of techniques to preserve water in landscaping. In 2021, the City's Gallons per Capita per Day (GPCD) water consumption rate was 111 gallons, which was lower than average due in part to a wet summer. San Antonio's goal is to reduce the GPCD to less than 100 gallons.

#### **Landscaping Regulations**

The City requires all plants in the city to be chosen from a list of drought-resistant plants in Appendix E of the City's Unified Development Code. The recommended plant list is specifically tailored to xeriscape planting methods, and all are water-friendly. City staff noted that this plant list is limited and could include additional drought-tolerant species. However, applicants are permitted to propose the use of other shrubs or plants, provided they are native or nearnative and the applicant can demonstrate they can survive in the area with limited or no irrigation. The City enforces compliance with the regulations through site visits performed by a team of five inspectors.

#### **Drought Ordinance**

Water conservation is also emphasized through the City's <u>drought ordinance</u>, enacted in 2014, which is tied to existing conditions in the Edwards Aquifer that provides much of the water for the city. Once aquifer levels fall below 665 feet (measured as elevation above mean sea level), the City begins preparation for drought restrictions. These restrictions are "staged" in four levels based on the level of the aquifer and are enforced by the City. During all stages, irrigation of commercial and residential properties is staggered based on the property's address.

- In Stage I, which is implemented when the aquifer has dropped to 660 feet, irrigation with a soaker hose, hose-end sprinkler, or in-ground irrigation system is only permitted between 7:00 p.m. and 11:00 a.m. on weekdays specified by address.
- In Stage II, which is triggered when the aquifer has dropped to 650 feet, the irrigation methods allowed in Stage I may only take place from 7:00 a.m. to 11:00 a.m. and 7:00 p.m. to 11:00 p.m. Irrigation with a drip irrigation system or five-gallon bucket is allowed during Stage II at any hour of the day, as is irrigation with a handheld hose.
- In Stage III, which is triggered once the aquifer has dropped to 640 feet, irrigation is only allowed every other week on the designated days beginning on the second Monday

after Stage III has been declared, between 7:00 a.m. and 11:00 a.m. and between 7:00 p.m. and 11:00 p.m. Irrigation with a drip irrigation system or five-gallon bucket is allowed on every Monday, Wednesday and Friday, and irrigation with a handheld hose is allowed at any time on any day.

 In Stage IV, which is triggered at the City Manager's discretion following a 30-day monitoring period once Stage III has been declared, the Stage III irrigation requirements remain in effect, but a surcharge is assessed on nonresidential San Antonio Water Service accounts whose consumption exceeds 5,236 gallons per month and residential accounts whose consumption exceeds 12,717 gallons in a billing cycle.

#### **Rebate Programs**

The City also offers a variety of rebate programs through its wholly owned public utility, the <u>San Antonio Water System (SAWS)</u>. For residential clients, SAWS offers <u>landscaping coupons</u> that provide \$100 coupons for landowners planning to remove grass. A landowner can receive one \$100 coupon for each 200 square feet of grass and sprinklers proposed to be removed, and can redeem coupons at participating plant vendors. Once the plants are installed, the landowner is required to send a photograph back to SAWS and, if approved, the landowner can participate in additional SAWS rebate programs.

Water conservation staff reported that the coupon program was implemented in 2014 and replaced an earlier program that involved pre-rebate and post-rebate inspections and more extensive requirements to update landscaping. SAWS has found that the rebate program is more popular, and in particular was used much more by lower-income households who were less likely to engage in more holistic landscape makeovers. While staff noted that the biggest water savings come from instituting xeriscaping on higher-income households, which generally have larger landscapes and are willing to spend more on water, they believe it is important to reach the entire community. However, staff also noted that a separate "Outdoor Living" program will be implemented on June 1, 2022, which will be an inspection-based program that encourages households to revise their landscaping to contain no more than 1/3 turf, 1/3 planting area, and 1/3 pervious living area such as pavers.

An <u>irrigation rebate program</u> allows residential homeowners to earn up to \$5,000 for removing their irrigation system or making it more efficient. The largest rewards are offered for removal of active irrigation systems, and smaller rewards are offered for removal of non-functional irrigation system, removal of an irrigation zone, conversion from spray to drip irrigation, and other conservation-friendly efforts. SAWS also offers a <u>separate irrigation consultation program</u> at no cost to homeowners that provides recommendations for revising an irrigation schedule. These efforts, according to staff, are generally effective in reducing water usage.<sup>2</sup> Staff has

<sup>&</sup>lt;sup>2</sup> Staff reported that it can be tricky to evaluate the effectiveness of individual programs due the variability of weather and other extrinsic factors that may affect water usage. For some projects they try to do a randomized

found that many households over-irrigate their landscapes, and that by providing a consultation that involves modifications to the irrigation schedule, along with less wasteful irrigation equipment, these households use significantly less water.

For commercial water users, SAWS has implemented a <u>custom rebate program</u> that offers payments for the implementation of a variety of water-conservation techniques. The amount of the rebate depends on the amount of water saved, and eligible options can include installation of smart irrigation systems, upgrades to irrigation systems to include water-saving technology, replacement of irrigated landscaping with xeriscape landscape, and other actions. SAWS also offers a commercial irrigation rebate program similar to the program offered to residential homeowners. Savings are based on the acre-feet of water use that the modifications are projected to eliminated, based on estimates that staff has developed over time. However, it is a complex program, and staff is investigating whether more straightforward, menu-based options would increase participation.

#### **Rewards Program**

SAWS also encourages water-conserving landscaping through a points-based WaterSavers Rewards program. Participants can earn points by attending events relating to water-efficient landscaping. These events are sponsored by third-party organizations (some of which are under contract with SAWS) and approved by SAWS. With the points earned, participants receive coupons at local retailers that can be used towards water-conserving materials such as plants, mulch, compost, and rain barrels. Staff reports the program attracts between 100,000 and 200,000 attendees at events each year and has attracted a committed following.

#### **Customer Outreach**

The centerpiece of SAWS' public outreach efforts is the <u>Garden Style San Antonio</u> website, which provides water-conservation advice, as well as evapotranspiration-based accurate watering advice and information about any current watering restrictions due to drought. More then 20,000 people subscribe to the Garden Style newsletter, which provides watering advice and information about other programs offered by SAWS.

#### **Primary Contact**

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control trial by matching the participants in a rebate program with non-participants with similar household income and pre-intervention water usage, but that it is complicated and difficult to implement.

# **Tree Protection and Tree Canopy Enhancement**

#### **Best Practices**

#### Lake Forest Park, WA

### **Background**

The City of Lake Forest Park, Washington is a small suburb of Seattle with a population approaching 14,000 across approximately four square miles. The City has had one part-time arborist since 2018, which was the first year the City hired an in-house employee dedicated to forestry. The City previously relied on a resident that was an arborist and expensive consulting services follow the retirement of the resident arborist to implement its tree protection and canopy enhancement program.

#### **Tree Protection**

<u>Chapter 16.14</u> of the Lake Forest Park Municipal Code is focused on tree canopy preservation and enhancement.

- The City uses a two-tiered permit structure that prioritizes protection of "significant" trees, trees in environmentally critical areas or buffers, and native tree species. A Minor Tree Permit, which can be obtained without City Arborist review, generally requires replacement of any trees removed from a development site (at a one tree to one tree ratio as long as canopy coverage is equal to or greater than before). If 1:1 replacement will not result in equal or greater tree canopy coverage, a Major Tree Permit based on arborist review will be required.
- Any application for a Major Tree Permit requires approval of a tree replacement plan that maintains canopy coverage or meets the canopy coverage goal for the property (depending on the project type).
- The City offers a Proactive Forest Management Permits for property owners as a
  method of expediting projects in exchange for increased collaboration with the City on
  tree maintenance and management and following an arborist plan to maintain canopy
  coverage. A similar Utility Forest Management Permit offers utility providers an
  opportunity to work with the City on a plan to balance the needs of utility providers and
  community goals for canopy coverage.
- Tree removal is generally not permitted in areas that the City has identified as
   Environmentally Critical Areas and Buffers—regulated by <u>Chapter 16.16</u>—which includes
   floodplain, stream buffers, wetlands, steep slopes, landslide hazard areas, erosion
   hazard areas, and seismic hazard areas. However, trees that present a risk (based on
   defined standards), are causing damage to buildings and infrastructure, or are invasive
   species, may be removed.

- The City Arborist notes that standards for protection of trees during construction are
  vital but not something addressed in the Code. Current uncodified practice is to require
  that the critical root zone be protect to a distance equal to one foot of radial distance
  from the tree trunk for every one inch in tree Diameter at Breast Height (DBH). The City
  often negotiates for an even wider protection area.
- Historically, the City has required chain link fencing on pier blocks to protect the critical root zone, but the City Arborist has found that pier blocks tend to be shifted around, so the City is starting to require that fencing be attached to posts driven into the ground.

Lake Forest Park highlighted the following successes and challenges with enforcement of tree protection regulations:

- The City is generally unable to do proactive code enforcement due to limited staff. Because it is a small city, Lake Forest Park relies on a small number of highly active residents that will report tree removal when they see it. Sometimes reports are made related to removal of trees for which valid Tree Permits have been issued, but false alarms are better than not knowing about the illegal removals for which permits have not been issued.
- The City has a Tree Account for payment of fees and fines for tree removal, which is an
  effective way to ensure a direct link between funds and tree programs. The process for
  determining a fine is generally as follows:
  - The City addresses violations of the Code by hiring an appraiser to determine the value of the removed tree(s) and notifying the property owner (and sometimes tree removal company) of the value to be paid. Local tree removal companies have become well aware of the costs of removing a tree without a Tree Permit, which has reduced the number of violations.
  - The City Arborist highlighted the ability of a resident to provide the City with information on the circumstances of the tree removal and to outline financial hardship before paying the fine.
  - Sometimes the City Attorney and an attorney for the Code violators meet to agree on the final fee amount.
  - In practice, the City Arborist noted that although the process of appraisal, fine, appeal, and reaching agreement on the fine amount is generally effective, it is also time consuming. To reduce this time commitment, the City has been assessing a fine for unpermitted tree removals that is essentially double the cost of the Tree Permit fee that should have been paid before removal, but only in circumstances where the City Arborists agrees that the removed tree was one for which removal would have been approved following the Code process.

### **Urban Canopy Management**

Lake Forest Park has more tree canopy than most surrounding communities and generally prioritizes protecting and expanding tree canopy more than neighboring communities. Existing regulations have been successful in the following ways:

- The City has a clear understanding of parcel-by-parcel tree canopy coverage (see <u>Canopy Coverage Maps</u>) and clear goals for canopy coverage by zoning district and lot size (see <u>Community Forest Management Plan</u>). This information is used in determining tree replacement requirements.
- The Code has clear definitions, which make it easier for staff to implement the Code and for community members to understand what is expected. Valuable terms that are defined by Code include:
  - "Canopy coverage" means the area covered by the canopy of trees on the lot. When a tree trunk straddles a property line, 50 percent of the canopy shall be counted towards each property's canopy coverage. The canopy coverage of the immature trees and newly planted trees is determined using the projected canopy areas in the Lake Forest Park general tree list.
  - "Landmark tree" means a significant tree that is at least 24 inches in diameter (DBH).
  - "Significant tree" means a tree six inches or greater in diameter (DBH) or a required replacement tree of any size. Dead trees shall not be considered significant trees.
  - "Exceptional tree" means a viable tree, which because of its unique combination of size and species, age, location, and health is worthy of long-term retention, as determined by the city's qualified arborist. To be considered exceptional, a tree must meet the following criteria:
    - The tree must be included in and have a diameter at breast height (DBH) that is equal to or greater than the threshold diameters listed in an adopted table;
    - The tree shall exhibit healthful vigor for its age and species;
    - The tree shall not be considered a significant risk in regard to existing utilities and structures as evaluated per the tree risk assessment defined in LFPMC 16.14.080(A)(1);
    - The tree shall have no visual structural defects that cannot be mitigated by one or more measures outlined in the International Society of Arboriculture Best Management Practices; and
    - If retained under current tree growth conditions, the tree can be expected to remain viable with reasonable and prudent management and care.

- "Viable (tree)" means a significant tree that a qualified arborist has determined to be in good health with a low risk of failure, is relatively windfirm if isolated or exposed, is a species that is suitable for its location, and is therefore worthy of long-term retention
- Although residents often expect that the City is responsible for maintenance of trees in the public right-of-way, the Code makes it clear that the property owner is responsible for those in the tree lawn along property frontages, even if they are located in the public right-of-way.
- The City maintains a detailed <u>Tree List</u> that include information on the expected canopy area of each species, typical characteristics, drought tolerance, and preferred soil type.

Lake Forest Park has also identified the following improvements that they would like to see in the future:

- The City Arborist would like to see the Code have stronger standards for retaining trees before allowing replacement. Currently, standards allow a tree to be replaced by a tree that will mature into a tree with equal or greater canopy, but replacement trees take years to mature and provide the same benefits as the original, removed tree.
- The City Arborist is concerned about recent changes to the Code that allow accessory dwelling units (ADUs) more broadly and future efforts that could rezone areas to allow for higher density housing, both of which could potentially result in the loss of tree canopy. Historically, the City has not seen much development or redevelopment or its generally large residential lots, so the Code may need to be updated to prevent canopy loss due to more intensive development.
- The City Arborist would like to increase education of new and existing property owners to prevent accidental and unpermitted tree removal.

#### **Primary Contact**

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#### Portland, OR

#### **Tree Permits**

Trees on private property and in City of Portland rights-of-way are regulated by <u>Title 11 of City Code</u>, <u>Trees</u>, which is focused on implementation of the City's <u>Urban Forest Management Plan</u> (2004) and <u>Urban Forest Action Plan</u> (2007) and tracking progress on those initiatives. Title 11 establishes the Urban Forestry Program, including appointed supervisory boards and regulations and procedures for tree permits, tree preservation, tree planting, and enforcement of these regulations.

<u>Chapter 11.30, Tree Permit Procedures</u> outlines a highly nuanced approach to tree protection with permits and standards varying based on ownership and location (private property or public property/street) and the type of activities proposed. Trees that are designated as "Heritage Trees" per <u>Section 11.20.060</u> ("trees that because of their age, size, type, historical association or horticultural value, are of special importance to the City") earn the strongest level of protection and regulation, and require approval by the Urban Forestry Commission (UFC) to remove the designation (and subsequent removal of the tree). In other cases, the code requires City Forester approval for any tree removal or maintenance.

<u>Chapter 11.40, Tree Permit Requirements (No Associated Development)</u>, details the permit requirements and review criteria when tree removal or maintenance is not associated with development activity. This chapter generally applies to all street trees, City trees three inches or greater in diameter, and private trees 12 or more inches in diameter (among other, more specific situations). Permit standards and review criteria are organized into two categories: City and Street Trees (<u>Section 10.40.040</u>) and Private Trees (<u>Section 10.40.050</u>).

City and Street Trees require a Type A tree permit, which requires City Forester review with no public notice period or opportunity for the public to appeal, for the following:

- Tree planting;
- Pruning branches (greater than ½ inch) and roots (greater than ¼ inch);
- Removal of dead, dying, or dangerous trees (with one replacement tree required per removed tree); or
- Removal of up to four healthy trees (per year) that are less than three inches in diameter (with one replacement tree required per removed tree).

City and Street Trees require a Type B permit, which may result in a public notice period and opportunity for public appeal of a pending City Forester decision, for removal of trees that are greater than three inches in diameter if either of the following conditions apply:

- Tree for tree replacement of removed trees is required for trees less than 20 inches in diameter (only if less than four healthy trees are removed per year). If any tree is 20 inches or larger in diameter or more than four health trees larger than 12 inches in diameter are removed, trees replacement must be "inch for inch," which means that trees of an equivalent total diameter are required to be planted.
- Similarly, if any tree is 20 inches or larger in diameter or more than four healthy trees larger than 12 inches in diameter are removed, public notice and opportunity for public appeal of the City Forester approval is required.

Private Trees require a Type A permit for pruning native trees in specified overlay districts, removal of a tree that is dead, dying, dangerous, a nuisance species, located within 10 feet of a building, or no more than four healthy trees smaller than 20 inches in diameter are removed.

Any tree removal under a Type A permit requires tree for tree replacement. Removal of up to four trees that are 20 inches in diameter or larger or removal of more than four trees larger than 12 inches in diameter require a Type B permit, inch for inch replacement, and public notice and opportunity for public appeal.

<u>Chapter 11.50, Trees in Development Situations</u>, details the permit requirements and review criteria when tree removal or maintenance proposed as part of a development activity. A Tree Plan is generally required for all development projects, unless:

- There are no private trees 12 inches or larger in diameter;
- There are no city trees six inches or larger in diameter;
- There are no street trees three inches or larger in diameter;
- The site or activity is exempt from on-site tree density standards; and
- The site or activity is exempt from street tree planning standards.

Sites larger than one acre (or where all work is occurring in the public right-of-way) may establish a Development Impact Area that provides some flexibility for tree preservation and planting. It also includes a requirement that one street tree be planted or retained for each full increment of 25 linear feet of street frontage with the option of paying a fee-in-lieu if the required number of trees cannot be provided.

<u>Section 11.50.040</u>, <u>Tree Preservation Standards</u>, details the standards for retention of trees and mitigation of trees not preserved, both on-site and in the public right-of-way. Mitigation is based on payment into the Tree Planting and Preservation Fund with the cost depending on the size of tree(s) to be removed.

<u>Chapter 11.45</u>, <u>Programmatic Tree Permits</u>, outlines a program to avoid going through individual Tree Permit applications for regular or continuing work by utilities and other public agencies. Although the City Code does not generally apply to State and Federal lands or highways), this permit establishes a method for the City to engage with these agencies to ensure that City regulations are understood and followed while allowing less oversight of day-to-day operations that could result in maintenance or removal of certain trees less than six inches in diameter. Programmatic Tree Permits may be approved by the City Forester for up to five years.

#### **Tree Protection**

<u>Section 11.60.030</u>, <u>Tree Protection Specifications</u>, offers both prescriptive and performance-based option for protection of both privately- and publicly owned trees. Importantly, the prescriptive path does not require any knowledge of trees or plants and is therefore frequently used by homeowners and small developers. It has been adjusted over time and seems to work well, based on the following standards:

- The root protection zone is one foot for each one inch in tree diameter;
- To provide flexibility for *existing* encroachments, provided the encroachment does not affect more than 25 percent of the root protection zone and does not penetrate the inner half of the zone radius;
- Six-foot chain link protection fencing on eight foot metal posts are required at the edge of the root protection zone; and
- The same standards apply to protection of street trees unless the City Forester requires more or less protection.

The performance path is most often used for larger projects and by larger developers because it allows a professional arborist to create a plan for tree preservation that reflects any unique circumstances of the project or site. The performance plan is reviewed for adequacy by City staff.

## **Urban Canopy Management**

To support the goals of the Urban Forest Action Plan to increase tree canopy coverage to 35-40 percent in residential areas, 15 percent in commercial/industrial areas, 30 percent in parks and open spaces, and 35 percent in rights-of-way, <a href="Section 11.50.050">Section 11.50.050</a> includes on-site tree density standards that specify a minimum required tree area based on the size of the site and the type and size of proposed and existing development. All new development and exterior alteration to existing development above a certain valuation are generally required to comply with these requirements, with a few exceptions. Applicant are provided with two options as follows:

- Option A requires the following minimum tree area:
  - One- and two family residential: 40 percent of site or development impact area;
  - Multi dwelling residential: 20 percent of site or development impact area;
  - o Commercial and mixed-use: 15 percent of site or development impact area;
  - Industrial: 10 percent of site or development impact area;
  - Institutional: 25 percent of site or development impact area; and
  - Other: 25 percent of site or development impact area.
- Option B requires that the entire site area, minus existing and proposed building coverage be designated as part of the tree canopy area.

This section also requires that the required tree area by planted with some combination of canopy trees that meets specific standards for number of trees required per size of tree area and the minimum required planting area per tree. The Code provides tree density credits towards any required tree density for trees planted to meet required stormwater or

landscaping requirements, existing healthy trees that are retained on-site, payments in-lieu of planting, and flexibility for small sites where existing trees are retained.

<u>Section 11.60.030, Tree Protection Specifications</u>, outlines the minimum size and species diversity for all trees required by this Code. Standards include the following:

- Broadleaf trees must be 1.5 inches in caliper for one- and two-family residential development (on-site or on street) or on-site for all other development types.
- Broadleaf street trees are required to be a minimum of two inches caliper for multidwelling residential and 2.5 inches caliper for all other types of development types.
- Coniferous trees are required to be at least five feet in height.
- Native trees are permitted to be ½ inch caliper less than required.
- When more than eight but fewer than 24 trees are required, no more than 40 percent
  of trees may be of one species. When more than 24 trees are required, no more than 24
  percent may be of one species. In some overlay districts all trees provided are required
  to be native species.

