Fort Collins City Council Agenda

Regular Meeting
6:00 p.m. Tuesday, October 17, 2023
City Council Chambers at City Hall, 300 Laporte Avenue, Fort Collins, CO 80521
Zoom Webinar link: https://zoom.us/j/98241416497

NOTICE:
Regular meetings of the City Council are held on the 1st and 3rd Tuesdays of each month in the City Council Chambers. Meetings are conducted in a hybrid format, with a Zoom webinar in addition to the in person meeting in Council Chambers.

City Council members may participate in this meeting via electronic means pursuant to their adopted policies and protocol.

How to view this Meeting:

Meetings are open to the public and can be attended in person by anyone.

Meetings are televised live on Channels 14 & 881 on cable television.

Meetings are available through the Zoom platform, electronically or by phone.

Meetings are livestreamed on the City's website, fcgov.com/fctv

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.

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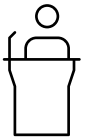
City of Fort Collins

Meeting agendas, minutes, and archived videos are available on the City's meeting portal at https://fortcollins-co.municodemeetings.com/

There are in person and remote options for members of the public who would like to participate in Council meetings:

Comment in real time:

During the public comment portion of the meeting and discussion items:



In person attendees can address the Council in the Chambers.
The public can join the Zoom webinar and comment from the remote meeting, joining online or via phone.

All speakers are required to sign up to speak using the online sign up system available at www.fcgov.com/agendas
Staff is also available outside of Chambers prior to meetings to assist with the sign up process for in person attendees.

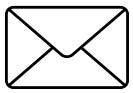
Full instructions for online participation are available at fcgov.com/councilcomments.

Join the online meeting using the link in this agenda to log in on an internet-enabled smartphone, laptop or computer with a speaker and microphone. Using earphones with a microphone will greatly improve audio experience.
To be recognized to speak during public participation portions of the meeting, click the 'Raise Hand' button.

Participate via phone using this call in number and meeting ID:
Call in number: 720 928 9299
Meeting ID: 982 4141 6497
During public participation opportunities in the meeting, press *9 to indicate a desire to speak.

Submit written comments:

Email comments about any item on the agenda to cityleaders@fcgov.com



Written comments can be mailed or dropped off at the City Manager's Office at City Hall, at 300 Laporte Ave, Fort Collins, CO 80521

Documents to Share during public participation*: Persons wishing to display presentation materials using the City's display equipment under the Public Participation portion of a meeting or during discussion of any Council item must provide any such materials to the City Clerk in a form or format readily usable on the City's display technology no later than two (2) hours prior to the beginning of the meeting at which the materials are to be presented.*

NOTE: All presentation materials for appeals, addition of permitted use applications or protests related to election matters must be provided to the City Clerk no later than noon on the day of the meeting at which the item will be considered. See Council Rules of Conduct in Meetings for details.

City Council
Regular Meeting Agenda

October 17, 2023 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
Shirley Peel, 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

Anissa Hollingshead
City Clerk

PROCLAMATIONS & PRESENTATIONS
5:00 PM

A) PROCLAMATIONS AND PRESENTATIONS

PP 1. **Declaring October 20, 2023 as Community Media Day.**

PP 2. **Declaring October 2023 as American Archives Month.**

PP 3. **Declaring October 2023 as Conflict Resolution Month.**

PP 4. **Declaring October 2023 as Domestic Violence Awareness Month.**

PP 5. **Declaring October 2023 as National Disability Employment Awareness Month.**

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 recommend 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 October 3, 2023 Regular Meeting.**

The purpose of this item is to approve the minutes of the October 3, 2023 regular meeting.

2. **Second Reading of Ordinance No. 132, 2023, Making a Supplemental Appropriation from the Regional Air Quality Council Mow Down Pollution Grant for Purchase of Zero-Emission Commercial Lawn and Garden Equipment.**

This Ordinance, unanimously adopted on First Reading on October 3, 2023, supports the City's Parks Department in converting lawn and garden gasoline powered equipment to battery-powered equipment by appropriating $100,000 of unanticipated grant revenue, awarded by the Regional Air Quality Council (RAQC) through funds provided by the Colorado Department of Public Health and Environment (CDPHE).

This item would also authorize the City Manager or their designee to accept the grant award and comply with the terms of the grant application and award.

3. **Second Reading of Ordinance No. 133, 2023, Appropriating Prior Year Reserves and Authorizing Transfers of Appropriations for the Childcare Space Modifications at the Northside Aztlan Community Center and Related Art in Public Places.**

This Ordinance, unanimously adopted on First Reading on October 3, 2023, appropriates $197,960 from Recreation Reserves to close the funding gap on the Childcare Space Modifications at Northside Aztlan Community Center and transfers 1% of the applicable construction costs to Art in Public Places (APP).

4. **Second Reading of Ordinance No. 134, 2023, Authorizing Transfer of an Appropriation for Art in Public Places Related to the Design and Construction of Connexion.**

This Ordinance, unanimously adopted on First Reading on October 3, 2023, transfers $27,924 of appropriated funds for Art in Public Places (APP) artwork expenses in the Cultural Services and Facilities Fund back to the Broadband Fund, where those related expenses will be transacted.

5. **Second Reading of Ordinance No. 135, 2023, Appropriating Unanticipated Revenue and Authorizing Transfers for the Lemay and Drake Intersection Improvements Project and Related Art in Public Places.**

This Ordinance, unanimously adopted on First Reading on October 3, 2023, appropriates: 1) $900,072 of Highway Safety Improvement Program (HSIP) grant funds for the Project; 2) $100,008 from the Community Capital Improvement Program (CCIP); and 3) $1,000 (1% of the CCIP amount) to the Art in Public Places Program.

6. **First Reading of Ordinance No. 139, 2023, Approving the Fiscal Year 2024 Budget, and Being the Annual Appropriation Ordinance for the Fort Collins Downtown Development Authority, and Fixing the Mill Levy for the Downtown Development Authority for Property Taxes Payable Fiscal Year 2024.**

The purpose of this item is to set the Downtown Development Authority ("DDA") Budget.

The following amounts will be appropriated:

DDA Public/Private Investments & Programs	$6,435,066
DDA Operations & Maintenance	$1,477,626
Revolving Line of Credit Draws	$9,000,000
DDA Debt Service Fund	$9,431,611

The Ordinance sets the 2024 Mill Levy for the Fort Collins DDA at five (5) mills, unchanged since tax year 2002. The approved Budget becomes the Downtown Development Authority's financial plan for 2024.

7. **First Reading of Ordinance No. 140, 2023, Adopting the 2024 Budget and Appropriating the Fort Collins Share of the 2024 Fiscal Year Operating and Capital Improvements Funds for the Northern Colorado Regional Airport.**

The purpose of this item is to adopt the 2024 budget for the Northern Colorado Regional Airport and appropriate Fort Collins's share of the 2024 fiscal year operating and capital funds for the Airport. Under the Amended and Restated Intergovernmental Agreement for the Joint Operation of the Airport between Fort Collins and Loveland (the "IGA"), the Airport is operated as a joint venture with each City owning 50% of the assets and revenues and responsible for 50% of the operating and capital costs. The proposed budget does not include any financial contributions from the City's General Fund. Because each City has an ownership interest in 50% of the Airport revenues, each City must appropriate its 50% share of the annual operating and capital budget for the Airport under the IGA.

8. **First Reading of Ordinance No. 141, 2023, Appropriating Philanthropic Revenue Received by City Give for the 2023 Parks Independence Day Celebration.**

The purpose of this item is to appropriate philanthropic revenue designated for the 2023 Parks Independence Day Celebration.

9. **First Reading of Ordinance No. 142, 2023, Appropriating Philanthropic Revenue Received Through City Give for the Art in Public Places Program, Pianos About Town Project.**

The purpose of this item is to consider an appropriation of $45,221 in philanthropic revenue received by City Give for the Art in Public Places program. This grant award was received from Bohemian Foundation for the designated purpose of Pianos About Town, a collaborative effort among the City's Art in Public Places program, the Fort Collins Downtown Development Authority, and the donor, Bohemian Foundation.

10. **First Reading of Ordinance No. 143, 2023, Making a Supplemental Appropriation, Appropriating Prior Year Reserves, Authorizing Transfers and Authorizing Intergovernmental Agreements for the Air Toxics Community Monitoring Project.**

The City was awarded a $499,139 Air Toxics Community Monitoring Project Grant from the Environmental Protection Agency (EPA) to provide air toxic monitoring that responds to concerns of residents in underserved communities, builds a broader understanding of air quality issues through innovative approaches including storytelling and art and empowers residents to engage in policy and regulatory discussions. This three-year project will be conducted in partnership with Colorado State University and the Larimer County Department of Health and Environment, with support from the Colorado Department of Public Health and Environment and various community organizations.

The purpose of this item is to support the *Air Toxics Community Monitoring project* by:

● Appropriating $499,139 of unanticipated grant revenue awarded by the EPA

● Appropriating $70,178 from the General Fund reserves

● Utilizing matching funds in the amount of $3,230 from existing 2023 appropriations into this new grant project

This item would authorize the City to accept the grant award and comply with the terms and conditions. This item would also authorize the City to enter into an agreement with Colorado State University to conduct the work contemplated by the grant agreement.

11. **Items Relating to the Zach Elementary School Crossings Project.**

A. Resolution 2023-092 Authorizing the Execution of an Intergovernmental Agreement Between the City of Fort Collins and the Colorado Department of Transportation for the Zach Elementary School Crossings Project.

B. First Reading of Ordinance No. 144, 2023, Appropriating Unanticipated Revenue From a CDOT Safe Routes to School Grant and Authorizing Transfers for the Zach Elementary School Crossings Project and Related Art in Public Places.

The purpose of this item is to enable the City to receive and expend federal, Colorado Department of Transportation (CDOT), and local funds for the Zach Elementary School Crossings Project (the Project). The funds will be used to design and construct improvements at the intersection of Kechter Road and Jupiter Drive and at the intersection of Kechter Road and Cinquefoil Lane. These improvements will create safer conditions for bicyclists, pedestrians, and motorists traveling in this location. If approved, the item will: 1) authorize the Mayor to execute an intergovernmental agreement (IGA) for the Project with CDOT; 2) appropriate $745,587 of Safe Routes to School (SRTS) grant funds for the Project; 3) appropriate matching funds from the SRTS School Transportation Safety Studies; 4) appropriate matching funds from the Bicycle Community Capital Improvement Program (Bicycle CCIP); 5) appropriate matching funds from the Pedestrian Community Capital Improvement Program (Pedestrian CCIP); 6) acknowledge anticipated funds contributed by the Poudre School District (PSD); and 7) appropriate funds to the Art in Public Places Program.

12. **Resolution 2023-093 Approving an Intergovernmental Agreement with the Poudre School District for a Grant to it Under the City's Digital Inclusion Program.**

The purpose of this item is to authorize the approval of an Intergovernmental Agreement with Poudre School District (PSD) for a Digital Inclusion grant made to PSD's Department of Language, Culture, and Equity to be designated toward the funding of a Digital Family Liaison who will support the technological literacy of PSD Family Liaisons and the digital literacy of those families served by PSD's Family Liaisons.

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.

13. **Items Related to the Adoption of a New Land Use Code.**

A. Second Reading of Ordinance No. 136, 2023, Repealing and Reenacting Section 29-1 of the Code of the City of Fort Collins to Adopt the Revised Land Use Code and Separately Codifying the 1997 Land Use Code as the "Pre-2024 Transitional Land Use Regulations."

B. Second Reading of Ordinance No. 137, 2023, Updating City Code References to Align With the Adoption of the Revised Land Use Code.

C. Second Reading of Ordinance No. 138, 2023, Amending the Zoning Map of the City of Fort Collins to Rename All Neighborhood Conservation Low Density, Neighborhood Conservation Medium Density, and Neighborhood Conservation Buffer Zone Districts to the Old Town Zone District In Conjunction With the Adoption of the Land Use Code.

These Ordinances, adopted on October 3, 2023, by a vote of 5-2 (Nays: Ohlson, Gutowsky), amend the City's Land Use Code. The Land Use Code (LUC) Phase 1 Update implements policy direction in City Plan, the Housing Strategic Plan, and the Our Climate Future Plan. Changes are intended to address one or more of the following Guiding Principles:

1. Increase overall housing capacity and calibrate market-feasible incentives for affordable housing.

2. Enable more affordability, especially near high frequency transit and priority growth areas.

3. Allow more diverse housing choices that fit in the existing context and priority place types.

4. Make the Code easier to use and understand.

5. Improve predictability of the development review process, especially for housing.

If adopted by Council, staff recommend that the proposed Code changes take effect on January 1, 2024.

In addition to changes to the Land Use Code, updates to City Code references to the revised Land Use Code are proposed.

Finally, because the revised Land Use Code renames the Neighborhood Conservation Low Density, Neighborhood Conservation Medium Density, and Neighborhood Conservation Buffer

zone districts to the Old Town zone district with corresponding subdistricts A, B, and C, updates to the zoning map to reflect the name changes are proposed. This change only affects the name of the zone districts and no changes to the boundaries are proposed.

14. **First Reading of Ordinance No. 145, 2023, Being the Annual Appropriation Ordinance Relating to the Annual Appropriations for the Fiscal Year 2024; Amending the Budget for the Fiscal Year Beginning January 1, 2024, and Ending December 31, 2024; and Fixing the Mill Levy for Property Taxes Payable Fiscal Year 2024.**

The purpose of this item is to amend the adopted 2024 Budget. This Ordinance sets the amount of $802,507,950 to be appropriated for fiscal year 2024. This appropriated amount does not include what is also being appropriated by separate Council/Board of Director actions to adopt the 2024 budgets for the General Improvement District (GID) No. 1 of $318,275, the 2024 budget for GID No. 15 (Skyview) of $1,000, the Urban Renewal Authority (URA) 2024 budget of $6,121,898 and the Downtown Development Authority 2024 budget of $26,344,303. The sum of these ordinances results in City-related total appropriations of $835,293,426 for 2024. This Ordinance also sets the 2024 City mill levy at 9.797 mills, unchanged since 1991.

15. **Items Relating to 2024 Utility Rates, Fee, and Charges.**

A. First Reading of Ordinance No. 146, 2023, Amending Chapter 26 of the Code of the City of Fort Collins to Revise Electric Rates, Fees, and Charges and Updating the Related Income-Qualified Assistance Program.

B. First Reading of Ordinance No. 147, 2023, Amending Chapter 26 of the Code of the City of Fort Collins to Revise Water Rates, Fees, and Charges.

C. First Reading of Ordinance No. 148, 2023, Amending Chapter 26 of the Code of the City of Fort Collins to Revise Wastewater Rates, Fees, and Charges.

D. First Reading of Ordinance No. 149, 2023, Amending Chapter 26 of the Code of the City of Fort Collins to Revise Stormwater Rates, Fees, and Charges.

The purpose of this item is to propose 2024 Utility Rates for Council consideration, which align with the 2024 City Manager's Recommended Budget. Monthly utility charges are proposed to increase 5% for electric customers, 4% for water customers, 4% for wastewater customers, and 3% for stormwater customers.

P) 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.)

Q) 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.

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PROCLAMATION

WHEREAS, the sharing of ideas and information helps to build common understanding and common values within a community and access to information in today's media environment is critical for the healthy functioning of our community; and

WHEREAS, community media organizations provide a means for diverse communities to tell their stories, hear each other's stories, and create new stories together; and

WHEREAS, community media organizations provide information to the community that is not covered by mainstream commercial media and also provide people with the skills necessary for the creation, sharing, and consumption of knowledge and ideas through media; and

WHEREAS, community media is an important resource for participating in local democratic policy and processes and connects community organizations, schools, and local governments to their constituents; and

WHEREAS, many communities are not aware of the diverse and valuable programming on public, education, and government access channels or community radio channels; and

WHEREAS, communities will benefit from increased general awareness of, viewing audiences for, and creators of media content created by and for the community.

NOW, **THEREFORE**, I, Jeni Arndt, Mayor of the City of Fort Collins, do hereby proclaim October 20, 2023, as

COMMUNITY MEDIA DAY

and FC Public Media, our non-profit community access media center, plays a vital role in the building our community by encouraging conversations about our common interests, increasing discourse around policy issues, fostering understanding of local cultures, and sharing information to improve our lives.

IN WITNESS WHEREOF, I have here unto set my hand and the seal of the City of Fort Collins this 17th of October, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

PROCLAMATION

WHEREAS, the Archive at Fort Collins Museum of Discovery is the local hub to study firsthand facts, data, and evidence from letters, diaries, scrapbooks, rare books, maps, photographs, newspapers, oral histories, and many other primary sources that shine light on Fort Collins; and

WHEREAS, the Archive fosters discovery, critical thinking, and empathy for others through explorations of our shared past; and

WHEREAS, the Archive serves as a free and open resource for everyone of all ages to learn about the history of our families, friends, and community so we can understand and strengthen our collective memory; and

WHEREAS, American Archives Month is a nationwide event that presents an opportunity to communicate to people that historical materials important to them are being preserved, cataloged, cared for, and made accessible by trained archivists, archive research assistants, and archive interns and volunteers.

NOW, **THEREFORE**, I, Jeni Arndt, Mayor of the City of Fort Collins, do hereby proclaim October 2023, as

AMERICAN ARCHIVES MONTH

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the City of Fort Collins this 17th day of October, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

PROCLAMATION

WHEREAS, the month of October is celebrated across the State of Colorado as Conflict Resolution Month; and

WHEREAS, the City of Fort Collins, in conjunction with other local entities, is recognizing this celebration; and

WHEREAS, conflict resolution encompasses mediation, restorative practices, conflict transformation, facilitation, collaborative decision-making, and other respectful responses to differences; and

WHEREAS, conflict transformation processes empower individuals, families, communities, neighborhoods, organizations, schools, and businesses to foster communication and devise solutions that are acceptable to the needs and interests of all parties involved; and

WHEREAS, the City of Fort Collins provides conflict transformation services to the community through Mediation and Restorative Justice Services, which has changed its name to Conflict Transformation Works; and

WHEREAS, community-based programs fairly and equitably transform neighborhood and community conflicts, thereby repairing, creating, and strengthening relationships; and

WHEREAS, I, along with the entire City Council, encourage Fort Collins residents to seek peaceful and collaborative ways to transform conflicts and hence contribute to creating an exceptional community that everyone can call home.

NOW, THEREFORE, I, Jeni Arndt, Mayor of the City of Fort Collins, do hereby proclaim October 2023, as

CONFLICT RESOLUTION MONTH

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the City of Fort Collins this 17th day of October, 2023.

_____
Mayor

ATTEST

_____
City Clerk

PROCLAMATION

WHEREAS, Colorado criminal code defines domestic violence as: "an act or threatened act of violence against a person with whom the defendant has an intimate relationship, such as a current or former spouse, partner, co-habitant, or co-parent when the act is used to coerce, control, punish, intimidate, or seek revenge against that person;" and

WHEREAS, nationally one in four women and one in seven men have been victims of severe physical violence by an intimate partner in their lifetimes; 1 in 15 children are exposed to intimate partner violence each year, and 90% of these children are eyewitnesses to this violence; domestic violence is one of the leading causes of homelessness for women and children; and

WHEREAS, in Colorado, 36.8% of women and 30.5% of men experience intimate partner physical violence, intimate partner sexual violence, and/or intimate partner stalking in their lifetimes; 15% of homicides in Colorado were committed by intimate partners; domestic violence statistics do not adequately represent our LGBTQ2+, People of Color, Black, and Indigenous communities, who face challenges that limit their ability to seek help when faced with domestic violence; and

WHEREAS, in Fort Collins and surrounds, Crossroads Safehouse (since 1980), Zonta Club of Fort Collins (since 1997), Zonta Club of Colorado North Forty (since 2018), and other local human and social services' agencies, together with numerous volunteers, provide critical assistance and services to victims and their children including lifesaving crisis intervention, emergency shelter, safety planning, and advocacy and support; and

WHEREAS, the City of Fort Collins recognizes multiple efforts by our community partners to bring awareness to and serve our community to support victims of domestic violence. These annual efforts are: Domestic Violence Awareness Month in October, and Zonta Says NO to Violence - 16 Days of Activism Against Gender-Based Violence from November 25 to December 10.

NOW, THEREFORE, I, Jeni Arndt, Mayor of the City of Fort Collins, do hereby proclaim the month of October 2023, as

DOMESTIC VIOLENCE AWARENESS MONTH

and urge citizens to join with Zonta Club of Fort Collins, Zonta Club of Colorado North Forty, and Crossroads Safehouse in support of efforts to end gender violence and to eliminate the detrimental consequences gender violence has on the well-being of our community.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the City of Fort Collins this 17th day of October, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

PROCLAMATION

WHEREAS, October 2023 marks the 78th anniversary of the National Disability Employment Awareness Month (NDEAM); and

WHEREAS, the purpose of National Disability Employment Month is to educate about disability employment issues and celebrate the many and varied contributions of America's workers with disabilities; and

WHEREAS, the history of NDEAM traces back to 1945, when it started as a week and focused only on people with physical disabilities. Later it expanded to a full month, and its name and scope evolved to acknowledge the importance of increasing the workforce inclusion of people with all nature of disabilities; and

WHEREAS, workplaces welcoming of the talents of all people, including people with disabilities, are a critical part of our efforts to build an inclusive community and strong economy; and

WHEREAS, activities during this month will reinforce the value and talent people with disabilities add to our workplaces and communities and affirm City of Fort Collins' commitment to an inclusive community that advances access and equity for all, including individuals with disabilities.

NOW, THEREFORE, I, Jeni Arndt, Mayor of the City of Fort Collins, do hereby declare October 2023, as

NATIONAL DISABILITY EMPLOYMENT AWARENESS MONTH

and call upon employers, schools, and other community organizations in Fort Collins, to take steps throughout the year to recruit, hire, retain, and advance individuals with disabilities and work to pursue the goals of opportunity, full participation, economic self-sufficiency, and independent living for people with disabilities.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the City of Fort Collins this 17th day of October, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

October 17, 2023

AGENDA ITEM SUMMARY
City Council

STAFF

Anissa N. Hollingshead, City Clerk

SUBJECT

Consideration and Approval of the Minutes of the October 3, 2023 Regular Meeting.

EXECUTIVE SUMMARY

The purpose of this item is to approve the minutes of the October 3, 2023 regular meeting.

STAFF RECOMMENDATION

Staff recommend approval of the minutes.

ATTACHMENTS

1. Draft Minutes, October 3, 2023

October 3, 2023

COUNCIL OF THE CITY OF FORT COLLINS, COLORADO

Council-Manager Form of Government

Regular Meeting – 6:00 PM

PROCLAMATIONS & PRESENTATIONS
5:00 PM

A) PROCLAMATIONS AND PRESENTATIONS

PP 1. **Declaring October 4, 2023 as Energy Efficiency Day.**

PP 2. **Declaring the Week of October 1-7, 2023 as Public Power Week.**

PP 3. **Declaring the Week of October 8-14, 2023 as Fire Prevention Week.**

PP 4. **Declaring October 2023 as Cybersecurity Awareness Month.**

The above proclamations were presented by Mayor Jeni Arndt in City Council Chambers beginning at 5:00 p.m.

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 Tricia Canonico
Councilmember Shirley Peel
Councilmember Kelly Ohlson
Councilmember Julie Pignataro

STAFF PRESENT
City Manager Kelly DiMartino

City Attorney Carrie Daggett
City Clerk Anissa Hollingshead
Assistant City Clerk Ann Marie Sharratt
Assistant City Clerk Amani Chamberlin

E) CITY MANAGER'S AGENDA REVIEW

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

- Noting a motion was added under Other Business to adjourn the regular meeting to conduct the Stormwater Utility Enterprise Board business.
- All but item 10 on the consent agenda was recommended for approval.
- Item 10 is recommended for approval with an amended exhibit to the ordinance.
- The items on the discussion agenda were reviewed.

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.)*

Matthew Behunin, Fort Collins resident, spoke as a volunteer with YIMBY (yes in my back yard) Fort Collins regarding housing and the organization's work by volunteers to make housing more available in the community through a greater variety of housing types for a greater range of income levels.

Kathryn Dubiel, Fort Collins resident, spoke about public engagement, including how making an argument in two minutes in forums like this is difficult and could benefit from allowing people to pool their time for a single spokesperson, as well as noting the recent forum held at CSU was by invitation only and therefore not effective engagement.

Robbie Moreland, Fort Collins resident, spoke on behalf of a coalition of residents also present to speak regarding the mock voter guide the group produced and would like to see produced by the City for the 2025 municipal election.

Kristina Vrouwenvelder, new Fort Collins resident who moved into the community a few months earlier, spoke regarding the lack of inventory for young families in walkable and bikeable parts of the City and in support of the land use code updates increasing density.

Anita Rehner spoke against the proposed land use code changes increasing density through infill as an ill-fitting solution for housing availability and affordability, and with concerns about the four days allowed to review the final version on the proposed land use code.

Brian Tracy, Fort Collins resident, spoke against the proposed changes to the land use code, calling the changes in this version lipstick on a pig.

Luke Flynn, Fort Collins resident, spoke in support of the land use code, noting it is good for the environment in comparison to the alternative of sprawl.

Julie Brewen, CEO of Housing Catalyst, a member of OneVoice for Housing, spoke on behalf of the authority and its board of directors in support of the proposed land use code.

Karen Artell, Fort Collins resident, spoke about inclusionary zoning and short-term rentals and how most residents in her neighborhood are likely unaware of the zoning in their area and how it makes them vulnerable in these proposed changes which do not incorporate inclusionary zoning or other measures that would support affordable housing development.

Paul Patterson, Fort Collins resident, spoke about the comments he made at the Planning and Zoning Commission last year, which grew into additional speakers at Council consideration and those same people are still not happy with these proposed changes.

Nick Scott spoke as a homeowner, landlord and property manager, and manager of extra occupancy properties, sharing the examples of the types of tenants in his extra occupancy properties as working professionals who are seeking housing they can afford and are often trying to save to buy homes of their own.

Chris Conway, Fort Collins resident and teacher, spoke regarding helping form the local Fort Collins YIMBY group and spoke in support of the proposed land use code, noting involvement in housing issues came from seeing friends and colleagues unable to find housing to stay in the community.

Hanna McCaslin, Fort Collins resident, spoke about researching and performing academic work studying how affordable housing impacts different systems in the community, concluding how housing density is necessary and spoke in support of the proposed land use code.

Barbara Denny, Fort Collins resident, spoke against the adoption of the proposed land use code, arguing the proposal is not ready yet and there is no need to rush.

Joy (Deirdre) Sullivan, president and CEO of United Way of Larimer County, , a member of OneVoice for Housing, spoke on behalf of the board of directors urging adoption of the proposed land use code, and noted their personal property includes a granny flat that is not allowed to have an oven because that would make it a duplex under current code provisions.

Bill King, Fort Collins resident, spoke about the minimization of engagement in the development review process, noting little has changed since the objections voiced in last year's consideration of the proposed land development code.

Vicki Rossen, Fort Collins resident and retired public school teacher, spoke against the proposed land use code, noting it does not guarantee affordable housing and will destroy Fort Collins as it is today, also speaking against attacks on HOAs by the proposed code.

Carrie Harriman, Fort Collins resident of two years previously living in northern Virginia and Huntington Beach California, spoke against the proposed land use code and its provisions supporting high density living and the negative impacts on affordability even with density.

Wayne Brothers, Fort Collins resident, spoke against building everything, everywhere, all at once, and against the proposed land use code, asking to leave existing low-density single-family neighborhoods alone.

Tom Farnsworth, Fort Collins resident, spoke against the proposed land use code, stating it is still not ready for prime time, noting it is all in the implementation and suggesting starting with baby steps.

Matt Peters, long time Fort Collins resident, spoke about the recent changes made to the land use code of the City of Boulder, noting we could study the impacts of these changes before Fort Collins

acts given current data is lacking and it is not known if these changes will help issues with affordability and housing availability.

Jenny Bramhall, 30-year Fort Collins resident and homeowner in Old Town, spoke in support of the proposed land use code and stated there is no dark force pushing this forward, rather neighbors and range of community members and stakeholders.

Charles Howes, Fort Collins resident, spoke about experiences of friends having trouble finding housing at a range of ages and income levels noting this shared challenge supports coming together as a community to support the revised proposed code to meet housing and climate goals.

Ann Hutchison, president and CEO of the Fort Collins Area Chamber of Commerce, a member of OneVoice for Housing, and Fort Collins resident, spoke in support of the proposed land use code on behalf of the Chamber and its involvement in this work for more than three years.

Jerry Gavaldon, spoke as a lifelong Fort Collins resident and real estate broker, spoke about density not equaling affordability and the importance of development fees on affordability as a core issue driving costs, not the land use code.

Peter Erickson, Fort Collins resident, spoke about what it means to be progressive and how all these issues come back to housing and the need to support affordable housing.

Randolph Lippert, Fort Collins resident, spoke about the City's identified priorities and how unaffordable housing is the number one contributor to homelessness, as well as the impacts of housing unaffordability on queer youth, and in support of the proposed land use code changes.

Lauren DeBell, Fort Collins residents and Chief Strategy Office for Elevation Community Land Trust, a member of OneVoice for Housing, spoke in support of the proposed land use code changes.

Nicole Swan, Fort Collins resident, spoke as an advocate for both affordable and attainable housing and in support of the proposed land use code.

Marsha Mulroney, Fort Collins resident and homeowner, spoke against the proposed land use code with concern about quality-of-life issues, noting it took 45 hours for their family to afford to move back to Fort Collins after graduating from CSU to enjoy this quality of life.

Kelly Evans, director of Neighbor to Neighbor, a member of OneVoice for Housing in pursuit of affordable housing for all, speaking of the coalition comprising One Voice for Housing and the need for sustainable, affordable housing, and addressed comments about what the rush is by noting the current land use code is from 1997 and is in dire need of changes to increase housing availability and affording without pushing these needs further down the road.

Mara Johnson, chief development officer for Habitat for Humanity, a member of OneVoice for Housing, spoke in support of affordable and available housing options across the community and in support of the proposed land use code now to help real people with real housing issues.

Vivian Bust, Fort Collins resident and homeowner, spoke in opposition to the proposed land use code, stating it would damage Fort Collins' image as a charming community with distinct characters, and spoke in support of applying densification to the undeveloped areas of the city.

Cece Abrams spoke about the need to preserve history and protect what you love and in opposition to the proposed land use code, with more housing as an option without sacrificing the existing small town charm of Fort Collins.

Connor M. Flynn, Fort Collins resident and electoral committee chair of Democratic Socialists of America of Fort Colins, spoke in support of the proposed land use code, noting density is not the enemy.

Steve Kuehneman, executive director of CARE Housing Inc., a member of OneVoice for Housing, spoke in support of the proposed land use code, noting the role of housing regulations on the cost of housing as well as the scope of housing challenges in the community.

Paul Anderson, Fort Collins resident, spoke about concerns with ADUs or duplexes built on a property as part of the proposed land use code and a desire for these units to be owner-occupied rather than allowing private equity firms, investors, and venture capitalists to buy up and maximize housing units.

August-Carter Nelson, Fort Collins resident, spoke about leaving a hometown due to affordability and in support of the proposed land use code to support affordability for residents of Fort Collins and their children and grandchildren.

Mary Alice Grant, Fort Collins resident, spoke in opposition to the proposed land use code and the voice of the community against the minimal changes made since the prior year, with complaints against the community engagement that was done.

Chris Rogers, Fort Collins resident, spoke against the proposed land use code as pushing increased density and housing changes on existing neighborhoods and potential challenges to existing infrastructure, suggesting the Council put this issue on the ballot for residents to decide.

Ryan Walker spoke in support of housing and affordable housing but stated this proposed code does not move in this direction, as the market dictates housing and this code seems to cater to developers.

Sean McCoy, Fort Collins resident, spoke largely in support of the proposed land use code as a tool in assisting affordable housing, and provided figures regarding the work that has gone into public engagement on this proposal, while stating concerns with false claims being spread by email.

James Burtis, Fort Collins resident, spoke in support of the proposed land use code, and in particular the incentives to add onto existing structures as well as noting their community is walkable and bikeable to many locations and can support more density so others can enjoy these advantages, and increased transit can help as well.

Patricia Babbitt, Fort Collins resident and write in candidate for Mayor, spoke regarding concerns with the land use code and its relationship to proposition 123 requiring a 3% growth rate per year with the need for careful consideration of related provisions.

Vara Vissa, Fort Collins resident, spoke in opposition to the proposed land use code and noted the possibility of single homes being multi-generational.

Tom Mulroney, Fort Collins resident, spoke about the agreements entered into by property owners at the time of their purchases that would be altered without a vote of the property owners by the adoption of the proposed land use code and spoke against the proposed code.

Julie Northrop, Fort Collins resident who moved from the Bay Area in 2015, spoke about the sense of community in Fort Collins that tonight appears instead to be an us versus them, and to the need for more affordable housing, speaking in support of the proposed land use code.

Brandon Northrop, Fort Collins resident, spoke about how the city is on the verge of crisis with high rents and lack of housing that requires building more housing, speaking in support of the proposed land use code as a good first step in addressing these needs.

Kaori Keyser, Fort Collins resident and homeowner and co-chair of Democratic Socialists of America, spoke in support of the proposed land use code to assist in developing more housing in the community.

Diane Smith, Fort Collins resident, spoke about good intentions not always making good policy and this being one of those instances with the proposed land use code, sharing concerns with experiences on the west side of the city where at one point housing was deteriorating with unmaintained rentals and departing homeowners.

Johanna Loury, Fort Collins resident, spoke about choosing to live in a neighborhood with an HOA for the last 30 years and against the proposed land use code with concerns about changes to the neighborhood.

David Kovach, director of FoCo Legal Services and chair of Fort Collins Senior Advisory Board, spoke about how Fort Collins will continue to be a great place to live regardless of what happens tonight, while also noting this Saturday is Ageism Awareness day, making it a great time to think about how to treat people of various ages.

Jonah Salehi, Fort Collins resident and member of DSA Fort Collins, spoke about moving to Fort Collins two years ago as a graduate student, finding it surprising how incredibly unaffordable the city is and noted support for the proposed land use code.

Michael May, Fort Collins resident and junior at Colorado State University from Silicon Valley, spoke about the impact of sprawl including impacts of traffic particularly when people cannot live in the community they need to travel to, and spoke in support of the proposed land use code.

Elaine Boni, spoke as a long-term Fort Collins resident with concerns with the proposed land use code and urged voting against the proposed code, speaking in support of increased density in undeveloped parts of the city only.

Melanie Potyondy, Fort Collins resident, thanked staff and City Council for all the work that has gone into the proposed land use code and spoke in support of the proposed land use code.

Madeleine Kamberg, Fort Collins resident, spoke about the U+2 policy and how it is both illegal and immoral, noting the cease-and-desist letter that has been sent to the Council and requested the City stop all enforcement of the policy as a matter of good faith until a proper policy has been implemented.

Rich Stave, Fort Collins resident, commented about the inability to sign up for both public comment and item discussion, then also commented that the community survey results seem to skew towards higher incomes, and that many people are driving around with missing or expired plates without enforcement. Also noted was a belief Transfort service will not be used in inclement weather given the need to walk long distances to reach stops.

Public comment ended at 7:56 p.m.

H) PUBLIC COMMENT FOLLOW-UP

Mayor Jeni Arndt noted last Wednesday's session was conducted by the State, not the City, and was out of the control of the Council.

Councilmember Julie Pignataro noted more will be discussed regarding the land use code during that item but commented regarding seeing excellent dialogue occurring within City Hall among community members as part of these deliberations.

I) COUNCILMEMBER REMOVAL OF ITEMS FROM CONSENT CALENDAR FOR DISCUSSION

None.

CONSENT CALENDAR

1. **Consideration and Approval of the Minutes of the September 19, 2023 Regular Meeting.**

   The purpose of this item is to approve the minutes of the September 19, 2023 regular meeting.

   Approved.

2. **Items Pertaining to the Annual Adjustment Ordinance.**

   A. Second Reading of Ordinance No. 122, 2023, Making Supplemental Appropriations in Various City Funds.

   B. Second Reading of Ordinance No. 123, 2023, Appropriating Prior Year Reserves and Authorizing Transfers in Various City Funds.

   These Ordinances, unanimously adopted on First Reading on September 19, 2023, appropriate additional revenues or prior year reserves that need to be appropriated before the end of the year to cover related expenses that were not anticipated, and therefore, not included in the 2023 annual budget appropriation. The additional revenue is primarily from fees, charges for service, rents, contributions, donations, and grants that have been paid to City departments to offset specific expenses.

   Adopted on Second Reading.

3. **Second Reading of Ordinance No. 124, 2023, Appropriating Philanthropic Revenue Received Through City Give for Various Programs and Services as Designated by the Donor.**

   This Ordinance, unanimously adopted on First Reading on September 19, 2023, requested appropriation of $20,300 in philanthropic revenue received through City Give. These miscellaneous gifts to various City departments support a variety of programs and services and are aligned with both the City's strategic priorities and the respective donors' designation.

   In 2019, City Give, a formalized enterprise-wide initiative, was launched to create a transparent, non-partisan governance structure for the acceptance and appropriations of charitable gifts.

   Adopted on Second Reading.

4. **Second Reading of Ordinance No. 125, 2023, Making a Supplemental Appropriation from the Great Outdoors Colorado Grant in Support for the Completion of the Colorado Front Range Trail-Poudre River Trail Segment.**

   This Ordinance, unanimously adopted on First Reading on September 19, 2023, appropriates $1,000,744 of unanticipated grant revenue from GOCO through Larimer County to the City.

Larimer County, in partnership with City of Fort Collins (City), and Towns of Windsor and Timnath, applied for a funding opportunity through Great Outdoors Colorado (GOCO) in support of the completion of the Poudre River Trail. The joint request successfully secured the funding needed to design and construct the remaining sections of trail. The focus of this work extends from the Environmental Learning Center in eastern Fort Collins to River Bluffs Open Space west of Windsor and includes a spur connection to Windsor's Kyger Reservoir property (the Project).

Larimer County, serving as the grant administrator, signed an agreement with GOCO that GOCO would pay a total of $3,740,402 to complete construction of the Poudre River Trail. The agreement provides for the proposed allocation of construction costs to each of the partners. The City and Larimer County entered an Intergovernmental Agreement (IGA) identifying the City as a subrecipient of $1,000,744 of the total $3,740,402 awarded by GOCO. The IGA stipulates the City's obligation to invoice Larimer County for all eligible costs associated with the construction of Poudre River Trail within the City's jurisdiction. Larimer County will reimburse the City for all eligible construction-related costs.

Adopted on Second Reading.

5. **Second Reading of Ordinance No. 126, 2023, Appropriating Prior Year Reserves and Making Supplemental Appropriation for the City of Fort Collins Revolving Loan Fund Program.**

This Ordinance, unanimously adopted on First Reading on September 19, 2023, authorizes the transfer of $143,884 accumulated from Platte River Power Authority's (PRPA) annual contribution to the City of Fort Collins in support of community economic development funds. The accumulated economic development funds have been in the General Fund to create the City of Fort Collins Revolving Loan Fund for Small Businesses and Startup companies operating in Fort Collins. The City will use the funds to support program access to capital for small businesses in Fort Collins city limits, including those that have historically not had access to traditional financial capital markets.

Adopted on Second Reading.

6. **Second Reading of Ordinance No. 127, 2023, Amending Chapter 7 of the Code of the City of Fort Collins Regarding Duties of the City Clerk.**

This Ordinance, unanimously adopted on First Reading on September 19, 2023, aligns the duties of the City Clerk regarding retention of certain election campaign records with new state law provisions regarding the same.

Adopted on Second Reading.

7. **Second Reading of Ordinance No. 128, 2023, Ratifying and Reaffirming Certain 2022 and 2023 City Expenditures and Designating Certain Unexpended and Unencumbered Appropriations as Non-Lapsing.**

This Ordinance, unanimously adopted on First Reading on September 19, 2023, addresses and remedies an oversight made in certain 2021, 2022, and 2023 appropriation ordinances related to certain appropriated funds that were intended to be designated as non-lapsing appropriations as contemplated in Section 11 of Article V of the City Charter ("Section 11"), but were not so designated. Section 11, which was amended by the City's voters in April 2021, provided before it was amended that all appropriations for capital projects and for federal and state grants were

considered non-lapsing appropriations without any specific designation of non-lapsing in the appropriation ordinance. However, after being amended, Section 11 now requires that there be an express non-lapsing designation in the ordinance, and it also adds another category of appropriations that can be designated non-lapsing, those being private grants and donations.

It has been discovered that various appropriations for capital projects and for federal, state, and private grants and donations, mostly in 2021 appropriation ordinances, were intended to be designated as non-lapsing but through oversight that designation was not included in the ordinance. Nevertheless, these appropriations were accounted for in the City's accounting records as non-lapsing accounts and funds were spent from those accounts in the subsequent fiscal years of 2022 and 2023. To ensure these expenditures were properly spent in those years, this Ordinance ratifies and reaffirms those expenditures and designates the remaining amounts from those appropriations as non-lapsing for future expenditure.

Adopted on Second Reading.

8. **Second Reading of Ordinance No. 129, 2023, Suspending Certain Provisions of the City's Land Use Code and Building Code to Permit Temporary Use of City Property at 117 North Mason Street as a Seasonal Overflow Homeless Shelter.**

This Ordinance, unanimously adopted on First Reading on September 19, 2023, suspends certain provisions of the City's Land Use Code to allow the temporary use of 117 North Mason Street as a men's overflow shelter site from November 1, 2023-April 30, 2024.

Adopted on Second Reading.

9. **Second Reading of Ordinance No. 130, 2023, Approving the Vacation of an Emergency Access Easement Located on Lot 1 of the Elizabeth Subdivision.**

This Ordinance, unanimously adopted on First Reading on September 19, 2023, approves an Ordinance that would vacate a twenty-foot emergency access easement (the "Easement") that was dedicated on the Plat of the Elizabeth Subdivision (the "Subdivision") across Lot 1, Block 1 (811 East Elizabeth Street) for the benefit of Lot 2, Block 1 (813 East Elizabeth Street) because the Easement is no longer required by Poudre Fire Authority.

Adopted on Second Reading.

10. **Second Reading of Ordinance No. 131, 2023, to Extend Terms of All Board and Commission Members to Align with New Recruitment and Interview Schedule and Waive Eight Year Service Limit.**

This Ordinance, unanimously adopted on First Reading on September 19, 2023, extends the terms of all current board and commission members through March 31 of the year their term ends. This aligns with the new recruitment schedule.

The exception to this is the Affordable Housing Board (AHB) and the Human Services and Housing Funding Board (HSHFB) whose terms will start on July 1. This is to align the scope of their work of making grant recommendations with the timing of when funds are received from the U.S. Department of Housing and Urban Development. The terms of current AHB and HSSFB members will be extended through June 30 of the year their terms end.

Pulled from Consent.

11. **First Reading of Ordinance No. 132, 2023, Making a Supplemental Appropriation from the Regional Air Quality Council Mow Down Pollution Grant for Purchase of Zero-Emission Commercial Lawn and Garden Equipment.**

The purpose of this item is to support the City's Parks Department in converting lawn and garden gasoline powered equipment to battery-powered equipment by appropriating $100,000 of unanticipated grant revenue, awarded by the Regional Air Quality Council (RAQC) through funds provided by the Colorado Department of Public Health and Environment (CDPHE).

This item would also authorize the City Manager or their designee to accept the grant award and comply with the terms of the grant application and award.

Adopted on First Reading.

12. **First Reading of Ordinance No. 133, 2023, Appropriating Prior Year Reserves and Authorizing Transfers of Appropriations for the Childcare Space Modifications at the Northside Aztlan Community Center and Related Art in Public Places.**

The purpose of this item is to appropriate $197,960 from Recreation Reserves to close the funding gap on the Childcare Space Modifications at Northside Aztlan Community Center and transfer 1 percent of the applicable construction costs to Art in Public Places.

Adopted on First Reading.

13. **First Reading of Ordinance No. 134, 2023, Authorizing Transfer of an Appropriation for Art in Public Places Related to the Design and Construction of Connexion.**

The purpose of this item is to transfer $27,924 of appropriated funds for Art in Public Places (APP) artwork expenses in the Cultural Services and Facilities Fund back to the Broadband Fund, where those related expenses will be transacted.

Adopted on First Reading.

14. **Items Relating to Lemay Avenue and Drake Road Intersection Improvements.**

A. Resolution 2023-090 Authorizing the Execution of an Intergovernmental Agreement Between the City of Fort Collins and the Colorado Department of Transportation for the Lemay and Drake Intersection Improvements Project.

B. First Reading of Ordinance No. 135, 2023, Appropriating Unanticipated Revenue and Authorizing Transfers for the Lemay and Drake Intersection Improvements Project and Related Art in Public Places.

The purpose of these items is to enable the City to receive and expend Colorado Department of Transportation (CDOT) funds for the Lemay and Drake Intersection Improvements Project (the Project). The funds will be used for design, right-of-way acquisition, and construction of improvements at the intersection of Lemay Avenue and Drake Road. If approved, the item will: (1) authorize the Mayor to execute an Intergovernmental Agreement for the Project with CDOT; (2) appropriate $900,072 of Highway Safety Improvement Program (HSIP) grant funds for the Project; (3) appropriate $100,008 from the Community Capital Improvement Program (CCIP); and (4) appropriate $1,000 (1% of the CCIP amount) to the Art in Public Places Program.

Adopted Resolution and Ordinance on First Reading.

15. **Resolution 2023-091 Designating a New City Representative to the Larimer County Community Services Block Grant Advisory Board.**

The purpose of this item is to designate Councilmember Susan Gutowsky to represent the City on the Larimer County Community Services Block Grant Advisory Board.

Adopted.

END OF CONSENT CALENDAR

Mayor Pro Tem Emily Francis moved, seconded by Councilmember Kelly Ohlson, to approve the recommended actions on items 1-15, minus item 10, on the Consent Calendar.

Councilmember Julie Pignataro asked for more information regarding item 11, including if the funds are intended for grants to individuals.

Mike Brunkhardt, Senior Supervisor with the Parks Department, spoke about the use of grant money being intended for the Parks Department's operations. The gasoline powered equipment that will be taken out of service will be disassembled to the point of inoperability.

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.)*

L) STAFF REPORTS

None.

M) COUNCILMEMBER REPORTS

Councilmember Tricia Canonico

- PD will be hosting a gun drop off event for Fort Collins residents on October 22 at Fort Collins Police Services.

Councilmember Ohlson

- Read a letter from a student at Polaris School that visited the Council a couple of weeks ago.
- Noted a transformer on his block was replaced today after 43 years and noted he shared with the crew he would give a shout out for the way that was handled, including the communication in advance to the neighborhood.

Councilmember Susan Gutowsky

- Attended a flower tour guided by a staff member from Parks, with appreciation for learning about the intricacies of planning and the science involved.
- Attended a ribbon cutting for Longview Behavioral Health center on September 22 with a new facility that will enhance mental health care for area residents.
- Attended the Governor's Tourism Conference hosted at the Hilton in Fort Collins, with international attendance, noting Colorado is one of the most popular states to come visit internationally.

Councilmember Shirley Peel

- Thanked people who came out to speak with her at both Open Streets and at a mobile home park listening session.
- Also attended Arc Film Festival, allowing community members as part of that organization to share short films.
- Shout out to HOPE team for their ongoing engagement work.
- Also attended the Governor's listening session last week and was able to engage with community members regarding a range of concerns impacting the community, finding it very valuable.
- Noted the family of the individual missing in Rocky Mountain Park, including former students of hers, is in her prayers.

Mayor Jeni Arndt

- Visited Boise, Idaho, with City manager DiMartino last week, noting they just passed a very robust land use code for their community that is right for their community, noting one of the reasons they passed that code was to preserve open space in the foothills.
- Shared that following next week's work session she will be going to a housing conference.

Clerk's Note: Mayor Arndt called for a 15-minute break at 8:11 p.m. The meeting reconvened at 8:26 p.m.

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

10. **Second Reading of Ordinance No. 131, 2023, to Extend Terms of All Board and Commission Members to Align with New Recruitment and Interview Schedule and Waive Eight Year Service Limit.**

This Ordinance, unanimously adopted on First Reading on September 19, 2023, extends the terms of all current board and commission members through March 31 of the year their term ends. This aligns with the new recruitment schedule.

The exception to this is the Affordable Housing Board (AHB) and the Human Services and Housing Funding Board (HSHFB) whose terms will start on July 1. This is to align the scope of their work of making grant recommendations with the timing of when funds are received from the U.S. Department of Housing and Urban Development. The terms of current AHB and HSSFB members will be extended through June 30 of the year their terms end.

This item was pulled from the Consent Calendar to allow the Council to consider approving an amended exhibit to the ordinance.

PUBLIC COMMENT

Rich Stave, Fort Collins resident, spoke about his perception this action is eliminating term limits for board and commission members.

Mayor Pro Tem Francis clarified term limits are not being eliminated by this action, rather only are being waived in this singular instance to allow for a one-time extension of existing terms to align with shifts to the recruitment schedule and ongoing start and end dates for terms.

Mayor Pro Tem Francis moved, seconded by Councilmember Ohlson, that the Second Reading of Ordinance No. 131, 2023, to Extend Terms of All Board and Commission Members to Align with New Recruitment and Interview Schedule and Waive Eight Year Service Limit, be passed on second reading with an updated exhibit to the ordinance, to include an additional board member, Kevin Goff, whose current term ends December 31, 2023, and whose new term would end March 31, 2027, in the Human Relations Commission section.

The motion carried 7-0.

O) CONSIDERATION OF ITEMS PLANNED FOR DISCUSSION

16. **Items Related to the Adoption of a New Land Use Code.**

This item consists of three separate ordinances:

A. First Reading of Ordinance No. 136, 2023, Repealing and Reenacting Section 29-1 of the Code of the City of Fort Collins to Adopt the Revised Land Use Code and Separately Codifying the 1997 Land Use Code as the "Pre-2024 Transitional Land Use Regulations."

B. First Reading of Ordinance No. 137, 2023, Updating City Code References to Align With the Adoption of the Revised Land Use Code.

C. First Reading of Ordinance No. 138, 2023, Amending the Zoning Map of the City of Fort Collins to Rename All Neighborhood Conservation Low Density, Neighborhood Conservation Medium Density, and Neighborhood Conservation Buffer Zone Districts to the Old Town Zone District In Conjunction With the Adoption of the Land Use Code.

The purpose of this item is to consider adopting of changes to the City's Land Use Code. The Land Use Code (LUC) Phase 1 Update implements policy direction in City Plan, the Housing Strategic Plan, and the Our Climate Future Plan. Changes are intended to address one or more of the following Guiding Principles:

1. Increase overall housing capacity and calibrate market-feasible incentives for affordable housing.

2. Enable more affordability, especially near high frequency transit and priority growth areas.

3. Allow more diverse housing choices that fit in the existing context and priority place types.

4. Make the Code easier to use and understand.

5. Improve predictability of the development review process, especially for housing.

If adopted by Council, staff recommend that the proposed Code changes take effect on January 1, 2024.

In addition to changes to the Land Use Code updates to City Code references to the revised Land Use Code are proposed.

Finally, because the revised Land Use Code rename the Neighborhood Conservation Low Density, Neighborhood Conservation Medium Density, and Neighborhood Conservation Buffer zone districts to the Old Town zone district with corresponding subdistricts A, B, and C, updates

to the zoning map to reflect the name changes are proposed. This change only affects the name of the zone districts and no changes to the boundaries are proposed.

Caryn Champine, Planning, Development & Transportation Director, introduced this item and provided an overview of the purpose of Land Use Code updates and the guiding principles that have governed the work done on this. CDNS Director Paul Sizemore then reviewed the engagement done on the proposed Code update since this was last considered by the Council. Noah Beal, Development Review Manager, then continued the full presentation as set forth in the slide deck in the meeting materials.

Other staff present to assist with any questions relating to the item included Interim Planning Manager Clay Frickey, Senior Policy & Project Manager Sylvia Tatman-Burruss, and Senior Assistant City Attorney Brad Yatabe. Participating remotely in the meeting were Senior Manager Social Sustainability Meaghan Overton and Outside Legal Counsel Jill Hassman.

PUBLIC COMMENT

David Roy, Fort Collins resident, spoke about how division seems to be the word of the year and urged the Council to slow down on the actions contained in the proposed land use code to help alleviate division and to help protect and preserve neighborhoods and look for proof of concept before proceeding on a wide scale.

Stefanie Berganini, Fort Collins resident and long term homeowner and chair of the Democratic Socialists of America of Fort Collins housing justice committee, spoke to urge Council to support adoption of the proposed code and suggested three changes: 1) extend the affordable housing deed restriction; 2) act to clarify the power of HOAs in the current version of the code particularly relating to setbacks; and 3) remove the stipulation for onsite managers for ADUs.

Kate Conley, Fort Collins resident and architect specializing in designing affordable housing and member of YIMBY Fort Collins, spoke in support of the proposed land use code and its provisions that will support additional development of the types of homes she designs.

Abigail Feuka, Fort Collins resident and renter, spoke advocating for people and in support of the proposed land use code, noting it is a bigger concern where we will put people rather than just where we will put the cars.

Kristin Fritz, Fort Collins resident and Chief Real Estate Officer at Housing Catalyst and two-time board member of the Housing Affordability Board, spoke noting the many voices heard tonight supporting the proposed land use code, also sharing support.

Adam Eggleston, Fort Collins resident, small business owner, and Realtor, spoke in support of the proposed land use code, noting work has been going for some time, since the 2020 presidential debates which he watched while reading the land use code audit.

Ross Cunniff, Fort Collins resident and chair of Preserve Fort Collins, noted being one of 6,447 residents to sign a petition to overturn the land development code passed in 2022 and how many concerns from those residents remain, also speaking about the many ancillary impacts of increased density.

Rich Stave, Fort Collins resident, stated the number one issue is trust, voicing concern about fiscal responsibility such as is demonstrated by homeowners paying taxes and assessments for years and calling the proposed code a regressive progressive policy.

Clint Anders requested clarification on alternative five, indicating a concern about letting HOAs govern setbacks, particularly for dormant older HOAs that have highly restrictive covenants.

Rick Hoffman, Fort Collins resident, spoke as an owner of several single family homes in the city that would potentially provide benefits given this, yet still spoke against the proposed land use code with concerns it will damage the character of the city. Hoffman asked Council to answer in its discussions if it is the responsibility of the City to provide housing for everyone who wants to live here.

Greg Zoda, Fort Collins resident and graduate teaching assistant at CSU and co-chair of DSA of Fort Collins, spoke in support of the proposed land use code and with concerns about statements regarding new residents to Fort Collins or those who want to come to Fort Collins indicating a belief that outsiders are somehow morally deficient.

Colleen Hoffman, Fort Collins resident, shared a quote from JFK about the persistent myth being the enemy of the truth rather than lie, then stating opposition to the proposed land use code as presented, and requesting amendments to focus density and development in the undeveloped part of the city.

Kolt Herkstroeter thanked everyone for the community interaction tonight and stated a belief that this issue should be on the ballot for everyone to vote on.

Aaron Miripol, president and CEO of Urban Land Conservancy, spoke in support of the proposed land use code as a good start, and shared prior work done through a land trust in Boulder to create affordable homes that remain today and have not brought down other property values, while also speaking in support of a 99 year period for deed restrictions.

Christina Larson, Fort Collins resident, spoke in opposition to the proposed land use code stating concern with more than 300 current vacant rentals that have been vacant for more than 90 days that will be sold if they aren't rented, as well as other landlords who will likely look to sell.

COUNCIL DISCUSSION

Mayor Pro Tem Francis asked a follow up question about a commenter regarding a payment in lieu provision. Staff noted this provision is not currently included and could apply as an option for not including affording housing primarily under a mandatory inclusionary zoning policy. There was a request for follow-up information on this subject before second reading.

Staff responded to several questions about specific differences between the current and proposed code in different zoning districts relating to various limits and requirements.

In a response to a question from Councilmember Pignataro about why the language landed on 60 years for maintaining affordability from the current 20, staff recounted how the Land Development Code provisions had proposed a 99 year limit and 60 years was identified as a compromise to allow at least a couple generations to live in that affordable unit while acknowledging there is also a significant cost reinvestment that needs to happen around 50 to 60 years. It was also noted that the land use code is intended to be a living document that could be adjusted down the road.

Staff responded to questions regarding clarifying how dwelling units and ADUs are essentially the same thing, whereas an accessory unit is differentiated and is allowed in the existing code and would still be allowed in the proposed code.

There was discussion about allowable heights for homes in some zones, including how switching from stories allowed to capping total height does not necessarily equate to taller structures. It was noted in Old Town there are stormwater standards that require buildings to be raised between 18 inches to four feet.

Mayor Arndt requests a list of Colorado cities and counties that currently allow ADUs and asked about owner occupied ADUs and the legality around that. Senior Assistant City Attorney Yatabe indicated the proposal for resident managers was intended to address concerns while avoiding potential legal issues around owner occupancy requirements.

Councilmember Ohlson asked if Golden and Boulder do have owner occupancy requirements for ADUs, as that information was sent to the Council. It was noted Boulder does do that and different jurisdictions must make their own determinations about potential legal risks. There was an additional request for follow up on ADUs for information on how long Boulder has allowed them with an owner occupancy requirement as well any other Colorado jurisdictions.

Councilmember Peel initiated a discussion about potentially eliminating the provisions identified as options 1-4 for the Council to consider in staff's presentation materials, including asking what the impact would be on density. Director Sizemore shared information including slides showing most of the additional capacity comes in Mixed-use zones (71%), while those first four provisions all have to do with RL zones that would make up 6%. In response to a question about if taking out those four provisions would impact the City's application for proposition 123, staff noted it would decrease incentives to build affordable housing in the RL but would not impact eligibility for proposition 123.

The Council continued discussion on Councilmember Peel's proposal, including looking at the first provision alone and removing duplexes as a permitted use in the RL zone. Some members noted concerns about alienating a sizeable segment of the community over 2-3% of the housing area while others shared the viewpoint that further compromise is not appropriate because this version of the code is already a stripped-down version because of a series of compromises from what was presented a year ago. There was discussion about the importance of provisions 2 and 3 in some parts of the community.

Mayor Pro Tem Francis moved, seconded by Councilmember Pignataro, to adopt Ordinance No. 136 on first reading.

Councilmember Peel moved, seconded by Councilmember Ohlson, to amend the motion on the floor to amend LUC Section 2.1.4 so as to remove duplexes as a permitted use and building type in the RL zone district.

The motion to approve the amendment passed 6-1.Ayes: Mayor Arndt, Mayor Pro Tem Francis, Councilmembers Ohlson, Peel, Canonico and Gutowsky. Nays: Councilmember Pignataro.

Mayor Arndt and members of Council made comments reflecting their positions ahead of the final vote on this item.

The motion to adopt the motion as amended passed 5-2. Ayes: Mayor Arndt, Mayor Pro Tem Francis, Councilmembers Peel, Canonico and Pignataro. Nays: Councilmembers Ohlson and Gutowsky.

P) 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.)

None.

OB 2. **Motion to adjourn this meeting until after the completion of the Stormwater Utility Enterprise Board business:**

Councilmember Francis moved, seconded by Councilmember Ohlson, that Council adjourn the meeting until after the completion of the Stormwater Utility Enterprise Board business.

The motion carried 7-0.

The meeting adjourned for the Stormwater Utility Enterprise Board Meeting at 10:55 p.m.

The Council meeting reconvened at 10:58 p.m., with the same members present at the time of reconvening as at the start of the meeting.

Q) ADJOURNMENT

There being no further business before the Council, the meeting was adjourned at 10:58 p.m.

_____
Mayor

ATTEST:

_____
City Clerk

October 17, 2023

AGENDA ITEM SUMMARY
City Council

STAFF

Mike Brunkhardt, Senior Supervisor, Parks
Kerri Ishmael, Senior Analyst, Grant Administration
Sara Arfmann, Assistant City Attorney

SUBJECT

Second Reading of Ordinance No. 132, 2023, Making a Supplemental Appropriation from the Regional Air Quality Council Mow Down Pollution Grant for Purchase of Zero-Emission Commercial Lawn and Garden Equipment.

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on October 3, 2023, supports the City's Parks Department in converting lawn and garden gasoline powered equipment to battery-powered equipment by appropriating $100,000 of unanticipated grant revenue, awarded by the Regional Air Quality Council (RAQC) through funds provided by the Colorado Department of Public Health and Environment (CDPHE).

This item would also authorize the City Manager or their designee to accept the grant award and comply with the terms of the grant application and award.

STAFF RECOMMENDATION

Staff recommend adoption of the Ordinance on Second Reading.

BACKGROUND / DISCUSSION

The primary mission of this grant is for the conversion of gasoline-powered to battery-powered handheld and push equipment. The RAQC has launched the Mow Down Pollution exchange program as part of their efforts to mitigate ground-level ozone and enhance air quality. This initiative offers vouchers to support individuals and organizations who opt to recycle their gas-powered lawn equipment and replace it with rechargeable or corded electric-powered alternatives.

The City of Fort Collins is committed to 100 percent renewable energy and an 80 percent decrease in carbon emissions from a 2005 baseline by 2030. To achieve this, the City adopted a Municipal Sustainability and Adaptation Plan (MSAP) in 2019 aligning with City values, the City's Strategic Plan and Air Quality Plan, that outlines goals, objectives and strategies for the municipality's sustainability and resilience utilizing a triple bottom line approach. Goal 5 within the MSAP, "We Are Carbon Neutral," includes Objective 5.1.3 to replace City-owned fossil fuel powered, small-engine equipment with non-combustion engine alternatives, i.e., battery- or human-powered.

The award is based on total costs of $135,000, with the RAQC providing $100,000 in funds from the CDPHE and the remaining $35,000 being provided by Parks as a grant match. As presented in the

Purchase Order (provided as Attachment 2), total project costs ($135,000) funds replacement of gas-powered mowers, trimmers, edgers, blowers and other lawn and garden equipment that support maintenance of properties part of the City's Parks, Forestry, Golf, Cemeteries and Parks Planning and Development departments.

The required match of $35,000 will be provided from City American Rescue Plan Act (ARPA) non-lapsing funds allocated to Parks per 2023 Budget Offer 83.1 for the purpose of replacing gas-powered lawn and garden equipment in support of having a 100 percent electric equipment fleet.

The grant award does not require execution of a post-award agreement. In this type of grant, the City would need to comply with the terms of the grant application and award upon accepting the grant and drawing the grant funds, the terms of which are provided as Attachment 3. Staff recommends that Council authorize the City Manager or their designee to accept the grant and comply with the terms of the grant application and award.

CITY FINANCIAL IMPACTS

This item appropriates $100,000 in costs for replacement of lawn and garden equipment from unanticipated grant revenue from the RAQC.

Additionally, required matching funds in the amount of $35,000 have already been appropriated in the 2023 General Fund per Budget Offer 83.1 for replacement of gas-powered equipment with battery-powered equipment. The total project cost is $135,000.

This grant from the RAQC, with funds from the CDPHE, is a reimbursement type grant, meaning General Fund expenses will be reimbursed up to $100,000.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

None.

PUBLIC OUTREACH

None.

ATTACHMENTS

First Reading attachments not included.

1. Ordinance for Consideration

ORDINANCE NO. 132, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
MAKING A SUPPLEMENTAL APPROPRIATION FROM THE REGIONAL AIR QUALITY COUNCIL MOW DOWN POLLUTION GRANT FOR PURCHASE OF ZERO-EMISSION COMMERCIAL LAWN AND GARDEN EQUIPMENT

WHEREAS, the City is committed to 100 percent renewable energy and an 80 percent decrease in carbon emissions from a 2005 baseline by 2030 and in 2019 the City adopted a Municipal Sustainability and Adaptation Plan ("MSAP") outlining the City's goals, objectives and strategies for the municipality's sustainability and resilience utilizing a triple bottom line approach; and

WHEREAS, the City's Parks Department was awarded a $100,000 grant from the Regional Air Quality Council ("RAQC") through funds provided by the Colorado Department of Public Health and Environment to support replacement of gas-powered mowers, trimmers, edgers, blowers and other lawn and garden equipment that support maintenance of properties part of the City's Parks, Forestry, Golf, Cemeteries, and Parks Planning and Development Departments; and

WHEREAS, this grant will support the City's Goal 5 within the MSAP titled "We are Carbon Neutral", which includes Objective 5.1.3 to replace City-owned fossil fuel powered, small-engine equipment with non-combustion engine alternatives; and

WHEREAS, the award is based on total costs of $135,000, with RAQC providing $100,000 in unanticipated funds and the remaining $35,000 being provided by Parks as a grant match, which has already been appropriated in the 2023 General Fund; and

WHEREAS, this appropriation benefits the public health, safety and welfare of the residents of Fort Collins and serves the public purpose of meeting the City's renewable energy commitment and reduction of carbon emissions by 2030; and

WHEREAS, 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; and

WHEREAS, the City Manager has recommended the appropriation described herein and determined that this appropriation is available and previously unappropriated from the General Fund and will not cause the total amount appropriated in the General 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; and

WHEREAS, 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, 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 donation or the City's expenditure of all funds received from such grant or donation; and

WHEREAS, the City Council wishes to designate the appropriation herein for the Regional Air Quality Council Mow Down Pollution grant as an appropriation that shall not lapse until the earlier of the expiration of the grant or the City's expenditure of all funds received from such grant.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That there is hereby appropriated from new revenue or other funds in the General Fund the sum of ONE HUNDRED THOUSAND DOLLARS ($100,000) to be expended in the General Fund for the purchase of zero-emission commercial lawn and garden equipment to be used by the Parks department.

Section 3. That the appropriation herein for the Regional Air Quality Council Mow Down Pollution grant is hereby designated, as authorized in Article V, Section 11 of the City Charter, as an appropriation 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.

Introduced, considered favorably on first reading and ordered published this 3rd day of October, 2023, and to be presented for final passage on the 17th day of October, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

Passed and adopted on final reading this 17th day of October, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

October 17, 2023

AGENDA ITEM SUMMARY
City Council

STAFF

Aaron Harris, Senior Manager, Recreation
Brian Hergott, Assistant Director, Operations Services
Sara Arfman, Assistant City Attorney

SUBJECT

Second Reading of Ordinance No. 133, 2023, Appropriating Prior Year Reserves and Authorizing Transfers of Appropriations for the Childcare Space Modifications at the Northside Aztlan Community Center and Related Art in Public Places.

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on October 3, 2023, appropriates $197,960 from Recreation Reserves to close the funding gap on the Childcare Space Modifications at Northside Aztlan Community Center and transfers 1% of the applicable construction costs to Art in Public Places (APP).

STAFF RECOMMENDATION

Staff recommend adoption of the Ordinance on Second Reading.

BACKGROUND / DISCUSSION

Budgeting for Outcomes Offer 43.23: American Recovery Plan Act (ARPA) Childcare Space Modifications at Northside Aztlan Community Center (NACC) was funded in 2023 for $721,932 ($421,932 was contributed by ARPA and $300,000 was contributed by General Fund reserves).

Supplemental Ordinance No. 040, 2023, adopted on April 4, 2023, appropriated an additional $260,000 to cover the overage in the original construction estimate.

This appropriation, in the amount of $196,000, is being requested from Recreation Reserves to cover the additional costs incurred due to modifications needed to the construction as detailed below.

Total amount for the project to date including this Ordinance is $1,177,932.

After completion of the design the Request for Proposal (RFP) was released for construction. Operations Services projected the project to cost $721,932 in Spring 2022 and included cost escalation and contingency. The two bids received came in approximately $260,000 over the original construction estimate.

The original 2007 Northside Aztlan Community Center was built over an existing landfill site. The building was designed with a full structural concrete slab, along with a special air monitoring system, to monitor

emissions and ensure the public using the facility were safe. Upon the general contractor doing initial floor deconstruction for renovation, they discovered special structural details associated with the concrete floor slab, which included two layers of continuous steel reinforcing. The design firm has since modified their design and the contractor has had a great deal of extra work in both labor and equipment to remove the concrete floor slab, along with the reinforcing steel, to allow for new underground utilities to be installed. These modifications in design also required the contractor to expose additional floor slab reinforcing steel which required special rebar couplers to be installed to maintain the structural floor slab system.

The contractor performed site potholing to locate the high-volume gas line, located along the west side of the building. The gas line was revealed to be located directly below the location identified for the new fence around the outdoor play area for the childcare renovation. We have had to modify the fencing details and relocate this fence so it is no longer over the gas line, which will also allow Xcel Energy access to this gas line in the future.

Following a third-party security audit, it was recommended that a pair of cross corridor access control doors be installed between the reception desk and east classrooms to limit public access. It was also recommended that two additional cameras be added to observe those entering and leaving the childcare area, along with the capability to observe the outdoor play area.

1. Additional Contractor Expenses associated with the Floor Slab $124,114.39
   - Additional saw cutting of the slab
   - Additional labor to remove the concrete slab and rebar
   - Additional rebar and special couplers
   - Additional labor and materials for under floor slab utilities
2. Additional Contractor Expenses associated with the fence $ 16,000.00
   - Additional labor and fencing materials to expand the fence
   - Additional environmental soil removal and cleanup
3. Additional City Expenses associated with the Floor Slab $ 19,717.00
   - Additional air monitoring while the floor slab is open to the earth below
   - Additional spotter services to observe the trenches below the floor slab
4. Additional City Expenses associated with the Fence: $ 5,271.00
   - Additional landscaping cost to move existing irrigation systems
   - Additional environmental spotter services to observe additional holes for fence post
5. Additional Security Upgrades: $ 30,897.00
   -Two additional security cameras based on a secondary security audit.
   -New security doors between existing reception desk and east classrooms.

Total Added Cost (rounded) $196,000.00

In addition, a contribution to Art in Public Places (APP) in the amount of $1,960 (1% of the $196,000) will be included in this appropriation.

The childcare space modification project addresses the numerous safety concerns existing at NACC. Specifically, the project includes three levels of security access control not found in the current facility. The project also includes emergency exit doors, that are not currently available. Currently, all three childcare classrooms are accessible by the public, with no secure entry.

Impact if funding is not approved and project is delayed.

- Cost escalation and inability to finish project.
  - We have exhausted initial project contingencies and have looked at potential savings. The final construction cost of this project will continue to increase if further delays are experienced, and the space will not be able to be opened/generate revenue until construction is complete.
- Impact on programs
  - Programs and rentals will continue to be impacted.

CITY FINANCIAL IMPACTS

Appropriating these funds will allow this project to move forward with current costs, prevent delays, and potential further cost escalation.

Recreation Reserves as of September 2023	Contingency Funding for NACC Childcare Project	Art in Public Places contribution for NACC Childcare Project	Recreation Reserves Projection December 31, 2023
$2,170,000	($196,000)	($1,960)	**$1,972,040**

Staff is asking that any remaining ARPA funds at the end of 2023 be considered to replenish the Recreation Reserves appropriated with this Ordinance since this was originally a partially ARPA funded project in the 2023-2024 budget.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

Because of the timing of board meetings, this need was not presented to the Parks and Recreation Advisory Board or to Council. They were very supportive of this project during the Budgeting For Outcomes (BFO) process.

PUBLIC OUTREACH

None.

ATTACHMENTS

1. Ordinance for Consideration

ORDINANCE NO. 133, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROPRIATING PRIOR YEAR RESERVES AND AUTHORIZING
TRANSFERS OF APPROPRIATIONS FOR THE CHILDCARE
SPACE MODIFICATIONS AT THE NORTHSIDE AZTLAN COMMUNITY
CENTER AND RELATED ART IN PUBLIC PLACES

WHEREAS, City Council appropriated $721,932 for the Childcare Space Modification at the Northside Aztlan Community Center (the "Project") for the 2023 fiscal year; and

WHEREAS, on April 4, 2023, Council adopted Ordinance No. 040, 2023, appropriating an additional $260,000 to cover the overage in the original construction estimate; and

WHEREAS, City staff is requesting an additional $196,000 from Recreation Reserves to cover costs incurred due to modifications to the Project to allow for new underground utilities to be installed and to address safety concerns; and

WHEREAS, the Recreation Fund currently contains sufficient reserves to fully fund the Project; and

WHEREAS, this appropriation benefits the public health, safety, and welfare of the residents of Fort Collins and serves the public purpose of making improvements to a public recreation center; and

WHEREAS, this Project involves construction estimated to cost more than $250,000 and, as such, 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"); and

WHEREAS, the total amount of this project to date including this Ordinance is $1,177,932; and

WHEREAS, the project cost of $421,932 contributed by the American Rescue Plan Act (ARPA) in the 2023-2024 Budget Offer #43.23 is not applicable for contribution to the APP Program due to the funding restrictions in place; and

WHEREAS, the project cost of $300,000 appropriated from General Fund Reserves in the 2023-2024 Budget Offer #43.23 is applicable for contribution to the APP Program and contributed in Ordinance No. 040, 2023; and

WHEREAS, the project cost of $260,000 appropriated from Recreation Fund Reserves in Ordinance No. 040, 2023, is applicable for contribution to the APP Program and contributed in the referenced Ordinance; and

WHEREAS, the project cost of $196,000 in this Ordinance contributed by Recreation Fund Reserves is applicable for contribution to the APP Program; and

WHEREAS, the amount to be contributed in this Ordinance will be $1,960; and

WHEREAS, 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 such funds for expenditure as may be available from reserves accumulated in prior years, notwithstanding that such reserves were not previously appropriated; and

WHEREAS, the City Manager has recommended the appropriation described herein and determined that this appropriation is available and previously unappropriated from the Recreation Fund and will not cause the total amount appropriated in the Recreation 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; and

WHEREAS, 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; and

WHEREAS, the City Manager has recommended the transfer of $1,960 from the Recreation Fund to the Cultural Services & Facilities Fund and determined that the purpose for which the transferred funds are to be expended remains unchanged; and

WHEREAS, Article V, Section 11 of the City Charter authorizes the City Council to designate in the ordinance when appropriating funds for capital projects that such appropriation shall not lapse at the end of the fiscal year in which the appropriation is made, but continue until the completion of the capital project; and

WHEREAS, the City Council wishes to designate the appropriation herein for the Project as appropriations that shall not lapse until the completion of the capital project.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above

Section 2. That there is hereby appropriated from prior year reserves in the Recreation Fund the sum of ONE HUNDRED NINETY-SEVEN THOUSAND NINE HUNDRED SIXTY DOLLARS ($197,960) to be expended in the Recreation Fund for the Childcare Space Modifications at the Northside Aztlan Community Center project. The appropriation is hereby designated, as authorized in Article V, Section 11 of the City Charter, as an appropriation that shall not lapse at the end of this fiscal year but continue until the completion of the capital project.

Section 3. That the unexpended and unencumbered appropriated amount of ONE THOUSAND FIVE HUNDRED TWENTY-NINE DOLLARS ($1,529) in the Recreation Fund is hereby authorized for transfer to the Cultural Services and Facilities Fund and appropriated and expended therein to fund art projects under the APP Program. The appropriation is hereby designated, as authorized in Article V, Section 11 of the City Charter, as an appropriation that shall not lapse at the end of this fiscal year but continue until the completion of the capital project.

Section 4. That the unexpended and unencumbered appropriated amount of THREE HUNDRED NINETY-TWO DOLLARS ($392) in the Recreation Fund is authorized for transfer to the Cultural Services and Facilities Fund and appropriated and expended therein for the operation costs of the APP Program.

Section 5. That the unexpended and unencumbered appropriated amount of THIRTY-NINE DOLLARS ($39) in the Recreation Fund is authorized 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, and ordered published this 3rd day of October, 2023, and to be presented for final passage on the 17th day of October, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

Passed and adopted on final reading this 17th day of October, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

October 17, 2023

AGENDA ITEM SUMMARY
City Council

STAFF

Lawrence Pollack, Budget Director
Ted Hewitt, Assistant City Attorney

SUBJECT

Second Reading of Ordinance No. 134, 2023, Authorizing Transfer of an Appropriation for Art in Public Places Related to the Design and Construction of Connexion.

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on October 3, 2023, transfers $27,924 of appropriated funds for Art in Public Places (APP) artwork expenses in the Cultural Services and Facilities Fund back to the Broadband Fund, where those related expenses will be transacted.

STAFF RECOMMENDATION

Staff recommend adoption of the Ordinance on Second Reading.

BACKGROUND / DISCUSSION

Larimer County wishes to provide its residents with high-quality broadband and has collaborated with adjacent municipalities to provide broadband to its residents. Larimer County and Connexion worked together to prioritize areas of the County based on cost for service, adjacency to municipal broadband infrastructure, underserved areas, and low socio-economic status. The areas with some of the highest rankings are northwest and northeast of the Harmony and Taft Hill intersection, with over 1,000 premises.

On June 6, 2023, Council passed Ordinance No. 073, 2023, to appropriate funding for this build-out of Connexion into unincorporated areas of the County. As part of that appropriation, $27,924 was approved for transfer from the Broadband Fund to the Cultural Services and Facilities Fund to fund related APP artwork. Section 23-303(c) of the City Code requires APP contributions specifically for artwork from an enterprise fund to be kept and spent within that enterprise fund. This action will transfer the appropriation for the related artwork of $27,924 back to the Broadband Fund where those expenses will occur.

CITY FINANCIAL IMPACTS

There is no net change in expenses from this action. Rather, $27,924 in funds for Arts in Public Places Artwork in the Cultural Services & Facilities Fund will be transferred to the Broadband Fund Arts in Public Places budget.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

None.

PUBLIC OUTREACH

None.

ATTACHMENTS

First Reading attachments not included.

1. Ordinance for Consideration

ORDINANCE NO. 134, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING TRANSFER OF AN APPROPRIATION FOR ART IN PUBLIC PLACES
RELATED TO THE DESIGN AND CONSTRUCTION OF CONNEXION

WHEREAS, on June 6, 2023, City Council adopted Ordinance No. 073, 2023, which appropriated funds for the design and construction of Connexion and authorized the transfer of $27,924 from the Broadband Fund to the Cultural Services and Facilities Fund for acquisition of related artwork under the Art in Public Places (APP) program; and

WHEREAS, Section 23-303(c) of the City Code requires APP contributions from a utility fund to be kept and spent within that utility fund, with the exception of contributions for maintenance, administration, repair and display costs; and

WHEREAS, to ensure compliance with Code Section 23-303(c), this $27,924 appropriation should be transferred back to the Broadband Fund; and

WHEREAS, this appropriation benefits the public health, safety and welfare of the residents of Fort Collins and serves the public purpose of ensuring compliance with City Code; and

WHEREAS, 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; and

WHEREAS, the City Manager has recommended the transfer of $27,924 from the Cultural Services and Facilities Fund to the Broadband Fund and determined that the purpose for which the transferred funds are to be expended remains unchanged; and

WHEREAS, 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 donation or the City's expenditure of all funds received from such grant or donation; and

WHEREAS, the City Council wishes to designate the appropriation herein for the Art in Public Places Artwork as an appropriation that shall not lapse until the completion of the Artwork or the City's expenditure of all such funds.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That the unexpended and unencumbered appropriated amount of TWENTY-SEVEN THOUSAND NINE HUNDRED TWENTY-FOUR DOLLARS ($27,924) is authorized for transfer from the Cultural Services and Facilities Fund to the Broadband Fund and appropriated therein to be expended for the Arts in Public Places Artwork related to the Design and Construction of Connexion in the areas northeast and northwest of Taft Hill and Harmony.

Section 3. That the appropriation herein for the Arts in Public Places Artwork related to the Design and Construction of Connexion in the areas northeast and northwest of Taft Hill and Harmony, from the Larimer County Intergovernmental Agreement (IGA) is hereby designated, as authorized in Article V, Section 11 of the City Charter, as an appropriation that shall not lapse at the end of this fiscal year but continue until the completion of the Artwork or the City's expenditure of all such funds.

Introduced, considered favorably on first reading, and ordered published this 3rd day of October, 2023, and to be presented for final passage on the 17th day of October, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

Passed and adopted on final reading this 17th day of October, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

October 17, 2023

AGENDA ITEM SUMMARY
City Council

STAFF

Florian Fiebig, Project Manager
Dana Hornkohl, Capital Projects Manager
Brad Buckman, City Engineer
Heather Jarvis, Assistant City Attorney

SUBJECT

Second Reading of Ordinance No. 135, 2023, Appropriating Unanticipated Revenue and Authorizing Transfers for the Lemay and Drake Intersection Improvements Project and Related Art in Public Places.

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on October 3, 2023, appropriates: 1) $900,072 of Highway Safety Improvement Program (HSIP) grant funds for the Project; 2) $100,008 from the Community Capital Improvement Program (CCIP); and 3) $1,000 (1% of the CCIP amount) to the Art in Public Places Program.

STAFF RECOMMENDATION

Staff recommend adoption of the Ordinance on Second Reading.

BACKGROUND / DISCUSSION

Statistical safety performance evaluation of the Lemay Avenue and Drake Road intersection shows that for a crossroads where two roads meet at a right angle, or 4-legged intersection, this intersection has an excess crash cost (using CDOT 4-legged signalized intersection safety performance function methodology) of $460,000 per year. The Lemay and Drake intersection is in the top 5 intersections of safety concerns in Fort Collins and registers as a LOSS IV using CDOT Level of Service of Safety (LOSS) analysis techniques, which means the intersection has a high potential for crash reduction. It experiences almost 3 more injury crashes per year than would be expected given volumes and geometry. Of special concern are approach turn crashes with statistically far more crashes than anticipated.

The intent of this Project is to eliminate most of the conflicts that result in traffic accidents at this intersection. The proposed improvements will add a southbound right turn lane and convert from "doghouse" style protected/permissive signals to flashing yellow arrows that can be operated protected only, by time of day on all 4 approaches. A protected signal is when on the green arrow, drivers are given the right-of-way to complete their turns, free of other traffic conflicts. A protected/permissive signal is when a green arrow indicates a protected turn, and there is also a permissive phase, in which the left-turning vehicles must yield to the opposing traffic during the green indication. This will require a rebuild of the signal system with new signal poles and mast arms. The southbound approach is the highest volume approach - particularly during the afternoon peak period and the approach with the highest propensity for rear end crashes. Adding a southbound right turn lane is expected to reduce total crashes by 14% (Harwood et al 2002 - source

Crash Modification Factors Clearinghouse). The addition of flashing yellow arrows that can be operated in protected only mode by time of day, such as during peak hour, will be used to target the unusual number of approach turn crashes at the intersection. Based on our experience at other locations in Fort Collins where this treatment has been used, the City anticipates an 80% reduction in approach turn crashes. The Project's conceptual design includes improvements for pedestrian and bicyclist safety as well.

The HSIP funding became available to the City in the State fiscal year 2023 (July 2022). HSIP funding involves a 90%/10% (Federal/Local) match. The funding split for this award is $900,072 Federal and $100,008 Local. Community Capital Improvement Program (CCIP) Arterial Intersection Improvement funds are available for the local match for the Project.

Per Chapter 23 of the City Code, Article XII (addressing Art in Public Places), Section 23-304, all appropriations for construction projects estimated to a total cost of over $250,000 shall include an amount equal to one percent of eligible funds for works of art. This appropriation includes a contribution of $1,000 to the Art in Public Places Program which is 1% of the City match of $100,008. The HSIP grant funds appropriated via this action are ineligible for use toward public art and, as such, are not subject to the 1% set aside.

The Project will require additional right-of-way acquisition for construction of the Project. Federal HSIP funds require the City to follow the Uniform Relocation Assistance and Real Property Acquisitions Policy Act of 1970, as amended (the Uniform Act) when acquiring right-of-way. Staff anticipates bringing a request before City Council seeking authorization for acquisition and the potential use of eminent domain, as required by the Uniform Act, once the Project design is finalized.

CITY FINANCIAL IMPACTS

The following is a summary of the funding anticipated for design, right-of-way acquisition, and construction for the Lemay and Drake Intersection Improvements Project:

Funds to be Appropriated with this Action	
HSIP Grant Award	$900,072
Local Match (10%) – Community Capital Improvement Program	$100,008
Total Appropriations with this Action	**$1,000,080**
Transfer to Art in Public Places	$(1,000)

The total fund amount projected for this Project is $1,000,080, composed of funds appropriated with this action.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

Staff will present this Project to the Transportation Board as the plans are developed.

PUBLIC OUTREACH

Staff will seek public input and present Project details via open house meetings as the Project moves forward. Staff will develop a Project web page in conjunction with a comprehensive communication plan.

ATTACHMENTS

First Reading attachments not included.

1. Ordinance for Consideration

ORDINANCE NO. 135, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROPRIATING UNANTICIPATED REVENUE AND AUTHORIZING
TRANSFERS FOR THE LEMAY AND DRAKE INTERSECTION IMPROVEMENTS
PROJECT AND RELATED ART IN PUBLIC PLACES

WHEREAS, the intersection of Lemay Avenue and Drake Road is a crossroads that experiences almost three more injury crashes per year than would be expected given volumes and geometry and results in an excess crash cost of $460,000 per year; and

WHEREAS, the Lemay Avenue and Drake Road intersection is in the top five intersections of safety concerns in Fort Collins and registers under Colorado Department of Transportation (CDOT) Level of Service of Safety (LOSS) analysis techniques as an intersection that has a high potential for crash reduction, labeled a "LOSS IV" rating under the CDOT LOSS rating system; and

WHEREAS, the southbound approach is the highest volume approach and is the approach turn with the highest propensity for rear end crashes, particularly during the afternoon peak period; and

WHEREAS, the Lemay and Drake Intersection Improvements Project (the Project) has been developed to address these safety concerns and eliminate most of the conflicts presented by this intersection that result in crashes; and

WHEREAS, the Project's proposed improvements will add a southbound right turn lane and will convert the signals on all four approaches to flashing yellow arrows that can be operated protected only, by time of day such as during the peak hour, where the protected operation provides a green arrow for drivers to have the right-of-way to complete their turns; and

WHEREAS, the Project's proposed improvements require a rebuild of the signal system with new signal poles and mast arms to replace existing "doghouse" style protected/permissive signals, which signals had a protected phase with a green arrow but also a permissive phase in which the left-turning vehicles must yield to the opposing traffic during the green indication; and

WHEREAS, based on experience at other locations in Fort Collins where treatments such as the proposed Project improvements have been used, the City anticipates about an 80 percent reduction in approach turn crashes; and

WHEREAS, the Project's conceptual design includes improvements for pedestrian and bicyclist safety as well; and

WHEREAS, the Highway Safety Improvement Program (HSIP) grant funds for the Project are to be administered by CDOT with project delivery oversight pursuant to an Intergovernmental Agreement (IGA) with CDOT that requires a ninety percent to ten percent federal to local funding split; and

WHEREAS, the total amount of funds associated with this Project is $1,000,080, composed of federal HSIP funds of $900,072 and City funds of $100,008; and

WHEREAS, the purpose of this Ordinance is to enable the City to receive and expend the available grant funds and to appropriate those funds; and

WHEREAS, this appropriation benefits public health, safety and welfare of the citizens of Fort Collins and serves the public purpose of improving transportation infrastructure within the City; and

WHEREAS, this Project involves construction estimated to cost more than $250,000 and, as such, 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"); and

WHEREAS, the project cost of $100,008 in this Ordinance contributed by the Community Capital Improvement Program Fund Reserves is applicable for contribution to the APP Program; and

WHEREAS, the HSIP funds appropriated in this Ordinance for the Project are ineligible for use in the APP Program due to restrictions placed on them by the HSIP grant administered by CDOT; and

WHEREAS, 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; and

WHEREAS, the City Manager has recommended the appropriation described herein and determined that this appropriation is available and previously unappropriated from the Community Capital Improvements Program Fund and will not cause the total amount appropriated in the Community Capital Improvements Program 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; and

WHEREAS, 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; and

WHEREAS, the City Manager has recommended the transfer of $100,008 from the Community Capital Improvement Program Fund to the Capital Projects Fund and determined that the purpose for which the transferred funds are to be expended remains unchanged; and

WHEREAS, the City Manager has recommended the transfer of $1,000 from the Capital Projects Fund to the Cultural Services & Facilities Fund and determined that the purpose for which the transferred funds are to be expended remains unchanged; and

WHEREAS, 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 donation or the City's expenditure of all funds received from such grant or donation; and

WHEREAS, the City Council wishes to designate the appropriation herein from the HSIP grant as an appropriation that shall not lapse until the earlier of the expiration of the grant or the City's expenditure of all funds received from such grant.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That there is hereby appropriated from new revenue or other funds from the Highway Safety Improvement Program (HSIP) grant in the Capital Projects Fund the sum of NINE HUNDRED THOUSAND SEVENTY-TWO DOLLARS ($900,072) to be expended in the Capital Projects Fund for the Lemay and Drake Intersection Improvements project.

Section 3. That the unexpended and unencumbered appropriated amount of ONE HUNDRED THOUSAND EIGHT DOLLARS ($100,008) is authorized for transfer from the Community Capital Improvement Program Fund to the Capital Project Fund and appropriated therein to be expended for the Lemay and Drake Intersection Improvements project.

Section 4. That the unexpended and unencumbered appropriated amount of SEVEN HUNDRED EIGHTY DOLLARS ($780) in the Capital Projects Fund is hereby authorized for transfer to the Cultural Services and Facilities Fund and appropriated and expended therein to fund art projects under the APP Program.

Section 5. That the unexpended and unencumbered appropriated amount of TWO HUNDRED DOLLARS ($200) in the Capital Projects Fund is authorized for transfer to the Cultural Services and Facilities Fund and appropriated and expended therein for the operation costs of the APP Program.

Section 6. That the unexpended and unencumbered appropriated amount of TWENTY DOLLARS ($20) in the Capital Projects Fund is authorized for transfer to the Cultural Services and Facilities Fund and appropriated and expended therein for the maintenance costs of the APP Program.

Section 7. That the appropriation herein from the HSIP grant is hereby designated, as authorized in Article V, Section 11 of the City Charter, as an appropriation 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.

Introduced, considered favorably on first reading and ordered published this 3rd day of October, 2023, and to be presented for final passage on the 17th day of October, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

Passed and adopted on final reading this 17th day of October, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

October 17, 2023

AGENDA ITEM SUMMARY
City Council

STAFF

Matt Robenalt, DDA Executive Director
Kristy Klenk, DDA Financial Coordinator
John Duval, Deputy City Attorney
Ryan Malarky, Assistant City Attorney

SUBJECT

First Reading of Ordinance No. 139, 2023, Approving the Fiscal Year 2024 Budget, and Being the Annual Appropriation Ordinance for the Fort Collins Downtown Development Authority, and Fixing the Mill Levy for the Downtown Development Authority for Property Taxes Payable Fiscal Year 2024.

EXECUTIVE SUMMARY

The purpose of this item is to set the Downtown Development Authority ("DDA") Budget.

The following amounts will be appropriated:

DDA Public/Private Investments & Programs	$6,435,066
DDA Operations & Maintenance	$1,477,626
Revolving Line of Credit Draws	$9,000,000
DDA Debt Service Fund	$9,431,611

The Ordinance sets the 2024 Mill Levy for the Fort Collins DDA at five (5) mills, unchanged since tax year 2002. The approved Budget becomes the Downtown Development Authority's financial plan for 2024.

STAFF RECOMMENDATION

Staff recommend adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

The DDA was created in 1981 with the purpose, according to Colorado state statute, of planning and implementing projects and programs within the boundaries of the DDA. By state statute, the purpose of the ad valorem tax levied on all real and personal property in the downtown development district, not to exceed five (5) mills, shall be for the budgeted operations of the authority. The DDA and the City adopted a Plan of Development that specifies the projects and programs the DDA would undertake. To carry out the purposes of the State statute and the Plan of Development, the City, on behalf of the DDA, has issued various tax increment bonds, which require debt servicing.

The DDA is requesting approval of the DDA Public/Private Investments and Programs budget for fiscal year 2024 in the amount of $6,435,066 and DDA Operation and Maintenance budget for fiscal year 2024

in the amount of $1,477,626. It is requesting appropriation of up to $9,000,000 for the 2024 Line of Credit draws. It is also requesting approval of the DDA debt payment commitments in the amount of $9,431,611 for 2024 obligations.

The 2024 Public/Private Investments and Program budget is projected as follows:

Uses:

Alley Operations	$ 94,596
Alley Capital Reserve Replacement	283,218
Alley Construction (Harper Goff, E Myrle, W Olive)	532,652
Alley Design and Construction (E and W Myrtle to Mulberry)	566,722
Alley Trash Enclosure Lease Payments	20,389
Business Marketing and Communications	46,747
Downtown River District Improvements (Willow St)	288,573
Façade Grant Program	527,470
Gateway Entrances	55,000
Land Bank	3,000,000
Nighttime Impact Study	35,000
Oak 140 Project	129,718
Old Town Parking Structure	25,000
Old Town Square Operations	107,232
Old Town Square Capital Reserve Replacement	123,931
Projects and Programs 2023 Reserve	280,911
Tree Canopy Replacement	6,200
Urban Micro-Space Design Plan	113,314
Warehouse Operations	11,255
Other Public/Private Investments & Programs	187,138
Total	**$ 6,435,066**

The 2024 Operations and Maintenance budget is projected as follows:

Uses:

Personnel Services	$1,039,771
Contractual Professional Services	371,416
Purchased Supplies and Commodities	30,400
Other	36,040
Total	**$1,477,626**

The 2024 Line of Credit draw, whose debt service payment will be made from the debt service fund, is projected to fund up to $9,000,000:

Uses:

Old Firehouse Alley Parking Garage IGA Payment	$ 300,000
Housing Catalyst/FC DDA LLC Loan (Oak140)	121,869
Multi-Year Reimbursement Payments	617,431
Project Management Fees	54,826
Business Marketing and Communications Program	107,000
Capital Asset General Maintenance Obligations	942,589
Capital Asset Replacement Reserve	451,210
Capital Asset Reserve & Replacement Annual Program	189,300
Future Public/Private Investments & Programs	6,215,775
Total	**$9,000,000**

The DDA debt service fund is projected to have sufficient revenue to meet the required debt service payments for 2024.

Uses:

Debt Payment: 2024	$9,431,611

CITY FINANCIAL IMPACTS

Adoption of this Ordinance will have no direct financial impacts on the City and its budget.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

At its September 14, 2023, meeting, the Downtown Development Authority Board of Directors adopted its proposed budget for 2024 totaling $26,344,303 and determined the mill levy necessary to provide for payment of administrative costs incurred by the DDA. The amount of $26,344,303 meets the reporting criteria of the City accounting standards but the DDA would like Council to be aware that the total amount does not directly reflect the anticipated revenues from Tax Increment or the 5 mills for 2024. The Public/Private Investments and Programs budget of $6,435,066 are previously appropriated unspent funds of which 63% is dedicated to the design and construction of two additional alleys, and funding of a land bank for future property acquisition. The repayment of the Line of Credit of $9,000,000 is reported as part of the Debt Service Payment total and is then reported separately for anticipated uses.

PUBLIC OUTREACH

None.

ATTACHMENTS

1. Ordinance for Consideration
2. Boundary Map
3. DDA Resolution 2023-04 Determining and Fixing the Mill Levy
4. DDA Resolution 2023-05 Determining and Recommending the 2024 Budget
5. DDA Resolution 2023-06 Appropriation of the 2024 Line of Credit Draw Service
6. DDA Resolution 2023-07 Appropriation for Debt Service
7. DDA Resolution 2023-08 Appropriation of Public-Private Investments & Programs

ORDINANCE NO. 139, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROVING THE FISCAL YEAR 2024 BUDGET, AND BEING THE
ANNUAL APPROPRIATION ORDINANCE FOR THE
FORT COLLINS DOWNTOWN DEVELOPMENT AUTHORITY, AND
FIXING THE MILL LEVY FOR THE DOWNTOWN DEVELOPMENT AUTHORITY
FOR PROPERTY TAXES PAYABLE FISCAL YEAR 2024

WHEREAS, the Fort Collins Downtown Development Authority (the "DDA") has been duly organized in accordance with the Colorado Revised Statutes ("C.R.S.") Section 31-25-804; and

WHEREAS, on September 8, 1981, the City Council adopted Resolution 81-129 approving DDA's original Plan of Development dated July 1981, which Plan has been amended several times since 1981 (the "DDA Plan of Development"); and

WHEREAS, on September 14, 2023, DDA Board of Directors (the "DDA Board"), acting under the provisions of C.R.S. Section 31-25-816, adopted a proposed and recommended DDA budget for the fiscal year beginning January 1, 2024, as reflected in DDA Board Resolutions 2023-05, 2023-06, 2023-07 and 2023-08 (the "Budget"), and determined the mill levy necessary to provide for payment during fiscal year 2024 of properly authorized operational and maintenance expenditures to be incurred by the DDA; and

WHEREAS, the DDA anticipates receiving in 2024 tax increment revenues of approximately $9,007,537 and approximately $963,944 in revenues from its five-mill property tax for the DDA's operational and maintenance expenditures; and

WHEREAS, it is the desire of the Council to appropriate the sum of TWENTY-SIX MILLION, THREE HUNDRED FORTY-FOUR THOUSAND, THREE HUNDRED THREE DOLLARS ($26,344,303) from the DDA Operation and Maintenance Fund and the DDA Debt Service Fund for the fiscal year beginning January 1, 2024, and ending December 31, 2024, to be used as follows:

DDA Public/Private Investments & Programs (O&M Fund)	$6,435,066
DDA Operations & Maintenance (O&M Fund)	1,477,626
2024 Revolving Line of Credit Draws	9,000,000
DDA Debt Service Fund	9,431,611
Total	$26,344,303

; and

WHEREAS, the DDA Board, as reflected in DDA Board Resolution 2023-04, has recommended to the Council that pursuant to C.R.S. Section 31-25-817 the Council set a mill levy of five (5) mills upon each dollar of assessed valuation on all taxable property within the DDA District, such levy representing the amount of taxes necessary to provide for payment during the 2024 fiscal year for all properly authorized operational and maintenance expenditures to be incurred by the DDA; and

WHEREAS, the amount of this proposed mill levy is not an increase over prior years and, as such, prior voter approval of the proposed levy is not required under Article X, Section 20 of the Colorado Constitution; and

WHEREAS, if a majority of voters approve the ballot issue identified as Proposition HH and for fiscal year 2024 only, Colorado Revised Statutes ("C.R.S.") Section 39-5-128(1)(b) requires certification of this tax levy to the Board of County Commissioners no later than January 5, 2024, but beginning fiscal year 2025, such certification shall occur no later than December 15th of that year and by December 15th in all subsequent years; however, if Proposition HH is not approved, the certification of the tax levy shall occur no later than December 15th of each year.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS, as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That the City Council hereby approves the Budget as provided in C.R.S. Section 31-25-816(1).

Section 3. That there is hereby appropriated for fiscal year 2024 for expenditure from the DDA Operation and Maintenance Fund for the Downtown Development Authority Public/Private Investments and Programs the sum of SIX MILLION, FOUR HUNDRED THIRTY-FIVE THOUSAND, SIXTY-SIX DOLLARS ($6,435,066), to be expended to fund the payment of the DDA-related obligations that have been entered into or will be entered into in furtherance of the DDA Plan of Development.

Section 4. That there is also hereby appropriated for fiscal year 2024 for expenditure from the DDA Operation and Maintenance Fund for the Downtown Development Authority Operation and Maintenance the sum of ONE MILLION, FOUR HUNDRED SEVENTY-SEVEN THOUSAND, SIX HUNDRED TWENTY-SIX DOLLARS ($1,477,626), to be expended for the authorized purposes of the DDA.

Section 5. That there is hereby appropriated for fiscal year 2024 for expenditure from the Downtown Development Authority 2024 Line of Credit draws the sum of up to NINE MILLION DOLLARS ($9,000,000), to be used to finance DDA projects or programs in accordance with the DDA Plan of Development including the multi-year reimbursement payments, and capital asset maintenance obligations.

Section 6. That there is hereby appropriated for the fiscal year 2024 for expenditure from the Downtown Development Authority Debt Service Fund the sum of NINE MILLION, FOUR HUNDRED THIRTY-ONE THOUSAND, SIX HUNDRED ELEVEN DOLLARS ($9,431,611), for payment of debt service on a previously issued and outstanding bond, and for payment on the 2024 Line of Credit draws.

Section 7. That the DDA's mill levy rate for the taxation upon each dollar of the assessed valuation of all taxable property within the DDA District shall be five (5) mills to be imposed on the assessed value of such property as set by state law for property taxes payable in 2024, which levy represents the amount of taxes necessary to provide for payment during fiscal year 2024 of all properly authorized operational and maintenance expenditures to be incurred by the DDA, as appropriated herein. The City Clerk shall certify said mill levy to the County Assessor and the Board of County Commissioners of Larimer County, Colorado, no later than January 5, 2024, if a majority of voters approve the ballot issue identified as Proposition HH; however, if Proposition HH is not approved, the City Clerk shall certify said mill levy no later than December 5, 2023.

Introduced, considered favorably on first reading and ordered published this 17th day of October, 2023, and to be presented for final passage on the 21st day of November, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

Passed and adopted on final reading this 21st day of November, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

Downtown Development Authority Boundary

N
W E
S

Parcels

DDA Boundary

1 inch = 1,320 feet

0 0.125 0.25 0.5 Miles

City of Fort Collins GIS

Amended: March 7, 2017
Printed: October 01, 2017

RESOLUTION 2023-04

OF THE BOARD OF DIRECTORS OF THE FORT COLLINS, COLORADO DOWNTOWN DEVELOPMENT AUTHORITY RECOMMENDING TO THE FORT COLLINS CITY COUNCIL THE DETERMINING AND FIXING OF THE MILL LEVY OF THE FORT COLLINS DOWNTOWN DEVELOPMENT AUTHORITY FOR THE FISCAL YEAR ENDING DECEMBER 31, 2024

WHEREAS, The Fort Collins, Colorado Downtown Development Authority ("DDA") has been duly organized in accordance with the Colorado Revised Statutes 31-25-804, 1973 as amended; and

WHEREAS, the Board of Directors of the DDA finds a mill levy of five (5) mills to be sufficient to meet the operational and maintenance needs of the DDA for fiscal year 2024.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE FORT COLLINS, COLORADO DOWNTOWN DEVELOPMENT AUTHORITY, to recommend to the City Council of the City of Fort Collins the mill levy rate for taxation upon all the taxable property within the boundaries of The Fort Collins, Colorado Downtown Development Authority for the fiscal year ending December 31, 2024 be set at five (5) mills, which mill levy is sufficient to raise ad valorem revenues for the 2024 Operations and Maintenance Budget as approved by the Board of Directors of The Fort Collins, Colorado Downtown Development Authority and which mill levy represents the amount of taxes for The Fort Collins, Colorado Downtown Development Authority. Said mill levy shall be distributed and certified by the County Assessor and the Board of County Commissioners of Larimer County, Colorado by the City Clerk as provided by law.

Passed and adopted at a regular meeting of the Board of Directors of The Fort Collins, Colorado Downtown Development Authority this 14th day of September 2023.

David Lingle, Chair

Dwight Hall, Secretary

RESOLUTION 2023-05

OF THE BOARD OF DIRECTORS OF THE FORT COLLINS, COLORADO DOWNTOWN DEVELOPMENT AUTHORITY APPROVING AND RECOMMENDING TO THE FORT COLLINS CITY COUNCIL THE BUDGET OF THE ESTIMATED AMOUNTS REQUIRED TO PAY THE EXPENSES OF CONDUCTING THE BUSINESS OF THE FORT COLLINS DOWNTOWN DEVELOPMENT AUTHORITY FOR THE FISCAL YEAR ENDING DECEMBER 31, 2024

WHEREAS, The Fort Collins, Colorado Downtown Development Authority ("DDA") has been duly organized in accordance with the Colorado Revised Statutes 31-25-804, 1973 as amended; and

WHEREAS, the Board of Directors of the DDA shall under Colorado Revised Statutes, 31-25-816, 1973, as amended, adopt a budget of the estimated revenues and expenditures to be received and incurred during fiscal year ending December 31, 2024.

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE FORT COLLINS, COLORADO DOWNTOWN DEVELOPMENT AUTHORITY that the following budget is adopted for the fiscal year ending December 31, 2024 and therefore recommends to the City Council of the City of Fort Collins the adoption of this budget.

Revenues:	
Ad Valorem Taxes	$963,944
Tax Increment Programs	$402,056
Licenses and Permits	1,800
Auto Specific Ownership Tax	50,000
Investment Earnings	5,000
Project Management Fees	54,826
TOTAL	**$1,477,626**
Expenditures:	
Personnel Services	$1,039,771
Contractual Services	371,416
Commodities	30,400
Other	36,040
TOTAL	**$1,477,626**

Passed and adopted at a regular meeting of the Board of Directors of The Fort Collins, Colorado Downtown Development Authority this 14th day of September 2023.

David Lingle, Chair

Dwight Hall, Secretary

RESOLUTION 2023-06

OF THE BOARD OF DIRECTORS OF THE FORT COLLINS, COLORADO DOWNTOWN DEVELOPMENT AUTHORITY RECOMMENDING TO THE FORT COLLINS CITY COUNCIL THE APPROPRIATION OF UP TO $9,000,000 (NINE MILLION DOLLARS) FROM THE FORT COLLINS DOWNTOWN DEVELOPMENT AUTHORITY 2024 REVOLVING LINE OF CREDIT FOR THE EXPENDITURE ON PROJECTS AND PROGRAMS, ALL IN ACCORDANCE WITH THE DOWNTOWN DEVELOPMENT AUTHORITY PLAN OF DEVELOPMENT

WHEREAS, The Fort Collins, Colorado Downtown Development Authority has been duly organized in accordance with the Colorado Revised Statutes 31-25-804, 1973 as amended; and

WHEREAS, the DDA's Plan of Development was approved by the City on September 8, 1981, and established the purpose of the DDA and the types of projects in which the DDA would participate; and

WHEREAS, on June 5, 2018 the City Council adopted Ordinance No. 066, 2018 authorizing the renewal of a revolving line of credit to be paid solely with Downtown Development Authority tax increment funds for a six (6) year period to finance DDA projects or programs in accordance with the DDA Plan of Development; and

WHEREAS, the Board of Directors of the DDA has determined that the following projects and programs are in accordance with the Plan of Development, the Downtown Plan and the Downtown Strategic Plan:

EXISTING COMMITMENTS OF $2,784,225
Old Firehouse Alley Parking Garage IGA Payment -- $300,000
Housing Catalyst/FC DDA LLC Loan (Oak 140) -- $121,869
Multi-Year Reimbursement Payments -- $617,431
Project Management Fees -- $54,826
Business Marketing and Communication Program -- $107,000
Capital Asset General Maintenance Obligations -- $942,589
Capital Asset Replacement Reserve -- $451,210
Capital Asset Reserve & Replacement Annual Program Contribution -- $189,300

OTHER COSTS OF $6,215,775
Future Public/Private Investments & Projects -- $6,215,775

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE FORT COLLINS, COLORADO DOWNTOWN DEVELOPMENT AUTHORITY, that it recommends to the City Council the appropriation for expenditure from the Downtown Development Authority Fund in accordance with the Downtown Plan of Development of up to Nine Million Dollars ($9,000,000).

Passed and adopted at a regular meeting of the Board of Directors of The Fort Collins, Colorado Downtown Development Authority this 14th day of September 2023.

David Lingle, Chair

Dwight Hall, Secretary

RESOLUTION 2023-07

OF THE BOARD OF DIRECTORS OF THE FORT COLLINS, COLORADO DOWNTOWN DEVELOPMENT AUTHORITY RECOMMENDING TO THE FORT COLLINS CITY COUNCIL THE APPROPRIATION OF $9,431,611 (NINE MILLION, FOUR HUNDRED THIRTY-ONE THOUSAND, SIX HUNDRED ELEVEN DOLLARS) FROM THE FORT COLLINS DOWNTOWN DEVELOPMENT AUTHORITY DEBT SERVICE FUND FOR PAYMENT OF DEBT SERVICE FOR THE FISCAL YEAR ENDING DECEMBER 31, 2024

WHEREAS, The Fort Collins, Colorado Downtown Development Authority has been duly organized in accordance with the Colorado Revised Statutes 31-25-804, 1973 as amended; and

WHEREAS, pursuant to Ordinance No. 15, 1983, the City Council of the City of Fort Collins established a special fund consisting of separate accounts for: (1) operation and maintenance expenses of The Fort Collins, Colorado Downtown Development Authority; (2) tax increment funds received by The Fort Collins, Colorado Downtown Development Authority; and (3) project funds consisting of proceeds of bonds, loans, and other forms of indebtedness; and

WHEREAS, Section 2 of Ordinance No. 95, 1987 provides the tax increment monies will be pledged to the payment of principal and interest on Bonds; and

WHEREAS, on June 5, 2018 the City Council adopted Ordinance No. 066, 2018 authorizing the renewal of a revolving line of credit to be paid solely with Downtown Development Authority tax increment funds for a six (6) year period to finance DDA projects or programs in accordance with the DDA Plan of Development; and

WHEREAS, principal and interest on the bonds and the 2024 line of credit draws is due and payable in 2024.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE FORT COLLINS, COLORADO DOWNTOWN DEVELOPMENT AUTHORITY, that it recommends to the City Council of the City of Fort Collins the appropriation for expenditure in 2024 from the tax increment fund, the sum of $431,611 (Four hundred thirty-one thousand, six hundred eleven dollars) for payment of debt service on outstanding tax increment bonds, and the sum of $9,000,000 (Nine million dollars) for payment on the 2024 Line of Credit draws.

Passed and adopted at a regular meeting of the Board of Directors of The Fort Collins, Colorado Downtown Development Authority this 14th day of September 2023.

David Lingle, Chair

Dwight Hall, Secretary

RESOLUTION 2023-08

OF THE BOARD OF DIRECTORS OF THE FORT COLLINS, COLORADO DOWNTOWN DEVELOPMENT AUTHORITY APPROVING AND RECOMMENDING TO THE FORT COLLINS CITY COUNCIL THE BUDGET OF THE ESTIMATED AMOUNTS REQUIRED TO PAY THE EXPENSES OF PUBLIC/PRIVATE INVESTMENTS AND PROGRAMS OF THE FORT COLLINS DOWNTOWN DEVELOPMENT AUTHORITY FOR THE FISCAL YEAR ENDING DECEMBER 31, 2024

WHEREAS, The Fort Collins, Colorado Downtown Development Authority ("DDA") has been duly organized in accordance with the Colorado Revised Statutes 31-25-804, 1973 as amended; and

WHEREAS, the Board of Directors of the DDA shall under Colorado Revised Statutes, 31-25-816, 1973, as amended, adopt a budget of the estimated expenditures to be incurred during fiscal year ending December 31, 2024.

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE FORT COLLINS, COLORADO DOWNTOWN DEVELOPMENT AUTHORITY that the following budget is adopted for public/private investments and programs for the fiscal year ending December 31, 2024 and therefore recommends to the City Council of the City of Fort Collins the adoption of this budget.

Alley Operations	$94,596
Alley Capital Reserve Replacement	283,218
Alley Construction (Harper Goff, Laurel to Myrtle, Olive to Magnolia)	532,652
Alley Design and Construction (E Myrtle to Mulberry, W Myrtle to Mulberry)	566,722
Alley Trash Enclosure Lease Payments	20,389
Business Marketing and Communications	46,747
Downtown River District Improvements (Willow St)	288,573
Façade Grant Program	527,470
Gateway Entrances	55,000
Land Bank	3,000,000
Nighttime Impact Study	35,000
Oak 140 Project	129,718
Old Town Parking Structure	25,000
Old Town Square Operations	107,232
Old Town Square Capital Reserve Replacement	123,931
Projects and Programs 2023 Reserve	280,911
Tree Canopy Replacement	6,200
Urban Micro-Space Design Plan	113,314
Warehouse Operations	11,255
Other Public/Private Investments & Programs	187,138
TOTAL	$6,435,066

Passed and adopted at a regular meeting of the Board of Directors of The Fort Collins, Colorado Downtown Development Authority this 14th day of September 2023.

David Lingle, Chair

Dwight Hall, Secretary

October 17, 2023

AGENDA ITEM SUMMARY

City Council

STAFF

David Ruppel, Interim Airport Director
Francis Robbins, Airport Operations & Maintenance Manager
Ryan Malarky, Assistant City Attorney

SUBJECT

First Reading of Ordinance No. 140, 2023, Adopting the 2024 Budget and Appropriating the Fort Collins Share of the 2024 Fiscal Year Operating and Capital Improvements Funds for the Northern Colorado Regional Airport.

EXECUTIVE SUMMARY

The purpose of this item is to adopt the 2024 budget for the Northern Colorado Regional Airport and appropriate Fort Collins's share of the 2024 fiscal year operating and capital funds for the Airport. Under the Amended and Restated Intergovernmental Agreement for the Joint Operation of the Airport between Fort Collins and Loveland (the "IGA"), the Airport is operated as a joint venture with each City owning 50% of the assets and revenues and responsible for 50% of the operating and capital costs. The proposed budget does not include any financial contributions from the City's General Fund. Because each City has an ownership interest in 50% of the Airport revenues, each City must appropriate its 50% share of the annual operating and capital budget for the Airport under the IGA.

STAFF RECOMMENDATION

Staff recommend adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

In 1963, the City of Fort Collins and the City of Loveland agreed to the establishment of a regional aviation facility and became owners and operators of the Northern Colorado Regional Airport, located ten miles southeast of downtown Fort Collins, just west of Interstate 25. The Airport is operated as a joint venture between the City of Fort Collins and the City of Loveland, with each city retaining a 50% ownership interest, sharing equally in policy-making and management, and with each assuming responsibility for 50% of the capital and operating costs associated with the Airport. Airport governance and management is set forth in the IGA.

The Airport's mission is: Serving the region, we are a catalyst for innovation in all modes of transportation, a driving force for innovation in business and training, and a global gateway to magnificent Colorado. According to a 2020 State of Colorado study, the Northern Colorado Airport provides a regional economic impact of approximately $295.97 million annually and supports 1,072 area jobs.

All revenues derived from the Airport are applied to both operating and capital expenditures. Each City contributes equal funding, when necessary, for Airport operating and capital needs as defined in the IGA.

External funding is also received through grants that are applied for and received by the Airport for eligible projects from the Federal Aviation Administration and the Colorado Department of Transportation Division of Aeronautics.

This Ordinance appropriates the City's 50% share ($1,515,493) of the 2024 Airport operating budget ($3,030,986) and 50% share ($10,979,000) of the 2024 capital budget ($21,958,000), for a total appropriation of $12,494,493 by the City (please refer to Exhibit A). The City of Loveland will be appropriating the other 50% of the total 2024 Airport budget ($12,494,493). The Airport's operating budget is used to maintain and operate the facility in compliance with all regulatory standards for safety and security and to achieve goals set by the Northern Colorado Regional Airport Commission on behalf of the Cities. The Airport's capital budget will be used to complete improvement projects, including the design and construction to widen the primary runway and repair project, the repaving of an existing aircraft taxiway, and environmental and design of expanded fuel storage facility.

Financial resources for 2024 are expected from the sources listed below. These include external sources, such as federal and state grants and required grant matches, as well as airport revenues and reserves. These resources will provide the necessary funding for the 2024 operating and capital budgets:

FAA Grants	$15,620,000
State Grants	$522,000
USDOT	$750,000
Airport Revenues	$1,966,908
Airport Reserves	$2,000,000
Total	**$20,858,908**

The $2,000,000 Airport Reserves item is an appropriation as set forth through the IGA for use by the Northern Colorado Regional Airport Commission consistent with the approved 2024 Budget for high priority projects. This Airport Reserve appropriation does not require any additional funding from the Cities.

The Northern Colorado Regional Airport Commission approved the proposed 2024 Airport Budget and recommended it for approval by the Fort Collins and Loveland Councils on September 21, 2023. Loveland's City Council has considered the 2024 Airport budget and it was unanimously accepted on first reading October 3, 2023, with the Second Reading scheduled on October 17, 2023.

CITY FINANCIAL IMPACTS

The proposed budget does not include any financial contributions from the City's General Fund. This item appropriates the City's 50% share of the annual budget for fiscal year 2024 for the Northern Colorado Regional Airport, which totals $12,494,493 and is 50% of the $24,988,986 total combined 2024 Airport operating and capital budget. The City of Loveland manages the Airport's budget and finances under the IGA; however, each Council must approve the annual budget under the IGA and, since the City of Fort Collins owns 50% of the Airport, it is necessary to appropriate its 50% portion of the total Airport budget.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

None.

PUBLIC OUTREACH

None.

ATTACHMENTS

1. Ordinance for Consideration
2. Exhibit A to Ordinance
3. Proposed 2024 Draft Budget with Explanation
4. Airport Commission Resolution #R-08-2023
5. Airport Financial Overview

ORDINANCE NO. 140, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
ADOPTING THE 2024 BUDGET AND APPROPRIATING THE FORT COLLINS SHARE OF THE 2024 FISCAL YEAR OPERATING AND CAPITAL IMPROVEMENT FUNDS FOR THE NORTHERN COLORADO REGIONAL AIRPORT

WHEREAS, in 1963, the City of Fort Collins and the City of Loveland (the "Cities") agreed to establish a regional general aviation facility and became owners and operators of the Fort Collins-Loveland Municipal Airport, now known as the Northern Colorado Regional Airport (the "Airport"); and

WHEREAS, the Airport is operated as a joint venture between the Cities, with each city retaining a 50% ownership interest, sharing equally in policy-making and management, and each assuming responsibility for 50% of the Airport's capital and operating costs; and

WHEREAS, pursuant to the Amended and Restated Intergovernmental Agreement for the Joint Operation of the Fort Collins-Loveland Municipal Airport dated January 22, 2015, and the First Amendment to the Amended and Restated Intergovernmental Agreement for the Joint Operation of the Fort Collins-Loveland Municipal Airport, now known as the Northern Colorado Regional Airport dated June 7, 2016, (collectively, the "IGA"), the Airport Manager is responsible for preparing the Airport's annual operating budget and submitting it to the Cities for their approval; and

WHEREAS, under the IGA, the City's share of existing and unanticipated Airport revenue is to be held and disbursed by the City of Loveland as an agent on behalf of the Cities, since the City of Loveland provides finance and accounting services for the Airport; and

WHEREAS, the Airport Manager has submitted for City Council consideration a 2024 Airport budget totaling $24,988,986 of which the City's 50% share is $12,494,493 ($1,515,493 for operations and $10,979,000 for capital); and

WHEREAS, the City Council is in the process of considering the City's 2024 budget and Ordinance No. 145, 2023, which appropriates $189,170 in City funds to be transferred to the Airport operating fund in payment of the City's 50% share of rent due under the approved lease of a portion of the Airport property operation of the Northern Colorado Regional Law Enforcement Training Center, which amount is included in the Land Lease revenues set forth in the 2024 Airport Budget; and

WHEREAS, pursuant to the IGA, the City of Loveland holds on behalf of both Cities the revenues of, and other financial contributions to, the Airport in a fund, which includes unappropriated and unencumbered reserves (the "Airport Fund"); and

WHEREAS, funding for the Airport's 2024 operating and capital improvement budgets has been identified as follows:

FAA Grants	$15,620,000
State Grants	$ 522,000

USDOT	$ 750,000
Airport Revenues	$ 1,966,908
Airport Reserves	$ 2,000,000
Total	**$20,858,908**

; and

WHEREAS, the City's 50% share of the 2024 Airport operating costs, to be held in the Airport Fund, is $1,515,493; and

WHEREAS, the City's 50% share of the 2024 Airport capital improvement costs, to be held in the Airport fund, is $10,979,000; and

WHEREAS, the Airport Reserves item is an appropriation for use by the Northern Colorado Regional Airport Commission for discretionary Airport projects; and

WHEREAS, City Finance staff has reviewed the financial statements for the Airport and determined that the requested appropriation of Airport Reserves in the 2024 Airport Budget meets the required limits set forth in the IGA; and

WHEREAS, in accordance with Article V, Section 8(b), of the City Charter, any expense or liability entered into by an agent of the City on behalf of the City, shall not be made unless an appropriation for the same has been made by the City Council; and

WHEREAS, this appropriation benefits the public health, safety and welfare of the residents of Fort Collins and serves the public purpose of enhancing transportation and economic welfare of the City and its residents; and

WHEREAS, this appropriation will not require additional funding from the Cities and is consistent with the IGA.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That the City Council hereby approves and adopts the 2024 Airport operating and capital budget totaling $12,494,493 ($1,515,493 for operations and $10,979,000 for capital), a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference.

Section 3. That the City Council hereby appropriates in the Airport Fund $1,515,493 to be expended to defray the City's 50% share of the 2024 operating costs of the Airport.

Section 4. That the City Council hereby appropriates in the Airport Fund $10,979,000 to be expended to defray the City's 50% share of the 2024 capital costs of the Airport.

Introduced, considered favorably on first reading, and ordered published this 17th day of October, 2023, and to be presented for final passage on the 21st day of November, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

Passed and adopted on final reading this 21st day of November, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

The Northern Colorado Regional Airport is a separate entity established by the cities of Fort Collins and Loveland. The City of Loveland does not have absolute authority over this fund. However, per the Intergovernmental Agreement between the cities, it is Loveland's responsibility to legally appropriate the budget for the Airport as part of its administrative responsibilities.

Northern Colorado Regional Airport Fund 600

	2022 Actuals	2023 Adopted	2023 Revised	2024 Proposed	2024 Draft/ 2023 Adopted $ Change	2024 Draft/ 2023 Adopted % Change
Beginning Fund Balance	**$ 5,778,763**	**$ 4,549,433**	**$ 6,027,301**	**$ 7,477,868**	**$ 2,928,436**	**64.4%**
Revenues by Department						
Airport	4,364,645	33,053,534	35,053,534	19,751,508	(13,302,026)	-40.2%
Total Revenues	**$ 4,364,645**	**$ 33,053,534**	**$ 35,053,534**	**$ 19,751,508**	**$(13,302,026)**	**-40.2%**
Revenue By Class						
Gain/Loss on Asset	12,150	-	-	-	-	0.0%
Interest Income	(112,373)	51,000	51,000	49,000	(2,000)	-3.9%
Intergovern	2,482,368	31,248,000	31,248,000	16,890,000	(14,358,000)	-45.9%
Lease Revenue	381,601	391,600	2,391,600	815,600	424,000	108.3%
Miscellaneous	105,724	144,900	144,900	52,600	(92,300)	-63.7%
Operating Revenues	1,495,175	1,218,034	1,218,034	1,944,308	726,274	59.6%
Total Revenues	**4,364,645**	**33,053,534**	**35,053,534**	**19,751,508**	**(13,302,026)**	**-40.2%**
Expenditures by Department						
Airport	4,116,107	33,602,967	33,602,967	24,988,896	(8,614,071)	-25.6%
Total Expenditures & Capital	**$ 4,116,107**	**$ 33,602,967**	**$ 33,602,967**	**$ 24,988,896**	**$ (8,614,071)**	**-25.6%**
Expenditures by Class						
Personal Services	771,444	1,089,540	1,089,540	1,147,418	57,878	5.3%
Supplies	99,694	115,400	124,900	123,550	8,150	7.1%
Purchased Services	596,694	1,482,910	1,473,410	1,736,478	253,568	17.1%
Depreciation	1,494,987	-	-	-	-	0.0%
Cost Allocations-Expense	23,450	23,450	23,450	23,450	-	0.0%
Capital Outlay	1,129,838	30,891,667	30,891,667	21,958,000	(8,933,667)	-28.9%
Total Expenditures	**$ 4,116,107**	**$ 33,602,967**	**$ 33,602,967**	**$ 24,988,896**	**$ (8,614,071)**	**-25.6%**
Expenditures by Operating vs. Capital						
Operating & Maintenance	1,491,282	2,711,300	2,711,300	3,030,896	319,596	11.8%
Depreciation	1,494,987	-	-	-	-	0.0%
Capital Outlay	1,129,838	30,891,667	30,891,667	21,958,000	(8,933,667)	-28.9%
Total Expenditures	**$ 4,116,107**	**$ 33,602,967**	**$ 33,602,967**	**$ 24,988,896**	**$ (8,614,071)**	**-25.6%**
Net Income	248,538	(549,433)	1,450,567	(5,237,388)	(4,687,955)	853.2%
Airport Reserve	*-*	*(2,000,000)*	*-*	*(2,000,000)*	*-*	*0.0%*
Ending Fund Balance	**$ 6,027,301**	**$ 2,000,000**	**$ 7,477,868**	**$ 240,480**	**$ (1,759,519)**	**-88.0%**

2024 Proposed Airport Budget

NORTHERN COLORADO
REGIONAL AIRPORT COMMISSION

	2020 Actual	2021 Actual	2022 Budget	2022 Actual	2023 Budget	2024 Budget	Justification	Percent Change
OPERATING REVENUES								
Hangar Rental	224,059	247,095	225,000	240,022	255,000	215,000	Reduced for decommissioning of A & B hangars	-15.7%
FBO Rent	92,586	92,713	94,172	94,172	94,134	105,008	Increase of two years CPI as per lease or 11.6%	11.6%
Gas and Oil Commissions	111,192	265,576	119,000	405,588	190,000	300,000	This is driven by fuel price and airport activty levels	57.9%
State & County Aircraft Fuel Tax	119,829	127,754	140,000	193,644	166,500	150,000	This is driven by fuel price and airport activty levels	-9.9%
Land Lease	694,391	738,561	749,900	920,494	891,600	1,099,000	Adjusted for new leases, and CPI lease escalations	23.3%
Terminal Lease and Landing Fees	5,700	7,160	12,000	8,024	5,700	75,300	Tied to airline/ bus activity	1221.1%
Parking	4,805	330	75,000	0	0	0	Tied to airline/ bus activity	0.0%
Miscellaneous	23,494	205,476	23,000	132,708	31,100	52,600	Tied to airline/ bus activity	69.1%
TOTAL OPERATING REVENUES	**1,276,056**	**1,684,665**	**1,438,072**	**1,994,652**	**1,634,034**	**1,996,908**	Total	22.2%
OPERATING EXPENSES								
FTE	6	6	7.5	8	8	9		
Personal Services	641,868	668,421	827,312	776,765	1,089,540	1,147,418	FTE	5.3%
Supplies	68,129	74,945	100,000	99,694	115,400	123,550	Inflation adjustments	7.1%
Purchased Services	513,984	435,275	678,619	620,144	1,506,360	1,759,928	adjustments	16.8%
TOTAL OPERATING EXPENSES	**1,223,981**	**1,178,641**	**1,605,931**	**1,496,603**	**2,711,300**	**3,030,896**	Total	11.8%
OPERATING GAIN (LOSS)	**52,075**	**506,023**	**(167,859)**	**498,049**	**(1,077,266)**	**(1,033,988)**	USDOT SCASD Grant cost amounts to this loss- and if received would provide for 75% funding reimbursement	-4.0%
NONOPERATING REVENUES (EXPENSES)								
City Conributions	0	0	0	0	0	0		
Passenger Facility Charge	0	0	65,000	0	0	0	No change	
Interest Income	95,157	(61,294)	75,000	(112,373)	51,000	49,000	Finance controlled investments	-3.9%
Capital Expenditures	(1,481,000)	(3,623,375)	(14,313,373)	(1,082,549)	(30,891,667)	(21,958,000)	Anticipated federal and state funded capital project expenses	-28.9%
TOTAL NONOPERATING REVENUES (EXPENSES)	**(1,385,843)**	**(3,684,669)**	**(14,173,373)**	**(1,194,922)**	**(30,840,667)**	**(21,909,000)**		-29.0%
NET INCOME (LOSS) BEFORE CAPITAL CONTRIBUTIONS	**(1,333,768)**	**(3,178,646)**	**(14,341,232)**	**(696,873)**	**(31,917,933)**	**(22,942,988)**		-28.1%
Capital Contributions	922,000	4,274,041	16,581,373	1,399,819	31,248,000	16,890,000	Terminal Building Construction, Runway Widening Design, potenial grants for SCASDG and BIL Terminal Funding Grants	-45.9%
CHANGE IN NET POSITION	**(411,768)**	**1,095,395**	**2,240,141**	**702,946**	**(669,933)**	**(6,052,988)**	This change is driven by the local share for the terminal project and any grant matches	803.5%
Reserve Appropriation	**500,000**	**1,000,000**	**1,000,000**	**2,000,000**	**2,000,000**	**2,000,000**	IGA stipulates this amount to be the lesser of 50% of unassigned balances of Airport Operating reserves and Capital Fund or less than 25% of the Airport's annual budget	0.0%

RESOLUTION # R-08-2023

A RESOLUTION APPROVING THE 2024 AIRPORT BUDGET AND RECOMMENDING APPROVAL BY THE CITY COUNCILS OF FORT COLLINS AND LOVELAND

WHEREAS, the City of Fort Collins ("Fort Collins") and the City of Loveland ("Loveland") jointly own and operate the Northern Colorado Regional Airport (the "Airport") pursuant to that Amended and Restated Intergovernmental Agreement for the Joint Operation of the Fort Collins-Loveland Municipal Airport (the "IGA"), dated January 22, 2015, as amended; and

WHEREAS, pursuant to the IGA, the two Cities formed the Northern Colorado Regional Airport Commission ("Commission") and granted the Commission certain authority, including the authority to develop the Airport budget; and

WHEREAS, the two Cities reserved to themselves the authority to approve the annual Airport budget and the authority to approve each Cities' annual contributions to and appropriation of the Airport budget; and

WHEREAS, Airport staff has prepared the annual Airport budget for fiscal year 2024 (the "2024 Airport Budget") and the Commission has reviewed the 2024 Airport Budget, which is attached hereto as "Exhibit A" and incorporated herein; and

WHEREAS, after such review, the Commission approves the 2024 Airport Budget, and recommends approval by the two City Councils along with appropriation of the necessary funds for such 2024 Airport Budget.

NOW THEREFORE BE IT RESOLVED BY THE NORTHERN COLORADO REGIONAL AIRPORT COMMISSION AS FOLLOWS:

Section 1. That the 2024 Airport Budget attached hereto as "Exhibit A" is hereby approved.

Section 2. That the Commission recommends that the Fort Collins City Council and the Loveland City Council each approve the 2024 Airport Budget. The Commission further recommends that the City Councils approve each City's annual contributions to and appropriation of the 2024 Airport Budget.

Section 3. That this Resolution shall be effective as of the date and time of its adoption.

ADOPTED this 21st day of September, 2023.

Don Overcash, Chair of the
Northern Colorado Regional Airport Commission

ATTEST:

Secretary

APPROVED AS TO FORM:

Senior Assistant City Attorney

EXHIBIT A TO RESOLUTION #R-08-2023

2024 Proposed Airport Budget

NORTHERN COLORADO
REGIONAL AIRPORT COMMISSION

	2020 Actual	2021 Actual	2022 Budget	2022 Actual	2023 Budget	2024 Budget	Justification	Percent Change
OPERATING REVENUES								
Hangar Rental	224,059	247,095	225,000	240,022	255,000	215,000	Reduced for decommissioning of A & B hangars	-15.7%
FBO Rent	92,586	92,713	94,172	94,172	94,134	105,008	Increase of two years CPI as per lease or 11.6%	11.6%
Gas and Oil Commissions	111,192	265,576	119,000	405,588	190,000	300,000	This is driven by fuel price and airport activty levels	57.9%
State & County Aircraft Fuel Tax	119,829	127,754	140,000	193,644	166,500	150,000	This is driven by fuel price and airport activty levels	-9.9%
Land Lease	694,391	738,561	749,900	920,494	891,600	1,099,000	Adjusted for new leases, and CPI lease escalations	23.3%
Terminal Lease and Landing Fees	5,700	7,160	12,000	8,024	5,700	75,300	Tied to airline/ bus activity	1221.1%
Parking	4,805	330	75,000	0	0	0	Tied to airline/ bus activity	0.0%
Miscellaneous	23,494	205,476	23,000	132,708	31,100	52,600	Tied to airline/ bus activity	69.1%
TOTAL OPERATING REVENUES	**1,276,056**	**1,684,665**	**1,438,072**	**1,994,652**	**1,634,034**	**1,996,908**	Total	22.2%
OPERATING EXPENSES								
FTE	6	6	7.5	8	8	9		
Personal Services	641,868	668,421	827,312	776,765	1,089,540	1,147,418	FTE	5.3%
Supplies	68,129	74,945	100,000	99,694	115,400	123,550	Inflation adjustments	7.1%
Purchased Services	513,984	435,275	678,619	620,144	1,506,360	1,759,928	adjustments	16.8%
TOTAL OPERATING EXPENSES	**1,223,981**	**1,178,641**	**1,605,931**	**1,496,603**	**2,711,300**	**3,030,896**	Total	11.8%
OPERATING GAIN (LOSS)	**52,075**	**506,023**	**(167,859)**	**498,049**	**(1,077,266)**	**(1,033,988)**	USDOT SCASD Grant cost amounts to this loss- and if received would provide for 75% funding reimbursement	-4.0%
NONOPERATING REVENUES (EXPENSES)								
City Conributions	0	0	0	0	0	0		
Passenger Facility Charge	0	0	65,000	0	0	0	No change	
Interest Income	95,157	(61,294)	75,000	(112,373)	51,000	49,000	Finance controlled investments	-3.9%
Capital Expenditures	(1,481,000)	(3,623,375)	(14,313,373)	(1,082,549)	(30,891,667)	(21,958,000)	Anticipated federal and state funded capital project expenses	-28.9%
TOTAL NONOPERATING REVENUES (EXPENSES)	**(1,385,843)**	**(3,684,669)**	**(14,173,373)**	**(1,194,922)**	**(30,840,667)**	**(21,909,000)**		-29.0%
NET INCOME (LOSS) BEFORE CAPITAL CONTRIBUTIONS	**(1,333,768)**	**(3,178,646)**	**(14,341,232)**	**(696,873)**	**(31,917,933)**	**(22,942,988)**		-28.1%
Capital Contributions	922,000	4,274,041	16,581,373	1,399,819	31,248,000	16,890,000	Terminal Building Construction, Runway Widening Design, potenial grants for SCASDG and BIL Terminal Funding Grants	-45.9%
CHANGE IN NET POSITION	**(411,768)**	**1,095,395**	**2,240,141**	**702,946**	**(669,933)**	**(6,052,988)**	This change is driven by the local share for the terminal project and any grant matches	803.5%
Reserve Appropriation	**500,000**	**1,000,000**	**1,000,000**	**2,000,000**	**2,000,000**	**2,000,000**	IGA stipulates this amount to be the lesser of 50% of unassigned balances of Airport Operating reserves and Capital Fund or less than 25% of the Airport's annual budget	0.0%

NORTHERN COLORADO REGIONAL AIRPORT

Airport Finance

A comprehensive overview of the Northern Colorado Regional Airport's current financial model

1

Goal & Topics of Discussion

NORTHERN COLORADO REGIONAL AIRPORT

- Goal
  - Provide a 30,000-foot view of the Airport's finances
- Topics
  - Revenues
  - Expenses
  - Economic Impacts
- Data included in this presentation is from 2021 (pandemic impacts)

2

Specific Focus Areas

NORTHERN COLORADO REGIONAL AIRPORT

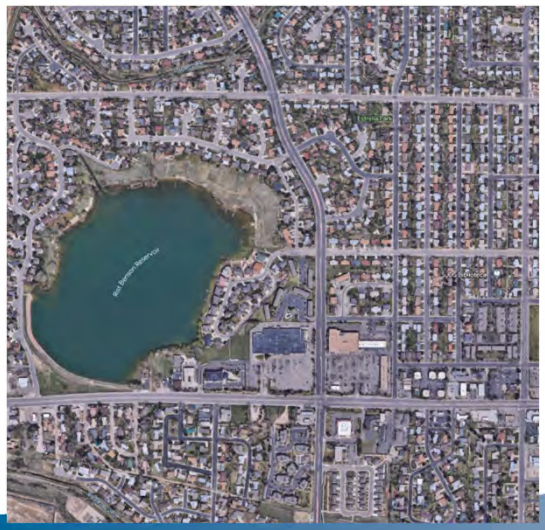
- Historical Background
- Obligations & Funding
  - Self-generated revenues
  - Capital funding
    - Grants what they are and what they can be used for
    - Funding sources and formulary contributions and match requirements
- Operational cost centers
  - Personal services
  - Supplies
  - Professional services
- Cities support and benefits

3

Historical Background

NORTHERN COLORADO REGIONAL AIRPORT

- Cities desired to partner and construct a larger facility to combine their two smaller 1920's era airports
  - Christman Field in Fort Collins still exists
  - Loveland Municipal is to the right
- Airport property acquisition & construction
  - Federal land and capital infrastructure grant in 1964
    - Runway, taxiways, and facilities
  - Required to be used for aviation purposes, and continued federal funding acceptance bind the Cities to these provisions



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Historical Background

NORTHERN COLORADO REGIONAL AIRPORT

- The intergovernmental agreement between the Cities outlines the management and authority for the airport
- Current IGA had its origins from 1994, after the property was annexed into the City of Loveland in 1986
- Conclusion was that Loveland was "the logical managing partner" due to their ability to collect revenues from the airport and geographical proximity.

5

Obligations & Funding: Grants

NORTHERN COLORADO REGIONAL AIRPORT

- Publicly funded improvements made over time specific to supporting aviation needs
  - Federal funds pay up to 90%
  - State funds pay for 5%
- Acceptance of federal and state grants require airport property be used for supporting aeronautical purposes
  - Or municipalities must repay undepreciated grant amounts **plus the value of property**

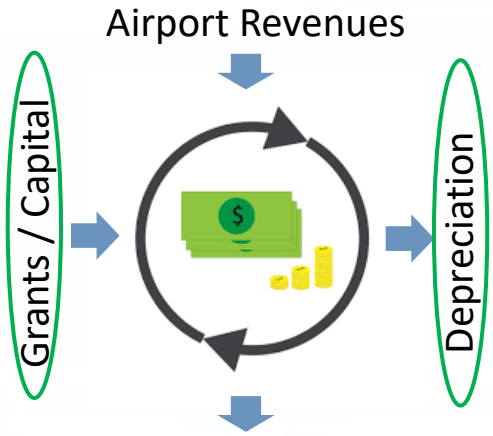
Federal Aviation Administration

COLORADO DIVISION OF AERONAUTICS

6

Obligations & Funding: Grants

NORTHERN COLORADO REGIONAL AIRPORT



- Federal Grant Assurances require that the Airport be operated and managed as self-sustaining as possible
  - All revenues must be reinvested into airport operational expenses
  - Grants provide the capital needed to maintain the safety of airport users- primarily focused on runways, taxiways, and navigational aids
    - Life limited = depreciation of assets
  - Require sponsor to maintain the facilities and provide for revenue generating needs

7

Obligations & Funding

NORTHERN COLORADO REGIONAL AIRPORT

- FAA Exemption: Northern Colorado Law Enforcement Training Center
  - 43-acre site originally purchased through the federal land grant required the Cities obtain approval from the FAA to use the land for non-aviation purposes
  - Approval requires property be leased at fair market value and paid directly to the Airport
- Other non-aeronautical property exists, but is limited and shown on FAA approved Airport Layout Plan

8

Grant Funding: Federal

NORTHERN COLORADO REGIONAL AIRPORT

- Federal
  - National Plan of Integrated Airport Systems
  - Majority of the federal funding provided to airports are self generated by the aviation industry through the taxation of aviation
    - 90% or greater is derived from commercial airline ticket and fuel taxes
    - Less than 10% is generated from all other aviation users
    - All goes into Federal Airport and Airway Trust Fund (AATF)
  - FAA distributes the funding based on need and formula, sometimes funding comes through USDOT directly
    - Safety is the top priority

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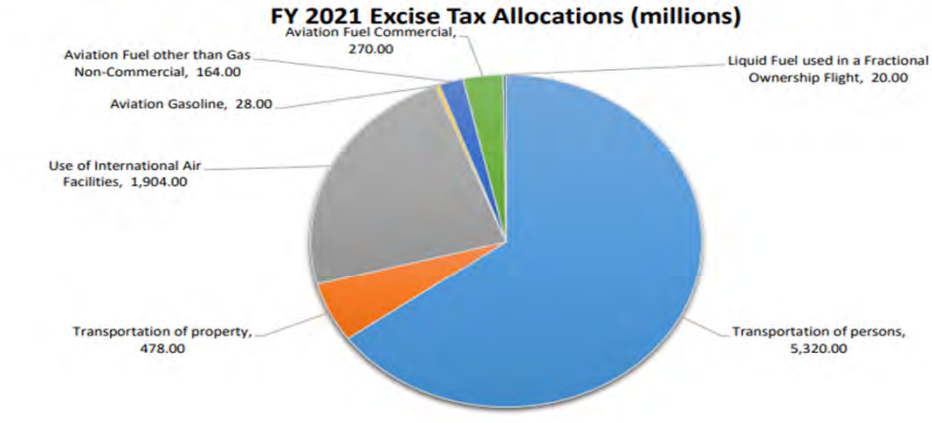
AATF FY 2021 Excise Tax Revenues



Total excise tax revenue $8,186*

*In FY21, there were refunds from the trust fund of $5.09M for aviation fuel taxes and $8.18M for aviation taxes other than gasoline.

10

Grant Funding: Federal

NORTHERN COLORADO REGIONAL AIRPORT

- Airport & Airways Trust Fund
- Airport Improvement Program
  - Formulary Grants
  - Discretionary Grants
- Temporary Rules
  - Pandemic grants, such as the CARES Act, ARPA, & CRSSA
  - BIL/ IIJA: 5 years of additional federal funding
- New General Aviation Airport Classification for FNL: National

11

Grant Funding: Federal

NORTHERN COLORADO REGIONAL AIRPORT

- FNL qualified as a Primary nonhub airport in 2022 with Avelo Airlines
  - Brings $2+ million in formulary grants in 2024 ($1m AIP, $1m BIL)
- No scheduled commercial flights in 2023 other than charter flights, which will likely result in a Nonprimary Commercial Service airport reclassification

Airport Categories	Criteria	Known as:
Commercial Service	Public-owned airports with more than 2,500 annual enplanements (passenger boardings) and scheduled air carrier service	
• Large Hub	Receives 1% or more of the annual U.S. commercial enplanements	Primary
• Medium Hub	Receives 0.25 to 1.0% of the annual U.S. commercial enplanements	Primary
• Small Hub	Receives 0.05 to 0.25% of the annual U.S. commercial enplanements	Primary
• Nonhub	Receives less than 0.05% but more than 10,000 of the annual U.S. commercial enplanements	Primary
• Nonprimary Commercial Service	Also referred to as nonhub nonprimary, these airports have scheduled passenger service and between 2,500 and 10,000 annual enplanements.	Nonprimary
Reliever	An airport designated by the Secretary to relieve congestion at a commercial service airport and to provide more general aviation access to the overall community.	Nonprimary
General Aviation	A public-use airport that does not have scheduled service or has scheduled service with less than 2,500 passenger boardings each year.	Nonprimary

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Grant Funding Federal

NORTHERN COLORADO REGIONAL AIRPORT

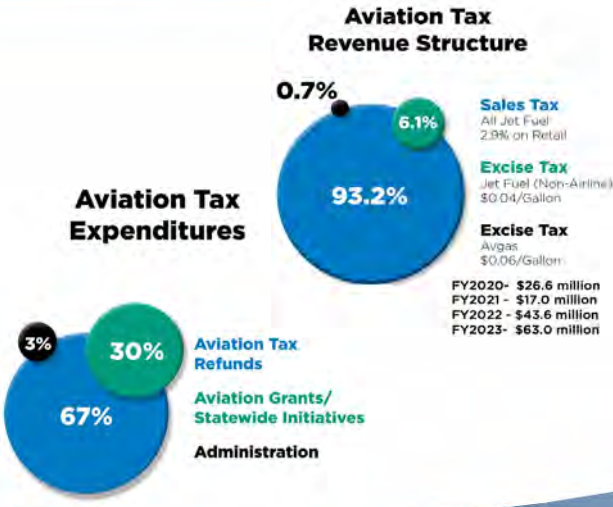
- National classification will provide $845,000 annually guaranteed from the FAA
  - $150K AIP, $695K BIL
- BIL/IIJA additional formulary funding expire in 2026

13

Grant Funding: State

NORTHERN COLORADO REGIONAL AIRPORT

- Funds are 100% self generated through taxation of aviation fuel
- Colorado Department of Transportation Division of Aeronautics
  - Funded through the 2.9% sales tax on aviation fuel
    - Distributes 2/3 of this back to the airport in which the fuel sale originated
    - Remaining 1/3 is put into the discretionary grant program
- Denver Airport provides 80% of state funding



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Grant Funding: State

NORTHERN COLORADO REGIONAL AIRPORT

- State funding provides for the following at FNL:
  - Remote Tower (100%)
  - Federal Grant Matches (50% of local share or 10% split 5%/5%)
  - State-Local Grants (up to 90%)
  - Surplus Equipment (80%)
  - Internships (50%)

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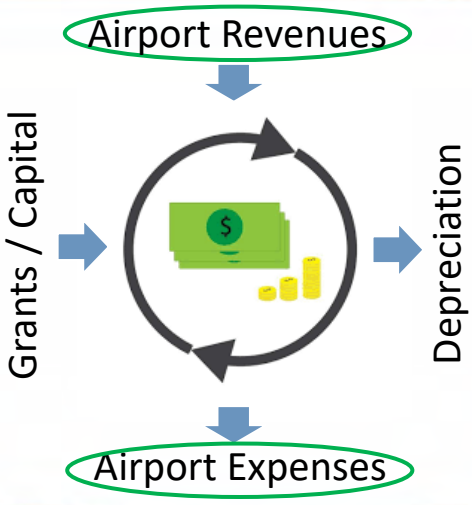
Self-Generated Revenues

NORTHERN COLORADO REGIONAL AIRPORT

- The airport has been operated as a quasi-business seeing that much of the revenues that it generates are used to sustain its expenses.
- This is primarily for the operations and maintenance of the facility
- The airport has been self-sustaining since 2019 for operations and maintenance



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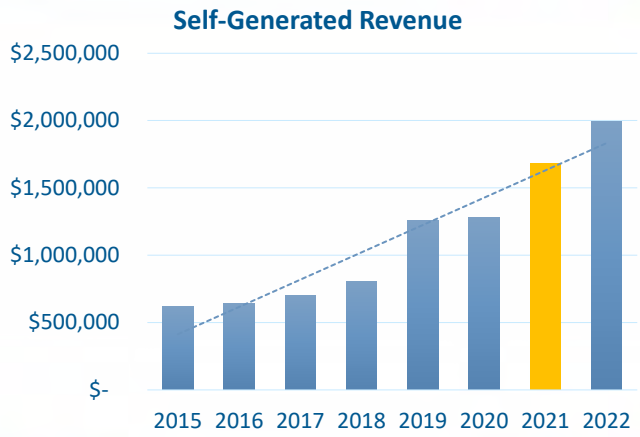
Self-Generated Revenue

NORTHERN COLORADO REGIONAL AIRPORT

- Strategic plan objective was to become financially self sufficient 2015-2021
  - Airport generated revenues rose from $617,000 in 2015 to $2 million in 2022
  - $372,350 was provided by the Cities toward NCLETC land lease in 2021



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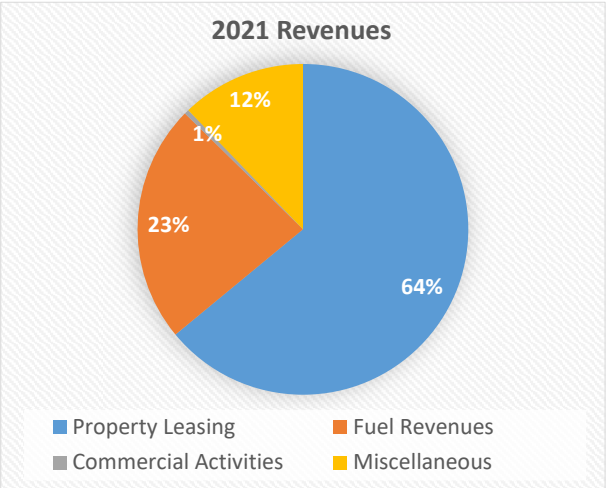
Self-Generated Revenue

NORTHERN COLORADO REGIONAL AIRPORT

- 2021 Total: $1,684,665
  - Property Leasing: $1,078,369
    - Hangars $247K, Airport Businesses & Land Leases $739K, FBO $93K, NCLETC & non-aero $372K
  - Fuel Revenues: $393,330
    - Fuel flowage, State & County sales tax reimbursements
  - Commercial services: $7,490
    - Landing fees, terminal fees, concessions, paid parking
  - Miscellaneous: $205,476
    - Sale of surplus assets, use of equipment (ARFF equipment fire support) $85K, airshow revenues $85K



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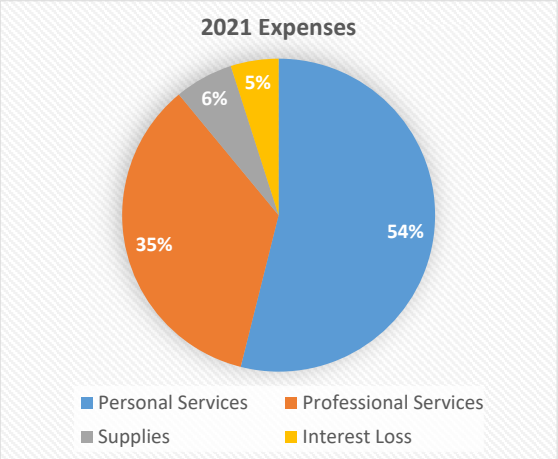
Expenses

NORTHERN COLORADO REGIONAL AIRPORT

- 2021 Total: $1,178,641
  - Personal Services $668,421
    - Salaries & benefits for 7 FTE
  - Professional Services $435,275
    - Contracted services, utilities, training, travel, administrative fees, maintenance, insurance, marketing
  - Supplies $74,945
    - Consumables, fuel, materials, deice, janitorial, tools, office equipment, etc.
  - Interest Losses $61,294
    - Rare loss of investment interest due to pandemic



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Capital Investments & Transfers

NORTHERN COLORADO REGIONAL AIRPORT

- The airport must ensure that adequate savings are available for operational reserves and for capital grant matches
- Capital plan indicates a significant amount of funding to be applied toward large capital projects in the short-term future
- 2021 Capital
  - Terminal design expenses
    - Revenues & Expenses: $631,385
      - Due to 100% funding of this grant
- 2021 Transfer to Capital: $444,730

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Costs to the Cities in 2021

NORTHERN COLORADO REGIONAL AIRPORT

- The Airport pays for certain services that the City of Loveland provides for administrative support
- Airport paid: $169,496
- Loveland allocation: $330,206
- Fort Collins allocation: ~$10,000
  - City Council, CM, Legal, Clerk
  - Estimated based on workload for the year

Service Center	Loveland Provides	Fort Collins Provides	Airport Pays
City Council	$ 1,355	$ 1,200	
City Manager Office	$ 7,540	$ 3,000	
Legal Services	$ 4,554	$ 2,000	
City Clerks	$ 58,827	$ 2,000	
Public Information	$ 1,208	$ -	
Finance	$ 72,696	$ -	
General Fund Admin	$ 311	$ -	$ 23,450
Budget	$ 2,059	$ -	
Human Resources	$ 16,596	$ -	
Employee Benefits	$ 1,819	$ -	
Information Technology	$ 32,530	$ -	
Facilities	$ 640	$ -	
Risk Management	$ 1,221	$ -	
LFRA (estimate)	$ 125,000	$ -	$ 17,000
Liability Insurance	$ -	$ -	$ 31,682
Property Insurance	$ -	$ 1,800	$ -
Fleet Management	$ 3,850	$ -	$ 36,310
Financial Audit	$ -	$ -	$ 13,960
Storm Water	$ -	$ -	$ 21,383
Street Maintenance	$ -	$ -	$ 25,711
Total	$ 330,206	$ 10,000	$ 169,496

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Direct Benefits

NORTHERN COLORADO REGIONAL AIRPORT

- Fort Collins = $0
  - No capability to collect taxes or fees
- Loveland = $252,585
  - Aviation fuel sales tax = $125,170
  - Property tax = $131,466
    - Includes TTF properties with taxiway access
- Balance
  - Fort Collins cost = ~$10,000
  - Loveland cost = $73,843
    - Total cost = $330,206
    - Total tax revenue = $256,636

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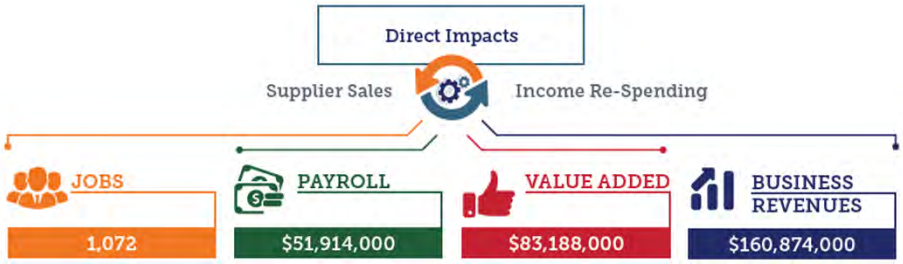
Indirect Benefits

NORTHERN COLORADO REGIONAL AIRPORT

- A 2020 Economic Impact study performed by the Colorado Department of Transportation Division of Aeronautics identified that the airport provides **$296 million** of economic benefit annually.
  - These include all that use, operate, benefit from, and visit through the airport each year.



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Conclusion

NORTHERN COLORADO REGIONAL AIRPORT

- The Airport is financially highly self sufficient
  - Operational and maintenance needs are met through self-generated revenues
  - Capital improvements are challenging to support due to rising costs and limited funding sources
    - Air service can be a revenue driver that could support other airport investment needs
- Intergovernmental agreement shifted the administrative oversight logically to the City of Loveland primarily due to the benefit from tax revenues
  - Airport costs haven't changed since the mid-1990's and should be reviewed as part of the governance investigation

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Future

NORTHERN COLORADO REGIONAL AIRPORT

- Airport infrastructure needs are ineligible or low priority for grant funding is needing to be addressed
  - General Aviation infrastructure
  - Vehicle access roads and parking lots
  - Airport operations and maintenance facilities
  - Utility infrastructure
  - Landscaping and signage
- Cities need to strategically balance the ability to operate the Airport as a business with responsibilities of also adhering to regulatory requirements as a public use facility

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October 17, 2023

AGENDA ITEM SUMMARY
City Council

STAFF

Nina Bodenhamer, City Give Director
Sara Arfmann, Assistant City Attorney

SUBJECT

First Reading of Ordinance No. 141, 2023, Appropriating Philanthropic Revenue Received by City Give for the 2023 Parks Independence Day Celebration.

EXEXUTIVE SUMMARY

The purpose of this item is to appropriate philanthropic revenue designated for the 2023 Parks Independence Day Celebration.

STAFF RECOMMENDATION

Staff recommend adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

The purpose of this item is to appropriate $20,000 in philanthropic revenue received from Elevations Credit Union. The award is designated by the donor as $20,000 for sponsorship of the 2023 Parks Independence Day Celebration.

A sponsorship, also referred to as “underwriting,” is both a community partnership and charitable award. Local businesses sponsor events to invest in community engagement and expand the reach of both organization’s valuable audiences. Per IRS code, businesses can declare portions of a sponsorship as charitable giving. Therefore, the City’s fiduciary responsibility is to steward, track, and report sponsorships as philanthropic revenue.

Each year, the City enters into various sponsorships across departments for events ranging from Kids in the Park to performances at The Lincoln Center, from Open Streets to Gardens of Lights.

Community partnerships and event sponsorships such as support from Elevations Credit Union significantly enhances the City’s service to the community and our residents.

CITY FINANCIAL IMPACTS

This Ordinance will appropriate $20,000 in philanthropic revenue received by City Give in the General Fund for the Parks Department.

The funds have been received and accepted per City Give Administrative and Financial Policy. The City Manager has also determined that these appropriations are available and previously unappropriated from

the General Fund and will not cause the total amount appropriated in the General Fund to exceed the current estimate of actual and anticipated revenues and all other funds to be received in the General Fund during fiscal year 2023.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

None.

PUBLIC OUTREACH

None.

ATTACHMENTS

1. Ordinance for Consideration

ORDINANCE NO. 141, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROPRIATING PHILANTHROPIC REVENUE RECEIVED BY CITY GIVE FOR THE 2023 PARKS INDEPENDENCE DAY CELEBRATION

WHEREAS, in fiscal year 2023, the City received a donation of $20,000 from Elevations Credit Union through the City Give program; and

WHEREAS, Elevations Credit Union designated that the full donation amount ($20,000) be used for its sponsorship of the City's 2023 Parks Independence Day Celebration; and

WHEREAS, this appropriation serves the public purpose of funding the City's Independence Day Celebration, which purpose thereby benefits public health, safety and welfare of the citizens of Fort Collins; and

WHEREAS, 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; and

WHEREAS, the City Manager has recommended the appropriation described herein and determined that this appropriation is available and previously unappropriated from the General Fund and will not cause the total amount appropriated in the General 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.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That there is hereby appropriated from new philanthropic revenue in the General Fund the sum of TWENTY THOUSAND DOLLARS ($20,000) to be expended in the General Fund by the Parks Department for the 2023 Parks Independence Day Celebration.

Introduced, considered favorably on first reading and ordered published this 17th day of October, 2023, and to be presented for final passage on the 21st day of November, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

Passed and adopted on final reading this 21st day of November, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

October 17, 2023

AGENDA ITEM SUMMARY
City Council

STAFF

Nina Bodenhamer, City Give Director
Ted Hewitt, Assistant City Attorney

SUBJECT

First Reading of Ordinance No. 142, 2023, Appropriating Philanthropic Revenue Received Through City Give for the Art in Public Places Program, Pianos About Town Project.

EXECUTIVE SUMMARY

The purpose of this item is to consider an appropriation of $45,221 in philanthropic revenue received by City Give for the Art in Public Places program. This grant award was received from Bohemian Foundation for the designated purpose of Pianos About Town, a collaborative effort among the City's Art in Public Places program, the Fort Collins Downtown Development Authority, and the donor, Bohemian Foundation.

STAFF RECOMMENDATION

Staff recommend adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

Pianos About Town is a collaboration between the City's Art in Public Places program (APP), the Downtown Development Authority's Art in Action program, and Bohemian Foundation. The project involves local artists painting or artistically decorating pianos at the Art in Action tent in Old Town Square where the public can watch the creative process and interact with the artists.

Pianos About Town contributes to the vibrancy of Fort Collins, making art and music fun and accessible for all. These colorfully painted pianos are rotated throughout Fort Collins for the public to enjoy as both musical instruments and works of art.

The $45,221 in philanthropic revenue is a partial award toward the total 2023/2024 grant of $92,336.

The first pianos were placed in Old Town in 2010. Since then, more than 130 donated pianos have been decorated and placed into rotation at sites throughout Fort Collins. The painting and decorating of pianos takes place throughout the year but is moved to indoor venues during the winter months. Area businesses play a key role in the success of the project by "adopting" the painted pianos and covering them during inclement weather.

The City's responsibilities for the funding include but are not limited to: annually acquiring, repairing, pre-painting, preparing, and tuning twelve to thirteen pianos; the coordination of placement, moving and piano tuning; working with appropriate City departments, the DDA and property owners on logistics for placing pianos in desired locations; selecting and managing the visual artists; managing logistics with area partners

of other entities to cover and uncover pianos; and collaborating with Bohemian Foundation to host Pianos About Town related events.

The grant is awarded by Bohemian Foundation, a Fort Collins-based private family foundation that supports local, national, and global efforts to build strong communities. Funding for Equity Indicators was awarded by Bohemian Foundation's Community Programs which is committed to the care and enrichment of our local community.

CITY FINANCIAL IMPACTS

If adopted, this Ordinance will appropriate $45,221 in unanticipated philanthropic revenue in the Cultural Services and Facilities Fund for the Art in Public Places program. The funds have been received and accepted per City Give Administrative and Financial Policy.

The City Manager recommends the appropriation described herein and determined that this appropriation is available and previously unappropriated from the Cultural Services and Facilities Fund and will not cause the total amount appropriated in the Cultural Services and Facilities Fund to exceed the current estimate of actual and anticipated revenues to be received in the Cultural Services and Facilities Fund during this fiscal year.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

None.

PUBLIC OUTREACH

None.

ATTACHMENTS

1. Ordinance for Consideration

ORDINANCE NO. 142, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROPRIATING PHILANTHROPIC REVENUE RECEIVED THROUGH CITY GIVE FOR THE ART IN PUBLIC PLACES PROGRAM, PIANOS ABOUT TOWN PROJECT

WHEREAS, the Pianos About Town project was started by the City's Art in Public Places (APP) program in 2010 and involved local artists painting or decorating pianos in Old Town Square, with the finished pianos being rotated throughout Fort Collins for the public to enjoy; and

WHEREAS, Pianos About Town is now a collaboration between APP, the Downtown Development Authority's Art in Action Program, and Bohemian Foundation; and

WHEREAS, in 2023, Bohemian Found donated $45,221 to support Pianos About Town in 2023, and this Ordinance would appropriate the donated funds for that purpose; and

WHEREAS, this appropriation benefits public health, safety and welfare of the citizens of Fort Collins and serves the public purpose of contributing to the vibrancy of Fort Collins by making art and music fun and accessible for all; and

WHEREAS, 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; and

WHEREAS, the City Manager has recommended the appropriation described herein and determined that this appropriation is available and previously unappropriated from the Cultural Services and Facilities Fund and will not cause the total amount appropriated in the Cultural Services and Facilities 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.

WHEREAS, 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 donation or the City's expenditure of all funds received from such grant or donation; and

WHEREAS, the City Council wishes to designate the appropriation herein for Art in Public Program Places Pianos About Town Project as an appropriation that shall not lapse until the earlier of the expiration of the donation or the City's expenditure of all funds received from such donation.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That there is hereby appropriated from new philanthropic revenue in the General Fund the sum of FORTY-FIVE THOUSAND TWO HUNDRED TWENTY-ONE DOLLARS ($45,221) to be expended in the Cultural Services and Facilities Fund for the Art in Public Places Program Pianos About Town Project.

Section 3. That the appropriation herein for Art in Public Places Program Pianos About Town Project is hereby designated, as authorized in Article V, Section 11 of the City Charter, as an appropriation that shall not lapse at the end of this fiscal year but continue until the earlier of the expiration of the donation or the City's expenditure of all funds received from such grant donation.

Introduced, considered favorably on first reading and ordered published this 17th day of October, 2023, and to be presented for final passage on the 21st day of November, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

Passed and adopted on final reading this 21st day of November, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

October 17, 2023

AGENDA ITEM SUMMARY
City Council

STAFF

Cassie Archuleta, Environmental Services
Kerri Ishmael, Grants Administration
Ted Hewitt, Assistant City Attorney

SUBJECT

First Reading of Ordinance No. 143, 2023, Making a Supplemental Appropriation, Appropriating Prior Year Reserves, Authorizing Transfers and Authorizing Intergovernmental Agreements for the Air Toxics Community Monitoring Project.

EXECUTIVE SUMMARY

The City was awarded a $499,139 Air Toxics Community Monitoring Project Grant from the Environmental Protection Agency (EPA) to provide air toxic monitoring that responds to concerns of residents in underserved communities, builds a broader understanding of air quality issues through innovative approaches including storytelling and art and empowers residents to engage in policy and regulatory discussions. This three-year project will be conducted in partnership with Colorado State University and the Larimer County Department of Health and Environment, with support from the Colorado Department of Public Health and Environment and various community organizations.

The purpose of this item is to support the *Air Toxics Community Monitoring project* by:

● Appropriating $499,139 of unanticipated grant revenue awarded by the EPA

● Appropriating $70,178 from the General Fund reserves

● Utilizing matching funds in the amount of $3,230 from existing 2023 appropriations into this new grant project

This item would authorize the City to accept the grant award and comply with the terms and conditions. This item would also authorize the City to enter into an agreement with Colorado State University to conduct the work contemplated by the grant agreement.

STAFF RECOMMENDATION

Staff recommend adoption of the Ordinance on First Reading

BACKGROUND / DISCUSSION

The primary mission of the EPA grant awarded to the City is to support the City, in partnership with Colorado State University (CSU), Larimer County Department of Health and Environment (LCDHE), Colorado Department of Public Health and Environment (CDPHE) and a suite of community groups, to implement

monitoring of select hazardous air pollutants (HAPs), aligned with efforts to inform and engage underserved residents of Northern Colorado through data sharing, and accessible relevant educational activities.

The EPA funds totaling $499,139, will be combined with staff resources provided by both City and Larimer County personnel, as well as City and Larimer County funds in support of the *Air Toxics Community Monitoring Project*. Total project costs of $623,977 will be used to: 1) leverage local air monitoring expertise to collect, interpret, and share air toxics data that responds to community pollution concerns; 2) expand the engagement of community groups to establish monitoring priorities so they address specific emission sources or sectors and prioritize the needs of underserved residents; 3) increase awareness and understanding of air pollution and air quality data, including the impacts of air toxics exposures; 4) increase the capacity of residents to engage in policy and regulatory discussions and decisions; and 5) build trust across diverse groups.

Goals of this project will be met through three project tasks:

1. **Forming an Air Quality Monitoring Advisory Committee**. The City and Larimer County will collaborate to form a new community Air Quality Monitoring Advisory Committee (AQ-MAC) to establish the criteria for monitoring deployment and community prioritization of locations/sources of concern. Diverse representation is essential to the Advisory Committee. The committee will be composed of community members and organizations, professionals, air quality experts, and government representatives in Northern Colorado. Committee responsibilities will include establishing monitoring site criteria, reviewing findings, making recommendations to the Project Team, and liaising with constituent organizations/residents.

2. **Air Toxics Monitoring**. The strategy will leverage the existing air quality monitoring expertise at CSU using commercially available instrumentation to measure a suite of high-concern air toxics. We have focused our approach on the problem of oil and gas development encroaching residential areas and high-occupancy buildings in Northern Colorado but will also use mobile survey techniques to identify any large, unknown sources in residential areas.

3. **Community Outreach, Engagement, and Air Quality Education**. CSU's Center for Environmental Justice, in collaboration with the City's Equity, Diversity and Inclusion Office, the Fort Collins Community Action Network (FCCAN) and Fuerza Latina, will organize and host a set of workshops aimed to build storytelling skills among youth, build skillsets for policy and civic engagement, and facilitate educational and public awareness events on air pollution.

The North Front Range of Colorado is home to growing population centers and to rapidly expanding oil and gas production. The Denver/Metro North Front Range region is also designated as a severe nonattainment for ozone (O_3). Community concerns are mounting about the adequacy of existing data monitoring networks to identify potential air quality issues, and the ability of local governments to characterize and address risks. Additionally, climate change is exacerbating these issues along the Northern Colorado Front Range, particularly for Latinx residents, children living near the poverty level, and residents with asthma, diabetes, fair or poor health status, or lacking health insurance.

The project will serve underserved populations in Northern Colorado by providing air toxics monitoring that responds to concerns of residents, increasing residents' awareness and understanding of air pollution and air quality data, including impacts of actual and perceived air toxics exposures, increasing residents' capacity to engage in policy and regulatory discussions and decisions, and building trust across diverse groups.

The EPA grant agreement does not require signature by the authorized representative for the City. As noted therein, by drawing down funds awarded by the EPA, the City agrees to award terms and conditions.

As demonstrated in the grant agreement, the City will provide $73,408 in required match, which accounts for both City personnel time and costs in support of community engagement activities. Larimer County will

provide in-kind services totaling $51,430. The City will recognize the $51,430 as in-kind revenue from Larimer County through the life of this project. The combined $124,838 in local match from the City and Larimer County meets the required 20.01% match under the EPA award.

CITY FINANCIAL IMPACTS

This item appropriates $569,317 in costs to support the *Air Toxics Community Monitoring project* from:

- $499,139 in unanticipated grant revenue
- $70,178 in General Fund reserves to be used towards the required matching funds

Additionally, required matching funds in the amount of $3,230 have already been appropriated in the 2023 General Fund in the Environmental Services operating Budget. The $3,230 will be transferred from Environmental Services' 2023 operating budget to the grant project.

This grant from the EPA is a reimbursement type grant, meaning General Fund expenses will be reimbursed up to $499,139.

The $51,430 for in-kind services by Larimer County will be reported in this project as in-kind revenue through the life of the project a/k/a period of performance under the EPA grant, from 10/1/2023 through 9/30/2026.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

The Air Quality Advisory Board (AQAB) provided a letter of support included in the grant application.

PUBLIC OUTREACH

Prior to and during the writing of the application, the project team consulted with a consortium of community groups, including members of the Latinx community, via several meetings to respond to community concerns. This project has the support and involvement of partners such as the Fort Collins Community Action Network, Northern Colorado Medical Society, League of Women Voters of Larimer County, Sierra Club-Poudre Canyon Group, and the Regional Air Quality Planning Council, as well as others.

Additionally, recruitment for the AQ-MAC has been conducted with a diverse array of stakeholders, community groups, and individuals to ensure the committee is representative of the community that this project will serve. AQ-Mac members will provide their lived experience and expertise to the project team to shape the monitoring plans. The goal is that those most vulnerable to air quality impacts will have a significant voice in this project, leading to more equitable outcomes.