Portland also uses some unique approaches to enforcement of tree planting, maintenance, and removal requirements, including the following:

- Street trees are included in the warranty period for infrastructure (e.g., sidewalks and streets) that require a Public Works permit, which generally lasts two years. This means that any required street trees that are damaged, poorly maintained, or die during the warranty period are required to be replaced by the applicant. Staff noted that this has worked well and does not require a separate process for enforcement.
- Penalties for failure to comply with the Code standard for trees and landscaping is based on an internal document that is informed by the Technical Specifications of Chapter 11.60. The City's current approach is not to make it more expensive to follow the Code, which may disincentivize people from coming info conformance. This approach still allows the City to require planting of three to seven trees when a tree is illegally removed. City staff hopes to eventually establish an administrative manual outside of the Code that clarifies penalties for noncompliance that can be easily updated if those penalties change in the future).
- The City Forester is permitted to require payment (based on an adopted fee schedule) into the Tree Planting and Preservation Fund instead of requiring replacement trees if the Forester finds there is insufficient or unsuitable area to accommodate some or all of the replacement trees within the street planting area or site.

Although not a complete success, City staff mentioned that they recently completed a study showing that compliance with various landscaping standards varied from 50 to 75 percent. The City currently enforces landscaping and tree regulations based on complaints by neighbors and

concerned citizens, which can make it difficult to ensure that required landscaping on private property is provided and maintained with limited resources.

Additional Portland tree-related regulations are documented in <u>Title 33</u>, *Planning and Zoning*.

## **Primary Contact**

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#### **Other Valuable Practices**

#### San Antonio, TX

The San Antonio Unified Development Code (UDC) was amended in 2010 to include Section 35-523, Tree Preservation. The regulations are based on a required minimum canopy coverage, which is 38 percent for single-family residential properties, 25 percent for multi-family and nonresidential properties, and 15 percent in the Community Revitalization Action Group (CRAG) area, which generally encompasses central San Antonio. Based on these final tree canopy coverage requirements, the applicant may use one of two methods for determining tree preservation. The tree survey method establishes a minimum percentage of all diameter inches of significant or heritage trees, or canopy area, which must be preserved or mitigated (e.g., 35 percent of six inch caliper trees are to be preserved on a single-family dwelling lot). The tree stand delineation method requires a minimum percentage of tree canopy coverage (not including floodplains and environmentally sensitive areas) to be preserved (e.g., 35 percent of non-heritage tree canopy for any project that requires any permit after the master development plan stage or 30 percent with a master development plan). San Antonio allows various alternatives when trees that are required for preservation are removed, including a feein-lieu payment into the Tree Mitigation Fund and protection and maintenance of natural areas within the surveyed area.

The City also offers tree preservation incentives, which include:

- Reduction of one required parking space for every four diameter inches of trees
  protected or mitigated on-site, up to a maximum of 15 percent of required parking
  spaces (or 30 percent with approval of the Planning Director). Preservation of
  woodlands and significant tree stands may qualify the site for a 50 percent reduction in
  parking spaces;
- Reduction in sidewalk width or elimination of a sidewalk requirement;
- Additional tree protection credits for preservation of tree clusters;
- Credit for trees provided to meet required landscape buffers and on-site landscaping (see Sec. 25-511, Landscaping);
- Credit for preservation of native understory plants alongside trees;

- Reduction of lot size and setback requirements for exceeding tree protection requirements.
- Exemption from City tree protection requirements for projects certified under the Texas Parks and Wildlife (TPW) Texas Wildscape Program;
- Credit for planting trees on the south and west sides of habitable buildings (to benefit energy conservation);
- Additional credit for preservation of woodlands, significant trees, and heritage trees;
- Reduction of required tree canopy for athletic fields; and
- Additional credit for incorporation of Low Impact Development (LID) to aid in stormwater management.

San Antonio defines the root protection zone as being one linear foot of radial distance for each one inch in tree diameter, which allows construction within five feet on one side of the tree. Alternatively, the City allows applicants for multi-family and nonresidential development to warranty the trees for five years to ensure trees are otherwise protected and maintained.

City staff noted that the codified list of approved plants and trees should be expanded and also highlighted the need for more detailed direction in the Code and clearer definition of terms. The San Antonio tree protection program is complex, but offers a variety of possible methods, alternatives, and incentives for the City of Fort Collins to consider.

#### **Primary Contact**

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#### Bloomington, IN

The City of Bloomington recently adopted an updated Unified Development Ordinance (UDO) that includes a unique approach to preserving urban canopy during land-disturbance activities. Section 20.04.030(i), Tree and Forest Protection establishes a minimum required canopy cover based on how much of the property is currently covered with tree canopy as shown below:

- 80-100 percent baseline canopy cover requires 50 percent of that coverage to be retained;
- 60-79 percent baseline canopy cover requires 60 percent of that coverage to be retained;
- 40-59 percent baseline canopy cover requires 70 percent of that coverage to be retained;
- 20-39 percent baseline canopy cover requires 80 percent of that coverage to be retained; and
- 0-19 percent baseline canopy cover requires 90 percent of that coverage to be retained.

This approach requires that more of the canopy be preserved when there is less canopy available. City staff indicated that this approach is somewhat complicated because it requires calculation and sometimes on-site review, but general found that the approach is fair to developers and seems to work well. Section 20.04.080, Landscaping, Buffering, and Fences, also establishes standards for landscaping on private property (including single-family dwelling development) and in the public right-of-way, which includes regulations for species diversity, minimum tree sizes, and protection of existing trees.

The City notes the following improvements to the UDO that could help with clarity and implementation of the <u>Bloomington Urban Tree Canopy Assessment Summary Report</u> (2019):

- A clearer definition of "closed canopy," or an alternative method of determining what constitutes tree canopy.
- A requirement that trees located in boxes include suitable soils.
- A fee-in-lieu option, especially for sites where there are conflicts between existing and potential planting areas and utility infrastructure).
- Coordination of tree-related regulations between <u>Chapter 12.24, Trees and Flora</u>, which
  applies to street trees in the public right-of-way, and Title 20 of the Unified
  Development Code, which governs private development.

City staff highlighted several enforcement challenges and potential solutions or alternatives. The City needs:

- Clearer standards for tree-protective fencing during construction and better enforcement of the required 10 foot setback beyond the dripline, which tends to be encroached upon;
- Clearer direction on who determines when a tree is a "heritage tree," which is defined as "a tree that is unique and important to the community because of its species, age, size, location, or historic significance;"
- An escrow payment program to ensure street tree maintenance. Currently, the City is responsible for street tree replacement, and poor private maintenance of street trees leads to higher costs to the City for tree replacement.
- Potentially updating UDO standards to require a minimum 10 foot wide tree lawn (where possible) and greater emphasis on planting and protecting native trees.
- A <u>bond funded program</u> (2022) for tree planting with emphasis on creating a more equitable urban canopy.

#### **Primary Contacts**

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#### **Boulder**, CO

The City of Boulder Code adopted an <u>Urban Forest Strategic Plan</u> in 2018 to establish a policy framework for urban canopy management. Today, the City offers limited protection for trees on private property (see <u>Chapter 9-9</u>, <u>Development Standards</u>). During the development process the applicant is required to identify all trees greater than four inches caliper and have a qualified arborist conduct an inventory of the trees worthy of preservation. The City reviews this inventory and works with the applicant on a tree protection plan, including identifying the trees to be preserved and the fencing and measures required to ensure protection during development of the property (see drawings <u>3.01</u>, <u>3.02</u>, <u>3.03</u>, <u>and 3.04</u>). Trees required to be preserved can be removed with payment of a mitigation fee.

Although the City does not currently have a permit process for removal of street trees, the City Forester noted that the City would like to formalize the process with a permit (see Chapter 6-6, Protection of Trees and Plants). Currently, the City Forester determines what trees are required to be preserved and the mitigation payment to compensate the City for any removed trees. Boulder uses the trunk formula method, which determines the value of trees to be removed based on the value of similar sized trees in a local nursery, the cost of installation, and other factors. Any tree that is illegally removed during the development process results in a mitigation fee to be paid before other permits are issued. Otherwise, the City documents the illegal tree removal and issues a fine (almost always) or requires replacement (rare because of the large share of development that takes place on infill sites that are too small to accommodate additional trees). Tree mitigation fees and fines go towards Capital Improvement Projects in the Parks and Recreation Budget. The City Forester supports the use of mitigation fees instead of tree replacement because it is easier to administer and because funds can be carried forward from year-to-year so that mitigation fees collected late in the year aren't lost when trees cannot be planted during the winter. Boulder has an Approved Tree List to guide tree planting in the right-of-way and on other municipal property, including information on tree spacing, hardiness zone, water needs, canopy size, and soil preferences.

The City Forester did note the following challenges and potential improvements to Boulder's current Code and practices:

- Standards for mulching and irrigation of trees are only identified during the permitting process and are otherwise difficult to enforce.
- The City could better educate property owners about when they are responsible for care and maintenance of street trees. The City generally manages street trees adjacent to residential properties and businesses manage those adjacent to their property.
   Alternatively, the City could explore taking over responsibility for all street trees.

The City should consider alternative arrangements to ensuring required trees are
maintained, including having developers prepay for cost of maintenance when the City
is required to provide maintenance. An escrow payment program has been considered
before, but it is not always clear which party should pay, or be responsible, or receive
any funds required to be rebated if not used within a specific period of time.

# **Primary Contact**

Kathleen Alexander, City Forester, <u>alexanderk@bouldercolorado.gov</u>

#### Madison, WI

The City of Madison requires private development (except for one- and two-family dwellings) to provide trees and landscaping through a menu of options in Section 28.142, Landscaping and Screening Requirements. These regulations establish a point value for distinct types of vegetation, which encourages the installation of higher quality (and larger) trees and requires a greater number of "points" for larger lots. Higher points are also provided for protection of "existing significant specimen trees" (those greater than 2.5 inches caliper) to prioritize preservation of large trees over removal and replacement with smaller trees that take longer to provide similar benefits. This section also requires any development that provides five or more trees to provide a specified diversity of tree species (with greater diversity required when more than 50 trees are provided) and at least three different street tree species per block. Once landscaping is installed, however, the City does not require or enforce tree protection on private property.

Trees in the right-of-way, however, are highly protected, primarily through Section 10.101, Regulation of Tree Trimming, Pruning and Removal within the Public Right-of-Way of Any Street, Alley or Highway). These standards require permits for tree trimming, pruning, and removal of trees in the public right-of-way, which include requirements for tree inventories and/or street tree report prepared by a certified arborist for any request to remove, prune, or perform most construction activities. The reports are typically triggered by a proposal to do any work that could impact the urban canopy or impact a tree that is six inches or greater in caliper. The City noted that tree protection regulations are relatively cumbersome, but that developers view the street tree report as a way to expedite the process because they can hire a certified arborist to conduct the review.

Madison is unique for codifying detailed standards for how the City and any contractors must protect trees in the right-of-way. Section 107.13 of the City's Standard Specifications for Public Works projects require that a five-foot area around each tree remain undisturbed, provide information on what City Forester markings indicate, describe methods of root cutting to limit damage to trees, lists best practices for trimming, pruning, and avoiding soil compaction, and. establishes penalties for damage to trees. The City Forester noted that current practice has

been to collect a deposit of \$125 per trunk diameter inch (measured 4.5 feet above the ground) prior to any work being done near trees. This ensures that the City is able to collect any damages without hassle.

The City noted that they will be reviewing the City Code in the next year to ensure implementation of the <u>Urban Forestry Task Force Final Report</u> (2019) and had the following suggestions to improve the effectiveness of current standards.

- Codify standards for soil volumes and require a third-party review and approval for the City to evaluate during the development review process.
- Modify parking lot landscaping requirements to require different parking lot tree arrangements.
- Assess development regulations in urban neighborhoods where the required setbacks are less than five feet, because it can prevent the full, healthy growth of trees if the sidewalk width is also narrow.
- Explore recommendations from the Tree Board for improving maintenance of public and private trees.

#### **Primary Contacts**

Heather Strouder, Planning Division Director, <u>HStouder@cityofmadison.com</u>; Marla Eddy, City Forester, <u>MEddy@cityofmadison.com</u>

#### Seattle, WA

The City of Seattle's 2020 <u>Draft Urban Forest Management Plan</u> has established a goal of increasing tree canopy coverage to 30 percent by 2037. Currently, <u>Chapter 25.11, Tree Protection</u> focus on preserving "exceptional trees" as opposed to thinking about the overall urban canopy. This reflects an increase in interest in tree protection from citizens and elected officials due to rapid development the past several years. Generally, Seattle has very few standards related to the planting, preservation, or maintenance of trees on private property (no tree removal permits, no tree planning requirements, no standards for tree size, no required species diversity, etc.). Street trees have more protections (removal requires permit approval), but standards for maintenance and replacement are minimal. Although Seattle takes a more hands-off approach to tree preservation, they are in the process of updating some regulations. Fort Collins may consider some of the following existing valuable practices:

The City has developed an <u>interactive tree list (using Tableau)</u> to allow residents to tailor
any new tree plantings to site conditions (sun exposure, width of planting strip for street
trees, presence of overhead wires) and desired tree characteristics (drought tolerance,
size, native/non-native, and flower and fall colors). Voluntary planning does not require
any specific tree type or size to be provided.

Removal of a street tree without City approval results in a fine that is triple the cost of
the permit that should have been obtained prior to tree removal. The City is considering
alternative penalty structures (including charging a dollar value per caliper inch of the
removed tree), but staff notes that City officials are weary of fines that could
disproportionately impact underserved communities.

### **Primary Contacts**

Chanda Emery, Senior Planner, <u>Chanda.Emery@Seattle.gov</u>; Nolan Rundquist, City Arborist, <u>Seattle.Trees@Seattle.gov</u>

#### Fort Wayne, IN

Fort Wayne has struggled with the loss of large trees and clear-cutting of trees on private property prior to or during the development review process, partly because existing regulations are very permissive about tree removal (see <u>Section 157.408, Landscape Standards</u>). Over the past decade, the City found that they have lost about six percent of existing tree canopy coverage. The City is in the early stages of looking at solutions (and assessing community support) for addressing the issue with new regulations and further implementing the City's <u>Urban Forest Management Plan</u> (2014), but does have the following regulations and practices that have proven successful or provide lessons learned from current practice:

- To limit conflicts with trees and infrastructure in utility easements, the City recently
  adopted provisions that allow landscaping to be provided elsewhere without requiring a
  waiver of standards. This is not yet reflected in the Code.
- Instead of requiring that trees be replaced at one-tree-to-one-tree ratio, the City is
  considering requiring tree replacement at a ratio of one-inch of tree caliper for every
  one-inch of tree caliper being removed. The current standard is not resulting in quality
  replacement trees.
- The City has been actively protecting about 1,000 of the highest value Ash trees (along key corridors, in parks, etc.) with TREE-äge Insecticide Treatment and has removed about 10,000 other Ash trees to manage Emerald Ash Borer damage. Any removed tree is replaced with guidance from the Parks Department to ensure species diversity. Otherwise, there is no species diversity requirement for new trees.

# **Primary Contact**

Derek Veit, Superintendent of Urban Forestry, <a href="Derek.Veit@cityoffortwayne.org">Derek.Veit@cityoffortwayne.org</a>

#### Reno, NV

The City of Reno is <u>in the process of updating standards</u> for tree protection, installation, and maintenance. Although this example does not offer an analysis of existing standards, it reflects

related discussion with City staff about what is working well or proving to be challenging, this community does offer an opportunity to see what another Western community is trying based on best practices. The <u>draft ordinance language</u> (as of 3/28/22) is set for review and recommendation by the Planning Commission, which has already been recommended to City Council for adoption by the Urban Forestry Commission. The draft ordinance focuses on many of the issues identified by the City of Fort Collins, including soil standards, tree protection regulations, enforcement mechanisms, and updated definitions—all with the goal of improving and expanding tree canopy. New standards in <u>Chapter 8.32</u>, <u>Trees and Shrubs</u>, and <u>Title 18</u>, <u>Land Development Code</u>:

- Establish a landmark tree designation for tree protection on private property;
- Establish a process for removal of a public tree by an adjacent property owner;
- Establish a methodology for tree appraisal and financial assurances in public trees are not adequately protected during construction;
- Clarify minimum soil volume and quality standards based on tree size;
- Increase quality standards for street trees and parking lot trees;
- Enhance standards for tree maintenance and replacement if required trees are damaged or removed;
- Establish procedures for landscape permits if required landscaping is removed or negatively impacted; and
- Expand penalties to apply based on number of trees impacted instead of applying the penalty based on a particular property not following regulations.

#### **Primary Contacts**

Matt Basile, Urban Forester, <u>basilem@reno.gov</u>; Kelly Mullin, Principal Planner, mullink@reno.gov.



Utilities

222 Laporte Ave. PO Box 580, Fort Collins, CO 80522 Item 9.

970-212-2900 utilities@fcgov.com

# **MEMORANDUM**

Date: July 25, 2024

To: Mayor and City Councilmembers

Through: Kelly DiMartino, City Manager (2)

Tyler Marr, Deputy City Manager

From: Katie Collins, Water Conservation Specialist

Subject: Update and Timing for Soil Standards and Landscape Code Revisions

#### **BOTTOM LINE**

The purpose of this memo is to provide City Council with an update and timeframe for soil and landscape code amendments and associated program improvements.

-DS

- First reading of code ordinances are scheduled for a regular City Council meeting on Sept. 3, 2024.
- Budget offers, for full-time employees (FTEs) to implement and enforce these programs, were proposed within the 2025-2026 Budget (Offer # 7.34 and 74.2).

#### **BACKGROUND**

Environmental Regulatory Affairs, Water Conservation and Forestry staff collaborated on code amendments that address three 2021-2023 Council Priorities including #14 Effective soil amendment policies and compliance (water usage), #19 Xeriscape – Increase rebates and education, less green lawns with new development, and #28 Improving tree policies.

The proposed code amendments were initially scheduled for a regular Council meeting in early 2024. Staff postponed these items to align with both the new format of Land Use Code adopted in May 2024 and Senate Bill 24-005, signed into law on March 15, 2024. Senate Bill 24-005 imposes significant restrictions of artificial turf and high-water grass on new and redevelopment after Jan. 1, 2026. Specific to high-water grass, the law prohibits its installation in locations where it serves no function. The law also lists areas where high-water grass cannot be installed, including streetscapes. While the intent behind the law and the City's proposal are the same — to reduce the amount of high-water grass in development — the scope and language presented in the state law differs enough that revisions to the City's initial proposal were required. While unfortunate to delay an already delayed effort, this revision avoids subsequent code amendments needed to align with the state law ahead of 2026.

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Staff revised code to define functional uses for grass which are used to determine where turf may be installed. Given the subjectivity of how turf may or may not be used after a development is complete, an additional control to limit turf is needed. Council supported staff's original recommendation to limit turf to no more than 30% of the landscaped area of a property, not to exceed 10,000 square feet (SF). However, it was revealed during code testing that the percentage requirement was confusing, challenging to track and lacked appropriate flexibility. For this reason, staff now proposes replacing the 30% control with an average water budget not to exceed 11 gallons per SF. Based on case studies of recent development projects, it is estimated this approach will result in comparable if not greater water savings. It also provides developments design flexibility (e.g., new parks with an allowable use of grass that exceeds 10,000 SF would not need to request an exception to the code).

Considering Senate Bill 24-005 requirements, feedback from Council, Boards and Commissions, staff, and community members, the following summarizes significant adjustments and additional considerations since Council last discussed these items at the Oct. 10, 2023, Council Work Session.

- Code amendments related to improving tree policies will come later to align with the pending adoption of the Urban Forest Strategic Plan, Rooted in Community, and to allow for further evaluation of incentives for tree preservation.
- Day time watering limitations will focus on voluntary compliance through education and outreach rather than restrictions in code.
- Revised landscape standards in Land Use Code will not apply to detached houses.
- The proposed Land Use Code amendments are formatted to match the new code format adopted May 17, 2024 and:
  - Align with Senate Bill 24-005 requirements, defining where high-water grass can be installed based on its intended use.
  - Reduces the average water budget requirement from 15 to 11 gallons per SF.

Code changes are one piece of program improvements. There is also the need to verify and enforce compliance with new standards. Both soil and landscape standards would need additional staff resources for plan review, site inspections, and enforcement to enact and enforce these enhanced standards. Within the 2025-2026 Budget cycle two offers for FTEs were submitted:

- 7.34 Utilities: ERA 1.0 FTE Stormwater Inspector for Soils
- 74.2 Senior Inspector, Zoning/Water Conservation 1.0 FTE

Table 1. Summary of Proposed Code Amendments			
Applicable to new commercial, industrial, institutional developments and redevelopments including multifamily housing, homeowners' association common spaces and other irrigation-only areas.	<ul> <li>Restricts installing high-water grass for nonfunctional purposes and identifies specific purposes where grass is allowed</li> <li>Requires no more than 11 gallons per square foot of landscape</li> <li>Restricts installing artificial turf except for athletic sports fields</li> <li>Requires dedicated surface or subsurface irrigation to all trees</li> <li>Reorganizes the existing section to be more concise and predictable</li> </ul>		
Municipal Code, Chapter 12  Applicable to residential accounts seeking Certificate of Occupancy or non-residential accounts requiring development review when landscape area impacted is greater than 1,000 SF.	<ul> <li>Clarifies applicability</li> <li>Sets soil compaction thresholds</li> <li>Removes barriers to soil amendments in a manner that is best for vegetation establishment</li> </ul>		

#### **NEXT STEPS**

- These code amendment ordinances are scheduled for first reading on Sept. 3, 2024.
- Soon, staff will begin updating City Streetscape Standards to reflect the state law prohibiting "nonfunctional turf" in streetscapes. Because Streetscape Standards are an appendix in Larimer County Urban Street Standards, it's unlikely Fort Collins Land Use Code will be impacted by the update.

#### **ATTACHMENTS**

Colorado Senate Bill 24-005

cc: Gretchen Stanford, Utilities Deputy Director
Mariel Miller, Water Conservation Manager
Jill Oropeza, Interim Water Director
Kathryne Marko, Environmental Regulatory Affairs Manager

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Fort Collins, CO 80522-0580

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#### MEMORANDUM

**DATE:** January 25, 2024

**TO:** Mayor and City Councilmembers

**FROM:** Katie Collins, Water Conservation Specialist

Mariel Miller, Water Conservation Manager

Jen Dial, Water Resources Manager

THROUGH: Kelly DiMartino, City Manager

Tyler Marr, Deputy City Manager

Gretchen Stanford, Utilities Deputy Director

**RE:** Council Work Session Follow-up to October 10, 2023 Landscape Standard

Improvements including Xeriscape, Soil Amendments and Trees Item

# **Bottom Line**

The purpose of this memo is to respond to Council's discussion during the Landscape Standard Improvements item at the October 10 work session around the cost to conserve water relative to Fort Collins Utilities' water rights portfolio, water storage needs, and water supply and demand assumptions. The work leading up to and following that work session is in response to 2021-2023 Council Priority 19 "Xeriscape – Increase rebates and education, less green lawns with new development."

# Background

Fort Collins Utilities ("Utilities") owns a robust portfolio of water rights. Historically, during average and wet precipitation years, these water rights have yielded more water than what is used by our customers. During hot and dry years, current supplies are not adequate to meet demands while also maintaining a stored reserve of water for emergencies. Furthermore, we anticipate a future where climate impacts and population growth increase demands. For these reasons, Utilities uses a multi-faceted approach to ensure a reliable and flexible water supply now and in the future.

This approach includes:

<sup>1</sup> Section 2.1.3 of the City of Fort Collins Water Supply and Demand Management Policy states the water supply planning criteria will include a storage reserve that equates to 20% of annual demand in storage through a 1-in-50-year drought, which is meant to address emergency situations such as pipeline failures or wildfire impacts. The reserve equates to about 3.7 months of average winter demand and about 1.5 months of average summer (July) demand.



- Planning and modeling Population growth trends, climate change models, and demand forecasts inform the development and updates of action-oriented strategic plans such as the Water Supply and Demand Management Policy, Water Efficiency Plan, and the Water Shortage Action Plan.
- Water supply storage Storage infrastructure is critical to reliably supply and deliver water. In addition to the storage available in Joe Wright and Horsetooth reservoirs, the enlargement of Halligan reservoir through the Halligan Water Supply Project will increase firm yield to provide additional municipal and industrial water supply.<sup>2</sup> Without an enlarged Halligan Reservoir, Utilities cannot meet projected future demands without frequent restrictions.
- Conservation and efficiency Even with an enlarged Halligan reservoir on-line, climate modeling predicting a hotter, drier future indicates that water restrictions are likely to become a more regular occurrence in the future. A suite of programs and strategies, guided by Utilities' Water Efficiency Plan and aimed at reducing water demand, allows us to do more with the supplies we have and, in the long-term, has the potential to offset a portion of future water supply needs and minimize the frequency and severity of future water restrictions.<sup>3</sup> Actions like xeriscaping can increase the resilience of community members by lowering their bills and reducing the impact of mandatory water shortage restrictions.

#### **Utilities' Water Conservation Program**

Utilities' Water Conservation team develops and implements planning, programs, and policies for the efficient use of water, indoors and outdoors, on residential, commercial, and multi-family properties. When water conservation and efficiency is adopted at a large scale, it helps us more precisely predict water use and demand. Current programs largely focus on incentives and education around reducing water use on existing properties. For new construction, Water Conservation has more recently focused on developing efficiency-related development standards and codes.

# At what cost should we be managing water demands?

Conservation and efficiency incentives and requirements are long-term, cost-effective investments that can help Utilities and its customers adapt to the implications of a hotter, drier future. In 2022, the cost of Utilities' Water Conservation offerings reduced demands at an approximate average cost of \$1,800 per acre-foot saved.<sup>4</sup> It is important to note that across all

<sup>2</sup> Firm yield is the amount of demand Utilities can meet through the 1-in-50-year drought and is the metric Utilities uses in its water supply system planning per the Water Supply and Demand Management Policy.

<sup>&</sup>lt;sup>3</sup> Utilities is updating the City's current Water Efficiency Plan. The updated plan will guide how we all use water and set fresh goals to reduce the amount we use as a community. The update process includes developing a new water modeling tool that looks at water demand and potential savings from various efficiency and conservation strategies. Staff is scheduled to present the Water Efficiency Plan update project for Council input at the Council work session on February 13, 2024.

<sup>&</sup>lt;sup>4</sup> Estimated cost to reduce future demands through water conservation based on Water Conservation's 2022 expenses of \$977,240 (this includes personnel) and 173,000,000 gallons (531-acre feet; 2% of annual demand) of estimated savings from various Water Conservation programs and services. Not all 531-acre feet can be considered permanent reductions, however. Factors of influence include behavior change, weather, and state-wide product efficiency requirements.



Water Conservation program and service offerings, not all savings attributed to the Water Conservation program can be considered permanent demand reductions. It's also realistic to assume that as our customers become more efficient with water use, there is a diminishing return on that \$1,800 per acre-foot price tag. But when the current cost to acquire additional units from the Colorado-Big Thompson Project or shares from the North Poudre Irrigation Company is valued at well over \$100,000 per acre-foot of firm yield, it still makes sense to pursue conservation and efficiency measures to offset a portion of future water supply needs.

Although water conservation can help reduce the need for additional water supplies, additional water storage, like the Halligan Water Supply Project, is still needed to provide a place to store our conserved water for use during drought or other water short years.

# Short-term water restrictions vs. long-term demand management

Our current understanding of how climate-driven changes might impact water use in Utilities' water service area is informed by the Utilities Water Supply Vulnerability Study (2019). The study indicates that even with additional storage in an enlarged Halligan Reservoir, a hotter, drier climate will require Utilities to impose water restrictions more frequently.

Restrictions work well in infrequent and severe situations and Utilities customers have quickly and actively responded to the three water restrictions we have had since 2000. However, frequent restrictions can impact water dependent businesses, quality of life, and the community aesthetic. Our living landscapes, especially those with a high-water requirement, cannot be sustained with limited or no irrigation for prolonged periods. Codifying standards that require low-water landscapes from the start, for example, help reduce water demand long-term and ensure that landscapes are more resilient and adapted to hotter, drier conditions. It also ensures we do not continue to install excessive turf grass in new developments while simultaneously providing rebates to remove it in existing properties. Staff considered these factors in the proposed Land Use Code standards for new landscapes and believe the recommended standards coming forward in Spring 2024 stand to make progress toward 2021-2023 Council Priority 19. "Xeriscape – Increase rebates and education, less green lawns with new development."

Attachments: Fort Collins Water Supply Vulnerability Study (2019)

cc: Jason Graham, Director of Water Utilities

Jill Oropeza, Senior Director of Integrated Sciences and Planning

Eric Potyondy, Assistant City Attorney Donnie Dustin, Water Resources Engineer

Kathryne Marko, ERA Manager



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Fort Collins, CO 80522-0580

# **MEMORANDUM**

Date: November 1, 2023

To: Mayor Arndt and City Councilmembers

**Through:** Kelly DiMartino, City Manager

Tyler Marr, Deputy City Manager

Kendall Minor, Utilities Executive Director

Dean Klingner, Community Services Director

From: Katie Collins, Water Conservation Specialist

Kendra Boot, City Forester

Kathryne Marko, Environmental Regulatory Affairs Manager

Subject: October 10, 2023, Work Session Summary: Council Priorities for Landscape Standard

DS

Improvements including Xeriscape, Soil Amendments, and Trees

The purpose of this memo is to summarize discussions during the October 10, 2023 Work Session. All Councilmembers were present. Staff members present were Katie Collins, Mariel Miller, Kendra Boot, Mike Calhoon, Kathryne Marko and Jill Oropeza.

Staff presented key proposed program improvements, anticipated resource needs, and path forward for three council priorities related to xeriscape, soil, and trees.

#### **Bottom line:**

- General support for the intent to increase protection and mitigation for trees; updated landscapes standards for commercial and multi-family development; soil inspection program; education and outreach for all landscape and irrigation efficiency efforts.
- While supportive of the goals of preserving mature tree canopy, shared concerns related to competing values and tradeoffs associated with cost, specifically small business and infill projects. Staff will be doing more work to present options that try to balance these tradeoffs.



There was not support to continue with single-family xeriscape requirements at this time.
 Councilmembers requested that staff continue to work on topics into the future, such as parkways, incentivizing conservation-oriented development, collaboration with other water providers, and the Urban Forest Strategic Plan that is scheduled for work session in Q1 2024.

#### Feedback:

- Prefer voluntary action city-wide through education and outreach related to irrigation scheduling rather than enforcement of a daytime watering restriction.
- On landscape standards for single-unit front yards, focus on making xeriscape the easy choice through voluntary action. Evaluate how to incentivize, remove barriers, and improve cost effectiveness.
- Review and adjust as appropriate tree mitigation for impacts to small businesses, greenfield vs
  infill differences, and voluntary trees species especially those that are high water consuming
  and/or invasive.

#### **Next steps:**

- Staff will schedule a hearing in Q1 2024 for code changes necessary for the soil amendments and commercial/multifamily landscape requirements. A supporting staffing appropriation will also be presented at that time.
- Staff will work with leadership and Leadership Planning Team to determine next action steps (such as a potential work session) and associated timeframes related to trees including commercial/multifamily mitigation requirements, Russian-olives, etc.
- Utilities will provide a memo to Council related to xeriscape, water and water conservation with information on estimated water savings, including acre-foot units, and water portfolio information.
- During the work session, staff showed a presentation with formatting that differed from the copy
  of the presentation included in the council packet. Staff also acknowledged an error on the
  Xeriscape Standards Cost Comparison table. A revised presentation with all changes noted is
  attached.

#### Attachment:

Updated Presentation: Landscape Standards\_Council Work Session\_Updated.pdf

#### Cc

Mariel Miller, Water Conservation Manager
John Phelan, Acting Deputy Director, Customer Connections
Mike Calhoon, Director of Parks
Jason Graham, Director of Water Utilities
Jill Oropeza, Senior Director of Integrated Sciences and Planning
Heather Jarvis, Assistant City Attorney



Eric Potyondy, Assistant City Attorney

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#### **Utilities**

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#### MEMORANDUM

**DATE:** June 27, 2023

**TO:** Mayor Arndt and Councilmembers

THROUGH: Kelly DiMartino, City Manager

Gretchen Stanford, Utilities Deputy Director, Customer Connections

Jason Graham, Director of Water Utilities

**FROM:** Kathryne Marko, Environmental Regulatory Affairs Manager [M]

Katie Collins, Water Conservation Specialist

**RE:** Council Priorities Update: Additional Details for Soil Amendment

Inspections and Artificial Turf

#### **Bottom Line**

The purpose of this memo is to provide additional background for the current and proposed soil amendment compliance program and the proposed restriction of artificial turf on all new development. These topics relate to a larger code update project that originated from two City Council priorities:

14. Effective soil amendment policies and compliance (water usage)

19. Xeriscape – Increase rebates and education, less green lawns with new development

#### **Background**

On November 21, 2023, Council will consider adoption of landscape-related codes, that promote water conservation, stormwater quality, and resilient urban landscapes. Staff will present a preview of the ordinance to discuss final direction of the proposal at the October 10, 2023 Council Work Session. The package of proposals will include artificial turf and soil amendment standards as well as standards related to general soil health, limits on irrigated grass, irrigation efficiency, and tree canopy protections. These items were discussed at the January 10, 2023 Council work session. Up to date details for these other proposals may be found in the most recent Council Priority Update.

#### **Soil Amendment**

The Soil Amendment Program is currently implemented via an administrative review process using site knowledge gained from other required field inspections for erosion control. The ability to resource and scale-up soil amendment inspections from an administrative review process to onsite inspections is dependent on numerous variables, including availability, existing workload, and timing of soil amendment submittals. A qualitative analysis of different scalability options is provided in this memo; this initial



evaluation indicates that to increase inspections with any significance, additional staffing/funding would be needed.

Soil amendment information is provided to address two questions from the January 10, 2023, Work Session: Land Use Code Changes to Address Xeriscape and Soil Amendment:

- How does the city enforce current soil amendment code?
- Resource analysis to scale up soil amendment inspections

#### **Enforcement of Current Soil Amendment Program**

The Soil Amendment Program is run through the Environmental Regulatory Affairs (ERA) Erosion Program staff. Staff consists of three FTE's – Two Senior Inspectors and one Senior Specialist. The core function of this work group is to manage the City's Erosion Control Program which is mandated by the City's Municipal Separate Storm Sewer System (MS4) Permit. Typically, construction sites that disturb over 10,000 ft<sup>2</sup> are inspected every two weeks during active construction for adequate erosion control. The following table is an overview of the activities performed by the Erosion Program staff.

Activity	2022 Statistics
Soil Amendment Certifications	350 Soil Certifications
	127 Temporary Waivers
Soil Amendment Site Inspections	<10 sites
Development Review	566 Projects
Erosion Control Inspections	170 sites
_	2115 routine inspections
Permanent Stormwater Quality Feature	58 sites
Inspections (SWQF)	67 SWQF Inspections
Vegetation / Site Stabilization Inspections	65 sites
	283 Vegetation Inspections
Other Responsibilities	<ul><li>Spill response</li></ul>
	<ul> <li>Fugitive dust complaints</li> </ul>
	<ul> <li>Construction site complaints</li> </ul>
	<ul> <li>Erosion enforcement</li> </ul>

The review and approval process consists of reviewing a certification form along with amendment receipts. During winter, when soil conditions do not allow for tilling, a temporary waiver is issued and staff tracks completion of the soil amendment the following Spring. In most cases, knowledge of the site from erosion control inspections feeds into review of the soil amendment certification review. Soil amendment verification site inspections are performed based on indicators such as:

- Delivery dates not consistent with certification date
- No Area to Amend Certification
- New compost supplier
- Inconsistent ratio of cubic yards to lot size (3 yds / 1,000 SF)
- Timing of soil amendment not consistent with phase of construction





If field verification determines soil amendment was not consistent with the requirements, staff will not sign off for a Certificate of Occupancy (CO). If a CO has been issued, as is the case for Temporary Waivers, other building permits can be put on hold.

#### **Resource Analysis to Scale Up Soil Amendment Inspections**

Qualitative analysis for scaling up soil amendment inspections is summarized in the following table.

Inspection Type	Considerations/Limitations	Feasibility/Needs
Investigative Inspect if indicators of deficiencies	Solely reactive, based on indicators	– Status Quo
Sporadic Inspect as time allows	Likely would not occur during busy construction season	<ul> <li>Without additional resources, a significant increase would not be likely with the existing workload.</li> </ul>
Seasonal Focus inspections during busy landscape season	<ul> <li>Increase existing staff time for hiring and/or training.</li> <li>Likely based on grouping of submittals and available staff time.</li> </ul>	<ul> <li>Additional resources/funding needed.</li> <li>Consider the use of temporary hourly employees or consultant</li> </ul>
Percentage Inspect a certain percentage of sites	<ul> <li>Likely based on grouping of submittals and available staff time.</li> </ul>	<ul> <li>Additional resources/funding is needed to ensure consistent coverage.</li> <li>Resource and funding needs dependent on percentage.</li> </ul>
Full with adjusted thresholds Inspect all except Single Family Residential (SFR) landscape renovations	<ul> <li>SFR landscape renovations currently do not get permitted and survey results show existing homeowners do amend soil.</li> <li>Could evaluate other thresholds</li> </ul>	Need higher additional resources/funding to ensure consistent coverage.
Full Inspect all vegetated landscape projects	<ul> <li>Requires significant process changes to add SFR landscape renovations to permit and inspection procedures.</li> </ul>	<ul> <li>Highest increase of additional resources/funding needed to address both inspections and process change for SFR.</li> </ul>

To conduct a full evaluation of selected alternatives, the following topics will need to be considered for a sustainable soil amendment inspection program:

- **Timing of certification submittal** related to when soil amendments occur and/or when CO is requested and staff's availability to perform a site inspection on short notice.
- Staffing to ensure consistent coverage for all work and avoid conflicting priorities with other regulatory permit requirements, while also considering coverage for all work throughout vacations, sick leave, and seasonal workload changes. Staffing considerations may also include use of 3<sup>rd</sup> Party consultants.
- **Software** improvements can help with efficiency and documentation. Both new and expanded capabilities of current systems are being explored, some being part of the City's digital transformation efforts.



• Consider results from the Assessment of Compliance with Local Environmental Policy project which will evaluate how various city workgroups address compliance with local environmental policy and provide recommendations to improve our approach.

#### **Artificial Turf**

#### **Current Policy in Land Use Code**

Land Use Code 3.2.1 restricts the use of artificial plants as a "Landscape Area Treatment." Except for single-family detached dwellings, all development and building permit applications are subject to review by this standard. Historically, a few projects have been approved for artificial turf installation given that the area proposed for installation was not considered landscape area by the code's definition.

During the "Land Use Code Changes" discussion at the January 10, 2023, work session, Council responded to a proposal that would have allowed the use of artificial turf in the city by exception if installed to high-standard specifications. Council overwhelmingly opposed the proposal, preferring not to allow artificial turf in Fort Collins.

While the benefits of artificial turf can include reduced water use, maintenance and chemical inputs, a growing body of research suggests the negative impacts of artificial turf to human health and the environment may outweigh the benefits. Potential risks include chemical exposures and contamination from the materials themselves, such as the release of per- and polyfluoroalkyl substances (known as PFAS) and carcinogens, and non-chemical impacts such as increased heat and heat island and waste-stream implications.

#### **Proposed Policy Changes in Land Use Code**

On November 21, Council will consider an ordinance that clearly restricts the use and installation of artificial turf on all new development and major redevelopment including non-residential and multi-family properties and single-family residential front yards. The artificial turf restriction ordinance will be packaged with additional landscape standards.

# **Impact**

The restriction of artificial turf on single-family residential front yards will require review of landscape plans for new single-family residential development, a process that does not currently exist. This process would also serve the other landscape standards discussed at the January 10 work session for new single-family residential properties. The added review willimpact the development review process and require additional staffing needs, which are being considered and will be discussed further during the October 10, 2023 Council Work Session. There will be an impact on owners challenged with finding suitable alternatives for high-traffic, low-water ground cover. Staff will continue to engage with landscape professionals and the community to identify and promote suitable alternatives.

#### **Attachments**

January 10 Council Work Session Materials

cc: Kendall Minor, Utilities Executive Director
Jill Oropeza, Sr. Director, Integrated Sciences & Planning
Mariel Miller, Water Conservation Manager
Eric Potyondy, Assistant City Attorney



Utilities

MM

electric · stormwater · wastewater · w 222 Laporte Ave. PO Box 580

Item 9.