ATTACHMENTS

1. Ordinance for Consideration
2. Exhibit A to Ordinance
3. Grant Terms and Conditions
4. AQAB Letter of Support

ORDINANCE NO. 143, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
MAKING A SUPPLEMENTAL APPROPRIATION, APPROPRIATING PRIOR YEAR RESERVES, AUTHORIZING TRANSFERS AND AUTHORIZING INTERGOVERNMENTAL AGREEMENTS FOR THE AIR TOXICS COMMUNITY MONITORING PROJECT

WHEREAS, the northern Front Range of Colorado is home to growing population centers and expanding oil and gas production; and

WHEREAS, community concerns are mounting about the adequacy of existing monitoring networks to identify potential air quality issues from oil and gas production and other sources; and

WHEREAS, the City applied for an Air Toxics Community Monitoring Project Grant from the Environmental Protection Agency (EPA) in collaboration with Colorado State University (CSU) and the Larimer County Department of Health and Environment, with support from the Colorado Department of Public Health and Environment and several community organizations; and

WHEREAS, the EPA awarded the City $499,139 in a three-year Air Toxics Community Monitoring Project Grant (the Grant) to provide air toxic monitoring that responds to concerns of residents in underserved communities, builds a broader understanding of air quality issues through innovative approaches and empowers residents to engage in policy and regulatory discussions (the Project); and

WHEREAS, funding for the Project would total $623,977, with the City providing $73,408 in required matching funds, which includes both City personnel time and costs to support community engagement activities, and Larimer County providing in-kind services worth a total of $51,430; and

WHEREAS, the City Council has previously appropriated funds through Ordinance No, 126, 2022, the 2023-2024 annual appropriation ordinance, to the Environmental Services operating budget in the General Fund that will be transferred by this Ordinance to contribute to the City's required match for the Project; and

WHEREAS, the Air Toxics Community Monitoring Project Grant agreement with the EPA is attached hereto as Exhibit "A"; and

WHEREAS, City staff seek to enter into an intergovernmental agreement with CSU for CSU to conduct monitoring of select hazardous air pollutants using Grant funds; and

WHEREAS, these appropriations benefit the public health, safety and welfare of the residents of Fort Collins and serve the public purposes of improving air quality monitoring in the region, including within the City, and building community understanding of air quality issues; and

WHEREAS, 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; and

WHEREAS, 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 such funds for expenditure as may be available from reserves accumulated in prior years, notwithstanding that such reserves were not previously appropriated; and

WHEREAS, the City Manager has recommended the appropriation described herein and determined that this appropriation is available and previously unappropriated from the General Fund and will not cause the total amount appropriated in the General 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; and

WHEREAS, 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; and

WHEREAS, the City Manager has recommended the transfer of $3,230 from the Environmental Services operating budget in the General Fund to the Air Toxics Community Monitoring Project in the General Fund and determined that the purpose for which the transferred funds are to be expended remains unchanged; and

WHEREAS, 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, 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 donation or the City's expenditure of all funds received from such grant or donation; and

WHEREAS, the City Council wishes to designate the appropriation herein for the Air Toxics Community Monitoring Project Grant as an appropriation that shall not lapse until the earlier of the expiration of the grant or the City's expenditure of all funds received from such grant; and

WHEREAS, Section 1-22 of the City Code requires the City Council to approve intergovernmental agreements and cooperative activities with other governmental entities, except in certain enumerated scenarios.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That there is hereby appropriated from new revenue or other funds in the General Fund the sum of FOUR HUNDRED NINETY-NINE THOUSAND ONE HUNDRED THIRTY-NINE DOLLARS ($499,139) to be expended in the General Fund for the Environmental Services Air Toxics Community Monitoring Project.

Section 3. That there is hereby appropriated from prior year reserves in the General Fund the sum of SEVENTY THOUSAND ONE HUNDRED SEVENTY-EIGHT DOLLARS ($70,178) to be expended in the General Fund for Environmental Services Air Toxics Community Monitoring Project.

Section 4. That the unexpended and unencumbered appropriated amount of THREE THOUSAND TWO HUNDRED THIRTY DOLLARS ($3,230) is authorized for transfer from the Environmental Services operating budget in the General Fund to the Environmental Services Air Toxics Community Monitoring Project.

Section 5. That the appropriation herein for the Environmental Services Air Toxics Community Monitoring Project is hereby designated, as authorized in Article V, Section 11 of the City Charter, as an appropriation 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 6. That the City Council approves the Air Toxics Community Monitoring Project Grant with the Environmental Protection Agency, which is attached hereto as Exhibit "A".

Section 7. That the City Council authorizes the City Manager, in consultation with the City Attorney, to develop and execute an intergovernmental agreement with Colorado State University to conduct monitoring of select hazardous air pollutants using funds from the Air Toxics Community Monitoring Project Grant.

Introduced, considered favorably on first reading and ordered published this 17th day of October, 2023, and to be presented for final passage on the 21st day of November, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

Passed and adopted on final reading this 21st day of November, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

U.S. ENVIRONMENTAL PROTECTION AGENCY

Grant Agreement

GRANT NUMBER (FAIN): 00I09701 **MODIFICATION NUMBER:** 0 **PROGRAM CODE:** 5X	**DATE OF AWARD** 09/13/2023
TYPE OF ACTION New	**MAILING DATE** 09/18/2023
PAYMENT METHOD: ASAP	**ACH#** 80084

RECIPIENT TYPE:
Municipal

Send Payment Request to:
Contact EPA RTPFC at: rtpfc-grants@epa.gov

RECIPIENT:
City of Fort Collins
P. O. Box 580
Fort Collins, CO 80522-0580
EIN: 84-6000587

PAYEE:
City of Fort Collins
P. O. Box 580
Fort Collins, CO 80522-0580

PROJECT MANAGER	EPA PROJECT OFFICER	EPA GRANT SPECIALIST
Emily Olivo 222 Laporte Avenue PO Box 580 Fort Collins, CO 80522-0580 **Email:** eolivo@fcgov.com **Phone:** 970-510-6638	Courtney Johnson 1595 Wynkoop Street Denver, CO 80202-1129 **Email:** Johnson.Courtney@epa.gov **Phone:** 303-312-6456	Jennifer Hale Grants, Acquisition and IAs Branch 1595 Wynkoop Street Denver, CO 80202-1129 **Email:** hale.jennifer@epa.gov **Phone:** 303-312-6330

PROJECT TITLE AND DESCRIPTION

Enhancing Monitoring of Air Toxics and Air Quality Education in Underserved Communities in Northern Colorado

See Attachment 1 for project description.

BUDGET PERIOD	PROJECT PERIOD	TOTAL BUDGET PERIOD COST	TOTAL PROJECT PERIOD COST
10/01/2023 - 09/30/2026	10/01/2023 - 09/30/2026	$623,977.00	$623,977.00

NOTICE OF AWARD

Based on your Application dated 03/23/2022 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards $499,139.00. EPA agrees to cost-share 79.99% of all approved budget period costs incurred, up to and not exceeding total federal funding of $499,139.00. Recipient's signature is not required on this agreement. The recipient demonstrates its commitment to carry out this award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. If the recipient disagrees with the terms and conditions specified in this award, the authorized representative of the recipient must furnish a notice of disagreement to the EPA Award Official within 21 days after the EPA award or amendment mailing date. In case of disagreement, and until the disagreement is resolved, the recipient should not draw down on the funds provided by this award/amendment, and any costs incurred by the recipient are at its own risk. This agreement is subject to applicable EPA regulatory and statutory provisions, all terms and conditions of this agreement and any attachments.

ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)	AWARD APPROVAL OFFICE
ORGANIZATION / ADDRESS	**ORGANIZATION / ADDRESS**
U.S. EPA, Region 8 , Environmental Protection Agency, Region 8 1595 Wynkoop Street Denver, CO 80202-1129	U.S. EPA, Region 8, Air and Radiation Division R8 - Region 8 1595 Wynkoop Street Denver, CO 80202-1129

THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY

Digital signature applied by EPA Award Official Sarah Hulstein - Grant Management Officer	**DATE** 09/13/2023

EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	$0	$499,139	$499,139
EPA In-Kind Amount	$0	$0	$0
Unexpended Prior Year Balance	$0	$0	$0
Other Federal Funds	$0	$0	$0
Recipient Contribution	$0	$73,408	$73,408
State Contribution	$0	$0	$0
Local Contribution	$0	$51,430	$51,430
Other Contribution	$0	$0	$0
Allowable Project Cost	$0	$623,977	$623,977

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.034 - Surveys-Studies-Investigations-Demonstrations and Special Purpose Activities relating to the Clean Air Act	Clean Air Act: Sec. 103	2 CFR 200, 2 CFR 1500 and 40 CFR 33

Fiscal									
Site Name	Req No	FY	Approp. Code	Budget Oganization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
-	2308FID039	2231	E1SFX	08FCO23	000AMTXM1	4183	-	-	$499,139
									$499,139

Budget Summary Page

Table A - Object Class Category (Non-Construction)	Total Approved Allowable Budget Period Cost
1. Personnel	$86,775
2. Fringe Benefits	$6,638
3. Travel	$0
4. Equipment	$0
5. Supplies	$0
6. Contractual	$0
7. Construction	$0
8. Other	$530,564
9. Total Direct Charges	$623,977
10. Indirect Costs: 0.00 % Base	$0
11. Total (Share: Recipient 20.01 % Federal 79.99 %)	$623,977
12. Total Approved Assistance Amount	$499,139
13. Program Income	$0
14. Total EPA Amount Awarded This Action	$499,139
15. Total EPA Amount Awarded To Date	$499,139

Attachment 1 - Project Description

The agreement provides funding under Inflation Reduction Act to conduct ambient air monitoring of pollutants of greatest concern in communities with environmental and health outcome disparities stemming from pollution and the COVID-19 pandemic.

The North Front Range of Colorado is home to growing population centers and to rapidly expanding oil and gas production. The Denver/Metro North Front Range region is also designated as serious nonattainment for ozone (O3) and will soon be downgraded to severe status. Community concerns are mounting about the adequacy of existing monitoring data networks to identify potential air quality issues, and the ability of local governments to characterize and address risks. Additionally, climate change is exacerbating these issues along the Northern Colorado Front Range, particularly for Latinx residents, children living near the poverty level, and residents with asthma, diabetes, fair or poor health status, or lacking health insurance. This project will provide air toxic monitoring that responds to concerns of residents in underserved communities, will increase awareness of air pollution, will build a broader understanding of air quality issues through innovative approaches including story-telling and art, and will hold workshops to further empower residents to engage in policy and regulatory discussions and seeking enforcement actions if warranted. The activities will be used to support community and local efforts to monitor their own air quality and to promote air quality monitoring partnerships between communities and tribal, state, and local governments that: leverage existing air quality expertise, expand use of community monitoring groups and other approaches that give the community a voice in the monitoring of the air quality, increase the capacity of residents to engage in policy and regulatory discussions and decisions, and build a foundation of trusting relationships and enhanced understanding from which sustainable solutions to community air pollution problems can be found.

The anticipated deliverables include an Air Quality Monitoring Advisory Committee (AQ-MAC) membership list and charter, AQ-MAC site selection criteria, initial monitoring site locations, updates to site selection criteria and locations, project Standard Operating Procedures (SOPs) and field plans, project websites, monthly data analysis reports/briefings, public updates, final data analysis report, final data presentations, final data to Colorado State University digital repository, workshop materials, attendance and feedback reports, and final public engagement and art installation report.

The expected outcomes include identifying Environmental Justice (EJ) priority monitoring areas; empower underserved communities to investigate potential concerns; identify acute and chronic air quality issues; increase community engagement in air quality monitoring planning, increase awareness of abundance and impact of air toxics; increase access to air toxics data for a wider range of communities; pursue community action to mitigate air pollution, increase investment in local policy to reduce air toxics; increase connections and trust with government agencies; create workshops focused on 1) storytelling related to environmental injustices 2) discuss civic engagement on air issues 3) complete general outreach and education on air quality fundamentals in northern Colorado (public art events and installations).

The intended beneficiaries include the city of Fort Collins. The City of Fort Collins, in partnership with Colorado State University (CSU), Larimer County Department of Health and Environment (LCDHE), Colorado Department of Public Health and Environment (CDPHE) and a suite of community groups, propose to implement monitoring of select hazardous air pollutants (HAPs), aligned with efforts to inform and engage underserved residents of Northern Colorado through data sharing, and accessible relevant educational activities. The primary goals of the project are to 1) leverage local air monitoring expertise to collect, interpret, and share air toxics data that responds to community pollution concerns, 2) expand the engagement of community groups to establish monitoring priorities so they address specific emission sources or sectors and prioritize the needs of underserved residents, 3) increase awareness and understanding of air pollution and air quality data, including the impacts of air toxics exposures, 4) increase the capacity of residents to engage in policy and regulatory discussions and decisions, and 5) build trust across diverse groups.

Administrative Conditions

National Administrative Terms and Conditions

General Terms and Conditions

The recipient agrees to comply with the current EPA general terms and conditions available at: https://www.epa.gov/grants/epa-general-terms-and-conditions-effective-october-1-2022-or-later.

These terms and conditions are in addition to the assurances and certifications made as a part of the award and the terms, conditions, or restrictions cited throughout the award.

The EPA repository for the general terms and conditions by year can be found at: https://www.epa.gov/grants/grant-terms-and-conditions#general.

A. Correspondence Condition

The terms and conditions of this agreement require the submittal of reports, specific requests for approval, or notifications to EPA. Unless otherwise noted, all such correspondence should be sent to the following email addresses:

- Federal Financial Reports (SF-425): rtpfc-grants@epa.gov and Grant Specialist, Jennifer Hale at hale.jennifer@epa.gov.
- MBE/WBE reports (EPA Form 5700-52A): Grant Specialist, Jennifer Hale at hale.jennifer@epa.gov.
- All other forms/certifications/assurances, Indirect Cost Rate Agreements, Requests for Extensions of the Budget and Project Period, Amendment Requests, Requests for other Prior Approvals, updates to recipient information (including email addresses, changes in contact information or changes in authorized representatives) and other notifications: Grant Specialist, Jennifer Hale at hale.jennifer@epa.gov and Project Officer Courtney Johnson at johnson.courtyney@epa.gov.
- Quality Assurance documents, workplan revisions, equipment lists, programmatic reports and deliverables: Project Officer Courtney Johnson at johnson.courtyney@epa.gov.

B. Leveraging

The recipient agrees to provide the proposed leveraged funding, including any voluntary cost-share contribution or overmatch, that is described in its proposal. If the proposed leveraging does not materialize during the period of award performance, and the recipient does not provide a satisfactory explanation, the Agency may consider this factor in evaluating future proposals from the recipient. In addition, if the proposed leveraging does not materialize during the period of award performance then EPA may reconsider the legitimacy of the award; if EPA determines that the recipient knowingly or recklessly provided inaccurate information regarding the leveraged funding the recipient described in its proposal, EPA may take action as authorized by 2 CFR Part 200 and/or 2 CFR Part 180 as applicable.

C. Voluntary Cost-Share or Overmatch

This award and the resulting federal funding of $499,139.00 is based on estimated costs

requested in the recipient's application dated 03/23/2022. Included in these costs is a voluntary cost-share contribution of $73,408.00 by the recipient and $51,430.00 from project partner(s) in the form of a voluntary cost-share or overmatch (providing more than any minimum required cost-share) for a total of $124,838.00 of voluntary cost-share contributions. The recipient must provide this voluntary cost-share contribution during performance of this award unless the EPA agrees otherwise in a modification to this agreement. While actual total costs may differ from the estimates in the recipient's application, EPA's participation shall not exceed the total amount of federal funds awarded.

If the recipient fails to provide the voluntary cost-share contribution during the period of award performance, and EPA does not agree to modify the agreement to reduce the cost share, the recipient is in violation of the terms of the agreement. In addition to other remedies available under 2 CFR Part 200, the Agency may consider this factor in evaluating future proposals from the recipient. In addition, if the voluntary cost-share contribution does not materialize during the period of award performance then EPA may reconsider the legitimacy of the award; if EPA determines that the recipient knowingly or recklessly provided inaccurate information regarding the voluntary cost-share or overmatch the recipient described in its proposal. EPA may take action as authorized by 2 CFR Part 200 and/or 2 CFR Part 180 as applicable.

Programmatic Conditions

Grant-Specific Programmatic Terms and Conditions (as of 2/01/2023)

A. PERFORMANCE REPORTING AND FINAL PERFORMANCE REPORT

Performance Reports – Content

In accordance with 2 CFR 200.329, the recipient agrees to submit performance reports that include brief information on each of the following areas: 1) A comparison of actual accomplishments to the outputs/outcomes established in the assistance agreement work plan for the period; 2) The reasons why established outputs/outcomes were not met; and 3) Additional pertinent information, including, when appropriate, analysis and explanation of cost overruns or high-unit costs.

Additionally, the recipient agrees to inform EPA as soon as problems, delays, or adverse conditions which will materially impair the ability to meet the outputs/outcomes specified in the assistance agreement work plan are known.

(See Grants Policy Issuance 11-03 State Grant Workplans and Progress Reports for more information)

Performance Reports - Frequency

The recipient agrees to submit **quarterly** performance reports electronically to the EPA Project Officer within 30 days after the quarterly reporting period ends. The reporting periods are October - December, January - March, April - June, and July - September. The recipient must submit the final performance report no later than 120 calendar days after the end date of the period of performance.

Subaward Performance Reporting

The recipient must report on its subaward monitoring activities under 2 CFR 200.332(d). Examples of items that must be reported if the pass-through entity has the information available are:

1. Summaries of results of reviews of financial and programmatic reports.

2. Summaries of findings from site visits and/or desk reviews to ensure effective subrecipient performance.

3. Environmental results the subrecipient achieved.

4. Summaries of audit findings and related pass-through entity management decisions.

5. Actions the pass-through entity has taken to correct deficiencies such as those specified at 2 CFR 200.332(e), 2 CFR 200.208 and the 2 CFR Part 200.339 Remedies for Noncompliance.

Note: EPA Project Officers may customize this reporting requirement based on programmatic information needs.

B. Data Reporting

Data and/or related observations must be shared publicly and in a practicable amount of time throughout the lifetime of the project and not only after the project is at or near completion.

C. Cybersecurity Condition

Cybersecurity Grant Condition for Other Recipients, Including Intertribal Consortia

(a) The recipient agrees that when collecting and managing environmental data under this assistance agreement, it will protect the data by following all applicable State or Tribal law cybersecurity requirements.

(b) (1) EPA must ensure that any connections between the recipient's network or information system and EPA networks used by the recipient to transfer data under this agreement, are secure. For purposes of this Section, a connection is defined as a dedicated persistent interface between an Agency IT system and an external IT system for the purpose of transferring information. Transitory, user-controlled connections such as website browsing are excluded from this definition.

If the recipient's connections as defined above do not go through the Environmental Information Exchange Network or EPA's Central Data Exchange, the recipient agrees to contact the EPA Project Officer (PO) no later than 90 days after the date of this award and work with the designated Regional/Headquarters Information Security Officer to ensure that the connections meet EPA security requirements, including entering into Interconnection Service Agreements as appropriate. This condition does not apply to manual entry of data by the recipient into systems operated and used by EPA's regulatory programs for the submission of reporting and/or compliance data.

(2) The recipient agrees that any subawards it makes under this agreement will require the subrecipient to comply with the requirements in (b)(1) if the subrecipient's network or information system is connected to EPA networks to transfer data to the Agency using systems other than the Environmental Information Exchange Network or EPA's Central Data Exchange. The recipient will be in compliance with this condition: by including this requirement in subaward agreements; and during subrecipient monitoring deemed necessary by the recipient under 2 CFR 200.332(d), by inquiring whether the subrecipient has contacted the EPA Project Officer. Nothing in this condition requires the recipient to contact the EPA Project Officer on behalf of a subrecipient or to be involved in the negotiation of an Interconnection Service Agreement between the subrecipient and EPA.

D. Public or Media Events

The Recipient agrees to notify the EPA Project Officer listed in this award document of public or media events publicizing the accomplishment of significant events related to construction projects as a result of this agreement, and provide the opportunity for attendance and participation by federal representatives with at least ten (10) working days' notice.

E. Geospatial Data Standards

All geospatial data created must be consistent with Federal Geographic Data Committee (FGDC) endorsed standards. Information on these standards may be found at https://www.fgdc.gov/.

F. Use of Logos

If the EPA logo is appearing along with logos from other participating entities on websites, outreach materials, or reports, it must **not** be prominently displayed to imply that any of the recipient or subrecipient's activities are being conducted by the EPA. Instead, the EPA logo should be accompanied with a statement indicating that the [Insert Recipient or subrecipient NAME] received financial support from the EPA under an Assistance Agreement. More information is available at: https://www.epa.gov/stylebook/using-epa-seal-and-logo#policy

G. DURC/iDURC

The recipient agrees to not initiate any life sciences research involving agents and toxins identified in Section 6.2.1 of the *United States Government Policy for Institutional Oversight of Life Sciences Dual Use Research of Concern (iDURC Policy)* until appropriate review and clearance by the recipient institution's Institutional Review Entity (IRE). The recipient also agrees to temporarily suspend life sciences research in the event that, during the course of the research project, the IRE determines that the life sciences research meets the definition of DURC in the iDURC Policy, and the recipient agrees to notify the EPA Institutional Contact for Dual Use Research (ICDUR) (DURC@epa.gov) of the institution's determination.

H. Competency Policy

Competency of Organizations Generating Environmental Measurement Data

Competency of Organizations Generating Environmental Measurement Data: In accordance with Agency Policy Directive Number FEM-2012-02, Policy to Assure the Competency of Organizations Generating Environmental Measurement Data under Agency-Funded Assistance Agreements, recipient agrees, by entering into this agreement, that it has demonstrated competency prior to award, or alternatively, where a pre-award demonstration of competency is not practicable, the recipient agrees to demonstrate competency prior to carrying out any activities under the award involving environmental information operations (*i.e.*, the collection, production, evaluation or use of environmental information and/or the design, construction, operation, or application of environmental technology). The recipient shall maintain competency for the duration of the agreement's period of performance, and this will be documented during the annual reporting process. To access the Policy and other information about the Policy, visit http://www.epa.gov/fem/lab_comp.htm. A copy of the Policy is available directly at https://www.epa.gov/measurements-modeling/documents-about-measurement-competency-under-assistance-agreements, or a copy may be requested by contacting the EPA Project Officer for this award.

I. Quality Assurance Project Plan

1. A Quality Assurance Project Plan (QAPP) is a record of determinations made during planning by the organization of the data type, quality, and quantity necessary to meet project objectives and the quality assurance and quality control procedures, specifications, and documentation that the recipient will use to ensure the desired results. This

quality assurance documentation requirement applies to all grants that involve environmental information operations (i.e., the collection, production, evaluation or use of environmental information and/or the design, construction, operation, or application of environmental technology).

2. To be approvable, the grant recipient must develop a QAPP or equivalent QA document that meets all requirements outlined in *EPA QA Project Plan Requirements*, QA/R-5. The term QAPP will be used hence forward in this grant QA Term and Condition (R8 QA T&C) to refer to the QAPP or equivalent QA document.

3. As applicable and in accordance with 2 CFR 1500.12, the recipient agrees to document in a QAPP, the quality assurance (QA), quality control (QC), and technical activities that must be implemented to ensure that the project objectives are met. Multiple QAPPs and/or a multi-year QAPPs may be prepared as directed in the Work Plan and by the EPA Project Officer.

4. Recipients implementing environmental information operations (defined in Section 1) within the scope of the assistance agreement must submit a QAPP to the EPA Project Officer and EPA QA reviewer for review and approval no later than 90 days prior to performing work that includes environmental information operations. Earlier submissions are welcome.

5. The QAPP shall be prepared for each project in accordance with (IAW) EPA QA/R-5: EPA Requirements for Quality Assurance Project Plans. For each QAPP, complete the Region 8 QA Document Review Crosswalk (QAPP Review Crosswalk). In the QAPP Review Crosswalk the recipient shall identify the specific page number(s) and section(s) of the QAPP that addresses the corresponding required QAPP element in QA/R-5, including a detailed explanation for any elements considered not applicable to the grant. The recipient shall submit the completed crosswalk with the QAPP to the EPA Project Officer and EPA QA contact for review and approval. Each QAPP has a maximum period of performance of 5 years.

6. The recipient agrees to ensure that no environmental information operations (defined in Section 1) occur without a QAPP that is approved by the EPA Regional Quality Assurance Manager or their delegate, except under circumstances requiring immediate action to protect human health and the environment or operations conducted under police powers. In the case of this exception, QAPPs must be approved within 30 days of the recipient's first date responding to the incident.

7. For multi-year QAPPs, the recipient must review the current QAPP annually to reconfirm its suitability and effectiveness and its alignment with the grant's work plan. The recipient shall document the review using the Region

8 QA Document Review Crosswalk (QAPP Review Crosswalk). In the QAPP Review Crosswalk the recipient shall identify the specific page number(s) and section(s) of changes to the approved version of the QAPP and include a description of what changed and why in the crosswalk element's comment box. For multi-year QAPPs, the documented annual QAPP review results (using the QAPP Review Crosswalk) must be submitted to EPA Project Officer and QA reviewer annually, no later than 60 days prior to the anniversary date of EPA's approval of the QAPP as a new document. Significant changes to the project require the recipient to modify the QAPP and submit the updated QAPP as a new document as described in Sections 4-5. The recipient must submit the updated QAPP and completed Region 8 QA Document Review Crosswalk to the EPA Project Officer and QA reviewer for review and approval. Only after the revision has been approved shall the change be implemented.

J. Leveraging:

The recipient agrees to provide the proposed leveraged funding, including any voluntary cost-share contribution or overmatch, that is described in its proposal dated 08/21/2023. If the proposed leveraging does not materialize during the period of award performance, and the recipient does not provide a satisfactory explanation, the Agency may consider this factor in evaluating future proposals from the recipient. In addition, if the proposed leveraging does not materialize during the period of award performance then EPA may reconsider the legitimacy of the award; if EPA determines that the recipient knowingly or recklessly provided inaccurate information regarding the leveraged funding the recipient described in its proposal dated 08/21/2023 EPA may take action as authorized by 2 CFR Part 200 and/or 2 CFR Part 180 as applicable.

K. Voluntary Cost-Share or Overmatch

This award and the resulting federal funding of $499,139 is based on estimated costs requested in the recipient's application dated 08/21/2023. Included in these costs is a voluntary cost-share contribution of $124,838 by the recipient in the form of a voluntary cost-share or overmatch (providing more than any minimum required cost-share) that the recipient included in its proposal dated 08/21/2023. The recipient must provide this voluntary cost-share contribution during performance of this award unless the EPA agrees otherwise in a modification to this agreement. While actual total costs may differ from the estimates in the recipient's application, EPA's participation shall not exceed the total amount of federal funds awarded.

If the recipient fails to provide the voluntary cost-share contribution during the period of award performance, and EPA does not agree to modify the agreement to reduce the cost share, the recipient is in violation of the terms of the agreement. In addition to other remedies available under 2 CFR Part 200, the Agency may consider this factor in evaluating future proposals from the recipient. In addition, if the voluntary cost-share contribution does not materialize during the period of award performance then EPA may reconsider the legitimacy of the award; if EPA determines that the recipient knowingly or recklessly provided inaccurate information regarding the voluntary cost-share or overmatch the recipient described in its proposal dated 08/21/2023 EPA may take action as authorized by 2 CFR Part 200 and/or 2 CFR Part 180 as applicable.

EPA General Terms and Conditions Effective October 1, 2022

1. Introduction

(a) The recipient and any sub-recipient must comply with the applicable EPA general terms and conditions outlined below. These terms and conditions are in addition to the assurances and certifications made as part of the award and terms, conditions, and restrictions reflected on the official assistance award document. Recipients **must** review their official award document for additional administrative and programmatic requirements. Failure to comply with the general terms and conditions outlined below and those directly reflected on the official assistance award document may result in enforcement actions as outlined in 2 CFR 200.339 and 200.340.

(b) If the EPA General Terms and Conditions have been revised, EPA will update the terms and conditions when it provides additional funding (incremental or supplemental) prior to the end of the period of performance of this agreement. The recipient must comply with the revised terms and conditions after the effective date of the EPA action that leads to the revision. Revised terms and conditions do not apply to the recipient's expenditures of EPA funds or activities the recipient carries out prior to the effective date of the EPA action. EPA will inform the recipient of revised terms and conditions in the action adding additional funds.

2. Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards

This award is subject to the requirements of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards; Title 2 CFR, Parts 200 and 1500. 2 CFR 1500.2, Adoption of 2 CFR Part 200, states the Environmental Protection Agency adopts the Office of Management and Budget (OMB) guidance Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards to Non-Federal Entities (subparts A through F of 2 CFR Part 200), as supplemented by 2 CFR Part 1500, as the Environmental Protection Agency (EPA) policies and procedures for financial assistance administration. 2 CFR Part 1500 satisfies the requirements of 2 CFR 200.110(a) and gives regulatory effect to the OMB guidance as supplemented by 2 CFR Part 1500. This award is also subject to applicable requirements contained in EPA programmatic regulations located in 40 CFR Chapter 1 Subchapter B.

2.1. Effective Date and Incremental or Supplemental Funding. Consistent with the OMB Frequently Asked Questions at https://cfo.gov/cofar on Effective Date and Incremental Funding, any new funding through an amendment (supplemental or incremental) on or after December 26, 2014, and any unobligated balances (defined at 2 CFR 200.1) remaining on the award at the time of the amendment, will be subject to the requirements of the Uniform Administrative Requirements, Cost Principles and Audit Requirements (2 CFR Parts 200 and 1500).

3. Termination

Consistent with 2 CFR 200.340, EPA may unilaterally terminate this award in whole or in part:

a. if a recipient fails to comply with the terms and conditions of the award including statutory or regulatory requirements; or

b. if the award no longer effectuates the program goals or agency priorities. Situations in which EPA may terminate an award under this provision include when:

(i) EPA obtains evidence that was not considered in making the award that reveals that specific award objective(s) are ineffective at achieving program goals and EPA determines that it is in the government's interest to terminate the award;

(ii) EPA obtains evidence that was not considered in making the award that causes EPA to significantly question the feasibility of the intended objective(s) of the award and EPA determines that it is in the government's interest to terminate the award;

(iii) EPA determines that the objectives of the award are no longer consistent with funding priorities for achieving program goals.

Financial Information

4. Reimbursement Limitation

EPA's financial obligations to the recipient are limited by the amount of federal funding awarded to date as reflected on the award document. If the recipient incurs costs in anticipation of receiving additional funds from EPA, it does so at its own risk. See 2 CFR 1500.9.

5. Automated Standard Application Payments (ASAP) and Proper Payment Draw Down

Electronic Payments. Recipients must be enrolled or enroll in the Automated Standard Application for Payments (ASAP) system to receive payments under EPA financial assistance agreements unless:

- EPA grants a recipient-specific exception;
- The assistance program has received a waiver from this requirement;
- The recipient is exempt from this requirement under 31 CFR 208.4; or,
- The recipient is a fellowship recipient pursuant to 40 CFR Part 46.

EPA will not make payments to recipients until the ASAP enrollment requirement is met unless the recipients fall under one of the above categories. Recipients may request exceptions using the procedures below but only EPA programs may obtain waivers.
To enroll in ASAP, complete the ASAP Initiate Enrollment Form located at:
https://www.epa.gov/financial/forms and email it to rtpfc-grants@epa.gov or mail it to:

US Environmental Protection Agency
RTP-Finance Center (Mail Code AA216-01)
4930 Page Rd.
Durham, NC 27711

Under this payment mechanism, the recipient initiates an electronic payment request online via ASAP, which is approved or rejected based on the amount of available funds authorized by EPA in the recipient's ASAP account. Approved payments are credited to the account at the financial institution of the recipient organization set up by the recipient during the ASAP enrollment process. Additional information concerning ASAP and enrollment can be obtained by contacting the EPA Research Triangle Park Finance Center (RTPFC), at rtpfc-grants@epa.gov or 919-541-5347, or by visiting: https://www.fiscal.treasury.gov/asap/.

EPA will grant exceptions to the ASAP enrollment requirement only in situations in which the recipient demonstrates to EPA that receiving payment via ASAP places an undue administrative or financial management burden on the recipient or EPA determines that granting the waiver is in the public interest. Recipients may request an exception to the requirement by following the procedures specified in RAIN-2018-G06-R.

Proper Payment Drawdown (for recipients other than states)

a. As required by 2 CFR 200.305(b), the recipient must draw funds from ASAP only for the minimum amounts needed for actual and immediate cash requirements to pay employees, contractors, subrecipients or to satisfy other obligations for allowable costs under this assistance agreement. The timing and amounts of the drawdowns must be as close as administratively feasible to actual disbursements of EPA funds. Disbursement within 5 business days of drawdown will comply with this requirement and the recipient agrees to meet this standard when performing this award.

b. Recipients may not retain more than 5% of the amount drawn down, or $1,000 whichever is less, 5 business days after drawdown to materially comply with the standard. Any EPA funds subject to this paragraph that remain undisbursed after 5 business days must be fully disbursed within 15 business days of draw down or be returned to EPA.

c. If the recipient draws down EPA funds in excess of that allowed by paragraph b., the recipient must contact rtpfc-grants@epa.gov for instructions on whether to return the funds to EPA. Recipients must comply with the requirements at 2 CFR 200.305(b)(8) and (9) regarding depositing advances of Federal funds in interest bearing accounts.

d. Returning Funds: Pay.gov is the preferred mechanism to return funds. It is free, secure, paperless, expedient, and does not require the recipient/vendor to create an account. Contact RTPFC-Grants at rtpfc-grants@epa.gov to obtain complete instructions. Additional information is available at the Pay.gov website: (https://www.pay.gov/public/home). Information on how to repay EPA via check is available at https://www.epa.gov/financial/makepayment. Instructions on how to return funds to EPA electronically via ASAP are available at https://www.fiscal.treasury.gov/asap/.

e. Failure on the part of the recipient to materially comply with this condition may, in addition to EPA recovery of the un-disbursed portions of the drawn down funds, lead to changing the payment method from advance payment to a reimbursable basis. EPA may also take other remedies for noncompliance under 2 CFR 200.208 and/or 2 CFR 200.339.

f. If the recipient believes that there are extraordinary circumstances that prevent it from complying with the 5-business day disbursement requirement throughout the performance period of this agreement, recipients may request an exception to the requirement by following the procedures specified in RAIN-2018-G06-R. EPA will grant exceptions to the 5-business day disbursement requirement only if the recipient demonstrates that compliance places an undue administrative or financial management burden or EPA determines that granting the exception is in the public interest.

Proper Payment Drawdown for State Recipients

In accordance with 2 CFR 200.305(a), payments are governed by Treasury-State Cash Management Improvement Act (CMIA) agreements and default procedures codified at 31 CFR Part 205, Subparts A and B and Treasury Financial Manual (TFM) 4A-2000, "Overall Disbursing Rules for All Federal Agencies" unless a program specific regulation (e.g. 40 CFR 35.3160 or 40 CFR 35.3560) provides otherwise. Pursuant to 31 CFR Part 205, Subpart A—*Rules Applicable to Federal Assistance Programs Included in a Treasury-State Agreement*, States follow their Treasury-State CMIA Agreement for major Federal programs listed in the agreement. For those programs not listed as major in the Treasury-State agreement, the State follows the default procedures in 31 CFR Part 205, Subpart B—Rules Applicable to Federal Assistance Programs Not Included in a Treasury-State Agreement, which directs State recipients to draw-down and disburse Federal financial assistance funds in anticipation of immediate cash needs of the State for work under the award. States must comply with 2 CFR 200.302(a) in reconciling costs incurred and charged to EPA financial assistance agreements at time of close out unless a program specific regulation provides otherwise.

Selected Items of Cost

6. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

This term and condition implements 2 CFR 200.216 and is effective for obligations and expenditures of EPA financial assistance funding on or after 8/13/2020.

As required by 2 CFR 200.216, EPA recipients and subrecipients, including borrowers under EPA funded revolving loan fund programs, are prohibited from obligating or expending loan or grant funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). Recipients, subrecipients, and borrowers also may not use EPA funds to purchase:

a. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

b. Telecommunications or video surveillance services provided by such entities or using such equipment.

c. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Consistent with 2 CFR 200.471, costs incurred for telecommunications and video surveillance services or equipment such as phones, internet, video surveillance, and cloud servers are allowable except for the following circumstances:

a. Obligating or expending EPA funds for covered telecommunications and video surveillance services or equipment or services as described in 2 CFR 200.216 to:
(1) Procure or obtain, extend or renew a contract to procure or obtain;
(2) Enter into a contract (or extend or renew a contract) to procure; or
(3) Obtain the equipment, services, or systems.

Certain prohibited equipment, systems, or services, including equipment, systems, or services produced or provided by entities identified in section 889, are recorded in the System for Award Management exclusion list.

7. Consultant Cap

EPA participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors shall be limited to the maximum daily rate for a Level IV of the Executive Schedule, available at: https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/, to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed (the recipient will pay these in accordance with their normal travel reimbursement practices).

Information on how to calculate the maximum daily rate and the daily pay limitation is available at the Office Of Personnel Management's Fact Sheet: How to Compute Rates of Pay and Fact Sheet: Expert and Consultant Pay. Specifically, to determine the maximum daily rate, follow these steps:

1. Divide the Level IV salary by 2087 to determine the hourly rate. Rates must be rounded to the nearest cent, counting one-half cent and over as the next higher cent (e.g., round $18.845 to $18.85).
2. Multiply the hourly rate by 8 hours. The product is the maximum daily rate.

Contracts and subcontracts with firms for services that are awarded using the procurement requirements in Subpart D of 2 CFR Part 200 are not affected by this limitation unless the terms of the contract provide the recipient with responsibility for the selection, direction and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. See 2 CFR 1500.10.

8. Establishing and Managing Subawards

If the recipient chooses to pass funds from this assistance agreement to other entities, the recipient must comply with applicable provisions of 2 CFR Part 200 and the EPA Subaward Policy, which may be found at: https://www.epa.gov/grants/grants-policy-issuance-gpi-16-01-epa-subaward-policy-epa-assistance-agreement-recipients.

As a pass-through entity, the recipient agrees to:

1. Be responsible for selecting subrecipients and as appropriate conducting subaward competitions using a system for properly differentiating between subrecipients and procurement contractors under the standards at 2 CFR 200.331 and EPA's supplemental guidance in Appendix A of the EPA Subaward Policy.

(a) For-profit organizations and individual consultants, in almost all cases, are not eligible subrecipients under EPA financial assistance programs and the pass-through entity must obtain prior written approval from EPA's Award Official for subawards to these entities unless the EPA-approved budget and work plan for this agreement contain a precise description of such subawards.

(b) Stipends and travel assistance for trainees (including interns) and similar individuals who are not are not employees of the pass-through entity must be classified as participant support costs rather than subawards as provided in 2 CFR 200.1 *Participant support costs*, 2 CFR 200.1 *Subaward*, and EPA's Guidance on Participant Support Costs.

(c) Subsidies, rebates and similar payments to participants in EPA funded programs to encourage environmental stewardship are also classified as *Participant support costs* as provided in 2 CFR 1500.1 and EPA's Guidance on Participant Support Costs.

2. Establish and follow a system that ensures all subaward agreements are in writing and contain all of the elements required by 2 CFR 200.332(a). EPA has developed a template for subaward agreements that is available in Appendix D of the EPA Subaward Policy.

3. Prior to making subawards, ensure that each subrecipient has a "Unique Entity Identifier (UEI)." The UEI is required by 2 CFR Part 25 and 2 CFR 200.332(a)(1). Subrecipients are not required to complete full System for Award Management (SAM) registration to obtain a UEI. Information regarding obtaining a UEI is available at the SAM Internet site: https://www.sam.gov/SAM/ and in EPA's General Term and Condition "**System for Award Management and Universal Identifier Requirements"** of the pass-through entity's agreement with the EPA.

4. Ensure that subrecipients are aware that they are subject to the same requirements as those that apply to the pass-through entity's EPA award as required by 2 CFR 200.332(a)(2). These requirements include, among others:

(a) Title VI of the Civil Rights Act and other Federal statutes and regulations prohibiting discrimination in Federal financial assistance programs, as applicable.

(b) Reporting Subawards and Executive Compensation under Federal Funding Accountability and Transparency Act (FFATA) set forth in the General Condition pass-through entity's agreement with EPA entitled **"Reporting Subawards and Executive Compensation."**

(c) Limitations on individual consultant fees as set forth in 2 CFR 1500.10 and the General Condition of the pass-through entity's agreement with EPA entitled **"Consultant Fee Cap."**

(d) EPA's prohibition on paying management fees as set forth in General Condition of the pass-through entity's agreement with EPA entitled "**Management Fees**."

(e) The Procurement Standards in 2 CFR Part 200 including those requiring competition when the subrecipient acquires goods and services from contractors (including consultants).

EPA provides general information on other statutes, regulations and Executive Orders on the Grants internet site at www.epa.gov/grants. Many Federal requirements are agreement or program specific and EPA encourages pass-through entities to review the terms of their assistance agreement carefully and consult with their EPA Project Officer for advice if necessary.

5. Ensure, for states and other public recipients, that subawards are not conditioned in a manner that would disadvantage applicants for subawards based on their religious character.

6. Establish and follow a system for evaluating subrecipient risks of noncompliance with Federal statutes, regulations and the terms and conditions of the subaward as required by 2 CFR 200.332(b) and document the evaluation. Risk factors may include:

Prior experience with same or similar subawards;

(a) Results of previous audits;

(b) Whether new or substantially changed personnel or systems, and;

(c) Extent and results of Federal awarding agency or the pass-through entity's monitoring.

7. Establish and follow a process for deciding whether to impose additional requirements on subrecipients based on risk factors as required by 2 CFR 200.332(c). Examples of additional requirements authorized by 2 CFR 200.208 include:

(a) Requiring payments as reimbursements rather than advance payments;

(b) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given period of performance;

(c) Requiring additional, more detailed financial reports;

(d) Requiring additional project monitoring;

(e) Requiring the non-Federal entity to obtain technical or management assistance,and

(f) Establishing additional prior approvals.

8. Establish and follow a system for monitoring subrecipient performance that includes the elements required by 2 CFR 200.332(d) and report the results of the monitoring in performance reports as provided in the reporting terms and conditions of this agreement.

9. Establish and maintain an accounting system which ensures compliance with the $25,000 limitation at 2 CFR 200.1, *Modified Total Direct Costs*, if applicable, on including subaward costs in *Modified Total Direct Costs* for the purposes of distributing indirect costs. Recipients with Federally approved indirect cost rates that use a different basis for distributing indirect costs to subawards must comply with their Indirect Cost Rate Agreement.

10. Work with EPA's Project Officer to obtain the written consent of EPA's Office of International and Tribal Affairs (OITA), prior to awarding a subaward to a foreign or international organization, or a subaward to be performed in a foreign country even if that subaward is described in a proposed scope of work.

11. Obtain written approval from EPA's Award Official for any subawards that are not described in the approved work plan in accordance with 2 CFR 200.308.

12. Obtain the written approval of EPA's Award Official prior to awarding a subaward to an individual if the EPA-approved scope of work does not include a description of subawards to individuals.

13. Establish and follow written procedures under 2 CFR 200.302(b)(7) for determining that subaward costs are allowable in accordance with 2 CFR Part 200, Subpart E and the terms and conditions of this award. These procedures may provide for allowability determinations on a pre-award basis, through ongoing monitoring of costs that subrecipients incur, or a combination of both approaches provided the pass-through entity documents its determinations.

14. Establish and maintain a system under 2 CFR 200.332(d)(3) and 2 CFR 200.521 for issuing management decisions for audits of subrecipients that relate to Federal awards. However, the recipient remains accountable to EPA for ensuring that unallowable subaward costs initially paid by EPA are reimbursed or mitigated through offset with allowable costs whether the recipient recovers those costs from the subrecipient or not.

15. As provided in 2 CFR 200.333, pass-through entities must obtain EPA approval to make fixed amount subawards. EPA is restricting the use of fixed amount subawards to a limited number of situations that are authorized in official EPA pilot projects. Recipients should consult with theirEPA Project Officer regarding the status of these pilot projects.

By accepting this award, the recipient is certifying that it either has systems in place to comply with the requirements described in Items 1 through 14 above or will refrain from making subawards until the systems are designed and implemented.

9. Management Fees

Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses; unforeseen liabilities; or for other similar costs which are not allowable under this assistance agreement. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

10. Federal Employee Costs

The recipient understands that none of the funds for this project (including funds contributed by the recipient as cost sharing) may be used to pay for the travel of Federal employees or for other costs associated with Federal participation in this project unless a Federal agency will be providing services to the recipient as authorized by a Federal statute.

11. Foreign Travel

EPA policy requires that all foreign travel must be approved by its Office of International and Tribal Affairs. The recipient agrees to obtain prior EPA approval before using funds available under this agreement for international travel unless the trip(s) are already described in the EPA approved budget for this agreement. Foreign travel includes trips to Mexico and Canada but does not include trips to Puerto Rico, the U.S. Territories or possessions. Recipients that request post-award approval to travel frequently to Mexico and Canada by motor vehicle (e.g. for sampling or meetings) may describe their proposed travel in general terms in their request for EPA approval. Requests for prior approval must be submitted to the Project Officer for this agreement.

12. The Fly America Act and Foreign Travel

The recipient understands that all foreign travel **funded under this assistance agreement** must comply with the Fly America Act. All travel must be on U.S. air carriers certified under 49 U.S.C. Section 40118, to the extent that service by such carriers is available even if foreign air carrier costs are less than the American air carrier.

13. Union Organizing (Added 6/14/2023)

Grant funds may not be used to support or oppose union organizing, whether directly or as an offset for other funds.

Reporting and Additional Post-Award Requirements

14. System for Award Management and Universal Identifier Requirements

14.1. Requirement for System for Award Management (SAM) Unless exempted from this requirement under 2 CFR 25.110, the recipient must maintain current information in the SAM. This includes information on the recipient's immediate and highest level owner and subsidiaries, as well as on all the recipient's predecessors that have been awarded a Federal contract or Federal financial assistance within the last three years, if applicable, until the submittal of the final financial report required under this award or receipt of the final payment, whichever is later. This requires that the recipient reviews and updates the information at least annually after the initial registration, and more frequently if required by changes in the information or another award term.

14.2. Requirement for Unique Entity Identifier. If the recipient is authorized to make subawards under this award, the recipient:

a. Must notify potential subrecipients that no entity (see definition in paragraph 14.3 of this award term) may receive a subaward unless the entity has provided its Unique Entity Identifier.

b. May not make a subaward to an entity unless the entity has provided its Unique Entity Identifier.

Subrecipients are not required to obtain an active SAM registration but must obtain a Unique Entity Identifier.

14.3. Definitions. For the purposes of this award term:

a. System for Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM Internet site: https://www.sam.gov/SAM/.

b. Unique Entity Identifier means the identifier assigned by SAM to uniquely identify business entities.

c. Entity includes non-Federal entities as defined at 2 CFR 200.1 and also includes all of the following:

14.3.c.1. A foreign organization;

14.3.c.2. A foreign public entity;

14.3.c.3. A domestic for-profit organization; and

14.3.c.4. A domestic or foreign for-profit organization; and

14.3.c.5. A Federal agency.

d. Subaward is defined at 2 CFR 200.1.

e. Subrecipient is defined at 2 CFR 200.1.

15. Reporting Subawards and Executive Compensation

15.1. Reporting of first-tier subawards.

a. Applicability. Unless the recipient is exempt as provided in paragraph 15.4. of this award term, the recipient must report each action that obligates $30,000 or more in Federal funds for a subaward to a non-Federal entity or Federal agency (see definitions in paragraph 15.5 of this award term).

b. Where and when to report. (1) The recipient must report each obligating action described in paragraph 15.1.a of this award term to www.fsrs.gov. (2) For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on any date during the month of November of a given year, the obligation must be reported by no later than December 31 of that year.)

c. What to report. The recipient must report the information about each obligating action as described in the submission instructions available at: http://www.fsrs.gov.

15.2. Reporting Total Compensation of Recipient Executives.

a. Applicability and what to report. The recipient must report total compensation for each of their five most highly compensated executives for the preceding completed fiscal year, if:

15.2.a.1. the total Federal funding authorized to date under this award is $30,000 or more;

15.2.a.2. in the preceding fiscal year, the recipient received: (i.) 80 percent or more of their annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); (ii.) and $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

15.2.a.3. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at: http://www.sec.gov/answers/execomp.htm.)

b. Where and when to report. The recipient must report executive total compensation described in

paragraph 15.2.a of this award term: (i.) As part of the registration Central System for Award Management profile available at https://www.sam.gov/SAM/ (ii.) By the end of the month following the month in which this award is made, and annually thereafter.

15.3. Reporting of Total Compensation of Subrecipient Executives.

a. Applicability and what to report. Unless exempt as provided in paragraph 15.4. of this award term, for each first-tier non-Federal entity subrecipient under this award, the recipient shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if:

15.3.a.1. in the subrecipient's preceding fiscal year, the subrecipient received: (i.) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and (ii.) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

15.3.a.2. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at: http:// www.sec.gov/answers/execomp.htm.)

b. Where and when to report. The recipient must report subrecipient executive total compensation described in paragraph 15.3.a. of this award term:

15.3.b.1. To the recipient.

15.3.b.2. By the end of the month following the month during which the recipient makes the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), the recipient must report any required compensation information of the subrecipient by November 30 of that year.

15.4. Exemptions

a. If, in the previous tax year, the recipient had gross income, from all sources, under $300,000, the recipient is exempt from the requirements to report:

15.4.a.1. (i) subawards, and (ii) the total compensation of the five most highly compensated executives of any subrecipient.

15.5. Definitions. For purposes of this award term:

a. Federal agency means a Federal agency as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C 552(f).

b. Non-Federal entity means all of the following, as defined in 2 CFR Part 25: (i.) A Governmental organization, which is a State, local government, or Indian tribe; (ii.) A foreign public entity; (iii.) A domestic or foreign nonprofit organization; and (iv.) A domestic or foreign for-profit organization.

c. Executive means officers, managing partners, or any other employees in management positions.

d. Subaward:

15.5.d.1. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

15.5.d.2. The term does not include procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200.331).

15.5.d.3. A subaward may be provided through any legal agreement, including an agreement that the recipient or a subrecipient considers a contract.

e. Subrecipient means a non-Federal entity or Federal agency that:

15.5.e.1. Receives a subaward from the recipient under this award; and

15.5.e.2. Is accountable to the recipient for the use of the Federal funds provided by the subaward.

f. **Total compensation** means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

15.5.f.1. Salary and bonus.

15.5.f.2. Awards of stock, stock options and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

15.5.f.3. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

15.5.f.4. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.

15.5.f.5. Above-market earnings on deferred compensation which is not tax-qualified.

15.5.f.6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds $10,000.

16. Recipient Integrity and Performance Matters - Reporting of Matters Related to Recipient Integrity and Performance

16.1. General Reporting Requirement

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds $10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

16.2. Proceedings About Which You Must Report

Submit the information required about each proceeding that:

a. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;

b. Reached its final disposition during the most recent five-year period; and

c. Is one of the following:

16.2.c.1. A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;

16.2.c.2. A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of $5,000 or more;

16.2.c.3. An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of $5,000 or more or reimbursement, restitution, or damages in excess of $100,000; or

16.2.c.4. Any other criminal, civil, or administrative proceeding if:

16.2.c.4.1. It could have led to an outcome described in paragraph 16.2.c.1, 16.2.c.2, or 16.2.c.3 of this award term and condition;

16.2.c.4.2. It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and

16.2.c.4.3. The requirement in this award term and condition to disclose

information about the proceeding does not conflict with applicable laws and regulations.

16.3. Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

16.4. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph 16.1 of this award term and condition, you must report proceedings information through SAM for the most recent five-year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than $10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

16.5. Definitions

For purposes of this award term and condition:

a. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (*e.g.*, Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.

b. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

c. Total value of currently active grants, cooperative agreements, and procurement contracts includes—

16.5.c.1. Only the Federal share of the funding under any Federal award with a recipient cost share or match; and

16.5.c.2. The value of all expected funding increments under a Federal award and options, even if not yet exercised.

17. Federal Financial Reporting (FFR)

Pursuant to 2 CFR 200.328 and 2 CFR 200.344, EPA recipients must submit the Federal Financial Report (SF-425) at least annually and no more frequently than quarterly. EPA's standard reporting frequency is annual unless an EPA Region has included an additional term and condition specifying greater reporting frequency within this award document. EPA recipients must submit the SF-425 no later than 30 calendar days after the end of each specified reporting period for quarterly and semi-annual reports and 90 calendar days for annual reports. Final reports are due no later than 120 calendar days after the end date of the period of performance of the award Extension of reporting due dates may be approved by EPA when requested and justified by the recipient. The FFR form is available on the internet at: https://www.epa.gov/financial/forms. All FFRs must be submitted to the Research Triangle Park Finance Center (RTPFC) via email at rtpfc-grants@epa.gov or mail it to:

US Environmental Protection Agency
RTP-Finance Center (Mail Code AA216-01)
4930 Page Rd.
Durham, NC 27703

The RTPFC will make adjustments, as necessary, to obligated funds after reviewing and accepting a final Federal Financial Report. Recipients will be notified and instructed by EPA if they must complete any

additional forms for the closeout of the assistance agreement.

18. Indirect Cost Rate Agreements

This term and condition provides requirements for recipients using EPA funds for indirect costs and applies to all EPA assistance agreements unless there are statutory or regulatory limits on IDCs. See also EPA's Indirect Cost Policy for Recipients of EPA Assistance Agreements (IDC Policy).

In order for the assistance agreement recipient to use EPA funding for indirect costs, the IDC category of the recipient's assistance agreement award budget must include an amount for IDCs and at least one of the following must apply:

- With the exception of "exempt" agencies and Institutions of Higher Education as noted below, all recipients must have one of the following current (not expired) IDC rates, including IDC rates that have been extended by the cognizant agency:
  - Provisional;
  - Final;
  - Fixed rate with carry-forward;
  - Predetermined;
  - 10% *de minimis* rate authorized by 2 CFR 200.414(f)
  - EPA-approved use of an expired fixed rate with carry-forward on an exception basis, as detailed in section 6.4.a. of the IDC Policy.
- "Exempt" state or local governmental departments or agencies are agencies that receive up to and including $35,000,000 in Federal funding per the department or agency's fiscal year, and must have an IDC rate proposal developed in accordance with 2 CFR Part 200, Appendix VII, with documentation maintained and available for audit.
- Institutions of Higher Education must use the IDC rate in place at the time of award for the life of the assistance agreement (unless the rate was provisional at time of award, in which case the rate will change once it becomes final). As provided by 2 CFR Part 200, Appendix III(C)(7), the term "life of the assistance agreement", means each competitive segment of the project. Additional information is available in the regulation.

IDCs incurred during any period of the assistance agreement that are not covered by the provisions above are not allowable costs and must not be drawn down by the recipient. Recipients may budget for IDCs if they have submitted a proposed IDC rate to their cognizant Federal agency or requested an exception from EPA under subsection 6.4 of the IDC Policy. However, recipients may not draw down IDCs until their rate is approved, if applicable, or EPA grants an exception. IDC drawdowns must comply with the indirect rate corresponding to the period during which the costs were incurred.

This term and condition does not govern indirect rates for subrecipients or recipient procurement contractors under EPA assistance agreements. Pass-through entities are required to comply with 2 CFR 200.332(a)(4)(i) and (ii) when establishing indirect cost rates for subawards.

19. Audit Requirements

In accordance with 2 CFR 200.501(a), the recipient hereby agrees to obtain a single audit from an independent auditor, if their organization expends $750,000 or more in total Federal funds in their fiscal year beginning on or after December 26, 2014.

The recipient must submit the form SF-SAC and a Single Audit Report Package within 9 months of the end of the recipient's fiscal year or 30 days after receiving the report from an independent auditor. The SF-SAC and a Single Audit Report Package MUST be submitted using the Federal Audit Clearinghouse's Internet Data Entry System available at: https://facides.census.gov/.

For complete information on how to accomplish the single audit submissions, you will need to visit the Federal Audit Clearinghouse Web site: https://facweb.census.gov/

20. Closeout Requirements

Reports required for closeout of the assistance agreement must be submitted in accordance with this agreement. Submission requirements and frequently asked questions can also be found at: https://www.epa.gov/grants/frequent-questions-about-closeouts

21. Suspension and Debarment

Recipient shall fully comply with Subpart C of 2 C.F.R. Part 180 entitled, "Responsibilities of Participants Regarding Transactions Doing Business With Other Persons," as implemented and supplemented by 2 C.F.R. Part 1532. Recipient is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 2 C.F.R. Part 180, entitled "Covered Transactions," and 2 C.F.R. § 1532.220, includes a term or condition requiring compliance with 2 C.F.R. Part 180, Subpart C. Recipient is responsible for further requiring the inclusion of a similar term and condition in any subsequent lower tier covered transactions. Recipient acknowledges that failing to disclose the information required under 2 C.F.R. § 180.335 to the EPA office that is entering into the transaction with the recipient may result in the delay or negation of this assistance agreement, or pursuance of administrative remedies, including suspension and debarment. Recipients may access the System for Award Management (SAM) exclusion list at https://sam.gov/SAM/ to determine whether an entity or individual is presently excluded or disqualified.

22. Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law.

This award is subject to the provisions contained in an appropriations act(s) which prohibits the Federal Government from entering into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to any corporation having a delinquent Federal tax liability or a felony conviction under any Federal law, unless the agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government. A "corporation" is a legal entity that is separate and distinct from the entities that own, manage, or control it. It is organized and incorporated under the jurisdictional authority of a governmental body, such as a State or the District of Columbia. A corporation may be a for-profit or non-profit organization.

As required by the appropriations act(s) prohibitions, the Government will not enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee with any corporation that — (1) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless an agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government; or (2) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless an agency has considered suspension or debarment of the corporation and made a determination that this action is not necessary to protect the interests of the Government.

By accepting this award, the recipient represents that it is not a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and it is not a corporation that was convicted of a felony criminal violation under a Federal law within the preceding 24 months.

Alternatively, by accepting this award, the recipient represents that it disclosed unpaid Federal tax liability information and/or Federal felony conviction information to the EPA. The recipient may accept this award if the

EPA Suspension and Debarment Official has considered suspension or debarment of the corporation based on tax liabilities and/or Federal felony convictions and determined that suspension or debarment is not necessary to protect the Government's interests.

If the recipient fails to comply with this term and condition, EPA will annul this agreement and may recover any funds the recipient has expended in violation of the appropriations act(s) prohibition(s). The EPA may also pursue other administrative remedies as outlined in 2 CFR 200.339 and 2 CFR 200.340, and may also pursue suspension and debarment.

23. Disclosing Conflict of Interests

23.1. For awards to Non-federal entities and individuals (other than states and fellowship recipients under 40 CFR Part 46).

As required by 2 CFR 200.112, EPA has established a policy (COI Policy) for disclosure of conflicts of interest (COI) that may affect EPA financial assistance awards. EPA's COI Policy is posted at https://www.epa.gov/grants/epas-financial-assistance-conflict-interest-policy. The posted version of EPA's COI Policy is applicable to new funding (initial awards, supplemental and incremental funding) awarded on or after October 1, 2015. This COI term and condition supersedes prior COI terms and conditions for this award based on either EPA's May 22, 2015 Revised Interim COI Policy or December 26, 2014 Interim COI Policy.

For competitive awards, recipients must disclose any competition related COI described in section 4.0(a) of the COI Policy that are discovered after award to the EPA Grants Specialist listed on the Assistance Agreement/Amendment within 30 calendar days of discovery of the COI. The Grants Specialist will respond to any such disclosure within 30 calendar days.

EPA's COI Policy requires that recipients have systems in place to address, resolve and disclose to EPA COIs described in sections 4.0(b), (c) and/or (d) of the COI Policy that affect any contract or subaward regardless of amount funded under this award. The recipient's COI Point of Contact for the award must disclose any COI to the EPA Grants Specialist listed on the Assistance Agreement/Amendment within 30 calendar days of the discovery of the potential COI and their approach for resolving the COI.

EPA's COI Policy requires that subrecipients have systems in place to address, resolve and disclose COI's described in section 4.0(b)(c) and (d) of the COI Policy regardless of the amount of the transaction. Recipients who are pass-through entities as defined at 2 CFR 200.1 must require that subrecipients being considered for or receiving subawards disclose COI to the pass-through entities in a manner that, at a minimum, is in accordance with sections 5.0(d) and 7.0(c) of EPA's COI Policy. Pass-through entities must disclose the subrecipient COI along with the approach for resolving the COI to the EPA Grants Specialist listed on the Assistance Agreement/Amendment within 30 calendar days of receiving notification of the COI by the subrecipient.

EPA only requires that recipients and subrecipients disclose COI's that are discovered under their systems for addressing and resolving COI. If recipients or subrecipients do not discover a COI, they do not need to advise EPA or the pass-through entity of the absence of a COI.

Upon notice from the recipient of a potential COI and the approach for resolving it, the Agency will then make a determination regarding the effectiveness of these measures within 30 days of receipt of the recipient's notice unless a longer period is necessary due to the complexity of the matter. Recipients may not request payment from EPA for costs for transactions subject to the COI pending notification of EPA's determination. Failure to disclose a COI may result in cost

disallowances.

Disclosure of a potential COI will not necessarily result in EPA disallowing costs, with the exception of procurement contracts that the Agency determines violate 2 CFR 200.318(c)(1) or (2), provided the recipient notifies EPA of measures the recipient or subrecipient has taken to eliminate, neutralize or mitigate the conflict of interest when making the disclosure.

23.2. For awards to states including state universities that are state agencies or instrumentalities

As required by 2 CFR 200.112, EPA has established a policy (COI Policy) for disclosure of conflicts of interest (COI) that may affect EPA financial assistance awards. EPA's COI Policy is posted at: https://www.epa.gov/grants/epas-financial-assistance-conflict-interest-policy. The posted version of EPA's COI Policy is applicable to new funding (initial awards, supplemental, incremental funding) awarded on or after October 1, 2015. This COI term and condition supersedes prior COI terms and conditions for this award based on either EPA's May 22, 2015 Revised Interim COI Policy or December 26, 2014 Interim COI Policy.

For competitive awards, recipients must disclose any competition related COI described in section 4.0(a) of the COI Policy that are discovered after award to the EPA Grants Specialist listed on the Assistance Agreement/Amendment within 30 calendar days of discovery of the COI. The Grants Specialist will respond to any such disclosure within 30 calendar days.

States including state universities that are state agencies and instrumentalities receiving funding from EPA are only required to disclose subrecipient COI as a pass-through entity as defined by 2 CFR 200.1. Any other COI are subject to state laws, regulations and policies. EPA's COI Policy requires that subrecipients have systems in place to address, resolve and disclose COIs described in section 4.0(b)(c) and (d) of the COI Policy that arise after EPA made the award regardless of the amount of the transaction. States who are pass-through entities as defined at 2 CFR 200.1 must require that subrecipients being considered for or receiving subawards disclose COI to the state in a manner that, as a minimum, in accordance with sections 5.0(d) and 7.0(c) of EPA's COI Policy. States must disclose the subrecipient COI along with the approach for resolving the COI to the EPA Grants Specialist listed on the Assistance Agreement/Amendment within 30 calendar days of receiving notification of the COI by the subrecipient.

EPA only requires that subrecipients disclose COI's to state pass-through entities that are discovered under their systems for addressing, resolving, and disclosing COI. If subrecipients do not discover a COI, they do not need to advise state pass-through entities of the absence of a COI.

Upon receiving notice of a potential COI and the approach for resolving it, the Agency will make a determination regarding the effectiveness of these measures within 30 days of receipt of the state's notice of a subrecipient COI unless a longer period is necessary due to the complexity of the matter. States may not request payment from EPA for costs for transactions subject to the COI pending notification of EPA's determination. A subrecipient's failure to disclose a COI to the state and EPA may result in cost disallowances.

Disclosure of a potential subrecipient COI will not necessarily result in EPA disallowing costs, with the exception of procurement contracts that the Agency determines violate 2 CFR 200.318(c)(1) or (2), provided the subrecipient has taken measures that EPA and the state agree eliminate, neutralize or mitigate the conflict of interest.

24. Transfer of Funds (Updated 6/14/2023)

24.1. Transfer of Funds

Applicable to all assistance agreements other than Continuing Environmental Program Grants subject to 40 CFR 35.114 and 40 CFR 35.514 when EPA's share of the total project costs exceeds the Simplified Acquisition Threshold. Simplified Acquisition Threshold is defined at 2 CFR 200.1 and is currently set at $250,000 but the amount is subject to adjustment.

(1) As provided at 2 CFR 200.308(f), the recipient must obtain prior approval from EPA's Grants Management Officer if the cumulative amount of funding transfers among direct budget categories or programs, functions and activities exceeds 10% of the total budget. Recipients must submit requests for prior approval to the Grant Specialist and Grants Management Officer with a copy to the Project Officer for this agreement.
(2) Recipients must notify EPA's Grant Specialist and Project Officer of cumulative funding transfers among direct budget categories or programs, functions and activities that do not exceed 10% of the total budget for the agreement. Prior approval by EPA's Grant Management Officer is required if the transfer involves any of the items listed in 2 CFR 200.407 that EPA did not previously approve at time of award or in response to a previous post-award request by the recipient.

24.2. Post-Award Changes for Continuing Environmental Program Grants

Applicable to Continuing Environmental Program Grants subject to 40 CFR 35.114 and 40 CFR 35.514 when EPA's share of the total project costs exceeds the Simplified Acquisition Threshold. Simplified Acquisition Threshold is defined at 2 CFR 200.1 and is currently set at $250,000 but the amount is subject to adjustment.

To determine if a post-award change in work plan commitments is significant and requires prior written approval for the purposes of 40 CFR §35.114(a) or 40 CFR §35.514(a), the recipient agrees to consult the EPA Project Officer (PO) before making the change. The term work plan commitments is defined at 40 CFR §35.102. If the PO determines the change is significant, the recipient cannot make the change without prior written approval by the EPA Award Official or Grants Management Officer.

The recipient must obtain written approval from the EPA Award Official prior to transferring funds from one budget category to another if the EPA Award Official determines that such transfer significantly changes work plan commitment(s). All transfers must be reported in required performance reports. In addition, unless approved with the budget at the time of award, Continuing Environmental Program (CEP) recipients must also obtain prior written approval from the EPA Award Official or Grants Management Officer to use EPA funds for directly charging compensation for administrative and clerical personnel under 2 CFR 200.413(c) and the General Provisions for Selected Items of Cost allowability at 2 CFR 200.420 through 200.476 as supplemented by EPA's Guidance on Selected Items of Cost. The recipient is not required to obtain prior written approval from the EPA Award Official for other items requiring prior EPA approval listed in 2 CFR §§ 200.407.

25. Electronic/Digital Signatures on Financial Assistance Agreement Form(s)/Document(s)

Throughout the life of this assistance agreement, the recipient agrees to ensure that any form(s)/document(s) required to be signed by the recipient and submitted to EPA through any means including but not limited to hard copy via U.S. mail or express mail, hand delivery or through electronic means such as e-mail are: (1) signed by the individual identified on the form/document, and (2) the signer has the authority to sign the form/document for the recipient. Submission of any signed form(s)/document(s) is subject to any provisions of law on making false statements (e.g., 18 U.S.C. 1001).

26. Extension of Project/Budget Period Expiration Date

EPA has not exercised the waiver option to allow automatic one-time extensions for non-research grants under 2 CFR 200.308(e)(2). Therefore, if a no-cost time extension is necessary to extend the period of availability of funds, the recipient must submit a written request to the EPA prior to the budget/project period expiration dates. **The written request must include:** a justification describing

the need for additional time, an estimated date of completion, and a revised schedule for project completion including updated milestone target dates for the approved workplan activities. In addition, if there are overdue reports required by the general, administrative, and/or programmatic terms and conditions of this assistance agreement, the recipient must ensure that they are submitted along with or prior to submitting the no-cost time extension request.

27. Utilization of Disadvantaged Business Enterprises

GENERAL COMPLIANCE, 40 CFR, Part 33
The recipient agrees to comply with the requirements of EPA's Disadvantaged Business Enterprise (DBE) Program for procurement activities under assistance agreements, contained in 40 CFR, Part 33.

The following text either provides updates to 40 CFR, Part 33 based upon the associated class exception or highlights a requirement.

1. EPA MBE/WBE CERTIFICATION, 40 CFR, Part 33, Subpart B
EPA no longer certifies entities as Minority-Owned Business Entities (MBEs) or Women-Owned Business Entities (WBEs) pursuant to a class exception issued in October 2019. The class exception was authorized pursuant to the authority in 2 CFR, Section 1500.3(b).

2. SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C
Pursuant to 40 CFR Section 33.301, the recipient agrees to make good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to require that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained. The specific six good faith efforts can be found at: 40 CFR Section 33.301 (a)-(f).

However, in EPA assistance agreements that are for the benefit of Native Americans, the recipient must solicit and recruit Native American organizations and Native American-owned economic enterprises and give them preference in the award process prior to undertaking the six good faith efforts (40 CFR Section 33.304). If recruiting efforts are unsuccessful, the recipient must follow the six good faith efforts.

3. CONTRACT ADMINISTRATION PROVISIONS, 40 CFR Section 33.302
The recipient agrees to comply with the contract administration provisions of 40 CFR Section 33.302 (a)-(d) and (i).

4. BIDDERS LIST, 40 CFR Section 33.501(b) and (c)
Recipients of a Continuing Environmental Program Grant or other annual reporting grant, agree to create and maintain a bidders list. Recipients of an EPA financial assistance agreement to capitalize a revolving loan fund also agree to require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40 CFR Section 33.501 (b) and (c) for specific requirements and exemptions.

5. FAIR SHARE OBJECTIVES, 40 CFR, Part 33, Subpart D
In October 2019, a class exception to the entire Subpart D of 40 CFR, Part 33 has been authorized pursuant to the authority in 2 CFR Section 1500.3(b). Notwithstanding Subpart D of 40 CFR, Part 33, recipients are not required to negotiate or apply fair share objectives in procurements under assistance agreements.

6. MBE/WBE REPORTING, 40 CFR, Part 33, Subpart E
When required, the recipient agrees to complete and submit a “MBE/WBE Utilization Under Federal

Grants and Cooperative Agreements" report (EPA Form 5700-52A) on an annual basis. The current EPA Form 5700-52A can be found at the EPA Grantee Forms Page at https://www.epa.gov/system/files/documents/2021-08/epa_form_5700_52a.pdf .

Reporting is required for assistance agreements where funds are budgeted for procuring construction, equipment, services and supplies (including funds budgeted for direct procurement by the recipient or procurement under subawards or loans in the "Other" category) with a cumulative total that exceed the Simplified Acquisition Threshold (SAT) (currently, $250,000 however the threshold will be automatically revised whenever the SAT is adjusted; See 2 CFR Section 200.1), including amendments and/or modifications. When reporting is required, all procurement actions are reportable, not just the portion which exceeds the SAT.

Annual reports are due by October 30th of each year. Final reports are due 120 days after the end of the project period.

This provision represents an approved exception from the MBE/WBE reporting requirements as described in 40 CFR Section 33.502.

7. MBE/WBE RECORDKEEPING, 40 CFR, Part 33, Subpart E
The recipient agrees to comply with all recordkeeping requirements as stipulated in 40 CFR, Part 33, Subpart E including creating and maintaining a bidders list, when required. Any document created as a record to demonstrate compliance with any requirement of 40 CFR, Part 33 must be maintained pursuant to the requirements stated in this Subpart.

Programmatic General Terms and Conditions

28. Sufficient Progress
EPA will measure sufficient progress by examining the performance required under the workplan in conjunction with the milestone schedule, the time remaining for performance within the project period and/or the availability of funds necessary to complete the project. EPA may terminate the assistance agreement for failure to ensure reasonable completion of the project within the project period.

29. Copyrighted Material and Data
In accordance with 2 CFR 200.315, EPA has the right to reproduce, publish, use and authorize others to reproduce, publish and use copyrighted works or other data developed under this assistance agreement for Federal purposes.

Examples of a Federal purpose include but are not limited to: (1) Use by EPA and other Federal employees for official Government purposes; (2) Use by Federal contractors performing specific tasks for [i.e., authorized by] the Government; (3) Publication in EPA documents provided the document does not disclose trade secrets (e.g. software codes) and the work is properly attributed to the recipient through citation or otherwise; (4) Reproduction of documents for inclusion in Federal depositories; (5) Use by State, tribal and local governments that carry out delegated Federal environmental programs as "co-regulators" or act as official partners with EPA to carry out a national environmental program within their jurisdiction and; (6) Limited use by other grantees to carry out Federal grants provided the use is consistent with the terms of EPA's authorization to the other grantee to use the copyrighted works or other data.

Under Item 6, the grantee acknowledges that EPA may authorize another grantee(s) to use the copyrighted works or other data developed under this grant as a result of:

- the selection of another grantee by EPA to perform a project that will involve the use of the

copyrighted works or other data or;
- termination or expiration of this agreement.

In addition, EPA may authorize another grantee to use copyrighted works or other data developed with Agency funds provided under this grant to perform another grant when such use promotes efficient and effective use of Federal grant funds.

30. Patents and Inventions

Rights to inventions made under this assistance agreement are subject to federal patent and licensing regulations, which are codified at Title 37 CFR Part 401 and Title 35 USC Sections 200-212.

Pursuant to the Bayh-Dole Act (set forth in 35 USC 200-212), EPA retains the right to a worldwide, nonexclusive, nontransferable, irrevocable, paid-up license to practice the invention owned by the assistance agreement holder, as defined in the Act. To streamline the invention reporting process and to facilitate compliance with the Bayh-Dole Act, the recipient must utilize the Interagency Edison extramural invention reporting system at https://www.nist.gov/iedison. Annual utilization reports must be submitted through the system. The recipient is required to notify the Project Officer identified on the award document when an invention report, patent report, or utilization report is filed at https://www.nist.gov/iedison. EPA elects not to require the recipient to provide a report prior to the close-out of a funding agreement listing all subject inventions or stating that there were none.

In accordance with Executive Order 12591, as amended, government owned and operated laboratories can enter into cooperative research and development agreements with other federal laboratories, state and local governments, universities, and the private sector, and license, assign, or waive rights to intellectual property "developed by the laboratory either under such cooperative research or development agreements and from within individual laboratories."

31. Acknowledgement Requirements for Non-ORD Assistance Agreements

The recipient agrees that any reports, documents, publications or other materials developed for public distribution supported by this assistance agreement shall contain the following statement:

"This project has been funded wholly or in part by the United States Environmental Protection Agency under assistance agreement (number) to (recipient). The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency, nor does the EPA endorse trade names or recommend the use of commercial products mentioned in this document."

Recipients of EPA Office of Research Development (ORD) research awards must follow the acknowledgement requirements outlined in the research T&Cs available at: https://www.nsf.gov/awards/managing/rtc.jsp. A Federal-wide workgroup is currently updating the Federal-Wide Research Terms and Conditions Overlay to the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards and when completed recipients of EPA ORD research must abide by the research T&Cs.

32. Electronic and Information Technology Accessibility

Recipients are subject to the program accessibility provisions of Section 504 of the Rehabilitation Act, codified in 40 CFR Part 7, which includes an obligation to provide individuals with disabilities reasonable accommodations and an equal and effective opportunity to benefit from or participate in a program, including those offered through electronic and information technology ("EIT"). In compliance with Section 504, EIT systems or products funded by this award must be designed to meet the diverse needs of users (e.g., U.S. public, recipient personnel) without barriers or diminished function or quality. Systems shall include usability features or functions that accommodate the needs of persons with disabilities, including those who use assistive technology. At this time, the EPA will consider a recipient's websites, interactive tools, and other EIT as being in compliance with Section 504 if such technologies meet standards established under Section 508 of the

Rehabilitation Act, codified at 36 CFR Part 1194. While Section 508 does not apply directly to grant recipients, we encourage recipients to follow either the 508 guidelines or other comparable guidelines that concern accessibility to EIT for individuals with disabilities.
Recipients may wish to consult the latest Section 508 guidelines issued by the U.S. Access Board or W3C's Web Content Accessibility Guidelines (WCAG) 2.0 (see https://www.access-board.gov/about/policy/accessibility.html).

33. Human Subjects

Human subjects research is any activity that meets the regulatory definitions of both research AND human subject. *Research* is a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. *Human subject* means a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information. [40 CFR 26.102 (d)(f)]

No research involving human subjects will be conducted under this agreement without prior written approval of the EPA to proceed with that research. If engaged in human subjects research as part of this agreement, the recipient agrees to comply with all applicable provisions of EPA Regulation 40 CFR 26 (Protection of Human Subjects). This includes, at Subpart A, the Basic Federal Policy for the Protection of Human Research Subjects, also known as the Common Rule. It also includes, at Subparts B, C, and D, prohibitions and additional protections for children, nursing women, pregnant women, and fetuses in research conducted or supported by EPA.

The recipient further agrees to comply with EPA's procedures for oversight of the recipient's compliance with 40 CFR 26, as given in EPA Order 1000.17 Change A1 (Policy and Procedures on Protection of Human Research Subjects in EPA Conducted or Supported Research). As per this order, no human subject may be involved in any research conducted under this assistance agreement, including recruitment, until the research has been approved or determined to be exempt by the EPA Human Subjects Research Review Official (HSRRO) after review of the approval or exemption determination of the Institutional Review Board(s) (IRB(s)) with jurisdiction over the research under 40 CFR 26.

For HSRRO approval, the recipient must forward to the Project Officer: (1) copies of all documents upon which the IRB(s) with jurisdiction based their approval(s) or exemption determination(s), (2) copies of the IRB approval or exemption determination letter(s), (3) copy of the IRB-approved consent forms and subject recruitment materials, if applicable, and (4) copies of all supplementary IRB correspondence.

Following the initial approvals indicated above, the recipient must, as part of the annual report(s), provide evidence of continuing review and approval of the research by the IRB(s) with jurisdiction, as required by 40 CFR 26.109(e). Materials submitted to the IRB(s) for their continuing review and approval are to be provided to the Project Officer upon IRB approval. During the course of the research, investigators must promptly report any unanticipated problems involving risk to subjects or others according to requirements set forth by the IRB. In addition, any event that is significant enough to result in the removal of the subject from the study should also be reported to the Project Officer, even if the event is not reportable to the IRB of record.

34. Animal Subjects

The recipient agrees to comply with the Animal Welfare Act of 1966 (P.L. 89-544), as amended, 7 USC 2131-2156. Recipient also agrees to abide by the "U.S. Government Principles for the Utilization and Care of Vertebrate Animals used in Testing, Research, and Training." (Federal Register 50(97): 20864-20865. May 20,1985). The nine principles can be viewed at https://olaw.nih.gov/policies-laws/phs-policy.htm. For additional information about the Principles, the recipient should consult the *Guide for the Care and Use of Laboratory Animals*, prepared by the Institute of Laboratory Animal Resources, National Research Council.

35. Light Refreshments and/or Meals

APPLICABLE TO ALL AGREEMENTS EXCEPT STATE CONTINUING ENVIRONMENTAL PROGRAMS (AS DESCRIBED BELOW):
Unless the event(s) and all of its components are described in the approved workplan, the recipient agrees to obtain prior approval from EPA for the use of grant funds for light refreshments and/or meals served at meetings, conferences, training workshops and outreach activities (events). The recipient must send requests for approval to the EPA Project Officer and include:
(1) An estimated budget and description for the light refreshments, meals, and/or beverages to be served at the event(s);
(2) A description of the purpose, agenda, location, length and timing for the event; and,
(3) An estimated number of participants in the event and a description of their roles.

Costs for light refreshments and meals for recipient staff meetings and similar day-to-day activities are not allowable under EPA assistance agreements.

Recipients may address questions about whether costs for light refreshments, and meals for events may be allowable to the recipient's EPA Project Officer; however, the Agency Award Official or Grant Management Officer will make final determinations on allowability. Agency policy prohibits the use of EPA funds for receptions, banquets and similar activities that take place after normal business hours unless the recipient has provided a justification that has been expressly approved by EPA's Award Official or Grants Management Officer.

EPA funding for meals, light refreshments, and space rental may not be used for any portion of an event where alcohol is served, purchased, or otherwise available as part of the event or meeting, even if EPA funds are not used to purchase the alcohol.

Note: U.S. General Services Administration regulations define light refreshments for morning, afternoon or evening breaks to include, but not be limited to, coffee, tea, milk, juice, soft drinks, donuts, bagels, fruit, pretzels, cookies, chips, or muffins. (41 CFR 301-74.7)

FOR STATE CONTINUING ENVIRONMENTAL PROGRAM GRANT RECIPIENTS EXCLUDING STATE UNIVERSITIES:
If the state maintains systems capable of complying with federal grant regulations at 2 CFR 200.432 and 200.438, EPA has waived the prior approval requirements for the use of EPA funds for light refreshments and/or meals served at meetings, conferences, and training, as described above. The state may follow its own procedures without requesting prior approval from EPA. However, notwithstanding state policies, EPA funds may not be used for (1) evening receptions, or (2) other evening events (with the exception of working meetings). Examples of working meetings include those evening events in which small groups discuss technical subjects on the basis of a structured agenda or there are presentations being conducted by experts. EPA funds for meals, light refreshments, and space rental may not be used for any portion of an event (including evening working meetings) where alcohol is served, purchased, or otherwise available as part of the event or meeting, even if EPA funds are not used to purchase the alcohol.

By accepting this award, the state is certifying that it has systems in place (including internal controls) to comply with the requirements described above.

36. Tangible Personal Property

36.1. Reporting Pursuant to 2 CFR 200.312 and 200.314, property reports, if applicable, are required for Federally-owned property in the custody of a non-Federal entity upon completion of the Federal award or when the property is no longer needed. Additionally, upon termination or completion of the project, residual unused supplies with a total aggregate fair market value exceeding $5,000 not needed for any other

Federally-sponsored programs or projects must be reported. For Superfund awards under Subpart O, refer to 40 CFR 35.6340 and 35.6660 for property reporting requirements. Recipients should utilize the Tangible Personal Property Report form series (SF-428) to report tangible personal property.

36.2. Disposition

36.2.1 Most Recipients. Consistent with 2 CFR 200.313, unless instructed otherwise on the official award document, this award term, or at closeout, the recipient may keep the equipment and continue to use it on the project originally funded through this assistance agreement or on other federally funded projects whether or not the project or program continues to be supported by Federal funds.

36.2.2 State Agencies. Per 2 CFR 200.313(b), state agencies may manage and dispose of equipment acquired under this assistance agreement in accordance with state laws and procedures.

36.2.3 Superfund Recipients. Equipment purchased under Superfund projects is subject to specific disposal options in accordance with 40 CFR Part 35.6345.

37. Dual Use Research of Concern (DURC)

The recipient agrees to conduct all life science research* in compliance with *EPA's Order on the Policy and Procedures for Managing Dual Use Research of Concern* (EPA DURC Order) and *United States Government Policy for Institutional Oversight of Life Sciences Dual Use Research of Concern (iDURC Policy).* If the recipient is an institution within the United States that receives funding through this agreement, or from any other source, the recipient agrees to comply with the iDURC Policy if they conduct or sponsor research involving any of the agents or toxins identified in Section 6.2.1 of the iDURC Policy. If the institution is outside the United States and receives funding through this agreement to conduct or sponsor research involving any of those same agents or toxins, the recipient agrees to comply with the iDURC Policy. The recipient agrees to provide any additional information that may be requested by EPA regarding DURC and iDURC. The recipient agrees to immediately notify the EPA Project Officer should the project use or introduce use of any of the agents or toxins identified in the iDURC Policy. The recipient's Institution/Organization must also comply with USG iDURC policy and EPA DURC Order and will inform the appropriate government agency if funded by such agency of research with the agents or toxins identified in Section 6.2.1 of the iDURC Policy. If privately funded the recipient agrees to notify the National Institutes of Health at DURC@od.nih.gov.

*"*Life Sciences Research*," for purposes of the EPA DURC Order, and based on the definition of research in 40 CFR §26.102(d), is a systematic investigation designed to develop or contribute to generalizable knowledge involving living organisms (e.g., microbes, human beings, animals, and plants) and their products. EPA does not consider the following activities to be research: routine product testing, quality control, mapping, collection of general-purpose statistics, routine monitoring and evaluation of an operational program, observational studies, and the training of scientific and technical personnel. [Note: This is consistent with Office of Management and Budget Circular A-11.]

38. Research Misconduct

In accordance with 2 CFR 200.329, the recipient agrees to notify the EPA Project Officer in writing about research misconduct involving research activities that are supported in whole or in part with EPA funds under this project. EPA defines research misconduct as fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results [65 FR 76262. I], or ordering, advising or suggesting that subordinates engage in research misconduct. The recipient agrees to:

(1) Immediately notify the EPA Project Officer who will then inform the EPA Office of Inspector General (OIG) if, at any time, an allegation of research misconduct falls into one of the categories listed below:
A. Public health or safety is at risk.
B. Agency resources or interests are threatened.
C. Circumstances where research activities should be suspended.
D. There is a reasonable indication of possible violations of civil or criminal law.
E. Federal action is required to protect the interests of those involved in the investigation.
F. The research entity believes that the inquiry or investigation may be made public prematurely so that

appropriate steps can be taken to safeguard evidence and protect the rights of those involved.
G. Circumstances where the research community or public should be informed. [65 FR 76263.III]

(2) Report other allegations to the OIG when they have conducted an inquiry and determined that there is sufficient evidence to proceed with an investigation. [65 FR 76263. III]

39. Scientific Integrity Terms and Conditions

The recipient agrees to comply with EPA's Scientific Integrity Policy when conducting, supervising, and communicating science and when using or applying the results of science. For purposes of this award condition scientific activities include, but are not limited to, computer modelling, economic analysis, field sampling, laboratory experimentation, demonstrating new technology, statistical analysis, and writing a review article on a scientific issue. The recipient agrees to:

39.1 Scientific Products

39.1.1 Produce scientific products of the highest quality, rigor, and objectivity, by adhering to applicable EPA information quality guidelines quality policy and peer review policy.

39.1.2 Prohibit all recipient employees, contractors, and program participants, including scientists, managers, and other recipient leadership, from suppressing, altering, or otherwise impeding the timely release of scientific findings or conclusions.

39.1.3 Adhere to EPA's Peer Review Handbook, 4th Edition, for the peer review of scientific and technical work products generated through EPA grants or cooperative agreements which, by definition, are not primarily for EPA's direct use or benefit.

39.2 Scientific Findings

39.2.1 Require that reviews regarding the content of a scientific product that are conducted by the project manager and other recipient managers and the broader management chain be based only on scientific quality considerations, e.g., the methods used are clear and appropriate, the presentation of results and conclusions is impartial.

39.2.2 Ensure scientific findings are generated and disseminated in a timely and transparent manner, including scientific research performed by employees, contractors, and program participants, who assist with developing or applying the results of scientific activities.

39.2.3 Include, when communicating scientific findings, an explication of underlying assumptions, accurate contextualization of uncertainties, and a description of the probabilities associated with both optimistic and pessimistic projections, if applicable.

39.2.4 Document the use of independent validation of scientific methods.

39.2.5 Document any independent review of the recipient's scientific facilities and testing activities, as occurs with accreditation by a nationally or internationally recognized sanctioning body.

39.2.6 Make scientific information available online in open formats in a timely manner, including access to data and non-proprietary models.

39.3 Scientific Misconduct

39.3.1 Prohibit intimidation or coercion of scientists to alter scientific data, findings, or professional opinions or non-scientific influence of scientific advisory boards. In addition, recipient employees, contractors, and program participants, including scientists, managers, and other leadership, shall not knowingly misrepresent, exaggerate, or downplay areas of scientific uncertainty.

39.3.2 Prohibit retaliation or other punitive actions toward recipient employees who uncover or report allegations of scientific and research misconduct, or who express a differing scientific opinion. Employees who have allegedly engaged in scientific or research misconduct shall be afforded the due process protections provided by law, regulation, and

applicable collective bargaining agreements, prior to any action. Recipients shall ensure that all employees and contractors of the recipient shall be familiar with these protections and avoid the appearance of retaliatory actions.

39.3.3 Require all recipient employees, contractors, and program participants to act honestly and refrain from acts of research misconduct, including publication or reporting, as described in EPA's Policy and Procedures for Addressing Research Misconduct, Section 9.C. Research misconduct does not include honest error or differences of opinion. While EPA retains the ultimate oversight authority for EPA-supported research, grant recipients conducting research bear primary responsibility for prevention and detection of research misconduct and for the inquiry, investigation, and adjudication of research misconduct alleged to have occurred in association with their own institution.

39.3.4 Take the actions required on the part of the recipient described in EPA's Policy and Procedures for Addressing Research Misconduct, Sections 6 through 9, when research misconduct is suspected or found.

39.4 Additional Resources

For more information about the Scientific Integrity Policy, an introductory video can be accessed at: https://youtu.be/FQJCy8BXXq8. A training video is available at: https://youtu.be/Zc0T7fooot8.

40. Post-Award Disclosure of Current and Pending Support on Research Grants (Added 8/8/2023)

The recipient is required to notify EPA if there has been a change in support for the principal investigator and/or major co-investigators listed on EPA Key Contacts Form, EPA Form 5700-54, since submission of its application or the last reporting period in the performance report. If there has been a change, the recipient must report the change within 30 calendar days to the EPA Project Officer. The information should also be included in the next due performance report. EPA may consult with the Principal Investigator and the Authorized Representative, to determine the impact of the new information on the EPA-funded research grant and, where necessary, take appropriate action.

If the recipient discovers that an investigator on an active EPA research grant failed to disclose current and pending support information or provided inaccurate information as part of the proposal submission process, it must provide the revised current and pending support information to the EPA Project Officer within 30 calendar days of the identification of the undisclosed or inaccurate current and pending support information.

Public Policy Requirements

41. Civil Rights Obligations

This term and condition incorporates by reference the signed assurance provided by the recipient's authorized representative on: 1) EPA Form 4700-4, "Preaward Compliance Review Report for All Applicants and Recipients Requesting EPA Financial Assistance"; and 2) Certifications and Representations in Sam.gov or Standard Form 424D, as applicable.

These assurances and this term and condition obligate the recipient to comply fully with applicable civil rights statutes and implementing federal and EPA regulations.

a. Statutory Requirements

i. In carrying out this agreement, the recipient must comply with:

1. Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP), by entities receiving Federal financial assistance.
2. Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against

persons with disabilities by entities receiving Federal financial assistance; and

3. The Age Discrimination Act of 1975, which prohibits age discrimination by entities receiving Federal financial assistance.

ii. If the recipient is an education program or activity (e.g., school, college or university) or if the recipient is conducting an education program or activity under this agreement, it must also comply with:

1. Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs and activities operated by entities receiving Federal financial assistance. For further information about your compliance obligations regarding Title IX, see 40 CFR Part 5 and https://www.justice.gov/crt/title-ix

iii. If this agreement is funded with financial assistance under the Clean Water Act (CWA), the recipient must also comply with:

1. Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex in CWA-funded programs or activities.

b. Regulatory Requirements

i. The recipient agrees to comply with all applicable EPA civil rights regulations, including:

1. For Title IX obligations, 40 C.F.R. Part 5; and
2. For Title VI, Section 504, Age Discrimination Act, and Section 13 obligations, 40 CFR Part7.
3. For statutory and national policy requirements, including those prohibiting discrimination and those described in Executive Order 13798 promoting free speech and religious freedom, 2 CFR 200.300.
4. As noted on the EPA Form 4700-4 signed by the recipient's authorized representative, these regulations establish specific requirements including maintaining compliance information, establishing grievance procedures, designating a Civil Rights Coordinator and providing notices of non-discrimination.

c. TITLE VI – LEP, Public Participation and Affirmative Compliance Obligation

i. As a recipient of EPA financial assistance, you are required by Title VI of the Civil Rights Act to provide meaningful access to LEP individuals. In implementing that requirement, the recipient agrees to use as a guide the Office of Civil Rights (OCR) document entitled "Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons." The guidance can be found at: https://www.federalregister.gov/documents/2004/06/25/04-14464/guidance-to-environmental-protection-agency-financial-assistance-recipients-regarding-title-vi

ii. If the recipient is administering permitting programs under this agreement, the recipient agrees to use as a guide OCR's Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs. The Guidance can be found at: https://www.govinfo.gov/content/pkg/FR-2006-03-21/pdf/06-2691.pdf

iii. In accepting this assistance agreement, the recipient acknowledges it has an affirmative obligation to implement effective Title VI compliance programs and ensure that its actions do not involve discriminatory treatment and do not have discriminatory effects even when facially neutral. The recipient must be prepared to demonstrate to EPA that such compliance programs exist and are being implemented or to otherwise demonstrate how it is meeting its Title VI obligations.

42. Drug-Free Workplace

The recipient organization of this EPA assistance agreement must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 2 CFR Part 1536 Subpart B. Additionally, in accordance with these regulations, the recipient organization must identify all known workplaces under its federal awards, and keep this information on file during the performance of the

award.

Those recipients who are individuals must comply with the drug-free provisions set forth in Title 2 CFR Part 1536 Subpart C.

The consequences for violating this condition are detailed under Title 2 CFR Part 1536 Subpart E. Recipients can access the Code of Federal Regulations (CFR) Title 2 Part 1536 at www.ecfr.gov/.

43. Hotel-Motel Fire Safety

Pursuant to 15 USC 2225a, the recipient agrees to ensure that all space for conferences, meetings, conventions or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (PL 101-391, as amended). Recipients may search the Hotel-Motel National Master List at https://apps.usfa.fema.gov/hotel/ to see if a property is in compliance, or to find other information about the Act.

44. Lobbying Restrictions

a) This assistance agreement is subject to lobbying restrictions as described below. Applicable to all assistance agreements:

i) The chief executive officer of this recipient agency shall ensure that no grant funds awarded under this assistance agreement are used to engage in lobbying of the Federal Government or in litigation against the U.S. unless authorized under existing law. The recipient shall abide by the Cost Principles available at 2 CFR Part 200 which generally prohibits the use of federal grant funds for litigation against the U.S. or for lobbying or other political activities.

ii) The recipient agrees to comply with Title 40 CFR Part 34, New Restrictions on Lobbying. The recipient shall include the language of this provision in award documents for all subawards exceeding $100,000 and require that subrecipients submit certification and disclosure forms accordingly.

iii) In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure.

iv) Contracts awarded by a recipient shall contain, when applicable, the anti-lobbying provision as stipulated in the Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.

v) By accepting this award, the recipient affirms that it is not a nonprofit organization described in Section 501(c)(4) of the Internal Revenue Code of 1986 as required by Section 18 of the Lobbying Disclosure Act; or that it is a nonprofit organization described in Section 501(c)(4) of the Code but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act. Nonprofit organizations exempt from taxation under section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities are ineligible for EPA subawards.

b) Applicable to assistance agreements when the amount of the award is over $100,000:

i) By accepting this award, the recipient certifies, to the best of its knowledge and belief, that:

(1) No Federal appropriated funds have been or will be paid, by or on behalf of the recipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, or any employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the recipient shall complete and submit the linked Standard Form -- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The recipient shall require that the language of this certification be included in the award documents for all subawards exceeding $100,000 at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

ii) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each failure.

45. Recycled Paper

When directed to provide paper documents, the recipient agrees to use recycled paper and double-sided printing for all reports which are prepared as a part of this agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA.

46. Resource Conservation and Recovery Act

Consistent with goals of section 6002 of RCRA (42 U.S.C. 6962), State and local institutions of higher education, hospitals and non-profit organization recipients agree to give preference in procurement programs to the purchase of specific products containing recycled materials, as identified in 40 CFR Part 247.

Consistent with section 6002 of RCRA (42 U.S.C. 6962) and 2 CFR 200.323, State agencies or agencies of a political subdivision of a State and its contractors are required to purchase certain items made from recycled materials, as identified in 40 CFR Part 247, when the purchase price exceeds $10,000 during the course of a fiscal year or where the quantity of such items acquired in the course of the preceding fiscal year was $10,000 or more. Pursuant to 40 CFR 247.2 (d), the recipient may decide not to procure such items if they are not reasonably available in a reasonable period of time; fail to meet reasonable performance standards; or are only available at an unreasonable price.

47. Trafficking in Persons

a. Provisions applicable to a recipient that is a private entity.

i. The recipient, the recipient's employees, subrecipients under this award, and subrecipients' employees may not—

1. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;

2. Procure a commercial sex act during the period of time that the award is in effect; or
3. Use forced labor in the performance of the award or subawards under the award.

ii. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if the recipient or a subrecipient that is a private entity—

1. Is determined to have violated a prohibition in paragraph a of this award term; or
2. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a of this award term through conduct that is either—
    a. Associated with performance under this award; or
    b. Imputed to the recipient or subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, ''OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),'' as implemented by our Agency at 2 CFR Part 1532.

b. Provision applicable to a recipient other than a private entity. EPA may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—

i. Is determined to have violated an applicable prohibition in paragraph a. of this award term; or

ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a of this award term through conduct that is either—

1. Associated with performance under this award; or
2. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, ''OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by EPA at 2 CFR Part 1532.

c. Provisions applicable to any recipient.

i. The recipient must inform the EPA immediately of any information received from any source alleging a violation of a prohibition in paragraph a of this award term.

ii. Our right to terminate unilaterally that is described in paragraph a and b:

1. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
2. Is in addition to all other remedies for noncompliance that are available to us under this award.

iii. The recipient must include the requirements of paragraph a of this award term in any subaward made to a private entity.

d. Definitions. For purposes of this award term:

i. ''Employee'' means either:

1. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
2. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

ii. ''Forced labor'' means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

iii. ''Private entity'':

1. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
2. Includes:
    a. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
    b. A for-profit organization.

iv. ''Severe forms of trafficking in persons,'' ''commercial sex act,'' and ''coercion'' have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

48. Build America, Buy America (Effective May 14, 2022 and applicable to all funding that date forward; Updated 6/14/2023)

a. The recipient is subject to the Buy America Sourcing requirements under the Build America, Buy America provisions of the Infrastructure Investment and Jobs Act (IIJA) (P.L. 117-58, §§70911-70917) for the types of infrastructure projects under the EPA program and activities specified in EPA's Identification of Federal Financial Assistance Infrastructure Programs Subject to the Build America, Buy America Provisions of the Infrastructure Investment and Jobs Act. None of the funds provided under this award may be used for a project of infrastructure unless all iron and steel, manufactured products, and construction materials that are consumed in, incorporated into, or affixed to an infrastructure project are produced in the United States. The Buy America preference requirement applies to an entire infrastructure project, even if it is funded by both Federal and non-Federal funds. The recipient must implement these requirements in its procurements, and these requirements must flow down to all subawards and contracts at any tier. For legal definitions and sourcing requirements, the recipient must consult EPA's Build America, Buy America website and the Office of Management and Budget's (OMB) Memorandum M-22-11, Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure.

b. When supported by rationale provided in IIJA §70914, the recipient may submit a waiver request to EPA. Recipients should request guidance on the submission instructions of an EPA waiver request from the EPA Project Officer for this agreement. A list of approved EPA waivers (general applicability and project specific) is available on the EPA Build America, Buy America website.

c. For questions regarding the applicability of the Build America, Buy America Act requirements to this assistance agreement or if there is an approved waiver in place, please contact the EPA Project Officer for this agreement.

49. Required Certifications and Consequences of Fraud (Added 8/8/2023)

Per 2 CFR 200.415(a) Required Certifications, to assure that expenditures are proper and in accordance with the terms and conditions of the Federal award and approved project budgets, the financial reports or vouchers requesting payment under the agreement will include a certification that must be signed by an official who is authorized to legally bind the recipient which reads as follows:

"By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812)."

50. Reporting Waste, Fraud, and Abuse (Added 8/8/2023)

Consistent with 2 CFR 200.113, the recipient and any subrecipients must report, in a timely manner, any violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting this award to the EPA Project Officer and the EPA Office of Inspector General (OIG) Hotline. The methods to contact the OIG hotline are (1) online submission via the EPA OIG Hotline Complaint Form; (2) email to OIG_Hotline@epa.gov; (3) phone 1-888-546-8740; or (4) mail directed to Environmental Protection Agency, Office of Inspector General, 1200 Pennsylvania Avenue, N.W. (2410T), Washington, DC 20460.

To support awareness of the OIG hotline, recipients and/or subrecipients receiving an EPA award or subaward of $1,000,000 or more must display EPA OIG Hotline posters in facilities where the work is performed under the grant. EPA OIG Hotline posters may be downloaded or printed or may be obtained by contacting the OIG at 1-888-546-8740. Recipients and subrecipients need not comply with this requirement if they have established a mechanism, such as a hotline, by which employees may report suspected instances of improper conduct and have provided instructions that encourage employees to make such reports.

51. Whistleblower Protections (Added 8/8/2023)

This award is subject is to whistleblower protections, including the protections established at 41 U.S.C. 4712 providing that an employee of the recipient or a subrecipient may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a covered person or body information that the employee reasonably believes is evidence of gross mismanagement of a Federal grant or subaward, a gross waste of Federal funds, an abuse of authority relating to a Federal grant or subaward, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal grant or subaward. These covered persons or bodies include:

a. A Member of Congress or a representative of a committee of Congress.
b. An Inspector General.
c. The Government Accountability Office.
d. A Federal employee responsible for contract or grant oversight or management at the relevant agency.
e. An authorized official of the Department of Justice or other law enforcement agency.
f. A court or grand jury.
g. A management official or other employee of the contractor, subcontractor, or grantee who has the responsibility to investigate, discover, or address misconduct.

Consistent with 41 U.S.C. 4712(d), the recipient and subrecipients shall inform their employees in writing, in the predominant language of the workforce or organization, of employee whistleblower rights and protections under 41 U.S.C. 4712. Additional information about whistleblower protections, including protections for such employees may be found at the EPA Office of Inspector General's Whistleblower Protection page.

52. Access to Records (Added 8/8/2023)

In accordance with 2 CFR 200.337, EPA and the EPA Office of Inspector General (OIG) have the right to access any documents, papers, or other records, including electronic records, of the recipient and subrecipient which are pertinent to this award in order to make audits, examinations, excerpts, and transcripts. This right of access also includes timely and reasonable access to the recipient and subrecipient's personnel for the purpose of interview and discussion related to such documents. This right of access shall continue as long as the records are retained.

Environmental Services
222 Laporte Ave
PO Box 580
Fort Collins, CO 80522

970-221-6600
fcgov.com

DATE: March 8, 2022
TO: Mayor and City Councilmembers
FROM: Air Quality Advisory Board; Chair, Karen Artell
RE: **EPA Community Monitoring Grant Application – AQAB Letter of Support**

Dear Mayor and Council Members,

The Fort Collins Air Quality Advisory Board (AQAB) is pleased to provide this letter of collaboration in support of your proposal to the Environmental Protection Agency (EPA) entitled “Enhancing Monitoring of Air Toxics and Air Quality Education in Underserved Communities in Northern Colorado.” We understand EPA’s objective in issuing these awards is to enable disproportionately impacted communities to monitor air quality and to promote monitoring partnerships. We appreciate your efforts in engaging regional partners, the plan to monitor air emissions in disproportionately affected communities and establishing easily understood educational materials for the public to motivate actions that improve air quality.

The AQAB, established in 1995, advises the Fort Collins City Council regarding policies, plans, and programs to improve and maintain the City's air quality. The AQAB meets monthly. The AQAB is particularly interested in the environmental justice focus of the City’s proposal. We appreciate the opportunity to increase regional efforts related to air emissions monitoring, outreach, and education for disproportionately impacted communities. AQAB members bring varied interests and backgrounds to the Board, including communication science and research, meteorology and air quality forecasting, atmospheric science, climate impacts, air quality monitoring, transportation planning and public health.

Fort Collins and Larimer County are situated in northern Colorado. Colorado is a major oil and gas producing state. Much of the oil and gas production is along the front range east of the Rocky Mountains and close to cities, communities and homes. Fort Collins is up against the Rocky Mountain foothills and part of the Denver Metro North Front Range ozone non-attainment area. The area is in serious non-attainment for ozone and soon to be downgraded to severe non-attainment. VOCs and NOx from oil and gas wells to the east of the County are carried by local winds to the west and up against the foothills. The Fort Collins West ozone monitor has some of the highest ozone readings in Colorado. Currently, there is no monitoring of VOCS, including air toxics and ozone precursors, from local and regional sources that contribute to health impacts.

In addition to regional oil and gas impacts, disproportionately affected community members are more likely to live near industrial areas and heavily trafficked streets. This adds to the community members' negative health outcomes related to these air pollutants.

The Fort Collins City Council has established priorities that include improving the City's air quality and advancing regionalism. The AQAB supports these priorities. Air emissions know no boundaries which makes addressing the issue of poor air quality particularly suited to a regional effort. The EPA Enhanced Monitoring Grant contributes to these priorities with partners that include the Colorado Department of Public Health and Environment (CDPHE), CSU, our County Health Department and possibly Weld County to the east and other County municipalities and the establishment of a regional air quality advisory group.

The AQAB is committed to the success of the project and offers its expertise in the following areas for the duration of the grant performance period:

- Participate on the Air Quality Monitoring Advisory Group that will be created to assist in the design, planning and performance of the project.
- Advise Fort Collins City Council on development of effective policy based on grant outcomes.
- Advise on development and distribution of education and outreach materials, providing critical feedback on communication strategies based on expertise, community knowledge and insight.

If awarded by the EPA, we look forward to working with you as the project moves forward.

October 17, 2023

AGENDA ITEM SUMMARY
City Council

STAFF

Gunnar Hale, Civil Engineer
Brad Buckman, City Engineer
Nancy Nichols, Safe Routes to School Program Manager
Heather Jarvis, Assistant City Attorney

SUBJECT

Items Relating to the Zach Elementary School Crossings Project.

EXECUTIVE SUMMARY

A. Resolution 2023-092 Authorizing the Execution of an Intergovernmental Agreement Between the City of Fort Collins and the Colorado Department of Transportation for the Zach Elementary School Crossings Project.

B. First Reading of Ordinance No. 144, 2023, Appropriating Unanticipated Revenue From a CDOT Safe Routes to School Grant and Authorizing Transfers for the Zach Elementary School Crossings Project and Related Art in Public Places.

The purpose of this item is to enable the City to receive and expend federal, Colorado Department of Transportation (CDOT), and local funds for the Zach Elementary School Crossings Project (the Project). The funds will be used to design and construct improvements at the intersection of Kechter Road and Jupiter Drive and at the intersection of Kechter Road and Cinquefoil Lane. These improvements will create safer conditions for bicyclists, pedestrians, and motorists traveling in this location. If approved, the item will: 1) authorize the Mayor to execute an intergovernmental agreement (IGA) for the Project with CDOT; 2) appropriate $745,587 of Safe Routes to School (SRTS) grant funds for the Project; 3) appropriate matching funds from the SRTS School Transportation Safety Studies; 4) appropriate matching funds from the Bicycle Community Capital Improvement Program (Bicycle CCIP); 5) appropriate matching funds from the Pedestrian Community Capital Improvement Program (Pedestrian CCIP); 6) acknowledge anticipated funds contributed by the Poudre School District (PSD); and 7) appropriate funds to the Art in Public Places Program.

STAFF RECOMMENDATION

Staff recommend adoption of the Resolution and the Ordinance on First Reading.

BACKGROUND / DISCUSSION

Zach Elementary School is located on the south side of Kechter Road, a high-volume arterial street in southeast Fort Collins. Zach Elementary students who live north of the arterial must cross this road to get to school. Many of the streets and roads in this area either lack sidewalks altogether or have substandard sidewalks, and there is a lack of multi-use trail connectivity in this southeastern area of the City. Zach

Elementary has high numbers of students who bike, walk, or roll to school. Those students who live south of the school experience safer routes to school via low-traffic, low-volume residential streets with sidewalks. Other students who live north of the school must cross Kechter to get to school, making their journey much more challenging and riskier due to the existing suboptimal crossings at Kechter Road and Jupiter Drive and at Kechter Road and Cinquefoil Lane. Due to the Jupiter/Kechter intersection not being fully signalized, a traffic-control contractor is required to keep students safe when crossing Kechter (at both morning arrival time and afternoon dismissal time).

There have been four rear-end crashes reported in this location between 2017 and 2022, one of which occurred during school dismissal time and one that involved a pedestrian who suffered serious injuries.

The improvements proposed for the Project will create space and infrastructure intended to eliminate most of the conflicts that result in crashes in this location. The improvements at the Jupiter/Kechter intersection include a new fully signalized intersection with pedestrian “walk” signals and a new bike-pedestrian crossing. The improvements at the Cinquefoil/Kechter intersection include a median refuge island and flashing signal.

In 2023, a CDOT SRTS grant was awarded to the City for the design and construction of the Project. The SRTS funding became available to the City in the State fiscal year 2024 (which began July 2023). SRTS funding involves an 80%/20% (Federal/Local) match. The funding split for this award is $745,587 Federal and $187,397 Local. The City’s local match is being covered by the SRTS School Transportation Safety Studies, Bicycle CCIP, Pedestrian CCIP, and funds that will be received pursuant to an IGA with the PSD.

Per Chapter 23 of the City Code, Article XII (addressing Art in Public Places), Section 23-304, all appropriations for construction projects estimated to a total cost of over $250,000 shall include an amount equal to one percent of eligible funds for works of art. The appropriation ordinance with this item includes a contribution of $1,010 to the Art in Public Places Program, which is 1% of the local match from SRTS School Transportation Safety Studies funds of $101,000. The Bicycle and Pedestrian CCIP 1% was previously appropriated through the 2023/24 Budgeting For Outcomes process. The SRTS grant funds and PSD Funds appropriated via this action are ineligible for use toward public art and, as such, are not subject to the 1% set aside.

CITY FINANCIAL IMPACTS

The following is a summary of the funding anticipated for design and construction for the Zach Elementary School Crossings Project:

Funds to be Appropriated with this Action	
CDOT SRTS Grant	$745,587
SRTS School Transportation Safety Studies/Infra. Improvements	$101,000
Bicycle CCIP	$46,397
Pedestrian CCIP	$40,000
Total Funds to be appropriated with this Action:	**$932,984**
Transfer to Art in Public Places	**($1,010)**

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

Staff will present this Project to the Transportation Board in 2024 as the plans are developed.

PUBLIC OUTREACH

Staff will present Project details to the public and Zach Elementary community as the Project is developed. As the Project moves forward, a website will be available to the public and staff will develop a comprehensive communication plan. Additionally, per requirements of the CDOT grant agreement, the City's Safe Routes to School program will provide educational activities for Zach Elementary students, staff, and parents relating to how to properly use the new infrastructure provided by the Project.

ATTACHMENTS

1. Resolution for Consideration
2. Exhibit A to Resolution
3. Ordinance for Consideration
4. Vicinity Map

RESOLUTION 2023-092
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF FORT COLLINS AND THE COLORADO DEPARTMENT OF TRANSPORTATION FOR THE ZACH ELEMENTARY SCHOOL CROSSINGS PROJECT

WHEREAS, Zach Elementary School is located on the south side of Kechter Road, a high-volume arterial street in southeast Fort Collins; and

WHEREAS, many of the streets and roads in this area either lack sidewalks altogether or have substandard sidewalks, and there is a lack of multi-use trail connectivity in this southeastern area of Fort Collins; and

WHEREAS, Zach Elementary School has high numbers of students who bike, walk, or roll to school; and

WHEREAS, Zach Elementary students who live south of the school experience safer routes to school via low-traffic, low-volume residential streets with sidewalks; and

WHEREAS, Zach Elementary students who live north of the arterial must cross Kechter Road to get to school, making their journey much more challenging and riskier due to the existing suboptimal crossings at Kechter Road and Jupiter Drive and at Kechter Road and Cinquefoil Lane; and

WHEREAS, due to the Jupiter/Kechter intersection not being fully signalized, a traffic-control contractor is required to keep students safe when crossing Kechter at both morning arrival time and afternoon dismissal time; and

WHEREAS, there have been four rear-end crashes reported in this location between 2017 and 2022, one of which occurred during school dismissal time and one that involved a pedestrian who suffered serious injuries; and

WHEREAS, the Zach Elementary School Crossings Project (the "Project") has been developed to address these safety concerns and eliminate most of the conflicts that result in crashes presented by both the Jupiter/Kechter and Cinquefoil/Kechter intersections; and

WHEREAS, the Project's proposed improvements at the Jupiter/Kechter intersection will include a new fully signalized intersection with pedestrian "walk" signals and a new bike-pedestrian crossing; and

WHEREAS, the Project's proposed improvements at the Cinquefoil/Kechter intersection will include a median refuge island and flashing signal; and

WHEREAS, the City was awarded a Colorado Department of Transportation ("CDOT") Safe Routes to School ("SRTS") grant for the design and construction of the Project, and the SRTS

funding became available to the City in the State fiscal year 2024, which began July 2023, and which funding involves an eighty percent to twenty percent federal to local funding split; and

WHEREAS, the funding split for this award is $745,587 in federal funds and $187,397 in local funds; and

WHEREAS, the City's local match is being covered by funding from the SRTS School Transportation Safety Studies, the Bicycle Community Capital Improvement Program, the Pedestrian Community Capital Improvement Program, and funds that will be received pursuant to an intergovernmental agreement (the "IGA") with the Poudre School District; and

WHEREAS, CDOT has proposed an IGA between CDOT and the City that outlines the terms and conditions of the use of the SRTS grant funds; and

WHEREAS, Colorado Revised Statutes Section 29-1-203 provides that governments may cooperate or contract with one another to provide certain services or facilities when the cooperation or contracts are authorized by each party thereto with the approval of its legislative body or other authority having the power to so approve; and

WHEREAS, City Charter Article II, Section 16 empowers the City Council, by ordinance or resolution, to enter into contracts with governmental bodies to furnish governmental services and make charges for such services, or enter into cooperative or joint activities with other governmental bodies; and

WHEREAS, City Code Section 1-22 requires the City Council to approve intergovernmental agreements that require the City to make a direct, monetary payment over $50,000, and the proposed IGA involves total project funding in the amount of $932,984 of which local matching funds amount to $187,397; and

WHEREAS, the City Council has determined that the Project and the SRTS grant funding are in the best interests of the City and that the Mayor be authorized to execute the IGA between the City and CDOT in support thereof.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That City Council authorizes the Mayor to execute, on behalf of the City, the intergovernmental agreement with the Colorado Department of Transportation, in substantially the form attached hereto as "Exhibit A," with additional or modified terms and conditions as the City Manager, in consultation with the City Attorney, determines to be necessary and appropriate to protect the interests of the City or effectuate the purposes of this Resolution.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 17th day of October, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

OLA #: 331003161
Routing #: 24-HA4-XC-00198

STATE OF COLORADO INTERGOVERNMENTAL AGREEMENT
Signature and Cover Page

State Agency Department of Transportation			**Agreement Routing Number** 24-HA4-XC-00198
Local Agency CITY OF FORT COLLINS			**Agreement Effective Date** The later of the effective date or August 21, 2023
Agreement Description SRTS Zach Elementary School			**Agreement Expiration Date** August 20, 2033
Project # SAR M455-149 (25704)	**Region #** 4	**Contract Writer** TCH	**Agreement Maximum Amount** $931,984.00

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

Each person signing this Agreement represents and warrants that he or she is duly authorized to execute this Agreement and to bind the Party authorizing his or her signature.

LOCAL AGENCY CITY OF FORT COLLINS _____ Signature _____ By: (Print Name and Title) Date: _____	**STATE OF COLORADO** Jared S. Polis, Governor Department of Transportation Shoshana M. Lew, Executive Director _____ Keith Stefanik, P.E., Chief Engineer Date: _____
Additional Local Agency Signatures _____ Signature _____ By: (Print Name and Title) Date: _____ APPROVED AS TO FORM: _____ Signature _____ By: (Print Name and Title) Date: _____	**LEGAL REVIEW** Philip J. Weiser, Attorney General _____ Assistant Attorney General _____ By: (Print Name and Title) Date: _____

In accordance with §24-30-202 C.R.S., this Agreement is not valid until signed and dated below by the State Controller or an authorized delegate.

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By: _____
Department of Transportation

Effective Date: _____

TABLE OF CONTENTS

1. PARTIES

This Agreement is entered into by and between Local Agency named on the Signature and Cover Page for this Agreement (“Local Agency”), and the STATE OF COLORADO acting by and through the State agency named on the Signature and Cover Page for this Agreement (the “State” or “CDOT”). Local Agency and the State agree to the terms and conditions in this Agreement.

2. TERM AND EFFECTIVE DATE

A. Effective Date

This Agreement shall not be valid or enforceable until the Effective Date, and Agreement Funds shall be expended within the dates shown in **Exhibit C** for each respective phase ("Phase Performance Period(s)"). The State shall not be bound by any provision of this Agreement before the Effective Date, and shall have no obligation to pay Local Agency for any Work performed or expense incurred before 1) the Effective Date of this original Agreement; except as described in **§7.D**; 2) before the encumbering document for the respective phase *and* the official Notice to Proceed for the respective phase; or 3) after the Final Phase Performance End Date, as shown in **Exhibit C**. Additionally, the State shall have no obligation to pay Local Agency for any Work performed or expense incurred after the Agreement Expiration Date or after required billing deadline specified in **§7.B.i.e**., or the expiration of "Special Funding" if applicable, whichever is sooner. The State's obligation to pay Agreement Funds exclusive of Special Funding will continue until the Agreement Expiration Date. If Agreement Funds expire before the Agreement Expiration Date, then no payments will be made after expiration of Agreement Funds.

B. Initial Term and Extension

The Parties' respective performances under this Agreement shall commence on the Agreement Effective Date shown on the Signature and Cover Page for this Agreement and shall terminate on August 20, 2033 as shown on the Signature and Cover Page for this Agreement, unless sooner terminated or further extended in accordance with the terms of this Agreement. Upon request of Local Agency, the State may, in its sole discretion, extend the term of this Agreement by Option Letter pursuant **§7.E.iv**. If the Work will be performed in multiple phases, the period of performance start and end date of each phase is detailed under the Project Schedule in **Exhibit C**.

C. Early Termination in the Public Interest

The State is entering into this Agreement to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Agreement ceases to further the public interest of the State, and this ARPA Award is not appropriated, or otherwise become unavailable to fund this ARPA Award the State, in its discretion, may terminate this Agreement in whole or in part. This subsection shall not apply to a termination of this Agreement by the State for breach by Local Agency, which shall be governed by **§14.A.i.**

i. Method and Content

The State shall notify Local Agency by providing written notice to Local Agency of the termination and be in accordance with **§16.** The notice shall specify the effective date of the termination and whether it affects all or a portion of this Agreement.

ii. Obligations and Rights

Upon receipt of a termination notice for termination in the public interest, Local Agency shall be subject to **§14.A.i.a**

iii. Payments

If the State terminates this Agreement in the public interest, the State shall pay Local Agency an amount equal to the percentage of the total reimbursement payable under this Agreement that corresponds to the percentage of Work satisfactorily completed and accepted, as determined by the State, less payments previously made. Additionally, if this Agreement is less than 60% completed, as determined by the State, the State may reimburse Local Agency for a portion of actual out-of-pocket expenses, not otherwise reimbursed under this Agreement, incurred by Local Agency which are directly attributable to the uncompleted portion of Local Agency's obligations, provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Local Agency hereunder. This subsection shall not apply to a termination of this ARPA Award by the State for breach by Local Agency.

D. Local Agency Termination Under Federal Requirements

Local Agency may request termination of the ARPA Award by sending notice to the State, which includes the effective date of the termination. If this ARPA Award is terminated in this manner, then Local Agency shall return any advanced payments made for work that will not be performed prior to the effective date of the termination.

3. AUTHORITY

Authority to enter into this Agreement exists in the law as follows:

A. Federal Authority

Pursuant to Title I, Subtitle A, of the "Fixing America's Surface Transportation Act" (FAST Act) of 2015, and to applicable provisions of Title 23 of the United States Code and implementing regulations at Title 23 of the Code of Federal Regulations, as may be amended, (collectively referred to hereinafter as the "Federal Provisions"), certain federal funds have been and are expected to continue to be allocated for transportation projects requested by Local Agency and eligible under the Surface Transportation Improvement Program that has been proposed by the State and approved by the Federal Highway Administration ("FHWA").

Pursuant to Title VI of the Social Security Act, Section 602 of the "Coronavirus State and Local Fiscal Recovery Funds", a part of the American Rescue Plan, provides state, local and Tribal governments with the resources needed to respond to the pandemic and its economic effects and to build a stronger, more equitable economy during the recovery.

B. State Authority

Pursuant to CRS §43-1-223 and to applicable portions of the Federal Provisions, the State is responsible for the general administration and supervision of performance of projects in the Program, including the administration of federal funds for a Program project performed by a Local Agency under a contract with the State. This Agreement is executed under the authority of CRS §§29-1-203, 43-1-110; 43-1-116, 43-2-101(4)(c) and 43-2-104.5.

4. PURPOSE

The purpose of this Agreement is to disburse Federal funds to the Local Agency pursuant to CDOT's Stewardship Agreement with the FHWA and/or USDT as shown in **Exhibit C**.

5. DEFINITIONS

The following terms shall be construed and interpreted as follows:

A. "**Agreement**" means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.

B. "**Agreement Funds**" means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Agreement.

C. "**ARPA**" means American Rescue Plan Act, funded by the US Department of the Treasury ("USDT"). See "SLFRF" below.

D. "**Award**" means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise.

E. "**Budget**" means the budget for the Work described in **Exhibit C**.

F. "**Business Day**" means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1) C.R.S..

G. "**Chief Procurement Officer**" means the individual to whom the Executive Director has delegated his or her authority pursuant to §24-102-202 to procure or supervise the procurement of all supplies and services needed by the State.

H. "**CJI**" means criminal justice information collected by criminal justice agencies needed for the performance of their authorized functions, including, without limitation, all information defined as criminal justice information by the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy, as amended and all Criminal Justice Records as defined under §24-72-302, C.R.S.

I. "**Consultant**" means a professional engineer or designer hired by Local Agency to design the Work Product.

J. "**Contractor**" means the general construction contractor hired by Local Agency to construct the Work.

K. "**CORA**" means the Colorado Open Records Act, §§24-72-200.1 *et. seq.*, C.R.S.

L. "**Effective Date**" means the date on which this Agreement is approved and signed by the Colorado State Controller or designee, as shown on the Signature and Cover Page for this Agreement.

M. "**Evaluation**" means the process of examining Local Agency's Work and rating it based on criteria established in **§6, Exhibit A** and **Exhibit E**.

N. "**Exhibits**" means the following exhibits attached to this Agreement:

i. **Exhibit A**, Scope of Work.
ii. **Exhibit B**, Sample Option Letter.
iii. **Exhibit C**, Funding Provisions
iv. **Exhibit D**, Local Agency Resolution
v. **Exhibit E**, Local Agency Contract Administration Checklist
vi. **Exhibit F**, Certification for Federal-Aid Contracts
vii. **Exhibit G**, Disadvantaged Business Enterprise
viii. **Exhibit H**, Local Agency Procedures for Consultant Services
ix. **Exhibit I**, Federal-Aid Contract Provisions for Construction Contracts
x. **Exhibit J**, Additional Federal Requirements
xi. **Exhibit K**, The Federal Funding Accountability and Transparency Act of 2006 (FFATA) Supplemental Federal Provisions
xii. **Exhibit L**, Sample Sub-Recipient Monitoring and Risk Assessment Form
xiii. **Exhibit M**, Supplemental Provisions for Federal Awards Subject to The Office of Management and Budget Uniform Administrative Requirements, Cost principles, and Audit Requirements for Federal Awards (the "Uniform Guidance")
xiv. **Exhibit N**, Federal Treasury Provisions
xv. **Exhibit O**, Agreement with Subrecipient of Federal Recovery Funds
xvi. **Exhibit P**, SLFRF Subrecipient Quarterly Report
xvii. **Exhibit Q**, SLFRF Reporting Modification Form
xviii. **Exhibit R**, Applicable Federal Awards
xix. **Exhibit S**, PII Certification
xx. **Exhibit T**, Checklist of Required Exhibits Dependent on Funding Source

O. "**Expiration Date**" means the date on which this Agreement expires, as shown on the Signature and Cover Page for this Agreement.

P. "**Extension Term**" means the period of time by which the ARPA Expiration Date is extended by the State through delivery of an updated ARPA Letter.

Q. "**Federal Award**" means an award of Federal financial assistance or a cost-reimbursement contract under the Federal Acquisition Requirements by a Federal Awarding Agency to a Recipient. "Federal Award" also means an agreement setting forth the terms and conditions of the Federal Award. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.

R. "**Federal Awarding Agency**" means a Federal agency providing a Federal Award to a Recipient. The US Department of the Treasury is the Federal Awarding Agency for the Federal Award, which may be the subject of this Agreement.

S. "**FHWA**" means the Federal Highway Administration, which is one of the twelve administrations under the Office of the Secretary of Transportation at the U.S. Department of Transportation. FHWA provides stewardship over the construction, maintenance and preservation of the Nation's highways and tunnels. FHWA is the Federal Awarding Agency for the Federal Award which is the subject of this Agreement.

T. "**Goods**" means any movable material acquired, produced, or delivered by Local Agency as set forth in this Agreement and shall include any movable material acquired, produced, or delivered by Local Agency in connection with the Services.

U. "**Incident**" means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access or disclosure of State Confidential Information or of the unauthorized modification, disruption, or destruction of any State Records.

V. "**Initial Term**" means the time period defined in **§2.B**.

W. "**Local Funds**" means the funds provided by the Local Agency as their obligated contribution to the federal and/or State Awards to receive the federal and/or State funding.

X. "**Notice to Proceed**" means the letter issued by the State to the Local Agency stating the date the Local Agency can begin work subject to the conditions of this Agreement.

Y. "**OMB**" means the Executive Office of the President, Office of Management and Budget.

Z. "**Oversight**" means the term as it is defined in the Stewardship Agreement between CDOT and the FHWA.

AA. "**Party**" means the State or Local Agency, and "**Parties**" means both the State and Local Agency.

BB. "**PCI**" means payment card information including any data related to credit card holders' names, credit card numbers, or the other credit card information as may be protected by state or federal law.

CC. "**PHI**" means any protected health information, including, without limitation any information whether oral or recorded in any form or medium: **(i)** that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and **(ii)** that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI includes, but is not limited to, any information defined as Individually Identifiable Health Information by the federal Health Insurance Portability and Accountability Act.

DD. "**PII**" means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual‘s identity, such as name, social security number, date and place of birth, mother‘s maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §24-72-501 C.R.S. "PII" shall also mean "personal identifying information" as set forth at § 24-74-102, et. seq., C.R.S.

EE. "**Recipient**" means the Colorado Department of Transportation (CDOT) for this Federal Award.

FF. "**Services**" means the services to be performed by Local Agency as set forth in this Agreement and shall include any services to be rendered by Local Agency in connection with the Goods.

GG. "**SLFRF**" means State and Local Fiscal Recovery Funds, provided by ARPA, funded by the US Treasury Department.

HH. "**Special Funding**" means an award by Federal agency or the State which may include but is not limited to one or a combination of Multimodal Transportation & Mitigation Options Funding, Revitalizing Main Streets, Safer Main Streets, Stimulus Funds, Coronavirus Response and Relief Supplemental Funds, ARPA, SLFRF, or COVID Relief.

II. "**State Confidential Information**" means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII and State personnel records not subject to disclosure under CORA.

JJ. "**State Fiscal Rules**" means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a).

KK. "**State Fiscal Year**" means a 12-month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.

LL. "**State Purchasing Director**" means the position described in the Colorado Procurement Code and its implementing regulations.

MM. "**State Records**" means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.

NN. "**Sub-Award**" means this Award by the State to Local Agency funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to this Sub-Award unless the terms and conditions of the Federal Award specifically indicate otherwise.

OO. "**Subcontractor**" means third parties, if any, engaged by Local Agency to aid in performance of the Work.

PP. "**Subrecipient**" means a non-Federal entity that receives a sub-award from a Recipient to carry out part of a Federal program but does not include an individual that is a beneficiary of such program. A Subrecipient may also be a recipient of other Federal Awards directly from a Federal Awarding Agency.

QQ. "**Tax Information**" means Federal and State of Colorado tax information including, without limitation, Federal and State tax returns, return information, and such other tax-related information as may be protected by Federal and State law and regulation. Tax Information includes but is not limited to all information defined as Federal tax Information in Internal Revenue Service Publication 1075.

RR. "**Uniform Guidance**" means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which supersedes requirements from OMB Circulars A-21, A-87, A-110, A-122, A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up.

SS. "**USDT**" The United States Department of the Treasury (**USDT**) is the national treasury and finance department of the federal government of the United States where it serves as an executive department. The USDT funds ARPA.

TT. "**Work**" means the delivery of the Goods and performance of the Services in compliance with CDOT's Local Agency Manual described in this Agreement.

UU. "**Work Product**" means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. "Work Product" does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

Any other term used in this Agreement that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

6. SCOPE OF WORK

Local Agency shall complete the Work as described in this Agreement and in accordance with the provisions of **Exhibit A**, and the Local Agency Manual. The State shall have no liability to compensate Local Agency for the delivery of any Goods or the performance of any Services that are not specifically set forth in this Agreement. Work may be divided into multiple phases that have separate periods of performance. The State may not compensate for Work that Local Agency performs outside of its designated phase performance period. The performance period of phases, including, but not limited to Design, Construction, Right of Way, Utilities, or Environment phases, are identified in **Exhibit C**. The State may unilaterally modify **Exhibit C** from time to time, at its sole discretion, to extend the Agreement Expiration Date and/or to extend the period of performance for a phase of Work authorized under this Agreement. To exercise these options to extend the Agreement Expiration Date and/or to update the phase performance period extension option, the State will provide written notice to Local Agency in a form substantially equivalent to **Exhibit B.** The State's unilateral extension of the Agreement Expiration Date and/or the phase performance periods will not amend or alter in any way the funding provisions or any other terms specified in this Agreement, notwithstanding the options listed under **§7.E**

A. Local Agency Commitments

i. Design

If the Work includes preliminary design, final design, design work sheets, or special provisions and estimates (collectively referred to as the "Plans"), Local Agency shall ensure that it and its Contractors comply with and are responsible for satisfying the following requirements:

a. Perform or provide the Plans to the extent required by the nature of the Work.

b. Prepare final design in accordance with the requirements of the latest edition of the American Association of State Highway Transportation Officials (AASHTO) manual or other standard, such as the Uniform Building Code, as approved by the State.

c. Prepare provisions and estimates in accordance with the most current version of the State's Roadway and Bridge Design Manuals and Standard Specifications for Road and Bridge Construction or Local Agency specifications if approved by the State.

d. Include details of any required detours in the Plans in order to prevent any interference of the construction Work and to protect the traveling public.

e. Stamp the Plans as produced by a Colorado registered professional engineer.

f. Provide final assembly of Plans and all other necessary documents.

g. Ensure the Plans are accurate and complete.

h. Make no further changes in the Plans following the award of the construction contract to Contractor unless agreed to in writing by the Parties. The Plans shall be considered final when approved in writing by CDOT, and when final, they will be deemed incorporated herein.

ii. Local Agency Work

a. Local Agency shall comply with the requirements of the Americans With Disabilities Act (ADA) 42 U.S.C. § 12101, et. seq., and applicable federal regulations and standards as contained in the document "ADA Accessibility Requirements in CDOT Transportation Projects".

b. Local Agency shall afford the State ample opportunity to review the Plans and shall make any changes in the Plans that are directed by the State to comply with FHWA requirements.

c. Local Agency may enter into a contract with a Consultant to perform all or any portion of the Plans and/or construction administration. Provided, however, if federal-aid funds are involved in the cost of such Work to be done by such Consultant, such Consultant contract (and the performance provision of the Plans under the contract) must comply with all applicable requirements of 23 C.F.R. Part 172 and with any procedures implementing those requirements as provided by the State, including those in **Exhibit H**. If Local Agency enters into a contract with a Consultant for the Work:

1) Local Agency shall submit a certification that procurement of any Consultant contract complies with the requirements of 23 C.F.R. 172.5(1) prior to entering into such Consultant contract, subject to the State's approval. If not approved by the State, Local Agency shall not enter into such Consultant contract.

2) Local Agency shall ensure that all changes in the Consultant contract have prior approval by the State and FHWA and that they are in writing. Immediately after the Consultant contract has been awarded, one copy of the executed Consultant contract and any amendments shall be submitted to the State.

3) Local Agency shall require that all billings under the Consultant contract comply with the State's standardized billing format. Examples of the billing formats are available from the CDOT Agreements Office.

4) Local Agency (and any Consultant) shall comply with 23 C.F.R. 172.5(b) and (d) and use the CDOT procedures described in **Exhibit H** to administer the Consultant contract.

5) Local Agency may expedite any CDOT approval of its procurement process and/or Consultant contract by submitting a letter to CDOT from Local Agency's attorney/authorized representative certifying compliance with **Exhibit H** and 23 C.F.R. 172.5(b)and (d).

6) Local Agency shall ensure that the Consultant contract complies with the requirements of 49 CFR 18.36(i) and contains the following language verbatim:

(a) The design work under this Agreement shall be compatible with the requirements of the contract between Local Agency and the State (which is incorporated herein by this

reference) for the design/construction of the project. The State is an intended third-party beneficiary of this agreement for that purpose.

(b) Upon advertisement of the project work for construction, the consultant shall make available services as requested by the State to assist the State in the evaluation of construction and the resolution of construction problems that may arise during the construction of the project.

(c) The consultant shall review the construction Contractor's shop drawings for conformance with the contract documents and compliance with the provisions of the State's publication, Standard Specifications for Road and Bridge Construction, in connection with this work.

(d) The State, in its sole discretion, may review construction plans, special provisions and estimates and may require Local Agency to make such changes therein as the State determines necessary to comply with State and FHWA requirements.

iii. Construction

If the Work includes construction, Local Agency shall perform the construction in accordance with the approved design plans and/or administer the construction in accordance with **Exhibit E**. Such administration shall include Work inspection and testing; approving sources of materials; performing required plant and shop inspections; documentation of contract payments, testing and inspection activities; preparing and approving pay estimates; preparing, approving and securing the funding for contract modification orders and minor contract revisions; processing construction Contractor claims; construction supervision; and meeting the quality control requirements of the FHWA/CDOT Stewardship Agreement, as described in **Exhibit E**.

a. The State may, after providing written notice of the reason for the suspension to Local Agency, suspend the Work, wholly or in part, due to the failure of Local Agency or its Contractor to correct conditions which are unsafe for workers or for such periods as the State may deem necessary due to unsuitable weather, or for conditions considered unsuitable for the prosecution of the Work, or for any other condition or reason deemed by the State to be in the public interest.

b. Local Agency shall be responsible for the following:

1) Appointing a qualified professional engineer, licensed in the State of Colorado, as Local Agency Project Engineer (LAPE), to perform engineering administration. The LAPE shall administer the Work in accordance with this Agreement, the requirements of the construction contract and applicable State procedures, as defined in the CDOT Local Agency Manual (https://www.codot.gov/business/designsupport/bulletins_manuals/2006-local-agency-manual).

2) For the construction Services, advertising the call for bids, following its approval by the State, and awarding the construction contract(s) to the lowest responsible bidder(s).

(a) All Local Agency's advertising and bid awards pursuant to this Agreement shall comply with applicable requirements of 23 U.S.C. §112 and 23 C.F.R. Parts 633 and 635 and C.R.S. § 24-92-101 et seq. Those requirements include, without limitation, that Local Agency and its Contractor(s) incorporate Form 1273 (Exhibit I) in its entirety, verbatim, into any subcontract(s) for Services as terms and conditions thereof, as required by 23 C.F.R. 633.102(e).

(b) Local Agency may accept or reject the proposal of the apparent low bidder for Work on which competitive bids have been received. Local Agency must accept or reject such bids within three (3) working days after they are publicly opened.

(c) If Local Agency accepts bids and makes awards that exceed the amount of available Agreement Funds, Local Agency shall provide the additional funds necessary to complete the Work or not award such bids.

(d) The requirements of **§6.A.iii.b.2** also apply to any advertising and bid awards made by the State.

(e) The State (and in some cases FHWA) must approve in advance all Force Account Construction, and Local Agency shall not initiate any such Services until the State issues a written Notice to Proceed.

iv. Right of Way (ROW) and Acquisition/Relocation

a. If Local Agency purchases a ROW for a State highway, including areas of influence, Local Agency shall convey the ROW to CDOT promptly upon the completion of the project/construction.

b. Any acquisition/relocation activities shall comply with all applicable federal and State statutes and regulations, including but not limited to, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs, as amended (49 C.F.R. Part 24), CDOT's Right of Way Manual, and CDOT's Policy and Procedural Directives.

c. The Parties' respective responsibilities for ensuring compliance with acquisition, relocation and incidentals depend on the level of federal participation as detailed in CDOT's Right of Way Manual (located at http://www.codot.gov/business/manuals/right-of-way); however, the State always retains oversight responsibilities.

d. The Parties' respective responsibilities at each level of federal participation in CDOT's Right of Way Manual, and the State's reimbursement of Local Agency costs will be determined pursuant the following categories:

1) Right of way acquisition (3111) for federal participation and non-participation;

2) Relocation activities, if applicable (3109);

3) Right of way incidentals, if applicable (expenses incidental to acquisition/relocation of right of way – 3114).

v. Utilities

If necessary, Local Agency shall be responsible for obtaining the proper clearance or approval from any utility company that may become involved in the Work. Prior to the Work being advertised for bids, Local Agency shall certify in writing to the State that all such clearances have been obtained.

vi. Railroads

If the Work involves modification of a railroad company's facilities and such modification will be accomplished by the railroad company, Local Agency shall make timely application to the Public Utilities Commission ("PUC") requesting its order providing for the installation of the proposed improvements. Local Agency shall not proceed with that part of the Work before obtaining the PUC's order. Local Agency shall also establish contact with the railroad company involved for the purpose of complying with applicable provisions of 23 C.F.R. 646, subpart B, concerning federal-aid projects involving railroad facilities, and:

a. Execute an agreement with the railroad company setting out what work is to be accomplished and the location(s) thereof, and which costs shall be eligible for federal participation.

b. Obtain the railroad's detailed estimate of the cost of the Work.

c. Establish future maintenance responsibilities for the proposed installation.

d. Proscribe in the agreement the future use or dispositions of the proposed improvements in the event of abandonment or elimination of a grade crossing.

e. Establish future repair and/or replacement responsibilities, as between the railroad company and the Local Agency, in the event of accidental destruction or damage to the installation.

vii. Environmental Obligations

Local Agency shall perform all Work in accordance with the requirements of current federal and State environmental regulations, including the National Environmental Policy Act of 1969 (NEPA) as applicable.

viii. Maintenance Obligations

Local Agency shall maintain and operate the Work constructed under this Agreement at its own cost and expense during their useful life, in a manner satisfactory to the State and FHWA. Local Agency shall conduct such maintenance and operations in accordance with all applicable statutes, ordinances, and regulations pertaining to maintaining such improvements. The State and FHWA may make periodic inspections to verify that such improvements are being adequately maintained.

ix. Monitoring Obligations

Local Agency shall respond in a timely manner to and participate fully with the monitoring activities described in **§7.F.vi.**

B. State's Commitments

i. The State will perform a final project inspection of the Work as a quality control/assurance activity. When all Work has been satisfactorily completed, the State will sign the FHWA Form 1212.

ii. Notwithstanding any consents or approvals given by the State for the Plans, the State shall not be liable or responsible in any manner for the structural design, details or construction of any Work constituting major structures designed by, or that are the responsibility of, Local Agency, as identified in **Exhibit E**.

7. PAYMENTS

A. Maximum Amount

Payments to Local Agency are limited to the unpaid, obligated balance of the Agreement Funds set forth in **Exhibit C**. The State shall not pay Local Agency any amount under this Agreement that exceeds the Agreement Maximum set forth in **Exhibit C**.

B. Payment Procedures

i. Invoices and Payment

a. The State shall pay Local Agency in the amounts and in accordance with conditions set forth in **Exhibit C**.

b. Local Agency shall initiate payment requests by invoice to the State, in a form and manner approved by the State.

c. The State shall pay each invoice within 45 days following the State's receipt of that invoice, so long as the amount invoiced correctly represents Work completed by Local Agency and previously accepted by the State during the term that the invoice covers. If the State determines that the amount of any invoice is not correct, then Local Agency shall make all changes necessary to correct that invoice.

d. The acceptance of an invoice shall not constitute acceptance of any Work performed or deliverables provided under the Agreement.

e. If a project is funded in part with Federal or State special funding there may be an expiration date for the funds. The expiration date applies to grants and local funds used to match grants. To receive payment or credit for the match, Work must be completed or substantially completed, as outlined in the terms of the grant, prior to the expiration date of the special funding and invoiced in compliance with the rules outlined in the award of the funding. The acceptance of an invoice shall not constitute acceptance of any Work performed or deliverables provided under the Agreement.

ii. Interest

Amounts not paid by the State within 45 days after the State's acceptance of the invoice shall bear interest on the unpaid balance beginning on the 46th day at the rate of 1% per month, as required by §24-30-202(24)(a), C.R.S., until paid in full; provided, however, that interest shall not accrue on unpaid amounts that the State disputes in writing. Local Agency shall invoice the State separately for accrued interest on delinquent amounts, and the invoice shall reference the delinquent payment, the number of days interest to be paid and the interest rate.

iii. Payment Disputes

If Local Agency disputes any calculation, determination, or amount of any payment, Local Agency shall notify the State in writing of its dispute within 30 days following the earlier to occur of Local Agency's receipt of the payment or notification of the determination or calculation of the payment by the State. The State will review the information presented by Local Agency and may make changes to its determination based on this review. The calculation, determination, or payment amount that results from the State's review shall not be subject to additional dispute under this subsection. No payment subject to a dispute under this subsection shall be due until after the State has concluded its review, and the State shall not pay any interest on any amount during the period it is subject to dispute under this subsection.

iv. Available Funds-Contingency-Termination

a. The State is prohibited by law from making commitments beyond the term of the current State Fiscal Year. Payment to Local Agency beyond the current State Fiscal Year is contingent on the appropriation and continuing availability of Agreement Funds in any subsequent year (as provided in the Colorado Special Provisions). If federal funds or funds from any other non-State funds constitute all or some of the Agreement Funds, the State's obligation to pay Local Agency shall be contingent upon such non-State funding continuing to be made available for payment. Payments to be made pursuant to this Agreement shall be made only from Agreement Funds, and the State's liability for such payments shall be limited to the amount remaining of such Agreement Funds. If State, federal or other funds are not appropriated, or otherwise become unavailable to fund this Agreement, the State may, upon written notice, terminate this Agreement, in whole or in part, without incurring further liability. The State shall, however, remain obligated to pay for Services and Goods that are delivered and accepted prior to the effective date of notice of termination, and this termination shall otherwise be treated as if this Agreement were terminated in the public interest as described in **§2.C**.

b. If the agreement funds are terminated, the State can terminate the contract early. Payment due for work done to the date of termination will be processed in a manner consistent with **§2.C**.

v. Erroneous Payments

The State may recover, at the State's discretion, payments made to Local Agency in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Local Agency. The State may recover such payments by deduction from subsequent payments under this Agreement, deduction from any payment due under any other contracts, grants or agreements between the State and Local Agency, or by any other appropriate method for collecting debts owed to the State. The close out of a Federal Award does not affect the right of FHWA or the State to disallow costs and recover funds on the basis of a later audit or other review. Any cost disallowance recovery is to be made within the Record Retention Period (as defined below in **§9.A**.).

vi. Federal Recovery

The close-out of a Federal Award does not affect the right of the Federal Awarding Agency or the State to disallow costs and recover funds on the basis of a later audit or other review. Any cost disallowance recovery is to be made within the Record Retention Period, as defined below.

C. Local Agency Funds

Local Agency shall provide their obligated contribution funds as outlined in **§7.A**. and **Exhibit C**. Local Agency shall have raised the full amount of their funds prior to the Effective Date and shall report to the State regarding the status of such funds upon request. Local Agency's obligation to pay all or any part of any matching funds, whether direct or contingent, only extend to funds duly and lawfully appropriated for the purposes of this Agreement by the authorized representatives of Local Agency and paid into Local Agency's treasury. Local Agency represents to the State that the amount designated "Local Agency Funds" in **Exhibit C** has been legally appropriated for the purpose of this Agreement by its authorized representatives and paid into its treasury. Local Agency may evidence such obligation by an appropriate ordinance/resolution or other authority letter expressly authorizing Local Agency to enter into this Agreement and to expend its match share of the Work. A copy of any such ordinance/resolution or authority letter is attached hereto as **Exhibit D** if applicable. Local Agency does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year debt of

Local Agency. Local Agency shall not pay or be liable for any claimed interest, late charges, fees, taxes, or penalties of any nature, except as required by Local Agency's laws or policies.

D. Reimbursement of Local Agency Costs

The State shall reimburse Local Agency's allowable costs, not exceeding the maximum total amount described in **Exhibit C** and **§7**. However, any costs incurred by Local Agency prior to the Effective Date shall not be reimbursed absent specific allowance of pre-award costs and indication that the Federal Award funding is retroactive. The State shall pay Local Agency for costs or expenses incurred or performance by the Local Agency prior to the Effective Date, only if (1) the Grant Funds involve federal funding and (2) federal laws, rules, and regulations applicable to the Work provide for such retroactive payments to the Local Agency. Any such retroactive payments shall comply with State Fiscal Rules and be made in accordance with the provisions of this Agreement. The applicable principles described in 2 C.F.R. Part 200 shall govern the State's obligation to reimburse all costs incurred by Local Agency and submitted to the State for reimbursement hereunder, and Local Agency shall comply with all such principles. The State shall reimburse Local Agency for the federal-aid share of properly documented costs related to the Work after review and approval thereof, subject to the provisions of this Agreement and **Exhibit C**. Local Agency costs for Work performed prior to the Effective Date shall not be reimbursed absent specific allowance of pre-award costs and indication that the Federal Award funding is retroactive. Local Agency costs for Work performed after any Performance Period End Date for a respective phase of the Work, is not reimbursable. Allowable costs shall be:

i. Reasonable and necessary to accomplish the Work and for the Goods and Services provided.

ii. Actual net cost to Local Agency (i.e. the price paid minus any items of value received by Local Agency that reduce the cost actually incurred).

E. Unilateral Modification of Agreement Funds Budget by State Option Letter

The State may, at its discretion, issue an "Option Letter" to Local Agency to add or modify Work phases in the Work schedule in **Exhibit C** if such modifications do not increase total budgeted Agreement Funds. Such Option Letters shall amend and update **Exhibit C**, Sections 2 or 4 of the Table, and sub-sections B and C of the **Exhibit C**. Option Letters shall not be deemed valid until signed by the State Controller or an authorized delegate. **This is NOT a Notice to Proceed**. Modification of **Exhibit C** by unilateral Option Letter is permitted only in the specific scenarios listed below. The State will exercise such options by providing Local Agency a fully executed Option Letter, in a form substantially equivalent to **Exhibit B**. Such Option Letters will be incorporated into this Agreement. This applies to the entire Scope of Work.

i. Option to Begin a Phase and/or Increase or Decrease the Encumbrance Amount

The State may require by Option Letter that Local Agency begin a new Work phase that may include Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous Work (but may not include Right of Way Acquisition/Relocation or Railroads) as detailed in **Exhibit A.** Such Option Letters may not modify the other terms and conditions stated in this Agreement and must decrease the amount budgeted and encumbered for one or more other Work phases so that the total amount of budgeted Agreement Funds remains the same. The State may also change the funding sources so long as the amount budgeted remains the same and the Local Agency contribution does not increase. The State may also issue a unilateral Option Letter to increase and/or decrease the total encumbrance amount of two or more existing Work phases, as long as the total amount of budgeted Agreement Funds remains the same, replacing the original Agreement Funding exhibit (**Exhibit C**) with an updated **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.).

ii. Option to Transfer Funds from One Phase to Another Phase.

The State may require or permit Local Agency to transfer Agreement Funds from one Work phase (Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous) to another phase as a result of changes to State, federal, and local match funding. In such case, the original funding exhibit (**Exhibit C**) will be replaced with an updated **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.) attached to the Option Letter. The Agreement Funds transferred from one Work phase to another are subject to the same terms and conditions stated in the original Agreement with the total budgeted Agreement Funds remaining the same. The State may unilaterally exercise this option by providing a

fully executed Option Letter to Local Agency within thirty (30) days before the initial targeted start date of the Work phase, in a form substantially equivalent to **Exhibit B**.

iii. Option to Exercise Options i and ii.

The State may require Local Agency to add a Work phase as detailed in **Exhibit A**, and encumber and transfer Agreement Funds from one Work phase to another. The original funding exhibit (**Exhibit C**) in the original Agreement will be replaced with an updated **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.) attached to the Option Letter. The addition of a Work phase and encumbrance and transfer of Agreement Funds are subject to the same terms and conditions stated in the original Agreement with the total budgeted Agreement Funds remaining the same. The State may unilaterally exercise this option by providing a fully executed Option Letter to Local Agency within 30 days before the initial targeted start date of the Work phase, in a form substantially equivalent to **Exhibit B**.

iv. Option to Extend Agreement/Phase Term and/or modify the OMB Uniform Guidance. The State, at its discretion, shall have the option to extend the term of this Agreement and/or update a Work Phase Performance Period and/or modify information required under the OMB Uniform Guidance, as outlined in **Exhibit C**. Any updated version of **Exhibit C** shall be attached to any executed Option Letter as **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.). In order to exercise this option, the State shall provide written notice to the Local Agency in a form substantially equivalent to **Exhibit B**.

F. Accounting

Local Agency shall establish and maintain accounting systems in accordance with generally accepted accounting standards (a separate set of accounts, or as a separate and integral part of its current accounting scheme). Such accounting systems shall, at a minimum, provide as follows:

i. Local Agency Performing the Work

If Local Agency is performing the Work, it shall document all allowable costs, including any approved Services contributed by Local Agency or subcontractors, using payrolls, time records, invoices, contracts, vouchers, and other applicable records.

ii. Local Agency-Checks or Draws

Checks issued or draws made by Local Agency shall be made or drawn against properly signed vouchers detailing the purpose thereof. Local Agency shall keep on file all checks, payrolls, invoices, contracts, vouchers, orders, and other accounting documents in the office of Local Agency, clearly identified, readily accessible, and to the extent feasible, separate and apart from all other Work documents.

iii. State-Administrative Services

The State may perform any necessary administrative support services required hereunder. Local Agency shall reimburse the State for the costs of any such services from the budgeted Agreement Funds as provided for in **Exhibit C**. If FHWA Agreement Funds are or become unavailable, or if Local Agency terminates this Agreement prior to the Work being approved by the State or otherwise completed, then all actual incurred costs of such services and assistance provided by the State shall be reimbursed to the State by Local Agency at its sole expense.

iv. Local Agency-Invoices

Local Agency's invoices shall describe in detail the reimbursable costs incurred by Local Agency for which it seeks reimbursement, the dates such costs were incurred and the amounts thereof, and Local Agency shall not submit more than one invoice per month.

v. Invoicing Within 60 Days

The State shall not be liable to reimburse Local Agency for any costs invoiced more than 60 days after the date on which the costs were incurred, including costs included in Local Agency's final invoice. The State may withhold final payment to Local Agency at the State's sole discretion until completion of final audit. Any costs incurred by Local Agency that are not allowable under 2 C.F.R. Part 200 shall be Local Agency's responsibility, and the State will deduct such disallowed costs from any payments due to Local Agency. The State will not reimburse costs for Work performed after the Performance Period End Date for a respective Work phase. The State will not reimburse costs for Work performed prior to Performance

Period End Date, but for which an invoice is received more than 60 days after the Performance Period End Date.

vi. Risk Assessment & Monitoring

Pursuant to 2 C.F.R. 200.331(b), – CDOT will evaluate Local Agency's risk of noncompliance with federal statutes, regulations, and terms and conditions of this Agreement. Local Agency shall complete a Risk Assessment Form (**Exhibit L**) when that may be requested by CDOT. The risk assessment is a quantitative and/or qualitative determination of the potential for Local Agency's non-compliance with the requirements of the Federal Award. The risk assessment will evaluate some or all of the following factors:

- Experience: Factors associated with the experience and history of the Subrecipient with the same or similar Federal Awards or grants.
- Monitoring/Audit: Factors associated with the results of the Subrecipient's previous audits or monitoring visits, including those performed by the Federal Awarding Agency, when the Subrecipient also receives direct federal funding. Include audit results if Subrecipient receives single audit, where the specific award being assessed was selected as a major program.
- Operation: Factors associated with the significant aspects of the Subrecipient's operations, in which failure could impact the Subrecipient's ability to perform and account for the contracted goods or services.
- Financial: Factors associated with the Subrecipient's financial stability and ability to comply with financial requirements of the Federal Award.
- Internal Controls: Factors associated with safeguarding assets and resources, deterring and detecting errors, fraud and theft, ensuring accuracy and completeness of accounting data, producing reliable and timely financial and management information, and ensuring adherence to its policies and plans.
- Impact: Factors associated with the potential impact of a Subrecipient's non-compliance to the overall success of the program objectives.
- Program Management: Factors associated with processes to manage critical personnel, approved written procedures, and knowledge of rules and regulations regarding federal-aid projects.

Following Local Agency's completion of the Risk Assessment Tool (**Exhibit L**), CDOT will determine the level of monitoring it will apply to Local Agency's performance of the Work. This risk assessment may be re-evaluated after CDOT begins performing monitoring activities.

G. Close Out

Local Agency shall close out this Award within 90 days after the Final Phase Performance End Date. If SLFRF Funds are used the Local Agency shall close out that portion of the Award within 45 days after the ARPA Award Expiration Date. Close out requires Local Agency's submission to the State of all deliverables defined in this Agreement, and Local Agency's final reimbursement request or invoice. The State will withhold 5% of allowable costs until all final documentation has been submitted and accepted by the State as substantially complete. If FHWA or US Treasury has not closed this Federal Award within one (1) year and 90 days after the Final Phase Performance End Date due to Local Agency's failure to submit required documentation, then Local Agency may be prohibited from applying for new Federal Awards through the State until such documentation is submitted and accepted.

8. REPORTING - NOTIFICATION

A. Quarterly Reports

In addition to any reports required pursuant to **§19** or pursuant to any exhibit, for any contract having a term longer than 3 months, Local Agency shall submit, on a quarterly basis, a written report specifying progress made for each specified performance measure and standard in this Agreement. Such progress report shall be in accordance with the procedures developed and prescribed by the State. Progress reports shall be submitted to the State not later than ten (10) Business Days following the end of each calendar quarter or at such time as otherwise specified by the State. If SLFRF Funds are used the report must be in the format of **Exhibit P**.

B. Litigation Reporting

If Local Agency is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Agreement or may affect Local Agency's ability to perform its obligations under this Agreement, Local Agency shall, within 10 days after being served, notify the State of such action and deliver copies of such pleading or document to the State's principal representative identified in **§16**.

C. Performance and Final Status

Local Agency shall submit all financial, performance and other reports to the State no later than 60 calendar days after the Final Phase Performance End Date or sooner termination of this Agreement, containing an Evaluation of Subrecipient's performance and the final status of Subrecipient's obligations hereunder.

D. Violations Reporting

Local Agency must disclose, in a timely manner, in writing to the State and FHWA, all violations of federal or State criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal Award. Penalties for noncompliance may include suspension or debarment (2 CFR Part 180 and 31 U.S.C. 3321).

9. LOCAL AGENCY RECORDS

A. Maintenance

Local Agency shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder. Local Agency shall maintain such records for a period (the "Record Retention Period") pursuant to the requirements of the funding source and for a minimum of three (3) years following the date of submission to the State of the final expenditure report, whichever is longer, or if this Award is renewed quarterly or annually, from the date of the submission of each quarterly or annual report, respectively. If any litigation, claim, or audit related to this Award starts before expiration of the Record Retention Period, the Record Retention Period shall extend until all litigation, claims, or audit findings have been resolved and final action taken by the State or Federal Awarding Agency. The Federal Awarding Agency, a cognizant agency for audit, oversight or indirect costs, and the State, may notify Local Agency in writing that the Record Retention Period shall be extended. For records for real property and equipment, the Record Retention Period shall extend three (3) years following final disposition of such property.

B. Inspection

Records during the Record Retention Period. Local Agency shall make Local Agency Records available during normal business hours at Local Agency's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than two (2) Business Days' notice from the State, unless the State determines that a shorter period of notice, or no notice, is necessary to protect the interests of the State.

C. Monitoring

The State will monitor Local Agency's performance of its obligations under this Agreement using procedures as determined by the State. The State shall monitor Local Agency's performance in a manner that does not unduly interfere with Local Agency's performance of the Work. Local Agency shall allow the State to perform all monitoring required by the Uniform Guidance, based on the State's risk analysis of Local Agency. The State shall have the right, in its sole discretion, to change its monitoring procedures and requirements at any time during the term of this Agreement. The State shall monitor Local Agency's performance in a manner that does not unduly interfere with Local Agency's performance of the Work. If Local Agency enters into a subcontract with an entity that would also be considered a Subrecipient, then the subcontract entered into by Local Agency shall contain provisions permitting both Local Agency and the State to perform all monitoring of that Subcontractor in accordance with the Uniform Guidance.

D. Final Audit Report

Local Agency shall promptly submit to the State a copy of any final audit report of an audit performed on Local Agency's records that relates to or affects this Agreement or the Work, whether the audit is conducted

by Local Agency or a third party. Additionally, if Local Agency is required to perform a single audit under 2 CFR 200.501, *et seq.*, then Local Agency shall submit a copy of the results of that audit to the State within the same timelines as the submission to the federal government.

10. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

Local Agency shall hold and maintain, and cause all Subcontractors to hold and maintain, any and all State Records that the State provides or makes available to Local Agency for the sole and exclusive benefit of the State, unless those State Records are otherwise publicly available at the time of disclosure or are subject to disclosure by Local Agency under CORA. Local Agency shall not, without prior written approval of the State, use for Local Agency's own benefit, publish, copy, or otherwise disclose to any third party, or permit the use by any third party for its benefit or to the detriment of the State, any State Records, except as otherwise stated in this Agreement. Local Agency shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. Local Agency shall immediately forward any request or demand for State Records to the State's principal representative. If Local Agency or any of its Subcontractors will or may receive the following types of data, Local Agency or its Subcontractors shall provide for the security of such data according to the following: **(i)** the most recently promulgated IRS Publication 1075 for all Tax Information and in accordance with the Safeguarding Requirements for Federal Tax Information attached to this Award as an Exhibit, if applicable, **(ii)** the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI, **(iii)** the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all CJI, and **(iv)** the federal Health Insurance Portability and Accountability Act for all PHI and the HIPAA Business Associate Agreement attached to this Award, if applicable. Local Agency shall immediately forward any request or demand for State Records to the State's principal representative.

B. Other Entity Access and Nondisclosure Agreements

Local Agency may provide State Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Agreement. Local Agency shall ensure all such agents, employees, assigns, and Subcontractors sign nondisclosure agreements with provisions at least as protective as those in this Agreement, and that the nondisclosure agreements are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential Information. Local Agency shall provide copies of those signed nondisclosure agreements to the State upon request.

C. Use, Security, and Retention

Local Agency shall use, hold and maintain State Confidential Information in compliance with any and all applicable laws and regulations in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information wherever located. Local Agency shall provide the State with access, subject to Local Agency's reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Agreement, Local Agency shall return State Records provided to Local Agency or destroy such State Records and certify to the State that it has done so, as directed by the State. If Local Agency is prevented by law or regulation from returning or destroying State Confidential Information, Local Agency warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

D. Incident Notice and Remediation

If Local Agency becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Local Agency can establish that none of Local Agency or any of its agents, employees, assigns, or Subcontractors are the cause or source of the Incident, Local Agency shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Local Agency shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which

may include, but is not limited to, developing, and implementing a remediation plan that is approved by the State at no additional cost to the State.

E. Safeguarding Personally Identifying Information "PII"

If Local Agency or any of its Subcontracts will or may receive PII under this agreement, Local Agency shall provide for the security for such PII, in a manner and form acceptable to the State, including, without limitation, State non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Local Agency shall be a "Third Party Service Provider" as defined in §24-73-103(1)(i), C.R.S. and shall maintain security procedures and practices consistent with §§24-73-101 et seq., C.R.S. In addition, as set forth in § 24-74-102, et. seq., C.R.S., Local Agency and Contractor, including, but not limited to, Local Agency and Contractor's employees, agents and Subcontractors, agrees not to share any PII with any third parties for the purpose of investigating for, participating in, cooperating with, or assisting with Federal immigration enforcement. If Local Agency and Contractor are given direct access to any State databases containing PII, Loca Agency and Contractor shall execute, on behalf of itself and its employees, the certification attached hereto as **Exhibit S** on an annual basis Local Agency and Contractor's duty and obligation to certify as set forth in **Exhibit S** shall continue as long as Local Agency and Contractor has direct access to any State databases containing PII. If Local Agency and Contractor uses any Subcontractors to perform services requiring direct access to State databases containing PII, the Local Agency and Contractor shall require such Subcontractors to execute and deliver the certification to the State on an annual basis, so long as the Subcontractor has access to State databases containing PII.

11. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

Local Agency shall not engage in any business or activities or maintain any relationships that conflict in any way with the full performance of the obligations of Local Agency under this Agreement. Such a conflict of interest would arise when a Local Agency or Subcontractor's employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Agreement. Officers, employees, and agents of Local Agency may neither solicit nor accept gratuities, favors or anything of monetary value from contractors or parties to subcontracts.

B. Apparent Conflicts of Interest

Local Agency acknowledges that, with respect to this Agreement, even the appearance of a conflict of interest shall be harmful to the State's interests. Absent the State's prior written approval, Local Agency shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Local Agency's obligations under this Agreement.

C. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Local Agency is uncertain whether a conflict or the appearance of a conflict has arisen, Local Agency shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the actual or apparent conflict constitutes a breach of this Agreement.

12. INSURANCE

Local Agency shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Agreement. All insurance policies required by this Agreement that are not provided through self-insurance shall be issued by insurance companies with an AM Best rating of A-VIII or better.

A. Local Agency Insurance

Local Agency is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S. (the "GIA") and shall maintain at all times during the term of this Agreement such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA.

B. Subcontractor Requirements

Local Agency shall ensure that each Subcontractor that is a public entity within the meaning of the GIA, maintains at all times during the terms of this Agreement, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor's obligations under the GIA. Local Agency shall ensure that each Subcontractor that is not a public entity within the meaning of the GIA, maintains at all times during the terms of this Agreement all of the following insurance policies:

i. Workers' Compensation

Workers' compensation insurance as required by state statute, and employers' liability insurance covering all Local Agency or Subcontractor employees acting within the course and scope of their employment.

ii. General Liability

Commercial general liability insurance written on an Insurance Services Office occurrence form, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

a. $1,000,000 each occurrence;

b. $1,000,000 general aggregate;

c. $1,000,000 products and completed operations aggregate; and

d. $50,000 any 1 fire.

iii. Automobile Liability

Automobile liability insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of $1,000,000 each accident combined single limit.

iv. Protected Information

Liability insurance covering all loss of State Confidential Information, such as PII, PHI, PCI, Tax Information, and CJI, and claims based on alleged violations of privacy rights through improper use or disclosure of protected information with minimum limits as follows:

a. $1,000,000 each occurrence; and

b. $2,000,000 general aggregate.

v. Professional Liability Insurance

Professional liability insurance covering any damages caused by an error, omission or any negligent act with minimum limits as follows:

a. $1,000,000 each occurrence; and

b. $1,000,000 general aggregate.

vi. Crime Insurance

Crime insurance including employee dishonesty coverage with minimum limits as follows:

a. $1,000,000 each occurrence; and

b. $1,000,000 general aggregate.

vii. Cyber/Network Security and Privacy Liability

Liability insurance covering all civil, regulatory and statutory damages, contractual damages, data breach management exposure, and any loss of State Confidential Information, such as PII, PHI, PCI, Tax Information, and CJI, and claims based on alleged violations of breach, violation or infringement of right to privacy rights through improper use or disclosure of protect consumer data protection law, confidentiality or other legal protection for personal information, as well as State Confidential Information with minimum limits as follows:

a. $1,000,000 each occurrence; and

b. $2,000,000 general aggregate.

C. Additional Insured

The State shall be named as additional insured on all commercial general liability policies (leases and construction contracts require additional insured coverage for completed operations) required of Local Agency and Subcontractors. In the event of cancellation of any commercial general liability policy, the carrier shall provide at least 10 days prior written notice to CDOT.

D. Primacy of Coverage

Coverage required of Local Agency and each Subcontractor shall be primary over any insurance or self-insurance program carried by Local Agency or the State.

E. Cancellation

All commercial insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Local Agency and Local Agency shall forward such notice to the State in accordance with **§16** within 7 days of Local Agency's receipt of such notice.

F. Subrogation Waiver

All commercial insurance policies secured or maintained by Local Agency or its Subcontractors in relation to this Agreement shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Local Agency or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

G. Certificates

For each commercial insurance plan provided by Local Agency under this Agreement, Local Agency shall provide to the State certificates evidencing Local Agency's insurance coverage required in this Agreement within seven (7) Business Days following the Effective Date. Local Agency shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Agreement within seven (7) Business Days following the Effective Date, except that, if Local Agency's subcontract is not in effect as of the Effective Date, Local Agency shall provide to the State certificates showing Subcontractor insurance coverage required under this Agreement within seven (7) Business Days following Local Agency's execution of the subcontract. No later than 15 days before the expiration date of Local Agency's or any Subcontractor's coverage, Local Agency shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Agreement, upon request by the State, Local Agency shall, within seven (7) Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this **§12**.

13. BREACH

A. Defined

The failure of a Party to perform any of its obligations in accordance with this Agreement, in whole or in part or in a timely or satisfactory manner, shall be a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization, or similar law, by or against Local Agency, or the appointment of a receiver or similar officer for Local Agency or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach.

B. Notice and Cure Period

In the event of a breach, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the breach, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in **§14** for that Party. Notwithstanding any provision of this Agreement to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Agreement in whole or in part or institute any other remedy in the Agreement in order to protect the public interest of the State.

14. REMEDIES

A. State's Remedies

If Local Agency is in breach under any provision of this Agreement and fails to cure such breach, the State, following the notice and cure period set forth in **§13.B,** shall have all of the remedies listed in this **§14.A.** in addition to all other remedies set forth in this Agreement or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

i. Termination for Breach

In the event of Local Agency's uncured breach, the State may terminate this entire Agreement or any part of this Agreement. Local Agency shall continue performance of this Agreement to the extent not terminated, if any.

a. Obligations and Rights

To the extent specified in any termination notice, Local Agency shall not incur further obligations or render further performance past the effective date of such notice and shall terminate outstanding orders and subcontracts with third parties. However, Local Agency shall complete and deliver to the State all Work not canceled by the termination notice and may incur obligations as necessary to do so within this Agreement's terms. At the request of the State, Local Agency shall assign to the State all of Local Agency's rights, title, and interest in and to such terminated orders or subcontracts. Upon termination, Local Agency shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Local Agency but in which the State has an interest. At the State's request, Local Agency shall return materials owned by the State in Local Agency's possession at the time of any termination. Local Agency shall deliver all completed Work Product and all Work Product that was in the process of completion to the State at the State's request.

b. Payments

Notwithstanding anything to the contrary, the State shall only pay Local Agency for accepted Work received as of the date of termination. If, after termination by the State, the State agrees that Local Agency was not in breach or that Local Agency's action or inaction was excusable, such termination shall be treated as a termination in the public interest, and the rights and obligations of the Parties shall be as if this Agreement had been terminated in the public interest under **§2.C**.

c. Damages and Withholding

Notwithstanding any other remedial action by the State, Local Agency shall remain liable to the State for any damages sustained by the State in connection with any breach by Local Agency, and the State may withhold payment to Local Agency for the purpose of mitigating the State's damages until such time as the exact amount of damages due to the State from Local Agency is determined. The State may withhold any amount that may be due Local Agency as the State deems necessary to protect the State against loss including, without limitation, loss as a result of outstanding liens and excess costs incurred by the State in procuring from third parties replacement Work as cover.

ii. Remedies Not Involving Termination

The State, in its discretion, may exercise one or more of the following additional remedies:

a. Suspend Performance

Suspend Local Agency's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Local Agency to an adjustment in price or cost or an adjustment in the performance schedule. Local Agency shall promptly cease performing Work and incurring costs in accordance with the State's directive, and the State shall not be liable for costs incurred by Local Agency after the suspension of performance.

b. Withhold Payment

Withhold payment to Local Agency until Local Agency corrects its Work.

c. Deny Payment

Deny payment for Work not performed, or that due to Local Agency's actions or inactions, cannot be performed or if they were performed are reasonably of no value to the state; provided, that any denial of payment shall be equal to the value of the obligations not performed.

d. Removal

Demand immediate removal from the Work of any of Local Agency's employees, agents, or Subcontractors from the Work whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this Agreement is deemed by the State to be contrary to the public interest or the State's best interest.

e. Intellectual Property

If any Work infringes a patent, copyright, trademark, trade secret, or other intellectual property right, Local Agency shall, as approved by the State (a) secure that right to use such Work for the State or Local Agency; (b) replace the Work with non infringing Work or modify the Work so that it becomes non infringing; or, (c) remove any infringing Work and refund the amount paid for such Work to the State.

B. Local Agency's Remedies

If the State is in breach of any provision of this Agreement and does not cure such breach, Local Agency, following the notice and cure period in **§13.B** and the dispute resolution process in **§15** shall have all remedies available at law and equity.

15. DISPUTE RESOLUTION

A. Initial Resolution

Except as herein specifically provided otherwise, disputes concerning the performance of this Agreement which cannot be resolved by the designated Agreement representatives shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager designated by Local Agency for resolution.

B. Resolution of Controversies

If the initial resolution described in §15.A fails to resolve the dispute within 10 Business Days, Local Agency shall submit any alleged breach of this Contract by the State to the Procurement Official of CDOT as described in §24-101-301(30), C.R.S. for resolution in accordance with the provisions of §§24-106-109, 24-109-101.1, 24-109-101.5, 24-109-106, 24-109-107, 24-109-201 through 24-109-206, and 24-109-501 through 24-109-505, C.R.S., (the "Resolution Statutes"), except that if Local Agency wishes to challenge any decision rendered by the Procurement Official, Local Agency's challenge shall be an appeal to the executive director of the Department of Personnel and Administration, or their delegate, under the Resolution Statutes before Local Agency pursues any further action as permitted by such statutes. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations.

C. Questions of Fact

Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement shall be decided by the Chief Engineer of the Department of Transportation. The decision of the Chief Engineer will be final and conclusive unless, within 30 calendar days after the date of receipt of a copy of such written decision, Local Agency mails or otherwise furnishes to the State a written appeal addressed to the Executive Director of CDOT. In connection with any appeal proceeding under this clause, Local Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, Local Agency shall proceed diligently with the performance of this Agreement in accordance with the Chief Engineer's decision. The decision of the Executive Director or his duly authorized representative for the determination of such appeals shall be final and conclusive and serve as final agency action. This dispute clause does not preclude consideration of questions of law in connection with decisions provided for herein. Nothing in this Agreement, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

16. NOTICES AND REPRESENTATIVES

Each individual identified below shall be the principal representative of the designating Party. All notices required or permitted to be given under this Agreement shall be in writing and shall be delivered **(i)** by hand with receipt required, **(ii)** by certified or registered mail to such Party's principal representative at the address set forth below or **(iii)** as an email with read receipt requested to the principal representative at the email address, if any, set forth below. If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party's principal representative at the address set forth below. Either Party may change its principal representative or principal representative contact information by notice submitted in accordance with this **§16** without a formal amendment to this Agreement. Unless otherwise provided in this Agreement, notices shall be effective upon delivery of the written notice.

For the State

Colorado Department of Transportation (CDOT)
Armando Ochoa, E/PST II
CDOT Region 4
10601 10th Street
Greeley, CO 80634
970-652-1668
armando.ochoa@state.co.us

For the Local Agency

City of Fort Collins
Gunnar Hale, Civil Engineer
281 North College Avenue
Fort Collins, CO 80524
970-817-0456
ghale@fcgov.com

17. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

A. Work Product

Local Agency hereby grants to the State a perpetual, irrevocable, non-exclusive, royalty free license, with the right to sublicense, to make, use, reproduce, distribute, perform, display, create derivatives of and otherwise exploit all intellectual property created by Local Agency or any Subcontractors. Local Agency assigns to the State and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based on, derived from, or incorporating the Work Product. Whether or not Local Agency is under contract with the State at the time, Local Agency shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State, to enable the State to secure patents, copyrights, licenses and other intellectual property rights related to the Work Product. The Parties intend the Work Product to be works made for hire.

i. Copyrights

To the extent that the Work Product (or any portion of the Work Product) would not be considered works made for hire under applicable law, Local Agency hereby assigns to the State, the entire right, title, and interest in and to copyrights in all Work Product and all works based upon, derived from, or incorporating the Work Product; all copyright applications, registrations, extensions, or renewals relating to all Work Product and all works based upon, derived from, or incorporating the Work Product; and all moral rights or similar rights with respect to the Work Product throughout the world. To the extent that Local Agency cannot make any of the assignments required by this section, Local Agency hereby grants to the State a perpetual, irrevocable, royalty-free license to use, modify, copy, publish, display, perform, transfer, distribute, sell, and create derivative works of the Work Product and all works based upon, derived from,

or incorporating the Work Product by all means and methods and in any format now known or invented in the future. The State may assign and license its rights under this license.

ii. Patents

In addition, Local Agency grants to the State (and to recipients of Work Product distributed by or on behalf of the State) a perpetual, worldwide, no-charge, royalty-free, irrevocable patent license to make, have made, use, distribute, sell, offer for sale, import, transfer, and otherwise utilize, operate, modify and propagate the contents of the Work Product. Such license applies only to those patent claims licensable by Local Agency that are necessarily infringed by the Work Product alone, or by the combination of the Work Product with anything else used by the State.

iii. Assignments and Assistance

Whether or not the Local Agency is under Agreement with the State at the time, Local Agency shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State, to enable the State to secure patents, copyrights, licenses and other intellectual property rights related to the Work Product. The Parties intend the Work Product to be works made for hire. Local Agency assigns to the State and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based on, derived from, or incorporating the Work Product.

B. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this Agreement, any pre-existing State Records, State software, research, reports, studies, photographs, negatives, or other documents, drawings, models, materials, data, and information shall be the exclusive property of the State (collectively, "State Materials"). Local Agency shall not use, willingly allow, cause or permit Work Product or State Materials to be used for any purpose other than the performance of Local Agency's obligations in this Agreement without the prior written consent of the State. Upon termination of this Agreement for any reason, Local Agency shall provide all Work Product and State Materials to the State in a form and manner as directed by the State.

C. Exclusive Property of Local Agency

Local Agency retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to Local Agency including, but not limited to, all pre-existing software, licensed products, associated source code, machine code, text images, audio and/or video, and third-party materials, delivered by Local Agency under this Agreement, whether incorporated in a Deliverable or necessary to use a Deliverable (collectively, "Local Agency Property"). Local Agency Property shall be licensed to the State as set forth in this Agreement or a State approved license agreement: (i) entered into as exhibits to this Agreement, (ii) obtained by the State from the applicable third-party vendor, or (iii) in the case of open source software, the license terms set forth in the applicable open source license agreement.

18. GOVERNMENTAL IMMUNITY

Liability for claims for injuries to persons or property arising from the negligence of the Parties, their departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the GIA; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, *et seq.* C.R.S. The following applies through June 30, 2022: no term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

19. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Local Agency under this Agreement is $100,000 or greater, either on the Effective Date or at any time thereafter, this **§19** shall apply. Local Agency agrees to be governed by and comply with the provisions of §24-106-103, §24-102-206, §24-106-106, §24-106-107 C.R.S. regarding the monitoring of vendor performance and the reporting of contract performance information in the State's contract management system ("Contract Management System" or "CMS"). Local Agency's performance shall be subject to evaluation and review in accordance with the terms and conditions of this Agreement, Colorado statutes governing CMS, and State Fiscal Rules and State Controller policies.

20. GENERAL PROVISIONS

A. Assignment

Local Agency's rights and obligations under this Agreement are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Local Agency's rights and obligations approved by the State shall be subject to the provisions of this Agreement

B. Subcontracts

Local Agency shall not enter into any subcontract in connection with its obligations under this Agreement without the prior, written approval of the State. Local Agency shall submit to the State a copy of each such subcontract upon request by the State. All subcontracts entered into by Local Agency in connection with this Agreement shall comply with all applicable federal and state laws and regulations, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of this Agreement.

C. Binding Effect

Except as otherwise provided in **§20.A.** all provisions of this Agreement, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

D. Authority

Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations have been duly authorized.

E. Captions and References

The captions and headings in this Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

F. Counterparts

This Agreement may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

G. Digital Signatures

If any signatory signs this agreement using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Contract by reference.

H. Entire Understanding

This Agreement represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Agreement. Prior or contemporaneous additions, deletions, or other changes to this Agreement shall not have any force or effect whatsoever, unless embodied herein.

I. Jurisdiction and Venue

All suits or actions related to this Agreement shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

J. Modification

Except as otherwise provided in this Agreement, any modification to this Agreement shall only be effective if agreed to in a formal amendment to this Agreement, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules. Modifications permitted under this Agreement, other than contract amendments, shall conform to the policies promulgated by the Colorado State Controller.

K. Statutes, Regulations, Fiscal Rules, and Other Authority.

Any reference in this Agreement to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Agreement.

L. Order of Precedence

In the event of a conflict or inconsistency between this Agreement and any exhibits or attachment such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:

i. The provisions of the other sections of the main body of this Agreement.
ii. **Exhibit N**, Federal Treasury Provisions.
iii. **Exhibit F**, Certification for Federal-Aid Contracts.
iv. **Exhibit G**, Disadvantaged Business Enterprise.
v. **Exhibit I**, Federal-Aid Contract Provisions for Construction Contracts.
vi. **Exhibit J**, Additional Federal Requirements.
vii. **Exhibit K**, Federal Funding Accountability and Transparency Act of 2006 (FFATA) Supplemental Federal Provisions.
viii. **Exhibit L**, Sample Sub-Recipient Monitoring and Risk Assessment Form.
ix. **Exhibit M**, Supplemental Provisions for Federal Awards Subject to The Office of Management and Budget Uniform Administrative Requirements, Cost principles, and Audit Requirements for Federal Awards (the "Uniform Guidance").
x. **Exhibit O**, Agreement with Subrecipient of Federal Recovery Funds.
xi. **Exhibit R**. Applicable Federal Awards.
xii Colorado Special Provisions in the main body of this Agreement.
xiii. **Exhibit A**, Scope of Work.
xiv. **Exhibit H**, Local Agency Procedures for Consultant Services.
xv. **Exhibit B**, Sample Option Letter.
xvi. **Exhibit C**, Funding Provisions.
xvii. **Exhibit P**, SLFRF Subrecipient Quarterly Report.
xviii. **Exhibit Q**, SLFRF Reporting Modification Form.
xix. **Exhibit D**, Local Agency Resolution.
xx. **Exhibit E**, Local Agency Contract Administration Checklist.
xxi. **Exhibit S**, PII Certification.
xxii. **Exhibit T**, Checklist of Required Exhibits Dependent on Funding Source.
xxiii. Other exhibits in descending order of their attachment.

M. Severability

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Agreement in accordance with the intent of the Agreement.

N. Survival of Certain Agreement Terms

Any provision of this Agreement that imposes an obligation on a Party after termination or expiration of the Agreement shall survive the termination or expiration of the Agreement and shall be enforceable by the other Party.

O. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in **§20.C,** this Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Agreement are incidental to the Agreement, and do not create any rights for such third parties.

P. Waiver

A Party's failure or delay in exercising any right, power, or privilege under this Agreement, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

Q. CORA Disclosure

To the extent not prohibited by federal law, this Agreement and the performance measures and standards required under §24-106-107 C.R.S., if any, are subject to public release through the CORA.

R. Standard and Manner of Performance

Local Agency shall perform its obligations under this Agreement in accordance with the highest standards of care, skill and diligence in Local Agency's industry, trade, or profession.

S. Licenses, Permits, and Other Authorizations.

Local Agency shall secure, prior to the Effective Date, and maintain at all times during the term of this Agreement, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Agreement, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or subcontract, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Agreement.

T. Compliance with State and Federal Law, Regulations, and Executive Orders

Local Agency shall comply with all State and Federal law, regulations, executive orders, State and Federal Awarding Agency policies, procedures, directives, and reporting requirements at all times during the term of this Agreement.

U. Accessibility

i. Local Agency shall comply with and the Work Product provided under this Agreement shall be in compliance with all applicable provisions of §§24-85-101, et seq., C.R.S., and the Accessibility Standards for Individuals with a Disability, as established by the Governor's Office of Information Technology (OIT), pursuant to Section §24-85-103 (2.5), C.R.S. Local Agency shall also comply with all State of Colorado technology standards related to technology accessibility and with Level AA of the most current version of the Web Content Accessibility Guidelines (WCAG), incorporated in the State of Colorado technology standards.

ii. Each Party agrees to be responsible for its own liability incurred as a result of its participation in and performance under this Agreement. In the event any claim is litigated, each Party will be responsible for its own attorneys' fees, expenses of litigation, or other costs. No provision of this Agreement shall be deemed or construed to be a relinquishment or waiver of any kind of the applicable limitations of liability provided to either the Local Agency or the State by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq. and Article XI of the Colorado Constitution. Nothing in the Agreement shall be construed as a waiver of any provision of the State Fiscal Rules.

iii. The State may require Local Agency's compliance to the State's Accessibility Standards to be determined by a third party selected by the State to attest to Local Agency's Work Product and software is in compliance with §§24-85-101, et seq., C.R.S., and the Accessibility Standards for Individuals with a Disability as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S.

V. Taxes

The State is exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from State and local government sales and use taxes under §§39-26-704(1), *et seq.*, C.R.S. (Colorado Sales Tax Exemption Identification Number 98-02565). The State shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the state imposes such taxes on Local Agency. Local Agency shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Local Agency may wish to have in place in connection with this Agreement.

21. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)

These Special Provisions apply to all contracts. Contractor refers to Local Agency.

A. STATUTORY APPROVAL. §24-30-202(1), C.R.S.

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Contract shall not be valid until it has been approved by the State's Chief Information Officer or designee.

B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S.

Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. GOVERNMENTAL IMMUNITY.

Liability for claims for injuries to persons or property arising from the negligence of the Parties, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

D. INDEPENDENT CONTRACTOR

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. **Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.**

E. COMPLIANCE WITH LAW.

Contractor shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. PROHIBITED TERMS.

Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S. Any term included in this Contract that limits Contractor's liability that is not void under this section shall apply only in excess of any insurance to be maintained under this Contract, and no insurance policy shall be interpreted as being subject to any limitations of liability of this Contract.

H. SOFTWARE PIRACY PROHIBITION.

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy

available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507, C.R.S.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

22. FEDERAL REQUIREMENTS

Local Agency and/or their contractors, subcontractors, and consultants shall at all times during the execution of this Agreement strictly adhere to, and comply with, all applicable federal and State laws, and their implementing regulations, as they currently exist and may hereafter be amended. A summary of applicable federal provisions are attached hereto as **Exhibit F**, **Exhibit I**, **Exhibit J**, **Exhibit K**, **Exhibit M, Exhibit N** and **Exhibit O** are hereby incorporated by this reference.

23. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

Local Agency will comply with all requirements of **Exhibit G** and **Exhibit E,** Local Agency Contract Administration Checklist, regarding DBE requirements for the Work, except that if Local Agency desires to use its own DBE program to implement and administer the DBE provisions of 49 C.F.R. Part 26 under this Agreement, it must submit a copy of its program's requirements to the State for review and approval before the execution of this Agreement. If Local Agency uses any State- approved DBE program for this Agreement, Local Agency shall be solely responsible to defend that DBE program and its use of that program against all legal and other challenges or complaints, at its sole cost and expense. Such responsibility includes, without limitation, determinations concerning DBE eligibility requirements and certification, adequate legal and factual bases for DBE goals and good faith efforts. State approval (if provided) of Local Agency's DBE program does not waive or modify the sole responsibility of Local Agency for use of its program.

EXHIBIT A

SCOPE OF WORK

Name of Project: SRTS Zach Elementary School
Project Number: SRM M455-149
SubAccount #: 25704

The Colorado Department of Transportation ("CDOT") will oversee the City of Fort Collins when City of Fort Collins designs the Zach Elementary School Crossing Improvements (hereinafter referred to as "this work"). CDOT and the City of Fort Collins believe it will be beneficial to perform this work to improve school crossing and intersection safety.

The design will be completed in accordance with AASHTO design standards, the Americans with Disabilities Act, and all applicable state, federal and local rules and regulations. The design phase of the work is anticipated to begin in the winter of 2023-2024 with local overmatch and will identify more exact requirements, qualities, and attributes for this work (hereinafter referred to as "the exact work"). The exact work shall be used to complete the construction phase of the project. The construction phase of the contract is anticipated to begin in 2024.

If ARPA funds are used all ARPA funds must be encumbered by December 31, 2024. All work funded by ARPA must be completed by December 31, 2026 and all bills must be submitted to CDOT for payment by January 31, 2027. These bills must be paid by CDOT by March 31, 2027.

By accepting funds for this Scope of Work, Local Agency acknowledges, understands, and accepts the continuing responsibility for the safety of the traveling public after initial acceptance of the project. **Local Agency is responsible for maintaining and operating the scope of work described in this Exhibit A constructed under this Agreement at its own cost and expense during its useful life.**

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EXHIBIT B

SAMPLE IGA OPTION LETTER

Date	State Fiscal Year	Option Letter No.
Project Code	**Original Agreement #**	

Vendor Name:

Option to unilaterally add phasing to include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous and to update encumbrance amount(s).

Option to unilaterally transfer funds from one phase to another phase.

Option to unilaterally add phasing to include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous, to update encumbrance amount(s), and to unilaterally transfer funds from one phase to another phase.

Option to unilaterally extend the term of this Agreement and/or update a Work Phase Performance Period and/or modify OMB Guidance.

Option A

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency, the State hereby exercises the option to authorize the Local Agency to add a phase and to encumber funds for the phase based on changes in funding availability and authorization. The total encumbrance is (or increased) by $0.00. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**.

Option B

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency, the State hereby exercises the option to transfer funds based on variance in actual phase costs and original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**.

Option C

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency, the State hereby exercises the option to 1) release the Local Agency to begin a phase; 2) to encumber funds for the phase based upon changes in funding availability and authorization; and 3) to transfer funds from phases based on variance in actual phase costs and

original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**.

Option D

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency, the State hereby exercises the option extend the term of this Agreement and/or update a Work Phase Performance Period and/or modify information required under the OMB Uniform Guidance, as outlined in **Exhibit C**. This is made part of the original Agreement and replaces the Expiration Date shown on the Signature and Cover Page. Any updated version of **Exhibit C** shall be attached to any executed Option Letter as **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.).

The effective date of this option letter is upon approval of the State Controller or delegate.

STATE OF COLORADO
Jared S. Polis
Department of Transportation

By: _____
Keith Stefanik, P.E., Chief Engineer
(For) Shoshana M. Lew, Executive Director

Date: _____

ALL AGREEMENTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Agreements. This Agreement is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If the Local Agency begins performing prior thereto, the State of Colorado is not obligated to pay the Local Agency for such performance or for any goods and/or services provided hereunder.

STATE OF COLORADO
STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By: _____
Colorado Department of Transportation

Date:_____

EXHIBIT C - FUNDING PROVISIONS

City of Fort Collins - SAR M455-149 (25704)

Cost of Work Estimate

The Local Agency has estimated the total cost the Work to be $931,984.00, which is to be funded as follows:

1.	**FUNDING**	
	a. Federal Funds (80% of SRTS Award)	$745,587.00
	b. Local Agency Funds (20% of SRTS Award)	$186,397.00
	TOTAL FUNDS ALL SOURCES	**$931,984.00**
2.	**OMB UNIFORM GUIDANCE**	
	a. Federal Award Identification Number (FAIN):	TBD
	b. Name of Federal Awarding Agency:	FHWA
	c. Local Agency Unique Entity Identifier	VEJ3BS5GK5G1
	d. Assistance Listing # Highway Planning and Construction	ALN 20.205
	e. Is the Award for R&D?	No
	f. Indirect Cost Rate (if applicable)	N/A
	g. Amount of Federal Funds Obligated by this Action:	$0.00
	h. Amount of Federal Funds Obligated to Date (including this Action):	$0.00
3.	**ESTIMATED PAYMENT TO LOCAL AGENCY**	
	a. Federal Funds Budgeted	$745,587.00
	b. Less Estimated Federal Share of CDOT-Incurred Costs	$0.00

TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY	**80%**	**$745,587.00**
TOTAL ESTIMATED FUNDING BY LOCAL AGENCY	**20%**	**$186,397.00**
TOTAL PROJECT ESTIMATED FUNDING	**100%**	**$931,984.00**

4.	**FOR CDOT ENCUMBRANCE PURPOSES**	
	a. Total Encumbrance Amount (Federal funds + Local Agency funds)	$931,984.00
	b. Less ROW Acquisition 3111 and/or ROW Relocation 3109	$0.00
NET TO BE ENCUMBERED BY CDOT IS AS FOLLOWS		**$931,984.00**

Note: No funds are currently available. Design and Construction funds will become available after execution of an Option letter (Exhibit B) or formal Amendment.

WBS Element 25704.10.30	Performance Period Start*/End Date TBD - TBD	Design 3020	$0.00
WBS Element 25704.20.10	Performance Period Start*/End Date TBD - TBD	Const. 3301	$0.00

*The Local Agency should not begin work until all three (3) of the following are in place: 1) Phase Performance Period Start Date; 2) the execution of the document encumbering funds for the respective phase; and 3) Local Agency receipt of the official Notice to Proceed. Any work performed before these three (3) milestones are achieved will not be reimbursable.

B. Funding Ratios

The funding ratio for the federal funds for this Work is 80% federal funds to 20% Local Agency funds, and this ratio applies only to the $931,984.00 that is eligible for federal funding. All other costs are borne by the Local Agency at 100%. If the total cost of performance of the Work exceeds $931,984.00, and additional federal funds are not available, the Local Agency shall pay all such excess costs. If the total cost of performance of the Work is less than $931,984.00, then the amounts of Local Agency and federal funds will be decreased in accordance with the funding ratio described in **A1**. **This applies to the entire scope of Work.**

C. Maximum Amount Payable

The maximum amount payable to the Local Agency under this Agreement shall be $745,587.00. For CDOT accounting purposes, the federal funds of $745,587.00 and the Local Agency funds of $186,397.00 will be encumbered for a total encumbrance of $931,984.00, unless this amount is increased by an executed amendment before any increased cost is incurred. The total cost of the Work is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and that any cost is subject to revisions agreed to by the parties prior to bid and award. The maximum amount payable will be reduced without amendment when the actual amount of the Local Agency's awarded Agreement is less than the budgeted total of the federal funds and the Local Agency funds. The maximum amount payable will be reduced through the execution of an Option Letter as described in Section 7. E. of this contract. **This applies to the entire scope of Work.**

D. Single Audit Act Amendment

All state and local government and non-profit organizations receiving $750,000 or more from all funding sources defined as federal financial assistance for Single Audit Act Amendment purposes shall comply with the audit requirements of 2 CFR part 200, subpart F (Audit Requirements) see also, 49 CFR 18.20 through 18.26. The Single Audit Act Amendment requirements applicable to the Local Agency receiving federal funds are as follows:

i. **Expenditure less than $750,000**
If the Local Agency expends less than $750,000 in Federal funds (all federal sources, not just Highway funds) in its fiscal year then this requirement does not apply.

ii. **Expenditure of $750,000 or more-Highway Funds Only**
If the Local Agency expends $750,000 or more, in Federal funds, but only received federal Highway funds (Catalog of Federal Domestic Assistance, CFDA 20.205) then a program specific audit shall be performed. This audit will examine the "financial" procedures and processes for this program area.

iii. **Expenditure of $750,000 or more-Multiple Funding Sources**
If the Local Agency expends $750,000 or more in Federal funds, and the Federal funds are from multiple sources (FTA, HUD, NPS, etc.) then the Single Audit Act applies, which is an audit on the entire organization/entity.

iv. **Independent CPA**
Single Audit shall only be conducted by an independent CPA, not by an auditor on staff. An audit is an allowable direct or indirect cost.

EXHIBIT D

LOCAL AGENCY RESOLUTION (IF APPLICABLE)

Exhibit E-

EXHIBIT A TO RESOLUTION NO. 2023-092

Local Agency Contract Administration Checklist

COLORADO DEPARTMENT OF TRANSPORTATION

LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

Project No.	STIP No.	Project Code	Region
SAR M455-149	**SR47001**	**25704**	**4**

Project Location	Date
City of Fort Collins	**8-1-2023**

Project Description
SRTS Zach Elementary

Local Agency	Local Agency Project Manager
City of Fort Collins	**Gunnar Hale**
CDOT Resident Engineer	CDOT Project Manager
Bryce Reeves	**Armando Ochoa**

INSTRUCTIONS:
This checklist shall be used to establish the contractual administrative responsibilities of the individual parties to this agreement. The checklist becomes an attachment to the Local Agency Agreement. Section numbers (NO.) correspond to the applicable chapters of the *CDOT Local Agency Desk Reference (Local Agency Manual).* LAWR numbers correspond to the applicable flowchart in the Local Agency Web Resource.

The checklist shall be prepared by placing an X under the responsible party, opposite each of the tasks. The X denotes the party responsible for initiating and executing the task. Only one responsible party should be selected. When neither CDOT nor the Local Agency is responsible for a task, not applicable (NA) shall be noted. In addition, # will denote that CDOT must concur or approve.

Tasks that will be performed by Headquarters staff are indicated with an X in the CDOT column under Responsible Party. The Regions, in accordance with established policies and procedures, will determine who will perform all other tasks that are the responsibility of CDOT.

The checklist shall be prepared by the CDOT Resident Engineer or the CDOT Project Manager, in cooperation with the Local Agency Project Manager, and submitted to the Region Program Engineer. If contract administration responsibilities change, the CDOT Resident Engineer, in cooperation with the Local Agency Project Manager, will prepare and distribute a revised checklist.

Note:
Failure to comply with applicable Federal and State requirements may result in the loss of Federal or State participation in funding.

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY LA	RESPONSIBLE PARTY CDOT
		TIP / STIP AND LONG-RANGE PLANS		
	2.1	Review Project to ensure it is consistent with Statewide Plan and amendments thereto		x
		FEDERAL FUNDING OBLIGATION AND AUTHORIZATION		
	4.1	Authorize funding by phases (Requires FHWA concurrence/involvement if Federal-aid Highway funded project.). *Please write in "NA", if Not Applicable.*		x
		PROJECT DEVELOPMENT		
1	5.1	Prepare Design Data - CDOT Form 463	x	#
	5.2	Determine Delivery Method	x	#
	5.3	Prepare Local Agency/CDOT Inter-Governmental Agreement (see also Chapter 3)		x
2	5.4	Conduct Consultant Selection/Execute Consultant Agreement • Project Development • Construction Contract Administration (including Fabrication Inspection Services)	 x x	 # #
3,3A	5.5	Conduct Design Scoping Review Meeting	x	#
3,6	5.6	Conduct Public Involvement (If applicable)	x	#

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY LA	CDOT
3	5.7	Conduct Field Inspection Review (FIR)	x	#
4	5.8	Conduct Environmental Processes (may require FHWA concurrence/involvement)	x	#
5	5.9	Acquire Right-of-Way (may require FHWA concurrence/involvement)	x	#
3	5.10	Obtain Utility and Railroad Agreements	x	#
3	5.11	Conduct Final Office Review (FOR)	x	#
3A	5.12	Justify Force Account Work by the Local Agency	x	#
3B	5.13	Justify Proprietary, Sole Source, or Local Agency Furnished Items	x	#
3	5.14	Document Design Exceptions - CDOT Form 464	x	#
	5.15	Seek Permission for use of Guaranty and Warranty Clauses	x	#
3	5.18	Prepare Plans, Specifications, Construction Cost Estimates and Submittals	x	#
	5.19	Comply with Requirements for Off-and On-System Bridges & Other Structural Work	x	#
	5.20	Update Approvals on PS&E Package if Project Schedule Delayed	x	#
	5.21	Ensure Authorization of Funds for Construction	#	x
	5.22	Use Electronic Signatures	x	x
	5.23	File Project Development Records/Documentation in ProjectWise	#	x
	PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE			
3	6.1	Set Disadvantaged Business Enterprise (DBE) Goals for Consultant and Construction Contracts (CDOT Region Civil Rights Office).		x
	6.2	Determine Applicability of Davis-Bacon Act This project ☐ is ☐ is not exempt from Davis-Bacon requirements as determined by the functional classification of the project location (Projects located on local roads and rural minor collectors may be exempt.) **Bryce Reeves** _____ _____ CDOT Resident Engineer Date		x
	6.3	Set On-the-Job Training Goals (CDOT Region Civil Rights Office) *"NA", if Not Applicable*		x
	6.4	Enforce Prompt Payment Requirements	x	#
	6.5	Use Electronic Tracking and Submission Systems – B2GNow ☐ LCPtracker ☐	x	#
3	6.6	Prepare/submit Title VI Plan and Incorporate Title VI Assurances	x	#
6,7		Ensure the correct Federal Wage Decision, all required Disadvantaged Business Enterprise/On-the-Job Training special provisions and FHWA Form 1273 are included in the Contract (CDOT Resident Engineer)	x	#
	ADVERTISE, BID AND AWARD of CONSTRUCTION PROJECTS Federal Project (use 7.1 series in Chapter 7) ■ Non-Federal Project (Use 7.2 series in Chapter 7) ☐			
6,7		Obtain Approval for Advertisement Period of Less Than Three Weeks;	x	#
7		Advertise for Bids	x	#
7		Concurrence to Advertise	#	x
7		Distribute “Advertisement Set” of Plans and Specifications	x	#
7		Review Worksite & Plan Details w/ Prospective Bidders While Project Is Under Ad	x	
7		Open Bids	x	
7		Process Bids for Compliance		
		Check CDOT Form 1415 – Commitment Confirmation when the low bidder meets DBE goals. (*Please write in "NA", if Not Applicable)*		x
		Evaluate CDOT Form 1416 - Good Faith Effort Report and determine if the Contractor has made a good faith effort when the low bidder does not meet DBE goals. *"NA", if Not Applicable.*		x
		Submit required documentation for CDOT award concurrence	x	
		Concurrence from CDOT to Award		x
		Approve Rejection of Low Bidder		x
7,8		Award Contract (federal)	x	

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY LA	CDOT
8		Provide "Award" and "Record" Sets of Plans and Specifications (federal)	x	
	CONSTRUCTION MANAGEMENT			
8	Intro	File Project Construction Records/Documentation in ProjectWise or as directed	x	
8	8.1	Issue Notice to Proceed to the Contractor	x	#
8	8.2	Project Safety	x	
8	8.3	Conduct Conferences:		
		Pre-construction Conference (Appendix B) • Fabrication Inspection Notifications	x x	#
		Pre-survey • Construction staking • Monumentation	 x x	
		Partnering (Optional)	x	
		Structural Concrete Pre-Pour (Agenda is in *CDOT Construction Manual*) *(If applicable)*	x	
		Concrete Pavement Pre-Paving (Agenda is in *CDOT Construction Manual*) *(If applicable)*	x	
		HMA Pre-Paving (Agenda is in *CDOT Construction Manual*) *(If applicable)*	x	
8	8.4	Develop and distribute Public Notice of Planned Construction to media and local residents	x	
9	8.5	Supervise Construction		
		A Professional Engineer (PE) registered in Colorado, who will be "in responsible charge of construction supervision." Gunnar Hale _____ 970-817-0456 Local Agency Professional Engineer or CDOT Resident Engineer — Phone number	x	
		Provide competent, experienced staff who will ensure the Contract work is constructed in accordance with the plans and specifications	x	
		Construction inspection and documentation (including projects with structures)	x	#
		Fabrication Inspection and documentation (If applicable)	x	
9	8.6	Review and Approve Shop Drawings	x	
9	8.7	Perform Traffic Control Inspections	x	#
9	8.8	Perform Construction Surveying	x	
9	8.9	Monument Right-of-Way	x	#
9,9A	8.10	Prepare and Approve Interim and Final Contractor Pay Estimates. Collect and review CDOT Form 1418 (or equivalent) or use compliance software system. Provide the name and phone number of the person authorized for this task. **Gunnar Hale** _____ 970-817-0456 Local Agency Representative — Phone number	x	
9	8.11	Prepare and Approve Interim and Final Utility and Railroad Billings	x	
9B	8.12	Prepare and Authorize Change Orders	x	#
9B	8.13	Submit Change Order Package to CDOT	x	
9A	8.14	Prepare Local Agency Reimbursement Requests	x	
9	8.15	Monitor Project Financial Status	x	#
9	8.16	Prepare and Submit Monthly Progress Reports	x	
9	8.17	Resolve Contractor Claims and Disputes	x	#
	8.18	Conduct Routine and Random Project Reviews Provide the name and phone number of the person responsible for this task. **Bryce Reeves** _____ **970-350-2126** CDOT Resident Engineer — Phone number		x
9	8.19	Ongoing Oversight of DBE Participation	x	

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY LA	CDOT
	MATERIALS			
9,9C	9.1	Discuss Materials at Pre-Construction Meeting • Buy America documentation required prior to installation of steel	x	
9,9C	9.2	Complete CDOT Form 250 - Materials Documentation Record • Generate form, which includes determining the minimum number of required tests and applicable material submittals for all materials placed on the project • Update the form as work progresses • Complete and distribute form after work is completed	 x x	x
9C	9.3	Perform Project Acceptance Samples and Tests	x	
9C	9.4	Perform Laboratory Acceptance Tests	x	
9C	9.6	Accept Manufactured Products Inspection of structural components: • Fabrication of structural steel and pre-stressed concrete structural components • Bridge modular expansion devices (0" to 6" or greater) • Fabrication of bearing devices	x x x x	
9C	9.6	Approve Sources of Materials	x	
9C	9.7	Independent Assurance Testing (IAT) Local Agency Procedures ☐ CDOT Procedures ⬓ • Generate IAT schedule • Schedule and provide notification • Conduct IAT	 x x	x
9C	9.8	Approve mix designs • Concrete • Hot mix asphalt	 x x	 # #
9C	9.9	Check Final Materials Documentation	x	#
9C	9.10	Complete and Distribute Final Materials Documentation	x	#
	CONSTRUCTION CIVIL RIGHTS AND LABOR COMPLIANCE			
9	10.1	Fulfill Project Bulletin Board and Pre-Construction Packet Requirements	x	
8,9	10.2	Process CDOT Form 205 - Sublet Permit Application and CDOT Form 1425 – Supplier Application Approval Request. Review & sign completed forms, or review/approve in compliance software system, as applicable, & submit to Region Civil Rights Office.	x	#
9	10.3	Conduct Equal Employment Opportunity and Labor Compliance Verification Employee Interviews. Complete CDOT Form 280	x	
9	10.4	Monitor Disadvantaged Business Enterprise Participation to Ensure Compliance with the "Commercially Useful Function" Requirements	x	
9	10.5	Conduct Interviews When Project Utilizes On-the-Job Trainees. • Complete CDOT Form 1337 – Contractor Commitment to Meet OJT Requirements. • Complete CDOT Form 838 – OJT Trainee / Apprentice Record. • Complete CDOT Form 200 - OJT Training Questionnaire	 x x x	
9	10.6	Check Certified Payrolls (Contact the Region Civil Rights Office for training reqmts.)	x	#
9	10.7	Submit FHWA Form 1391 - Highway Construction Contractor's Annual EEO Report	x	
	10.8	Contract Compliance and Project Site Reviews		x
	FINALS			
	11.1	Conduct Final Project Inspection & Final Inspection of Structures, if applicable		x
10	11.2	Write Final Project Acceptance Letter	x	
10	11.3	Advertise for Final Settlement	x	
11	11.4	Prepare and Distribute Final As-Constructed Plans	x	
11	11.5	Prepare EEO Certification and Collect EEO Forms	x	
11	11.6	Check Final Quantities, Plans, and Pay Estimate; Check Project Documentation; and submit Final Certifications	x	#

LA WK	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
			LA	CDOT
11	11.7	Check Material Documentation and Accept Final Material Certification (See Chapter 9)	x	#
	11.8	Review CDOT Form 1419		x
	11.9	Submit CDOT Professional Services Closeout Report Form	x	
	11.10	Complete and Submit CDOT Form 1212 LA – Final Acceptance Report (by CDOT)		x
11	11.11	Process Final Payment	x	#
	11.12	Close out Local Project	x	
	11.13	Complete and Submit CDOT Form 950 - Project Closure		x
11	11.14	Retain Project Records	x	
11	11.15	Retain Final Version of Local Agency Contract Administration Checklist	x	

cc: CDOT Resident Engineer/Project Manager
CDOT Region Program Engineer
CDOT Region Civil Rights Office
CDOT Region Materials Engineer
CDOT Contracts and Market Analysis Branch
Local Agency Project Manager

EXHIBIT F

CERTIFICATION FOR FEDERAL-AID CONTRACTS

The Local Agency certifies, by signing this Agreement, to the best of its knowledge and belief, that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, Agreement, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer of Congress, or an employee of a Member of Congress in connection with this Federal contract, Agreement, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such sub-recipients shall certify and disclose accordingly.

EXHIBIT G

DISADVANTAGED BUSINESS ENTERPRISE

SECTION 1. Policy.

It is the policy of the Colorado Department of Transportation (CDOT) that disadvantaged business enterprises shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal fundsunder this agreement, pursuant to 49 CFR Part 26. Consequently, the 49 CFR Part IE DBE requirements the Colorado Department of Transportation DBE Program (or a Local Agency DBE Program approved in advance by the State) applyto this agreement.

SECTION 2. DBE Obligation.

The recipient or the Local Agency agrees to ensure that disadvantaged business enterprises as determined by the Office of Certification at the Colorado Department of Regulatory Agencies have the maximum opportunity to participate in theperformance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all participants or contractors shall take all necessary and reasonable steps in accordance with the CDOTDBE program (or a Local Agency DBE Program approved in advance by the State) to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of CDOT assisted contracts.

SECTION 3 DBE Program.

The Local Agency (sub-recipient) shall be responsible for obtaining the Disadvantaged Business Enterprise Program ofthe Colorado Department of Transportation, 1988, as amended, and shall comply with the applicable provisions of the program. (If applicable).

A copy of the DBE Program is available from and will be mailed to the Local Agency

upon request: BusinessPrograms Office

Colorado Department of Transportation

2829 West Howard PlaceDenver,

Colorado 80204

Phone: (303) 757-9007

REQUIRED BY 49 CFR
PART 26

EXHIBIT H

LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES

Title 23 Code of Federal Regulations (CFR) 172 applies to a federally funded Local Agency project agreement administered by CDOT that involves professional consultant services. 23 CFR 172.1 states “The policies and procedures involve federally funded contracts for engineering and design related services for projects subject to the provisions of 23 U.S.C. 112(a) and are issued to ensure that a qualified consultant is obtained through an equitable selection process, that prescribed work is properly accomplished in a timely manner, and at fair and reasonable cost” and according to 23 CFR 172.5 “Price shall not be used as a factor in the analysis and selection phase.” Therefore, local agencies must comply with these CFR requirements when obtaining professional consultant services under a federally funded consultant contract administered by CDOT.

CDOT has formulated its procedures in Procedural Directive (P.D.) 400.1 and the related operations guidebook titled "Obtaining Professional Consultant Services". This directive and guidebook incorporate requirements from both Federal and State regulations, i.e., 23 CFR 172 and CRS §24-30-1401 et seq. Copies of the directive and the guidebook may be obtained upon request from CDOT's Agreements and Consultant Management Unit. [Local agencies should have their own written procedures on file for each method of procurement that addresses the items in 23 CFR 172].

Because the procedures and laws described in the Procedural Directive and the guidebook are quite lengthy, the subsequent steps serve as a short-hand guide to CDOT procedures that a Local Agency must follow in obtaining professional consultant services. This guidance follows the format of 23 CFR 172. The steps are:

1. The contracting Local Agency shall document the need for obtaining professional services.

2. Prior to solicitation for consultant services, the contracting Local Agency shall develop a detailed scope of work and a list of evaluation factors and their relative importance. The evaluation factors are those identified in C.R.S. 24-30-1403. Also, a detailed cost estimate should be prepared for use during negotiations.

3. The contracting agency must advertise for contracts in conformity with the requirements of C.R.S. 24-30-1405. The public notice period, when such notice is required, is a minimum of 15 days prior to the selection of the three most qualified firms and the advertising should be done in one or more daily newspapers of general circulation.

4. The Local Agency shall not advertise any federal aid contract without prior review by the CDOT Regional Civil Rights Office (RCRO) to determine whether the contract shall be subject to a DBE contract goal. If the RCRO determines a goal is necessary, then the Local Agency shall include the goal and the applicable provisions within the advertisement. The Local Agency shall not award a contract to any Contractor or Consultant without the confirmation by the CDOT Civil Rights and Business Resource Center that the Contractor or Consultant has demonstrated good faith efforts. The Local Agency shall work with the CDOT RCRO to ensure compliance with the established terms during the performance of the contract.

5. The Local Agency shall require that all contractors pay subcontractors for satisfactory performance of work no later than 30 days after the receipt of payment for that work from the contractor. For construction projects, this time period shall be reduced to seven days in accordance with Colorado Revised Statute 24-91-103(2). If the Local Agency withholds retainage from contractors and/or allows contractors to withhold retainage from subcontractors, such retainage provisions must comply with 49 CFR 26.29.

6. Payments to all Subconsultants shall be made within thirty days of receipt of payment from [the Local Agency] or no later than ninety days from the date of the submission of a complete invoice from the Subconsultant, whichever occurs first. If the Consultant has good cause to dispute an amount invoiced by a Subconsultant, the Consultant shall notify [the Local Agency] no later than the required date for payment. Such notification shall include the amount disputed and justification for the withholding. The Consultant shall maintain records of payment that show amounts paid to all Subconsultants. Good cause does not include the Consultant’s failure to submit an invoice to the Local Agency or to deposit payments made.

7. The analysis and selection of the consultants shall be done in accordance with CRS §24-30-1403. This section of the regulation identifies the criteria to be used in the evaluation of CDOT pre-qualified prime consultants and their team. It also shows which criteria are used to short-list and to make a final selection.

The short-list is based on the following evaluation factors:

a. Qualifications,

b. Approach to the Work,

c. Ability to furnish professional services.

d. Anticipated design concepts, and

e. Alternative methods of approach for furnishing the professional services. Evaluation factors for final selection are the consultant's:

a. Abilities of their personnel,

b. Past performance,

c. Willingness to meet the time and budget requirement,

d. Location,

e. Current and projected work load,

f. Volume of previously awarded contracts, and

g. Involvement of minority consultants.

8. Once a consultant is selected, the Local Agency enters into negotiations with the consultant to obtain a fair and reasonable price for the anticipated work. Pre-negotiation audits are prepared for contracts expected to be greater than $50,000. Federal reimbursements for costs are limited to those costs allowable under the cost principles of 48 CFR 31. Fixed fees (profit) are determined with consideration given to size, complexity, duration, and degree of risk involved in the work. Profit is in the range of six to 15 percent of the total direct and indirect costs.

9. A qualified Local Agency employee shall be responsible and in charge of the Work to ensure that the work being pursued is complete, accurate, and consistent with the terms, conditions, and specifications of the contract. At the end of Work, the Local Agency prepares a performance evaluation (a CDOT form is available) on the consultant.

CRS §§24-30-1401 THROUGH 24-30-1408, 23 CFR PART 172, AND P.D. 400.1, PROVIDE ADDITIONAL DETAILS FOR COMPLYING WITH THE PRECEEDING EIGHT (8) STEPS.

EXHIBIT I

FEDERAL-AID CONTRACT PROVISIONS FOR CONSTRUCTION CONTRACTS

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under title 23, United States Code, as required in 23 CFR 633.102(b) (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). 23 CFR 633.102(e).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider. 23 CFR 633.102(e).

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services) in accordance with 23 CFR 633.102. The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in solicitation-for-bids or request-for-proposals documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract). 23 CFR 633.102(b).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract. 23 CFR 633.102(d).

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

II. NONDISCRIMINATION (23 CFR 230.107(a); 23 CFR Part 230, Subpart A, Appendix A; EO 11246)

The provisions of this section related to 23 CFR Part 230, Subpart A, Appendix A are applicable to all Federal-aid construction contracts and to all related construction subcontracts of $10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding $10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR Part 230, Subpart A, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal Employment Opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (*see* 28 CFR Part 35, 29 CFR Part 1630, 29 CFR Parts 1625-1627, 41 CFR Part 60 and 49 CFR Part 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140, shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR Part 35 and 29 CFR Part 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract. 23 CFR 230.409 (g)(4) & (5).

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, sexual orientation, gender identity, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action or are substantially involved in such action, will be made fully cognizant of and will implement the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action

within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs (i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance). In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. 23 CFR 230.409. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established thereunder. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors, suppliers, and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurances Required:

a. The requirements of 49 CFR Part 26 and the State DOT's FHWA-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.

b. The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:
(1) Withholding monthly progress payments;
(2) Assessing sanctions;
(3) Liquidated damages; and/or
(4) Disqualifying the contractor from future bidding as non-responsible.

c. The Title VI and nondiscrimination provisions of U.S. DOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women.

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of more than $10,000. 41 CFR 60-1.5.

As prescribed by 41 CFR 60-1.8, the contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location under the contractor's control where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding $2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 “Contract provisions and related matters” with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages (29 CFR 5.5)

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH–1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b.(1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding (29 CFR 5.5)

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records (29 CFR 5.5)

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division Web site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or

subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH–347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees (29 CFR 5.5)

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the

corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. 23 CFR 230.111(e)(2). The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract as provided in 29 CFR 5.5.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract as provided in 29 CFR 5.5.

9. Disputes concerning labor standards. As provided in 29 CFR 5.5, disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility (29 CFR 5.5)

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Pursuant to 29 CFR 5.5(b), the following clauses apply to any Federal-aid construction contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. 29 CFR 5.5.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph 1 of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 of this section, in the sum currently provided in 29 CFR 5.5(b)(2)* for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1 of this section. 29 CFR 5.5.

* $27 as of January 23, 2019 (See 84 FR 213-01, 218) as may be adjusted annually by the Department of Labor; pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990).

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 of this section. 29 CFR 5.5.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 4 of this section. 29 CFR 5.5.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System pursuant to 23 CFR 635.116.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term “perform work with its own organization” in paragraph 1 of Section VI refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions: (based on longstanding interpretation)

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
(2) the prime contractor remains responsible for the quality of the work of the leased employees;
(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract. 23 CFR 635.102.

2. Pursuant to 23 CFR 635.116(a), the contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. Pursuant to 23 CFR 635.116(c), the contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. (based on long-standing interpretation of 23 CFR 635.116).

5. The 30-percent self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements. 23 CFR 635.116(d).

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR Part 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. 23 CFR 635.108.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR Part 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704). 29 CFR 1926.10.

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance

with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR Part 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 11, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (42 U.S.C. 7606; 2 CFR 200.88; EO 11738)

This provision is applicable to all Federal-aid construction contracts in excess of $150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.326.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.326.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost $25,000 or more – as defined in 2 CFR Parts 180 and 1200. 2 CFR 180.220 and 1200.220.

1**. Instructions for Certification – First Tier Participants:**

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction. 2 CFR 180.320.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default. 2 CFR 180.325.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900-180.1020, and 1200. “First Tier Covered Transactions” refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). “Lower Tier Covered Transactions” refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). “First Tier Participant” refers to the participant

who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. 2 CFR 180.330.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold. 2 CFR 180.220 and 180.300.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (https://www.sam.gov/). 2 CFR 180.300, 180.320, and 180.325.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. 2 CFR 180.325.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.335;.

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property, 2 CFR 180.800;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification, 2 CFR 180.700 and 180.800; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default. 2 CFR 180.335(d).

(5) Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(6) Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal. 2 CFR 180.335 and 180.340.

3. **Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders, and other lower tier transactions requiring prior FHWA approval or estimated to cost $25,000 or more - 2 CFR Parts 180 and 1200). 2 CFR 180.220 and 1200.220.

a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances. 2 CFR 180.365.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900 – 180.1020, and 1200. You may contact the person to which this proposal is

submitted for assistance in obtaining a copy of those regulations. “First Tier Covered Transactions” refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). “Lower Tier Covered Transactions” refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). “First Tier Participant” refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). “Lower Tier Participant” refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. 2 CFR 1200.220 and 1200.332.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold. 2 CFR 180.220 and 1200.220.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (https://www.sam.gov/), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

(a) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;

(b) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(c) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. (USDOT Order 4200.6 implementing appropriations act requirements)

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed $100,000. 49 CFR Part 20, App. A.

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier

subcontracts, which exceed $100,000 and that all such recipients shall certify and disclose accordingly.

XII. USE OF UNITED STATES-FLAG VESSELS:

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, or any other covered transaction. 46 CFR Part 381.

This requirement applies to material or equipment that is acquired for a specific Federal-aid highway project. 46 CFR 381.7. It is not applicable to goods or materials that come into inventories independent of an FHWA funded-contract.

When oceanic shipments (or shipments across the Great Lakes) are necessary for materials or equipment acquired for a specific Federal-aid construction project, the bidder, proposer, contractor, subcontractor, or vendor agrees:

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.

2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, ‘on-board’ commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS (23 CFR 633, Subpart B, Appendix B) This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

EXHIBIT J

ADDITIONAL FEDERAL REQUIREMENTS

Federal laws and regulations that may be applicable to the Work include:

Executive Order 11246

Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60) (All construction contracts awarded in excess of $10,000 by the Local Agencies and their contractors or the Local Agencies).

Copeland "Anti-Kickback" Act

The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and sub-Agreements for construction or repair).

Davis-Bacon Act

The Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of $2,000 awarded by the Local Agencies and the Local Agencies when required by Federal Agreement program legislation. This act requires that all laborers and mechanics employed by contractors or sub-contractors to work on construction projects financed by federal assistance must be paid wages not less than those established for the locality of the project by the Secretary of Labor).

Contract Work Hours and Safety Standards Act

Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by the Local Agency's in excess of $2,000, and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers).

Clean Air Act

Standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act (33 U.S.C. 1368). Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (contracts, subcontracts, and sub-Agreements of amounts more than $100,000).

Energy Policy and Conservation Act

Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

OMB Circulars

Office of Management and Budget Circulars A-87, A-21 or A-122, and A-102 or A-110, whichever is applicable.

Hatch Act

The Hatch Act (5 USC 1501-1508) and Public Law 95-454 Section 4728. These statutes state that federal funds cannot be used for partisan political purposes of any kind by any person or organization involved in the administration of federally assisted programs.

Nondiscrimination

The Local Agency shall not exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States on the ground of race, color national origin, sex, age or disability. Prior to the receipt of any Federal financial assistance from CDOT, the Local Agency shall execute the attached Standard DOT Title VI assurance. As appropriate, the Local Agency shall include Appendix A, B, or C to the Standard DOT Title VI assurance in any contract utilizing federal funds, land, or other aid. The Local Agency shall also include the following in all contract advertisements:

> *The [Local Agency], in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (79 Stat. 252, 42 US.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, DBEs will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for any award.*

ADA

In any contract utilizing federal funds, land, or other federal aid, the Local Agency shall require the federal-aid recipient or contractor to provide a statement of written assurance that they will comply with Section 504 and not discriminate on the basis of disability.

Uniform Relocation Assistance and Real Property Acquisition Policies Act

The Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended (Public Law 91-646, as amended and Public Law 100-17, 101 Stat. 246-256). (If the contractor is acquiring real property and displacing households or businesses in the performance of the Agreement).

Drug-Free Workplace Act

The Drug-Free Workplace Act (Public Law 100-690 Title V, subtitle D, 41 USC 701 et seq.).

Age Discrimination Act of 1975

The Age Discrimination Act of 1975, 42 U.S.C. Sections 6101 et. seq. and its implementing regulation, 45 C.F.R. Part 91; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, as amended, and implementing regulation 45 C.F.R. Part 84.

23 C.F.R. Part 172

23 C.F.R. Part 172, concerning "Administration of Engineering and Design Related Contracts".

23 C.F.R Part 633

23 C.F.R Part 633, concerning "Required Contract Provisions for Federal-Aid Construction Contracts".

23 C.F.R. Part 635

23 C.F.R. Part 635, concerning "Construction and Maintenance Provisions".

Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973

Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973. The requirements for which are shown in the Nondiscrimination Provisions, which are attached hereto and made a part hereof.

Nondiscrimination Provisions:

In compliance with Title VI of the Civil Rights Act of 1964 and with Section 162(a) of the Federal Aid Highway Act of 1973, the Contractor, for itself, its assignees, and successors in interest, agree as follows:

i. Compliance with Regulations

The Contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Agreement.

ii. Nondiscrimination

The Contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, color, sex, mental or physical handicap or national origin in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. The Contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix C of the Regulations.

iii. Solicitations for Subcontracts, Including Procurement of Materials and Equipment

In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurement of materials or equipment, each potential Subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, sex, mental or physical handicap or national origin.

iv. Information and Reports

The Contractor will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the State, or the FHWA as appropriate and shall set forth what efforts have been made to obtain the information.

v. Sanctions for Noncompliance

In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Agreement, the State shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to: **a.** Withholding of payments to the Contractor under the contract until the Contractor complies, and/or **b.** Cancellation, termination or suspension of the contract, in whole or in part.

Incorporation of Provisions §22

The Contractor will include the provisions of this Exhibit J in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto. The Contractor will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the State to enter into such litigation to protect the interest of the State and in addition, the Contractor may request the FHWA to enter into such litigation to protect the interests of the United States.

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SAMPLE

The United States Department of Transportation (USDOT) Standard Title VI/Non-Discrimination

Assurances for Local Agencies

DOT Order No. 1050.2A

The [Local Agency] (herein referred to as the "Recipient"), **HEREBY AGREES THAT**, as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation (DOT), through the Colorado Department of Transportation and the Federal Highway Administration (FHWA), Federal Transit Administration (FTA), and Federal Aviation Administration (FAA), is subject to and will comply with the following:

Statutory/Regulatory Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 C.F.R. Part 21 (entitled Non-discrimination In Federally-Assisted Programs Of The Department Of Transportation-Effectuation Of Title VI Of The Civil Rights Act Of 1964);
- 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);

The preceding statutory and regulatory cites hereinafter are referred to as the "Acts" and "Regulations," respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

> *"No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity, "for which the Recipient receives Federal financial assistance from DOT, including the FHWA, FTA, or FAA.*

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Non-discrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these non- discrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

Specific Assurances

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federally assisted FHWA, FTA, and FAA assisted programs:

1. The Recipient agrees that each "activity," "facility," or "program," as defined in §§ 21.23(b) and 21.23(e) of 49 C.F.R. § 21 will be (with regard to an "activity") facilitated or will be (with regard to a "facility") operated or will be (with regard to a "program") conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests for Proposals for work, or material subject to the Acts and the Regulations made in connection with all FHWA, FTA and FAA programs and, in adapted form, in all proposals for negotiated agreements regardless of funding source:
3. "The [Local Agency] in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 US.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity

4. to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."
5. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.

6. The Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.

7. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.

8. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.

9. That the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:

    a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
    b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.

10. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:

    a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
    b. the period during which the Recipient retains ownership or possession of the property.

11. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.

12. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, the [Local Agency] also agrees to comply (and require any sub-recipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the FHWA, FTA, and FAA's access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigationsconducted by CDOT, FHWA, FTA, or FAA. You must keep records, reports, and submit the material for review

upon request to CDOT, FHWA, FTA, or FAA, or its designee in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

[Local Agency] gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under the FHWA, FTA, and FAA. This ASSURANCE is binding on [Local Agency], other recipients, sub-recipients, sub-grantees, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the FHWA, FTA, and FAA funded programs. The person(s) signing below is authorized to sign this ASSURANCE on behalf of the Recipient.

_____

(***Name of Recipient***)

by_____

(***Signature of Authorized Official***)

DATED_____

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations**: The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, FHWA, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

2. **Non-discrimination**: The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment**: In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.

4. **Information and Reports**: The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the [Local Agency], CDOT or FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the [Local Agency], CDOT or FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance**: In the event of a contractor's noncompliance with the non-discrimination provisions of this contract, the [Local Agency] will impose such contract sanctions as it, CDOT or FHWA may determine to be appropriate, including, but not limited to:

   a. withholding payments to the contractor under the contract until the contractor complies; and/or
   b. cancelling, terminating, or suspending a contract, in whole or in part.

6. **Incorporation of Provisions**: The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the [Local Agency], CDOT or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX B

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

NOW, THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the [Local Agency] will accept title to the lands and maintain the project constructed thereon in accordance with (***Name of Appropriate Legislative Authority***), the Regulations for the Administration of (***Name of Appropriate Program***), and the policies and procedures prescribed by the FHWA of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the [Local Agency] all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto [Local Agency] and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the [Local Agency] its successors and assigns.

The [Local Agency], in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the [Local Agency] will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended [, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX C

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the [Local Agency] pursuant to the provisions of Assurance 7(a):

A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:

    1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, [Local Agency] will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued. *

C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the [Local Agency] will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the [Local Agency] and its assigns. *

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX D

CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by [Local Agency] pursuant to the provisions of Assurance 7(b):

A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.

B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non- discrimination covenants, [Local Agency] will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued. *

C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, [Local Agency] will there upon revert to and vest in and become the absolute property of [Local Agency] of Transportation and its assigns. *

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination onthe basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601),(prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis ofsex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on thebasis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, orsex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability ofTitle VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all ofthe programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation,and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

EXHIBIT K

FFATA SUPPLEMENTAL FEDERAL PROVISIONS

State of Colorado
Supplemental Provisions for
Federally Funded Contracts, Grants, and Purchase Orders
Subject to
The Federal Funding Accountability and Transparency Act of 2006 (FFATA), As Amended
Revised as of 3-20-13

The contract, grant, or purchase order to which these Supplemental Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Supplemental Provisions, the Special Provisions, the contract or any attachments or exhibits incorporated into and made a part of the contract, the provisions of these Supplemental Provisions shall control.

1. **Definitions.** For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below.

1.1. **"Award"** means an award of Federal financial assistance that a non-Federal Entity receives or administers in the form of:

1.1.1. Grants;
1.1.2. Contracts;
1.1.3. Cooperative agreements, which do not include cooperative research and development agreements (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710);
1.1.4. Loans;
1.1.5. Loan Guarantees;
1.1.6. Subsidies;
1.1.7. Insurance;
1.1.8. Food commodities;
1.1.9. Direct appropriations;
1.1.10. Assessed and voluntary contributions; and
1.1.11. Other financial assistance transactions that authorize the expenditure of Federal funds by non-Federal Entities.

Award ***does not*** include:

1.1.12. Technical assistance, which provides services in lieu of money;
1.1.13. A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;
1.1.14. Any award classified for security purposes; or
1.1.15. Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5).

1.2. **"Contract"** means the contract to which these Supplemental Provisions are attached and includes all Award types in **§1.1.1** through **1.1.11** above.

1.3. **"Contractor"** means the party or parties to a Contract funded, in whole or in part, with Federal financial assistance, other than the Prime Recipient, and includes grantees, subgrantees, Subrecipients, and borrowers. For purposes of Transparency Act reporting, Contractor does not include Vendors.

1.4. **"Data Universal Numbering System (DUNS) Number"** means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet's website may be found at: http://fedgov.dnb.com/webform.

1.5. **"Entity"** means all of the following as defined at 2 CFR part 25, subpart C;

1.5.1. A governmental organization, which is a State, local government, or Indian Tribe;
1.5.2. A foreign public entity;
1.5.3. A domestic or foreign non-profit organization;

1.5.4. A domestic or foreign for-profit organization; and

1.5.5. A Federal agency, but only a Subrecipient under an Award or Subaward to a non-Federal entity.

1.6. **"Executive"** means an officer, managing partner or any other employee in a management position.

1.7. **"Federal Award Identification Number (FAIN)"** means an Award number assigned by a Federal agency to a Prime Recipient.

1.8. **"FFATA"** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109- 282), as amended by §6202 of Public Law 110-252. FFATA, as amended, also is referred to as the "Transparency Act."

1.9. **"Prime Recipient"** means a Colorado State agency or institution of higher education that receives an Award.

1.10. **"Subaward"** means a legal instrument pursuant to which a Prime Recipient of Award funds awards all or a portion of such funds to a Subrecipient, in exchange for the Subrecipient's support in the performance of all or any portion of the substantive project or program for which the Award was granted.

1.11. **"Subrecipient"** means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term "Subrecipient" includes and may be referred to as Subgrantee.

1.12. **"Subrecipient Parent DUNS Number"** means the subrecipient parent organization's 9-digit Data Universal Numbering System (DUNS) number that appears in the subrecipient's System for Award Management (SAM) profile, if applicable.

1.13. **"Supplemental Provisions"** means these Supplemental Provisions for Federally Funded Contracts, Grants, and Purchase Orders subject to the Federal Funding Accountability and Transparency Act of 2006, As Amended, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institution of higher education.

1.14. **"System for Award Management (SAM)"** means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at http://www.sam.gov.

1.15. **"Total Compensation"** means the cash and noncash dollar value earned by an Executive during the Prime Recipient's or Subrecipient's preceding fiscal year and includes the following:

1.15.1. Salary and bonus;

1.15.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;

1.15.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;

1.15.4. Change in present value of defined benefit and actuarial pension plans;

1.15.5. Above-market earnings on deferred compensation which is not tax-qualified;

1.15.6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds $10,000.

1.16. "**Transparency Act**" means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. The Transparency Act also is referred to as FFATA.

1.17 "Vendor" means a dealer, distributor, merchant or other seller providing property or services required for a project or program funded by an Award. A Vendor is not a Prime Recipient or a Subrecipient and is not subject to the terms and conditions of the Federal award. Program compliance requirements do not pass through to a Vendor.

2. **Compliance.** Contractor shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, including but not limited to these Supplemental Provisions. Any revisions to such provisions or regulations shall automatically become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.

3. **System for Award Management (SAM) and Data Universal Numbering System (DUNS) Requirements.**

   3.1. SAM. Contractor shall maintain the currency of its information in SAM until the Contractor submits the final financial report required under the Award or receives final payment, whichever is later. Contractor shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.

   3.2. DUNS. Contractor shall provide its DUNS number to its Prime Recipient, and shall update Contractor's information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Contractor's information.

4. **Total Compensation.** Contractor shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:

   4.1. The total Federal funding authorized to date under the Award is $25,000 or more; and

   4.2. In the preceding fiscal year, Contractor received:

      4.2.1. 80% or more of its annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and

      4.2.2. $25,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and

   4.3. The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.

5. **Reporting.** Contractor shall report data elements to SAM and to the Prime Recipient as required in §7 below if Contractor is a Subrecipient for the Award pursuant to the Transparency Act. No direct payment shall be made to Contractor for providing any reports required under these Supplemental Provisions and the cost of producing such reports shall be included in the Contract price. The reporting requirements in §7 below are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Contract and shall become part of Contractor's obligations under this Contract, as provided in **§2** above. The Colorado Office of the State Controller will provide summaries of revised OMB reporting requirements at http://www.colorado.gov/dpa/dfp/sco/FFATA.htm.

6. **Effective Date and Dollar Threshold for Reporting.** The effective date of these Supplemental Provisions apply to new Awards as of October 1, 2010. Reporting requirements in §7 below apply to new Awards as of October 1, 2010, if the initial award is $25,000 or more. If the initial Award is below $25,000 but subsequent Award modifications result in a total Award of $25,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds $25,000. If the initial Award is $25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below $25,000, the Award shall continue to be subject to the reporting requirements.

7. **Subrecipient Reporting Requirements.** If Contractor is a Subrecipient, Contractor shall report as set forth below.

7.1 To SAM. A Subrecipient shall register in SAM and report the following data elements in SAM ***for each*** Federal Award Identification Number no later than the end of the month following the month in which the Subaward was made:

7.1.1 Subrecipient DUNS Number;

7.1.2 Subrecipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;

7.1.3 Subrecipient Parent DUNS Number;

7.1.4 Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;

7.1.5 Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and

7.1.6 Subrecipient's Total Compensation of top 5 most highly compensated Executives if criteria in §4 above met.

7.2 To Prime Recipient. A Subrecipient shall report to its Prime Recipient, upon the effective date of the Contract, the following dataelements:

7.2.1 Subrecipient's DUNS Number as registered in **SAM**.

7.2.2 Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

8. Exemptions.

8.1. These Supplemental Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.

8.2 A Contractor with gross income from all sources of less than $300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.

8.3 Effective October 1, 2010, "Award" currently means a grant, cooperative agreement, or other arrangement as defined in Section 1.1 of these Special Provisions. On future dates "Award" may include other items to be specified by OMB in policy memoranda available at the OMB Web site; Award also will include other types of Awards subject to the Transparency Act.

8.4 There are no Transparency Act reporting requirements for Vendors.

Event of Default. Failure to comply with these Supplemental Provisions shall constitute an event of default under the Contract and the State of Colorado may terminate the Contract upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Contract, at law or in equity.

EXHIBIT L

SAMPLE SUBRECIPIENT MONITORING AND RISK ASSESSMENT

CDOT SUBRECIPIENT RISK ASSESSMENT	Date:	
Name of Entity (Subrecipient):		
Name of Project / Program:		
Estimated Award Period:		
Entity Executive Director or VP:		
Entity Chief Financial Officer:		
Entity Representative for this Self Assessment:		

Instructions: (See "Instructions" tab for more information) *1. Check only one box for each question. All questions are required to be answered.* *2. Utilize the "Comment" section below the last question for additional responses.* *3. When complete, check the box at the bottom of the form to authorize.*	Yes	No	N/A
EXPERIENCE ASSESSMENT	Yes	No	N/A
1 Is your entity new to operating or managing federal funds (has not done so within the past three years)?	☐	☐	
2 Is this funding program new for your entity (managed for less than three years)? *Examples of funding programs include CMAQ, TAP, STP-M, etc.*	☐	☐	
3 Does your staff assigned to the program have at least three full years of experience with this federal program?	☐	☐	
MONITORING/AUDIT ASSESSMENT	Yes	No	N/A
4 Has your entity had an on-site project or grant review from an external entity *(e.g., CDOT, FHWA)* within the last three years?	☐	☐	☐
5 a) Were there non-compliance issues in this prior review?	☐	☐	☐
b) What were the number and extent of issues in prior review?	☐ 1 to 2	☐ >3	☐
OPERATION ASSESSMENT	Yes	No	N/A
6 Does your entity have a time and effort reporting system in place to account for 100% of all employees' time, that can provide a breakdown of the actual time spent on each funded project? *If No, in the comment section please explain how you intend to document 100% of hours worked by employees and breakdown of time spent on each funding project.*	☐	☐	
FINANCIAL ASSESSMENT	Yes	No	N/A
7 a) Does your entity have an indirect cost rate that is approved and current?	☐	☐	
b) If Yes, who approved the rate, and what date was it approved?			
8 Is this grant/award 10% or more of your entity's overall funding?	☐ >10%	☐ <10%	
9 Has your entity returned lapsed* funds? **Funds "lapse" when they are no longer available for obligation.*	☐	☐	☐
10 Has your entity had difficulty meeting local match requirements in the last three years?	☐	☐	☐
11 What is the total federal funding your entity has been awarded for the last federal fiscal year, and what is your entity's fiscal year end?			

INTERNAL CONTROLS ASSESSMENT		Yes	No	N/A
12	Has your entity had any significant changes in key personnel or accounting system(s) in the last year? *(e.g., Controller, Exec Director, Program Mgr, Accounting Mgr, etc.) If Yes, in the comment section, please identify the accounting system(s), and / or list personnel positions and identify any that are vacant.*	☐	☐	☐
13	Does your entity have financial procedures and controls in place to accommodate a federal-aid project?	☐	☐	
14	Does your accounting system identify the receipts and expenditures of program funds separately for each award?	☐	☐	
15	Will your accounting system provide for the recording of expenditures for each award by the budget cost categories shown in the approved budget?	☐	☐	
16	Does your agency have a review process for all expenditures that will ensure that all costs are reasonable, allowable and allocated correctly to each funding source? *If Yes, in the comment section, please explain your current process for reviewing costs.*	☐	☐	☐
17	How many total FTE perform accounting functions within your organization?	☐ ≥6	☐ 2 to 5	☐ < 2
IMPACT ASSESSMENT		**Yes**	**No**	**N/A**
18	For this upcoming federal award or in the immediate future, does your entity have any potential conflicts of interest* in accordance with applicable Federal awarding agency policy? *If Yes, please disclose these conflicts in writing, along with supporting information, and submit with this form. (*Any practices, activities or relationships that reasonably appear to be in conflict with the full performance of the Subrecipient's obligations to the State.)*	☐	☐	
19	For this award, has your entity disclosed to CDOT, in writing, violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the award? *Response options:* ***YES** = Check if have one or more violation(s) and have either disclosed previously to CDOT or as part of this form. In the comment section, list all violations with names of supporting documentation and submit with this form.* ***NO** = Check if have one or more violation(s) and have not disclosed previously or will not disclose as part of this form. Explain in the comment section.* ***N/A** = Check if have no violations.*	☐	☐	☐
PROGRAM MANAGEMENT ASSESSMENT		**Yes**	**No**	**N/A**
20	Does your entity have a written process/procedure or certification statement approved by your governing board ensuring critical project personnel are capable of effectively managing Federal-aid projects? *If Yes, please submit with this form.*	☐	☐	☐
21	Does your entity have written procurement policies or certification statement for consultant selection approved by your governing board in compliance with 23 CFR 172*? *If Yes, please submit with this form. (*The Brooks Act requires agencies to promote open competition by advertising, ranking, selecting, and negotiating contracts based on demonstrated competence and qualifications, at a fair and reasonable price.)*	☐	☐	☐
22	a) Is your staff familiar with the relevant CDOT manuals and federal program requirements?	☐	☐	☐
	b) Does your entity have a written policy or a certification statement approved by your governing board assuring federal-aid projects will receive adequate inspections? *If Yes, please submit with this form.*	☐	☐	☐
	c) Does your entity have a written process or a certification statement approved by your governing board assuring a contractor's work will be completed in conformance with approved plans and specifications? *If Yes, please submit with this form.*	☐	☐	☐

	d) Does your entity have a written policy or certification statement approved by your governing board assuring that materials installed on the projects are sampled and tested per approved processes. *If Yes, please submit with this form.*		☐	☐
	e) Does your entity have a written policy or certification statement approved by your governing board assuring that only US manufactured steel will be incorporated into the project *(Buy America requirements)? If Yes, please submit with this form.*		☐	☐

***Comments** - As needed, include the question number and provide comments related to the above questions. Insert additional rows as needed.*

☐ ***By checking this box, the Executive Director, VP or Chief Financial Officer of this entity certifies that all information provided on this form is true and correct.***

Tool Version: v2.0 (081816)

EXHIBIT M

OMB UNIFORM GUIDANCE FOR FEDERAL AWARDS

Subject to
The Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and AuditRequirements for Federal Awards ("Uniform Guidance"),
Federal Register, Vol. 78, No. 248, 78590

The agreement to which these Uniform Guidance Supplemental Provisions are attached has been funded, in whole or in part, with an award of Federal funds. In the event of a conflict between the provisions of these Supplemental Provisions, the Special Provisions, the agreement or any attachments or exhibits incorporated into and made a part of the agreement, the provisions of these Uniform Guidance Supplemental Provisions shall control. In the event of a conflict between the provisions of these Supplemental Provisions and the FFATA Supplemental Provisions, the FFATA Supplemental Provisions shall control.

1. Definitions. For the purposes of these Supplemental Provisions, the following terms shall have the meaningsascribed to them below.

1.1. "Award" means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditionsof the Federal Award specifically indicate otherwise. 2 CFR §200.38

1.2. "Federal Award" means an award of Federal financial assistance or a cost-reimbursement contract underthe Federal Acquisition Requirements by a Federal Awarding Agency to a Recipient. "Federal Award"also means an agreement setting forth the terms and conditions of the Federal Award. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.

1.3."Federal Awarding Agency" means a Federal agency providing a Federal Award to a Recipient. 2CFR §200.37

1.4. "FFATA" means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252.

1.5. "Grant" or "Grant Agreement" means an agreement setting forth the terms and conditions of an Award. The term does not include an agreement that provides only direct Federal cash assistance to an individual,a subsidy, a loan, a loan guarantee, insurance, or acquires property or services for the direct benefit of use of the Federal Awarding Agency or Recipient. 2 CFR§200.51.

1.6. "OMB" means the Executive Office of the President, Office of Management and Budget.

1.7. "Recipient" means a Colorado State department, agency or institution of higher education that receives a Federal Award from a Federal Awarding Agency to carry out an activity under a Federal program. The term does not include Subrecipients. 2 CFR §200.86

1.8. "State" means the State of Colorado, acting by and through its departments, agencies and institutions ofhigher education.

1.9. "Subrecipient" means a non-Federal entity receiving an Award from a Recipient to carry out part of aFederal program. The term does not include an individual who is a beneficiary of such program.

1.10. "Uniform Guidance" means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which supersedes requirements from OMB Circulars A-21, A-87, A-110, and A-122, OMB Circulars A-89, A-102, and A- 133, and the guidance in Circular A-50 on Single Audit Act follow-up. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.

1.11. "Uniform Guidance Supplemental Provisions" means these Supplemental Provisions for Federal Awards subject to the OMB Uniform Guidance, as may be revised pursuant to ongoing guidance from relevant Federal agencies or the Colorado State Controller.

2. Compliance. Subrecipient shall comply with all applicable provisions of the Uniform Guidance, including but notlimited to these Uniform Guidance Supplemental Provisions. Any revisions to such provisions automatically shall become a part of these Supplemental Provisions, without the necessity of either partyexecuting any further instrument. The State of Colorado may provide written notification to Subrecipient of suchrevisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.

3. Procurement Standards.

3.1 Procurement Procedures. Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation,

§§200.318 through 200.326 thereof.

3.2 Procurement of Recovered Materials. If Subrecipient is a State Agency or an agency of a politicalsubdivision of a state, its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in theEPA guidelines.

4. Access to Records. Subrecipient shall permit Recipient and auditors to have access to Subrecipient's records and financial statements as necessary for Recipient to meet the requirements of §200.331 (Requirements for pass through entities), §§200.300 (Statutory and national policy requirements) through 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance. 2 CFR §200.331(a)(5).

5. Single Audit Requirements. If Subrecipient expends $750,000 or more in Federal Awards during Subrecipient's fiscal year, Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant tothe Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR §200.501.

5.1 Election. Subrecipient shall have a single audit conducted in accordance with Uniform Guidance §200.514(Scope of audit), except when it elects to have a program-specific audit conducted in accordance with §200.507 (Program-specific audits). Subrecipient may elect to have a program-specific audit if Subrecipient expends Federal Awards under only one Federal program (excluding research and development) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of Recipient. A program-specific audit may not be electedfor research and development unless all of the Federal Awards expended were received from Recipient and Recipient approves in advance a program-specific audit.

5.2 Exemption. If Subrecipient expends less than $750,000 in Federal Awards during its fiscal year, Subrecipient shall be exempt from Federal audit requirements for that year, except as noted in 2 CFR §200.503 (Relation to other audit requirements), but records shall be available for review or audit by appropriate officials of the Federal agency, the State, and the Government

Accountability Office.

5.3 Subrecipient Compliance Responsibility. Subrecipient shall procure or otherwise arrange for the audit required by Part F of the Uniform Guidance and ensure it is properly performed and submitted when due in accordance with the Uniform Guidance. Subrecipient shall prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with Uniform Guidance §200.510 (Financial statements) and provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by UniformGuidance Part F-Audit Requirements.

6. Contract Provisions for Subrecipient Contracts. Subrecipient shall comply with and shall include all of thefollowing applicable provisions in all subcontracts entered into by it pursuant to this Grant Agreement.

6.1 Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 shall include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

"During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments

under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice inconspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965,and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuantthereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled,

terminated or suspendedin whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided bylaw.

(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuantto section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however,* that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction,the contractor may request the United States to enter into such litigation to protect the interests of the United States."

6.2 Davis-Bacon Act. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractorsmust be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination.The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40

U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or Subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is other wise entitled.

The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

6.3 Rights to Inventions Made Under a Contract or Agreement. If the Federal Award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," Subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

6.4 Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251- 1387), as amended. Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Actas amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection

Agency (EPA).

6.5 Debarment and Suspension (Executive Orders 12549 and 12689). A contract award (see 2 CFR 180.220)must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAMExclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well asparties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

6.6 Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, oran employee of a member of Congress in connection with obtaining any Federal contract, grant or any otheraward covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non- Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

7. Certifications. Unless prohibited by Federal statutes or regulations, Recipient may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2CFR §200.208.Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to the State at the end of the Award that the project or activity was completed or the level of effort was expended. 2 CFR §200.201(3). If the required level ofactivity or effort was not carried out, the amount of the Award must be adjusted.

7.1 Event of Default. Failure to comply with these Uniform Guidance Supplemental Provisions shall constitute anevent of default under the Grant Agreement (2 CFR §200.339) and the State may terminate the Grant upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Grant, at law or in equity.

8. Effective Date. The effective date of the Uniform Guidance is December 26, 2013. 2 CFR §200.110. The procurement standards set forth in Uniform Guidance §§200.317-200.326 are applicable to new Awards made by Recipient as of December 26, 2015. The standards set forth in Uniform Guidance Subpart F-Audit Requirements are applicable to audits of fiscal years beginning on or after December 26, 2014.

9. Performance Measurement. The Uniform Guidance requires completion of OMB-approved standard information collection forms (the PPR). The form focuses on outcomes, as related to the Federal Award Performance Goals that awarding Federal agencies are required to detail in the Awards.

Section 200.301 provides guidance to Federal agencies to measure performance in a way that will help theFederal awarding agency and other non-Federal entities to improve program outcomes.

The Federal awarding agency is required to provide recipients with clear performance goals, indicators, and milestones (200.210). Also, must require the recipient to relate financial data to performance accomplishments of the Federal award.

Exhibit N
Federal Treasury Provisions

1. APPLICABILITY OF PROVISIONS.

1.1. The Grant to which these Federal Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Federal Provisions, the Special Provisions, the body of the Grant, or any attachments or exhibits incorporated into and made a part of the Grant, the provisions of these Federal Provisions shall control.

1.2. The State of Colorado is accountable to Treasury for oversight of their subrecipients, including ensuring their subrecipients comply with the SLFRF statute, SLFRF Award Terms and Conditions, Treasury's Final Rule, and reporting requirements, as applicable.

1.3. Additionally, any subrecipient that issues a subaward to another entity (2nd tier subrecipient), must hold the 2nd tier subrecipient accountable to these provisions and adhere to reporting requirements.

1.4. These Federal Provisions are subject to the Award as defined in §2 of these Federal Provisions, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institutions of higher education.

2. DEFINITIONS.

2.1. For the purposes of these Federal Provisions, the following terms shall have the meanings ascribed to them below.

2.1.1. "Award" means an award of Federal financial assistance, and the Grant setting forth the terms and conditions of that financial assistance, that a non-Federal Entity receives or administers.

2.1.2. "Entity" means:

2.1.2.1. a Non-Federal Entity;

2.1.2.2. a foreign public entity;

2.1.2.3. a foreign organization;

2.1.2.4. a non-profit organization;

2.1.2.5. a domestic for-profit organization (for 2 CFR parts 25 and 170 only);

2.1.2.6. a foreign non-profit organization (only for 2 CFR part 170) only);

2.1.2.7. a Federal agency, but only as a Subrecipient under an Award or Subaward to a non-Federal entity (or 2 CFR 200.1); or

2.1.2.8. a foreign for-profit organization (for 2 CFR part 170 only).

2.1.3. "Executive" means an officer, managing partner or any other employee in a management position.

2.1.4. "Expenditure Category (EC)" means the category of eligible uses as defined by the US Department of Treasury in "Appendix 1 of the Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at www.treasury.gov.

2.1.5. "Federal Awarding Agency" means a Federal agency providing a Federal Award to a Recipient as described in 2 CFR 200.1

2.1.6. "Grant" means the Grant to which these Federal Provisions are attached.

2.1.7. "Grantee" means the party or parties identified as such in the Grant to which these Federal Provisions are attached.

2.1.8. "Non-Federal Entity means a State, local government, Indian tribe, institution of higher education, or nonprofit organization that carries out a Federal Award as a Recipient or a Subrecipient.

2.1.9. "Nonprofit Organization" means any corporation, trust, association, cooperative, or other organization, not including IHEs, that:

2.1.9.1. Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;

2.1.9.2. Is not organized primarily for profit; and

2.1.9.3. Uses net proceeds to maintain, improve, or expand the operations of the organization.

2.1.10. "OMB" means the Executive Office of the President, Office of Management and Budget.

2.1.11. "Pass-through Entity" means a non-Federal Entity that provides a Subaward to a Subrecipient to carry out part of a Federal program.

2.1.12. "Prime Recipient" means the Colorado State agency or institution of higher education identified as the Grantor in the Grant to which these Federal Provisions are attached.

2.1.13. "Subaward" means an award by a Prime Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Subaward unless the terms and conditions of the Federal Award specifically indicate otherwise in accordance with 2 CFR 200.101. The term does not include payments to a Contractor or payments to an individual that is a beneficiary of a Federal program.

2.1.14. "Subrecipient" or "Subgrantee" means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term does not include an individual who is a beneficiary of a federal program.

2.1.15. "System for Award Management (SAM)" means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at http://www.sam.gov. "Total Compensation" means the cash and noncash dollar value earned by an Executive during the Prime Recipient's or Subrecipient's preceding fiscal year (see 48 CFR 52.204-10, as prescribed in 48 CFR 4.1403(a)) and includes the following:

2.1.15.1. Salary and bonus;

2.1.15.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the

fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;

2.1.15.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;

2.1.15.4. Change in present value of defined benefit and actuarial pension plans;

2.1.15.5. Above-market earnings on deferred compensation which is not tax-qualified;

2.1.15.6. Other compensation, if the aggregate value of all such other compensation (e.g., severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds $10,000.

2.1.16. "Transparency Act" means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252.

2.1.17. "Uniform Guidance" means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.

2.1.18. "Unique Entity ID" means the Unique Entity ID established by the federal government for a Grantee at https://sam.gov/content/home.

3. COMPLIANCE.

3.1. Grantee shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, all applicable provisions of the Uniform Guidance, and all applicable Federal Laws and regulations required by this Federal Award Any revisions to such provisions or regulations shall automatically become a part of these Federal Provisions, without the necessity of either party executing any further instrument. The State of Colorado, at its discretion, may provide written notification to Grantee of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.

3.2. Per US Treasury Final Award requirements, grantee programs or services must not include a term or conditions that undermines efforts to stop COVID-19 or discourages compliance with recommendations and CDC guidelines.

4. SYSTEM FOR AWARD MANAGEMENT (SAM) AND UNIQUE ENTITY ID (UEI) REQUIREMENTS.

4.1. SAM. Grantee shall maintain the currency of its information in SAM until the Grantee submits the final financial report required under the Award or receives final payment, whichever is later. Grantee shall review and update SAM information at least annually.

4.2. UEI. Grantee shall provide its Unique Entity ID to its Prime Recipient, and shall update Grantee's information in Sam.gov at least annually.

5. TOTAL COMPENSATION.

5.1. Grantee shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:

5.1.1. The total Federal funding authorized to date under the Award is $30,000 or more; and

5.1.2. In the preceding fiscal year, Grantee received:

5.1.2.1. 80% or more of its annual gross revenues from Federal procurement Agreements and Subcontractors and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and

5.1.2.2. $30,000,000 or more in annual gross revenues from Federal procurement Agreements and Subcontractors and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and

5.1.2.3. 5.1.2.3 The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.

6. REPORTING.

6.1. If Grantee is a Subrecipient of the Award pursuant to the Transparency Act, Grantee shall report data elements to SAM and to the Prime Recipient as required in this Exhibit. No direct payment shall be made to Grantee for providing any reports required under these Federal Provisions and the cost of producing such reports shall be included in the Grant price. The reporting requirements in this Exhibit are based on guidance from the OMB, and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Grant and shall become part of Grantee's obligations under this Grant.

7. EFFECTIVE DATE AND DOLLAR THRESHOLD FOR FEDERAL REPORTING.

7.1. Reporting requirements in §8 below apply to new Awards as of October 1, 2010, if the initial award is $30,000 or more. If the initial Award is below $30,000 but subsequent Award modifications result in a total Award of $30,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds $30,000. If the initial Award is $30,000 or more, but funding is subsequently de-obligated such that the total award amount falls below $30,000, the Award shall continue to be subject to the reporting requirements. If the total award is below $30,000 no reporting required; if more than $30,000 and less than $50,000 then FFATA reporting is required; and, $50,000 and above SLFRF reporting is required.

7.2. The procurement standards in §9 below are applicable to new Awards made by Prime Recipient as of December 26, 2015. The standards set forth in §11 below are applicable to audits of fiscal years beginning on or after December 26, 2014.

8. SUBRECIPIENT REPORTING REQUIREMENTS.

8.1. Grantee shall report as set forth below.

8.1.1. Grantee shall use the SLFRF Subrecipient Quarterly Report Workbook as referenced in Exhibit P to report to the State Agency within ten (10) days following each quarter ended September, December, March and June. Additional information on specific requirements are detailed in the SLFRF Subrecipient Quarterly Report Workbooks and "Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at www.treasury.gov.

EC 1 – Public Health

All Public Health Projects

a) Description of structure and objectives
b) Description of relation to COVID-19
c) Identification of impacted and/or disproportionately impacted communities
d) Capital Expenditures
    i. Presence of capital expenditure in project
    ii. Total projected capital expenditure
    iii. Type of capital expenditure
    iv. Written justification
    v. Labor reporting

COVID-19 Interventions and Mental Health (1.4, 1.11, 1.12, 1.13)

a) Amount of total project used for evidence-based programs
b) Evaluation plan description

COVID-19 Small Business Economic Assistance (1.8)

a) Number of small businesses served

COVID-19 Assistance to Non-Profits (1.9)

a) Number of non-profits served

COVID-19 Aid to Travel, Tourism, and Hospitality or Other Impacted Industries (1.10)

a) Sector of employer
b) Purpose of funds

EC 2 – Negative Economic Impacts

All Negative Economic Impacts Projects

a) Description of project structure and objectives
b) Description of project's response to COVID-19
c) Identification of impacted and/or disproportionately impacted communities
d) Amount of total project used for evidence-based programs and description of evaluation plan *(not required for 2.5, 2.8, 2.21-2.24, 2.27-2.29, 2.31, 2.34-2.36)*
e) Number of workers enrolled in sectoral job training programs
f) Number of workers completing sectoral job training programs
g) Number of people participating in summer youth employment programs
h) Capital Expenditures
    i. Presence of capital expenditure in project
    ii. Total projected capital expenditure
    iii. Type of capital expenditure
    iv. Written justification
    v. Labor reporting

Household Assistance (2.1-2.8)

a) Number of households served

b) Number of people or households receiving eviction prevention services (2.2 & 2.5 only) *(Federal guidance may change this requirement in July 2022)*
c) Number of affordable housing units preserved or developed (2.2 & 2.5 only) *(Federal guidance may change this requirement in July 2022)*

Healthy Childhood Environments (2.11-2.13)

a) Number of children served by childcare and early learning *(Federal guidance may change this requirement in July 2022)*
b) Number of families served by home visiting *(Federal guidance may change this requirement in July 2022)*

Education Assistance (2.14, 2.24-2.27)

a) National Center for Education Statistics ("NCES") School ID or NCES District ID
b) Number of students participating in evidence-based programs *(Federal guidance may change this requirement in July 2022)*

Housing Support (2.15, 2.16, 2.18)

a) Number of people or households receiving eviction prevention services *(Federal guidance may change this requirement in July 2022)*
b) Number of affordable housing units preserved or developed *(Federal guidance may change this requirement in July 2022)*

Small Business Economic Assistance (2.29-2.33)

a) Number of small businesses served

Assistance to Non-Profits (2.34)

a) Number of non-profits served

Aid to Travel, Tourism, and Hospitality or Other Impacted Industries (2.35-2.36)

a) Sector of employer
b) Purpose of funds
c) If other than travel, tourism and hospitality (2.36) – description of hardship

EC 3 – Public Health – Negative Economic Impact: Public Sector Capacity

Payroll for Public Health and Safety Employees (EC 3.1)

a) Number of government FTEs responding to COVID-19

Rehiring Public Sector Staff (EC 3.2)

a) Number of FTEs rehired by governments

EC 4 – Premium Pay

All Premium Pay Projects

a) List of sectors designated as critical by the chief executive of the jurisdiction, if beyond those listed in the final rule
b) Numbers of workers served
c) Employer sector for all subawards to third-party employers
d) Written narrative justification of how premium pay is responsive to essential work during the public health emergency for non-exempt workers or those making over 150 percent of the state/county's average annual wage

e) Number of workers to be served with premium pay in K-12 schools

EC 5 – Infrastructure Projects

All Infrastructure Projects

a) Projected/actual construction start date (month/year)
b) Projected/actual initiation of operations date (month/year)
c) Location (for broadband, geospatial data of locations to be served)
d) Projects over $10 million
    i. Prevailing wage certification or detailed project employment and local impact report
    ii. Project labor agreement certification or project workforce continuity plan
    iii. Prioritization of local hires
    iv. Community benefit agreement description, if applicable

Water and sewer projects (EC 5.1-5.18)

a) National Pollutant Discharge Elimination System (NPDES) Permit Number (if applicable; for projects aligned with the Clean Water State Revolving Fund)
b) Public Water System (PWS) ID number (if applicable; for projects aligned with the Drinking Water State Revolving Fund)
c) Median Household Income of service area
d) Lowest Quintile Income of the service area

Broadband projects (EC 5.19-5.21)

a) Confirm that the project is designed to, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds.
    i. If the project is not designed to reliably meet or exceed symmetrical 100 Mbps download and upload speeds, explain why not, and
    ii. Confirm that the project is designed to, upon completion, meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed, and be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed.
b) Additional programmatic data will be required for broadband projects and will be defined in a subsequent version of the US Treasury Reporting Guidance, including, but not limited to *(Federal guidance may change this requirement in July 2022)*:
    i. Number of households (broken out by households on Tribal lands and those not on Tribal lands) that have gained increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, with the number of households with access to minimum speed standard of reliable 100 Mbps symmetrical upload and download and number of households with access to minimum speed standard of reliable 100 Mbps download and 20 Mbps upload
    ii. Number of institutions and businesses (broken out by institutions on Tribal lands and those not on Tribal lands) that have projected increased access to broadband meeting the minimum speed standards in areas that previously

lacked access to service of at least 25 Mbps download and 3 Mbps upload, in each of the following categories: business, small business, elementary school, secondary school, higher education institution, library, healthcare facility, and public safety organization, with the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps symmetrical upload and download; and number of each type of institution with access to the minimum speed standard of reliable 100 Mbps download and 20 Mbps upload.

iii. Narrative identifying speeds/pricing tiers to be offered, including the speed/pricing of its affordability offering, technology to be deployed, miles of fiber, cost per mile, cost per passing, number of households (broken out by households on Tribal lands and those not on Tribal lands) projected to have increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, number of households with access to minimum speed standard of reliable 100 Mbps symmetrical upload and download, number of households with access to minimum speed standard of reliable 100 Mbps download and 20 Mbps upload, and number of institutions and businesses (broken out by institutions on Tribal lands and those not on Tribal lands) projected to have increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, in each of the following categories: business, small business, elementary school, secondary school, higher education institution, library, healthcare facility, and public safety organization. Specify the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps symmetrical upload and download; and the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps download and 20 Mbps upload.

All Expenditure Categories

a) Program income earned and expended to cover eligible project costs

8.1.2. A Subrecipient shall report the following data elements to Prime Recipient no later than five days after the end of the month following the month in which the Subaward was made.

8.1.2.1. Subrecipient Unique Entity ID;

8.1.2.2. Subrecipient Unique Entity ID if more than one electronic funds transfer (EFT) account;

8.1.2.3. Subrecipient parent’s organization Unique Entity ID;

8.1.2.4. Subrecipient’s address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;

8.1.2.5. Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and

8.1.2.6. Subrecipient's Total Compensation of top 5 most highly compensated Executives if the criteria in §4 above met.

8.1.3. To Prime Recipient. A Subrecipient shall report to its Prime Recipient, the following data elements:

8.1.3.1. Subrecipient's Unique Entity ID as registered in SAM.

8.1.3.2. Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

8.1.3.3. Narrative identifying methodology for serving disadvantaged communities. See the "Project Demographic Distribution" section in the "Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at www.treasury.gov. This requirement is applicable to all projects in Expenditure Categories 1 and 2.

8.1.3.4. Narrative identifying funds allocated towards evidenced-based interventions and the evidence base. See the "Use of Evidence" section in the "Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at www.treasury.gov. See section 8.1.1 for relevant Expenditure Categories.

8.1.3.5. Narrative describing the structure and objectives of the assistance program and in what manner the aid responds to the public health and negative economic impacts of COVID-19. This requirement is applicable to Expenditure Categories 1 and 2. For aid to travel, tourism, and hospitality or other impacted industries (EC 2.11-2.12), also provide the sector of employer, purpose of funds, and if not travel, tourism and hospitality a description of the pandemic impact on the industry.

8.1.3.6. Narrative identifying the sector served and designated as critical to the health and well-being of residents by the chief executive of the jurisdiction and the number of workers expected to be served. For groups of workers (e.g., an operating unit, a classification of worker, etc.) or, to the extent applicable, individual workers, other than those where the eligible worker receiving premium pay is earning (with the premium pay included) below 150 percent of their residing state or county's average annual wage for all occupations, as defined by the Bureau of Labor Statistics Occupational Employment and Wage Statistics, whichever is higher, OR the eligible worker receiving premium pay is not exempt from the Fair Labor Standards Act overtime provisions, include justification of how the premium pay or grant is responsive to workers performing essential work during the public health emergency. This could include a description of the essential workers' duties, health or financial risks faced due to COVID-19 but should not include personally identifiable information. This requirement applies to EC 4.1, and 4.2.

8.1.3.7. For infrastructure projects (EC 5), or capital expenditures in any expenditure category, narrative identifying the projected construction start date (month/year), projected initiation of operations date (month/year), and location (for broadband, geospatial location data). For projects over $10 million:

8.1.3.8. Certification that all laborers and mechanics employed by Contractors and Subcontractors in the performance of such project are paid wages at rates not less

than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the "Davis-Bacon Act"), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the Agreement work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed, or by the appropriate State entity pursuant to a corollary State prevailing-wage-in-construction law (commonly known as "baby Davis-Bacon Acts"). If such certification is not provided, a recipient must provide a project employment and local impact report detailing (1) the number of employees of Contractors and sub-contractors working on the project; (2) the number of employees on the project hired directly and hired through a third party; (3) the wages and benefits of workers on the project by classification; and (4) whether those wages are at rates less than those prevailing. Recipients must maintain sufficient records to substantiate this information upon request.

8.1.3.8.1. A Subrecipient may provide a certification that a project includes a project labor agreement, meaning a pre-hire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)). If the recipient does not provide such certification, the recipient must provide a project workforce continuity plan, detailing: (1) how the Subrecipient will ensure the project has ready access to a sufficient supply of appropriately skilled and unskilled labor to ensure high-quality construction throughout the life of the project; (2) how the Subrecipient will minimize risks of labor disputes and disruptions that would jeopardize timeliness and cost-effectiveness of the project; and (3) how the Subrecipient will provide a safe and healthy workplace that avoids delays and costs associated with workplace illnesses, injuries, and fatalities; (4) whether workers on the project will receive wages and benefits that will secure an appropriately skilled workforce in the context of the local or regional labor market; and (5) whether the project has completed a project labor agreement.

8.1.3.8.2. Whether the project prioritizes local hires.

8.1.3.8.3. Whether the project has a Community Benefit Agreement, with a description of any such agreement.

8.1.4. Subrecipient also agrees to comply with any reporting requirements established by the US Treasury, Governor’s Office and Office of the State Controller. The State of Colorado may need additional reporting requirements after this agreement is executed. If there are additional reporting requirements, the State will provide notice of such additional reporting requirements via Exhibit Q – SLFRF Reporting Modification Form.

9. PROCUREMENT STANDARDS.

9.1. Procurement Procedures. A Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and applicable regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation, 2 CFR 200.318 through 200.327 thereof.

9.2. Domestic preference for procurements (2 CFR 200.322). As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all Agreements and purchase orders for work or products under this award.

9.3. Procurement of Recovered Materials. If a Subrecipient is a State Agency or an agency of a political subdivision of the State, its Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247, that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

10. ACCESS TO RECORDS.

10.1. A Subrecipient shall permit Prime Recipient and its auditors to have access to Subrecipient's records and financial statements as necessary for Recipient to meet the requirements of 2 CFR 200.332 (Requirements for pass-through entities), 2 CFR 200.300 (Statutory and national policy requirements) through 2 CFR 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance.

11. SINGLE AUDIT REQUIREMENTS.

11.1. If a Subrecipient expends $750,000 or more in Federal Awards during the Subrecipient's fiscal year, the Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR 200.501.

11.1.1. Election. A Subrecipient shall have a single audit conducted in accordance with Uniform Guidance 2 CFR 200.514 (Scope of audit), except when it elects to have a program-specific audit conducted in accordance with 2 CFR 200.507 (Program-specific audits). The Subrecipient may elect to have a program-specific audit if Subrecipient expends Federal Awards under only one Federal program (excluding research and development) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of Prime Recipient. A program-specific audit may not be elected for research and development unless all of the Federal Awards expended were received from Recipient and Recipient approves in advance a program-specific audit.

11.1.2. Exemption. If a Subrecipient expends less than $750,000 in Federal Awards during its fiscal year, the Subrecipient shall be exempt from Federal audit requirements for that year, except as noted in 2 CFR 200.503 (Relation to other audit requirements), but records shall be available for review or audit by appropriate officials of the Federal agency, the State, and the Government Accountability Office.

11.1.3. Subrecipient Compliance Responsibility. A Subrecipient shall procure or otherwise arrange for the audit required by Subpart F of the Uniform Guidance and ensure it is properly performed and submitted when due in accordance with the Uniform Guidance. Subrecipient shall prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with 2 CFR 200.510 (Financial statements) and provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by Uniform Guidance Subpart F-Audit Requirements.

12. GRANT PROVISIONS FOR SUBRECIPIENT AGREEMENTS.

12.1. In addition to other provisions required by the Federal Awarding Agency or the Prime Recipient, Grantees that are Subrecipients shall comply with the following provisions. Subrecipients shall include all of the following applicable provisions in all Subcontractors entered into by it pursuant to this Grant.

12.1.1. [Applicable to federally assisted construction Agreements.] Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all Agreements that meet the definition of "federally assisted construction Agreement" in 41 CFR Part 60-1.3 shall include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, Office of Federal Agreement Compliance Programs, Equal Employment Opportunity, Department of Labor.

12.1.2. [Applicable to on-site employees working on government-funded construction, alteration and repair projects.] Davis-Bacon Act. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).

12.1.3. Rights to Inventions Made Under a grant or agreement. If the Federal Award meets the definition of "funding agreement" under 37 CFR 401.2 (a) and the Prime Recipient or Subrecipient wishes to enter into an Agreement with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the Prime Recipient or Subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Agreements and Cooperative Agreements," and any implementing regulations issued by the Federal Awarding Agency.

12.1.4. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended. Agreements and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal awardees to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Awarding Agency and the Regional Office of the Environmental Protection Agency (EPA).

12.1.5. Debarment and Suspension (Executive Orders 12549 and 12689). A Agreement award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in SAM, in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

12.1.6. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Agreement, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

12.1.7. Never Contract with the Enemy (2 CFR 200.215). Federal awarding agencies and recipients are subject to the regulations implementing "Never Contract with the Enemy" in 2 CFR part 183. The regulations in 2 CFR part 183 affect covered Agreements, grants and cooperative agreements that are expected to exceed $50,000 within the period of performance, are performed outside the United States and its territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

12.1.8. Prohibition on certain telecommunications and video surveillance services or equipment (2 CFR 200.216). Grantee is prohibited from obligating or expending loan or grant funds on certain telecommunications and video surveillance services or equipment pursuant to 2 CFR 200.216.

12.1.9. Title VI of the Civil Rights Act. The Subgrantee, Contractor, Subcontractor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S. C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CRF Part 22, and herein incorporated by reference and made part of this Agreement or agreement.

13. CERTIFICATIONS.

13.1. Subrecipient Certification. Subrecipient shall sign a "State of Colorado Agreement with Recipient of Federal Recovery Funds" Certification Form in Exhibit E and submit to State Agency with signed grant agreement.

13.2. Unless prohibited by Federal statutes or regulations, Prime Recipient may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2 CFR 200.208. Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to the State at the end of the Award that the project or activity was completed or the level of effort was expended. 2 CFR 200.201(3). If the required level of activity or effort was not carried out, the amount of the Award must be adjusted.

14. EXEMPTIONS.

14.1. These Federal Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.

14.2. A Grantee with gross income from all sources of less than $300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.

15. EVENT OF DEFAULT AND TERMINATION.

15.1. Failure to comply with these Federal Provisions shall constitute an event of default under the Grant and the State of Colorado may terminate the Grant upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30-day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Grant, at law or in equity.

15.2. Termination (2 CFR 200.340). The Federal Award may be terminated in whole or in part as follows:

15.2.1. By the Federal Awarding Agency or Pass-through Entity, if a Non-Federal Entity fails to comply with the terms and conditions of a Federal Award;

15.2.2. By the Federal awarding agency or Pass-through Entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities;

15.2.3. By the Federal awarding agency or Pass-through Entity with the consent of the Non-Federal Entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated;

15.2.4. By the Non-Federal Entity upon sending to the Federal Awarding Agency or Pass-through Entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal Awarding Agency or Pass-through Entity determines in the case of partial termination that the reduced or modified portion of the Federal Award or Subaward will not accomplish the purposes for which the Federal Award was made, the Federal Awarding Agency or Pass-through Entity may terminate the Federal Award in its entirety; or

15.2.5. By the Federal Awarding Agency or Pass-through Entity pursuant to termination provisions included in the Federal Award.

EXHIBIT O

AGREEMENT WITH SUBSUBRECIPIENT OF FEDERAL RECOVERY FUNDS

Section 602(b) of the Social Security Act (the Act), as added by section 9901 of the American Rescue Plan Act (ARPA), Pub. L. No. 117-2 (March 11, 2021), authorizes the Department of the Treasury (Treasury) to make payments to certain Subrecipients from the Coronavirus State Fiscal Recovery Fund. The State of Colorado has signed and certified a separate agreement with Treasury as a condition of receiving such payments from the Treasury. This agreement is between your organization and the State and your organization is signing and certifying the same terms and conditions included in the State's separate agreement with Treasury. Your organization is referred to as a Subrecipient.

As a condition of your organization receiving federal recovery funds from the State, the authorized representative below hereby (i) certifies that your organization will carry out the activities listed in section 602(c) of the Act and (ii) agrees to the terms attached hereto. Your organization also agrees to use the federal recovery funds as specified in bills passed by the General Assembly and signed by the Governor.

Under penalty of perjury, the undersigned official certifies that the authorized representative has read and understood the organization's obligations in the Assurances of Compliance and Civil Rights Requirements, that any information submitted in conjunction with this assurances document is accurate and complete, and that the organization is in compliance with the nondiscrimination requirements.

Subrecipient Name _____

Authorized Representative: _____

Title: _____

Signature: _____

AGREEMENT WITH SUBRECIPIENT OF FEDERAL RECOVERY FUNDS
TERMS AND CONDITIONS

1. Use of Funds.

   a. Subrecipient understands and agrees that the funds disbursed under this award may only be used in compliance with section 602(c) of the Social Security Act (the Act) and Treasury's regulations implementing that section and guidance.

   b. Subrecipient will determine prior to engaging in any project using this assistance that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of such project.

2. Period of Performance. The period of performance for this award begins on the date hereof and ends on December 31, 2026. As set forth in Treasury's implementing regulations, Subrecipient may use award funds to cover eligible costs incurred during the period that begins on March 3, 2021, and ends on December 31, 2024.

3. Reporting. Subrecipient agrees to comply with any reporting obligations established by Treasury as they relate to this award. Subrecipient also agrees to comply with any reporting requirements established by the Governor's Office and Office of the State Controller.

4. Maintenance of and Access to Records
   a. Subrecipient shall maintain records and financial documents sufficient to evidence compliance with section 602(c), Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.

   b. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of Subrecipient in order to conduct audits or other investigations.

   c. Records shall be maintained by Subrecipient for a period of five (5) years after all funds have been expended or returned to Treasury, whichever is later.

5. Pre-award Costs. Pre-award costs, as defined in 2 C.F.R. § 200.458, may not be paid with funding from this award.

6. Administrative Costs. Subrecipient may use funds provided under this award to cover both direct and indirect costs. Subrecipient shall follow guidance on administrative costs issued by the Governor's Office and Office of the State Controller.

7. Cost Sharing. Cost sharing or matching funds are not required to be provided by Subrecipient.

8. Conflicts of Interest. The State of Colorado understands and agrees it must maintain a conflict of interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict of interest policy

is applicable to each activity funded under this award. Subrecipient and Contractors must disclose in writing to the Office of the State Controller or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112. The Office of the State Controller shall disclose such conflict to Treasury.

9. Compliance with Applicable Law and Regulations.

a. Subrecipient agrees to comply with the requirements of section 602 of the Act, regulations adopted by Treasury pursuant to section 602(f) of the Act, and guidance issued by Treasury regarding the foregoing. Subrecipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Subrecipient shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.

b. Federal regulations applicable to this award include, without limitation, the following:

i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.

ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.

iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.

iv. OMB Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (Agreements and Subcontractors described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.

i. Subrecipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.

ii. Government wide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.

iii. New Restrictions on Lobbying, 31 C.F.R. Part 21.

iv. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.

v. Generally applicable federal environmental laws and regulations.

c. Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:

i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;

ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;

iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;

iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and

v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

10. Remedial Actions. In the event of Subrecipient's noncompliance with section 602 of the Act, other applicable laws, Treasury's implementing regulations, guidance, or any reporting or other program requirements, Treasury may impose additional conditions on the receipt of a subsequent tranche of future award funds, if any, or take other available remedies as set forth in 2 C.F.R. § 200.339. In the case of a violation of section 602(c) of the Act regarding the use of funds, previous payments shall be subject to recoupment as provided in section 602(e) of the Act and any additional payments may be subject to withholding as provided in sections 602(b)(6)(A)(ii)(III) of the Act, as applicable.

11. Hatch Act. Subrecipient agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C.§§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.

12. False Statements. Subrecipient understands that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or Agreements, and/or any other remedy available by law.

13. Publications. Any publications produced with funds from this award must display the following language: "This project [is being] [was] supported, in whole or in part, by federal award number SLFRF0126 awarded to the State of Colorado by the U.S. Department of the Treasury."

14. Debts Owed the Federal Government.
    a. Any funds paid to the Subrecipient (1) in excess of the amount to which the Subrecipient is finally determined to be authorized to retain under the terms of this award; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by Treasury to be subject to a repayment obligation pursuant to sections 602(e) and 603(b)(2)(D) of the Act and have not been repaid by the Subrecipient shall constitute a debt to the federal government.

    b. Any debts determined to be owed to the federal government must be paid promptly by Subrecipient. A debt is delinquent if it has not been paid by the date specified in Treasury's initial written demand for payment, unless other satisfactory arrangements have been made or if the Subrecipient knowingly or improperly retains funds that are a debt as defined in paragraph 14(a). Treasury will take any actions available to it to collect such a debt.

15. Disclaimer.
    a. The United States expressly disclaims any and all responsibility or liability to Subrecipient or third persons for the actions of Subrecipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any Agreement, or Subcontractor under this award.

    b. The acceptance of this award by Subrecipient does not in any way establish an agency relationship between the United States and Subrecipient.

16. Protections for Whistleblowers.
    a. In accordance with 41 U.S.C. § 4712, Subrecipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal Agreement or grant, a gross waste of federal funds, an abuse of authority relating to a federal Agreement or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal Agreement (including the competition for or negotiation of an Agreement) or grant.

    b. The list of persons and entities referenced in the paragraph above includes the following:
        i. A member of Congress or a representative of a committee of Congress;
        ii. An Inspector General;

iii. The Government Accountability Office;
iv. A Treasury employee responsible for Agreement or grant oversight or management;
v. An authorized official of the Department of Justice or other law enforcement agency;
vi. A court or grand jury; or
vii. A management official or other employee of Subrecipient, Contractor, or Subcontractor who has the responsibility to investigate, discover, or address misconduct.

c. Subrecipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

17. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Subrecipient should encourage its Contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

1. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225(Oct. 6, 2009), Subrecipient should encourage its employees, Subrecipients, and Contractorsto adopt and enforce policies that ban text messaging while driving, and Subrecipient should establish workplace safety policies to decrease accidents caused by distracted drivers.

ASSURANCES OF COMPLIANCE WITH CIVIL RIGHTS REQUIREMENTS

ASSURANCES OF COMPLIANCE WITH TITLE VI
OF THE CIVIL RIGHTS ACT OF 1964

As a condition of receipt of federal financial assistance from the Department of theTreasury, the Subrecipient provides the assurances stated herein. The federal financial assistance may include federal grants, loans and Agreements to provide assistance to the Subrecipient's beneficiaries, the use or rent of Federal land or property at below market value, Federal training, aloan of Federal personnel, subsidies, and other arrangements with the intention of providing assistance. Federal financial assistance does not encompass Agreements of guarantee or insurance,regulated programs, licenses, procurement Agreements by the Federal government at market value,or programs that provide direct benefits.

The assurances apply to all federal financial assistance from or funds made available through the Department of the Treasury, including any assistance that the Subrecipient may request in the future.

The Civil Rights Restoration Act of 1987 provides that the provisions of the assurances apply to all of the operations of the Subrecipient's program(s) and activity(ies), so long as any portion of the Subrecipient's program(s) or activity(ies) is federally assisted in the manner prescribed above.

1. Subrecipient ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d *et seq.*), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.
2. Subrecipient acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Subrecipient understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, Subrecipient shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Subrecipient understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Subrecipient's programs, services, and activities.
3. Subrecipient agrees to consider the need for language services for LEP persons when Subrecipient develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit http://www.lep.gov.

4. Subrecipient acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon Subrecipient and Subrecipient's successors, transferees, and assignees for the period in which such assistance is provided.

5. Subrecipient acknowledges and agrees that it must require any sub-grantees, contractors, subcontractors, successors, transferees, and assignees to comply with assurances 1-4 above, and agrees to incorporate the following language in every Agreement or agreement subject to Title VI and its regulations between the Subrecipient and the Subrecipient's sub-grantees, Contractors, Subcontractors, successors, transferees, and assignees:

   The sub-grantee, Contractor, Subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits Subrecipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this Agreement or agreement.

6. Subrecipient understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates the Subrecipient, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates the Subrecipient for the period during which it retains ownership or possession of the property.

7. Subrecipient shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. The Subrecipient shall comply with information requests, on-site compliance reviews and reporting requirements.

8. Subrecipient shall maintain a complaint log and inform the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. Subrecipient also must inform the Department of the Treasury if Subrecipient has received no complaints under Title VI.

9. Subrecipient must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other agreements between the Subrecipient and the administrative agency that made the finding. If the Subrecipient settles a case or matter alleging such discrimination, the Subrecipient must provide documentation of the settlement. If Subrecipient has not been the subject of any court or administrative agency finding of

discrimination, please so state.

10. If the Subrecipient makes sub-awards to other agencies or other entities, the Subrecipient is responsible for ensuring that sub-Subrecipients also comply with Title VI and other applicable authorities covered in this document State agencies that make sub-awards must have in place standard grant assurances and review procedures to demonstrate that that they are effectively monitoring the civil rights compliance of sub- Subrecipients.

The United States of America has the right to seek judicial enforcement of the terms of this assurances document and nothing in this document alters or limits the federal enforcement measures that the United States may take in order to address violations of this document or applicable federal law.

EXHIBIT P

SLFRF SUBRECIPIENT QUARTERLY REPORT

1. SLFRF SUBRECIPIENT QUARTERLY REPORT WORKBOOK

1.1 The SLFRF Subrecipient Quarterly Report Workbook must be submitted to the State Agency within ten (10) days following each quarter ended September, December, March and June. The SLFRF Subrecipient Quarterly Report Workbook can be found at:
https://osc.colorado.gov/american-rescue-plan-act (see SLFRF Grant Agreement Templates tab)

EXHIBIT A TO RESOLUTION NO. 2023-092

EXHIBIT Q

SAMPLE SLFRF REPORTING MODIFICATION FORM

Local Agency:			Agreement No:		
Project Title:			Project No:		
Project Duration:	To:		From:		
State Agency:	CDOT				

This form serves as notification that there has been a change to the reporting requirements set forth in the original SLFRF Grant Agreement.

The following reporting requirements have been (add/ remove additional rows as necessary):

Updated Reporting Requirement (Add/Delete/Modify)	**Project Number**	**Reporting Requirement**

By signing this form, the Local Agency agrees to and acknowledges the changes to the reporting requirements set forth in the original SLFRF Grant Agreement. All other terms and conditions of the original SLFRF Grant Agreement, with any approved modifications, remain in full force and effect. Grantee shall submit this form to the State Agency within 10 business days of the date sent by that Agency.

_____ _____

Local Agency Date

_____ _____

CDOT Program Manager Date

EXHIBIT R

APPLICABLE FEDERAL AWARDS

FEDERAL AWARD(S) APPLICABLE TO THIS GRANT AWARD

Federal Awarding Office	US Department of the Treasury
Grant Program	Coronavirus State and Local Fiscal Recovery Funds
Assistance Listing Number	21.027
Federal Award Number	SLFRP0126
Federal Award Date *	May 18, 2021
Federal Award End Date	December 31, 2024
Federal Statutory Authority	Title VI of the Social Security Act, Section 602
Total Amount of Federal Award (this is not the amount of this grant agreement)	$3,828,761,790

* Funds may not be available through the Federal Award End Date subject to the provisions in §2 and §5 below.

EXHIBIT S

PII Certification

STATE OF COLORADO

LOCAL AGENCY CERTIFICATION FOR ACCESS TO PII THROUGH A DATABASE OR AUTOMATED NETWORK

Pursuant to § 24-74-105, C.R.S., I, _____, on behalf of _____ (legal name of Local Agency) (the "Local Agency"), hereby certify under the penalty of perjury that the Local Agency has not and will not use or disclose any Personal Identifying Information, as defined by § 24-74-102(1), C.R.S., for the purpose of investigating for, participating in, cooperating with, or assisting Federal Immigration Enforcement, including the enforcement of civil immigration laws, and the Illegal Immigration and Immigrant Responsibility Act, which is codified at 8 U.S.C. §§ 1325 and 1326, unless required to do so to comply with Federal or State law, or to comply with a court-issued subpoena, warrant or order.

I hereby represent and certify that I have full legal authority to execute this certification on behalf of the Local Agency.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

EXHIBIT A TO RESOLUTION NO. 2023-092

EXHIBIT T

CHECKLIST OF REQUIRED EXHIBITS DEPENDENT ON FUNDING SOURCE

Checklist for required exhibits due to funding sources. Required Exhibits are dependent on the source of funding. This is a guide to assist in the incorporation and completion of Exhibits in relation to funding sources.

Exhibit	Funding only from FHWA	Funding only from ARPA	FHWA and ARPA Funding
EXHIBIT A, SCOPE OF WORK	✓	✓	✓
EXHIBIT B, SAMPLE OPTION LETTER	✓	✓	✓
EXHIBIT C, FUNDING PROVISIONS	✓	✓	✓
EXHIBIT D, LOCAL AGENCY RESOLUTION (IF APPLICABLE)	✓	✓	✓
EXHIBIT E, LOCAL AGENCY AGREEMENT ADMINISTRATION CHECKLIST	✓	✓	✓
EXHIBIT F, CERTIFICATION FOR FEDERAL-AID AGREEMENTS	✓		✓
EXHIBIT G, DISADVANTAGED BUSINESS ENTERPRISE	✓		✓
EXHIBIT H, LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES	✓		✓
EXHIBIT I, FEDERAL-AID AGREEMENT PROVISIONS FOR CONSTRUCTION AGREEMENTS	✓		✓
EXHIBIT J, ADDITIONAL FEDERAL REQUIREMENTS	✓		✓
EXHIBIT K, FFATA SUPPLEMENTAL FEDERAL PROVISIONS	✓	✓	✓
EXHIBIT L, SAMPLE SUBRECIPIENT MONITORING AND RISK ASSESSMENT FORM	✓	✓	✓
EXHIBIT M, OMB UNIFORM GUIDANCE FOR FEDERAL AWARDS	✓		✓

EXHIBIT N, FEDERAL TREASURY PROVISIONS		✓	✓
EXHIBIT O, AGREEMENT WITH SUBRECIPIENT OF FEDERAL RECOVERY FUNDS		✓	✓
EXHIBIT P, SLFRF SUBRECIPIENT QUARTERLY REPORT		✓	✓
EXHIBIT Q, SLFRF REPORTING MODIFICATION FORM		✓	✓
EXHIBIT R, APPLICABLE FEDERAL AWARDS		✓	✓
EXHIBIT S, PII CERTIFICATAION	✓	✓	✓
EXHIBIT T, CHECKLIST OF REQUIRED EXHIBITS DEPENDENT ON FUNDING SOURCE	✓	✓	✓

ORDINANCE NO. 144, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROPRIATING UNANTICIPATED REVENUE FROM A CDOT SAFE ROUTES TO SCHOOL GRANT AND AUTHORIZING TRANSFERS FOR THE ZACK ELEMENTARY SCHOOL CROSSINGS PROJECT AND RELATED ART IN PUBLIC PLACES

WHEREAS, Zach Elementary School is located on the south side of Kechter Road, a high-volume arterial street in southeast Fort Collins; and

WHEREAS, many of the streets and roads in this area either lack sidewalks altogether or have substandard sidewalks, and there is a lack of multi-use trail connectivity in this southeastern area of Fort Collins; and

WHEREAS, Zach Elementary School has high numbers of students who bike, walk, or roll to school; and

WHEREAS, Zach Elementary students who live south of the school experience safer routes to school via low-traffic, low-volume residential streets with sidewalks; and

WHEREAS, Zach Elementary students who live north of the arterial must cross Kechter Road to get to school, making their journey much more challenging and riskier due to the existing suboptimal crossings at Kechter Road and Jupiter Drive and at Kechter Road and Cinquefoil Lane; and

WHEREAS, due to the Jupiter/Kechter intersection not being fully signalized, a traffic-control contractor is required to keep students safe when crossing Kechter at both morning arrival time and afternoon dismissal time; and

WHEREAS, there have been four rear-end crashes reported in this location between 2017 and 2022, one of which occurred during school dismissal time and one that involved a pedestrian who suffered serious injuries; and

WHEREAS, the Zach Elementary School Crossings Project (the "Project") has been developed to address these safety concerns and eliminate most of the conflicts that result in crashes presented by both the Jupiter/Kechter and Cinquefoil/Kechter intersections; and

WHEREAS, the Project's proposed improvements at the Jupiter/Kechter intersection will include a new fully signalized intersection with pedestrian "walk" signals and a new bike-pedestrian crossing; and

WHEREAS, the Project's proposed improvements at the Cinquefoil/Kechter intersection will include a median refuge island and flashing signal; and

WHEREAS, the City was awarded a Colorado Department of Transportation ("CDOT") Safe Routes to School ("SRTS") grant for the design and construction of the Project, and the SRTS funding became available to the City in the State fiscal year 2024, which began July 2023; and

WHEREAS, the SRTS grant funds for the Project are to be administered by CDOT with project delivery oversight pursuant to an intergovernmental agreement (the "IGA") with CDOT that outlines the terms and conditions of the use of the SRTS grant funds, which funds require an eighty percent to twenty percent ("80%/20%") federal to local funding split; and

WHEREAS, the 80%/20% funding split for this award is $745,587 in federal funds and $187,397 in local funds; and

WHEREAS, the City's local match is being transferred from the SRTS School Transportation Safety Studies business unit in the Transportation Services Fund in the amount of $101,000 and from the Community Capital Improvement Program Fund Bicycle Community Capital Improvement Program ("Bicycle CCIP") business unit in the amount of $46,397 and Pedestrian Community Capital Improvement Program ("Pedestrian CCIP") business unit in the amount of $40,000; and

WHEREAS, the City anticipates receiving a $25,000 contribution for the Project from the Poudre School District pursuant to an IGA, which will reimburse portions of the appropriated Bicycle CCIP and Pedestrian CCIP funds; and

WHEREAS, the purpose of this Ordinance is to enable the City to receive and expend the available grant funds and to appropriate those funds; and

WHEREAS, this appropriation benefits public health, safety and welfare of the people of Fort Collins and serves the public purpose of improving transportation infrastructure within the City and accommodating multimodal transportation and safety; and

WHEREAS, this Project involves construction estimated to cost more than $250,000 and, as such, 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"); and

WHEREAS, the project cost of $101,000 in this Ordinance contributed by the Transportation Services Fund of prior appropriated monies from the SRTS School Transportation Safety Studies business unit is applicable for contribution to the APP Program; and

WHEREAS, the Bicycle CCIP and Pedestrian CCIP funds APP Program contribution was previously appropriated; and

WHEREAS, the CDOT SRTS grant funds appropriated in this Ordinance for the Zack Elementary School Crossings Project are ineligible for use in the APP Program due to restrictions placed on them by the SRTS grant administered by CDOT; and

WHEREAS, 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; and

WHEREAS, the City Manager has recommended the appropriation described herein and determined that this appropriation is available and previously unappropriated from the Transportation Services Fund and the Community Capital Improvement Program Fund and will not cause the total amount appropriated in the Transportation Services Fund and Community Capital Improvement Program 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; and

WHEREAS, 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; and

WHEREAS, the City Manager has recommended the transfer of $86,397 from the Community Capital Improvement Program Fund to the Capital Projects Fund for the Project and determined that the purpose for which the transferred funds are to be expended remains unchanged; and

WHEREAS, the City Manager has recommended the transfer of $101,000 from the Transportation Services Fund to the Capital Projects Fund for the Project and determined that the purpose for which the transferred funds are to be expended remains unchanged; and

WHEREAS, the City Manager has recommended the transfer of $1,010 from the Capital Projects Fund to the Cultural Services & Facilities Fund and determined that the purpose for which the transferred funds are to be expended remains unchanged; and

WHEREAS, 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 donation or the City's expenditure of all funds received from such grant or donation; and

WHEREAS, the City Council wishes to designate the appropriation herein from the SRTS grant as an appropriation that shall not lapse until the earlier of the expiration of the grant or the City's expenditure of all funds received from such grant.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That there is hereby appropriated from new revenue or other funds from the Safe Routes to School (SRTS) grant in the Capital Projects Fund the sum of SEVEN HUNDRED FORTY-FIVE THOUSAND FIVE HUNDRED EIGHTY-SEVEN DOLLARS ($745,587) to be expended in the Capital Projects Fund for the Zack Elementary School Crossings project.

Section 3. That the unexpended and unencumbered appropriated amount of ONE HUNDRED ONE THOUSAND DOLLARS ($101,000) is authorized for transfer from the Transportation Services Fund to the Capital Project Fund and appropriated therein to be expended for the Zack Elementary School Crossings project.

Section 4. That the unexpended and unencumbered appropriated amount of EIGHTY-SIX THOUSAND THREE HUNDRED NINETY-SEVEN DOLLARS ($86,397) is authorized for transfer from the Community Capital Improvement Program Fund to the Capital Project Fund and appropriated therein to be expended for the Zack Elementary School Crossings project.

Section 5. That the unexpended and unencumbered appropriated amount of SEVEN HUNDRED EIGHTY-EIGHT DOLLARS ($788) in the Capital Projects Fund is hereby authorized for transfer to the Cultural Services and Facilities Fund and appropriated and expended therein to fund art projects under the APP Program.

Section 6. That the unexpended and unencumbered appropriated amount of TWO HUNDRED TWO DOLLARS ($202) in the Capital Projects Fund is authorized for transfer to the Cultural Services and Facilities Fund and appropriated and expended therein for the operation costs of the APP Program.

Section 7. That the unexpended and unencumbered appropriated amount of TWENTY DOLLARS ($20) in the Capital Project Fund is authorized for transfer to the Cultural Services and Facilities Fund and appropriated and expended therein for the maintenance costs of the APP Program.

Section 8. That the appropriation herein from the SRTS grant is hereby designated, as authorized in Article V, Section 11 of the City Charter, as an appropriation 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.

Introduced, considered favorably on first reading and ordered published this 17th day of October, 2023, and to be presented for final passage on the 21st day of November, 2023.

_____
Mayor

ATTEST:

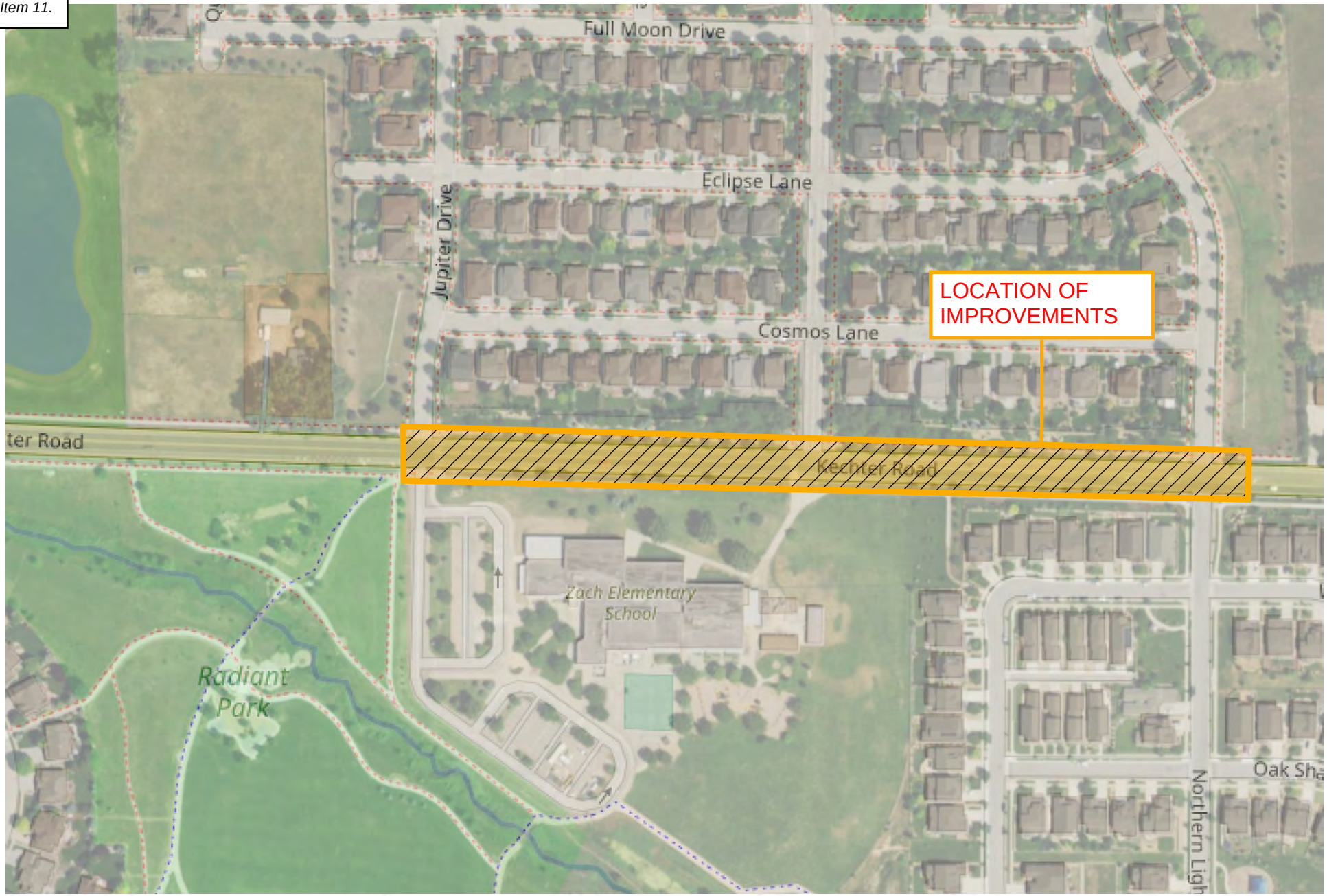
_____
City Clerk

Passed and adopted on final reading this 21st day of November, 2023.

_____
Mayor

ATTEST:

_____
City Clerk



Mercator Projection
WGS84
UTM Zone 13T

0.1 0.2 0.3 0.4 km
0.1 0.2 mi

Scale **1:2676** 1 inch = 223 feet

MN
7.8º

October 17, 2023

AGENDA ITEM SUMMARY
City Council

STAFF

Nina Bodenhamer, City Give Director
John Duval, Deputy City Attorney

SUBJECT

Resolution 2023-093 Approving an Intergovernmental Agreement with the Poudre School District for a Grant to it Under the City's Digital Inclusion Program.

EXECUTIVE SUMMARY

The purpose of this item is to authorize the approval of an Intergovernmental Agreement with Poudre School District (PSD) for a Digital Inclusion grant made to PSD's Department of Language, Culture, and Equity to be designated toward the funding of a Digital Family Liaison who will support the technological literacy of PSD Family Liaisons and the digital literacy of those families served by PSD's Family Liaisons.

STAFF RECOMMENDATION

Staff recommend adoption of the Resolution.

BACKGROUND / DISCUSSION

Fort Collins Connexion, created by and for our community, was launched to improve life and business in Fort Collins through faster, more accessible, and more affordable internet.

Embedded in City Code is a broadband Payment in Lieu of Taxes (PILOT) designed to diminish a municipal-owned utility's unfair commercial market advantage. As such, 6% of Connexion's revenue is paid to the General Fund as a PILOT and is dedicated to income-qualified internet service and Digital Inclusion per Council priority.

As Fort Collins Connexion expands its reach and PILOT revenue grows, the City will invest in a diverse range of Digital Inclusion programming, services, and community collaboration. This dedicated revenue enables the City to deliver on its commitment to reduce the digital divide and increase the digital fluency of all residents through trusted partners and community collaboration.

The award of $85,000 for each of the calendar years of 2023 and 2024, for a total grant of $170,000, is to be used by the Grantee, PSD's Department of Language, Culture, and Equity, for the operational expenses of a Digital Literacy Liaison, a PSD staff member, to support the technological literacy of PSD Family Liaisons and the digital literacy of those families served by PSD's Family Liaisons. PSD Family Liaisons are a trusted link to families with students in PSD Title 1 schools.

This position is an individual with the lived-experience and digital skills to support PSD Family Liaisons in their digital fluency, accompany them on home visits, and support the digital skills of the families Liaisons serve.

This individual will be onsite at PSD's newly launched PSD Future Ready center. Located in the Foothills Mall, the welcome center maintains non-traditional hours of operations to allow families, students and Family Liaisons expanded access to Digital Inclusion support to address their technological needs, digital fluency, and digital platforms.

CITY FINANCIAL IMPACTS

Council approved in the City's annual budgets for fiscal years 2023-2024 (Neighborhood Livability and Social Health Budget Offer #11.2) and appropriated in the City's annual appropriation ordinances for 2023 and 2024, funds to be used through the City's Digital Inclusion Program (the "DI Program") to provide, among other things, grants to non-profit entities and other governments who will agree to use these grant funds to assist their economically disadvantaged constituents with access to affordable internet services and digital literacy.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

None.

PUBLIC OUTREACH

None.

ATTACHMENTS

1. Resolution for Consideration

RESOLUTION 2023-093
OF THE CITY COUNCIL OF THE CITY OF FORT COLLINS
APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE POUDRE SCHOOL DISTRICT FOR A GRANT TO IT UNDER THE CITY'S DIGITAL INCLUSION PROGRAM

WHEREAS, the City has established and is operating as a utility a fiber-optic broadband system known as Connexion that provides various telecommunication services, including Internet services; and

WHEREAS, related to the City's operation of Connexion, the City Council has recognized that because of economic inequality many residents of Fort Collins do not have access to affordable and reliable Internet services causing a gap in economic and educational opportunity for these residents and their children, often referred to as the "digital divide"; and

WHEREAS, to address this digital divide, the City Council approved in the City's biennial budget for fiscal years 2023-2024 (Neighborhood Livability and Social Health Budget Offer #11.2) and appropriated in the City's annual appropriation ordinance 2023, funds to be used through the City's Digital Inclusion Program (the "DI Program") to provide, among other things, grants to non-profit entities and other governments who will agree to use these grant funds to assist their economically disadvantage constituents with access to affordable and reliable Internet services; and

WHEREAS, the City has received an application from the Poudre School District (the "District") for a grant under the DI Program that City staff has reviewed and is recommending that the grant requested by the District be awarded; and

WHEREAS, the District has requested an annual grant of $85,000 for the years 2023 and 2024 to be used by the District to fund its costs employing a full-time Digital Literacy Liaison who will be responsible for supporting the technological literacy of the District's Family Liaisons and of the families served by its Family Liaisons (the "District Grant"); and

WHEREAS, City and District staff have negotiated and are proposing that the City and the District enter into the attached Intergovernmental Agreement Authorizing a Grant under the City of Fort Collins Digital Inclusion Program attached hereto as Exhibit "A" and incorporated herein by reference (the "Agreement"); and

WHEREAS, the City Council wishes to expressly grant the City Manager the authority to approve the District Grant, to enter into the Agreement on the City's behalf, and to disburse the grant funds under it to the District, subject to the availability of appropriated funds; and

WHEREAS, Colorado governments are authorized in C.R.S. Section 29-1-203 to cooperate and contract with one another to provide any function, service, or facility each is lawfully authorized to provide; and

WHEREAS, the City and the Grantee are both lawfully authorized to assist their respective constituents who are economically disadvantaged with access to affordable and reliable Internet services; and

WHEREAS, the City Council finds and determines that this Resolution is in the City's best interest and necessary for the public's health, safety, and welfare.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FORT COLLINS, COLORADO, as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That the City Council hereby authorizes the City Manager to approve the District Grant, to enter into the Agreement on the City's behalf, and to disburse the grant funds under it to the District, subject to the availability of appropriated funds, with the Agreement to be in the form attached hereto as Exhibit "A" subject to such modifications as the City Manager, in consultation with the City Attorney, may determine are necessary and appropriate to protect the interests of the City or to effectuate the purposes of this Resolution and the DI Program.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 17th day of October, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

EXHIBIT A TO RESOLUTION 2023-093

INTERGOVERNMENT AGREEMENT AUTHORIZING A GRANT UNDER THE CITY OF FORT COLLINS DIGITAL INCLUSION PROGRAM

THIS INTERGOVERNMENTAL AGREEMENT AUTHORIZING A GRANT UNDER THE CITY OF FORT COLLINS DIGITAL INCLUSION PROGRAM (this "Agreement") is entered into this __ day of _____, 2023, by and between Poudre School District (the "Grantee") and the City of Fort Collins, a Colorado home rule municipality, (the "City"). The Grantee and City shall be referred to jointly herein as the "Parties" or individually as "Party".

RECITALS

WHEREAS, the City has established and is operating as a utility a fiber-optic broadband system known as Connexion that provides various telecommunication services, including Internet services; and

WHEREAS, related to the City's operation of Connexion, the City Council has recognized that because of economic inequality many residents of Fort Collins do not have access to affordable and reliable Internet services causing a gap in economic and educational opportunity for these residents and their children, often referred to as the "digital divide"; and

WHEREAS, to address this digital divide, the City Council approved in the City's annual budgets for fiscal years 2023-2024 (Neighborhood Livability and Social Health Budget Offer #11.2) and appropriated in the City's annual appropriation ordinances for 2023 and 2024, funds to be used through the City's Digital Inclusion Program (the "DI Program") to provide, among other things, grants to non-profit entities and other governments who will agree to use these grant funds to assist their economically disadvantage constituents with access to affordable Internet services and digital literacy; and

WHEREAS, the Grantee has been awarded a grant under the DI Program to be used to fund for the operational expenses of a Digital Literacy Liaison, a PSD staff member to support the technological literacy of PSD Family Liaisons and the digital literacy of those families served by PSD's Family Liaisons (the "Grant Work"); and

WHEREAS, the City has approved this application and agreed to provide the Grantee with a grant of $85,000 for each of the calendar years of 2023 and 2024, for a total grant of $170,000, to be used by the Grantee in accordance with the terms and conditions of this Agreement to fund its costs in these years for the Grant Work and the Grantee has agreed to so use the grant funds; and

WHEREAS, on October 17, 2023, the City Council approved this Agreement in Resolution 2023-XXX authorizing the City Manager to enter into this Agreement of the City's behalf: and

WHEREAS, Colorado governments are authorized in C.R.S. Section 29-1-105 to cooperate and contract with one another to provide any function, service, or facility each is lawfully authorized to provide; and

WHEREAS, the City and the Grantee are both lawfully authorized to assist their respective constituents who are economically disadvantaged with access to affordable and reliable Internet services.

AGREEMENT

NOW, THEREFORE, in consideration of the objectives, policies and findings expressed in the Recitals of this Agreement, which are hereby adopted by the Parties and incorporated by this reference, and the mutual promises contained in this IGA, the City and District agree as follows:

1. Grant. Subject to the terms and conditions of this Agreement, the City agrees to pay the Grantee $85,000 on or before each of the following dates: (i) December 31, 2023, and (ii) January 31, 2024 (collectively, the "Grant Funds").

2. Use and Repayment of Grant Funds. The Grantee agrees to use the Grant Funds only for the Grant Work. In any year in which the Grantee does not perform the Grant Work in whole or part, the amount of the Grant Funds not used by the Grantee for the Grantee Work as required by this Agreement shall be repaid by the Grantee to the City by February 1 of the year following the year in which Grant Work was not performed in whole or part.

3. Appropriation. To the extent this Agreement or any provision in it constitutes a multiple fiscal year debt or financial obligation of the City, it shall be subject to annual appropriation by City Council as required in Article V, Section 8(b) of the City Charter, City Code Section 8-186, and Article X, Section 20 of the Colorado Constitution. The City shall have no obligation to continue this Agreement in any fiscal year for which no such supporting appropriation has been made.

4. Accounting. At any time it deems necessary, the City may request an accounting from the Grantee of its expenditure of the Grant Funds under this Agreement. The Grantee agrees to promptly provide such accounting upon receiving the City's written request for such accounting.

5. Amendments. This Agreement may be amended only by agreement of the Parties evidenced by a written instrument authorized and executed with the same formality as used for this IGA.

6. Notice. Any notice given under this Agreement shall be in writing. If such notice is hand delivered or personally served, it shall be effective immediately upon such delivery or service. If given by mail, it shall be sent by certified mail with return receipt requested and addressed to the following addresses:

City Manager
City of Fort Collins
P.O. Box 580
Fort Collins, CO 80522

With a copy to:

City Attorney
City of Fort Collins
P.O. Box 580
Fort Collins, CO 80522

David Autenrieth, Interim Director of Language, Culture & Equity
Poudre School District
2407 Laporte Ave
Fort Collins, CO 80521

Notice given by certified mail shall be effective three (3) days after it is deposited in the United States mail depository correctly addressed and with sufficient postage for delivery.

7. Governing Law and Venue. This Agreement and the rights and obligations of the Parties under it shall be interpreted and construed in accordance with the laws of the State of Colorado,

the City Code, and the City Charter (collectively, the "Controlling Laws"). In the event of any conflict between this Agreement and the Controlling Laws, the Controlling Laws shall control the interpretation of the Agreement and the Parties' performance of their obligations under it. Neither Party shall be obligated under this Agreement to take any action that would be a violation of or in conflict with any of the Controlling Laws. The Parties agree that venue for any judicial action to interpret, enforce, or seek damages under this Agreement shall be in the District Court of Larimer County, Colorado.

8. Severability. If this Agreement, or any portion of it, is for any reason held invalid or unlawful by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of the IGA.

9. Indemnity. To the full extent permitted by law, the Grantee agrees to indemnify and save harmless the City, its officers, agents and employees against and from any and all actions, suits, claims, demands or liability of any character whatsoever brought or asserted for injuries to or death of any person or persons, or damages to property arising out of, result from or occurring in connection with the Grantee's performance of the Grant Work and that of its officers and employees. However, nothing contained in this Agreement shall constitute any waiver by the City or the Grantee of any defenses, immunities, or limitations of liability available to them under the Colorado Governmental Immunity Act or available to them under any other applicable Colorado or federal law.

10. No Third-Party Beneficiaries. None of the terms, conditions, or covenants in this Agreement shall give or allow any claim, benefit, or right of action by any third person or entity not a party hereto.

11. No Assignment. The rights, benefits and obligations of this Agreement shall not be assigned by either of the Parties without the other Party's prior written consent. Any assignment without such prior written consent shall be deemed null and void and of no effect.

12. Default. Each and every term and condition hereof shall be deemed to be a material element of this Agreement. In the event either Party should fail or refuse to perform according to the terms of this Agreement, such Party may be declared in default thereof.

13. Remedies. In the event the either Party has been declared in default under this Agreement, they shall be allowed a period of ten (10) days after receiving written notice of the declared default within which to cure said default. In the event the default remains uncorrected after the ten (10) days, the non-faulting Party may elect to (a) terminate this Agreement and seek damages; (b) treat this Agreement IGA as continuing and require specific performance; or (c) avail itself of any other remedy at law or equity.

14. Binding Effect. This Agreement shall inure to the benefit of and be binding on the Parties' respective successors and permitted assigns.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date stated above.

CITY OF FORT COLLINS, COLORADO

By_____
City Manager

ATTEST:

_____
City Clerk

_____
Date

EXHIBIT A TO RESOLUTION 2023-093

APPROVED AS TO LEGAL FORM:

_____
Deputy City Attorney

POUDRE SCHOOL DISTRICT

By_____
David Autenrieth, Interim Director of
Language, Culture & Equity

ATTEST:

_____ _____
Secretary Date

October 17, 2023

AGENDA ITEM SUMMARY
City Council

STAFF

Noah Beals, Development Review Manager
Paul Sizemore, Director of CDNS
Caryn Champine, Director of PDT
Brad Yatabe, Senior Assistant City Attorney

SUBJECT

Items Related to the Adoption of a New Land Use Code.

EXECUTIVE SUMMARY

A. Second Reading of Ordinance No. 136, 2023, Repealing and Reenacting Section 29-1 of the Code of the City of Fort Collins to Adopt the Revised Land Use Code and Separately Codifying the 1997 Land Use Code as the "Pre-2024 Transitional Land Use Regulations."

B. Second Reading of Ordinance No. 137, 2023, Updating City Code References to Align With the Adoption of the Revised Land Use Code.

C. Second Reading of Ordinance No. 138, 2023, Amending the Zoning Map of the City of Fort Collins to Rename All Neighborhood Conservation Low Density, Neighborhood Conservation Medium Density, and Neighborhood Conservation Buffer Zone Districts to the Old Town Zone District In Conjunction With the Adoption of the Land Use Code.

These Ordinances, adopted on October 3, 2023, by a vote of 5-2 (Nays: Ohlson, Gutowsky), amend the City's Land Use Code. The Land Use Code (LUC) Phase 1 Update implements policy direction in City Plan, the Housing Strategic Plan, and the Our Climate Future Plan. Changes are intended to address one or more of the following Guiding Principles:

1. Increase overall housing capacity and calibrate market-feasible incentives for affordable housing.
2. Enable more affordability, especially near high frequency transit and priority growth areas.
3. Allow more diverse housing choices that fit in the existing context and priority place types.
4. Make the Code easier to use and understand.
5. Improve predictability of the development review process, especially for housing.

If adopted by Council, staff recommend that the proposed Code changes take effect on January 1, 2024.

In addition to changes to the Land Use Code, updates to City Code references to the revised Land Use Code are proposed.

Finally, because the revised Land Use Code renames the Neighborhood Conservation Low Density, Neighborhood Conservation Medium Density, and Neighborhood Conservation Buffer zone districts to the Old Town zone district with corresponding subdistricts A, B, and C, updates to the zoning map to reflect the name changes are proposed. This change only affects the name of the zone districts and no changes to the boundaries are proposed.

STAFF RECOMMENDATION

Staff recommend adoption of the Ordinances on Second Reading.

BACKGROUND / DISCUSSION

At the October 3rd, 2023, regular meeting, Council approved all ordinances on first reading. With regards to Ordinance No. 136, 2023, regarding adoption of the Land Use Code, Council directed staff to remove Item 1 from the "Items for Council Discussion" from the Land Use Code, disallowing new duplexes from being built in the Residential, Low Density Zone District (RL).The other items have been included in the Draft Land Use Code. See the table below for reference:

	Items for Council Discussion	
1.	In RL, Allow duplexes under one of the following site-specific conditions: • 100ft wide lots • Duplex integrates an existing structure • Duplex includes one unit of deed-restricted affordable housing • Lot located within 1/4 mile of current or future high-frequency transit	*Amended - removed from draft LUC at First Reading*
2.	In OT-A (NCL), allow three units on lots 6,000 sf or larger under one the following site-specific conditions: • Combination of a duplex + ADU • Triplex integrates an existing structure • Triplex includes one deed-restricted affordable housing unit • A 3-unit Cottage Court includes one deed-restricted affordable housing unit	
3.	In OT-B (NCM), allow six units on lots 6,000sf or larger under the following site-specific condition: • Approved building types that both integrate with the existing structure and includes a deed restricted affordable housing unit.	
4.	In OT-B (NCM), allow six units on lots 9,000sf or larger with under the following site-specific condition: • A six-unit Cottage Court includes one deed-restricted affordable housing unit	
5.	Allow a Private Covenant/HOA to regulate site placement of all structures (additional setbacks, separation requirements)	
6.	Require properties with a new ADU to have a resident manager.	
7.	Did Council intend for the Short Term Rental prohibition for and ADU include the primary house?	

See attached First Reading Agenda Item Summary for additional information regarding background, financial impacts, board/commission/committee recommendation, and public outreach.

REQUESTED INFORMATION

Additional materials were requested at First Reading of the Land Use Code at a Regular Meeting on October 3, 2023, and are included as attachments listed below.

Information Regarding City of Boulder and Golden ADU Owner-Occupancy Policies

1. The City of Boulder has had an owner-occupancy requirement in association with ADUs since at least 2014 which is the oldest version of their land use code available online. There also seem to be references to owner-occupancy requirements where two kitchens are allowed in a detached dwelling unit as early as the year 2000.

2. The City of Golden has had an owner-occupancy requirement in association with ADUs since at least 2015 which is the oldest version of their land use code available online. It appears that the owner-occupancy requirement has been in place since at least 2010.

ATTACHMENTS

First Reading attachments not included.

1. Ordinance A for Consideration – Adopt the Revised Land Use Code
2. Exhibit A to Ordinance A
3. Exhibit B to Ordinance A
4. Exhibit C to Ordinance A
5. Exhibit D to Ordinance A
6. Exhibit E to Ordinance A
7. Exhibit F to Ordinance A
8. Exhibit G to Ordinance A
9. Ordinance B for Consideration – Making Conforming Changes to Land Use Code References Contained in City Code
10. Ordinance C for Consideration – Renaming the Neighborhood Conservation Low Density, Neighborhood Conservation Medium Density, and Neighborhood Conservation Buffer Zone Districts to the Old Town Zone District
11. Exhibit A to Ordinance C
12. Exhibit B to Ordinance C
13. Table of Relevant Code Changes
14. Memorandum Regarding “Fee in Lieu” for Affordable Housing
15. Accessory Dwelling Unit (ADU) Information from Front Range Municipalities and Counties
16. First Reading Agenda Item Summary, October 3, 2023
17. Presentation

ORDINANCE NO. 136, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
REPEALING AND REENACTING SECTION 29-1 OF THE CODE OF THE CITY OF FORT COLLINS TO ADOPT THE REVISED LAND USE CODE AND SEPARATELY CODIFYING THE 1997 LAND USE CODE AS THE "PRE-2024 TRANSITIONAL LAND USE REGULATIONS"

WHEREAS, 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; and

WHEREAS, on March 18, 1997, by adoption of Ordinance No. 51, 1997, the Fort Collins City Council adopted the Land Use Code referred to in Section 29-1 of the City Code, which was subsequently amended and on December 2, 1997, by adoption of Ordinance No. 190, 1997, the City repealed the Land Use Code so adopted and reenacted the Land Use Code dated December 12, 1997 (referred to herein as the "1997 Land Use Code"); and

WHEREAS, since adoption of the 1997 Land Use Code, the City Council adopted Resolution 2019-048 on April 16, 2019 (later ratified by Ordinance No. 40, 2020) adopting a major update of the comprehensive master plan for the City and its additional components and elements such as the Master Street Plan and subarea plans (the "2019 City Plan"); and

WHEREAS, on March 2, 2021, by adoption of Ordinance No. 033, 2021, City Council adopted the Housing Strategic Plan as an element of the City's comprehensive plan establishing a goal that all residents have healthy stable housing they can afford and listing 26 housing strategies proposed for implementation to progress toward that goal; and

WHEREAS, the City commissioned the Land Use Code Audit dated January 2020 to align the 1997 Land Use Code with adopted City plans and policies with a focus on housing-related changes, code organization, and equity; and

WHEREAS, changes to the 1997 Land Use Code to implement the 2019 City Plan and the Housing Strategic Plan goals of improving housing supply and affordability are desired; and

WHEREAS, in preparation for a future comprehensive review and rewrite of the 1997 Land Use Code as contemplated in the 2019 City Plan, reorganization of the 1997 Land Use Code to consolidate standards, eliminate repetition, simplify language, and increase user-friendliness is also desired; and

WHEREAS, in light of the proposed changes to the 1997 Land Use Code, the anticipated future comprehensive review and rewrite, and to better describe its purpose, the code replacing the 1997 Land Use Code is known as the Land Use Code; and

WHEREAS, City Council adopted a prior version of the Land Use Code known as the Land Development Code on second reading of Ordinance No. 114, 2022; and

WHEREAS, City Council repealed Ordinance No. 114, 2022, through Ordinance No. 007, 2023, after receiving a certified referendum petition regarding Ordinance No. 114, 2022; and

WHEREAS, City staff conducted extensive public outreach regarding the Land Use Code in response to issues raised by community members including mailing a City wide postcard, conducting public meetings both remote and in person upon request while offering interpreting services during such meetings, hosting a deliberative forum and a separate open house, making recordings of public meetings available, conducting neighborhood specific walking tours, answering questions in person and by email, maintaining a website with the latest information in the process, outreach to City boards and commissions including the Planning and Zoning Commission, Historic Preservation Commission, Transportation Board, Affordable Housing Board, and multiple Council work sessions; and

WHEREAS, based upon the additional public outreach and City Council feedback, City staff has drafted a revised version of the Land Use Code; and

WHEREAS, on September 27, 2023, the Planning and Zoning Commission on a 4-1 vote (Haefele Nay) recommended that City Council adopt the Land Use Code as presented by City staff; and

WHEREAS, the Land Use Code, effective January 1, 2024, will replace the 1997 Land Use Code in its entirety; and

WHEREAS, City Council has determined that the 1997 Land Use Code shall be separately codified as the "Pre-2024 Transitional Land Use Regulations" and limited in their application to the review of pending land development applications submitted and determined to be complete and ready for review pursuant to Land Use Code Section 2.2.4 prior to the effective date of the Land Use Code adopted pursuant to this Ordinance; and

WHEREAS, City Council has determined that adoption of the Land Use Code is appropriate to accomplish the goals set forth above and is in the best interests of the residents of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That Section 29-1 of the Code of the City of Fort Collins is hereby repealed and reenacted to read as follows:

Sec. 29-1. - Cross reference to Land Use Code

The Land Use Code, as adopted by Ordinance No. 136, 2023, shall be codified separately from the Code of the City of Fort Collins and, although not a numbered Chapter of the Code of the City of

Fort Collins, is a part of the Code of the City of Fort Collins with the same legal significance as though it were a numbered Chapter. The Land Use Code may be used, as applicable, to support the implementation of the Code of the City of Fort Collins, and the Code of the City of Fort Collins may be used, as applicable, to support the implementation of the Land Use Code.

Section 3. That the Land Use Code attached hereto and incorporated herein by this reference as Exhibits "A" through Exhibit "G", with each exhibit corresponding to a separate Land Use Code Article 1 through Article 7 respectively, is hereby adopted and shall be codified separately from the Code of the City of Fort Collins.

Section 4. That the 1997 Land Use Code is hereby repealed and separately codified as the "Pre-2024 Transitional Land Use Regulations" and shall be limited in its application to the review of pending land development applications submitted and determined to be complete and ready for review pursuant to the Pre-2024 Transitional Land Use Regulations Section 2.2.4 prior to the effective date of the Land Use Code as set forth in this Ordinance.

Section 5. That the Land Use Code shall be effective for all land development applications submitted on or after January 1, 2024.

Section 6. That after the Land Use Code effective date, all references to the Land Use Code in the Code of the City of Fort Collins and City Council administratively adopted policy, planning, regulatory, and other documents including, but not limited to, the 2019 City Plan, the Larimer County Urban Area Street Standards, the Stormwater Criteria Manual, Dust Prevention and Control Manual shall be interpreted to refer to the appropriate provisions of the Land Use Code until conforming changes can be made.

Section 7. That the water adequacy determination provisions that City Council adopted through Ordinance No. 117, 2023, on second reading on September 19, 2023, shall be incorporated into the Land Use Code with appropriate renumbering of sections and references as follows:

a. Amendments to 1997 Land Use Code Section 3.7.3 shall be incorporated into Land Use Code Section 5.7.3;
b. New Division 3.13 added to the 1997 Land Use Code shall be incorporated into Land Use Code Article 5 as Division 5.17; and
c. New definitions added to 1997 Land Use Code Article 5 shall be incorporated alphabetically into Land Use Code Article 7.

Section 8. That the oil and gas buffer code language that City Council adopted through Ordinance No. 116, 2023, on second reading on September 19, 2023, shall be incorporated into the Land Use Code with appropriate renumbering of sections and references as follows:

a. Amendments to 1997 Land Use Code Section 3.8.26 shall be incorporated into Land Use Code Section 5.10.2;
b. New Section 3.8.36 added to the 1997 Land Use Code shall be incorporated into Land Use Code Article 5 as Section 5.10.3; and
c. New definitions added to 1997 Land Use Code Article 5 shall be incorporated alphabetically into Land Use Code Article 7.

Section 9. That in relation to the incorporation of the provisions described in Section 7 and Section 8, all necessary renumbering of internal Land Use Code references shall be made.

Introduced, considered favorably on first reading and ordered published this 3rd day of October, 2023, and to be presented for final passage on the 17th day of October, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

Passed and adopted on final reading this 17th day of October, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

City of Fort Collins

LAND USE CODE

City of Fort Collins

ARTICLE 1

GENERAL PURPOSE and PROVISIONS

City of Fort Collins - Land Use Code

TABLE OF CONTENTS

ARTICLE 1
GENERAL PURPOSE and PROVISIONS

DIVISION 1.1 ORGANIZATION OF LAND USE CODE

The City of Fort Collins Land Use Code is organized into seven (7) Articles as follows:

Article 1: General Purpose and Provisions

Article 2: Zone Districts

Article 3: Building Types

Article 4: Use Standards

Article 5: General Development and Site Design

Article 6: Administration and Procedures

Article 7: Rules of Measurement and Definition

The General Purpose and Provisions contained in **Article 1** address the organization of this Land Use Code ("LUC" or "Code"); its title, purpose and authority and the relationship to the Code of the City of Fort Collins.

All zone districts within the City of Fort Collins and their respective list of permitted uses, prohibited uses, and development standards for particular uses are described in **Articles 2 and 4**. These zone districts directly relate to the Zoning Map and Zone Districts established in Article 6.

Articles 3 and 5 establish standards that apply to all types of development applications unless otherwise indicated. Collectively, these articles are known as the general development standards and address standards for environmental and historic resource protection (see also, Code of the City of Fort Collins Chapter 14), site, building, and infrastructure design, compact urban growth, and transportation and circulation.

Article 6, Administration and Procedures, guides the reader through the procedural and decision-making process by providing divisions pertaining to general procedural requirements and a twelve-step common development review process, as well as providing a separate division for each type of development application and other land use requests; rules for interpretation; rules for nonconformities; amendments to the text of this Code and/or Zoning Map, enforcement mechanisms, and guidelines and regulations for areas and activities of state interest.

Definitions of terms and measurements used throughout this LUC are included in **Article 7** although definitions specific to areas and activities of state interest are contained in Article 6.

This method of organization, which distinguishes and separates general provisions, administration, general development standards, district standards and definitions, use-specific standards, and sign standards is intended to provide a user-friendly and easily accessible LUC. This is accomplished by consolidating most city regulations addressing land use and development, standardizing the regulatory format, providing common development review procedures, and clarifying standards and definitions.

For an overview on how to use this LUC when applying for a development application or other request, see Section 6.2.2, Overview of Development Review Procedures.

DIVISION 1.2 TITLE, PURPOSE, AND AUTHORITY

1.2.1 TITLE

The provisions contained herein shall be known,
cited and referred to as the "City of Fort Collins Land Use Code," the "Land Use Code," the "LUC," or as referenced in the Land Use Code, the "Code."

1.2.2 PURPOSE

The purpose of this Code is to improve and protect the public health, safety, and welfare by:

(A) Ensuring that all growth and development which occurs is consistent with this Code, City Plan and its adopted elements, including, but not limited to, the Structure Plan, Principles and Policies and associated sub-area plans.

(B) Implementing the vision of the Housing Strategic Plan that everyone in Fort Collins has healthy, stable housing they can afford.

(C) Supporting *Our Climate Future* goals to reduce energy consumption and greenhouse gas emissions, provide renewable electricity, and achieving zero waste.

(D) Encouraging innovations in land development and renewal.

(E) Fostering the safe, efficient, and economic use of the land, the city's transportation infrastructure, and other public facilities and services.

(F) Facilitating and ensuring the provision of adequate public facilities and services such as transportation (streets, bicycle routes, sidewalks and mass transit), water, wastewater, storm drainage, fire and emergency services, police, electricity, open space, recreation, and public parks.

(G) Avoiding the inappropriate development of lands and providing for adequate drainage and reduction of flood damage.

(H) Encouraging patterns of land use which decrease trip length of automobile travel and encourage trip consolidation.

(I) Increasing public access to mass transit, sidewalks, trails, bicycle routes and other alternative modes of transportation.

(J) Minimizing the adverse environmental impacts of development.

(K) Improving the design, quality and character of new development.

(L) Fostering a more rational pattern of relationship among residential, business and industrial uses for the mutual benefit of all.

(M) Encouraging the development of vacant properties within established areas.

(N) Encouraging a wide variety of housing opportunities at various densities that are well-served by public transportation for people of all ages, abilities, and income levels to promote diversity.

1.2.3 AUTHORITY

The City Council of the City of Fort Collins has the authority to adopt this Land Use Code pursuant to Article XX of the Colorado Constitution; Title 31, Article 2 of the Colorado Revised Statutes, the Charter of The City of Fort Collins, Colorado, and such other authorities and provisions as are established in the statutory and common law of the State of Colorado.

1.2.4 APPLICABILITY

The provisions of this Code shall apply to any and all development of land, as defined in Article 7 of this Code, within the municipal boundaries of the City, unless expressly and specifically exempted or provided otherwise in this Code. For example, this Code is meant to complement and not override or substitute for the requirements of Chapter 14 of the Code of the City of Fort Collins regarding landmarks. No development shall be undertaken without prior and proper approval or authorization pursuant to the terms of this Code. All development shall comply with the applicable terms, conditions, requirements, standards and procedures established in this Code.

Except as hereinafter provided, no building, structure or land shall be used and no building or structure or part thereof shall be erected, constructed, reconstructed, altered, repaired, moved or structurally altered except in conformance with the regulations herein specified for the district in which it is located, nor shall a yard, lot or open space be reduced in dimensions or area to an amount less than the minimum requirements set forth herein and all other applicable standards of the City or to an amount greater than the maximum requirements set forth herein and all other applicable standards of the City.

This Land Use Code establishes procedural and substantive rules for obtaining the necessary approval to develop land and construct buildings and structures. Development applications for overall development plans, project development plans, and final plans will be reviewed for compliance with the applicable development standards herein and all other applicable standards of the City. Building permit applications will also be reviewed for compliance with the applicable development standards and District Standards and all other applicable standards of the City and will be further reviewed for compliance with the approved final plan in which they are located.

This Land Use Code shall also apply to the use of land following development to the extent that the provisions of this Land Use Code can be reasonably and logically interpreted as having such ongoing application.

1.2.5 MINIMUM STANDARDS

The provisions of this Land Use Code are the minimum standards necessary to accomplish the purposes of this Land Use Code

DIVISION 1.3 LEGAL

1.3.1 RELATIONSHIP TO CODE OF THE CITY

This Land Use Code, although not a numbered Chapter of the Code of the City, is adopted by reference in Chapter 29 of the Code of the City and made part thereof, with the same legal significance as though it were a numbered Chapter. This Land Use Code may be used, as applicable, to support the implementation of the Code of the City; and the Code of the City may be used, as applicable, to support the implementation of this Land Use Code. Particularly, but without limitation, the provisions of Chapter 1 of the Code of the City are incorporated into this Land Use Code by reference.

1.3.2 CONFLICT BETWEEN LAND USE CODE STANDARDS AND CONFLICT WITH OTHER LAWS

(A) In the event of a conflict between a standard or requirement contained in Articles 2, 3, or 4 and a standard or requirement in Article 5, the standard or requirement in Article 2, 3, or 4 shall prevail to the extent of the conflict. In the event there is a conflict between standards or requirements contained in Article 2, 3, or 4, the more specific standard or requirement shall prevail to the extent of the conflict. If neither standard or requirement is more specific, the more stringent standard or requirement shall prevail to the extent of the conflict.

(B) In the event of conflicts not addressed in (A), if the provisions of this Land Use Code are internally conflicting or if they conflict with any other statute, code, local ordinance, resolution, regulation or other applicable Federal, State, or local law, the more specific standard, limitation or requirement shall govern or prevail to the extent of the conflict. If neither standard is more specific, then the more stringent standard, limitation or requirement shall govern or prevail to the extent of the conflict.

1.3.3 CONFLICTS WITH PRIVATE HOUSING COVENANTS

No person shall create, cause to be created, enforce or seek to enforce any provision contained in any contract or restrictive covenant that prohibits or has the effect of prohibiting the number and/or type of dwelling units permitted on a lot when such number and/or type of dwelling unit(s) would otherwise be permitted by the City's zoning regulations. A Homeowner's Association may enforce private covenants which reasonably regulate external aesthetics including, but not limited to, site placement/setbacks, color, window placement, height, and materials with the intent of furthering compatibility with the existing neighborhood.

No person shall create, cause to be created, enforce or seek to enforce any provision contained in any contract or restrictive covenant that prohibits or has the effect of prohibiting subdivision of property when such subdivision would otherwise be permitted by the City's zoning regulations.

1.3.4 SEVERABILITY

It is the legislative intent of the City Council in adopting this Land Use Code that all provisions hereof shall be liberally construed to protect and preserve the peace, health, safety and general welfare of the inhabitants of the City. it is the further intent of the City Council that this Land Use Code shall stand, notwithstanding the invalidity of any part thereof, and that should any provision of this Land Use Code be held to be unconstitutional or invalid by a court or tribunal of competent jurisdiction, such holding shall not be construed as affecting the validity of any of the remaining provisions.

ARTICLE **2**

ZONE DISTRICTS

2.1 RESIDENTIAL

2.1.1 RUL

2.1.2 UE

2.1.3 RF

2.1.4 RL

2.1.5 MH

2.1.6 OT

2.2 MIXED-USE

2.2.1 LMN

2.2.2 MMN

2.2.3 HMN

2.2.4 NC

2.3 COMMERCIAL

2.3.1 CC

2.3.2 CCN

2.3.3 CCR

2.3.4 CG

2.3.5 CS

2.3.6 CL

2.4 DOWNTOWN

2.4.1 D

2.5 EMPLOYMENT, INDUSTRIAL, OTHER

2.5.1 HC

2.5.2 E

2.5.3 I

2.5.4 T

2.5.5 POL

2.5.6 RC

2.6 OVERLAY

2.6.1 TOD

2.6.2 SCG

2.6.3 PUD

2.6.4 I-25

DIVISION 2.1 RESIDENTIAL DISTRICTS

SECTION 2.1.1

RUL
Rural Lands District

PURPOSE

The Rural Lands District is intended for privately owned lands that are planned as a rural edge to the community. Rural lands include but are not limited to community separators, clustered residential development, large lot residential, agriculture, natural area buffers and corridors and other open lands of similar character and purpose.

BUILDING TYPES

The following building types are permitted in the RUL District:

- Detached House (Urban & Suburban)
- Residential Cluster
- Detached Accessory Structure
- Accessory Dwelling Unit

DEVELOPMENT STANDARDS

BUILDING HEIGHT

Single-Unit Dwelling	3 Stories max.

LOT SIZE

Lot Area (Except Residential Cluster)	435,600 ft^2 (10 Acres) min.

RESIDENTIAL CLUSTER

Sites in the Rural Lands District may be developed as a Residential Cluster according to the Residential Cluster Building Type standards established in Section 3.1.10. In a cluster development, lot sizes may be reduced in order to cluster the dwellings together on a portion of the property, with the remainder of the property permanently preserved as public or private open space.

LOT WIDTH

Single-Unit Dwelling > 10 Acres	200’ min.
Single-Unit Dwelling Residential Cluster Developments	60’ min.
All Other Uses	100’ min.

SETBACKS*

Front Setback - From Arterial Streets	80’ min.
Front Setback > 10 Acres	60’ min.
Rear Setback > 10 Acres	50’ min.
Side Setback > 10 Acres	50’ min.

* For Residential Cluster development, see Building Types.

Airport Critical Area

No residential use shall be permitted within the designated Airport Critical Area.

UE

Urban Estate District

PURPOSE

The Urban Estate District is intended to be a setting for a predominance of low-density and large-lot housing. The main purposes of this District are to acknowledge the presence of the many existing subdivisions which have developed in these uses which function as parts of the community and to provide additional locations for similar development, typically in transitional locations between more intense urban development and rural or open lands.

BUILDING TYPES

The following building types are permitted in the UE District:

- Detached House (Urban & Suburban)
- Duplex
- Residential Cluster
- Detached Accessory Structure
- Accessory Dwelling Unit

DEVELOPMENT STANDARDS

LOT SIZE

Lot Area (Except Residential Cluster)	21,780 ft^2 (1/2 Acre) min.

LOT WIDTH

Single-Unit Dwelling	100’ min.
Single-Unit Dwelling (Subdivided before 1997)	60’ min.

RESIDENTIAL CLUSTER

Sites in the Urban Estate District may be developed as a Residential Cluster according to the Residential Cluster Building Type standards established in Section 3.1.10. In a cluster development, lot sizes and widths may be reduced in order to cluster the dwellings together on a portion of the property, with the remainder of the property permanently preserved as public or private open space.

SETBACKS*

Front Setback	30’ min.
Front Setback (Subdivided before 1997)	20’ min.
Rear Setback	25’ min.
Rear Setback (Subdivided before 1997)	15’ min.
Side Setback	20’ min.
Side Setback (Subdivided before 1997)	5’ min.

* For Residential Cluster development, see Building Types.

BUILDING HEIGHT

Single-Unit Dwelling	3 Stories max.

RF
Residential Foothills District

PURPOSE

The Residential Foothills District designation is for low density residential areas located near the foothills.

BUILDING TYPES

The following building types are permitted in the RF District:

- Detached House (Urban & Suburban)
- Residential Cluster
- Detached Accessory Structure
- Accessory Dwelling Unit


RF Cluster Development

DEVELOPMENT STANDARDS

LOT WIDTH

Single-Unit Dwelling	200’ min.

LOT SIZE

Lot Area (Except Residential Cluster)	100,000 ft^2 (2.29 Acres) min.

No elevation of any building built on a lot in the RF District shall extend above five thousand two hundred fifty (5,250) feet above mean sea level.

SETBACKS*

Front Setback	60’ min.
Rear Setback	50’ min.
Side Setback	50’ min.

* For Residential Cluster development, see Building Types.

BUILDING HEIGHT

Single-Unit Dwelling	3 Stories max.

RESIDENTIAL CLUSTER

Sites in the Residential Foothills District may be developed in a Residential Cluster according to the Residential Cluster Building Type standards established in Section 3.1.10. In a cluster development, lot sizes may be reduced in order to cluster the dwellings together on a portion of the property, with the remainder of the property permanently preserved as public or private open space.

RL

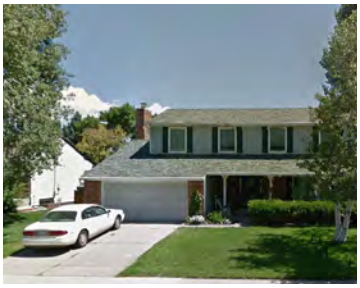
Low Density Residential District

PURPOSE

The Low Density Residential District designation is intended predominantly for single-unit and accessory dwellings located throughout the City.

RL - Low Density Residential District

EXISTING CONDITIONS



BUILDING TYPES

The following building types are permitted in the RL District:

BUILDING TYPES	# OF UNITS*	LOT AREA
Detached House (Urban & Suburban)	1 max.	6000 ft^2 min.
ADU	1 max.	N/A
Detached Accessory Structure	See Section 3.1.8	

*The total number of units shall not exceed two (2) on a lot.

**See integrate with existing structure requirements in Article 7.

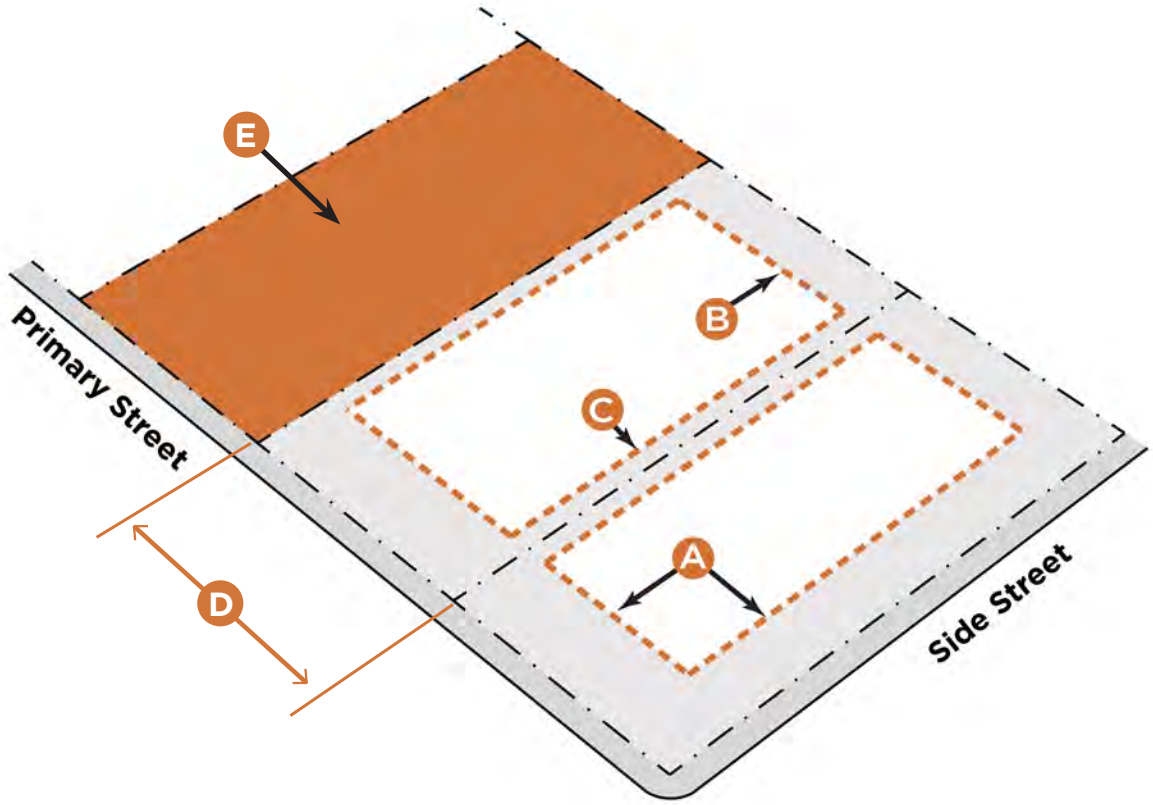
***Existing or planned high frequency transit pursuant to the adopted Transit Master Plan.

Refer to Building Types Article 3 and Use Standards Article 4 for specific definitions.

RL - Low Density Residential District

DEVELOPMENT STANDARDS

BUILDING PLACEMENT



SETBACKS

Front Setback	20’ min. A
Rear Setback	Along Alley - 5’ min. B No Alley - 15’ min
Garage Door Setback (side or rear alley)	8’ min.
Residential - Side Setback	Corner Lot - 15’ min. A Interior Lot - 5’ min. C

LOT WIDTH

Single-Unit Dwelling	60’ min. D
Child-Care Center	60’ min.
All Other Uses	100’ min.