Fort Collins, CO 80522-0580 **970.212.2900** 

V/TDD: 711 utilities@fcgov.com fcgov.com/utilities

#### MEMORANDUM

**DATE:** January 13, 2023

**TO:** Mayor Arndt and City Councilmembers

FROM: Katie Collins, Water Conservation Specialist

Mariel Miller, Water Conservation Manager

THROUGH: Kelly DiMartino, City Manager

Kendall Minor, Utilities Executive Director

RE: January 10, 2023, Work Session Summary: Land Use Code Changes to Address

Xeriscape and Soil Amendment

Mayor Arndt, Mayor Pro Tem Francis, and Councilmembers Canonico, Pignataro, Gutowsky, and Ohlson were present. Staff members present were Katie Collins, Mariel Miller, Danielle Reimanis, Gretchen Stanford, Kathryne Marko and Jesse Schlam.

The purpose of this item was to seek Council feedback on four proposed code update opportunities that support water-wise landscaping in Fort Collins. The four proposals presented were:

- 1. Less turf in new development and redevelopment (three options)
- 2. Allow synthetic turf in some scenarios
- 3. Expand irrigation standards and residential equipment efficiency
- 4. Increase flexibility in soil amendment policy

#### **Summary**

Overall: Councilmembers expressed general support for proposals 1, 3, and 4. Councilmembers were not in support of proposal 2.

- All Councilmembers indicated support for a turf limit between 15 30% maximum of the landscape area of new and redeveloped residential and commercial properties. Several councilmembers request more exploration of turf minimums and maximums across all property types.
- All Councilmembers expressed significant concern for updating code to allow the installation of synthetic turf in Fort Collins. Of most concern is the PFAS content of synthetic turf material.
- Council indicated support for an update to irrigation efficiency standards.
   Councilmembers are in favor of proposed soil amendment code changes related to smaller, more "micro" landscape changes and best practices. Council requests additional evaluation of current inspection and enforcement processes, and of opportunities for improvement on larger, more "macro" landscape changes (e.g. new development).

#### Questions

How are front yards and recreation defined and identified?





- How would larger, estate lots be evaluated and are there incentives to keep some area more natural?
- Would landscape standards override HOA rules?
- Will properties irrigated with hose-end sprinklers be subject to the proposed watering window?
- How does the city enforce current soil amendment code?
- Has Utilities considered adjusting the top tier water rate for those that use the most water?
- Can the Xeriscape Incentive Program be expanded to include other water districts?
- What additional costs are associated with proposed landscape and irrigation standards?

#### **Next Steps**

- Q1-Q3 2023: Continue internal/external outreach and engagement and identify, communicate additional resource needs (i.e. budget, education campaigns)
- Q2 2023: provide answers to the above questions via a memo to Council, which will include detail on the following:
  - o cost impact analysis for landscape and irrigation proposals
  - soil amendment program information and cost and resource analysis to scale up soil amendment inspections
- Q3 2023: Incorporate feedback and draft code updates for first reading, scheduled for September 19, 2023

Item 9.



Utilities

electric · stormwater · wastewater · wate 222 Laporte Ave.

PO Box 580

Fort Collins, CO 80522-0580

970.212.2900 V/TDD: 711 utilities@fcgov.com fcgov.com/utilities

MEMORANDUM

DATE:

March 28, 2022

TO:

Mayor Arndt and City Councilmembers

FROM:

Katie Collins, Water Conservation Coordinator

Jesse Schlam, Senior Environmental Regulatory Speciali

Abbye Neel, Interim Water Conservation Manager

Gretchen Stanford, Customer Connection Deputy Director

3/29/2022

3/29/2022

-DS YS 3/29/2022

3/29/2022

THROUGH:

Kelly DiMartino, Interim City Manager

Kendall Minor, Utilities Executive Directo

3/30/2022

3/30/2022

RE:

Xeriscape and Soil Amendment Council Priorities Update

#### **Bottom Line**

Utilities staff take pride in delivering exceptional services and continue to look for opportunities to further promote water-wise principles. The purpose of this memo is to:

- 1) Provide an update on work that supports the three topic areas included in the 2021-23 Xeriscape Council priority: increase rebates, increase education, and less green lawns with new development.
- 2) Provide an update on work that supports the 2021-23 Soil Amendment Council priority that calls for effective soil amendment policies and compliance.

#### Xeriscape Rebates

Since 2016, the Xeriscape Incentive Program (XIP) has reduced outdoor water use by providing rebates to Utilities water customers who convert from high-water (i.e., Kentucky bluegrass) to low-water landscapes, such as shrub beds, water-wise turfgrasses, permeable hardscaping and more. Nearly 300 projects have been completed and 350,000+ square feet of high-water landscape have turned water-wise through the program.

In 2020, the <u>commercial XIP incentive</u> was added with the help of outside grant funding to serve Utilities commercial water customers. Since inception, 19 commercial projects have been installed across 650,000 square feet. Another 12 projects are scheduled to be completed by the end of the year.

Participants of XIP are required to certify loosening of soil and incorporation of a soil amendment with a notarized soil amendment certificate, pursuant to Ordinance No. 084, 2003.





An example of a 2021 Xeriscape Incentive Program project in midtown.

XIP continues to be funded by the Water Conservation budget, state, and federal grant funding, and a 2021 awarded BFO enhancement offer.

In partnership with Nature in the City, successful Xeriscape projects can be found by using the self-guided Fort Collins <u>Garden Tour</u> via an interactive story map. Garden 'tourists' are also encouraged to check out the gardens onsite.

Garden In A Box helps take the guesswork out of landscape design for XIP and non-XIP residents alike. Utilities, Nature in the City and Fort Collins-Loveland Water District partner with Resource Central to offer discounts on do-it-yourself perennial garden kits allowing residents to easily save water and beautify their landscape. New in 2022, Utilities has offered a limited number of \$100 discounts to incomequalified water customers.

#### **Xeriscape Education**

Utilities provides and supports numerous xeriscape education opportunities each year:

- **XIP Basics** XIP participants are required to attend this class to learn how to efficiently water landscapes. Class content has changed over the years, but customer feedback remains overwhelmingly positive. Since 2016, over 500 people have joined us for XIP classes.
- Xeriscape Garden Party This June marks the 20th annual event, and we will be celebrating all month long both in-person on June 18 at the Xeriscape Demonstration Garden and online via webinars and virtual resources. This event typically welcomes approximately 400+ people in-person. In 2021, during the first ever virtual Garden Party, over 7,000 people engaged with content throughout the monthlong event.
- <u>Xeriscape Demonstration Garden</u> In recent years, nearly 50 new species were planted, and educational signage was updated. The garden has a history at the time of installation, it was only the second Xeriscape Garden in the world! Today, it continues to be an important resource showcasing the methods, plants, and materials for low-water gardening.
- <u>City of Fort Collins Plant List</u> Published in May 2021, this educational tool was developed through a collaboration of several City departments. The plant list resource is now the most



comprehensive and information-rich list of Fort Collins native plants to date and is intended for a wide audience - from the small plot gardener to the large-scale developer.

 Gardens on Spring Creek Adult Education – Utilities continues to partner with the Gardens on Spring Creek to subsidize courses focused on water-wise landscapes and irrigation.

#### Less green lawns with new development

Effective January 1, 2022, <u>Water Supply Requirements</u> are helping to move new development toward low-water landscapes. The new fee structure is more closely tied to landscape water requirements such that development fees are less for landscapes that use less water.

#### Soil Amendments

In addition to over 250 soil amendment certificates received through the Xeriscape Incentive Program, Utilities has inspected and collected over 2,300 soil amendment certificates on development projects over the past five years. The soil amendment program has been providing online resources and guidance to developers, builders, landscapers, and residential customers online since June 2012 welcoming 3,542 unique visitors. To spread awareness and compliance of the soil amendment ordinance, the program provides brochures in the field and at the building department.

#### **Next Steps**

Staff continues to be focused on identifying program efficiencies that reduce barriers to participation. A new pilot of the Xeriscape Incentive Program aimed at getting more rebates to businesses and households will be offered this fall. A continuing enhancement offer for the Xeriscape Incentive Program will be submitted for the 2023-2024 budget cycle.

Staff is working towards providing an **update to xeriscape and soil amendment regulations.** Land-use consultant Clarion Associates has been hired to research and benchmark the City's current xeriscape and soil amendment codes against peer communities to help understand gaps and opportunities. Public outreach on proposed changes, including discussions with the other major water districts, is scheduled for summer 2022. Staff will present proposed regulations to Council for comment at the Oct. 11 work session.

#### Coming Up

- XIP Basics April 5 and May 7 Register at fcgov.com/xip
- **Xeriscape Garden Party** June 18, from 9 a.m.-noon at 300 Laporte Ave. <u>fcgov.com/garden-party</u>
- Oct. 11 work session Council will be asked to weigh in on proposed xeriscape and soil amendment regulations.



# SENATE BILL 24-005

BY SENATOR(S) Roberts and Simpson, Bridges, Hinrichsen, Buckner, Cutter, Exum, Fields, Jaquez Lewis, Marchman, Michaelson Jenet, Priola, Winter F., Fenberg;

also REPRESENTATIVE(S) McCormick and McLachlan, Amabile, Bacon, Bird, Boesenecker, Brown, Daugherty, deGruy Kennedy, Duran, Epps, Froelich, Garcia, Herod, Jodeh, Joseph, Kipp, Lieder, Lindsay, Lukens, Mabrey, Martinez, Marvin, Mauro, Ortiz, Parenti, Rutinel, Sirota, Snyder, Story, Titone, Valdez, Velasco, Weissman, Willford, McCluskie.

CONCERNING THE CONSERVATION OF WATER IN THE STATE THROUGH THE PROHIBITION OF CERTAIN LANDSCAPING PRACTICES.

Be it enacted by the General Assembly of the State of Colorado:

**SECTION 1.** In Colorado Revised Statutes, **add** article 99 to title 37 as follows:

# ARTICLE 99 Prohibition of Nonfunctional Turf, Artificial Turf, and Invasive Plant Species

37-99-101. Legislative declaration. (1) THE GENERAL ASSEMBLY

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

#### FINDS THAT:

- (a) As Colorado continues to grapple with the impacts of climate change, green urban spaces, such as urban tree canopies, are a vital adaptation tool for mitigating the impacts of climate change, especially for mitigating the urban heat island effect, which can increase energy costs, air pollution, and heat-related illnesses and deaths;
- (b) However, water supply in the Western United States is under increasing pressure due to climate change and increasing demand;
- (c) Many communities in the state overuse nonnative grass for landscaping purposes, which requires large amounts of water to maintain;
- (d) While there are appropriate and important uses for turf, including for civic, community, or recreational purposes such as use in parks, sports fields, and playgrounds, much of the turf in the state is nonfunctional, located in areas that receive little, if any, use, and could be replaced with landscaping that adheres to water-wise landscaping principles without adversely impacting quality of life or landscape functionality;
- (e) PROHIBITING THE INSTALLATION, PLANTING, OR PLACEMENT OF NONFUNCTIONAL TURF IN APPLICABLE PROPERTY IN THE STATE CAN HELP CONSERVE THE STATE'S WATER RESOURCES;
- (f) Installed vegetation that adheres to water-wise Landscaping principles can help reduce outdoor demand of water; and
- (g) ADDITIONALLY, ARTIFICIAL TURF CAN CAUSE NEGATIVE ENVIRONMENTAL IMPACTS, SUCH AS EXACERBATING HEAT ISLAND EFFECTS IN URBAN AREAS AND RELEASING HARMFUL CHEMICALS, INCLUDING PLASTICS, MICROPLASTICS, AND PERFLUOROALKYL AND POLYFLUOROALKYL CHEMICALS, INTO THE ENVIRONMENT AND WATERSHEDS.
  - (2) The General assembly therefore declares that

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PREVENTING THE INSTALLATION, PLANTING, OR PLACEMENT OF NONFUNCTIONAL TURF, ARTIFICIAL TURF, AND INVASIVE PLANT SPECIES IN APPLICABLE PROPERTY IN THE STATE IS:

- (a) A MATTER OF STATEWIDE CONCERN; AND
- (b) IN THE PUBLIC INTEREST.

**37-99-102. Definitions.** AS USED IN THIS ARTICLE 99, UNLESS THE CONTEXT OTHERWISE REQUIRES:

- (1) (a) "APPLICABLE PROPERTY" MEANS:
- (I) COMMERCIAL, INSTITUTIONAL, OR INDUSTRIAL PROPERTY;
- (II) COMMON INTEREST COMMUNITY PROPERTY; OR
- (III) A STREET RIGHT-OF-WAY, PARKING LOT, MEDIAN, OR TRANSPORTATION CORRIDOR.
- (b) "APPLICABLE PROPERTY" DOES NOT INCLUDE RESIDENTIAL PROPERTY.
- (2) "ARTIFICIAL TURF" MEANS AN INSTALLATION OF SYNTHETIC MATERIALS DEVELOPED TO RESEMBLE NATURAL GRASS.
- (3) "COMMERCIAL, INSTITUTIONAL, OR INDUSTRIAL" HAS THE MEANING SET FORTH IN SECTION 37-60-135 (2)(b).
- (4) "Common interest community" has the meaning set forth in section 38-33.3-103 (8).
- (5) "COMMON INTEREST COMMUNITY PROPERTY" MEANS PROPERTY WITHIN A COMMON INTEREST COMMUNITY THAT IS OWNED AND MAINTAINED BY A UNIT OWNERS' ASSOCIATION, SUCH AS ENTRYWAYS, PARKS, AND OTHER COMMON ELEMENTS AS DEFINED IN SECTION 38-33.3-103 (5).
- (6) "DEPARTMENT" MEANS THE DEPARTMENT OF PERSONNEL CREATED IN SECTION 24-1-128 (1).

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- (7) "FUNCTIONAL TURF" MEANS TURF THAT IS LOCATED IN A RECREATIONAL USE AREA OR OTHER SPACE THAT IS REGULARLY USED FOR CIVIC, COMMUNITY, OR RECREATIONAL PURPOSES, WHICH MAY INCLUDE PLAYGROUNDS; SPORTS FIELDS; PICNIC GROUNDS; AMPHITHEATERS; PORTIONS OF PARKS; AND THE PLAYING AREAS OF GOLF COURSES, SUCH AS DRIVING RANGES, CHIPPING AND PUTTING GREENS, TEE BOXES, GREENS, FAIRWAYS, AND ROUGHS.
- (8) "Invasive plant species" has the meaning set forth in section 37-60-135 (2)(e).
  - (9) "LOCAL ENTITY" MEANS A:
- (a) HOME RULE OR STATUTORY CITY, COUNTY, CITY AND COUNTY, TERRITORIAL CHARTER CITY, OR TOWN;
  - (b) SPECIAL DISTRICT; AND
  - (c) METROPOLITAN DISTRICT.
- (10) "MAINTAIN" OR "MAINTAINING" MEANS AN ACTION TO PRESERVE THE EXISTING STATE OF NONFUNCTIONAL TURF, ARTIFICIAL TURF, OR AN INVASIVE PLANT SPECIES THAT HAS ALREADY BEEN INSTALLED, PLANTED, OR PLACED.
- (11) "NATIVE PLANT" MEANS A PLANT SPECIES THAT IS INDIGENOUS TO THE STATE OF COLORADO.
- (12) "New development project" means a new construction project that requires a building or landscaping permit, plan check, or design review.
- (13) (a) "Nonfunctional turf" means turf that is not functional turf.
- (b) "Nonfunctional turf" includes turf located in a street right-of-way, parking lot, median, or transportation corridor.
- (c) "Nonfunctional turf" does not include turf that is designated to be part of a water quality treatment solution

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REQUIRED FOR COMPLIANCE WITH FEDERAL, STATE, OR LOCAL AGENCY WATER QUALITY PERMITTING REQUIREMENTS THAT IS NOT IRRIGATED AND DOES NOT HAVE HERBICIDES APPLIED.

- (14) "REDEVELOPMENT PROJECT" MEANS A CONSTRUCTION PROJECT THAT:
- (a) REQUIRES A BUILDING OR LANDSCAPING PERMIT, PLAN CHECK, OR DESIGN REVIEW; AND
- (b) RESULTS IN A DISTURBANCE OF MORE THAN FIFTY PERCENT OF THE AGGREGATE LANDSCAPE AREA.
- (15) "SPECIAL DISTRICT" HAS THE MEANING SET FORTH IN SECTION 32-1-103 (20).
- (16) "Transportation corridor" means a transportation system that includes all modes and facilities within a described geographic area, having length and width.
- (17) "TURF" HAS THE MEANING SET FORTH IN SECTION 37-60-135 (2)(i).
- (18) "Unit owners' association" has the meaning set forth in section 38-33.3-103 (3).
- (19) "WATER-WISE LANDSCAPING" HAS THE MEANING SET FORTH IN SECTION 37-60-135 (2)(1).
- 37-99-103. Prohibition of nonfunctional turf, artificial turf, and invasive plant species local entities construction or renovation of state facilities. (1) On and after January 1, 2026, a local entity shall not install, plant, or place, or allow any person to install, plant, or place, any nonfunctional turf, artificial turf, or invasive plant species, as part of a new development project or redevelopment project, on any portion of applicable property within the local entity's jurisdiction.
- (2) On or before January 1, 2026, a local entity shall enact or amend ordinances, resolutions, regulations, or other laws

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REGULATING NEW DEVELOPMENT PROJECTS AND REDEVELOPMENT PROJECTS ON APPLICABLE PROPERTY IN ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION.

- (3) THE DEPARTMENT SHALL NOT INSTALL, PLANT, OR PLACE, OR ALLOW ANY PERSON TO INSTALL, PLANT, OR PLACE, ANY NONFUNCTIONAL TURF, ARTIFICIAL TURF, OR INVASIVE PLANT SPECIES AS PART OF A PROJECT FOR THE CONSTRUCTION OR RENOVATION OF A STATE FACILITY, WHICH PROJECT DESIGN COMMENCES ON OR AFTER JANUARY 1, 2025.
  - (4) NOTHING IN THIS SECTION PROHIBITS:
- (a) A LOCAL ENTITY FROM MAINTAINING, OR ALLOWING ANY PERSON TO MAINTAIN, ANY NONFUNCTIONAL TURF, ARTIFICIAL TURF, OR INVASIVE PLANT SPECIES INSTALLED, PLANTED, OR PLACED BEFORE JANUARY 1, 2026;
- (b) The department from maintaining, or allowing any Person to maintain, any nonfunctional turf, artificial turf, or invasive plant species installed, planted, or placed at a state facility before January 1, 2025;
- (c) A LOCAL ENTITY OR THE DEPARTMENT FROM INSTALLING, OR ALLOWING ANY PERSON TO INSTALL, GRASS SEED OR SOD THAT IS A NATIVE PLANT OR HAS BEEN HYBRIDIZED FOR ARID CONDITIONS;
- (d) A LOCAL ENTITY OR THE DEPARTMENT FROM ESTABLISHING PROHIBITIONS ON, OR REQUIREMENTS FOR, NONFUNCTIONAL TURF, ARTIFICIAL TURF, OR INVASIVE PLANT SPECIES THAT ARE MORE STRINGENT THAN THE REQUIREMENTS OF THIS SECTION; OR
- (e) A LOCAL ENTITY OR THE DEPARTMENT FROM INSTALLING, OR ALLOWING ANY PERSON TO INSTALL, ARTIFICIAL TURF ON ATHLETIC FIELDS OF PLAY.
- **SECTION 2.** Act subject to petition effective date applicability. (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or

part will not take effect unless approved by the people at the general election to be held in November 2024 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act does not apply to projects approved by the department of personnel or a local entity before the effective date of this act.

Steve Fenberg PRESIDENT OF THE SENATE Julie McCłuskie SPEAKER OF THE HOUSE OF REPRESENTATIVES

Cincle of Markwell

Cindi L. Markwell

SECRETARY OF

Cindi L. Markwell SECRETARY OF THE SENATE Robin Jones

CHIEF CLERK OF THE HOUSE OF REPRESENTATIVES

APPROVED Folding March 15th 2024 at 2:15 mm (Date and Time)

Jared S. Polis

GOVERNOR OF THE STATE OF COLORADO

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# **REGULAR MEETING**

August 15, 2024, 5:30-7:30 p.m. Hybrid in person at 222 Laporte Ave and online via Zoom

The Water Commission advises City Council regarding water, wastewater, and stormwater policy issues such as water rights, planning, acquisition and management, conservation and public education, floodplain regulations, storm drainage, and development criteria. Read more at https://www.fcgov.com/cityclerk/boards/water.

#### 1. CALL TO ORDER

5:30 p.m.