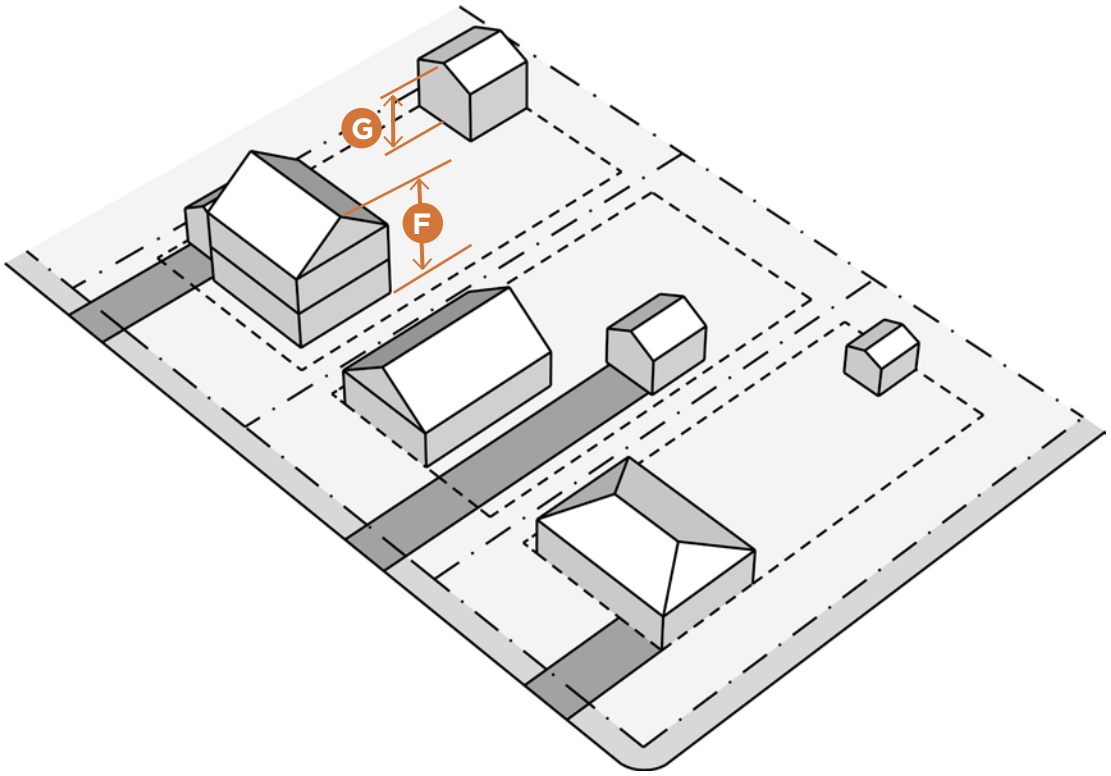
LOT SIZE E

Lot Area	6,000 ft^2 min.

RL - Low Density Residential District

DEVELOPMENT STANDARDS

BUILDING ENVELOPE



BUILDING HEIGHT	
Single-Unit Dwelling, Group Home, or Child-Care Center	28' max. (F)
All Other Uses	3 Stories max.

HEIGHT SETBACK	
Upper Story Setback	Above 2 stories, a 25' min. upper story setback shall apply.

Applies only to Non-Residential Buildings.

ACCESSORY BUILDING HEIGHT (G)		
Detached Accessory Structure with or without habitable space	28' max.*	
Accessory Dwelling Unit	No Alley	Alley
	15' max.	26' max.*

*Accessory buildings and structures may not exceed the height of any existing or proposed principal building on the lot by more than two (2) feet.

MH

Manufactured Housing District

PURPOSE

The MH Manufactured Housing District is intended for existing manufactured housing communities located throughout the City. This designation is designed to preserve and support existing manufactured housing communities as the predominant residential use alongside other complementary accessory and nonresidential activities which primarily serve residents of manufactured housing communities.

BUILDING TYPES

The following building types are permitted in the MH District:
- Mobile Home
- Detached House (Urban & Suburban)
- Detached Accessory Structure

DEVELOPMENT STANDARDS

SETBACKS	
Front Setback*	15’ min.
Rear Setback*	10’ min.
Side Setback*	10’ min.
Distance Between Buildings	10’ min.

* Setbacks are from property line.

BUILDING HEIGHT	
Single-Unit Dwelling	3 Stories max.

BUILDING FOOTPRINT	
Maximum	5,000 ft²

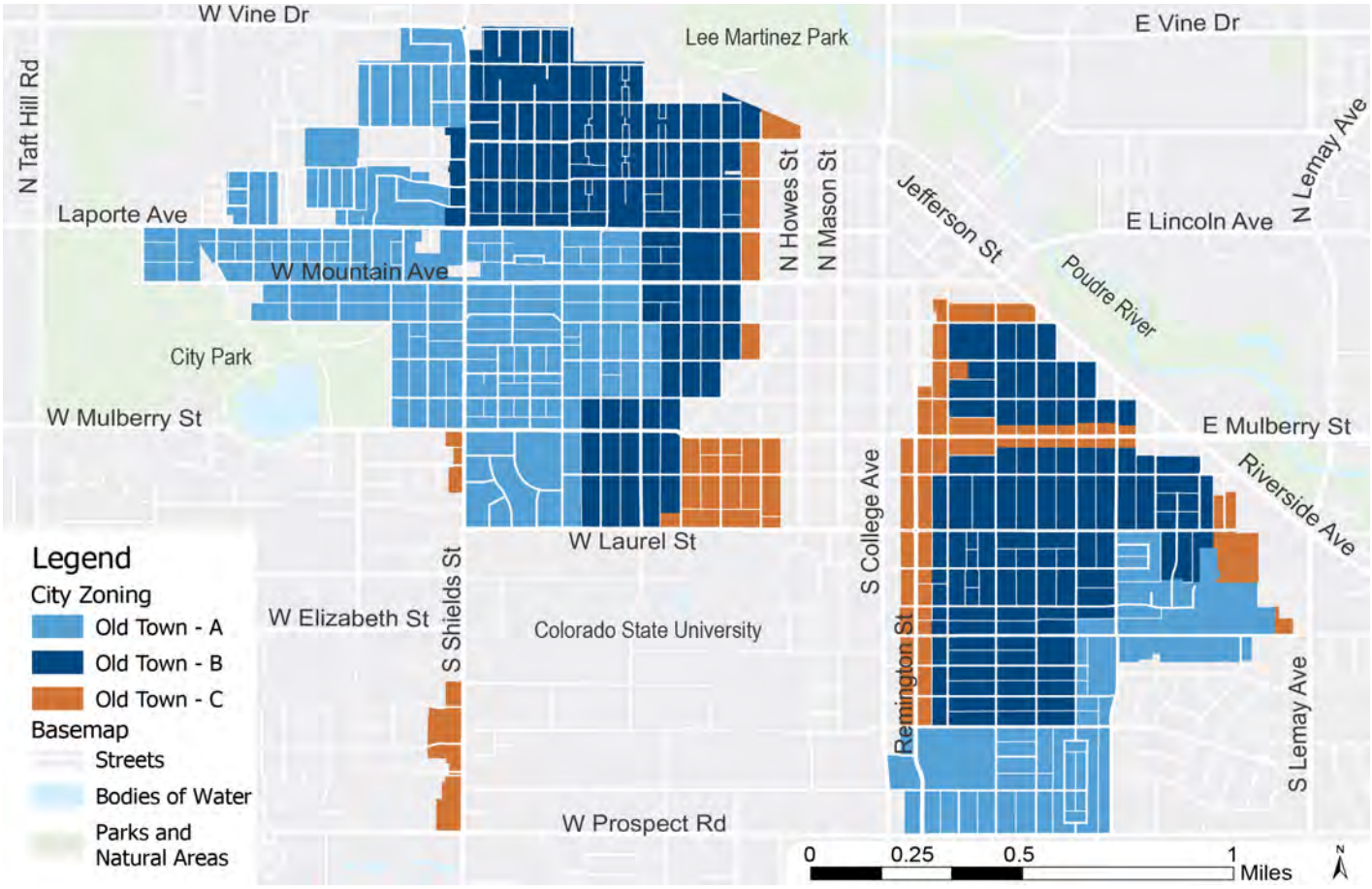
OT
Old Town District

PURPOSE

The Old Town District is intended to preserve the unique history, character, and scale of the neighborhoods developed adjacent to Downtown and Colorado State University (CSU) and given this designation in accordance with an adopted subarea plan. The District is divided into three (3) subdistricts and is intended to encourage a mix of housing options, choices, and intensities as permitted by each subdistrict, which is described on the following pages. The Old Town Districts consists of the following three (3) sub-districts:

OT-A - Old Town District, Low
OT-B - Old Town District, Medium
OT-C - Old Town District, High

All standards within this zone district apply to all sub-districts, unless stated otherwise.

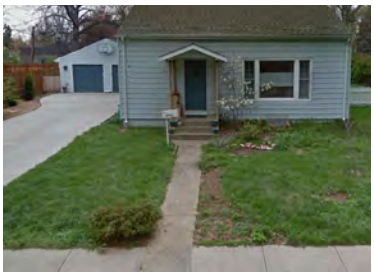


OT-A

Old Town District, Low

PURPOSE

The Old Town District, Low (OT-A) subdistrict allows single-unit and accessory dwellings.



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.	4500 ft² min.	2,400 ft² max.	N/A
Duplex	2 max.	4500 ft² min. or 6000ft² min. with an ADU	40% of lot area max.	N/A
Triplex	3 max.	6000 ft² min.	40% of lot area max.	**MUST MEET ONE OF THE FOLLOWING TWO REQUIREMENTS**
				Integrates existing structure**
				Affordable Housing Development
Cottage Court	3 max.	9000 ft² min.	See Section 3.1.3	Affordable Housing Development
ADU	1 max.	N/A	See Section 3.1.9	Accesory to either a Duplex or Detached House
Detached Accessory Structure	See Section 3.1.8			N/A

*The total number of units shall not exceed three (3) on a lot.

**See integrate with existing structure requiments in Article 7.

Refer to Building Types Article 3 and Use Standards Article 4 for specific definitions.

OT-B

Old Town District, Medium

PURPOSE

The Old Town District, Medium (OT-B) subdistrict is intended to preserve the character of areas that have a predominance of developed single-unit and low- to medium-density multi-unit housing and have been given this designation in accordance with an adopted subarea plan.

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.	4500 ft² min.	2,400 ft² max.	N/A
Duplex	2 max.	4500 ft² min.	40% of lot area max.	N/A
Triplex	3 max.	4500 ft² min.	70% of lot area max.	N/A
Apartment Building	4 max.	6000 ft² min.	85% of lot area max.	N/A
	5 max.			Integrates existing structure**
	6 max.	6000 ft² min.	85% of lot area max.	**MUST MEET BOTH OF THE BELOW REQUIREMENTS**
				Integrates existing structure*
				Affordable Housing Development
Rowhouse	2-3 max. 4 max. 5 max.	4500 ft² min 6000 ft² min 7500 ft² min	40% of lot area max. 70% of lot area max. 70% of lot area max.	Affordable Housing Development
Cottage Court	3 min. 6 max.	9000 ft² min	See Section 3.1.3	N/A
ADU	1 max.	N/A	See Section 3.1.9	Only allowed with a Detached House, Duplex, or Cottage Court
Detached Accessory	See Section 3.1.8			N/A

*The total number of units shall not exceed six (6) units on a lot.

**See integrate with existing structure requiments in Article 7.

Refer to Building Types Article 3 and Use Standards Article 4 for specific definitions.

OT-C

Old Town District, High

PURPOSE

The Old Town District, High (OT-C) subdistrict is intended for areas that are a transition between Downtown, the CSU campus, and adjacent neighborhoods. Intensive commercial-use areas or high traffic zones have been given this designation in accordance with an adopted subarea plan.

BUILDING TYPES

The following building types are permitted in the OT-C subdistrict:

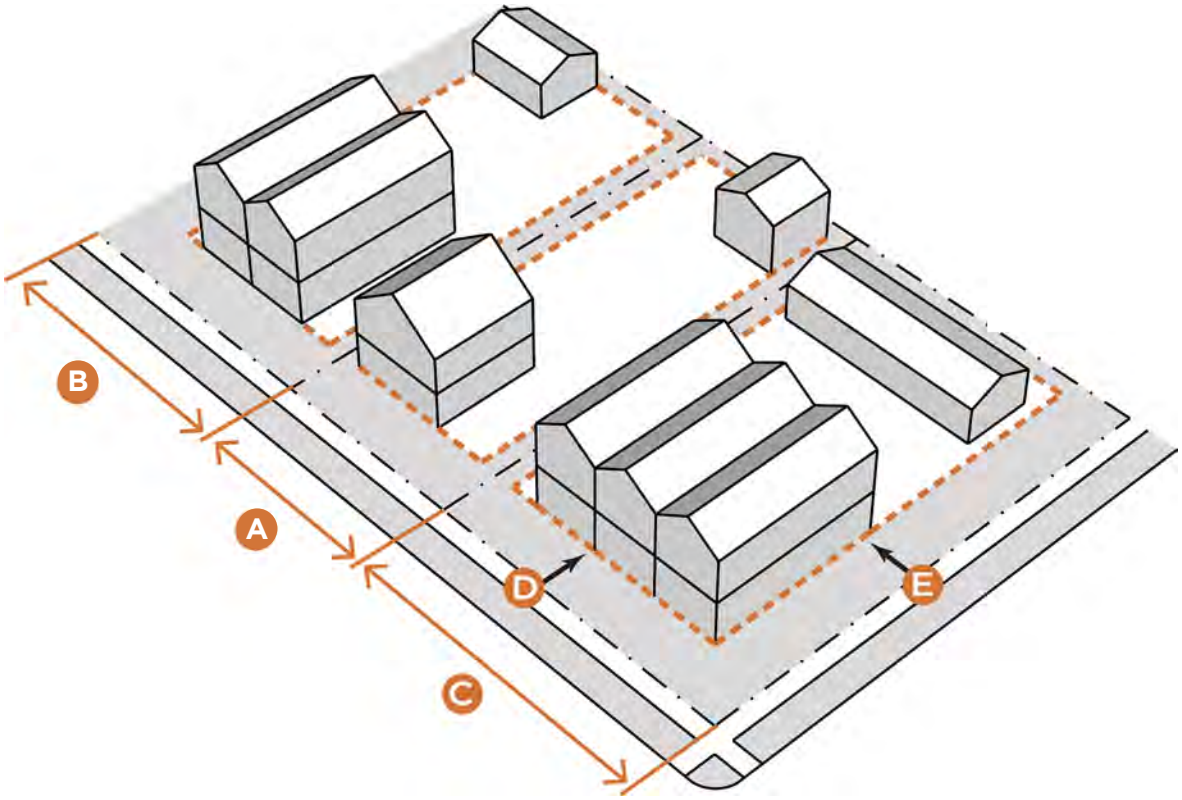
BUILDING TYPES	UNITS	LOT AREA	FLOOR AREA
Detached House (Urban & Suburban)	1 max.	4500 ft² min.	2,400 ft² max.
Duplex	2 max.	4500 ft² min.	No max.
Apartment Bldg.	3 min.	4500 ft² min. & additional 750 ft² min. for each unit greater than 3 units	No max.
Rowhouse	2 min. to 3 max.	4500 ft² min.	No max.
	4 max.	6000 ft² min.	No max.
	5 max.	7500 ft² min.	No max.
Cottage Court	5 min.	9000 ft² min.	See Section 3.1.3
Mixed-Use	3 min.	4500 ft² min. & additional 750 ft² min. for each unit greater than 3 units	No max.
ADU	1 max.	N/A	See Section 3.1.9
Detached Accessory Structure	See Section 3.1.8		

Refer to Building Types Article 3 and Use Standards Article 4 for specific definitions.

OT - Old Town District (Low, Medium, and High)

DEVELOPMENT STANDARDS

BUILDING PLACEMENT



LOT WIDTH		
Detached House	40’ min.	A
Duplex	40’ min.	B
All Others	50’ min. *	C

* Exception for Rowhouse Building Type. See Section 3.1.4.

SCHOOLS & PLACES OF WORSHIP & ASSEMBLY SETBACKS	
Front Setback	15’ min.
Side Setback (interior and street)	25’ min.
Rear Setback	15’ min.

RESIDENTIAL BUILDING SETBACKS		
Front Setback	15’ min.	D
Side Setback, Interior	5’ min.	
Side Setback, Street	9’ min.	E
Rear Setback, No Alley	15’ min.	
Rear Setback, Alley	5’ min.	
Garage Setback (from walkway)	20’ min.	
Garage Door Setback (side or rear alley)	8’ min.	

OT - Old Town District (Low, Medium, and High)

DEVELOPMENT STANDARDS

BUILDING ENVELOPE

BUILDING HEIGHT

OT-A	35' max.
OT-B	35' max.
OT-C	4 stories max.
Front Porch	1 story max.

A second floor shall not overhang the lower front or side exterior walls of a new or existing building.

BUILDING DESIGN

Additional design standards apply in the following conditions. See Article 7 for measurement details.

	BULK PLANE	FRONT FACADE	SIDE FACADE
2-Story Dwelling Replacing 1-Story Dwelling	◉	◉	
New Buildings > 2,500 ft²	◉	◉	◉
Second Story Addition > 3,000 ft²	◉	◉	◉

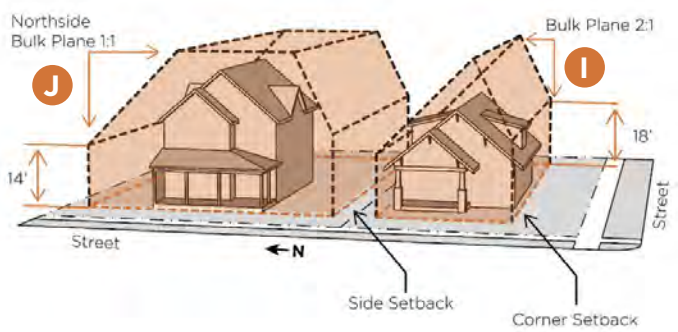
◉ Required

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

BULK PLANE

All Applicable Buildings, as specified in the Building Design Table	Building shall be setback an additional 1' for every 2' of height above 18'. (I)
North facing walls, when along side-interior lot line with an adjoining property	Building shall be setback an additional 1' for every 1' of height above 14'. (J)



FRONT FACADE DESIGN

At least one (1) front façade feature from the menu below shall be included to promote pedestrian orientation and compatibility with the character of the structures on the block face. See Section 7.1.2 for details.

- Limited 2-story facade
- 1-story element
- Covered entry

SIDE FACADE DESIGN

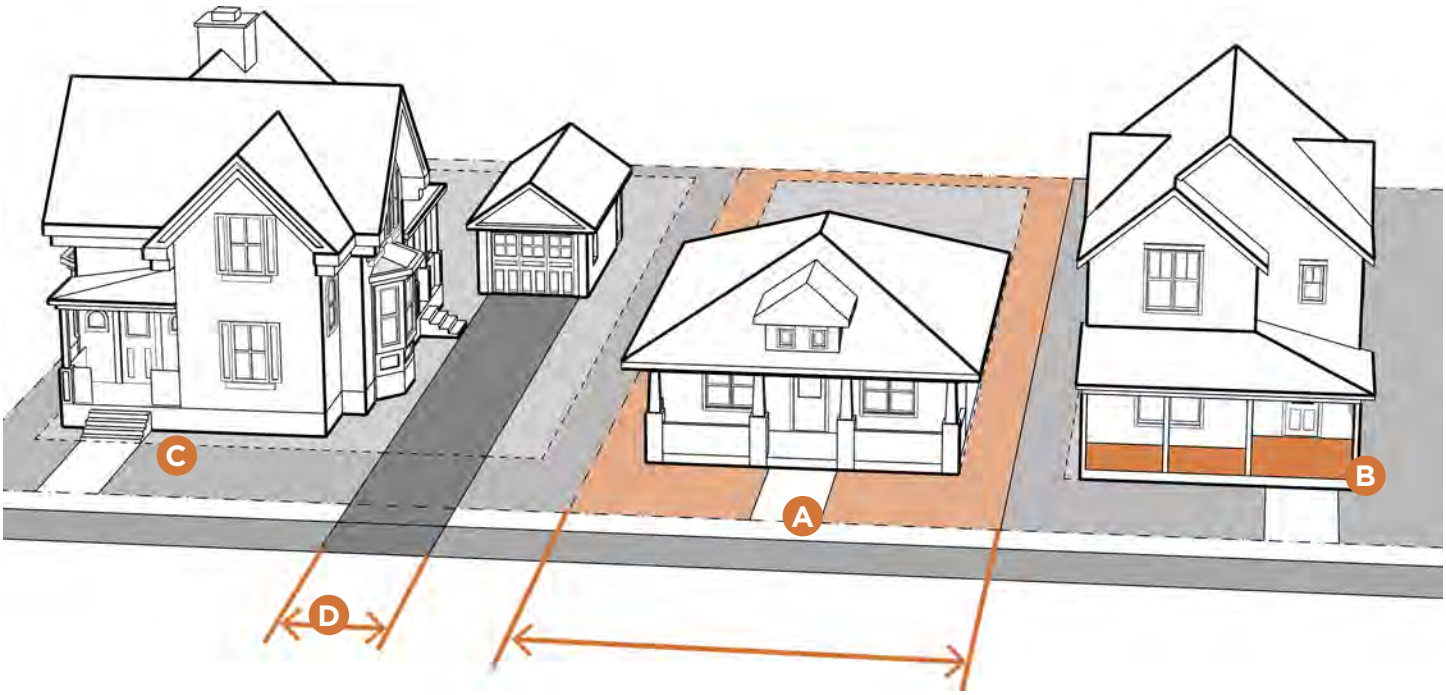
At least one (1) side façade feature from the menu below shall be included to address potential looming and privacy impacts on neighbors. See Section 7.1.2 for details.

- Wall Offset
- Step Down in Height
- 1-story element
- Additional setback

OT - Old Town District (Low, Medium, and High)

DEVELOPMENT STANDARDS

SITE DESIGN



ENTRANCES

Primary Entrance*	Face street or common court	A
	Primary Entrance shall include architectural feature such as a porch, landing or portico.	B

*Unless otherwise required for ADA access.

LANDSCAPE / HARDSCAPE

Front Yard Coverage[1]	Maximum 40% of front yard can be covered with inorganic material such as asphalt, concrete, pavers, stone, rock or gravel.	C

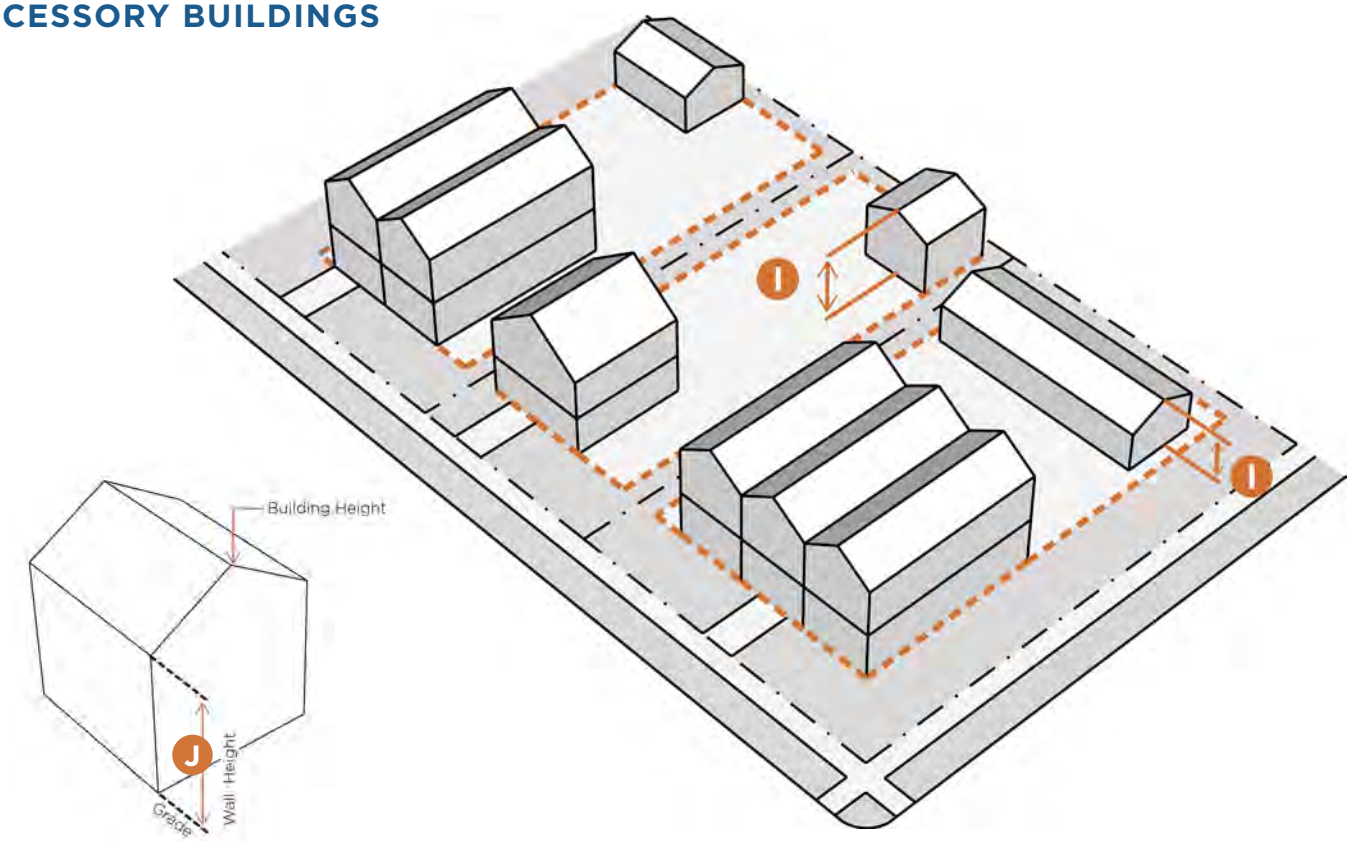
ACCESS & PARKING

Alley Access	Whenever a lot has access along an alley, any new off-street parking area located on such lot must obtain access from such adjoining alley.
Existing Driveways D	Alley access shall not be required when a new detached garage is proposed to be accessed from an existing driveway that has a curbcut along a public street, or when alley access is determined by the City Engineer to be a hazard to persons or vehicles.
Off-Street Parking	Permanent open off-street parking areas for all permitted principal uses, other than single-unit dwellings, shall not be located any closer to a public street right-of-way than the distance by which the principal building is set back from the street right-of-way. This provision shall not be construed to preclude temporary parking in driveways.

OT - Old Town District (Low, Medium, and High)

DEVELOPMENT STANDARDS

ACCESSORY BUILDINGS



DETACHED ACCESSORY STRUCTURE HEIGHT (Maximum)

ADU Height	24' max. / or as tall as the primary building (whichever is less)*	
Accessory Building (Non-Habitable)	20' max. or as tall as the primary building (whichever is less)*	I
Wall Height (along interior side lot line)	13' max.	J

*Shall apply to buildings that have applied for a builidng permit on or after January 1, 2024.

DETACHED ACCESSORY STRUCTURE DORMER or SIMILAR ARCHITECTURAL FEATURE

Width (along side lot line)	8' max.
Stepback from first story	2' min.

ACCESSORY BUILDING - LOT STANDARDS

ADU Floor Area	1000 ft^2 max. / or 45% of primary dwelling unit (whichever is less)
ADU Setback from Primary Dwelling	5' min.

DIVISION 2.2 MIXED-USE DISTRICTS

SECTION 2.2.1

LMN

Low Density Mixed-Use Neighborhood District

PURPOSE

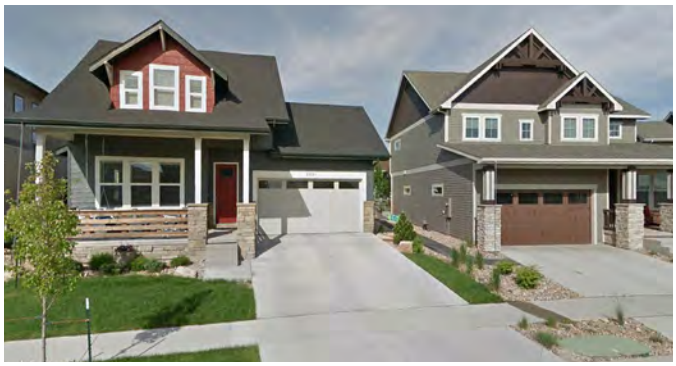
The Low Density Mixed-Use Neighborhood District is intended to be a setting for a variety of housing, providing diverse opportunities for single unit and accessory dwellings to attached units and small and medium-sized multi-unit structures. The District also encourages complementary commercial and institutional land uses and amenities that serve the everyday needs of a residential neighborhood. Parks and neighborhood centers are integrated into new and existing development and the broader community through the pattern of streets, blocks, and other linkages, providing an attractive and walkable focal point for services, open space, and recreation.

For the purposes of this Section, a neighborhood shall be considered to consist of approximately eighty (80) to one hundred sixty (160) acres, with its edges typically consisting of major streets, drainageways, irrigation ditches, railroad tracks and other major physical features.

SECTION 2.2.1

LMN - Low Density Mixed-Use Neighborhood District

EXISTING CONDITIONS



BUILDING TYPES

The following building types are permitted in the LMN District:

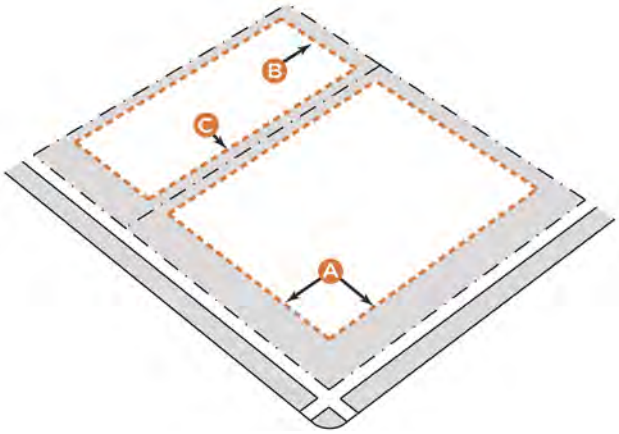
LMN BUILDING TYPES	# OF UNITS	MAXIMUM DENSITY		MIN. DENSITY
		BASE	BONUS	
Non-Residential	N/A	N/A	N/A	N/A
Mixed-Use	1 min.	1 unit per 3,630 sq. ft. of site area	No max. density for affordable housing projects	1 unit per 10,000 sq. ft. of site area
Apartment	3+ min.			
Rowhouse	2+ min.			
Cottage Court	3+ min.			
Duplex	2 max.			
Detached House - Urban	1 max.			
Detached House - Suburban	1 max.			
ADU	1 max.	N/A	N/A	N/A
Detached Accessory Structure	See Section 3.1.8	N/A	N/A	N/A

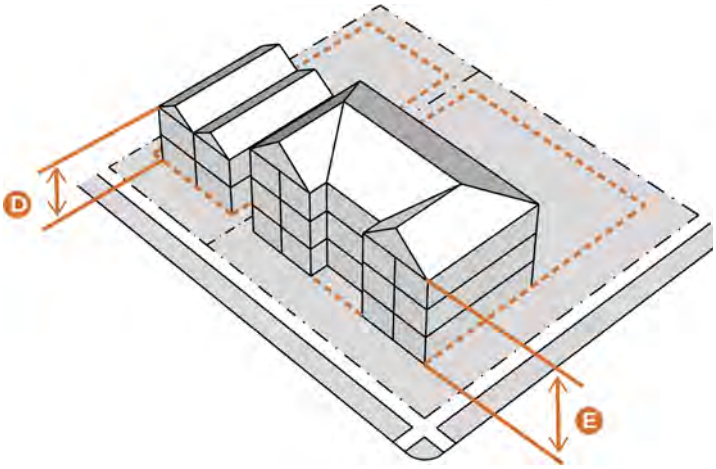
Minimum and Maximum Density applies to an entire site or subdivision.

LMN - Low Density Mixed-Use Neighborhood District

DEVELOPMENT STANDARDS

BUILDING PLACEMENT & BUILDING ENVELOPE





RESIDENTIAL BUILDING SETBACKS

Front Setback - from Arterial streets	15' min.	A
Front Setback - from Non-Arterial streets	9' min.	
Rear Setback	8' min.	B
Side Setback	5' min.	C

CONTEXTUAL HEIGHT SETBACK

For properties abutting a zone district with a lower maximum building height.*

Upper Story Setback	25' min. upper story setback from property line above 2 stories

* This does not apply to detached units, duplexes, or accessory structures.

BUILDING HEIGHT

Residential - Up to 3 Units	2.5 Stories max.	D
Residential - 4+ Units	3 Stories max.	E
Non-Residential & Mixed-Use	1.5 Stories min. 2.5 Stories max.	

FLOOR AREA

Residential - 4+ Units	14,000 ft^2 max.
Affordable Housing Development Bonus	20,000 ft^2 max.

BUILDING FOOTPRINT

Non-Residential & Mixed-Use	20,000 ft^2 max.
Schools, Places of Worship/Assembly	25,000 ft^2 max.

LMN - Low Density Mixed-Use Neighborhood District

DEVELOPMENT STANDARDS

BUILDING MASS & SCALE

BUILDING MASS

Residential - 4+ Units	Walls >40 ft in width require Variation in Massing and Facade Articulation (F)
Non-Residential & Mixed-Use	>10,000 sf requires Variation in Massing

Variation in Massing includes:

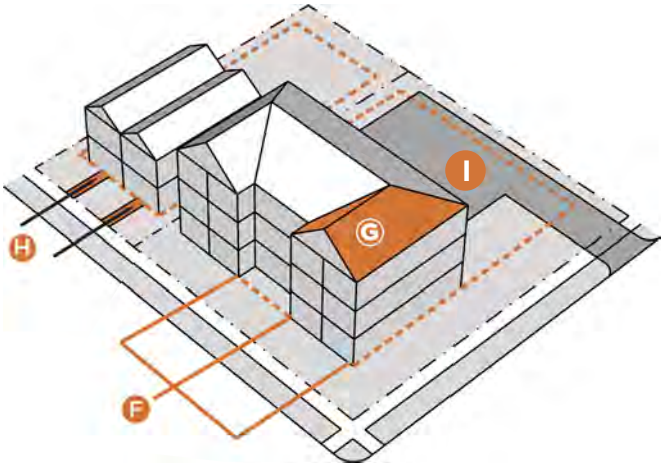
- Massing, wall plane, roof design proportions similar to detached house, so that larger buildings can be integrated into surrounding lower scale neighborhood
- Projections, recesses, covered doorways, balconies, covered box or bay windows and/or other similar features
- Dividing large facades and walls into human-scaled proportions similar to the adjacent single- or two-family dwellings
- Shall not have repetitive, monotonous undifferentiated wall planes.

Facade articulation can be accomplished by offsetting the floor plan, recessing or projection of design elements, or change in materials.

ROOF DESIGN

Non-Residential & Mixed-Use	Buildings with a footprint >4000 sf shall have a minimum of 3 Roof Planes Variation in roof plane shall relate to overall massing and facade design
Residential - 4+ Units (G)	Roof Shape shall be sloped (min pitch 6:12), flat, or curved, and must include 2 Roof Design Elements: • Change in roof shape or plane • Variation in height • Flat roof that is stepped or terraced to form usable space, such as a balcony or green roof • Roof element that is directly related to the primary entrance and/or facade articulation

ACCESS & PARKING



ENTRANCES & ORIENTATION

Residential	Varies by Building Type (H)
	Clearly identifiable and visible connection from the street and public areas.
	Incorporate architectural elements and landscaping.
Non-Residential & Mixed-Use	Entrance faces street, opens directly onto adjoining local street

If a building has more than one (1) front facade, and if one (1) of the front facades faces and opens directly onto a street sidewalk, the primary entrances located on the other front facade(s) need not face a street sidewalk or connecting walkway.

PARKING

Non-Residential & Mixed-Use	Rear or Side Yards; Parking shall not be between the primary facade and the street. (I)

MMN

Medium Density Mixed-Use Neighborhood District

Illustration from City Plan

PURPOSE

The Medium Density Mixed-Use Neighborhood District is intended to be a setting for a diverse range of higher intensity housing and complementary services and amenities within close proximity to transit and/or commercial districts. This District is intended to function together with adjacent commercial development and/or transit to provide a transition to lower density neighborhoods. Together, the MMN district and its adjacent commercial core and low density neighborhoods are intended to form an integral, town-like pattern of development with a unifying pattern of walkable streets and blocks.

SECTION 2.2.2

MMN - Medium Density Mixed-Use Neighborhood District

EXISTING CONDITIONS

BUILDING TYPES

The following building types are permitted in the MMN District:

MMN BUILDING TYPES	# OF UNITS	MAX. DENSITY	MINIMUM DENSITY	
			> 20 AC	< 20 AC
Non-Residential	N/A	N/A	N/A	N/A
Mixed-Use	1 min.	None	1 unit per 3,500 sq. ft. of site area	1 unit per 5,000 sq. ft. of site area
Apartment	3+ min.			
Rowhouse	2+ min.			
Cottage Court	3+ min.			
Duplex	2 max.			
Detached House - Urban	1 max.			
Detached House - Suburban	1 max.			
ADU	1 max.	N/A	N/A	N/A
Detached Accessory Structure	See Section 3.1.8	N/A	N/A	N/A

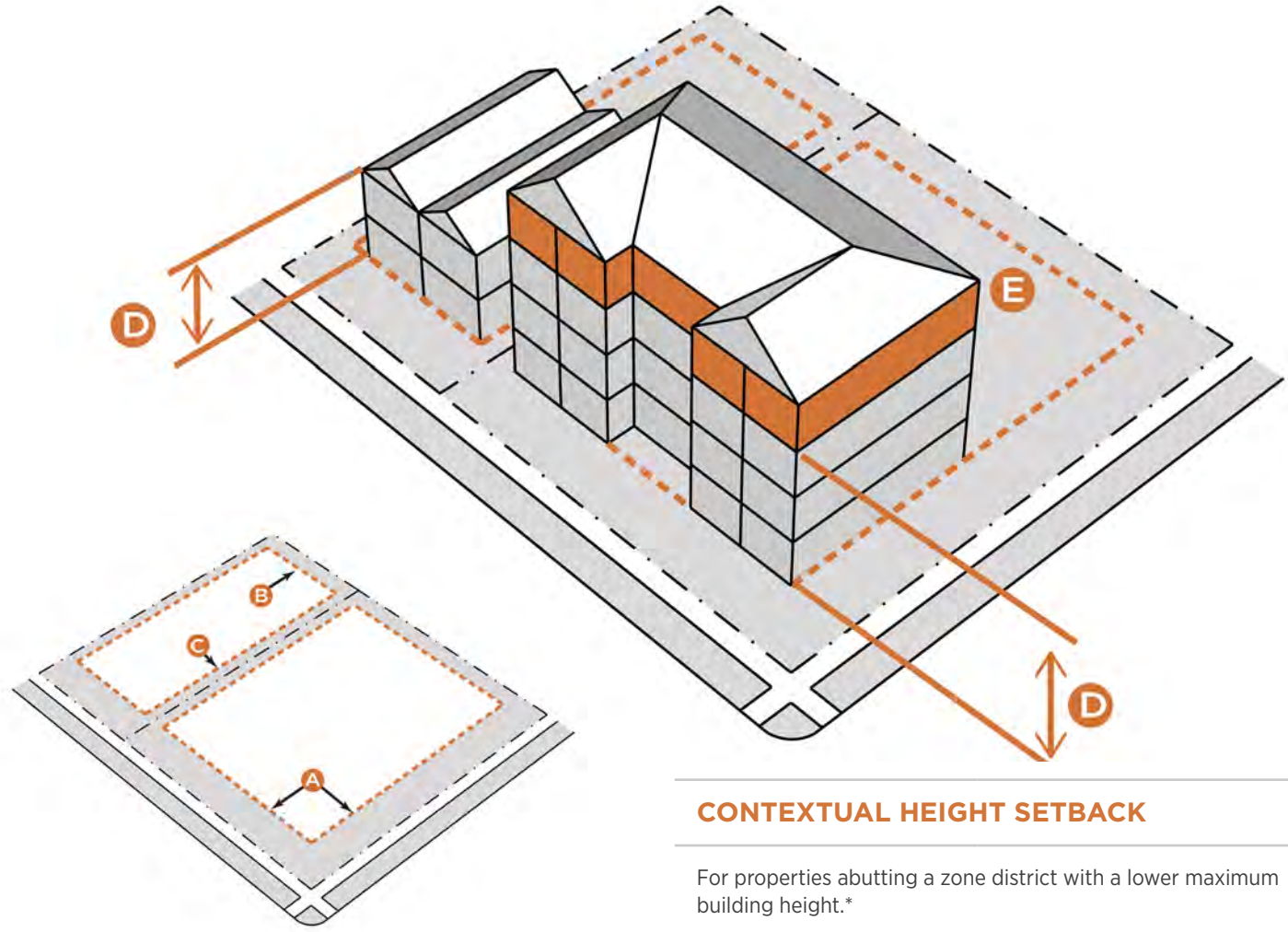
Minimum and Maximum Density applies to an entire site or subdivision.

SECTION 2.2.2

MMN - Medium Density Mixed-Use Neighborhood District

DEVELOPMENT STANDARDS

BUILDING PLACEMENT & BUILDING ENVELOPE



RESIDENTIAL BUILDING SETBACKS

Front Setback - from Arterial streets	15' min.	A
Front Setback - from Non-Arterial streets	9' min.	
Rear Setback	8' min.	B
Side Setback	5' min.	C

CONTEXTUAL HEIGHT SETBACK

For properties abutting a zone district with a lower maximum building height.*

Upper Story Setback	25' min. upper story setback from property line above 2 stories

* This does not apply to detached units, duplexes, or accessory structures.

BUILDING HEIGHT

All Buildings	3 Stories max. D
Affordable Housing Development Bonus	4 Stories max. E

MMN - Medium Density Mixed-Use Neighborhood District

DEVELOPMENT STANDARDS

BUILDING MASS & SCALE

BUILDING MASS

Residential - 4+ Units	Walls >40 ft in width require Variation in Massing and Facade Articulation (F)
Non-Residential & Mixed-Use	>10,000 sf requires Variation in Massing

Variation in Massing includes:

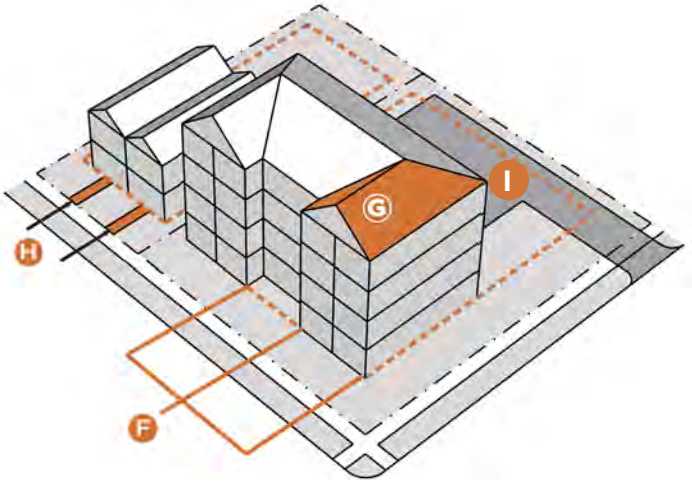
- Massing, wall plane, roof design proportions similar to detached house, so that larger buildings can be integrated into surrounding lower scale neighborhood
- Projections, recesses, covered doorways, balconies, covered box or bay windows and/or other similar features
- Dividing large facades and walls into human-scaled proportions similar to the adjacent single- or two-family dwellings
- Shall not have repetitive, monotonous undifferentiated wall planes.

Facade articulation can be accomplished by offsetting the floor plan, recessing or projection of design elements, or change in materials.

ROOF DESIGN

Non-Residential & Mixed-Use	Buildings with a footprint >4000 sf shall have a minimum of 3 Roof Planes Variation in roof plan shall relate to overall massing and facade design
Residential - 4+ Units (G)	Roof Shape shall be sloped (min pitch 6:12), flat, or curved, and must include 2 Roof Design Elements: • Change in roof shape or plane • Variation in height • Flat roof that is stepped or terraced to form usable space, such as a balcony or green roof • Roof element that is directly related to the primary entrance and/or facade articulation

ACCESS & PARKING



ENTRANCES & ORIENTATION

Residential	Varies by Building Type (H)
	Clearly identifiable and visible connection from the street and public areas.
	Incorporate architectural elements and landscaping.
Non-Residential & Mixed-Use	Entrance faces street, opens directly onto adjoining local street

If a building has more than one (1) front facade, and if one (1) of the front facades faces and opens directly onto a street sidewalk, the primary entrances located on the other front facade(s) need not face a street sidewalk or connecting walkway.

PARKING

Non-Residential & Mixed-Use	Rear or Side Yards; Parking shall not be between the primary facade and the street. (I)

HMN

High Density Mixed-Use Neighborhood District

Illustration from City Plan

PURPOSE

The High Density Mixed-Use Neighborhood District is intended to be a setting for higher density multi-unit housing and group quarter residential uses (dormitories, fraternities, sororities, etc.) closely associated with, and in close proximity to, the Colorado State University Main Campus, provided that such areas have been given this designation in accordance with an adopted subarea plan. Multistory buildings (greater than one [1] story and up to five [5] stories) are encouraged in order to promote efficient utilization of the land and the use of alternative modes of travel.

HMN - High Density Mixed-Use Neighborhood District

EXISTING CONDITIONS

BUILDING TYPES

The following building types are permitted in the HMN District:

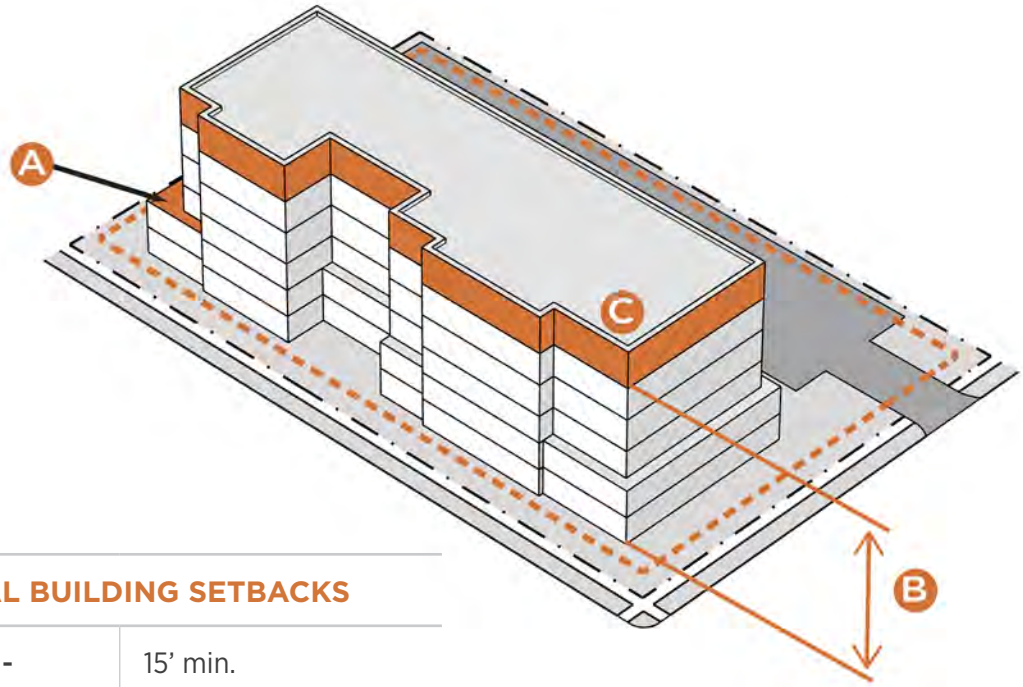
HMN BUILDING TYPES	# OF UNITS	MAXIMUM DENSITY	MINIMUM DENSITY
Non-Residential	N/A	N/A	N/A
Mixed-Use	4+ min.	None	1 unit per 2,000 sq. ft. of site area
Apartment	4+ min.		
Rowhouse	3+ min.		
ADU (with an existing Detached House)	1 max.		
Detached Accessory Structure (with an existing Detached House)	1 max.		

Minimum and Maximum Density applies to an entire site or subdivision.

HMN - High Density Mixed-Use Neighborhood District

DEVELOPMENT STANDARDS

BUILDING PLACEMENT & BUILDING ENVELOPE



RESIDENTIAL BUILDING SETBACKS

Front Setback - from Arterial streets	15' min.
Front Setback - from Non-Arterial streets	9' min.
Rear Setback	8' min.
Side Setback	5' min.

BUILDING HEIGHT

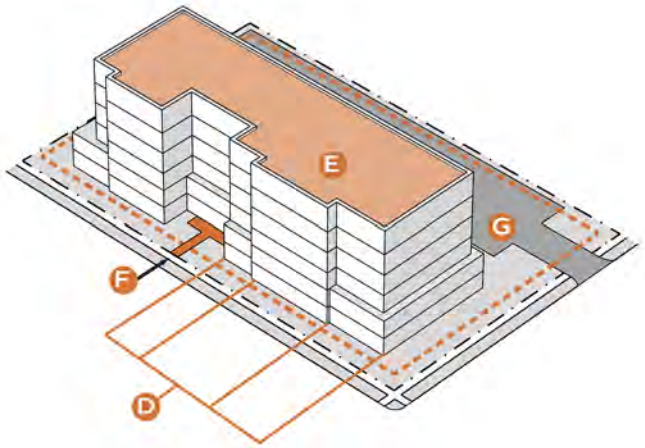
All Buildings	5 stories max. B
Affordable Housing Development Bonus	6 Stories max. C

CONTEXTUAL HEIGHT SETBACK

Properties abutting a zone district with a lower maximum building height shall comply.*

Upper Story Setback	25' min. upper story setback from property line above 2 stories A
Upper Story Setback from Streets	Wall height above 35' shall be set back an additional 1-ft for every 2-ft in height or fraction thereof

* This does not apply to detached units, duplexes, or structures.



Standards for D-Building Mass; E-Roof Design; F-Entrances; G-Parking are on the following page.

HMN - High Density Mixed-Use Neighborhood District

DEVELOPMENT STANDARDS

BUILDING MASS & SCALE

BUILDING MASS

Residential - 4+ Units	Walls >40 ft in width require Variation in Massing and Facade Articulation (D)
Non-Residential & Mixed-Use	>10,000 sf requires Variation in Massing

Variation in Massing includes:

- Massing, wall plane, roof design proportions similar to detached house, so that larger buildings can be integrated into surrounding lower scale neighborhood
- Projections, recesses, covered doorways, balconies, covered box or bay windows and/or other similar features
- Dividing large facades and walls into human-scaled proportions similar to the adjacent single- or two-family dwellings
- Shall not have repetitive, monotonous undifferentiated wall planes.

Facade articulation can be accomplished by offsetting the floor plan, recessing or projection of design elements, or change in materials.

ROOF DESIGN

Non-Residential & Mixed-Use	Buildings with a footprint >4000 sf shall have a minimum of 3 Roof Planes Variation in roof plan shall relate to overall massing and facade design
Residential - 4+ Units (E)	Roof Shape shall be sloped (min pitch 6:12), flat, or curved, and must include 2 Roof Design Elements: • Change in roof shape or plane • Variation in height • Flat roof that is stepped or terraced to form usable space, such as a balcony or green roof • Roof element that is directly related to the primary entrance and/or facade articulation

ACCESS, PARKING & SITE DESIGN

ENTRANCES & ORIENTATION

Residential	Varies by Building Type
	Clearly identifiable and visible connection from the street and public areas. (F)
	Incorporate architectural elements and landscaping.
Non-Residential & Mixed-Use	Entrance faces street, opens directly onto adjoining local street

If a building has more than one (1) front facade, and if one (1) of the front facades faces and opens directly onto a street sidewalk, the primary entrances located on the other front facade(s) need not face a street sidewalk or connecting walkway.

PARKING

Non-Residential & Mixed-Use	Rear or Side Yards; Parking shall not be between the primary facade and the street. (G)

SITE DESIGN

Front Yards	Building design, in conjunction with site design, shall include structured elements to mark the transition from the public street to doorways. Examples of such elements are porches, pediments, pergolas, low walls or fencing, railings, pedestrian light fixtures and hedges.
Outdoor Activity	Buildings and extensions of buildings shall be designed to form outdoor spaces such as balconies, terraces, patios, decks or courtyards.

NC
Neighborhood Commercial District

PURPOSE / INTENT

The Neighborhood Commercial District is intended to be a mixed-use commercial core area anchored by a supermarket or grocery store and a transit stop. The main purpose of this District is to meet consumer demands for frequently needed goods and services, with an emphasis on serving the surrounding residential neighborhoods typically including a Medium Density Mixed-Use Neighborhood. In addition to retail and service uses, the District may include neighborhood-oriented uses such as schools, employment, day care, parks, small civic facilities, as well as residential uses.

This District is intended to function together with a surrounding Medium Density Mixed-Use Neighborhood, which in turn serves as a transition and a link to larger surrounding low density neighborhoods. The intent is for the component zone districts to form an integral, town-like pattern of development with this District as a center and focal point; and not merely a series of individual development projects in separate zone districts.

BUILDING TYPES

The following building types are permitted in the NC District:

- Mixed-Use, Apartment, Row House, and Duplex.
- ADU only with an existing Detached House.
- Detached Accessory Structure.
- See Division 3.1 for more details
- All nonresidential buildings permitted under this Section, including industrial buildings, shall meet the standards for mixed-use and commercial buildings contained in Section 5.15.2 of this Code.

NC - Neighborhood Commercial District

DEVELOPMENT STANDARDS

BLOCK STANDARDS

BLOCK SIZE

All Blocks	7 Acres max.
Blocks with Supermarkets	10 Acres max.

BLOCK STRUCTURE

Each development within this District shall be developed as a series of complete blocks bounded by public or private streets (see Section 5.3.2(E) for Multi-Family Block Requirements). Natural areas, irrigation ditches, high-voltage power lines, operating railroad tracks and other similar substantial physical features may form up to two (2) sides of a block.

BUILDING STANDARDS

BUILDING HEIGHT

All Buildings	4 stories max.
Affordable Housing Development Bonus	6 stories max.

All buildings shall have a minimum height of twenty (20) feet, measured to the dominant roof line of a flat-roofed building, or the mean height between the eave and ridge on a sloped-roof building. In the case of a complex roof with different co-dominant portions, the measurement shall apply to the highest portion. All buildings shall be limited to four (4) stories.

BUILDING FRONTAGE

Minimum Building Frontage. Forty (40) percent of each block side or fifty (50) percent of the total of all block sides shall consist of either building frontage, plazas or other functional open space.

CANOPIES

1. Primary canopies and shade structures shall be attached to and made an integral part of the main building and shall not be freestanding.
2. Freestanding secondary canopies and shade structures that are detached from the building, if any, shall be designed with a pitched roof, or have the appearance of a pitched roof through a false mansard or parapet, to match the primary canopy and relate to the neighborhood character.
3. All canopies shall be designed with a shallow-pitched roof, false mansard or parapet that matches the building. Such roofs, false mansards or parapets shall be constructed of traditional roofing materials such as shingles or cementitious, clay or concrete tiles, or standing seam metal in subdued, neutral colors in a medium value range. The colors shall be designed to relate to other buildings within the commercial center.
4. Canopy fascias and columns shall not be internally illuminated nor externally illuminated with neon or other lighting technique, nor shall canopy fascias or columns be accented, striped or painted in any color except that of the predominant building exterior color.
5. There shall be no advertising, messages, logos or any graphic representation displayed on the canopy fascias or columns associated with drive-in restaurants, financial services and retail stores. This prohibition shall not apply to canopies for covering the retail dispensing or sale of vehicular fuels.
6. Under-canopy lighting shall be fully recessed with flush-mount installation using a flat lens. There shall be no spot lighting.

2.3 COMMERCIAL DISTRICTS

SECTION 2.3.1

CC

Community Commercial District

PURPOSE

The Community Commercial District provides a combination of retail, offices, services, cultural facilities, civic uses and higher density housing. Multi-story buildings are encouraged to provide a mix of residential and nonresidential uses. Offices and dwellings are encouraged to locate above ground-floor retail and services.

BUILDING TYPES

The following building types are permitted in the CC District:

- Mixed-Use, Apartment, Row House and Duplex.
- Detached Accessory Structure
- ADU only with an existing Detached House.
- See Division 3.1 for more details.
- All nonresidential buildings permitted under this Section, including industrial buildings, shall meet the standards for mixed-use and commercial buildings contained in Section 5.15.2 of this Code.

CC - Community Commercial District

DEVELOPMENT STANDARDS

CENTRAL FEATURE OR GATHERING PLACE

At least one (1) prominent or central location within each geographically distinct Community Commercial District shall include a convenient outdoor open space or plaza with amenities such as benches, monuments, kiosks or public art. This feature and its amenities may be placed on blocks with community facilities.

BLOCK STRUCTURE

Each Community Commercial District and each development within this District shall be developed as a series of complete blocks bounded by public or private streets (see Section 5.3.2(E) for Multi-Family Block Requirements). Natural areas, irrigation ditches, high-voltage power lines, operating railroad tracks and other similar substantial physical features may form up to two (2) sides of a block.

BLOCK SIZE	
All Blocks	7 Acres max.
Blocks with Supermarkets	10 Acres max.

BUILDING FRONTAGE

Minimum Building Frontage. Forty (40) percent of each block side or fifty (50) percent of the total of all block sides shall consist of either building frontage, plazas or other functional open space.

INTEGRATION OF THE TRANSIT STOP

Community Commercial Districts shall be considered primary stops on the regional transit network. Transit stops, to the maximum extent feasible, shall be centrally located and adjacent to the core commercial area.

Commercial buildings must be directly visible and accessible from the transit stop. Transfers to feeder buses shall be provided for in the design and location of these stops. (See also Section 5.4.9, Bus Stop Design Standards).

BUILDING ORIENTATION

The configuration of shops in the Community Commercial District shall orient primary ground-floor commercial building entrances to pedestrian-oriented streets, connecting walkways, plazas, parks or similar outdoor spaces, not to interior blocks or parking lots.

Anchor tenant retail buildings may have their primary entrances from off-street parking lots; however, on-street entrances are strongly encouraged.

The lot size and layout pattern for individual blocks within the Community Commercial District shall support this requirement.

BUILDING ENVELOPE

BUILDING HEIGHT	
All Buildings	4 stories max.
Affordable Housing Development Bonus	6 stories max.

CCN

Community Commercial - North College District

PURPOSE

The Community Commercial - North College District is for fringes of retail/commercial core areas and corridors. This District is intended for moderate intensity uses that are supportive of the commercial core or corridor, and that help to create a transition and a link between the commercial areas and surrounding residential areas. This designation is only for areas identified for its application in the North College Corridor Plan.

BUILDING TYPES

The following building types are permitted in the CCN District:

- Mixed-Use, Apartment, Row House and Duplex.
- ADU only with an existing Detached House.
- Detached Accessory Structure.
- See Division 3.1 for more details.
- All nonresidential buildings permitted under this Section, including industrial buildings, shall meet the standards for mixed-use and commercial buildings contained in Section 5.15.2 of this Code.

DEVELOPMENT STANDARDS

All development in the Community Commercial - North College District shall also comply with the standards contained in the Standards and Guidelines for the North College Avenue Corridor as adopted by the City, to the extent that such standards and guidelines apply to the property to be developed.

BUILDING HEIGHT

All Buildings	4 stories max.
Affordable Housing Development Bonus	6 stories max.

DENSITY

Single-unit, two-unit and multi-unit housing shall have a minimum density of five (5) dwelling units per net acre calculated on a gross residential acreage basis for any development project. Single-unit housing shall be limited to a maximum of forty (40) percent of the geographically distinct district area.

CCR
Community Commercial - Poudre River District

PURPOSE

The Community Commercial - Poudre River District is for Downtown fringe areas in the Cache la Poudre River corridor with both public street frontage and River frontage. This District provides locations for redevelopment or development of moderate intensity uses that are supportive of Downtown, subject to floodplain restrictions. Such redevelopment or development shall be compatible with the scenic, cultural, natural and historical context of the River and Downtown.

A main purpose of the District is to foster a healthy and compatible relationship between the River, the Downtown and surrounding urban uses. Any significant redevelopment shall be designed as part of a master plan for the applicable group of contiguous properties.

BUILDING TYPES

The following building types are permitted in the CCR District:

- Mixed-Use, Apartment, Row House and Duplex.
- ADU only with an existing Detached House.
- Detached Accessory Structure
- See Division 3.1 for more details.
- All nonresidential buildings permitted under this Section, including industrial buildings, shall meet the standards for mixed-use and commercial buildings contained in Section 5.15.2 of this Code.

Prospect Road Streetscape Program

All development in this zone district that is located within the planning area for the Prospect Road Streetscape Program shall also comply with the Prospect Road Streetscape Standards as adopted by the City, to the extent that such Standards apply to the property proposed to be developed.

CCR - Poudre River District

DEVELOPMENT STANDARDS

BUILDING STANDARDS

BUILDING HEIGHT

All Buildings	3 stories max.
Affordable Housing Development Bonus	5 stories max.

ROOFLINES

Pitch - Gable & Hiproofs	8:12 min.
Pitch - Hipped Roofs Only	6:12 min.

Flat-roofed buildings shall feature three-dimensional cornice treatment on all walls facing streets, the River or connecting walkways, unless they are stepped and terraced back to form a usable roof terrace area(s). A single continuous horizontal roofline shall not be used on one-story buildings except as part of a design style that incorporates corbelled masonry and/or cornices.

PARKING LOTS

Buildings shall be sited so that any new parking lots and vehicle use areas are located in either: 1) interior block locations between buildings that face the street and buildings that face the River, or 2) side yards.

LANDSCAPE & VEGETATION PROTECTION

The natural qualities of the River landscape shall be maintained and enhanced using plants and landscape materials native to the River corridor in the design of site and landscape improvements.

OUTDOOR SPACES

Buildings and extensions of buildings shall be designed to form outdoor spaces such as balconies, arcades, terraces, decks or courtyards, and to integrate development with the landscape to the extent reasonably feasible.

WINDOWS

Windows shall be individually defined with detail elements such as frames, sills and lintels, and placed so as to visually establish and define the building stories and establish human scale and proportion. Glass curtain walls and spandrel-glass strip windows shall not be used as the predominant style of fenestration for buildings in this District. This requirement shall not serve to restrict the use of atrium, lobby or greenhouse-type accent features used as embellishments to the principal building.

BUILDING MATERIALS

Predominant building colors shall be subdued or neutral shades, within a medium or moderately dark range of value, and not white or reflective.

Textured unit masonry such as brick, stone and tinted, variously textured concrete masonry units, as well as treated wood siding, shall be used in repeating pattern as integral parts of the building fabric to the maximum extent feasible. Any other exterior materials, if used, shall be used as integral parts of the overall building fabric, in repeating modules, proportioned both horizontally and vertically to relate to human scale, and with enough depth at joints between architectural elements to cast shadows.

CG

General Commercial District

PURPOSE

The General Commercial District is intended to be a setting for development, redevelopment and infill of a wide range of community and regional retail uses, offices and personal and business services. Secondarily, it can accommodate a wide range of other uses including creative forms of housing.

While some General Commercial District areas may continue to meet the need for auto-related and other auto-oriented uses, it is the City's intent that the General Commercial District emphasize safe and convenient personal mobility in many forms, with planning and design that accommodates pedestrians.

BUILDING TYPES

The following building types are permitted in the CG District:

- Mixed-Use, Apartment, Row House and Duplex.
- ADU only with an existing Detached House.
- Detached Accessory Structure.
- See Division 3.1 for more details.
- All nonresidential buildings permitted under this Section, including industrial buildings, shall meet the standards for mixed-use and commercial buildings contained in Section 5.15.2 of this Code.

DEVELOPMENT STANDARDS

BUILDING STANDARDS

BUILDING HEIGHT

All Buildings	4 stories max.
Affordable Housing Development Bonus	6 stories max.

Prospect Road Streetscape Program
All development in this zone district that is located within the planning area for the Prospect Road Streetscape Program shall also comply with the Prospect Road Streetscape Standards as adopted by the City, to the extent that such Standards apply to the property proposed to be developed.

OUTDOOR SPACES

Pedestrian-oriented outdoor spaces shall be placed next to activity areas that generate the users (such as street corners, shops, stores, offices, day care and dwellings). Because liveliness created by the presence of people is the main key to the attractiveness of such spaces, to the maximum extent feasible, the development shall link outdoor spaces to and make them visible from streets and sidewalks. Sculpture, kiosks or shelters are encouraged to be prominently placed in outdoor spaces.

LANDSCAPE & OPEN SPACE

In multiple-building developments, outdoor spaces and landscaped areas shall be integral to an open space system in conjunction with streets and connections, and not merely residual areas left over after buildings and parking lots are sited.

CS

Service Commercial District

PURPOSE

The Service Commercial District is intended for high traffic commercial corridors where a range of uses is encouraged to create a transition from commercial operations on a highway, arterial street or rail spur, to less intensive use areas or residential neighborhoods. This designation is only for areas that have been designated under an adopted subarea plan as being appropriate for the C-S District.

BUILDING TYPES

The following building types are permitted in the CS District:

- Mixed-Use, Apartment, Row House and Duplex.
- ADU only with an existing Detached House.
- Detached Accessory Structure
- See Division 3.1 for more details.
- All nonresidential buildings permitted under this Section, including industrial buildings, shall meet the standards for mixed-use and commercial buildings contained in Section 5.15.2 of this Code.

DEVELOPMENT STANDARDS

BUILDING STANDARDS

BUILDING HEIGHT	
Maximum	3 stories max.
Affordable Housing Development Bonus	5 stories max.

See Article 5 for additional building design standards.

CL

Limited Commercial District

PURPOSE

The Limited Commercial District is intended for areas primarily containing existing, small commercial uses that are adjacent to residential neighborhoods. Many of these areas have transitioned over time from residential to commercial uses. The District is divided into the Riverside Area and all other areas. The purpose of this District is to allow small scale nonresidential uses to continue to exist or to expand while still protecting surrounding residential areas, provided that such areas have been designated under an adopted subarea plan as being appropriate for the CL District.

BUILDING TYPES

The following building types are permitted in the CL District:

- Mixed-Use, Apartment, Row House and Duplex.
- ADU only with an existing Detached House.
- Detached Accessory Structure.
- See Division 3.1 for more details.
- All nonresidential buildings permitted under this Section, including industrial buildings, shall meet the standards for mixed-use and commercial buildings contained in Section 5.15.2 of this Code.

Development Standards in the Riverside Area

Within the Riverside Area, any nonresidential use shall be separated from abutting residential land uses or residential zone districts by a solid fence or wall at least [illegible]t in height.

DEVELOPMENT STANDARDS

BUILDING STANDARDS

BUILDING HEIGHT

All Buildings	3 Stories max.

BUILDING MASS

Residential - 4+ Units	Walls >40 ft require Variation in Massing and Facade Articulation
Non-Residential & Mixed-Use	>10,000 sf requires Variation in Massing

Variation in Massing includes:

- Massing, wall plane, roof design proportions similar to detached house, so that larger buildings can be integrated into surrounding lower scale neighborhood
- Projections, recesses, covered doorways, balconies, covered box or bay windows and/or other similar features
- Dividing large facades and walls into human-scaled proportions similar to the adjacent single- or two-family dwellings
- Shall not have repetitive, monotonous undifferentiated wall planes.

Facade articulation can be accomplished by offsetting the floor plan, recessing or projection of design elements, change in materials and/or change in contrasting colors.

BUILDING SIZE

No building permitted by this Section shall have a single undifferentiated mass with a footprint over ten thousand (10,000) square feet. Except for schools and places of worship or assembly, no building footprint shall exceed a total of twenty thousand (20,000) square feet.

For any building with a footprint in excess of ten thousand (10,000) square feet, walls that are greater than seventy-five (75) feet in length shall incorporate recesses or projections created by wall plane returns of at least thirty (30) feet; any such building shall be differentiated into multiple sections of mass in order to achieve proportions that are compatible in scale with adjacent residential neighborhoods.

DOWNTOWN DISTRICT

SECTION 2.4.1 DOWNTOWN DISTRICT (D)

(A) Purpose

The Downtown District is intended to provide a concentration of retail, civic, employment and cultural uses in addition to complementary uses such as hotels, entertainment, and housing, located along the backdrop of the Poudre River Corridor. It is divided into nine (9) subdistricts as depicted on Figure 18. The development standards for the Downtown District are intended to encourage a mix of activity in the area while providing for high quality development that maintains a sense of history, human scale, and pedestrian-oriented character.

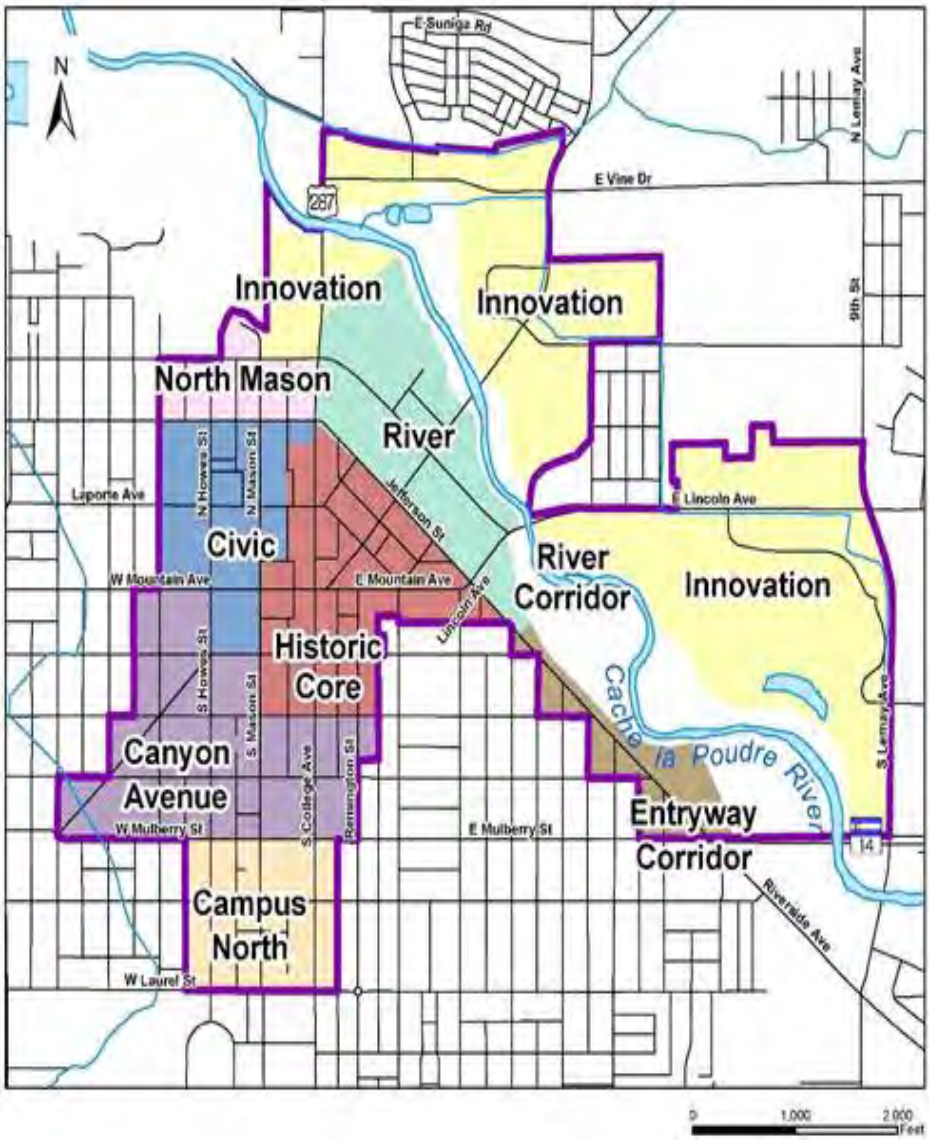


Figure 18
Downtown District Subdistricts

(B) Street Frontage Types

Three types of street frontages have evolved in the Downtown District shaping public space and building placement. Applicable street frontage types are depicted on Figure 18.1.

- *Storefront* -Found primarily within the Historic Core, and along Laurel Street, buildings abut a wide sidewalk. Retail and commercial uses predominate the ground floor with a high degree of visual interest and transparency into shops and restaurants.
- *Mixed Use* - Found adjacent the Historic Core Subdistrict on streets such as Mason, this street character is a hybrid and transition between the Storefront and Green Edge frontage types. Buildings are set a little farther back from the street than along Storefront streets, often with small landscape beds separating the building from the sidewalk. There is significantly less ground floor retail space, but buildings still address the sidewalk in a similar way.
- *Green Edge* - Found primarily in the subdistricts away from the Historic Core, this frontage type is best recognized for generous parkway widths and landscaped setbacks between the sidewalk and the building. Ground floor uses are mostly residential and office, with a scattering of other commercial uses, often in much larger buildings than are found in the Historic Core Subdistrict.

Figure 18.1
Downtown District Street Frontage Types

Street Frontage and Building Placement Requirements. The following standards shall apply to the Downtown District:

Figure 18.2
Building Design based on Street Frontage

	STREET FRONTAGE TYPE		
	Storefront	Mixed Use	Green Edge
Minimum Setback from Back of Curb (right of way included in setback)	Min. 9′ from back of curb to building	Min. 19′ from back of curb to building Min. 6′ sidewalk if detached Min. 10′ sidewalk if attached Min. 5′ back of walk to building	Min. 24′ from back of curb to building Min. 9′ parkway Min. 10′ back of walk to building
Min. Alley, Sidelot and Rear Lot Setback (measured from property line)	0′ Sidelot 5′ Alley 0′ Rear Yard	0′ Sidelot 5′ Alley 5′ Rear Yard	10′ Sidelot 5′ Alley 5′ Rear Yard
Required Street Frontage Build-To Range (as measured from the setback) *See Figure 18.3*	90% at 0 to 5′	75% at 5 to 10′	50% at 10 to 20′
Primary Entrance Location	For parcels with multiple street frontage types, the primary entrance must face a Storefront Street if present, otherwise a Mixed-Use Street. The primary entrance may face a Green Edge Street only when other street frontage types are not present.		
Primary Entrance Articulation	The primary entrance on a storefront street shall be recessed from the front facade so that the door swing does not encroach the sidewalk while the upper floors maintain the sidewalk edge except as required to meet upper story stepbacks.	The primary building entrance shall be a clearly defined, demarcated architectural feature of the building easily distinguishable from secondary building entrances.	
Garage Entry Location	Garage entries and service locations shall be located in alleys. If no alley is present, they may be located on a Green Edge street. If a Green Edge street is not present, they may be located on a Mixed-Use street. To the maximum extent feasible, garage entries and service locations shall not be located on Storefront street frontages.		
Building Base Materials *See Figure 18.4*	Lower story facades until any stepbacks (required or otherwise) must be constructed of authentic, durable, high-quality materials (brick, stone, glass, terra cotta, stucco (non EFIS), precast concrete, wood, cast iron, architectural metal - or similar modular materials) installed to industry standards.		
Ground-Floor Transparency *See Figure 18.5*	60%	40%	25%
Ground Floor Use Requirements	Maximum 25% street-facing linear frontage for residential living space.	None.	

Figure 18.3
Street Frontage Build-To Range

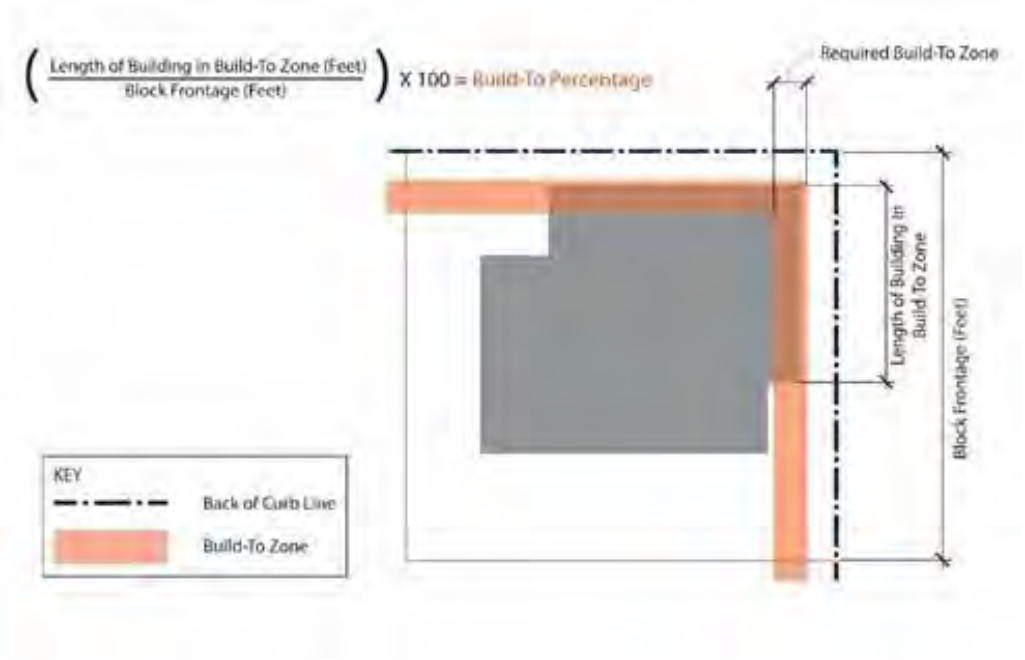


Figure 18.4
Building Base Materials

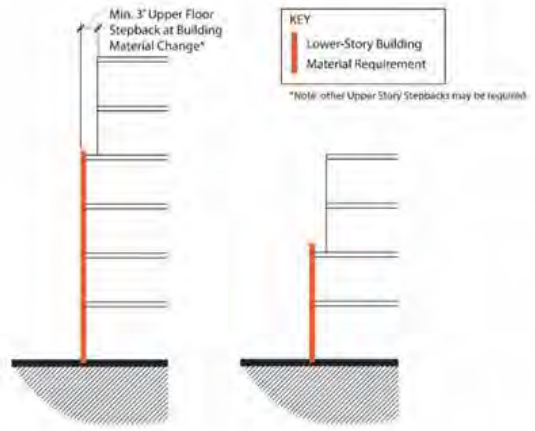
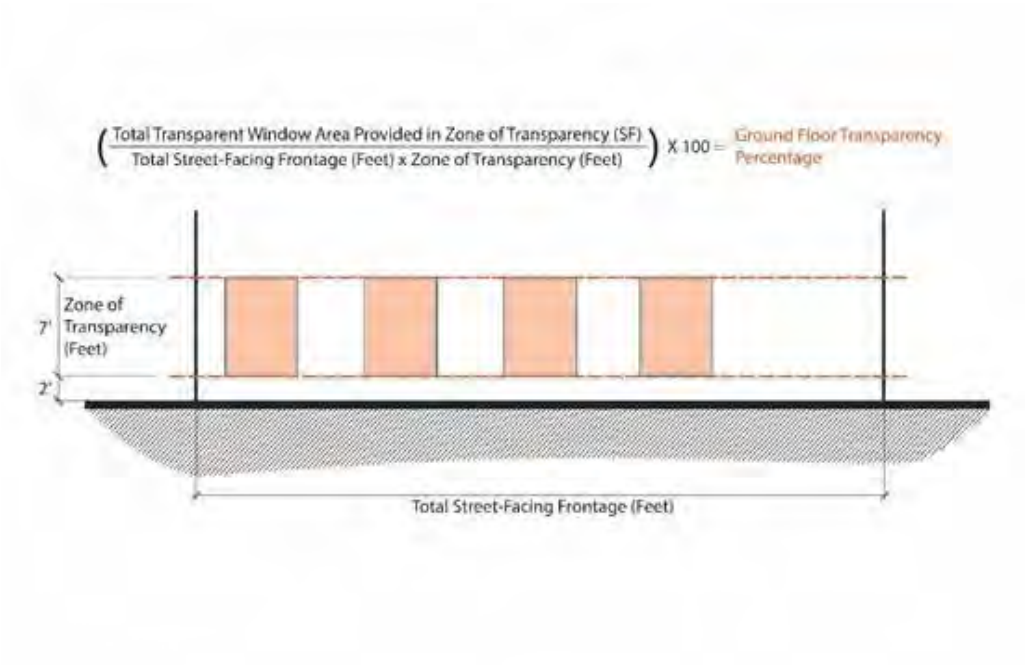


Figure 18.5
Ground Floor Transparency Calculation



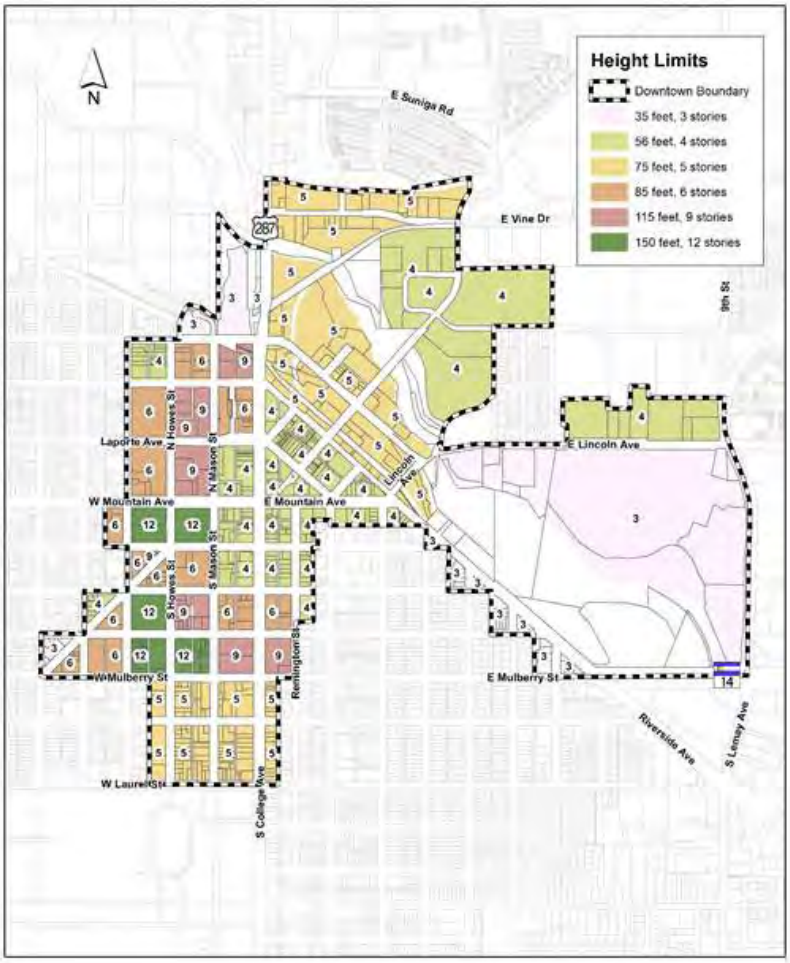
(C) **Building Heights and Mass Reduction.**
The following standards shall apply to the Downtown District:

Figure 18.6
Building Mass Reduction and Articulation

	MAXIMUM HEIGHT ALLOWANCE				
	3 Stories	4 Stories	5 Stories	6 Stories	12 Stories
Maximum Building Footprint	None.				For contiguous commonly-zoned lots over 60,000 SF, interior floor plates above the 6th story shall not exceed 40,000 SF
Upper-Story Stepbacks	None.	Any portion of the building within the build-to-range must have a stepback that averages at least 10′ along all street frontages. Stepbacks may be continuous or may vary with up to 20′ counting towards the calculation of the average. Stepbacks may occur at the 2nd-5th story. Exception: If directly across the street from a height allowance of 3 stories, the stepback must occur at the 2nd or 3rd story.			
Maximum Wall Length	For buildings over 100′ long, the maximum wall length for the base of the building (defined as the portion of the building below any required upper-story stepbacks) without a *Major Facade Plane Change* shall be 50 feet. A *Major Facade Plane Change* must be a minimum of 2 feet deep and shall be related to entrances, the integral structure, and/or the organization of interior spaces and activities.				
Building Articulation	Street-facing facades shall incorporate a minimum of 3 of the following articulation techniques to avoid long, undifferentiated facades: 1.Minor Facade Plane Changes- minimum 3 inches; 2.Vertical Projections; 3.Horizontal Projections (awnings, canopies, cornice articulation) that are integrated into the architecture; 4.Balconies or terraces; and/or 5.Fenestration details, including window depth and sills or lintels.				

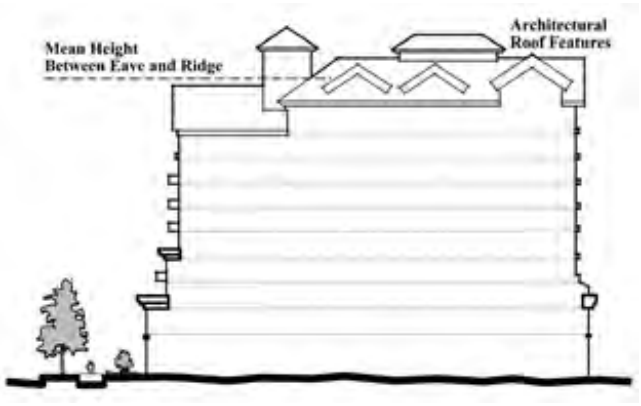
1. **Building Height Limits.** The maximum height of buildings within the Downtown District shall be as shown on the Building Heights Map See Figure 18.7.

Figure 18.7
Building Heights Map



2. **Measurement of Height Limits.** The maximum height limits are intended to convey a scale of building rather than an exact point or line. In the case of sloped roofs, building height shall be measured to the mean height between the eave and ridge. The maximum height limits are not intended to hinder architectural roof features such as sloped roofs with dormers, penthouses, chimneys, towers, shaped cornices or parapets, or other design features that exceed the numerical limits but do not substantially increase bulk and mass. Lofts or penthouses projecting above the limits shall not exceed one-third (1/3) of the floor area of the floor below and shall be set back from any roof edge along a street, by a distance equal to or greater than the height of the loft or penthouse structure. See Figure 18.8.

Figure 18.8
Measurement of Height Limits



3. Upper Story Stepbacks.

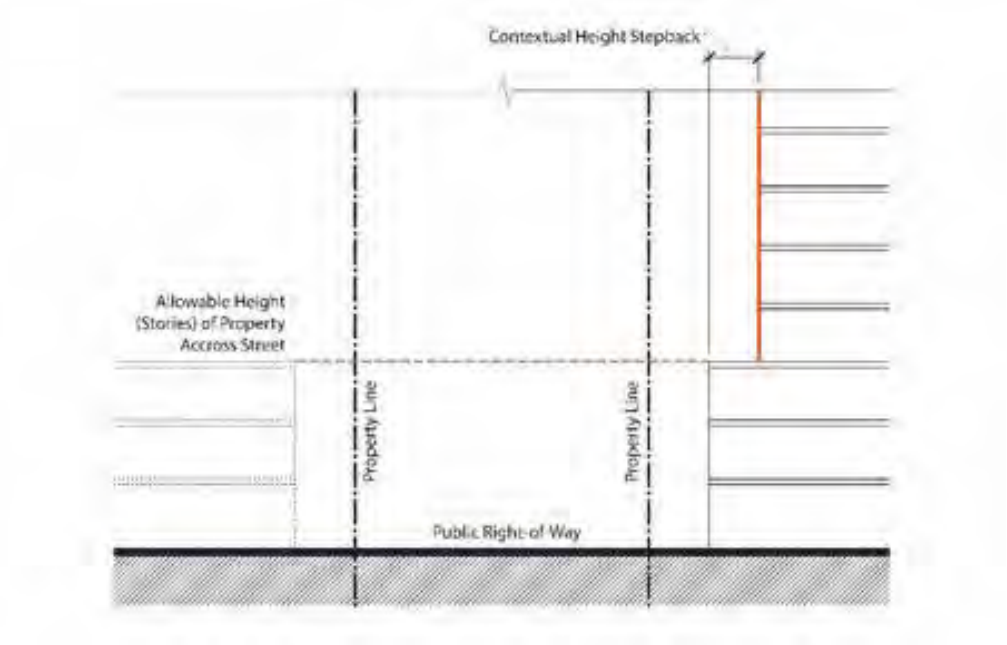
   a. **Historic Core, Innovation and North Mason Stepbacks:** The fourth story of a building shall be stepped back an average of at least ten (10) feet along all street frontages. Stepbacks may be continuous or may vary with a twenty (20) foot stepback counting towards the calculation of the required ten (10) foot average.

   b. **Canyon Avenue, Civic and Campus North Stepbacks:** The fifth story of a building shall be stepped back an average of at least ten (10) feet along all street frontages. Stepbacks may be continuous or may vary with up to a twenty (20) foot stepback counting towards the calculation of the required ten (10) foot average. Stepbacks may occur at the second to fifth stories.

4. Contextual Height Stepback.

   To provide an appropriate scale transition between opposing block faces with dissimilar height allowances, buildings shall provide a contextual height stepback. Upper floors shall be stepped back a minimum of three (3) feet at the equivalent height limit on the opposing block face. See Figure 18.9.

Figure 18.9
Contextual Height Stepbacks



5. **Planning and Zoning Commission Review of Large Buildings.** Development plans with new buildings (or building additions) greater than twenty-five thousand (25,000) square feet in floor area per story, or that exceed either six (6) stories or eight-five (85) feet in height, shall be subject to Planning and Zoning Commission review.

(D) Site Design.
The following standards shall apply to the Downtown District:

1. Parking lots, garage entries and service locations.
Parking lots, garage entries and service locations shall be located on alleys. If no alley is present, they may be located on a Green Edge street. If a Green Edge street is not present, they may be located on a Mixed-Use street. To the maximum extent feasible, parking lots and garage entries shall not be located on Storefront streets. Auto entrances shall be located to minimize pedestrian/auto conflicts.

2. Parking structures.
To the extent reasonably feasible, all parking structures shall meet the following design criteria:

a. Where parking structures abut streets, retail and other uses shall be required along the ground level frontage to minimize interruptions in pedestrian interest and activity. The decision maker may grant an exception to this standard for all or part of the ground level frontage on streets with low pedestrian interest or activity.
b. Parking and awnings, signage and other architectural elements shall be incorporated to encourage pedestrian activity at the street-facing level.
c. Architectural elements, such as openings, sill details, emphasis on vertical proportions such as posts, recessed horizontal panels and other architectural features shall be used to establish human scale at the street-facing level

3. **Outdoor activity.**
To the extent reasonably feasible, outdoor spaces shall be placed next to activity that generates the users (such as street corners, offices, day care, shops and dwellings). Outdoor spaces shall be linked to and made visible from streets and sidewalks to the extent reasonably feasible. Buildings shall promote and accommodate outdoor activity with balconies, arcades, terraces, decks and courtyards for residents' and workers' use and interaction, to the extent reasonably feasible.

(E) **Special Subdistrict Provisions.**

1. **Canyon Avenue and Civic Center Subdistricts: Plazas**. For buildings located within the Canyon Avenue and Civic Center Subdistricts that are four (4) stories or taller, ground floor open space shall be provided that is organized and arranged to promote both active and passive activities for the public. Such space must be highly visible and easily accessible to the public and must include features that express and promote a comfortable human sense of proportionality between the individual and the environment, whether natural or man-made.

2. **Civic Subdistrict**

   a. **Purpose.** The Civic Subdistrict will serve as an important element of the Downtown District and as the primary location for new civic uses and buildings.

   b. **Development Standards.** The following standards shall apply to all development in the Civic Subdistrict:

      I. *Civic Spine.* All development shall incorporate the concept of the "Civic Spine" as described in the Downtown Civic Center Master Plan, allowing for continuous north-south and east-west pedestrian connections. The Civic Spine will serve to connect various buildings to unify parks and plazas.

      II. *Building materials.* The use of local sandstone is required in all civic buildings to establish a visual continuity and a local sense of place.

      III. *Civic buildings.* New major civic buildings, such as a library, government offices, courthouses, performing arts facilities and transit centers, shall be located within the Civic Subdistrict and placed in central locations as highly visible focal points. To the extent reasonably feasible, they shall be close to a transit stop.

      IV. *Incorporation of new buildings.* New buildings shall be designed in a manner that establishes continuity and a visual connection between new and existing buildings within and adjacent to the Civic Subdistrict. The height, mass and materials of major public buildings shall convey a sense of permanence and importance.

3. **Old Town Fort Collins Historic District.** Buildings located within the locally designated Old Town Fort Collins Historic District shall also comply with the *Old Town Historic District Design Standards* adopted by Ordinance 094, 2014, Chapter 14 of the City Code, and the *U.S. Secretary of the Interior Standards for the Treatment of Historic Properties*. (*See* Old Town Fort Collins Historic District, Figure 19).

Figure 19
Old Town Fort Collins Historic District

4. Innovation Subdistrict

a. **Purpose**. The Innovation Subdistrict is intended to recognize continuing redevelopment in this former industrial area, promoting employment and innovation. Redevelopment projects will continue to build up a fitting identity and character related to the Downtown District edge setting with contemporary semi-industrial building styles and materials. Streetscapes and sites will reinforce the area's identity and character with design features that reflect an industrial character and the river landscape corridor.

b. **Development Standards.** The following standards shall apply to all development in the Innovation Subdistrict:

I. Site Design

i. **Landscaping/Vegetation Protection.** Naturalistic characteristics of the river landscape shall be maintained and enhanced using plants and landscape materials native to the river corridor in the design of site and landscape improvements.

ii. **Outdoor Spaces.** Development shall incorporate outdoor spaces such as patios, courtyards, terraces and plazas to add interest and facilitate interaction.

iii. **Color/Materials.** Heavy, durable, locally fabricated components, with materials such as metal and stone, shall be used to complement building design.

II. Buildings.

i. **Height/Mass.** Multi-story buildings shall be designed to step down to one (1) story directly abutting any natural habitat or feature protection buffer, and 2) must step down to three (3) stories at least 150 feet from any parcel zoned Low Density Residential (RL) or Medium Density Mixed Use Neighborhood (MMN).

ii. **Parking lots.** Buildings shall be sited so that any new parking lots and vehicle use areas are located in either: 1) interior block locations between buildings that face the street and buildings that face the river; or 2) side yards.

5. River Subdistrict.

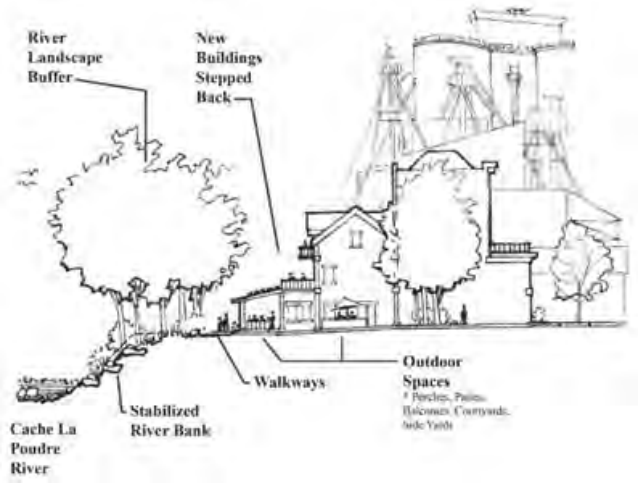
a. **Purpose.** The River Subdistrict is intended to reestablish the linkage between the Historic Core and the Cache la Poudre River (the "River") through redevelopment in the corridor. This Subdistrict offers opportunities for more intensive redevelopment of housing, businesses, and workplaces to complement the Historic Core Subdistrict. Improvements should highlight the historic origin of Fort Collins and the unique relationship of the waterway and railways to the urban environment as well as expand cultural opportunities in the Downtown area. Redevelopment will extend the positive characteristics of Downtown such as the pattern of blocks, pedestrian-oriented street fronts and lively outdoor spaces.

b. Development Standards.

I. Transition between the River and Development.

i. **River Landscape Buffer.** In substitution for the provisions contained in Section 5.6.1 (E) (Establishment of Buffer Zones) requiring the establishment of "natural area buffer zones," the applicant shall establish, preserve or improve a continuous landscape buffer along the river as an integral part of a transition between development and the river. To the maximum extent feasible, the landscape buffer shall consist predominantly of native tree and shrub cover. (See Figure 19.1.) The landscape buffer shall be designed to prevent bank erosion and to stabilize the River bank in a manner adequate to withstand the hydraulic force of a 100-year flood event. The bank stabilization shall comply with the following criteria:

Figure 19.1
Landscape Buffer



Any bank stabilization improvements shall consist of native plants and stone, to the extent reasonably feasible. If any structural materials such as concrete are required, such materials shall be designed to emphasize characteristics of the native landscape such as color, texture, patterns and proportions, to minimize contrast with the river landscape.

The predominant visual elements in any bank stabilization improvements shall be native vegetation and stone. Notwithstanding the use of any integrated structural elements, blank walls shall not be used to retain the slope of the river bank.

ii. **Outdoor spaces.** On sites that have river frontage between Linden Street and Lincoln Avenue, buildings or clusters of buildings shall be located and designed to form outdoor spaces (such as balconies, arcades, terraces, decks or courtyards) on the river side of the buildings and/or between buildings, as integral parts of a transition between development and the River. A continuous connecting walkway (or walkway system) linking such spaces shall be developed, including coordinated linkages between separate development projects.

II. Streets and Walkways.

i. **Streets.** Redevelopment shall maintain the existing block grid system of streets and alleys. To the extent reasonably feasible, the system shall be augmented with additional connections, such as new streets, alleys, walkway spines, mid-block passages, courtyards and plazas, to promote a detailed pedestrian circulation network that supplements public sidewalks.

ii. **Driveways.** To the extent reasonably feasible, driveways and curb cuts must be minimized to avoid disruption to the sidewalk network, by using shared driveways between properties. The width of driveways and turning radii must be minimized except where truck access is required.

iii. **Jefferson Streetscape.** Redevelopment activity along the Jefferson Street frontage shall provide formal streetscape improvements including street trees in sidewalk cutouts with tree grates and planters to screen parking. Planters to screen parking shall be designed and constructed to appear as integral extensions of the building design. Materials used shall not be inferior to those used in the construction of the principal building.

III. Buildings.

i. **Industrial Buildings.** Except as otherwise provided in this subsection (3), all new nonresidential buildings, including industrial buildings, shall comply with the standards for Mixed-use and Commercial Buildings contained in Section 5.15.2.

ii. **Programming, Massing and Placement**.

- **Height Mass.** Multiple story buildings are permitted, provided that massing of multiple story buildings shall be terraced back from the River and from streets so that multiple story buildings are stepped down to one (1) story abutting the River landscape frontage and are stepped down to three (3) stories or less abutting any street frontage. Such terraced massing shall be a significant and integral aspect of the building design.
- **Parking lots**. Buildings shall be sited so that any new parking lots and vehicle use areas are in either: (1) interior block locations between buildings that face the street and buildings that face the river, or (2) side yards.

- **Frequent view/access**. No building wall abutting the landscape corridor along the river shall exceed one hundred twenty-five (125) feet on the axis along the river.
- **Outdoor spaces and amenities**. To the extent reasonably feasible, all development shall provide on-site outdoor space such as courtyard, plaza, patio, or other pedestrian-oriented outdoor space. To the extent reasonably feasible, outdoor spaces shall be visible from the street and shall be visually or physically connected with any outdoor spaces on adjacent properties.

iii. **Character and Image.** New buildings shall be designed to demonstrate compatibility with the historical agricultural/industrial characteristics of the Subdistrict to promote visual cohesiveness and emphasize positive historical attributes. Such characteristics include simple rectilinear building shapes, simple rooflines, juxtaposed building masses that directly express interior volumes/functions, visible structural components and joinery, details formed by brickwork, sandstone, sills, lintels, headers and foundations and details formed by joinery of structural materials.

- **Outdoor spaces.** Buildings and extensions of buildings shall be designed to form architectural outdoor spaces such as balconies, arcades, terraces, decks or courtyards.
- **Windows.** Windows shall be individually defined with detail elements such as frames, sills and lintels, and placed to visually establish and define the building stories and establish human scale and proportion. Windows shall be placed in a symmetrical pattern relative to the wall and massing. Glass curtain walls and spandrel-glass strip windows shall not be used as the predominant style of fenestration for buildings in this Subdistrict. This requirement shall not serve to restrict the use of atrium, lobby or greenhouse-type accent features used as embellishments to the principal building.
- **Roof forms.** Flat, shed and gable roof forms corresponding to massing and interior volumes/functions shall be the dominant roof forms. Flat-roofed masonry buildings shall feature three-dimensional cornice treatment integral with masonry on all walls facing streets, the River or connecting walkways. Additional decorative shaped cornices in wood (or other material indistinguishable from wood) shall be permitted in addition to the top masonry cornice treatment. Sloped metal roofs are allowed. Barrel roofs may be used as an accent feature but must be subordinate to the dominant roof. Specialized or unusual roof forms, including mansards and A-frames, are prohibited. A single continuous horizontal roofline shall not be used on one-story buildings except as part of a design style that emulates nearby landmarks (or structures eligible for landmark designation).
- **Materials.** Building materials shall contribute to visual continuity within the Subdistrict. Textured materials with native and historic characteristics, such as brick, stone, wood, architectural cast stone and synthetic stone in historically compatible sandstone patterns only, architectural metals and materials with similar characteristics and proportions shall be used in a repeating pattern as integral parts of the exterior building fabric. Masonry units must wrap around the corners of walls to not appear as an applied surface treatment. Other exterior materials, if any, shall be used as integral parts of the overall building

fabric, in repeating modules, proportioned both horizontally and vertically to relate to human scale, and with enough depth at joints between architectural elements to cast shadows, to better ensure that the character and image of new buildings are visually related to the Downtown and River context. Lapped aluminum siding, vinyl siding, smooth-face concrete masonry units, synthetic stucco coatings and imitation brick are prohibited.

- **Primary entrance**. The primary entrance must be clearly identified and must be oriented to a major street, pedestrian way, place, courtyard and/or other key public space. The primary entrance must feature a sheltering element such as a canopy or be defined by a recess or a simple surround.
- **Accent features**. Accent features, where used, must complement and not dominate the overall composition and design of the building and may include secondary entrances, loading docks, garage bays, balconies, canopies, cupolas, vertical elevator/stair shafts and other similar features.
- **Awnings and canopies.** Awnings and canopies must complement the character of the building and must be subordinate to the facade. Colors must be solid or two (2) color stripes for simplicity.

IV. Site Design.

i. **River Landscape.** The natural qualities of the River landscape shall be maintained and enhanced, using plants and landscape materials native to the River corridor in the design of site and landscape improvements.

ii. **Walls, Fences and Planters.** Walls, fences and planters shall be designed to match or be consistent with the quality of materials, the style and colors of nearby buildings. Brick, stone or other masonry may be required for walls or fence columns.

iii. **Street Edge.** A well-defined street edge must be established and shall be compatible with the streetscape in the public realm. Components may include any of the following: planted areas, decorative paving, public art, street furnishing with ornamental lighting and iron and metal work that reflect on the agricultural/industrial heritage of the Subdistrict.

iv. **Corner Lots.** For sites located at public street corners, parking lots and vehicular use areas shall not abut more than one (1) street frontage.

v. **Parking.** Where parking lots are highly visible from streets or pedestrian-oriented outdoor spaces, a visual buffer must be provided. Such buffering may consist of any of the following singularly or in combination: a low solid screen wall, a semi-opaque screen or a living green wall consisting of plant material sufficient to provide a minimum of seventy-five-percent opacity year-round or other City approved screening device that is sensitive to pedestrian activity.

vi. **Interim Parking.** Interim parking lots as a principal use may be approved with a gravel surface and without lighting and landscape improvements and shall be restricted to a period of use not to exceed three (3) years. Extensions for two (2) successive periods of one (1) year each may be granted by the Planning and Zoning Commission upon a finding

that the use is compatible with the context of the area and is a beneficial use which supports the purpose of the River Subdistrict.

vii. **Service Areas and Outside Storage Areas.** Service areas and outside storage areas that are not used for trash and recycling containers, dumpsters and mechanical equipment must, to the maximum extent feasible, be located to the side or rear of the building and be screened from public view. Notwithstanding the foregoing, where industrial processes and outdoor mechanical activities are functionally integral to the principal use, such areas must, to the extent reasonably feasible, be located to the side or rear of the building and not impact pedestrian areas. Partial screening must be provided with design and materials consistent with the building and/or the agricultural/industrial character of the area.

viii. **Design Guidelines.** See also the Fort Collins River District Design Guidelines, which are intended to assist applicants in the preparation of development plans within the Subdistrict.

EMPLOYMENT, INDUSTRIAL, OTHER DISTRICTS

SECTION 2.5.1 HARMONY CORRIDOR DISTRICT (HC)

(A) Purpose.

The Harmony Corridor District is intended to implement the design concepts and land use vision of the Harmony Corridor Plan - that of creating an attractive and complete mixed-use area with a major employment base.

(B) Land Use Standards.

6. All development in the HC Harmony Corridor District shall comply with the Harmony Corridor land use and locational standards as adopted by the City and the following specific standards to the extent that such standards apply to the property proposed to be developed.

7. All secondary uses shall be integrated both in function and appearance into a larger employment-based development plan that emphasizes primary uses. A secondary use shall be subject to administrative review or Planning and Zoning Commission review as required for such use in Division 4.2. The following permitted uses shall be considered secondary uses in this zone district and together shall occupy no more than twenty-five (25) percent of the total gross area of the development plan.

    a. Community facilities.
    b. Public facilities.
    c. Child care centers.
    d. Print shops.
    e. Food catering.
    f. Workshops and custom small industry uses.
    g. Residential uses (except mixed-use dwellings when the residential units are stacked above a primary use which occupies the ground floor).
    h. Lodging establishments.
    i. Convenience shopping centers.
    j. Standard restaurants.
    k. Bed and breakfast establishments.
    l. Clubs and lodges.
    m. Health and membership clubs.
    n. Convention and conference centers.
    o. Places of worship or assembly.
    p. Limited indoor recreation establishments.
    q. Unlimited indoor recreation use and facility.
    r. Food truck rally.
    s. Microbrewery/distillery/winery.
    t. Seasonal overflow shelters.

(C) Dimensional Standards.

1. Maximum height for all nonresidential buildings, including those containing mixed-use dwelling units, shall be six (6) stories. Maximum height for residential buildings shall be three (3) stories.

2. All new structures greater than eighty thousand (80,000) square feet in gross leasable area shall be subject to Planning and Zoning Commission review.

3. Any building addition that exceeds eighty thousand (80,000) square feet in gross leasable area and exceeds twenty-five (25) percent of the gross leasable area of the existing building shall be subject to Planning and Zoning Commission review.

(D) **Density/Intensity.**
All residential development in the HC Harmony Corridor District shall have an overall minimum average density of seven (7) dwelling units per net acre of residential land.

(E) **Site Design**

1. In the case of multiple parcel ownership, to the extent reasonably feasible, an applicant shall enter into cooperative agreements with adjacent property owners to create a comprehensive development plan that establishes an integrated pattern of streets, outdoor spaces, building styles and land uses.

2. Where an employment or industrial use abuts a residential area, there shall be no drastic and abrupt change in the scale and height of buildings.

3. All commercial/retail and industrial uses, except for off-street parking and loading, shall be conducted or carried out entirely within completely enclosed buildings or structures.

(F) **Building Standards.**

1. **Industrial Buildings.** To the extent reasonably feasible, industrial buildings shall provide a primary entrance that faces and opens directly onto the abutting street sidewalk or a walkway, plaza or courtyard that has direct linkage to the street sidewalk without requiring pedestrians to cross any intervening driveways or parking lots.

2. **Campus Exception.** An exception shall be permitted to subsection (1) above, and to the requirements contained in Section 5.15.2(B) if the development provides a "campus or park-like development block," meaning development with a unifying, formative internal framework of pedestrian-oriented, nonvehicular outdoor spaces and walkways that function as an alternative to street sidewalks by organizing and connecting buildings. The internal campus pedestrian circulation system shall be designed to provide direct connections to common origins and destinations (such as street sidewalks, transit stops, restaurants, child care facilities and convenience shopping centers).

SECTION 2.5.2 EMPLOYMENT DISTRICT (E)

(A) Purpose.

The Employment District is intended to provide locations for a variety of workplaces including light industrial uses, research and development activities, offices and institutions. This District also is intended to accommodate secondary uses that complement or support the primary workplace uses, such as hotels, restaurants, convenience shopping, child care and housing.

Additionally, the Employment District is intended to encourage the development of planned office and business parks; to promote excellence in the design and construction of buildings, outdoor spaces, transportation facilities and streetscapes; to direct the development of workplaces consistent with the availability of public facilities and services; and to continue the vitality and quality of life in adjacent residential neighborhoods.

(B) Land Use Standards.

1. **Prospect Road Streetscape Program.**
   All development in this zone district that is located within the planning area for the Prospect Road Streetscape Program shall also comply with the Prospect Road Streetscape Standards as adopted by the City, to the extent that such Standards apply to the property proposed to be developed.

2. **Secondary Uses.**
   All secondary uses shall be integrated both in function and appearance into a larger employment district development plan that emphasizes primary uses. A secondary use shall be subject to administrative review or Planning and Zoning Commission review as required for such use in Division 4.2. The following permitted uses shall be considered secondary uses in this zone district and together shall occupy no more than twenty-five (25) percent of the total gross area of the development plan.
   a. Veterinary facilities and small animal clinics.
   b. Clubs and lodges.
   c. Child care centers.
   d. Residential uses (except mixed-use dwellings when the residential units are stacked above a primary use which occupies the ground floor).
   e. Standard and fast food restaurants.
   f. Lodging establishments.
   g. Bed and breakfast establishments.
   h. Funeral homes.
   i. Health and membership clubs.
   j. Convenience shopping centers.
   k. Convention and conference center.
   l. Food catering.
   m. Minor public facilities.
   n. Community facilities.
   o. Bars and taverns.
   p. Plant nurseries and greenhouses.
   q. Dog day-care facilities.
   r. Print shops.
   s. Workshops and custom small industry uses.
   t. Artisan and photography studios and galleries.
   u. Limited indoor recreation establishments.
   v. Enclosed mini-storage facilities.
   w. Places of worship or assembly.
   x. Personal and business service shops.
   y. Music studios.
   z. Homeless shelters (including seasonal overflow shelters).

3. **Locational Standards along I-25.**
   Along I-25, any secondary uses shall be located at least one thousand four hundred forty-five (1,445) feet from the centerline of I-25. Such secondary uses shall be located so that they have direct access from a collector or local street.

4. **Dimensional Standards.**

aa. Maximum height shall be four (4) stories.

bb. All new structures greater than fifty thousand (50,000) square feet in gross leasable area shall be subject to Planning and Zoning Commission review.

cc. Any building addition that exceeds fifty thousand (50,000) square feet in gross leasable area and exceeds twenty-five (25) percent of the gross leasable area of the existing building shall be subject to Planning and Zoning Commission review.

(C) Density/Intensity.

All residential development in the E Employment District shall have an overall minimum average density of seven (7) dwelling units per net acre of residential land.

(D) Development Standards

1. **Site Design.**

a. In the case of multiple parcel ownership, to the extent reasonably feasible, an applicant shall enter into cooperative agreements with adjacent property owners to create a comprehensive development plan that establishes an integrated pattern of streets, outdoor spaces, building styles and land uses.

b. Where an employment or industrial use abuts a residential area, there shall be no drastic and abrupt change in the scale and height of buildings.

c. Except for off-street parking and loading areas, all veterinary hospitals and all industrial uses (except commercial composting) shall be carried out entirely within completely enclosed buildings or structures.

2. **Building Design.**
To the extent reasonably feasible, industrial buildings shall provide a primary entrance that faces and opens directly onto the abutting street sidewalk or a walkway, plaza or courtyard that has direct linkage to the street sidewalk without requiring pedestrians to cross any intervening driveways or parking lots. The following exceptions shall be permitted to this standard and to the requirements contained in subsection 5.15.2(B):

a. Buildings may orient away from the street if the development provides a campus or park-like development block with a unifying, formative internal framework of outdoor spaces and connecting walkways that function as an alternative to street sidewalks by connecting buildings within the site and directly connecting to common destinations in the district (such as transit stops, restaurants, child care facilities and convenience shopping centers). Such an internal network shall provide direct pedestrian access to the street sidewalk(s).

3. **Enclosed Mini-Storage Facilities.**
Where enclosed mini-storage facilities face a public street, the entire linear frontage along such street shall include only buildings designed for human occupancy, landscaping, accessory parking and/or drives.

(E) Development Standards for the I-25 Corridor.
Development located within one thousand three hundred twenty (1,320) feet (one-quarter [¼] mile) of the centerline of I-25 shall be subject to the requirements of Section 2.6.3.

(F) Development Standards for the Transit-Oriented Development (TOD) Overlay Zone.
Development located within the TOD Overlay Zone shall be subject to the requirements of Section 2.6.1.

SECTION 2.5.3 INDUSTRIAL DISTRICT (I)

(A) Purpose.

The Industrial District is intended to provide a location for a variety of work processes and work places such as manufacturing, warehousing and distributing, indoor and outdoor storage, and a wide range of commercial and industrial operations. The Industrial District also accommodates complementary and supporting uses such as convenience shopping, child care centers and housing. While this District will be linked to the City's transportation system for multiple modes of travel, some may emphasize efficient commercial trucking and rail traffic as needed. Industrial and manufacturing processes used in this District may, by necessity, be characteristically incompatible with residential uses.

(B) Land Use Standards.

1. Prohibited Uses.

The following uses are specifically prohibited in the Industrial District:

a. Feedlots.

b. All establishments falling within Standard Industrial Classification (SIC) Major Group No. 29, Petroleum Refining and Related Industries, as identified in the Standard Industrial Classification Manual (OMB 1987).

c. All establishments falling within Standard Industrial Classification (SIC) Major Group No. 331, Steel Works, Blast Furnaces, and Rolling and Finishing Mills, as identified in the Standard Industrial Classification Manual (OMB 1987).

d. All establishments falling within Standard Industrial Classification (SIC) Major Group No. 33, Primary Metal Industries, as identified in the Standard Industrial Classification Manual (OMB 1987).

e. All electrical generation facilities falling within Standard Industrial Classification (SIC) Major Group No. 4911, as identified in the Standard Industrial Classification Manual (OMB 1987).

f. All establishments falling within Standard Industrial Classification (SIC) Major Group No. 4925, Mixed, Manufactured, or Liquefied Petroleum Gas Products and/or Distribution, as identified in the Standard Industrial Classification Manual (OMB 1987).

g. All establishments falling within Standard Industrial Classification (SIC) Major Group No. 2011, Meat Packing Plants, as identified in the Standard Industrial Classification Manual (OMB 1987).

h. All establishments falling within Standard Industrial Classification (SIC) Major Group No. 2015, Poultry Slaughtering and Processing, as identified in the Standard Industrial Classification Manual (OMB 1987).

i. All establishments falling within Standard Industrial Classification (SIC) Major Group No. 2077, Animal and Marine Fats and Oils, as identified in the Standard Industrial Classification Manual (OMB 1987).

2. Dimensional Standards.

a. Maximum height for all nonresidential buildings, including those containing mixed-use dwelling units, shall be four (4) stories.

b. All new structures greater than fifty thousand (50,000) square feet in gross leasable area shall be subject to Planning and Zoning Commission review.

c. Any building addition that exceeds fifty thousand (50,000) square feet in gross leasable area and exceeds twenty-five (25) percent of the gross leasable area of the existing building shall be subject to Planning and Zoning Commission review.

(C) **Development Standards.**

1. **Prospect Road Streetscape Program**
All development in this zone district that falls within the planning area for the Prospect Road Streetscape Program shall also comply with the Prospect Road Streetscape Program Standards as adopted by the City, to the extent that such Standards apply to the property proposed to be developed.

2. **Building Design.**

a. Applicability of Division 5.15
Compliance with the standards contained in Section 5.15.2 of this Code shall be required only for the following permitted uses in this zone district:

I. Standard and Fast Food Restaurants

II. Bars and Taverns

III. Bed and Breakfast Establishments

IV. Child Care Centers

V. Convenience Shopping Centers

b. **Orientation.** Along arterial streets and any other streets that directly connect to other districts, buildings shall be sited so that a building face abuts upon the required minimum landscaped yard for at least thirty (30) percent of the building frontage. Such a building face shall not consist of a blank wall.

c. **Building character and color.** New building color shades shall be neutral, with a medium or dark color range, and not white, bright or reflective.

3. **Site Design.**

a. Screening.

I. Industrial and commercial activities shall not abut a residential area unless the activities and related storage are contained within a building or otherwise completely screened from view from the residential area.

II. A minimum thirty (30) foot deep landscaped yard shall be provided along all arterial streets, and along any district boundary line that does not adjoin a residential land use. If a district boundary line abuts upon or is within a street right-of-way, then the required landscaped yard shall commence at the street right-of-way line on the district side of the street, rather than at the district boundary line. This requirement shall not apply to development plans that comply with the standards contained in Section 5.15.2 of this Code.

III. A minimum eighty (80) foot deep landscaped yard shall be provided along any boundary line that adjoins a residential land use or a zone district (whether within or beyond the City's jurisdictional boundary) that is predominately characterized by residential uses as permitted uses. This residential buffer yard may be reduced to thirty (30) feet if the adjoining residential land use or zone district (whether within or beyond the City's jurisdictional boundary) is separated by a public street.

b. **Storage and Operational Areas.**

I. Storage, loading and work operations shall be screened from view along all district boundary lines and along all public streets.

II. Within internal district areas, buildings may be surrounded by paving for vehicle use. To the extent reasonably feasible, side and rear yards in interior block locations shall be used for vehicle operations and storage areas, and front yards shall be used for less intensive automobile parking. At district edges, side yards shall be used for vehicle operations and storage areas, in order to allow for a finished, attractive rear building wall and a landscaped rear yard.

(D) **Development Standards for the I-25 Corridor.** Development located within one thousand three hundred twenty (1,320) feet (one-quarter [¼] mile) of the centerline of I-25 shall be subject to the requirements of Section 2.6.3.

SECTION 2.5.4 TRANSITION DISTRICT (T)

(A) Purpose.

The Transition District is intended for properties for which there are no specific and immediate plans for development. The only permitted uses are those existing at the date the property was placed into this District.

(B) Permitted Uses.

1. The following uses are permitted in the T District:

   a. No use shall be permitted of properties in the T District except such legal use as existed on the date the property was placed into this zone district. No permanent structures shall be constructed on any land in this District, except that at the time of zoning or rezoning of the property into this District the City Council may grant a variance permitting the installation or enlargement of a permanent structure containing a legal use which was existing, or is ancillary to the legal use of the property, at the time of such zoning or rezoning upon the following conditions:

      I. The owner of the property, prior to the City Council meeting at which the zoning or rezoning is to be heard, shall submit a site plan showing in reasonable detail the existing and proposed uses of such property; and

      II. The City Council shall grant such variance only upon a finding that the strict application of this Code would result in exceptional or undue hardship upon the owner of the property and that the variance may be granted without substantial detriment to the public good and without substantially impairing the intent and purposes of this Code.

   b. After the property has been placed in the T District, the Land Use Review Commission may grant a variance in accordance with Division 6.14 permitting installation or enlargement of a permanent structure containing a use which was existing at the time the property was placed in this District, or containing a use which is ancillary to such existing use. When applying the standards of Section 6.14.4(H), paragraph 6.14.4(H)(2) shall not apply. Any proposal for the installation or enlargement of such a structure for which a variance has been approved must comply with the requirements contained in Section 6.17.5 and the applicable general development and site standards contained in Article 5.

   c. Notwithstanding the other provisions contained in paragraphs (a) and (b) above, a property in the T District can be used for off-site staging in compliance with Section 4.4.5(E) of this Code.

2. The owner of any property in the T District may at any time petition the City to remove the property from this zone district and place it in another zone district. Unless the following time limitations are waived by the owner, any such petition shall be referred to the Planning and Zoning Commission to be considered at the next regular meeting of such Commission which is scheduled at least thirty (30) days from the date the petition is filed with the City Clerk. Within sixty (60) days from the date the matter is considered by the Commission, the City Council shall change the zoning for the property in question to another zone district authorized under this Code.

3. Any use which was nonconforming upon a parcel prior to placement into this zone district shall continue to be nonconforming upon removal of such parcel or property from this zone district unless such parcel is placed into a

zone district where such use is listed as a permitted use.

SECTION 2.5.5 PUBLIC OPEN LANDS DISTRICT (POL)

(A) Purpose.

The Public Open Lands District is for large publicly owned parks and open lands which have a community-wide emphasis or other characteristics which warrant inclusion under this separate designation rather than inclusion in an adjoining neighborhood or other District designation.

SECTION 2.5.6 RIVER CONSERVATION DISTRICT (RC)

(A) Purpose.

The River Conservation District is designed for the conservation and protection of predominately undeveloped land in the Cache la Poudre River (the "River") corridor. The main purpose of this District is to accommodate land use functions such as stormwater management, native wildlife habitat and sand and gravel operations, all of which depend primarily on the continued functioning of natural river systems or are incompatible with significant urban development. Urban development, if any, will be limited and will be located and designed in a way to avoid or minimize impacts upon the scenic, cultural, natural and historical values of the River landscape.

This District offers opportunities for scientific research and education, recreation, wildlife observation, crop agriculture, grazing, sand and gravel mining and reclamation and large-lot residential uses.

(B) Land Use Standards.

1. Dimensional Standards.

a. Maximum building height shall be two (2) stories.

b. To the maximum extent feasible, no building, structure or private parking lot shall be developed within a natural area protection buffer; provided, however, that public parking may be constructed in the buffer areas to provide convenient public access to trails, parks and natural areas when such parking cannot reasonably be contained on other nearby developed areas. The natural area protection buffer shall mean that area extending three hundred (300) feet from the bank of the River.

c. A landscaped building setback of at least fifty (50) feet shall be provided along all streets. The setback will be measured from the future edge of the public right-of-way as determined by the City Engineer.

d. The site layout for permitted nonresidential uses shall, to the maximum extent feasible, maintain large, contiguous areas of open land. The proportion of the site used for development (including buildings, streets and parking areas) shall be no more than thirty (30) percent of the total site.

(C) Development Standards.

1. Street/Access.

a. Development in this District shall be exempt from the standards contained in Section 5.4.7, Street Pattern and Connectivity Standards.

b. No new streets shall be constructed within the natural area protection buffer.

c. Any new streets shall be constructed to maximize "shared access points" for contiguous properties and minimize the total land area devoted to street development.

d. The layout and design of any new streets shall emphasize characteristics and views of the River landscape. Roadway design alternatives to city standards shall be developed by January 1, 1998, consistent with the pastoral character of the landscape in this District. Examples of special street design characteristics appropriate to this District are divided lanes, landscape islands and landscape solutions to drainage instead of standard curb and gutter, with stormwater runoff directed into open swales and ditches. Local and residential access roads shall be

designed without curbs and gutters unless deemed necessary for health and safety by the City Engineer.

2. **Walkways, Trails and Paths.**

a. Walkways, trails and paths may be constructed to serve as access to passive recreation, scientific, educational or interpretation areas within this District. All walkways, trails or paths shall be sited and designed to minimize or avoid impacts to environmentally sensitive areas in conformance with the requirements described in the Parks and Recreation Policy Plan adopted in December 1996.

b. Environmental or historical interpretation areas shall be integrated with the walkway and/or trail/path system to the maximum extent feasible. Interpretation areas shall include benches, trash receptacles and bike racks.

c. Detached sidewalks along arterial streets shall follow a meandering rather than straight alignment, with at least ten (10) feet of separation from the edge of the roadway, and shall be designed with long, smooth, sweeping curves of not less than a sixty (60) foot radius.

d. At intersections, the sidewalk shall be parallel to the road for a minimum distance of sixty (60) feet and shall connect to pedestrian crosswalks at the corner.

3. **Building Design.**

a. Façades.

I. No building wall shall exceed seventy-five (75) feet in length, in order to accommodate frequent views of the River.

II. Extensions of building walls shall be used to form outdoor spaces, integrate development with the landscape and screen service and accessory functions.

b. Color/Materials.

I. In order to minimize contrast with the River landscape, building colors shall be subdued or neutral shades, within a medium or moderately dark color range, and not white or reflective.

II. Textured materials with native and historic characteristics, such as stone, wood and brick, and materials which mimic those characteristics, such as tinted, textured concrete masonry units, shall be used in a repeating pattern as integral parts of the building fabric, to the maximum extent feasible.

4. **Site Design.**

a. The natural qualities of the River landscape shall be maintained and enhanced using plants and landscape materials native to the River corridor in the design of site and landscape improvements.

b. Parking.

I. Parking areas shall have blocks of parking stalls interspersed with landscaped islands in order to minimize the visual contrast of the parking area with the natural landscape. To the maximum extent feasible, pavement edges shall be flush with abutting landscape materials or walkways to minimize the appearance of standard concrete curbs and to emphasize the integration of development with the landscape.

II. Parking areas within the RC District shall be screened from view from public streets, trails and

the River by plant material, fencing and/or berming.

III. Berms planned to screen adjacent parking areas next to arterial and collector streets shall be at least four (4) feet high.

c. Landscaping.

I. Landscaping and restoration of disturbed lands shall be designed to maximize the characteristics of the native riparian ecosystem and short grass prairie. Such characteristics include thickets of native shrubs massed in broad, blended drifts and clumps. Riparian plant materials shall be maintained or enhanced in the natural area protection buffer along the River and around ponds and wetlands. Upland grasses and forbs shall be planted outside of the natural area protection buffer. Groves and belts of native trees may be used as accents or to frame buildings or views. Recommended plant materials for use in this District are listed in Appendix D through G of the Prospect Road Streetscape Program.

II. Planting shall be spaced informally in masses or groups as is characteristic of the native vegetation.

III. Berms, swales and contour grading shall be designed to form varied, naturalistic contours in areas that are disturbed by development or street construction. Grading along arterial streets shall be designed to screen and soften the visual impact of adjacent development, to the maximum extent feasible.

IV. Berms, swales and detention ponds shall be graded in such a manner as to make them appear to be integral parts of the landscape, designed with smooth transitions between changes in a slope and shall not exceed a 3:1 slope.

d. Drainage.

I. Ditches or swales will be allowed for the purpose of providing for drainage and for controlling run-off between the roadway edges and sidewalks.

II. The use of concrete or asphalt to line drainage conveyance channels shall not be permitted in this District. Drainage conveyance channels shall be designed to blend into the natural landscape.

e. Walls and Fences.

I. Fencing, screening or architectural walls are prohibited in the natural area protection buffer, except to define a public property boundary. Any such fencing shall be a rural two-rail corral and/or a three-strand smooth wire fencing not to exceed five (5) feet in height.

II. Outside of the natural area protection buffer, other open and penetrable view fencing is allowed. Solid wood fencing or walls for a distance of twenty (20) feet or less is permissible for screening and buffering. Such fencing or screening shall be six (6) feet or less in height and constructed of similar building materials and design to the primary structure or of a material that will harmonize with the architectural character and identity of the proposed development.

III. Unclad chain link fences that are visible from public areas, arterial or collector streets are prohibited.

OVERLAY DISTRICTS

SECTION 2.6.1 TRANSIT-ORIENTED DEVELOPMENT OVERLAY (TOD)

(A) Applicability.

These standards apply to applications for development within the boundary of the TOD Overlay Zone, south of Prospect Road and provided further that the provisions contained in subsection 2.6.1(D) regarding parking structure design shall also apply to the HMN, High Density Mixed-Use Neighborhood and the CC, Community Commercial zone districts throughout the City.

(B) Purpose.

The purpose of this Section is to modify the underlying zone districts south of Prospect Road to encourage land uses, densities and design that enhance and support transit stations along the Mason Corridor. These provisions allow for a mix of goods and services within convenient walking distance of transit stations; encourage the creation of stable and attractive residential and commercial environments within the TOD Overlay Zone south of Prospect Road; and provide for a desirable transition to the surrounding existing neighborhoods. Accordingly, in the event of a conflict between the provisions contained in this Section and the provisions contained in Article 2, this Section shall control. The purpose of this Section is also to apply the standards contained in subsection 2.6.1(D) regarding parking structure design to all land within the City that is located in the HMN, High Density Mixed-Use Neighborhood and the CC, Community Commercial zone districts.

(C) Site Planning.

1. **Building Orientation**
   Primary commercial and residential building entrances shall face streets, connecting walkways, plazas, parks or similar outdoor spaces, but not parking lots. Buildings shall face all street frontages to the maximum extent feasible, with highest priority given to east-west streets that lead from transit stations to destinations.

2. **Central Feature or Gathering Place.**
   At least one (1) prominent or central location within each transit station area shall include a convenient outdoor open space or plaza with amenities such as benches, monuments, kiosks or public art. This feature and its amenities shall be placed adjacent to a transit station, to the extent reasonably feasible.

3. **Outdoor Spaces.** To the extent reasonably feasible, buildings and extensions of buildings shall be designed to form outdoor spaces such as courtyards, plazas, arcades, terraces, balconies and decks for residents' and workers' use and interaction, and to integrate the development with the adjacent physical context. To the extent reasonably feasible, a continuous walkway system linking such outdoor spaces shall be developed and shall include coordinated linkages between separate developments.

(D) Streetscape and Pedestrian Connections.

1. **Streetscape.** Developments shall provide formal streetscape improvements which shall include sidewalks having street trees in sidewalk cutouts with tree grates, planters or other appropriate treatment for the protection of pedestrians, and shall provide seating and pedestrian light fixtures. Specific design details shall be subject to approval by the City Engineer in accordance with the design criteria for streets.

2. **On-street Parking.** On-street parking shall be defined by landscaped curb extensions or bulb-outs. Conventional or enhanced crosswalks shall be provided at all

intersections.

3. **Off-street Parking.** Off-street parking shall be located behind, above, within or below street-facing buildings to the maximum extent feasible. No parking will be allowed between the street and the front or side of a building.

4. **Parking Structure Design.**
To the extent reasonably feasible, all parking structures shall meet the following design criteria:

   a. Where parking structures face streets, retail or other nonresidential uses shall be required along at least fifty (50) percent of the ground level frontage to minimize interruptions in pedestrian interest and activity. The decision maker may grant an exception to this standard for all or part of the ground level frontage on streets with low pedestrian interest or activity.

   b. Awnings, signage and architectural elements shall be incorporated to encourage pedestrian activity at the street-facing level.

   c. Auto entrances shall be located and designed to minimize pedestrian/auto conflicts. Where service entries or parking structure entries are needed, the following standards shall be met: (See Figure 16.5)

      I. The crown of the underground parking access ramp shall be at least four (4) feet behind the back edge of the sidewalk;

      II. The beginning of the ramp for an above-ground parking garage shall be at least four (4) feet behind the back edge of the sidewalk;

      III. The entry to the parking structure shall be separated from the sidewalk by low planters or a low wall;

      IV. No blank walls shall be allowed on either side of the entry;

      V. The sidewalk pavement shall be continuous across the drive aisle. Any break in the paving surface or scoring shall be in the drive surface and not in the pedestrian surface; and

      VI. Appropriate cautionary signage shall be used to alert pedestrians to the presence of entering and existing vehicles and to inform drivers that pedestrians have priority.

Figure 16.5

Clear Sight Lines for Pedestrian Safety

(E) Character and Image.

1. Articulation

Exterior building walls shall be subdivided and proportioned to human scale, using projections, overhangs and recesses in order to add architectural interest and variety and avoid the effect of a single, massive wall with no relation to human size.

2. Rooflines.

Flat-roofed buildings shall feature three-dimensional cornice treatment on all walls facing streets or connecting walkways, or a rail at the top of the wall of a usable rooftop deck, unless the top floor is stepped back to form a usable roof terrace area. A single continuous horizontal roofline shall not be used on one-story buildings. Accent roof elements or towers may be used to provide articulation of the building mass. To the maximum extent feasible, a minimum pitch of 6:12 shall be used for gable and hipped roofs. Where hipped roofs are used alone, the minimum pitch shall be 4:12.

3. Materials and Colors.

a. Predominant exterior building materials shall be high quality materials, including, but not limited to, brick, sandstone, other native stone, tinted/textured concrete masonry units, stucco systems or treated tilt-up concrete systems.

b. All building facades shall incorporate stone, stone veneer, brick, brick veneer, stucco, corrugated metal, wood and/or equivalent accent material in a manner that highlights the articulation of the massing or the base and top of the building. An all-brick building does not need to incorporate an accent material, though soldier courses and banding or other brick, stone or metal detailing are encouraged in order to subdivide masses and establish human scale.

c. Predominant or field colors for facades shall be low reflectance, subtle, neutral or earth tone colors. The use of high-intensity colors, black or fluorescent colors shall be prohibited.

d. Building trim and accent areas may feature brighter colors, including primary colors, and black, but neon tubing shall not be an acceptable feature for building trim or accent areas.

e. Exterior building materials shall not include smooth-faced concrete block, untreated or unpainted tilt-up concrete panels or prefabricated steel panels.

4. **Multiple Store Fronts.**
Buildings with multiple storefronts shall be unified through the use of architecturally compatible features, such as colors, details, awnings, signage and lighting fixtures.

5. **Walls, Fences and Planters.**
Walls, fences and planters shall be designed to match or be consistent with the quality of materials, style and colors of the development.

6. **Building Height.**
All buildings shall have a minimum height of twenty (20) feet, measured to the dominant roof line of a flat-roofed building, or the mean height between the eave and ridge on a sloped-roof building. In the case of a complex roof with different, co-dominant portions, the measurement shall apply to the highest portion.

a. All buildings shall be limited to the maximum height allowed in the underlying zone district unless:

I. the development is mixed-use and contains at least one-seventh (1/7) of its total building square footage as either residential or office use, in which case the maximum allowable height shall be the base height plus one (1) story; or

II. the development is mixed-use and contains at least one-seventh (1/7) of its total building square footage as residential use and at least ten (10) percent of the residential units are either affordable housing units for rent or affordable housing units for sale as defined in Article 5 or structured parking (underground, interior to the site or above ground), in which case the maximum allowable height shall be the base height plus two (2) stories; or

III. the project is mixed-use and contains at least one-seventh (1/7) of its total building square footage as residential use, and at least ten (10) percent of the residential units are either affordable housing units for rent or affordable housing units for sale as defined in Article 5, and the project contains structured parking (underground, interior to the site or above ground), in which case the maximum height shall be the base height plus three (3) stories.

b. Buildings shall have a base portion consisting of one (1) or two (2) stories. The base portion shall be clearly defined by a prominent, projecting cornice or roof, fenestration, different material and different color from the remainder of the building. If the base portion is two (2) stories, the ground floor shall be further differentiated by fenestration and other detailing.

c. Buildings greater than two (2) stories in height shall also be designed so that upper portions of the building are stepped back from the base. The adequacy of

upper floor step-backs shall be determined by the extent to which they advance the following objectives:

I. providing pedestrian scale along sidewalks and outdoor spaces;

II. enhancing compatibility with the scale and massing of nearby buildings;

III. preserving key sunshine patterns in adjacent spaces; and

IV. preserving views.

7. Windows.

Standard storefront window and door systems may be used as the predominant style of fenestration for nonresidential or mixed-use buildings as long as the building facade visually establishes and defines the building stories and establishes human scale and proportion. Minimum glazing on pedestrian-oriented facades of buildings shall be sixty (60) percent on the ground floor and forty (40) percent on upper floors. Subject to approval by the decision maker, projects functionally unable to comply with this requirement shall mitigate such noncompliance with ample, enhanced architectural features such as a change in massing or materials, enhanced landscaping, trellises, arcades or shallow display window cases.

(F) Display Windows.

Ground floor retail, service and restaurant uses shall have large-pane display windows. Such windows shall be framed by the surrounding wall and shall not exceed ninety (90) percent of the total ground level facade area.

SECTION 2.6.2 SOUTH COLLEGE GATEWAY OVERLAY (SCG)

(A) Applicability.

These standards apply to applications for development within the South College Gateway Area.

(B) Purpose.

The purpose of this Section is to provide standards to modify the underlying zone districts north of the intersection of South College Avenue and Carpenter Road to encourage land uses and designs that implement the South College Corridor Plan regarding the enhancement of the South College Gateway Area (see Figure 16.7).

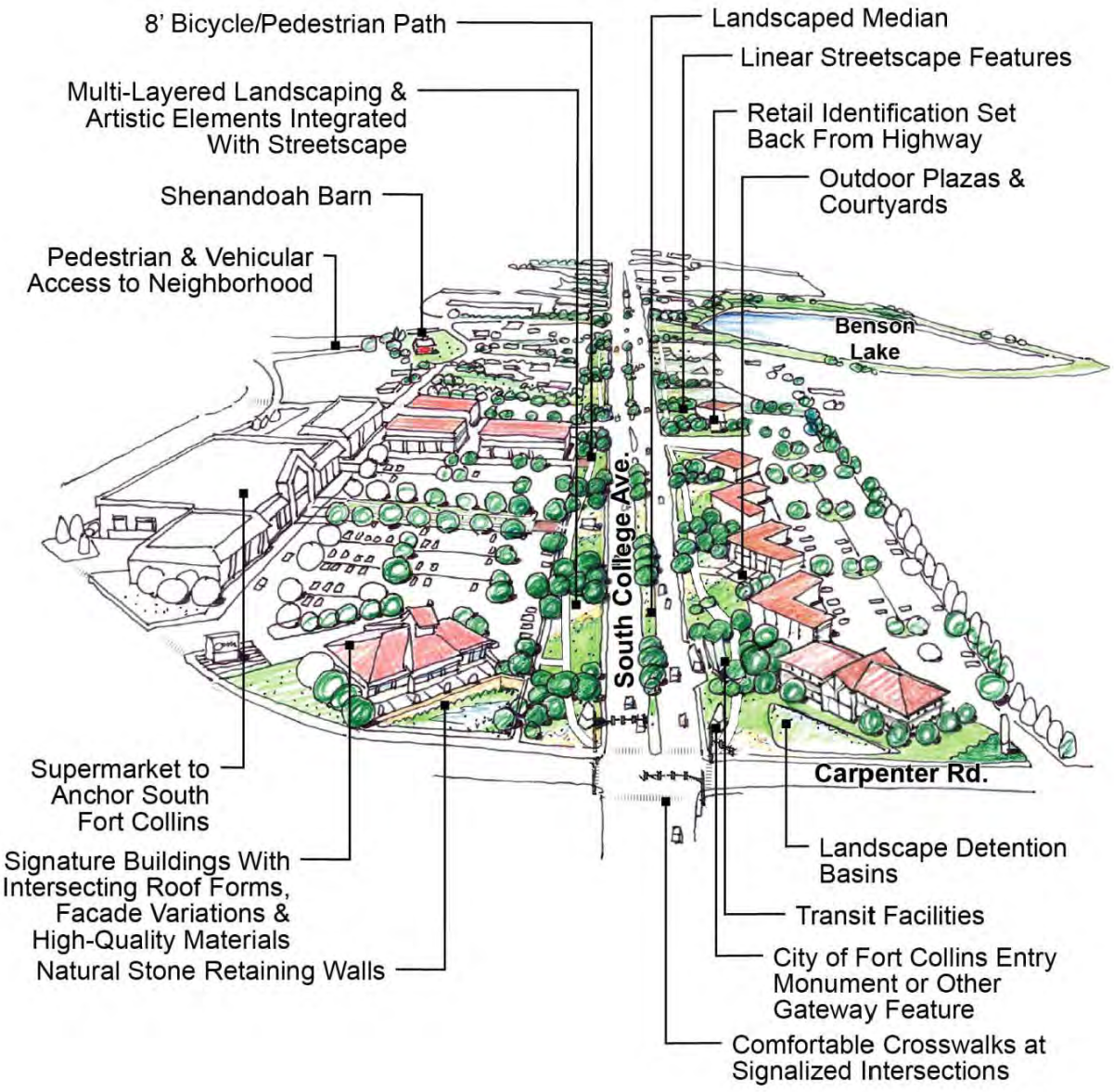


Figure 16.7
Example of the South College Gateway Area Concept

(C) Setback Area.

1. Setback Area Distance.
A setback area of at least fifty (50) feet shall be provided along South College Avenue, measured from the curb to the nearest edge of adjacent buildings or parking areas.

2. Landscaping.
Gateway landscaping shall be provided consisting of groups of deciduous, evergreen and ornamental trees repeated across both sides of South College Avenue, including the median where permitted, in a coordinated massing pattern, with openings between groups. The massing pattern of tree groups and openings shall be placed to manage views and to reinforce such features and spaces along the streetscape as transit stops, signs and outdoor spaces that are defined by buildings, as well as community identity features, such as entry monuments, retaining walls, welcome signs and public art.

3. Sidewalks.
Sidewalks/paths along College Avenue shall be located in the landscaped setback area and shall be designed to connect key points, such as street intersections, transit stops, outdoor spaces in adjacent developments and walkway connections while providing greater separation from College Avenue than would be provided by a parkway strip in the typical cross-section.

4. Plaza Element.
At least one (1) pedestrian or courtyard plaza element shall be provided within or immediately adjacent to the setback area and connected to the off-street path.

(D) Site Planning.

1. Building Placement.
There shall be a building or structure placed on each side of South College Avenue at the Carpenter Road intersection.

a. The buildings or structures shall be placed and designed to form a coordinated overall appearance across the intersection with similar placement and image, including roof forms, materials and other design characteristics.

b. A context diagram shall be provided for each development plan to indicate how the building placement on each side will relate to building placement across the intersection. The context diagram shall include any existing or proposed buildings and other physical features.

c. Buildings shall provide roofs with sloping pitches of at least 5:12 or arc, barrel or other architectural distinctive forms.

(E) Character and Image

1. Building masses shall be varied with elements such as slipped-plane offsets, recesses and projections, reveals, harmonious variations in roof shape or height and vertical extensions at focal points.

2. Buildings shall be multi-story or a minimum of twenty (20) feet in height.

3. Retaining walls shall be constructed of materials that match or complement the architecture of the building.

SECTION 2.6.3 PLANNED UNIT DEVELOPMENT (PUD) OVERLAY

(A) Purpose.

1. Directs and guides subsequent Project Development Plans and Final Plans for large or complex developments governed by an approved PUD Comprehensive Plan.

2. Substitutes a PUD Comprehensive Plan for an Overall Development Plan for real property within an approved PUD Overlay.

3. Positions large areas of property for phased development.

4. Encourages innovative community planning and site design to integrate natural systems, energy efficiency, aesthetics, higher design, engineering and construction standards and other community goals by enabling greater flexibility than permitted under the strict application of the Code, all in furtherance of adopted and applicable City plans, policies, and standards.

5. Allows greater flexibility in the mix and distribution of land uses, densities, and applicable development and zone district standards.

(B) Objectives.

1. Encourage conceptual level review of development for large areas.

2. In return for flexibility in site design, development under a PUD Overlay must provide public benefits significantly greater than those typically achieved through the application of a standard zone district, including one or more of the following as may be applicable to a particular PUD Comprehensive Plan:

   a. Diversification in the use of land;
   b. Innovation in development;
   c. More efficient use of land and energy;
   d. Public amenities commensurate with the scope of the development;
   e. Furtherance of the City's adopted plans and policies; and
   f. Development patterns consistent with the principles and policies of the City's Comprehensive Plan and adopted plans and policies.

3. Ensure high-quality urban design and environmentally-sensitive development that takes advantage of site characteristics.

4. Promote cooperative planning and development among real property owners within a large area.

5. Protect land uses and neighborhoods adjacent to a PUD Overlay from negative impacts.

(C) Applicability.

1. Any property or collection of contiguous properties of a minimum of fifty (50) acres in size is eligible for a PUD Overlay provided all owners authorize their respective property to be included.

2. An approved PUD Overlay will be shown upon the Zoning Map and will overlay existing zoning, which will continue to apply, except to the extent modified by or inconsistent with the PUD Comprehensive Plan.

3. An approved PUD Comprehensive Plan will substitute for the requirement for an Overall Development Plan. Development within the boundaries of an approved PUD Overlay may proceed directly to application for Project Development Plan(s) and Final Plan(s).

(D) PUD Comprehensive Plan Review Procedure.

Step 1 (Conceptual Review / Preliminary Design Review):
Applicable.

Step 2 (Neighborhood Meeting):
Applicable to any proposed PUD Overlay subject to Planning and Zoning Commission or City Council review. If a neighborhood meeting is required at the conceptual planning stage pursuant to Division 6.3, a second neighborhood meeting shall be required after the PUD Overlay application has been submitted and the first round of staff review completed.

Step 3 (Development Application Submittal):
All items or documents as described in the development application submittal master list for a PUD Overlay shall be submitted. Notwithstanding, the Director may waive or modify the foregoing submittal requirements if, given the facts and circumstances of the specific application, a particular requirement would either be irrelevant, immaterial, redundant or otherwise unnecessary for the full and complete review of the application.

Step 4 (Review of Application): Applicable.

Step 5 (Staff Report): Applicable.

Step 6 (Notice): Applicable.

Step 7(A) (Decision Maker):
Applicable as follows:

1. Planning and Zoning Commission review (Type 2 review) applies to PUD Overlay applications between 50 and 640 acres;

2. City Council is the decision maker for PUD Overlay applications greater than 640 acres after receiving a Planning and Zoning Commission recommendation. City Council approval of a PUD Overlay shall be by ordinance.

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

Step 8 (Standards):
Applicable. In order to approve a proposed PUD Comprehensive Plan, the decision maker must find that the PUD Comprehensive Plan satisfies all of the following criteria:

1. The PUD Comprehensive Plan achieves the purpose and objectives of Sections 2.6.3(A) and (B);

2. The PUD Comprehensive Plan provides high quality urban design within the subject property or properties;

3. The PUD Comprehensive Plan will result in development generally in compliance with the principles and policies of the City's Comprehensive Plan and adopted plans and policies;

4. The PUD Comprehensive Plan will, within the PUD Overlay, result in compatible design and use as well as public infrastructure and services, including public streets, sidewalks, drainage, trails, and utilities; and

5. The PUD Comprehensive Plan satisfies all applicable Land Use Code permitted uses and standards except to the extent additional permitted uses or modified standards, including densities, have been approved pursuant to Subsections (E) or (G) below.

The standards for granting additional uses within a PUD Overlay are set forth below in Subsection (E) and the standards for granting modifications of densities and development standards are set forth in below Subsection (G).

Step 9 (Conditions of Approval):
Applicable.

Step 10 (Amendments):
Applicable.

Step 11 (Lapse):

Applicable.

Step 12 (Appeals):
Applicable. A Planning and Zoning Commission decision on a PUD Overlay between 50 and 640 acres is appealable to City Council pursuant to Section 6.3.12(A). Appeals of Project Development Plans within PUD Overlays are subject to the limitations of Section 2.6.3(I).

(E) Permitted Uses.

1. Any uses permitted in the underlying zone district are permitted within an approved PUD Overlay.

2. Additional uses not permitted in the underlying zone district may be requested for inclusion in a PUD Comprehensive Plan along with the type of review for such use, whether Type I, Type II, or Basic Development Review. The application must enumerate the additional use being requested, the proposed type of review, and how the use satisfies below criteria (a) through (d). The decision maker shall approve an additional use only if it satisfies criteria (a) through (d). For each approved additional use, the decision maker shall determine the applicable type of review and may grant a requested type of review if it would not be contrary to the public good.

3. The use advances the purpose and objectives of the applicable PUD Overlay provisions set forth in Sections 2.6.3(A) and (B) and the principles and policies of the City's Comprehensive Plan and adopted plans and policies;

4. The use complies with applicable Code provisions regarding the natural environment, including but not limited to water, air, noise, storm water management, wildlife, vegetation, wetlands and the natural functioning of the environment;

5. The use is compatible with the other proposed uses within the requested PUD Overlay and with the uses permitted in the zone district or districts adjacent to the proposed PUD Overlay; and

6. The use is appropriate for the property or properties within the PUD Overlay.

(F) Prohibited Uses.
All uses that are not expressly allowed in an approved PUD Comprehensive Plan, in the underlying zone district, or determined to be permitted pursuant to Land Use Code Division 6.9 shall be prohibited.

(G) Modification of Densities and Development Standards.

1. Certain densities and development standards set forth in the Land Use Code and described below in Subsection (G)(2) may be modified as part of a PUD Comprehensive Plan. The modification procedure described in this Section (G) substitutes for the modification procedure set forth in Division 6.8.

2. The application must enumerate the densities and development standards proposed to be modified.

   a. The application shall describe the minimum and maximum densities for permitted residential uses.

   b. The application shall enumerate the specific Land Use Code standards of Articles 2 through 5 that are proposed to be modified and the nature of each modification in terms sufficiently specific to enable application of the modified standards to Project Development Plans and Final Plans submitted subsequent to, in conformance with and intended to implement, the approved PUD Comprehensive Plan. Modifications under this Section may not be granted for Engineering Design Standards referenced in Section 5.4.3 and variances to such standards are addressed below in Subsection (L).

3. In order to approve requested density or development standard modifications, the decision maker must find that the density or development standard as modified satisfies all of the following criteria:

   a. The modified density or development standard is consistent with the applicable purposes, and advances the applicable objectives of, the PUD Overlay as described in Sections 2.6.3(A) and (B);

   b. The modified density or development standard significantly advances the development objectives of the PUD Comprehensive Plan;

   c. The modified density or development standard is necessary to achieve the development objectives of the PUD Comprehensive Plan; and

   d. The modified density or development standard is consistent with the principles and policies of the City's Comprehensive Plan and adopted plans and policies.

(H) **PUD Comprehensive Plan Termination and Amendment.**

4. **Termination.**
   An approved PUD Comprehensive Plan may be terminated in accordance with the following provisions:

   a. Termination may be initiated by any of the following:

      I. The written request of all of the real property owners within a PUD Overlay; or

      II. The City, provided no vested property right approved in connection with the PUD Comprehensive Plan would be in effect upon termination.

   b. Upon receiving a valid request to terminate, the original decision maker of the PUD Comprehensive Plan shall terminate unless termination is determined to be detrimental to the public good after holding a public hearing to address the issue.

   c. If the PUD Comprehensive Plan is terminated, the City may remove the overlay designation on the zoning map and the underlying zone district regulations in effect at the time of such removal shall control.

   d. Any nonconforming uses resulting from expiration or termination of a PUD Comprehensive Plan are subject to Division 6.17.

5. PUD Comprehensive Plan Amendment. An approved PUD Comprehensive Plan may be amended pursuant to the procedures set forth in Section 6.3.10 in accordance with the following provisions:

   a. Amendments may be initiated by any of the following:

      I. The written request of all real property owners within the PUD Overlay; or

      II. The written request of the original applicant, property owner, and/or developer for the approved PUD Comprehensive Plan, or any successor or assign thereof authorized in writing by such party or parties to have the ability pursuant to this Subsection to request an amendment, provided the following conditions are met:

         i. The name or names of the original applicant, property owner, and/or developer authorized to request an amendment must be set forth in writing in the PUD Comprehensive Plan.

         ii. The authorized applicant, property owner, developer, or successor or assign, owns

or otherwise has legal control of real property within the PUD Overlay; and

iii. The right of the authorized applicant, property owner, developer, or successor or assign, to amend the PUD Comprehensive Plan without the consent of other owners of real property within the PUD Overlay has been recorded as a binding covenant or deed restriction recorded on the respective real property; or

III. The City, provided the amendment does not amend, modify, or terminate any existing vested right approved in connection with the PUD Comprehensive Plan without the permission of the beneficiary or beneficiaries of such vested right.

b. Except as to real property within the PUD Overlay owned or otherwise under the control of the authorized applicant, property owner, developer, or successor or assign, any approved amendment requested by the authorized applicant, property owner, developer, or successor or assign, shall not apply to any other real property within the PUD Overlay which:

I. Is already developed pursuant to the applicable PUD Comprehensive Plan;

II. Has a valid and approved Project Development Plan or Final Plan; or

III. Is the subject of ongoing development review at the time the authorized applicant, property owner, developer, or successor or assign amendment request is submitted to the City.

(I) **Appeals.**

1. A Planning and Zoning Commission final decision on a PUD Comprehensive Plan is appealable to Council pursuant to Section 6.3.12(A).

2. Any Project Development Plan wholly located within a PUD Overlay may be appealed pursuant to Section 6.3.12(A). However, the validity of the uses, densities, and development standards approved in a PUD Comprehensive Plan shall not be the subject of any such Project Development Plan appeal.

3. Vesting of PUD Comprehensive Plan. Subject to the provisions of Section 6.3.11(C), the only aspects of an approved PUD Comprehensive Plan eligible for vested property rights are the enumerated uses, densities, development standards, and variances from Engineering Design Standards granted pursuant to Section 2.6.3(K). Such uses, densities, and development standards may be those for which modifications have been granted or uses, densities, and development standards set forth in the Code. The applicant shall specify in the PUD Comprehensive Plan if it is requesting vested property rights for uses, densities, development standards, and variances from Engineering Design Standards in excess of the three (3) year period specified in Section 6.3.11(C)(2) and the justification therefor.

(J) **Vesting of PUD Comprehensive Plan.**
Subject to the provisions of Section 6.3.11(C), the only aspects of an approved PUD Master Plan eligible for vested property rights are the enumerated uses, densities, development standards, and variances from Engineering Design Standards granted pursuant to Section 2.6.3(K). Such uses, densities, and development standards may be those for which modifications have been granted or uses, densities, and development standards set forth in the Code. The applicant shall specify in the PUD Master Plan if it is requesting vested property rights for uses, densities, development standards, and

variances from Engineering Design Standards in excess of the three (3) year period specified in Section 6.3.11(C)(2) and the justification therefor.

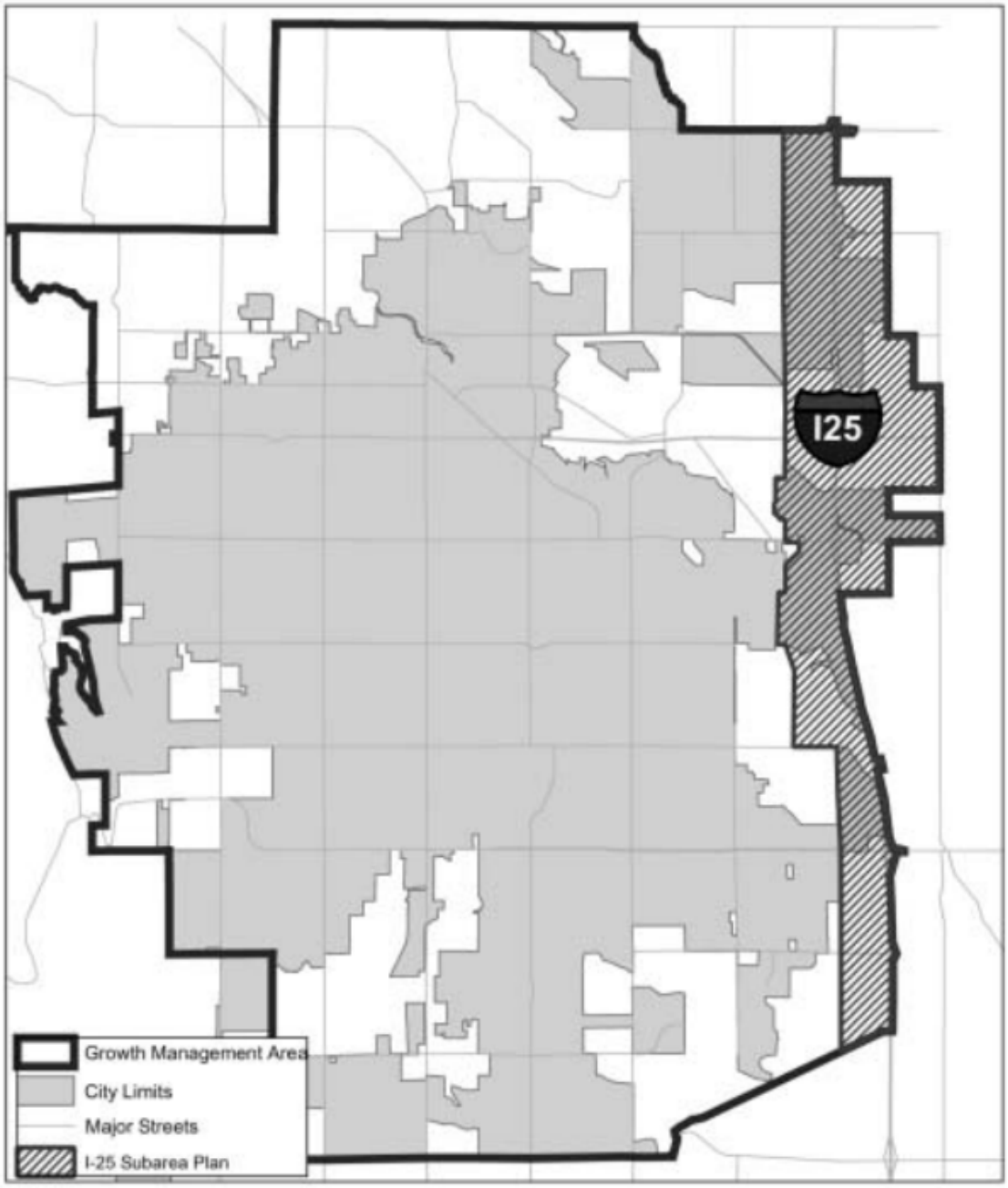
(K) **Variances.**

Variances from the Engineering Design Standards listed in Section 5.4.3, including variances from the Larimer County Area Urban Street Standards, may be requested in connection with a PUD Comprehensive Plan. A request for such variances shall be processed in accordance with and subject to the standards applicable to the variance. Variances so requested and approved prior to the approval of a PUD Comprehensive Plan may be incorporated into and approved as a part of the PUD Comprehensive Plan, and if so incorporated and approved, shall be applicable to Project Development Plans and Final Plans submitted subsequent to, in conformance with and intended to implement, the approved PUD Comprehensive Plan. The decision maker on the PUD Comprehensive Plan shall not have the authority to alter or condition any approved variance as part of the PUD Comprehensive Plan review. Variances may also be processed in connection with a Project Development Plan or Final Plan submitted subsequent to an approved PUD Comprehensive Plan.

SECTION 2.6.4 I-25 DEVELOPMENT STANDARDS

(A) Applicability.

The provisions contained in Section 2.6.4 shall apply to applications for development within the boundary of the I-25 Subarea Plan, and, to the extent that such provisions regulate Activity Centers, they shall also apply to the I-25/State Highway 392 Corridor Activity Center; and the provisions contained in Section 2.6.4(M) shall apply only to the I-25/State Highway 392 Corridor Activity Center.



(B) Purpose.

The purpose of this Section is to provide standards to implement the model standards outlined in the "Development Standards for the I-25 Corridor" and the "Fort Collins I-25 Corridor Subarea Plan," in addition to the standards contained elsewhere in this Land Use Code.

from I-

1. Development of new single-unit residential lots within one thousand three hundred twenty (1,320) feet (one-quarter [¼] mile) of

the centerline of Interstate Highway 25 (I-25) shall be prohibited. Exception: single-unit detached dwellings in the Rural Lands District (RUL) shall be exempt from this standard.

2. In the Urban Estate zone district, development that creates new single-unit residential lots located between one-quarter (¼) and one-half (½) mile from the centerline of I-25 shall utilize the clustering technique (as provided for in Section 2.1.2 of this Land Use Code for the Urban Estate District) in order to concentrate densities away from I-25, maximize views and preserve landscape features or open space.

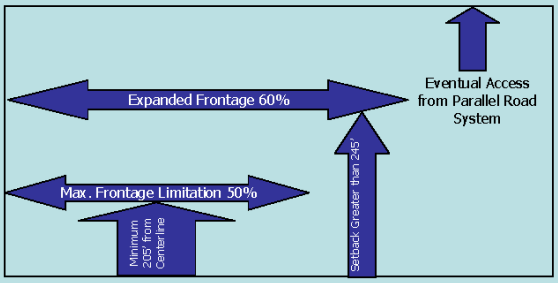
(D) **Building Placement Standards.**

1. Minimum setback of any building on a lot, tract or parcel of land adjoining the I-25 right-of-way shall be two hundred five (205) feet from the centerline of I-25.

2. Outside of I-25 activity centers, the placement of a building on a lot, tract or parcel of land adjoining the I-25 right-of-way where the building is located between two hundred five (205) feet and two hundred forty-five (245) feet from the centerline of I-25 shall be restricted so that no more than fifty (50) percent of the total frontage of the lot, tract or parcel of land is occupied by the building.

3. Outside of I-25 activity centers, the placement of a building on a lot, tract or parcel of land adjoining the I-25 right-of-way where the building is located more than two hundred forty-five (245) feet from the centerline of I-25 shall be restricted so that no more than sixty (60) percent of the total frontage of the lot, tract or parcel of land is occupied by the building.

Outside of Activity Centers maximum building frontage allowances are dependent upon setback distances from the I-25 Centerline.



(E) **Landscaping Standards.**

1. Parking Lot Perimeter Landscaping. At least seventy-five (75) percent of the perimeter of all parking areas shall be screened from nearby streets, public rights-of-way, public open space and nearby uses by at least one (1) of the following methods:

   a. A berm at least three (3) feet high with a maximum slope of 3:1 in combination with evergreen and deciduous trees and shrubs;

   b. A hedge at least three (3) feet high, consisting of a double row of shrubs readily capable of growing to form a hedge, planted three (3) feet on center in a triangular pattern;

   c. A decorative fence or wall between three (3) and four (4) feet in height in combination with landscaping including, without limitation, evergreen and deciduous trees and shrubs.

2. Site Perimeter Landscaping Abutting the I-25 Right-of-Way.

   a. Buffers abutting I-25. Developments with a site perimeter which is adjoining the I-25 right-of-way shall provide a landscaped buffer of at least eighty (80) feet between the building or parking lot edge and the I-25 right-of-way. The buffer shall consist of

informal clusters of deciduous and evergreen trees and shrubs planted in an offset pattern and shall consist of one (1) tree and ten (10) shrubs per twenty-five (25) lineal feet of frontage.

b. Berms. Berms greater than three (3) feet in height shall not be permitted adjoining the I-25 right-of-way if they block long-range views of mountains and open lands for motorists on I-25 (not including motorists on frontage roads or ramps). Notwithstanding this limitation, additional berm height may be required to screen the following areas visible to motorists on I-25: parking lots, drive-thru lanes, and service areas, including but not limited to, loading areas, service entrances, and trash and recycling enclosures.

c. Parking and Service Areas. When berms screening parking and service areas are less than five (5) feet in height, berms and surrounding landscape areas shall be planted with a minimum of eight (8) trees and eight (8) shrubs per one hundred (100) lineal feet. A minimum of fifty (50) percent of the required trees shall be evergreens.

d. Additional Screening Elements. In conjunction with the buffering, landscaping and berms, additional elements allowed within the 80-foot buffer may include screen walls in accordance with the provisions of Section 3.9.8(A), (B) and (C).

(F) Commercial Building Design Standards.

Roof Form

1. Roofs on principal structures with a building footprint of less than ten thousand (10,000) square feet shall:

   a. be pitched with a minimum slope of at least 5:12;

   b. incorporate the 5:12 pitch by use of a modified Mansard roof, covering a sufficient area of the roof so as to create the appearance that the Mansard roof covers the entire structure, and;

   c. incorporate at least one (1) of the following elements into the design for each fifty (50) lineal feet of roof:

      I. Projecting gables/dormers

      II. Hips

      III. Horizontal or vertical breaks

      IV. Three (3) or more roof planes

2. Roofs on structures with a footprint of greater than ten thousand (10,000) square feet shall have at least two (2) of the following features:

   a. Parapet walls featuring three-dimensional cornice treatment that at no point exceeds one-third (⅓) of the height of the supporting wall.

   b. Overhanging eaves, extending at least three (3) feet beyond the supporting walls.

   c. Sloping roofs not exceeding the average height of the supporting walls, with an average slope greater than or equal to one (1) foot of vertical rise for every one (1) foot of horizontal run.

   d. Three (3) or more roof slope planes.

Building Form/Façade Treatment

3. Buildings that face public streets, adjoining developments or connecting pedestrian frontage shall be articulated, fenestrated and proportioned to human scale along at least sixty (60) percent of the facade using features such as windows, entrances, arcades, arbors or awnings.

4. Building facades facing a primary access street shall have clearly defined, highly visible

customer entrances that feature at least two (2) of the following:

a. Canopies or porticos
b. Overhangs
c. Recesses or projections of at least three (3) percent of wall length
d. Arcades
e. Distinctive roof forms
f. Arches
g. Outdoor patios
h. Display windows
i. Planters or wing walls that incorporate landscaped areas and/or places for sitting

Materials and Colors

5. One (1) or more of the following building materials shall be incorporated into the design of a structure and used to provide visual interest at the sidewalk level for pedestrians:

a. Stucco
b. Brick
c. Stone
d. Tinted, textured masonry block

6. Smooth-faced gray concrete block and tilt-up concrete panels are prohibited.

7. Metal is prohibited as a primary exterior surface material. It may be used as trim material covering no more than ten (10) percent of the facade or as a roof material.

8. Facade colors shall only be earth tone colors with a low reflectance.

9. High-intensity primary colors are prohibited on any roof area visible from a public or private right-of-way or public open space

(G) Block Pattern for Activity Centers.

1. To the maximum extent feasible, larger sites containing multiple buildings and uses shall be composed of a series of urban-scale blocks of development defined and formed by streets or drives that provide links to nearby streets along the perimeter of the site.

2. Block sizes shall not exceed ten (10) acres for commercial development.

3. In addition to a network of streets and drives, blocks shall be connected by a system of parallel tree-lined sidewalks that adjoin the streets and drives combined with off-street connecting walkways so that there is a fully integrated and continuous pedestrian network.

4. To the maximum extent feasible, remote or independent pad sites, separated by their own parking lots and service drives, shall be minimized. Such buildings shall be directly connected to the pedestrian sidewalk network.

(H) Service Areas, Outdoor Storage and Mechanical Equipment.

1. Location. Loading docks, outdoor storage yards and all other service areas shall be located to the sides and/or rear of a building, except when a site abuts I-25, in which event said areas shall be located to the sides of the building that do not face I-25.

2. Screening.

a. All outdoor storage yards, loading docks, service areas and mechanical equipment or vents larger than eight (8) inches in diameter shall be concealed by screens at least as high as the equipment they hide, of a color and material matching or compatible with the dominant colors and materials found on the facades of the principal building. Chain link, with or without slats, shall not be used to satisfy this requirement.

b. Equipment that would remain visible despite screening, due to differences in topography (i.e., a site that is at a lower grade than surrounding roadways) shall be completely enclosed except for vents needed for air flow, in which event such

vents shall occupy no more than twenty-five (25) percent of the enclosure facade.

(I) Fencing and Walls.

1. Materials. Walls and fences shall be constructed of high-quality materials, such as tinted, textured blocks; brick; stone; treated wood; or ornamental metal; and shall complement the design of an overall development and its surroundings. The use of chain link fencing or exposed cinder block walls shall be prohibited.

2. Location. Fences and walls shall be set back at least six (6) feet from the back edge of an adjoining public sidewalk, and such setback area shall be landscaped with turf, shrubs and/or trees, using a variety of species to provide seasonal color and plant variety.

3. Maximum Length. The maximum length of continuous, unbroken and uninterrupted fence or wall plane shall be forty (40) feet. Breaks shall be provided through the use of columns, landscaping pockets, transparent sections and/or a change to different materials.

(J) Wireless Telecommunication.

1. Location. Wireless telecommunication facilities shall not be permitted within one thousand four hundred forty-five (1,445) feet of the centerline of I-25.

2. Height. Wireless telecommunication facilities shall not exceed the maximum height allowed for a structure as specified in the underlying zone district.

(K) Height.

1. Outside the I-25 activity centers, nonresidential building heights shall not exceed twenty (20) feet within two hundred twenty-five (225) feet of the centerline of I-25.

2. Outside the I-25 activity centers, nonresidential and residential building heights shall not exceed forty (40) feet between two hundred twenty-six (226) feet and seven hundred twenty-five (725) feet of the centerline of I-25.

3. Where existing site topography (whether natural or man-made) blocks views of the mountains or open lands from I-25, these height restrictions shall not apply.

(L) Minimum Residential Density in Activity Centers.

1. Minimum residential density in activity centers shall be twelve (12) dwelling units per gross acre.

(M) Corridor Activity Center Design Standards.

1. On any first floor building elevation that is visible from a public right-of-way, masonry materials limited to natural stone, synthetic stone, brick and concrete masonry units that are textured or split face, solely or in combination, shall be applied to cover from grade to the top of the entry feature of such elevation, or if there is no entry feature on any particular elevation, to a height that would be equivalent to the top of the first floor. For first floor building elevations not visible from a public right-of-way and on all upper stories, other exterior finish materials, including, but not limited to, synthetic stucco (E.I.F.S.), architectural metals, clay units, terra cotta, prefabricated brick panels or wood, can be applied in whole, or in combination with the masonry materials described above. For the purposes of this provision, architectural metals shall mean metal panel systems that are either coated or anodized; metal sheets with expressed seams; metal framing systems; or cut, stamped or cast ornamental metal panels, but not ribbed or corrugated metal panel systems. Standard concrete masonry units or tilt-up concrete with applied texturing are prohibited on any building elevation.

2. A roof pitch shall be required for buildings containing less than twenty-five thousand (25,000) square feet and having three (3)

stories or less. In cases where mechanical equipment must be mounted on the roof, a sloping mansard roof shall be allowed.

3. The maximum building height shall be ninety (90) feet.

4. All freestanding signs shall be ground signs and shall be limited to a maximum height of fourteen (14) feet along and perpendicular to I-25 and twelve (12) feet along and perpendicular to all other streets. Such ground signs shall be subject to all other requirements in Division 5.16.

ARTICLE 3

BUILDING TYPES

DIVISION 3.1 RESIDENTIAL BUILDING TYPES

SECTION 3.1.1

Mixed-Use

DESCRIPTION

In “mixed-use” buildings, there shall be a combination of retail, office, and/or residential spaces within one or several buildings. Mixed-use buildings are usually in more urban areas and can vary in their size and number of stories. A mixed-use building type can be identified by its approachable and pedestrian friendly look. The buildings may be farther away from the street with wider sidewalk areas, street plantings, or outdoor seating.

ZONE DISTRICTS

The following Zone Districts allow Mixed-Use building types:

- **LMN**
- **MMN**
- **HMN**
- **OT-C**
- **NC**
- **CC**
- **CCN**
- **CCR**
- **D**
- **CG**
- **CS**
- **CL**
- **HC**
- **E**
- **Overlay Districts**

BUILDING TYPE EXAMPLES

ColoProperty.com, IRES MLS

Myriad Condominiums, Dohn Construction

TMA CHA Architects

SECTION 3.1.1

Mixed-Use

BUILDING STANDARDS

BUILDING HEIGHT

Maximum	4-12 stories max.*	A
Affordable Housing Bonus	1-2 additional stories	B

*See Zone District standards for specific maximum height.

BUILD-TO LINES C

Smaller than Arterial	0'min. - 15' max.
On-Street Parking	0'min. - 15' max.
Arterial or larger	10'min. - 25'max.

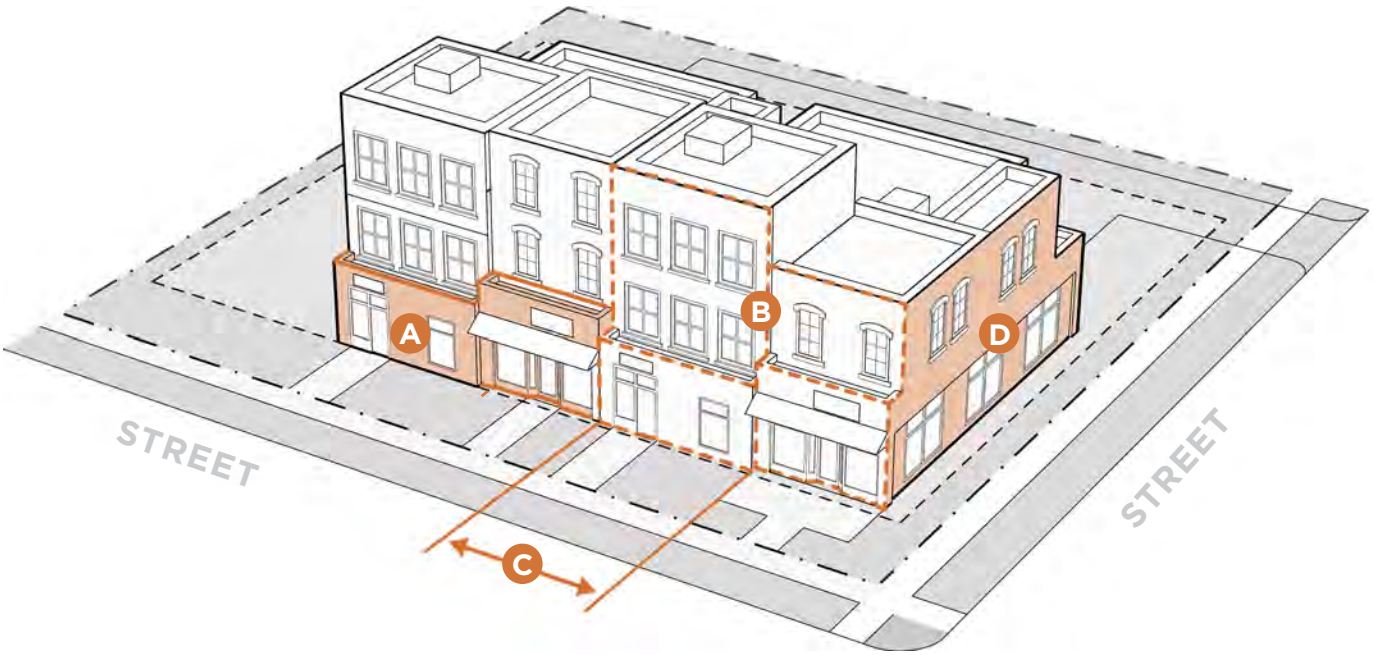
BUILD-TO LINE EXCEPTIONS

Plaza, courtyard, patio or garden	Landscaping, low walls, fencing or railings, a tree canopy and/ or other similar site improvements are required.
Easement	As required by the City to continue an established drainage channel or access drive, or other easement.
Contextual Build-To	A contextual build-to line may fall at any point between the required build-to line and the build-to line that exists on a lot that abuts, and is oriented to, the same street as the subject lot.

SECTION 3.1.1

Mixed-Use

MASSING & ARTICULATION



FACADE BASE (A)

All facades shall have a recognizable "base" consisting of (but not limited to):

- thicker walls, ledges or sills;
- textured materials such as stone or masonry;
- integrally colored and patterned materials such as smooth-finished stone or tile;
- lighter or darker colored materials;
- mullions or panels; and
- planters.

FACADE TOP (B)

All facades shall have a recognizable "top" consisting of (but not limited to):

- cornice treatments, other than just colored "stripes" or "bands," with integrally textured materials such as stone or other masonry or differently colored materials;
- sloping roof with overhangs and brackets; and
- stepped parapets.

MASSING

Building Bays* - Maximum Width	30′	(C)

Footprints over ten-thousand (10,000) sf shall incorporate recesses/projections with bays no wider than thirty (30) ft.

*Building bay is defined as at least two (2) of the following:

- change in plane;
- change in height;
- change in texture or masonry pattern, windows, treillage with vines; and/or
- an equivalent element that subdivides the wall into human scale proportions.

FOUR-SIDED DESIGN

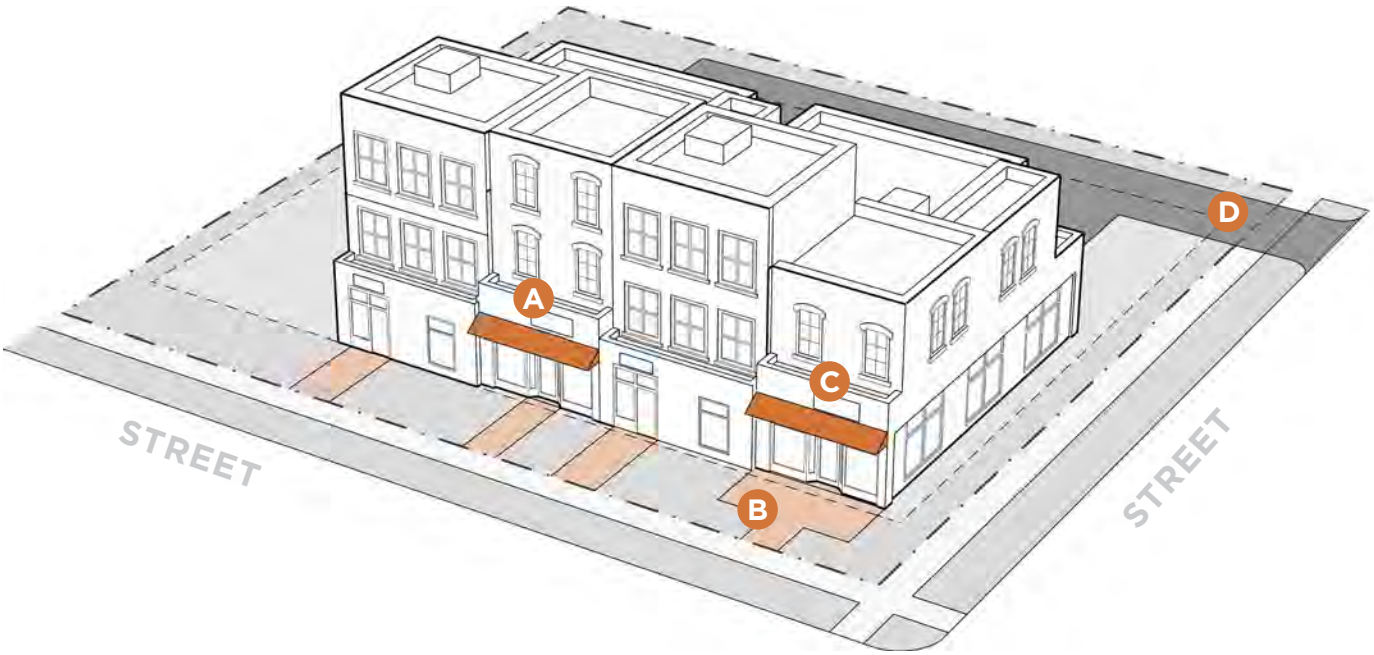
Building Materials	Consistent with Front of Building	(D)

*Standard also applies to rear facade..

SECTION 3.1.1

Mixed-Use

SITE ACCESS



ENTRYWAYS

Primary Entrance Features	Sheltering Element Required* (A)
Primary Entrance Orientation	Opens to a Connecting Walkway With Pedestrian Frontage** (B)
Awning Width	No shorter than Single Storefront (C)

*Includes clearly defined and recessed or framed element such as an awning, arcade, or portico to provide shelter.

**Buildings with vehicle bays and/or service doors for intermittent/infrequent nonpublic access to equipment, storage or similar rooms (e.g., self-serve car washes and self-serve mini-storage warehouses) are exempt from this standard.

WALKWAYS

Primary Function	Pedestrian Accommodation
Secondary Function	Vehicular Movement

VEHICULAR ACCESS & PARKING

Alley Access* **	Setback additional 15' min. from the building wall (D)
Off-Street Parking	Shall not be located any closer to a public street right-of-way than the principal building is set back from the street.

***Any new access must obtain access from an alley when present, unless proposed alley access is deemed hazardous by the City Engineer.

SECTION 3.1.2

Apartment Building

DESCRIPTION

An apartment building is a residential building that has three (3) or more housing units. Apartment buildings are typically medium to large in size because the units are placed side-by-side and/or stacked vertically. Apartment buildings have a variety of architectural styles but are usually at least 2 stories tall and have common entries that face the street.

ZONE DISTRICTS

The following Zone Districts allow Apartment building:

- LMN
- MMN
- HMN
- OT-C
- NC
- CC
- CCN
- CCR
- CG
- D
- HC
- CS
- CL
- E
- Overlay Districts

BUILDING TYPE EXAMPLES

ce, Fort Collins

SECTION 3.1.2

Apartment Building

BUILDING STANDARDS

BUILDING HEIGHT

Maximum	3 - 12 stories max.*	A
Affordable HousingBonus	1-2 additional stories	B

*See Zone District standards for specific maximum height.

CONTEXTUAL HEIGHT SETBACK C

Upper Story Setback*	25' min. upper story setback above 2 stories

*Only properties abutting a zone district with a lower maximum building height shall comply.

ROOF DESIGN E

Roof lines may be either sloped, flat or curved, but must include at least two (2) of the following:

- The primary roof line shall be articulated through a variation or terracing in height, detailing and/or change in massing.
- Secondary roofs shall transition over entrances, porches, garages, dormers, towers or other architectural projections.
- Offsets in roof planes shall be a minimum of two (2) feet in the vertical plane.
- Termination at the top of flat roof parapets shall be articulated by design details and/or changes in materials and color.
- Rooftop equipment shall be hidden from view by incorporating equipment screens of compatible design and materials.

SECTION 3.1.2

Apartment Building

BUILDING STANDARDS

FACADES & WALLS

Building Facade Articulation*	Required when 40′ or more (D)

***Facade articulation can be accomplished by:**

- Covered doorways, balconies, covered box or bay windows, and/or other similar features;
- Offsetting the floor plan;
- Recessing or projection of design elements;
- Change in materials; and/or
- Change in contrasting colors.

MASSING (D)

- Massing, wall plane, and roof design proportions shall be similar to a detached house, so that larger buildings can be integrated into surrounding lower scale neighborhoods.
- Projections, recesses, covered doorways, balconies, covered box or bay windows and/or other similar features.
- Dividing large facades and walls into human-scaled proportions similar to the adjacent single- or two-family dwellings shall not have repetitive, monotonous undifferentiated wall planes.
- Horizontal and/or vertical elements that break up blank walls of forty (40) feet or longer.

PRIMARY ENTRANCES

Architectural Feature	Primary entrances shall include architectural features such as a porch, landing, portico, similar feature or landscaping.
Location	Primary entry(ies) shall be located on the street-facing facade. (G)

VEHICULAR ACCESS & PARKING (F)

Alley Access**	Setback additional 15’ min. from building wall.
Off-Street Parking	Shall not be located any closer to a public street right-of-way than the principal building is set back from the street.

**Any new access must obtain access from an alley when present, unless proposed alley access is deemed hazardous by the City Engineer.

SECTION 3.1.3

Cottage Court

DESCRIPTION

Cottage Court complexes are a grouping of residential units that are organized around a shared courtyard accessible to all residents. Some cottages face the street while others face towards the courtyard. The cottages are usually smaller in scale with friendly architectural styles that provide a neighborhood feel, such as porches or stoops for each residential unit.

ZONE DISTRICTS

The following Zone Districts allow cottage court building types:

- **LMN**
- **MMN**
- **OT**
- **HC**
- **E**
- **D**
- **Overlay Districts**

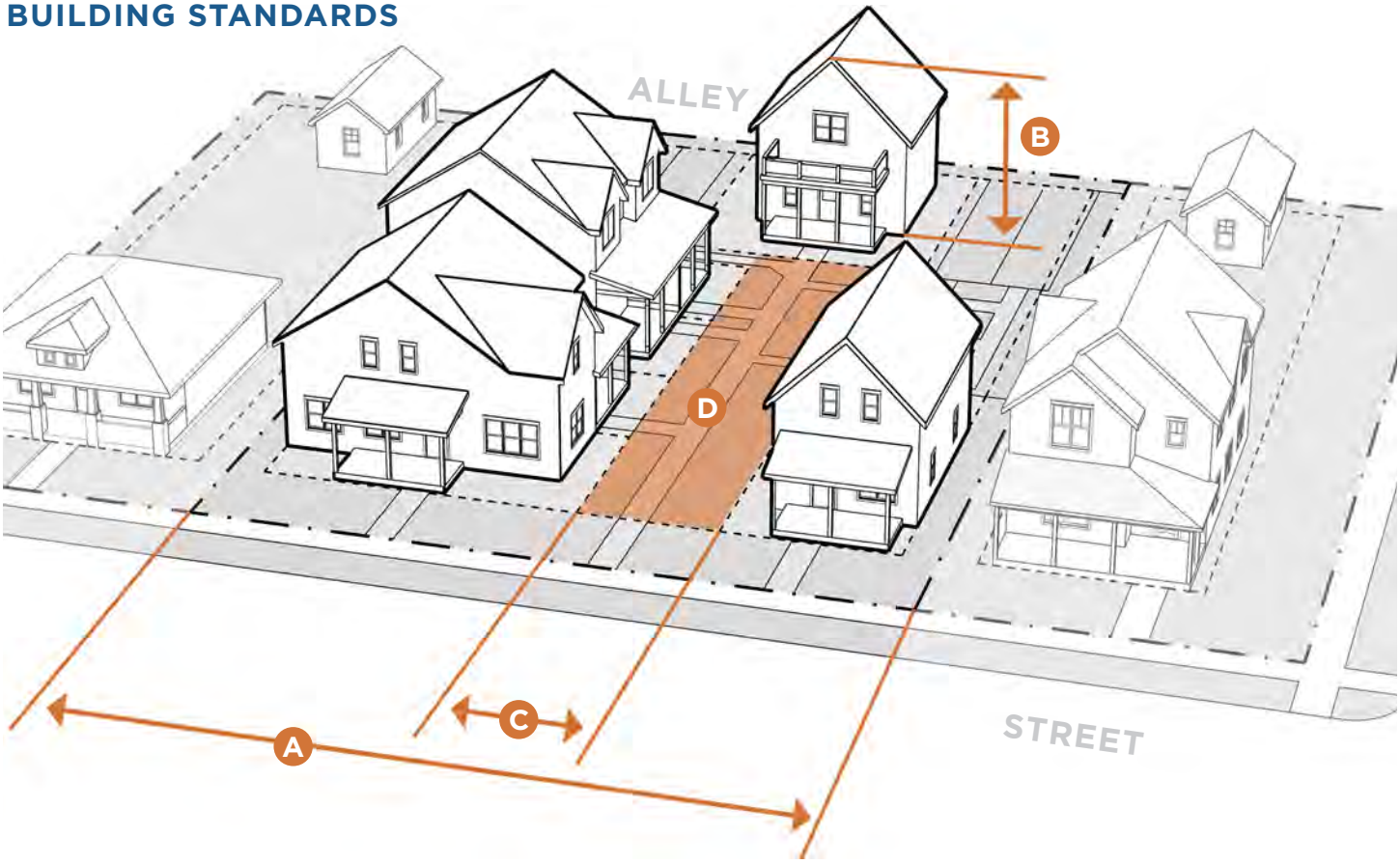
BUILDING TYPE EXAMPLES

rtesy of Ross Chapin Architects

SECTION 3.1.3

Cottage Court

BUILDING STANDARDS



LOT STANDARDS

Lot Area - Minimum (Prior to Subdivision)	9000 ft² min.
Lot Area / Unit - Minimum	1400 ft² min.
Lot Width - Minimum (Prior to Subdivision)	100′ min. A

DWELLING UNITS

# of Dwelling Units	3 - 12 max.
Distance between units	10′ min.

FLOOR AREA (Maximum)

Cottage	1200-1500 sf on average

BUILDING MASS

Building Height - Maximum	1.5 - 2.5 stories / 26 - 32′ max.* B
Eave Height - Maximum	13′ - 18′ max.*

*See Zone District standards for specific maximum height.

COMMON COURT

Court Width - Minimum	16′ min.* C
Court Area - Minimum	800 ft² min. D

*Along frontage line.

SECTION 3.1.3

Cottage Court

SITE ACCESS

ENTRANCES

Primary Entrance Orientation*	Toward street or shared court
Architectural Features	Required
Single-Unit Detached	6′ deep min. x 8′ length min. A
Single-Unit Attached	4′ x 4′ min. covered porch or stoop required** B

*For new construction on rear area of a lot that consists of frontage on two (2) streets and an alley, frontage shall face street.

**Porch Depth is as measured from the building facade to the posts, railings and spindles.

ACESSS & CIRCULATION

Walkways	Shared pathways C
Off-Street Parking - Alley Access	Behind street fronting dweilling
Off-Street Parking - No-Alley Access	12′ max. driveway width, 1 driveway / lot D
Parking Ratio per number of bedrooms	1 or less br: 1.0 2 br: 1.50 3 br: 2.00 4 br: 2.50 E

- Off-street parking area shall be prohibited within the court.

SECTION 3.1.4

Rowhouse

BUILDING STANDARDS

A rowhouse consists of 2-8 residential units that are placed side-by-side and share walls. Rowhouses are typically narrow and 2-3.5 stories tall, with each home having its own entrance that usually faces the street. It is common for homes in rowhouses to have porches and some may have an attached or detached garage behind each unit.

ZONE DISTRICTS

The following Zone Districts allow Rowhouse building types:

- **UE**
- **LMN**
- **MMN**
- **HMN**
- **OT-B**
- **NC**
- **D**
- **CC**
- **CCN**
- **CCR**
- **CG**
- **CS**
- **CL**
- **HC**
- **E**

BUILDING TYPE EXAMPLES

uilders

CG Architect

SECTION 3.1.4

Rowhouse

BUILDING STANDARDS

LOT STANDARDS

Lot Area / Unit	1400 ft² min.
Lot Width - Minimum	15′ min. A
Private Outdoor Space*	12′ x 18′ / unit

*Clearly defined space such as a patio, courtyard or deck.

BUILDING MASS

Building Height - Maximum	2-3.5 Stories** B
# of Rowhouse Groupings	2 - 8 max.***
Building Orientation	Front faces street ****

**See Zone Distrcit standards for max. height.
***Maximum is dependent on Zone District standards.
****ower side of unit faces the street.

ROOF DESIGN

Roof lines may be either sloped, flat or curved, but must include at least two (2) of the following elements:

- The primary roof line shall be articulated through a variation or terracing in height, detailing and/or change in massing.
- Secondary roofs shall transition over entrances, porches, garages, dormers, towers or other architectural projections.
- Offsets in roof planes shall be a minimum of two (2) feet in the vertical plane.
- Termination at the top of flat roof parapets shall be articulated by design details and/or changes in materials and color.
- Rooftop equipment shall be hidden from view by incorporating equipment screens of compatible design and materials.

SECTION 3.1.4

Rowhouse

SITE ACCESS

ACESSS & CIRCULATION

Off-Street Parking - Alley Access	Behind dwelling (A)
Off-Street Parking - No-Alley Access	12′ max. driveway width

- Off Street Parking area shall not be visible from the street or shared court the primary entrance faces.

ENTRANCES (B)

Primary Entrance Orientation	Toward street or shared court
Architectural Features	Required
Porch Dimensions	6′ deep min. x 8′ length min.

- For new construction on rear area of a lot that consists of frontage on two (2) streets and an alley, frontage shall face street.
- Architectural features include porch, portico or similar feature.
- Porch Depth is as measured from the building facade to the posts, railings and spindles

SECTION 3.1.5

Duplex

DESCRIPTION

A duplex consists of one building with two (2) side-by-side residential units that both face the street or two (2) units that are stacked vertically. A duplex is commonly 1.5 to 2 stories and usually features porches, stoops, and pitched roofs, so it can look like a medium to large detached house and fit in well with single-unit neighborhoods. Other types of duplexes may not face the street, such as over-the-garage duplexes or basement duplexes.

ZONE DISTRICTS

The following Zone Districts allow Duplex building types:

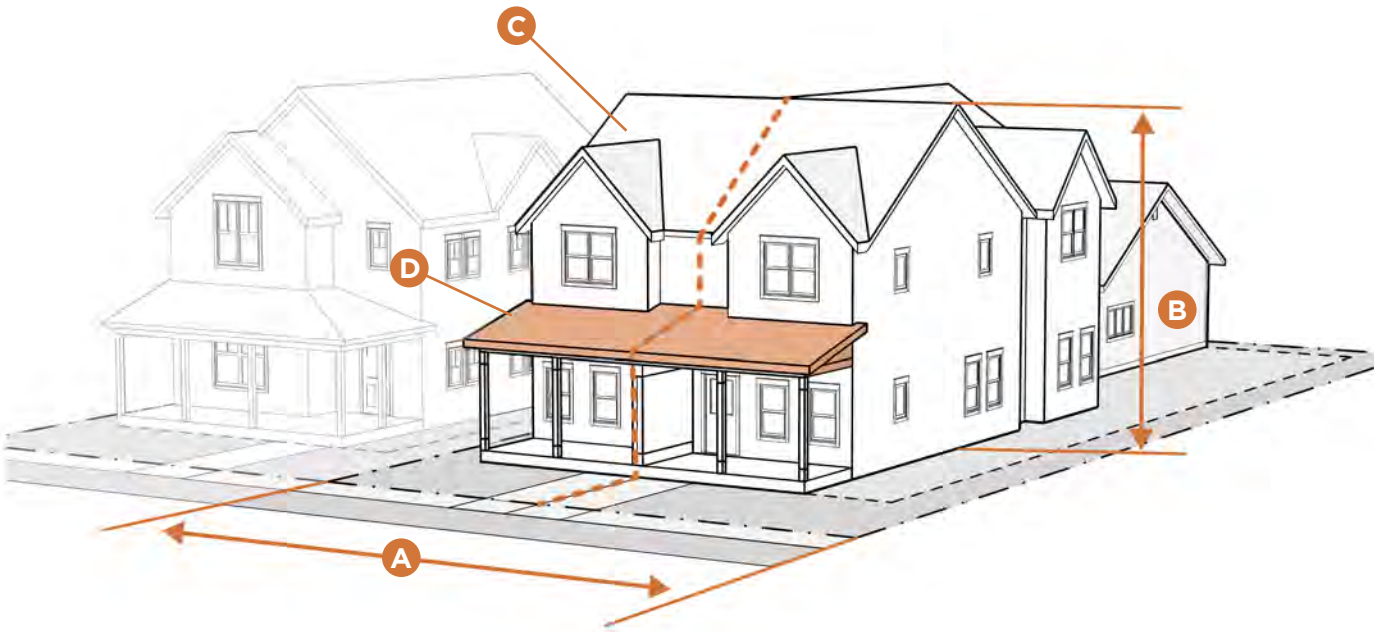
- LMN
- MMN
- OT
- NC
- CC
- CCN
- CCR
- CG
- CS
- CL
- HC
- E

BUILDING TYPE EXAMPLES

SECTION 3.1.5

Duplex

BUILDING STANDARDS



LOT STANDARDS

Lot Size - Minimum	4500 ft²
Lot Width - Minimum	40′ min. A
Floor Area - Maximum	1500 ft² / unit
Private Outdoor Space*	12′ x 18′ / unit

*Clearly defined space such as a patio, courtyard or deck

BUILDING MASS

Building Height - Maximum	35′** B
# of Duplex Groupings	3 - 6 max.
Building Orientation	Front faces street or shared court

- A second floor shall not overhang the lower front or side exterior walls of a new or existing building.

**See Zone District standards for specific maximum height.

ROOF DESIGN C

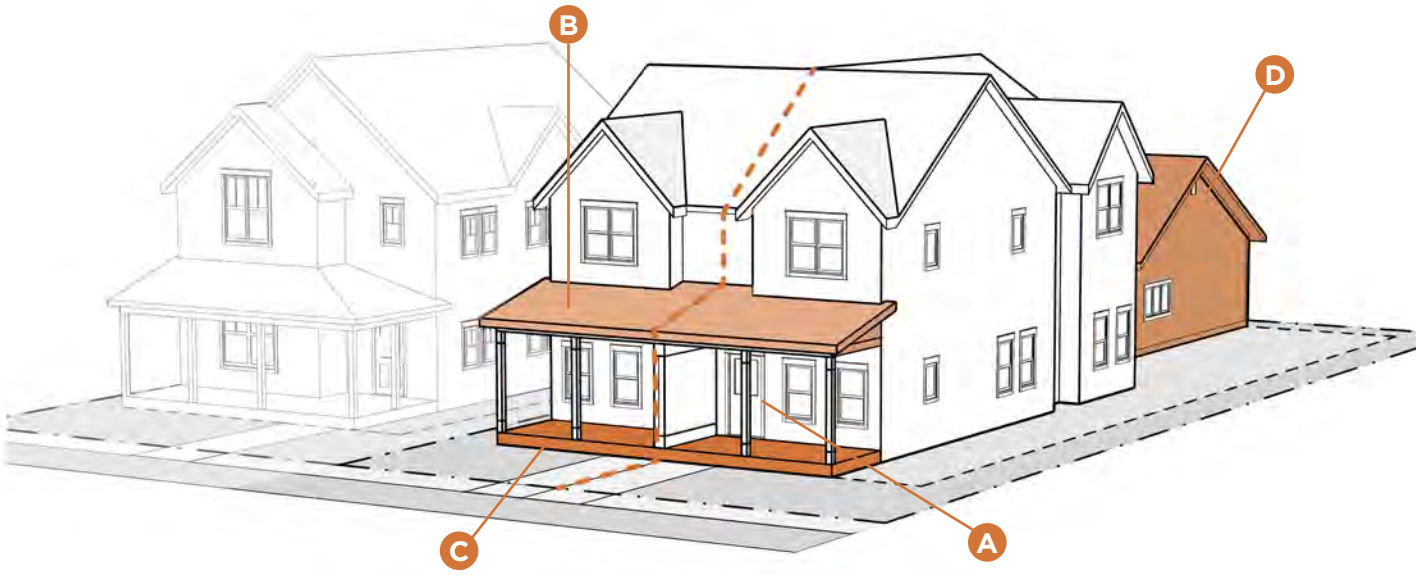
Roof Pitch - Minimum	2:12
Roof Pitch - Maximum	12:12
Roof Pitch - Architectural Features	24:12*** D

***Covered porch may be flat whenever the roof of such a porch is also considered to be the floor of a second-story deck.

SECTION 3.1.5

Duplex

SITE ACCESS



ENTRANCES

Private Entrance for Individual Units	Min. of one entry required to orient toward street; may be shared entry for stacked units. A
Architectural Features	Required
Shared Front Porch	6′ deep min. x 8′ length min. B
Individual Entry Feature	4′ x 4′ min. covered ground-floor stoop C

- Entrances must be visible from the street or shared court.
- Architectural features include porch, portico or similar feature. Covered porch may be flat whenevr the roof of such porch is also considered to be the floor of a second-story deck.
- Porch Depth is as measured from the building facade to the posts, railings and spindles.

ACESSS & CIRCULATION

Off-Street Parking - Alley Access	Behind dwelling D
Street-Facing Garage Setback*	Recessed 4′ behind a porch or front facade
Off-Street Parking - No-Alley Access*	12′ max. driveway width

* Allowed only when there is no alley access.

SECTION 3.1.6

Detached House, Urban

DESCRIPTION

An urban detached house is a small to medium-sized 1-2 story home on a single lot located in established neighborhoods. Most have one main entrance and often attached or detached garages. Urban detached houses are distinct in that they are usually on smaller lots, and within walking distance to key amenities and services.

ZONE DISTRICTS

The following Zone Districts allow Detached House, Urban building:

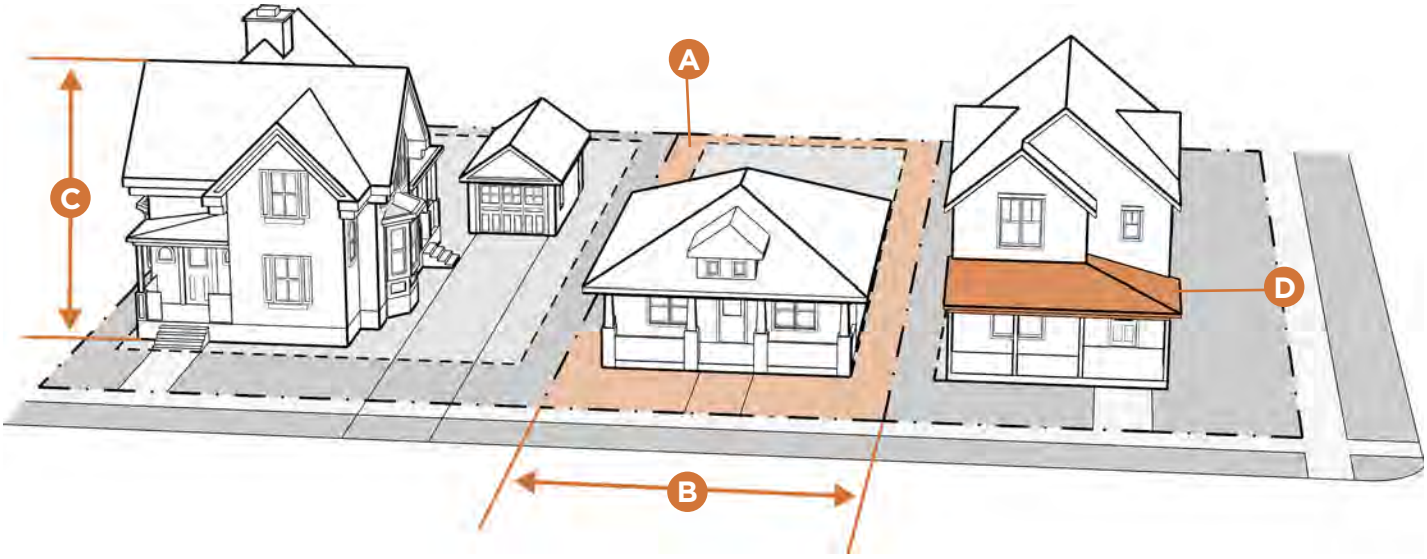
- OT
- LMN
- MMN
- RL
- RF
- RUL
- MH
- HC
- CL
- CS
- CCR
- CCN

BUILDING TYPE EXAMPLES

SECTION 3.1.6

Detached House, Urban

BUILDING STANDARDS



LOT STANDARDS*

Lot Size - Minimum	3000 ft²	A
Lot Width - Minimum	40′ min.	B

*Lot standards may vary from dimensions stated here if part of a larger development and consistent with density requirements.

FRONT YARD FENCES

Opacity	60% min.
Height	2.5’ min. - 3’ max.
Prohibited Materials	Chain Link

ROOF DESIGN

Roof Pitch - Minimum**	2:12	
Roof Pitch - Maximum	12:12	
Roof Pitch - Architectural Features	24:12***	D

**Only applies in the OT zone district.
***Covered porch may be flat whenever the roof of such a porch is also considered to be the floor of a second-story deck.

OFF-STREET PARKING

Alley Access	Behind dwelling
No-Alley Access	12′ max. driveway width

BUILDING MASS

Building Height - Maximum	35′****	C
Building Orientation	Front faces street	

A second floor shall not overhang the lower front or side exterior walls of a new or existing building.

****See Zone District standards for specific maximum height.

Detached House, Urban

SITE ACCESS

ENTRANCES

Primary Entrance Orientation	Towards front wall of building*
Architectural Features	Required A
Porch Dimensions	6′ deep min. x 8′ length min. B

*Unless required for handicap access.

OFF-STREET PARKING

Alley Access	Behind dwelling
No-Alley Access	12′ max. driveway width C

- Except in RL, the maximum driveway width is 18′.

SECTION 3.1.7

Detached House, Suburban

DESCRIPTION

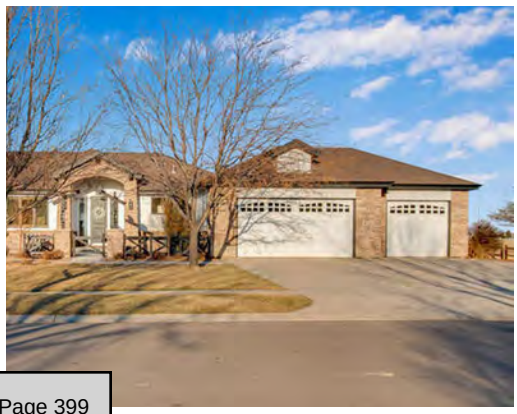
A suburban detached house is a small to medium-sized 1-2 story home on a single lot located in established neighborhoods. Most have one main entrance and often attached or detached garages. Suburban detached houses make up a large portion of Fort Collin's current single-unit residential areas.

ZONE DISTRICTS

The following Zone Districts allow Detached House, Suburban building type:

- OT
- LMN
- MMN
- RL
- RF
- UE
- RUL
- MH
- CCN
- CCR
- CG
- CS
- CL
- HC
- E

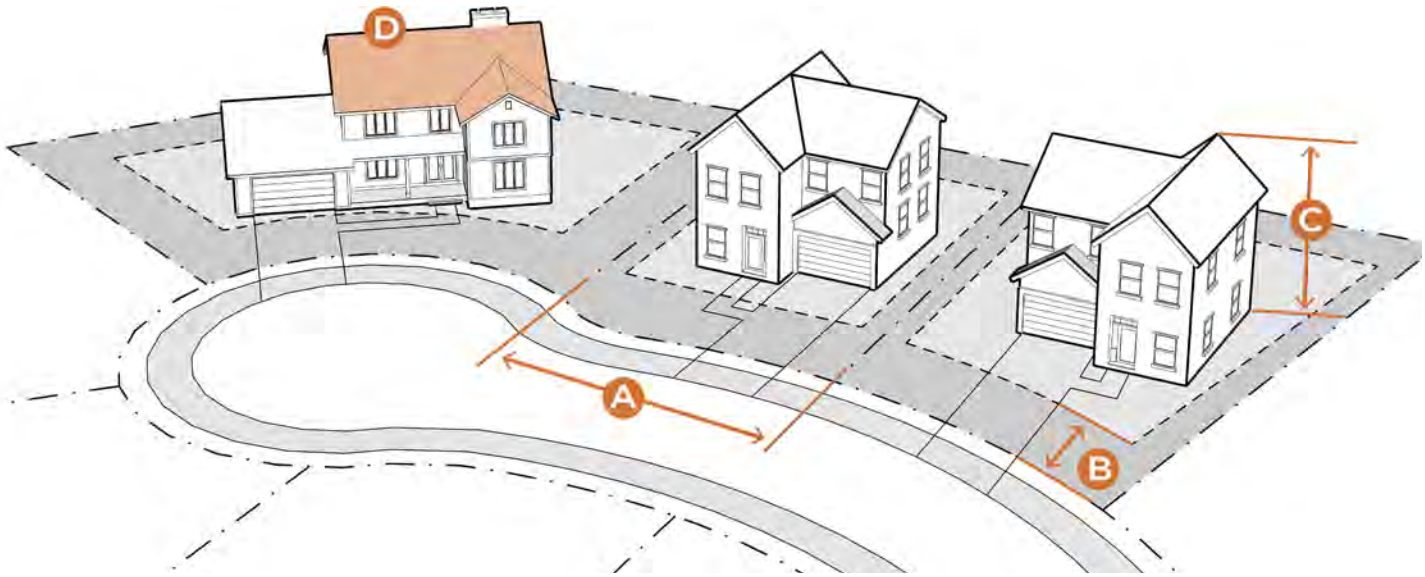
BUILDING TYPE EXAMPLES



SECTION 3.1.7

Detached House, Suburban

BUILDING STANDARDS



LOT STANDARDS

Lot Area	3000 ft^2 min.*
Lot Width**	60' min. A
Front Setback**	20' B
Rear Setback**	15'
Rear Setback, Alley-Accessed Garages**	6'
Residential Use - Side Setback**	Corner Lot - 15' min. Interior Lot - 5' min.

*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.
**Except in OT, the standards in this zone district apply.

BUILDING HEIGHT

Maximum	28' Max.*** C

***See Zone District standards for specific maximum height.

ROOF DESIGN D

Roof Pitch - Minimum****	2:12
Roof Pitch - Maximum	12:12

******Only applies in the OT zone district.

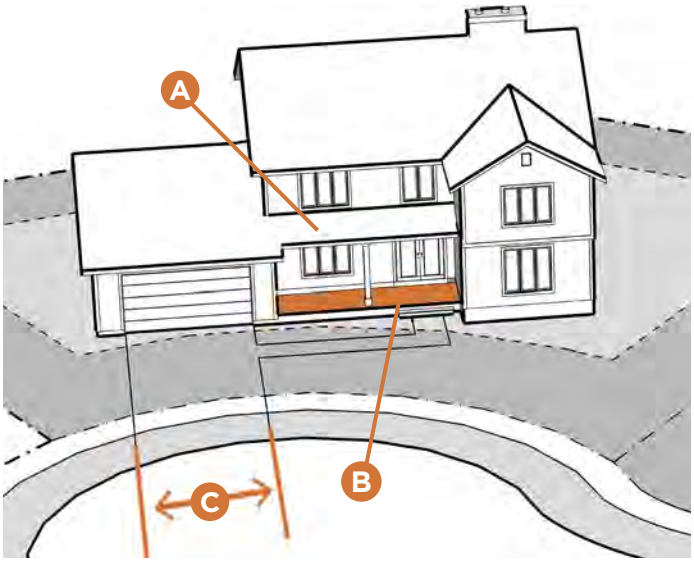
MASSING

A second floor shall not overhang the lower front or side exterior walls of a new or existing building.

SECTION 3.1.7

Detached House, Suburban

SITE DESIGN



ENTRANCES

Primary Entrance Orientation	Towards front wall of building*
Architectural Features	Required by District A
Porch Dimensions**	6′ deep min. x 8′ length min. B

*Unless required for handicap access.
**When required by zone district.

ACESSS & CIRCULATION

Off-Street Parking	12′ max. driveway width C

- Except in RL, the maximum driveway width is 18′.

GARAGE LOCATION

Street-Facing Garage Setback	Recessed 4′ behind a porch or front facade

SECTION 3.1.8

Detached Accessory Structure

DESCRIPTION

- Free-standing structure
- Does not include a dwelling unit
- Unattached to proposed or existing primary dwelling
- Does not share a common wall with primary dwelling
- New construction or built from existing detached accessory building
- Max. square footage
- Compliments primary dwelling (architecture, building materials)

ZONE DISTRICTS

All Zone Districts that permit single-unit and two-unit uses.

BUILDING STANDARDS

ACCESSORY BUILDING FLOOR AREA

OT zone district	**Any parcel**	600 ft² max.
All other zone districts	**Parcels < 20,000 sf**	800 ft² max.
	Parcels > 20,000 sf < 1 acre	1,200 ft² max.
	Parcels > 1 acre	6% ft² max.

ACCESSORY BUILDING SETBACKS

Setback from Primary Dwelling	5' min.
Side & Rear Setback	Per Zone District standards

ACCESSORY BUILDING HEIGHT (Maximum)

Accessory Building	24' max. A
Bulk Plane	Per Zone District standards

SECTION 3.1.9
BUILDING TYPE:

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 compliments the primary dwelling (architecture, building materials)
- ADUs may came come in one of two varieties:
  - Detached
  - Attached

ZONE DISTRICTS

Allowed in all zone districts where there is an existing:

- detached house;
- duplex; or
- non-residential use operating in a detached house.

BUILDING TYPE EXAMPLES

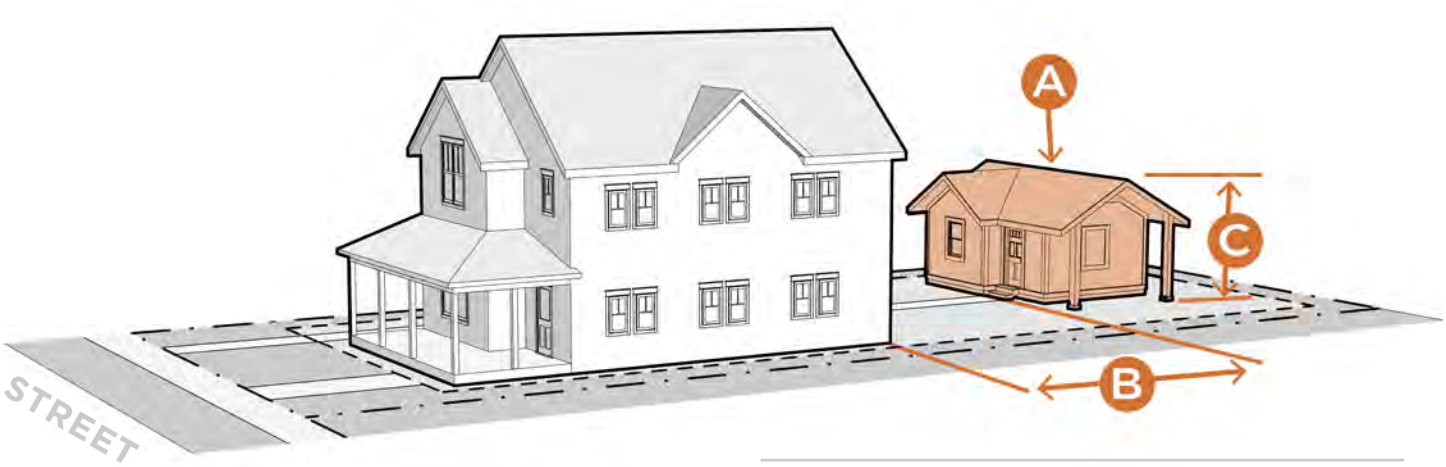
nmer & Hand, Designed by Polyphon Architecture & Design
Bottom Photo: Studio Shed

Photo: Troy Thies for Ben Quie & Sons

SECTION 3.1.9

BUILDING TYPE:

Accessory Dwelling Unit, Detached



BUILDING STANDARDS:

Accessory Dwelling Unit (ADU), detached (A)

- Free-standing structure
- Unattached to proposed or existing primary dwelling
- Does not share a common wall or roof with primary dwelling
- Behind front wall of primary dwelling
- May include garage, shed or other accessory space

Detached ADU SETBACKS	
ADU detached, Setback from Primary Dwelling	5' min. (B)
Side & Rear Setback	Per Zone District standards

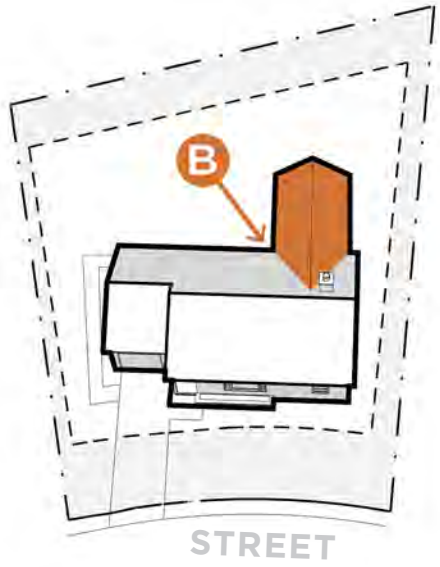
Detached ADU HEIGHT (Maximum)	
ADU Height	1.5 stories /28' max. or per Zone District standard (C)

Detached ADU FLOOR AREA			
Detached ADU with or without non-habitable space (Rear Lot)	New construction	Primary Building $\leq$ 1,335 ft^2	600 ft^2 max.*
		Primary Building > 1,335 ft^2	1,000 ft^2 max. / or 45% of primary dwelling unit. (whichever is less)*
	Existing accessory structure**		800 ft^2 max.***

*Max. floor Area includes garage, shed or other accessory space. **Legal structure upon the adoption of the LUC. ***Does not include non-habitable space.

SECTION 3.1.9
BUILDING TYPE:

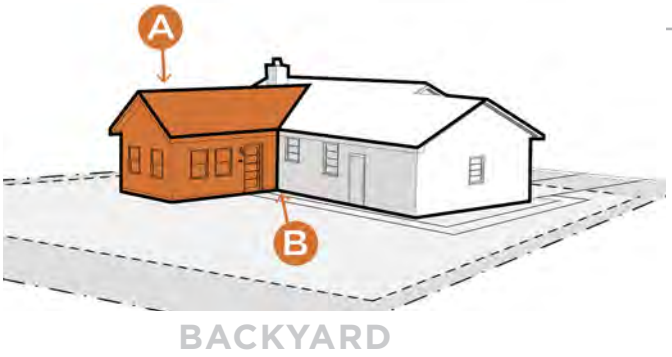
Accessory Dwelling Unit, Attached



BUILDING STANDARDS:

Accessory Dwelling Unit (ADU), attached

A Attached to the existing primary dwelling
B Shares at minimum one (1) common wall with primary dwelling



Attached ADU SETBACKS	
Side & Rear Setback	Per Zone District standards

Attached ADU HEIGHT (Maximum)	
ADU Height	No taller than the Primary Dwelling
Bulk Plane	Per Zone District standards

ADU FLOOR AREA		
Attached ADU	Located on a floor level at or above grade	45% of primary dwelling unit
	located on floor level below grade	100% of the floor level

SECTION 3.1.10

Residential Cluster

DESCRIPTION

In a residential cluster lot sizes may be reduced in order to cluster the dwellings together on a portion of the property, with the remainder of the property permanently preserved as privately owned open space. A Residentail Cluster may include the following other building types Detached House, Duplex, Cottage Court, Rowhouse, or ADU.

ZONE DISTRICTS

The following Zone Districts allow Residential Cluster building type:

- **UE**
- **RF**
- **RUL**

DESIGN STANDARDS

(A) Street Connectivity and Design. The layout and design of any new streets shall emphasize characteristics and views of the open-landscape. To the maximum extent feasible, streets shall be designed to minimize the amount of site disturbance caused by roadway and associated grading required for their construction by utilizing special street design characteristics such as divided lanes, landscape islands and landscape solutions to drainage instead of standard curb and gutter (so that storm water runoff is directed into open swales and ditches). Local and residential access roads shall be designed without curbs and gutters unless deemed necessary for health and safety by the City Engineer.

(B) Fossli Creek Reservoir Resource Management Area. In the Fossil Creek Reservoir Resource Management Area clustering shall be required for residential development.

(C) Site Design for Residential Cluster Development. In a cluster development, lot sizes and widths may be reduced in order to group the dwellings together. The precentage of the developement that includes residential uses and the precentage required to be preserved as privately owned open space can be found in the following table.

Portion of Development Used for Residential Cluster

Zone District	Cluster Maximum	Open Space (Privately Owned) Minimum
UE	50%	50%
RUL	20%	80%
RF	50%	50%

(1) The private open space of the proposed development shall remain under private ownership, as protected by restrictive covenants for the benefit of the City, and/ or by maintaining existing dwellings and any outbuildings, protected by restrictive covenants binding upon either:

(a) existing residential owners;
(b) the residential homeowners' association if it owns such propert; or
(c) a nonprofit organization acceptable to the City, if it owns such property.

(2) The development plan shall include such restrictive provisions protected by restrictive covenants for the benefit of the City, proposed uses, and maintenance provisions as necessary to ensure the continuation of the private open space uses intended. The city may also require that the developer commit in the development agreement to maintain the open space.

SECTION 3.1.10

Residential Cluster

(3) Setbacks

Setbacks for attached, detached 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
Detached Accessory	Behind primary building	5′ min	15′ min	8′ min

(4) Outbuildings relating to agricultural use are allowed to remain and, if included, shall be applied toward the total allowed residential density in the development.

(5) Dwelling Units. The maximum number of dwellings are indicated in the following table.

Units per Acres in a Residential Cluster

Zone District	Max. Dweiling Units	Acres
UE	2	1
RUL	1	10
RF	1	1

(D) The design of the cluster development shall be appropriate for the site, as demonstrated by meeting all of the following criteria:

(1) The preservation of significant natural resources, wildlife habitat, natural areas and features such as drainage swales, rock outcroppings and slopes, native vegetation, open lands or agricultural property through maintenance of large, contiguous blocks of land and other techniques. Residual land shall be designed to achieve the maximum amount of contiguous open space possible, while avoiding the creation of small, isolated and unusable areas.

(2) The provision of additional amenities such as trails, common areas or access to public recreational areas and open space. Residual lands shall not include any street rights-of-way or parking areas.

(3) The protection of adjacent residential development through landscaping, screening, fencing, buffering or similar measures.

(4) The layout of lots to conform to terrain and minimize grading and filling, including the preservation of natural features such as drainage swales, rock outcroppings and slopes.

(5) The indication of any areas where Farm Animals will be allowed, including any mitigation features needed to buffer these areas from surrounding uses.

ARTICLE 4

USE STANDARDS

INDEX

ARTICLE 4
USE STANDARDS

DIVISION 4.1 PURPOSE

This Article classifies the uses allowed by zone district in order to identify the activities that support the health, safety, and welfare of the people that live and work in all areas of Fort Collins. This Article also includes standards that may apply to a specific use.

DIVISION 4.2 TABLE OF PRIMARY USES

All uses that are not (1) expressly allowed as permitted uses in this Section or (2) determined to be permitted by the Director or the Planning and Zoning Commission pursuant to this Code are prohibited.

	RESIDENTIAL DISTRICTS						MIXED-USE DISTRICTS					COMMERCIAL DISTRICTS									DOWNTOWN DISTRICTS						EMPLOYMENT, INDUSTRIAL, OTHER				
	RUL	UE	RF	RL	OT-A	MH	LMN	MMN	HMN	OT-B	OT-C	CC	CCN	CCR	CG	CG-CAC	CS	NC	CL (RA)	CL (OA)	HC	H. CORE	CA/C /NM	I/R	RC	CN	EC	E	I	POL	T	
RESIDENTIAL USES																																
Single Unit Dwelling	◪	◪	▨	◪	■		◪	◪		■	■		◪	▨			◪		■	■	▨						■	▨				⚠
Single Unit Attached Dwelling		◪					◪	◪		▨	◪	◪	◪	◪	◪		◪	◪	■	■	▨		◪	◪		◪	■/■	▨				⚠
Two Unit Dwelling		◪			◪		◪	◪		▨	◪	◪	◪	◪	◪		◪	◪	■	■	▨		◪			◪	■/■	▨				
Multi-Unit Dwelling					◪		▨	▨	▨	▨	▨	◪	◪	◪	◪		◪	◪	◪	▨	▨	■/■	◪	◪		◪	▨	▨				
Mixed-Use Dwelling Units							◪	▨	▨		▨	▨	▨	▨	▨	▨	▨	▨	▨	▨	▨	■	◪	◪		◪	◪	▨				
Accessory Dwelling Unit	■	■	■	■	◪		■	■	■	◪	◪	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■			
Short Term Primary Rentals		▣					▣	▣	▣	▣	▣	▣	▣	▣	▣	▣	▣		▣	▣	▣	▣	▣	▣		▣	▣	▣	▣			
Short Term Non-Primary Rentals													▣	▣	▣	▣	▣		▣	▣	▣	▣	▣	▣		▣	▣	▣	▣			
Fraternity & Sorority Houses								▨	◪		▨	▨		▨					■	◪											
Extra Occupancy Houses						◪	◪	■	■		■	■	■	■	■		■	■	■	■		■/■	■/■	■/■		■/■	■/■	■	■			⚠
Manufactured Housing Community						◪	▨																					▨				⚠
Group Homes		◪	▨	▨	▨	◪	◪	◪	◪	◪	◪	◪	◪	◪	◪	▨	◪	◪	■	◪	▨	◪	▨	▨		◪	◪	▨				⚠
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

	RESIDENTIAL DISTRICTS						MIXED-USE DISTRICTS					COMMERCIAL DISTRICTS										DOWNTOWN DISTRICTS						EMPLOYMENT, INDUSTRIAL, OTHER				
	RUL	UE	RF	RL	OT-A	MH	LMN	MMN	HMN	OT-B	OT-C	CC	CCN	CCR	CG	CG-CAC	CS	NC	CL (RA)	CL (OA)	HC	H. CORE	CA/C /NM	I/R	RC	CN	EC	E	I	POL	T	
COMMERCIAL/RETAIL USES																																
Adult oriented uses																													▨			
Adult day/respite care center		▨		▨		◪	◪	◪	◪	■	■	◪	◪	◪	▨		◪	◪	■	■	◪	◪	◪	◪		◪	◪	◪	▨			
Animal Boarding	◪	▨																		▨									▨			
Artisan and photography studios and galleries							▨	◪	◪			◪	◪	◪	◪		◪	◪		◪		■/■	◪	◪		◪	◪	▨	◪			⚠
Bars, taverns												◪	◪		◪		◪	▨	◪	◪		■/■	◪	◪		◪	◪	◪	▨			
Night clubs												▨					◪	▨				■/■	▨	▨		▨	▨					
Bed & breakfast establishments		▨					◪	◪	◪	▨	■	◪	◪	◪	◪		◪			◪	▨					◪	◪	▨	▨			
Child care centers		▨		▨		◪	◪	◪	◪	■	■	◪	◪	◪	▨		◪	◪	■	■	◪	◪	◪	◪		◪	◪	◪	▨			⚠
Clubs and Lodges												◪	◪	◪	◪		◪		■	◪	▨	■/■	◪	◪		◪	◪	◪	◪			
Convenience retail stores without fuel sales							◪	◪	◪			◪	◪	◪	◪		◪	◪	◪	◪						◪	◪					⚠
Convenience retail stores with fuel sales							▨					▨	▨		◪	▨	◪	◪	◪	◪							◪		▨			⚠
Convenience shopping centers																					▨							▨	▨			
Convention and conference centers																					▨	■/■	▨	▨				▨				
Day Shelter												▨	▨	▨	▨		▨					▨		▨		◪			▨			⚠
Dog day-care facility												◪	◪	◪	◪		◪	◪	■	◪			▨	▨		▨	▨	◪	◪			
Drive-In Facilities																										▨	▨					
Grocery stores												◪	◪	◪	▨	▨	◪	◪		◪		◪	◪	◪		◪	◪					⚠
Supermarkets												▨	▨		▨	▨	◪	▨					▨	▨		▨						
Enclosed mini-storage facility							▨								▨		◪		◪	◪								▨	◪			⚠
Entertainment facilities and theaters												▨	◪	▨	▨	▨	◪	▨	■	◪		■/■	▨	◪		▨	▨					
Exhibit halls												▨	◪	◪	▨		◪		■	◪		■	▨	◪		▨	■/■					
Food Catering or small food product preparation												◪	◪	◪	◪		◪	◪	◪	◪	◪							◪	◪			

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	RESIDENTIAL DISTRICTS						MIXED-USE DISTRICTS					COMMERCIAL DISTRICTS										DOWNTOWN DISTRICTS						EMPLOYMENT, INDUSTRIAL, OTHER				
	RUL	UE	RF	RL	OT-A	MH	LMN	MMN	HMN	OT-B	OT-C	CC	CCN	CCR	CG	CG-CAC	CS	NC	CL (RA)	CL (OA)	HC	H. CORE	CA/C /NM	I/R	RC	CN	EC	E	I	POL	T	
COMMERCIAL/RETAIL USES																																
Food Truck Rally												▣	▣		▣			▣		▣	◪	▣	▣	▣		▣	▣					
Frozen Food Lockers															◪				■	◪									◪			
Funeral homes											▨	◪	◪	▨	◪		◪		◪	◪								▨	◪			⚠
Gasoline stations												◪			◪		◪	◪	◪				▨	▨		▨	◪		◪			
Health and membership clubs												◪		◪	◪	▨	◪	◪		◪	▨	■/■	◪	◪		◪	◪	▨	◪			
Homeless Shelters												▨			▨		▨					▨	▨	▨		▨	▨	▨	▨			
Indoor Kennel													◪		◪		◪		◪	◪	◪								◪			⚠
Limited indoor recreation establishments							▨					◪	◪	◪	◪		◪	◪	■	◪	▨	■/■	◪	◪		◪	◪	▨	◪			⚠
Unlimited Indoor Recreation Establishments												▨	▨	▨	▨	▨	◪				▨											
Lodging establishments												◪	◪	◪	◪	◪	◪		◪	◪	▨	▨	▨	▨		◪	◪	▨				
Long-term care facility												▨	▨	▨		▨					▨	▨	▨	▨		▨	▨	▨	▨			
Medical centers/clinics												◪	◪	◪	◪	▨	◪	◪	■	■	◪							◪	◪			
Medical marijuana centers												■	■	■	■		■					■/■	■/■	■/■		■/■	■/■					
Micro-brewery/distillery/winery												◪	◪		◪		◪	▨	◪	◪	◪	■/■	▨	▨		▨	▨	◪	▨			⚠
Music Studio												◪	◪	◪	◪		◪					◪	◪	◪		◪	◪	◪	◪			
Music Facility, Multi-Purpose												◪	◪	◪								◪	◪	◪		◪	◪		◪			
Offices, financial services & clinics							▨	▨	◪		■	◪	◪	◪	◪	◪	◪	◪	■	■	◪	■/■	◪	◪		■/■	■/■	◪	◪			
Outdoor amphitheater												▨	▨	▨	▨		▨	▨			▨	◪	◪	◪		▨						
Plant Nurseries & Greenhouses		▨													◪		◪			◪								◪	◪			
Plumbing, electrical, and carpenter shops															◪		◪		■	■									◪			
Print Shop												◪	◪	◪	◪		◪	◪	■	◪	◪	◪	◪	◪		◪	◪	◪	◪			
Open air farmers markets								◪	◪			◪	◪		◪			◪		◪	◪	◪	◪	◪		◪	◪					⚠

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	RESIDENTIAL DISTRICTS						MIXED-USE DISTRICTS					COMMERCIAL DISTRICTS									DOWNTOWN DISTRICTS						EMPLOYMENT, INDUSTRIAL, OTHER				
	RUL	UE	RF	RL	OT-A	MH	LMN	MMN	HMN	OT-B	OT-C	CC	CCN	CCR	CG	CG-CAC	CS	NC	CL (RA)	CL (OA)	HC	H. CORE	CA/C/NM	I/R	RC	CN	EC	E	I	POL	T	
COMMERCIAL/RETAIL USES																																
Parking lots and garages (as principle use)											◪	▨			▨		◪		■			▨	▨	▨		▨	▨	◪	◪			
Personal and business service shops							◪	▨	◪		■	◪	◪	◪	◪	▨	◪	◪	■	■		■/■	■/■	◪		◪	■/■	◪				△
Recreational uses															▨		◪												▨			
Restaurant (limited mixed-use)								◪	▨																							
Restaurants (standard)												◪	◪	◪	◪	▨	◪	◪	■	◪	▨	■/■	◪	◪		◪	◪	▨	▨			
Restaurants (fast food with drive-thru)															▨	▨																
Restaurants (fast food without drive-thru)												◪	◪	◪	◪	▨	◪	◪	■	◪		■/■	◪	◪		◪	◪	▨	▨			
Restaurants, Drive-In															▨		◪	▨	◪									▨	▨			△
Retail marijuana stores												■	■	■	■		■					■/■	■/■	■/■		■/■	■/■					
Retail establishments												◪	◪	▨	◪	◪	◪	◪	■	◪		■/■	▨	▨		◪	◪					△
Large Retail establishments												▨	▨		▨	◪	▨					▨	▨	▨								△
Retail stores (with vehicle servicing)												▨			◪		◪												◪			
Retail stores/supply yards (with outdoor storage)															▨		◪												▨			
Small scale reception center		▨										◪	◪	▨	◪	▨	◪			◪		◪	◪	◪		◪	◪					
Harmony Cooridor Community Shopping Center																					▨											
Harmony Cooridor Lifestyle Shopping Center																					▨											
Harmony Cooridor Regional Shopping Center																					▨											
Harmony Cooridor Neighborhood Service Center																					▨											
I-25 Activity Centers															▨																	
Unlimited Indoor Recreation Establishments												▨	▨	▨	▨	▨	◪									▨			◪			
Boat sales with storage															▨														▨			
Vehicle Sales															▨		◪		■								▨		▨			△

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	RESIDENTIAL DISTRICTS						MIXED-USE DISTRICTS					COMMERCIAL DISTRICTS									DOWNTOWN DISTRICTS						EMPLOYMENT, INDUSTRIAL, OTHER				
	RUL	UE	RF	RL	OT-A	MH	LMN	MMN	HMN	OT-B	OT-C	CC	CCN	CCR	CG	CG-CAC	CS	NC	CL (RA)	CL (OA)	HC	H. CORE	CA/C /NM	I/R	RC	CN	EC	E	I	POL	T	
COMMERCIAL/RETAIL USES																																
Vehicle Major Repair															▨		◪		■	▨							▨		◪			△
Vehicle Minor Repair												▨			◪		◪	◪	■	◪						▨	◪		◪			△
Farm implement & heavy equipment sales																			◪										▨			
Manufactured home/recreational vehicle/truck sales																			◪										▨			
Equipment, Truck, trailer rental												▨			◪		◪												◪			
Equipment Rental est. (without outdoor storage)												◪			◪		◪	◪											◪			
Veterinary Hospital																	◪		■	◪							■/■	▨	▨			
Veterinary facilities/small animal clinics or hospitals							◪	▨	◪			◪	◪	◪	◪		◪	◪	■	■	◪		▨	▨		◪	◪	◪	◪			△

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	RESIDENTIAL DISTRICTS						MIXED-USE DISTRICTS					COMMERCIAL DISTRICTS										DOWNTOWN DISTRICTS						EMPLOYMENT, INDUSTRIAL, OTHER				
	RUL	UE	RF	RL	OT-A	MH	LMN	MMN	HMN	OT-B	OT-C	CC	CCN	CCR	CG	CG-CAC	CS	NC	CL (RA)	CL (OA)	HC	H. CORE	CA/C /NM	I/R	RC	CN	EC	E	I	POL	T	
INDUSTRIAL USES																																
Airport/Airstrips																													▨			
Compost facilities	◪	▨													▨										◪				◪	◪	◪	
Dry Cleaning Plants																													▨	▨		
Heavy Industrial																														◪		
Light industrial							▨						◪		◪		◪		◪	▨	◪								◪	◪			△
Junk Yards																														▨		
Medical marijuana cultivation													■				■			■										■		
Medical Marijuana optional premises cultivation operations													■				■			■				■/■						■		
Medical Marijuana Research and Development													■				■			■				■/■						■		
Retail Marijuana cultivation facility													■				■			■										■		
Retail marijuana product manufacturing facility													■				■			■										■		
Retail marijuana testing facility													■				■			■										■		
Oil and gas piplines												▨	▨	▨	▨	▨	▨	▨	▨	▨	▨	▨	▨	▨	▨	▨	▨	▨	▨	▨			△
Oil and gas facilities																													▨			△
Outdoor storage facilities																			◪										◪			△
Recreation vehicle, boat, truck storage																													◪			
Recycling facilities																	▨												◪			
Research laboratories												◪	◪				◪		◪	◪	◪		◪	◪		◪	◪	◪	◪			△
Resource extraction, process and sales	▨	▨																											▨			
Resource recovery																									◪					◪		
Solar energy systems, small- and medium-scale	▨	▨	▨	▨	▨		▨	▨	▨	▨	▨	◪	◪	◪	◪	◪	◪	◪	◪	◪	◪	◪	◪	◪		◪	◪	■	■	▨		
Solar energy systems - large scale																												◪	◪			
Transportation terminals (truck, container storage)																	▨		■										▨			
Warehouses																	◪		■	◪								◪	◪			△
Wholesale distribution facility																	◪		■									◪	◪			
Workshops and custom small industry							▨					◪	◪	◪	◪		◪	◪	■	■	◪		◪	◪		◪	◪	◪	◪			△

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	RESIDENTIAL DISTRICTS						MIXED-USE DISTRICTS					COMMERCIAL DISTRICTS									DOWNTOWN DISTRICTS						EMPLOYMENT, INDUSTRIAL, OTHER			
	RUL	UE	RF	RL	OT-A	MH	LMN	MMN	HMN	OT-B	OT-C	CC	CCN	CCR	CG	CG-CAC	CS	NC	CL (RA)	CL (OA)	HC	H. CORE	CA/C/NM	I/R	RC	CN	EC	E	I	POL	T
ACCESSORY/MISC USES																															
Accessory buildings	◪	◪	◪	◪	◪	◪	◪	◪	◪	◪	◪	■	■	■	■	■	■	■	■	■	■	■/■	■/■	■/■		■/■	■/■	■	■	■	
Accessory uses	◪	◪	◪	◪	◪	◪	◪	◪	◪	◪	◪	■	■	■	■	■	■	■	■	■	■	■/■	■/■	■/■	■/■	■/■	■/■	◪	◪	◪	
Agricultural activities	■																					◪	◪	◪		◪	◪			◪	
Farm Animals	■	◪	◪																												
Urban Agriculture	▣	▣	▣	▣	▣	▣	▣	▣	▣	▣	▣	▣	▣	▣	▣	▣	▣	▣			▣	▣	▣	▣		▣	▣	▣	▣	▣	
Heliports and Helipads																					▨							▨	▨		
Outdoor vendor												■	■	■	■	■	■	■	■	■	■	■/■	■/■	■/■		■/■	■/■	■	■		
Satellite dishes (>39" in diameter)												◪	◪	◪	◪		◪	◪	■	■	◪	■/■	■/■	■/■		■/■	■/■	◪	◪		
Wireless communication facilities, collocated	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	◪	◪	◪		◪	◪	■	■	■		⚠
Wireless communication facilities				▨								◪	◪	◪	■	■	■	◪	◪	◪	■	▨	▨	▨		▨	▨	■	■	◪	
Off-site Construction Staging	■	■	■	■	■		■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■		■	■	■	■	■	■	

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DIVISION 4.3 ADDITIONAL USE STANDARDS

4.3.1 RESIDENTIAL USES

(A) **Accessory Building** shall be subordinate to a primary building and may contain finished space, unfinished space and habitable space.

(1) Accessory buildings shall not be eligible for a new short term rental License on or after January 1, 2024. 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.

(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.

(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.

(2) 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.

(C) **Extra Occupancy Unit**

(1) One (1) occupant per three hundred fifty (350) square feet of habitable floor space, in addition to a minimum of four hundred (400) square feet of habitable floor space if owner-occupied.

(a) In the LMN Zone district no more than twenty-five (25) percent of the parcels on a block face may be approved for extra occupancy use.

(b) In the CS zone district such use shall not be allowed within two hundred (200) feet of North College Avenue.

(D) **Family Care Homes** consist of one or more of the following:

(1) **Family Foster Homes.** Family foster homes shall be permitted as an accessory use as defined in Article 7 provided that the maximum number of foster children in any given home shall not exceed four (4).

(2) **Day Care Homes.** Day care homes shall be permitted as an accessory use as defined in Article 7 provided that such homes are licensed by the State of Colorado and that the maximum number of children and the age

limitation of children to whom care is provided complies with the State of Colorado regulations for a family child care home, an infant/toddler home or an experienced family child care provider home.

(3) **Elderly Day Care Homes.** Elderly day care homes shall be permitted as an accessory use as defined in Article 7, provided that the maximum number of elderly persons receiving care, protection and supervision in any such home shall not exceed four (4) at any given time.

(E) **Fraternity/Sorority Houses shall** mean residences housing students attending an accredited institution of higher learning within the City.

(F) **Group Home** is allowed in the following zone districts:

Zone	Maximum Number of Residents excluding supervisors, for Minimum lot size.	Additional lot area for each additional resident (square feet)	Maximum permissible residents, excluding supervisors	Minimum separation requirements between any other group home (feet)
UE	3	2,000	8	1,500
RL, OT-A, HC, E, RF, MH	3	1,500	8	1,500
LMN, OT-B, RDR	6	750	15	1,000
OT-C, D, CS, CCN, MMN, HMN, NC, CG, CC, CL, CCR	6	500	20	700

(1) All Group Homes are required to be setback at least 200 feet from North College Avenue.

(2) The minimum separation distance required between group homes that are located in different zone districts shall be the one that requires the greatest distance.

(3) The decision maker may determine a higher maximum number of residents to be allowed to occupy the facility upon finding that the facility as so occupied will satisfy the following criteria:

The adjacent street system is sufficient to accommodate the traffic impacts generated by the group care facility;

the group care facility has made adequate, on-site accommodations for its parking needs;

the architectural design of the group care facility is compatible with the character of the surrounding neighborhood;

the architectural design of the group care facility is compatible with the character of the surrounding neighborhood;

the size and scale of the group care facility is compatible with the character of the surrounding neighborhood; and

the types of treatment activities or the rendering of services proposed to be conducted upon the premises are substantially consistent with the activities permitted in the zone district in which the facility is proposed to be located.

(4) Regardless of the level of review:

(a) The decision maker shall conduct such review for the purpose of approving, denying or approving with conditions the application for a group home use in such zone. If approved, the decision maker shall, with such approval, establish the type of group home permitted and the maximum number of residents allowed in such group home.

A group home may be located without consideration to the minimum separation requirements as established in the table above if the group home is separated from other group homes within the area of the aforesaid minimum separation requirement by a substantial natural or man-made physical barrier, including, but not limited to, an arterial street, a state or federal highway, railroad tracks, river or commercial/business district. Such reduction in the separation requirement shall be allowed only after the decision maker has determined that the barrier and resulting separation distance are adequate to protect the City from any detrimental impacts resulting from an excessive concentration of group homes in any one (1) vicinity.

No permanent certificate of occupancy will be issued by the City for a group home until the person applying for the group home has submitted a valid license, or other appropriate authorization, or copy thereof, from a governmental agency having jurisdiction.

If active and continuous operations are not carried on in a group home which was approved pursuant to the provisions contained in this Section for a period of twelve (12) consecutive months, the group home use shall be considered to have been abandoned. The group home use can be reinstated only after obtaining a new approval from the decision maker as outlined in this Section.

Shelters for victims of domestic violence shall be separated from any other group home or shelter by a minimum of one thousand five hundred (1,500) feet.

Please see Section 6.1.5 for information regarding Reasonable Accommodations.

(G) Home Occupations

(1) A home occupation shall be allowed as a permitted accessory use, provided that all of the following conditions are met:

(a) Such use shall be conducted entirely within a dwelling and carried on by the inhabitants of the dwelling with not more than one (1) additional employee or co-worker. The hours of operation during which clients, customers, employees or co-workers are allowed to come to the home in connection with the business activity are limited to between 8:00 a.m. and 6:00 p.m. Monday through Saturday.

Such use shall be clearly incidental and secondary to the use of the dwelling for dwelling purposes and shall not change the character thereof.

The total area used for such purposes shall not exceed one-half (½) the floor area of the user's dwelling unit.

There shall be no exterior advertising other than the residential sign allowed in Section 5.16(D)(5)(a) of this Code.

There shall be only incidental sale of stocks, supplies or products conducted on the premises.

There shall be no exterior storage on the premises of material or equipment used as a part of the home occupation.

There shall be reasonable mitigation of noise, vibration, smoke, dust, odors, heat or glare noticeable at or beyond the property line.

A home occupation shall provide additional off-street parking area adequate to accommodate all needs created by the home occupation.

In particular, a home occupation may include, but is not limited to, the following, provided that all requirements contained herein are met:

(I) art studio;
(II) dressmaking or millinery work;
(III) professional office;
(IV) office for insurance or real estate sales;
(V) teaching;

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;
(VI) adult-oriented use;
(VII) 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.
(VIII) medical marijuana businesses ("MMBs"), as defined in Section 15-452 of the City Code.
(IX) retail marijuana establishment as defined in Section 15-603 of the City Code.
(X) short term primary rentals and short term non-primary rentals.

(2) A home occupation shall be permitted only after the owner or inhabitant of the dwelling in which such occupation is conducted has obtained a home occupation license from the City. The fee for such a license shall be the fee established in the Development Review Fee Schedule, and the term of such license shall be two (2) years. At the end of such term, the license may be issued again upon the submission and review of a new application and the payment of an additional fee. If the City is conducting an investigation of a violation of this Code with respect to the particular home occupation at the time such renewal application is made, the license will not be reissued until the investigation is completed and, if necessary, all violations corrected. The term of the previous license shall continue during the period of investigation. The Director may revoke any home occupation license issued by the City if the holder of such license is in violation of any of the provisions contained in paragraphs (a) through (h) of this Section, provided that the holder of the license shall be entitled to the administrative review of any such revocation under the provisions contained in Chapter 2, Article VI of the City Code.

(H) **Manufactured Housing**

(1) Manufactured Housing Communities shall be developed in accordance with the applicable general development standards contained in this Code and the regulations contained in Chapter 18 of the City Code.

(I) **Mixed Use Dwelling Unit**

(1) Facility Amenities limited to the use of residents in the building such as but not limited to a leasing office, gym, and pool are not considered a separate use.

(2) In the I zone district such use shall be constructed above nonresidential uses, provided that the aggregate floor area of all mixed-use dwellings does not exceed the aggregate floor area of all nonresidential uses in the building.

(J) **Multi-Unit Dwelling** has three or more habitable dwelling units contained within a permitted building type. The land underneath the primary structure is not divided into separate lots.

(K) **Single Unit Detached Dwelling** is a stand-alone residential dwelling unit, other than a manufactured home, providing complete, independent living facilities including permanent provisions for living, sleeping, eating, and cooking.

(1) In the HC, CCN, CCR, and CS Zone only allowed on lots less than six thousand (6,000) sf.

(2) In the CS zone district not allowed within two hundred (200) feet of North College Avenue.

(L) **Single Unit Attached Dwelling**

(1) In the CS zone district such use shall be setback at least 200 ft. from North College Avenue.

(M) **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.

(N) **Short Term Rentals**

(1) **Applicability.** These standards apply to short term primary rentals and short term non-primary rentals.

(2) **Purpose.** The purposes of these standards are to mitigate the impacts of short term rentals on the neighborhoods in which they are located, to maintain and enhance neighborhood livability, to ensure the health and safety of renters of short term rentals, and to ensure the compatibility of short term rentals with the allowed uses in the applicable zone districts.

(3) **Location.** Subject to subsection (6) below, the allowable locations of short term primary and non-primary rentals are determined by the zone districts and their respective list of permitted uses as described in the applicable zone districts.

(a) On or after January 1, 2024, short term primary and non-primary rentals are prohibited in both accessory buildings and accessory dwelling units. This does not apply to any licenses issued prior to this date or accessory buildings and accessory dwelling units that have applied for a building permit prior to this date, and such licenses may be renewed or a new license may be issued per Section 15-646 of the Code of the City of Fort Collins.

(4) **Off-street Parking.** See Section 5.9.1(K)(1)(m) for minimum off-street parking space requirements.

(5) **Licensing.** The licensing of short term rentals is governed by the Code of the City of Fort Collins Chapter 15, Article XVIII. No dwelling unit shall be used as a short term primary rental or short term non-primary rental unless a license is first obtained pursuant to Chapter 15, Article XVIII.

(a) Licenses issued to ADUs prior to the adoption of this code may continued to be renewed.

(6) **Nonconforming Use.** A dwelling unit utilized as a short term primary or non-primary rental that is located in a zone district where such use is prohibited, and such short term rental was a lawfully established use as defined in (c) below, is deemed to be a nonconforming use. Such nonconforming use shall correspond to the type (either primary or non-primary) of short term rental conducted prior to March 31, 2017.

(a) In addition to complying with the nonconforming use regulations in Land Use Code Division 6.16, the owner of the dwelling unit must obtain a license pursuant to the Code of the City of Fort Collins § 15-646 and continuously maintain such license to maintain nonconforming use status. Failure to apply for such license by October 31, 2017, shall be considered abandonment of the nonconforming use. Should such license be revoked, not be renewed, or lapse for any period of time, the nonconforming short term rental use shall be considered abandoned or otherwise terminated.

(b) Should ownership of a dwelling unit licensed pursuant to § 15-646 be transferred, and such license was continuously valid until the transfer of ownership, the new owner must comply with the following in order to continue the nonconforming use: (1) apply for a license pursuant to § 15-646 within thirty (30) days of the transfer of ownership; (2) comply with the parking requirements contained in Section 5.9.1(K)(1)(m) of this Code; and (3) continuously maintain any license issued pursuant to § 15-646. Should any license issued to the new owner be revoked, not be renewed, or lapse for any period of time, the nonconforming short term rental use shall be considered abandoned or otherwise terminated.

(c) To be deemed a lawful use, a dwelling unit must have been actually utilized as a short term primary or non-primary rental prior to March 31, 2017, and valid sales and use and lodging tax licenses for such dwelling unit must have been obtained prior to October 31, 2017, in accordance with Chapter 25, Art. IV, of the Code of the City of Fort Collins.

(O) **Two Unit Dwelling is a** building that contains two primary dwelling units on one lot. The units must share a common wall or common floor/ceiling.

(1) In the CS zone district such use not be allowed within two hundred (200) feet of North College Avenue.

(P) **Secondary Uses**

(1) In the CC zone district all residential permitted uses, except mixed use dwellings in multistory mixed use buildings, shall be considered secondary uses and, for projects containing ten (10) or more acres, together shall occupy no more than thirty (30) percent of the total gross area of any development plan. If the project contains less than ten (10) acres, the development plan must demonstrate how it contributes to the overall mix of land uses within the surrounding area, but shall not be required to provide a mix of land uses within the development.

(2) In the NC zone district all permitted residential uses, except mixed use dwellings in multistory mixed use buildings, shall be considered secondary uses and, for projects containing five (5) or more acres, together shall occupy no more than thirty (30) percent of the total gross area of any development plan. If the project contains less than five (5) acres, the development plan must demonstrate how it contributes to the overall mix of land uses within the surrounding area but shall not be required to provide a mix of land uses within the development.

4.3.2 INSTITUTIONAL/CIVIC/PUBLIC USES

(Q) Community Facilities

(1) Community facilities such as community buildings, government offices, recreation centers and libraries shall be placed in central locations as highly visible focal points. To the extent reasonably feasible, they shall be located close to transit stops.

(R) Public and Private Schools for college, university, vocational and technical education

(1) Limited in the LMN zone district to within five hundred (500) feet of East Vine Drive or railroad property abutting and parallel to East Vine Drive.

(S) Seasonal Overflow Shelter

(1) The following standards shall apply to all seasonal overflow shelters.

(2) The purpose of this Section is to allow for the siting and approval of seasonal overflow shelters while helping to ensure that such shelters are compatible with the adjacent neighborhoods.

(3) General Standards. Seasonal overflow shelters shall be allowed as a permitted use, provided that all of the following conditions are met:

(a) *Occupancy Limit*. No more than fifty (50) persons may be housed at any one (1) seasonal overflow shelter.

(b) *Operations.* An organization with prior homeless shelter management experience must be designated as the operator responsible for managing the seasonal overflow shelter.

(c) *Operating Agreement.* An operating agreement must be completed between the City, the operator and the owner of the real property upon which the seasonal overflow shelter is located, delineating the roles of the parties, and, without limitation, shall include provisions pertaining to parking, hours of operation, site cleanup, loitering, number of staff and designated contact persons for each party. The operating agreement shall be executed by all parties prior to the approval of a seasonal overflow shelter and must be executed preceding each operating season that the shelter is functioning.

(d) *Transportation*. If the seasonal overflow shelter is more than two (2) miles from a homeless shelter, then transit to and from the seasonal overflow shelter and the homeless shelter (or other locations designated in the operating agreement) shall be provided by the operator of the seasonal overflow shelter.

(e) *Neighborhood Meeting.* The City shall require a neighborhood meeting for each application for approval of a seasonal overflow shelter and preceding each operating season that the shelter is functioning.

(f) *Limit.* There shall be no more than three (3) seasonal overflow shelters operating in the City at any given time.

(g) *Compliance with Other Standards.* The property upon which the seasonal overflow shelter is located must continue to comply with the standards of this Code, at least to the extent of its original compliance (so as to preclude any greater deviation from the standards of this Code by reason of a seasonal overflow shelter being located thereon).

(T) **Wildlife Rescue and Education Centers**

(1) Limited in the LMN zone district to within five hundred five hundred (500) feet of East Vine Drive or railroad property abutting and parallel to East Vine Drive.

4.3.3 COMMERCIAL/RETAIL USES

(A) **Adult Day/Respite care centers**

(1) In the I zone district such use shall not exceed 25,000 sq. ft. of floor area.

(B) **Adult-Oriented Uses**

(1) Adult-oriented uses are permitted only in the zone districts shown in the Use Table of Division 4.2.

(2) Adult-oriented uses shall not be established, operated or maintained within one thousand (1,000) feet of the boundary of any residential zone district (whether within or beyond the City's jurisdictional boundary), any structure occupied for residential purposes, any public park or playground, any child care center, any outdoor recreation facility, any limited indoor recreation use, any place of worship or assembly, any school meeting all of the requirements of the compulsory education laws of the State and/ or any other adult-oriented use. An adult-oriented use lawfully operating as a conforming use shall not be rendered a nonconforming use by the subsequent location of a residential district or residential use, public park or playground, child care center, outdoor recreation facility, limited indoor recreation use, place of worship or assembly, or school within one thousand (1,000) feet of said adult-oriented use.

(3) Method of Measurement. All measurements required pursuant to this use shall be made from the nearest property line of the property from which spacing is required (pursuant to paragraph (B) of this Section) to the nearest entrance of the building in which the adult-oriented use is to occur, using a straight line, without regard to intervening structures or objects.

(4) Displays, Screenings. Advertisements, displays or other promotional materials displaying or depicting "specified anatomical areas" or "specific sexual activities" shall not be shown or exhibited so as to be visible or audible to the public from adjacent streets, sidewalks or walkways or from other areas outside the establishment; and all building openings, entries and windows for adult-oriented uses shall be located, covered or screened in such manner as to prevent the interior of such premises from being viewed from outside the establishment.

(5) No adult bookstore, adult novelty store or adult retail store that, as of June 14, 2002, had adult material in excess of twenty (20) percent of its stock-in-trade, or derived in excess of twenty (20) percent of its revenues from such material, or devoted in excess of twenty (20) percent of its interior business or interior advertising to such material, or maintained in excess of twenty (20) percent of its gross floor area or display space for the sale or rental of such material, shall be allowed to increase its adult material business beyond the percentages that existed on June 14, 2002.

(6) In the I zone district such use shall not exceed 25,000 sq. ft. of floor area.

(C) **Animal Boarding**

(1) In the I zone district such use shall not exceed 25,000 sq. ft. of floor area.

(D) **Bars and Taverns**

(1) In the I zone district such use shall not exceed 25,000 sq. ft. of floor area.

(E) **Bed and Breakfast Establishment**

(1) In the I zone district such use shall not exceed 25,000 sq. ft. of floor area.

(2) In the LMN, MMN, HMN, OT-B zone district such use shall be limited to six (6) beds not including on site staff.

(F) **Child Care Center**

(1) Outdoor Play Area Table:

Minimum Outdoor Play Area for a Child Care Center	
15 Children or less	1,200 square feet
More than 15 Children	75 square feet per child for 33% of the child capacity of the center

(2) An outdoor play area as stated above shall not be required for drop-in child care centers.

(3) For the purposes of this subsection, the capacity of the center is calculated based upon indoor floor space reserved for school purposes of forty (40) square feet per child. Any such play area on the site of the child care center within or abutting any residential district shall be enclosed by a decorative solid wood fence, masonry wall or chain link fence with vegetation screening, densely planted. The height of such fence shall be a minimum of six (6) feet and shall comply with other fences regulations within this code. Where access to child care centers is provided by other than local streets, an off-street vehicular bay or driveway shall be provided for the purpose of loading and unloading children.

(4) If active and continuous operations are not carried on for a period of twenty-four (24) consecutive months in a child care center which was approved for operation within a residential dwelling, the child care center use shall be deemed to have been abandoned. Such child care center use may thereafter be reestablished only upon approval of a new application in accordance with all applicable provisions of this Code.

(5) In the I zone district such use shall not exceed 25,000 sq. ft. of floor area.

(G) **Convenience retail stores with fuel sales**

(1) In the LMN, CC, CCN, NC, I zone districts such use shall be spaced at least three thousand nine hundred sixty (3,960) feet (three-quarters [¾] of a mile) from any other such existing or permitted fueling station.

(2) In the I zone district such use shall not exceed 25,000 sq. ft. of floor area.

(H) **Convenience Shopping Center**

(1) In the I zone district such use shall not exceed 25,000 sq. ft. of floor area.

(2) In the I zoned district such use may include Drive-in restaurants.

(3) In the NC zone district such shall be three thousand nine hundred sixty (3,960) feet from any other any other such existing or permitted fueling station.

(I) Day Shelter

(1) In the D, CC, CCN, CCR, CG/CAC, CS, I zone districts such use shall not exceed ten thousand (10,000) square feet and shall be located within one thousand three hundred twenty (1,320) feet (one-quarter [¼] mile) of a Transfort route.

(J) Dog Day-Care Facility Regulations

(1) All services provided by a dog day-care facility shall be conducted within a completely enclosed, soundproof building.

(2) All dog day-care facilities shall be designed and constructed in a manner that reasonable mitigates emission of odor to persons owning, occupying or patronizing properties adjacent to such facilities.

(K) Drive-in Restaurant

(1) In the E, I zone districts such use is only permitted in a convenience shopping center.

(2) In the I zone district such use shall not exceed 25,000 sq. ft. of floor area.

(3) In the N-C zone district such use shall exclude drive-thru restaurant.

(L) Enclosed Mini-storage Facility

(1) In the CS zoned districts such use shall be at least 150 feet from South College Avenue.

(2) Not permitted in the South College Gateway Area.

(3) In the LMN zone district such use shall be located within five hundred (500) feet of East Vine Drive or of the railroad property abutting and parallel to East Vine Drive.

(M) Fast Food Restaurant

(1) In the CC, CCN, CCR, CS, NC, CL, E, and I zone districts, such use is prohibited as a drive-in or drive-through facilities.

(2) In the I zone district such use shall not exceed 25,000 sq. ft. of floor area.

(N) Funeral Homes

(1) In the OT-C such use shall be located in the street-fronting principal building.

(O) Grocery Stores

(1) In the D, CC, CCN, CCR, CS, NC zone districts shall occupy between five thousand [5,000] and forty-five thousand [45,000] square feet).

(P) **Indoor Kennel**

(1) In the HC zone district only permitted in community or regional shopping center.

(Q) **Limited indoor recreation establishments**

(1) In the LMN zone district such use shall be located within five hundred (500) feet of East Vine Drive or of the railroad property abutting and parallel to East Vine Drive.

(R) **Micro-brewery/distillery/winery**

(1) In the HC zone district only permitted within a community, lifestyle, regional, and convenience shopping center.

(2) In the I zone district such use shall not exceed 25,000 sq. ft. of floor area.

(S) **Neighborhood Centers**

(1) In the LMN zone district such use shall contain two (2) or more of the following uses:

(a) mixed-use dwelling units;
retail stores;
convenience retail stores;
personal and business service shops;
small animal veterinary facilities;
offices, financial services and clinics;
community facilities;
neighborhood support/recreation facilities; schools;
child care centers;
limited indoor recreation establishments;
open-air farmers markets;
places of worship or assembly;
dog day care;
music studio;
micro brewery/distillery/winery;
standard fast food restaurants (without drive-in or drive-through facilities);
artisan and photography studios and galleries;
convenience retail stores with fuel sales that are at least three-quarters (¾) mile from any other such use and from any gasoline station;
grocery store;
health and membership club, provided that such use or uses are combined with at least one (1) other use.

(T) **Small Animal Veterinary Clinic and Hospital Regulations**

(1) All facilities of a small animal veterinary clinic or a small animal veterinary hospital, including all treatment rooms, cages, pens, kennels and exercise runs, shall be maintained within a completely enclosed, soundproof building.

(2) All such veterinary clinics and hospitals shall be designed and constructed in a manner that reasonably mitigates any emission of odor to persons owning, occupying or patronizing properties adjacent to such clinics or hospitals.

(3) All such veterinary clinics and hospitals shall be designed and constructed in a manner that reduces the sound coming from any such clinic or hospital to the level of sixty-five (65) decibels at any given abutting property line.

(4) No such veterinary clinic or hospital shall board any animal for any length of time except where such boarding is necessary to provide surgical or other medical care to the animals.

(U) **Open Air Farmers Markets**

(1) In the HC zone district only permitted in neighborhood, community and regional shopping centers only.

(V) **Outdoor Storage Facility**

(1) In the CL/RA zone district such use may include a towing yard, provided such use is setback at lease thirty five (35) from an arterial street.

(W) **Personal and Business Service Shop**

(1) In the HC zone district only permitted within a neighborhood, community, lifestyle and regional center.

(X) **Research Laboratories**

(1) In the South College Gateway Area Overlay such use is not permitted.

(Y) **Small Scale Reception center**

(1) In the UE zone district such use shall comply with the following performance standards

(a) **Lot Size**. Minimum lot size shall be seven (7) acres.

(b) **Building Size**. The total floor area of any new building shall not exceed seven thousand five hundred (7,500) square feet and the total aggregate floor area of new and existing buildings shall not exceed fifteen thousand (15,000) square feet.

(c) **Building Location and Separation from Residential Areas**. All buildings shall be located a minimum of three hundred (300) feet from the nearest dwelling on any abutting property, except that in cases where there are no dwellings on such abutting property, all buildings shall be located a minimum of two hundred fifty (250) feet from the nearest property line of such abutting property.

(d) **Outdoor Spaces, Location and Separation From Residential Areas**. All outdoor spaces such as lawns, plazas, gazebos and/or terraces used for social gatherings or ceremonies associated with the reception center shall be located within one hundred (100) feet of the primary building and shall be located a minimum of three hundred (300) feet from the nearest dwelling on any abutting property, except that in cases where there are no dwellings on such abutting property, all outdoor spaces, as described above, shall be located a minimum of two hundred fifty (250) feet from the nearest property line of such abutting property.

(e) **Nonresidential Abutment**. At least one-sixth (1/6) of the reception center's property boundary must be contiguous to property that is zoned in one (1) or more of the following nonresidential zone districts within the City:

(I) D;
(II) CC;
(III) CCN;

(IV) CCR;
(V) CG;
(VI) CS;
(VII) NC
(VIII) CL;
(IX) HC;
(X) E;
(XI) I.

(f) **Access.** Vehicular access to the reception center shall be only directly from an arterial street so as to not add traffic to existing local neighborhood streets.

(g) **Buffering**. If the reception center abuts a single-family 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.

(h) **Hours of Operation**. Hours of operation shall be limited to 8:00 a.m. to 10:00 p.m. Sunday through Thursday and 8:00 a.m. to 12:00 a.m. on Friday and Saturday.

(i) **Noise**. No noise will be permitted in violation of Chapter 20, Article II of the City Code, and the following limitations will also apply:

(I) Music that is not amplified (such as stringed quartets or acoustic guitars) will be allowed out of doors, but shall end no later than 8:00 p.m. Sunday through Thursday, and 9:00 p.m. on Friday and Saturday.

(II) Except during wedding ceremonies, sound-amplifying equipment used out of doors shall be limited to speakers with a maximum power rating of fifty (50) watts permanently installed as part of the design of outdoor spaces such as lawns, plazas, gazebos and/or terraces.

(j) **On-Site Caretaker**. There shall be a manager or owner on site during all hours of operation.

(k) **Parking Lot Lighting**. Parking lot lighting, if used at all, shall conform to the requirements contained in Article 5.12, and shall be further restricted such that the fixture does not exceed a height of fourteen (14) feet above ground level.

(Z) **Standard Restaurant**

(2) In the I zone district such use shall not exceed 25,000 sq. ft. of floor area.

(AA) **Recreational Uses**

(1) In the I zone district such use shall not exceed 25,000 sq. ft. of floor area.

(BB) **Retail Establishment**

(1) In the CG zone district such use shall be 25,000 sq. ft. or under in size.

(2) In the HC zone district only permitted within a neighborhood, community, lifestyle and regional center.

(CC) **Retail Establishment, Large**

(1) In the CG zone district such use shall be greater than 25,000 sq. ft.

(DD) **Retail and Supply Yard establishment with outdoor storage**

(1) In the I zone district such use shall not exceed 25,000 sq. ft. of floor area.

(EE) **Vehicle major repair, servicing and maintenance establishments**

(1) Not permitted in the South College Gateway Area Overlay.

(FF) **Vehicle minor repair, servicing and maintenance establishments**

(1) In all permitted zone districts such use shall be conducted indoors.

(2) Not permitted in the South College Gateway Area Overlay.

(GG) **Vehicle Sales and Leasing Establishments for Cars and light trucks**

(1) In the CS District, shall be limited to ten (10) percent of the total linear frontage of both sides of North College Avenue between Vine Drive and the northern City limits or the intersection of North College Avenue and State Highway 1, whichever results in the shortest linear distance. These uses shall be located at least one hundred fifty (150) feet from South College Avenue.

(2) In the I zone district such use shall not exceed 25,000 sq. ft. of floor area.

(3) In the I zone district such use may include boats, manufactured housing, farm implements and heavy excavation equipment.

(4) In the CG, CL/RA zone districts such use may include outdoor storage.

(5) In the CS zone district such use shall be limited to ten (10) percent of the total linear frontage of both sides of North College Avenue between Vine Drive and the northern City limits or the intersection of North College Avenue and State Highway 1, whichever results in the shortest linear distance.

(6) In the CS zone district such use shall be setback 150 ft. from South College Avenue.

(HH) **Veterinary Hospital**

(1) In the I zone district such use shall not exceed 25,000 sq. ft. of floor area.

4.3.4 INDUSTRIAL USES

(A) **Light Industrial**

(1) In the LMN zone district such use is located within five hundred [500] feet of East Vine Drive.

(2) In the CG zone district such use shall not have outdoor storage.

(3) In the South College Gateway Overlay such use is not permitted.

(B) Resource Extraction

(1) In the RC zone district such use shall be prohibited in the natural area protection buffer.

(C) Warehouse

(1) In the CS zone district such use shall be setback at least 200 ft. from North College Ave and 150 ft. from South College Avenue.

(2) In the South College Gateway Area Overlay such use is prohibited.

(D) Wholesale Distribution Facility

(1) In the CS zone district such use shall be setback at least 200 ft. from North College Ave and 150 ft. from South College Avenue.

(E) Workshops and Custom Small Industry

(1) In the LMN zone district such use is located within five hundred [500] feet of East Vine Drive.

(F) Oil And Gas Facilities And Pipelines

(1) Purpose And Applicability

(a) **Purpose.** This Division is intended to protect the public health, safety, and welfare, and the environment and wildlife resources by regulating oil and gas development to anticipate, avoid, minimize and mitigate adverse impacts to existing, planned, and future land uses.

(b) **Applicability.** This Division applies to siting and reclamation of all oil and gas facilities and oil and gas pipelines within City boundaries over which the City has regulatory authority pursuant to law, except for oil and gas facilities and oil and gas pipelines subject to a valid operator agreement between the City and the operator effective prior to April 14, 2023, in which case the operator agreement shall govern the applicable oil and gas facilities and oil and gas pipelines. All persons must obtain approval from the City in accordance with the standards in this Division and all applicable Land Use Code requirements prior to constructing and operating any new oil and gas facility or oil and gas pipeline or enlarging or expanding any oil and gas facility or oil and gas pipeline lawfully existing prior to April 14, 2023.

Any terms used in this Division that are not defined within the Land Use Code shall be defined by the ECMC as set forth in the Code of Colorado Regulations. The terms applicant and operator are used interchangeably at times in this Division.

Where, in any specific case, the requirements of any other provision within the Land Use Code or Code of the City of Fort Collins or any applicable federal or state laws or regulations of any state or federal agency are in conflict with this Division, the more restrictive or stringent requirement shall be imposed.

(2) **Existing Oil And Gas Facilities And Pipelines**

Application to Existing Oil and Gas Facilities and Pipelines. Oil and gas facilities and oil and gas pipelines that were lawfully established prior to April 14, 2023, referred herein as lawful nonconforming oil and gas facilities and pipelines, are considered nonconforming uses that may continue to operate pursuant to either a valid operator agreement governing such oil and gas facilities or oil and gas pipelines between the City and the operator in effect prior to April 14, 2023, or absent such an operator agreement, pursuant to Land Use Code Division 6.16 as modified in this Section. The following provisions apply to lawful nonconforming oil and gas facilities and pipelines not subject to an operator agreement:

(a) Section 6.16.3 regarding abandonment of use.

(b) Section 6.16.4 regarding reconstruction does not apply to lawful nonconforming oil and gas facilities and pipelines. Reconstruction of such an oil and gas facility or pipeline or facility or pipeline taken by governmental acquisition or damaged by fire or other accidental cause or natural catastrophe is not allowed.

(c) Section 6.16.5 regarding enlargement of buildings and expansion of facilities, equipment or structures does not apply to lawful nonconforming oil and gas facilities and pipelines. Enlargement and expansion of any such facility or pipeline requires such facility or pipeline to be brought into conformance with the Land Use Code.

(I) Enlargement or expansion includes, but is not limited to, any permanent physical change to a lawful nonconforming oil and gas facility or pipeline not required by law that increases operating capacity, harmful air emissions, traffic, noise, risk of spills, or will adversely impact public health, safety, welfare, the environment or wildlife resources. Use of a drilling rig or hydraulic fracturing equipment to deepen or recomplete an existing well into a new geologic formation is considered expansion.

(II) Maintenance activities, the replacement of existing equipment with substantially similar equipment in like and kind, installation of emission control equipment, and the addition of equipment to fulfill mandated regulatory requirements are not considered enlargement or expansion.

(3) **Oil and Gas Project Development Plan Review Procedures**

In order for a new oil and gas facility to be constructed and operated, or a lawful nonconforming oil and gas facility to be enlarged or expanded, the applicant must receive approval of a project development plan, final plan, and building permit pursuant to the Land Use Code. In order for enlargement or expansion of a lawful nonconforming oil and gas facility to occur, unless an operator agreement as described in above Section 4.3.4(F)(2) provides otherwise, such facility must be brought into conformance with the Land Use Code and receive approval of a project development plan, final plan, and building permit pursuant to the Land Use Code prior to enlargement or expansion and continued operation.

With regards to oil and gas pipelines, flowlines are subject to review as part of the project development plan for any new oil and gas facility to which the flowlines are associated or through a major amendment if additional flowlines are added subsequent to project development plan approval. Crude oil transfer lines, gathering lines and transmission lines are subject to project development plan review and subsequent changes through a major amendment. In order for enlargement or expansion of a lawful nonconforming oil and gas pipeline to occur, unless an operator agreement as described in above Section 4.3.4(F)(2) provides otherwise, such pipeline must be brought into conformance with the Land Use Code and receive approval of a project development plan, final plan, and building and other required permits pursuant to the Land Use Code prior to enlargement or expansion and continued operation.

Specific development standards regarding oil and gas facilities are set forth in Section 4.3.4(F)(4), and specific development standards regarding oil and gas pipelines are set forth in Section 4.3.4(F)(5). The Project Development Plan Review Procedures set forth in Section 6.6.2 are modified as follows:

(a) **Step 1 (Conceptual Review):** Mandatory. In addition to the Concept Plan Submittal requirements pursuant to Section 6.3.1(A)(3), the applicant for a new oil and gas facility or oil and gas pipeline shall provide an alternative location analysis and preliminary site analysis as described below. The Director may waive or modify any information required for the alternative location and preliminary site analysis if, given the facts and circumstances of a proposed oil and gas facility or pipeline, a particular requirement would either be irrelevant, immaterial, redundant or otherwise unnecessary to evaluate the proposed project. Prior to the required neighborhood meeting referenced in (b) below, the City will review all proposed locations for the oil and gas facility or oil and gas pipeline to determine which locations, if any, meet Land Use Code requirements and will prepare a report summarizing its findings with respect to the proposed locations. If the City requests a site visit of any of the locations under consideration, the operator is responsible for securing permission or coordinating with the landowner(s) to conduct the site visit. Prior to selecting the location for the proposed oil and gas facility or oil and gas pipeline, the operator shall consult with the City regarding the proposed locations and the City's report regarding such locations.

(I) **Alternative Location Analysis.** The alternative location analysis must include, at a minimum, the following:

(i) For oil and gas facilities:

(A) A map depicting the following elements within three (3) miles of the proposed surface location. (This requirement is limited to one (1) mile for a proposed single vertical or directional well):

(1) All mineral rights held or controlled by the applicant; and

(2) The location of all features listed in the "Preliminary Site Analysis."

(B) The alternative location analysis shall evaluate a minimum of three potential locations that can reasonably access the mineral resources within the proposed drilling and spacing unit(s), including the following information for each site:

(1) General narrative description of each location;

(2) Any location restrictions that the site does not satisfy;

(3) Any existing surface use agreements or other documentation regarding legal property rights;

(4) Off-site impacts that may be associated with each site;

(5) Proposed truck traffic routes and access roads for each location; and

(6) Any information pertinent to the applicable review criteria that will assist the Director in evaluating the locations.

(ii) For oil and gas pipelines, the alternative location analysis shall evaluate a minimum of three potential alignments for the pipeline, including the following information for each alignment:

(A) General narrative description of each alignment;

(B) Any location restrictions that the alignment does not satisfy;

(C) Any existing surface use agreements or other documentation regarding legal property rights;

(D) Off-site impacts that may be associated with each alignment; and

(E) Any information pertinent to the applicable review criteria that will assist the Director in evaluating the locations.

(II) **Preliminary Site Analysis.** The Preliminary Site Analysis shall include maps with the following information:

(i) Provide an ecological characterization study if the development site contains or is within two thousand (2,000) feet of a natural habitat or feature as defined in Section 5.6.1.

(ii) All drilling and spacing units proposed by the applicant within one (1) mile of the City's boundaries; and

(iii) All features defined below that are wholly or partially within one (1) mile of the proposed oil and gas facility:

(A) Any existing or future building approved as occupiable space, as defined in the City's Building Code;

(B) City parks or City property intended to be used for City parks;

(C) City maintained trails and trailheads or City property intended to be used for City trails and trailheads;

(D) Outdoor venues, playgrounds, permanent sports fields, amphitheaters, or other similar places of outdoor assembly;

(E) City natural areas;

(F) Existing and approved oil and gas facilities and pipelines;

(G) Areas within the FEMA 100-Year Floodplain boundary;

(H) The centerline of all USGS perennial and intermittent streams and the map will indicate which surface water features are downgradient;

(I) Active reservoirs and public and private water supply wells of public record;

(J) Natural habitats and features as defined in Land Use Code Section 5.6.1 within one (1) mile of the proposed oil and gas facility;

(K) High priority habitat as defined by the ECMC; and

(L) Disproportionately impacted communities, as defined by the ECMC.

(b) **Step 2 (Neighborhood Meeting):** Mandatory. After a proposed location has been selected for the oil and gas facility or oil and gas pipeline, a neighborhood meeting must be held. Written notice of the neighborhood meeting must be mailed to the owners of record and occupants of all real property within one (1) mile (exclusive of public rights-of-way, public facilities, parks or public open space) of the property line of the parcel of land upon which the development is planned.

(c) **Step 3 (Development Application Submittal):** All items or documents required for project development plans as described in the development application submittal master list for oil and gas facilities and oil and gas pipelines shall be submitted. The Director may waive or modify the foregoing submittal requirements if, given the facts and circumstances of the specific application, a particular requirement would either be irrelevant, immaterial, redundant or otherwise unnecessary for the full and complete review of the application.

The complete project development plan application must be submitted and accepted by the City as complete prior to the applicant submitting any required Form 2 or 2A to the ECMC. Should the applicant submit any required Form 2 or 2A to the ECMC prior to submitting its complete project development plan application to the City, the applicant must withdraw the Form 2 or 2A and refrain from resubmitting until a complete project development plan application has been submitted and accepted by the City as complete.

(4) **Oil and Gas Facility Development Standards**

The following requirements apply to oil and gas facilities in addition to other applicable Land Use Code requirements.

(a) **Location Restrictions for New Oil and Gas Facilities or Enlarged or Expanded Existing Oil and Gas Facilities.**

(1) Allowed Zone Districts. Oil and gas facilities may only be located on property located within:

(i) The Industrial (I) zone district;

(ii) A zone district to which oil and gas facility is added as an allowed use for a particular parcel pursuant to Division 6.9, Addition of Permitted Uses; or

(iii) A Planned Unit Development (PUD) overlay in which oil and gas facilities are an allowed use.

A development application for an oil and gas facility may not be submitted until oil and gas facility is an allowed use for the proposed location.

(2) Setbacks. Setbacks for new oil and gas facilities and enlarged or expanded existing oil and gas facilities cannot be modified pursuant to Division 6.8, Modification of Standards. Setbacks are measured as the shortest distance from the edge of the working pad surface.

(i) No working pad surface shall be located within two thousand (2,000) feet from the following:

(A) The nearest wall of any existing or platted building approved or to be approved as occupiable space as defined under the City's Building Code;

(B) The property boundary line of any property containing a City park or City property intended to be used for a City park;

(C) The easement or parcel boundary of City maintained recreation trails and trailheads or City property intended to be used for City maintained trails and trailheads;

(D) The edge of outdoor venues, playgrounds, permanent sports fields, amphitheaters, or other similar places of outdoor assembly; or

(E) The property boundary line of any property containing a City natural area.

(ii) No working pad surface shall be located within one thousand (1,000) feet from the following:

(A) Public water supply surface intakes or public water supply wells;

(B) Ditches that transport water used by, or to augment, a public water supply system; or

(C) Conservation easements.

(3) Buffer zones surrounding natural habitats and features. Oil and gas facilities shall protect natural habitats and features specified in Section 3.4.1 through buffer zones. Buffer zones set forth in the

Buffer Zone Table for Fort Collins Natural Habitats and Features in Section 5.6.1(E) are measured from the shortest distance from the working pad surface to the top of bank, and are modified as follows:

(i) All features under the Stream Corridors category: 1,000 feet

(ii) Wetlands greater than 1/3 acre: 1,000 feet

(iii) Lakes or reservoirs: 1,000 feet

(iv) Naturalized storm drainage channels/detention ponds: 1,000 feet

(v) Naturalized irrigation ponds: 1,000 feet

(vi) Buffer zones for natural habitats and features not listed above will conform to the buffer distances specified in Section 5.6.1(E) or 1,000 feet, whichever is greater.

(b) **Prohibited Oil and Gas Facilities.** The following facilities are prohibited within the City:

(I) Injection wells for disposal of oil and gas exploration and production wastes;

(II) Gas storage wells;

(III) Disposal pits;

(IV) Commercial disposal facilities;

(V) Centralized exploration and production waste management facilities;

(VI) Subsurface disposal facilities; and

(VII) Glycol dehydrators and desiccant gas processing dehydrators.

(VIII) Onsite oil storage greater than thirty (30) feet in height.

(c) **Landscaping.** Land Use Code Section 5.10.1 applies in addition to the following requirements:

(I) The requirements of Section 5.10.1, Landscaping and Tree Protection, apply within designated setbacks as defined in Section 4.3.4(4)(A)(2) above to meet the Landscaping and Tree Protection general standard set forth in Land Use Code Section 5.10.1.

(II) No landscaping may be placed within a twenty-five (25) foot buffer around any tank or other structure containing flammable or combustible materials.

(d) **Environmental Protection.** Land Use Code Section 5.6.1, Natural Habitats and Features, applies in addition to the requirement for an Ecological Characterization Study if the development site contains or is within two thousand (2,000) feet of a natural habitat or feature.

(e) **Artificial Lift.** Artificial lift may not be accomplished through the use of traditional pump jacks and an alternative artificial lift system must be used that is both less visible and has fewer auditory impacts than a traditional pump jack. Alternatives such as gas lift, linear rod pumps, or hydraulic pumping unit must be used instead of traditional pumpjacks and are to be as low profile as practicable with a maximum height of thirty (30) feet.

(f) **Fencing Plan.** The requirements in this Subsection (f) apply to oil and gas facilities in substitution of the requirements set forth in Land Use Code Section 4.3.5(C), Fences and Walls. A fencing plan must be submitted as part of the application for a project development plan and such plan must demonstrate how the oil and gas facility will comply with the following requirements:

(I) All pumps, wellheads and production facilities must be fenced to prevent unauthorized access and fencing must:

(i) Completely surround such facilities;

(ii) Be no less than six (6) feet in height;

(iii) Be noncombustible and allow for adequate ventilation;

(iv) May not consist of solid masonry walls; and

(v) Must be visually compatible with surrounding land uses.

(II) Each fence enclosure must be equipped with at least one gate. Each gate must meet the following requirements:

(i) Gates shall be provided with a combination catch and locking attachment device for a padlock and shall be kept locked except when being used to access the oil and gas location; and

(ii) Gates must provide adequate access for emergency responders and the operator must provide Poudre Fire Authority with a "Knox Padlock" or "Knox Box with a key" to allow emergency access to the oil and gas location.

(5) Oil and Gas Pipelines

Oil and Gas Pipelines. To the maximum extent feasible, oil and gas pipelines must be utilized for the transport of oil, gas, and produced water within and from any oil and gas location except that temporary tanks may be utilized during drilling, flowback, workover, completion, hydraulic fracturing and maintenance operations. All oil and gas pipelines needed to transport oil, gas, and produced water within and from any oil and gas location must be constructed prior to the production phase of such oil and gas facility.

Oil and gas pipelines must meet the following requirements in order to be approved:

(a) Oil and gas pipelines shall be located underground except to the extent above ground connections to surface oil and gas facilities are necessary.

(b) Oil and gas pipelines shall be sited a minimum of fifty (50) feet away from residential and non-residential buildings. This distance shall be measured from the nearest edge of the oil and gas pipeline. Increased setbacks of up to one hundred and fifty (150) feet may be required for public safety on a case-by-case basis in consideration of the size, pressure, and type of oil and gas pipeline being proposed.

(c) Oil and gas pipelines that pass within one hundred and fifty (150) feet of residential or non-residential building or the high-water mark of any surface water body shall incorporate leak detection, secondary containment, or other mitigation, as appropriate.

(d) To the maximum extent feasible, oil and gas pipelines shall be aligned with established roads in order to minimize surface impacts and reduce natural habitat fragmentation and disturbance.

(e) To the maximum extent feasible, operators shall share existing oil and gas pipeline easements and consolidate new corridors for oil and gas pipeline easements to minimize surface impacts.

(f) The legal description of the location of all new oil and gas pipelines must be recorded on the respective property with the Larimer County Clerk and Recorder within thirty (30) days of completion of construction.

(g) Coordinates of all oil and gas pipelines shall be provided in a format suitable for input into the City's GIS system depicting the locations and type of above and below ground facilities.

(h) Operators shall use boring technology when crossing streams, rivers, irrigation ditches or wetlands with a pipeline to minimize negative impacts to the channel, bank, and riparian areas, except that open cuts may be used across irrigation ditches if the affected ditch company approves the technique.

(i) Special conditions of approval for all gathering lines and transmission lines:

(I) Operator must make available to the City upon request all records submitted to PHMSA or the PUC including those related to inspections, pressure testing, pipeline accidents and other safety events.

(II) Operator shall comply with Fort Collins right-of-way permit and easement processes for all gathering lines installed in Fort Collins owned property or rights-of-way.

(6) Plugging and Abandonment of Wells and Pipelines and Decommissioning of Oil and Gas Facilities

(a) The plugging and abandonment of a well, abandonment of an oil and gas pipeline, and the decommissioning of any oil and gas facility are subject to basic development review. City review and approval of an application to plug and abandon a well, abandon an oil and gas pipeline or decommission and oil and gas facility is intended to be in addition to any required ECMC review and approval. The following documents and information shall be provided as part of the basic development review application:

(I) Coordinates of the well proposed to be plugged and abandoned or pipeline to be abandoned.

(II) A removal plan for flowlines and wastewater pipelines associated with any well proposed to be plugged and abandoned to the extent such lines will not serve a well that has not been plugged and abandoned.

(III) A sampling and monitoring plan associated with any well proposed to be plugged and abandoned. Site investigation, sampling, and monitoring shall be conducted to demonstrate that the well has been properly abandoned and that soil, air and water quality have not been adversely impacted by oil and gas facilities or other sources of contamination. Such sampling and monitoring shall be conducted by a qualified environmental engineering or consulting firm with experience in oil and gas investigations. Director approval that the sampling and monitoring plan contains the information required pursuant to this Subsection (3) is required prior to sampling occurring and such plan shall include, but is not limited to, the following:

(i) Site survey, historical research, and/or physical locating techniques to determine exact location and extent of oil and gas facilities.

(ii) Documentation of plugging activities, abandonment and any subsequent inspections.

(iii) Soil sampling, including soil gas testing.

(iv) Groundwater sampling, if deemed necessary.

(v) Installation of permanent groundwater wells for future site investigations, if deemed necessary.

(vi) A minimum of five (5) years of annual soil gas and groundwater monitoring at the well location.

(vii) Upon completion of the site investigation and sampling, not including the ongoing monitoring, the consultant must provide a written report verifying that the soil and groundwater samples meet applicable Environmental Protection Agency and State residential regulations and that a reclaimed site would not pose a greater health or safety risk for future residents or users of the site. Otherwise, the decision maker may require that the following actions be completed by a qualified professional before development may occur, including but not limited to:

(A) Remediation of environmental contamination to background levels.

(B) Well repair or re-plugging of a previously abandoned well.

(IV) A final reclamation plan for the associated oil and gas location. The final reclamation plan must demonstrate how the following reclamation requirements will be satisfied:

(i) All oil and gas related improvements and equipment must be removed from the oil and gas location, including flowlines, gathering lines, and oil and gas pipelines of any kind unless such improvements or equipment are needed to serve a well that has not been plugged and abandoned.

(ii) Upon written request, the Director may approve in writing the abandonment in place of any oil and gas pipeline. The Director may approve abandonment in place only if removal would cause greater adverse impacts to public health, safety, welfare, or the environment than allowing the oil and gas pipeline to remain. If an oil and gas pipeline is abandoned in place, a tracer will be placed in any nonmetal line. Any oil and gas pipeline approved to be abandoned in place must comply with all ECMC rules and the location of the abandoned oil and gas pipeline must be recorded with the Larimer County Clerk and Recorder on the corresponding property.

(iii) The oil and gas location must be reclaimed and revegetated to the satisfaction of the City and in consultation with the landowner, the oil and gas location and all access roads associated with the oil and gas location proposed to be reclaimed within three (3) years after seeding, or as directed by the landowner in a surface use agreement.

(b) Prior to commencing plugging and abandonment of a well, the applicant must provide the City with evidence of ECMC approval of the request to plug and abandon.

(c) After plugging and abandonment is completed, the operator must:

(I) Provide the City with evidence of ECMC approval of the completed plugging and abandonment.

(II) Provide evidence that the location of the plugged and abandoned well has been recorded with the Larimer County Clerk and Recorder on the corresponding property.

(III) Permanently mark by a brass plaque set in concrete, similar to a permanent benchmark, to monument the plugged and abandoned well's existence and location. Such plaque shall contain the information required by the ECMC to properly identify the well.

(d) **Reclamation.** Within six (6) months after plugging and abandoning a well, abandoning an oil and gas pipeline, or decommissioning an oil and gas facility, reclamation of the associated oil and gas location must be completed pursuant to the approved final reclamation plan unless the Director grants additional time to complete reclamation in consideration of the complexity of the reclamation and conditions that may delay reclamation such as the season and weather. The operator must notify the City upon commencement of reclamation and upon completion.

4.3.5 ACCESSORY/MISCELLANEOUS USES

(A) Accessory Buildings, Structures and Uses

(1) Accessory buildings, structures and uses (when the facts, circumstances and context of such uses reasonably so indicate) may include but are not limited to the following:

(a) Home Occupations;
(b) Horse and household pets;
(c) Signs;
(d) Off-street parking areas;
(e) Off-street loading areas;
(f) Fences;
(g) Private green houses;
(h) Private swimming pools, recreations facilities and clubhouses;
(i) Storage of merchandise in business, commercial and industrial districts;
(j) Cultivation, storage and sale of crops, vegetables, plants and flowers produced on the premises;
(k) Family-care homes;
(l) Solar energy systems
(m) Satellite dish antennas less than thirty-nine (39) inches in diameter;
(n) Hoop houses;
(o) Garage sales, wherein property which not originally purchased for the purpose of resale is sold, provided that such sales are limited to no more than five (5) weekend periods (as defined in Section 15-316 of the City Code) in one (1) calendar year;
(p) Community based shelters services.

(2) In the UE zone district accessory buildings 2,500 sq. ft. or greater shall be reviewed by the Planning and Zoning Commission.

(B) **Composting**

(1) Composting facilities shall be located at least six hundred sixty (660) feet from any land located in the RL, LMN, or MMN zone districts and/or any residential use (except a residential use occupied by the owner, operator or any employee of such composting facility) as such zone districts or residential uses exist at the time of the establishment of such composting facility.

(2) Composting facilities shall contain and treat on-site, all water run-off that comes into contact with the feedstocks or compost, in such manner that the run-off will not contaminate surface or ground water.

(3) Composting facilities shall not be located in any floodway.

(4) No composting facility shall commence operation until a nuisance condition control plan, specifying all measures to be taken to control nuisance conditions (such as odor, noise, scattered solid waste, dust or vectors) has been approved by the Director. The Director's approval shall be based on a finding that the nuisance condition control plan adequately and reasonably identifies potential nuisance conditions and that compliance with the plan will fully address, significantly mitigate, or substantially reduce any adverse conditions to a level reasonably calculated to protect the health and safety of the public.

(C) **Fences and Walls**

(1) Fences and walls are allowed in all zone districts as provided in this section.

(2) If used along collector or arterial streets, such features shall be made visually interesting and shall avoid creating a "tunnel" effect. Compliance with this standard may be accomplished by integrating architectural elements such as brick or stone columns, incorporating articulation or openings into the design, varying the alignment or setback of the fence, softening the appearance of fence lines with plantings, or similar techniques. In addition to the foregoing, and to the extent reasonably feasible, fences and sections of fences that exceed one hundred (100) feet in length shall vary the alignment or setback of at least one-third (⅓) of the length of the fence or fence section (as applicable) by a minimum of five (5) feet.

(3) **Materials:** Chain-link fencing with or without slats shall not be used as a fencing material for screening purposes. Except as permitted below, no barbed wire or other sharp-pointed fence and no electrically charged fence shall be installed or used in any zone districts.

(a) In the Urban Estate (UE), Rural Land (RUL) and Foothills Residential (RF) Districts, barbed wire and portable electrically charged fencing may be used for the purpose of livestock and pasture management. Electrically charged fencing must be used within permanent fencing. Electrically charged fencing that is located along any public right-of-way shall contain signage that identifies it as being electrically charged. Such signage shall occur every three hundred (300) feet and be a minimum of thirty-six (36) square inches in area. All electrically charged fencing shall be limited to low impedance commercially available electric fence energizers using an interrupted flow of current at intervals of about one (1) second on and two (2) seconds off and shall be limited to two thousand six hundred (2,600) volts at a five-hundred-ohm load at seventeen (17) millamperes current. All electric fences and appliances, equipment and materials used shall be listed or labeled by a qualified testing agency and shall be installed in accordance with manufacturers' specifications and in compliance with the National Electrical Code, 1981 Edition NFPA 701981.

In the Employment (E) District and the Industrial (I) District, the Director may grant a revocable use permit that must be renewed every three (3) years for installation of security arms and barbed wire strands atop protective fences or walls, provided that the following conditions are met: the lowest strand of barbed wire must be maintained at least ten (10) feet above the adjoining ground level outside the fence; exterior area security lighting controlled by an automatic light level switch must be installed and maintained in good operating condition; and such lighting must be directed into the site and not outward toward the perimeter.

(4) No more than four (4) feet high between the front building line and front property line;

(5) No more than four (4) feet high if located in the front yard, or within any required side yard setback area in the front yard, except if required for demonstrated unique security purposes;

(6) No more than six (6) feet high if located within any required rear yard setback area or within any side yard setback area in a rear yard;

(7) No more than forty-two (42) inches in height when located within the visual clearance triangle described in Section 5.16.1(K), and, if over thirty-two (32) inches in height within such triangle, fences shall be constructed of split rail with a minimum dimension of twelve (12) inches between horizontal members;

(8) No closer than two (2) feet to a public sidewalk;

(9) No closer than three (3) feet to a lot line along an alley where an alley-accessed garage door is set back at least twenty (20) feet from the lot line, and no closer than eight (8) feet to a lot line along an alley where an alley-accessed garage door is set back less than twenty (20) feet from the lot line, except that alley fences on lots in the RL and OT districts may be located closer to the lot line along an alley when the City Engineer approves such a location.

(D) Urban Agriculture

(1) The following standards apply to all urban agriculture land uses, except those urban agriculture land uses that are approved as a part of a site-specific development plan.

(2) The intent of these urban agriculture regulations is to allow for a range of urban agricultural activities at a level and intensity that is compatible with the City's neighborhoods.

(3) Standards

(a) *License required*. Urban agriculture land uses shall be permitted only after the owner or applicant for the proposed use has obtained an urban agriculture license from the City. The fee for such a license shall be the fee established in the Development Review Fee Schedule. If active operations have not been carried on for a period of twenty-four (24) consecutive months, the license shall be deemed to have been abandoned regardless of intent to resume active operations. The Director may revoke any urban agriculture license issued by the City if the holder of such license is in violation of any of the provisions contained in subsection(b) below, provided that the holder of the license shall be entitled to the administrative review of any such revocation under the provisions contained in Article 6.

General Standards. Urban agriculture shall be allowed as a permitted use, provided that all of the following conditions are met:

(I) Mechanized Equipment. All mechanized equipment used in the urban agriculture land use must be in compliance with Chapter 20, Article II of the City Code regarding noise levels.

(II) Parking. Urban agriculture land uses shall provide additional off-street vehicular and bicycle parking areas adequate to accommodate parking demands created by the use.

(III) Chemicals and Fertilizers. Synthetic pesticides or herbicides may be applied only in accordance with state and federal regulations. All chemicals shall be stored in an enclosed, locked structure when the site is unattended. No synthetic pesticides or herbicides may be applied within a Natural Habitat Buffer Zone.

(IV) Trash/Compost. Trash and compost receptacles shall be screened from adjacent properties by utilizing landscaping, fencing or storage within structures and all trash shall be removed from the site weekly. Compost piles and containers shall be set back at least ten (10) feet from any property line when urban agriculture abuts a residential land use.

(V) Maintenance. All urban agriculture land uses shall be maintained in an orderly manner, including necessary watering, pruning, pest control and removal of dead or diseased plant materials, and shall be maintained in compliance with the provisions of Chapter 20 of the City Code.

(VI) Water Conservation and Conveyance. To the extent reasonably feasible, the use of sprinkler irrigation between the hours of 10:00 a.m. and 6:00 p.m. shall be minimized. Drip irrigation or watering by hand may be done at any time. The site must be designed and maintained so that any water runoff is conveyed off-site into a City right-of-way or drainage system without adversely affecting downstream property.

(VII) Identification/Contact Information. A clearly visible sign shall be posted near the public right-of-way adjacent to all urban agriculture land uses, which sign shall contain the name and contact information of the manager or coordinator of the agricultural land use. If a synthetic pesticide or herbicide is used in connection with such use, the sign shall also include the name of the chemical and the frequency of application. The contact information for the manager or coordinator shall be kept on file with the City. All urban agriculture signs must comport with Article 5 of this Code.

(VIII) If produce from an urban agriculture land use is proposed to be distributed within the City, the applicant must provide a list of proposed Food Membership Distribution Sites in the application.

(IX) Floodplains. If urban agriculture is proposed within a floodplain, then a Floodplain Use Permit is required in accordance with Chapter 14 of the City Code.

(X) Hoop Houses. If an urban agriculture land use contains a hoop house, then the hoop house shall be set back a minimum of five (5) feet from any property line and shall also be located in such a manner that the hoop house does not generate potential adverse impacts on adjacent uses, such as shading or glare.

(XI) Additional Impact Mitigation. The Director may impose measures, such as landscaping, fencing or setbacks, deemed by the Director to reasonably mitigate potential visual, noise or odor impacts on adjoining property. The Director's imposition of measures shall be found reasonable where

the Director determines that any noise, vibration, smoke, dust, odors, heat or glare noticeable at or beyond the property line of the parcel where the urban agriculture land use is conducted will likely be reduced to a level that will not adversely impact public health and safety. Where an urban agriculture land use abuts a residential use, there shall be a minimum setback of five (5) feet between the operation and the property line.

(XII) Notice. At the time of an initial application for an urban agriculture land use within a residential zone (OT, UE, RF, RL, LMN, MMN, HMN, MH, RC and POL) or if the urban agriculture land use exceeds one-half (0.5) acre in size, the Director shall determine whether the proposed urban agriculture land use presents a significant impact on the affected neighborhood, and, if so, the Director shall schedule a neighborhood meeting and provide mailed and posted notice for such meeting. Such notice and neighborhood meeting shall be conducted in accordance with Article 6 of this Code.

(E) **Off-Site Construction Staging**

(1) Applicability. Use of any parcel for off-site construction staging shall be permitted only in accordance with the provisions of an off-site construction staging license issued pursuant to this Section 4.3.5(E).

(2) Purpose. The purpose of requiring an off-site construction staging licensed under this Section 4.3.5(E) is to address the compatibility of off-site construction staging with the zone districts in which they are located, mitigate the impact off-site construction staging on adjacent parcels, the neighborhoods and environment, and ensure the health and safety of off-site construction staging.

(3) Location. Subject to issuance of and compliance with an off-site construction staging license under subsection (4) below, off-site construction staging shall be permitted in specified zone districts as listed in Division 4.2, Table of Primary Uses.

(4) Off-site construction staging license.

(a) 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:

(I) Existing grade contours of the site and of adjoining properties;
(II) Locations of different activities to be located on the site;
(III) 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;
(IV) Any proposed grading necessary to stabilize the site;
(V) Proposed erosion control measures and storm drainage control measures to prevent wind and water erosion, drainage impacts and tracking mud onto streets;
(VI) Flood ways and flood plains;
(VII) Natural habitat and features;
(VIII) Fences;
(IX) Restrooms;
(X) Existing trees;
(XI) Existing easements and rights-of-way;
(XII) Existing underground utilities;
(XIII) Other information necessary to describe the site;
(XIV) Traffic control plan reflecting means of ingress and egress to be used;

(XV) 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

(XVI) Restoration and final site condition plan.

(b) An off-site construction staging license shall be issued, with or without conditions, if the Director finds that the off-site construction staging:

(I) is not detrimental to the public good; and

(II) 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

(III) is located within a quarter (.25) of a mile of the construction or development site to be served by the off-site construction staging.

(c) An off-site construction staging license issued hereunder shall expire eighteen (18) months after the date of issuance unless an extension is granted.

(I) A six (6) month extension may be granted by the Director upon a finding that the conditions specified in Section 4.3.5(E)(4)(b), including any conditions to mitigate adverse impacts, have been and continue to be satisfied.

(II) 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 6.3.6(D) is conducted and the Director determines: the extension is not detrimental to the public good; and that the license conditions specified in Section 4.3.5(E)(4)(b), including any conditions to mitigate adverse impacts, have been and continue to be satisfied.

(d) 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.

(e) The Director may modify or revoke any off-site construction staging license issued by the City for any of the following:

(I) 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

(II) 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.

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

(I) The license holder may appeal any decision denying, modifying or revoking an off-site construction staging license to the Land Use Review Commission pursuant to Article 6 .

(5) 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.

(F) Outdoor Vendor

(1) Outdoor vendors shall be prohibited on undeveloped lots.

(2) Outdoor vendors shall be considered as accessory uses in the zone districts in which they are permitted, provided they are on lots that contain a principal building wherein active operations are being conducted. Outdoor vendors that qualify as accessory uses shall not be subject to change-of-use regulations which would otherwise require the properties on which they are located to be brought into compliance with the standards of this Code.

(3) Outdoor vendors located on lots wherein active operations in the principal building have ceased shall be considered principal uses and shall be subject to change-of-use regulations requiring that the properties upon which they are located be brought into compliance with the applicable standards of this Code.

(4) Signage for outdoor vendors shall be limited to signs placed directly onto the vehicle or cart used in connection with the business.

(5) Outdoor vendors shall comply with all outdoor vendor regulations and standards contained in Chapter 15 of the City Code.

(6) An outdoor vendor shall be situated on a lot in such a manner that no aspect of its operation shall impede vehicular, pedestrian or bicycle circulation.

(7) The owner of a private parcel or lot, or owner of the principal business thereon, upon which an outdoor vendor, or outdoor vendors, vend from mobile food trucks, pushcarts, or any other vehicles, as such terms are defined in Section 15-381 of the City Code, shall not allow such outdoor vendor, or outdoor vendors, to operate on such private parcel or lot for more than three (3) consecutive calendar days, or for more than three (3) total calendar days within any calendar week, defined for purposes of this Section as Sunday through Saturday, unless stationary vending is an approved use thereon.

(8) The owner of a private parcel or lot upon which stationary vending will occur shall comply with the following additional requirements:

(a) Obtain an approved minor amendment to allow stationary vending on the private parcel or lot as an accessory use.

(I) A property owner may apply for a minor amendment to allow stationary vending only for private parcels or lots within non-neighborhood zone districts. Non-neighborhood zone districts solely for purposes of eligible stationary vendor locations shall be defined as: D, CC, CCN, CCR, CG, NC, CL, HC, E, and I.

(II) Stationary vending shall not be permitted on parcels or lots within any neighborhood zone district. Neighborhood zone districts solely for purposes of non-eligible stationary vendor locations shall be defined as: RUL, UE, RF, RL, LMN, MMN, OT-A, OT-B, OT-C, HMN.

(III) Stationary vending shall not be allowed to occur for more than twelve (12) hours per calendar day on the private parcel or lot for which a minor amendment has been granted to allow such use; and

(IV) After the completion of each period of vending operations, a stationary vendor shall not be allowed to leave outdoors overnight (3:00 a.m. to 7:00 a.m.) on any private parcel or lot where stationary vending is allowed any food truck, push cart, or vehicle, as such terms are defined in Section 15-381 of the City Code, from which the vendor vends.

(G) **Solar Energy Systems**

(1) The following standards shall apply to all solar energy systems.

(1) Purpose. The purposes of these solar energy system supplementary regulations are to promote reduced dependence on nonrenewable energy sources, to design solar energy systems in a manner that minimizes impacts on adjacent properties and to promote systems that are visually compatible with the character of the areas in which they are located and that are not detrimental to public health, safety and welfare.

(2) General Design Standards:

(a) To the maximum extent feasible, ancillary solar equipment shall be located inside the building or screened from public view.

(b) The applicant shall demonstrate that the height, location, setback or base elevation of a solar energy system minimizes potential glare and visual impacts of the system on adjacent properties.

(c) Support structures for ground-mounted solar facilities shall, to the extent reasonably feasible, use materials, colors and textures that complement the site context.

(d) All solar energy system appurtenances, including, but not limited to, plumbing, water tanks and support equipment, shall be of a color that is complementary to the site location, and shall be screened to the extent reasonably feasible without compromising the effectiveness of the solar collectors. Solar panels/collectors are exempt from the screening requirements of this Code.

(e) Building-mounted solar energy systems are exempt from the height requirements of this Code, except that they must comply with the height limitations of this Section 4.3.5(G), including the following:

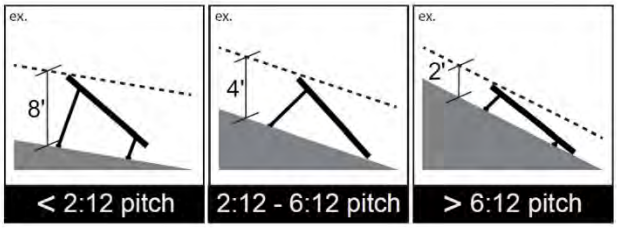
Solar Energy Table

Nonresidential and residential buildings (excluding single-dwelling unit or duplex dwellings)	
< 2:12 pitch	8 feet, as measured on a vertical axis to the roof below, to which it is installed (see Figure 16.3 below)

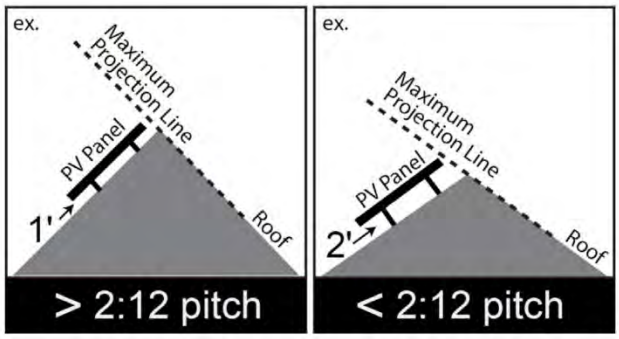
2:12 to 6:12 pitch	4 feet, as measured on a vertical axis to the roofline below, to which it is installed.
> 6:12 pitch	2 feet, as measured on a vertical axis to the roofline below, to which it is installed.
Single dwelling unit and duplex dwellings (principal and accessory buildings)	
No taller than 1 foot, as measured on a vertical axis to the roof below, to which it is installed, unless roof pitch is 2:12 or less, in such case 2 feet is permitted. No portion of a solar energy system shall project above the maximum projection line depicted within Figures 16.3 and 16.4 below.	
All buildings	
Building-mounted solar energy systems shall not extend horizontally beyond any roof overhang.	
Building-mounted solar energy systems	
Solar panels installed on the sides of buildings as awnings or attached to buildings as shade elements are permitted so long as the provisions of this and other applicable requirements are met.	

Maximum Height for Roof-mounted Systems

(Principal Building [Excluding Single-Unit and Two-Unit Dwellings]



Maximum Height for Roof-Mounted Systems (Single Unit and Two-Unit Dwellings)



(3) Standards for Small, Medium and Large-scale Solar Energy Systems. Solar energy systems shall conform to the applicable size-based regulations as set out in this subsection:

(a) Small-Scale Solar Energy Systems.

(I) Covering less than one-half (0.5) acre.

(II) Maximum Height. All ground-mounted small-scale solar energy systems shall comply with the accessory building height limits within the zone district, except for light poles with integrated solar panels, which are subject to the standards of Article 5.

(III) Setbacks. Ground-mounted, small-scale solar energy systems shall not be located within the front, side or rear building setbacks, or the front yard area. If necessary for the system's effectiveness, ground-mounted solar energy collectors may be located within the minimum setbacks for the zone district, provided that the solar energy collector is located no less than fifteen (15) feet from rights-of-way and five (5) feet from all other property lines.

(IV) Parking. No minimum parking requirements shall apply. Parking spaces located beneath covered parking solar energy systems are exempt from maximum parking limits.

(b) Medium-Scale Solar Energy Systems.

(I) Covering between one-half (0.5) acre and five (5) acres.

(II) Maximum Height. All ground-mounted medium-scale solar energy systems shall comply with the accessory building height limits within the zone district, except for light poles with integrated solar panels, which are subject to the standards of this Code.

(III) Setbacks. Ground-mounted, medium-scale solar energy systems shall not be located within the front, side or rear building setbacks, or the front yard area.

(IV) Fencing/Access. Ground-mounted medium-scale solar energy systems shall be enclosed with a perimeter fence with a minimum height of five (5) feet and a maximum height of seven (7) feet. Knox boxes and keys shall be provided at locked entrances for emergency personnel access. Warning signage shall be placed at the entrance and perimeter of the facility.

(V) Visual Appearance. Buildings and accessory structures shall, to the extent reasonably feasible, use materials, colors and textures that blend the facility into the existing environment.

(VI) Landscaping. Landscaping and/or screening materials shall be provided to assist in screening the facility from public rights-of-way and neighboring residences.

(VII) Lighting. Lighting shall be limited to the minimum necessary for security and shall incorporate shielded full cut-off light fixtures.

(VIII) Electrical Interconnections. All electrical interconnection and distribution lines within the project boundary shall be underground, except for power lines that extend beyond the project site or are within a substation.

(c) Large-Scale Solar Energy Systems.

(I) Covering more than five (5) acres.

(II) Maximum Height. All ground-mounted large-scale solar energy systems shall comply with the accessory building height limits within the zone district, except for light poles integrating solar panels, which are subject to the standards of Article 5.

(III) Setbacks. Large-scale solar energy systems shall be set back from all property lines a minimum of thirty (30) feet, and shall be located at least one hundred (100) feet from all residentially zoned land. Additional setbacks may be required to mitigate visual and functional impacts.

(IV) Fencing/Access. Ground-mounted large-scale solar energy systems shall be enclosed with a perimeter fence with a minimum height of five (5) feet and a maximum height of seven (7) feet. Knox boxes and keys shall be provided at locked entrances for emergency personnel access. Warning signage shall be placed at the entrance and perimeter of the facility.

(V) Visual Appearance. Buildings and accessory structures shall, to the extent reasonably feasible, use materials, colors and textures that blend the facility into the existing environment.

(VI) Landscaping. Landscaping and/or screening materials shall be provided to assist in screening the facility from public rights-of-way and neighboring residences.

(VII) Lighting. Lighting shall be limited to the minimum extent necessary for security and shall incorporate shielded full cut-off light fixtures.

(VIII) Electrical Interconnections. All electrical interconnection and distribution lines within the project boundary shall be underground, except for power lines that extend beyond the project site or are within a substation.

(4) Maintenance. Any solar energy system that has not been in working condition for a period of one (1) year shall be subject to Section 115 (Unsafe Structures and Equipment) of the International Building Code, which may require the panels and associated equipment to be removed, or the unsafe condition otherwise mitigated if it is determined to be unsafe. If so determined by the Building Official, the panels and associated equipment shall be promptly removed from the property to a place of safe and legal disposal, after which the site and/or building, as applicable, must be returned to its preexisting condition.

(5) Use Restrictions in Established Residential Areas. Notwithstanding the use review criteria contained set out in Article 4, if either a small-scale solar energy system or a medium-scale solar energy system is located on an existing platted lot and within an established residential neighborhood, then such system must be processed as a permitted use subject to review by the Planning and Zoning Commission.

(6) Allocation of Energy. Energy derived from solar collectors may be allocated to the lot where the system is located or may be distributed to other locations.

(H) Wireless Communication

(1) **Applicability and Exemptions.** The provisions of this Section shall apply to any Wireless Communications Facility (WCF) within the City. The requirements set forth in this Section shall not apply to:

(a) Antennas or towers used by FCC-licensed amateur (ham) radio operators.

(b) Television or radio antennas. Those antennas, including over the air reception devices, located on single family dwellings or duplexes, not exceeding one (1) meter in diameter and less than five (5) feet above the highest point of the existing principal structure, or for ground mounted antennas, the requirement that the height be no more than the distance from its base to the property line or the maximum height specified for accessory structures for that zone district, whichever is less. The Director has the authority to approve modifications to the height restriction related to over the air reception device antennas and antenna structures, if in the reasonable discretion of the City, modifications are necessary to comply with federal law.

(c) Government-owned facilities. City-owned communications WCFs located on City-owned property and/or public rights-of-way, and any government-owned WCF installed upon the declaration of a state of emergency by the federal, state or local government, or a written determination of public necessity by the City.

(d) Over the Air Reception Devices (OTARD) antennas and associated masts. The Director may approve modifications to the height restriction related to OTARD antennas and OTARD antenna structures, if in the reasonable discretion of the Engineer, modifications are necessary to comply with federal law.

(e) A facility entirely enclosed within a permitted building where the installation does not require a modification of the exterior of the building; nor a device attached to a building, used for serving that building only and that is otherwise permitted under other provisions of this Code.

(2) **Location**. Subject to the requirements of paragraph (3) of this Section, WCFs may be attached to or mounted on any existing building or structure (or substantially similar replacement structure) located in any zone district of the city. With the exception of OTARD, and associated masts, WCFs shall not, however, be permitted to be attached to or mounted on any residential building containing four (4) or fewer dwelling units.

(3) **Cooperative Collocation**. No WCF or equipment owner or lessee or employee thereof shall act to exclude or attempt to exclude any other wireless communication provider from using the same building, structure or location. WCF or equipment owners or lessees or employees thereof, and applicants for the approval of plans for the installation of such facilities or equipment, shall cooperate in good faith to achieve co-location of WCFs and equipment. Any application for the approval of a plan for the installation of WCFs or equipment shall include documentation of the applicant's good faith efforts toward such cooperation.

(4) **Standards.**

(a) *Setbacks*. With respect to a WCF that is a tower or a monopole, the setback of the facility from the property lines shall be one (1) foot for every foot of height. However, to the extent that it can be demonstrated that the structure will collapse rather than topple, this requirement can be waived by the Director. In addition, the setbacks for ground-mounted wireless telecommunication equipment shall be governed by the setback criteria established in this Code.

Collocated WCFs in the R-U-L zone district shall be setback from the center line I-25 of Carpenter Road a distance of at least one thousand three hundred twenty (1,320) feet (one-quarter (¼) mile).

WCFs. All WCFs shall be consistent with the architectural style of the surrounding architectural environment (planned or existing) considering exterior materials, roof form, scale, mass, color, texture and character. Such facilities shall also be compatible with the surrounding natural environment considering land forms, topography, and other natural features. If such facility is an accessory use to an existing use, the facility shall be constructed out of materials that are equal to or better than the materials of the principal use.

WCFs in Residential Zone Districts. Non-collocated WCFs permitted in the following zone districts: UE, RL, LMN, MMN, and HMN, as specified in Article 4 - Use Standards must be located on a non-residential parcel and installation must be mitigated by use of concealment design techniques and compatibility standards.

*Collocated or attached WCFs .*WCFs shall be of the same color as the building or structure to which or on which such equipment is mounted.

Whenever a wireless telecommunication antenna is attached to a building roof, the height of the antenna shall not be more than fifteen (15) feet over the height of the building. All WCF equipment shall be located as far from the edge of the roof as is feasible. Even if the building is constructed at or above the building height limitations contained in other sections of this Code, the additional fifteen (15) feet is permissible.

Whenever WCFs are mounted to the wall of a building or structure, the equipment shall be mounted in a configuration as flush to the wall as feasible and shall not project above the wall on which it is mounted. Such equipment shall, to the extent feasible, also feature the smallest and most discreet components that the technology will allow so as to have the least possible impact on the architectural character and overall aesthetics of the building or structure.

Roof- and ground-mounted WCFs shall be screened by parapet walls or screen walls in a manner compatible with the building's design, color and material.

Landscaping. WCFs and related transmission equipment may need to be landscaped with landscaping materials that exceed the levels established in Division 5.10, due to the unique nature of such facilities. Landscaping may therefore be required to achieve a total screening effect at the base of such facilities or equipment to screen the mechanical characteristics. A heavy emphasis on coniferous plants for year-round screening may be required.

If a WCF and related transmission equipment has frontage on a public street, street trees shall be planted along the roadway in accordance with the policies of the City Forester.

Fencing. Chain link fencing shall be unacceptable to screen facilities. Fencing material shall consist of wood, masonry, stucco or other acceptable materials and be opaque. Fencing shall not exceed six (6) feet in height.

Berming. Berms shall be considered as an acceptable screening device. Berms shall feature slopes that allow mowing, irrigation and maintenance.

Irrigation. Landscaping and berming shall be equipped with automatic irrigation systems meeting the water conservation standards of the City.

Color. All WCFs and related transmission equipment shall be painted to match to the extent feasible the color and texture of the wall, building or surrounding built environment. Muted colors, earth tones and subdued colors shall be used.

Lighting. The light source for security lighting shall comply with the requirements of Division 5.12. Light fixtures, whether freestanding or tower-mounted, shall not exceed twenty-two (22) feet in height.

Interference. Wireless telecommunication facilities and equipment shall operate in such a manner so as not to cause interference with other electronics such as radios, televisions or computers, and otherwise in compliance with applicable federal standards for avoiding signal interference. An applicant shall provide a written statement ("Signal Interference Letter") from a qualified radio frequency engineer, certifying that a technical evaluation of existing and proposed facilities indicates no potential interference problems.

Radio frequency standards. All WCFs shall comply with federal standards for radio frequency emissions. An applicant shall provide a written statement ("Emission Standards Letter") from a qualified radio frequency engineer, certifying that a technical evaluation of existing and proposed facilities indicates no potential emissions in excess of federal radio frequency standards.

Access Roadways. Access roads must be capable of supporting all of the emergency response equipment of the Poudre Fire Authority.

Foothills and Hogbacks. Applicants for WCFs and related transmission equipment in or near the foothills bear a special responsibility for mitigating visual disruption. If such a location is selected, the applicant shall provide computerized, three-dimensional, visual simulation of the facility or equipment and other appropriate graphics to demonstrate the visual impact on the view of the city's foothills and hogbacks.

Airports and Flight Paths. WCFs and related transmission equipment shall comply with Federal Aviation Administration (FAA) requirements and obtain the necessary approvals from the FAA.

Historic Sites and Structures. WCFs and related transmission equipment shall not be located on any historic site or structure unless permission is first obtained from the city's Historic Preservation Commission as required by Chapter 14 of the City Code.

Concealment Required. All WCFs shall, to the extent feasible, use concealment design techniques, and when not feasible utilize camouflage design techniques.

Compatibility Required.

(I) Purpose. The purpose of this Section is to ensure that proposed WCFs are compatible with the surrounding context by ensuring that:

(i) New or existing WCFs do not adversely impact the visual character* of the community within the area of adjacency; and

(ii) The design of WCFs are compatible and contextually appropriate with the built or natural environment surrounding a proposed wireless communication site.

(II) To accomplish its purpose, this Section provides the standards for design compatibility of WCFs with the existing context within the delineated area of adjacency surrounding a proposed WCF site.

* For the purposes of this Section, character is defined as special physical characteristics of a structure or area that set it apart from its surroundings and contribute to its individuality. This can include but is not limited to the built environment, landscaping, natural features and open space, and types and styles of building architecture.

(III) WCF Site and Area of Adjacency.

As used in this Section, the *area of adjacency* shall mean an area measured radially from the center point of the WCF. Any element of a lot or parcel of property shall be considered within the area of adjacency if any portion of such lot or parcel is within the boundary. The limits of the boundary shall be based on the following calculation:

The overall height (from grade to highest point of the proposed facility) of the proposed WCF multiplied by five (5).

In the event that the area of adjacency is absent of an established visual character the WCF shall be designed in such a way that most closely relates to the landscape, historic, or future potential use of land.

(IV) Design Standards for a Proposed WCF.

Proposed WCFs and equipment shall mimic the height and appearance of structures or natural elements appropriate to the context in a way that protects and enhances the character of the area both on the development site and within the area of adjacency. The Table 1 requirements shall apply to the development of facilities on the development site as follows:

Table 1 – Standards for Compatibility on the Development Site and Within the Area of Adjacency

Purpose	Standards for Compatibility on the Development Site and Within the Area of Adjacency

Height and Mass of WCFs	New or modified WCFs shall use concealment, and when not feasible, camouflage that reflects the character of the area of adjacency. The overall height and mass of a facility or equipment established under these standards are the maximum height that if any greater, would otherwise defeat concealment. 1. Height. New or modified WCFs shall not exceed 15 feet or 15%, whichever is less, of the average height of buildings or landscape within the area of adjacency. If a lot containing a residential land use falls within or abuts the area of adjacency, the maximum height of the facility shall not exceed forty-five (45) feet. 2. Massing. All WCFs shall mimic the mass (height and width) in a way that is subordinate to the natural environment or built environment found within the area of adjacency.
Materials for WCFs	Create visual and contextual connection between WCFs colors and materials with those found in the surrounding area. New or modified WCFs shall utilize, to the extent feasible, the following elements found within the area of adjacency to inform their concealment techniques: a) Architectural style b) Building materiality c) Color d) Tree species e) Structures that are related to the primary use of the site
Technology for Facilities	To the extent feasible, new WCFs and related transmission equipment shall utilize industry best practices and the latest technology available to achieve concealment and compatibility with the context. Such facilities or shall feature the smallest and most discreet components that the technology will allow so as to have the least possible impact on the character and overall aesthetics of the area of adjacency.

(5) Wireless Telecommunication Equipment in the RUL zone district such use shall be setback from the center line I-25 of Carpenter Road a distance of at least one thousand three hundred twenty (1,320) feet (one-quarter (¼) mile).

(6) The regulations contained in this Section shall not apply to the installation, operation, maintenance, or upgrade of a small cell facility by a telecommunications provider principally located within a public highway. The regulation of such activities is addressed in Chapter 23 of the Code of the City of Fort Collins, and design standards for small cell facilities are addressed in the City's Small Cell Handbook as may be amended from time to time.

(7) **Review Procedures and Requirements.**

(a) General. No new WCF shall be constructed and no collocation or modification to any WCF may occur except after a written request from an applicant, reviewed and approved by the City in accordance with this Section. All WCFs shall comply with the zone district use standards and land use application processes identified in this Code.

(b) Application Requirements. All applications for WCFs shall include:

(I) Application form as provided by the Director.

(II) If the applicant is not the owner of the property or structure to which the WCF is to be attached, an executed Letter of Authorization from the landowner.

(III) A report, signed and sealed by a professional engineer in the State of Colorado, or a verified statement from a qualified radio frequency engineer, demonstrating or assuring that the site will be in full compliance with federal radio-frequency emissions standards for WCFs.

(IV) A signal interference certification bearing the seal and signature of a professional engineer in the State of Colorado, representing that all WCFs covered by the application shall be designed, sited and operated in accordance with applicable federal signal interference requirements.

(V) Submittal fees.

(VI) Scaled site plan, photo simulation, scaled elevation view and supporting drawings, calculations, showing the location and dimension of all improvements, including information concerning topography, tower and where applicable, structure height, setbacks, drives, parking, street trees, adjacent uses, drainage.

(VII) Narrative detailing the rationale for the proposed location.

(VIII) Other information reasonably deemed by the Director to be necessary to assess compliance with this Section. Documents requiring signatures and seals by appropriate qualified professionals shall be provided by applicant prior to issuance of a permit under this Section.

(c) Structural Assessment. Prior to issuance of a WCF permit for any WCF proposing a new pole or attachment to a non-City-owned structure, the applicant shall submit a stamped and signed structural assessment for each new proposed WCF host support structure conducted by a professional engineer, licensed in the State of Colorado.

(I) When the structural assessment indicates a need for a stronger structure to address issues such as wind load factor, applicant shall provide a replacement structure at applicant's cost satisfactory to the Director in consultation with Fort Collins Utilities, as applicable.

(II) All costs for conducting an assessment under this subsection (3) shall be borne by the applicant, and shall be paid by the applicant prior to issuance of a permit under this Section.

(d) New Structures. All applications for new vertical structures associated with a WCF shall demonstrate that other alternative siting options, including collocations, are not feasible. Notwithstanding anything in this Section to the contrary, all WCFs and associated vertical structures located within the City shall satisfy the location and design criteria set forth in subsections (2)-(4) above.

(8) **Timeframes for Review.**

(a) Application types. All WCFs shall be reviewed according to the following timeframes (the review of Eligible Facility Requests is addressed in (8)(c) below):

(I) Review of a completed application to collocate a facility other than a small cell facility on an existing tower or base station: 90 days.

(II) Review of an application to deploy a WCF other than a small cell facility on a new structure: 150 days.

(III) Review of an application for a new tower, base station, or alternative tower structure that does not qualify as a small cell facility: 150 days.

(b) Tolling the Timeframe for Review. The relevant review timeframe begins to run when the application is filed with the City, and may be tolled only by mutual agreement or where the City determines that an application is incomplete.

(I) To toll the timeframe for incompleteness, the City shall provide written notice to the applicant within thirty (30) calendar days of receipt of the application, specifically delineating all missing documents or information required in the application;

(II) Upon providing the notice of incompleteness to the applicant, the timeframe for review pauses. The timeframe for review begins running again when the applicant makes a supplemental written submission in response to the City's notice of incompleteness; and

(III) Following a supplemental submission, the City will notify the applicant within ten (10) business days whether the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in subparagraphs (I) and (II) of this subsection. In the case of a second or subsequent notice of incompleteness, the City may not specify missing documents or information that were not delineated in the original notice of incompleteness.

(c) Specific Review Procedures for Eligible Facility Requests.

(I) EFR standards. The City shall prepare, and from time to time revise and make available, an application form requiring the information necessary for the City to consider whether the project covered by an application would:

(i) result in a Substantial Change to the physical dimensions of the site; and

(ii) violate a generally applicable law, regulation, or other rule reasonably related to public health and safety.

The application shall not require an applicant to demonstrate a need or business case for the proposed modification or collocation.

(II) Timeframe for EFR review. Subject to the tolling provisions below, an eligible facility request shall be approved within sixty (60) days of the date of the request unless it the City determines that it does not qualify as an eligible facilities request. Upon receipt of an application for an eligible facility request pursuant to this subsection, the City shall review such application to determine whether the application so qualifies.

(III) Tolling the timeframe for EFR review.

(i) The sixty (60) calendar day review period begins to run when the application is filed with the City, and may be tolled only by mutual agreement or where the City determines that an application is incomplete:

(A) To toll the timeframe for incompleteness, the City must provide written notice to the applicant within thirty (30) calendar days of receipt of the application, specifically delineating all missing documents or information required in the application;

(B) Upon notice of incompleteness to the applicant, the timeframe for review pauses. The timeframe for review begins running again when the applicant makes a supplemental written submission in response to the City's notice of incompleteness; and

(C) Following a supplemental submission, the City will notify the applicant within ten (10) business days whether the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in subparagraphs (A) and (B) of this subsection. In the case of a second or subsequent notice of incompleteness, the City may not specify missing documents or information that were not delineated in the original notice of incompleteness.

(ii) If the City fails to approve or deny an eligible facility request within the time frame for review (accounting for any tolling), the request shall be deemed granted; provided that this approval shall become effective only upon the City's receipt of written notification from the applicant after the review period has expired (accounting for any tolling) indicating that the application has been deemed granted.

(IV) Interaction with Telecommunications Act 47 U.S.C. Section 332(c)(7). If the City determines that the applicant's request is not an eligible facilities request as delineated in this subsection, the applicant shall be advised as to the relevant provisions of the City Code that govern the process to consider the request, and whether the Code requires any additional information to be submitted in order for the request to be considered complete. If the applicant subsequently indicates an intent for the proposal to be considered under the relevant section of the City Code and submits all required information, the presumptively reasonable timeframe under Section 332(c)(7), as set forth in applicable federal and state law will begin to run from submittal of the required information under the applicable provision of this Code.

City of Fort Collins

ARTICLE 5

General Development and Site Design

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ARTICLE 5
General Development and Site Design

DIVISION 5.1 APPLICABILITY

5.1.1 APPLICABILITY

Applicability. Article 5, general development and site design standards apply throughout the City and are not unique to a specific zone district, unless excluded as stated in a specific standard such as Chapter 14 of the Code of the City of Fort Collins regarding Landmarks.

DIVISION 5.2 AFFORDABLE HOUSING

5.2.1 AFFORDABLE HOUSING

(A) **Purpose.** To support the City's adopted housing goals as outlined in the Housing Strategic Plan and to achieve 10% deed-restricted, affordable housing stock by 2040, this Division outlines applicability of affordable housing incentives and requirements for compliance. This Division seeks to:

(1) Encourage the development of deed-restricted, affordable housing for low- and moderate-income households.

(2) Provide options for use of affordable housing incentives in order to allow for increased flexibility for various development types and contexts.

(B) **Applicability.** This Section shall apply to the following development projects:

(1) Projects that meet the definition of Affordable Housing Development as outlined in Article 7; and

(2) Projects that propose to use bonus option standards for maximum density, maximum height, and/or minimum parking.

(3) Section 5.2 does not apply to group homes, dormitories, medical facilities, hotels, motels, shelters, tents, short-term rentals or other structures designed or used primarily for temporary occupancy and/or group living.

(C) **Affordability Standards.** Rental and For-sale projects shall provide one of the following minimum unit options:

(1) Rental Units:

(a) 10% units at 60% AMI; or

(b) 20% units at 80% AMI

(2) For-Sale:

(a) 10% units at 80% AMI; or

(b) 20% units at 100% AMI

(D) **Compliance.** To achieve compliance, all Affordable Housing built under the standards of this Code shall provide the following:

(1) Certification Letter. The applicant shall submit a notarized affidavit to the Director that provides how the development meets the affordability standards above and administrative requirements. Upon review and acceptance of the affidavit in consultation with the Director of the Social Sustainability Department, the Director will provide a letter certifying that the development meets the standards stated above and any administrative requirements (Certification Letter). This letter is required to be submitted as part of the building permit application before a building permit can be issued for the development but is not required to as a part of a land use review.

(2) Qualified Preservation Partner (QPP). If applicable, the Certification Letter shall identify the Qualified Preservation Partner.

(3) Covenant/Deed Restriction. The units will be required by binding legal instrument acceptable to the City, providing rights of enforcement to the City, and duly recorded with the Larimer County Clerk and Recorder, to be occupied by and affordable to low-income households for at least sixty (60) years. This covenant shall be recorded prior to issuance of a building permit for the development. There will be language placed in real estate sales documents, acceptable to the City, clearly noticing the deed restriction as part of the sale, and containing a continued requirement of notice in all future sales.

(E) **Timing of Development**. The construction of the affordable dwelling units or spaces shall occur before the construction of the market rate units, or at no case less than on a proportional basis, according to the same ratio as the number of affordable units bears to the number of the market rate units.

(F) **Annual Reporting**. The applicant or Qualified Preservation Partner shall provide annual documentation to the Director, who shall provide a copy to the Director of the Social Sustainability Department, relating to the affordable dwelling units in the development. This documentation must commence no later than thirty (30) days following issuance of a Certificate of Occupancy (CO) for the affordable dwelling units and will include, at minimum, the following:

(1) Occupancy and demographic report;

(2) Rent report (annually at minimum and at any time the applicant/owner proposes to increase rents);

(3) Reporting required for compliance as part of a City funding award for affordable units shall satisfy the requirements of this subsection; and

(4) Any further documentation/verification the City may deem necessary to verify the validity of the affordable housing reporting, including, but not limited to, seeking direct verification from tenants/owners of affordable units.

(G) **Monitoring and Enforcement.**

(1) Monitoring. The Director in consultation with the Director of Social Sustainability Department shall periodically monitor and verify the commitments made by the applicant or Qualified Preservation Partner in the Declaration of Covenants, Conditions and Restrictions. Upon reasonable notice to the applicant or Qualified Preservation Partner, the applicant or Qualified Preservation Partner shall provide information to the City sufficient to verify the following:

(a) Compliance with all Affordable Housing Requirements as set forth in this Division.

(b) The affordable dwelling units are occupied by households earning income as required in the Declaration of Covenants, Conditions and Restrictions.

(c) The eligibility of each prospective household is verified by the owner prior to occupancy of any affordable unit and proof provided to the City upon request. Applicants or Qualified Preservation Partners submit documentation for certification to the City for a determination of tenant eligibility, prior to tenant occupancy. No affordable unit is rented, sold, or occupied by any person unless and until the City determines that the prospective tenant or occupant satisfies the eligibility requirements.

(2) Staff shall be entitled to arrange periodic site visits to ensure habitability of affordable units; owner will secure authority to enter the unit and will cooperate with Staff.

(3) Monitoring required for compliance as part of a City funding award for affordable units shall satisfy the requirements of this subsection (G).

(H) **Enforcement.** Upon a finding by the City that an Affordable Housing project built under the standards of this Code does not comply with the requirements of Section 5.2, the City make take one or more enforcement actions;

(1) imposition of penalties including those found in City Code Section 1-15 civil infractions and any additional penalties as set forth in an agreement between the owner/developer and the City; or

(2) imposition of another appropriate action to enforce these requirements or accomplish their intended result.

DIVISION 5.3 RESIDENTIAL DEVELOPMENT

5.3.1 RESIDENTIAL DEVELOPMENTS

(A) **Purpose.** To promote variety of architecture and housing choices that create cohesion within a development project and relates to the surrounding context.

(B) **Applicability**. Division 5.3 applies to all residential development projects that approve one or more buildings on one or more parcels unless otherwise excluded in a specific standard.

5.3.2 MULTI-BUILDING AND MIX OF HOUSING

(A) **Purpose.** To promote:

- a variety of architecture;
- housing choices;
- cohesion within a development project;
- visual interest;
- relationship to the surrounding context, visual interest; and
- pedestrian-oriented streets in residential development.

(B) **Applicability.** Applies to all development projects with more than one building on one or more parcels unless otherwise excluded in a specific standard

(C) **Mix of Housing Types.** A mix of permitted building types shall be included in any individual development plan that includes residential uses, to the extent reasonably feasible, depending on the size of the parcel. To promote such variety, the following minimum standards shall be met:

(1) A minimum number of building types is required on any project development plan as shown in the following table:

Minimum number of Building Types in a development project	
Acre Size	Number of Building Types
15>20	2
20>30	3
30+	4

(a) in the HC district only, if Detached House dwelling units are proposed, at least an equivalent number of Row House, Duplex or Apartment Building dwelling units (or combination thereof) must also be provided.

(2) Housing types, block dimensions, garage placement, lot sizes and lot dimensions shall be significantly and substantially varied to avoid repetitive rows of housing and monotonous streetscapes. For example, providing distinct single-unit detached dwellings or two-unit dwellings on larger lots and on corners and providing small lot single-unit dwellings on smaller lots abutting common open spaces fronting on streets are methods that accomplish this requirement.

(3) The following list of building types shall be used to satisfy the minimum number of building type requirement, provided that no building type comprises less than 5% or more than 80% of development:

(a) Detached House with rear loaded garages.

(b) Detached House with front or side loaded garages.

(c) Small lot with Detached House (lots containing less than four thousand [4,000] square feet or with lot frontages of forty [40] feet or less) if there is a difference of at least two thousand (2,000) square feet between the average lot size for small lot single-unit and the average lot size for single-unit detached dwellings with front or side loaded garages.

(d) Duplex.

(e) Rowhouse.

(f) Duplex, attached, the placement of which shall be limited to no more than two (2) dwellings per two (2) consecutive individual lots.

(g) Mixed-Use building.

(h) Apartment Building containing up to four (4) units per building;

(i) Apartment Building containing at least five (5) up to seven (7) units per building.

(j) Apartment Building containing at least eight (8) up to twelve (12) units per building.

(k) Apartment Building containing more than 12 units per building

(l) Manufactured Housing.

(4) For any development containing repeated building types (excluding clubhouses/leasing offices) there shall be a minimum number of distinct designs as shown in the table below:

Minimum number of distinct designs for repeating Building Types in a development project	
Repeating Building Types	Distinct designs
5 to 7	2
8+	3

(a) For all developments, there shall be no more than two (2) similar buildings placed next to each other along a street or major walkway spine.

(b) Distinctly different building designs shall provide significant variation in:

Distinct Building Requirements	
Varies in either:	
Footprint size; or	30% difference in square footage from another building.
Shape	Square
	Rectangle, 40ft difference from the longest side compared to the longest side of another building.
	Other Polygons, 40ft difference from the longest side compared to the longest side of another building.
And includes variations in at least three of the following building elements:	
Element	**Components of the element**
Exterior finish materials	Brick, Wood, Stone, Metal, or Other Material
Window Combinations/Placement	Size and/or Pattern
Entrance feature	• Recessed or Covered • Portal Size •Location on building elevation • Lighting
Roof forms	Flat, Pitch, or Overhang greater than 4ft
Patio/balcony size	30% Difference in Square Footage
Upper story step-back (above 2nd story)	10ft min. Step-Back on all Sides
Building Height	12ft min Difference in Height
Vertical building module	3 min.

(5) For development that contains Detached House and Duplex building types found in Article 3, there shall be model variety and variation among buildings as indicated in the following table:

Minimum number of Detached house and Duplex models	
Number of dwelling units	Distinct models
11 to 99	3
100+	4

(a) The applicant shall include, in the application for approval of the project development plan, documentation showing how the development will comply with the model variation.

(b) Each housing model shall have at least three (3) characteristics which clearly and obviously distinguish it from the other housing models, which characteristics may include, without limitation, differences in floor plans, exterior materials, roof lines, garage placement, placement of the footprint on the lot and/or building face.

(c) An applicant for a Building Permit for these building types shall affirm and certify in the application that the dwelling which is the subject of the Building Permit does not adjoin a lot with the same housing model, if on the same block face.

(6) Development that contains Row House building type containing more than two (2) dwelling units shall comply with the following requirements:

(a) For any development containing at least three (3) and not more than five (5) buildings (excluding clubhouses/leasing offices), there shall be at least two (2) distinctly different building designs. For any such development containing more than five (5) buildings (excluding clubhouses/leasing offices), there shall be at least three (3) distinctly different building designs. For all developments, there shall be no similar buildings placed next to each other along a street or street-like private drive. Building designs shall be considered similar unless they vary significantly in footprint size and shape.

(b) Building designs shall be further distinguished by including unique architectural elevations and unique entrance features, within a coordinated overall theme of roof forms, massing proportions and other characteristics. Such variation among buildings shall not consist solely of different combinations of the same building features.

(D) **Relationship of Dwellings to Streets and Parking**. Development projects containing residential buildings shall place a high priority on building entryways and their relationship to the street. Pedestrian usability shall be prioritized over vehicular usability. Buildings shall include human-scaled elements, architectural articulation, and in projects containing more than one (1) building, design variation.

(1) **Orientation to a Connecting Walkway**. Every front facade with a primary entrance to a dwelling unit shall face the adjacent street to the extent reasonably feasible. Every front facade with a primary entrance to a dwelling unit shall face a connecting walkway with no primary entrance more than two hundred (200) feet from a street sidewalk and the address shall be posted to be visible from the intersection of the connecting walkway and public right of way. The following exceptions to this standard are permitted:

(a) Up to one (1) dwelling on an individual lot that has frontage on either a public or private street.

(b) A primary entrance may be up to three hundred fifty (350) feet from a street sidewalk if the primary entrance faces and opens directly onto a connecting walkway that qualifies as a major walkway spine.

(c) If an Apartment Building or Mixed-Use building has more than one (1) front facade, and if one (1) of the front facades faces and opens directly onto a street sidewalk, the primary entrances located on the other front facade(s) need not face a street sidewalk or connecting walkway.

- Street-Facing Facades. Every building containing four (4) or more dwelling units shall have at least one (1) building entry or doorway facing all adjacent streets that are smaller than a full arterial or has on-street parking.

- At least one (1) door providing direct access for emergency responders from the outside into each individual Rowhouse Building must be located within one hundred fifty (150) feet from the closest emergency access easement or designated fire lane as measured along paved walkways. Neither an exterior nor an interior garage door shall satisfy this requirement.

(E) ***Block Requirements***. All development shall comply with the applicable standards set forth below, unless the decision maker determines that compliance with a specific element of the standard is infeasible due to unusual topographic features, existing development, safety factors or a natural area or feature:

(1) *Block Structure.* Each multi-unit project shall be developed as a series of complete blocks bounded by streets (public or private). (See Block Examples at 5(a)-(f) below). Natural areas, irrigation ditches, high-voltage power lines, operating railroad tracks and other similar substantial physical features may form up to two (2) sides of a block.

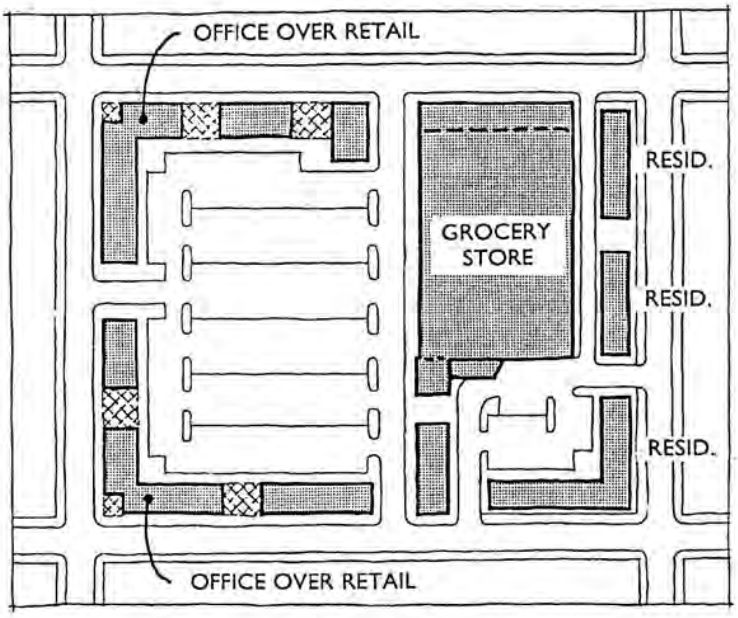
(2) *Block Size.* All blocks shall be limited to a maximum size of seven (7) acres.

(3) *Mid-block Pedestrian Connections.* If any block face is over seven hundred (700) feet long, then walkways connecting to other streets shall be provided at approximately mid-block or at intervals of at least every six hundred fifty (650) feet, whichever is less.

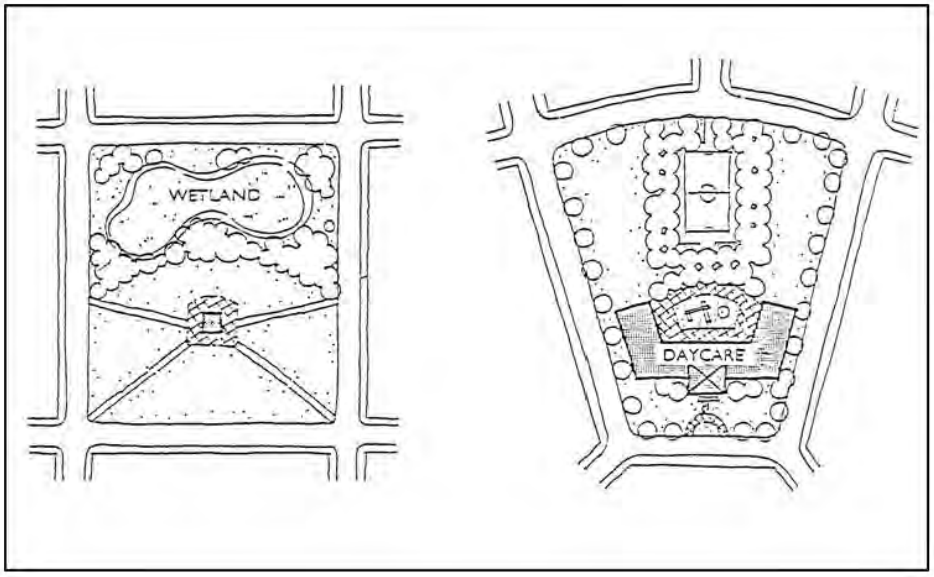
(4) *Minimum Building Frontage.* Forty (40) percent of each block side or fifty (50) percent of the block faces of the total block shall consist of either building frontage, plazas or other function open space.