#### 2. ROLL CALL

- Commissioners Present In Person: Tyler Eldridge (Vice Chairperson), Paul Herman, John Primsky, Greg Steed
- Commissioners Present via Zoom: Nick Martin
- Commissioners Absent Excused: Jordan Radin (Chairperson), James Bishop, Rick Kahn, Nicole Ng
- Staff Members Present In Person: Jeremy Woolf, John Song, Leslie Hill, Richard Thorp, Katie Collins, Heather Jarvis, Jill Oropeza
- Staff Members Present via Zoom: Mariel Miller, Kathryne Marko, Kerri Ishmael
- Members of the Public: James

#### 3. AGENDA REVIEW

Vice Chairperson Tyler Eldridge briefly summarized items on the agenda

#### 4. COMMUNITY PARTICIPATION

None

# 5. APPROVAL OF MINUTES

Vice Chairperson Eldridge asked for comments and revisions on the draft minutes.

Commissioner Steed moved to approve the July 18 minutes. Commissioner Herman seconded the motion. Vote on the motion: it passed unanimously, 5-0





#### **REGULAR MEETING**

#### 6. NEW BUSINESS

# a. Staff Reports

# i. Financial Monthly Report

(meeting packet only)

# Discussion Highlights

A Commissioner commented that this was the largest margin that they have seen fir operating costs for water and wondered if it was due to higher use and/or higher expenses. Staff Liaison Jeremy Woolf and Water Conservation Manager Mariel Miller added that 2023 was about 13% less water use than the previous 5-year average and discrepancies have been mostly due to weather, so this year is more of a return to normal.

# ii. Cybersecurity UT Water Memo to Council (meeting packet only; staff available for questions)

# **Discussion Highlights**

Commissioners commented on or inquired about various related topics including VPNs, system updates, and networks. Jeremy Woolf elaborated that Water Utilities' operational environment functions via the Supervisory Control and Data Acquisition (SCADA) system, which operates onsite and among a small network through the privileged access management (PAM) system, which is all isolated from the wider enterprise network of the rest of the City. In all, there are three levels of security for Utilities' system beyond the initial firewall. Commissioners and staff spoke about the July 10<sup>th</sup> cyberattack on the enterprise system, which again is separate from the operational network SCADA which was thus protected from the attack.

# b. Regular Items

# Agreements Regarding the Michigan Ditch Forest Health and Pre-Fire Mitigation Project

Richard Thorp, Lead Specialist, Sciences

The Michigan Ditch is critical water supply infrastructure owned by the City and located near Cameron Pass within Colorado State Forest State Park. Watershed Program staff seek a recommendation from the Water Commission that City Council approve the Watershed Program entering into the attached Intergovernmental Agreement Regarding Forest Health and Pre-Fire Mitigation Services through the Colorado State Forest Service and the Colorado State Forest Service Financial Assistance Program for Michigan







#### **REGULAR MEETING**

Ditch Pre-Fire Mitigation.

# **Discussion Highlights**

Commissioners commented on or inquired about various related topics including the Intergovernmental Agreement (IGA) budget makeup, the Watershed Program fund, program intent, and the proposed agreements. A Commissioner inquired if the strategy is to simply thin the forest to prevent fires. Mr. Thorp responded that though it's a part of the strategy, there would need to be a good mitigation plan beyond just thinning, as the area around Michigan Ditch is a sensitive ecozone and there could be risks of drying out the land even further and making it more susceptible to fires. A Commissioner inquired about the two agreements, to which Mr. Thorp responded that the two are co-dependent, namely that one agreement would fund the work of the other, and thus the motion requires the acceptance and recommendation of both agreements for the IGA to move forward as intended.

**Commissioner Primsky moved** that the Water Commission recommend City Council formally approve of Utilities' Watershed Program entering into the Intergovernmental Agreement Regarding Forest Health and Pre-Fire Mitigation Services through the Colorado State Forest Service and the Colorado State Forest Service Financial Assistance Program for Michigan Ditch Pre-Fire Mitigation.

# Commissioner Eldridge seconded the motion.

Vote on the Motion: it passed unanimously, 5-0

# ii. Code Amendments – Soil and Xeriscape Katie Collins, Water Conservation Specialist

Environmental Regulatory Affairs and Water Conservation seek a recommendation from the Water Commission that City Council approve the attached amendments to Land Use Code and Municipal Code. Proposed amendments support water-wise, resilient landscape practices and address two 2021-2023 Council Priorities: #14 Effective soil amendment policies and compliance (water usage), #19 Xeriscape – Increase rebates and education, less green lawns with new development. Kathryne Marko, Environment Regulatory Affairs Manager, co-leads this project.

#### **Discussion Highlights**







# **REGULAR MEETING**

Commissioners commented on or inquired about various related topics including the Senate bill on turf limits, Council priorities, and daytime watering restrictions. A Commissioner inquired whether the comprehensive field inspection would be done before any construction and whether any new fees would be incurred. Katie Collins confirmed that the inspection would occur before any builds or plants are put in the ground. Environmental Regulatory Affairs (ERA) Manager Kathryne Marko added that there would be no specific fee for the inspection, but rather that it would be built into the building permit. A Commissioner inquired about community outreach, to which Ms. Collins responded that there had been a high level of engagement and feedback, seeing about a thousand responses from the community, as well as engagement with real estate and contracting professionals. One of the pushbacks regarded the lack of language regarding grass in the streetscape or parkway, but Ms. Collins stated that there were yet uncertainties of any alternatives and so they were not able to elaborate on the topic.

Commissioner Steed moved that the Water Commission recommend City Council approve the amendments to Land Use Code Sections 5.10.1 and 7.2.2 and City Code Sections 12-130 through 12-134 in substantially the same content and form as proposed by staff and considered by the Commission on August 15, 2024.

#### Commissioner Herman seconded the motion.

Vote on the Motion: it passed unanimously, 5-0

### 7. COMMISSIONER REPORTS

a. Rocky Mountain Water Conference in two weeks

#### 8. OTHER BUSINESS

- a. Oak Street Project Tour Opportunity
- b. Water Commission Support for One Water Operator Efforts
- c. Switch from Zoom to Teams starting next month
- d. New One Water Director Nicole Poncelet-Johnson starting September 30
- e. Risk and Resiliency Program Summary
- f. Strategic Asset Management Plan







# **REGULAR MEETING**

# 9. ADJOURNMENT

7:02 p.m.

These minutes were approved by the Water Commission on September 19, 2024.





# Landscape Standards – Soil, Xeriscape

# **Kathryne Marko**

Environmental Regulatory Affairs Manager, Utilities

# **Katie Collins**

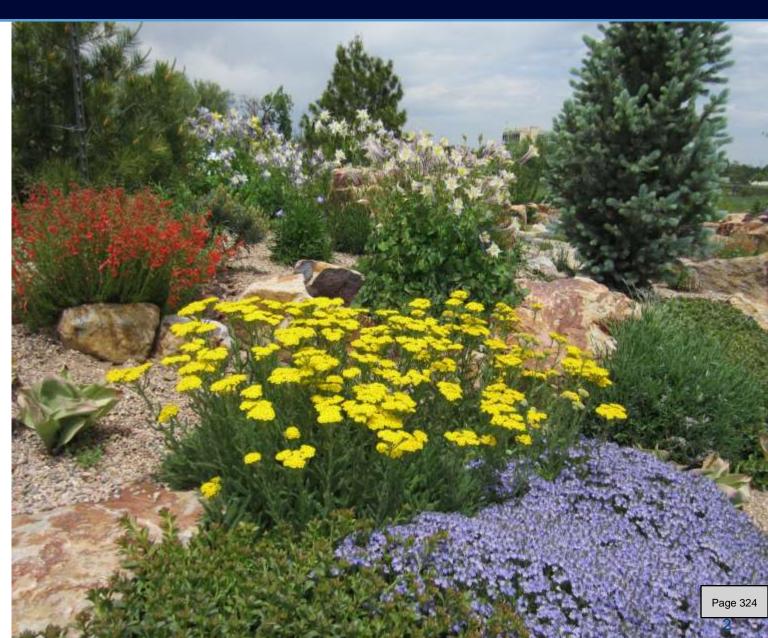
Water Conservation Specialist, Utilities



# Agenda



- Background
- Approach to Compliance
  - -Timeline
  - –Proposal
  - -Engagement
- Trends
- Cost Impacts



# **Background**



"Landscaping that adheres to water-wise landscaping principles without adversely impacting quality of life or landscape functionality."

Legislative declaration, CO Senate Bill 24-005

# **2021-2023 City Council Priorities**

- #14 Effective soil amendment policies and compliance
- #19 Xeriscape less grass in new development
- #28 Improving Tree Policy
- Project launched early 2022

# **Colorado Senate Bill 24-005**

- Prohibitions on commercial development
  - nonfunctional turf
  - artificial turf
  - invasive species
- Signed into law March 2024
- Align by Jan. 1, 2026

# **Background**



# Goal: Build climate resilient landscapes in Fort Collins

## **Objectives**

- Reduce impacts of our built environment
- Maintain Fort Collins' unique sense of character and place
- Consider community needs now and into the future

# **Alignment**

- City Plan
- Our Climate Future
- Water Efficiency Plan

## **Outcome**

- Code
- Education and outreach
- Compliance



Principle LIV 9: Encourage development that reduces impacts on natural ecosystems and promotes sustainability and resilience.



Principle ENV 6: Manage water resources in a manner that enhances and protects water quality, supply and reliability.

Principle ENV 8: Create and maintain a safe, healthy and resilient urban forest.

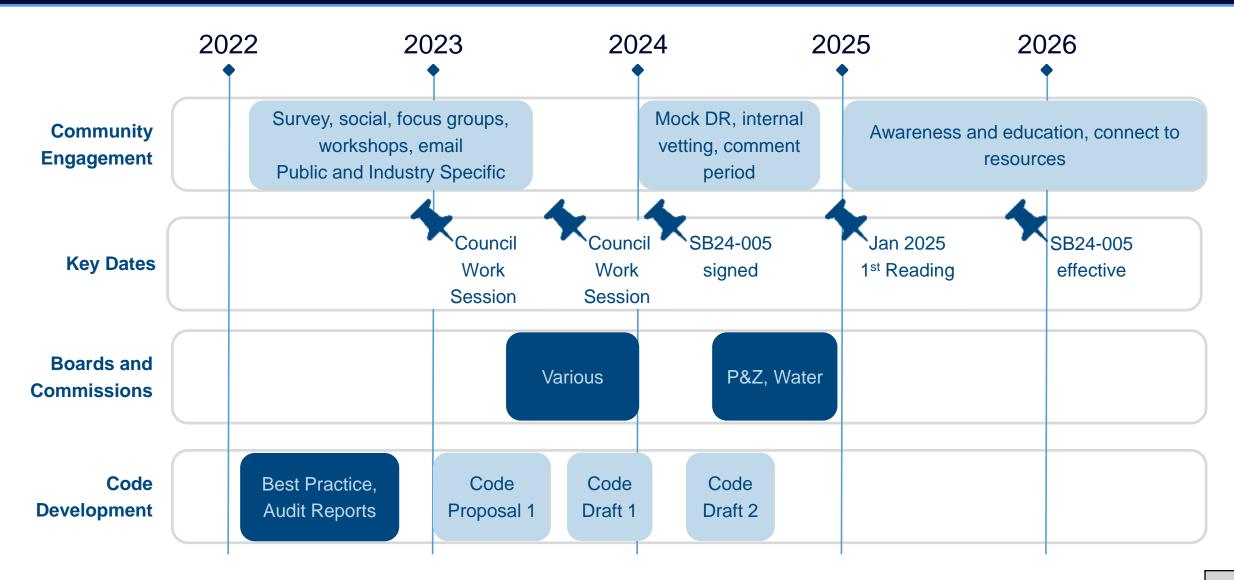


**BIG MOVE 3** 

**CLIMATE RESILIENT COMMUNITY** 

# **Timeline**





# **Proposal – Senate Bill**



State Requirement	City Compliance (proposed)
No artificial turf (except for athletic fields)	Prohibit artificial turf (except for athletic fields)
No invasive plant species	Existing standard
High-water grass only allowed in functional areas	<ul> <li>Definition of functional areas</li> <li>Limit high-water grass to functional areas</li> <li>Update Streetscape Standards (2025)</li> </ul>

# **Proposal – Additional City Specific**



# Additional Fort Collins Specific Code Amendments (proposed)

# General

Code cleanup and reorganization

# **Landscape**

- 50% living landscape coverage
- 11 gallon/sq.ft. annual water budget
- Limit high- and moderate-water grass to functional areas
- No restriction on low-water grass
- No irrigated grass < 75 sq.ft.</li>

# **Trees**

- Dedicated tree irrigation
- Limit consecutive trees

# **Soils**

- Soil standards applicability
- Site specific soil amendment
- Soil loosening around trees

# **Proposal**











# **Engagement**



1,500+ "touch points" (how many people we heard from)

6,000+ comments

Public, developers, landscape and real estate professionals, property managers, nurseries and wholesalers, sod growers

# **Support:**

Commercial landscape regulations
Grass with a purpose
Education and incentives

## **Concerns:**

Residential landscape regulations
Limitation of turf area by percentage
Prohibiting artificial turf
Cost and maintenance of dedicated tree irrigation



# **Cost Impact Analysis**



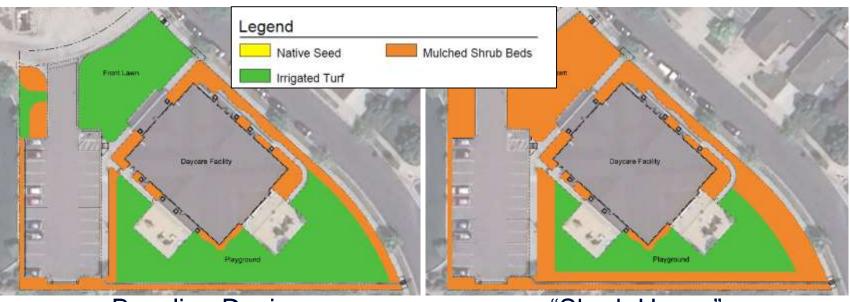
# Fictional designs for two property types: small commercial and multi-family

- Baseline compliant with current code (i.e. 15 gallon/sq.ft., no grass limitation)
- Alternative compliant with amended code
   (i.e. 11 gallon/sq.ft., grass limitations, irrig. to trees)

# Applied upfront and ongoing costs to each scenario

- Installation
- Development fees for water
- Annual maintenance
- Annual water cost







Baseline Design

"Shrub Heavy"

"Native Grass Heavy"







# Cost Compared to Baseline Landscape (2024 Rates & Fees)

Landscape Design	Avg. GPSF	Installation & Water Fees			Mainten Water C	ance & Ar ost	<u>inual</u>
		<u>FoCo</u>	ELCO	<b>FCLWD</b>	<u>FoCo</u>	ELCO	<b>FCLWD</b>
Baseline	15	\$195K	\$224K	\$211K	\$3,900	\$5,000	\$4,200
Alt. 1 Shrub Heavy	10.7	+ \$39K	+ \$30K	+ \$57K	(\$270)	(\$600)	(\$370)
Alt. 2 Shrubs and Native Grass	10.4	(\$2K)	(\$10K)	+ \$18K	(\$290)	(\$650)	(\$400)
Alt. 3 Native Grass Heavy	7.8	(\$43K)	(\$53K)	(\$12K)	(\$460)	(\$1,000)	(\$630)



# Water Budgets – 15 GPSF vs 11 GPSF



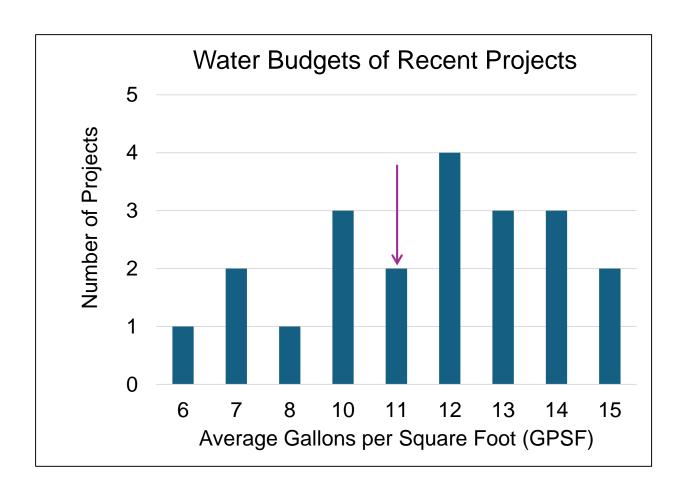
Water Budget Chart – LUC 5.10.1				
Hydrozone	Annual Water Need (GPSF)			
High	18			
Moderate	14			
Low	8			
Very low	3			

# **21 Recent Development Projects**

12 projects > 11 GPSF

Annual outdoor demand: 31.1M gal (95 AF)

Adjusted outdoor demand: 29.4M gal (90 AF)





# Thank you!

#### File Attachments for Item:

10. First Reading of Ordinance No. 009, 2025, Amending the Land Use Code to Align with Two Adopted State House Bills Concerning Accessory Dwelling Units and Parking for Multi-Unit Dwellings and to Clarify and Correct Certain Provisions.

The purpose of this item is to propose revisions, clarifications, and organization to the Land Use Code provisions that address specific areas that are the subject of two Colorado State House Bills passed last year. HB24-1152 requires the ability to build an ADU in more areas of the City, and HB24-1304 removes the minimum parking requirements for new multi-unit and residential mixed-use development. This item also includes clean-up to the Land Use Code.

## **January 21, 2025**

## **AGENDA ITEM SUMMARY**

City Council



#### **STAFF**

Noah Beals, Development Review Manager

#### **SUBJECT**

First Reading of Ordinance No. 009, 2025, Amending the Land Use Code to Align with Two Adopted State House Bills Concerning Accessory Dwelling Units and Parking for Multi-Unit Dwellings and to Clarify and Correct Certain Provisions.

#### **EXECUTIVE SUMMARY**

The purpose of this item is to propose revisions, clarifications, and organization to the Land Use Code provisions that address specific areas that are the subject of two Colorado State House Bills passed last year. HB24-1152 requires the ability to build an ADU in more areas of the City, and HB24-1304 removes the minimum parking requirements for new multi-unit and residential mixed-use development. This item also includes clean-up to the Land Use Code.

#### STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

#### **BACKGROUND / DISCUSSION**

The list of updates is summarized into 34 specific areas; see the attached summary. These include changes to the following sections:

- Article 2 Zone Districts Sections: 2.1.2, 2.1.3, 2.1.4, 2.1.5, 2.1.6, 2.2.1, and 2.2.3
- Article 3 Building Types Sections: 3.1.6, 3.1.7, 3.1.9, and 3.1.10
- Article 4 Use Standards Sections: 4.2, 4.3.1, and 4.3.3
- Article 5 General Development and Site Design Sections: 5.9.1 and 5.10.3
- Article 6 Administration and Procedures Sections: 6.4.3 and 6.21.4
- Article 7 Rules of Measurement and Definitions Section: 7.2.2

The housing updates to the Land Use Code in 2022 and 2023 initially proposed adding ADUs as a use to all residential zone districts. Due to strong opposition from community members, in the Land Use Code updates adopted and effective in 2024, ADUs were not expanded to all residential zone districts and remained the same from the 1997 Land Use Code. Since the adoption of the housing updates to the Land Use Code, the Colorado General Assembly passed HB24-1152. This bill requires jurisdictions within a metropolitan planning organization with a population of at least 1,000 residents to allow ADUs. Specifically,

an ADU may be built on lots where a single-unit dwelling exists or where a single-unit dwelling could be built. State law requires jurisdictions to comply with this bill by June 2025. Most of the proposed changes in this Ordinance are to bring the Land Use Code into compliance with this legislation. The following is a summary of the requirements of HB24-1152:

- Permit ADUs where the Land Use Code permits single-unit dwellings.
- ADU must be built on the same lot as a primary dwelling.
- ADU may be attached or detached to the primary dwelling.
- Allow existing accessory buildings to be converted into an ADU.
- Allow an ADU to be at least 750 square feet in size.
- May not require setbacks to be greater than minimum for the primary dwelling.
- May not require more restrictive design standard than are applied to the primary dwelling.
- May not require a new off-street parking space for the ADU.
- May not require owner occupancy of one of the units on the lot.
- ADU proposals must be reviewed and decided by local government staff based solely on objective standards and cannot be elevated to an elected or appointed public body including a hearing officer.

In addition to these requirements, the bill also allows subject jurisdictions to:

- Require that a historic preservation commission to offer a recommendation to the local government staff.
- Restrict an ADU from being used as a short-term rental.
- Apply and enforce safety codes.
- Require a statement from the water service provider regarding the capacity of the service.

The proposed changes will bring the Land Use Code into compliance with these requirements.