(5) *Block Examples.*

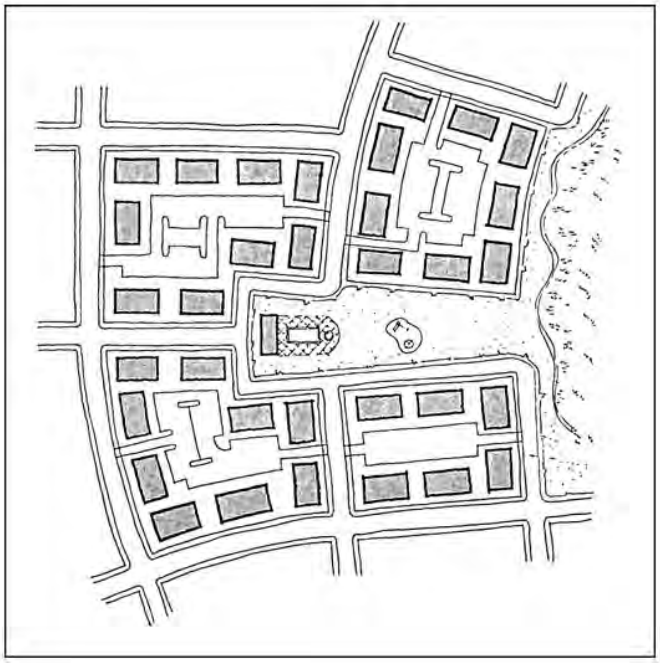
(a) Figure of Shopping Center on One Block



(b) Figure of Park/Civic Block



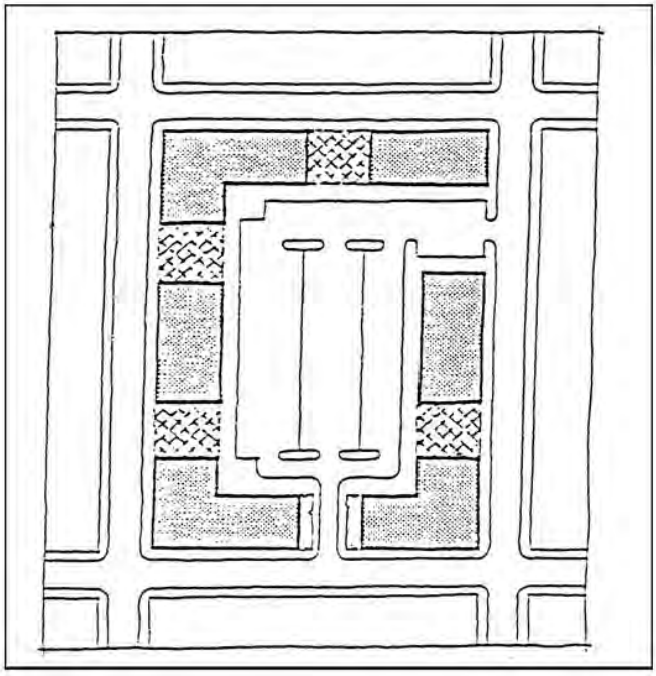
(c) Figure of Garden Apartment Block



(d) Figure of Townhouses and Small Lot Houses

(e) Figure of Bungalow Block

(f) Figure of Office Block



(F) **Residential Building Setbacks, Lot Width, and Size**

(1) **Setback from Arterial Streets.** Except as provided in Articles 2 and 3, the minimum setback for residential buildings and all incidental detached accessory buildings shall be thirty (30) feet from any arterial street right-of-way.

(2) **Setback from Nonarterial Streets.** Except as provided in Articles 2 and 3, the minimum setback for residential buildings and all incidental detached accessory buildings shall be fifteen (15) feet from any public street right-of-way.

(3) **Exceptions to the setback standards**. Exceptions to Subsection (1) and (2) are permitted if one (1) of the following is met:

(a) Each unit side that faces the street has a porch and/or balcony that has a minimum depth of six (6) feet (as measured from the building facade to the far side posts, railings/spindles) and a minimum length of eight (8) feet. If more than one (1) side of a unit faces the street, then only one (1) side is required to comply.

(b) An outdoor space such as a plaza, courtyard, patio or garden is located between a building and the sidewalk, provided that such space shall have landscaping, low walls, fencing or railings, a tree canopy and/or other similar site improvements along the sidewalk designed for pedestrian interest, comfort and visual continuity.

(c) All ground units that face a street are ADA compliant units that have street-facing porches that are directly and individually accessed from the public sidewalk by a connecting walkway that is at least six (6) feet in width.

(d) All ground units that face a street with a transit stop that fronts the building are affordable housing units, each having a street-facing stoop that directly accesses the public sidewalk by a connecting walkway.

(e) A project is within an area in the Downtown that is designated in the Downtown Plan as allowing "main street storefront" buildings with zero or minimal setback.

(4) **Side and Rear Yard Setbacks**. Except as provided in Articles 2 and 3, the minimum side yard setback for all residential buildings and for all detached accessory buildings that are incidental to the residential building shall be five (5) feet from the property line, except for garages accessed from alleys or private drives where the associated dwelling faces on-site walkways rather than street sidewalks for which the minimum setback from an alley or private drive shall be eight (8) feet. If a zero-lot-line development plan is proposed, a single six (6) foot minimum side yard is required. Rear yard setbacks in residential areas shall be a minimum of eight (8) feet from the rear property line, except for garages and storage sheds not exceeding eight (8) feet in height, where the minimum setback shall be zero (0) feet.

(5) Setback for Windmills. Windmills shall be set back from the property lines a minimum of one (1) foot for every foot of height of the structure measured from the ground to the top of the highest blade of the windmill; provided, however, that, if the applicant demonstrates with a certified analysis of a licensed professional engineer that the structure will collapse rather than topple, then this requirement may be waived by the Director. Shadow flicker shall not be allowed to cross any property line.

5.3.3 NEIGHBORHOOD CENTERS

(A) **Access to Neighborhood Centers.** At least ninety (90) percent of the dwellings in all development projects greater than forty (40) acres shall be located within three thousand nine hundred sixty (3,960) feet (three-quarters [¾] mile) of either a neighborhood center contained within the project, or an existing neighborhood center located in an adjacent development, or an existing or planned Neighborhood Commercial District commercial project, which distance shall be measured along street frontage, and without crossing an arterial street. Neighborhood centers shall meet the requirements contained in subparagraphs (B) through (E) below.

(B) **Location.** A neighborhood center shall be planned as an integral part of surrounding residential development and located where the network of local streets provides direct access to the center. Neighborhood centers that are located on arterial streets and that include retail uses or restaurants shall be spaced at least three thousand nine hundred sixty (3,960) feet (three-quarters [¾] mile) apart.

(C) **Use Requirements.**

(1) A neighborhood center shall include two (2) or more of the following uses:

- mixed-use dwelling units;
- community facilities;
- neighborhood support/recreation facilities;
- schools;
- child care centers;
- places of worship or assembly;
- convenience retail stores;
- retail stores, offices;
- financial services and clinics with less than five thousand (5,000) square feet of building footprint area;
- personal or business service shops;
- standard or fast food restaurants (without drive-in or drive-through facilities);
- small animal veterinary clinics;
- convenience retail stores with fuel sales that are at least three-quarters (¾) mile from any other such use and from any gasoline station;
- artisan or photography studios or galleries;
- dog day cares;
- music studios;
- micro-breweries/distilleries/wineries; and
- grocery stores and health and membership clubs.

(2) No drive-in facilities shall be permitted.

(3) A neighborhood center shall not exceed five (5) acres in size, excluding such portion of the neighborhood center which is composed of a school, park, place of worship or assembly and/or outdoor space as defined in Subparagraph (E) of this Section.

(D) **Design and Access.** The design of neighborhood centers shall be integrated with surrounding residential areas by matching the scale of nearby residential buildings; providing direct access from surrounding residential areas; creating usable outdoor spaces; orienting building entrances to connecting walkways; and to the extent reasonably feasible, maintaining/continuing the architectural themes or character of nearby neighborhoods.

(E) **Outdoor Spaces.** A publicly accessible outdoor space such as a park, plaza, pavilion or courtyard shall be included within or adjacent to every neighborhood center to provide a focal point for such activities as outdoor gatherings, neighborhood events, picnicking, sitting and passive and active recreation.

5.3.4 SMALL NEIGHBORHOOD PARKS

At least ninety (90) percent of the dwellings in any development project of ten (10) acres or larger as measured along the street frontage shall be located within a maximum of one-third (1/3) mile of either a neighborhood park or a privately owned park, that is at least one (1) acre in size.

(A) **Location.** Such parks shall be highly visible, well-defined settings formed by the street layout and pattern of lots and easily observed from streets. Rear facades and rear yards of dwellings shall not abut more than two (2) sides or more than fifty (50) percent of the perimeter frontage of the park.

(B) **Accessibility.** All parts of such parks shall be safely and easily accessible by and open to the public.

(C) **Facilities.** Such parks shall consist of multiple-use turf areas, walking paths, plazas, pavilions, picnic tables, benches or other features for various age groups to enjoy.

(D) **Ownership and Maintenance.** Such parks may, in the discretion of the City, be acquired by the City (through dedication or purchase), or be privately owned and maintained by the developer or property owners association.

(E) **Storm Drainage.** When integrating storm drainage and detention functions to satisfy this requirement, the design of such facilities shall not result in slopes or gradients that conflict with other recreational and civic purposes of the park.

5.3.5 GARAGE DESIGN

(A) **Garage Doors**. To prevent residential streetscapes from being dominated by protruding garage doors, and to allow the active, visually interesting features of the house to dominate the streetscape, the following standards shall apply:

(1) Street-facing garage doors must be recessed behind either the front facade of the ground floor living area portion of the dwelling or a covered porch (measuring at least six [6] feet by eight [8] feet) by at least four (4) feet. Any street-facing garage doors complying with this standard shall not protrude forward from the front facade of the living area portion of the dwelling by more than eight (8) feet.

(2) Garage doors may be located on another side of the dwelling ("side- or rear-loaded") provided that the side of the garage facing the front street has windows or other architectural details that mimic the features of the living portion of the dwelling.

(3) Garage doors shall not comprise more than fifty (50) percent of the ground floor street-facing front linear building frontage. Alleys and side streets are exempt from this standard.

(4) Attached and multi-unit dwellings which also face a second street or a major walkway spine shall be exempt from paragraphs (1) through (3) above. The façade oriented to the second street or walkway spine shall include windows, doorways and a structured transition from public to private areas using

built elements such as porch features, pediments, arbors, low walls, fences, trellis work and/or similar elements integrated with plantings.

(5) Alternative garage door treatments shall be accepted by the Director if:

(a) the configuration of the lot or other existing physical condition of the lot makes the application of these standards impractical; and

(b) the proposed design substantially meets the intent of this Code to line streets with active living spaces, create pedestrian-oriented streetscapes and provide variety and visual interest in the exterior design of residential buildings.

(B) **Rear Walls of Multi-Unit Garages**. To add visual interest and avoid the effect of a long blank wall with no relation to human size, accessibility needs or internal divisions within the building, the following standards for minimum wall articulation shall apply:

(1) **Perimeter Garages.**

(a) Length. Any garage located with its rear wall along the perimeter of a development and within sixty-five (65) feet of a public right-of-way or the property line of the development site shall not exceed sixty (60) feet in length. A minimum of seven (7) feet of landscaping must be provided between any two (2) such perimeter garages.

(b) Articulation. No rear garage wall that faces a street or adjacent development shall exceed thirty (30) feet in length without including at least one (1) of the following in at least two (2) locations:

(I) change in wall plane of at least six (6) inches;

(II) change in material or masonry pattern;

(III) change in roof plane;

(IV) windows;

(V) doorways;

(VI) false door or window openings defined by frames, sills and lintels; and/or

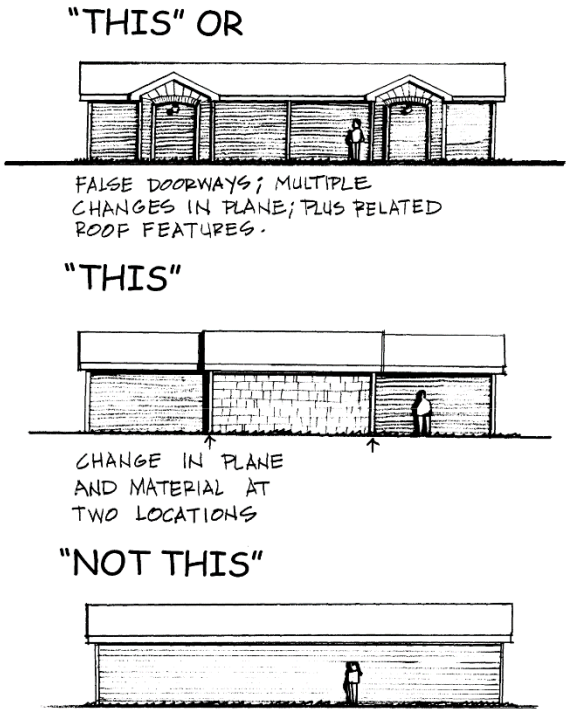
(VII) an equivalent vertical element that subdivides the wall into proportions related to human scale and/or the internal divisions within the building. (See Figure 9A.)

(2) **All Garages.**

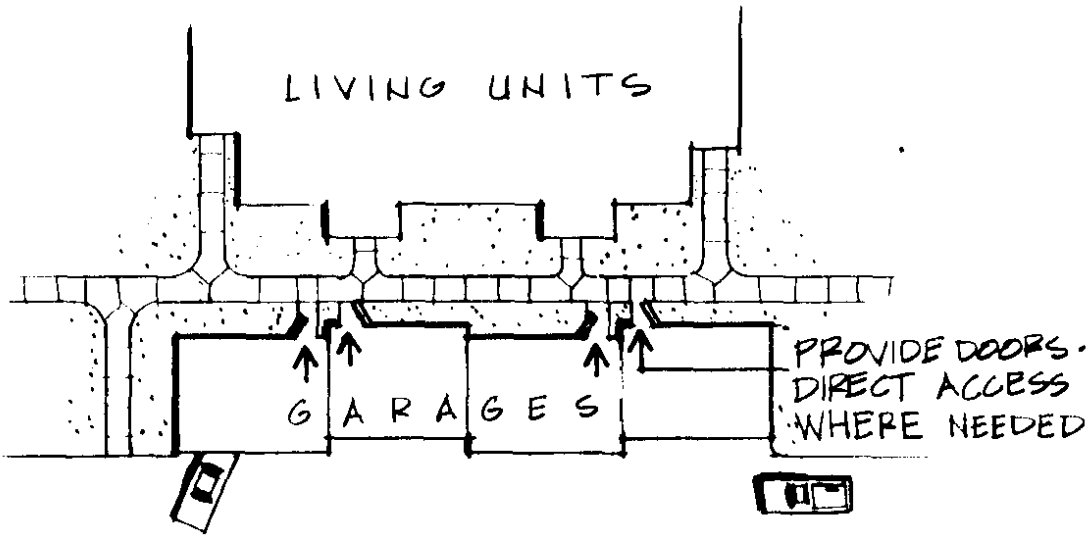
(a) Access Doors. Rear doorways shall be provided as determined by the decision maker to be reasonably necessary to allow direct access to living units without requiring people to walk around the garage to access their living units. (See Figure 9B.)

(b) Articulation. At a minimum, a vertical trim detail that subdivides the overall siding pattern shall be provided at intervals not to exceed two (2) internal parking stalls (approximately twenty [20] to twenty-four [24] feet). In addition, the articulation described in paragraph (1)(b) above is encouraged but shall not be required.

(I) Figure 9A – Garage Articulation.



(II) Figure 9B – Garage Door Direct Access



5.3.6 SECOND KITCHEN

(A) **Second Kitchen.** A maximum of one additional kitchen may be established inside a dwelling unit without creating an additional dwelling unit if approved through a minor amendment pursuant to Section 6.3.10 and the following standards are met:

(1) That both kitchens are accessible to all occupants of the dwelling unit;

(2) That both kitchens have non-separated, continuous, and open access with no locked doors separating the kitchens from the rest of the dwelling unit;

(3) That neither kitchen is located in an accessory building; and

(4) The property owner of a dwelling unit in which a second kitchen is approved by the Director shall, prior to issuance of a building permit, sign and record with the Larimer County Clerk and Recorder a notarized affidavit stating that the second kitchen will not be used for a second dwelling unit and the property owner acknowledges and agrees that the dwelling shall only be used as a single-unit dwelling.

DIVISION 5.4 DEVELOPMENT INFRASTRUCTURE

5.4.1 DEVELOPMENT INFRASTRUCTURE

(A) **Purpose.** Implement the variety of *place types* identified in City Plan to create a cohesive network of varying types of transportation routes, utility connections, housing variety, and recreational areas both City owned and privately owned.

(B) **Applicability.** Applies to all development projects, unless otherwise excluded in a specific standard.

5.4.2 DEVELOPMENT IMPROVEMENTS

(A) **Approval of City Engineer.**

(1) Before the Director certifies the acceptance of any final plat, the Director must be notified by the City Engineer that the required improvements have been designed according to the City's various design criteria and construction standards.

(2) No improvements shall be made until all required plans, profiles and specifications, including reproducible plans for the same, have been submitted to and approved by the City Engineer.

(3) As each portion of the improvements in a subdivision is completed, and after inspection and acceptance by the City Engineer, the amount of guaranty covering that phase of the development shall be released following the written request of the applicant to the Director.

(B) **Development Agreement.** At the time the plans, profiles and specifications required in this Division are approved, the applicant shall enter into an agreement providing for the installation of all improvements in the subdivision required by this Code. Such agreement shall establish and set forth the extent to which the City is to participate in the cost of constructing any public improvements, including, without limitation, collector or arterial streets. No final plan or plat or other site specific development plan shall be approved by the City or recorded until such agreement has been fully executed. Such agreement shall further provide that the applicant will fully account to the City for all costs incurred in the construction of any public improvement in which the City is participating, and the books and records of the applicant relating to such public improvement shall be open to the City at all reasonable times for the purpose of auditing or verifying such costs. Such agreement (and any amendments thereto) shall be recorded by the City with the Larimer County Clerk and Recorder with all recording costs to be paid to the City by the applicant.

(C) **Development Guarantee and Maintenance and Repair Guarantees.**

(1) **Construction Security**.

(a) Prior to the issuance of a Development Construction Permit for a new development, the developer must provide to the City a guarantee in the form of a development bond, performance bond, letter of credit, cash, certificate of deposit or other City-approved means to guarantee the completion of all public improvements to be constructed as shown on the approved plans for the development (hereafter referred to as the "construction security").

(b) The amount of the construction security shall be equal to the total cost of the developer's portion of the public improvements, as estimated by the developer and approved by the City Engineer.

(c) As progress is made on the construction of the new public infrastructure, the developer may request a reduction in the amount of construction security in proportion to the actual completion percentage of the installed infrastructure. However, draws upon such construction security shall not exceed the actual cost of completing a deficient development project or making any necessary repairs. Upon receipt of such a request, the City shall verify the completion percentage and permit the substitution of an approved construction security instrument in an amount equal to the cost of the developer's portion of the remaining public improvements.

(2) **Maintenance/Repair Security.**

(a) The plat shall contain a two (2) year maintenance guarantee and a five (5) year repair guarantee covering all errors or omissions in the design and/or construction. Said guarantees shall run concurrently and shall commence upon the date of completion of the public improvements and acceptance by the City, as described in paragraph 6.3.3(C)(3) (Execution of Plats/Deeds; Signature Requirements).

(b) If a plat is not required or if the plat does not include the entire area being developed, then said maintenance and repair guarantees shall be established in a development agreement. Security for the maintenance guarantee and the repair guarantee (hereinafter referred to as the "maintenance/repair security") shall be in the form of a bond, letter of credit, cash, certificate of deposit, an extension of the security as provided in paragraph (1) above or other City-approved means to secure said maintenance and repair. The amount of the maintenance/repair security during the maintenance guarantee period shall be based on a percentage of the cost of the public improvements. Said percentage shall be determined by the City Engineer based on the potential costs of repairs within the development and shall not exceed twenty-five (25) percent.

(c) At the conclusion of the two (2)year maintenance/repair period, representatives of the City and the developer shall jointly conduct an inspection of the development for the purpose of identifying any repairs or maintenance actions necessary before transfer of the maintenance responsibility from the developer to the City. Upon satisfactory completion of said repairs or maintenance actions, the City will assume the responsibility for maintaining the streets and other improvements which have been dedicated to the City

(3) **Maintenance/Repair Security Extension.**

(a) Whether maintenance/repair security must be provided by the developer for the remaining three (3) years of the repair guarantee period shall depend upon the condition of the streets and other public infrastructure within the development.

(b) The developer shall not be required to provide such additional maintenance/repair security for streets or infrastructure that, upon inspection by the City Engineer, are found not to exhibit any evidence of deterioration or defect (including, without limitation, excessive cracking, settlements, deflections, rutting, potholes or other similar defects), other than normal wear and tear. However, if evidence of such deterioration or defect is exhibited, then the existing maintenance/repair security shall be required to be renewed, or a new security shall be required for the final three (3) years of the repair guarantee period.

(c) The amount of the maintenance/repair security during the repair guarantee period shall be based on a percentage of the cost of the public improvements. Said percentage shall be determined by the City Engineer based on the potential costs of repairs within the development, shall not exceed twenty-five (25) percent, and may be adjusted if appropriate during the guarantee period.

(4) **Affordable Housing Security Exemption**. Notwithstanding the security requirements contained in subparagraphs (1), (2) and (3) above, applications for the construction of affordable housing projects shall be totally or partially exempt from such security requirements according to the following criteria:

(a) The security authorized under this subsection (C) shall be entirely waived for development projects in which one hundred (100) percent of the dwelling units qualify as affordable housing units for sale or for rent.

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

- number of affordable housing units ÷ total number of housing units x total security required = amount of security waived

(c) The security authorized under this subsection (C) shall not be reduced if less than ten (10) percent of the dwelling units within the project qualify as affordable housing units for sale or for rent.

(d) In order to determine whether a development project is eligible for a waiver or reduction of fees under this subparagraph (4), any applicant seeking such waiver or reduction must submit documentation evidencing the eligibility of the development project to the City Engineer, who may, upon review of such documentation, reduce the amount of said security in accordance with this subparagraph (4). Prior to the issuance of any certificate of occupancy for the development project, a final determination shall be made by the City Engineer as to whether the development project qualifies for a waiver or reduction of the security. In the event that the City Engineer determines that the development project does not so qualify, security shall be increased to the level required in the applicable subparagraph (1), (2) or (3) above, and the security shall be deposited with the City prior to the issuance of the first certificate of occupancy.

(D) **Required Improvements Prior to Issuance of Building Permit.** The following improvements shall be required prior to the issuance of a Building Permit, unless otherwise specified in the development agreement:

(1) *Survey Monuments.* The applicant shall provide survey monuments as required by Articles 51 and 53, Title 38, C.R.S.

(2) *Sanitary Sewers.* The applicant shall provide adequate lines and stubs to each lot as required by the current standards of the utility provider (if not the City) or current City design criteria and construction standards, whichever is applicable.

(3) *Water Mains.* The applicant shall provide adequate mains and stubs to each lot as required by the current standards of the utility provider (if not the City) or current City design criteria and construction standards, whichever is applicable.

(4) *Fire Hydrants.* The applicant shall provide sufficient fire hydrants as required according to the Fire Code.

(5) *Stormwater Drainage.* The applicant shall provide stormwater facilities and appurtenances as required by Section 26-544 of the City Code and, where applicable, such facilities shall conform to Section 10-37 of the City Code.

(6) *Streets, Alleys and Paths.* The applicant shall provide street improvements necessary to serve the lot or lots in accordance with Section 24-95 of the City Code.

(7) *Utilities (including, without limitation, communications, electric power, gas, water, sewer).*

(a) Except as hereafter provided, all new utility facilities on or adjoining the development shall be installed underground and, if located in a street or alley, shall be installed, inspected and approved in accordance with the permit required pursuant to Section 23-16 of the City Code, prior to the completion of street or alley surfacing. To the extent feasible, the undergrounding of utilities shall be planned, coordinated and installed in an orderly fashion from deepest to shallowest.

(b) Aboveground facilities necessarily appurtenant to underground facilities shall be allowed, but shall be located outside of the parkway area that is between the street and sidewalk where detached sidewalks exist and, in all circumstances, shall be located at least two (2) feet behind the back of the sidewalk, or if there is no sidewalk, behind the edge of the pavement.

(c) Roadway lighting fixtures with their poles and junction boxes, as well as traffic signals with their controller cabinets, are exempt from this requirement.

(d) Any aboveground facilities shall be located so as to not cause a sight obstruction for vehicular, pedestrian or bicycle traffic.

(e) In addition, all existing overhead utilities located on the development site, or adjoining the development site in public rights-of-way or utility easements, whether they serve the development or not, shall be relocated underground when such relocation is an incidental conversion associated with other public improvements in conjunction with the development project.

Exceptions:

(I) New or existing overhead utility facilities shall be allowed if they:

(i) are electric transmission lines above forty (40) kilovolts nominal; or

(ii) are temporary in nature for the purpose of servicing construction or lands not developed to urban qualifications; or

(iii) are required to be installed on a temporary basis while an underground utility facility is being repaired; or

(iv) are necessary to span natural barriers such as canyons, rivers or boulder fields where an underground installation would be extremely impractical.

(II) Existing overhead utility facilities shall be allowed if they:

(I) are capable of serving only territories anticipated to be annexed to the City in the future; or

(II) traverse the periphery of the development for a distance less than four hundred (400) feet (and provided that the developer has installed conduit to accommodate future undergrounding); or

(III) are distribution lines which will be removed upon future development, or

(IV) are electric distribution circuits of utilities that do not provide electric service to persons within the City.

(E) **Required Improvements Prior to Issuance of Certificate of Occupancy.**

(1) The improvements in subparagraph (3) shall be required prior to the issuance of a certificate of occupancy.

(2) In cases where the strict interpretation of this provision would place undue hardship upon the person requesting the certificate of occupancy, and the health, safety and welfare of the public would not be placed at risk, he or she may be permitted to establish an escrow account in an amount acceptable to the Director which will cover the costs of completion of the required improvements and the maintenance of any incomplete street sections which might be involved.

(3) The amount so placed in escrow shall be available to ensure to the City that the subject improvements are installed in the event that the person requesting the certificate of occupancy fails to install the same as agreed:

(a) Sidewalks. All on-site sidewalks shall be installed as required by City specifications.

(b) Street signs. All street signs shall be installed as required by the Traffic Operations Engineer and shall conform to the Manual of Uniform Traffic Control Devices.

(c) Streets, alleys and paths.

(I) All streets shall be paved with curbs and gutters installed in accordance with the approved utility plans.

(II) All alleys and paths required to be constructed by the City shall be paved. In cases where a previously existing street which has not been brought up to City specifications is located within a subdivision, such street shall be paved with curbs and gutters installed in order to meet City specifications.

(III) All streets existing within ownership of the lands which make up any subdivision shall be shown on the subdivision plat. If any subdivision is located adjacent to any existing street right-of-way, the applicant shall improve local streets to the full width and collector and arterial streets to one-half (½) width except as is otherwise provided herein below, with pavement, curb, gutter, sidewalk and any other required street improvements as necessary to bring such street up to City specifications.

(IV) Notwithstanding the foregoing, collector and arterial streets shall be constructed to such specifications as shall be necessary in the judgment of the City Engineer based upon traffic safety considerations, and taking into account the traffic impact of the development upon such arterial or collector street.

(V) No such arterial street shall be constructed to a width of less than thirty-six (36) feet.

(d) Streetlights. All streetlights shall be installed as required according to City specifications.

(e) Drainage.

(I) The construction of stormwater drainage facilities required by the approved Development Plan Documents must be consistent with the Stormwater Criteria Manual as it may be modified from time to time.

(II) Such stormwater drainage facility must be verified by an authorized City inspector at the appropriate phases of construction activities as specified in the Development Certification Checklist issued by Water Utilities Engineering and available on the City of Fort Collins website.

(III) In the event of non-compliance, the City shall have the option to withhold building permits and/or certificates of occupancy or use any other legal remedy that may be provided in the City Code, the Land Use Code and/or the Development Agreement, as determined appropriate to ensure that the Developer properly installs all privately owned stormwater improvements associated with the development as specified in the Development Plan Documents.

(IV) In addition, a "Drainage Certification" prepared by a Professional Engineer licensed in the State of Colorado must be provided. The "Certification" must confirm to the City that all stormwater drainage facilities required to serve the property have been constructed in conformance with the approved Development Plan Documents so as to protect downstream property and the quality of Stormwater runoff from the property to comply with the City's Municipal Separate Storm Sewer System permit. Such certification must be in the form required by the City's Stormwater Criteria Manual and Construction Standards.

(f) Other. All other improvements required as a condition of approval of the plat shall be completed.

(g) Where applicable, the person requesting a certificate of occupancy shall be required to conform to the provisions of Section 10-38 of the City Code by submitting a post-construction floodproofing elevation certificate to the Utilities Executive Director for the City's permanent records.

(F) **Off-Site Public Access Improvements.**

(1) **Path Improvements**.

(a) All developments must have adequate access to the City's Improved Arterial Street Network, as described below, or to a street that connects to the Improved Arterial Street Network. Exceptions to the

foregoing requirements may be granted for streets which have adequate funds appropriated by the City for improvement to current standards.

(b) The developer of any property which does not have such adequate access to an Improved Arterial Street or which does not have such adequate access to streets which connect to the Improved Arterial Street Network, along the primary access routes for the development, shall be required to improve the impacted intervening streets as follows:

(I) For arterial and collector streets, such improvements shall consist, at a minimum, of constructing a thirty six (36) foot wide paved street cross section on a base that is adequate to accommodate the ultimate design of the street either (1) as designated on the Master Street Plan, or (2) in accordance with the City design criteria for streets, whichever is applicable.

(II) For all other street classifications, the off-site improvements shall be designed and constructed to City standards including, without limitation, curb, gutter, sidewalk and pavement.

(III) All streets that connect to the Improved Arterial Street Network shall include the width and improvements necessary to maintain a level of service as defined by Part II of the City of Fort Collins Multi-modal Transportation Level of Service Manual for the length required to connect to the Improved Arterial Street Network.

(IV) Off-site public access improvements shall be required for all primary access routes that will, in the judgment of the Traffic Engineer, carry the most trips (per travel mode) generated by the development as defined by the Transportation Impact Study required by Section 5.4.10.

(c) To identify the improvements to be made as a condition of approval of the development, the City Engineer shall utilize a map entitled the "Improved Arterial Street Network" depicting, as nearly as practicable, (1) all existing arterial and collector streets in the City; and (2) the current structural condition of the same.

(d) A waiver to these requirements may be granted by the City Engineer for primary access routes which, in the judgment of the City Engineer, are in substantial compliance with the City standards applicable for such routes and are designed and constructed to adequately accommodate the traffic impacts of the development.

(4) Costs and Reimbursements.

(a) Off-site streets, street intersections, sidewalks, alleys, paths or other related improvements to serve the development site or such improvements along the perimeter of the development site shall be funded by the developer unless otherwise agreed by the City Manager, in his or her discretion. The developer (and others providing funding, including but not limited to the City) may be entitled to request reimbursement under paragraph (b).

(b) The entire cost of such construction (including right-of-way acquisition) shall be the responsibility of such developer.

(c) If, within twelve (12) months of the completion and acceptance by the City of such improvements, the developer installing such improvements (the "Funding Developer") has entered into a reimbursement agreement with the City in the manner prescribed by this Section, then, at the time that other property adjacent to the improvements (the "Adjacent Property") is developed or redeveloped and access to such improvements is accomplished or other benefit from such improvements is conferred, the City may collect from the developer of the Adjacent Property a proportionate charge, based upon the cost incurred by the Funding Developer, plus an inflation factor, and based upon the benefit conferred upon the Adjacent Property.

(d) For the purpose of this Section, benefit to the Adjacent Property may include, among other things, the construction of improvements that will allow the Adjacent Property to be developed in accordance with the requirements of Section 5.4.10, where, in the absence of the improvements, such development

would not be allowed to proceed. Said charge, if imposed by the City, shall be paid prior to the issuance of any building permits for the Adjacent Property; provided, however, that the City shall not attempt to make such collection unless the reimbursement agreement has been timely and properly prepared, executed and delivered to the City.

(I) If such charge is collected, the City shall reimburse the Funding Developer to the extent of such collection after deducting a service charge of three (3) percent to cover administrative costs.

(e) All costs for the construction (including right-of-way acquisition) of such improvements must be fully paid by the Funding Developer before such person shall be entitled to reimbursement under any agreement established hereunder. The amount of the reimbursement assessed by the City for each Adjacent Property as it develops shall be based on:

(I) The fair market value (as determined by the City) of any right-of-way acquired by the Funding Developer that was needed for, and is directly attributable to, the improvements; and

(II) The original cost of design and construction of the improvements plus an adjustment for inflation based on the construction cost index for Denver, Colorado, as published monthly by "Engineering News Record." (If said index shows deflation, the adjustment shall be made accordingly, but not below the original cost as submitted by the Funding Developer and approved by the City Engineer.)

(i) The original cost of the right-of-way and design and construction shall mean the cost of right-of-way acquisition, financing, engineering, construction and any other costs actually incurred which are directly attributable to the improvements, including any costs incurred for the formation or administration of a special improvement district.

(f) The City's obligation to reimburse the Funding Developer shall be contingent upon the City's actual collection of the charge from the developer of the Adjacent Property. In order to obtain approval of a reimbursement agreement from the City, the Funding Developer shall provide the City Engineer with copies of the following, after acceptance of the improvements:

(I) real estate closing documents and/or appraisals or other documents showing to the satisfaction of the City the fair market value of the right-of-way for the improvements;

(II) an invoice from the Funding Developer's engineer for any fee assessed on the project;

(III) the contractor's application for final payment approved by the Funding Developer's engineer;

(IV) a letter from the Funding Developer and/or contractor certifying that final payment has been received by the contractor;

(V) a letter from the Funding Developer and/or engineer certifying that final payment of engineering fees has been made;

(VI) a letter from the Funding Developer certifying the portion of the cost which has been funded by such developer and also any portions funded by others, and naming such proportionate contributors, if any;

(VII) a map prepared by a licensed engineer or surveyor which shows:

(i) the location of the improvements constructed;

(ii) the name of the owner of each Adjacent Property which is benefited by the improvements;

(iii) the proportionate benefit conferred upon each Adjacent Property, together with the assessment due based on the original costs;

(iv) the acreage and parcel number of each Adjacent Property;

(v) a reference to the book, page and reception number from the records of the county Clerk and Recorder where the information for each property was obtained; and

(vi) any other information deemed necessary by the City Engineer.

Any right to reimbursement pursuant to this provision shall not exceed a period of ten (10) years from the acceptance by the City of the street improvements. The City Council may approve extensions of the reimbursement agreement for additional ten (10) year periods. No such reimbursement shall be made unless the person entitled to reimbursement has fully satisfied his or her obligations under any other reimbursement agreements with the City.

(G) **City Participation in Certain Street Improvements.**

(1) If a street within or adjacent to the development is improved as an arterial or collector street rather than as a local street, the developer making such improvements shall be reimbursed in accordance with the provisions of Section 24-112 of the Code of the City of Fort Collins.

(2) If an off-site street is improved to a width in excess of thirty six (36) feet, and provided that such excess width is not required because of the traffic impacts of the development, the City Engineer shall compute the extra expense caused by such street being improved to such excess width. Such extra expense shall be paid by the City out of the Transportation Improvements Fund established in Section 8-87. The City's obligations to participate in such costs shall be limited to those funds budgeted and appropriated for the payment requested. The participation of the City shall be limited to the costs of design, construction and right-of-way acquisition as limited pursuant to Section 24-112 of the City Code and costs of curbs, gutters or sidewalks exceeding local standards.

(3) If the right to develop has lapsed or been abandoned pursuant to Sections 6.3.10 and 6.3.11 and no extension has been granted, any right to City participation, pursuant to this Section and Chapter 24 of the City Code, shall be limited to those improvements substantially completed and accepted by the City Engineer at the time of the termination.

5.4.3 ENGINEERING DESIGN STANDARDS

Development Projects must comply with all design standards, requirements and specifications for the following services as certified by the appropriate agency or variances must be granted by such agency:

- water supply
- sanitary sewer
- mass transit
- fire protection
- flood hazard areas
- telephone
- walks/bikeways
- irrigation companies
- electricity
- natural gas
- storm drainage
- cable television
- streets/pedestrians
- broadband/fiber optic

5.4.4 PLAT AND DEVELOPMENT PLAN STANDARDS

(A) **General Provisions.**

(1) **Applicability.** No (1) final plat of a subdivision or (2) development plan, shall be approved and accepted by the City unless it conforms to the provisions of this Code.

(2) **Jurisdiction**. This Division shall be applicable to all lands located within the City.

(3) **Plat.** General Requirements.

(a) All plats of a subdivision of land within the City shall be filed and recorded only after having been approved by the appropriate decision maker, with such approval evidenced in writing on the plat and signed by the City Clerk.

(b) Except with respect to property which is platted as an official subdivision (or part thereof) approved in accordance with the provisions of this Code (or prior law, if applicable), no Building Permit or certificate of occupancy shall be issued for any of the following and no person shall perform any of the following:

(I) construction of any new principal building;

(II) enlargement of any principal building used for nonresidential purposes by more than twenty-five (25) percent of the existing floor area of such building; and/or

(III) an act which changes the use of any building.

(B) **Lots.**

(1) No lot in a subdivision shall have less area than required under the applicable zoning requirements of the City. Each lot must have vehicular access to a public street. Lots with both front and rear frontage on a street shall not be permitted except where necessary to provide separation from arterial streets or from incompatible land uses, or to take access from an alley.

(2) The general layout of lots, roads, driveways, utilities, drainage facilities and other services within the proposed development shall be designed in a way that enhances an interconnected street system within and between neighborhoods, preserves natural areas and features, and otherwise accomplishes the purposes and intent of this Code. Applicants shall refer to the development standards set forth in Articles 2 through 5 of this Code and shall apply them in the layout of the development in order to avoid creating lots or patterns of lots that will make compliance with such development standards difficult or infeasible.

(C) **Public Sites, Reservations and Dedications.**

(1) An applicant shall be required to dedicate rights-of-way for public streets, drainage easements and utility easements as needed to serve the area being developed and/or platted. In cases where any part of an existing road is abutting or within the tract being developed and/or subdivided, the applicant shall dedicate such additional rights-of-way as may be necessary to increase such roadway to the minimum width required under this Code for such street.

(2) Reservation of sites for flood control, open space and other municipal uses shall be made in accordance with the requirements of this Code, and, generally, the City Code.

5.4.5 MASTER STREET PLAN

(A) **Purpose**. This Section is intended to ensure that the transportation network of streets, alleys, roadways and trails is in conformance with adopted transportation plans and policies established by the City.

(B) **General Standard**. The transportation network of any proposed development shall be in conformance with the City of Fort Collins Master Street Plan, as well as City adopted access control plans and the Larimer County Urban Area Street Standards.

(C) **Establishment of Master Street Plan.** In order to accomplish the purposes of this Code, the location and ultimate functional classification of necessary arterial and collector streets and other transportation facilities have been established on a map entitled "City of Fort Collins Master Street Plan," dated February 15, 2011, as amended, which map is incorporated herein by reference. The Master Street Plan is on file with the City Clerk and the City Engineer.

(D) **Compliance With Master Street Plan.** All development plans shall provide for or accommodate the streets and transportation facilities identified on the Master Street Plan that are associated with the development plan.

(E) **Compliance with Access Control Plans.** The State Highway Access Control Code and/or any specific access control plan shall determine the location of all intersections (whether of public streets or private drives or other access ways) with state highways or City streets, as applicable. All development plans that are adjacent to a state or federal highway shall provide the access design facilities, including supporting circulation facilities, identified within any applicable adopted access control plans, when such facilities are needed because of the development plan. All development plans shall be in compliance with applicable State regulations including, but not limited to, CDOT regulations. In addition, all development plans that are adjacent to any street for which an access control plan has been adopted by the City shall provide the access design facilities, including supporting circulation facilities, identified within such access control plan, when such facilities are needed because of the development plan.

5.4.6 STREETS, STREETSCAPES, ALLEYS AND EASEMENTS

(A) **Purpose**. This Section is intended to ensure that the various components of the transportation network are designed and implemented in a manner that promotes the health, safety and welfare of the City.

(B) **General Standard**. Public streets, public alleys and private alleys, private streets, street-like private drives and private drives shall be designed and implemented in a manner that establishes a transportation network that protects the public health, safety and welfare. Rights-of-way and/or easements for the transportation system shall be sufficient to support the infrastructure being proposed. The transportation network shall clearly identify construction and maintenance responsibilities for the proposed infrastructure. All responsibilities and costs for the operation, maintenance and reconstruction of private streets and medians, street-like private drives and private drives shall be borne by the property owners. The City shall have no obligation to operate, maintain or reconstruct such private streets, street-like private drives and private drives nor shall the City have any obligation to accept such private streets, street-like private drives and private drives.

(C) Streets on a project development plan or subdivision plat shall conform to the Master Street Plan where applicable. All streets shall be aligned to join with planned or existing streets. All streets shall be designed to bear a logical relationship to the topography of the land. Intersections of streets shall be at right angles unless otherwise approved by the City Engineer.

(D) Cul-de-sacs shall be permitted only if they are not more than six hundred sixty (660) feet in length and have a turnaround at the end with a diameter of at least one hundred (100) feet. Surface drainage on a cul-de-sac shall be toward the intersecting street, if possible, and if not possible a drainage easement shall be provided from the cul-de-sac. If fire sprinkler systems or other fire prevention devices are to be installed within a residential subdivision, these requirements may be modified by the City Engineer according to established administrative guidelines and upon the recommendation of the Poudre Fire Authority.

(E) Except as provided in subsection (D) above for cul-de-sacs, no dead-end streets shall be permitted except in cases where such streets are designed to connect with future streets on abutting land, in which case a temporary turnaround easement at the end of the street with a diameter of at least one hundred (100) feet must be dedicated and constructed. Such turnaround easement shall not be required if no lots in the subdivision are dependent upon such street for access.

(F) If residential lots in a subdivision abut an arterial street, no access to individual lots from such arterial street shall be permitted.

(G) Reverse curves on arterial streets shall be joined by a tangent at least two hundred (200) feet in length.

(H) The applicant shall not be permitted to reserve a strip of land between a dedicated street and adjacent property for the purpose of controlling access to such street from such property unless such reservation is approved by the City Engineer and the control of such strip is given to the City.

(I) Street right-of-way widths shall conform to the *Larimer County Urban Area Street Standards* as approved and amended by the City Council from time to time by ordinance or resolution.

(J) Streetscape design and construction, including medians and parkways, shall conform to the *Larimer County Urban Area Street Standards* as approved and amended by the City Council from time to time by ordinance or resolution. Any permits that are required pursuant to the *Larimer County Urban Area Street Standards* shall be obtained by the applicant before the construction of the street, streetscape, sidewalk, alley or other public way (as applicable) is commenced.

(K) **Public alleys** shall be controlled by the following requirements:

(1) **When Allowed**. Public alleys in residential subdivisions shall be permitted only when: (a) they are necessary and desirable to continue an existing pattern or to establish a pattern of alleys that will extend over a larger development area, and (b) they are needed to allow access to residential properties having garages or other parking areas situated behind the principal structure and the principal structure is on a residential local street. Public alleys shall also be provided in commercial and industrial areas unless other provisions are made and approved for service access.

(2) **Design Construction Requirements**. All public alleys shall be constructed in conformance with the *Larimer County Urban Area Street Standards* as adopted by the City Council by ordinance or resolution, except those public alleys within the OT zone district that do not abut commercially zoned properties and that provide access only for Accessory Dwelling Units (ADUs) and habitable accessory buildings as such terms are described in Article 4. Dead-end alleys shall not be allowed.

(L) **Private Streets.** Private streets shall be controlled by the following requirements:

(1) **When Allowed**. Private streets shall be allowed in a development, provided that their function will be primarily to provide access to property within the development. Private streets shall not be permitted if (by plan or circumstance) such streets would, in the judgment of the City Engineer, attract "through traffic" in such volumes as to render public streets necessary as connections between developments, neighborhoods or other origins and destinations outside of the development plan.

(2) **Design Requirements**. As with public streets, the design of private streets must be completed by or under the charge of a professional engineer licensed by the State of Colorado. The design for all private streets shall be included in the utility plans for the development. Designs for public streets shall be permitted if either:

(a) The designs meet all standards for public streets in accordance with the *Larimer County Urban Area Street Standards*, as adopted by the City Council by ordinance or resolution; or

(b) The designs have customized treatments and features including travel lanes; parallel or diagonal street parking; tree-lined sidewalks with the sidewalks either detached or attached with trees in cutouts; and

crosswalks. Other features such as bikeways, landscaped medians, corner plazas, custom lighting, bike racks, and identity signs may be provided to afford an appropriate alternative to a standard City street in the context of the development plan. Head-in parking may only be used in isolated parking situations where the effect on the character of the street is negligible. Customized treatments and features will not be approved unless the City determines that such treatments and features present no safety risk to the public and that the City's utilities will not incur maintenance or replacement costs for their utilities above normal costs associated with the City's standard design.

(3) **Construction Requirements**. The construction of all private streets shall be under the direct supervision of a professional engineer licensed by the State of Colorado, who must certify that all improvements for private streets have been completed in accordance with the plans approved by the City. In addition, the construction of private streets shall be subject to inspection by the City Engineer for compliance with City standards established in the *Larimer County Urban Area Street Standards*, as adopted by the City Council by ordinance or resolution, and in accordance with the approved plans for the development. All private streets shall be subject to the same bonding and warranty requirements as are established for public streets.

(4) **Traffic Control**. All traffic control devices for the private street system, such as signs, signals, striping, speed control devices (traffic calming) and speed limits, must meet City standards. All plans for traffic control, including any proposed revisions, must be reviewed and approved by the Traffic Engineer prior to installation thereof.

(5) **Operation, Maintenance and Reconstruction**.

(a) The developer of a private street system must submit to the City that portion of the covenants, declarations and/or bylaws of the appropriate property owners association which defines the responsibilities for the operation, maintenance and reconstruction of the private street system, the costs of which must be borne by the property owners and not the City.

(b) The documents must provide for maintenance, reconstruction, drainage, lighting, landscaping, traffic control devices and any other special conditions. This information must also be shown on the plat and site plan for the development with the added statement that the City has no obligation to perform or pay for repair and maintenance or any obligation to accept the streets as public streets.

(c) At the time of recording of the plat, the developer shall also record a notice in the Larimer County, Colorado records showing the location of such street and identifying the property or properties which are burdened with the obligation of operation, maintenance and reconstruction of such street, and affirming that the City has no such obligation, or any obligation to accept such street as a public street.

(6) **Naming and Addressing**. Private streets shall be named and addressed in the same manner as public streets, in accordance with the laws and standards of the City.

(7) **Gated Developments**. Gated street entryways into residential developments are prohibited in accordance with Subsection 5.4.7(G). Gated entryways for private streets are also prohibited.

(M) **Private Drives.**

(1) **When Allowed**.

(a) Internal access or additional cross-access. Private drives shall be allowed in a development, provided that their function will only be to provide access to property within the development or *additional* cross-access between developments that are also connected by a street(s). Private drives shall not be permitted if (by plan or circumstance) such drives would, in the judgment of the City Engineer, attract "through traffic" in such volumes as to render such drives necessary as connections between developments, neighborhoods or other origins and destinations outside of the development plan.

(b) Primary access. A private drive shall be allowed to provide primary access to a development, provided that the drive is in compliance with Subparagraph (a) above.

(c) A private drive shall not be permitted if it prevents or diminishes compliance with any other provisions of this Code.

(2) **Design Requirements**. Private drives shall be designed to meet the following criteria:

(a) If any property served by the private drive cannot receive fire emergency service from a public street, then all emergency access design requirements shall apply to the private drive in accordance with Section 5.4.8. An "emergency access easement" must be dedicated to the City for private drives that provide emergency access.

(b) Private drives which must comply with Section 5.4.8 for emergency access shall be limited to an overall length of six hundred sixty (660) feet from a single point of access (measured as the fire hose would lay).

(c) Private drives which must comply with Section 5.4.8 for emergency access shall be limited to an overall length of six hundred and sixty (660) feet from a single point of access (measure as the fire hose lay).

(d) The design of private drives shall comply with all the standards for *Emergency Access* as contained in Section 5.4.8.

(e) Access locations on public or private streets shall be placed in accordance with City standards.

(f) The connection of a private drive with a public street shall be made in accordance with City street standards.

(g) If drainage from a private drive is channeled or directed to a public street, such drainage shall be in accordance with City street standards.

(3) **Construction Requirements**. The construction of all private drives shall be under the direct supervision of a professional engineer licensed by the State of Colorado, who must certify that all improvements for private drives have been completed in accordance with the plans approved by the City. In addition, the construction of private drives that will serve emergency access purposes shall be inspected by the City Engineer for compliance with City standards and the approved plans in the same manner as is required by the City for public streets.

(4) **Operation, Maintenance and Reconstruction**.

(a) The developer of a private drive must submit to the City that portion of the covenants, declarations and/or by-laws of the appropriate property owners association which defines the responsibilities for the operation, maintenance and reconstruction of the private drive, the costs of which must be borne by the property owners and not the City.

(b) The documents must provide for maintenance, reconstruction, drainage, policing and any other special conditions. This information must also be shown on the plat and site plan for the development with the added statement that the City has no obligation to perform or pay for repair and maintenance or any obligation to accept the private drives as public streets.

(c) At the time of recording of the plat, the developer shall also record a notice in the Larimer County, Colorado records showing the location of such drive and identifying the property or properties which are burdened with the obligation of operation, maintenance and reconstruction of such drive, and

affirming that the City has no such obligation, nor any obligation to accept such drive as a public street or drive.

(5) **Naming and Addressing**. Private drives shall be named, if necessary, to comply with the standards for *Emergency Access* as contained in Section 5.4.8. Addressing of the property shall be assigned by the City in conformance with the Larimer County Urban Area Street Standards.

(6) **Gated Developments**. Gated street entryways into residential developments are prohibited in accordance with subsection 5.4.7(G). Gated entryways for private drives are also prohibited.

(N) **Easements.** Easements shall be controlled by the following requirements:

(1) Public and private easements shall be provided on lots for utilities, public access, stormwater drainage or other public purposes as required and approved by the City Engineer.

(2) Pedestrian and bicycle paths shall be provided to accommodate safe and convenient pedestrian and bicycle movement throughout the subdivision and to and from existing and future adjacent neighborhoods and other development; all such pedestrian and bicycle paths shall be constructed in conformity with the *Larimer County Urban Area Street Standards* as adopted by the City Council by ordinance or resolution.

(3) Development plans shall incorporate and continue any public access easements so as to connect them to any such easements that exist on abutting properties.

(4) The subdivider shall be responsible for adequate provisions to eliminate or control flood hazards associated with the subdivision in accordance with Chapter 10 of the City Code. Agreements concerning stormwater drainage between private parties shall be subject to City review and approval.

5.4.7 STREET PATTERN AND CONNECTIVITY STANDARDS

(A) **Purpose.** This Section is intended to ensure that local street system is well designed with regard to safety, efficiency and convenience for automobile, bicycle, pedestrian, mobility devices, and transit modes of travel.

For the purposes of this Division, “local street system” shall mean the interconnected system of collector and local streets providing access to development from an arterial street.

(B) **General Standard**. The local street system of any proposed development shall be designed to be safe, efficient, convenient and attractive, considering use by all modes of transportation that will use the system, (including, without limitation, cars, trucks, buses, bicycles, pedestrians, mobility devices and emergency vehicles). The local street system shall provide multiple direct connections to and between local destinations such as parks, schools and shopping. Local streets must provide for both intra- and inter-neighborhood connections to knit developments together, rather than forming barriers between them. The street configuration within each parcel must contribute to the street system of the neighborhood.

(C) **Spacing of Full Movement Collector and Local Street Intersections With Arterial Streets**. Potentially signalized, full-movement intersections of collector or local streets with arterial streets shall be provided at least every one thousand three hundred twenty (1,320) feet or one-quarter (¼) mile along arterial streets, unless rendered infeasible due to unusual topographic features, existing development or a natural area or feature.

(D) **Spacing of Limited Movement Collector or Local Street Intersections With Arterial Streets**. Additional non-signalized, potentially limited movement, collector or local street intersections with arterial streets shall be spaced at intervals not to exceed six hundred sixty (660) feet between full movement collector or local street intersections, unless rendered infeasible due to unusual topographic features, existing development or a natural area or feature.

The City Engineer may require any limited movement collector or local street intersections to include an access control median or other acceptable access control device. The City Engineer may also allow limited movement intersection to be initially constructed to allow full movement access.

(E) **Distribution of Local Traffic to Multiple Arterial Streets.** All development plans shall contribute to developing a local street system that will allow access to and from the proposed development, as well as access to all existing and future development within the same section mile as the proposed development, from at least three (3) arterial streets upon development of remaining parcels within the section mile, unless rendered infeasible by unusual topographic features, existing development or a natural area or feature.

The local street system shall allow multi-modal access and multiple routes from each development to existing or planned neighborhood centers, parks and schools, without requiring the use of arterial streets, unless rendered infeasible by unusual topographic features, existing development or a natural area or feature.

(F) **Utilization and Provision of Sub-Arterial Street Connections to and From Adjacent Developments and Developable Parcels.** All development plans shall incorporate and continue all sub-arterial streets stubbed to the boundary of the development plan by previously approved development plans or existing development. All development plans shall provide for future public street connections to adjacent developable parcels by providing a local street connection spaced at intervals not to exceed six hundred sixty (660) feet along each development plan boundary that abuts potentially developable or re-developable land.

(G) **Gated Developments.** Gated street entryways into residential developments shall be prohibited.

(H) **Alternative Compliance.** Upon request by an applicant, the decision maker may approve an alternative development plan that may be substituted in whole or in part for a plan meeting the standards of this Section.

(1) Procedure. Alternative compliance development plans shall be prepared and submitted in accordance with submittal requirements for plans as set forth in this Section. The plan and design shall clearly identify and discuss the alternatives proposed and the ways in which the plan will better accomplish the purpose of this Section than would a plan which complies with the standards of this Section.

(2) Review Criteria. To approve an alternative plan, the decision maker must find that the proposed alternative plan accomplishes the purposes of this Division equally well or better than would a plan and design which complies with the standards of this Division, and that any reduction in access and circulation for vehicles maintains facilities for bicycle, pedestrian, mobility devices and transit.

In reviewing the proposed alternative plan, the decision maker shall take into account whether the alternative design minimizes the impacts on natural areas and features, fosters nonvehicular access, provides for distribution of the development's traffic without exceeding level of service standards, enhances neighborhood continuity and connectivity and provides direct, sub-arterial street access to any parks, schools, neighborhood centers, commercial uses, employment uses and Neighborhood Commercial Districts within or adjacent to the development from existing or future adjacent development within the same section mile.

5.4.8 EMERGENCY ACCESS

(A) **Purpose.** This Section is intended to ensure that emergency vehicles can gain access to, and maneuver within, the project so that emergency personnel can provide fire protection and emergency services without delays.

(B) **General Standard.** All developments shall provide adequate access for emergency vehicles and for those persons rendering fire protection and emergency services by complying with Article 9, Fire Department Access and Water Supply, of the Uniform Fire Code as adopted and amended pursuant to Chapter 9 of the

City Code. All emergency access ways, easements, rights-of-way or other rights required to be granted pursuant to the Uniform Fire Code must include not only access rights for fire protection purposes, but also for all other emergency services.

5.4.9 BUS STOP DESIGN STANDARDS

(A) **Purpose.** The purpose of this Section is to ensure that new development adequately accommodates existing and planned transit service by integrating facilities designed and located appropriately for transit into the development plan.

(B) **General Standard**. All development located on an existing or planned transit route shall install or construct a transit stop and other associated facilities on an easement or right-of-way dedicated to the City as prescribed by the City of Fort Collins Bus Stop Design Standards and Guidelines in effect at the time of installation, unless the Director determines that adequate transit facilities consistent with the Bus Stop Design Standards already exist to serve the needs of the development. All development located on existing transit routes will accommodate the transit facilities by providing the same at the time of construction. All development located on planned routes will accommodate said facilities by including the same in the development plan and escrowing funds to enable the City or its agents to construct the transit facilities at the time transit service is provided to the development. All facilities installed or constructed shall, upon acceptance by the City, become the property of the City and shall be maintained by the City or its agent.

(C) **Location of Existing and Planned Transit Routes.** For the purposes of application of this standard, the location of existing transit routes shall be defined by the Transfort Route Map in effect at the time the application is approved. The location of planned transit routes shall be defined according to the Transfort Strategic Operating Plan, as amended.

5.4.10 TRANSPORTATION LEVEL OF SERVICE REQUIREMENTS

(A) **Purpose.** In order to ensure that the transportation needs of a proposed development can be safely accommodated by the existing transportation system, or that appropriate mitigation of impacts will be provided by the development, the project shall demonstrate that all adopted level of service (LOS) standards will be achieved for all modes of transportation as set forth in this Section.

(B) **General Standard**. All development plans shall adequately provide vehicular, pedestrian, mobility devices, and bicycle facilities necessary to maintain the adopted transportation level of service standards. The vehicular level of service standards are those contained in Table 4-3 of the Larimer County Urban Area Street Standards (LCUASS). The bicycle and pedestrian level of service standards are those contained in Part II of the City of Fort Collins Multi-modal Transportation Level of Service Manual. Mitigation measures for levels of service that do not meet the standards are provided in Section 4.6 of LCUASS. No Transit level of service standards will be applied for the purposes of this Section. Notwithstanding the foregoing, adopted level of service standards need not be achieved where the necessary improvements to achieve such standards are not reasonably related and proportional to the impacts of the development. In such cases, the Director may require improvements or a portion thereof that are reasonably related and proportional to the impacts of the development, or the requirement may be varied or waived pursuant to LCUASS Section 4.6.

(C) **Transportation Impact Study, Nominal Impact**. In order to identify those facilities that are necessary in order to comply with these standards, development plans may be required to include the submittal of a Transportation Impact Study, to be approved by the Traffic Engineer, consistent with the Transportation

Impact Study guidelines as established in LCUASS Chapter 4. Should a Transportation Impact Study not be required pursuant to LCUASSS Chapter 4, a proposed development shall be deemed to have a nominal impact and shall not be subject to the transportation level of service requirements described in this Section.

DIVISION 5.5 ENVIRONMENTAL REQUIREMENTS

5.5.1 NOISE AND VIBRATION

General Standard. Proposed land uses and activities shall be conducted so that any noise generated on the property will not violate the noise regulations contained in the City's Noise Control Ordinance (Chapter 20, Article II of the City Code), and so that any vibration caused by using the property will be imperceptible without instruments at any point along the property line.

5.5.2 HAZARDOUS MATERIALS

(A) **Purpose.** The purpose of this Section is to protect the community and neighborhood from potential harm caused directly or indirectly by hazardous materials. The proper location, construction and processing of hazardous materials facilities are important to controlling community risk. If the type and magnitude of hazardous materials emergencies can be predicted, the potential impact on adjacent land uses, emergency providers and the environment can be minimized.

(B) **General Standard**. If any use on the development site may entail the use or storage of hazardous materials (including hazardous wastes) on-site, the project shall be designed to comply with all safety, fire and building codes for the use and storage of the hazardous materials involved. Adequate precautions shall be taken to protect against negative off-site impacts of a hazardous materials release, using the best available technology.

(C) **Hazardous Materials** Impact Analysis. To evaluate the impact of hazardous materials risk, all development proposals that have the potential to cause off-site impacts during the release of a hazardous material shall include a Hazardous Materials Impact Analysis (HMIA). These include land uses such as gas stations, manufacturing facilities and similar establishments that require the use or storage of flammable or toxic substances.

- This analysis shall provide basic information on the project (including site layout and proposed hazardous materials use), describe likely incident scenarios, describe mitigation actions designed to limit the potential for off-site impacts on adjacent land uses or environment and describe emergency response measures in the event of a spill. Based on the information provided in the impact analysis, recommendations will be made by the Poudre Fire Authority to the relevant decision maker to protect against off-site impacts. If a HMIA is required for a development proposal, a statement indicating that such a study has been required will be included in all required written notices to property owners as defined by Section 6.3.6 of this Code, to the extent reasonably feasible.

5.5.3 GLARE OR HEAT

(A) **Purpose**. This Section is intended to protect the community and neighborhood from glare, defined as a harsh, uncomfortably bright light. Glare can inhibit good visibility, cause visual discomfort and create safety

problems. This Section is also intended to protect the neighborhood from the adverse effects of reflected heat that could be caused by a proposed land use.

(B) **General Standard**. If the proposed activity produces intense glare or heat, whether direct or reflected, that is perceptible from any point along the site's property lines, the operation shall be conducted within an enclosed building or with other effective screening sufficient to make such glare or heat imperceptible at the property line.

(C) **Glare From Manufacturing Sources**. Manufacturing processes that create glare, such as welding, shall be conducted within an enclosed building or be effectively screened from public view. If the source of the glare is proposed to be screened with plant material, then the applicant must show that the screening will be effective year-round.

5.5.4 SOLAR ACCESS, ORIENTATION, AND SHADING

(A) **Purpose**. It is the City's intent to encourage the use of both active and passive solar energy systems for heating air and water in homes and businesses, as long as natural topography, soil or other subsurface conditions or other natural conditions peculiar to the site are preserved. While the use of solar energy systems is optional, the right to solar access is protected. Solar collectors require access to available sunshine during the entire year, including between the hours of 9:00 am and 3:00 pm, MST, on December 21, when the longest shadows occur. Additionally, a goal of this Section is to ensure that site plan elements do not excessively shade adjacent properties, creating a significant adverse impact upon adjacent property owners. Thus, standards are set forth to evaluate the potential impact of shade caused by buildings, structures and trees.

(B) **General Standard**. All development shall be designed throughout to accommodate active and/or passive solar installations to the extent reasonably feasible.

(C) **Solar-Oriented Residential Lots**. At least sixty-five (65) percent of the lots less than fifteen thousand (15,000) square feet in area in single- and two-unit residential developments must conform to the definition of a "solar-oriented lot" in order to preserve the potential for solar energy usage.

(D) **Access to Sunshine**. The elements of the development plan (e.g., buildings, circulation, open space and landscaping) shall be located and designed, to the maximum extent feasible, to protect access to sunshine for planned solar energy systems or for solar-oriented rooftop surfaces that can support a solar collector or collectors capable of providing for the anticipated hot water needs of the buildings in the project between the hours of 9:00 a.m. and 3:00 p.m. MST, on December 21.

(E) **Shading**.

(1) The physical elements of the development plan shall be, to the maximum extent feasible, located and designed so as not to cast a shadow onto structures on adjacent property greater than the shadow which would be cast by a twenty –five (25) foot hypothetical wall located along the property lines of the project between the hours of 9:00 am and 3:00 pm, MST, on December 21. This provision shall not apply to structures within the following high-density zone districts: Downtown, Community Commercial, and Transit-Oriented Overlay District.

(2) The impact of trees shall be evaluated on an individual basis considering the potential impacts of the shading and the potential adverse impacts that the shading could create for the adjacent properties in terms of blocking sunlight in indoor living areas, outdoor activity areas, gardens and similar spaces benefiting from access to sunlight. Shading caused by deciduous trees can be beneficial and is not prohibited.

(F) **Alternative Compliance.** Upon request by an applicant, the decision maker may approve an alternative site layout that may be substituted in whole or in part for a plan meeting the standards of this Section.

(1) **Procedure**. Alternative compliance plans shall be prepared and submitted in accordance with submittal requirements for plans as set forth in this Section. The plan shall clearly identify and discuss the modifications and alternatives proposed and the ways in which the plan will better accomplish the purpose of this Section than a plan which complies with the standards of this Section.

(2) **Review Criteria.** In approving an alternative plan, the decision maker shall find that the proposed alternative plan accomplishes the purposes of this Section equally or better than a plan which complies with the standards of this Section.

(3) In reviewing the proposed alternative plan, the decision maker shall take into account whether the alternative design enhances neighborhood continuity and connectivity, fosters nonvehicular access, and preserves existing natural or topographic conditions on the site.

5.5.5 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).

5.5.6 PARKS AND TRAILS

(A) **Establishment of Parks and Recreation Policy Plan Master Plan.** In order to accomplish the purposes of this Code, the location, size and characteristics of parks and trails have been established on a plan entitled "ReCreate: Parks & Recreation Master Plan" dated January 19, 2021, as amended, which plan is hereby made a part of this Code by reference. The Parks and Recreation Policy Plan Master Plan is on file with the City Clerk.

(B) **Purpose.** The compliance of development plans with the Parks and Recreation Policy Plan ensures that the community will have a fair and equitable system of parks, trail and recreation facilities as the community grows. Establishment of the facilities in the Parks and Recreation Policy Plan shall generally provide the same level of service to new portions of the community as the existing community enjoys.

(C) **General Standard.** All development plans shall provide for, accommodate or otherwise connect to, either on-site or off-site, the parks and trails identified in the Parks and Recreation Policy Plan Master Plan that are associated with the development plan.

DIVISION 5.6 ENVIROMENTAL SITE SUITABILITY

5.6.1 NATURAL HABITATS AND FEATURES

(A) **Applicability.** This Section applies if any portion of the development site is within five hundred (500) feet of an area or feature identified as a natural habitat or feature on the City's *Natural Habitats and Features Inventory Map,* or if any portion of the development site contains natural habitats or features that have significant ecological value, and such natural habitats or features are discovered during site evaluation and/or reconnaissance associated with the development review process. Natural habitats and features considered to have significant ecological value are as follows:

(1) **Natural Communities or Habitats:**

(a) aquatic (e.g., rivers, streams, lakes, pond);
(b) wetland and wet meadow;
(c) native grassland;
(d) riparian forest;
(e) urban plains forest;
(f) riparian shrubland;
(g) foothills shrubland; and
(h) foothills forest.

(2) **Special Features***:*

(a) Significant remnants of native plant communities;
(b) Potential habitats and known locations of rare, threatened or endangered species of plants;
(c) Potential habitats and know locations of rare, threatened or endangered species of wildlife;
(d) Raptor habitat features, including nest sites, communal roost sites and key concertation areas;
(e) Concertation areas for nesting and migratory shorebirds and waterfowl;
(f) Migratory songbird concertation areas;
(g) Key nesting areas for grassland birds;
(h) Fox and coyote dens;
(i) Mule deer winter concertation areas;
(j) Prairie dog colonies one (1) acre or greater in size;
(k) Concentration areas for rate, migrant or resident butterflies;
(l) Areas of high terrestrial or aquatic insect diversity;
(m) Areas of significant geological or paleontological interest; and
(n) Irrigating ditches that serve as wildlife corridors.

(B) **Purpose.** The purpose of this Section is to ensure that when property is developed consistent with its zoning designation, the way in which the proposed physical elements of the development plan are designed and arranged on the site will protect the natural habitats and features both on the site and in the vicinity of the site.

(C) **General Standard**. The development plan shall be designed and arranged to be compatible with and to protect natural habitats and features and the plants and animals that inhabit them and integrate them within the developed landscape of the community by: (1) directing development away from sensitive resources, (2) minimizing impacts and disturbance through the use of buffer zones, (3) enhancing existing

conditions, or (4) restoring or replacing the resource value lost to the community (either on-site or off-site) when a development proposal will result in the disturbance of natural habitats or features.

(D) **Ecological Characterization and Natural Habitat or Feature Boundary Definition**. The boundary of any natural habitat or feature shown on the *Natural Habitats and Features Inventory Map* is approximate. The actual boundary of any area to be shown on a project development shall be proposed by the applicant and established by the Director through site evaluations and reconnaissance and shall be based on the ecological characterization of the natural habitat or feature in conjunction with the map.

(1) *Ecological Characterization Study.*

(a) If the development site contains, or is within five hundred (500) feet of, a natural habitat or feature, or if it is determined by the Director, upon information or from inspection, that the site likely includes areas with wildlife, plant life and/or other natural characteristics in need of protection, then the developer shall provide to the City an ecological characterization report prepared by a City approved professional qualified in the areas of ecology, wildlife biology or other relevant discipline.

(b) At least ten (10) working days prior to the submittal of a project development plan application for all or any portion of a property, a comprehensive ecological characterization study of the entire property must be prepared by a qualified consultant and submitted to the City for review.

(c) The Director may waive any or all of the following elements of this requirement if the City already possesses adequate information required by this subsection to establish the buffer zone(s), as set forth in subsection (E) below, and the limits of development ("LOD"), as set forth in subsection (N) below. The ecological characterization study shall describe, without limitation, the following:

(I) the wildlife use of the area showing the species of wildlife using the area, the times or seasons that the area is used by those species and the "value" (meaning feeding, watering, cover, nesting, roosting, perching) that the area provides for such wildlife species;

(II) the boundary of wetlands in the area and a description of the ecological functions and characteristics provided by those wetlands;

(III) any prominent views from or across the site;

(IV) the pattern, species and location of any significant native trees and other native site vegetation;

(V) the pattern, species and location of all non-native trees and vegetation that contribute to the site's ecological, shade, canopy, aesthetic and cooling value;

(VI) the top of bank, shoreline and high water mark of any perennial stream or body of water on the site;

(VII) areas inhabited by or frequently utilized by Sensitive and Specially Valued Species;

(VIII) special habitat features;

(IX) wildlife movement corridors;

(X) the general ecological functions provided by the site and its features;

(XI) any issues regarding the timing of development-related activities stemming from the ecological character of the area; and

(XII) any measures needed to mitigate the projected adverse impacts of the development project on natural habitats and features.

(2) **Wetland Boundary Delineation**.

(a) Wetland boundary delineations of both a non-jurisdictional wetland and "jurisdictional wetland" shall be established in accordance with the U.S. Army Corps of Engineers 1987 Westland Delineation Manual and the appropriate Regional Supplement, and classified according to the U.S. Fish and Wildlife Service wetland classification system. In establishing the boundaries of a wetland, the applicant and the Director shall use soil samples, vegetation analysis and hydrological evidence.

(b) If at least one of the required criteria for wetland delineation, hydric soil, hydrophytic vegetation, or hydrology, is present on the development site, the applicant shall communicate the criterion or criteria to the Director for consideration.

(c) The Director may also utilize the standards and guidelines and/or the professional recommendations of the U.S. Army Corps of Engineers or other organization, individual, or governmental entity in reviewing such boundaries. These shall be identified in the submittal documents for the review of the project development plan (if applicable, or if not applicable, the most similar development review) and prior to commencement of any construction activities.

(E) **Establishment of Buffer Zones.** Buffer zones surrounding natural habitats and features shall be shown on the project development plan for any development that is subject to this Division. The purpose of the buffer zones is to protect the ecological character of natural habitats and features from the impacts of the ongoing activity associated with the development.

(1) **Buffer Zone Performance Standards.** The decision maker shall determine the buffer zones for each natural habitat or feature contained in the project site. The buffer zones may be multiple and noncontiguous. The general buffer zone distance is established according to the buffer zone table below, but the decision maker may reduce any portion of the general buffer zone distance so long as the reduced buffer complies with the performance standards set forth below. To mitigate a reduced portion of the buffer area, the decision maker may also enlarge any portion of the general buffer zone distance if necessary to ensure that the buffer complies with the performance standards set forth below. The buffer zone performance standards are as follows:

(a) The project shall be designed to preserve or enhance the ecological character or function and wildlife use of the natural habitat or feature and to minimize or adequately mitigate the foreseeable impacts of development.

(b) The project, including, by way of example and not by way of limitation, its fencing, pedestrian/bicycle paths and roadways, shall be designed to preserve or enhance the existence of wildlife movement corridors between natural habitats and features, both within and adjacent to the site.

(c) The project shall be designed to preserve existing trees and vegetation that contribute to the site's ecological, shade, canopy, aesthetic, habitat and cooling value. Notwithstanding the requirements of Section 5.10.1(F), trees and vegetation within the Limits of Development must be preserved or, if necessary, mitigated based on the values established by the Ecological Characterization Study or the City Environmental Planner. Such mitigation, if necessary, shall include trees, shrubs, grasses, or any combination thereof, and must be planted within the buffer zone.

(d) The project shall be designed to protect from adverse impact species utilizing special habitat features such as key raptor habitat features, including nest sites, night roosts and key feeding areas as identified by the Colorado Parks and Wildlife Division ("CPW") or the Fort Collins Natural Areas Department ("NAD"):

(I) key production areas;
(II) wintering areas and migratory feeding areas for waterfowl;
(III) heron rookeries;
(IV) key use areas for wading birds and shorebirds;
(V) key use areas for migrant songbirds;
(VI) key nesting areas for grassland birds;
(VII) fox and coyote dens;
(VIII) mule deer winter concentration areas as identified by the CPW or NAD;
(IX) prairie dog colonies one (1) acre or greater in size;
(X) key areas for rare, migrant or resident butterflies as identified by the NAD;
(XI) areas of high terrestrial or aquatic insect diversity as identified by the NAD;
(XII) remnant native prairie habitat;
(XIII) mixed foothill shrubland;
(XIV) foothill ponderosa pine forest;
(XV) plains cottonwood riparian woodlands; and
(XVI) wetlands of any size.

(e) The project shall be designed so that the character of the proposed development in terms of use, density, traffic generation, quality of runoff water, noise, lighting and similar potential development impacts shall minimize the degradation of the ecological character or wildlife use of the affected natural habitats or features.

(f) The project shall be designed to integrate with and otherwise preserve existing site topography, including, but not limited to, such characteristics as steepness of slopes, existing drainage features, rock outcroppings, river and stream terraces, valley walls, ridgelines and scenic topographic features.

(g) The project shall be designed to enhance the natural ecological characteristics of the site. If existing landscaping within the buffer zone is determined by the decision maker to be incompatible with the purposes of the buffer zone, then the applicant shall undertake restoration and mitigation measures such as regrading and/or the replanting of native vegetation.

(h) The project may be designed to provide appropriate human access to natural habitats and features and their associated buffer zones in order to serve recreation purposes, provided that such access is compatible with the ecological character or wildlife use of the natural habitat or feature.

(i) Fencing associated with the project shall be designed to be compatible with the ecological character and wildlife use of the natural habitat or feature.

(2) **Development Activities Within the Buffer Zone**.

(a) No disturbance shall occur within any buffer zone and no person shall engage in any activity that will disturb, remove, fill, dredge, clear, destroy or alter any area, including vegetation within natural habitats or features including without limitation lakes, ponds, stream corridors and wetlands, except as provided in subsection (c) below.

(b) If the development causes any disturbance within the buffer zone, whether by approval of the decision maker or otherwise, the applicant shall undertake restoration and mitigation measures within the buffer zone such as regrading and/or the replanting of native vegetation. The applicant shall undertake mitigation measures to restore any damaged or lost natural resource either on-site or off-site at the discretion of the decision maker. Any such mitigation or restoration shall be at least equal in ecological value to the loss suffered by the community because of the disturbance, and shall be based on such mitigation and restoration plans and reports as have been requested, reviewed and approved by the decision maker. Unless otherwise authorized by the decision maker, if existing vegetation (whether native or non-native) is destroyed or disturbed, such vegetation shall be replaced with native vegetation and landscaping.

(c) The decision maker may allow disturbance or construction activity within the buffer zone for the following limited purposes:

(I) mitigation of development activities;

(II) restoration of previously disturbed or degraded areas or planned enhancement projects to benefit the natural area or feature;

(III) emergency public safety activities;

(IV) utility installations when such activities and installations cannot reasonably be located outside the buffer zone or other nearby areas of development;

(V) construction of a trail or pedestrian walkway that will provide public access for educational or recreational purposes provided that the trail or walkway is compatible with the ecological character or wildlife use of the natural habitat or feature; and

(VI) construction or installation of recreation features or public park elements, provided that such features or elements are compatible with the ecological character or wildlife use of the natural habitat or feature.

(d) Buffer Zone Table for Fort Collins Natural Habitats and Features.

Natural Habitat or Feature	*Buffer Zone Standard*[3]
Isolated Areas	
Irrigation ditches that serve as wildlife corridors	50 feet
Isolated patches of native grassland or shrubland	50 feet
Isolated patches of native upland or riparian forest	50 feet
Woodlots/farmstead windbreaks	25 feet
Naturalized irrigation ponds	50 feet
Naturalized storm drainage channels/detention ponds	50 feet
Lakes or reservoirs	100 feet
Wetlands < ⅓ acre in size	50 feet
Wetlands > ⅓ acre in size, without significant use by waterfowl and/or shorebirds	100 feet
Wetlands > ⅓ acre in size, with significant use by waterfowl and/or shorebirds	300 feet
Stream Corridors	
Boxelder Creek	100 feet
Cache la Poudre River (west UGA boundary to College Avenue)	300 feet
Cache la Poudre River in downtown (College to Lincoln Avenue)[2]	200 feet
Cache la Poudre River (Lincoln Avenue to east UGA boundary)	300 feet
Cooper Slough	300 feet
Dry Creek	100 feet
Fossil Creek and Tributaries	100 feet
Spring Creek	100 feet
Special Habitat Features/Resources of Special Concern	
Bald eagle communal feeding sites	660 feet
Bald eagle communal roost sites	1,320 feet
Bald eagle nest sites	2,640 feet
Winter raptor concentration areas	300 feet
Great blue heron colonial nest sites	825 feet
Migratory waterfowl concentration areas	300 feet
Nesting waterfowl concentration areas	300 feet
Migratory shorebird concentration areas	300 feet
Nesting shorebird concentration areas	300 feet
Migratory songbird concentration areas	300 feet
Locations of Preble's meadow jumping mouse	300 feet
Locations of fox, coyote and badger dens	50 feet
Locations of rare butterfly species	site analysis
Locations of rare, threatened or endangered plant species	site analysis
Locations of geological or paleontological sites of special interest	site analysis
Prairie dog colonies	site analysis

(I) Note that these buffer zone standards do not apply in areas zoned RDR - River Downtown Redevelopment. Alternative standards are included in the description of this zone district.

(II) Table distances may be modified as described in Section 5.6.1(E)(1) above to meet performance standards.

(III) Buffer zone table distances shall be measured in a straight line without regard to topography. Measurements will be made from the outer edge of the natural habitat or feature to the boundary of the lot, tract or parcel of land that defines and describes the development and:

(i) Isolated area buffer zones such as woodlots, farm windbreaks and forests will be measured from the outer edge of the drip line toward the boundary of such lot, tract or parcel of land;

(ii) Wetlands, grasslands and shrubland buffer zones will be measured from the outside edge of the habitat toward the boundary of such lot, tract or parcel of land;

(iii) Stream corridors, lakes, reservoirs and irrigation ditches buffer zones will be measured from the top of bank toward the boundary of such lot, tract or parcel of land;

(iv) Special habitat features/resources of special concern will be measured as a radius starting from the outer edge of the habitat toward the boundary of such lot, tract or parcel of land; and

(v) Locations of geological or paleontological sites of special interest will be measured from the outer edge of the feature toward the boundary of such lot, tract or parcel of land.

(F) **Protection of Wildlife Habitat and Ecological Character.**

(1) **Rare, Threatened or Endangered Species.** If the ecological characterization report required pursuant to Subsection (D)(1) above shows the existence in a natural habitat or feature of a rare, threatened or endangered species of plant or wildlife, then the development plan shall include provisions to ensure that any habitat contained in any such natural habitat or feature or in the adjacent buffer zone which is of importance to the use or survival of any such species shall not be disturbed or diminished and, to the maximum extent feasible, such habitat shall be enhanced. (NOTE: Some studies, e.g., rare plant surveys, are time-limited and can only be performed during certain seasons.)

(2) **Sensitive or Specially Valued Species**. If the ecological characterization report required pursuant to subsection (D)(1) above shows the existence in a natural habitat or feature of a plant or wildlife species identified by the City as a sensitive or specially valued species, excluding threatened or endangered species, then the development plan shall include provisions to protect, enhance, or mitigate impacts to any such natural habitat or feature or in the adjacent buffer zone which is of importance to the use or survival of any such species to the extent reasonably feasible.

(3) **Connections**. If the development site contains existing natural habitats or features that connect to other off-site natural habitats or features, to the maximum extent feasible the development plan shall preserve such natural connections. If natural habitats or features lie adjacent to (meaning in the region immediately round about) the development site, but such natural habitats or features are not presently connected across the development site, then the development plan shall, to the extent reasonably feasible, provide such connection. Such connections shall be designed and constructed to allow for the

continuance of existing wildlife movement between natural habitats or features and to enhance the opportunity for the establishment of new connections between areas for the movement of wildlife.

(4) **Wildlife Conflicts**. If wildlife that may create conflicts for the future occupants of the development (including, but not limited to, prairie dogs, beaver, deer and rattlesnakes) are known to exist in areas adjacent to or on the development site, then the development plan must, to the extent reasonably feasible, include provisions such as barriers, protection mechanisms for landscaping and other site features to minimize conflicts that might otherwise exist between such wildlife and the developed portion of the site.

(G) **Lakes/Riparian Area Protection**

(1) **Lakes, Reservoirs and Ponds**. If the development site contains a lake, reservoir or pond, the development plan shall include such enhancements and restoration as are necessary to provide reasonable wildlife habitat and improve aesthetic quality in areas of shoreline transition and areas subject to wave erosion. The development plan shall also include a design that requires uniform and ecologically and aesthetically compatible treatment among the lots or tracts surrounding a lake, reservoir or pond with regard to the establishment of erosion control protection and shoreline landscaping on or adjacent to such lots or tracts. Water bodies and features such as irrigation ponds, reflecting pools and lagoons constructed as new landscaping features of a development project shall be exempt from the standards contained in this subparagraph.

(2) **Streambank Stabilization.** When the Stormwater Master Plans and the Storm Drainage Design Criteria and Construction Standards of the City require streambank stabilization, native vegetation shall be utilized for such purpose, and engineered stabilization techniques such as exposed rip rap shall be avoided, to the maximum extent feasible. The use of native vegetation shall be the principal means of streambank stabilization, and the use of rip-rap for streambank stabilization shall be restricted to locations where the use of vegetation techniques is not reasonably feasible.

(H) **Ridgeline Protection.**

(1) **Ridgeline Setback.** So that structures blend more naturally into the landscape rather than being a prominent focal point, no development shall intrude into any ridgeline protection area identified and designated by the Director during the development review process in conjunction with the establishment of the LOD and the buffer zone. For the purposes of this subsection, a designated ridgeline protection area shall include the crest of any hill or slope so designated, plus the land located within one hundred (100) horizontal feet (plan view) on either side of the crest of the hill or slope.

(2) **Building Height and Profile**. Multilevel buildings shall follow the general slope of the site in order to keep the building height and profile in scale with surrounding natural features.

(I) **Design and Aesthetics.**

(1) **Project design**. Projects in the vicinity of large natural habitats and/or natural habitat corridors, including, but not limited to, the Poudre River Corridor and the Spring Creek Corridor, shall be designed to complement the visual context of the natural habitat. Techniques such as architectural design, site design, the use of native landscaping and choice of colors and building materials shall be utilized in such

manner that scenic views across or through the site are protected, and manmade facilities are screened from off-site observers and blend with the natural visual character of the area. These requirements shall apply to all elements of a project, including any aboveground utility installations.

(2) **Visual Character of Natural Features.** Projects shall be designed to minimize the degradation of the visual character of affected natural features within the site and to minimize the obstruction of scenic views to and from the natural features within the site.

(J) **Stormwater Drainage/Erosion Control.** All stormwater drainage and erosion control plans shall meet the standards adopted by the City Stormwater Utility for design and construction and shall, to the maximum extent feasible, utilize nonstructural control techniques, including but not limited to:

(1) limitation of land disturbance and grading;
(2) maintenance of vegetated buffers and natural vegetation;
(3) minimization of impervious surfaces;
(4) use of terraces, contoured landscapes, runoff spreaders, grass or rock-lined waterways;
(5) use of infiltration devices; and
(6) use of recharge basins, seepage pits, dry wells, seepage beds or ditches, porous pavement or sub-drain systems

(K) **Water Rights.** To the extent that a development plan proposes the creation of water features such as lakes, ponds, streams or wetlands, the plan must include clear and convincing evidence that such water features will be supplied with sufficient water whether by natural means or by the provision of sufficient appropriative water rights. No development plan shall be approved which would have the effect of injuring or diminishing any legally established water supply for any natural area.

(L) **Compatibility with Public Natural Areas or Conserved Land**. If the project contains or abuts a publicly owned natural area or conserved land, the development plan shall be designed so that it will be compatible with the management of such natural area or conserved land. In order to achieve this, the development plan shall include measures such as barriers or landscaping measures to minimize wildlife conflicts, setbacks or open space tracts to provide a transition between the development and the publicly owned natural area or conserved land, and educational signage or printed information regarding the natural values, management needs and potential conflicts associated with living in close proximity to such natural area or conserved land.

(M) **Access to Public Natural Areas or Conserved Land.** In the event that the development plan contains or abuts a publicly owned natural area or conserved land, the development plan shall include such easements and rights-of-way as are necessary to allow reasonable access for the public to such natural area or conserved land, unless such access is deemed by the decision maker to be unnecessary and undesirable for the proper public utilization of such natural area or conserved land. Any such access requirement or dedication shall be credited (based upon a fair market value analysis) against any such natural area or conserved land dedication or fee-in-lieu thereof required by the City. If the development site contains any privately owned natural area or open lands, any access provided to such area or open lands, whether for private or public use, if determined to be appropriate, shall be designed and managed in such manner as to minimize the disturbance of existing wildlife using such area.

(N) **Standards for Protection During Construction.** For every development subject to this Division, the applicant shall propose, and the Director shall establish, measures to be implemented during the actual

construction phase of the project to ensure protection of natural habitats and features and their associated buffer zones, as follows:

(1) **Limits of Development**. The applicant shall propose, and the Director shall establish on the project development plan, a "limits of development" ("LOD") line(s) to establish the boundary of the project outside of which no land disturbance activities will occur during the construction of the project. The purpose of the LOD lines shall be to protect natural habitats and features and their associated buffer zones from inadvertent damage during site construction activities. The location of the LOD shall be designed to preserve significant ecological characteristics of the affected natural habitat or feature that could not reasonably be restored if disturbed by construction activities associated with the project. The LOD shall also be designed to accommodate the practical needs of approved construction activity in terms of ingress and egress to the developed project and necessary staging and operational areas.

(2) **Designation.** LODs, as approved by the Director, shall be shown on the final plan for development. LODs shall be designated in the field prior to commencement of excavation, grading or construction with fencing or other methods approved by the Director.

(3) **Barrier Fencing.** Construction barrier fencing shall be provided at the limits of development during construction. For the protection of natural habitats and features, including but not limited to trees and clumps of trees to be preserved with a buffer zone that is to be disturbed, tree protection specifications as described in subsection 5.10.1(G)(1) and (3) through (7) shall be followed.

(4) **Construction Timing**. Construction shall be organized and timed to minimize the disturbance of Sensitive or Specially Valued Species occupying or using on-site and adjacent natural habitats or features.

(5) **Red-tailed and Swainson's Hawk Nest Sites.**

(a) No tree with an active nest shall be removed unless a permit for such removal has been obtained by the developer from the United States Fish and Wildlife Service.

(b) To the extent reasonably feasible, trees that are known to have served as nest sites shall not be removed within five (5) years of the last known nesting period. If the tree is removed, it shall be mitigated in accordance with Section 5.10.1, Landscaping and Tree Protection Standards.

(c) A temporary LOD of a four-hundred-fifty (450) foot radius shall be established for Red-tailed and Swainson's hawk active nest sites during the period from February 15 through July 15 of the first year of a multi-year development construction project.

(6) **Prairie Dog Removal**. Before the commencement of grading or other construction on the development site, any prairie dogs inhabiting portions of the site within the LOD shall be relocated or eradicated by the developer. Prairie dog relocation shall be accomplished using methods reviewed and approved by the Colorado Parks and Wildlife Division. Following relocation or eradication activities, a report shall be provided to the City that documents when prairie dog removal occurred, the method(s) that were used to remove prairie dogs, measures taken to ensure that prairie dogs will not re-inhabit the site, and confirmation that no threatened or endangered species were harmed by removal activities.

(O) **Proof of Compliance.**

(1) If a proposed development will disturb an existing wetland, the developer shall provide to the City a written statement from the U.S. Army Corps of Engineers that the development plan fully complies with all applicable federal wetland regulations as established in the federal Clean Water Act.

5.6.2 AIR QUALITY

(A) **General Standard.** The project shall conform to all applicable local, state and federal air quality regulations and standards, including, but not limited to, those regulating odor, dust, fumes or gases which are noxious, toxic or corrosive, and suspended solid or liquid particles. The project shall be designed and constructed to comply with the dust control measures contained in the Dust Control Manual to the extent required therein.

(B) **Setbacks From Domestic Wastewater Treatment Works to Habitable Structures.**

(1) Unless specifically authorized pursuant to the provisions of paragraph (C) below, the minimum horizontal distances set forth in subparagraph (2) of this Subsection shall be maintained between the various kinds of wastewater treatment works listed in said subparagraph and any of the following uses:

(a) any residential use;

(b) any commercial/retail use except frozen food lockers, enclosed mini-storage facilities and properties used principally as parking lots or parking garages;

(c) any industrial use except warehouses, properties used for recreational vehicle, boat or truck storage, composting facilities, outdoor storage facilities, junkyards, transport terminals, recycling facilities, and resource extraction;

(d) any institutional/civic/public use except cemeteries, golf courses, public facilities, parks, recreation and other open lands, places of worship or assembly; and

(e) any accessory/miscellaneous uses except agricultural activities, farm animals, satellite dishes (greater than thirty-nine [39] inches in diameter), and wireless communication facilities.

(2) The following minimum horizontal distances shall apply to the kinds of wastewater treatment works listed below and the uses specified in subparagraph 1. above:

(a) Non-aerated lagoons: one thousand three hundred twenty (1,320) feet (¼ mile).

(b) Aerated lagoons containing less than two (2) total surface acres with no surface aeration one hundred (100) feet.

(c) Aerated lagoons containing greater than two (2) total surface acres and/or with surface aeration: one thousand (1,000) feet, or with established vegetation barriers, and/or walls, berms or other topographic features to reduce aerosol drift as approved pursuant to paragraph (C) below: five hundred (500) feet.

(d) Small mechanical plants with less than one hundred thousand (100,000) gpd capacity and all facilities with building enclosure: one hundred (100) feet.

(e) All other mechanical plants: one thousand (1,000) feet.

(C) **Alternative Compliance.** Upon request by an applicant, the decision maker may approve an alternative setback distance that may be substituted for a setback distance meeting the standards of this Section.

(1) **Procedure**. Alternative compliance setback plans shall be prepared and submitted in accordance with the submittal requirements for plans as set forth in this Section. The plan shall clearly identify and discuss the setback modifications proposed and the ways in which the plan will equally well or better accomplish the purpose of this Section than would a plan which complies with the standards of this Section.

(2) **Review Criteria.** To approve an alternative plan, the decision maker must find that the proposed alternative plan accomplishes the purposes of this Section equally well or better than would a plan which complies with the standards of this Section.

(3) **Alternative Plan.** In reviewing the proposed alternative plan, the decision maker shall consider any mitigating factors that exist to counter the potential for odor problems and/or aerosol drift, including, without limitation, structural, chemical or technological mitigation occurring at the subject wastewater treatment works, established vegetation barriers and/or walls, berms, or other topographic features sufficient to serve as mitigation for odor problems and/or aerosol drift. In order to assist the decision maker in evaluating the proposed mitigation factors the Utilities Executive Director shall submit a written recommendation regarding such mitigation factors, which recommendation shall include the technical analysis and reasoning used in support of the Utilities Executive Director's recommendation.

5.6.3 WATER QUALITY

General Standard. Projects shall be designed so that precipitation runoff flowing from the site is treated in accordance with the criteria set forth in the *Stormwater Criteria Manual*.

5.6.4 WATER HAZARDS

(A) Lands which are subject to flooding or are located in a natural drainageway shall not be approved for development or redevelopment unless the following conditions are met:

(1) the project development plan complies with the Basin Master Drainageway Plan as applicable;

(2) the project development plan complies with the City's Stormwater Criteria Manual;

(3) the project development plan complies with the floodplain regulations as established in Chapter 10 of the City Code; and

(4) all measures proposed to eliminate, mitigate or control water hazards related to flooding or drainageways have been approved by the Water Utilities Executive Director.

(B) If a project includes a water hazard such as an irrigation canal, water body or other water channel, necessary design precautions shall be taken to minimize any hazard to life or property, and additional measures such as fencing, water depth indicators and erection of warning signs shall be taken, to the extent reasonably feasible.

(C) Any lands that are subject to high groundwater (meaning groundwater at an elevation such that basement flooding is reasonably anticipated by the City Engineer to occur) shall not be platted for building lots with basements unless adequate provisions to prevent groundwater from entering basements have been designed and approved by the City Engineer.

5.6.5 HAZARDS

(A) If the project contains potential areas of natural or geologic hazard (such as unstable or potentially unstable slopes, faulting, landslides, rockfalls) or soil conditions (such as expansive soils) unfavorable to development, the applicant shall provide to the Director a study of such hazards produced by a geotechnical engineer licensed in the state of Colorado. Such study shall contain, where appropriate, recommendations for special mitigation measures and engineering precautions that shall be taken to overcome those limitations. In the alternative, if determined to be a safe and reasonable option by the geotechnical engineer, such areas may be set aside from development.

(B) Steep or unstable land and areas having inadequate drainage shall not be subdivided into building lots unless the applicant makes adequate provisions to prevent the same from endangering life, health or other property.

5.6.6 HEALTH RISKS

(A) **Purpose**. This Section is intended to protect the occupants of and visitors to the site following development from health risks that may be presented by the existence of dangerous chemicals, metals or other substances, microorganisms, germs, bacteria or viruses, which pose a health risk to the potential occupants of and/or visitors to the development site if permitted to develop.

(B) **General Standard.** If, because of credible evidence in the possession of the City or the applicant, whether written or otherwise, there is a reasonable suspicion or belief that the development site contains dangerous chemicals, metals or other substances, microorganisms, germs, bacteria or viruses, which pose a health risk to the potential occupants of and/or visitors to the development site if permitted to develop, then the applicant shall either take such actions as are necessary to satisfy the decision maker that such health risks have been reasonably mitigated, or shall demonstrate to the decision maker by presentation of written statements from either the Larimer County Health Department or from specialists appropriate in education and training to examine the risks, showing that the suspicion of danger and health risk is scientifically unfounded and that actual, reasonable risk is unlikely.

5.6.7 OTHER JURISDICTION ENVIRONMENTAL COMPLIANCE

(A) If the Director obtains credible information regarding threatened or pending regulatory oversight or enforcement related to an environmental condition of the property to be developed, or an environmental impact related to the development plan, then the Director may require the developer to provide to the City written statements from such governmental agencies as the Director may designate as having related jurisdiction based on the nature of the oversight or enforcement or environmental impact.

(a) Said statements shall verify that the development plan fully complies with environmental regulations within the jurisdiction of the writing agency. If the developer, after a diligent effort, is unable to obtain such written verifications from one (1) of more of the designated agencies, the developer shall at least provide to the City a written verification from said agency that the City's approval of the development plan will not interfere with a threatened or pending environmental enforcement action of said agency.

(B) All required written statements shall be provided to the Director prior to the scheduling of the hearing for the project development plan.

DIVISION 5.7 COMPACT URBAN GROWTH STANDARDS

5.7.1 COMPACT URBAN GROWTH

(A) **Purpose**. The City has adopted a compact urban growth policy that encourages and directs development to take place within areas contiguous to existing development in the community. Such a policy seeks to accomplish several goals, including:

(1) improving air quality by reducing vehicle miles traveled and by encouraging mass transit and alternatives to the private automobile;

(2) preserving natural areas and features, particularly in the periphery of the City;

(3) making possible the efficient use of existing infrastructure and cost-effective extensions of new services;

(4) encouraging infill development and reinvestment in built-up areas of the City; and

(5) promoting physical separation from neighboring communities to help each maintain its individual identity and character.

(B) **Establishment of Growth Management Area**. The City has adopted a cooperative planning area policy in the City Plan that includes a Growth Management Area as adopted by Intergovernmental Agreement with Larimer County.

(C) **General Standard.** No development shall be approved unless it is located within the City limits and meets the specific standards set forth in this Division relating to the required degree of contiguity, availability of adequate public facilities and access.

5.7.2 CONTIGUITY

(A) **Development Approval Criteria.** No development for any site within the City limits shall be approved unless it meets the following minimum requirements:

(1) **Degree of Contiguity**. At least one-sixth (1 /6) of the proposed development's boundaries must be contiguous to existing urban development within either the City or unincorporated Larimer County within the Growth Management Area. For purposes of this Section, contiguity shall not be affected by the existence of a platted street or alley, a public or private right-of-way, a public or private transportation right-of-way or area, publicly owned open space, or a lake, reservoir, stream or other natural or artificial waterway between the proposed development and existing urban development.

(2) **Existing Urban Development Defined**. For purposes of this Section, *existing urban development* shall mean industrial uses; commercial/retail uses; institutional/civic/public uses; or residential uses having an overall minimum density of at least one (1) unit per acre; and provided further that all engineering improvements for any such development, including paved streets, public sewer and water, stormwater

drainage and other utilities, and fire suppression consistent with the Fire Code must have been completed.

(3) **Exemption for Properties Located Within Certain Planned Subareas**. Development located within the following planned subareas are not required to comply with the requirements of this Section :

(a) Fossil Creek Reservoir Area; and
(b) Harmony Corridor.

(B) **Developments Outside the Growth Management Area.** No development application shall be accepted or approved as part of an annexation petition if the proposed development is located outside the Growth Management Area.

(C) **Waiver/Exceptions.** The Planning and Zoning Commission may waive or make modifications to the contiguity requirements of this Section upon making a specific finding that the proposed development will:

(1) Substantially advance the implementation of the City Plan in the provision of Medium-Density Mixed-Use Neighborhoods or Community Commercial Districts;

(2) Produce special benefits to the City in terms of large-scale open space dedication or preservation, completion of regional trail linkages, or substantially advance other primary open space and recreational goals contained in the City Plan;

(3) Produce special benefits to the City in terms of long-term economic development opportunity in accordance with the City Plan; or

(4) Promote the infilling of an area with already existing noncontiguous urban-level development.

5.7.3 ADEQUATE PUBLIC FACILITIES

(A) **Purpose**. The purpose of the adequate public facilities (APF) management system is to establish an ongoing mechanism which ensures that public facilities and services needed to support development are available concurrently with the impacts of such development.

(B) **Applicability.** This Section shall apply to all development in the City.

(C) **APF Management System.**

(1) **APF Management System Established.** In order to implement the City's Principles and Policies, the adequate public facilities management system ("APF management system") is hereby established. The APF management system is incorporated into and shall be part of the development review procedures as well as the process for issuance of Building Permits.

(2) **General Requirements**. The approval of all development shall be conditioned upon the provision of adequate public facilities and services necessary to serve new development. No Building Permit shall be issued unless such public facilities and services are in place, or the commitments described in subparagraph (E)(1)(a)(II) below have been made, or with respect to transportation facilities, a variance under LCUASS Section 4.6.7 or an alternative mitigation strategy under LCUASS Section 4.6.8 has been approved. Under this APF management system, the following is required:

(a) The City shall adopt and maintain level of service standards for the following public facilities: transportation, water, wastewater, storm drainage, fire and emergency services, electrical power and any other public facilities and services required by the City.

(b) No site specific development plan or Building Permit shall be approved or issued in a manner that will result in a reduction in the levels of service below the adopted level of service standards for the affected facility, except as expressly permitted under this Section (and the referenced provisions of LCUASS).

(D) **Level of Service Standards.** For the purpose of review and approval of new development and the issuance of Building Permits, the City hereby adopts the following level of service standards for the public facilities and services identified below:

(1) **Transportation.**

(a) All development must have access to the Improved Arterial Street Network or to a street for which funds have been appropriated to fund improvement as an arterial street as more specifically required in Section 5.4.2, Development Improvements, (F) Off-site Public Access Improvements.

(b) Except as provided in Subsection (E)(1) below, all development shall meet or exceed the following transportation level of services standards:

(I) The vehicular level of service standards for overall intersection level of service standards contained in Table 4-3 of the Larimer County Urban Area Street Standards (LCUASS). Alternative mitigation strategies are provided in LCUASS Section 4.6.8.

(II) The bicycle and pedestrian level of service standards are contained in Part II of the City of Fort Collins Multi-modal Transportation Level of Service Manual. Variances for levels of service that do not meet the standards are provided in LCUASS Section 4.6.7.

(III) No transit level of service standards contained in Part II of the Multi-modal Transportation Manual will be applied for the purposes of this Section.

(c) If any off-site improvements are required by the standards contained in this Section, repayments for the costs of such improvements shall be provided to the developer in accordance with the provisions of Section 5.4.2(F).

(2) **Water.** All development shall provide adequate and functional lines and stubs to each lot as required by the current City or special district, as applicable, design criteria and construction standards.

(3) **Wastewater.** All development shall provide adequate and functional mains and stubs to each lot as required by the current City or special district, as applicable, design criteria and construction standards.

(4) **Storm Drainage**. All development shall provide storm drainage facilities and appurtenances as required by Sections 26-544 and 10-37 of the Municipal Code and by all current City storm drainage master plans, design criteria and construction standards.

(5) **Fire and Emergency Services.** All development shall provide sufficient fire suppression facilities as required by the Fire Code.

(6) **Electrical Power Service**. All development shall have service provided as described in the Electric Construction Policies, Practices, and Procedures, and the Electric Service Rules and Regulations of the Fort Collins Electric Utility.

(E) **Minimum Requirements for APF**

(1) The City's APF management system shall ensure that public facilities and services to support development are available concurrently with the impacts of development. In this regard, the following standards shall be used to determine whether a development meets or exceeds the minimum requirements for adequate public facilities:

(a) For transportation facilities, at a minimum, the City shall require that, at the time of issuance of any Building Permit issued pursuant to a site specific development plan, all necessary facilities and services, as described in Section (D)(1) above, are either:

(I) In place and available to serve the new development in accordance with the development agreement; or

(II) Funding for such improvements has been appropriated by the City or provided by the developer in the form of either cash, non-expiring letter of credit, or escrow in a form acceptable to the City.

(b) Notwithstanding the foregoing, with respect to improvements required to maintain the applicable transportation facilities' level of service where, as determined by the Director, such improvements are not reasonably related to and proportional to the impacts of the development or currently desired by the City, a Building Permit may be issued pursuant to a site specific development plan provided the developer has:

(I) Agreed in the development agreement to install or fund improvements, or a portion thereof, that are reasonably related and proportional to the impacts of the development on the affected transportation facility or facilities; or

(II) Obtained a variance regarding the affected transportation facility or facilities under LCUASS Section 4.6.7; or

(III) Agreed in the development agreement to implement an alternative mitigation strategy as defined by LCUASS Section 4.6.8, or portion thereof, to adequately mitigate the reasonably related and proportional impacts of the development on the affected transportation facility or facilities; or

(IV) Funding for such improvements has been appropriated by the City or provided by the developer in the form of either cash, non-expiring letter of credit, or escrow in a form acceptable to the City.

(c) For water and wastewater facilities, at a minimum, the City shall require that, at the time of issuance of any building permit issued pursuant to a site-specific development plan, all necessary facilities and services, as described in Section (D)(2)-(3) above, are in place and available to serve the new development in accordance with the approved utility plan and development agreement.

(d) For storm drainage facilities, the City shall require that all necessary facilities and services, as described in Section (D)(4) above, are in place and available to serve the new development in accordance with the approved drainage and erosion control report, utility plans and development agreement for such development. The timing of installation of such facilities and service shall be as follows:

(I) Where multiple building permits are to be issued for a project, twenty-five (25) percent of the building permits and certificates of occupancy may be issued prior to the installation and acceptance of the certification of the drainage facilities. Prior to the issuance of any additional permits, the installation and acceptance of the certification of the drainage facilities shall be required.

(II) For projects involving the issuance of only one (1) building permit and certificate of occupancy, the installation and acceptance of the certification of the drainage facilities shall be required prior to the issuance of the certificate of occupancy.

(e) For fire and emergency services, at a minimum, the City shall require that, at the time of issuance of any building permit issued pursuant to a site-specific development plan, all necessary facilities and services, as required by the Fire Code, are in place and available to serve the site within the new development where the building is to be constructed in accordance with the Fire Code and the development agreement.

(f) For electric power facilities, the following minimum requirements shall apply:

(I) For residential development: The developer must coordinate the installation of the electric system serving the development with the City's electric utility. In addition, each application for a building permit within the development must show the name of the development, its address, each lot or building number to be served, and the size of electric service required. The size of electric service shall not exceed that originally submitted to the electric utility for design purposes. Costs for installation of the electric service line to the meter on the building will be payable upon the issuance of each building permit.

(II) For Commercial/Industrial Development: The following documents/information shall be provided to the City's electric utility with each application for a building permit:

(i) an approved and recorded final plat;
(ii) the final plan (two [2] copies);
(iii) the utility plan;
(iv) a one-line diagram of the electric main entrance;
(v) a Commercial Service Information Form (C-1 form) completed by the developer/ builder for each service, and approved by the electric utility (Blank forms are available at the Electric Utility Engineering Department, 970-221-6700);

(vi) the transformer location(s), as approved by the electric utility;
(vii) the name and address of the person responsible for payment of the electric development charges; and
(viii) the name, of the development, building address and lot or building number.

(III) Compliance with Administrative Regulations: The developer shall also comply with all other administrative regulations and policies of the electric utility, including, without limitation, the *Electric Construction Policies, Practices and Procedures,* and the *Electric Service Rules and Regulations*, copies of which may be obtained from the electric utility.

(F) **Transportation APF Exception.** *Nominal Impact.* For the purpose of the transportation APF requirements contained in this Section, a proposed development shall be deemed to have a nominal impact and shall not be subject to the APF requirements for transportation if the development proposal is not required to complete a Traffic Impact Study per the requirements in Chapter 4 - Transportation Impact Study of the Larimer County Urban Area Street Standards.

5.7.4 LOTS

(A) **Area and Dimension**. No part of an area or dimension required for a lot to comply with the provisions of this Code shall be included as an area or dimension required for another lot, nor shall such required area or dimension be burdened by any easement for an abutting private street or private drive that provides access to the lot or to any other lot. Private driveways on the lot may be included in the lot area where a minimum lot area square footage is otherwise required by this Code, said minimum lot area shall be required for each principal building located on any one (1) lot.

(B) **Reduction for Public Purpose**. When an existing lot is reduced as a result of conveyance to a federal, state or local government for a public purpose and the remaining area is at least seventy-five (75) percent of the required minimum lot size for the district in which it is located, then that remaining lot shall be deemed to comply with the minimum lot size standards of this Code.

(C) **Utility Facilities**. Utility facilities using land or a building used only for equipment purposes (and not for human occupation) and requiring less than one thousand (1,000) square feet of site are exempt from the minimum lot size standards of all zone districts.

DIVISION 5.8 HISTORIC

5.8.1 HISTORIC, LANDMARK PRESERVATION AND CULTURAL RESOURCES

(A) **Purpose.**

(1) The purpose of this Section is to ensure that proposed development is compatible with and protects historic resources by ensuring that:

(a) historic resources on a development site are preserved, adaptively reused, and incorporated into the proposed development;

(b) development does not adversely affect the integrity of historic resources on nearby property within the area of adjacency surrounding a development site; and

(c) the design of new structures and site plans are compatible with and protect the integrity of historic resources located within a development site and within the area of adjacency surrounding a development site.

(2) To accomplish its purpose, this Section provides:

(a) the requirements for the treatment of historic resources located on a development site;

(b) the standards for design compatibility between proposed development and historic resources on a development site and within the delineated area of adjacency surrounding a development site; and

(c) this Section is intended to work in conjunction with the standards for the treatment of historic resources set forth in Chapter 14 of the Fort Collins Municipal Code and any relevant adopted standards for historic resources.

(B) **Jurisdiction of the Historic Preservation Commission (HPC)**

When Chapter 14 of the Code of the City of Fort Collins designates the HPC or City Staff as the decision maker, the proposed development must ultimately meet the requirements of Chapter 14 of the City Code. This includes jurisdiction over properties inside a Landmarked District or Landmarked properties. After the Code of the City for Fort Collins Chapter 14 standards are met, the proposed development project may then proceed through this Code's review procedures to ensure compliance with the criteria herein.

(C) **Historic Resources on the Development Site and within the Area of Adjacency.**

(1) As used in this Section, the area of adjacency shall mean an area, the outer boundary of which is two hundred (200) feet in all directions from the perimeter of the development site. Any lot or parcel of property shall be considered within the area of adjacency if any portion of such lot or parcel is within the two hundred (200) foot outer boundary.

(2) Historic preservation staff shall identify as expeditiously as possible the historic resources on the development site and within the area of adjacency to be used for application of the design standards contained in below Subsection (F), *Design Requirements for a Proposed Development,* and provide a list of such resources to the applicant. The procedure for identifying the relevant historic resources shall be as follows:

(a) The location of the following shall be identified within the area of adjacency:

(I) Any historic resource; and

(II) Any building, site, structure, and object that requires evaluation as to whether it is eligible for Fort Collins landmark designation and, therefore, qualifies as a historic resource.

(b) All historic resources on the development site shall be identified and the procedure in below Subsection (D)(1) shall be completed if necessary.

(c) Any building, site, structure, or object requiring evaluation shall be reviewed for eligibility for Fort Collins landmark designation pursuant to below Subsection (D)(2).

(d) Any historic resource identified in above steps (a), (b), or (c) shall be the historic resources utilized as the basis for applying Subsection (F). Identified historic resources on the development site and within the area of adjacency shall be classified as follows for purposes of applying the design standards set forth in the below Subsection (F):

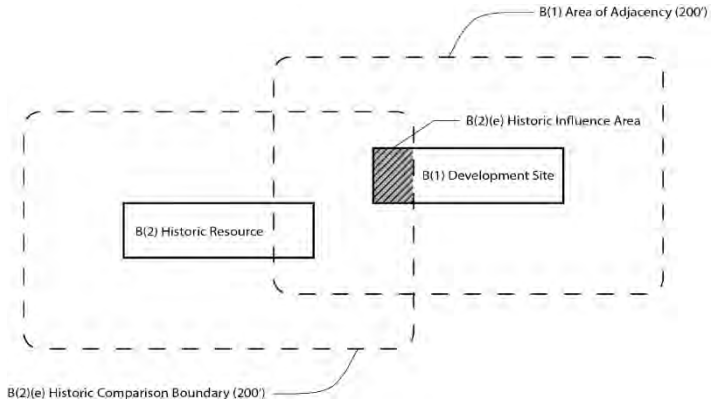
(I) Historic resources on the development site, or abutting or on the other side of a side alley that abuts the development site; and

(II) All other historic resources.

(e) The historic comparison boundary shall be established at two hundred (200) feet in all directions from the perimeter of each identified historic resource except those located on the development site. The historic influence area formed by the overlapping area between the outer boundary of the development site and the historic comparison boundary is the area within which the standards in below Subsection (F) apply to any new construction proposed within such area.

(f) The historic influence area for any historic resource located on the development site shall be the entire development site.

Example of Area of Adjacency, Historic Comparison Boundary, and Historic Influence Area



(3) The historic preservation staff determination pursuant to this Section of the historic resources relevant to the application of the design standards set forth in below Subsection (F) is not subject to appeal. Notwithstanding, eligibility determinations pursuant to below Subsection (D)(1) are subject to appeal pursuant to Fort Collins Municipal Code Section 14-23.

(D) **Determination of Eligibility for Designation as Fort Collins Landmark.** The review of proposed development pursuant to this Section may require the determination of the eligibility of buildings, sites, structures, and objects located both on the development site and in the area of adjacency for designation as Fort Collins landmarks. The determination of eligibility for designation as a Fort Collins landmark shall be made pursuant to the standards and procedures set forth in Sections 14-22 and 14-23 of the Fort Collins Municipal Code except as varied in below Subsections (D)(1)-(2).

(1) **Buildings, Sites, Structure, and Objects on a Development Site**. If any buildings, sites, structures, or objects on a development site are fifty (50) years of age or older and lack an official determination of eligibility for Fort Collins landmark designation made within the last five (5) years, the applicant must request an official eligibility determination for each such building, site, structure, or object pursuant to Sections 14-22 and 14-23 of the Fort Collins Municipal Code. A current intensive-level Colorado Cultural Resource Survey Form is required for each building, site, structure, and object and the applicant is responsible for reimbursing the City for the cost of having such a property survey generated by a third-party expert selected by the City.

(2) **Buildings, Sites, Structures, and Objects Within the Area of Adjacency.** If any buildings, sites, structures, or objects outside of a development site but within the area of adjacency are fifty (50) years of age or older and lack an official determination of eligibility for Fort Collins landmark designation established within the last five (5) years, the applicant must request a non-binding determination of eligibility for each such building, site, structure, or object pursuant to Sections 14-22 and 14-23 of the Fort Collins Municipal Code. Notwithstanding Sections 14-22 and 14-23, any such eligibility determination shall not be appealable pursuant to Section 14-23 and shall not be valid for any purpose other than the evaluation of the proposed development pursuant to this Section. A current architectural-level property survey is required for each building, site, structure, and object and the applicant is responsible for reimbursing the City for the cost of having such a property survey generated by a third-party expert selected by the City. The Director, in consultation with historic preservation staff, may waive the required eligibility determination for any building, site, structure, or object if the Director determines that such eligibility determination would be unnecessarily duplicative of information provided by existing historic resources or would not provide relevant information.

(E) **Treatment of Historic Resources on Development Sites - Design Review.**

(1) Proposed alterations, as such alterations are described in Fort Collins Municipal Code Chapter 14, Article III, to any Fort Collins landmark on a development site or to any portion of the development site located within a Fort Collins historic district must comply with the design review requirements in Chapter 14, Article III, of the Fort Collins Municipal Code. The applicant must obtain a certificate of appropriateness for all proposed alterations pursuant to Chapter 14 before receiving a HPC recommendation pursuant to below Subsection (G).

(2) Proposed alterations to any building, site, structure, or object located on the development site that is not a Fort Collins landmark but is designated on the Colorado State Register of Historic Properties, either individually or contributing to a district, or the National Register of Historic Places, either individually or contributing to a district, must comply with the design review requirements in Chapter 14, Article III, of the Fort Collins Municipal Code. The applicant must obtain a report pursuant to Chapter 14 regarding all proposed alterations before receiving a HPC recommendation pursuant to below Subsection (G). Additionally, to the maximum extent feasible, the development plan and building design shall provide for the preservation and adaptive use of any such building, site, structure, or object.

(3) The development plan and building design shall provide for the preservation and adaptive use pursuant to the Secretary of the Interior *Standards for the Treatment of Historic Properties* of any building, site, structure, or object located on the development site and determined to be eligible for Fort Collins landmark designation either through a binding or non-binding determination pursuant to Land Use Code Section 5.8.1(C). This requirement shall apply to development applications including building permit applications for partial or total demolition of, or work that may have an adverse effect on, any building, site, structure, or object located on the development site and determined to be eligible for Fort Collins landmark designation.

(F) **Design Requirements for a Proposed Development.**

(1) **Design Compatibility**. Proposed development may represent the architecture and construction standards of its own time but must also convey a standard of quality and durability appropriate for infill in a historic context and protect and complement the historic character of historic resources both on the development site and within the area of adjacency. The design of development on development sites containing historic resources or with historic resources located within the area of adjacency shall meet the requirements in below Table 1 in addition to applicable Land Use Code requirements. The Table 1 requirements shall apply to the development of buildings or structures, other than those addressed in above Subsection (E), on the development site located within a historic influence area, as such term is defined in above Subsection (C)(4), as follows:

(a) If one (1) or more historic influence areas exist that are associated with historic resource(s) on the development site, or which abut or are on the other side of a side alley that abuts the development site, then all historic influence areas shall be considered to be associated with such historic resource(s) and the standards set forth in Table 1, Column A, shall apply. If two (2) or more historic influence areas exist that are associated with historic resources on the development site, or which abut or are on the other side of a side alley that abuts the development site, the applicant may satisfy the standards set forth in Table 1, Column A, by choosing characteristics from one (1) or more of such historic resources.

(b) If no historic influence areas exist that are associated with historic resources on the development site, or which abut or are on the other side of a side alley that abuts the development site, the standards set forth in Table 1, Column B, shall apply to all historic influence areas.

(c) Table 1: Requirements for New Construction Near Historic Resources.

	Purpose	Column A Standards for Compatibility with Historic Resources on the Development Site, Abutting, Or Across a Side Alley	Column B Standards for compatibility with Historic Properties Within the Area of Adjacency but Not On or Abutting the Development Site or Across a Side Alley

Massing and Building Articulation	Integrate new construction into existing context and use massing options that respect historic buildings.	1. New construction shall be similar in width or, if larger, be articulated into massing reflective or the mass and scale of historic resources on the development site, abutting, or across a side alley. 2. In all zone districts, step-backs must be located on new building(s) to create gradual massing transitions at the same height or one story above the height of historic resources on the development site, abutting, or across a side alley. Additionally, in the Downtown zone district, the widest portions of step-backs required by the Downtown zone district step-back standard shall be on building portions closest to historic resources.	Review the identified historic properties within the area of adjacency and identify any predominate typologies and primary character-defining design and architectural features. With those key buildings, features, or patterns in mind, apply at least two of the Standards for Compatibility with Historic Resources on the Development Site, Abutting, Or Across a Side Alley (those numbered 1 to 6).
Building Materials	Create visual connection between modern building materials and historic building materials.	3. The lower story facades until any step-backs (required or otherwise) must be constructed of authentic, durable, high-quality materials (brick, stone, glass, terra cotta, stucco (non EFIS), precast concrete, wood, cast iron, architectural metal) installed to industry standards. 4. New construction shall reference one or more of the predominate material(s) on historic resources on the development site, abutting, or across a side alley, by using at least two of the following to select the primary material(s) for any one to three story building or the lower story facades until any step-backs (required or otherwise): 1) Type; 2) Scale; 3) Color; 4) Three-dimensionality; 5) Pattern.	
Facade Details	Create visual connection between modern building design and historic building design.	5. Use at least one of the following: 1) Similar window pattern 2) Similar window proportion of height to width 3)Similar solid-to-void pattern as found on historic resources on the development site, abutting, or across a side alley. 6. Use select horizontal or vertical reference lines or elements (such as	

		rooflines, cornices, and belt courses) to relate the new construction to historic resources on the development site, abutting or across a side alley.	
Visibility of Historic Features	Protect visibility of historic architecture and details.	New construction shall not cover or obscure character-defining architectural elements, such as windows or primary design features, of historic resources on the development site, abutting or across a side alley.	None

(2) **Old Town Historic District.** Proposed development within the Old Town Historic District shall comply with the Old Town Historic District Standards adopted by Ordinance 094, 2014, Chapter 14 of the Fort Collins Municipal Code and as amended, and the U.S. Secretary of the Interior Standards for the Treatment of Historic Properties and as amended in lieu of the requirements set forth in this Section except Subsections (E) and (G).

(3) **Plan of Protection**. A plan of protection shall be submitted prior to the HPC providing a recommendation pursuant to below Subsection (G) that details the particular considerations and protective measures that will be employed to prevent short-term and long-term material damage and avoidable impact to identified historic resources on the development site and within the area of adjacency from demolition, new construction, and operational activities.

(G) **Historic Preservation Commission (HPC) Recommendation.**

Recommendation to Decision Maker for Development Proposal. HPC shall provide a written recommendation to the decision maker for development sites containing or adjacent to historic resources, or both. The written recommendation shall address compliance of the proposed development with this Section and applicable Municipal Code Chapter 14, Article III requirements and the decision maker shall consider such recommendation in making its final decision. Notwithstanding, the Director may waive the requirement for a HPC recommendation if the Director, after considering the recommendation of historic preservation staff, has issued a written determination that the development plan would not have an adverse effect on any historic resource on the development site or within the proposed development's area of adjacency and that the development plan is compatible with the existing character of such historic resources. A recommendation made under this Subsection is not appealable to the City Council under Chapter 2 of the Fort Collins Municipal Code.

DIVISION 5.9 BUILDING PLACEMENT AND SITE DESIGN

5.9.1 ACCESS, CIRCULATION AND PARKING

(A) **Purpose.** This Section is intended to ensure that the parking and circulation aspects of all developments are well designed with regard to safety, efficiency and convenience for vehicles, bicycles, pedestrians, mobility assistance devices, and transit, both within the development and to and from surrounding areas. Sidewalk or bikeway extensions off-site may be required based on needs created by the proposed development.

This Section sets forth parking requirements in terms of numbers and dimensions of parking stalls, landscaping and shared parking. It also addresses the placement of drive-in facilities and loading zones.

(B) General Standard. The parking and circulation system within each development shall accommodate the movement of vehicles, bicycles, pedestrians, mobility assistance devices and transit, throughout the proposed development and to and from surrounding areas, safely and conveniently, and shall contribute to the attractiveness of the development. The on-site pedestrian system must provide adequate directness, continuity, street crossings, visible interest and security as defined by the standards in this Section. The on-site bicycle system must connect to the City's on-street bikeway network. Connections to the off-road trail system shall be made, to the extent reasonably feasible.

(C) Development Standards. All developments shall meet the following standards:

(1) Safety Considerations. Pedestrians and those utilizing mobility assisted devices shall be separated from vehicles and bicycles.

(a) Where complete separation of people and vehicles and bicycles is not possible, potential hazards shall be minimized by the use of techniques such as special paving, raised surfaces, pavement marking, signs or striping, bollards, median refuge areas, traffic calming features, landscaping, lighting or other means to clearly delineate pedestrian areas, for both day and night use.

(b) Where individuals and bicyclists share walkways, the pedestrian/ assisted mobility devices/bicycle system shall be designed to be wide enough to easily accommodate the amount of individuals and bicycle traffic volumes that are anticipated. A minimum width of eight (8) feet shall be required and shall meet American Association of State Highway and Transportation Officials (AASHTO) guidelines, Guide for Development of Bicycle Facilities, August 1991, or any successor publication. Additional width of up to four (4) feet may be required to accommodate higher volumes of bicycle and pedestrian traffic within and leading to Community Commercial Districts, Neighborhood Commercial Districts, schools and parks.

(2) Curbcuts and Ramps. Curbcuts and ramps shall be located at convenient, safe locations for the individuals, for bicyclists and for people pushing strollers or carts. The location and design of curbcuts and ramps shall meet the requirements of the International Building Code and the Americans With Disabilities Act ramp standards and shall avoid crossing or funneling traffic through loading areas, drive-in lanes and outdoor trash storage/collection areas.

(3) Site Amenities. Development plans shall include site amenities that enhance safety and convenience and promote walking or ease of use for of assisted mobility devices, or bicycling. Site amenities may include bike racks, drinking fountains, canopies and benches as described in the Fort Collins Bicycle Program Plan and Pedestrian Plan as adopted by the City.

(4) Bicycle Facilities. Commercial, industrial, civic, employment and multi-unit residential uses shall provide bicycle facilities to meet the following standards:

(a) Required Types of Bicycle Parking. To meet the minimum bicycle parking requirements, the development must provide required bicycle parking for both Enclosed Bicycle Parking and Fixed Bicycle Racks.

(b) Bicycle Parking Space Requirements. The minimum bicycle parking requirements are set forth in the table below. For uses that are not specifically listed in the table, the number of bicycle parking spaces required shall be the number required for the most similar use listed. Enclosed bicycle parking spaces may not be located on balconies.

(c) **Minimum Bicycle Requirements Table:**

Use Categories	*Bicycle Parking Space Minimums*	*% Enclosed Bicycle Parking/ % Fixed Bicycle Racks*
Residential and Institutional Parking Requirements		
Multi-Unit Residential	1 per bedroom	60%/40%
Fraternity and Sorority Houses	1 per bed	60%/40%
Group Homes	No requirement	n/a
Recreational Uses	1/2,000 sq. ft., minimum of 4	0%/100%
Schools/Places of Worship or Assembly and Child Care Centers	1/3,000 sq. ft., minimum of 4	0%/100%
Small Scale Reception Centers in the U-E, Urban Estate District	1/4,000 sq. ft., minimum of 4	0%/100%
Extra Occupancy	1 per occupant	0%/100%
Nonresidential Parking Requirements		
Restaurants		
a. Fast food	1.5/1,000 sq. ft., minimum of 4	0%/100%
b. Standard	1/1,000 sq. ft., minimum of 4	0%/100%
Bars, Taverns and Nightclubs	1/500 sq. ft., minimum of 4	0%/100%
Commercial Recreational	1/2,000 sq. ft., minimum of 4	20%/80%
Theaters	1/30 seats, minimum of 4	0%/100%
General Retail	1/4,000 sq. ft., minimum of 4	20%/80%
Personal Business and Service Shop	1/4,000 sq. ft., minimum of 4	20%/80%
Shopping Center	1/4,000 sq. ft., minimum of 4	20%/80%
Medical Office	1/4,000 sq. ft., minimum of 4	20%/80%
Financial Services	1/4,000 sq. ft., minimum of 4	20%/80%
Grocery Store, Supermarket	1/3,000 sq. ft., minimum of 4	20%/80%
General Office	1/4,000 sq. ft., minimum of 4	20%/80%
Vehicle Servicing and Maintenance	4	n/a
Low Intensity Retail, Repair Service, Workshop and Custom Small Industry	4	n/a
Lodging Establishments	1 per 4 units	60%/40%
Health Facilities	1/5,000 sq. ft., minimum of 4	20%/80%
Industrial: Employee Parking	4	n/a

(d) Alternative Compliance. Upon written request by the applicant, the decision maker may approve an alternative number of bicycle parking spaces that may be substituted in whole or in part for the number that would meet the standards of this Section.

(l) *Procedure*. The alternative bicycle parking plan shall be prepared and submitted in accordance with the submittal requirements for bicycle parking 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.

(II) *Review Criteria*. To approve an alternative plan, the decision maker must find that the proposed alterative plan accomplishes the purposes of this Section equally well or better than would a plan that complies with the standards of this Section.

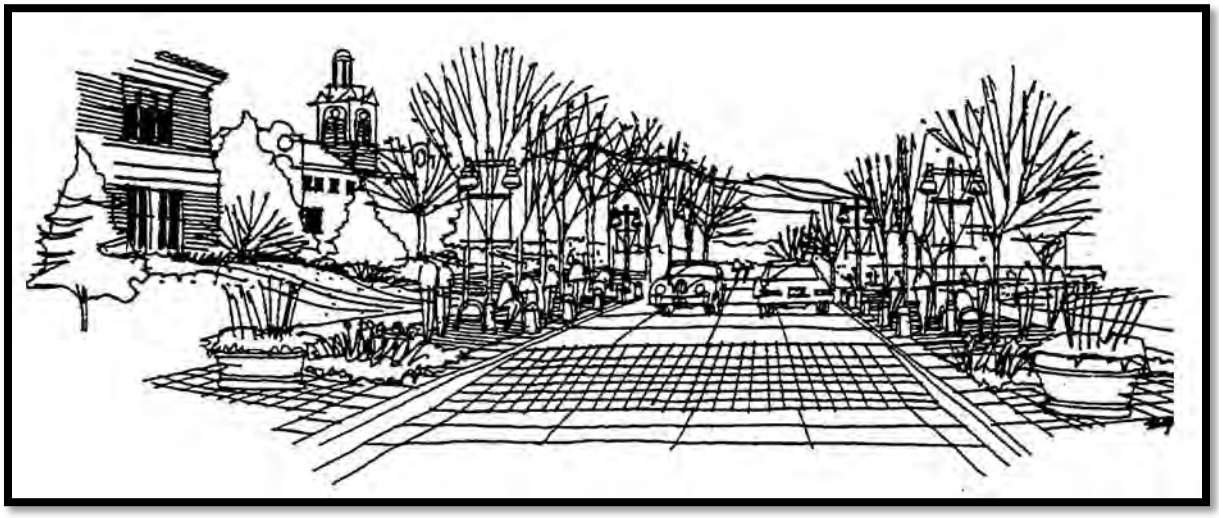
(III) In reviewing a request for an alternative number of bicycle parking spaces, the decision maker must consider whether the proposed land use will likely experience a lower-than-normal amount of bicycle traffic. Factors to be taken into consideration in making this determination may include but need not be limited to: (i) the nature of the proposed use; (ii) its location in relation to existing or planned bicycle facilities or infrastructure; and (iii) its proximity to natural features that make the use of bicycles for access to the project infeasible.

(5) **Walkways.**

(a) Directness and Continuity. Walkways within the site shall be located and aligned to directly and continuously connect areas or points of pedestrian origin and destination and shall not be located and aligned solely based on the outline of a parking lot configuration that does not provide such direct pedestrian access. Walkways shall be unobstructed by vertical curbs, stairs, raised landscape islands, utility appurtenances or other elements that restrict access and shall link street sidewalks with building entries through parking lots. Such walkways shall be raised or enhanced with a paved surface not less than six (6) feet in width. Drive aisles leading to main entrances shall have walkways on both sides of the drive aisle.

(b) Street Crossings. Where it is necessary for the primary crossing of drive aisles or internal roadways, the crossing shall emphasize and place priority on individuals' access and safety. The material and layout of the access shall be continuous as it crosses the driveway, with a break in continuity of the driveway paving and not in the pedestrian access way. The crossings must be well-marked using pavement treatments, signs, striping, signals, lighting, traffic calming techniques, median refuge areas and landscaping. (See Figure 3.)

Figure 3: Street Crossings



(6) **Direct On-Site Access to Individual and Bicycle Destinations.** The on-site pedestrian and bicycle circulation system must be designed to provide, or allow for, direct connections to major individual and

bicycle destinations including, but not limited to, trails, parks, schools, Neighborhood Centers, Neighborhood Commercial Districts and transit stops that are located either within the development or adjacent to the development as required, to the maximum extent feasible. The on-site individual and bicycle circulation system must also provide, or allow for, on-site connections to existing or planned off-site pedestrian and bicycle facilities at points necessary to provide direct and convenient pedestrian and bicycle travel from the development to major individual destinations located within the neighborhood. In order to provide direct pedestrian connections to these destinations, additional sidewalks or walkways not associated with a street, or the extension of street sidewalks, such as from the end of a cul-de-sac, or other walkways within the development, to another street or walkway, may be required as necessary to provide for safety, efficiency and convenience for bicycles and individuals both within the development and to and from surrounding areas.

(7) **Off-Site Access to Individual and Bicycle Destinations**. Off-site individual or bicycle facility improvements may be required in order to comply with the requirements of Section 5.9.1(E) (Parking Lot Layout), Section 5.4.10 (Transportation Level of Service Requirements), or as necessary to provide for safety, efficiency and convenience for bicycles and pedestrians both within the development and to and from surrounding areas.

(8) **Transportation Impact Study (TIS)**. In identifying those facilities that may be required in order to comply with these standards, all development plans must submit a TIS approved by the Traffic Engineer, which study shall be prepared in accordance with the TIS guidelines maintained by the City.

(D) **Access and Parking Lot Requirements.** All vehicular use areas in any proposed development shall be designed to be safe, efficient, convenient and attractive, considering use by all modes of transportation that will use the system, (including, without limitation, cars, trucks, buses, bicycles and emergency vehicles).

(1) **Individual/Vehicle Separation**. To the maximum extent feasible, individuals and vehicles shall be separated through provision of a sidewalk or walkway. Where complete separation of individuals and vehicles is not feasible, potential hazards shall be minimized by using landscaping, bollards, special paving, lighting and other means to clearly delineate pedestrian areas.

(2) **Access.** Unobstructed vehicular access to and from a public street shall be provided for all off-street parking spaces. Vehicular access shall be provided in such manner as to protect the safety of persons using such access or traveling in the public street from which such access is obtained and, in such manner, as to protect the traffic-carrying capacity of the public street from which such access is obtained. Notwithstanding the forgoing required off-street parking for both an ADU and extra occupancy use are allowed one (1) tandem space to count towards minimum parking requirement.

(3) **Location.** In a zone district predominated by residential uses, only off-street parking will be allowed to serve non-residential uses.

(a) Required off-street parking spaces shall be located on the same lot or premises as the building or use for which they are required unless:

(I) such spaces are provided collectively by two (2) or more buildings or uses on abutting lots in a single parking area located within the boundaries of those abutting lots, and the total number of parking spaces supplied collectively is equal to the number of spaces required by this subdivision for each use considered separately; or

(II) an alternative location is approved by the Director provided that the Director must have determined that such location is permanent and provides close and easy access to users.

(b) Guest Parking. Off-street guest parking spaces in multi-unit developments shall be distributed proportionally to the dwelling unit locations that they are intended to serve. Such parking shall not be located more than two hundred (200) feet from any dwelling unit that is intended to be served.

(c) Pavement. All open off-street parking and vehicular use areas shall be surfaced with asphalt, concrete or other material in conformance with City specifications with the exception of off-street parking and vehicular use areas for a park or trail connection point that may be surfaced with gravel or another similar inorganic material.

(d) Lighting. Light fixtures provided for any off-street parking area adjacent to a residential use or residentially zoned lot shall shield the source of light from sight and prevent the spillover of direct light onto the residential use, while still providing security to motorists, individuals and bicyclists.

(e) Maintenance. The property owner shall be responsible for maintaining any vehicular use area in good condition and free of refuse and debris and all landscaping in a healthy and growing condition, replacing it when necessary as determined by the City Forester.

(E) **Parking Lot Layout.**

(1) **Circulation Routes.** Parking lots shall provide well-defined circulation routes for vehicles, bicycles, and individuals and pedestrians

(2) **Traffic Control Devices.** Standard traffic control signs and devices shall be used to direct traffic where necessary within a parking lot.

(3) **Orientation.** Parking bays shall be perpendicular to the land uses they serve to the maximum extent feasible. Large parking lots shall include walkways that are located in places that are logical and convenient for pedestrians.

(4) **Landscaped Islands.** Landscaped islands with raised curbs shall be used to define parking lot entrances, the ends of all parking aisles and the location and pattern of primary internal access drives, and shall provide pedestrian refuge areas and walkways.

(5) **Points of Conflict.** The lot layout shall specifically address the interrelation of pedestrian, vehicular and bicycle circulation in order to provide continuous, direct pedestrian access with a minimum of driveway and drive aisle crossings. Remedial treatment such as raised pedestrian crossings, forecourts and landings, special paving, signs, lights and bollards shall be provided at significant points of conflict.

(6) **Lot Size/Scale.** Large surface parking lots shall be visually and functionally segmented into several smaller lots according to the following standards:

(a) Large parking lots shall be divided into smaller sections by landscape areas. Each section shall contain a maximum of two hundred (200) parking spaces.

(b) Parking bays shall be landscaped in accordance with the requirements contained in subsection 5.10.1(E)(5).

(F) **User Needs**. Layout and design shall anticipate the needs of users and provide continuity between vehicular circulation, parking, pedestrian and bicycle circulation. Pedestrian drop-off areas shall be provided where needed, especially for land uses that serve children or the elderly.

(G) **Shared Parking.** Where a mix of uses creates staggered peak periods of parking demand, shared parking calculations shall be made to reduce the total amount of required parking. Retail, office, institutional and entertainment uses may share parking areas.

(H) **Drive-in Facilities.** Any drive-in facilities, if permitted by the zone district regulations set forth in Article 2, shall be secondary in emphasis and priority to any other access and circulation functions. Such facilities shall be located in side or rear locations that do not interrupt direct pedestrian access along connecting pedestrian frontage. The design and layout of drive-in facilities for restaurants, banks, or other uses shall:

(1) avoid potential individual/vehicle conflicts;

(2) provide adequate stacking spaces for automobiles before and after use of the facility;

(3) provide adequate directional signage to ensure a free-flow through the facility; and

(4) provide a walk-up service option as well as drive-in.

(I) **Truck Traffic.** All developments that generate truck traffic that is anticipated to adversely affect a neighborhood by creating noise, dust or odor problems shall avoid or mitigate those impacts either through physical design or operational procedures.

(J) **Setbacks.** Any vehicular use area containing six (6) or more parking spaces or one thousand eight hundred (1,800) or more square feet shall be set back from the street right-of-way and the side and rear yard lot line (except a lot line between buildings or uses with collective parking) consistent with the provisions of this Section, according to the following table:

(1) Landscape Setback Table:

	Minimum Average of Entire Landscaped Setback Area (feet)	*Minimum Width of Setback at Any Point (feet)*
Along an arterial street	15	5
Along a nonarterial street	10	5
Along an interior lot line*	5	5

*Setbacks along interior lot lines for vehicular use areas may be increased by the decision maker in order to enhance compatibility with the abutting use or to match the contextual relationship of adjacent or abutting vehicular use areas.

(K) **Parking Lots - Required Number of Off-Street Spaces for Type of Use.**

(1) **Residential and Institutional Parking Requirements**. Residential 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	.75
Two	1.5	1
Three	2.0	1.25
Four and above	3.0	1.5
* 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).		
** 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.		

(l) 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	0.75
Two	1
Three	1.25
Four and above	1.5
Rent-by-the Bedroom	*Parking Spaces Per Bedroom*
All bedrooms	0.75
*Maximum of 115% of minimum requirement unless provided in a structure	

(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 or for Rent (equal to or less than 60% Area Median Income).	50%
Transit Passes for each tenant.	10%
Car Share.	5 spaces/1 car share

Within 1,000 feet walking distance of MAX 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.)	10%
Bicycle & Pedestrian Level of Service A.	10%
Off-Site Parking.	1:1
Shared Parking.	Based on Approved Alternative Compliance.
Parking Impact Study.	Based on Approved Alternative Compliance.
Participation in the City's Bike Share Program.	Based on Approved Alternative Compliance.
Transportation Demand Management (TDM).	Based on Approved Alternative 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.	
*** Maximum of 50% reduction without provision of a Parking Impact Study or Transportation Demand Management.	

(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 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.

(d) **Single Unit and Two-Unit.** 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.

(f) **Manufactured Homes.** For each manufactured home in a manufactured home community there shall be one (1) parking spaces per dwelling unit.

(g) **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.

(h) **Group Homes**. For each group home there shall be two (2) parking spaces for every three (3) employees, and in addition, one (1) parking space for each four (4) adult residents, unless residents are prohibited from owning or operating personal automobiles.

(i) **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.

(j) **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.

(k) **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.

(l) **Extra Occupancy**. For each extra occupancy, there shall be 0.75 (¾) parking space per occupant, rounded up to the nearest whole parking space. If the lot upon which such parking spaces are to be

situated has more than sixty-five (65) feet of street frontage length on any one (1) street or abuts an alley, then each such parking space shall have direct access to the abutting street or alley and shall be unobstructed by any other parking space. If such lot has less than sixty-five (65) feet of street frontage length on any one (1) street and does not abut an alley. then one (1) of the required parking spaces may be aligned in a manner that does not provide direct access to the abutting street.

(m) **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.

(2) **Nonresidential Parking Requirements**. Nonresidential uses shall provide a **minimum** number of parking spaces, and will be limited to a **maximum** number of parking spaces as defined by the standards defined below.

(a) The table below sets forth the number of minimum required and maximum allowed parking spaces based on the square footage of the gross leasable area and of the occupancy of specified uses. In the event that on-street or shared parking is not available on land adjacent to the use, then the maximum parking allowed may be increased by twenty (20) percent.

(b) Parking Requirements for Nonresidential Uses:

Use	*Minimum Parking Spaces*	*Maximum Parking Spaces*
Restaurants		
a. Fast Food	7/1000 sq. ft.	15/1000 sq. ft.
b. Standard	5/1000 sq. ft.	10/1000 sq. ft.
Bars, Taverns, and Nightclubs	5/1000 sq. ft.	10/1000 sq. ft.
Commercial Recreational		
a. Limited Indoor Recreation	3/1000 sq. ft.	6/1000 sq. ft.
b. Outdoor	.1/person cap	.3/person cap
c. Bowling Alley	2.5/1000 sq. ft.	5/1000 sq. ft.
Theaters	1/6 seats	1/3 seats
General Retail	2/1000 sq. ft.	4/1000 sq. ft.
Personal Business and Service Shop	2/1000 sq. ft.	4/1000 sq. ft.
Shopping Center	2/1000 sq. ft.	5/1000 sq. ft.
Medical Office	2/1000 sq. ft.	4.5/1000 sq. ft.

Financial Services	2/1000 sq. ft.	3.5/1000 sq. ft.
Grocery Store, Supermarket	3/1000 sq. ft.	6/1000 sq. ft.
General Office	1/1000 sq. ft.	3/1000 sq. ft. or .75/employee on the largest shift or 4.5/1000 sq. ft. if all additional parking spaces gained by the increased ratio (over 3/1000 sq. ft.) are contained within a parking garage/structure
Vehicle Servicing & Maintenance	2/1000 sq. ft.	5/1000 sq. ft.
Low Intensity Retail, Repair Service, Workshop and Custom Small Industry	1/1000 sq. ft.	2/1000 sq. ft.
Lodging Establishments	0.5/unit	1/unit
Health Facilities		
a. Hospitals	0.5/bed	1/bed
b. Long-Term Care Facilities		.33/bed plus 1/two employees on major shift
Industrial: Employee Parking	0.5/employee	.75/employee

(c) Existing Buildings Exemption. Change in use of an existing building shall be exempt from minimum parking requirements. For the expansion or enlargement of an existing building which does not result in the material increase of the building by more than twenty-five (25) percent, but not to exceed five thousand (5,000) square feet in the aggregate, shall be exempt from minimum parking requirements. For the redevelopment of a property which includes the demolition of existing buildings, the minimum parking requirement shall be applied to the net increase in the square footage of new buildings.

(d) TOD Overlay Zone Exemption. If new development is proposed within the Transit-Oriented Development (TOD) Overlay zone, twenty-five (25) percent of the square footage of gross leasable area of such new development, but not to exceed five thousand (5,000) square feet in the aggregate, shall be exempt from minimum parking requirements. The exemption shall be distributed proportionally among the uses contained in a mixed-use development.

(e) For uses that are not specifically listed in subsections 5.9.1(K)(1) or (2), the number of parking spaces permitted shall be the number permitted for the most similar use listed.

(f) For non-residential uses within the Transit-Oriented Development (TOD) Overlay Zone the required minimum number of parking spaces may be reduced by providing demand mitigation strategies as shown in the following table:

*Demand Mitigation Strategy***	*Parking Requirement Reduction*
Transit Passes for every employee within the development.	10%
Car Share.	5 spaces/1 car share
Within 1,000 feet walking distance of MAX Station. (Walking distance shall mean an ADA-compliant, contiguous improved walkway measured from the most remote building entrance to the transit station	10%

and contained within a public ROW or pedestrian easement.)	
Off-Site Parking.	1:1
Bicycle & Pedestrian Level of Service A.	10%
Shared Parking.	Based on approved alternative compliance.
Parking Impact Study.	Based on approved alternative compliance.
Transportation Demand Management (TDM).	Based on approved alternative 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.	

(3) **Alternative Compliance**. Upon written request by the applicant, the decision maker may approve an alternative parking ratio (as measured by the number of parking spaces based on the applicable unit of measurement established in the table contained in Section 5.9.1(K)(2) for nonresidential land uses or the number of parking spaces based on use in Section 5.9.1(K)(1) for residential and institutional land uses) that may be substituted in whole or in part for a ratio meeting the standards of this Section.

(a) 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. Each such plan shall clearly identify and discuss the modifications and alternatives proposed and the ways in which the plan will better accomplish the purpose of this Section than would a plan which complies with the standards of this Section. The request for alternative compliance must be accompanied by a Parking Impact Study, Transportation Demand Management analysis, or Shared Parking Study which addresses issues identified in the City's submittal requirements for such studies.

(b) Review Criteria. To approve an alternative plan, the decision maker must find that the proposed alternative plan accomplishes the purposes of this Section equally well or better than would a plan which complies with the standards of this Section. In reviewing the request for an alternative parking ratio plan in order to determine whether it accomplishes the purposes of this Section, as required above, the decision maker shall take into account the number of employees occupying the building or land use, the number of expected customers or clients, the availability of nearby on-street parking (if any), the availability of shared parking with abutting, adjacent or surrounding land uses (if any), the provision of purchased or leased parking spaces in a municipal or private parking lot meeting the requirements of the City, trip reduction programs (if any), or any other factors that may be unique to the applicant's development request. The decision maker shall not approve the alternative parking ratio plan unless it:

(I) does not detract from continuity, connectivity and convenient proximity for pedestrians between or among existing or future uses in the vicinity;

(II) minimizes the visual and aesthetic impact along the public street by placing parking lots to the rear or along the side of buildings, to the maximum extent feasible;

(III) minimizes the visual and aesthetic impact on the surrounding neighborhood;

(IV) creates no physical impact on any facilities serving alternative modes of transportation;

(V) creates no detrimental impact on natural areas or features;

(VI) maintains handicap parking ratios; and

(VII) for projects located in D, LMN, MMN and CC zone districts, conforms with the established street and alley block patterns, and places parking lots across the side or to the rear of buildings.

(c) For recreational and institutional land uses that are required to provide a **minimum** amount of parking, a request for alternative compliance to provide parking below the required minimum must follow the same procedure and be held to the same review criteria as described in Section 5.9.1(K)(3)(a) and 5.9.1(K)(3)(b), and in addition, must demonstrate:

(I) that there will be no dispersal of spillover parking onto surrounding, adjacent or abutting land uses, and

(II) that there will be no dispersal of spillover parking onto surrounding, adjacent or abutting public streets (or private streets not under legal ownership of the applicant) where parking is prohibited.

Notwithstanding the spillover parking prohibitions above, spillover parking may be allowed pursuant to this subsection for "Special Event Parking," meaning parking associated with a recreational facility, activity or institution expected to occur no more than four (4) times per year for school assemblies, pageants, graduations, religious celebrations or other ceremonies or events that occur so infrequently that the public can reasonably be expected to accept the inconvenience of spillover parking on such infrequent occasions.

(4) **Exception to the General Office Parking Standard**. An exception to the general office parking standard as established in the table contained in Section 5.9.1(K)(2) shall be permitted for the purpose of ensuring that the parking provided is adequate but not in excess of the users' needs. Requests for exceptions to the general office parking standard shall be reviewed according to the procedure and criteria contained in subparagraphs (I) and (II) below. Exceptions shall be available to those projects where the number of anticipated employees can be reasonably estimated, and such exceptions shall apply only to the ratio between the number of parking spaces and the number of employees, and not to the ratio between the number of parking spaces and the gross leasable area.

(I) **Procedure.** All requests for exceptions to the general office parking standard shall be submitted in accordance with the submittal requirements for plans as set forth in this subsection. Each such request shall clearly identify and discuss the proposed project and the ways in which the plan will accomplish the general purpose of this subsection. The request for an exception to the standard must be accompanied by an estimated number of employees. In addition, a traffic impact study containing a trip generation analysis or other relevant data describing the traffic and parking impacts of any proposed general office land use or activity shall be submitted.

(II) **Review Criteria**. To approve an exception to the standard, the decision maker must find that the proposed project accomplishes the general purpose of this Section. In reviewing the request for an exception to the standard parking ratio and in order to determine whether such request is consistent with the purposes of this subsection, as required above, the decision maker shall take into account the anticipated number of employees occupying the building, the number and frequency of expected customers or clients, the

availability of nearby on-street parking (if any), the availability of shared parking with abutting, adjacent or surrounding land uses (if any), the provision of purchased or leased parking spaces in a municipal or private parking lot meeting the requirements of the City, travel demand management programs(if any), or any other factors that may be unique to the applicant's development request. The decision maker shall not approve an exception to the general office parking standard unless it:

(i) does not detract from continuity, connectivity and convenient proximity for pedestrians between or among existing or future uses in the vicinity;

(ii) minimizes the visual and aesthetic impact along the public street of the proposed increased parking by placing parking lots to the rear or along the side of buildings, to the maximum extent feasible;

(iii) minimizes the visual and aesthetic impact of such additional parking on the surrounding neighborhood;

(iv) creates no physical impact on any facilities serving alternative modes of transportation;

(v) creates no detrimental impact on natural areas or features;

(vi) maintains handicap parking ratios;

(vii) for projects located in D, LM-N, M-M-N and C-C zone districts, conforms with the established street and alley block patterns, and places parking lots across the side or to the rear of buildings;

(viii) results in a ratio that does not exceed one-space-per-employee (1:1), and

(ix) is justified by a travel demand management program which has been submitted to and approved by the City.

(5) **Accessible Parking.**

(a) **Accessible spaces**. Parking spaces for those living with a disability shall have a stall width of thirteen (13) feet unless the space is parallel to a pedestrian walk. Other dimensions shall be the same as those for standard vehicles. Any such spaces shall be designated as being for the handicapped with a raised standard identification sign.

(b) **Location**. Accessible parking spaces shall be located next the nearest accessible building entrance, using the shortest possible accessible route of travel., the accessible route of travel shall not cross lanes for vehicular traffic. When crossing vehicle traffic lanes is deemed necessary by the City and acceptable under the federal standards, the route of travel shall be designated and marked as a crosswalk.

(c) **Marking.** Every accessible parking space shall be identified by a sign, centered between three (3) feet and five (5) feet above the parking surface, at the head of the parking space. The sign shall include the international symbol of accessibility and state RESERVED, or equivalent language.

(d) **Amount.** Each parking lot shall contain at least the minimum specified number of accessible spaces as provided in the table below. Regardless of the number of accessible spaces required, at least one (1) such space shall be designated as a van-accessible space, and must be a minimum of eight (8) feet wide and adjoin a minimum eight-foot-wide access aisle.

(I) Accessibility Parking Spaces Minimum Requirement Table:

NUMBER OF ACCESSIBLE PARKING SPACES	
Total Parking Spaces in Lot	*Minimum Required Number of Accessible Spaces*
1-25	1
26-50	2
51-75	3
76-100	4
101-150	5
151-200	6
201-300	7
301-400	8
401-500	9
501-1,000	2% of total spaces
Over 1,000	20 spaces plus 1 space for every 100 spaces, or fraction thereof, over 1,000

(6) **Loading Zones.** All development shall provide loading zones and service areas adequately sized to accommodate the types of vehicles that use them. Such loading zones and service areas shall be indicated on the development plan.

(L) **Parking Stall Dimensions.** Off-street parking areas for automobiles shall meet the following minimum standards for long- and short-term parking of standard and compact vehicles:

(1) **Standard Spaces.** Parking spaces for standard vehicles shall conform with the standard car dimensions shown on Table A.

(2) **Compact Vehicle Spaces in Long-term Parking Lots and Parking Structures.** Those areas of a parking lot or parking structure that are approved as long-term parking have the option to include compact parking stalls. Such approved long-term parking areas may have up to forty (40) percent compact car stalls using the compact vehicle dimensions set forth in Table B, except when no minimum parking is required for a use pursuant to Subsection 5.9.1(K), in which event the number of compact car stalls allowed may be greater than forty (40) percent. No compact spaces shall be designated as accessible parking spaces.

Table A – Standard Parking Dimensions

Standard Vehicle			*Dimensions in feet*			
A	B	C	D	E	F	G
0º	8	23	8	23	20	12
30º	8.5	20	17.4	17	20	15
45º	8.5	20	20.2	12	20	15
60º	9	19	21	10.4	24	20
90º	9	19	19	9	24*	20**

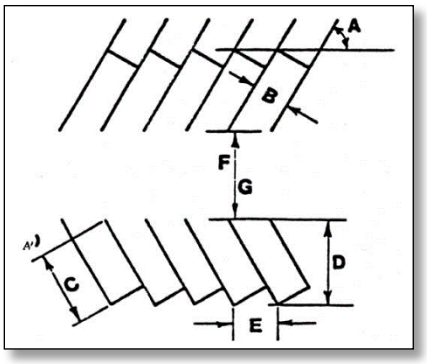
Table B – Compact Parking Dimensions

Compact Vehicle			*Dimensions in feet*			
A	B	C	D	E	F	G
0º	7.5	19	7.5	19	20	12
30º	7.5	16.5	14.8	15	20	15
45º	7.5	16.5	17	10.6	20	15
60º	8	16	17.9	9.2	24	20
90º	8	15	15	8	24*	20**

Table C

A-Angle of Parking
B-Stall Width
C-Stall Length
D-Stall Depth
E-Curb Length
F-Two-Way Drive Aisle Width
G-One-Way Drive Aisle Width
** When garages are located along a driveway and are opposite other garages or buildings, the two-way drive aisle width (F) must be increased to 28 feet.*
*** When an overhang is allowed to reduce stall depth, the one-way drive aisle width (G) must be increased to 22 feet.*
(See Figure 4)

Figure 4
Parking Stall Dimensions



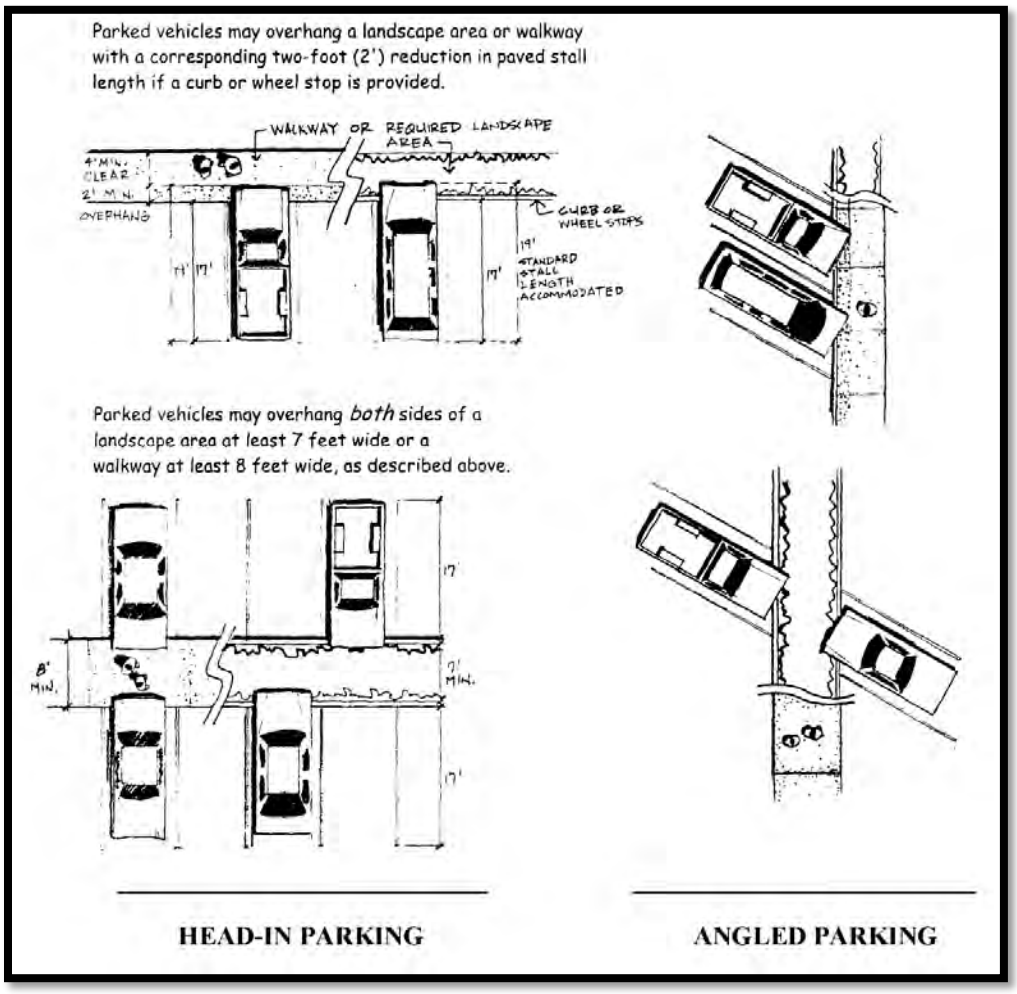
(3) **Long-Term Parking Stalls.** As an option in long-term parking areas, all long-term parking stalls may be designated using the following stall dimensions:

Long Term Parking Dimensions

Parking Angle	*Stall Width*	*Stall Length*
0	8	21
30	8	19
45	8	19
60	8.5	18
90	8.5	18

(4) **Vehicular Overhang.** The stall dimensions indicated above may be modified with respect to vehicular overhang as indicated in Figure 5, except that compact vehicle spaces may not be reduced in depth to a dimension that is less than the required depth indicated above.

(II) Figure 5 – Vehicular Overhang for Standard-Size Parking Stalls:



DIVISION 5.10 LANDSCAPING AND TREE PROTECTION

5.10.1 LANDSCAPING AND TREE PROTECTION

(A) **Applicability.** This Section shall apply to all development (except for development on existing lots for single-unit detached dwellings) 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 landscape and tree protection plans that ensure significant canopy cover 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 shall submit a landscape and tree protection plan, and, if receiving water service from the City, an irrigation plan, that: (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.

(D) **Tree Planting Standards**. 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. The groves and belts may also be combined or interspersed with other landscape areas in remaining portions of the development to accommodate views and functions such as active recreation and storm drainage.

(1) **Minimum Plantings/Description**. These tree standards require at least a minimum tree canopy but are not intended to limit additional tree plantings in any remaining portions of the development. Groves and belts of trees shall be required as follows:

(a) 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;

(b) street tree planting in accordance with the *Larimer County Urban Area Street Standards* or other street tree planting as defined in subsection (2)(b) or (c) below;

(c) "full tree stocking" shall be required in all landscape areas within fifty (50) 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 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 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) 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.

(I) Full tree stocking shall mean formal or informal groupings of trees planted according to the following spacing dimensions:

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

(II) 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 fifty (50) percent of all tree plantings. Trees required in subparagraphs (a) or (b) above may be used to contribute to this standard.

(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.

(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.

(a) Species Diversity Table:

Number of trees on site	*Maximum percentage of any one species*
10—19	50%
20—39	33%
40—59	25%
60 or more	15%

(4) **Tree Species and Minimum Sizes**. The City Forester shall provide a recommended list of trees which shall be acceptable to satisfy the requirements for landscape plans, including approved canopy shade trees that may be used as street trees. The following minimum sizes shall be required (except as provided in subparagraph (5) below):

(a) *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

(I) 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.

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

(a) *Affordable Housing Minimum Tree Size Table:*

Type	*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

(E) **Landscape Standards**. All development applications shall include landscape plans that meet the following minimum standards:

(1) **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:

(a) Separation and screening with plant material: planting dense stands of evergreen trees, canopy shade trees, ornamental trees or shrubs;

(b) 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;

(c) 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;

(d) 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

(e) Landform shaping: utilizing berming or other grade changes to alter views, subdue sound, change the sense of proximity and channel pedestrian movement.

(2) **Landscape Area Treatment.** Landscape areas shall include all areas on the site 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. 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) Turf grass. High-use areas shall be planted with irrigated turf grass. 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.

(b) Planting beds. Shrub and ground cover planting beds shall be separated from turf grass with edging and shall have open surface areas covered with mulch.

(c) 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 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.

(d) 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) feet wide placed directly along at least fifty (50) percent of such walls, except 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.

(e) Parkways. All adjoining street parkways shall be landscaped in connection with the development in accordance with the *Larimer County Urban Area Street Standards*.

(f) Agricultural Use. If outdoor space is maintained in active agricultural use, the landscape surfaces and ground cover standards above shall not apply.

(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:

(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.

(b) Landscape plans shall include:

(I) A water budget chart that shows the total annual water use, which shall not exceed an average of fifteen (15) gallons/square foot/year for each water tap.

- Accurate and clear identification of all applicable hydrozones using the following categories:

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) 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.

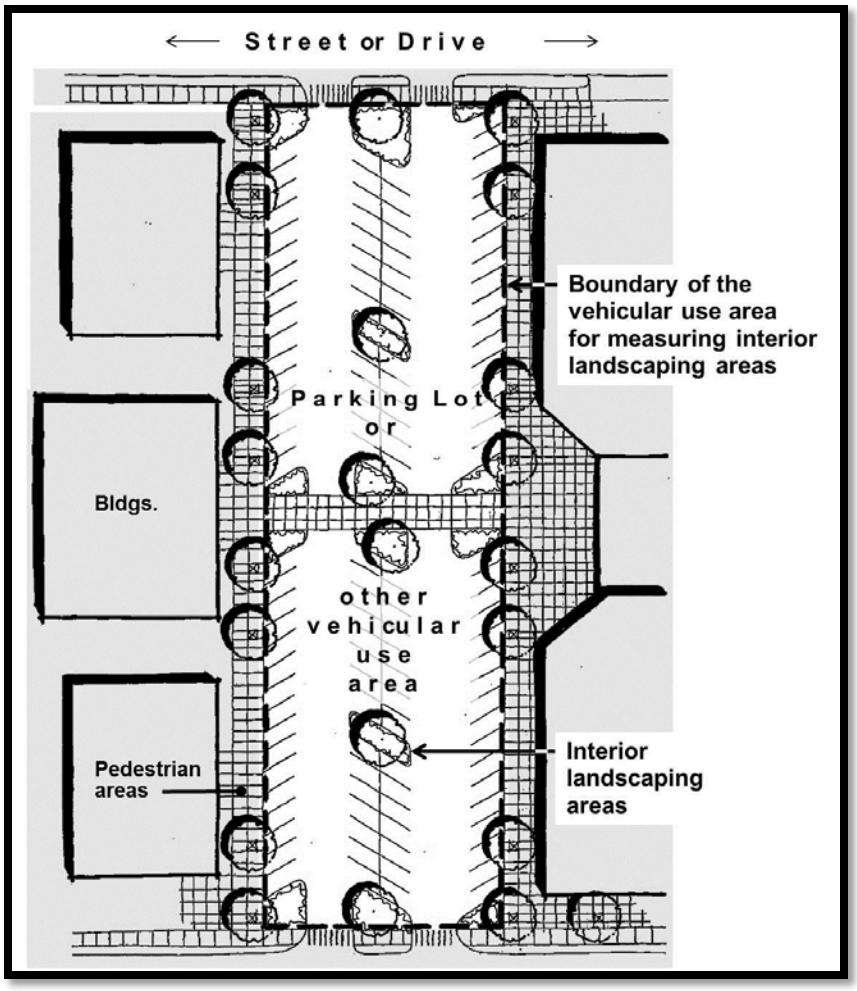
(5) **Parking Lot Interior Landscaping.** Six (6) percent of the interior space of all parking lots with less than one hundred (100) spaces, and ten (10) percent of the interior space of all parking lots with one hundred (100) spaces or more shall be landscape areas. (See Figure 1). All parking lot islands, 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 curbcut.

(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.

(d) Figure 1 – Interior Landscaping for Vehicular Use Areas:



(e) Walkways and Driveways. Connecting 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.

(f) Parking bays shall extend no more than fifteen (15) parking spaces without an intervening tree, landscape island or landscape peninsula.

(g) 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 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).

(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 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 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 (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 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 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 DBH and Russian-olive or ash (*Fraxinus* species) less than eight (8) inches DBH.

(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).

(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) 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.

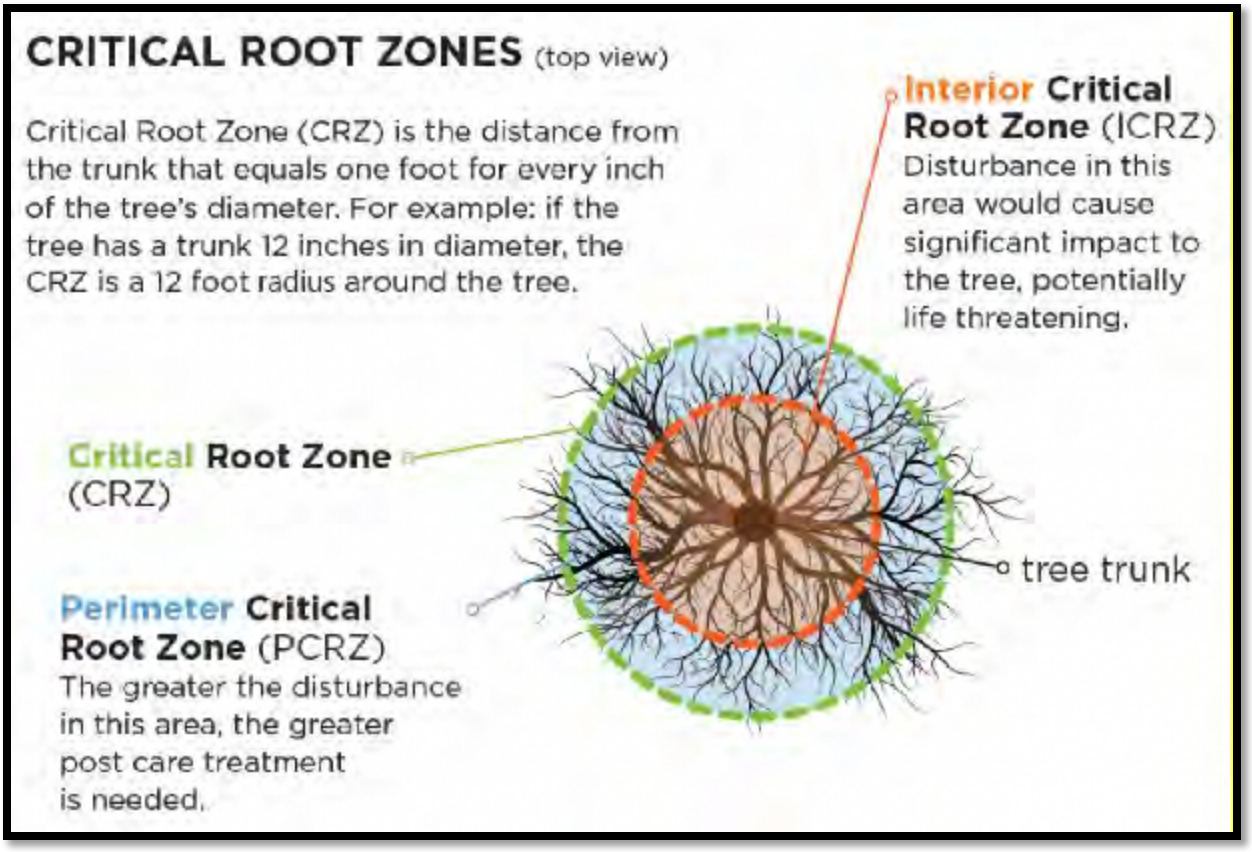
(6) Large property areas containing protected trees and separated from construction or land clearing areas, road rights-of-way and utility easements may be "ribboned off," rather than erecting protective fencing around each tree as required in subsection (G)(3) above. This may be accomplished by placing 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.

(a) Auger Distance Table:

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

(b) Figure 2 - Critical Root Zone Diagram.



(H) **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:

(1) protecting existing trees, natural areas and features;

(2) enhancing visual continuity within and between neighborhoods;

(3) providing tree canopy cover;

(4) creating visual interest year-round;

(5) complementing the architecture of a development;

(6) providing screening of areas of low visual interest or visually intrusive site elements;

(7) establishing an urban context within mixed-use developments;

(8) providing privacy to residents and users;

(9) conserving water;

(10) avoiding reliance on excessive maintenance;

(11) promoting compatibility and buffering between and among dissimilar land uses; and

(12) establishing spatial definition.

(I) **Landscape Materials, Maintenance and Replacement.**

(1) **Topsoil.** 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 soil amendments shall also be incorporated in accordance with the requirements of Section 5.5.5.

(2) **Plant Materials**. Plant material shall be selected from the *City of Fort Collins Plant List* created 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.

(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 American Association of Nurserymen standards.

(4) **Installation.** All landscaping 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.

(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.

(7) **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 with not less than one (1) or more than six (6) replacement trees sufficient to mitigate the loss of value of the removed tree. The applicant shall select either the City Forester or a qualified landscape appraiser to determine such loss based upon an 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)(4) above) shall be required for such replacement trees.

(8) **Restricted Species.** City Forestry Division shall provide a list of specified tree species that shall not be planted within the limits of development and 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 species**. For prohibited species reference Chapter 27, Article II, Division 1, Sec. 27-18 of the Fort Collins Municipal Code.

(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 detached single-unit dwellings.

(2) For any development provided water within the City, a final irrigation plan shall be submitted to and approved by the Director prior to the issuance of the building permit, or if no building permit is required, then prior to commencement of construction. As determined by the Director, minor redevelopment or change of use projects may not be required to submit an irrigation 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 below. In addition, the irrigation system must be inspected for compliance with the approved irrigation plan before the issuance of a Certificate of Occupancy.

(3) 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.

(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) Turf and non-turf areas shall be irrigated on separate zones.

(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) Drip, micro-sprays, sprayheads and rotors shall not be 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. The purpose of the submeter would be to enable the owner and landscape maintenance contractor to monitor water use for irrigation. The submeter would 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 data input chart for the Smart Controller, including the precipitation rate from the audit, shall be posted at each irrigation controller.

- Within six (6) weeks of the installation of new landscaping, the irrigation system Smart Controllers shall be reset to the 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:

- The type of sprinkler and associated nozzles shall be selected to correlate with the size and geometry of the zone being irrigated.

- Sprinklers shall be spaced no closer than seventy-five (75) percent of the maximum radius of throw for the given sprinkler and nozzle. Maximum spacing shall be head-to-head coverage.

- 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.

- Sprinklers, bubblers or emitters on a zone shall be of the same manufacturer.

- Sprayheads in turf areas shall have a minimum three-and-one-half-inch pop-up riser height.

- Sprayheads on a zone shall have matched precipitation nozzles. Variable Arc Nozzles (VAN) are not acceptable for ninety (90), one hundred eighty (180) and three hundred sixty (360) degree applications. High-Efficiency Variable Arc Nozzles (HE-VAN) are acceptable only in odd shaped areas where ninety (90), one hundred eighty (180) and three hundred sixty (360) are not applicable.

- Nozzles for rotors shall be selected to achieve an approximate uniform precipitation rate throughout the zone.

- 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 turf areas are exempt from this requirement.

(II) The audit shall include measurement of distribution uniformity. Minimum acceptable distribution uniformities shall be sixty (60) percent for spray head zones and seventy (70) percent 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 (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.

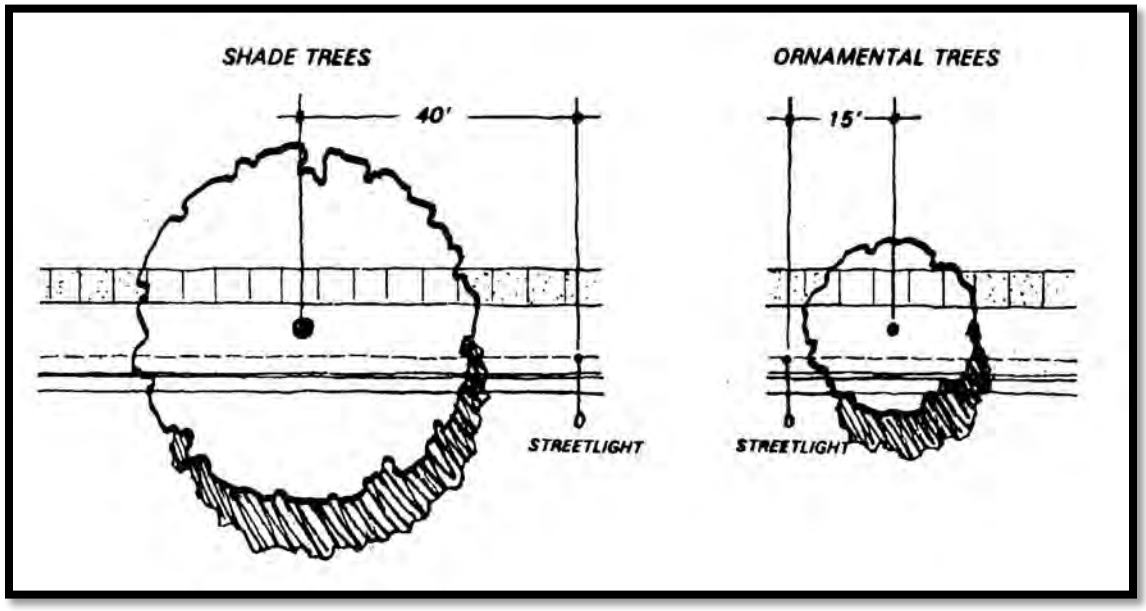
(IV) The audit shall measure the operating pressure for one (1) sprinkler on each zone to determine whether the zone meets the above pressure requirements.

(V) A copy of the sprinkler performance audit shall be submitted to and approved by the City before issuance of a certificate of occupancy.

(K) **Utilities and Traffic.** Landscape, utility and traffic plans shall be coordinated. The following list sets forth minimum dimension requirements for the most common tree/utility and traffic control device separations. Exceptions to these requirements may occur 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.

(1) Forty (40) feet between shade trees and streetlights. Fifteen (15) feet between ornamental trees and streetlights. (See Figure 3.)

(a) Figure 3 – Tree/Streetlight Separations:



(2) Twenty (20) feet between shade and/or ornamental trees and traffic control signs and devices.

(3) Ten (10) feet between trees and water or sewer mains.

(4) Six (6) feet between trees and water or sewer service lines.

(5) Four (4) feet between trees and gas lines.

(6) Street trees on local streets planted within the eight-foot-wide utility easement may conflict with utilities. Additional conduit may be required to protect underground electric lines.

(L) **Visual Clearance or Sight Distance Triangle**. Except as provided in subparagraphs (1) and (2) 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.

(1) Fences shall not exceed forty-two (42) inches in height and shall be of an open design.

(2) 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.

(M) **Revegetation**. When the development causes any disturbance within any natural area buffer zone, revegetation shall occur as required in paragraph 5.6.1(E)(2) (Development Activities Within the Buffer Zone) and subsection 5.10.1(F) (Tree Preservation and Mitigation).

(N) **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 complies with the standards of this Section.

(2) Review Criteria. To approve an alternative plan, the decision maker must find that the proposed alternative plan accomplishes the purposes of this Section equally well or better than would a plan which complies with the standards of this Section.

(3) 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.

(O) **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).

5.10.2 BUFFERING FOR RESIDENTIAL AND HIGH OCCUPANCY BUILDING UNITS

(A) **Applicability.** These standards apply only to applications that include residential uses and, to the extent legally applicable, high occupancy building units. Standards regarding Buffer Yard D shall not apply to any lot for which a site specific development plan with vested rights was approved prior to September 14, 2018 so long as such site specific development plan was, or is, valid at the time of issuance of any building permit for the construction or modification of any dwelling unit or high occupancy building unit on such lot.

(B) **Purpose.** The purpose of this Section is to provide standards to separate residential land uses and high occupancy building units from existing industrial uses in order to eliminate or minimize potential nuisances such as dirt, litter, noise, glare of lights and unsightly buildings or parking areas, or to provide spacing to reduce adverse impacts of noise, odor, air pollutants, hazardous materials or site contamination, or danger from fires or explosions.

(C) **Buffer standards.** Buffer yards shall be located on the outer perimeter of a lot or parcel and may be required along all property lines for buffering purposes and shall meet the standards as provided in this Section.

(1) Only those structures used for buffering and/or screening purposes shall be located within a buffer yard. The buffer yard shall not include any paved area, except for pedestrian sidewalks or paths or vehicular access drives which may intersect the buffer yard at a point which is perpendicular to the buffer yard and which shall be the minimum width necessary to provide vehicular or pedestrian access. Fencing and/or walls used for buffer yard purposes shall be solid, with at least seventy-five (75) percent opacity.

(2) There are four (4) types of buffer yards which are established according to land use intensity as described in Chart 1 below. Buffer yard distances are established in Chart 2 below and specify deciduous or coniferous plants required per one hundred (100) linear feet along the affected property line, on an average basis.

(3) The buffer yard requirements shall not apply to temporary or seasonal uses or to properties that are separated by a major collector street, arterial street, or highway.

(4) Additional Standards Applicable to *Buffer Yard D*. The following requirements shall also apply to development located in Buffer Yard D:

(a) **Measured.** For purposes of Buffer Yard D standards, the buffer yard shall be measured as either the distance from the outer edge of an oil and gas location to the nearest wall or corner of any dwelling or high occupancy building unit location or, if any Colorado Oil and Gas Conservation Commission adopted setback measurement method applicable to a dwelling or high occupancy building unit results in a greater distance between the existing oil and gas operation site location and the dwelling or high occupancy building unit at issue, then the Colorado Oil and Gas Conservation Commission setback measurement method shall be used. Buffer Yard D areas may include paved areas, notwithstanding paragraph (1) above.

(b) **Minimum Buffer Distances**. The following minimum buffer distances shall apply:

(I) Residential Development. The minimum buffer between a dwelling and any oil and gas location shall be five hundred (500) feet, or the Colorado Oil and Gas Conservation Commission designated setback distance, whichever is greater. Public playgrounds, parks, recreational fields, or community gathering spaces shall not be placed within a buffer. Private common areas within a buffer shall not contain playgrounds, parks, recreational fields, or community gathering spaces.

(II) High Occupancy Building Units. The minimum buffer between a high occupancy building unit and any oil and gas location shall be one thousand (1,000) feet, or the Colorado Oil and Gas Conservation Commission designated setback distance, whichever is greater. Public or private playgrounds, parks, recreational fields, or community gathering spaces shall not be allowed within a buffer.

(c) Alternative compliance buffer reduction from plugged and abandoned wells. Upon applicant request, the decision maker may approve a reduced buffer distance from a plugged and abandoned well for which reclamation has been completed, all of the aforementioned in accordance with Colorado Oil and Gas Conservation Commission regulations, in lieu of the minimum buffer distances set forth in the immediately preceding Subsection (b), provided that the approved reduced buffer is no less than 150 feet from the permanently abandoned well and meets the requirements specified below.

(I) **Procedure**. To request alternative compliance, an alternative compliance buffer reduction plan shall be prepared and submitted in accordance with the submittal requirements established by the Director. At a minimum, the plan must:

(i) Clearly identify and discuss the proposed buffer reduction and the ways in which the plan will equally well or better eliminate or minimize the nuisances and reduce the adverse effects referenced in the purpose of this Section than would a plan which complies with the separation and spacing standards of this Section.

(ii) Include information regarding environmental testing and monitoring for the site. Site investigation, sampling, and monitoring shall be conducted to demonstrate that the well has been properly abandoned and that soil, air and water quality have not been adversely impacted by oil and gas operations or facilities or other sources of

contamination. Such sampling and monitoring shall be conducted by a qualified environmental engineering or consulting firm with experience in oil and gas investigations. Director approval that the sampling and monitoring plan contains the information required pursuant to this subsection b) is required prior to sampling occurring and such plan shall include, but is not limited to, the following:

- Site survey, historical research, and/or physical locating techniques to determine exact location and extent of oil and gas operations and facilities.
- Documentation of plugging activities, abandonment and any subsequent inspections.
- Soil sampling, including soil gas testing.
- Groundwater sampling.
- Installation of permanent groundwater wells for future site investigations.
- A minimum of five (5) years of annual soil gas and groundwater monitoring at the well location.

(iii) Upon completion of the site investigation and sampling, not including the ongoing monitoring, the consultant must provide a written report verifying that the soil and groundwater samples meet applicable EPA and State residential regulations and that a reduced buffer would not pose a greater health or safety risk for future residents or users of the site. Otherwise, the decision maker may specify an appropriate buffer distance or require that the following actions be completed by a qualified professional before development may occur, including but not limited to:

- Remediation of environmental contamination to background levels.
- Well repair or re-plugging of a previously abandoned well.

(II) Review Criteria. To approve an alternative compliance buffer reduction plan, the decision maker must find that the proposed alternative plan eliminates or minimizes the nuisances and reduces the adverse effects referenced in the purpose of this Section equally well or better than would a plan which complies with the separation and spacing standards of this Section. An approved alternative compliance buffer reduction plan shall be exempt from the screening requirements of Chart 2 - Buffer Yard Types and below Subsection (e) regarding fencing.

(d) Disclosure. If any residential development or dwelling, or high occupancy building unit is proposed to be located within one thousand (1,000) feet of an oil and gas location, the following requirements shall apply:

(I) At such time as the property to be developed is platted or replatted, the plat shall show the one-thousand-foot radius on the property from such oil and gas location and shall contain a note informing subsequent property owners that certain lots shown on the plat are in close proximity to an existing oil and gas location.

(II) For residential developments requiring a declaration pursuant to the Colorado Common Interest Ownership Act, a statement shall be included in such declaration specifying the lots within such residential development upon which dwellings may be constructed that are within one thousand (1,000) feet of an oil and gas location. The approved plat for such residential development shall be attached to the recorded declaration. Where no such declaration is required, the property owner shall record a statement on the

property where the dwelling is located indicating that such property is located within one thousand (1,000) feet of an oil and gas location.

(e) **Fencing**. If any residential development is proposed to be located within five hundred (500) feet of an oil and gas location, and if an existing fence does not surround the oil and gas location, the developer must erect a fence that restricts public access to the oil and gas location along the property boundary between the oil and gas location and the development.

Chart 1

Land Use Intensity Categories

Land Use	*Intensity Category*	*Buffer Yard*
Airports/airstrips	Very High	C
Composting facilities	High	B
Dry cleaning plants	Very High	C
Feedlots	Very High	C
Heavy industrial uses	Very High	C
Light industrial uses	High	B
Junkyards	High	B
Outdoor storage facilities	High	B
Recreation vehicle, boat, truck storage	Medium	A
Recycling facilities	High	B
Agricultural research laboratories	High	B
Resource extraction	Very High	C
Oil and gas operations, including plugged and abandoned wells	Very High	D
Transportation terminals (truck, container storage)	High	B
Warehouse & distribution facilities	High	B
Workshops and custom small industry	Medium	A

Chart 2

Buffer Yard Types

Type - Base Standard (plants per 100 linear feet along affected property line)[*]	*Option Width*	*Plant Multiplier*[**]	*Option: Add 6' Wall*	*Option: Add 3' Berm or 6' Fence*
Buffer Yard A:	**15 feet**	**1.00**		
	20 feet	.90		
3 Shade Trees	25 feet	.80		
2 Ornamental Trees or Type 2 Shrubs[***]	30 feet	.70	.65	.80

3 Evergreen Trees	35 feet	.60		
15 Shrubs (33% Type 1, 67% Type 2)	40 feet	.50		
Buffer Yard B:	15 feet	1.25		
	20 feet	**1.00**		
	25 feet	.90		
4 Shade Trees	30 feet	.80	.75	.85
4 Ornamental Trees or Type 2 Shrubs***	35 feet	.70		
3 Evergreen Trees	40 feet	.60		
25 Shrubs (Type 2)	45 feet	.50		
Buffer Yard C:	20 feet	1.25		
	25 feet	**1.00**		
	30 feet	.90		
5 Shade Trees	35 feet	.80	.75	.85
6 Ornamental Trees or Type 2 Shrubs***	40 feet	.70		
4 Evergreen Trees	45 feet	.60		
30 Shrubs (Type 2)	50 feet	.50		
Buffer Yard D:	500 feet	1.25		
	525 feet	**1.00**		
	550 feet	.90		
6 Shade Trees	575 feet	.80	.75	.85
7 Ornamental Trees or Type 2 Shrubs***	600 feet	.70		
5 Evergreen Trees	625 feet	.60		
35 Shrubs (Type 2)	650 feet	.50		

* "Base standard" for each type of buffer yard is that width which has a plant multiplier.

** "Plant multipliers" are used to increase or decrease the amount of required plants based on providing a buffer yard of reduced or greater width or by the addition of a wall, berm or fence.

*** Shrub types: Type 1: 4′ - 8′ High Type 2: Over 8′ High.

DIVISION 5.11 TRASH AND RECYCLING ENCLOSURES

5.11.1 TRASH AND RECYCLING ENCLOSURES

(A) **Purpose.** The purpose of this standard is to ensure the provision of areas, compatible with surrounding land uses, for the collection, separation, storage, loading and pickup of trash, waste cooking oil,

compostable and recyclable materials. This standard is supplemented by the Enclosure Design Considerations and Guidance Document issued by the Director and available from the Department.

(B) **Applicability.** The following developments must provide adequately sized, conveniently located, and easily accessible areas to accommodate the specific trash, compostable and recyclable materials and waste cooking oil needs of the proposed use and future uses that are likely to occupy the development:

(1) New commercial structures;

(2) New residential structures using a common collection system for waste disposal;

(3) Commercial structures that are proposed to be enlarged by more than twenty-five (25) percent;

(4) Residential structures using a common collection system for waste disposal that are proposed to be enlarged by more than twenty-five (25) percent;

(5) Commercial structures where a change of use is proposed; and

(6) All newly constructed enclosures.

(C) **General Standards.**

(1) Areas for the collection and storage of trash, waste cooking oil, and compostable, recyclable and other materials (linen service containers, returnable crates and pallets, and other similar containers) must be enclosed so that they are screened from public view. Enclosures must be constructed of durable materials such as masonry and shall be compatible with the structure to which it is associated.

(2) Areas for the collection and storage of trash, waste cooking oil, and compostable, recyclable and other materials must be adequate in size, number and location to readily serve the reasonably anticipated needs of the development's occupants.

(3) Development plans must include labeled drawings of all proposed enclosures, internal trash and recycling rooms, staging areas and the like and include all proposed dumpsters, containers, bins and other receptacles and label the capacity of each. Proposed recycling capacity must be at least fifty (50) percent of the proposed trash capacity.

(4) To provide equal access for trash, compostable and recyclable materials, space allotted for the collection and storage of compostable/recyclable materials must be adequate in size and provided everywhere space for trash is provided in a functional manner.

(5) Areas for the collection and storage of trash, waste cooking oil, and compostable, recyclable and other materials must be designed to allow walk-in access for pedestrians separate from the service opening that is at least thirty-two (32) inches wide and provides unobstructed and convenient access to all dumpsters, containers, bins, and other receptacles. Where possible, pedestrian entrances are encouraged to provide door-less entry unless reasonable circumstances (preventing illicit activities/usage, regulated waste streams, and the like) are demonstrated that would necessitate doors. If doors are used, they must provide safe and efficient access.

(6) Areas for the collection and storage of trash, waste cooking oil, and compostable, recyclable and other materials must provide a service opening that is at least ten (10) feet for haulers to efficiently maneuver dumpsters, containers, bins and other receptacles unless an alternative and functional method is demonstrated on the plan. Enclosures must provide service gates unless an alternative and functional method is demonstrated on the plans that adequately screen the enclosure from view. Service gates must be constructed of metal or other comparable durable material, and must be finished to complement the enclosure. Service gates must be free of obstructions that would prevent them from opening fully, must have a method to be secured by hardware in both closed and fully open positions, and must be properly maintained so they may be operated easily and smoothly.

(7) Areas for the collection and storage of trash, waste cooking oil, and compostable, recyclable and other materials, must include bollards, angle-iron, curbing, metal framing or other effective method to protect the interior walls of the enclosure from being damaged by dumpsters, containers, bins, and other receptacles.

(8) Areas for the collection and storage of trash, waste cooking oil, and compostable, recyclable and other materials must be designed to provide adequate, safe and efficient accessibility for haulers and service vehicles, including but not limited to front-load, rear-load, side-load, and roll off trucks and trucks used to pump waste cooking oil. Development plans must label the route the hauler will take to service the development and must comply with necessary turning radii, width, and height restrictions for the type of collection vehicles that will service the development.

(9) To ensure wheeled service dumpsters, containers, bins and other receptacles can be rolled smoothly and to prevent damage to the surfaces they will be wheeled over, enclosures must be situated on a service pad that extends beyond the service gates at their fully open position at least the width of the widest proposed dumpster, container, bin and other receptacles plus an additional two (2) feet. If the truck access point is separated from the storage location, a serviceable route that is free of obstructions must be provided and shall not exceed a maximum grade of five (5) percent in the direction of travel and two (2) percent cross slope. Areas for the collection and storage of trash, waste cooking oil, and compostable, recyclable and other materials, service pads and serviceable routes must be constructed of cement concrete. For offsite conditions such as existing public alleyways, this standard will only apply to the extent reasonably feasible.

(10) To provide equal access to trash and recyclable materials, multi-story buildings utilizing trash chutes must include a recycling chute of the same size or larger than the trash chute. Anywhere a trash chute is provided a recycling chute must also be provided adjacent to it. Chutes must be appropriately labeled "Landfill" and "Recycle" as appropriate.

(11) Where proposed uses and future uses that are likely to occupy the development will generate waste cooking oil, internal waste cooking oil collection systems are encouraged. All areas used to store waste cooking oil must include measures to prevent spills and contamination of the stormwater system. Waste cooking oil containers must be secured in place, enclosed separately, or separated from other containers with bollards or another physical barrier. To prevent rain water from carrying residual waste cooking oil into the stormwater system, all areas used to store waste cooking oil must include a roof unless an alternative and functional method is demonstrated on the plans.

DIVISION 5.12 EXTERIOR SITE LIGHTING

5.12.1 EXTERIOR SITE LIGHTING

(A) **Purpose**. The purpose of this Section is to ensure adequate exterior lighting for the safety, security, enjoyment and function of the proposed land use; conserve energy and resources; reduce light trespass, glare, artificial night glow, and obtrusive light; protect the local natural ecosystem from damaging effects of artificial lighting; and encourage quality lighting design and fixtures.

(B) **General Standard**. All development that includes proposed artificial outdoor lighting, except for development on single-unit detached residential lots, single-unit attached residential lots, and two-unit dwelling residential lots for which an application is submitted after March 26, 2021, subject to below Subsection 5.12.1(D), shall submit for review and approval a proposed lighting plan that complies with the standards in this Section and meets the functional needs of the proposed land use without adversely affecting adjacent properties or the community.

(C) **Design Standards.** The lighting plan shall meet the following requirements and all other applicable requirements set forth in this Section:

(1) Provide a comprehensive plan that clearly calculates the lumens of all exterior lighting being proposed and demonstrates compliance with impacts to adjacent properties, as outlined in subsections (I) and (J) below.

(2) Design different use areas considering nighttime safety, utility, security, enjoyment, and commerce.

(3) Reinforce and extend the style and character of the architecture and land use proposed within the site.

(4) Demonstrate no light trespass onto Natural Areas, Natural Habitat Buffer Zones or River Landscape Buffers as defined in Section 5.6.1(E).

(5) All lighting shall have a nominal correlated color temperature (CCT) of no greater than 3000 Kelvin. Consider high color fidelity lamps relative to the lighting application.

(6) Light poles shall be anodized (or otherwise coated) to minimize glare from the light source.

(D) **Existing Lighting.** Existing lighting shall mean lighting installed or approved prior to March 26, 2021.

(1) The addition of three (3) or more new fixtures in excess of the existing number of fixtures, updating or replacement of three (3) or more existing fixtures, or the updating or replacement of between ten (10) and fifty (50) percent of the existing fixtures requires an approved minor amendment pursuant to Section 6.3.10. Such minor amendment review is limited to meeting Section 5.12(A), *Purpose,* Section 5.12.1(C), *Design Standards*, and Section 5.12.1(I), *Limits of Offsite Impacts.*

(2) The addition of less than three (3) new fixtures in excess of the existing number of fixtures, updating or replacement of less than three (3) existing fixtures, or the update or the replacement of less than ten (10) percent of the existing fixtures requires Director review and approval. The review shall be limited to meeting Section 5.12.1(A), *Purpose*, Section 5.12.1(C), *Design Standards*, and Section 5.12.1(I), *Limits to Offsite Impacts.* The Director may impose conditions of approval to ensure lighting meets the purpose and intent of code requirements. The applicant may appeal the Director's decision in the same manner

as a basic development review or minor subdivision decision as set forth in Land Use Code Section 6.3.12(C).

(3) Should the addition of fixtures in excess of the existing number of fixtures or update or replacement of existing fixtures occur incrementally, and the cumulative changes exceed three (3) new fixtures or replacement of between ten (10) and fifty (50) percent of the existing fixtures, whichever is greater, within a ten (10) year period, the addition or update that exceeds such threshold must be approved through a minor amendment pursuant to Section 6.3.10. Such minor amendment will review the cumulative changes or updates and be limited to meeting Section 5.12.1(A), *Purpose*, Section 5.12.1(C), *Design Standards*, and Section 5.12.1(I), *Limits to Offsite Impacts*.

(4) Applicants for minor amendments and changes of use pursuant to Land Use Code Section 6.3.10(A) that result in the replacement or upgrade of fifty (50) percent or more of the existing outdoor lighting fixtures at one time or incrementally within a ten (10) year period shall submit a lighting plan for the entire development site that meets the requirements of this Section and, if necessary to meet such requirements, complete a site lighting retrofit of the entire development site.

(5) Applicants for major amendments and changes of use pursuant to 6.3.10(B) shall submit a lighting plan for the entire development site that meets the requirements of this Section and, if necessary to meet such requirements, complete a site lighting retrofit for the entire development site.

(E) **Conformance with All Applicable Codes.** All outdoor lighting shall be installed in conformance with this Section 5.12.1 and applicable sections of Chapter 5 of the Code of the City of Fort Collins.

(F) **Exceptions.** The following are not subject to the requirements set forth in this Section:

(1) Temporary lighting for construction sites, special events, holidays, and other events requiring lighting.

(2) Festoon lights installed for less than thirty (30) consecutive days.

(3) Lighting within the public right-of-way. Such lighting is regulated under the Larimer County Urban Area Street Standards.

(4) Lighting for single-unit residential housing and duplexes. Such lighting is regulated by the adopted building codes and amendments.

(G) **Prohibited Lighting**. The following lighting is prohibited:

(1) Site lighting that may be confused with warning, emergency or traffic signals; and

(2) Mercury vapor lamps.

(H) **Lighting Context Areas.** The applicable Lighting Context Area shall determine the limitations for exterior artificial lighting. The Lighting Context Areas are described as follows:

(1) LC0 - No ambient lighting. Areas where the natural environment will be seriously and adversely affected by lighting. Impacts include disturbing the biological cycles of flora and fauna and/or detracting from

human enjoyment and appreciation of the natural nighttime environment. The vision of human residents and users is adapted to the darkness, and they expect to see little or no lighting.

(2) LC1 - Low ambient lighting. The vision of human residents and users is adapted to low light levels. Lighting may be used for safety and convenience, but it is not necessarily uniform or continuous. Typical locations include low and medium density residential areas, commercial or industrial areas with limited nighttime activity, and the developed areas in parks and other natural settings.

(3) LC2 - Moderate ambient lighting. Areas of human activity where the vision of human residents and users is adapted to moderate light levels. Lighting may typically be used for safety and convenience, but it is not necessarily uniform or continuous. Typical locations include high density residential areas, shopping and commercial districts, industrial parks and districts, City playfields and major institutional uses, and mixed-use districts.

(4) LC3 - Moderately high ambient lighting. Lighting is generally desired for safety, security, convenience, and unique site conditions. Lighting is often uniform and/or continuous. Typical locations include select areas in the Downtown Zone District and 24-hour emergency medical sites.

(5) Lighting Context Areas generally correspond to zone districts as provided in Table 5.12.1-1, Lighting Context Area, although the assigned Lighting Context Area may vary from Table 5.12.1-1 if necessary to accomplish the purposes and intent of this Section 5.12.1. The location of the Lighting Context Areas are shown on the "Lighting Context Area Map" on file at the City Clerk's office.

Table 5.12.1-1 Lighting Context Area

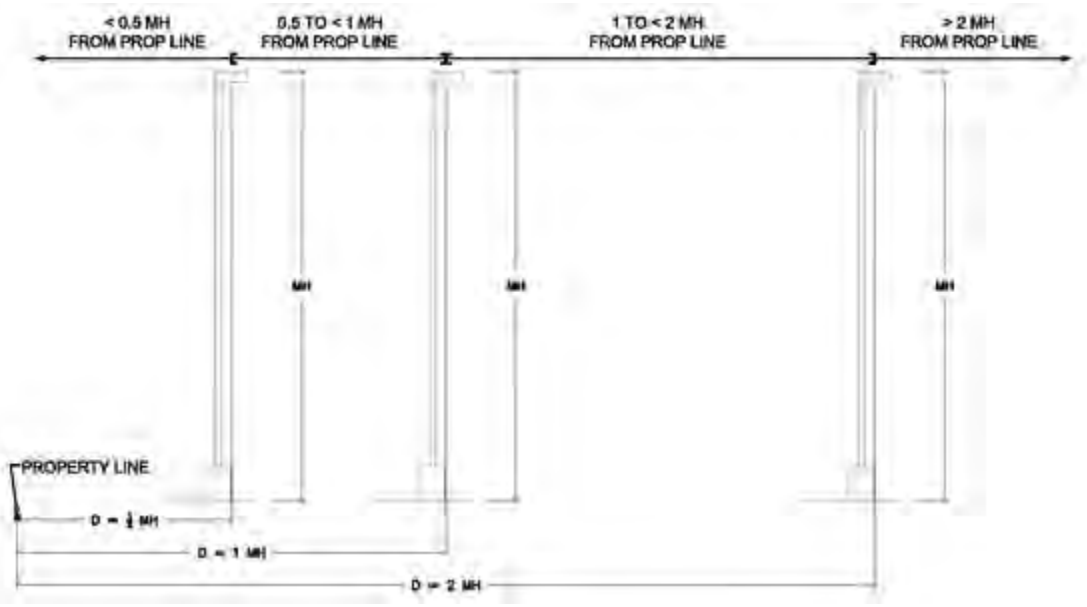
Lighting Context Area	Land Use	Corresponding Zone Districts
LC0	Natural Area/Conservation Easement	POL (City Natural Areas)
LC1	Single-Unit/Multi-Unit/Light Industrial/Employment/ Portions of Harmony District	POL (City Parks); RUL; UE, RF; OT-A, RC; LMN; MMN; I; E; T
LC2	Commercial/Industrial/Portions of Harmony District/High Density Residential	CN; CC; CCN; CCR; CG; CL; HC; I , RDR, D, HMN
LC3	Portions of Downtown,24-Hour Emergency Medical Sites	D, MMN

(l) **Limits to Off-Site Impacts.** All luminaires shall be rated and installed according to Table 5.12.1-2, Table 5.12.1-3, and Table 5.12.1-4, which outline maximum BUG (Backlight-Uplight-Glare) ratings (see Figure B below) for all individual luminaires installed in a given Lighting Context Area. Luminaires equipped with adjustable mounting devices shall not be permitted unless the total lumen output is one hundred fifty (150) lumens or less.

(1) For property boundaries that abut public rights-of-way, private streets, private drives, public alleys, and public and private parking lots, the backlight rating, glare rating and illuminance values provided in Tables 5.12.1-2, 5.12.1-4 and 5.12.1-5 respectively, shall be measured ten (10) feet from the property boundary. For all other property boundaries, values shall be measured at the property boundary.

(2) For tables 5.12.1-2 and 5.12.1-4 below, to be considered ideally oriented, the luminaire must be mounted with the backlight portion of the light output oriented perpendicular to and towards the property line of concern (see Figure A below).

(3) **Figure A. Ideally Oriented Luminaire and Mounting Conditions.**



(4) **Figure B. Backlight, Uplight and Glare.**

(5) Table 5.12.1-2 Maximum Allowable Backlight Ratings.

Table 5.12.1-2 Maximum Allowable Backlight Ratings.				
Mounting Condition	LC0	LC1	LC2	LC3
Greater than 2 mounting heights from the property line or not ideally oriented	B1	B3	B4	B5
1 to less than 2 mounting heights from the property line and ideally oriented.	B1	B2	B3	B4
0.5 to less than 1 mounting heights from the property line and ideally oriented.	B0	B1	B2	B3
Less than 0.5 mounting heights from the property line and ideally oriented.	B0	B0	B0	B1

(6) Table 5.12.1-3 Maximum Allowable Uplight Ratings.

Table 5.12.1-3 Maximum Allowable Uplight Ratings.				
	LC0	LC1	LC2	LC3
Allowed Uplight Rating.	U0	U0	U1	U2
Allowed light emission above 90 degrees for street or area lighting.	0%			

(7) Table 5.12.1-4 Maximum Allowable Glare Ratings.

Table 5.12.1-4 Maximum Allowable Glare Ratings.				
Mounting Condition	LC0	LC1	LC2	LC3
Greater than 2 mounting heights from the property line.	G0	G1	G1	G2
2 or less mounting heights from the property line and ideally oriented.				
1 to less than 2 mounting heights from the property line and **not** ideally oriented.	G0	G0	G1	G1

0.5 to less than 1 mounting heights from the property line and **not** ideally oriented.	G0	G0	G0	G1
Less than 0.5 mounting heights from the property. line and not ideally oriented	G0	G0	G0	G0

(8) **Light Trespass Limitations.** The illuminance levels provided in Table 5.12.1-4 shall be used for enforcement, should concerns of obtrusive lighting or question of compliance arise. Lighting plans shall show horizontal illuminance along all lot lines with calculation points spaced no further than ten (10) feet apart. This provision shall apply to all exterior lighting.

(9) **Maximum Horizontal Illuminance.**

Lighting Context Area	Maximum Horizontal Illuminance
Natural Habitat Buffer Zones and River District Landscape Buffers	0.0
LC0	0.0
LC1	0.1
LC2	0.3
LC3	0.8

(J) **Site lumen limit.** The total installed initial luminaire lumens of all outdoor lighting shall not exceed the total site lumen limit. The total site lumen shall be determined using either the Parking Space Method (Tables 5.12.1-5) or the Hardscape Area Method (Tables 5.12.1-6). Only one method shall be used per permit application and the applicable method shall be determined by the applicant. For sites with existing lighting, existing lighting shall be included in the calculation of total installed lumens. The total installed initial luminaire lumens are calculated as the sum of the initial luminaire lumens for all luminaires. Sign lighting shall be exempt from the calculation of total installed lumens.

(1) **Table 5.12.1-6 Allowed Total Initial Luminaire Lumens per Site for Non-Residential Outdoor Lighting, per Parking Space Method.**

Table 5.12.1-6Allowed Total Initial Luminaire Lumens per Site for Non-Residential Outdoor Lighting, per Parking Space Method.			
May only be applied to properties up to ten parking spaces (including handicapped accessible spaces).			
LC0	LC1	LC2	LC3
350 lumens per space	490 lumens per space	630 lumens per space	840 lumens per space

(2) **Table 5.12.1-7Allowed Total Initial Lumens per Site for Non-Residential Outdoor Lighting, Hardscape Area Method.**

Table 5.12.1-7Allowed Total Initial Lumens per Site for Non-Residential Outdoor Lighting, Hardscape Area Method.

May be used for any project. When lighting intersections of site drives and public streets or roads, a total of 600 square feet for each intersection may be added to the actual site hardscape area to provide for intersection lighting. Top level, exterior parking garage decks are included as Hardscape Areas.				
	LC0	LC1	LC2	LC3
Base Allowance	0.5 lumens per square foot of hardscape.	1.25 lumens per square foot of hardscape.	2.5 lumens per square foot of hardscape.	5 lumens per square foot of hardscape.
Additional allowances for sales and service facilities. No more than two additional allowances per site. Allowance may only be used to light the specific sales or service area selected and may not be used to light other areas of the site.				
Building Facades. This allowance is lumen per unit area of building facade that are illuminated. To use this allowance, luminaires must be aimed at the facade.	0		8 lumens per square foot.	16 lumens per square foot.
Outdoor Sales Lots. This allowance is lumens per square foot of uncovered sales lots used exclusively for the display of vehicles or other merchandise for sale, and may not include driveways, parking or other non-sales areas. To use this allowance, luminaires must be within 0.5 mounting heights of the sales lot area.	0	4 lumens per square foot.	8 lumens per square foot.	16 lumens per square foot.
Outdoor Dining. This allowance is lumen per unit area for the total illuminated hardscape of outdoor dining. In order to use this allowance, luminaires must be within 0.5 mounting heights of the hardscape area of outdoor dining. This allowance includes rooftop dining.	0	1 lumen per square foot.	5 lumens per square foot.	10 lumens per square foot.
Gasoline Station. This allowance is lumens per installed fuel pump. Both	0	4,000 lumens per pump.	8,000 lumens per pump.	8,000 lumens per pump.

sides of a two-sided pump qualify as one allowance.				

(K) **Athletic and Recreational Fields.** The lighting for athletic and recreational fields are exempted from the lumen, BUG and color temperature requirements in this section and shall meet the following requirements:

(1) Lighting shall have a nominal correlated color temperature (CCT) of no greater than 5700 Kelvin.

(2) Off-site impacts shall be limited to the maximum extent practical.

(3) Lighting controls shall provide the following functions:

(I) Lighting shall be dimmable to ten (10) percent to adjust illuminance levels for relative activity (maintenance vs active play).

(II) Local or remote manual control with at least two (2) preset illuminance levels.

(III) Lights shall be automatically extinguished by one (1) hour after the end of play.

(IV) Field lighting aimed upward shall be controlled separately from downward-directed field lighting.

(L) **Alternative Compliance.** Upon request by an applicant, the decision maker may approve an alternative lighting plan that may be substituted in whole or in part for a plan meeting the standards of this Section.

(1) **Procedure.** Alternative compliance lighting plans shall be prepared and submitted in accordance with submittal requirements for lighting plans as set forth in this Section. The plan shall clearly identify and discuss the modifications and alternatives proposed and the ways in which the plan will better accomplish the purpose of this Section than would a plan which complies with the standards of this Section.

(2) **Review Criteria**. To approve an alternative plan, the decision maker must find that the proposed alternative plan accomplishes the purposes of this Section equally well or better than would a lighting plan which complies with the standards of this Section.

(3) In reviewing the proposed alternative plan, the decision maker shall consider the extent to which the proposed design meets the functional safety and security needs, protects natural areas from light intrusion, enhances neighborhood continuity and connectivity, fosters nonvehicular access, and demonstrates innovative design and use of fixtures or other elements.

DIVISION 5.13 YARDS AND SETBACKS

5.13.1 YARDS

All developments shall meet the following yard requirements unless otherwise specified in this Code:

(A) Cornices, eaves or similar architectural features may extend into a required yard not more than three (3) feet. Fire escapes may extend into a required rear yard not more than six (6) feet.

(B) No part of a yard required for a building for the purpose of complying with the provisions of this Code shall be included as a yard for another building.

(C) Solar energy devices, including but not limited to, overhangs, movable insulating walls and roofs, detached solar collectors, sun reflectors and piping, may extend into a required yard not more than three (3) feet.

5.13.2 SETBACKS

(A) **Features Allowed Within Setbacks**. The following structures and features may be located within required setbacks:

(1) trees, shrubbery or other features of natural growth;

(2) fences or walls, subject to permit approval, that do not exceed the standards established in Section 4.3.5(H);

(3) driveways and sidewalks;

(4) signs, if permitted by the sign regulations of this Land Use Code;

(5) bay windows and similar sized cantilevered floor areas, and architectural design embellishments of dwellings that do not project more than two (2) feet into the required setback, basement egress windows including the foundation that forms the window well, as long as the window foundation does not exceed the elevation or height of the house foundation, provided none of the foregoing elements shall encroach upon any public easements;

(6) eaves that do not project more than two and one-half (2½) feet into the required setback;

(7) open outside stairways, entrance hoods, terraces, canopies and balconies that do not project more than five (5) feet into a required front or rear setback and/or not more than two (2) feet into a required side setback, provided they do not encroach on public easements;

(8) chimneys, flues and residential ventilating ducts that do not project more than two (2) feet into a required setback and when placed so as not to obstruct light and ventilation, provided they do not encroach on public easements;

(9) utility lines, wires and associated structures, such as power poles; and

(10) decks which are not more than thirty (30) inches above ground.

(B) **Contextual Setbacks**. Regardless of the minimum front setback requirement imposed by the zone district standards of this Land Use Code, applicants shall be allowed to use a "contextual" front setback. A "contextual" front setback may fall at any point between the front setback required in the zone district and the front setback that exists on a lot that abuts, and is oriented to, the same street as the subject lot. If the subject lot is a corner lot, the "contextual" setback may fall at any point between the zone district required front setback and the front setback that exists on the lot that is abutting and oriented to the same street as the subject lot. If lots on either side of the subject lot are vacant, the setback shall be interpreted as the

minimum required front setback that applies to the vacant lot. This provision shall not be construed as requiring a greater front setback than that imposed by the underlying zone district, and it shall not be construed as allowing setbacks to be reduced to a level that results in right-of-way widths below established minimums.

(C) **Front Setbacks on Corner Lots**. In the case of corner lots, only one (1) street line shall be considered as a front line, and the street to which the primary entrance of the principal building faces or to which the building is addressed shall be considered the front line for purposes of determining the front setback.

(D) **Setbacks Reduced for Public Purpose**. When an existing setback is reduced as a result of conveyance for a public use and the remaining setback is at least seventy-five (75) percent of the required minimum setback for the district in which it is located, then that remaining setback shall be deemed to be in compliance with the minimum setback standards of this Land Use Code.

DIVISION 5.14 OCCUPANCY LIMITS

5.14.1 OCCUPANCY LIMITS; INCREASING THE NUMBER OF PERSONS ALLOWED

(A) Except as provided in Subsection (B) below, or pursuant to a certificate of occupancy issued by the City to the owner of the property, the maximum occupancy allowed per dwelling unit in a single- unit, two-unit or multi-unit dwelling shall be:

(1) one (1) family as defined in Section 7.2.2 and not more than one (1) additional person; and

(2) two (2) adults and their dependents, if any, and not more than one (1) additional person.

(B) **Exceptions.** The following shall be exempt from the maximum occupancy limit established in Subsection (A) above:

(1) dwellings regularly inspected or licensed by the state or federal government, including, but not limited to, group homes; and

(2) dwellings owned or operated by a nonprofit organization incorporated under the laws of this state for the purpose of providing housing to victims of domestic violence as such is defined in Section 18-6-800.03, C.R.S.

(C) A violation of this Section shall be proven by a preponderance of the evidence. A person shall be liable for allowing occupancy in excess of this Section if they knew, or through reasonable diligence should have known, that a violation of this Section was occurring.

(D) **Definitions**. The following words, terms and phrases, when used in this Section, shall have the meanings ascribed to them below:

(1) **Adult** shall mean any person eighteen (18) years of age or older who is not a dependent.

(2) **Dependent** shall mean the biological child of an adult occupying a dwelling unit, or a person related to an adult by reason of adoption, guardianship or other duly authorized custodial relationship, who

receives financial support from the adult and who resides with the adult in the dwelling unit at least three (3) calendar months in a calendar year.

(3) **Occupancy or occupy** shall mean the use of a dwelling unit or any portion thereof for living and sleeping purposes by a person acting in any of the following capacities:

(a) as an owner of the unit;

(b) as a tenant under an express or implied lease or sublease of the unit or of any portion thereof; or

(c) as a guest or invitee of the owner, property manager, lessee or sublessee of the unit, if such guest or invitee stays overnight at the unit for a total of thirty (30) or more days within any twelve (12) month period of time.

(4) **Occupant** shall mean a person who occupies a dwelling unit or any portion thereof for living and sleeping purposes.

(E) **Increasing the Occupancy Limit**.

(1) With respect to single-unit and two-unit dwellings, the number of persons allowed under this Section may be increased by the issuance of a certificate of occupancy allowing extra occupancy in zones allowing such use.

(2) With respect to multiple-unit and single-unit attached dwellings, the decision maker (depending on the type of review, Type 1 or Type 2) may, upon receipt of a written request from the applicant and upon a finding that all applicable criteria of this Code have been satisfied, increase the number of unrelated persons who may reside in individual dwelling units. The decision maker shall not increase said number unless satisfied that the applicant has provided sufficient amenities, either public or private, to sustain the activities associated with multi-family residential development, to adequately serve the occupants of the development and to protect the adjacent neighborhood. Such amenities may include, without limitation, passive open space, buffer yards, on-site management, recreational areas, plazas, courtyards, outdoor cafes, neighborhood centers, limited mixed-use restaurants, parking areas, sidewalks, bikeways, bus shelters, shuttle services or other facilities and services.

(3) With respect to single-unit, owner occupied dwellings, the number of persons allowed under Section 5.14.1(A)(1) may be increased to allow one (1) additional person by the issuance of a "host family permit," provided that the following conditions are met:

(a) Adequate off-street parking is available to accommodate the additional occupant;

(b) There have been no violations of Chapter 17 or 20 of the City Code or this Code at the premises for which the permit is sought within the twelve (12) months immediately preceding the date of the application for the permit; and

(c) At least two (2) months have elapsed since the issuance of any previous host family permit for the same premises.

(4) Host family permits shall be valid for ten (10) months from the date of issuance; provided, however, that in the event that the Municipal Judge or Municipal Court Referee determines, during the term of any such permit, that a violation of Chapter 17 or 20 of the City Code or this Code has occurred at the premises for which the permit was issued, the permit may be revoked. The City may charge a twenty-five ($25) dollar permit fee, or any greater amount not to exceed the costs of processing the application, which shall be payable at the time of application for the host family permit.

DIVISION 5.15 BUILDING STANDARDS

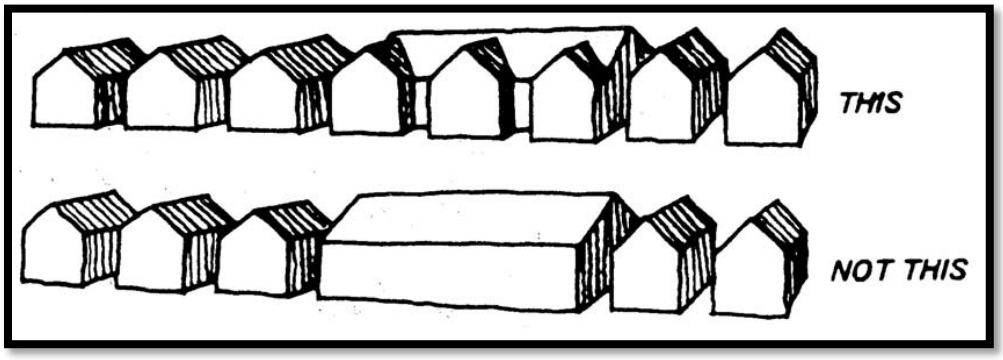
5.15.1 BUILDING AND PROJECT COMPATIBILTY

(A) **Purpose.** The purpose of this Section is to ensure that the physical and operational characteristics of proposed buildings and uses are compatible when considered within the context of the surrounding area. They should be read in conjunction with the more specific building standards contained in this Division and 5.3 and the zone district standards contained in Articles 2 and 4. All criteria and regulations contained in this Section that pertain to "developments," "the development plan," "buildings" and other similar terms shall be read to include the application of said criteria and regulations to any determination made by the decision maker of Section 6.9.1 for the purpose of evaluating the authorization of an additional use.

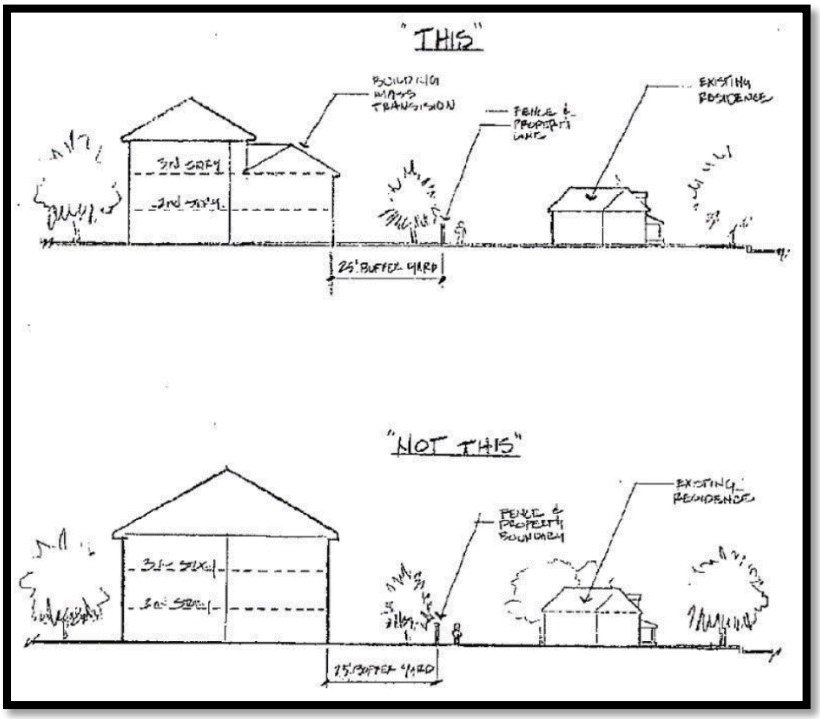
(B) **General Standard.** New developments in or adjacent to existing developed areas shall be compatible with the established architectural character of such areas by using a design that is complementary. In areas where the existing architectural character is not definitively established or is not consistent with the purposes of this Code, the architecture of new development shall set an enhanced standard of quality for future projects or redevelopment in the area. Compatibility shall be achieved through techniques such as the repetition of roof lines, the use of similar proportions in building mass and outdoor spaces, similar relationships to the street, similar window and door patterns and/or the use of building materials that have color shades and textures similar to those existing in the immediate area of the proposed infill development. Brick and stone masonry shall be considered compatible with wood framing and other materials. Architectural compatibility (including, without limitation, building height) shall be derived from the neighboring context.

(C) **Building Size, Height, Bulk, Mass, Scale**. Buildings shall either be similar in size and height, or, if larger, be articulated and subdivided into massing that is proportional to the mass and scale of other structures, if any, on the same block face, abutting or adjacent to the subject property, opposing block face or cater-corner block face at the nearest intersection. (See Figures 7a and 7b.)

(1) Figure 7a – Infill Buildings



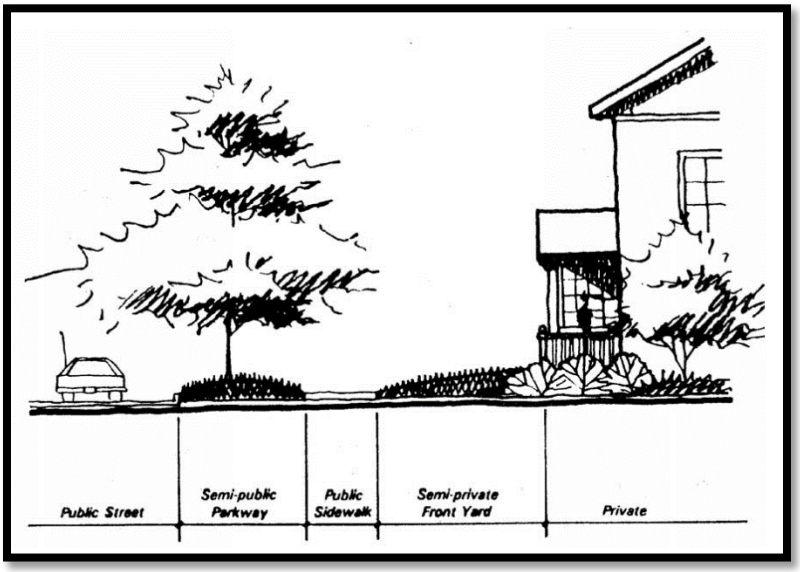
(2) Figure 7b – Infill Buildings



(3) New buildings in historic districts should reflect the historic character of the neighborhood through repetition of roof lines, patterns of door and window placement, and the use of characteristic entry features. These buildings are also subject to Chapter 14 of the City Code and Secretary of the Interior Standards as adopted by the City.

(D) Privacy Considerations. Elements of the development plan shall be arranged to maximize the opportunity for privacy by the residents of the project and minimize infringement on the privacy of adjoining land uses. Additionally, the development plan shall create opportunities for interactions among neighbors without sacrificing privacy or security. (See Figure 8.)

(a) Figure 8 Privacy Considerations



(E) **Building Materials**.

(1) **General**. Building materials shall either be similar to the materials already being used in the neighborhood or, if dissimilar materials are being proposed, other characteristics such as scale and proportions, form, architectural detailing, color and texture, shall be utilized to ensure that enough similarity exists for the building to be compatible, despite the differences in materials.

(2) **Glare.** Building materials shall not create excessive glare. If highly reflective building materials are proposed, such as aluminum, unpainted metal and reflective glass, the potential for glare from such materials will be evaluated to determine whether the glare would create a significant adverse impact on the adjacent property owners, neighborhood or community in terms of vehicular safety, outdoor activities and enjoyment of views. If so, such materials shall not be permitted.

(3) **Windows.**

(a) Mirror glass with a reflectivity or opacity of greater than sixty (60) percent is prohibited.

(b) Clear glass shall be used for commercial storefront display windows and doors.

(c) Windows shall be individually defined with detail elements such as frames, sills and lintels, and placed to visually establish and define the building stories and establish human scale and proportion.

(F) **Building Color**. Color shades shall be used to facilitate blending into the neighborhood and unifying the development. The color shades of building materials shall draw from the range of color shades that already exist on the block or in the adjacent neighborhood.

(G) **Building Height Review**.

(1) **Special Height Review/Modifications.** Purpose. The purpose of this Section is to establish a special process to review buildings or structures that exceed forty (40) feet in height. This section is not intended to supersede the requirements of Chapter 14 of City Code. Its intent is to encourage creativity and diversity of architecture and site design within a context of harmonious neighborhood planning and

coherent environmental design, to protect access to sunlight, to preserve desirable views and to define and reinforce downtown and designated activity centers. All buildings or structures in excess of forty (40) feet in height shall be subject to special review pursuant to this subsection (G).

(a) **Review Standards.** If any building or structure is proposed to be greater than forty (40) feet in height above grade, the building or structure must meet the following special review criteria:

(I) Light and Shadow. Buildings or structures greater than forty (40) feet in height shall be designed so as not to have a substantial adverse impact on the distribution of natural and artificial light on adjacent public and private property. Adverse impacts include, but are not limited to, casting shadows on adjacent property sufficient to preclude the functional use of solar energy technology, creating glare such as reflecting sunlight or artificial lighting at night, contributing to the accumulation of snow and ice during the winter on adjacent property and shading of windows or gardens for more than three (3) months of the year. Techniques to reduce the shadow impacts of a building may include, but are not limited to, repositioning of a structure on the lot, increasing the setbacks, reducing building mass or redesigning a building shape.

(II) Privacy. Development plans with buildings or structures greater than forty (40) feet in height shall be designed to address privacy impacts on adjacent property by providing landscaping, fencing, open space, window size, window height and window placement, orientation of balconies, and orientation of buildings away from adjacent residential development, or other effective techniques.

(III) Neighborhood Scale. Buildings or structures greater than forty (40) feet in height shall be compatible with the scale of the neighborhoods in which they are situated in terms of relative height, height to mass, length to mass and building or structure scale to human scale.

(b) **Submittal Requirements**. All development plans proposing building or structure heights in excess of forty (40) feet shall, at a minimum, include the following information:

(I) a shadow analysis that indicates, on the project development site plan, the location of all shadows cast by the building or structure (with associated dates of the year); and

(II) a summary of the key conclusions of the shadow analysis, and steps to be taken to comply with the review standards set forth above.

(c) **Modification of Height Limits.** To provide flexibility in meeting the height limits contained in Article 4 of this Code, such height limits can be either increased or decreased by the decision maker in the development review process for the following purposes:

(I) preserving the character of existing residential neighborhoods;

(II) allowing architectural embellishments consistent with architectural style, such as peaked roof sections, corner turrets, belvederes or cupolas;

(III) defining and reinforcing the downtown areas the major focal point in the community;

(IV) allowing for maximum utilization of activity centers;

(V) protecting access to sunlight;

(VI) providing conscious direction to the urban form of the City through careful placement of tall buildings or structures within activity centers;

(VII) allowing rooftop building extensions to incorporate HVAC equipment.

(H) **Land Use Transition**. When land uses with significantly different Building Types are proposed abutting each other and where gradual transitions are not possible or not in the best interest of the community, the development plan shall, to the maximum extent feasible, achieve compatibility through the provision of buffer yards and passive open space a minimum of 20 ft. in width to enhance the separation between uses.

(I) **Outdoor Storage Areas/Mechanical Equipment**.

(1) No areas for outdoor storage, trash collection or compaction, loading or other such uses shall be located within twenty (20) feet of any public street, public sidewalk or internal pedestrian way. Notwithstanding the foregoing, areas for trash collection may be located within twenty (20) feet of an internal pedestrian way.

(2) Loading docks, truck parking, outdoor storage (including storage containers), utility meters, HVAC and other mechanical equipment, trash collection, trash compaction and other service functions shall be incorporated into the overall design theme of the building and the landscape so that the architectural design is continuous and uninterrupted by ladders, towers, fences and equipment, and no attention is attracted to the functions by use of screening materials that are different from or inferior to the principal materials of the building and landscape. These areas shall be located and screened so that the visual and acoustic impacts of these functions are fully contained and out of view from adjacent properties and public streets.

(3) Conduit, meters, vents and other equipment attached to the building or protruding from the roof shall be painted to match surrounding building surfaces.

(4) Outside areas, used on a long-term or regular basis for inventory storage or sale, over-stock, seasonal goods, bulk items and the like shall be located within an area that is permanently screened with walls or fences. Materials, colors and design of screening walls or fences shall conform to those used as predominant materials and colors on the building. If such areas are to be covered, then the covering shall conform to those used as predominant materials and colors on the building.

(5) Outside areas that are used on a temporary basis for the sale of seasonal inventory only shall be defined by nonpermanent walls or fences. Such an enclosure shall not inhibit fire access to the building or pedestrian and bicycle access to the building entrance. If chain link fencing is used, it must be vinyl-clad or covered with a mesh material. Any such enclosure shall be removed upon the conclusion of the seasonal sale period.

[NOTE: Subsections (4) and (5) shall not apply to temporary vendors who have been issued outdoor vendor licenses as required by Section 15-382 of the City Code, provided that such temporary vendors are not permitted to operate for more than sixty (60) days in any calendar year.]

(6) All rooftop mechanical equipment shall be screened from public view from both above and below by integrating it into building and roof design to the maximum extent feasible.

(7) All satellite dishes that are greater than two (2) meters (78.74 inches) in diameter must be screened and located as required in subsections (1) through (5) of this Section.

(J) **Operational/Physical Compatibility Standards.** Conditions may be imposed upon the approval of development applications to ensure that new development will be compatible with existing neighborhoods and uses. Such conditions may include, but need not be limited to, restrictions on or requirements for:

(1) hours of operation and deliveries;

(2) location on a site of activities that generate potential adverse impacts on adjacent uses such as noise and glare;

(3) placement of trash receptacles;

(4) location of loading and delivery zones;

(5) light intensity and hours of full illumination;

(6) placement and illumination of outdoor vending machines; and

(7) location and number of off-street parking spaces.

5.15.2 MIXED-USE, INSTITUTIONAL AND COMMERCIAL BUILDINGS

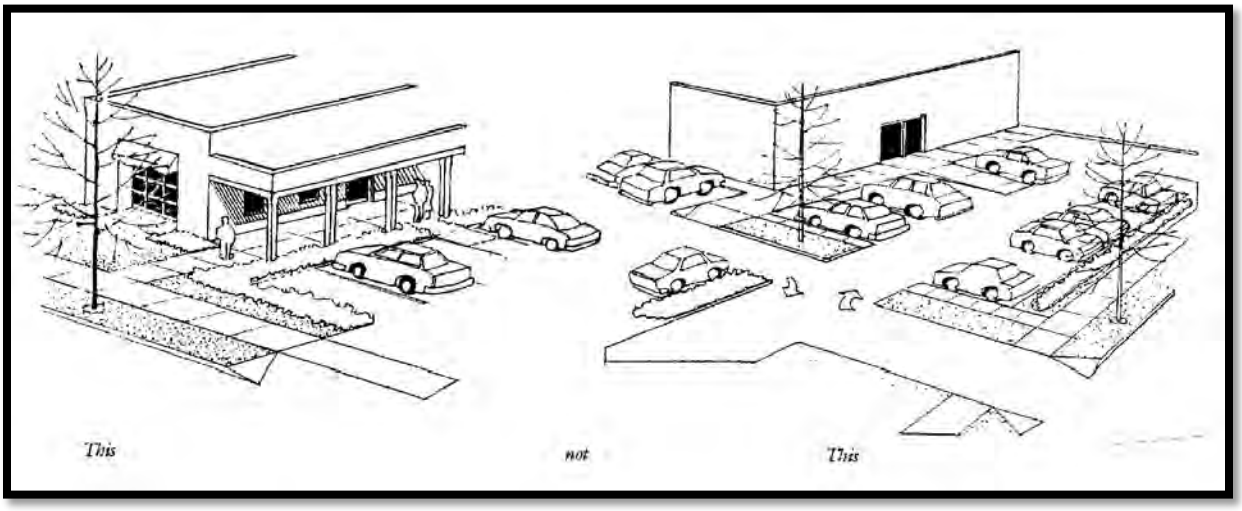
(A) **Purpose**. These standards are intended to promote the design of an urban environment that is built to human scale.

(B) **General Standard**. Mixed-use and nonresidential buildings shall provide significant architectural interest and shall not have a single, large, dominant building mass. The street level shall be designed to comport with a pedestrian scale in order to establish attractive street fronts and walkways. Walkways shall be designed principally for the purpose of accommodating pedestrians and pedestrian connections while secondarily accommodating vehicular movement. Buildings shall be designed with predominant materials, elements, features, color range and activity areas tailored specifically to the site and its context.

(C) **Relationship of Buildings to Streets, Walkways and Parking.**

(1) **Orientation to a Connecting Walkway.** At least one (1) main entrance of any commercial or mixed-use building shall face and open directly onto a connecting walkway with pedestrian frontage. Any building which has only vehicle bays and/or service doors for intermittent/infrequent nonpublic access to equipment, storage or similar rooms (e.g., self-serve car washes and self-serve mini-storage warehouses) shall be exempt from this standard. See Figure 10.

(a) *Figure 10* – Orientation to Walkways.



(2) **Orientation to Build-to Lines for Street front Buildings.** See Article 7 Rules of Measurement Build-to lines.

(D) **Variation in Massing.** A single, large, dominant building mass shall be avoided in new buildings and, to the extent reasonably feasible, in development projects involving changes to the mass of existing buildings.

(1) Horizontal masses shall not exceed a height:width ratio of 1:3 without substantial variation in massing that includes a change in height and a projecting or recessed elements.

(2) Changes in mass shall be related to entrances, the integral structure and/or the organization of interior spaces and activities and not merely for cosmetic effect. False fronts or parapets create an insubstantial appearance and are prohibited.

(E) **Character and Image.** In new buildings and, to the extent reasonably feasible, in development projects involving changes to existing building walls, facades or awnings, the following standards shall apply:

(1) **Site Specific Design**. Building design shall contribute to the uniqueness of a zone district, and/or the Fort Collins community with predominant materials, elements, features, color range and activity areas tailored specifically to the site and its context. In the case of a multiple building development, each individual building shall include predominant characteristics shared by all buildings in the development so that the development forms a cohesive place within the zone district or community. A standardized prototype design shall be modified as necessary to comply with the requirements of this subsection.

(2) **Facade Treatment.** Minimum Wall Articulation. Building bays shall be a maximum of thirty (30) feet in width. Bays shall be visually established by architectural features such as columns, ribs or pilasters, piers and fenestration pattern. In order to add architectural interest and variety and avoid the effect of a single, long or massive wall with no relation to human size, the following additional standards shall apply:

(I) No wall that faces a street or connecting walkway shall have a blank, uninterrupted length exceeding thirty (30) feet without including at least two (2) of the following:

change in plane, change in texture or masonry pattern, windows, treillage with vines, or an equivalent element that subdivides the wall into human scale proportions;

(II) Side or rear walls that face walkways may include false windows and door openings defined by frames, sills and lintels, or similarly proportioned modulations of the wall, only when actual doors and windows are not feasible because of the nature of the use of the building; and

(III) All sides of the building shall include materials and design characteristics consistent with those on the front. Use of inferior or lesser quality materials for side or rear facades shall be prohibited.

(3) **Facades.** Facades that face streets or connecting pedestrian frontage shall be subdivided and proportioned using features such as windows, entrances, arcades, arbors, awnings, treillage with vines, along no less than fifty (50) percent of the facade.

(4) **Entrances.** Primary building entrances shall be clearly defined and recessed or framed by a sheltering element such as an awning, arcade or portico in order to provide shelter from the summer sun and winter weather.

(5) **Awnings**. Awnings shall be no longer than a single storefront.

(6) **Base and Top Treatments.** All facades shall have:

(a) a recognizable "base" consisting of (but not limited to):

(I) thicker walls, ledges or sills;

(II) integrally textured materials such as stone or other masonry;

(III) integrally colored and patterned materials such as smooth-finished stone or tile;

(IV) lighter or darker colored materials, mullions or panels; and/or

(V) planters.

(b) a recognizable "top" consisting of (but not limited to):

(I) cornice treatments, other than just colored "stripes" or "bands," with integrally textured materials such as stone or other masonry or differently colored materials;

(II) sloping roof with overhangs and brackets; and/or

(III) stepped parapets.

(7) **Encroachments.** Special architectural features, such as bay windows, decorative roofs and entry features may project up to three (3) feet into street rights-of-way, provided that they are not less than nine (9) feet above the sidewalk. Trellises, canopies and fabric awnings may project up to five (5) feet

into front setbacks and public rights-of-way, provided that they are not less than eight (8) feet above the sidewalk. No such improvements shall encroach into alley rights-of-way.

(8) **Drive-through lane width limitation**. No drive-through facility associated with a retail establishment or large retail establishment shall exceed ten (10) feet in width.

(9) **Illumination prohibition**. Exterior-mounted exposed neon/fiber optic/ rope L.E.D. lighting, illuminated translucent materials (except signs), illuminated striping or banding, and illuminated product displays on appurtenant structures (e.g., fuel dispensers) shall be prohibited.

5.15.3 LARGE RETAIL ESTABLISHMENTS

(A) **Purpose**. These standards are intended to ensure that large retail building development is compatible with its surrounding area and contributes to the unique community character of Fort Collins. (For expansions/enlargements of large retail establishments, see also Section 6.22.)

(B) **General Standard**. Large retail buildings shall provide a high level of architectural interest by utilizing high quality materials and design and shall be compatible with the character of the surrounding area. Large retail buildings shall have pedestrian and bicycle access and connectivity and shall mitigate negative impacts. Buildings shall be designed with predominant materials, elements, features, color range and activity areas tailored specifically to the site and its context.

(C) **Land Use.** All large retail establishments shall be located in a group of more than four (4) retail establishments located in a complex which is planned, developed, owned or managed as a single unit with off-street parking provided on the property. Indoor recreation facilities are exempt from this requirement.

(D) **Development Standards.**

(1) **Aesthetic Character**.

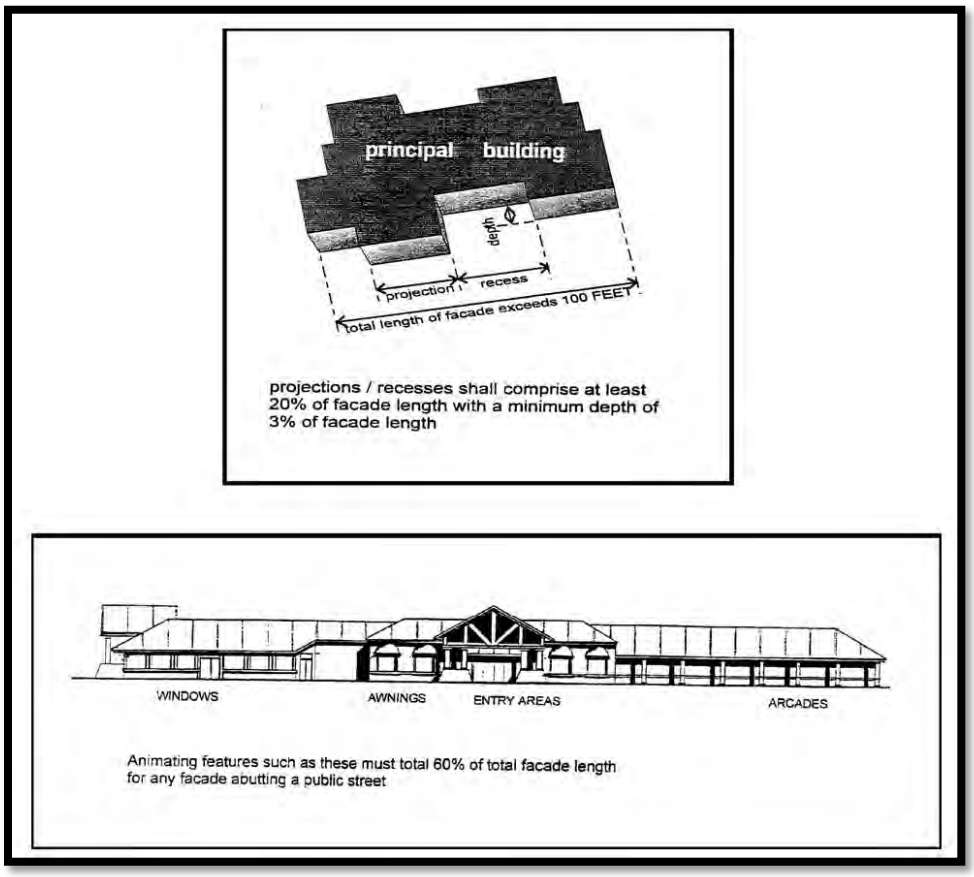
(a) Facades and Exterior Walls:

(I) Facades greater than one hundred (100) feet in length, measured horizontally, shall incorporate wall plane projections or recesses having a depth of at least three (3) percent of the length of the facade and extending at least twenty (20) percent of the length of the facade. No uninterrupted length of any facade shall exceed one hundred (100) horizontal feet; and

(II) Ground floor facades that face public streets shall have arcades, display windows, entry areas, awnings or other such features along no less than sixty (60) percent of their horizontal length. (See Figure 11.)

(b) Small Retail Stores. Where large retail establishments contain additional, separately owned stores that occupy less than twenty-five thousand (25,000) square feet of gross floor area, with separate, exterior customer entrances, the street level facade of such stores shall be transparent between the height of three (3) feet and eight (8) feet above the walkway grade for no less than sixty (60) percent of the horizontal length of the building facade of such additional stores.

(l) Figure 11 – Building.



(c) Detail Features. Building facades must include:

(l) a repeating pattern that includes no less than three (3) of the following elements:

(i) color change;

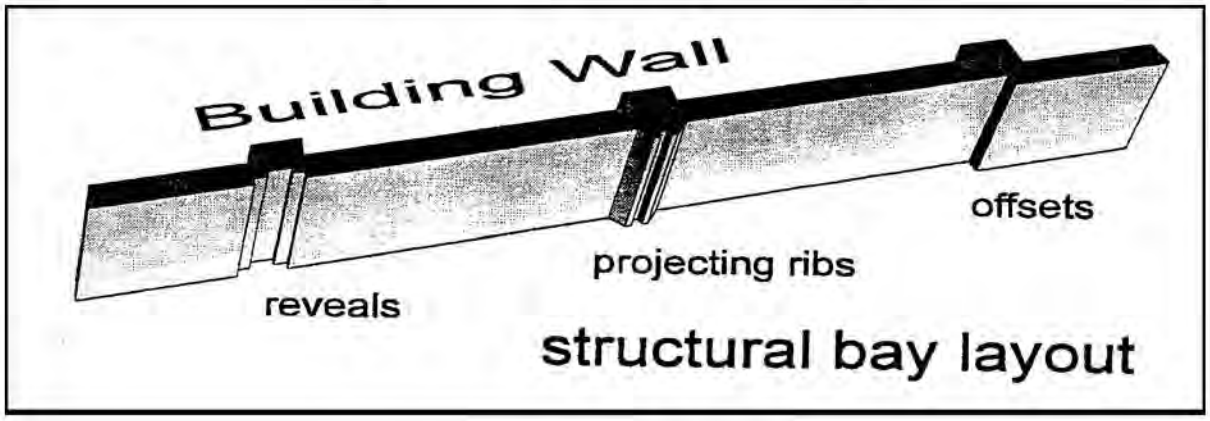
(ii) texture change;

(iii) material module change; and

(iv) an expression of architectural or structural bays through a change in plane no less than twelve (12) inches in width, such as an offset, reveal or projecting rib. (See Figure 12).

Note: At least one (l) of elements (i), (ii) or (iii) shall repeat horizontally. All elements shall repeat at intervals of no more than thirty (30) feet, either horizontally or vertically.

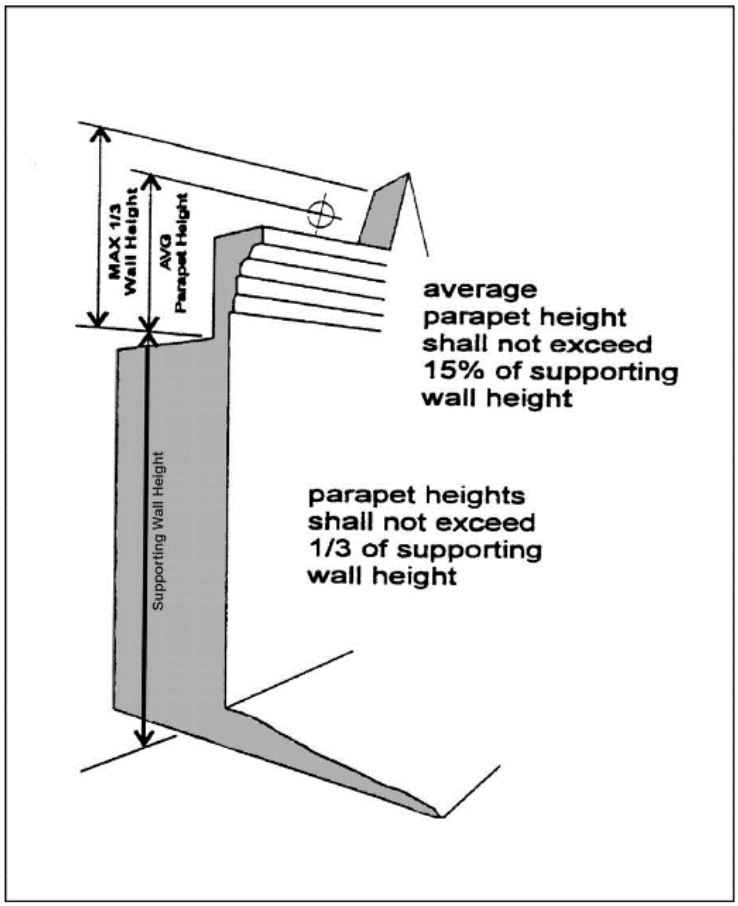
(II) Figure 12 – Expression of Architectural or Structural Bay



(d) Roofs. Roofs shall have no less than two (2) of the following features:

(I) parapets concealing flat roofs and rooftop equipment such as HVAC units from public view. The average height of such parapets shall not exceed fifteen (15) percent of the height of the supporting wall and such parapets shall not at any point exceed one-third (1/3) of the height of the supporting wall. (See Figure 13.) Such parapets shall feature three-dimensional cornice treatment;

(II) Figure 13 – Parapet Standards



(III) overhanging eaves, extending no less than three (3) feet past the supporting walls;

(IV) sloping roofs that do not exceed the average height of the supporting walls, with an average slope greater than or equal to one (1) foot of vertical rise for every three (3) feet of horizontal run and less than or equal to one (1) foot of vertical rise for every one (1) foot of horizontal run; and/or

(V) three (3) or more roof slope planes.

(e) Materials and colors.

(I) Predominant exterior building materials shall be high quality materials, including, but not limited to, brick, sandstone, other native stone and tinted/textured concrete masonry units.

(II) Facade colors shall be low reflectance, subtle, neutral or earth tone colors. The use of high-intensity colors, metallic colors, black or fluorescent colors shall be prohibited.

(III) Building trim and accent areas may feature brighter colors, including primary colors, but neon tubing shall not be an acceptable feature for building trim or accent areas.

(IV) Exterior building materials shall not include smooth-faced concrete block, tilt-up concrete panels or prefabricated steel panels.

(2) **Entryways.**

(a) Each large retail establishment on a site shall have clearly defined, highly visible customer entrances featuring no less than three (3) of the following:

(I) canopies or porticos;

(II) overhangs;

(III) recesses/projections;

(IV) arcades;

(V) raised corniced parapets over the door;

(VI) peaked roof forms;

(VII) arches;

(VIII) outdoor patios;

(IX) display windows;

(X) architectural details such as tile work and moldings which are integrated into the building structure and design; and/or

(XI) integral planters or wing walls that incorporate landscaped areas and/or places for sitting.

(b) Where additional stores will be located in the large retail establishment, each such store shall have at least one (1) exterior customer entrance, which shall conform to the above requirements.

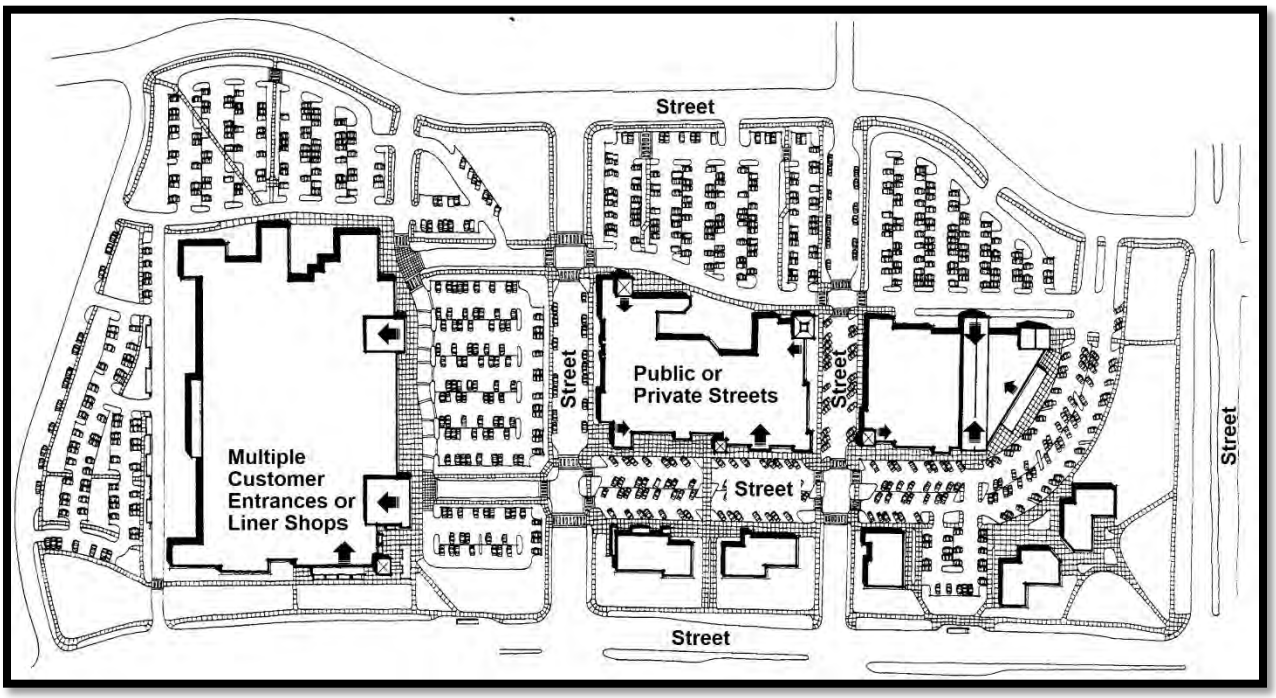
(c) All building facades which are visible from adjoining properties and/or public streets shall comply with the requirements of Article 5.15.3(D)(2) above.

(3) **Site Design and Relationship to Surrounding Community.**

(a) Entrances. At least two (2) sides of a large retail establishment shall feature operational customer entrances. The two (2) required sides shall be those that are planned to have the highest level of public pedestrian activity, one (1) of which shall also be the side that most directly faces a street with pedestrian access. The other of the two (2) sides having an operational customer entrance may face a second street with pedestrian access, and/or a main parking lot area. If the large retail

establishment does not include a second side entrance that is fully operational and open to the public, then this standard shall be met by attaching smaller retail store(s) ("liner stores") to the side of the large retail establishment which is expected to generate the most pedestrian activity or which faces a public street. Such liner store(s) shall, to the extent reasonably feasible, occupy no less than thirty-three (33) percent of the building elevation on which they are located and shall feature distinctive store fronts and entrances that are significantly differentiated from the large retail establishment in order to create strong identifiable entrance features. Entrances to the liner store(s) may, but need not, provide access into the large retail establishment and must be fully operational and open to customers at times that are generally equivalent to the store hours of the large retail establishment to which they are attached. All entrances, including those of the liner store(s), shall be architecturally prominent and clearly visible from the abutting public street. (See Figure 14.) Movie theaters are exempt from this requirement.

(l) Figure 14 – Building Entrances (Example of a development with Customer entrances on all sides which face a public street.)



(b) Parking lot location. No more than fifty (50) percent of the off-street parking area for the lot, tract or area of land devoted to the large retail establishment shall be located between the front facade of the large retail establishment and the abutting streets (the "Front Parking Area"). The Front Parking Area shall be determined by drawing a line from the front corners of the building to the nearest property corners. If any such line, when connected to the plane of the front facade of the building, creates an angle that is greater than one hundred eighty (180) degrees, then the line shall be adjusted to create an angle of one hundred eighty (180) degrees when connected to the plane of the front facade of the building. If any such line, when connected to the plane of the front facade of the building, creates an angle that is less than ninety (90) degrees, then the line shall be adjusted to create an angle of ninety (90) degrees when connected to the plane of the front facade of the building. Parking spaces in the Front Parking Area shall be counted to include all parking spaces within the boundaries of the Front Parking Area, including (i) all partial parking spaces if the part inside the Front Parking Area boundary lines constitutes more than one-half (½) of said parking

space, and (ii) all parking spaces associated with any pad sites located within the Front Parking Area boundaries. Supermarkets are exempt from this requirement.

(c) Back sides. The minimum setback for any building facade shall be thirty-five (35) feet from the nearest property line. Where the facade faces abutting residential uses, an earthen berm, no less than six (6) feet in height, containing at a minimum evergreen trees planted at intervals of twenty (20) feet on center, or in clusters or clumps, shall be provided.

(d) Connectivity. The site design must provide direct connections and safe street crossings to adjacent land uses.

(4) **Pedestrian Circulation.**

(a) Sidewalks at least eight (8) feet in width shall be provided along all sides of the lot that abut a public street.

(b) Continuous internal pedestrian walkways, no less than eight (8) feet in width, shall be provided from the public sidewalk or right-of-way to the principal customer entrance of all large retail establishments on the site. At a minimum, walkways shall connect focal points of pedestrian activity such as, but not limited to, transit stops, street crossings, building and store entry points, and shall feature adjoining landscaped areas that include trees, shrubs, benches, flower beds, ground covers or other such materials for no less than fifty (50) percent of the length of the walkway.

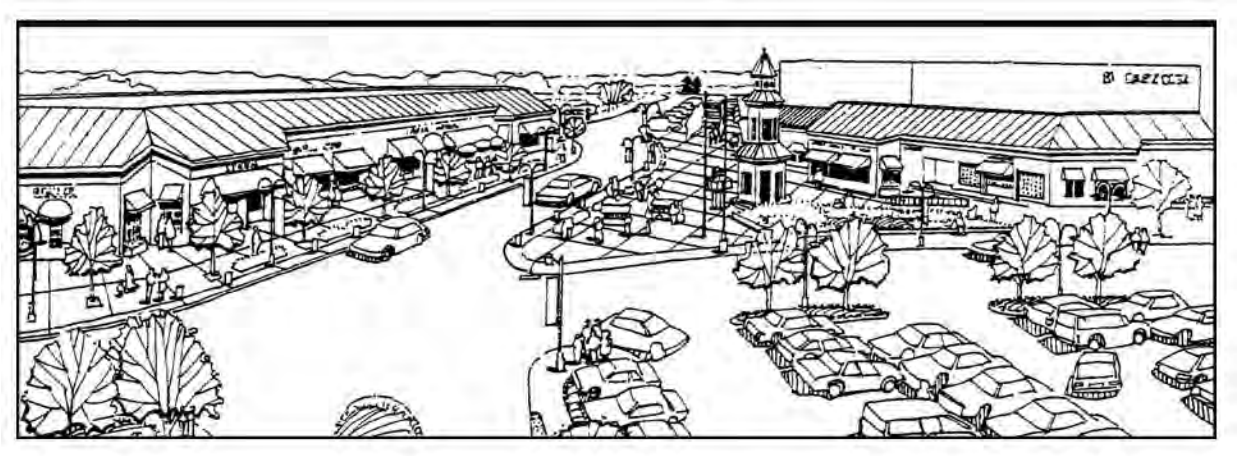
(c) Sidewalks, no less than eight (8) feet in width, shall be provided along the full length of the building along any facade featuring a customer entrance, and along any facade abutting public parking areas. Such sidewalks shall be located at least six (6) feet from the facade of the building to provide planting beds for foundation landscaping, except where features such as arcades or entryways are part of the facade.

(d) Internal pedestrian walkways provided in conformance with part (b) above shall provide weather protection features such as awnings or arcades within thirty (30) feet of all customer entrances.

(e) All internal pedestrian walkways shall be distinguished from driving surfaces through the use of durable, low maintenance surface materials such as pavers, bricks or scored concrete to enhance pedestrian safety and comfort, as well as the attractiveness of the walkways.

(5) **Central Features and Community Space.** Each retail establishment subject to these standards shall contribute to the establishment or enhancement of community and public spaces by providing at least two (2) of the following: patio/seating area, pedestrian plaza with benches, transportation center, window shopping walkway, outdoor playground area, kiosk area, water feature, clock tower or other such deliberately shaped area and/or a focal feature or amenity that, in the judgment of the appropriate decision maker, adequately enhances such community and public spaces. Any such areas shall have direct access to the public sidewalk network and such features shall not be constructed of materials that are inferior to the principal materials of the building and landscape. (See Figure 15.)

(a) **Figure 15 – Center with Community Features**



(6) **Delivery/Loading Operations.** No delivery, loading, trash removal or compaction, or other such operations shall be permitted between the hours of 10:00 p.m. and 7:00 a.m. unless the applicant submits evidence that sound barriers between all areas for such operations effectively reduce noise emissions to a level of forty-five (45) dB, as measured at the lot line of any adjoining property.

5.15.4 CONVENIENCE SHOPPING CENTER

(A) **Purpose**. Neighborhood convenience shopping centers are intended to provide locations for small scale, everyday shopping and services assembled in an attractive, convenient destination to primarily serve consumer demand from adjacent areas. These standards supplement the general standards for all commercial and mixed-use development, to promote development in which the commercial component is tempered as needed to reflect neighborhood character and minimize the garish or intrusive characteristics of commercial development.

(B) **General Standard**. Neighborhood convenience shopping centers shall be compatible with the character of the surrounding neighborhood utilizing high quality materials and finishes and shall be internally compatible and harmonious with respect to quality design, aesthetics and materials, tailored specifically to the site and its context.

(C) **Land Use.**

(1) **Size of Development.** A convenience shopping center shall be situated on seven (7) or fewer acres with four (4) or more business establishments located in an area that is planned and developed as a whole.

(2) **Permitted Uses**. Permitted uses include retail stores, personal and business services, convenience retail stores (with accessory gas pumps), restaurants without drive-up windows, equipment rental (not including outdoor storage), professional offices, limited banking services such as automated teller machines, multi-unit dwellings, medical offices and clinics, small animal veterinary clinics, and day care services.

(3) **Phasing of Improvements**. If a center is to be built in phases, each phase shall include an appropriate share of the proposed streets and circulation system, landscaping and outdoor spaces, screening and other site and architectural amenities of the entire project. The extent of these improvements shall be determined for each phase of a specific project at the time of project development approval, and may not be based solely upon a proportional or equal share of the entire site. Requirements for a phased project may include off-site improvements.

(D) **Buildings.**

(1) **Architectural Style.** Standardized architecture, recognized as a prototype of a larger chain of establishments, shall be customized as necessary to express a level of quality that enhances the distinctive character of the immediate neighborhood and the City as a whole. Forms and finish materials of buildings, signage, gasoline pump canopies and other accessory structures shall be compatible with the architectural character of the adjacent area through compliance with all of the following standards:

(a) All buildings, including gasoline pump canopies, shall utilize a consistent architectural style, with different buildings, businesses or activities in the center distinguished by variations within the architectural style.

(b) The sides and backs of buildings shall be as visually attractive as the front through the design of roof lines, architectural detailing and landscaping features.

(c) Quality finish materials shall be utilized. Such materials may include, but need not be limited to:

(I) brick masonry or stone;

(II) integrally tinted, textured masonry block;

(III) stucco; or

(IV) wood siding.

(d) Where any sloped roofs and canopies are used, they shall be covered with:

(I) high profile asphalt shingles;

(II) natural clay tiles;

(III) slate;

(IV) concrete tiles - with natural texture and color;

(V) ribbed metal; or

(VI) wood shakes or shingles, provided that the roof includes required fire protection.

(e) Vending machines and other site accessories shall be integrated into the architectural theme of the center.

(2) **Building Placement.** Minimum building setbacks from the property line of any adjoining residential use shall be twenty (20) feet.

(E) **Site Design.**

(1) **Screening.**

(a) Screening walls or fences shall be at least five (5) feet, but not more than eight (8) feet in height.

(b) Fences or walls shall be constructed of material similar to, or compatible with and complementary to, the primary building material and architecture. (Chain link type fences with or without wood slats or other inserts are not acceptable screening devices.) Fencing shall not impair traffic safety by obscuring views.

(c) Long expanses or fences or wall surfaces shall be architecturally designed so as to avoid monotony by use of repeating elements, alternative opaque and transparent sections, or architectural elements including pillars.

(2) **Landscaping/Streetscapes**.

Ground signage, if any, shall be incorporated into the landscape design.

(3) **Site Setbacks.**

(a) Minimum setbacks of parking and drives from public rights-of-way shall be as follows:

(I) twenty-five (25) feet from any arterial right-of-way; and

(II) fifteen (15) feet from any nonarterial right-of-way.

(b) Minimum setbacks of parking and drives from other land uses shall be as follows:

(I) twenty (20) feet from the property line of any residential use; and

(II) five (5) feet from the property line of nonresidential uses, except a property line between buildings or uses with shared parking areas where zero (0) feet is required.

DIVISION 5.16 SIGNS

5.16.1 SIGNS GENERALLY.

(A) **Title; Purpose and Intent.**

(1) **Title**. Sections 5.16.1, 5.16.2, 5.16.3, 5.16.4, and 5.16.5 may be collectively referred to as the "City of Fort Collins Sign Code," or the "Sign Code". Definitions related to the Sign Code are set out in Section 7.1.2, Definitions.

(2) **Purpose and Intent.** The purpose and intent of the Sign Code is to set out reasonable regulations for the design, location, installation, display, operation, repair, maintenance, and removal of signs in a manner that advances the City's legitimate, important, substantial, and compelling interests, while simultaneously safeguarding the constitutionally protected right of free speech.

(B) **Interests.** The City has a legitimate, important, substantial, or compelling interest in:

(1) Preventing the proliferation of signs of generally increasing size, dimensions, and visual intrusiveness (also known as "sign clutter") that tends to result from property owners competing for the attention of passing motorists and pedestrians, because sign clutter:

(a) Creates visual distraction and obstructs views, potentially creating safety hazards for motorists, bicyclists, and pedestrians;

(b) May involve physical obstruction of streets, sidewalks, or trails, creating public negative impacts;

(c) Degrades the aesthetic quality of the City, making the City a less attractive place for residents, business owners, visitors, and private investment; and

(d) Dilutes or obscures messages on individual signs due to the increasing competition for attention.

(2) Maintaining and enhancing the historic character of historic Downtown Fort Collins, a unique historic resource of exceptional quality and vibrancy.

(3) Protecting the health of the City's tree canopy, an important community asset that contributes to the character, environmental quality, and economic health of the City and the region.

(4) Maintaining a high-quality aesthetic environment to protect and enhance property values, leverage public investments in streets, sidewalks, trails, plazas, parks, open space, civic buildings, and landscaping, and enhance community pride.

(5) Protecting minors from speech that is harmful to them according to state or federal law, by preventing such speech in places that are accessible to and used by minors.

(C) **Findings.** The City finds that:

(1) Content-neutrality, viewpoint neutrality, and fundamental fairness in regulation and review are essential to ensuring an appropriate balance between the important, substantial, and compelling interests set out in Section 5.16.1(B) and the constitutionally-protected right to free expression.

(2) The regulations set out in the Sign Code are unrelated to the suppression of constitutionally-protected free expression, do not relate to the content of protected messages that may be displayed on signs, and do not relate to the viewpoint of individual speakers.

(3) The incidental restriction on the freedom of speech that may result from the regulation of signs pursuant to the Sign Code is no greater than is essential to the furtherance of the important, substantial, and compelling interests that are set out in Section 5.16.1(B).

(4) Regulation of the location, number, materials, height, sign area, form, and duration of display of temporary signs is essential to prevent sign clutter.

(5) Temporary signs may be degraded, damaged, moved, or destroyed by wind, rain, snow, ice, and sun, and after such degradation, damage, movement, or destruction, such signs harm the safety and aesthetics of the City's streets if they are not removed.

(6) Certain classifications of speech are not constitutionally protected due to the harm that they cause to individuals or the community.

(D) **Applicability, exemptions, and permit exceptions.**

(1) **Applicability.** The provisions of the Sign Code shall apply to the display, construction, installation, erection, alteration, use, location, maintenance, and removal of all signs within the City that are not specifically exempt from such application.

(2) **Sign Permits.**

(a) No sign shall be displayed, constructed, installed, erected, refaced, or altered within the City limits until the City has issued a sign permit, unless the sign qualifies as an exception to the permit requirements.

(b) No permit is required for routine sign maintenance, painting, or replacing light sources with lighting of comparable intensity (however, the installation of a new manual changeable copy message center or electronic message center does require a permit).

(3) **Sign Regulation Exemptions.** The Sign Code does not apply to:

(a) Signs of any type that are installed or posted (or required to be installed or posted) by the Federal government, the State of Colorado, Larimer County, the City, or a School District (collectively, "Governmental Entities"), on property owned or controlled by a Governmental Entity; and/or

(b) Required signs, posted in accordance with applicable law or regulations.

(4) **Sign Regulation Partial Exemptions**. The following signs are subject only to subsections (E) through (L) of this Section 5.16.1, inclusive, and shall not require a sign permit:

(a) Signs that are not visible from any of the following areas due to the configuration of the building(s) or structure(s) or the topography of the site upon which the signs are located:

(I) Residential lots;

(II) Adjoining property that is not under common ownership;

(III) Public rights-of-way; or

(IV) Property that is located at a higher elevation than the property upon which the sign is displayed.

(b) Signs that are not legible from adjoining property or rights-of-way due to the configuration of the building(s) or structure(s) or the topography of the site upon which the signs are located or the orientation or setback or typeface of the sign, provided that:

(I) One (1) such sign may have a sign area that is not more than thirty five (35) square feet, and if a sign area allowance applies to the site, fifty (50) percent of the sign area of the sign is counted towards the sign area allowance;

(II) Other such signs may have a sign area that is not more than eight (8) square feet, and are not counted towards any applicable sign area allowance.

(c) Horizontal projected light signs that are projected onto private property, provided that they are not projected onto required signs.

(5) **Sign Permit Exceptions.** The following signs may be displayed, constructed, installed, erected, or altered without a sign permit, but are not exempt from other applicable provisions of Section 5.16.2 or Section 5.16.3:

(a) One (1) optional residential sign per street-facing building elevation of a residential building not exceeding four (4) square feet in area;

(b) Flags that are hung from not more than three (3) rigid, straight, building-mounted or ground-mounted flagpoles per one hundred (100) feet of property frontage or fraction thereof, provided that:

(I) No more than three (3) flags are flown from any one (1) flagpole;

(II) No flag obstructs pedestrian, bicycle, or vehicular traffic, or a required sight triangle; and

(III) No flag exceeds thirty-two (32) square feet in area;

(c) Small signs, as follows:

(I) Signs that are affixed to a building or structure, that do not exceed two (2) square feet in sign area, provided that only one (1) such sign is present on each elevation that is visible from public rights-of-way or adjoining property; and

(II) Signs that are less than one (1) square foot in area that are affixed to machines, equipment, fences, gates, walls, gasoline pumps, public telephones, or utility cabinets;

(d) Temporary seasonal decorations;

(e) Temporary signs (except feather flags and attached or detached temporary banners and pennants, all of which require a sign permit); and

(f) Window signs that are less than six (6) square feet in area, provided that:

(I) The total area covered by window signs:

(i) Does not exceed twenty-five (25) percent of the area of the architecturally distinct window in which they are located; and

(ii) Does not exceed twenty-five (25) percent of the sign allowance described in Section 5.16.2(A); and

(II) The window signs are not illuminated.

(E) **Relationship to Other Regulations.**

(1) In addition to the regulations set out in the Sign Code, signs may also be subject to applicable State laws and regulations (e.g., State of Colorado, Department of Highways, "Rules and Regulations Pertaining to Outdoor Advertising," effective January 1, 1984, as may be amended from time to time), Federal laws and regulations, and applicable adopted building and electrical codes. Exceptions to the sign permit requirements do not constitute exemptions to other applicable codes or permit requirements.

(2) Where any provision of the Sign Code covers the same subject matter as other regulations of the City, the more specific regulation shall control the more general one, unless the City determines that the more restrictive regulation is clearly unenforceable as a matter of law.

(3) Where any provision of the Sign Code covers the same subject matter as other regulations of the State of Colorado or the United States, the applicant is advised that nothing in this Chapter shall be construed as a defense to a violation of applicable state or federal law except as may be provided in the state or federal law.

(4) All signs within the Old Town Historic District within the Downtown District must comply with the Old Town Historic District Design Standards except that the Old Town Historic District Design Standards shall not be interpreted to limit the content of the sign.

(5) The Downtown District shall be defined by the boundary exhibited in the 2017 Fort Collins Downtown Plan.

(F) **Measurements.**

(1) **Property Frontage.** Property frontage is measured as the length of each property boundary that abuts a public street right-of-way.

(2) **Sign Area.**

(a) *Generally.* In general, sign area is the area within a continuous polygon with up to eight (8) straight sides that completely encloses the limits of text and graphics of a sign, together with any frame or other material or color forming an integral part of the display or used to differentiate the sign's contents from the background against which they are placed.

(b) *Additions.* The area of all freestanding and ground signs shall include the area of the sign face(s) as calculated in subsection (F)(2)(a), together with any portion of the sign structure which exceeds one and one-half (1½) times the area of the sign face(s).

(c) *Exclusions.* The sign area does not include the structure upon which the sign is placed (unless the structure is an integral part of the display or used to differentiate it), but does include any open space contained within the outer limits of the display face, or between any component, panel, strip, or figure of any kind composing the display face, whether this open space is enclosed by a frame or border or not.

Figure (F)(2)(c) Sign Area Measurement

(d) *Multiple Sign Faces.* Freestanding temporary signs may have multiple faces. The area of such signs is measured using the vertical cross-section that represents the sign's maximum projection upon a vertical plane (e.g., for a sign with two (2) opposite faces on the same plane, the total cumulative area of both faces is used for area calculation).

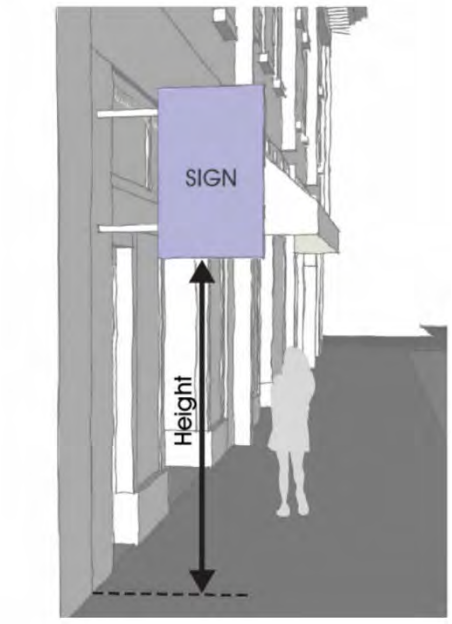
Figure (F)(2)(d) Multiple Sign Faces

(e) *Three-Dimensional Sign Faces.* The area of signs that do not have a flat sign face is measured using the vertical cross-section that represents the sign's maximum projection upon a vertical plane.

Figure (F)(2)(e)
Three-Dimensional Sign Faces

(3) **Sign Clearance.** Sign clearance is the distance between the bottom of a sign or related structural element that is not affixed to the ground and the nearest point on the ground-level surface under it.

Figure (F)(3)
Sign Clearance



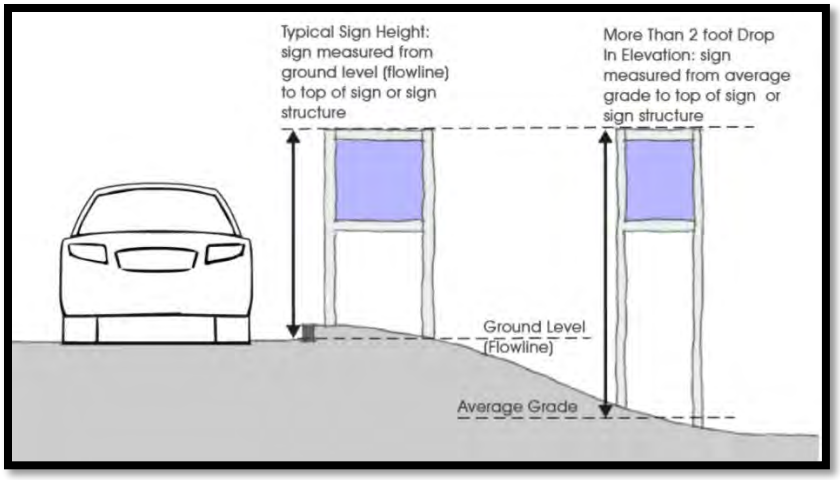
(4) **Sign Height.** Sign height is measured as:

(a) For ground-mounted signs:

(I) The distance between ground level at the base of the sign and the top of the sign or sign structure, whichever is higher; or

(II) If the average grade under the base of the sign is more than two (2) feet lower than the average grade of the nearest adjoining street, then the height of the detached sign shall be measured from the elevation of the flowline of the street to the top of the sign or sign structure.

Figure (F)(4)(a)
Sign Height (Ground-Mounted Signs)

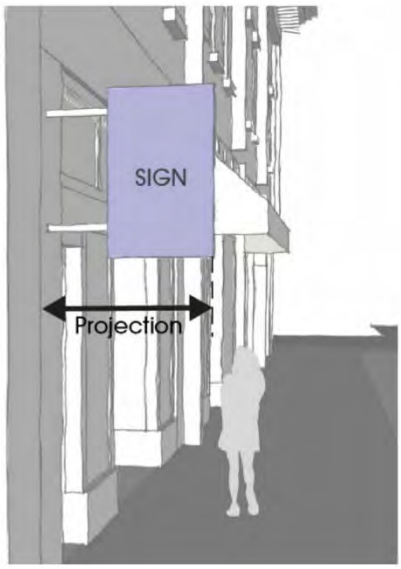


(b) For building-mounted signs, the greatest distance between the lowest part of the sign or sign structure and the highest part of the sign or sign structure.

Figure (F)(4)(b)
Sign Height (Building-Mounted Signs)

(5) **Projection.** Projection is the horizontal distance between a building wall or fascia to which a sign is mounted and the part of the sign or sign structure that is most distant from the wall or fascia, Measured perpendicular to the vertical plane of the wall or fascia.

Figure (F)(5) Projection



(6) **Setbacks.** Sign setbacks are measured perpendicularly from the property line that defines the required setback to the nearest point on the sign or sign structure.

(G) **Prohibited signs and sign elements.**

(1) **Generally.** The prohibitions in this subsection (G) apply to temporary and permanent signs in all areas of the City.

(2) **Prohibited Signs**. The following signs are not allowed, whether temporary or permanent:

(a) Temporary signs, except as specifically permitted in Section 5.16.3, Temporary Signs;

(b) Portable signs, except as permitted in the Code of the City of Fort Collins Chapter 24, Article IV;

(c) Wind-driven signs except flags, feather flags, banners, and pennants in compliance with Section 5.16.3;

(d) Inflatable signs, and signs that are designed to appear as inflatable signs (e.g., plastic balloons);

(e) Revolving or rotating signs;

(f) Permanent off-premises signs;

(g) Billboards; and

(h) Abandoned signs.

(3) **Prohibited Design Elements**. The following elements shall not be incorporated as an element of any sign or sign structure, whether temporary or permanent:

(a) Animated or moving parts, including any moving, swinging, rotating, or spinning parts or flashing, blinking, scintillating, chasing, fluctuating, or otherwise animated light; except as expressly allowed in this Sign Code;

(b) Cardboard, card stock, or paper, except when laminated or used as a window sign located on the interior side of the window;

(c) Motor vehicles, unless:

(I) The vehicles are operational, and either:

(i) Automobile dealer inventory; or

(ii) Regularly used as motor vehicles, with current registration and tags.

(II) The display of signage on the motor vehicle would not interfere with the immediate operation of the motor vehicle (e.g., signs that are held in place by an open hood or trunk are not allowed; signs that cover windows are not allowed; and signs that would fall off of the vehicle if the vehicle were in motion are not allowed); and

(III) The motor vehicle is legally parked in a vehicle use area depicted on an approved site plan.

(d) Semi-trailers, shipping containers, or portable storage units, unless:

(I) The trailers, containers, or portable storage units are:

(i) Structurally sound and capable of being transported;

(ii) Used for their primary purpose (e.g., storage, pick-up, or delivery); and

(iii) If subject to registration, have current registration and tags; and

(II) The display of signage is incidental to the primary purpose; and

(i) The semi-trailer, shipping container, or portable storage unit is parked or placed in a designated loading area or on a construction site in an area that is designated on an approved construction staging plan.

Exception: This standard does not apply to shipping containers that are used as building cores.

(e) Stacked products (e.g., tires, soft drink cases, bagged soil or mulch) that are placed in unapproved outdoor storage locations;

(f) Materials with a high degree of specular reflectivity, such as polished metal, installed in a manner that creates substantial glare from headlights, streetlights, or sunlight.

Exception: This standard does not prohibit retroreflective materials that comply with the standards set forth in the Manual on Uniform Traffic Control Devices.

(g) Rooftop signs and all other types of signs that project above the roof deck, except that signs are allowed on parapet walls if the parapet wall was constructed as a part of the building and the parapet wall includes a sign band within which the sign is installed.

Exception: Secondary Roof signs as provided in subsection 5.16.2(F).

(4) **Prohibited Obstructions**. In no event shall a sign, whether temporary or permanent, obstruct the use of:

(a) Building ingress or egress, including doors, egress windows, and fire escapes;

(b) Operable windows (with regard to movement, not transparency); or

(c) Equipment, structures, or architectural elements that are related to public safety, building operations, or utility service (e.g., standpipes, downspouts, fire hydrants, electrical outlets, lighting, vents, valves, and meters).

(5) **Prohibited Mounts**. No sign, whether temporary or permanent, shall be posted, installed, mounted on, fastened, or affixed to any of the following:

(a) Any tree or shrub;

(b) Any utility pole or light pole, unless:

(I) The sign is a banner or flag that is not more than ten (10) square feet in area;

(II) The owner of the utility pole or light pole consents to its use for the display of the banner or flag;

(III) The banner or flag is mounted on brackets or a pole that extends not more than thirty (30) inches from the utility pole or light pole;

(IV) The banner or flag is either situated above an area that is not used by pedestrians or vehicles, or the bottom of the banner or flag has a sign clearance of at least eight (8) feet; and

(V) Any applicable City encroachment or banner permits are obtained.

(c) Utility cabinets.

(H) **Prohibited Locations.** In addition to applicable setback requirements and other restrictions of this Sign Code, no sign shall be located in any of the following locations:

(1) In or over public rights-of-way (which, in addition to streets, may include other sidewalks, parkways, trails, multi-use pathways, retaining walls, utility poles, traffic calming devices, medians, and center islands that are within public rights-of-way), except:

(a) Signs painted on or affixed to transit shelters and bus benches as authorized by the provider of the shelter or bench, but not extending beyond the physical structure of the shelter or bench;

(b) Signs that are the subject of a revocable license agreement with the City, installed and maintained in accordance with the terms of that agreement;

(c) Portable signs permitted pursuant to the Code of the City of Fort Collins, Chapter 24, Article IV; or

(d) Signs posted by the City or jurisdiction that owns or maintains the right-of-way; or

(2) Within any sight distance triangle, as provided in subsection (I), below.

(I) **Illumination.** The illumination of signs, where permitted, shall comply with the standards of this subsection (I) and Division 5.12, Exterior Site Lighting.

(1) **Generally**.

(a) In general, attached illuminated signs shall be turned off by 11:00 PM if they located within three hundred (300) feet of property that is zoned, used, or approved for residential use. However, signs may be illuminated in Downtown, Commercial/Industrial, and Mixed-Use sign districts after 11:00 PM if:

(I) The operating hours of the use to which the sign relates extend past 10:30 PM, in which case the sign shall be turned off not more than thirty (30) minutes after the end of operating hours each day; and the sign is dimmed by at least thirty (30) percent between midnight and 6:00 AM;

(II) The lighting that illuminates the sign is used primarily for the protection of the premises or for safety purposes; or

(III) The sign is separated from residential uses by an arterial street.

(b) Illuminated signs shall avoid the concentration of illumination. The intensity of the light source shall not produce glare, the effect of which constitutes a traffic hazard or nuisance to adjoining property.

(c) No sign or associated luminaire shall create light spillover of more than one (1) lux at any property line that is zoned or used for single-unit detached, duplex, or townhome purposes.

(d) Every electric sign shall have affixed thereon an approved Underwriters' Laboratories label, and all wiring connected to such sign shall comply with all provisions of the National Electrical Code, as adopted by the City.

(e) Electrical service to freestanding signs shall be installed underground. Electrical service to attached signs shall be provided from the building and concealed from view.

(2) **Internal Illumination.**

(a) No internal sign lighting shall include any exposed light source, except that neon or comparable tube lighting is permitted in locations where internal sign illumination is allowed.

(b) During the time between sunset and the time an illuminated sign must be turned off pursuant to subsection (I)(1)(a), above, internally lit signs (including electronic message centers) shall not exceed six hundred (600) nits of luminance.

(3) **Indirect Lighting.**

(a) All signs that use indirect lighting shall have their lighting directed in such a manner as to illuminate only the face of the sign, and not to create glare or sky glow.

(b) When indirect lighting is used to illuminate detached signs, the light source must be concealed from view from on and off-site vehicular and pedestrian use areas and from within existing buildings.

(c) Indirect lighting of signs shall not exceed the following illuminance:

(I) Commercial/Industrial and Mixed-Use Sign Districts: six hundred (600) lux.

(II) Downtown Sign District: five hundred (500) lux.

(III) All Other Sign Districts: four hundred (400) lux.

(4) *Off-Premises Signage.* No new illumination may be added to existing off-premises signage.

(J) **Message Centers.**

(1) **Manual Copy Message Centers.**

(a) **Design.**

(I) Manual changeable copy message centers shall appear integrated into the sign face of a permanent sign that also includes text and graphics that are not part of the manual changeable copy message center.

(II) No manual changeable copy message center may be constructed using face or screen materials such as expanded metal or other types of mesh; any type of corrugated plastic such as Filon, V3, or Styrene; or other types of materials that are commonly used for "portable" or "homemade" signs.

(b) **Dimensions.** No manual changeable copy message center shall occupy more than eighty (80) percent of the sign area of a sign.

(c) **Operation and Maintenance.**

(I) No changeable copy sign or portion of a sign may have changeable copy that is nailed, pinned, glued, taped, or comparably attached.

(II) If any part of the changeable copy portion of a sign or the track type system or other method of attachment is absent from the sign, or deteriorates so that it is no longer consistent with the style or materials used in the permanent portion of the sign, or is altered in such a way that it no longer conforms to the approved plans and specifications, the sign shall be removed or repaired within fourteen (14) days.

(2) **Electronic Message Centers**. Digital electronic message centers ("EMCs") may be incorporated into signs as provided in this subsection.

(a) **Number, Design, Dimensions.**

(I) Not more than one (1) sign with an EMC component is allowed per street frontage.

(II) EMCs shall appear to be incorporated into the face of a permanent sign that includes text or graphics that are not part of the EMC.

(III) EMCs shall not have a pixel pitch that is greater than twelve (12) mm.

(IV) EMCs shall be integrated harmoniously into the design of the sign face and structure, shall not be the predominant element of the sign, and if located at the top of a sign, the sign must include a substantial cap feature above the EMC, which consists of the same material, form, color, and texture as is found on the sign face or structure.

(V) Not more than fifty (50) percent of the sign area of a permitted sign may be occupied by EMCs.

(b) **Spacing, Prohibitions.**

(I) Signs with EMC components shall be separated from each other and from property used or if the property is vacant but zoned for residential purposes (except multi-unit buildings with more than four [4] units) by a distance of not less than one hundred (100) feet, measured in a straight line.

(II) EMCs are not allowed on a freestanding pole sign.

(III) In the Downtown (D) District, wall signs with electronic message centers are not permitted on properties located within the boundaries of the Portable Sign Placement Area Map, See Section 24-150, et seq., Fort Collins City Code.

(c) **Operations.**

(I) The message displayed on an EMC shall not change more frequently than once per sixty (60) seconds. If a single sign includes multiple EMCs, they shall be considered a single EMC for the purposes of this standard.

(II) EMCs shall contain static messages only, and animated, dissolve, or fade transitions are not allowed.

(III) EMCs shall be controlled by dimming software and sensors to adjust brightness for nighttime viewing and variations in ambient light. The intensity of the light source shall not produce glare, the effect of which constitutes a traffic hazard or is otherwise detrimental to the public health, safety or welfare.

(d) **Certification**. Prior to acceptance of the installation by the City, the permit holder shall schedule an inspection with a Zoning Inspector to verify compliance. The permit holder and the business owner, business manager or property manager shall be in attendance during the inspection.

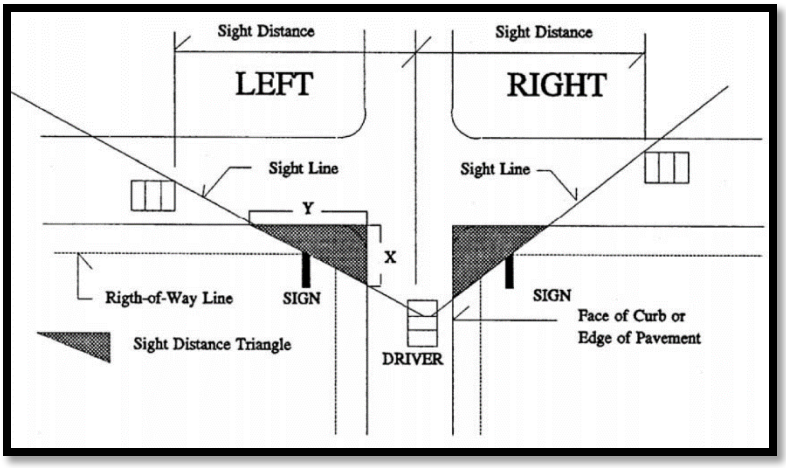
(K) **Sight Distance Triangles.** Signs that obstruct view within an area between forty-two (42) inches and seventy-two (72) inches above the flowline of the adjacent street shall be set back from the right-of-way line a distance as established in Table (K), Sight Distance Triangles.

Table (K)
Sight Distance Triangles[1]

Type of street	Y distances (ft.)[2]	X distances (ft.)	Safe sight distance (ft.)
Arterial	Right: 135 Left: 270	15	500
Collector	Right: 120 Left: 220	15	400
Local	Right: 100 Left: 150	15	300

Table Notes:
[1] These distances are typical sight distance triangles to be used under normal conditions and may be modified by the Director of Engineering in order to protect the public safety and welfare in the event that exceptional site conditions necessitate such modification.
[2] See Figure (K) for illustration.

Figure (K)
Sight Distance Triangle Setbacks



(L) **Content.** Except as provided in this subsection (L), no sign shall be approved or disapproved based on the content or message it displays.

(1) **Prohibition on Certain Types of Unprotected Speech**. The following content, without reference to the viewpoint of the individual speaker, shall not be displayed on signs:

(a) Text or graphics that is harmful to minors as defined by state or federal law;

(b) Text or graphics that are obscene, fighting words, defamation, incitement to imminent lawless action, or true threats, as such words and phrases are defined by controlling law;

(c) Text or graphics that present a clear and present danger due to their potential confusion with traffic control signs; or

(d) Signs that provide false information related to public safety (e.g., signs that use the words "Stop," "Yield," "Caution," or "Danger," or comparable words, phrases, symbols, or characters that are presented in a manner as to confuse motorists or imply a safety hazard that does not exist).

(2) **Severability**. The narrow classifications of content that are prohibited from display on signs by this subsection (L) are either not protected by the United States and Colorado Constitutions, or are offered limited protection that is outweighed by the substantial and compelling governmental interests in protecting the public safety and welfare. It is the intent of the City Council that each provision of this subsection (L) be individually severable in the event that a court holds one or more of them to be inconsistent with the United States Constitution or Colorado Constitution.

(M) **Sign Districts.**

(1) **Generally.** In recognition that the City is a place of diverse physical character, and that different areas of the City have different functional characteristics, signs shall be regulated based on sign district in which they are located.

(2) **Sign Districts Created**. The following sign districts are created: Downtown, Commercial/Industrial, Multi-unit, Single-unit, and Residential Neighborhood. Sign districts shall correspond to zoning districts as provided in Table (M), Sign Districts.

Table (M) Sign Districts	
Sign District	**Corresponding Zoning Districts**
Downtown	D; RDR
Commercial/Industrial	T; CC; CCN; CCR; CG; CS; CL; HC; E; I
Mixed-Use	LMN; MMN; HMN; NC
Multi-unit	OT-B; OT-C; MH
Single-unit	RUL; UE; RF; RL; OT-A; POL; RC
Residential Neighborhood Sign District	See map on file at City Clerk's office. To the extent of any geographic overlap with other sign districts, the Residential Neighborhood Sign District supersedes the overlapped sign district.

5.16.2 PERMANENT SIGNS

(A) **Sign Area Allowance.**

(1) **Generally.** The sign area allowance limits the total amount of sign area that may be allocated to certain types of signs (listed in Tables (B) to (F)) on a site based on the location and use of the site. Sign area allowance is calculated as set out in Table (A), Sign Area Allowance.

Table (A) Sign Area Allowance					
Location/Use	**Calculation**				
	For 1st 200 lf. of bldg. frontage.	+	For each lf. of bldg. frontage in excess of 200 lf.	=	But not less than
Generally					

All Sign Districts[1]	2 sf./lf.	+	1 sf./lf.	=	1 sf./lf. of lot frontage

TABLE NOTES:

[1] Sign allowance is calculated per building frontage and may only be applied to the frontage to which the calculations apply. No more than 3 building frontages shall be used for the purposes of the sign allowance calculations.

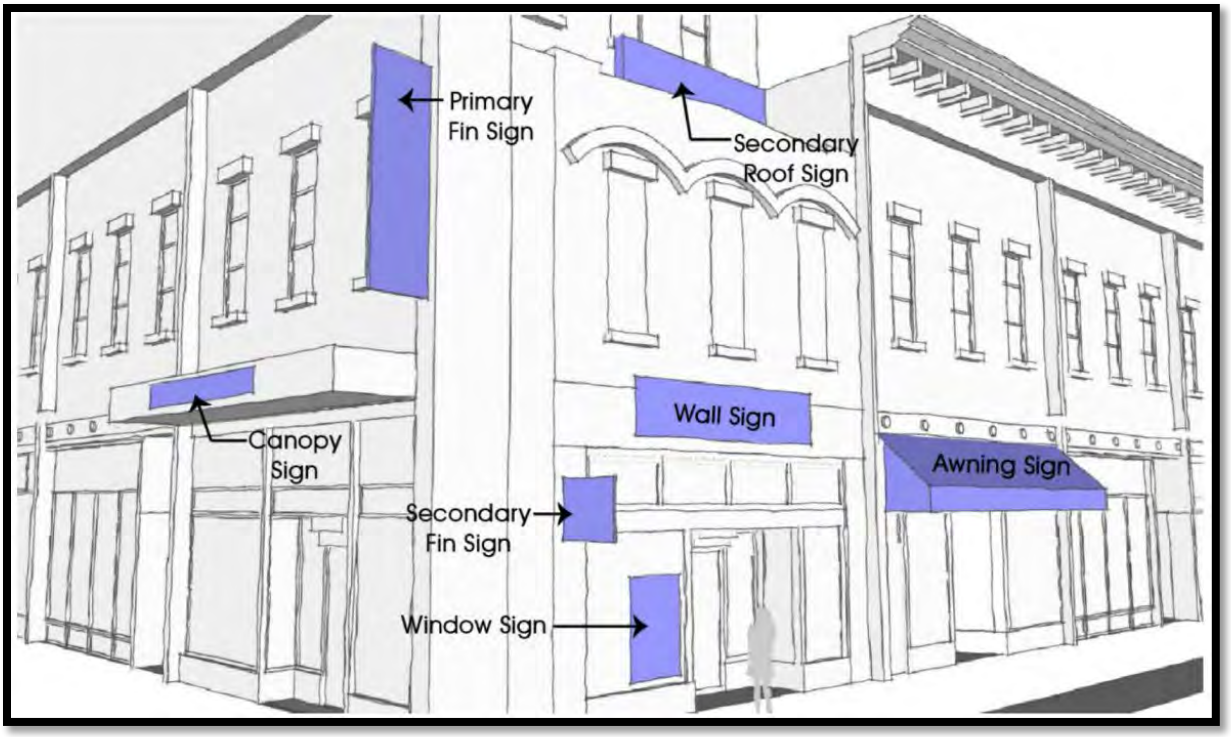
(2) **Sites without Frontage on Public Streets**. If a building does not have frontage on a dedicated public street, the owner of the building may designate the one building frontage for the purpose of calculating the sign area allowance.

(3) **Allocation of Sign Area Allowance.**

(a) If the only building frontage that fronts on a public street is a wall containing no signs, the property owner may designate another building frontage on the building on the basis of which the total sign allowance shall be calculated, provided that no more than twenty-five (25) percent of the total sign allowance permitted under this Sign Code may be placed on frontage other than the building fascia which was the basis for the sign allowance calculation.

(b) In all other cases, the sign allowance for a property may be distributed in any manner among its building and/or street frontages except that no one building, or street frontage may contain more sign area than one hundred (100) percent of the sign area allowance.

Figure (A), Sign Types



(B) **Wall Signs.** Wall signs are allowed according to the standards in Table (B), Wall Signs.

Table (B)
Wall Signs

Type of Sign Standards	Sign District					
	Outside of Residential Neighborhood Sign District[1]					
	Downtown	Commercial/ Industrial	Mixed-Use	Multi-Unit	Single-Unit	Within Residential Neighborhood Sign District[1]
Applied or Painted Wall Signs						
Max. #	Not limited.	Not limited.	1 per single-unit dwelling or duplex building that fronts on an arterial; or 1 per nonresidential use.	1 per single-unit dwelling or duplex building that fronts on an arterial; or 1 per nonresidential use.	1 per single-unit dwelling or duplex building that fronts on an arterial; or 1 per nonresidential use.	1 per single-unit dwelling or duplex building that fronts on an arterial; not limited for nonresidential uses.
Subject to Sign Area Allowance	Yes.	Yes.	Nonresidential uses only.	Nonresidential uses only.	Nonresidential uses only.	Yes.
Max. Sign Area	In addition to sign allowance, 6 sf. is allowed on rear wall if: (i) the wall includes a public entrance; (ii) site is within DDA Alley Enhancement Project area; and (iii) a projecting sign is not installed on the wall.	Limited by sign area allowance.	Single-unit or duplex building: 4 sf. Nonresidential use: 35 sf.	Single-unit or duplex building: 4 sf. Nonresidential use: 35 sf.	Single-unit or duplex building: 4 sf. Nonresidential use: 35 sf.	Limited by sign area allowance, except if tenant space does not have outside wall, in which case 30 sf.
Max. Sign Height	4.5 ft. if within 15 ft. of elevation of sidewalk below; 7 ft. if above 15 ft. of elevation of sidewalk below but any portion below fourth story; 9 ft. if entirely above fourth story.	7 ft.	7 ft.	7 ft.	7 ft.	2.5 ft. within Neighborhood Service Center or Neighborhood Commercial Uses; 2 ft. within Convenience Shopping Center use; and 1.5 ft. for all other Institutional, Business, Commercial, or other Nonresidential uses.
Max. Sign Width	N/A.	N/A.	N/A.	N/A.	N/A.	N/A.

Allowed Lighting	Indirect only.	Indirect only.	Indirect only.	Indirect only.	None.	Indirect only.
Other Standards	For flush wall signs consisting of framed banners, all banners shall be sized to fit the banner frame so that there are no visible gaps between the edges of the banner and the banner frame.	For flush wall signs consisting of framed banners, all banners shall be sized to fit the banner frame so that there are no visible gaps between the edges of the banner and the banner frame.	Not allowed if detached sign is installed.	Not allowed if detached sign is installed.	Not allowed if detached sign is installed.	Location shall harmonize with architecture of the building(s) to which sign is attached, (e.g., projection, relief, cornice, column, change of building material, window or door opening); Flush wall signs shall align with other such signs on the same building.

Figure (B)(1)
Applied or Painted Wall Signs

Table (B) Wall Signs						
Type of Sign Standards	Sign District					
	Outside of Residential Neighborhood Sign District[1]					
	Downtown	Commercial/ Industrial	Mixed-Use	Multi-Unit	Single-Unit	Within Residential Neighborhood Sign District[1]
Applied or Painted Wall Signs - Vertically Oriented						

Max. #	1 per building.	1 per building.	1 per building.	1 per building.	1 per building.	1 per single-unit dwelling or duplex building that fronts on an arterial; 1 per building for nonresidential uses.
Subject to Sign Area Allowance	Yes.	Yes.	Nonresidential uses only.	Nonresidential uses only.	Nonresidential uses only.	Yes.
Max. Sign Area	Limited by sign area allowance.	Limited by sign area allowance.	Single-unit or duplex building: 4 sf. Nonresidential use: 35 sf.	Single-unit or duplex building: 4 sf. Nonresidential use: 35 sf.	Single-unit or duplex building: 4 sf. Nonresidential use: 35 sf.	Limited by sign area allowance, except if tenant space does not have outside wall, in which case 30 sf.
Max. Sign Height	10′ if within 15′ if elevation of sidewalk below; 25 ft. if above 15′ of elevation of sidewalk below.	25 ft.	25 ft.	25 ft.	25 ft.	25 ft.
Max. Sign Width	2 ft.	2 ft.	2 ft.	2 ft.	2 ft.	2 ft.
Allowed Lighting	Indirect only.	Indirect only.	Indirect only.	Indirect only.	Indirect only.	Indirect only.

Figure (B)(2)
Applied or Painted Wall Signs - Vertically Oriented

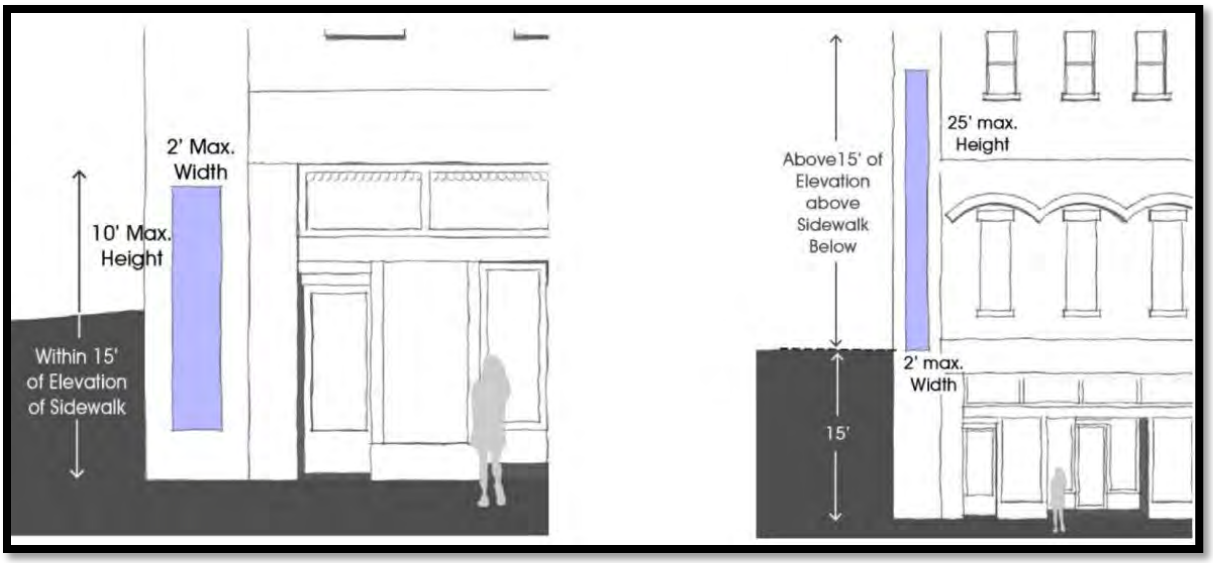


Table (B) Wall Signs						
Type of Sign Standards	Sign District					
	Outside of Residential Neighborhood Sign District[1]					
	Downtown	Commercial/ Industrial	Mixed-Use	Multi-Unit	Single-Unit	Within Residential Neighborhood Sign District[1]
Cabinet Wall Signs or Dimensional Wall Signs						
Max. #	Not limited.	Not limited.	Not limited for nonresidential or mixed-use; 1 per building per frontage for multi-unit properties.	Not limited for nonresidential or mixed-use; 1 per building per frontage for multi-unit properties.	Not limited for nonresidential or mixed-use; 1 per building per frontage for multi-unit properties.	Not limited for nonresidential or mixed-use; 1 per building per frontage for multi-unit properties.
Subject to Sign Area Allowance	Yes.	Yes.	Nonresidential uses only.	Yes.	Yes.	Yes.
Max. Sign Area	Limited by sign area allowance.	Limited by sign area allowance.	Limited by sign area allowance.	Limited by sign area allowance.	Limited by sign area allowance.	Limited by sign area allowance.
Max. Sign Height	4.5 ft. if within 15 ft. of elevation of sidewalk below; 7 ft. if above 15 ft. of elevation of sidewalk below but any portion below fourth story; 9 ft. if entirely above fourth story.	7 ft.	7 ft.	7 ft.	7 ft.	2.5 ft. within Neighborhood Service Center or Neighborhood Commercial Uses; 2 ft. within Convenience Shopping Center use; and 1.5 ft. for all other Institutional, Business, Commercial, or other Nonresidential uses.
Max. Projection	1 ft.	1 ft.	1 ft.	1 ft.	1 ft.	1 ft.
Allowed Lighting	Any.	Any.	Any.	None.	None.	Internal only.
Other Standards	Raceway must be finished to match color of wall; raceway must be not more than 50% of height of attached letters or shapes.	Raceway must be finished to match color of wall; raceway must be not more than 50% of height of attached letters or shapes.	Raceway must be finished to match color of wall; raceway must be not more than 50% of height of attached letters or shapes.	Raceway must be finished to match color of wall; raceway must be not more than 50% of height of attached letters or shapes.	Raceway must be finished to match color of wall; raceway must be not more than 50% of height of attached letters or shapes.	Raceway must be finished to match color of wall; raceway must be not more than 50% of height of attached letters or shapes.

(C) **Window Signs.** Window signs are allowed according to the standards in Table (C), Window Signs.

Table (C) Window Signs						
Type of Sign Standards	Sign District					
	Outside of Residential Neighborhood Sign District[1]					
	Downtown	Commercial/ Industrial	Mixed-Use	Multi-Unit	Single-Unit	Within Residential Neighborhood Sign District[1]
All Window Signs						
Max. #	Not limited.[1]	Not limited.[1]	Not limited.[1]	Not limited.	Not limited.	Not limited.
Subject to Sign Area Allowance	Yes, except as provided in "other standards," below.	Yes, except as provided in "other standards," below.	Nonresidential only, and except as provided in "other standards," below.	No.	No.	Yes.
Max. Sign Area[2]	Up to 50% of area of architecturally distinct window.	Up to lesser of 50% of area of architecturally distinct window or 80 sf.	Up to lesser of 50% of area of architecturally distinct window or 80 sf.	Nonresidential: Up to lesser of 50% of area of architecturally distinct window or 80 sf.; Residential: 6 sf.	Nonresidential: Up to lesser of 50% of area of architecturally distinct window or 80 sf.; Residential: 6 sf.	Nonresidential: Up to lesser of 25% of area of architecturally distinct window or 80 sf.; Residential: 6 sf.
Max. Sign Height	No Max.	7 ft.	7 ft.	3 ft.	3 ft.	3 ft.
Allowed Lighting	Internal.	Internal.	Internal.	None.	None.	Internal.
Other Standards	Window signs that are not exempt from sign permits are counted towards sign area allowance. See subsection (A), above, and Section 5.16.1(D)(5)(f).	Window signs that are not exempt from sign permits are counted towards sign area allowance. See subsection (A), above, and Section 5.16.1(D)(5)(f).	Window signs that are not exempt from sign permits are counted towards sign area allowance. See subsection (A), above, and Section 5.16.1(D)(5)(f).	Not allowed above the first story of nonresidential buildings.	Not allowed above the first story of nonresidential buildings.	Not allowed above the first story of nonresidential buildings.

(D) **Projecting Signs.** Projecting signs include awning signs, marquee signs, under-canopy signs, and fin signs. Projecting signs are allowed according to the standards in Table (D), Projecting Signs. Projecting signs shall not extend into the public right-of-way, except that the City may grant a revocable license to allow projecting signs to encroach into the right-of-way.

Table (D) Projecting Signs						
Type of Sign Standards	Sign District					
	Outside of Residential Neighborhood Sign District[1]					
	Downtown	Commercial/ Industrial	Mixed-Use	Multi-Unit	Single-Unit	Within Residential Neighborhood Sign District[1]
Awning Signs						

Max. #	1 per awning.	1 per awning.	1 per awning.	1 per awning; limited to nonresidential uses.	1 per awning; limited to nonresidential uses.	1 per awning; limited to nonresidential uses.
Subject to Sign Area Allowance	Yes.	Yes.	Nonresidential uses only.	Nonresidential uses only.	Nonresidential uses only.	Yes.
Max. Sign Area	Lesser of 35 sf. or 25% of total area of the awning.	Lesser of 35 sf. or 25% of total area of the awning.	Lesser of 35 sf. or 25% of total area of the awning.	Lesser of 35 sf. or 25% of total area of the awning.	Lesser of 10 sf. or 10% of total area of the awning.	Lesser of 35 sf. or 25% of total area of the awning.
Max. Projection (may project into right-of-way with revocable license)	7 ft.	7 ft.	7 ft.	7 ft.	7 ft.	7 ft.
Min. Sign Clearance	8 ft. to awning; 7 ft. to valance.	8 ft. to awning; 7 ft. to valance.	8 ft. to awning; 7 ft. to valance.	8 ft. to awning; 7 ft. to valance.	8 ft. to awning; 7 ft. to valance.	8 ft. to awning; 7 ft. to valance.
Allowed Lighting	Indirect; or backlighting of letters and graphics is allowed if background is completely opaque.	Indirect; or backlighting of letters and graphics is allowed if background is completely opaque.	Indirect; or backlighting of letters and graphics is allowed if background is completely opaque.	Indirect; or backlighting of letters and graphics is allowed if background is completely opaque.	For nonresidential uses only; Indirect; or backlighting of letters and graphics is allowed if background is completely opaque.	Indirect; or backlighting of letters and graphics is allowed if background is completely opaque.
Other Standards	Not allowed above first story; awning must be installed over window or building entrance Awning sign shall not project above top of awning or beyond face of awning.	Not allowed above first story; awning must be installed over window or building entrance Awning sign shall not project above top of awning or beyond face of awning.	Not allowed above first story; awning must be installed over window or building entrance Awning sign shall not project above top of awning or beyond face of awning.	Not allowed above first story; awning must be installed over window or building entrance Awning sign shall not project above top of awning or beyond face of awning.	Not allowed above first story; awning must be installed over window or building entrance Awning sign shall not project above top of awning or beyond face of awning.	Not allowed above first story; awning must be installed over window or building entrance Awning sign shall not project above top of awning or beyond face of awning.
Under-Canopy Signs						
Max. #	1 per building entrance for canopies that are attached to buildings; 1 per elevation for detached canopies.	1 per building entrance for canopies that are attached to buildings; 1 per elevation for detached canopies.	1 per building entrance for canopies that are attached to buildings; 1 per elevation for detached canopies.	1 per building entrance for canopies that are attached to buildings; 1 per elevation for detached canopies.	1 per building entrance for canopies that are attached to buildings; 1 per elevation for detached canopies.	Under canopies that cover vehicular use areas: 1 per street frontage; all others not limited.

Subject to Sign Area Allowance	Yes.	Yes.	Yes.	Yes.	Yes.	Yes.
Max. Sign Area (per face)	Not covering vehicular use area: 4 sf.; Covering vehicular use area: 12 sf.	Not covering vehicular use area: 4 sf.; Covering vehicular use area: 12 sf.	Not covering vehicular use area: 4 sf.; Covering vehicular use area: 12 sf.	Not covering vehicular use area: 4 sf.; Covering vehicular use area: 12 sf.	Not covering vehicular use area: 4 sf.; Covering vehicular use area: 12 sf.	Not covering vehicular use area: 4 sf.; Covering vehicular use area: 12 sf.
Min. Sign Clearance	8 ft.	8 ft.	8 ft.	8 ft.	8 ft.	8 ft.
Allowed Lighting	Any.	Any.	Any.	Indirect only.	Indirect only.	Indirect only.
Other Standards	Under-canopy sign shall not project above top of canopy to which it is mounted; painted or applied wall sign standards apply if parallel to building facade; secondary fin sign standards apply if perpendicular to building facade; not allowed if secondary fin sign is present at same entrance.	Under-canopy sign shall not project above top of canopy to which it is mounted; painted or applied wall sign standards apply if parallel to building facade; secondary fin sign standards apply if perpendicular to building facade; not allowed if secondary fin sign is present at same entrance.	Under-canopy sign shall not project above top of canopy to which it is mounted; painted or applied wall sign standards apply if parallel to building facade; secondary fin sign standards apply if perpendicular to building facade; not allowed if secondary fin sign is present at same entrance.	Not allowed if secondary fin sign is present at same entrance.	Not allowed if secondary fin sign is present at same entrance.	Not allowed on a canopy that covers a vehicular use area if a canopy sign is present; not allowed if secondary fin sign is present at same entrance.
Fin Signs (Primary)						
Max. #	1 per street frontage per nonresidential, mixed-use, or multifamily building.	1 per street frontage per nonresidential, mixed-use, or multifamily building.	1 per street frontage per nonresidential, mixed-use, or multifamily building.	1 per street frontage per nonresidential, mixed-use, or multifamily building.	1 per street frontage per nonresidential, mixed-use, or multifamily building.	1 per street frontage per nonresidential, mixed-use, or multifamily building.
Subject to Sign Area Allowance	Yes.	Yes.	Yes, but only for nonresidential, mixed-use, or multifamily buildings.	Yes, but only for nonresidential, mixed-use, or multifamily buildings.	Yes, but only for nonresidential, mixed-use, or multifamily buildings.	Yes.
Max. Sign Area	12 sf. if within 15 ft. of elevation of sidewalk below; 25 sf. if between 15 ft. and 45 ft. of elevation above sidewalk below; 45 sf. if entirely above 45 ft. of	15 sf.	15 sf.	15 sf.	15 sf.	7 sf.

	elevation above sidewalk below.					
Max. Sign Height	7 ft. if within 15 ft. of elevation of sidewalk below; 10 ft. if 15 ft. to 45 ft. of elevation above sidewalk below; 18 ft. if entirely above 45 ft. of elevation above sidewalk below.	7 ft.	7 ft.	7 ft.	7 ft.	4 ft.
Max. Projection (may project into right-of-way only by revocable license)	Entirely or partially below third story: 3 ft.; entirely above third story: 6 ft.; Not more than 4 ft. within right-of-way.	6 ft.; not more than 4 ft. within right-of-way.	6 ft.; not more than 4 ft. within right-of-way.	6 ft.; not more than 4 ft. within right-of-way.	6 ft.; not more than 4 ft. within right-of-way.	4 ft.; not more than 4 ft. within right-of-way.
Min. Sign Clearance	8 ft.	8 ft.	8 ft.	8 ft.	8 ft.	8 ft.
Allowed Lighting	Any.	Any.	Any.	Any.	Any.	Internal only.
Other Standards	City may authorize up to 48 in. encroachment into right-of-way by revocable license if total sign area for fin signs is lesser of 1 sf. per lf. building frontage or 12 sf.	City may authorize up to 48 in. encroachment into right-of-way by revocable license if total sign area for fin signs is lesser of 1 sf. per lf. building frontage or 12 sf.	City may authorize up to 48 in. encroachment into right-of-way by revocable license if total sign area for fin signs is lesser of 1 sf. per lf. building frontage or 12 sf.	City may authorize up to 48 in. encroachment into right-of-way by revocable license if total sign area for fin signs is lesser of 1 sf. per lf. building frontage or 12 sf.	City may authorize up to 48 in. encroachment into right-of-way by revocable license if total sign area for fin signs is lesser of 1 sf. per lf. building frontage or 12 sf.	

Figure (D)
Fin Signs (Primary)

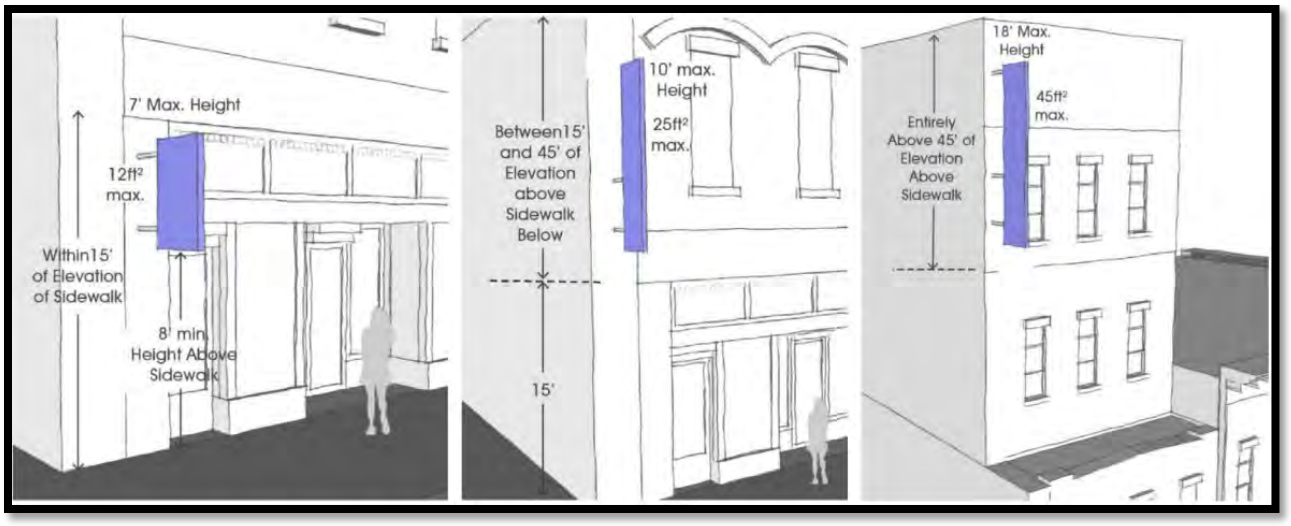


Table (D)
Projecting Signs

Type of Sign Standards	Sign District					
	Outside of Residential Neighborhood Sign District[1]					
	Downtown	Commercial/ Industrial	Mixed-Use	Multi-Unit	Single-Unit	Within Residential Neighborhood Sign District[1]
Fin Signs (Secondary)						
Max. #	1 per public building entry.	1 per public building entry.	1 per public building entry.	1 per public building entry.	1 per public building entry.	1 per public building entry.
Subject to Sign Area Allowance	Yes.	Yes.	Yes, but only for nonresidential uses.	No.	No.	Yes.
Max. Sign Area	4 sf.	4 sf.	4 sf.	4 sf.	4 sf.	4 sf.
Max. Projection	4 ft.	4 ft.	4 ft.	4 ft.	4 ft.	1 ft.
Min. Sign Clearance	By building code.	By building code.	By building code.	By building code.	By building code.	By building code.
Allowed Lighting	Indirect only.	Any.	Any.	Not allowed.	Not allowed.	Internal only.
Other Standards	Must be located above entrance, within 3 ft. of top of door; not allowed if under-canopy sign is present at	Must be located above entrance, within 3 ft. of top of door; not allowed if under-canopy sign is present at same entrance.	Must be located above entrance, within 3 ft. of top of door; not allowed if under-canopy sign is present at same entrance.	Must be located above entrance, within 3 ft. of top of door; not allowed if under-canopy sign is present at same entrance.	Must be located above entrance, within 3 ft. of top of door; not allowed if under-canopy sign is present at	Must be located above entrance, within 3 ft. of top of door; not allowed if under-canopy sign is present at same entrance.

	same entrance.				same entrance.	

(E) **Canopy Signs.** Canopy signs are allowed according to the standards in Table (E), Canopy Signs.

Table (E) Canopy Signs						
Type of Sign Standards	**Sign District**					
	Outside of Residential Neighborhood Sign District[1]					
	Downtown	**Commercial/ Industrial**	**Mixed-Use**	**Multi-**Unit	**Single-Unit**	**Within Residential Neighborhood Sign District[1]**
All Canopy Signs						
Max. #	1 per canopy elevation, for nonresidential, multi-unit, or mixed-use property.	1 per canopy elevation, for nonresidential, multi-unit, or mixed-use property.	1 per canopy elevation, for nonresidential, multi-unit, or mixed-use property.	1 per canopy elevation, for nonresidential, multi-unit, or mixed-use property.	1 per canopy elevation, for nonresidential, multi-unit, or mixed-use property.	1 per street frontage, on canopy that covers vehicular use area of nonresidential. multi-unit, or mixed-use property.
Subject to Sign Area Allowance	Yes.	Yes.	Yes.	Yes.	Yes.	Yes.
Max. Sign Area (per sign)	20 percent of canopy fascia on elevation to which sign is mounted.	30 percent of canopy fascia on elevation to which sign is mounted.	30 percent of canopy fascia on elevation to which sign is mounted.	15 percent of canopy fascia on elevation to which sign is mounted.	10 percent of canopy fascia on elevation to which sign is mounted.	12 sf. on canopy that covers vehicular use area.
Allowed Lighting	Internal only.	Internal only.	Internal only.	Internal only.	Internal only.	Internal only.
Min. Sign Clearance	By building code.	By building code.	By building code.	By building code.	By building code.	By building code.
Other Standards	Canopy signs shall not project above the top of the canopy to which they are mounted.	Canopy signs shall not project above the top of the canopy to which they are mounted.	Canopy signs shall not project above the top of the canopy to which they are mounted.	Canopy signs shall not project above the top of the canopy to which they are mounted.	Canopy signs shall not project above the top of the canopy to which they are mounted.	Not allowed on a canopy that covers a vehicular use area if an under-canopy sign is present.

(F) **Secondary Roof Signs.** Secondary roof signs are allowed according to the standards in Table (F), Secondary Roof Signs.

Table (F) Secondary Roof Signs						
Type of Sign Standards	**Sign District**					
	Outside of Residential Neighborhood Sign District[1]					
	Downtown	**Commercial/ Industrial**	**Mixed-Use**	**Multi-Unit**	**Single-Unit**	**Within Residential Neighborhood Sign District[1]**

Max. #	1 per building, for nonresidential or mixed-use property.	1 per building, for nonresidential or mixed-use property.	1 per building, for nonresidential or mixed-use property.	1 per building, for nonresidential or mixed-use property.	1 per building, for nonresidential or mixed-use property.	1 per building, for nonresidential or mixed-use property.
Subject to Sign Area Allowance	Yes.	Yes.	Yes.	Yes.	Yes.	Yes.
Max. Sign Area (per sign)	Limited by sign area allowance.	Limited by sign area allowance.	Limited by sign area allowance.	Limited by sign area allowance.	Limited by sign area allowance.	Limited by sign area allowance.
Max. Sign Height	1st or 2nd story secondary roof: 3 ft.	1st or 2nd story secondary roof: 3 ft.	1st or 2nd story secondary roof: 3 ft.	1st or 2nd story secondary roof: 3 ft.	1st or 2nd story secondary roof	1st or 2nd story secondary roof: 3 ft.
Allowed Lighting	Any.	Any.	Any.	Any.	Any.	Any.
Other Standards	Distance between secondary roof and bottom of sign face shall not exceed 6 in.; not allowed above 2nd story.	Distance between secondary roof and bottom of sign face shall not exceed 6 in.; not allowed above 2nd story.	Distance between secondary roof and bottom of sign face shall not exceed 6 in.; not allowed above 2nd story.	Distance between secondary roof and bottom of sign face shall not exceed 6 in.; not allowed above 2nd story.	Distance between secondary roof and bottom of sign face shall not exceed 6 in.; not allowed above 2nd story.	Distance between secondary roof and bottom of sign face shall not exceed 6 in.; not allowed above 2nd story.

Figure (F)
Secondary Roof Sign

(G) **Freestanding Permanent Signs.** Detached permanent signs are allowed according to the standards in Table (G)(1), Freestanding Permanent Signs.

Table (G)(1) Freestanding Permanent Signs	
	Sign District
	Outside of Residential Neighborhood Sign District[1]

Type of Sign Standards	Downtown	Commercial/ Industrial	Mixed-Use	Multi-Unit	Single-Unit	Within Residential Neighborhood Sign District[1]
Primary Detached Signs						
Max. #	1 per frontage.[1]	1 per frontage.[1]	1 per frontage for nonresidential, mixed-use, or multi-unit property.[1]	1 per site for nonresidential, mixed-use, or multi-unit uses[1]; 1 per site for single-unit detached or duplex if the lot fronts on an arterial; 2 per public vehicular entry into residential subdivision or multifamily site (one single face sign on each side of entry).	1 per site for nonresidential, mixed-use, or multi-unit uses[1]; 1 per site for single-unit detached or duplex if the lot fronts on an arterial; 2 per public vehicular entry into residential subdivision or multifamily site (one single face sign on each side of entry).	1 per site for nonresidential, mixed-use, or multi-unit uses[1]; 2 per public vehicular entry into residential subdivision or multifamily site (one single face sign on each side of entry).
Subject to Sign Area Allowance	Yes.	Yes.	Yes, for nonresidential or multi-unit uses.	No.	No.	Yes.
Max. Sign Area	Based on setback and style, see Table (G)(2), below.	Based on setback and style, see Table (G)(2), below.	Based on setback and style, see Table (G)(2), below.	Single-unit detached or duplex building with frontage on arterial: 4 sf. All other allowed signs: 35 sf.	Single-unit detached or duplex building with frontage on arterial: 4 sf. All other allowed signs: 35 sf.	32 sf.[2]
Max. Sign Height	Based on setback and style, see Table (G)(2), below.	Based on setback and style, see Table (G)(2), below	Based on setback and style, see Table (G)(2), below.	Single-unit detached or duplex building with frontage on arterial: 5 ft. Multi-unit or Nonresidential use: 8 ft.	Single-unit detached or duplex building with frontage on arterial: 5 ft. Multi-unit or Nonresidential use: 8 ft.	Multi-unit or Nonresidential use: 5 ft.[2]
Allowed Lighting	Any.	Any.	Any.	Indirect only.	None.	Indirect only.
Setbacks and Spacing	See Table (G)(2), below; 15 ft. setback from interior lot lines; 75 ft. spacing between freestanding signs.	See Table (G)(2), below; 15 ft. setback from interior lot lines; 75 ft. spacing between freestanding signs.	See Table (G)(2), below; 15 ft. setback from interior lot lines; 75 ft. spacing between freestanding signs.	Not allowed if a wall sign is installed.	Not allowed if a wall sign is installed.	75 ft. from adjacent residential zone or existing or approved residential use.
Max. Cabinets or Modules per Sign Face	3	3	3	3	3	3

Other Standards	Location may be established by approved development plan. Structure shall match primary finish and colors of associated buildings. Pole style signs shall contain no more than thirty (30) percent (or forty [40] percent if located within the site distance triangle) of free air space between the top of the sign and the ground, vertically and between the extreme horizontal limits of the sign extended perpendicular to the ground. A base or pole cover provided to satisfy this requirement shall be integrally designed as part of the sign by use of such techniques as color, material and texture. Freestanding signs that existed prior to December 30, 2011, and that do not comply with this requirement shall be removed or brought into compliance by December 31, 2019, provided that such signs otherwise comply with Section 5.16.4, Nonconforming Signs.					Structure shall match primary finish and colors of associated buildings; must be monument style.
Secondary Detached Signs						
Max. #	1 per vehicular access point to nonresidential, mixed-use, or multifamily property.	1 per vehicular access point to nonresidential, mixed-use, or multifamily property.	1 per vehicular access point to nonresidential, mixed-use, or multifamily property.	1 per vehicular access point to nonresidential, mixed-use, or multifamily property.	1 per vehicular access point to nonresidential, mixed-use, or multifamily property.	1 per street frontage of a nonresidential, mixed-use, or multifamily uses.
Subject to Sign Area Allowance	Yes.	Yes.	Nonresidential uses only.	No.	No.	No.
Max. Sign Area	16 sf.	16 sf.	16 sf.	16 sf.	16 sf.	20 sf.
Max. Sign Height	4 ft.	4 ft.	4 ft.	4 ft.	4 ft.	5 ft.
Allowed Lighting	Any.	Any.	Any.	Indirect only.	Indirect only.	Indirect only.
Setbacks and Spacing	2 ft. from right-of-way; 10 ft. from property lines.	2 ft. from right-of-way; 10 ft. from property lines.	2 ft. from right-of-way; 10 ft. from property lines.	2 ft. from right-of-way; 10 ft. from property lines.	2 ft. from right-of-way; 10 ft. from property lines.	2 ft. from right-of-way; 10 ft. from property lines.
Max. Cabinets or Modules per Sign Face	1	1	1	1	1	1
Other Standards	Same as primary freestanding sign; however, pole style signs are not allowed.	Same as primary freestanding sign; however, pole style signs are not allowed.	Same as primary freestanding sign; however, pole style signs are not allowed.	Same as primary freestanding sign; however, pole style signs are not allowed.	Same as primary freestanding sign; however, pole style signs are not allowed.	Same as primary freestanding sign; however, pole style signs are not allowed.
Drive-Thru Lane Signs						
Max. #	1 per drive through lane	1 per drive through lane	1 per drive through lane	1 per drive through lane	1 per drive through lane	1 per drive through lane
Subject to Sign Area Allowance	No.	No.	No.	No.	No.	No.
Max. Sign Area	30 sf.[3]	30 sf.[3]	30 sf.[3]	30 sf.[3]	30 sf.[3]	30 sf.[3]
Max. Sign Height	6 ft.	6 ft.	6 ft.	6 ft.	6 ft.	6 ft.
Allowed Lighting	Any.	Any.	Any.	Any.	Any.	Any.
Setbacks and Spacing	2 ft. from the right of way; if the sign faces	2 ft. from the right of way; if the sign faces	2 ft. from the right of way; if the sign faces	2 ft. from the right of way; if the sign faces	2 ft. from the right of way; if the sign faces	2 ft. from the right of way; if the sign faces

	out to the right-of-way 10 ft.	out to the right-of-way 10 ft.	out to the right-of-way 10 ft.	out to the right-of-way 10 ft.	out to the right-of-way 10 ft.	out to the right-of-way 10 ft.
Max. Cabinets or Modules per Sign Face	1	1	1	1	1	1
Other Standards	Must be oriented to the drive-thru lane; if any part of the sign structure is visible from abutting property or right-of-way additional screening is required.[4]	Must be oriented to the drive-thru lane; if any part of the sign structure is visible from abutting property or right-of-way additional screening is required.[4]	Must be oriented to the drive-thru lane; if any part of the sign structure is visible from abutting property or right-of-way additional screening is required.[4]	Must be oriented to the drive-thru lane; if any part of the sign structure is visible from abutting property or right-of-way additional screening is required.[4]	Must be oriented to the drive-thru lane; if any part of the sign structure is visible from abutting property or right-of-way additional screening is required.[4]	Must be oriented to the drive-thru lane; if any part of the sign structure is visible from abutting property or right-of-way additional screening is required.[4]

Table Notes:

[1] Frontages include the frontage of all properties that are part of a group of properties that are planned or developed with shared pedestrian or vehicular access. Signs may not be allocated from one frontage to another.

[2] Additional sign area and sign height are allowed as follows:
(i) Convenience shopping centers: Max. sign area: 40 sf., Max. sign height 8 ft.;
(ii) Neighborhood service centers or neighborhood commercial districts: Max. sign area: 55 sf., Max. sign height: 10 ft.

[3] A Drive-Thru Lane EMC may be 100% of the sign area if the display changes no more than three times in a 24 hr. period.

[4] For a Drive-Thru Lane Sign screening may be achieved through plants or other materials compatible to the primary building.

Table (G)(2)
Setback for Primary Detached Signs Based on Sign Height and Sign Area

Distance from Street Right-of-Way Line (ft.)	Monument Style Sign Max. Height (ft.)	Max. Sign Area (per face) (sf.)	Pole Style Sign Max. Height (ft.)	Max. Sign Area (per face) (sf.)
0	7	45	10	20
5	8.5	60	10	30
10	10	75	12	40
15	12	90	12	50
20	12	90	14	60
25	12	90	16	70
30	12	90	18	80
36+	12	90	18	90

(H) **Projected Light Signs.**

(1) **Horizontal Projected Light Signs.**

(a) Horizontal projected light signs that are projected onto public sidewalks are allowed only by portable sign permit, except that with respect to such signs, the area in which the portable sign permit may be issued is expanded to include the following zoning districts: D, RDR, CCR, CG, and NC, and all pedestrian-oriented shopping streets within the CC and HC zoning districts.

(b) All horizontal projected light signs require a permit.

(c) The projected image of a horizontal projected light sign:

(I) Shall be entirely within ten (10) feet of a building entrance;

(II) Shall not exceed six (6) square feet in area;

(III) Shall be projected onto a sidewalk or landscaped area;

(IV) Shall not project onto safety or traffic signage (e.g., crosswalk markings, bicycle dismount signs, etc.); and

(V) Shall comply with all applicable lighting standards.

(d) The projector shall be concealed from view and either:

(I) Located entirely on private property; or

(II) Hung under an awning, canopy, eave, or arcade that is allowed to encroach over the right-of-way by way of a revocable license.

(e) A Horizontal projected light sign shall not be displayed on the public sidewalk at the same time as a sidewalk sign.

(2) **Vertical Projected Light Signs**. Vertical projected light signs are not allowed as permanent signs. See Section 5.16.3 for the temporary use of vertical projected light signs.

(3) **Operation**. All projected light signs shall contain static messages only. Animated, dissolve, or fade transitions are not allowed.

(l) **Restoration or Reconstruction of Historic Signs.** The provisions of this subsection apply to buildings in the Downtown sign district that are fifty (50) years or older, whether they are formally recognized as historic at the local, state, or national level, or whether they are located within a designated historic district.

(1) A sign on a designated property, or a property determined to be eligible for designation on the National Register of Historic Places, the State Register of Historic Properties, or as a Fort Collins Landmark, that may not otherwise comply with the strict provisions of this Sign Code and has been approved by the Historic Preservation Commission through a review of Chapter 14 of the City Code shall be permitted and shall not be counted in sign area allowance for the property.

(2) A sign on a property which is not designated or individually eligible for designation on the National Register of Historic Places, the State Register of Historic Properties, or as a Fort Collins Landmark, that may not otherwise comply with the strict provisions of this Sign Code and is inspired by a historic sign on the property and does not require a review through Chapter 14 of the City Code by the Historic Preservation Commission shall be reviewed by the Director. In approving such signs, the Director shall not condition approval on changes in content and must find the following:

(a) The sign is not detrimental to the public good;

(b) The size and location of the sign are comparable to a historic sign of the property and the deviation from the provisions of this Sign Code are nominal and inconsequential with the context of the neighborhood;

(c) The sign is comparable to the quality, character and design of a historic sign of the property; and

(d) The sign shall not degrade the historic character of the neighborhood or convey a false sense of history.

The Director may deny any sign application that does not meet all the standards of this Section. All signs approved through Section 5.16.2(I) shall count towards the sign area allowance for the property.

5.16.3 TEMPORARY SIGNS

(A) **Applicability.** The regulations contained in this Section 5.16.3 apply to temporary signs. The standards of this Section are applied in conjunction with all other applicable standards.

(B) **Standards for Attached Temporary Signs.**

(1) **Generally.** The standards of this subsection apply to temporary signs that are attached to buildings. Temporary signs that are not attached to buildings are subject to the standards of subsection (C), below. Duration of display is limited by subsection (D).

(2) **Attached Temporary Banners and Pennants**. Attached temporary banners and pennants may only be displayed provided a permit is obtained pursuant to Section 5.16.4(B)(2).

(3) **Temporary Sign Covers**. Temporary sign covers are permitted in all sign districts, provided that they are used during a period not to exceed forty (40) days in which a new permanent sign or sign component is being fabricated and such sign or sign component is permitted and installed in accordance with this Sign Code.

(4) **Temporary Window Signs**.

(a) Temporary window signs are allowed in all locations where permanent window signs are allowed, provided that the standards of Section 5.16.2(C) are met as to the combination of temporary and permanent window signs.

(b) Temporary window signs shall be affixed to the window such that the fastener (e.g., tape) is not highly visible, or shall be mounted vertically inside of the building for viewing through the window.

(C) **Standards for Detached Temporary Signs.**

(1) **Generally.** The standards of this subsection apply to temporary signs that are not attached to buildings. Temporary signs that are attached to buildings are subject to the standards of subsection (B), above. Duration of display is limited by subsection (D).

(2) **Detached Temporary Signs**. Detached temporary signs are allowed according to the standards in Table (C), Detached Temporary Signs. Detached temporary sign types that are not listed in Table C (including but not limited to inflatable signs) are not allowed. Detached banners and pennants may only be displayed provided a permit is obtained pursuant to subsection (E), below. Portable signs may only be displayed provided a permit is obtained pursuant to the Code of the City of Fort Collins, Chapter 24, Article IV.

Table (C) Detached Temporary Signs (sf. = square feet/ft. = linear feet/N/A = not applicable)				
Type of Sign Standards	Sign District			
	Downtown	Commercial-Industrial	Multi-Unit/Mixed Use	Single-Unit
Yard Signs				
Max. #	Single-Unit and Duplex Residential Buildings: Not Limited.	Single-Unit and Duplex Residential Buildings: Not Limited.	Single-Unit and Duplex Residential Buildings: Not Limited.	Residential Buildings: Not limited.
	Multi-Unit Residential Buildings: 1 per 20 ft. of property frontage or fraction thereof	All other uses: 2 per vehicular access point.	Multi-Unit Residential Buildings: 1 per 20 ft. of property frontage or fraction thereof.	Nonresidential and Residential Mixed Use Buildings: 1 per 80 ft. of property frontage or fraction thereof.
	Nonresidential and Residential Mixed Use Buildings: 1 per 80 ft. of property frontage or fraction thereof.		Nonresidential and Residential Mixed Use Buildings: 1 per 80 ft. of property frontage or fraction thereof.	
Max. Sign Area (per sign)	6 sf.	8 sf.	8 sf.	6 sf.
Max. Sign Height	4 ft.	4 ft.	4 ft.	4 ft.
Allowed Lighting	None.	None.	None.	None.
Setbacks and Spacing	2 ft. from property lines; 2 ft. from all other signs.	2 ft. from property lines; 2 ft. from all other signs.	2 ft. from property lines; 2 ft. from all other signs.	2 ft. from property lines; 2 ft. from all other signs.
Other Standards	Must be installed in permeable landscaped area.	Must be installed in permeable landscaped area that is at least 8 sf. in area and 2 ft. in any horizontal dimension, not more than 10 ft. from vehicular access point.	Must be installed in permeable landscaped area that is at least 8 sf. in area and 2 ft. in any horizontal dimension.	Must be installed in permeable landscaped area that is at least 8 sf. in area and 2 ft. in any horizontal dimension.
Site Signs				
Max. #	Residential Buildings: Not Limited	1 per 600 ft. of property frontage or fraction thereof.	1 per 600 ft. of property frontage or fraction thereof, provided that the area of the property is at least 2 acres; properties that are less than 2 acres shall not display site signs.	1 per 600 ft. of property frontage or fraction thereof, provided that the area of the property is at least 2 acres; properties that are less than 2 acres shall not display site signs.
	Nonresidential and Residential Mixed Use Buildings: 1 per property.			
Max. Sign Area	16 sf.	32 sf.	32 sf.	32 sf.
Max. Sign Height	6 ft.	6 ft.	6 ft.	6 ft.
Allowed Lighting	External, down directional and	External, down directional and	External, down directional and	External, down directional and

	concealed light source.	concealed light source.	concealed light source.	concealed light source.
Setbacks and Spacing	2 ft. from front property lines.	2 ft. from front property lines.	2 ft. from front property lines.	2 ft. from front property lines.
	10 ft. from all other property lines.	10 ft. from all other property lines.	10 ft. from all other property lines.	10 ft. from all other property lines.
	10 ft. from all other signs.	10 ft. from all other signs.	10 ft. from all other signs.	10 ft. from all other signs.
	12 ft. from building walls.	12 ft. from building walls.	12 ft. from building walls.	12 ft. from building walls.
Other Standards	Where allowed, site signs shall be installed in permeable landscaped areas or hardscaped areas other than vehicular use areas and sidewalks that are at least 5 ft. in every horizontal dimension and at least 40 sf. in area.	Where allowed, site signs shall be installed in permeable landscaped areas or hardscaped areas other than vehicular use areas and sidewalks that are at least 5 ft. in every horizontal dimension and at least 40 sf. in area.	Where allowed, site signs shall be installed in permeable landscaped areas or hardscaped areas other than vehicular use areas and sidewalks that are at least 5 ft. in every horizontal dimension and at least 40 sf. in area.	Where allowed, site signs shall be installed in permeable landscaped areas or hardscaped areas other than vehicular use areas and sidewalks that are at least 5 ft. in every horizontal dimension and at least 40 sf. in area.
Swing Signs				
Max. #	Not allowed.	Not allowed.	1 per property frontage.	1 per property frontage.
Max. Sign Area	N/A.	N/A.	5 sf., including riders.	5 sf., including riders.
Max. Sign Height	N/A.	N/A.	5 ft.	5 ft.
Allowed Lighting	N/A.	N/A	None.	None.
Setbacks and Spacing	N/A.	N/A.	2 ft. from all property lines.	2 ft. from all property lines.
Other Standards	N/A.	N/A.	Swing signs shall be installed in permeable landscaped areas that are at least 4 ft. in every horizontal dimension and at least 20 sf. in area.	Swing signs shall be installed in permeable landscaped areas that are at least 4 ft. in every horizontal dimension and at least 20 sf. in area.
Feather Flags				
Max. #	1 per 100 ft. of property frontage or fraction thereof; may be clustered.	1 per 100 ft. of property frontage or fraction thereof; may be clustered.	1 per 100 ft. of property frontage or fraction thereof; may be clustered.	Residential Buildings: Not Allowed. Nonresidential Buildings: 1.
Max. sign area	40 sf.	40 sf.	40 sf.	10 sf.
Max. sign height	15 ft.	15 ft.	15 ft.	10 ft.
Other Standards	Not allowed if freestanding banner is present Must be installed in a permeable landscaped area with a radius that	Not allowed if freestanding banner is present Must be installed in a permeable landscaped area with a radius that	Must be installed in a permeable landscaped area with a radius that extends not less than 3 ft. from the flag pole.	Must be installed in a permeable landscaped area with a radius that extends not less than 3 ft. from the flag pole.

	extends not less than 3 ft. from the flag pole.	extends not less than 3 ft. from the flag pole.		

(D) **Duration of Display of Temporary Signs.**

(1) **Generally**. The purpose of temporary signs is to display messages for a temporary duration. Temporary signs shall not be used as a subterfuge to circumvent the regulations that apply to permanent signs or to add permanent signage to a property in addition to that which is allowed by this Sign Code.

(2) **Classification of Temporary Sign Materials.** Temporary signs are constructed from a variety of materials with varying degrees of durability. Common materials are classified in Table (D)(1), Classification of Temporary Sign Materials.

Table (D)(1)
Classification of Temporary Sign Materials

Material	Material Class				
	1	2	3	4	5
Paper, card stock, foam core board, or cardboard	✓				
Laminated paper or cardstock, polyethylene bags		✓			
Cloth, canvas, nylon, polyester, burlap, flexible vinyl, or other flexible material of comparable durability			✓		
Inflexible vinyl, hard plastic, composite, or corrugated plastic ("coroplast")				✓	
Wood or metal					✓

(3) **Duration of Display.**

(a) In general, a temporary sign shall be removed as of the earlier of the date that:

(I) It becomes an abandoned sign;

(II) It falls into disrepair (see Section 5.16.5); or

(III) The number of days set out in Table (D)(2), *Duration of Temporary Sign Display by Material Class*, expires.

Table (D)(2)
Duration of Temporary Sign Display by Material Class

Sign Type	Max. Duration for Individual Sign by Material Class					Max. Posting Days/Year
	1	2	3	4	5	
Yard Sign	Not Allowed.	45 days.	Not Allowed.	60 days.	180 days.	180 days.
Site Sign	Not Allowed.	Not Allowed.	Not Allowed.	60 days.	180 days.	180 days[1].
Swing Sign	Not Allowed.	Not Allowed.	Not Allowed.	60 days.	180 days.	180 days[1].
Window Sign	30 days per sign.	30 days per sign.	30 days per sign.	30 days per sign.	30 days per sign.	30 days per sign.
Feather Flags	Not Allowed.	Not Allowed.	20 days.	Not Allowed.	Not Allowed.	20 days.

Table Notes:
[1] Alternatively, the sign type may be displayed for three hundred sixty (360) days every two (2) calendar years.

(b) Temporary required signs shall be removed as required by the applicable regulation.

(4) **Administrative Interpretations.** Materials for signage that are not listed in this subsection (D) may be introduced into the market. When a material is proposed that is not listed in this subsection (D), the Director shall determine the class of materials with which the new material is most closely comparable, based on the new material's appearance, durability, and colorfastness. No temporary sign shall be displayed for a longer period than a site sign constructed of class 5 material, regardless of the durability material (although such a sign may be permissible as a permanent sign under Section 5.16.2).

(E) **Banners and Pennants.**

(1) Attached unframed banners, detached banners, and attached and detached pennants are allowed in any zone district subject to the restrictions in below Table (E), provided that a permit is obtained from the Director. The Director shall issue a permit for the display of banners and pennants only in locations where the Director determines that such banners and pennants will not cause unreasonable annoyance or inconvenience to adjoining property owners or other persons in the area and on such additional conditions as deemed necessary to protect adjoining premises and the public. All banners and pennants shall be removed on or before the expiration date of the permit. If any person, business or organization erects any banners or pennants without receiving a permit, as herein provided, the person, business or organization shall be ineligible to receive a permit for a banner or pennant for the remainder of the calendar year.

(2) Each business or non-profit entity or other organization, and each individual not affiliated with an entity or organization, shall be eligible to display banners and pennants pursuant to a valid permit for a maximum of forty (40) days per calendar year. A permitted banner may exceed the forty (40) days when there is City authorized construction work in the portion of public right-of-way abutting the property, until such time as all applicable construction materials, equipment and fencing is removed from the right-of-way.

(3) The Director shall review a banner or pennant permit application within two (2) business days to determine completeness. If it is complete, the Director shall approve or deny the application within three (3) business days after such determination. If it is incomplete, the Director shall cause the application to be returned to the applicant within one (1) business day of the determination, along with written reasons for the determination of incompleteness.

(4) Notwithstanding the size and time limitations contained in Table E in the Downtown sign district:

(a) In conjunction with a special event permit, three (3) banners larger in size than forty (40) square feet may be displayed for fifteen (15) days.

(b) The Director may approve a temporary banner permit application upon the Director's determination that:

(I) The banner display is not detrimental to the public good;

(II) The banner does not project into the right-of-way;

(III) The banner is attached to a building thirty (30) feet or greater in height;

(IV) The banner is mounted flush with the building wall;

(V) The banner is on the side of building that fronts a right-of-way or public plaza;

(VI) There is no more than fifteen (15) square feet of permanent signage on the side of the building on which the banner is to be displayed;

(VII) The banner does not cover more than one (1) architecturally distinct window;

(VIII) No feather flags are displayed on the property;

(IX) Only one (1) banner is displayed at a time;

(X) The banner does not exceed six (6) feet in width and twenty-five (25) feet in height; and

(XI) The banner is displayed no more than a four (4) consecutive month period.

Table (E) Banners and Pennants (sf. = square feet/ft. = linear feet/N/A = not applicable)				
Standard	Sign District			
	Downtown	Commercial-Industrial	Multi-Unit/Mixed Use	Single-Unit
Attached Banners and Pennants				
Max. # on each building elevation	1	1 per 300 ft. of building elevation or fraction thereof, but not more than 3 banners per building.	1	Residential Buildings: Not Allowed. Nonresidential Buildings: 1.
Max. Sign Area	40 sf.	40 sf.	40 sf.	Residential Buildings: N/A Nonresidential Buildings: 40 sf.
Allowed Lighting	None.	External.	None.	None.
Max. Sign Height	7 ft.	7 ft.	4 ft.	4 ft.
Other Standards	None.	If more than one banner is allowed on a building elevation, banners may be clustered.	None.	None.
Detached Banners and Pennants				
Max. #	Either framed or unframed: 1 per property frontage; or 1 per 100 ft. of property frontage if secured to temporary construction fencing related to permitted construction (may be clustered).	Either framed or unframed: 1 per property frontage; or 1 per 100 ft. of property frontage if secured to temporary construction fencing related to permitted construction (may be clustered).	Either framed or unframed: 1 per property frontage; or 1 per 100 ft. of property frontage if secured to temporary construction fencing related to permitted construction (may be clustered).	Not allowed.
Max. Sign Area (per banner)	40 sf.	40 sf.	40 sf.	40 sf.
Allowed Lighting	None.	None.	None.	None.
Max. Sign Height (applies to freestanding banner frames)	6 ft.	6 ft.	6 ft.	6 ft.