HB24-1152 also includes provisions for local governments to become a certified "accessory dwelling unit supportive jurisdiction." The certification requirements address items that are programmatic in nature and not code related. These include fee waivers, working with designers and builders to create pre-approved plans, and enabling more home ownership. These provisions are not a requirement of the bill; therefore, they are not included in this Ordinance. Instead, becoming an "accessory dwelling unit supportive jurisdiction" is the subject of the agenda item at the March 25, 2025, work session.

Along with the passage of HB24-1152 the General Assembly passed HB24-1304, regarding minimum parking requirements for multi-unit and residential mixed-use development projects. This bill requires jurisdictions within a metropolitan planning organization to eliminate minimum parking requirements for multi-unit dwellings and residential mixed-use development projects. The associated code changes in this Ordinance strike out all minimum parking requirements for these residential uses. This does not affect single-unit, institutional, and commercial parking standards.

HB24-1304 does not impact other requirements for off-street parking spaces. For instance, if a multi-unit project does provide off-street parking, such spaces will still be required to meet minimum size, accessibility, EV readiness, and landscaping requirements.

Other proposed code changes in this Ordinance include clean-up items that provide clarification, such as deleting duplicative standards, updating references, and combining tables.

#### **CITY FINANCIAL IMPACTS**

No financial impacts to the City are anticipated as a result of these changes.

#### **BOARD / COMMISSION / COMMITTEE RECOMMENDATION**

Staff presented the proposed changes to the Planning and Zoning Commission (P&Z) at their November work session and public hearing.

The P&Z discussion included several clarifying questions:

Is there a limit to the number of ADUs on a property?

Yes, the proposed Code would limit to only one ADU per property.

Is there code language that continues to allow water services to extend from the primary building?

Yes, the Municipal Code provides criteria to allow water utilities to extend from the primary building in the Utilities section (see Chapter 26 Article 3 Division 3 Section 26-94 of Municipal Code).

Is there concern ADUs will be built and not be used as dwelling units?

No, the current Code does not allow any new ADUs to be used as short-term rentals, and this does not change.

Does the code language allow for different types of ADUs?

Yes, both attached and detached ADUs are permitted. Attached includes conversions of existing areas in the primary house including basements and new additions.

P&Z spent the most time discussing proposed code language that effectively would prohibit water/sewer in an accessory building with one exception for an ADU. P&Z had expressed that there are many reasons to have water/sewer in an accessory building and the added costs associated with ADUs could be overbearing. They expressed this change would need more public engagement and at this time they would not be supportive of prohibiting water/sewer for all other accessory buildings. Staff acknowledge this code language could be removed at this time.

P&Z also discussed the removal of parking requirements for multi-unit and residential mixed-use projects. There was acknowledgment by the Commission that the State requirement placed the need for housing over a need to provide off-street parking.

Overall, the Commission unanimously agreed to recommend approval of the proposed code changes, provided the prohibition on water/sewer services for accessory buildings being removed.

The Land Use Code language presented to Council for 1<sup>st</sup> reading aligns with the P&Z recommendation with the language prohibiting water/sewer services for accessory buildings being removed.

#### **PUBLIC OUTREACH**

Staff did not conduct any public outreach for these Land Use Code updates. These updates were referenced in the Development Newsletter and agenda publication of the Planning and Zoning Commission.

#### **ATTACHMENTS**

- 1. Ordinance for Consideration.
- Summary of Proposed Land Use Code Changes
   Planning and Zoning Meeting Minutes, November 21, 2024 (draft)
- 4. Presentation

# ORDINANCE NO. 009, 2025 OF THE COUNCIL OF THE CITY OF FORT COLLINS AMENDING THE LAND USE CODE TO ALIGN WITH TWO ADOPTED STATE HOUSE BILLS CONCERNING ACCESSORY DWELLING UNITS AND PARKING FOR MULTI-USE DWELLINGS AND TO CLARIFY AND CORRECT CERTAIN PROVISIONS

- A. Pursuant to Ordinance 055, 2024, Council adopted the revised Land Use Code by reference which went into effect on May 27, 2024.
- B. Pursuant to Ordinance 081, 2024, Council amended the revised Land Use Code to remove residential occupancy limits based on familial relationships, which went into effect on July 12, 2024.
- C. The Land Use Code contains various restrictions on the use of accessory dwelling units (ADUs).
- D. The terms of Colorado House Bill 24-1152, effective May 13, 2024, require the City to eliminate certain restrictions on ADUs and allow ADUs to be built in all zones where a single-unit dwelling exists or could be built by June 30, 2025.
- E. The Land Use Code also contains minimum parking requirements for new multi-unit and residential mixed-use development.
- F. The terms of Colorado House Bill 24-1304, effective August 7, 2024, prohibit the City from imposing minimum parking requirements on land use approvals for new multi-unit and residential mixed-use development after June 30, 2025.
- G. The City desires to comply with House Bills 24-1152 and 24-1304, and in order to do so, the existing Land Use Code ADU and minimum parking requirements must be amended as set forth in this Ordinance.
- H. To provide clarification, this Ordinance also corrects various items in the Land Use Code, such as deleting duplicative standards, updating references, and combining tables.
- I. On November 21, 2024, the Planning and Zoning Commission unanimously voted to recommend that Council adopt the proposed changes set forth in this Ordinance.
- J. This Ordinance amends the Land Use Code which was adopted by reference in Ordinance 055, 2024, and amended in Ordinance 081, 2024. However, the amendments contained in this Ordinance are set forth in their entirety herein.

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. ARTICLE 2 ZONE DISTRICTS, DIVISION 2.1 RESIDENTIAL DISTRICTS, Section 2.1.2, UE – Urban Estate District, BUILDING TYPES and DEVELOPMENT STANDARDS, Building Types list, Lot size Table, Lot Width Table, Building Height Table is hereby amended to read as follows:

. . .

BUILDING TYPES  The following building types a in the UE District:	<del>re permitted</del>
— Detached House (Urban & St — Duplex — Residential Cluster — Detached Accessory Structu	, ro
BUILDING HEIGHT	
- Single-Unit Dwelling	-3 Stories max.

LOT WIDTH	
Single-Unit Dwelling	-100' min.
Single-Unit Dwelling (Subdivided before 1997)	-60' min.

LOT SIZE	
ot Area	21.790 ft²
ot Airea	21,700 10
Except Residential Cluster)	(1/2 Acre) min.

The following building types are permitted in the UE District:

<b>BUILDING</b>	LOT SIZE	LOT WIDTH	BUILDING	ADDITIONAL
<b>TYPES</b>			<b>HEIGHT</b>	<b>REQUIREMENTS</b>
Detached house (Urban & Suburban)	21,780 ft <sup>2</sup> (1/2 Acre) min.	100' min.	3 Stories max.	Only one detached house on a lot, may include one (1)
Duplex	21,780 ft <sup>2</sup> (1/2 Acre) min.	100' min.	3 Stories max.	Only one duplex on a lot, shall not be combined with a detached house or ADU
Accessory Dwelling Unit	N/A	N/A	No taller than Detached house on the same lot	Located on the same lot with a detached house

Detached	21,780 ft <sup>2</sup>	100' min.	30' max.	Located on the
Accessory	(1/2 Acre)			same lot with a
<b>Structure</b>	<mark>min.</mark>			primary use
Non	N/A	N/A	3 Stories max.	See other Articles
<b>Residential</b>				
Residential	See section 3.1	<mark>.10</mark>	3 Stories max.	See other Articles
Cluster				

Section 2. ARTICLE 2 ZONE DISTRICTS, DIVISION 2.1 RESIDENTIAL DISTRICTS, Section 2.1.3, RF – Residential Foothills District, BUILDING TYPES and DEVELOPMENT STANDARDS, Building Types list, Lot size Table, Lot Width Table, Building Height Table is hereby amended to read as follows:

. . .

BUILDING TYPES  The following building types are permitted in the RF District:		LOT WIDTH		
		Single Unit Dwelling	<del>200' min.</del>	
Detached House (Urban & S Residential Cluster	<del>uburban) -</del>			
Detached Accessory Structu	<del>re -</del>	BUILDING HEIGHT		
- Accessory Dwelling Onit		Single-Unit Dwelling	3 Stories max.	
LOT SIZE				
Lot Area	100,000 ft <sup>2</sup> (2.29 Acres) min.			

## The following building types are permitted in the RF District:

<b>BUILDING</b>	LOT	LOT	<b>BUILDING</b>	<b>ELEVATION</b>	<b>ADDITIONAL</b>
TYPES	SIZE	WIDTH	HEIGHT		<b>REQUIREMENTS</b>
<b>Detached</b>	100,000	200' min.	3 Stories	No elevation	Only one
<mark>house</mark>	<mark>ft²</mark>		<mark>max.</mark>	of any	detached house
(Urban &	<mark>(2.29</mark>			building built	on a lot, may
Suburban)	Acres)			on a lot in	include one (1)
	min.			the RF	<mark>ADU</mark>

Accessory	N/A	N/A	No taller	District shall	Located on the
<b>Dwelling</b>			<mark>than</mark>	<mark>extend</mark>	same lot with a
<b>Unit</b>			Detached	above five	detached house
			house on	thousand	
			the same lot	two hundred	
Detached	100,000	200' min.	30' max.	fifty (5,250)	Located on the
Accessory	ft <sup>2</sup>			feet above	same lot with a
Structure	(2.29			<mark>mean sea</mark>	primary use
	Acres)			<mark>level</mark>	
	min.				
Non	N/A	N/A	3 Stories		See other Articles
<b>Residential</b>			max.		
Residential	See section	n 3.1.10	3 Stories		See other Articles
Cluster			max.		

. . .

Section 3. ARTICLE 2 ZONE DISTRICTS, DIVISION 2.1 RESIDENTIAL DISTRICTS, Section 2.1.4, RL – Low Density Residential District, BUILDING TYPES and DEVELOPMENT STANDARDS, Building Types list, # Of Units Table, and Lot Area Table is hereby amended to read as follows:

. . .

#### **BUILDING TYPES**

The following building types are permitted in the RL District:

The following building types are permitted in the RL District:

BUILDING TYPES	# OF UNITS*	LOT AREA	ADDITIONAL REQUIREMENTS
Detached House (Urban & Suburban)	1 max.	The greater of 6000 ft <sup>2</sup> min. or three (3) times the total floor area of all buildings excluding an ADU	N/A
Accessory  Dwelling Unit  (Attached &  Detached)	1 max.	N/A	Located on the same lot with a detached house

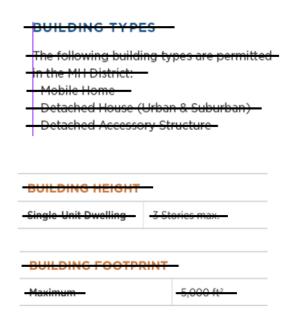
Detached	See Section 3.1.8	Located on the
Accessory		same lot with and
Structure		<mark>behind a</mark>
		detached house

<sup>\*</sup>The total number of units shall not exceed one (1). on a lot Detached house and one (1) ADU. Refer to Building Types Article 3 and Use Standards Article 4 for specific definitions.

. . .

Section 4. ARTICLE 2 ZONE DISTRICTS, DIVISION 2.1 RESIDENTIAL DISTRICTS, Section 2.1.5, MH – Manufactured Housing District, BUILDING TYPES and DEVELOPMENT STANDARDS, Building Types, Building Height Table, Building Footprint Table, and Setbacks Table is hereby amended to read as follows:

. . .



The following building types are permitted in the MH District:

<b>BUILDING TYPES</b>	<b>BUILDING HEIGHT</b>	FOOTPRINT	ADDITIONAL	
			<b>STANDARDS</b>	
Mobile Home	3 Stories max.	<mark>N/A</mark>	Lot may include one	
			(1) ADU.	
<b>Accessory Dwelling</b>	No taller than	No greater than	Only one (1) ADU	
Unit (Detached &	Mobile Home on the	Mobil Home on the	<mark>on a lot with a</mark>	
Attached)	same lot.	same lot.	Mobile Home.	
<b>Detached</b>	28' max.	800 ft <sup>2</sup>	Located on the	
Accessory			same lot with a	
Structure Structure Structure			primary use.	
Nonresidential Nonresidential	3 Stories max.	5,000 ft <sup>2</sup>	See Article 4 and 5	
<b>Buildings</b>				

SETBACKS AN	SETBACKS AND SEPARATION				
Front	15' min.	Distance between	10' min.		
Setback*		Mobile Home and			
Rear Setback*	10' min.	Accessory Dwelling			
		<b>Units</b>			
Side Setback*	10' min.	Distance between	3' min.		
		<b>Accessory Structure</b>			
Distance	<del>10' min.</del>				
Between					
Buildings					

<sup>\*</sup>Setbacks are from property line.

Section 5. ARTICLE 2 ZONE DISTRICTS, DIVISION 2.1 RESIDENTIAL DISTRICTS, Section 2.1.6, OT – Old Town District, BUILDING TYPES, Building Types list, Additional Site Requirement Table, is hereby amended to read as follows:

. . .

#### **BUILDING TYPES**

The following building types are permitted in the OT-A subdistrict:

Building Types	Units*	Lot Area	Floor Area	Additional Site Requirement
Detached House (Urban & Suburban)	1 max.	6,000 ft <sup>2</sup> min.	2,400 ft <sup>2</sup>	N/A
ADU (Detached only) Accessory Dwelling Unit (Attached & Detached)	1 max.	12,000 ft <sup>2</sup> min N/A	See Section 3.1.9	Located behind a Detached House Located on the same lot with a Detached House
Detached Accessory Structure		See Section 3.1.8	3	N/ALocated on the same lot with a primary use

## **BUILDING** TYPES

The following building types are permitted in the OT-B subdistrict:

Building Types	Units*	Lot Area	Floor Area	Additional Site Requirement
Detached House (Urban & Suburban)	1 max.	5,000 ft <sup>2</sup> min.	2,400 ft <sup>2</sup> max.	N/A
Duplex	2 max.	5,000 ft <sup>2</sup> min	40% of lot area max.	N/A
Triplex	3 max.	6,000 ft <sup>2</sup> min	70 % of lot area max.	N/A
Apartment Building	4 max.	6,000 ft <sup>2</sup> min	85% of lot area max.	N/A
ADU (Detached enly) Accessory Dwelling Unit (Attached & Detached)	1 max.	10,000 ft <sup>2</sup> min <mark>N/A</mark>	See Section 3.1.9	Located behind a Detached House, Duplex, or Triplex Located on the same lot with a Detached House, Duplex, or Triplex
Detached Accessory Structure	See Section 3.1.8			
Detached Accessory Structure				Located on the same lot with a primary use

## **BUILDING TYPES**

The following building types are permitted in the OT-C subdistrict:

Building Types	Units	Lot Area	Floor Area	Additional Site Requirement
Detached House (Urban & Suburban)	1 max.	4,500 ft <sup>2</sup> min.	2,400 ft <sup>2</sup>	N/A
Duplex	2 max.	4,500 ft <sup>2</sup> min.	No max.	N/A

Apartment Bldg.  (Triplex and other)	3 min.	4,500 ft <sup>2</sup> min. & additional 750 ft <sup>2</sup> min. for each unit greater than 3 units	No max.	N/A
Rowhouse	2 min. to 3 max.	4,500 ft <sup>2</sup> min.	No max.	N/A
	4 max.	6,000 ft <sup>2</sup> min.	No max.	N/A
	5 max.	7,500 ft <sup>2</sup> min.	No max.	N/A
Cottage Court	5 min.	9,000 ft <sup>2</sup> min.	See Section 3.1.3	N/A
Mixed-Use	3 min.	4,500 ft <sup>2</sup> min. & additional 750 ft <sup>2</sup> min. for each unit greater than 3 units	No max.	N/A
ADUAccessory Dwelling Unit (Attached & Detached)	1 max.	N/A	See Section 3.1.9	Located behind either a Detached House, Duplex, or TriplexLocated on the same lot with a Detached House, Duplex, or Triplex
Detached		See Sec	tion 3.1.8	
Accessory Structure				
Detached Accessory Structure		See Section 3.1.	8	Located on the same lot with a primary use

**OT** – Old Town District (Low, Medium, and High)

## **DEVELOPMENT STANDARDS**

## FLOOR AREA – REAR LOT AREA

OT-A	25% max. of rear 50% lot area**	
OT-B & OT-C	33% max. of rear 50% lot area**	

\*\*All floor area of an ADU is excluded

6. ARTICLE 2 ZONE DISTRICTS, DIVISION 2.1 RESIDENTIAL DISTRICTS, Section 2.2.1., LMN – Low Density Mixed-Use Neighborhood District, DEVELOPMENT STANDARDS, Residential Building Setbacks table is hereby amended to read as follows:

RESIDENTIAL AND ACCESSORY BUILDING SETBACKS				
Front Setback – from Arterial streets	15' min. 🙆			
Front Setback – from Non-Arterial streets	9' min.			
Rear Setback	8' min. <u>.</u>			
Side Setback	5' min. 🢁			

. . .

Section 7. ARTICLE 2 ZONE DISTRICTS, DIVISION 2.1 RESIDENTIAL DISTRICTS, Section 2.2.3, HMN – High Density Mixed-Use Neighborhood District, BUILDING TYPES, Minimum Density Table is hereby amended to read as follows:

• • •

HMN BUILDING TYPES	# OF UNITS	MAXIMUM DENSITY	MINIMUM DENSITY	MINIMUM DENSITY
Non-Residential	N/A	N/A	N/A	N/A
Mixed-Use	4+ min.		1 unit per	1 unit per 2,000
Apartment	4+ min.		<del>2,000 sq. ft. of</del>	sq. ft. of site area
Rowhouse	3+ min.		site area	
ADU (with an	1 max.			N/A
existing				
Detached House)		None		
Detached	1 max.			N/A
Accessory				
Structure (with an				
existing				
Detached House)				

Minimum and Maximum Density applies to an entire site or subdivision.

Section 8. ARTICLE 3 BUILDING TYPES, DIVISION 3.1 RESIDENTIAL BUILDING TYPES, Section 3.1.6 Detached House, Urban, ZONE DISTRICTS and LOT STANDARDS is hereby amended as follows:

. . .

#### **ZONE DISTRICTS**

The following Zone Districts allow Detached House, Urban Building:

•	OT	•	-MH
•	LMN	•	HC
•	MMN	•	CL
•	RL	•	CS
•	RUL	•	CCR
•	UE	•	CCN

. . .

LOT STANDARDS*	
Lot Size - Minimum	3000 ft <sup>2*</sup>
Lot Width - Minimum	40' min. 📵

<sup>\*</sup>Lot standards may vary from dimensions stated here if part of a larger development and consistent with density requirements.

\*Lot standards may vary from dimensions stated here if:

- Part of a larger development and consistent with density requirements; or
- Zone District specific standard applies (see Article 2)

. . .

Section 9. ARTICLE 3 BUILDING TYPES, DIVISION 3.1 RESIDENTIAL BUILDING TYPES, Section 3.1.7 Detached House, Suburban, ZONE DISTRICTS and LOT STANDARDS is hereby amended as follows:

. . .

#### **ZONE DISTRICTS**

The following Zone Districts allow Detached House, Suburban building type:

•	ОТ	•	MH
•	LMN	•	CCN
•	MMN	•	CCR
•	RL	•	CG
•	RF	•	CS
•	UE	•	CL
•	RUL	•	HC

#### • E

. . .

LOT STANDARDS	
Lot Area	3000 ft <sup>2</sup> min.*
Lot Width**	60' min. 🙆
Front Setback**	20'
Rear Setback**	15'
Rear Setback, Alley-Accessed Garages**	6'
Residential Use – Side Setback**	Corner Lot – 15'
	min.
	Interior Lot – 5' min.

<sup>\*</sup>Except in RL, the minimum lot area shall be the equivalent of three (3) times the total floor area of the building but not less than six thousand (6,000) square feet.

\*Lot standards may vary from dimensions stated here if:

- part of a larger development and consistent with density requirements; or
- Zone District specific standard applies (see Article 2)

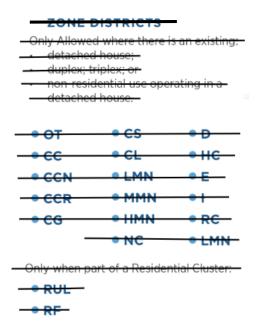
. . .

Section 10. ARTICLE 3 BUILDING TYPES, DIVISION 3.1 RESIDENTIAL BUILDING TYPES, Section 3.1.9 BUILDING TYPE: Accessory Dwelling Unit (ADU), DESCRIPTION, ZONE DISTRICTS, Detached ADU FLOOR AREA, and ADU FLOOR AREA is hereby amended as follows:

#### **DESCRIPTION**

- Full living amenities
- Accessory to a Duplex or Detached House
- Provides complete independent living facilities including
  - living,
  - sleeping,
  - eating,
  - cooking, and
  - sanitation.
- Per zone district Standards may be accessory to a Detached House, Mobile Home, Duplex, or triplex, located on the same lot.
- New construction or built within an existing detached accessory building
- Min & Max. square footage
- Subordinate to and complements the primary dwelling (architecture, building materials)
- ADUs may came come in one of two varieties:
  - Detached
  - Attached

<sup>\*\*</sup>Except in OT, the standards in this zone district apply.



### **ZONE DISTRICTS**

All zone districts where single unit dwelling is permitted or exists.

<b>Detached ADU FLO</b>	OR AREA		
Detached ADU with or without non-	New construction	Primary Building ≤1,3351,667 ft²	600 <mark>750</mark> ft <sup>2</sup> max.*
habitable space (Rear Lot)		Primary Building ≥1,3351,667 ft <sup>2</sup>	1,000 ft <sup>2</sup> max./ or 45% of primary dwelling unit. (whichever is less)*
	Existing accessory structure**		800 ft <sup>2</sup> max.***

<sup>\*</sup>Max. floor Area includes garage, shed or other accessory space. \*\*Legal structure upon the adoption of the LUC. \*\*\*Does not include non-habitable space.

ADU MAX. FLOOR AREA						
Attached ADU	Located on a floor level at	The greater of 750 sf or				
	or above grade	45% of primary dwelling				
		unit				
	Located on floor level	The greater of 750 sf or				
	below grade	100% of the floor level				

Section 11. ARTICLE 3 BUILDING TYPES, DIVISION 3.1 RESIDENTIAL BUILDING TYPES, Section 3.1.10 Residential Cluster, Setbacks for attached, detached and accessory buildings in a Residential Cluster and Units Per Acres in a Residential Cluster is hereby amended as follows:...

	attached, detach		dwelling unit,	and accessory						
buildings in a Residential Cluster										
Building	Front	Interior Side	Street Side	Rear						
Detached	15' min	5' min	15' min	8' min						
Attached	10' min	0' min	15' min	8' min						
Accessory	<mark>15' min</mark>	<mark>5' min</mark>	<mark>15' min</mark>	<mark>8' min</mark>						
<b>Dwelling Unit</b>										
Detached	Behind primary	5' min	15' min	8' min						
Accessory	building									

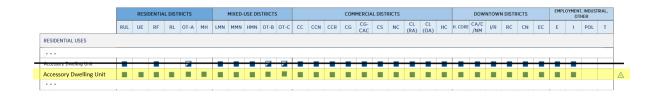
. . .

Units per Acres in a Residential Cluster							
Zone District	Max. Dwelling Units*	Acres					
UE	2	1					
RUL	1	10					
RF	1	1					

\*In addition to the max dwelling units, lots with a detached house may include one (1) ADU.

. . .

Section 12. ARTICLE 4 USE STANDARDS, DIVISION 4.2 TABLE OF PRIMARY USES is hereby amended to add Accessory Dwelling Unit to all zone districts where an existing Detached House is or can be built and change the level of review for an ADU to a Basic Development Review, and add Public/Private schools as Type 1 use to read as follows:



. . .

		RESI	DENTIA	L DIST	RICTS			MIXED-	USE DE	STRICTS					COM	4ERCIAI	L DISTI	acts					DOW	NTO WA	I DISTR	HCTS		EMPL	OYMENT OTI	r, INDUST Her	IRIAL.
	RUL	UE	RF	RL.	OT-A	МН	LMN	MMN	HMN	от-в	OT-C	cc	CCN	CCR	CG	CG- CAC	cs	NC	CL (RA)	CL (OA)	нс	H. CORE	CA/C /NM	I/R	RC	CN	EC	E	1	POL	Т
INSTITUTIONAL/CIVIC/PUBL	IC USES	S																													
Public/Private schools (elem., interm. & H.S.)		<b>2</b>	<b>2</b>	<b>2</b>	<b>2</b>		<b>2</b>							<b>2</b>	<b>2</b>	<b>2</b>	<b>2</b>		<b>2</b>		<b>2</b>										
Public/Private schools (voc. & tech.)							<b>2</b>				<b>%</b>																				

. . .

Section 13. ARTICLE 4 USE STANDARDS, DIVISION 4.3 ADDITIONAL USE STANDARDS, Section 4.3.1 RESIDENTIAL USES, Subsection (B) Accessory Building is hereby amended to read as follows:

#### 4.3.1 RESIDENTIAL USES

- (B) Accessory Dwelling Unit shall be subordinate to a primary dwelling unit. The land underneath the primary structure and the accessory dwelling unit is not divided into separate lots. This does not exclude the ability to create a condominium plat.
  - (1) Accessory dwelling units shall have a resident manager residing on the property in the ADU or primary building, when the owner does not reside on the property.
    - (a) The resident manager shall have one (1) primary residence and shall reside on the property for nine (9) months of the calendar year.
    - (b) If the designated resident manager no longer resides on the property, a new one shall be established by the property owner.
    - (c) If the resident manager shall be authorized by the property owner to manage the property and all dwelling units.
    - (d) Before the Certificate of Occupancy is issued for an ADU the property owner shall provide the name, address, and the resident manager's authorization to manage the property and dwelling units.

Any ongoing verification of such information shall be provided by the owner upon request of the City.

(21) Accessory Dwellings Units that apply for a building permit on or after January 1, 2024, shall not be used for a short term rental. Existing short term rental licenses issued before January 1, 2024, may be renewed or a new license after this date may be issued per Section 15-646 of the Code of the City of Fort Collins.

. . .

Section 14. ARTICLE 4 USE STANDARDS, DIVISION 4.3 ADDITIONAL USE STANDARDS, Section 4.3.1 RESIDENTIAL USES, Subsection (E)(1)(j) Home Occupations is hereby amended to read as follows:

- (i) A home occupation shall not be interpreted to include the following:
  - (I) animal hospital;
  - (II) long-term care facility;
  - (III) restaurant;
  - (IV) bed & breakfast;
  - (V) group home; adult-oriented use;
  - (VI) adult-oriented use;
  - (VIIVI) vehicle repair, servicing, detailing or towing if vehicles are dispatched from the premises, or are brought to the premises, or are parked or stored on the premises or on an adjacent street.
  - (VIIIVII) medical marijuana businesses ("MMBs"), as defined in Section 15-452 of the City Code-;
  - (IXVIII) retail marijuana establishment as defined in Section 15-603 of the City Code-; and(XIX) short term primary rentals and short term non-primary rentals.

Section 15. ARTICLE 4 USE STANDARDS, DIVISION 4.3 ADDITIONAL USE STANDARDS, Section 4.3.1 RESIDENTIAL USES, Subsection (K) Shelter for victims of Domestic Violence is hereby amended to read as follows:

. . .

### (K) Shelter for victims of Domestic Violence

(1) Shall be separated from a group home or shelter by a minimum of one thousand five hundred (1,500) feet.

Section 16. ARTICLE 4 USE STANDARDS, DIVISION 4.3 ADDITIONAL USE STANDARDS, Section 4.3.3COMMERCIAL/RETAIL USES, Subsection (Y)(1)(g) Small Scale Reception center is hereby amended to read as follows:

(g) **Buffering**. If the reception center abuts a single-family unit dwelling or property zoned for such activity, buffering shall be established between the two (2) land uses sufficient to screen the building, parking, outdoor lighting and associated outdoor activity from view. A combination of setbacks, landscaping, building placement, fences or walls and elevation changes and/or berming shall be utilized to achieve appropriate buffering.

. . .

Section 17. ARTICLE 5 General Development and Site Design, DIVISION 5.9 BUILDING PLACEMENT AND SITE DESIGN, Section 5.9.1(K) Parking Lots – Required Number of Off-Street Spaces for Type of Used is hereby amended to read as follows:

- (K) Parking Lots Required Number of Off-Street Spaces for Type of Use.
  - (1) Residential, Commercial, and Institutional Parking Requirements. Residential, commercial, and institutional uses shall provide a *minimum* number of parking spaces as defined by the standards below.
    - (a) Attached Dwellings: for each single-unit attached, two-unit, and multi-unit dwelling there shall be parking spaces provided as indicated by the following table:

Number of Bedrooms/Dwelling Unit	Parking Spaces Per Dwelling Unit*, **	Affordable Housing (Section 5.2) Parking Spaces Per Dwelling Unit*,**,***
One or less	1	<del>.75</del>
Two	<del>1.5</del>	4
Three	<del>2.0</del>	<del>1.25</del>
Four and above	3.0	<del>1.5</del>

<sup>\*</sup> Spaces that are located in detached residential garages (but not including parking structures) or in attached residential garages, which attached garages do not provide direct entry into an individual dwelling unit, may be credited toward the minimum requirements contained herein only if such spaces are made available to dwelling unit

occupants at no additional rental or purchase cost (beyond the dwelling unit rentalrate or purchase price).

\*\* When public streets abutting the perimeter of the development site do not provide on-street parking then the percentage of garage parking spaces provided for the development site shall not exceed eighty (80) percent of the parking total.

\*\*\*Only applies to developments with seven (7) or more units.

(I) Multi-unit dwellings and mixed-use dwellings within the Transit-Oriented Development (TOD) Overlay Zone shall provide a minimum number of parking spaces as shown in the following table:

Number of Bedrooms/Dwelling Unit	Parking Spaces Per Dwelling Unit*						
One or less	<del>0.75</del>						
Two	1						
Three	<del>1.25</del>						
Four and above	<del>1.5</del>						
Rent-by-the Bedroom	Parking Spaces Per						
Home by the beardom	Bedroom						
All bedrooms							

(i) Multi-unit dwellings and mixed-use dwellings within the Transit-Oriented Development (TOD) Overlay Zone may reduce the required minimum number of parking spaces by providing demand mitigation elements as shown in the following table:

Demand Mitigation Strategy**	Parking Requirement Reduction***
Affordable Housing Dwelling Unit for Sale	<del>50%</del>
or for Rent (equal to or less than 60% Area	
Median Income).	
Transit Passes for each tenant.	<del>10%</del>
Car Share.	5 spaces/1 car share
Within 1,000 feet walking distance of MAX	<del>10%</del>
Station. (Walking distance shall mean an	
ADA-compliant, contiguous improved	
walkway measured from the most remote	
building entrance to the transit station and	

contained within a public ROW or pedestrian easement.)	
Bicycle & Pedestrian Level of Service A.	<del>10%</del>
Off-Site Parking.	<del>1:1</del>
Shared Parking.	Based on Approved Alternative  Compliance.
Parking Impact Study.	Based on Approved Alternative Compliance.
Participation in the City's Bike Share	Based on Approved Alternative
Program.	Compliance.
Transportation Demand Management	Based on Approved Alternative
<del>(TDM).</del>	Compliance.

\*\*All demand mitigation strategies shall be shown on the site plan and in the Development Agreement and shall be subject to audit for the duration of the project.

- (II) Alternative Compliance. Upon written request by the applicant, the decision maker may approve an alternative parking ratio, other than the minimum required in Section 2.6.1, TOD Overlay Zone, per subparagraph 5.9.1.(K)(1)(a)(I), that may be substituted in whole or in part for a ratio meeting the standards of this Section.
  - (ii) Procedure. Alternative compliance parking ratio plans shall be prepared and submitted in accordance with the submittal requirements for plans as set forth in this Section. The request for alternative compliance must be accompanied by a Parking Impact Study, Transportation Demand Management proposal, or Shared Parking Study which addresses issues identified in the City's submittal requirements for such studies.
  - (iii) Review Criteria. To approve an alternative plan, the decision maker must find that the proposed alternative plan accomplishes the purposes of this Section and Section 2.6.1, TOD Overlay Zone equally well or better than would a plan which complies with the standards of these Sections. In reviewing the request for an alternative parking ratio plan in order to determine whether it accomplishes the purposes of this Section, the decision maker shall take into account the objective and verifiable results of the Parking Impact

<sup>\*\*\*</sup> Maximum of 50% reduction without provision of a Parking Impact Study or Transportation Demand Management.

Study, Transportation Demand Management proposal, or Shared Parking Study together with the proposed plan's compatibility with surrounding neighborhoods in terms of potential spillover parking.

- (b) Multi-Unit. Parking on an internal street fronting (streets only serving one development) on a lot or tract containing multi-unit, attached or two-unit dwellings (except for mixed-use dwellings and single-unit detached dwellings) may be counted to meet the parking requirements for the development.
- (c) Single-Unit. For each Detached House there shall be one (1) parking space on lots with greater than forty (40) feet of street frontage or two (2) parking spaces on lots with forty (40) feet or less of street frontage.
- (da) Single Unit and Two-Unit.

Detached House: there shall be one (1) parking space on lots with greater than forty (40) feet of street frontage or two (2) parking spaces on lots with forty (40) feet or less of street frontage.

Duplex and Rowhouse: for each dwelling unit with two (2) or fewer bedrooms there shall be one (1) parking space and two (2) parking spaces for each dwelling unit with three (3) or more bedrooms.

Parking of any vehicle in the front yard of a lot on which exists a Detached House or Duplex shall be prohibited unless such vehicle is parked on an improved area having a surface of asphalt, concrete, rock, gravel or other similar inorganic material, and such improved area has a permanent border.

- (e) Accessory Dwelling Unit. One (1) additional parking space required.
- (fb) **Manufactured Homes.** For each manufactured home in a manufactured home community there shall be one (1) parking spaces per dwelling unit.
- (gc) Fraternity and Sorority Houses. For each fraternity or sorority house, there shall be two (2) parking spaces per three (3) beds. The alternative compliance provisions Section 5.9.1(K)(1)(a)(II) may be applied to vary this standard.

- (hd) Recreational Uses For each recreational use located in a residential district there shall be one (1) parking space per four (4) persons maximum rated capacity.
- (ie) Schools, Places of Worship or Assembly and Child Care **Centers**. For each school, place of worship or assembly and child care center, there shall be one (1) parking space per four (4) seats in the auditorium or place of worship or assembly, or two (2) parking spaces per three (3) employees, or one (1) parking space per one thousand (1,000) square feet of floor area, whichever requires the greatest number of parking spaces. In the event that a school, place of worship or assembly, or child care center is located adjacent to uses such as retail, office, employment or industrial uses, and the mix of uses creates staggered peak periods of parking demand, and the adjacent landowners have entered into a shared parking agreement, then the maximum number of parking spaces allowed for a place of worship or assembly shall be one (1) parking space per four (4) seats in the auditorium or place of worship or assembly, and the maximum number of parking spaces allowed for a school or child care center shall be three (3) spaces per one thousand (1,000) square feet of floor area. When staggered peak periods of parking demand do not exist with adjacent uses such as retail, office, employment or industrial uses, then the maximum number of parking spaces allowed for a place of worship or assembly shall be one (1) parking space per three (3) seats in the auditorium or place of worship or assembly, and the maximum number of parking spaces allowed for a school or child care center shall be four (4) spaces per one thousand (1,000) square feet of floor area.
- (jf) Small Scale Reception Centers in the UE, Urban Estate District. For each reception center there shall be one (1) parking space per four (4) persons maximum rated occupancy as determined by the building code.
- (kg) Short term non-primary rentals and short term primary rentals. The minimum number of off-street parking spaces required are as follows:

Number of Bedrooms Rented	Number of Off-Street Parking Spaces
1—2	1
3—4	2
5—6	3

- (I) The number of additional off-street parking spaces required for more than six (6) bedrooms rented shall be calculated in the same manner used in the above chart (e.g., 7-8 bedrooms rented requires four (4) off-street parking spaces).
- (II) Short term rentals licensed pursuant to the Code of the City of Fort Collins Section 15-646 and for which the license application was submitted prior to October 31, 2017, are exempt from compliance with these parking requirements so long as such license remains continuously valid. Subsequent licenses issued pursuant to Section 15-646 shall comply with these parking requirements.

. . .

Section 18. ARTICLE 5 General Development and Site Design, DIVISION 5.10 LANDSCAPING AND TREE PROTECTION, 5.10.3 BUFFERING BETWEEN BUILDINGS WITH OCCUPIABLE SPACE AND OIL AND GASE, Section 5.10.3(F)(3) *Disclosure* is hereby amended to read as follows:

. . .

(3) Sellers and lessors of any real property within an oil and gas buffer must provide the following written notice of material facts related to oil and gas facilities identified by environmental site assessments the disclosure notice must be provided in at least fourteen (14) point font to any potential purchaser who intends to resell, occupy and/or lease the property prior to or as part of the purchase or rental agreement:

As required by 5.10.3 of the Fort Collins Land Use Code, notice is hereby given that [insert description of lot] is within [insert buffer standard set forth in Subsection (D) including well status and distance from well]. At the time of [sale or lease], environmental assessments, studies or reports done involving the physical condition of the Property impacted by oil and gas production are within the acceptable Environmental Protection Agency limits. For more information contact the City of Fort Collins Environmental Planner or the Colorado Energy and Colorado Carbon Management

Commission formerly known as the Colorado Oil and Gas Conservation Commission.

The above notice shall be provided by the prospective seller or lessor to the prospective buyer or lessee of real property no less than thirty (30) days before closing or such shorter time period agreed to by the parties and shall be provided before the signing of any purchase, sale, or rental agreement for the subject property

Section 19. Article 6, ADMINISTRATION and PROCEDURE, DIVISION 6.4 BASIC DEVELOPMENT REVIEW, Basic Development Review and Minor Subdivision review procedures, Section 6.4.3(L) *Step* 12: (Appeals) is hereby amended to read as follows:

**Step 12** (Appeals): Applicable pursuant to Section 6.3.12(C). Regardless of the foregoing the Appeals step is not applicable to applications for Accessory Dwelling Units.

Section 20. The title of Article 6, ADMINISTRATION and PROCEDURES, DIVISION 6.21 PROJECT STOCKPILING PERMITS, AND DEVELOPMENT CONSTRUCTION AND OFF-SITE CONSTRUCTION STAGING is hereby amended to read as follows:

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

Section 21. Article 6, ADMINISTRATION and PROCEDURE, DIVISION 6.21 PROJECT STOCKPILING PERMITS, AND DEVELOPMENT CONSTRUCTION AND OFF-SITE CONSTRUCTION STAGING, Section 6.21.4 OFF-SITE CONSTRUCTION STAGING is hereby deleted in its entirety.

#### 6.21.4 Off-Site construction staging

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

- (d) Any proposed grading necessary to stabilize the site;
- (e) Proposed erosion control measures and storm drainage control measures to prevent wind and water erosion, drainage impacts and tracking mud onto streets;
- (f) Flood ways and flood plains;
- (g) Natural habitat and features;
- (h) Fences;
- (i) Restrooms:
- (j) Existing trees;
- (k) Existing easements and rights-of-way;
- (I) Existing underground utilities;
- (m) Other information necessary to describe the site;
- (n) Traffic control plan reflecting means of ingress and egress to be used;
- (o) Mitigation plan to address any adverse impacts to the site, or adjacent parcels, caused by the off-site construction staging during and after the staging; and
- (p) Restoration and final site condition plan.
- (2) An off-site construction staging license shall be issued, with or without conditions, if the Director finds that the off-site construction staging:
  - (a) is not detrimental to the public good; and
  - (b) will not cause substantial adverse impacts to the parcel on which it is located or adjacent parcels or the environment, with or without mitigation; and
  - (c) is located within a quarter (.25) of a mile of the construction or development site to be served by the off-site construction staging.
- (3) An off-site construction staging license issued hereunder shall expire eighteen (18) months after the date of issuance unless an extension is granted.
  - (a) A six (6) month extension may be granted by the Director upon a finding that the conditions specified in Section 6.21.4(B)(2), including any conditions to mitigate adverse impacts, have been and continue to be satisfied.
  - (b) The Director may further extend the license up to an additional twelve (12) months beyond the first six (6) month extension, for a maximum total of not more than thirty-six (36) months, if a neighborhood meeting for which the neighborhood is notified in compliance with Section 6.3.2 is conducted and the Director determines: the

extension is not detrimental to the public good; and that the license conditions specified in Section 6.21.4(B)(2), including any conditions to mitigate adverse impacts, have been and continue to be satisfied.

- (4) After expiration of an off-site construction staging license, at least four (4) consecutive months shall lapse before a new license is issued for the same parcel.
- (5) The Director may modify or revoke any off-site construction staging license issued by the City for any of the following:
  - (a) After issuance of the license, the site or activities thereon are found to be out of compliance with the approved application or license, including any conditions to mitigate adverse impacts; or
  - (b) An adverse impact not previously anticipated at the time the license or license extension was issued is identified and such adverse impact cannot be adequately mitigated and/or is detrimental to the public good.

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

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

Section 22. ARTICLE 7 RULES OF MEASUREMENT and DEFINITIONS, DIVISION 7.2 DEFINITION, SECTION 7.2.2 DEFINITIONS is hereby amended to read as follows:

. . .

Accessory dwelling unit (ADU), detached shall mean an additional, subordinate dwelling unit created on a lot with a primary dwelling unit. The additional unit is smaller than the primary dwelling unit (except when the accessory dwelling unit is in an existing basement). The accessory dwelling unit includes its own complete independent living facilities, including habitable space facilities for living, sleeping, eating, cooking, and sanitation. It is designed for residential occupancy by one or more people, independent of the primary dwelling unit.

. . .

Accessory dwelling unit (ADU), attached shall be defined as an additional, subordinate dwelling unit created on a lot with a primary dwelling unit. The additional unit is smaller than the primary dwelling unit (except when the accessory

dwelling unit is in an existing basement). The accessory dwelling unit includes its own complete independent living facilities, which constitute habitable space including facilities for living, sleeping, eating, cooking, and sanitation. It is designed for residential occupancy by one or more people, independent of the primary dwelling unit. The unit may have a separate exterior entrance or an entrance to an internal common area accessible to the outside.

. . .

Building Footprint, the outline of the total area that is covered by a building's perimeter occupied or obstructed from ground to sky by the structure or portion of the structure, as measured to the exterior face at or above-grade including exterior walls on all levels, to the furthest edge of roofs, and to the furthest edge of any other above-grade surfaces. This does not include structures or portions of structures with surfaces located no more than 30-inches above grade; fences and retaining walls; or detached ground-mounted mechanical equipment serving permitted uses.

. . .

Occupant, in relation to extra occupancy and in other parts of this Code, shall mean a person who occupies habitable space in a dwelling unit or any portion thereof.

. . .

Introduced, considered favorably on first reading on January 21, 2025, and approved on second reading for final passage on February 4, 2025.

	Mayor	
ATTEST:		
City Clerk		

Effective Date: February 14, 2025 Approving Attorney: Madelene Shehan

## **Summary of Proposed Land Use Code Changes**

Item#	Article	Section	Page	Description								
1	2	2.1.2	2-2	Added Accessory Dwelling Unit to List of Building Types								
2	2	2.1.2	2-2	Clarification by adding a table								
3	2	2.1.3	2-3	Clarification total units number of units allowed 1 Detached House and 1 ADU.  Additionaly, table added.								
4	2	2.1.4	2-5	Added Accessory Dwelling Unit to List of Building Types, Clarified total units to include 1 Detached house and 1 ADU. Also moved the lot size in requirement for RL from Article 3 to here.								
5	2	2.1.5	2-8	Clarification by adding a table. Clarification distance between accessory structures. Removed building types not allowed in this zone district.								
6	2	2.1.5	2-8	Added Accessory Dwelling Unit to list of Building Types								
7	2	2.1.6	2-10	Added Attached Accessory Dwelling Unit, and clarified location of Accessory structures and ADUs.								
8	2	2.1.6	2-11	Added Attached Accessory Dwelling Unit, Clarified location of Accessory structures and ADUs.								
9	2	2.1.6	2-12	Clarification location of ADU								
10	2	2.1.6	2-14	Added Exclusion of ADU Floor Area to rear floor area calculations.								
11	2	2.2.1	2-19	Added the Clarification that setback apply to accessory buildings								
12	2	2.2.3	2-26	Clarify min. density does not apply to acessory structures								
13	3	3.1.6	3-17	Removed the MH zone district from the list. This was left when extra occupancy and group home was permitted in MH. Detached House is not allowed in the MH only Mobile Home.								
14	3	3.1.6	3-18	Clarified lot minimum is zone district specific.								

15	3	3.1.7	3-20	Removed the MH zone district from the list. This was left when extra occupancy and group home was permitted in MH. Detached House is not allowed in the MH only Mobile Home.							
16	3	3.1.7	3-21	Clarified lot minimum is zone district specific. Moved lot area exception from the building Type and placed it in the RL zone district see 2.1.4 pg 2-5.							
17	3	3.1.9	3-24	Description Clarified to match state regs, Clarification on applicable zone districts.							
18	3	3.1.9	3-25	Increased Floor Area maximum to align with state Regs.							
19	3	3.1.9	3-26	Increased Floor Area maximum to align with state Regs.							
20	3	3.1.10	3-28	Residential Cluster Building type: Added Accessory Dwelling unit to the list of buildings and setback table. Added an * to clarify that an ADU could be added to lots with a detached house.							
21	4	4.2	4-2	Indicated ADU is an BDR use in all zone districts							
22	4	4.2	4-3	Clarified Schools are permitted NC, CS, CL, and HC districts subject to Type 1 review.							
23	4	4.3.1(B)(1)	4-10	Removed requirement for an ADU to have a resident manager.							
24	4	4.3.1(E)(1)(j)(v)	4-11	Clean up reference to group home.							
25	4	4.3.1(K)(1)	4-12	Clean up reference to group home.							
26	4	4.3.3(Y)(1)(g)	4-20	Clean up reference to single-family.							
27	5	5.9.1(K)(1)(a)		Removed minimum parking requirements for Multi-unit projects to align with State HB24 1304. Also cleaned up Single Unit and Two unit requirements.							
28	5	5.9.1(K)(1)(e)	5-68	Remove parking requirement for an ADU.							
29	5	5.10.3(F)(3)	5-98	Clean up name of the Colorado ECMC.							
30	6	6.4.3	6-34	Removed the ability to have a public appeal hearing of a BDR for ADU applications							
31	6	6.21.4	6-65	Remove duplicate section, it is found in 4.3.5(E)							
32	7	7.2.2	7-14	Clarifying definition of ADU's to align with the state.							
33	7	7.2.2	7-19	New definition of Building Footprint.							
34	7	7.2.2	7-38	Cleaning up reference to Extra Occupancy.							



## Planning and Zoning Commission Minutes

Julie Stackhouse, Chair Adam Sass, Vice Chair Russell Connelly David Katz Shirley Peel Ted Shepard York Virtual Hearing City Council Chambers 300 Laporte Avenue Fort Collins, Colorado

Cablecast on FCTV, Channel 14 on Connexion & Channels 14 & 881 on Comcast

The City of Fort Collins will make reasonable accommodations for access to City services, programs, and activities and will make special communication arrangements for persons with disabilities. Please call 221-6515 (TDD 224-6001) for assistance.

#### Regular Hearing November 21, 2024

Chair Stackhouse called the meeting to order at 6:00 p.m.

Roll Call: Stackhouse, Connelly, Peel, York, Katz, Sass, and Shepard

Absent: None

Staff Present: Jarvis, Haigh, Kleer, Frickey, Myler, Beals, Stamey, Matsunaka

Chair Stackhouse provided background on the Commission's role and what the audience could expect as to the order of business. She described the role of the Commission and noted that members are volunteers appointed by City Council. The Commission Members review the analysis by staff, the applicants' presentations, and input from the public and make a determination regarding whether each proposal meets the land use code. She noted that this is a legal hearing, and that she will moderate for civility and fairness.

#### **Agenda Review**

Planning Manager Clay Frickey reviewed the items on the Consent and Discussion agendas stating all items will be heard as originally advertised.

#### Public Input on Items Not on the Hearing Agenda

None.

Planning & Zoning Commission November 21, 2024 Page 6 of 8

#### THE MOTION CARRIED.

(\*\*Secretary's Note: The Commission took a brief recess at this point in the meeting.)

5. <u>Land Use Code Update: State Requirements for Accessory Dwelling Units and Parking Regulations</u>

PROJECT DESCRIPTION:

This is a request for a Recommendation to the City Council regarding an update to the Land Use Code. There are proposed revisions, clarifications, and organizations to the Code that address specific areas that are the subject of two State House Bills passed earlier this year. HB24-1152 requires the ability to build an ADU in more areas of the city, and HB24-1304 removes the minimum parking requirements for new multi-unit and residential mixed-use development. Items considered

clean-up to the code are also included.

APPLICANT: City of Fort Collins

300 Laporte Ave Fort Collins, CO 80524

STAFF ASSIGNED: Noah Beals, Development Review Manager

#### **Staff Presentation**

Noah Beals, Development Review Manager, stated this item relates to two State House Bills passed earlier this year, one that requires jurisdictions to allow accessory dwelling units (ADUs) anywhere a single-unit house could be built or where a single-unit house exists. Additionally, all restrictive standards that would prohibit an ADU from being built must be eliminated, no additional parking spaces need to be required for an ADU, and ADU applications are only to be reviewed by government staff and shall not be deferred to elected or appointed public bodies, including a hearing officer. The Bill does allow for restrictions on the use of ADUs for short-term rentals, for a statement to be made by the Historic Preservation Commission, and for the water service provider to provide a letter related to water service in the area.

The second House Bill eliminates minimum parking requirements for multi-unit and residential mixed-use developments. However, if parking is provided, jurisdictions can still require design standards for the parking area.

Beals outlined additional Code changes that are necessary due to the state regulations. He stated staff is recommending the Commission recommend approval of the proposed Code changes to City Council.

#### **Commission Questions**

Commissioner York asked if there is a limit to one ADU per property. Beals replied that is the proposal with the Code changes.

Commissioner Sass asked if there is a requirement for making the change to Section 4.3.1(A)(2). Beals replied the proposed Code language for that section is not necessarily required by the State House Bill, but is intended to help ensure the ADUs that are built, built and used safely.

Commissioner Shepard noted there was previously a provision in the Land Use Code that allowed for the extension of water and sewer service to an ADU, but that has now been moved to the Municipal Code. Beals confirmed that change.

Planning & Zoning Commission November 21, 2024 Page 7 of 8

Commissioner Shepard asked about the standards related to the ADU being subordinate to the principal dwelling. Beals replied there are some floor area requirements for ADUs to ensure they are within the state statute to limit the size to 750 square feet, and they cannot be taller than the existing primary structure.

Commissioner Shepard asked about the difference in building permit fees between an accessory building with habitable space without water and sewer and an ADU with water and sewer. Beals replied capital expansion fees are associated with a dwelling unit, and those can be \$10,000-\$15,000.

Commissioner Sass asked how many accessory buildings currently exist in the city. Beals replied he did not have that exact number.

Commissioner Sass asked if there is a concern that more accessory buildings will be built but not utilized as dwelling units, which is the goal of the state legislation. Beals replied the current Code restricts how many ADUs can be built, but does allow for accessory buildings with habitable space to be built. The proposed Code changes are designed to ensure ADUs are built and used correctly and safely.

Commissioner Shepard asked if a fire suppression system would be required if the ADU is detached. Beals replied that is probably dependent on distance to a fire hydrant.

Commissioner Shepard asked if a basement could be converted to an ADU. Beals replied in the affirmative and noted it would require a separate exterior entrance or vestibule.

Chair Stackhouse asked if there would be a way to address the safety concerns by defining an ADU as being used for overnight occupancy. Assistant City Attorney Jarvis replied she believed that would be possible.

Beals stated staff would be willing to revise the piece related to Section 4.3.1(A)(2) for consideration at a later date.

#### **Public Comment**

None.

#### **Commission Questions / Deliberation**

Commissioner Connelly expressed concern about Section 4.3.1(A)(2) and supported removing it from consideration at this time. Commissioner Sass concurred.

Commissioner Shepard asked how the public has been notified about these changes. Beals replied all Planning and Zoning Commission meetings are publicly noticed, though no additional public outreach as occurred.

Commissioner Peel also concurred with removing the Section 4.3.1(A)(2) changes at this time.

Commissioner York also concurred.

Commissioner Sass asked how to deal with a situation in which a garage is converted into an ADU and street parking is not available. Beals replied the State Bill grappled with that, but ultimately decided the priority is more housing.

Commissioner Sass expressed concern about the parking situation.

Commissioner Shepard asked if parking maximums have been considered. Beals replied that possible change is being considered for the next phase of Land Use Code updates.

Chair Stackhouse also concurred with the removal of the Section 4.3.1(A)(2) changes at this time.

Members discussed full living amenities which include living, sleeping, eating, cooking, and sanitation.

Planning & Zoning Commission November 21, 2024 Page 8 of 8

Commissioner Shepard suggested examining a tiered capital expansion fee system based on square footage.

Commissioner Connelly made a motion that the Fort Collins Planning and Zoning Commission recommend that City Council approve the proposed amendments to the Land Use Code Article 2, Zone Districts, Sections 2.1.2, 2.1.3, 2.1.4, 2.1.5, 2.1.6, and 2.2.1, Article 3, Building Types, Sections 3.1.6, 3.1.7, 3.1.9, and 3.1.10, Article 4, Use Standards, Sections 4.2 and 4.3.1(A)(1), Article 5, General Development and Site Design, Sections 5.9.1 and 5.10.3, Article 6, Administration and Procedure, Sections 6.4.3 and 6.21.4, and Article 7, Rules of Measurement and Definitions, Section 7.2.2, finding that the proposed revisions, clarifications, and organizations to the Land Use Code are needed to comply with two State House Bills, HB24-1152, which requires the ability to build an accessory dwelling unit in more areas of the city, and HB24-1304, which removes the minimum parking requirements for new multi-unit and residential mixeduse development. The proposed amendments will promote the public welfare and will be consistent with the vision, goals, principles, and policies of City Plan and the elements thereof. This decision is based upon the agenda materials, the information and materials presented during the work session and this hearing, and the Commission discussion on this item. The Commission hereby adopts the information, analysis, findings of fact, and conclusions regarding this Land Use Code update contained in the staff report included in the agenda materials for this hearing.

Commissioner York provided a friendly amendment to also include Section 4.3.1(B). Commissioner Connelly accepted the amendment.

Commissioner York seconded the motion. Yeas: Sass, Katz, Shepard, Peel, Connelly, York, and Stackhouse. Nays: none.

THE MOTION CARRIED.

For more complete details on this hearing, please view our video recording located here: https://www.fcgov.com/fctv/video-archive.php?search=PLANNING%20ZONING

nttps://www.icgov.com/ictv/video-arcmve.pnp/searcn=PLANNING%20ZONING
Other Business
None.
Adjournment
Chair Stackhouse moved to adjourn the P&Z Commission hearing. The meeting was adjourned at 8:26 pm.
Minutes respectfully submitted by Melissa Matsunaka

Minutes approved by a vote of the Commission on: January 16, 2025.





# ADU & Parking LUC Code Changes

## **Noah Beals**

**Development Review Manager** 



## **State House Bill**



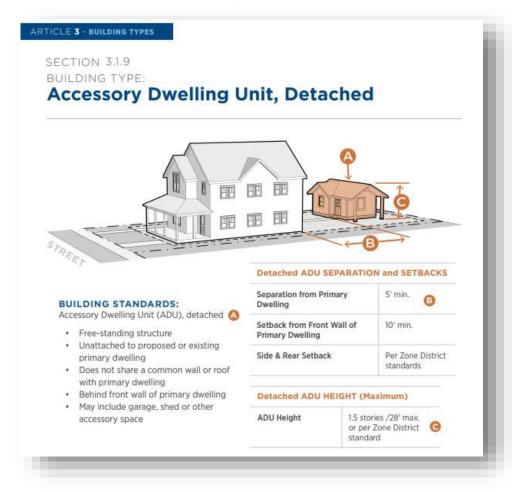
#### House Bill HB24-1152

- Requires municipalities to allow Accessory Dwelling Units on the same lot with all single-unit dwellings
- Eliminate all restrictive standards that would prohibit and ADU
- May not require additional parking for an ADU
- ADU applications are reviewed by government staff and shall not be deferred to elected or appointed public body including a hearing officer.
- May restrict Short Term Rental use
- May require recommendation from Historic Preservation
- May require Water service provide to provide a letter stating capacity





#### Building Type Section 3.1.9 Accessory Dwelling Unit (ADU)







#### Building Type Section 3.1.9 Accessory Dwelling Unit (ADU)

#### DESCRIPTION

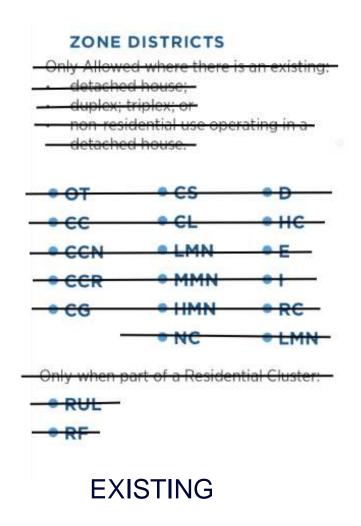
- Full living amenities
- Accessory to a Duplex or Detached House
- New construction or built within an existing detached accessory building
- Min & Max. square footage
- Subordinate to and complements the primary dwelling (architecture, building materials)
- · ADUs may came come in one of two varieties:
  - Detached
  - Attached

#### DESCRIPTION

- Provides complete independent living facilities including:
  - living,
  - sleeping,
  - eating,
  - cooking, and
  - sanitation.
- Per zone district Standards may be accessory to a Detached House, Mobile Home, Duplex, or triplex, located on the same lot.
- · New construction or built within an existing building
- Max. square footage
- Subordinate to and complements the primary dwelling (architecture, building materials)
- ADUs may came come in one of two varieties:
  - Detached
  - Attached



## Building Type Section 3.1.9 Accessory Dwelling Unit (ADU)



#### ZONE DISTRICTS

All zone districts where single unit dwelling is permitted or exists.



## Building Type Section 4.2. Table of Primary Uses

	RESIDENTIAL DISTRICTS				RESIDENTIAL DISTRICTS MIXED-USE DISTRICTS								COMMERCIAL DISTRICTS								DOWNTOWN DISTRICTS						EMPLOYMENT, INDUSTRIAL, OTHER					
	RUL	UE	RF	RL	OT-A	МН	LMN	мми	HMN	от-в	от-с	сс	CCN	CCR	CG	CG- CAC	cs	NC		CL (OA)	нс	H. CORE	CA/C /NM	<b>l</b> ∕R	RC	CN	EC	E	- 1	POL	т	
RESIDENTIAL USES																																
Single Unit Dwelling			<b>2</b>											<b>2</b>							<b>Z</b>							<b>2</b>				
Single Unit Attached Dwelling	<b>20</b>	<b></b>	<b>2</b>							<b>2</b>											<b></b>						■/■	<b>2</b>				
Two Unit Dwelling	<b>2</b>		<b>20</b>							<b>2</b>											<b></b>						<b>=/=</b>	<b>2</b>				
Multi-Unit Dwelling							<b>2</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>2</b>									<b>2</b>	<b></b>	<b>=/=</b>					<b>2</b>	<b>2</b>				
Mixed-Use Dwelling Units								<b>2</b>	<b>2</b>		<b>2</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>20</b>	<b>2</b>	<b>20</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>2</b>							<b>2</b>				
Accessory Dwelling Unit																																
Short Term Primary Rentals																																
Short Term Non- Primary Rentals																																
Fraternity & Sorority Houses								<b>2</b>			<b>2</b>	<b>2</b>		<b>2</b>																		
Manufactured Housing Community																												<b>2</b>				
Shelter for victims of domestic violence																										■/■	■/■					

Regardless of the level of review indicated in the Residential Uses table above all affordable housing developments shall be reviewed through Basic Development Review (BDR).

Basic Development Review	Type 1 (Administrative Review)	Type 2 (Planning and Zoning Commission)	Additional Use Standards
Minor Amendment	Building Permit	License	

## **State House Bill**



#### House Bill HB24-1304

- Eliminate all minimum parking requirements for multi-unit dwellings and residential mixed-used developments
- May continue to require design standards when a parking is being provided.



## **State House Bill**



## Site Design Section 5.9.1 Minimum Parking Requirements

Number of Bedrooms/Dwelling Unit	Parking Spaces Per Dwelling Unit*, **	Affordable Housing (Section 5.2) Parking Spaces Per Dwelling Unit: ************************************
One or less	1	<del>.75</del>
Two	1.5	1
Three	<del>2.0</del>	<del>1.25</del>
Four and above	3.0	1.5

<sup>\*</sup> Spaces that are located in detached residential garages (but not including parking structures) or in attached residential garages, which attached garages do not provide-direct entry into an individual dwelling unit, may be credited toward the minimum-requirements contained herein only if such spaces are made available to dwelling unit-occupants at no additional rental or purchase cost (beyond the dwelling unit rental rate or purchase price).

<sup>\*\*</sup> When public streets abutting the perimeter of the development site do not provide on-street parking then the percentage of garage parking spaces provided for the development site shall not exceed eighty (80) percent of the parking total.

<sup>\*\*\*</sup>Only applies to developments with seven (7) or more units.

## **Planning and Zoning Commission**



Planning and Zoning Commission recommends approval of the proposed Land Use Code changes.





# **Thank You**