(5) For banners and pennants in all sign districts, the following shall apply:

(a) Mounting hardware shall be concealed from view;

(b) Banners shall be stretched tightly to avoid movement in windy conditions;

(c) All banners that are installed in banner frames shall be sized to fit the banner frame so that there are no visible gaps between the edges of the banner and the banner frame;

(d) Banners are not allowed if any of the following are present on the property: feather flag, yard sign, site sign, or swing sign; and

(e) Any common line of pennants must be stretched tightly to avoid movement in windy conditions.

(F) **Vertical Projected Light Signs.**

(1) Vertical projected light signs may be used in connection with a temporary special event, during the term of the temporary special event. Such special events may include, but are not limited to, Art in Public Places events or Downtown Development Authority Alley Enhancement Projects.

(2) The projected image of a vertical projected light signs is limited to nonresidential and mixed-use properties, but is not limited by zoning district.

(3) The projected image shall not fall onto a surface with a high degree of specular reflectivity, such as polished metal or glass. The image shall be positioned to harmonize with the architectural character of the building(s) to which it is projected, and shall avoid any projection, relief, cornice, column, window, or door opening.

(4) The projected image shall not exceed fifteen (15) square feet if any portion of it is on a first story building wall or on a structure that is not a building, or thirty (30) square feet if all of the image is above the first story of a building, except that a projected image may occupy one hundred (100) percent of the side or rear wall area of a building in the Downtown sign district, provided that the building is within the Downtown Development Authority's Alley Enhancement Project and the building wall does not face a vehicular right-of-way.

(5) The path of the projection shall not cross public rights-of-way or pedestrian pathways at a height of less than seven (7) feet.

(6) Vertical projected light signs shall contain static messages only, and animated, dissolve, or fade transitions are prohibited.

(7) Vertical projected light signs are subject to the illumination standards of Section 5.16.1(I) unless the City determines that additional illumination will be permitted because it will pose no material detrimental effects on neighboring properties or public rights-of-way due to the location and/or timing of the display. Such determination, and allowable illumination levels, shall be specified in the permit that allows the vertical projected light sign.

5.16.4 NONCONFORMING SIGNS AND ADMINISTRATION

(A) **Nonconforming Signs.**

(1) Nonconforming signs shall be maintained in good condition and no such sign shall be:

(a) structurally changed to another nonconforming sign, although its content may be changed;

(b) structurally altered in order to prolong the life of the sign;

(c) altered so as to increase the degree of nonconformity of the sign; or

(d) enlarged.

(2) Except as provided in subsection (A)(3), below, all existing nonconforming signs located on property annexed to the City shall be removed or made to conform to the provisions of this Article no later than seven (7) years after the effective date of such annexation; provided, however, that during said seven (7) year period, such signs shall be maintained in good condition and shall be subject to the same limitations contained in subparagraphs (A)(1)(a) through (f), above. This subsection shall not apply to off-premises signs that are subject to the just compensation provisions of the Federal Highway Beautification Act and the Colorado Outdoor Advertising Act.

(3) All existing signs with flashing, moving, blinking, chasing or other animation effects not in conformance with the provisions of this Article and located on property annexed to the City shall be altered so that such flashing, moving, blinking, chasing, or other animation effects shall cease within sixty (60) days after such annexation, and all existing portable signs, vehicle-mounted signs, banners, and pennants located on property annexed to the City shall be removed or made to conform within sixty (60) days after such annexation.

(4) Historic signs shall be considered conforming for the purposes of this Section. The Director may designate a sign as an historic sign if:

(a) the applicant provides documentation that the sign has been at its present location for a minimum of fifty (50) years;

(b) the sign is structurally safe or capable of being made structurally safe without substantially altering its historic character. The property owner is responsible for making all structural repairs and restoration of the sign to its original condition; and

(c) the sign is representative of signs from the era in which it was constructed and provides evidence of the historic use of the building or premises.

Additionally, a sign shall be considered historic if the HPC through a review of Chapter 14 of the City Code as approved the historic nature of the sign.

(B) **Administration.**

(1) All sign permit applications shall be accompanied by detailed drawings indicating the dimensions, location, and engineering of the particular sign, plat plans when applicable, and the applicable processing fee.

(2) The Director shall review the sign permit application within two (2) business days after receipt to determine if it is complete. If it is complete, the Director shall approve or deny the application within three (3) business days after such determination. If it is incomplete, the Director shall cause the application to be returned to the applicant within one (1) business day of the determination, along with written reasons for the determination of incompleteness.

5.16.5 SIGN MAINTENANCE

(A) **Maintenance Standards.** Signs and sign structures of all types (attached, detached, and temporary) shall be maintained according to the following standards:

(1) **Paint and Finishes**. Paint and other finishes shall be maintained in good condition. Peeling finishes shall be repaired. Signs with running colors shall be repainted, repaired, or removed if the running colors were not a part of the original design.

(2) **Mineral Deposits and Stains.** Mineral deposits and stains shall be promptly removed.

(3) **Corrosion and Rust**. Permanent signs and sign structures shall be finished and maintained to prevent corrosion and rust. A patina on copper elements (if any) is not considered rust.

(4) **Damage.** Permanent signs that are damaged shall be repaired or removed within one (1) year, of being damaged unless the damage creates a material threat to public safety, in which case the Chief Building Official may order prompt repair or removal. Temporary signs that are obviously damaged (e.g., broken yard signs) shall be removed within twenty-four (24) hours of being damaged.

(5) **Upright, Level Position.** Signs that are designed to be upright and level, whether temporary or permanent, shall be installed and maintained in an upright and level position. Feather flag poles shall be installed in a vertical position. Signs that are not upright and level shall be removed or restored to an upright, level position.

(6) **Code Compliance.** The sign must be maintained in compliance with all applicable building, electrical, and property maintenance codes (including any exceptions that may apply to existing sign structures).

(B) **Quality of Repairs.** Repairs to signs shall be equal to or better in quality of materials and design than the original sign.

(C) **Altering or Moving Existing Signs.**

(1) Any alteration to an existing sign structure (except for alterations to changeable copy, replacement of a panel in a cabinet sign, replacement of a light source with a comparably bright light source, application of paint or stain) shall require a new permit pursuant to Section 5.16.4(B) prior to commencement of the alteration. Alterations requiring a new permit shall include, without limitation:

(a) Changes to the area of manual changeable copy center on a sign, including the installation of a new manual changeable copy center where one was not previously present;

(b) Changing the size of the sign;

(c) Changing the shape of the sign;

(d) Changing the material of which the sign is constructed;

(e) Changing or adding lighting to the sign (except as provided above);

(f) Changing the location of the sign; or

(g) Changing the height of the sign.

(2) No sign permit is required for removal of sign displays from supporting structures for maintenance, provided that they are replaced on the same support in the same configuration and the maintenance did not involve work that requires a permit.

ARTICLE 6

ADMINISTRATION and PROCEDURES

TABLE OF CONTENTS

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

ARTICLE 6

ADMINISTRATION and PROCEDURES

DIVISION 6.1 ZONING MAP AND ZONE DISTRICTS

6.1.1 ESTABLISHMENT OF ZONE DISTRICTS

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

Residential

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

Mixed-Use

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

Commercial

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

Downtown

- Downtown District (D)

Employment, Industrial, and Other

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

Overlay

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

6.1.2 ESTABLISHMENT OF ZONING MAP

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

6.1.3 ESTABLISHMENT OF ZONE DISTRICT AND DEVELOPMENT STANDARDS

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

DIVISION 6.2 GENERAL PROCEDURAL REQUIREMENTS

6.2.1 OVERVIEW OF DECISION MAKERS AND ADMINISTRATIVE BODIES

The City Council, Planning and Zoning Commission, Land Use Review Commission, the Historic Preservation Commission and Director are frequently referenced in this Land Use Code. Reference should be made to Chapter 2 of the City Code for descriptions of these and other decision makers and administrative bodies, and their powers, duties, membership qualifications and related matters.

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

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

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

6.2.2 OVERVIEW OF DEVELOPMENT REVIEW PROCEDURES

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

(A) **Where is the project located?** An applicant must first locate the proposed project on the Zoning Map. Once the proposed project has been located, the applicable zone district must be identified from the Zoning Map and legend. Then, by referring to Article 2 of this Land Use Code, the applicant will find the zone district standards which apply to the zone district in which the proposed project is located. The city's staff is available to assist applicants in this regard.

(B) **What uses are proposed?** Next, an applicant must identify which uses will be included in the proposed project. If *all* of the applicant's proposed uses are listed as permitted uses in the applicable zone district for the project, then the applicant is ready to proceed with a development application for a permitted use. If *any* of the applicant's proposed uses are *not* listed as permitted uses in the applicable zone district for the project, then the applicant must either:

- eliminate the nonpermitted uses from their proposal;
- seek the addition of a new permitted use pursuant to Division 6.9;
- seek a text amendment to this Land Use Code pursuant Division 6.25;
- seek a rezoning amendment to the Zoning Map pursuant to Division 6.25; or
- seek approval of a PUD Overlay pursuant to Divisions 2.6.

Any use not listed as a permitted use in the applicable zone district is deemed a prohibited use in that zone district unless it has been permitted pursuant to Division 6.9 for a particular development application or permitted as part of an approved PUD Overlay. Applications for permits regarding areas and activities of state interest provisions may be reviewed regardless of whether the zone district or districts in which the proposed project allow such a use or even expressly prohibit such use. Again, the City's staff will be available to assist applicants with their understanding of the zone districts and permitted uses.

(C) **Which type of development application should be submitted?** To proceed with a development proposal for permitted uses, the applicant must determine what type of development application should be selected and submitted. All development proposals which include only permitted uses must be processed and approved through the following development applications as determined pursuant to Article 4:

- a project development plan (Division 6.6) followed by a final plan (Division 6.7); or
- basic development review (Division 6.4).

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

Divisions 6.27 and 6.28.

(D) **Who reviews the development application?** Once an applicant has determined the type of development application to be submitted, they must determine the appropriate level of development review required for the development application. To make this determination, the applicant must refer to the provisions of the applicable zone district in Article 4 and the provisions pertaining to the appropriate development application. These provisions will determine whether the permitted uses and the development application are subject to basic development review, administrative review ("Type 1 review"), Planning and Zoning Commission review ("Type 2 review"), or City Council review in the case of PUD Overlays greater than 640 acres and permits to conduct a designated activity or develop in a designated area of state interest. Identification of the required level of development review will, in turn, determine which decision maker, the Director in the case of basic development review and administrative review ("Type 1 review"), or the Planning and Zoning Commission in the case of Planning and Zoning Commission review ("Type 2 review"), or the City Council for PUD Overlays greater than 640 acres and permits pursuant to the areas and activities of state interest provisions, will review and make the final decision on the development application. When a development application contains both Type 1 and Type 2 uses, it will be processed as a Type 2 review.

(E) **How will the development application be processed?** The review of overall development plans, PUD Overlays, project development plans and final plans, and permits pursuant to the areas and activities of state interest provisions will each generally follow the same procedural "steps" regardless of the level of review (basic development review, administrative review or Planning and Zoning Commission, or City Council review). The common development review procedures contained in Division 6.3 establish a twelve-step process equally applicable to all overall development plans, project development plans and final plans.

The twelve (12) steps of the common development review procedures are the same for each type of development application, whether subject to basic development review, administrative review, Planning and Zoning Commission review, or City Council review in the case of PUD Overlays greater than 640 acres and permits pursuant to the areas and activities of state interest provisions unless an exception to the common development review procedures is expressly called for in the particular development application requirements of this Land Use Code. In other words, each overall development plan, each project development plan and each final plan will be subject to the twelve-step common procedure. The twelve (12) steps include: (1) conceptual review; (2) neighborhood meeting; (3) development application submittal; (4) determination of sufficiency; (5) staff report; (6) notice; (7) public hearing; (8) standards; (9) conditions of approval; (10) amendments; (11) lapse; and (12) appeals.

However, Step 1, conceptual review, applies only to the initial development application submittal for a development project (i.e., overall development plan or PUD Overlay when required, or project development plan when neither an overall development plan nor a PUD Overlay is required). Basic Development Review and Final Plan applications for the same development project are not subject to Step 1, conceptual review.

Moreover, Step 2, neighborhood meeting, applies only to certain development applications subject to Planning and Zoning Commission and City Council review. Step 2, neighborhood meeting, does not apply to development applications subject to basic development review or administrative review. Step 3, application submittal requirements, applies to all development applications. Applicants shall submit items and documents in accordance with a Comprehensive list of submittal requirements as established by the Director. Overall development plans must comply with only certain identified items on the Comprehensive list, while PUD Overlays, project development plans, and final plans must include different items from the Comprehensive list. This Comprehensive list is intended to assure consistency among submittals by using a "building block" approach, with each successive development application building upon the previous one for that project. City

staff is available to discuss the common procedures with the applicant.

(F) **What if the development proposal doesn't fit into one of the types of development applications discussed above?** In addition to the five (5) development applications for permitted uses, the applicant may seek approval for other types of development applications, including development applications for a modification of standards (Division 6.8), an amendment to the text of the Land Use Code and/or the Zoning Map (Division 6.25), a hardship variance (Division 6.14), an appeal of an administrative decision (Division 6.18), a permit to conduct an activity or develop in an area of state interest (Articles 6.27 and 6.28) or other requests. These other types of development applications will be reviewed according to applicable steps in the common development review procedures.

(G) **Is a building permit required?** The next step after approval of a final plan is to apply for a Building Permit. Most construction requires a Building Permit. This is a distinct and separate process from a development application. The twelve (12) steps of the common development review procedures must be followed for the Building Permit process. Procedures and requirements for submitting a Building Permit application are described in Division 6.13.

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

6.2.3 TYPES OF DEVELOPMENT APPLICATIONS

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

Permitted uses subject to basic development review, administrative review, or permitted uses subject to Planning and Zoning Commission review listed in the applicable zone district set forth in Article 2, zone districts, shall be processed through an overall development plan, a basic development review, a project development plan or a final plan. If any use not listed as a permitted use in the applicable zone district is included in a development application, it may also be processed as an overall development plan, project development plan or final plan, if such proposed use has been approved, or is concurrently submitted for approval, in accordance with the requirements for an amendment to the text of this Land Use Code and/or the

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

(B) **Basic Development Review (BDR)**

(1) **Purpose and Effect.** The basic development review is the administrative process for reviewing a site specific development plan that describes and establishes the type and intensity of use for a specific parcel or parcels of property. The basic development review shall include the final subdivision plat (when such plat is required pursuant to Section 5.4.4 of this Code), and if required by this Code or otherwise determined by the Director to be relevant or necessary, the plan shall also include the development agreement and utility plan and shall require detailed engineering and design review and approval. Building permits may be issued by the Director only pursuant to an approved Basic Development Review, subject to the provisions of Division 6.4.

(2) **Applicability.** A basic development review application may be submitted prior to required public notification. If the project is to be developed over time in two (2) or more separate basic development review submittals, an overall development plan shall also be required. Refer to Division 6.4 for specific requirements for basic development reviews.

(C) **Overall Development Plan**

(1) **Purpose and Effect.** The purpose of the overall development plan is to establish general planning and development control parameters for projects that will be developed in phases with multiple submittals while allowing sufficient flexibility to permit detailed planning in subsequent submittals. Approval of an overall development plan does not establish any vested right to develop property in accordance with the plan.

(2) **Applicability.** An overall development plan shall be required for any property which is intended to be developed over time in two (2) or more separate project development plan submittals. Refer to Division 6.5 for specific requirements for overall development plans.

(D) **Project Development Plan and Plat**

(1) **Purpose and Effect.** The project development plan shall contain a general description of the uses of land, the layout of landscaping, circulation, architectural elevations and buildings, and it shall include the project development plan and plat (when such plat is required pursuant to Section 5.4.4 of this Code). Approval of a project development plan does not establish any vested right to develop property in accordance with the plan.

(2) **Applicability.** Upon completion of the conceptual review meeting and after the Director has made written comments and after a neighborhood meeting has been held (if necessary), an application for project development plan review may be filed with the Director. If the project is to be developed over time in two (2) or more separate project development plan submittals, an overall development plan shall also be required. Refer to Division 6.6 for specific requirements for project development plans.

(E) **Final Plan and Plat**

(1) **Purpose and Effect.** The final plan is the site specific development plan which describes and establishes the type and intensity of use for a specific parcel or parcels of property. The final plan shall include the final subdivision plat (when such plat is required pursuant to Section 5.4.4 of this Code), and if required by this Code or otherwise determined by the Director to be relevant or necessary, the plan shall also include the development agreement and utility plan and shall require detailed engineering and design review and approval. Building permits may be issued by the Director only pursuant to an approved final plan or other site specific development plan, subject to the provisions of Division 6.7.

(2) **Applicability.** Application for a final plan may be made only after approval by the appropriate decision maker (Director for Type 1 review or Planning and Zoning Commission for Type 2 review) of a project development plan, unless the project development and final plans have been consolidated pursuant to Section 6.3.3(B). An approved final plan shall be required for any property which is intended to be developed. No development shall be allowed to develop or otherwise be approved or permitted without an approved final plan. Refer to Division 6.7 for specific requirements for final plans.

(F) **Site Plan Advisory Review**

(1) **Purpose and Effect.** The Site Plan Advisory Review process requires the submittal and approval of a site development plan that describes the location, character, and extent of improvements to parcels owned or operated by public entities. In addition, with respect to public and charter schools, the review also has as its purpose, as far as is feasible, that the proposed school facility conforms to the City's Comprehensive Plan.

(2) **Applicability.** A Site Plan Advisory Review shall be applied to any public building or structure. For a public or charter school, the Planning and Zoning Commission shall review a complete Site Plan Advisory Review application within thirty (30) days (or such later time as may be agreed to in writing by the applicant) of receipt of such application under Section 22-32-124, C.R.S. For Site Plan Advisory Review applications under Section 31-23-209, C.R.S., such applications shall be reviewed and approved or disapproved by the Planning and Zoning Commission within sixty (60) days following receipt of a complete application.

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

(a) The change results in a size increase of less than twenty-five (25) percent of the existing building, structure or facility being enlarged, whether it be a principal or accessory use; and

(b) The enlargement or expansion does not change the character of the building or facility.

(c) Application for a Site Plan Advisory Review is subject to review by the Planning and Zoning Commission under the requirements contained in Division 6.11 of this Code.

(G) **PUD Overlay**

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

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

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

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

(1) **Purpose and Effect.** The areas and activities of state interest guidelines and regulations set forth in Article 6 are adopted pursuant to Section 24-65.1-101, et seq., C.R.S., and provide the City with the ability to review and regulate matters of state interest. A permit issued pursuant to Article 6 is required in order for a proposed development plan related to a designated activity or within a designated area of state interest to be constructed and operate.

(2) **Applicability.** A permit to conduct a designated activity or to develop within a designated area of state interest within the City is required for all proposed development plans meeting the criteria set forth in Division 6.27 unless an exemption exists pursuant to Section 6.27.4.1 or a finding of no significant impact is issued pursuant to Section 6.27.6.5.

6.2.4 EFFECT OF DEVELOPMENT APPLICATION APPROVAL

(A) **Limitation on other development.**

In the event that a property has obtained development approval of a site specific development plan, such property may not thereafter be developed in any other fashion, except in accordance with Division 6.16, Nonconforming Uses and Structures or 6.17, Existing Limited Permitted Uses; or upon the occurrence of one (1) of the following events:

(1) The right to develop the property in accordance with the approved plan has expired pursuant to Division 6.3, in which event the property may be developed according to such other development application as may be subsequently approved by the appropriate decision maker (the Director for Type 1 review and the Planning and Zoning Commission for Type 2 review);

(2) The owner of the property has obtained the approval, pursuant to subsections 6.3.10(B) and (C), of the appropriate decision maker to abandon the right to develop the property (or any portion thereof) in accordance with the approved development plan, in which event the right to develop other than as the previously approved development plan shall apply only to the portion of the property which is no longer subject to the development plan;

(3) The owner of the property has obtained permission from the appropriate decision maker to amend the approved development plan in accordance with Division 6.3, in which event the property shall be developed according to the amended plan;

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

(B) **Process.** Any property owner seeking to obtain the approval of the appropriate decision maker pursuant to this Section shall submit an application complying with the requirements and procedures set forth in Section 6.3.10 pertaining to amendments and abandonment.

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

(1) The application shall not be approved if, in so approving, any portion of the property remains developed or to be developed in accordance with the previously approved development plan and, because of the abandonment, such remaining parcel of property would no longer qualify for development approval pursuant to the standards and requirements of the most current version of this Code.

(2) The application shall not be approved if, in so approving, the city's rights of ownership of, or practical ability to utilize, any previously dedicated street, easement, right-of-way or other public area or public property would be denied or diminished to the detriment of the public good.

6.2.5 DEDICATIONS AND VACATIONS

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

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

6.2.6 OPTIONAL PRE-APPLICATION REVIEW

(A) **Optional City Council Pre-Application Review of Complex Development Proposals**: A potential applicant for development other than a PUD Overlay or permit to conduct a designated activity of state interest or develop in a designated area of state interest may request that the City Council conduct a hearing for the purpose of receiving preliminary comments from the City Council regarding the overall proposal in order to assist the proposed applicant in determining whether to file a development application or annexation petition. Only one (1) pre-application hearing pursuant to this Subsection (A) may be requested. The following criteria must be satisfied for such a hearing to be held:

(1) The proposed development cannot have begun any step of the Common Development Review Procedures for Development Applications set forth in Division 6.3.

(2) The proposed application for approval of a development plan must require City Council approval of an annexation petition, an amendment to the City's Comprehensive Plan, or some other kind of formal action

by the City Council, other than a possible appeal under this Land Use Code.

(3) The City Manager must determine in writing that the proposed development will have a community-wide impact.

(B) **Optional Pre-Application PUD Overlay Proposal Review:** This optional review is available to potential PUD applicants that have not begun any step of the Common Development Review Procedures for Development Applications set forth in Division 6.3. Such review is intended to provide an opportunity for applicants to present conceptual information to the Planning and Zoning Commission for PUD Overlays between 50 and 640 acres in size, or to City Council for PUD Overlays greater than 640 acres in size, regarding the proposed development including how site constraints will be addressed and issues of controversy or opportunities related to the development. Applicants participating in such review procedure should present specific plans showing how, if at all, they intend to address any issues raised during the initial comments received from staff and affected property owners. For a pre-application hearing to be held, the Director must determine in writing that the proposed PUD will have a community-wide impact. Only one (1) pre-application hearing pursuant to this Subsection (B) may be requested.

(C) **Notice and Hearing Procedure.**
All preapplication hearings under above Subsections (A) or (B) this provision will be held in accordance with the provisions contained in Steps (6), (7)(B) and (7)(C) of the Common Development Review Procedures set forth in Division 6.3, except that the signs required to be posted under Step (6)(B) shall be posted subsequent to the scheduling of the session and not less than fourteen (14) days prior to the date of the hearing. At the time of requesting the hearing, the applicant must advance the City's estimated costs of providing notice of the hearing. Any amounts paid that exceed actual costs will be refunded to the applicant.

(D) **Input Non-Binding, Record.** The Planning and Zoning Commission or City Council as applicable pursuant to above Subsections (A) or (B) may, but shall not be required to, comment on the proposal. Any comment, suggestion, or recommendation made by any Planning and Zoning Commission or City Council member regarding the proposal does not bind or otherwise obligate any City decision maker to any course of conduct or decision pertaining to the proposal. All information related to an optional review shall be considered part of the record of any subsequent development review related to all or part of the property that was the subject of the optional review.

DIVISION 6.3 COMMON DEVELOPMENT REVIEW PROCEDURES FOR DEVELOPMENT APPLICATIONS

6.3.1 STEP 1: CONCEPTUAL REVIEW/PRELIMINARY DESIGN REVIEW

(A) **Conceptual Review:**

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

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

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

(3) **Concept Plan Submittal.** The applicant shall bring a sketch showing the location of the proposed project, major streets and other significant features in the vicinity to the Conceptual Review meeting.

(4) **Staff Review and Recommendation.** Upon receipt of a concept plan, and after review of such plan with the applicant, the Director shall furnish the applicant with written comments regarding such plan, including appropriate recommendations to inform and assist the applicant prior to preparing the components of the development application.

(B) **Preliminary Design Review:**

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

Preliminary design review may include representatives of the Department, Poudre Fire Authority, Police Services, Water and Wastewater Utilities, Electric Utility, Stormwater Utility, and other departments as appropriate, and special districts where applicable. Additionally, other public or quasi-public agencies which may be impacted by the development project are invited and encouraged to attend the preliminary design review. These agencies may include the gas utility, water and/or wastewater utility districts, ditch companies, railroads, cable television service providers and other similar agencies.

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

(3) **Preliminary Plan Submittal.** In conjunction with a preliminary design review, the applicant shall submit all documents required for such review as established in the development application submittal requirements Comprehensive list.

(4) **Staff Review and Recommendation**. Upon receipt of a preliminary development proposal for review, and after review of such proposal with the applicant, the Director shall furnish the applicant with written comments and recommendations regarding such proposal in order to inform and assist the applicant prior to preparing components of the development application. In conjunction with the foregoing, the Director shall provide the applicant with a "critical issues list" which will identify those critical issues which have surfaced in the preliminary design review as issues which must be resolved during the review process of the formal development application. The critical issues list will provide to applicants the opinion of the Director

regarding the development proposal, as that opinion is established based upon the facts presented during conceptual review and preliminary design review. To the extent that there is a misunderstanding or a misrepresentation of facts, the opinion of the Director may change during the course of development review. The positions of the Director that are taken as a part of the critical issues list may be relied upon by applicants, but only insofar as those positions are based upon clear and precise facts presented in writing, either graphically or textually on plans or other submittals, to the Director during the course of preliminary design review.

6.3.2 STEP 2: NEIGHBORHOOD MEETINGS

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

(B) **Applicability**. A neighborhood meeting shall be required on any development proposal that is subject to Planning and Zoning Commission review unless the Director determines as a part of the staff review and recommendation required pursuant to Section 6.3.1(B)(4) that the development proposal would not have significant neighborhood impacts.

(C) **Notice of Neighborhood Meeting.** Notice of the neighborhood meeting shall be given in accordance with Section 6.3.6(A), (B) and (D).

(D) **Attendance at Neighborhood Meeting.** If a neighborhood meeting is required, the meeting shall be held prior to submittal of a development application to the Director for approval of an overall development plan and/or project development plan. The applicant or applicant's representative shall attend the neighborhood meeting. The Director shall be responsible for scheduling and coordinating the neighborhood meeting and shall hold the meeting in the vicinity of the proposed development.

(E) **Summary of Neighborhood Meeting.**
A written summary of the neighborhood meeting shall be prepared by the Director. The written summary shall be included in the staff report provided to the decision maker at the time of the public hearing to consider the proposed development.

6.3.3 STEP 3: DEVELOPMENT APPLICATION SUBMITTAL

(A) **Development Application Forms.** All development applications shall be in a form established by the Director and made available to the public.

(B) **Consolidated Development Applications and Review.** Development applications combining an overall development plan and a project development plan for permitted uses for the same development proposal may

be consolidated for submittal and review, in the discretion of the Director, depending upon the complexity of the proposal. For these consolidated applications, the applicant shall follow the project development plan development review procedures. Such consolidated applications shall be reviewed, considered and decided by the highest level decision maker that would have decided the development proposal under Section 6.3.7 had it been submitted, processed and considered as separate development applications. Decision makers, from highest level to lowest level, are the Planning and Zoning Commission and the Director, respectively.

(C) **Development Application Contents.**

(1) **Development Application Submittal Requirements Comprehensive List.** A Comprehensive list of development application submittal requirements shall be established by the Director. The Comprehensive list shall, at a minimum, include a list of all information, data, explanations, analysis, testing, reports, tables, graphics, maps, documents, forms or other items reasonably necessary, desirable or convenient to (1) determine whether or not the applicant, developer and/or owner have the requisite power, authority, clear title, good standing, qualifications and ability to submit and carry out the development and/or activities requested in the development application; and (2) determine whether or not the development activities and development application address and satisfy each and every applicable development standard, district standard or other requirement or provisions of this Land Use Code.

(2) **Submittal Requirement.** Each development application shall be submitted to the Director and shall include the items on the Comprehensive list that are identified as submittal requirements for that development application. The Director may waive items on the Comprehensive list that are not applicable due to the particular conditions and circumstances of that development proposal. At the time of application submittal, all applicants must agree in writing to pay the costs for third-party consultants the City retains to adequately review the application as described in Land Use Code Section 6.3.3(D)(3).

(3) **Execution of Plats/Deeds; Signature Requirements.** All final plats and/or deeds (for conveyances of real property either off the site described on the plat or at a time or in a manner separate from the plat), submitted to the City shall:

(a) be signed by all current owners of any recorded fee interest in the surface of the land described on the plat (or in the deed), whether full or defeasible and whether solely or partially owned;

(b) be signed by all current owners of any equitable interest arising out of a contract to purchase any fee interest in the surface of the land described on the plat (or in the deed), whether full or defeasible and whether solely or partially owned;

(c) be signed by all current record owners of any non-freehold interest arising from any recorded lease of the surface of the land described on the plat (or in the deed) if such lease has a remaining term of six (6) years following approval of the final development plan by the decision maker or if such lease contains any right of extension which, if exercised by the tenant, would create a remaining term of six (6) years following approval of the final development plan by the decision maker;

(d) be signed by all current owners of any recorded mortgage, deed of trust or other lien, financial encumbrance upon or security interest in the lands described on the plat (or deed) which, if foreclosed would take, injure, diminish or weaken the city's interest in any land, easement or right-of-way which is dedicated to the city or to the public on the plat (or in the deed);

(e) be signed by all current owners of any easement or right-of-way in the lands described on the plat (or in the deed) whether on, above or below the surface, which includes rights which will take, injure, diminish

or weaken the city's interest in any land, easement or right-of-way which is dedicated to the city or to the public on the plat (or in the deed);

(f) be signed by the applicant's attorney licensed to practice law in the State of Colorado certifying to the City that all signatures as required pursuant to subparagraphs (a) through (e) above have lawfully and with full authority been placed upon the plat (or in the deed). Said certification may be limited by the attorney so certifying to only those ownership interests that are of record or, if not of record, are either actually known to the certifying attorney to exist, or in the exercise of reasonable diligence, should have been known to the certifying attorney to exist. For purposes of such certification, the terms "record," "recorded" and "of record" shall mean as shown by documents recorded in the real estate records in the Clerk and Recorder's Office of Larimer County, Colorado prior to the date of certification;

(g) contain a maintenance guarantee, a repair guarantee and a certificate of dedication signed by the developer and the owner (as described in subparagraph (a) above), which provide a two-year maintenance guarantee and five-year repair guarantee covering all errors or omissions in the design and/or construction. The specific provisions of the maintenance guarantee, repair guarantee and certificate of dedication shall be established by the City Engineer; and

(h) contain the legal notarization of all signatures as required pursuant to subparagraphs (a) through (e) above to be placed upon the plat (or deed).

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

(D) **Development Review Fees and Costs for Specialized Consultants.**

(1) **Recovery of Costs**. Development review fees are hereby established for the purpose of recovering the costs incurred by the City in processing, reviewing and recording applications pertaining to development applications or activity within the municipal boundaries of the City, and issuing permits related thereto. The development review fees imposed pursuant to this Section shall be paid at the time of submittal of any development application, or at the time of issuance of the permit, as determined by the City Manager and established in the development review fee schedule.

(2) **Development Review Fee Schedule.** The amount of the City's various development review fees shall be established by the City Manager, and shall be based on the actual expenses incurred by or on behalf of the City. The schedule of fees shall be reviewed annually and shall be adjusted, if necessary, by the City Manager on the basis of actual expenses incurred by the City to reflect the effects of inflation and other changes in costs. At the discretion of the City Manager, the schedule may be referred to the City Council for adoption by resolution or ordinance.

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

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

6.3.4 STEP 4: REVIEW OF APPLICATIONS

(A) **Determination of Sufficiency.** After receipt of the development application, the Director shall determine whether the application is complete and ready for review. Some development applications may involve complex technical issues that require review and input that is outside the expertise of City staff. If such a situation arises, the Director may procure the services of third-party consultants to review and consult with the City regarding the relevant subject matter and require the applicant to pay the costs for such third-party consultants as described in Section 6.3.3(D)(3). Upon review by the Director and any necessary third-party consultants, the Director will determine whether the application is complete. The determination of sufficiency shall not be based upon the perceived merits of the development proposal.

(B) ***Specialized Consultants to Assist With Review.*** As described in Section 6.3.3(D)(3), the City may retain the services of third-party consultants with specialized knowledge that the City requires to adequately evaluate whether an application is complete pursuant to above Subsection (A) or to assist in the review of a complete application, the costs of which must be paid by the applicant.

(C) **Processing of Incomplete Applications.** Except as provided below, if a submittal is found to be insufficient, all review of the submittal will be held in abeyance until the Director receives the necessary material to determine that the submittal is sufficient. The development application shall not be reviewed on its merits by the decision maker until it is determined sufficient by the Director. Notwithstanding the foregoing, if an application has been determined to be incomplete because the information provided to the Director shows that a portion of the property to be developed under the application is not yet under the ownership and control of the applicant or developer, the Director may nonetheless authorize the review of such application and the presentation of the same to the decision maker, as long as:

(1) the applicant, at the time of application, has ownership of, or the legal right to use and control, the majority of the property to be developed under the application;

(2) the Director determines that it would not be detrimental to the public interest to accept the application for review and consideration by the decision maker; and

(3) the applicant and developer enter into an agreement satisfactory in form and substance to the City Manager, upon consultation with the City Attorney, which provides that:

(a) until such time as the applicant has acquired full ownership and control of all property to be developed under the application, neither the applicant nor the developer will record, or cause to be recorded, in the office of the Larimer County Clerk and Recorder any document related to the City's review and approval of the application; and

(b) the applicant will indemnify and hold harmless the City and its officers, agents and assigns from any and all claims that may be asserted against them by any third party, claiming injury or loss of any kind whatsoever that are in any way related to, or arise from, the City's processing of the application.

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

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

6.3.5 STEP 5: STAFF REPORT

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

6.3.6 STEP 6: NOTICE

(A) **Mailed Notice.** The Director shall mail written notice to the owners of record of all real property within eight hundred (800) feet (exclusive of public rights-of-way, public facilities, parks or public open space) of the property lines of the parcel of land for which the development is planned. Owners of record shall be ascertained according to the records of the Larimer County Assessor's Office, unless more current information is made available in writing to the Director prior to the mailing of the notices. If the development project is of a type described in the Supplemental Notice Requirements of Subsection 6.3.6(D), then the area of notification shall conform to the notice requirements of that Section. In addition, the Director may further expand the notification area. Formally designated representatives of bona fide neighborhood groups and organizations and homeowners' associations within the area of notification shall also receive written notice. Such written notices shall be mailed at least fourteen (14) days prior to the public hearing/meeting date or in case of a Basic Development Review the Director's decision. The Director shall provide the applicant with a map delineating the required area of notification, which area may be extended by the Director to the nearest streets or other distinctive physical features which would create a practical and rational boundary for the area of notification. The applicant shall pay postage and handling costs as established in the development review schedule.

(B) **Posted Notice.** The real property proposed to be developed shall also be posted with a sign, giving notice to the general public of the proposed development. For parcels of land exceeding ten (10) acres in size, two (2) signs shall be posted. The size of the sign(s) required to be posted shall be as established in the Supplemental Notice Requirements of subsection 6.3.6(D). Such signs shall be provided by the Director and shall be posted on the subject property in a manner and at a location or locations reasonably calculated by the Director to afford the best notice to the public, which posting shall occur within fourteen (14) days following submittal of a development application to the Director.

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

(D) **Supplemental Notice Requirements**. The following table indicates the required notice radius for a mailed notice and posted sign size for development applications.

Development Project	*Minimum Notice Radius*	*Sign Size*
All developments except those described below.	800 feet	12 square feet
Area or activity of state interest.	1,000 feet in all directions of the location of a proposed development plan as determined by the Director, this distance shall apply to mailed notice for FONSI comment periods, neighborhood meetings, appeals of Director FONSI decisions, Planning and Zoning Commission permit recommendations, and City Council permit hearings	12 square feet, however, the Director may require an increased number of signs depending upon the size and configuration of the proposed development plan
Minor Subdivisions containing no more than one (1) new lot.	Abutting Properties	12 square feet
Developments including only an Accessory Dwelling Unit or one (1) additional dwelling unit.	Abutting Properties	12 square feet
Developments proposing more than fifty (50) and less than one hundred (100) single-family or two-family lots or dwelling units.	800 feet	12 square feet
Developments proposing more than twenty-five (25) and less than one hundred (100) multi-family dwelling units.	800 feet	12 square feet
Nonresidential developments containing more than twenty-five thousand (25,000) and less than fifty thousand (50,000) square feet of floor area.	800 feet	12 square feet
Developments proposing one hundred (100) or more single-family or two-family lots or dwelling units.	1,000 feet	12 square feet
Developments proposing one hundred (100) or more multi-family dwelling units.	1,000 feet	12 square feet
Nonresidential developments containing fifty thousand (50,000) or more square feet of floor area.	1,000 feet	12 square feet

Nonresidential developments which propose land uses or activities which, in the judgment of the Director, create community or regional impacts.	1,000 feet; plus, with respect to neighborhood meetings, publication of a notice not less than seven (7) days prior to the meeting in a newspaper of general circulation in the City.	12 square feet
Off-site construction staging	500 feet	12 square feet
Oil and gas facilities and oil and gas pipelines	One (1) mile to owners of record and occupants of real property (exclusive of property rights-of-way, public facilities, parks or public open space); plus, with respect to neighborhood meetings, publication of a notice not less than seven (7) days prior to the meeting in a newspaper of general circulation in the City.	12 square feet
Plugging and abandonment of wells and pipelines and decommissioning of oil and gas facilities	One (1) mile to owners of record and occupants of real property (exclusive of property rights-of-way, public facilities, parks or public open space of the oil and gas facility, well, or pipeline.	12 square feet
Zonings and rezonings of forty (40) acres or less.	800 feet	12 square feet
Zonings and rezonings of more than forty (40) acres.	1,000 feet	12 square feet

(E) The following shall not affect the validity of any hearing, meeting or determination by the decision maker:

(1) The fact that written notice was not mailed as required under the provision of this Section.

(2) The fact that written notice, mailed as required under the provision of this Section, was not actually received by one (1) or more of the intended recipients.

(3) The fact that signage, posted in compliance with the provision of this Section, was subsequently damaged, stolen or removed either by natural causes or by persons other than the person responsible for posting such signage or their agents.

6.3.7 STEP 7: PUBLIC HEARING

(A) **Decision maker**

(1) **Basic Development Review** no public hearing is conducted as part of a BDR.

(2) **Administrative Review (Type 1 review).** An administrative review process is hereby established wherein certain development applications shall be processed, reviewed, considered and approved, approved with conditions, or denied by the Director pursuant to the general procedural requirements contained in Division 6.2, and the common development review procedures contained in Division 6.3. For those development applications that are subject to administrative review, the Director shall be the designated decision maker.

(3) **Planning and Zoning Commission Review (Type 2 review).** A Planning and Zoning Commission review process is hereby established wherein certain development applications shall be processed, reviewed, considered and approved, approved with conditions, or denied by the Planning and Zoning Commission pursuant to the general procedural requirements contained in Division 6.2, and the common development review procedures contained in Division 6.3. For those development applications that are subject to Planning and Zoning Commission review, the Planning and Zoning Commission shall be the designated decision maker.

(B) Conduct of Public Hearing.

(1) **Rights of All Persons.** Any person may appear at a public hearing and submit evidence, either individually or as a representative of a person or an organization. Each person who appears at a public hearing shall state their name, address and, if appearing on behalf of a person or organization, the name and mailing address of the person or organization being represented.

(2) **Exclusion of Testimony.** The decision maker conducting the public hearing may exclude testimony or evidence that it finds to be irrelevant, immaterial or unduly repetitious.

(3) **Continuance of Public Hearing.** The decision maker conducting the public hearing may, on its own motion or at the request of any person, continue the public hearing to a fixed date, time and place. All continuances shall be granted at the discretion of the body conducting the public hearing.

(C) **Order of Proceedings at Public Hearing.**

The order of the proceedings at the public hearing shall be as follows:

(1) **Director Overview.** The Director shall provide an overview of the development application.

(2) **Applicant Presentation**. The applicant may present information in support of its application, subject to the determination of the Chair as to relevance. Copies of all writings or other exhibits that the applicant wishes the decision maker to consider must be submitted to the Director no less than five (5) working days before the public hearing.

(3) **Staff Report Presented.** The Director shall present a narrative and/or graphic description of the development application, as well as a staff report that includes a written recommendation. This recommendation shall address each standard required to be considered by this Code prior to approval of the development application.

(4) **Staff Response to Applicant Presentation**. The Director, the City Attorney and any other City staff member may respond to any statement made or evidence presented by the applicant.

(5) **Public Testimony.** Members of the public may comment on the application and present evidence, subject to the determination of the Chair as to relevance.

(6) **Applicant Response.** The applicant may respond to any testimony or evidence presented by the public.

(7) **Staff Response to Public Testimony or Applicant Response.** The Director, the City Attorney and any other City staff member may respond to any statement made or evidence presented by the public testimony or by the applicant's response to any such public testimony.

(D) Decision and Findings.

(1) **Decision — Administrative Review (Type 1 review).** After consideration of the development application, the Staff Report and the evidence from the public hearing, the Director shall close the public hearing. Within ten (10) working days following the public hearing, the Director shall issue a written decision to approve, approve with conditions, or deny the development application based on its compliance with the Standards referenced in Step 8 of the Common Development Review Procedures (Section 6.3.8). The written decision shall be mailed to the applicant and any person who provided testimony at the public hearing.

(2) **Decision — Planning and Zoning Commission Review (Type 2 review).** After consideration of the development application, the Staff Report and the evidence from the public hearing, the Chair of the Planning and Zoning Commission shall close the public hearing and the Commission shall approve, approve with conditions, or deny the development application based on its compliance with the Standards referenced in Step 8 of the Common Development Review Procedures (Section 6.3.8).

(3) **Findings.** All decisions shall include at least the following elements:

(a) A clear statement of approval, approval with conditions, or denial, whichever is appropriate.

(b) A clear statement of the basis upon which the decision was made, including specific findings of fact with specific reference to the relevant standards set forth in this Code.

(E) **Notification to Applicant.**

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

(F) **Record of Proceedings.**

(1) **Recording of Public Hearing.** The decision maker conducting the public hearing shall record the public hearing by any appropriate means. A copy of the public hearing record may be acquired by any person upon application to the Director, and payment of a fee to cover the cost of duplication of the record.

(2) **The Record.** The record shall consist of the following:

(c) all exhibits, including, without limitation, all writings, drawings, maps, charts, graphs, photographs and other tangible items received or viewed by the decision maker at the proceedings;

(d) all minutes of the proceedings;

(e) if appealed to the City Council, a verbatim transcript of the proceedings before the decision maker, the cost of which transcript shall be borne by the City; and

(f) if available, a videotape recording of the proceedings before the decision maker.

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

(1) **Filing with City Clerk.** Once approved, and after the appeal period has expired (if applicable), the decision of the decision maker shall be filed with the City Clerk.

(2) **Final Plats and Development Agreements Recorded with County Clerk and Recorder.** Once the final utility plans, final plat and all other applicable Final Development Plan Documents are approved and the development agreement has been executed, the final plan has been approved, and any applicable conditions of final plan approval have been met, and after the appeal period has expired, the final plat and Development Agreement shall be recorded by the City in the Office of the Larimer County Clerk and Recorder and shall be filed with the City Clerk. The date that the recording with the Larimer County Clerk and Recorder of both the Final Plat and the Development Agreement is accomplished by the City shall establish the date of approval under Section 6.3.11(E)1. of this Land Use Code.

6.3.8 STEP 8: STANDARDS

To approve a development application, the decision maker must first determine and find that the development application has satisfied and followed the applicable requirements of this Article 6 and complies with all of the standards required for the applicable development application as modified by any modification of standards approved under Division 6.8.

6.3.9 STEP 9: CONDITIONS OF APPROVAL

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

6.3.10 STEP 10: AMENDMENTS AND CHANGES OF USE

(A) **Minor Amendments and Changes of Use.**

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

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

(2) Any change to any approved development plan or any site specific development plan which was originally subject only to administrative review and was approved by the Director, or any change of use of any property that was developed pursuant to a basic development review or a use-by-right review under prior law; provided that such change would not have disqualified the original plan from administrative review had it been requested at that time; and provided that the change or change of use complies with all of the following criteria applicable to the particular request for change or change of use:

(a) results in an increase by five (5) percent or less in the approved number of dwelling units, except that in the case of a change of use of any property that was developed pursuant use-by-right review under prior law, the number of dwelling units proposed to be added may be four (4) units or less;

(b) results in an increase or decrease in the amount of square footage of a nonresidential land use or structure that does not change the character of the project;

(c) results in a change in the housing mix or use mix ratio that complies with the requirements of the zone district and does not change the character of the project;

(d) does not result in a change in the character of the development;

(e) does not result in new buildings, building additions or site improvements, such as parking lots and landscaping, that are proposed to be located outside the boundaries of the approved Project Development Plan or approved site specific development plan;

(f) results in a decrease in the number of approved dwelling units and does not change the character of the project, and that the plan as amended continues to comply with the requirements of this Code; and

(g) in the case of a change of use, the change of use results in the site being brought into compliance, to the extent reasonably feasible as such extent may be modified pursuant to below subsection 6.3.10(A)3., with the applicable development standards contained in Articles 3 and 5 and the applicable zone district standards contained in Articles 2 and 4 of this Code.

(3) Any change to any approved development plan or any site specific development plan which was originally subject to review by the Planning and Zoning Commission (either as a Type 2 project or as a project reviewed by the Planning and Zoning Commission under prior law) or City Council review of a PUD Overlay, or any change of use of any property that was approved by the Planning and Zoning Commission; provided that the change or change of use complies with all of the following criteria applicable to the particular request for change or change of use:

(a) results in an increase or decrease by five (5) percent or less in the approved number of dwelling units;

(b) results in an increase or decrease in the amount of square footage of a nonresidential land use or structure that does not change the character of the project;

(c) results in a change in the housing mix or use mix ratio that complies with the requirements of the zone district and does not change the character of the project;

(d) does not result in a change in the character of the development; and

(e) does not result in new buildings, building additions or site improvements, such as parking lots and landscaping, that are proposed to be located outside the boundaries of the approved Project Development Plan or approved site specific development plan.

(4) **Waiver of Development Standards for Changes of Use.**

(a) **Applicability.** The procedure and standards contained in this Section shall apply only to changes of use reviewed pursuant to Section 6.3.10(A) of this Code.

(b) **Purpose.** In order for a change of use to be granted pursuant to Section 6.3.10(A), the change of use must result in the site being brought into compliance with all applicable development and zone district standards to the extent reasonably feasible. The purpose of this Section is to allow certain changes of use that do not comply with all applicable development standards to the extent reasonably feasible to be granted pursuant to Section 6.3.10(A) in order to:

(I) Foster the economic feasibility for the use, maintenance and improvement of certain legally constructed buildings and sites which do not comply with certain Land Use Code development standards provided that:

(II) existing blight conditions have been ameliorated; and

(III) public and private improvements are made that address essential health and life safety issues that are present on-site.

(IV) Encourage the eventual upgrading of nonconforming buildings, uses and sites.

(c) **Review by Director.** As part of the review conducted pursuant to Section 6.3.10(A) for a proposed change of use, the Director may waive, or waive with conditions, any of the development standards set forth in subsection (d) below. In order for the Director to waive, or waive with conditions, any such development standard, the Director must find that such waiver or waiver with conditions would not be detrimental to the public good and that each of the following is satisfied:

(I) The site for which the waiver or waiver with conditions is granted satisfies the policies of the applicable Council adopted subarea, corridor or neighborhood plan within which the site is located;

(II) The proposed use will function without significant adverse impact upon adjacent properties and the district within which it is located in consideration of the waiver or waiver with conditions;

(III) Existing blight conditions on the site are addressed through site clean-up, maintenance, screening, landscaping or some combination thereof; and

(IV) The site design addresses essential health and public safety concerns found on the site.

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

(I) Division 5.9 related to Parking Lot Perimeter and Interior Landscaping, and Landscape Coverage.

(II) Division 5.12 Site Lighting,

(III) Division 5.11 Trash and Recycling Enclosure design.

(IV) Division 5.4.3 Engineering Design standards related to water quality standard, including Low Impact Development.

(5) **Referral.** In either subsection (1) or (2) above, the Director may refer the amendment or change of use to the decision maker who approved the development plan proposed to be amended. The referral of minor amendments to development plans or changes of use allowed or approved under the laws of the City for the development of land prior to the adoption of this Code shall be processed as required for the land use or uses proposed for the amendment or change of use as set forth in Article 4 (i.e., Type 1 review or Type 2 review) for the zone district in which the land is located. The referral of minor amendments or changes of use to project development plans or final plans approved under this Code shall be reviewed and processed in the same manner as required for the original development plan for which the amendment or change of use is sought, and, if so referred, the decision maker's decision shall constitute a final decision, subject only to appeal as provided for development plans under Divisions 6.2.3 (B);(C);(D);(E); and (G) as applicable, for the minor amendment or change of use. City Council approval of a minor amendment to a PUD Comprehensive Plan shall be by resolution.

(6) **Notification**. Written notice must be mailed to the owners of record of all real property abutting the property that is the subject of the minor amendment application at least fourteen (14) calendar days prior to the Director's decision.

(7) **Appeals**. Applicable pursuant to Section 6.3.12(C).

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

(1) **Procedure/Criteria.** Amendments to any approved development plan, including any Overall Development Plan, Project Development Plan, or PUD Comprehensive Plan, or any site specific development plan, and changes of use that are not determined by the Director to be minor amendments or qualifying changes of use under the criteria set forth in subsection (A) above, shall be deemed major amendments.

(2) Major amendments to approved development plans or site specific development plans approved under the laws of the City for the development of land prior to the adoption of this Code shall be processed as required for the land use or uses proposed for the amendment as set forth in Article 4 (i.e., BDR, Type 1 review, or Type 2 review) for the zone district in which the land is located, and, to the maximum extent feasible, shall comply with all applicable Land Use Code standards. Major amendments to development

plans or site specific development plans approved under this Code shall be reviewed and processed in the same manner as required for the original development plan for which amendment is sought. Any major amendments to an approved project development plan or site specific development plan shall be recorded as amendments in accordance with the procedures established for the filing and recording of such initially approved plan. City Council approval of a major amendment to a PUD Comprehensive Plan shall be by resolution.

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

(4) *Appeals.* Appeals of decisions for approval, approval with conditions or denial of major amendments, or abandonment, of any approved development plan or site specific development plan shall be filed and processed in accordance with Section 6.3.12 (Step 12).

(C) **Additional Criteria.** In addition to the criteria established in (A) and (B) above, the criteria established in subsection 6.2.4(C) shall guide the decision maker in determining whether to approve, approve with conditions, or deny the application for partial or total abandonment.

(D) **Parkway Landscaping Amendments.** Amendments to parkway landscaping in any approved development plan may be approved, approved with conditions or denied administratively by the Director. No public hearing need be held on an application for a parkway landscaping amendment. Such amendments may be authorized by the Director as long as the development plan, as so amended, continues to comply with the Fort Collins Streetscape Standards, Appendix C, Section 6.1 in the Larimer County Urban Area Street Standards. Appeals of the decision of the Director regarding the approval, approval with conditions or denial of parkway landscaping amendments of any approved development plan shall be made in accordance with paragraph (A)(4) of this Section.

6.3.11 STEP 11: LAPSE

(A) **Application Submittals.** An application submitted to the City for the review and approval of a development plan must be diligently pursued and processed by the applicant. Accordingly, the applicant, within one hundred eighty (180) days of receipt of written comments and notice to respond from the City on any submittal (or subsequent revision to a submittal) of an application for approval of a development plan, shall file such additional or revised submittal documents as are necessary to address such comments from the City. If the additional submittal information or revised submittal is not filed within said period of time, the development application shall automatically lapse and become null and void. The Director may grant one (1) extension of the foregoing one-hundred-eighty-day requirement, which extension may not exceed one hundred twenty (120) days in length, and one (1) additional extension which may not exceed sixty (60) days in length. This subsection (A) shall apply to applications which are, or have been, filed pursuant to this Code and to applications which are, or have been, filed pursuant to the laws of the City for the development of land prior to the adoption of this Code. On transfer of ownership of any real property that is the subject of a pending application, whether in whole or in part, such transfer shall bar a new owner or transferee from taking further action on such application unless, prior to taking any action, the new owner provides evidence satisfactory to the Director that the transferor of such property intended that all rights of the owner under the pending

application be assigned to the transferee.

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

(C) **PUD Comprehensive Plan.** A PUD Comprehensive Plan shall be eligible for a vested property right solely with respect to uses, densities, development standards, and Engineering Standards for which variances have been granted pursuant to Section 2.6.3, as all are set forth in an approved PUD Comprehensive Plan. An approved PUD Comprehensive Plan shall be considered a site specific development plan solely for the purpose of acquiring such vested property rights subject to the provisions set forth in this Subsection (C) and not Subsection (E) below. A PUD Comprehensive Plan shall be deemed approved upon the effective date of the ordinance approving such PUD Comprehensive Plan as a site specific development plan and, upon such approval, a vested property right shall be created pursuant to the provisions of Article 68 Title 24, C.R.S., and this Section 6.3.11.

(1) **Specification of Uses, Densities, Development Standards, and Engineering Standards**. The application for a PUD Comprehensive Plan shall specify the uses, densities, development standards, and Engineering Standards granted variances pursuant to Section 2.6.3, for which the applicant is requesting a vested property right. Such uses, densities, and development standards may include those granted modifications pursuant to Section 2.6.3 and uses, densities, and development standards set forth in the Land Use Code which are applicable to the PUD Comprehensive Plan.

(2) **Term of Vested Right**. The term of the vested property right shall not exceed three (3) years unless: (a) an extension is granted pursuant to paragraph (3) of this subsection, or (b) the City and the developer enter into a development agreement which vests the property right for a period exceeding three (3) years. Such agreement may be entered into by the City if the Director determines that it will likely take more than three (3) years to complete all phases of the development and the associated engineering improvements for the development, and only if warranted in light of all relevant circumstances, including, but not limited to, the overall size of the development and economic cycles and market conditions. Council shall adopt any such development agreement as a legislative act subject to referendum.

(3) **Extensions.** Extensions for two (2) successive periods of one (1) year each may be granted by the Director, upon a finding that (a) the applicant has been diligently pursuing development pursuant to the PUD Comprehensive Plan, and (b) granting the extension would not be detrimental to the public good. Any additional one-year extensions shall be approved, if at all, only by the original PUD Comprehensive Plan decision maker, upon a finding that (a) the applicant has been diligently pursuing development pursuant to the PUD Comprehensive Plan, and (b) granting the extension would not be detrimental to the public good. A request for an extension of the term of vested right under this Section must be submitted to the Director in writing at least thirty (30) days prior to the date of expiration. Time is of the essence. The granting of extensions by the Director under this Section may, at the discretion of the Director, be referred to the original PUD Comprehensive Plan decision maker.

(4) **Publication**. A "notice of approval" describing the PUD Comprehensive Plan and stating that a vested property right has been created or extended, shall be published by the City once in a newspaper of general circulation within the City, not later than fourteen (14) days after the approval of a PUD Comprehensive

Plan, an extension of an existing vested right, or the legislative adoption of a development agreement as described in paragraph (2) of this subsection. The period of time permitted by law for the exercise of any applicable right of referendum or judicial review shall not begin to run until the date of such publication, whether timely made within said fourteen-day period, or thereafter.

(5) **Minor and Major Amendments**. In the event that a minor or major amendment to a PUD Comprehensive Plan is approved under the provisions of Section 6.3.10, and such amendment alters or adds uses, densities, development standards, or Engineering Standards for which variances have been granted pursuant to Section 2.6.3, a new vested property right may be created upon the applicant's request and pursuant to paragraph 2 of this subsection. If the applicant wants the term of the new vested property right to exceed three (3) years, such extended term must be approved and legislatively adopted pursuant to paragraph 2 of this subsection.

(D) **Project Development Plan and Plat.** Following the approval of a project development plan and upon the expiration of any right of appeal, or upon the final decision of the City Council following appeal, if applicable, the applicant must submit a final plan for all or part of the project development plan within three (3) years unless the project development plan is for a large base industry to be constructed in phases, in which case the application for approval of a final plan must be submitted within twenty-five (25) years. If such approval is not timely obtained, the project development plan (or any portion thereof which has not received final approval) shall automatically lapse and become null and void. The Director may grant one (1) extension of the foregoing requirement, which extension may not exceed six (6) months in length. No vested rights shall ever attach to a project development plan. The approval of, or completion of work pursuant to, a final plan for portions of a project development plan shall not create vested rights for those portions of the project development plan which have not received such final plan approval and have not been completed.

(E) **Final Plan and Plat and Other Site Specific Development Plans.**

(1) **Approval.** With the exception of site specific development plans subject to Subsection (C) above, a site specific development plan shall be deemed approved upon the recording by the City with the Larimer County Clerk and Recorder of both the Final Plat and the Development Agreement and upon such recording, a vested property right shall be created pursuant to the provisions of Article 68 Title 24, C.R.S., and this Section 6.3.11.

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

(3) **Term of Vested Right.** Within a maximum of three (3) years following the approval of a final plan or other site specific development plan, the applicant must undertake, install and complete all engineering improvements (water, sewer, streets, curb, gutter, street lights, fire hydrants and storm drainage) in accordance with City codes, rules and regulations. The period of time shall constitute the "term of the vested property right." The foregoing term of the vested property right shall not exceed three (3) years unless: (a) an extension is granted pursuant to paragraph (4) of this subsection, or (b) the City and the developer enter into a development agreement which vests the property right for a period exceeding three (3) years. Such agreement may be entered into by the City only if the subject development constitutes a "large base industry" as defined in Article 7, or if the Director determines that it will likely take more than

three (3) years to complete all engineering improvements for the development, and only if warranted in light of all relevant circumstances, including, but not limited to, the size and phasing of the development, economic cycles and market conditions. Any such development agreement shall be adopted as a legislative act subject to referendum. Failure to undertake and complete such engineering improvements within the term of the vested property right shall cause a forfeiture of the vested property right and shall require resubmission of all materials and reapproval of the same to be processed as required by this Code. All dedications as contained on the final plat shall remain valid unless vacated in accordance with law.

(4) **Extensions.** Extensions for two (2) successive periods of one (1) year each may be granted by the Director, upon a finding that the plan complies with all applicable development standards as contained in Articles 3 and 5 and Zone District Standards as contained in Articles 2 and 4 at the time of the application for the extension. Any additional one-year extensions shall be approved, if at all, only by the Planning and Zoning Commission, upon a finding that the plan complies with all applicable development standards as contained in Articles 3 and 5 and zone district standards as contained in Articles 2 and 4 at the time of the application for the extension, and that (a) the applicant has been diligent in constructing the engineering improvements required pursuant to paragraph (3) above, though such improvements have not been fully constructed, or (b) due to other extraordinary and exceptional situations unique to the property, completing all engineering improvements would result in unusual and exceptional practical difficulties or undue hardship upon the applicant, and granting the extension would not be detrimental to the public good. A request for an extension of the term of vested right under this Section must be submitted to the Director in writing at least thirty (30) days prior to the date of expiration. Time is of the essence. The granting of extensions by the Director under this Section may, at the discretion of the Director, be referred to the Planning and Zoning Commission.

(5) **Minor Amendments.** In the event that minor amendments to a final plan or other site-specific development plan are approved under the provisions of Section 6.3.10(A) (or under prior law, if permissible), the effective date of such minor amendments, for purposes of duration of a vested property right, shall be the date of the approval of the original final plan or other site specific development plan.

(6) **Major Amendments.** The approval of major amendments to a final plan or other site specific development plan under the provisions of Section 6.3.10(B) (or under prior law, if permissible), shall create a new vested property right with effective period and term as provided herein, unless expressly stated otherwise in the decision approving such major amendment.

(7) **Planning over old plans**. In the event that a new final plan is approved for a parcel of property which includes all of a previously approved site specific development plan, the approval of such new final plan shall cause the automatic expiration of such previously approved site specific development plan. In the event that a new final plan is approved for a parcel of property which includes only a portion of a previously approved site specific development plan, the approval of such new final plan shall be deemed to constitute the abandonment of such portion of the previously approved plan as is covered by such new plan, and shall be reviewed according to the abandonment criteria contained in subsection 6.2.4(C) and all other applicable criteria of this Code.

(8) **Other provisions unaffected.** Approval of a final plan or other site specific development plan shall not constitute an exemption from or waiver of any other provisions of this Code pertaining to the development and use of property.

(9) **Post denial re-submittal delay.** Property that is the subject of an overall development plan or a project development plan that has been denied by the decision maker or denied by City Council upon appeal, or withdrawn by the applicant, shall be ineligible to serve, in whole or in part, as the subject of another overall development plan or project development plan application for a period of six (6) months from the date of the final decision of denial or the date of withdrawal (as applicable) of the plan unless the Director determines that the new plan includes substantial changes in land use, residential density and/or nonresidential intensity.

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

6.3.12 STEP 12: APPEALS/ALTERNATE REVIEW

(A) **Appeals.** Appeals of any final decision of a decision maker under this Code shall be only in accordance with Chapter 2, Article II, Division 3 of the City Code, unless otherwise provided in this Article.

(B) **Alternate Review.** Despite the foregoing, if the City is the applicant for a development project, there shall be no appeal of any final decision regarding such development project to the City Council. In substitution of an appeal of a development project for which the City is the applicant, the City Council may, by majority vote, as an exercise of its legislative power and in its sole discretion, overturn or modify any final decision regarding such project, by ordinance of the City Council. Any Councilmember may request that the City Council initiate this exercise of legislative power but only if such request is made in writing to the City Clerk within fourteen (14) days of the date of the final decision of the Planning and Zoning Commission. City Council shall conduct a hearing prior to the adoption of the ordinance in order to hear public testimony and receive and consider any other public input received by the City Council (whether at or before the hearing) and shall conduct its hearing in the manner customarily employed by the Council for the consideration of legislative matters. When evaluating City projects under alternate review, the City Council may, in its legislative discretion, consider factors in addition to or in substitution of the standards of this Land Use Code.

(C) **Appeal of Minor Amendment, Changes of Use, and Basic Development Review Decisions by the Director.** The Director's final decision on a minor amendment or change of use application pursuant to Section 6.3.10(A) or basic development review application pursuant to Division 6.4 may be appealed to the Planning and Zoning Commission as follows:

(1) **Parties Eligible to File Appeal.** The following parties are eligible to appeal the Director's final decision on a minor amendment, change of use, or basic development review application:

(a) the applicant that submitted the application subject to the Director's final decision;

(b) any party holding an ownership or possessory interest in the real or personal property that was the subject of the final decision;

(c) any person to whom or organization to which the City mailed notice of the final decision;

(d) any person or organization that provided written comments to the appropriate City staff for delivery to the Director prior to the final decision; and

(e) any person or organization that provided written comments to the appropriate City staff for delivery to the decision maker prior to the final decision on the project development plan or final plan being amended or provided spoken comments to the decision maker at the public hearing where such final decision was made.

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

(a) A copy of the Director's final decision being appealed.

(b) The name, address, email address, and telephone number of each appellant and a description why each appellant is eligible to appeal the final decision pursuant to Subsection (C)(1) above.

(c) The specific Land Use Code provision(s) the Director failed to properly interpret and apply and the specific allegation(s) of error and/or the specific Land Use Code procedure(s) not followed that harmed the appellant(s) and the nature of the harm; and

(d) In the case of an appeal filed by more than one (1) person, the name, address, email address and telephone number of one (1) such person who shall be authorized to receive, on behalf of all persons joining the appeal, any notice required to be mailed by the City to the appellant.

(3) **Scheduling of Appeal.** A public hearing shall be scheduled before the Planning and Zoning Commission within sixty (60) calendar days of a notice of appeal being deemed complete unless the Planning and Zoning Commission adopts a motion granting an extension of such time period.

(4) **Notice.** Once a hearing date before the Planning and Zoning Commission has been determined, the Director shall mail written notice pursuant to Section 6.3.6(A). Notice requirements set forth in Section 6.3.6(B) through (D) shall not apply. The mailed notice shall inform recipients of:

(a) the subject of the appeal;

(b) the date, time, and place of the appeal hearing;

(c) the opportunity of the recipient and members of the public to appear at the hearing and address the Planning and Zoning Commission; and

(d) how the notice of appeal can be viewed on the City's website.

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

(a) The Planning and Zoning Commission shall hold a public hearing pursuant to Section 6.3.7 to decide the appeal, and City staff shall prepare a staff report for the Planning and Zoning Commission. The notice of appeal, copy of the Director's final decision, and the application and all application materials submitted to the Director shall be provided to the Planning and Zoning Commission for its consideration at the hearing.

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

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

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

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

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

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

(a) A copy of the Director's determination being appealed;

(b) The name, address, email address, and telephone number of each person joining the appeal;

(c) The specific reasons why the appellant believes the Director's determination is incorrect;

(d) In the case of an appeal filed by more than one (1) person, the name, address, email address and telephone number of one (1) such person who shall be authorized to receive, on behalf of all persons joining the appeal, any notice required to be mailed by the City to the appellant.

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

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

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

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

(a) The subject of the appeal;

(b) The date, time, and place of the appeal hearing;

(c) The opportunity of the recipient and members of the public to appear at the hearing and address the Planning and Zoning Commission; and

(d) How the notice of appeal can be viewed on the City's website.

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

(a) The Planning and Zoning Commission shall hold a public hearing pursuant to Section 6.3.7 to decide the appeal with appellant being substituted for applicant in Section 6.3.7. In any appeal of a Director finding that a proposed development project would have a significant impact and is not required to obtain a permit, the procedure set forth in Section 6.3.7 shall be modified to provide the FONSI applicant an opportunity equal to that of the appellant to address the Commission and respond to evidence and arguments raised by the appellant and members of the public. City staff shall prepare a staff report for the Commission. The notice of appeal, copy of the Director's final decision, and the application and all application materials submitted to the Director shall be provided to the Commission for its consideration at the hearing.

(b) The hearing shall be considered a new, or *de novo*, hearing at which the Planning and Zoning Commission shall not be restricted to reviewing only the allegations of error listed in the notice of appeal, the Planning and Zoning Commission shall not give deference to the Director's decision being appealed, and the burden shall be on the appellant to establish why the appeal should be granted. The applicant, appellant, members of the public, and City staff may provide information to the Planning and Zoning Commission for its consideration at the appeal hearing that was not provided to the Director for their consideration in making the decision being appealed.

(c) The Planning and Zoning Commission shall review the application that is the subject of the appeal for compliance with all applicable criteria set forth in Section 6.27.6.5 and shall uphold or overturn the Director's determination. The Planning and Zoning Commission decision shall constitute a final decision appealable to City Council pursuant to Section 6.3.12(A).

DIVISION 6.4 BASIC DEVELOPMENT REVIEW

6.4.1 PURPOSE AND APPLICABILITY

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

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

6.4.2 MINOR SUBDIVISIONS

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

6.4.3 BASIC DEVELOPMENT REVIEW AND MINOR SUBDIVISION REVIEW PROCEDURES

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

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

Step 7(F)(2)(c and d): (Verbatim Transcript and Videotape Recording): Not Applicable.
Step 7(G): (Recording of Decisions and Plats): Applicable for Minor Subdivisions only.

(H) ***Step 8*** (Standards): Applicable.
(I) ***Step 9*** (Conditions of Approval): Applicable.
(J) ***Step 10*** (Amendments): Applicable.
(K) ***Step 11*** (Lapse): Applicable.
Step 11(A): (Application Submittals): Applicable.
Step 11(B and C) (Lapse): Not Applicable.
Step 11(D)(1—8): (Final Plan and Plan and Other Site Specific Development Plan): Applicable.
Step 11(D)(9): (Post denial re-submittal delay): Not Applicable.
Step 11(D)(10): (Automatic repeal; waiver): Applicable.
(L) ***Step 12*** (Appeals): Applicable pursuant to Section 6.3.12(C).

DIVISION 6.5 OVERALL DEVELOPMENT PLAN

6.5.1 PURPOSE AND APPLICABILITY

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

6.5.2 OVERALL DEVELOPMENT PLAN REVIEW PROCEDURES

An overall development plan shall be processed according to, in compliance with and subject to the provisions contained in Division 6.2 and Steps 1 through 12 of the Common Development Review Procedures (Sections 6.3.1 through 6.3.12, inclusive) as follows:

(A) ***Step 1*** (Conceptual Review): Applicable.
(B) ***Step 2*** (Neighborhood Meeting): Applicable.
(C) ***Step 3*** (Development Application Submittal): All items or documents required for overall development plans as described in the development application submittal Comprehensive list shall be submitted. The Director may waive or modify the foregoing submittal requirements if, given the facts and circumstances of the specific application, a particular requirement would either be irrelevant, immaterial, redundant or otherwise unnecessary for the full and complete review of the application.
(D) ***Step 4*** (Review of Applications): Applicable.
(E) ***Step 5*** (Staff Report): Applicable.
(F) ***Step 6*** (Notice): Applicable.
(G) ***Step 7(A)*** (Decision Maker): All overall development plans will be processed as Type 2 reviews.
(H) ***Step 7(B)—(G)*** (Conduct of Public Hearing, Order of Proceedings at Public Hearing, Decision and Findings, Notification to Applicant, Record of Proceedings, Recording of Decisions and Plats): Applicable.
(I) ***Step 8*** (Standards): Applicable. An overall development plan shall comply with the following criteria:
(1) The overall development plan shall be consistent with the permitted uses and zone district standards contained in Articles 2 and 4 for all zone districts contained within the boundaries of the overall development plan. The plan shall also be consistent with any development standards (Articles 3 and 5) that can be applied at the level of detail required for an overall development plan submittal. Only one (1) application for an overall development plan for any specific parcel or portion thereof may be pending for approval at any given time. Such application shall also be subject to the provisions for delay set out in Section 6.3.11.

(2) The overall development plan shall be consistent with the required density range of residential uses (including lot sizes and housing types) with regard to any land which is part of the overall development plan and which is included in the following districts of Article 2:

- The Rural Land District (RUL).
- The Urban Estate District (UE).
- The Residential Foothills District (RF).
- The Low Density Mixed-Use Neighborhood District (LMN).
- The Medium Density Mixed-Use Neighborhood District (MMN).
- The High Density Mixed-Use Neighborhood District (HMN).
- The Manufactured Housing District (MH).
- The Community Commercial - North College District (CCN).
- The Harmony Corridor District (HC).
- The Employment District (E).

(3) The overall development plan shall conform to the Master Street Plan requirements and the street pattern/connectivity standards both within and adjacent to the boundaries of the plan as required pursuant to Sections 5.4.5 and 5.4.7(A) through (F). The overall development plan shall identify appropriate transportation improvements to be constructed and shall demonstrate how the development, when fully constructed, will conform to the Transportation Level of Service Requirements as contained in Section 5.4.10 by submittal of a Comprehensive Level Transportation Impact Study.

(4) The overall development plan shall provide for the location of transportation connections to adjoining properties in such manner as to ensure connectivity into and through the overall development plan site from neighboring properties for vehicular, pedestrian and bicycle movement, as required pursuant to Section 5.4.7(F) and Section 5.9.1(C)(6).

(5) The overall development plan shall show the general location and approximate size of all natural areas, habitats and features within its boundaries and shall indicate the applicant's proposed rough estimate of the natural area buffer zones as required pursuant to Section 5.6.1(E).

(6) The overall development plan shall be consistent with the appropriate Drainage Basin Master Plan.

(7) Any standards relating to housing density and mix of uses will be applied over the entire overall development plan, not on each individual project development plan review.

(J) ***Step 9*** (Conditions of Approval): Applicable.
(K) ***Step 10*** (Amendments): Applicable.
(L) ***Step 11*** (Lapse): Applicable.
(M) ***Step 12*** (Appeals): Applicable.

DIVISION 6.6 PROJECT DEVELOPMENT PLAN

6.6.1 PURPOSE AND APPLICABILITY

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

6.6.2 PROJECT DEVELOPMENT PLAN REVIEW PROCEDURES

A project development plan shall be processed according to, in compliance with and subject to the provisions contained in Division 6.2 and Steps 1 through 12 of the Common Development Review Procedures (Sections 6.3.1 through 6.3.12, inclusive) as follows:

(A) ***Step 1*** (Conceptual Review): Applicable, only if the project development plan is not subject to an overall development plan.
(B) ***Step 2*** (Neighborhood Meeting): Applicable.
(C) ***Step 3*** (Development Application Submittal): All items or documents required for project development plans as described in the development application submittal Comprehensive list shall be submitted. The Director may waive or modify the foregoing submittal requirements if, given the facts and circumstances of the specific application, a particular requirement would either be irrelevant, immaterial, redundant or otherwise unnecessary for the full and complete review of the application.
(D) ***Step 4***(Review of Applications): Applicable.
(E) ***Step 5***(Staff Report): Applicable.
(F) ***Step 6*** (Notice): Applicable.
(G) ***Step 7(A)*** (Decision Maker):
Applicable as follows:

(1) **Administrative review** (Type 1 review) applies to a project development plan that satisfies all of the following conditions:

(a) it was submitted after the effective date of this Land Use Code and is subject to the provisions of this Land Use Code; and

(b) it contains only permitted uses subject to administrative review as listed in the zone district (set forth in Article 7, District Standards) in which it is located.

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

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

(H) **Step 8** (Standards): Applicable. A project development plan shall comply with all development standards applicable to the development proposal (Articles 3 and 5) and the applicable zone district standards (Articles 2 and 4); and, when a project development plan is within the boundaries of an approved overall development plan or PUD Overlay, the project development plan shall be consistent with the overall development plan or PUD Comprehensive Plan associated with such PUD Overlay. Only one (1) application for a project development plan for any specific parcel or portion thereof may be pending for approval at any given time. Such application shall also be subject to the provisions for delay set out in Section 6.3.11.

(E) **Step 9** (Conditions of Approval): Applicable.
(F) **Step 10** (Amendments): Applicable.
(G) **Step 11** (Lapse): Applicable.
(H) **Step 12** (Appeals): Applicable

DIVISION 6.7 FINAL PLAN

6.7.1 PURPOSE AND APPLICABILITY

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

6.7.2 FINAL PLAN REVIEW PROCEDURES

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

A final plan shall be processed according to, in compliance with and subject to the provisions contained in Division 6.2 and Steps 1 through 12 of the Common Development Review Procedures (Sections 6.3.1 through 6.3.12, inclusive) as follows:

(A) ***Step 1*** (Conceptual Review): Not applicable.
(B) ***Step 2*** (Neighborhood Meeting):
Not applicable
(C) **Step 3** (Development Application Submittal): All items or documents required for final plans as described in the development application submittal Comprehensive list shall be submitted. The Director may waive or modify the foregoing submittal requirements if, given the facts and circumstances of the specific application, a particular requirement would either be irrelevant, immaterial, redundant or otherwise unnecessary for the full and complete review of the application.
(D) **Step 4** (Review of Applications): Applicable.
(E) **Step 5** (Staff Report): Not applicable.
(F) **Step 6** (Notice): Not applicable.
(G) **Step 7**(A)—(C) (Decision Maker, Conduct of Public Hearing, Order of Proceeding at Public Hearing): Not applicable, and in substitution therefor, the Director is hereby authorized to, and shall, review, consider and approve, approve with conditions or deny the development application for a final plan based on its consistency with a valid project development plan for the subject property and its compliance with all of the standards established in Step 8 of this Section. The Director may, but is not obligated to, confer or meet with the applicant or other city staff to obtain clarification or explanation, gain understanding, suggest revision, or otherwise discuss or learn about the development proposal and final plan, all for the purpose of ensuring a fully consistent and compliant final plan.

Step 7(D) (Decision and Findings): Not applicable, except that Step 7(D)(3) shall apply.
Step 7(E) (Notification to Applicant): Applicable.
Step 7(F) (Record of Proceedings): Not applicable, except that Step 7(F)(2) shall apply.
Step 7(G) (Recording of Decisions and Plats): Applicable.
(H) ***Step 8*** (Standards): Applicable. A final plan shall comply with the development standards applicable to the development proposal (Articles 3 and 5) and the applicable zone district standards (Articles 2 and 4); and a final plan shall be consistent with the project development plan.
(I) ***Step 9*** (Conditions of Approval): Applicable.
(J) ***Step 10*** (Amendments): Applicable.
(K) ***Step 11*** (Lapse): Applicable.
(L) ***Step 12*** (Appeals): Not applicable. The Director's decision shall be final and no appeals of the Director's decision will be allowed; however, the Director may refer the decision to the Planning and Zoning Commission when the Director is in doubt as to the compliance and consistency of the final plan with the approved project development plan. If the Director refers the decision to the Planning and Zoning Commission, the decision of the Planning and Zoning Commission shall be final and shall not be appealable to the City Council, notwithstanding any provision of the City Code to the contrary.

DIVISION 6.8 MODIFICATION OF STANDARDS

6.8.1 PURPOSE AND APPLICABILITY

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

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

either for:

- overall development plans, project development plans, and/or applications subject to basic development review that are pending approval at the time that the request for proposed modification is filed;
- overall development plans and/or project development plans which the applicant intends to file, provided that such plans are in fact filed with the Director as development applications within one (1) year following the determination of the decision maker on the request for the proposed modification; or
- development plans approved under the Land Use Code or prior law and which are sought to be amended (either as a minor or major amendment) pursuant to Section 6.3.10.

6.8.2 MODIFICATION REVIEW PROCEDURES

A request for modification to the standards shall be processed according to, in compliance with and subject to the provisions contained in Division 6.3 and Steps 1 through 12 of the Common Development Review Procedures (Sections 6.3.1 through 6.3.12, inclusive) as set forth below. Once a modification is approved, it shall be controlling for the successive, timely filed, development applications for that particular development proposal only to the extent that it modifies the standards pertaining to such plan.

(A) ***Step 1*** (Conceptual Review): Applicable.
(B) ***Step 2*** (Neighborhood Meeting): Not applicable.
(C) ***Step 3*** (Development Application Submittal): All items or documents required for a Modification of Standards as described in the development application submittal Comprehensive list shall be submitted. The Director may waive or modify the foregoing submittal requirements if, given the facts and circumstances of the specific application, a particular requirement would either be irrelevant, immaterial, redundant or otherwise unnecessary for the full and complete review of the application.
(D) ***Step 4*** (Review of Applications): Applicable.
(E) ***Step 5*** (Staff Report): Applicable.
(F) ***Step 6*** (Notice): Section 6.3.6(A), (B) and (C) apply. Section 6.3.6(D) shall not apply.
(G) ***Step 7(A)*** (Decision Maker): Applicable, and in explanation thereof and in addition thereto, if an application for a modification of standards pertains to a minor amendment or a development plan that is subject to administrative review or basic development review, the Director shall be the designated decision maker, except that, at the option of the applicant, the application may be considered by the Planning and Zoning Commission; and if an application for a modification of standards pertains to a development plan which is subject to Planning and Zoning Commission review, the Planning and Zoning Commission shall be the designated decision maker. If the application is for a modification of standards pertaining to a development plan previously approved under prior law or not yet filed, the Director shall determine whether such development plan would have been, or will be, subject to administrative review or Planning and Zoning Commission review and shall identify the decision maker accordingly. In all cases, the decision maker shall

review, consider and approve, approve with conditions or deny an application for a modification of standards based on its compliance with all of the standards contained in Step 8.

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

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

(H) ***Step 8*** (Standards): Applicable, and the decision maker may grant a modification of standards only if it finds that the granting of the modification would not be detrimental to the public good, and that:

(1) the plan as submitted will promote the general purpose of the standard for which the modification is requested equally well or better than would a plan which complies with the standard for which a modification is requested; or

(2) the granting of a modification from the strict application of any standard would, without impairing the intent and purpose of this Land Use Code, substantially alleviate an existing, defined and described problem of city-wide concern or would result in a substantial benefit to the City by reason of the fact that the proposed project would substantially address an important community need specifically and expressly defined and described in the City's Comprehensive Plan or in an adopted policy, ordinance or resolution of the City Council, and the strict application of such a standard would render the project practically infeasible; or

(3) by reason of exceptional physical conditions or other extraordinary and exceptional situations, unique to such property, including, but not limited to, physical conditions such as exceptional narrowness, shallowness or topography, or physical conditions which hinder the owner's ability to install a solar energy system, the strict application of the standard sought to be modified would result in unusual and exceptional practical difficulties, or exceptional or undue hardship upon the owner of such property, provided that such difficulties or hardship are not caused by the act or omission of the applicant; or

(4) the plan as submitted will not diverge from the standards of the Land Use Code that are authorized by this Division to be modified except in a nominal, inconsequential way when considered from the perspective of the entire development plan, and will continue to advance the purposes of the Land Use Code as contained in Section 1.2.2.

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

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

(J) ***Step 10*** (Amendments): Not Applicable.

(K) ***Step 11*** (Lapse): All Modifications of Standards which apply to a pending development plan or a development plan which is timely filed in accordance with the provisions of Section 6.8.1 shall be valid in accordance with the lapse provisions contained in Section 6.3.11. All Modifications of Standards which apply to a development plan which has not been filed in accordance with the provisions of Section 6.8.1 shall be valid for a period of time not to exceed one (1) year following the determination of the decision maker on the request for the proposed modification.

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

DIVISION 6.9 ADDITION OF PERMITTED USES

6.9.1 ADDITION OF PERMITTED USES

(A) **Purpose Statement.** The purpose of the Addition of Permitted Use process is to allow for the approval of a particular land use to be located on a specific parcel within a zone district that otherwise would not permit such a use. Under this process, an applicant may submit a plan that does not conform to the zoning, with the understanding that such plan will be subject to a heightened level of review, with close attention being paid to compatibility and impact mitigation. This process is intended to allow for consideration of unforeseen uses and unique circumstances on specific parcels with evaluation based on the context of the surrounding area. The process allows for consideration of emerging issues, site attributes or changed conditions within the neighborhood surrounding and including the subject property. For residential neighborhoods, land use flexibility shall be balanced with the existing residential character. Projects are expected to continue to meet the objectives of any applicable sub-area plan and City Plan. The process encourages dialogue and collaboration among applicants, affected property owners, neighbors and City Staff.

(B) **Applicability.** This Section is applicable only under the following circumstances:

(1) where the proposed use is not listed as a permitted use in any zone district, does not fall within any existing use classification and is proposed as being appropriate to be added to the permitted uses in the zone district. If approved under this Section, such use shall be considered for inclusion into the zone district pursuant to Division 6.25; or

(2) where the proposed use is listed as a permitted use in one (1) or more zone district(s) and is proposed based solely on unique circumstances and attributes of the site and development plan.

(C) **Procedures and Required Findings.** The following procedures and required findings shall apply to addition of permitted use determinations made by the Director, Planning and Zoning Commission, and City Council respectively:

(1) **Director Approval.** In conjunction with an application for approval of an overall development plan, a project development plan, or any amendment of the foregoing (the "primary application" for purposes of this Section only), for property not located in any zone district listed in subsection (G), the applicant may apply for the approval of an Addition of Permitted Use for uses described in subsection (B)(1) to be determined by the Director. If the applicant does not apply for such an addition of permitted use in conjunction with the primary application, the Director in their sole discretion may initiate the addition of permitted use process. The Director may add to the uses specified in a particular zone district any other use which conforms to all of the following criteria:

(a) Such use is appropriate in the zone district to which it is added.
(b) Such use conforms to the basic characteristics of the zone district and the other permitted uses in the zone district to which it is added.
(c) The location, size and design of such use is compatible with and has minimal negative impact on the use of nearby properties.
(d) Such use does not create any more offensive noise, vibration, dust, heat, smoke, odor, glare or other objectionable influences or any more traffic hazards, traffic generation or attraction, adverse environmental impacts, adverse impacts on public or quasi-public facilities, utilities or services, adverse effect on public health, safety, morals or aesthetics, or other adverse impacts of development, than the amount normally resulting from the other permitted uses listed in the zone district to which it is added.
(e) Such use will not change the predominant character of the surrounding area.

(f) Such use is compatible with the other listed permitted uses in the zone district to which it is added.

(g) Such use, if located within or adjacent to an existing residential neighborhood, shall be subject to two (2) neighborhood meetings, unless the Director determines, from information derived from the conceptual review process, that the development proposal would not have any significant neighborhood impacts. The first neighborhood meeting must take place prior to the submittal of an application. The second neighborhood meeting must take place after the submittal of an application and after the application has completed the first round of staff review.

(h) Such use is not a medical marijuana business as defined in Section 15-452 of the City Code or a retail marijuana establishment as defined in Section 15-603 of the City Code.

(2) **Planning and Zoning Commission Approval.** In conjunction with a primary application for a project not located, in whole or in part, in any zone district listed in subsection (G), the applicant may apply for approval of an addition of permitted use for uses described in subsection (B)(2) to be determined by the Planning and Zoning Commission. The Planning and Zoning Commission may add a proposed use if the Commission specifically finds that such use: (1) conforms to all of the eight (8) criteria listed in subsection (C)(1); (2) would not be detrimental to the public good; (3) would be in compliance with Section 5.15.1 Building and Project Compatibility; and (4) is not specifically listed as a "prohibited use" in the zone district in which the proposed site is located. The addition of a permitted use by the Commission shall be specific to the proposed project and shall not be considered for a text amendment under subsection (D) below.

(3) **City Council Approval**. In conjunction with a primary application for a project located, in whole or in part, in a zone district listed in subsection (G), any application for the approval of an addition of permitted use shall be determined by the City Council after a Planning and Zoning Commission recommendation on the addition of permitted use. The Planning and Zoning Commission shall remain the decision maker on the primary application.

(a) The Planning and Zoning Commission may recommend to the City Council that a proposed use described in subsection (B)1. be added if the Commission specifically finds that such use conforms to all of the eight criteria listed in subsection (C)1. The Planning and Zoning Commission may recommend to the City Council that a proposed use described in subsection (B)2. be added if the Commission specifically finds that such use: (1) conforms to all of the eight (8) criteria listed in subsection (C)1.; (2) would not be detrimental to the public good; (3) would be in compliance with Section 5.15.1 Building and Project Compatibility; and (4) is not specifically listed as a "prohibited use" in the zone district in which the proposed site is located. The Planning and Zoning Commission shall consider only the requirements set forth in this subsection in making a recommendation on the addition of permitted use and shall follow the notice and hearing requirements that are established for zonings and rezonings of areas of no more than six hundred forty (640) acres in size as set forth in Section 6.25 of this Land Use Code.

(b) In considering the recommendation of the Planning and Zoning Commission and in determining whether a proposed use should be added, the City Clerk shall cause the hearing by the City Council to be placed on the agenda for a future City Council meeting; and the public hearing before the City Council shall be held after at least fifteen (15) day notice of the time, date and place of such hearing and the subject matter of the hearing and the nature of the proposed zoning change has been given by publication in a newspaper of general circulation within the City and City Council shall follow the applicable hearing procedures established by the City Council by resolution for such hearings. In determining the addition of permitted use, the City Council shall consider only the requirements set forth in subsection (c) below.

(c) In deciding the addition of permitted use application for uses described in subsection (B)(1), the City Council, after considering the Planning and Zoning Commission recommendation, may add a proposed

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

(d) If the addition of permitted use is denied, any primary application that has been approved by the Planning and Zoning Commission contingent upon the City Council's approval of an additional permitted use under this Section shall be automatically terminated and made null if such condition is not met; and any pending appeal of such conditional approval shall also be automatically terminated if such condition is not met, whereupon the appellant shall be promptly refunded any appeal fee that was paid to the City.

(D) *Codification of New Use* When any use described in subsection (B)1. has been added by the Director to the list of permitted uses in any zone district in accordance with subsection (C)1. above, such use shall be promptly considered for an amendment to the text of this Code under Division 6.25. If the text amendment is approved, such use shall be deemed to be permanently listed in the appropriate permitted use list of the appropriate zone district and shall be added to the published text of this Code, at the first convenient opportunity, by ordinance of City Council pursuant to Division 6.25. If the text amendment is not approved, such use shall not be deemed permanently listed in the zone district, except that such use shall continue to be deemed a permitted use in such zone district for only the development proposal for which it was originally approved under subsection (C)1. above.

(E) Conditions When any use has been added to the list of permitted uses in any zone district in accordance with this Section, the Director or the Planning and Zoning Commission with respect to any zone district not listed in subsection (G), or the City Council with respect to any zone district listed in subsection (G), may impose such conditions and requirements, including, but not limited to, conditions related to the location, size and design on such use as are necessary or desirable to: (1) accomplish the purposes and intent of this Code, (2) ensure consistency with the City Plan and its adopted components and associated sub-area plans, or (3) prevent or minimize adverse effects and impacts upon the public and neighborhoods, and to ensure compatibility of uses.

(F) Changes to Approved Addition of Permitted Use. Approvals under this Section are specific to the subject addition of permitted use application. Any changes to the use or to its location, size and design, in a manner that changes the predominant character of or increases the negative impact upon the surrounding area, will require the approval of a new addition of permitted use.

(G) Zones Subject to City Council Addition of Permitted Use Review. The City Council shall make all final determinations regarding any addition of permitted use under subsection (C)(3) with respect to a project located, in whole or in part, in any of the following zone districts:

- Rural Lands District (RUL)

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

DIVISION 6.10 ANNEXATION AND DISCONNECTION OF LAND

6.10.1 COMPLIANCE WITH STATE LAW

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

6.10.2 PETITIONS FOR ANNEXATION AND ANNEXATION PLATS

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

6.10.3 HEARING AND REPORT BY PLANNING AND ZONING COMMISSION

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

6.10.4 ANNEXATION OF USES NOT LEGALLY PERMITTED

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

If a use which is not permitted by the county exists on any property that is included in an enclave annexation consisting of more than one (1) separately owned parcel, the above-described development process shall apply only if such property is placed in a zone district wherein such use is a permitted use. If a property which contains a use that is not permitted by the county is included in such multi-parcel enclave annexation, and such property is placed

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

6.10.5 EFFECTIVE DATE OF ANNEXATION

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

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

(B) the filing for recording of three (3) certified copies of the annexation ordinance and map of the area annexed, containing a legal description of such area, with the Larimer County Clerk and Recorder.

6.10.6 APPLICATION FOR DISCONNECTION, ENACTMENT, AND FILING

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

DIVISION 6.11 SITE PLAN AND ADVISORY REVIEW

6.11.1 PURPOSE AND APPLICABILITY

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

6.11.2 SITE PLAN ADVISORY REVIEW PROCEDURES

A Site Plan Advisory Review shall be processed according to, in compliance with and subject to the provisions contained in Division 6.2 and Steps 1 through 12 of the Common Development Review Procedures (Sections 6.3.1 through 6.3.12, inclusive) as follows:

(A) **Step 1** (Conceptual Review): Applicable.
(B) ***Step 2*** (Neighborhood Meeting): Applicable.
(C) ***Step 3*** (Development Application Submittal): All items or documents required for Site Plan Advisory Review as described in the development application submittal Comprehensive list shall be submitted. The Director may waive or modify the foregoing submittal requirements if, given the facts and circumstances of the specific application, a particular requirement would either be irrelevant, immaterial, redundant or

otherwise unnecessary for the full and complete review of the application.

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

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

(M) ***Step 4*** (Review of Application): Applicable.
(N) ***Step 5*** (Staff Report): Applicable.
(O) ***Step 6*** (Notice): Applicable.
(P) ***Step 7(A)*** (Decision Maker): Not applicable, and in substitution thereof, the Planning and Zoning Commission shall consider a Site Plan Advisory Review and approve or disapprove the application in a public hearing held within sixty (60) days after receipt of the application under Section 31-23-209, C.R.S. In the case of a public or charter school application under Section 22-32-124, C.R.S., the Planning and Zoning Commission shall provide review comments at a public hearing held within thirty (30) days (or such later time as may be agreed to in writing by the applicant) after receipt of the application.

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

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

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

(R) ***Step 9*** (Conditions of Approval): Not applicable.
(S) ***Step 10*** (Amendments): Not applicable.
(T) ***Step 11*** (Lapse): Not applicable.
(U) ***Step 12*** (Appeals): Not applicable, and in substitution thereof, a disapproved Site Plan Advisory Review made under Section 31-23-209, C.R.S., may be overruled by the governing board of the public entity by a vote of not less than two-thirds (⅔) of its entire membership. Further, with respect to a review made under Section 22-32-124, C.R.S., the Planning and Zoning Commission may request a hearing before the applicable board of education.

DIVISION 6.12 CITY PROJECTS

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

DIVISION 6.13 BUILDING PERMITS

6.13.1 PURPOSE

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

6.13.2 APPLICABILITY

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

6.13.3 BUILDING PERMIT REVIEW PROCEDURES

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

(A) ***Step 1*** (Conceptual Review): Not applicable.
(B) ***Step 2***(Neighborhood Meeting): Not applicable.
(C) ***Step 3(A)*** (Development Application Forms): Applicable.
Step 3(B) (Consolidated Development Applications and Review): Not applicable.
Step 3(C) (Development Application Contents): Not Applicable, and in substitution therefor, an application for a Building Permit shall be submitted to the Director for review and determination. An application for a Building Permit shall include all items, materials and documents that are required by the adopted International Building Code.
Step 3(D) (Development Review Fees): Applicable.
(D) ***Step 4***(Review of Applications): Not applicable.
(E) ***Step 5***(Staff Report): Not applicable.
(F) ***Step 6*** (Notice): Not applicable.
(G) ***Step 7*** (Public Hearing): Not applicable, and in substitution therefor, an application for a Building Permit shall be processed, reviewed, considered and approved, approved with modifications, or denied by the Director based on its compliance with the site specific development plan, the City Code and all regulations related to such permit adopted by the city by reference or otherwise, as amended.
(H) ***Step 8*** (Standards): Not applicable, and in substitution therefor, an application for a Building Permit shall be reviewed for compliance with the site specific development plan, the City Code and all regulations related to such permit adopted by the City by reference or otherwise, as amended; and if the Building Permit is for the enlargement of a building and/or for the expansion of facilities, equipment or structures regulated under the provisions of Division 6.17, such application shall also comply with Division 6.17.
(I) ***Step 9*** (Conditions of Approval): Applicable.

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

(K) ***Step 11*** (Lapse): Not applicable, and in substitution therefor, a Building Permit shall expire six (6) months after the date that such Building Permit was issued unless properly acted upon in accordance with the provisions of the Uniform Building Code, as amended. One (1) six-month extension may be granted by the Director.

(L) ***Step 12*** (Appeals): Not applicable, and in substitution therefor, appeals of any final decision of the Director on a Building Permit application shall be in accordance with Division 6.18; provided, however, that such appeals may be filed only by persons who possess a legal or equitable interest in the specific real property which is the subject of the decision, or who own or reside on real property any part of which is located within five hundred (500) feet of the specific real property which is the subject of the decision. Notwithstanding the foregoing, appeals pertaining to the application and enforcement of the International Building Code (as adopted and amended by the City) shall be processed in accordance with Section 5-27 of the City Code.

DIVISION 6.14 VARIANCES

6.14.1 PURPOSE AND APPLICABILITY

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

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

Variances shall not authorize a change in use other than to a use that is allowed subject to basic development review. Also, the variance shall not be used for Basic Development Review, overall development plans, project development plans or final plans which are pending approval at the time that the request for the variance is filed. The process to be used for such pending development applications is the procedure established in Division 6.8 (Modification of Standards).

6.14.2 VARIANCES BY THE DIRECTOR

(A) The Director shall be authorized to grant the following types of variances, subject to the variance review procedure in Section 6.14.4 below:

(1) Setback encroachment of up to ten (10) percent.
(2) Fence height increase of up to one (1) foot.
(3) In the OT zone district, the allowable floor area in the rear half of the lot increase of up to ten (10) percent, provided the amount of increase does not exceed the allowable floor area for the entire lot.
(4) Building height increase of up to one (1) foot.

(B) The Director may refer any variance described in (A) above to the Land Use Review Commission for review and decision if the Director determines that the application under consideration raises questions as to compliance with the requirements for compatibility with the surrounding neighborhood that are appropriately addressed through a public hearing before the Land Use Review Commission that will allow the applicant or the public, or both, an opportunity to provide relevant information related to the application.

6.14.3 VARIANCES BY THE LAND USE REVIEW COMMISSION

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

6.14.4 VARIANCE REVIEW PROCEDURES

A variance shall be processed according to, in compliance with and subject to the provisions contained in Division 6.2 and Steps 1 through 12 of the Common Development Review Procedures (Sections 6.3.1 through 6.3.12, inclusive) as follows:

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

(B) **Step 2**(Neighborhood Meeting): Not applicable.

(C) **Step 3**(Development Application Submittal): All items or documents required for variances as described in the development application submittal Comprehensive list shall be submitted. The Director may waive or modify the foregoing submittal requirements if, given the facts and circumstances of the specific application, a particular requirement would either be irrelevant, immaterial, redundant or otherwise unnecessary for the full and complete review of the application.

(D) **Step 4** (Review of Applications): Applicable.

(E) **Step 5** (Staff Report): Not applicable.

(F) **Step 6** (Notice): For variances reviewed by the Director or the Land Use Review Commission subsection 6.3.6(A) only applies, except that a variance reviewed by the Director shall require mailed written notice fourteen (14) days prior to the decision instead of the hearing/meeting date and for variances reviewed by the Director or the Land Use Review Commission, "eight hundred (800) feet" shall be changed to "one hundred fifty (150) feet," and for single-unit houses in the OT-A and OT-B zone districts, eight hundred (800) feet shall be changed to five hundred (500) feet for variance requests for:

(1) Construction that results in a two-story house where a one-story house previously existed and where there is at least one (1) lot abutting the side of the subject lot and the house on such abutting lot is one (1) story; or

(2) Construction of a new house that is greater than two thousand five hundred (2,500) square feet; or

(3) Construction of an addition that results in a total square footage of more than three thousand (3,000) square feet.

(G) **Step 7(A)** (Decision Maker): Not applicable, and in substitution for Section 6.3.7(A), the Director or Land Use Review Commission, pursuant to Chapter 2 of the City Code, shall review, consider and approve, approve with conditions, or deny applications for variance based on its compliance with all of the standards contained in Step 8.

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

Step 7(B)—(C) and (E)—(G)(1) Director Review Only (Conduct of Public Hearing, Order of Proceedings as Public Hearing): Not applicable.
Step 7(D) Director Review Only (Decision and Findings): Applicable and in substitution thereof, the Director shall issue a written decision to approve, approve with conditions, or deny the variance request. The written decision shall be mailed to the applicant and to the property owners to whom notice was originally mailed and shall also be posted on the City's website at www.fcgov.com.

(H) **Step 8** (Standards): Applicable, and the Director or Land Use Review Commission may grant a variance from the standards of Articles 2 – 5 and only if it finds that the granting of the variance would neither be detrimental to the public good nor authorize any change in use other than to a use that is allowed subject to basic development review; and that:

(1) by reason of exceptional physical conditions or other extraordinary and exceptional situations unique to such property, including, but not limited to, physical conditions such as exceptional narrowness, shallowness or topography, or physical conditions which hinder the owner's ability to install a solar energy system, the strict application of the standard sought to be varied would result in unusual and exceptional practical difficulties, or exceptional or undue hardship upon the occupant of such property, or upon the applicant, provided that such difficulties or hardship are not caused by the act or omission of the occupant or applicant;

(2) the proposal as submitted will promote the general purpose of the standard for which the variance is requested equally well or better than would a proposal which complies with the standard for which the variance is requested; or

(3) the proposal as submitted will not diverge from the standards of the Land Use Code that are authorized by this Division to be varied except in a nominal, inconsequential way when considered in the context of the neighborhood, and will continue to advance the purposes of the Land Use Code as contained in Section 1.2.2.

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

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

(J) **Step 10** (Amendments): Not Applicable.

(K) **Step 11** (Lapse): Any variance that applies to the issuance of a Building Permit shall expire six (6) months after the date that such variance was granted, unless all necessary permits have been applied for; provided, however, that for good cause shown, the Director may authorize a longer term if such longer term is reasonable and necessary under the facts and circumstances of the case, but in no event shall the period of time for applying for all necessary permits under a variance exceed twelve (12) months in length. One (1) six-month extension may be granted by the Director.

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

(1) Applicable and in substitution thereof, variances decided by the Director are appealable to the Land Use Review Commission. Any such appeal must be initiated by filing a notice of appeal of the final decision of the Director within fourteen (14) days after the decision that is the subject of the appeal. The appeal

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

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

DIVISION 6.15 REASONABLE ACCOMODATION PROCESS

(A) **Intent.** It is the policy of Fort Collins to provide reasonable accommodation for exemptions in the application of its zoning laws to rules, policies, and practices for the siting, development, and use of housing, as well as other related residential services and facilities, to persons with disabilities seeking fair access to housing. The purpose of this section is to provide a process for making a request for reasonable accommodation to individual persons with disabilities.

(B) **Application.** Any person who requires reasonable accommodation, because of a disability, in the application of a zoning law that may be acting as a barrier to equal opportunity to housing opportunities, or any person or persons acting on behalf of or for the benefit of such a person, may request such accommodation. For purposes of this section, "disabled," "disability," and other related terms shall be defined as in the federal Americans with Disabilities Act of 1990 ("ADA"), the Fair Housing Act ("FHA"), or their successor laws. Additional for the purpose of this section such laws are referred collectively as the “the Acts”. Requests for reasonable accommodation shall be made in the manner prescribed by Division 6.15(C).

(C) **Required Information.**

(1) **The applicant shall provide the following information:**

(a) Applicant's name, address, and telephone number;
(b) Address of the property for which the request is being made;
(c) The current actual use of the property;
(d) Confirmation that the subject individual or individuals are disabled under the Acts. Any information related to the subject individual or individuals' disability shall be kept confidential;
(e) The specific zoning code provision, regulation, or policy from which accommodation is being requested; and
(f) Why the reasonable accommodation is necessary for the subject individual or individuals with disabilities to have equal opportunity to use and enjoy the specific property.

(2) **Review With Other Land Use Applications.**
If the project for which the request for reasonable accommodation is being made also requires some other development review, then the applicant shall file the information required by Division 6.15(C) together for concurrent review with any other application for development review approval. The application for reasonable accommodation will be decided prior to any concurrent development review application that is affected by the request for reasonable accommodation, including but not limited to applications reviewed by the City Council, Planning and Zoning Commission and Land Use Review Commission.

(3) **Timing of Application.** An application for reasonable accommodation may be filed at any time prior to a final decision on a development application, including any applicable time for appeal.

(4) **Effect of Application on Appeals.** Notwithstanding any limitation found in Section 2-49 or Section 2-52 of the City Code, filing an application for reasonable accommodation will toll the time for filing an appeal

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

(D) **Review Procedure.**

(1) **Director.** Requests for reasonable accommodation shall be reviewed by the Director, or their designee.

(2) **Interactive Meeting.** Upon either the request of the Director or the applicant, the Director or their designee shall hold an interactive meeting with the applicant to discuss the reasonable accommodation request in order to obtain additional information or to discuss what may constitute a reasonable accommodation for a particular application.

(3) **Director Review.** The Director, or their designee, shall make a written determination within forty-five (45) days of receiving an application, or having an interactive meeting, whichever date comes later, and either grant, grant with modifications, or deny a request for reasonable accommodation in accordance with Division 6.15(E). Information related to the subject individual or individuals' disability shall be kept confidential and shall not be included in a public file.

(E) **Findings and Decision.**

(1) **Findings.** The written decision to grant, grant with conditions or deny a request for reasonable accommodation shall be based on consideration of the following factors:

(a) Whether the property, which is the subject of the request, will be used by an individual disabled under the Acts;
(b) Whether the request for reasonable accommodation is necessary to make specific housing available to an individual with a disability under the Acts;
(c) Whether the requested reasonable accommodation would impose an undue financial or administrative burden on the City;
(d) Whether the requested reasonable accommodation would require a fundamental alteration in the nature of a Land Use Code provision; and
(e) Any other applicable requirements of the FHA and ADA.

(2) **Conditions of Approval.** In granting a request for reasonable accommodation, the reviewing authority may impose any conditions of approval deemed reasonable and necessary to ensure that the reasonable accommodation would comply with the findings required by Division 6.15(E)(1).

(3) **Effect of Approval.** An approval, with or without conditions, of an application for reasonable accommodation will be treated as compliance with the Code section being accommodated but will not affect any concurrent review not related to the reasonable accommodation, except that the decision maker shall amend or modify any concurrent decision to incorporate the approved reasonable accommodation.

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

DIVISION 6.16 NONCONFORMING USES AND STRUCTURES

6.16.1 CONTINUATION OF USE

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

(A) The hours of operation of a nonconforming use may not be extended into the hours between 10:00 p.m. and 7:00 a.m.

(B) The nonconforming use shall not be converted from a seasonal to a multi-seasonal operation.

(C) Light intensity and hours of illumination shall not be changed except in compliance with the site lighting standards contained in Article 5 of this Code.

(D) Any proposals for the addition of trash receptacles and/or the relocation of existing trash receptacles shall comply with the location and design standards in Section 5.11.

(E) Outdoor storage areas shall not be expanded, nor shall they be relocated closer to any adjoining residential use.

6.16.2 CHANGE OF USE

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

6.16.3 ABANDONMENT OF USE

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

6.16.4 RECONSTRUCTION

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

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

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

(1) The nonconforming use shall not be changed (except to a conforming use) as a result of enlargement, expansion or construction.

(2) The enlargement, expansion or construction shall not result in the conversion of the nonconforming use of a seasonal to a year-round operation.

(3) The nonconforming use shall not be expanded beyond the limits of the parcel of property upon which such use existed at the time it became nonconforming.

(4) Additional traffic generated by an enlargement, expansion or construction must be incorporated into the neighborhood and community transportation network without creating safety problems or causing or increasing level of service standard deficiencies.

(5) The noise and vibration levels that may be generated by the nonconforming use shall not be increased beyond the levels that existed prior to the enlargement, expansion or construction that is under consideration.

(6) The outdoor storage areas shall not be expanded or located any closer to an adjoining residential development as a result of the enlargement, expansion or construction.

(7) The proposed enlargement, expansion or construction shall not add more than twenty-five (25) percent of new floor area to existing buildings on the site.

(8) The enlargement, expansion or construction shall not exceed the building height requirements of the zone district in which the property is located.

(9) The enlargement, expansion or construction shall not further encroach upon any nonconforming setback.

(10) The enlargement, expansion or construction shall not increase or amplify any inconsistency with the parking standards contained within this Code.

(11) The enlargement, expansion or construction shall not hinder the future development of surrounding properties in accordance with this Code.

(12) The enlargement, expansion or construction shall not present a threat to the health, safety or welfare of the City or its residents.

(B) Where a building, facility, equipment or structure is enlarged, expanded or added pursuant to subsection 6.16.5(A), the parcel of ground upon which the building, facility, equipment or structure is located shall be brought into compliance with the applicable building and development standards contained in Articles 3 and 5 and the applicable zone district standards contained in Articles 2 and use standards in Article 4 of this Code. Any new structure that is added to said parcel of ground shall also comply with the applicable development standards and zone district standards referenced above.

(C) The hours of operation of a nonconforming use may not be extended into the hours between 10:00 p.m. and 7:00 a.m.

6.16.6 ALTERATION OR REPAIR OF BUILDING

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

6.16.7 ACCESSORY DWELLING UNIT EXEMPTION

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

DIVISION 6.17 EXISTING LIMITED PERMITTED USES

6.17.1 PURPOSE AND APPLICABILITY

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

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

6.17.2 CONTINUATION OF USE

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

(A) The hours of operation of a nonconforming use may not be extended into the hours between 10:00 p.m. and 7:00 a.m.

(B) The nonconforming use shall not be converted from a seasonal to a multi-seasonal operation.

(C) Light intensity and hours of illumination shall not be changed except in compliance with the site lighting standards contained in Section 5.12.

(D) Any proposals for the addition of trash receptacles and/or the relocation of existing trash receptacles shall comply with the location and design standards Section 5.11.

(E) Outdoor storage areas shall not be expanded, nor shall they be relocated closer to any adjoining residential use.

6.17.3 CHANGE OF USE

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

6.17.4 RECONSTRUCTION

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

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

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

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

(A) Additional traffic generated by an enlargement, expansion or construction must be incorporated into the neighborhood and community transportation network without creating safety problems, or causing or increasing level of service standard deficiencies.

(B) The noise and vibration levels that may be generated by the use shall not be increased beyond the levels that existed prior to the enlargement, expansion or construction that is under consideration.

(C) The outdoor storage areas shall not be expanded or located any closer to an adjoining residential development as a result of the enlargement, expansion or construction.

(D) The enlargement, expansion or construction shall not further encroach upon any nonconforming setback.

(E) The enlargement, expansion or construction shall not increase or amplify any inconsistency with the parking standards contained within this Code.

(F) The enlargement, expansion or construction shall not hinder the future development of surrounding properties in accordance with this Code.

(G) The enlargement, expansion or construction shall not present a threat to the health, safety or welfare of the City or its residents.

(H) Where a proposed building addition exceeds five thousand (5,000) square feet or twenty-five (25) percent of the gross floor area of such building as it existed on March 27, 1997, whichever results in the least amount of square footage, the building and the parcel of ground upon which the building is located shall be brought into compliance with the applicable development standards contained in Articles 3 and 5 and the applicable zone district standards contained in Articles 2 and use standards in Article 4 of this Code, to the extent reasonably feasible. Any new structure that is added to said parcel of ground shall also comply with the applicable development standards and zone district standards referenced above.

6.17.6 ALTERATION OR REPAIR OF BUILDING

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

6.17.7 ABANDONMENT OF USE

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

6.17.8 ACCESSORY DWELLING UNIT EXEMPTION

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

DIVISION 6.18 APPEAL FROM ADIMINSTRATIVE DECISIONS TO THE LAND USE REVIEW COMMISSION

6.18.1 PURPOSE AND APPLICABILITY

(A) **Purpose.** The purpose of this Division is to provide for appeals of certain administrative/city staff decisions to the Land Use Review Commission. Appeals to the Planning and Zoning Commission of Minor Amendment and Change of Use and Basic Development Review decisions made by the Director are addressed in Section 6.3.12(C).

(B) **Applicability**. This Division shall apply to appeals from an administrative decision regarding the interpretation and/or application of the land use regulations which preceded this Land Use Code, and to appeals from the following administrative decisions made under this Land Use Code, provided such administrative decision is not for approval, approval with conditions, or denial either of a project development plan or a final plan pursuant to Divisions 6.6 or 6.7 or of an administrative amendment/ abandonment of any such plan or of any plan approved under prior law, processed pursuant to Section 6.3.10 (Step 10):

(1) Addition of a Permitted Use by Director (but not by Planning and Zoning Commission) under Division 6.9;
(2) Issuance of a written administrative interpretation under Division 6.24;
(3) Establishment of the Development Application Submittal Requirements under Section 6.3.3(C);
(4) Waiver of Development Application Submittal Requirements under Section 6.3.3(C);
(5) Waiver of a neighborhood meeting by the Director under Section 6.3.2;
(6) Establishment of Development Review Fees by the City Manager under Section 6.3.3(D), adopted administratively and not by Council resolution;
(7) The issuance of a Stockpiling Permit under Section 6.21.3.
(8) The issuance of a Development Construction Permit under Section 6.21.3.
(9) The issuance of a Building Permit under Section 6.13.3.
(10) Decisions of the City Engineer made under the provisions of Section 5.4.2 of this Land Use Code. Appeals from administrative decisions on a project development plan or a final plan shall be governed by Divisions 6.6 or 6.7, respectively. Appeals from an administrative decision on an amendment/ abandonment of an approved development plan or site specific development plan shall be governed by Section 6.3.10 (Step 10). Any action taken in reliance upon an appealed administrative decision during the pendency of the appeal shall be totally at the risk of the person(s) taking such action and the City shall not be liable for any damages arising from any such action.
(11) The issuance, denial, modification or revocation of an Off-Site Construction Staging License under Section 6.21.4.

6.18.2 ADMINISTRATIVE APPEAL REVIEW PROCEDURES

An appeal from an administrative decision shall be processed according to, in compliance with and subject to the provisions contained in Division 6.2 and Steps 1 through 12 of the Common Development Review Procedures (Sections 6.3.1 through 6.3.12, inclusive) as follows:

(A) ***Step 1*** (Conceptual Review): Not applicable.
(B) ***Step 2*** (Neighborhood Meeting): Not applicable.
(C) ***Step 3*** (Development Application Submittal): All items or documents required for an appeal from an administrative decision as described in the development application submittal Comprehensive list shall be submitted. The Director may waive or modify the foregoing submittal requirements if, given the facts and

circumstances of the specific application, a particular requirement would either be irrelevant, immaterial, redundant, or otherwise unnecessary for the full and complete review of the application.

(D) ***Step 4***(Review of Applications): Applicable.

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

(F) ***Step 6*** (Notice): Only Section 6.3.6(A) applies, except that "14 days" shall be changed to "7 days," everywhere it occurs in Section 6.3.6. Section 6.3.6(B)-(D) shall not apply.

(G) ***Step 7(A)*** (Decision Maker): Not applicable, and in substitution for Section 6.3.7(A), the Land Use Review Commission, pursuant to Chapter 2 of the City Code, shall review, consider, and uphold, modify or overturn the administrative decision which is the subject of the appeal based on its compliance with all of the standards contained in Step 8 of this Section.

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

(H) ***Step 8*** (Standards): Applicable, and an appeal from an administrative decision shall be determined based upon the same standards which applied to the underlying administrative decision. Any appeal that is taken pursuant to this Division must be taken not later than fourteen (14) days from the date that the administrative decision was made; and, except for administrative decisions which are not focused upon a specific parcel of real property (are general in nature), may be filed only by persons who possess a legal or equitable interest in the specific real property which is the subject of the decision, or who own or reside within real property any part of which is located within eight hundred (800) feet of the specific real property which is the subject of the decision.

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

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

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

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

DIVISION 6.19 VESTED RIGHTS AND TAKINGS DETERMINATIONS

6.19.1 PURPOSE

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

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

6.19.2 ADMINISTRATIVE PROCESS/HEARING OFFICER

(A) There is hereby established the following Vested Rights Determination and Takings Determination Procedures for the purpose of identifying certain parcels of real property in the City that should be made exempt, or partially exempt, from the application of any portion of this Code.

(B) An owner or developer of real property in the City who claims such an exemption on the basis of development rights that have vested under the criteria contained in Section 6.19.10 may seek a Vested Rights Determination in accordance with the procedures described in this Division. Furthermore, an owner or developer of real property in the City who claims that such property has been taken without just compensation or who claims a deprivation of due process may seek a Takings Determination in accordance with the procedures described in this Division. With regard to a Takings Determination, the owner or developer may assert any legally recognized takings claim, including, but not limited to, a claim that they have been deprived of "all economically beneficial use" of their property, that a condition imposed by the City does not have a "reasonable nexus" to the potential impacts of their development, that such a condition is not "roughly proportional" to the potential impacts of their development, or that actions taken by the City under this Code have resulted in a deprivation of due process.

(C) Such persons will be provided an opportunity for a public hearing, the right to present and rebut evidence, a formal record and an impartial Hearing Officer in accordance with the following procedures. Such Hearing Officer shall be selected and appointed by the City Manager and shall be an attorney licensed to practice law in the State of Colorado, with experience in land use matters. Subject to the procedures hereinafter provided, the Hearing Officer shall issue formal findings of fact, conclusions of law and a Vested Rights Determination and/or Takings Determination, depending on the nature of the claim asserted by the applicant. The claims shall be reviewed according to the following procedure:

6.19.3 APPLICATION

An Application for vested rights determination or takings determination shall be submitted to the Director in the form established by the director. An application fee in the amount of two thousand five hundred dollars ($2,500.00) per application (i.e., $2,500.00 for vested rights, $2,500.00 for takings, whichever is applied for) shall accompany and be part of the application. the application shall, at a minimum, include:

(A) the name, address and telephone number of the property owner and authorized applicant if other than the owner;
(B) the street address, legal description and acreage of the property; and
(C) for Vested Rights Determinations, all factual information and knowledge reasonably available to the owner and applicant to address the criteria established in Section 6.19.10.
(D) for Takings Determination, all factual information and knowledge reasonably available to the owner and applicant to address the criteria established in Section 6.19.11, including, without limitation, the following:

(1) documentation of the date of purchase and the purchase price of such property, and any and all offers to purchase such property made by any person within the last three (3) years;

(2) a description of the physical features present on such property, the present use of such property, the use of such property at the time it was purchased, the use of such property on the day prior to the time of the adoption of this Code, the uses permitted on such property at the time of application pursuant to this Section, and a detailed description of the regulations which are alleged to result in an elimination of economically beneficial use of the land;
(a) evidence of any investments made by the owner to improve such property, the date the improvements were made, and the costs of the improvements;

(b) all appraisals, studies and any other supporting evidence related to such property;

(c) any actions taken by the City related to such property;

(d) a description of the use which the owner believes represents the minimum legally required economically beneficial use of such property, and all documentation, studies and other supporting evidence thereof.

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

6.19.4 DETERMINATION OF COMPLETENESS

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

6.19.5 REVIEW AND DETERMINATION OR RECOMMENDATION BY DIRECTOR AND CITY ATTORNEY

After receipt of a completed Application for Vested Rights Determination or Takings Determination, the Director and the City Attorney shall review and evaluate the application in light of all of the criteria in Section 6.19.10 or Section 6.19.11, whichever is applicable. Within twenty (20) days of such receipt and based on the review and evaluation, the Director and the City Attorney shall prepare a written recommendation to the Hearing Officer that the application should be denied, granted or granted with conditions by the Hearing Officer. Such recommendations shall include findings of fact for each of the criteria established in Section 6.19.10 or 6.19.11, whichever is applicable, to the extent that the information is presented or obtained or inclusion is feasible or applicable.

If the Director and the City Attorney agree, based on the review and evaluation, that the Application for Determination clearly should be granted or granted with conditions, then they may enter into a written Stipulated Determination with the applicant, in lieu of the written recommendation to the Hearing Officer and the provisions in Sections 6.19.6, 6.19.7, and 6.19.8. Any such Stipulated Determination shall be in writing, signed by the City Manager, the City Attorney and the applicant, and shall be approved by the City Council by resolution at its next regularly-scheduled meeting which is at least fourteen (14) days from the date such Stipulated Determination is signed. Said Stipulated Determination shall include findings of fact and conclusions of law based on the criteria established in Section 6.19.10 or Section 6.19.11, whichever is applicable, and the determination granting or granting with conditions, in whole or in part, the application. In the event that a proposed Stipulated Determination is rejected by the City Council, it shall be referred to the Hearing Officer for a hearing and Determination in accordance with the procedures described in Sections 6.19.6 through 6.19.9 below.

6.19.6 REVIEW AND DETERMINATION BY HEARING OFFICER

No later than thirty (30) days after receipt by the Hearing Officer of the Application for Determination and the written recommendation of the Director and the City Attorney, the Hearing Officer shall hold a public hearing on the application. Written notice of the hearing shall be mailed by the City to the applicant at least fourteen (14) days prior to the scheduled hearing. At the hearing, the Hearing Officer shall take evidence and sworn testimony in regard to the criteria set forth in Section 6.19.10 or Section 6.19.11, whichever is applicable, and shall follow such rules of procedure as may be established by the Director. The parties before the Hearing Officer shall include the City and the applicant. Testimony shall be limited to the matters directly relating to the standards set forth in Section 6.19.10 or Section 6.19.11, whichever is applicable. The City Attorney shall represent the City, shall attend the public hearing and shall offer such evidence as is relevant to the proceedings. The other parties to the proceedings, or their authorized agents, may offer such evidence at the public hearing as is relevant to the proceedings and criteria. The order of presentation before the Hearing Officer at the public hearing shall be as follows: (1) the City's summary of

the application, written recommendation, witnesses and other evidence; (2) the applicant's witnesses and evidence; and (3) city rebuttal, if any.

6.19.7 ISSUANCE OF DETERMINATION BY HEARING OFFICER

Within thirty (30) working days after the completion of the public hearing under Section 6.19.6, the Hearing Officer shall consider the Application for Determination, the recommendation of the Director and the City Attorney, and the evidence and testimony presented at the public hearing, in light of all of the criteria set forth in Section 6.19.10 or Section 6.19.11, whichever is applicable, and shall deny, grant, grant with conditions, or grant in part and deny in part, the Application for Determination for the property or properties at issue. The Determination shall be in writing and shall include findings of fact for each of the applicable criteria established in Section 6.19.10 or Section 6.19.11, whichever is applicable, conclusions of law for each of such criteria, and a determination denying, granting, or granting with conditions, in whole or in part, the vested rights.

6.19.8 APPEAL TO THE CITY COUNCIL

Within twenty (20) days after issuance of the Hearing Officer's written Determination, the City Attorney, the Director, the applicant, its authorized attorney or agent, or any resident of the City who appeared at the public hearing before the Hearing Officer may appeal the Determination of the Hearing Officer to the City Council by filing a written notice of appeal with the City Clerk. A fee of one hundred dollars ($100.00) shall be paid for the application and processing of any such appeal except an appeal filed by the City Attorney or the Director. The appeal shall be determined by the City Council at a hearing based solely upon the record of the proceedings before the Hearing Officer. The City Council shall adopt the Hearing Officer's Determination, with or without modifications or conditions, or reject the Hearing Officer's Determination. Such appeal shall be based upon the criteria established in Section 6.19.10 or Section 6.19.11, whichever is applicable.

6.19.9 WAIVER OF TIME LIMITS

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

6.19.10 CRITERIA FOR VESTED RIGHTS

(A) This Section is intended to strictly adhere to and implement existing case law and statutory law controlling in the State of Colorado as they relate to the doctrine of vested rights and equitable estoppel as applied to a home rule municipality exercising its authority and powers in land use planning, zoning, the provisions of adequate public facilities concurrent with development (APF), subdivision, site development, land development regulations and related matters addressed in this Code. It is the express intent of the City to require application of the provisions of this Division 6.19 to as much development and property in the City as is legally possible without violating the legally vested rights of an owner/developer under case law or statutory law. The criteria herein provided shall be considered in rendering a Vested Rights Determination hereunder. It is intended that each case be decided on a case-by-case factual analysis. An applicant shall be entitled to a positive Vested Rights Determination only if such applicant demonstrates, by clear and convincing evidence, entitlement to complete their development without regard to the otherwise applicable provisions of this Code by reason of: (A) the provisions of Title 24, Article 68, C.R.S.; (B) Section 6.3.11 of this Code; or (C) the existence of all three (3) of the following requirements:

(1) some authorized act of the City;

(2) reasonable good faith reliance upon such act by the applicant; and

(3) such a substantial change in position or expenditure by the applicant that it would be highly inequitable or unjust to destroy the rights acquired.

(B) In evaluating whether an applicant (property owner, developer or the successor in interest of either) has met the requirements as set forth in paragraph (A)(3) above, the Hearing Officer shall consider and give weight to the following factual matters

(1) the total investment made in the project, including all costs incurred subsequent to the act of the City relied upon by the applicant, which costs may include, without limitation, the costs of land acquisition, architectural and engineering fees and the costs of on-site and off-site infrastructure improvements to service the project;

(2) any dedication of property made to public entities in accordance with the approved overall development plan for the project or the approved project development plan or plat for the project;

(3) whether infrastructure improvements which have been installed have been sized to accommodate uses approved in the approved overall development plan or the approved project development plan or plat for the project;

(4) the acreage of the approved overall development plan or the approved project development plan or plat for the project and the number of phases within the overall development plan or the approved project development plan or plat and their respective acreages which have received final approval;

(5) whether the completion of the project has been timely and diligently pursued; and

(6) the effect of the applicant's existing development loans on the application of this Land Use Code to the project.

6.19.11 CRITERIA FOR TAKINGS

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

The criteria herein provided shall be considered in rendering a Takings Determination hereunder. It is intended that each case be decided on a case-by-case factual analysis. While the criteria for takings established in this Section are intended to provide fair standards in a pre-litigation forum and to reflect the current state of the law for Colorado, the City's adoption or use of these criteria for takings shall not in any way be deemed an admission, concession or statement by the City that such criteria apply or are controlling in a court of law, and the City hereby unconditionally reserves all defenses and claims which would otherwise be available to it under the law. For example, but without limitation, the City does not concede for litigation purposes that the "reasonable nexus/rough proportionality" doctrines apply to monetary exactions or to legislative acts, although the City chooses to apply such criteria to the Takings Determination process described herein.

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

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

(1) *Actual Condition of Land*. The actual condition of the land shall be considered. The reality of limited development potential, given the natural condition of the land, shall not be attributed to the regulations applied to the land. If the land is such that it cannot safely or properly accommodate development with normal grading and clearing practices, this fact shall lower the intensity of use that is considered a minimum economically beneficial use.

(2) *Common Land Use*. A land use commonly found in the City, although it may not involve further development of the land, is considered an economically beneficial use. Furthermore, a land use that is considered to be the lowest intensity in the City, but which use still provides for residence within the City, is considered an economically beneficial use.

(3) *No Government Subsidy*. A minimum economically beneficial use of the land is one that does not have any governmental subsidy attached to the long-term safe occupation or use of the land. If such a subsidy is needed, then that must be reflected by lowering the use intensity that is considered a minimum economically beneficial use on a market valuation basis, or by deducting the cost of such a subsidy from the otherwise established minimum economically beneficial use.

(4) *Potential for Damages*. The potential for damages to either residents or property shall be assessed in determining economically beneficial use. Such damage potential shall be calculated and must be reflected by deducting the damage potential from the otherwise established minimum economically beneficial use, or otherwise taking account of such damage.

(5) *No Investment-Backed Expectations.* Speculative expectations of land value and development potential shall not be considered. Reasonable development expectations backed by investments shall not be considered, unless required by the current state of the law.

(6) *Conservative Financial Investment.* The opportunity to make a return on the use of the land equivalent to that which would have been received from a conservative financial investment shall be indicative of an economically beneficial use. However, general downturns in the real estate market or the economy shall not be attributed to the regulations applied to the land.

(7) *No Diminution in Value.* The market value of the land, as established by the comparable sales approach, one (1) day prior to the adoption of this Land Use Code, shall be compared to the market value of the land, as established by the comparable sales approach, with the regulations as applied. Market value of the land one (1) day prior to the adoption of this Land Use Code shall constitute its highest and best use on the day prior to the adoption of this Land Use Code or the date of the purchase of the land by the applicant, whichever is later. All appraisals or other land value information, if any, shall be proposed by qualified licensed appraisers, and shall follow the best professional practices established by the profession. Mere diminution in market value shall not be sufficient to support a determination of denial of economically beneficial use.

(8) **Current State of Law.** The current state of law established by the United States Supreme Court, the Federal Circuit Court of Appeals, the Colorado Supreme Court and other controlling Colorado courts, and controlling statutory law, shall be considered.

(B) **Reasonable Nexus/Rough Proportionality.** With regard to the takings doctrines of "reasonable nexus" and "rough proportionality," an applicant shall be entitled to the minimum revision of any required dedication or reduction of its property, or the minimum revision of any payment of money to ensure "rough proportionality," or the reevaluation of the offending condition or action, including invalidation if necessary, to ensure that the "reasonable nexus" and "rough proportionality" doctrines are satisfied.

(1) In evaluating an applicant's "reasonable nexus/rough proportionality" takings claim, a determination shall first be made as to whether a "reasonable nexus" exists between a "legitimate state interest" and the condition imposed by the City.

(2) The second part of the "reasonable nexus/rough proportionality" takings analysis requires that a determination then be made as to whether the exaction or condition is reasonably related to the needs created by the development or the impacts of such development.

(3) Finally, a determination shall be made as to whether the degree of the exaction demanded by the City's condition is reasonably related to the projected impacts of the applicant's proposed development. No precise mathematical calculation is required, but the City must make some sort of individualized determination that the required exaction or condition is related both in nature and extent to the impact of the proposed development.

(4) The current state of law established by the United States Supreme Court, the Federal Circuit Court of Appeals, the Colorado Supreme Court and other controlling Colorado courts, and controlling statutory law, shall be considered in making each of these determinations.

DIVISION 6.20 PREEMPTION USES

6.20.1 PREEMPTION USES

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

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

6.21.1 PURPOSE

(A) A stockpiling permit is required in order to regulate the placement of fill dirt on properties not covered by a site specific development plan, to protect against adverse impacts to floodplains, drainage systems, natural areas, wildlife habitat, wetlands or other areas of public interest, and to assure that public nuisances will not be created by the stockpiling activities.

(B) A Development Construction Permit is required in order to coordinate the transition from completion of the development review process to the construction process.

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

6.21.2 APPLICABILITY

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

(B) Development Construction Permit shall be required for all development that is required to construct public infrastructure improvements that, upon completion, will be owned or maintained by the City.

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

6.21.3 STOCKPILING PERMIT AND DEVELOPMENT CONSTRUCTION PERMIT REVIEW PROCEDURES

An application for a Stockpiling Permit or a Development Construction Permit shall be processed according to, in compliance with and subject to the provisions contained in Division 6.3 and Steps (1) through (12) of the Common Development Review Procedures (Sections 6.3.1 through 6.3.12, inclusive), as follows:

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

(B) ***Step 2***(Neighborhood Meeting): Not applicable.

(C) ***Step 3(A)*** (Development Application Forms): Not applicable, and in substitution therefor, all applications for Stockpiling Permits or Development Construction Permits shall be in a form established by the City Engineer and made available to the public.
Step 3(B) (Consolidated Development Applications and Review): Not applicable.
Step 3(C) (Development Application Contents): Applicable.
Step 3(D) (Submittal Hearing Date Schedule): Not applicable.
Step 3(E) (Development Review Fees - Stockpiling Permit): Applicable.
Step 3(E) (Development Review Fees - Development Construction Permit): Not applicable, and in substitution therefor, the applicant for a Development Construction Permit shall remit to the City an application fee and a construction inspection fee in the amounts as are authorized to be established pursuant to Chapter 7.5, Article I of the City Code.

(D) ***Step 4***(Review of Applications): Applicable except that the term "City Engineer" shall be substituted for the term "Director."

(E) ***Step 5*** (Staff Report): Not applicable.

(F) ***Step 6*** (Notice): Not applicable.

(G) ***Step 7*** (Public Hearing - Stockpiling Permit): Not applicable, and in substitution therefor, an application for a Stockpiling Permit shall be processed, reviewed, considered and approved, approved with modifications or denied by the City Engineer based on its compliance with the City Code and all regulations related to such permit adopted by the City by reference or otherwise, as amended, including, without limitation, the erosion control standards as contained in the Stormwater Design Criteria and Construction Standards Manual.
Step 7 (Public Hearing - Development Construction Permit): Not applicable, and in substitution therefor, an application for a Development Construction Permit shall be processed, reviewed, considered and approved, approved with modifications or denied by the City Engineer based on its compliance with the Site Specific Development Plan, the City Code and all regulations related to such permit adopted by the City by reference or otherwise, as amended.

(H) ***Step 8*** (Standards - Stockpiling Permit): Not applicable, and in substitution therefor, an application for a Stockpiling Permit shall be reviewed for compliance with the City Code and all regulations related to such permit adopted by the City by reference or otherwise, as amended, including, without limitation, the erosion control standards as contained in the Stormwater Criteria Manual and the dust control measures contained in the Dust Control Manual to the extent required therein.
Step 8 (Standards - Development Construction Permit): Not applicable, and in substitution therefor, an application for a Development Construction Permit shall be reviewed for compliance with the Site Specific Development Plan, the City Code and all regulations related to such permit adopted by the City by reference or otherwise as amended, including, without limitation, the erosion control standards as contained in the Stormwater Criterial Manual and the dust control measures contained in the Dust Control Manual to the extent required therein.

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

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

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

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

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

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

(1) *Prior to commencement of construction*. If construction has not commenced within sixty (60) days from the date of issuance of the Development Construction Permit, such permit shall expire, and all fees paid therefor shall be forfeited.

(2) *Following commencement of construction*. If construction has timely commenced, the Development Construction Permit shall expire upon the passage of one (1) year from the date of issuance thereof.

(3) *Extensions*. The applicant for a Development Construction Permit may apply for an extension of the term of such permit if such application is filed with the City Engineer at least two (2) weeks prior to the permit expiration date. Such application shall contain good and sufficient reasons as to why an extension is necessary; and, for good cause shown, the City Engineer may grant extensions; provided, however, that no extension shall be granted for a term in excess of six (6) months, and no extension shall be granted which, in the judgment of the City Engineer, would be detrimental to the public health, safety or welfare.

(L) ***Step 12*** (Appeals): Not applicable, and in substitution therefor, appeals of any final decision of the City Engineer on a Stockpiling Permit or a Development Construction Permit application shall be in accordance with Division 6.18; provided, however, that such appeals may be filed only by persons who possess a legal or equitable interest in the specific real property which is the subject of the decision.

6.21.4 OFF-SITE CONSTRUCTION STAGING

(A) ***Location.*** Subject to issuance of and compliance with an off-site construction staging license under subsection (D) below, off-site construction staging shall be permitted in specified zone districts as listed in Article 4.

(B) ***Off-site construction staging license.***

(1) An application for an off-site construction staging license shall be accompanied by a site and grading plan that shows the following for the site on which the off-site construction staging is to occur:

(a) Existing grade contours of the site and of adjoining properties;

(b) Locations of different activities to be located on the site;

(c) List of materials and equipment to be stored on the site, including the means and methods to safely store any hazardous material or dangerous equipment;

(d) Any proposed grading necessary to stabilize the site;

(e) Proposed erosion control measures and storm drainage control measures to prevent wind and water erosion, drainage impacts and tracking mud onto streets;

(f) Flood ways and flood plains;

(g) Natural habitat and features;

(h) Fences;

(i) Restrooms;

(j) Existing trees;

(k) Existing easements and rights-of-way;

(l) Existing underground utilities;

(m) Other information necessary to describe the site;

(n) Traffic control plan reflecting means of ingress and egress to be used;

(o) Mitigation plan to address any adverse impacts to the site, or adjacent parcels, caused by the off-site construction staging during and after the staging; and

(p) Restoration and final site condition plan.

(2) An off-site construction staging license shall be issued, with or without conditions, if the Director finds that the off-site construction staging:

(a) is not detrimental to the public good; and

(b) will not cause substantial adverse impacts to the parcel on which it is located or adjacent parcels or the environment, with or without mitigation; and

(c) is located within a quarter (.25) of a mile of the construction or development site to be served by the off-site construction staging.

(3) An off-site construction staging license issued hereunder shall expire eighteen (18) months after the date of issuance unless an extension is granted.

(a) A six (6) month extension may be granted by the Director upon a finding that the conditions specified in Section 6.21.4(B)(2), including any conditions to mitigate adverse impacts, have been and continue to be satisfied.

(b) The Director may further extend the license up to an additional twelve (12) months beyond the first six (6) month extension, for a maximum total of not more than thirty-six (36) months, if a neighborhood meeting for which the neighborhood is notified in compliance with Section 6.3.2 is conducted and the Director determines: the extension is not detrimental to the public good; and that the license conditions specified in Section 6.21.4(B)(2), including any conditions to mitigate adverse impacts, have been and continue to be satisfied.

(4) After expiration of an off-site construction staging license, at least four (4) consecutive months shall lapse before a new license is issued for the same parcel.

(5) The Director may modify or revoke any off-site construction staging license issued by the City for any of the following:

(a) After issuance of the license, the site or activities thereon are found to be out of compliance with the approved application or license, including any conditions to mitigate adverse impacts; or

(b) An adverse impact not previously anticipated at the time the license or license extension was issued is identified and such adverse impact cannot be adequately mitigated and/or is detrimental to the public good.

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

(6) The license holder may appeal any decision denying, modifying or revoking an off-site construction staging license to the Zoning Board of Appeals pursuant to Section 6.14.

(C) ***Restoration of Site.*** Within fifteen (15) days after expiration of the license, the license holder must have completed restoration of the site consistent with the approved restoration or final site condition plan included in the application.

DIVISION 6.22 EXPANSIONS AND ENLARGEMENTS OF EXISTING BUILDINGS

6.22.1 EXPANSIONS AND ENLARGEMENTS OF EXISTING BUILDINGS

(A) E***xpansions of Large Retail Establishments.*** No addition to an existing large retail establishment which would increase the gross square feet of floor area of such establishment by fifty (50) percent or more, and no addition to a building which would create a large retail establishment and which would increase the gross square footage of floor area of such building by fifty (50) percent or more, shall be approved for construction or occupancy unless the entire large retail establishment affected by the new construction has been determined by the Planning and Zoning Commission to be in compliance with the building standards for Section 5.15.3 Large Retail Establishments contained in this code whether the existing large retail establishment or building was approved under prior law or under this Land Use Code.

(B) ***Expansions and Enlargements of Other Nonresidential Buildings and of Multi-unit Dwellings***. Any proposal for the enlargement or expansion of a nonresidential building that was constructed pursuant to a basic development review, or use-by-right review under prior law, and that is not otherwise regulated by the above subparagraph (A) of this Section, and any proposal for the enlargement or expansion of a multi-unit dwelling that was constructed pursuant to a basic development review, or use-by-right review under prior law, must comply with the requirements contained in this code.

(C) ***Expansions and Enlargements of Single-Family Dwellings, Two-Family Dwellings and Accessory Buildings***. Any proposal for the enlargement or expansion of a single-unit dwelling, two-unit dwelling or accessory building shall be subject to Building Permit review in accordance with standards of this code.

DIVISION 6.23 ABANDONMENT PERIOD/RECONSTRUCTION OF PERMITTED USES

6.23.1 PERMITTED USES: ABANDONMENT PERIOD/RECONSTRUCTION OF PERMITTED USES

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

operations shall not affect the foregoing.

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

(C) Any determination of the Director under this Section shall constitute a building permit decision and as such shall be appealable as a building permit under Section 6.18.1(B)9.

DIVISION 6.24 INTERPRETATIONS

6.24.1 AUTHORITY

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

6.24.2 INITIATION

An interpretation may be requested by any person.

6.24.3 PROCEDURES

(A) **Submission of request for interpretation.** before an interpretation may be provided by the Director, a request for interpretation must be submitted to the Director in a form established by the Director.

(B) **Determination of Sufficiency.** After receipt of a Request for Interpretation, the Director shall determine whether the request is complete, specific, clear and ready for review. If the Director determines that the request is not complete, they shall serve a written notice on the applicant specifying the deficiencies. The Director shall take no further action on the Request for Interpretation until the deficiencies are remedied.

(C) **Rendering of Interpretation.** After the Request for Interpretation has been determined to be sufficient, the Director shall review and evaluate the request in light of the terms and provisions of this Land Use Code and/or the Zoning Map, whichever is applicable, and render an interpretation. The Director may consult with the City Attorney and other City departments before rendering an interpretation.

(D) **Form.** The interpretation shall be in writing and shall be delivered to the applicant. Interpretations that are not in writing shall have no force or effect. Interpretations shall have no precedential value and shall be limited in their application to the property, if any, identified in the interpretation.

(E) **Official Record.** The Director shall maintain an official record of all interpretations in the Department. Such official record shall be available for public inspection during normal business hours.

(F) **Appeal.** Appeals of any interpretation under this Section shall be made only in accordance with Division 6.18.

6.24.4 RULES FOR INTERPRETATION OF BOUNDARIES

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

(A) **District Regulations Extend to all Portions of Districts Surrounded by Boundaries.** Except as otherwise specifically provided, a district symbol or name shown within district boundaries on the Zoning Map indicates that district standards and other district regulations pertaining to the district extend throughout the whole area surrounded by the boundary line.

(B) **Boundaries.** Where uncertainty exists as to the boundaries of zone districts as shown on the Zoning Map, the following rules shall apply:

(1) Boundaries indicated as approximately following the centerlines of dedicated streets, highways, alleys or rights-of-way shall be construed as following such centerlines as they exist on the ground, except where such interpretation would change the zoning status of a lot or parcel, in which case the boundary shall be interpreted in such a manner as to avoid changing the zoning status of any lot or parcel. In case of a street vacation, the boundary shall be construed as remaining in its location except where ownership of the vacated street is divided other than at the center, in which case the boundary shall be construed as moving with the ownership.

(2) Boundaries indicated as approximately following lot lines, public property lines and the like shall be construed as following such lines; provided, however, that where such boundaries are abutting a dedicated street, alley, highway or right-of-way and the zoning status of the street, highway, alley or right-of-way is not indicated, the boundaries shall be construed as running to the middle of the street, highway, alley or right-of-way. In the event of street vacation, interpretation shall be as provided in (1) above.

(3) Boundaries indicated as approximately following city limits shall be construed as following such city limits.

(4) Boundaries indicated as following the centerlines of streams, canals or other bodies of water shall be construed as following such centerlines. In case of a change of the course or extent of bodies of water, the boundaries shall be construed as moving with the change, except where such movement would change the zoning status of a lot or parcel; and in such case the boundary shall be interpreted in such a manner as to avoid changing the zoning status of any lot or parcel.

(5) Boundaries indicated as entering any body of water but not continuing to intersect with other zoning boundaries or with the limits of jurisdiction of the city shall be construed as extending in the direction in which they enter the body of water to the point of intersection with other zoning boundaries or with the limits of city jurisdiction.

(6) Boundaries indicated as following physical features other than those listed above shall be construed as following such physical features, except where such interpretation from mapped location would change the zoning status of a lot or parcel, in which case the boundary shall be interpreted in such manner as to avoid changing the zoning status of any lot or parcel.

(7) Boundaries indicated as parallel to or extensions of features indicated in (1) through (6) above shall be construed as being parallel to or extensions of such features.

(8) Distances not specifically indicated on the Zoning Map shall be determined by the scale of the map on the page of the Zoning Map showing the property in question.

6.24.5 CASES NOT COVERED BY SECTION 6.24.4

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

6.24.6 DIVISION OF A LOT OF RECORD BY A BOUNDARY

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

6.24.7 NONREGULATED LAND TRANSFERS

(A) Abutting portions of lots may be transferred to adjoining property owners without being subject to subdivision requirements; provided, however, that no such transfer shall imply or confer any right to develop, or create a new lot, create a nonconformity of any nature whatsoever, or circumvent the intent or requirements of this Land Use Code. (This type of transfer is commonly known as a "lot line adjustment" even though the legal lot lines are not changed and cannot be changed except through replatting.)

(B) Notwithstanding any provision of Colorado law to the contrary, any parcel of land, whether larger or smaller than thirty-five (35) acres, may be conveyed by metes and bounds description or by other usual and customary method of land description, without being subject to subdivision requirements; provided, however, that no such conveyance shall imply or confer any right to develop, or create a new lot upon which development can occur unless such development has, prior to the conveyance, been approved in accordance with this Land Use Code or prior law and provided further that such conveyance shall not be made if it creates nonconformities of any nature whatsoever, or circumvents the intent or requirements of this Land Use Code.

6.24.8 CONTINUITY OF ZONING

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

6.24.9 RULES OF CONSTRUCTION FOR TEXT

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

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

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

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

(B) **Text.** In case of any difference of meaning or implication between the text of the Land Use Code and any figure or diagram, the text shall control.

(C) **Conjunctive/Disjunctive.** Unless the context clearly indicates the contrary, the following words shall be interpreted as follows:

(1) "And" indicates that all connected words or provisions apply.

(2) "Or" or "and/or" indicates that the connected words or provisions may apply singly or in any combination.

(3) "Either...or" indicates that the connected words or provisions apply singly but not in combination.

(D) **Day.** The word "day" shall mean a calendar day.

(E) **Delegation of Authority.** Whenever a provision appears requiring the Director or some other City officer or employee to do some act or perform some duty, such provision shall be construed as authorizing the Director or other officer or employee to designate, delegate and authorize another City employee to perform the required act or duty unless the terms of the provision specify otherwise. With respect to the review of development applications eligible for Type 1 review, in addition to or in substitution for delegation to City employees as above authorized, the Director may engage the services of an attorney with experience in land use matters.

(F) **Exhibits.** Any exhibit to this Code which is taken from another regulation of the City shall be automatically amended upon the making of any amendment to the document of origin, and the Director shall promptly replace such exhibit with the new amended exhibit.

(G) **Include.** The word "including," "includes," "such as," "additional" or "supplemental" is illustrative and is not intended as an exhaustive listing, unless the context clearly indicates the contrary.

(H) **Headings.** Article, division, section and subsection headings contained in the Land Use Code are for convenience only and do not govern, limit, modify or in any manner affect the scope, meaning or intent of any portion of the Land Use Code.

(I) **Shall, May, Should.** The word "shall," "will" or "must" is mandatory; "may" is permissive, "should" is suggestive but not mandatory.

(J) **Week.** The word "week" shall be construed to mean seven (7) calendar days.

(K) **Written or In Writing.** The term "written" or "in writing" shall be construed to include any representation of words, letters or figures whether by printing or other form or method of writing.

(L) **Year.** The word "year" shall mean a calendar year, unless a fiscal year is indicated or three hundred sixty-five (365) calendar days is indicated.

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

6.25.1 PURPOSE

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

6.25.2 APPLICABILITY

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

6.25.3 INITIATION

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

6.25.4 TEXT AND MAP AMENDMENT REVIEW PROCEDURES

An amendment to the text of this Code or an amendment to the Zoning Map may be approved by the City Council by ordinance after receiving a recommendation from the Planning and Zoning Commission. Any such proposed amendment shall be processed through a public hearing before the Planning and Zoning Commission, which hearing shall be held either prior to City Council consideration of the proposed amendment or between first and second readings of the ordinance approving the amendment which will provide a recommendation to the City Council. (See Steps 1 through 12 below). The City Clerk shall cause the hearing by the City Council to be placed on the agenda for a future City Council meeting; and the public hearing before the City Council shall be held after at least fifteen (15) days' notice of the time, date and place of such hearing and the subject matter of the hearing and the nature of the proposed zoning change has been given by publication in a newspaper of general circulation within the City. On a proposal for a text amendment, the Planning and Zoning Commission shall hold a hearing, which hearing shall be held either prior to City Council consideration of the proposed amendment or between first and second readings of the ordinance approving the amendment. Notice shall be given as required for ordinances pursuant to the City Charter. The City Council shall then approve, approve with conditions or deny the amendment based on its consideration of the Staff Report, the Planning and Zoning Commission recommendation and findings and the evidence from the public hearings, and based on the amendment's compliance with the standards and conditions established in this Section. In the event that a protest is filed under the provisions of Section 31-23-305, C.R.S., any protested zoning change shall not become effective except by the favorable vote of a simple majority of the Councilmembers present and voting as provided in Article II, Section 11 of the City Charter. (See Steps 8 and 9 below).

The Planning and Zoning Commission processing of the proposed amendment shall be according to, in compliance with and subject to the provisions contained in Steps 1 through 12 of the Common Development Review Procedures (Sections 6.3.1 through 6.3.12, inclusive) as follows:

(A) ***Step 1*** (Conceptual Review): Not applicable.
(B) ***Step 2*** (Neighborhood Meeting): Not applicable, except that, with respect to a quasi-judicial map amendments only, the Director may convene a neighborhood meeting to present and discuss a proposal of known controversy and/or significant neighborhood impacts.
(C) ***Step 3*** (Development Application Submittal): All items or documents required for amendments to the text of this Code and/or the Zoning Map as described in the development application submittal Comprehensive list shall be submitted. The Director may waive or modify the foregoing submittal requirements if, given the facts and circumstances of the specific application, a particular requirement would either be irrelevant, immaterial, redundant or otherwise unnecessary for the full and complete review of the application.
(D) ***Step 4*** (Review of Applications): Applicable.
(E) ***Step 5*** (Staff Report): Applicable.
(F) ***Step 6*** (Notice):

(1) *Text Amendments*. Not applicable, and in substitution therefor, notice of the Planning and Zoning Commission hearing shall be given in accordance with Section 2-74 of the City Code. (However, for text amendments proposed pursuant to Division 6.9, subsection 6.3.6(C) shall apply, and in addition the notice shall name the specific proposed new use [or uses] to be added to the zone district list of permitted uses.)

(2) *Zonings or Rezonings of No More Than Six Hundred Forty (640) Acres (Quasi-judicial)*. Subsection 6.3.6(A) shall apply and such notices shall identify the proposed new zone district(s), as well as the uses permitted therein, shall indicate whether a neighborhood meeting will be held with regard to the proposed zoning or rezoning, and shall inform the recipient of the notice of the name, address and telephone number of the Director to whom questions may be referred with regard to such zoning change. Subsections 6.3.6(B), (C) and (D) shall apply, and the published notice given pursuant to subsection 6.3.6(C) shall provide the time, date and place of the hearing, the subject matter of the hearing and the nature of the proposed zoning change.

(3) *Zonings or Rezonings of More Than Six Hundred Forty (640) Acres (Legislative)*. Subsection 6.3.6(C) shall apply. Subsections 6.3.6(A), (B) and (D) shall not apply.

(G) ***Step 7(A)*** (Decision Maker): Planning and Zoning Commission Review applies.
Step 7(B) (Conduct of Public Hearing): Applicable.
Step 7(C) (Order of Proceedings at Public Hearing): Applicable.
Step 7(D) (Decision and Findings): Applicable, except that the Planning and Zoning Commission's decision shall be in the form of a recommendation, not a decision, to Council. In making its recommendation, the Planning and Zoning Commission shall consider whether the application or proposal complies with the standards contained in Step 8 of this Section.
Step 7(E) (Notification to Applicant): Not applicable.
Step 7(F) (Record of Proceedings): Applicable.
Step 7(G) (Recording of Decisions and Plats): Not applicable.

(H) ***Step 8*** (Standards): Applicable, as follows:

(1) *Text Amendments and Legislative Zonings or Rezonings.* Amendments to the text of this Code, and amendments to the Zoning Map involving the zoning or rezoning of more than six hundred forty (640) acres of land (legislative rezoning), are matters committed to the legislative discretion of the City Council, and decisions regarding the same are not controlled by any one (1) factor.

(2) *Mandatory Requirements for Quasi-judicial Zonings or Rezonings.* Any amendment to the Zoning Map involving the zoning or rezoning of six hundred forty (640) acres of land or less (a quasi-judicial rezoning) shall be recommended for approval by the Planning and Zoning Commission or approved by the City Council only if the proposed amendment is:

(a) consistent with the City's Comprehensive Plan; and/or

(b) warranted by changed conditions within the neighborhood surrounding and including the subject property.

(3) *Additional Considerations for Quasi-Judicial Zonings or Rezonings.* In determining whether to recommend approval of any such proposed amendment, the Planning and Zoning Commission and City Council may consider the following additional factors:

(a) whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject land and is the appropriate zone district for the land;

(b) whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment, including, but not limited to, water, air, noise, stormwater management, wildlife, vegetation, wetlands and the natural functioning of the environment;

(c) whether and the extent to which the proposed amendment would result in a logical and orderly development pattern.

(I) ***Step 9*** (Conditions of Approval): Applicable.
(J) ***Step 10*** (Amendments): Not applicable.
(K) ***Step 11*** (Lapse): Not applicable.
(L) ***Step 12*** (Appeals): Not applicable.

DIVISION 6.26 ENFORCEMENT

6.26.1 METHODS OF ENFORCEMENT

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

(A) requirement of a Building Permit;

(B) requirement of a certificate of occupancy;

(C) inspection and ordering removal of violations;

(D) criminal or civil proceedings; and

(E) injunction or abatement proceedings.

6.26.2 PERMITS AND CERTIFICATES OF OCCUPANCY

(A) No building shall be erected, moved or structurally altered unless a Building Permit has been issued by the Director. All permits shall be issued in conformance with the provisions of this Land Use Code and shall expire six (6) months after the date that such Building Permit was issued unless properly acted upon in accordance with the provisions of the International Building Code, as amended. One (1) six-month extension may be granted by the Director.

(B) No land or building shall be changed in use, nor shall any new structure, building or land be occupied or used, unless the owner (or the owner's contractor, if any) shall have obtained a certificate of occupancy from the Director. If the use is in conformance with the provisions of this Land Use Code, a certificate of occupancy shall be issued within three (3) days of the time of notification that the building is completed and ready for occupancy. A copy of all certificates of occupancy shall be filed by the Director and shall be available for examination by any person with either proprietary or tenancy interest in the property or building.

6.26.3 INSPECTION

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

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

6.26.4 CRIMINAL AND CIVIL LIABILITY; PENALTIES

(A) Except as otherwise specified in this Land Use Code, any person (including, without limitation, the developer of, owner of, or any person possessing, occupying or trespassing upon, any property which is subject to this

Code, or any agent, lessee, employee, representative, successor or assign thereof) who violates this Code or who fails to comply with any of its requirements or who fails to comply with any orders made thereunder, shall be guilty of a misdemeanor and upon conviction shall be subject to the penalties provided in Section 1-15 of the City Code. Each day that such a violation occurs shall constitute a separate offense. Nothing contained herein shall prevent the City from taking such other lawful action as is necessary to prevent or remedy any violations of this Land Use Code.

(B) An owner, property manager or occupant commits a civil infraction by violating any provision of Section 5.14.1 of this Land Use Code. Each day during which the limitation on the number of occupants is exceeded shall constitute a separate violation. A finding that such civil infraction has occurred shall subject the offender(s) to the penalty provisions of Section 1-15(f) of the Code of the City of Fort Collins and any or all of the following actions:

(1) the imposition of a civil penalty of not less than five hundred dollars ($500.00) and not more than one thousand dollars ($1,000.00) for each violation;

(2) an order to comply with any conditions reasonably calculated to ensure compliance with the provisions of Section 5.14.1 of this Land Use Code or with the terms and conditions of any permit or certificate granted by the City;

(3) an injunction or abatement order; and/or

(4) denial, suspension or revocation of any city permit or certificate relating to the dwelling unit.

6.26.5 LIABILITY OF CITY AND INJUNCTION

(A) In addition to any of the foregoing remedies, the City Attorney acting on behalf of the City Council may maintain an action for an injunction to restrain any violation of this Land Use Code.

(B) This Land Use Code shall not be construed to hold the city responsible for any damage to persons or property by reason of the inspection or reinspection authorized herein or failure to inspect or reinspect or by reason of issuing a Building Permit as herein provided, or by reason of pursuing or failing to pursue an action for injunctive relief as authorized in (A), above.

6.26.6 ENFORCEMENT OF THE REQUIREMENTS AND CONDITIONS OF DEVELOPMENT APPROVAL

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

(A) failure to comply with any terms, conditions or limitations contained on the site plan, landscape plan, building elevations or other approved documents pertaining to a development which has received final approval from the city, whether under the provisions of this Land Use Code or under the provisions of prior law.

(B) failure to comply with any conditions of record imposed by the appropriate decision maker upon its review of the site specific development plan for the development, whether under the provisions of this Land Use Code or under the provisions of prior law.

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

SECTION 6.27.1 INTRODUCTORY AND GENERAL PROVISIONS

SECTION 6.27.2 PROCEDURE FOR DESIGNATION OF MATTERS OF STATE INTEREST

SECTION 6.27.3 DESIGNATED ACTIVITIES OF STATE INTEREST

SECTION 6.27.4 EXEMPTIONS

SECTION 6.27.5 PERMIT AUTHORITY

SECTION 6.27.6 PERMIT APPLICATION PROCEDURES

SECTION 6.27.1 INTRODUCTORY AND GENERAL PROVISIONS

SECTION 6.27.1.1 TITLE AND CITATION

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

SECTION 6.27.1.2 PURPOSE AND FINDINGS

(A) **Purpose.** The general purpose of these Regulations is to facilitate identification, designation, and administration of matters of state interest consistent with the statutory requirements and criteria set forth in Section 24-65.1-101, et seq., C.R.S. The specific purposes are to:

(1) Protect public health, safety, welfare, the environment, and historic, cultural, and wildlife resources;

(2) Implement the vision and policies of the City's Comprehensive Plan;

(3) Ensure that infrastructure, growth and development in the City occur in a planned and coordinated manner;

(4) Protect natural, historic, and cultural resources; protect and enhance natural habitats and features of significant ecological value as defined in Section 5.6.1; protect air and water quality; reduce greenhouse gas emissions and enhance adaptation to climate change;

(5) Promote safe, efficient, and economic use of public resources in developing and providing community and regional infrastructure, facilities, and services;

(6) Regulate land use on the basis of environmental, social and financial impacts of proposed development on the community and surrounding areas; and

(7) Ensure City participation in the review and approval of development plans that pass through and impact City residents, businesses, neighborhoods, property owners, resources and other assets.

(B) **Findings.** The City Council of the City of Fort Collins finds that:

(1) The notice and public hearing requirements of Section 24-65.1-404, C.R.S., have been followed in adopting these Regulations;

(2) These Regulations are necessary because of the intensity of current and foreseeable development pressures on and within the City;

(3) These Regulations are necessary to protect the public health, safety, welfare, the environment, and historic, cultural and wildlife resources;

(4) These Regulations apply to the entire area within the incorporated municipal boundaries of the City; and

(5) These Regulations interpret and apply to any regulations adopted for specific areas of state interest and specific activities of state interest which have been or may be designated by the City Council.

SECTION 6.27.1.3 AUTHORITY

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

SECTION 6.27.1.4 APPLICABILITY

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

(A) To the extent a development plan could be reviewed under these Regulations and also as a Site Plan Advisory Review, Overall Development Plan, Project Development Plan, Final Plan, Basic Development Review, or Minor or Major Amendment, or other site-specific development plan, such development plan shall only be reviewed under these Regulations unless the Director issues a FONSI pursuant to Section 6.27.6.5 or an exemption as set forth in Section 6.27.4.1 applies, in which case the development plan shall instead be reviewed under the other applicable review process.

(B) Development plans that have completed Site Plan Advisory Review pursuant to the Land Use Code prior to the effective date of these Regulations and been denied by the Planning and Zoning Commission shall be subject to these Regulations unless a FONSI is issued pursuant to Section 6.27.6.5 or an exemption applies pursuant to Section 6.27.4.1.

(C) Certain work exempt from the definition of development set forth in Article 7 may be subject to these Regulations as stated in the definition of development and these Regulations.

(D) City Council has designated as an activity of state interest subject to these Regulations, the Site Selection and Construction of Major New Domestic Water and Sewage Treatment Systems and the Major Extension of Existing Domestic Water and Sewage Treatment Systems. Definitions for major new domestic water systems and major new sewage treatment systems and major extensions of each are set forth in Section 6.27.1.9.

(E) City Council has also designated as an activity of state interest subject to these Regulations, the Site Selection of Arterial Highways and Interchanges and Collector Highways. Definitions for arterial highways, interchanges and collector highways are set forth in Section 6.27.1.9.

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

(A) Permit Required.

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

(B) Allowed Use in Zone District Not Required.

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

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

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

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

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

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

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

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

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

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

(E) Permit requirements included in these Regulations shall be in addition to and in conformance with all applicable local, state, and federal water quality and air quality, and environmental laws, rules, and regulations.

(F) Review or approval of a development plan by a federal or state or local agency does not substitute for a permit under these Regulations. Any applicant for a permit under these Regulations that is also subject to the regulations of other agencies may request in writing that the City application and review process be coordinated with that of the other agency or agencies. If practicable, the Director, in their discretion, may attempt to eliminate redundant application submittal requests and may coordinate City review of the application with that of other agencies as appropriate. To the extent the Director determines that the City's authority is preempted with regards to any requirement under these Regulations, such requirement shall not be applicable to the proposed development plan to the extent of the preemption.

(G) These Regulations shall not be construed as modifying or amending existing laws or court decrees with respect to the determination and administration of water rights. To the extent the Director determines that any requirement under these Regulations would modify or amend existing laws or court decrees with respect to the determination and administration of water rights, such requirement shall not be applicable to the development plan to the extent of the modification or amendment of existing laws or court decrees.

SECTION 6.27.1.7 MAPS

(A) Each map referred to in designations and regulations for any particular matter of state interest adopted by the City Council is deemed adopted therein as if set out in full.

(B) Maps referred to in any such designations and regulations shall be available for inspection in the offices of the Community Development and Neighborhood Services Department.

SECTION 6.27.1.8 SEVERABILITY

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

SECTION 6.27.1.8 DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

Highways shall mean state and federal highways.

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

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

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

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

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

Major new sewage system shall mean:

(1) A new wastewater treatment plant;

(2) A new lift station; or

(3) An interceptor main or collector sewer used for the purposes of transporting wastewater that meets one or more of the following criteria:

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

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

Major new domestic water system shall mean:

(1) A system of wells, water diversions, transmission mains, distribution mains, ditches, structures, and facilities, including water reservoirs, water storage tanks, water treatment plants or impoundments and their associated structures, through which a water supply is obtained, stored, and sold or distributed for domestic uses; or

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

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

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

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

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

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

(1) Any maintenance, repair, adjustment;

(2) Existing pipeline or the relocation, or enlargement of an existing pipeline within the same public right-of-way or easement not greater than 30-feet in width and for a distance of 1,452 linear feet or less;

(3) A new pipeline or facility within an existing public right-of-way;

(4) A new pipeline or facility within easements not greater than 30-feet or less and for a distance of 1,452 linear feet or less; or

(5) A new pipeline or facility constructed partially within an existing public right-of-way and partially within adjoining easements that are not greater than 30-feet in width and for a distance of 1,452 linear feet or less.

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

(1) Any maintenance, repair, adjustment;

(2) Existing pipeline or the relocation, or enlargement of an existing pipeline within the same public right-of-way or easement not greater than 30-feet in width and for a distance of 1,452 linear feet or less;

(3) A new pipeline or facility within an existing public right-of-way;

(4) A new pipeline or facility within easements not greater than 30-feet or less and for a distance of 1,452 linear feet or less;

(5) A new pipeline or facility constructed partially within an existing public right-of-way and partially within adjoining easements that are not greater than 30-feet in width and for a distance of 1,452 linear feet or less; or

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

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

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

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

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

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

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

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

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

(1) Construction of an arterial highway, interchange, or collector highway is proposed; or

(2) Expansion or modification of an existing arterial highway, interchange or collector highway is proposed that would result in either (a) or (b), or both as follows:

(a) An increase in road capacity by at least one (1) vehicle lane through widening or alternative lane configuration.

(b) Expansion or modification of an existing interchange or bridge.

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

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

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

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

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

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

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

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

SECTION 6.27.2 PROCEDURE FOR DESIGNATION OF MATTERS OF STATE INTEREST

SECTION 6.27.2.1 CITY COUNCIL TO MAKE DESIGNATIONS

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

(A) The City Council may in its discretion designate and adopt regulations for the administration of any matter of state interest.

(B) The Planning and Zoning Commission may on its own motion or upon City Council request, recommend the designation of matters of state interest to City Council. The City Council shall decide, in its sole discretion, whether or not to designate any or all of the requested matters of state interest.

(C) City staff may request that City Council designate an area or activity of state interest and adopt regulations for the administration of the matter designated. The City Council shall

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

SECTION 6.27.2.2 PUBLIC HEARING REQUIRED

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

SECTION 6.27.2.3 NOTICE OF PUBLIC HEARING; PUBLICATION

(A) The City shall prepare a notice of the designation hearing which shall include:

(1) The time and place of the hearing;

(2) The place at which materials relating to the matter to be designated and any guidelines and regulations for the administration thereof may be examined;

(3) The telephone number and e-mail address where inquiries may be answered; and

(4) A description of the area or activity proposed to be designated in sufficient detail to provide reasonable notice as to property which would be included.

(B) At least thirty (30) days, but no more than sixty (60) days before the public hearing, the City shall publish the notice in a newspaper of general circulation in the City and shall mail the notice to each of the following as deemed appropriate in the City's discretion:

(1) State and federal agencies; and

(2) Any local government jurisdiction that would be directly or indirectly affected by the designation.

SECTION 6.27.2.4 MATTERS TO BE CONSIDERED AT DESIGNATION HEARING

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

(A) Testimony and evidence from any and all persons or organizations desiring to appear and be heard, including City staff;

(B) Any documents that may be offered; and

(C) The recommendation of the Planning and Zoning Commission.

SECTION 6.27.2.5 ADOPTION OF DESIGNATIONS AND REGULATIONS

(A) City Council shall consider the following when determining whether to designate an area or activity to be of state interest:

(1) All testimony, evidence and documents taken and admitted at the public hearing;

(2) The intensity of current and foreseeable development pressures in the City;

(3) The matters and considerations set forth in any applicable guidelines or model regulations issued by the Colorado Land Use Commission and other State agencies; and

(4) Reasons why the particular area or activity is of state interest, the dangers that would result from uncontrolled development of any such area or uncontrolled conduct of such activity, and the advantages of development of such area or conduct of such activity in a coordinated manner.

(B) Any City Council order designating an area or activity to be of state interest and the adoption of any regulations for the administration of an area or activity of state interest shall be by ordinance.

(C) In the event the City Council finally determines that any matter is a matter of state interest within the City, it shall be the City Council's duty to designate such matter and adopt regulations for the administration thereof.

(D) Each designation order adopted by the City Council shall:

(1) Specify the boundaries of the designated area of state interest or the boundary of the area in which an activity of state interest has been designated; and

(2) State reasons why the particular area or activity is of state interest, the dangers that would result from uncontrolled development of any such area or uncontrolled conduct of such activity, and the advantages of development of such area or conduct of such activity in a coordinated manner.

SECTION 6.27.2.6 EFFECT OF DESIGNATION – MORATORIUM UNTIL FINAL DETERMINATION

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

SECTION 6.27.2.7 MAPPING DISPUTES

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

SECTION 6.27.3 DESIGNATED ACTIVITIES OF STATE INTEREST

6.27.3.1 Designated Areas and Activities of State Interest

SECTION 6.27.3.1DESIGNATED ACTIVITIES OF STATE INTEREST

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

(A) Site Selection and Construction of Major New Domestic Water and Sewage Treatment Systems and Major Extension of Existing Domestic Water and Sewage Treatment Systems (Ordinance No. 122, 2021)

(B) Site Selection of Arterial Highways and Interchanges and Collector Highways (Ordinance No. 122, 2021)

SECTION 6.27.4 EXEMPTIONS

6.27.4.1 Exemptions

SECTION 6.27.4.1 EXEMPTIONS

These Regulations are not applicable to the following:

(A) Any fully constructed and operating project or facility that was lawfully developed under prior law in effect before the effective date of these Regulations that would be subject to these Regulations if it were currently proposed, may continue to operate pursuant to Division 6.16, Nonconforming Uses and Structures, with the exception that enlargement or expansion of any such project or facility shall require a permit under these Regulations unless an exemption exists or a FONSI is issued. An enlargement or expansion requiring a permit shall not include the maintenance, repair or replacement of existing buildings or structures associated with an existing facility, including retrofitting or updating technology, provided any changes do not result in a material change as determined by the Director. Enlargements or expansions not requiring a permit may still be subject to Section 6.16.5 or an applicable Land Use Code development review process.

(B) Any site specific development plan that would be subject to these Regulations but has received final City approval as of the effective date of these Regulations so long as the vested rights for such approved site specific development plan have not expired. This exemption does not apply to any subsequent modifications to the approved site specific development plan or expansion of the development site that was not included within the City approved application and for which a new or revised development application is required.

(C) Any proposed development plan otherwise subject to these Regulations but such proposed development plan is (1) subject to review and approval as part of the review of a proposed residential, commercial, industrial or mixed-use project under a development review process other than Site Plan Advisory Review under the Land Use Code, including but not limited to a project development plan or basic development review, and (2) which proposed development plan is directly necessitated by a proposed residential, commercial, industrial or mixed-use development.

(D) Any project previously approved by the Planning and Zoning Commission pursuant to the Site Plan Advisory Review (SPAR) process.

(E) Any proposed development plan issued a FONSI pursuant to Section 6.27.6.5.

SECTION 6.27.5 PERMIT AUTHORITY

6.27.5.1 Established Permit Authority

6.27.5.1 PERMIT AUTHORITY ESTABLISHED

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

(B) The Director shall be the decision maker regarding issuing or not issuing a FONSI.

(C) The Planning and Zoning Commission shall be the decision maker regarding appeals of Director decisions to issue or not issue a FONSI and regarding recommendations to City Council regarding permit applications.

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

SECTION 6.27.6 PERMIT APPLICATION PROCEDURES

SECTION 6.27.6.1 APPLICATION PROCEDURES

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

SECTION 6.27.6.2 APPLICATION FEE; FINANCIAL SECURITY WAIVER

(A) Each pre-application area or activity review application and development application for a permit submitted must be accompanied by the fees established pursuant to Section 6.3.3(D). The Director may determine at any time during the pre-application review and development application review process that it is necessary to retain a third-party consultant to assist in reviewing the application pursuant to Section 6.3.3(D). All costs incurred in the third-party consultant review shall be borne by the applicant in addition to the City's internal application review fees.

(B) A referral agency may impose a reasonable fee for the review of a development application and the applicant shall pay such fee which shall detail the basis for the fee imposed. No hearings by the Permit Authority will be held if any such referral agency's fee has not been paid.

SECTION 6.27.6.3 PRE-APPLICATION AREA OR ACTIVITY REVIEW

(A) The purpose of the pre-application area or activity review is to determine if a permit is required for the proposed development plan, application submittal requirements, procedural requirements, and relevant agencies to coordinate with as part of any permit review process. Topics of discussion may include, as relevant to the specific application, but are not limited to:

(1) Characteristics of the activity, including its location, proximity to natural and human-made features; the size and accessibility of the site; surrounding development and land uses; and its potential impact on surrounding areas, including potential environmental effects and planned mitigation strategies.

(2) The nature of the development proposed, including land use types and their densities; placement of proposed buildings, pipelines, structures, operations, and maintenance; the protection of natural habitats and features, historic and cultural resources, and City natural areas, parks, or other City property or assets; staging areas during construction; alternatives considered; proposed parking areas and internal circulation system, including trails, the total ground coverage of paved areas and structures; and types of water and wastewater treatment systems proposed.

(3) Proposed mitigation of significant impacts.

(4) Siting and design alternatives and reasons why such alternatives are not feasible.

(5) Community policy considerations, including the review process and likely conformity of the proposed development with the policies and requirements of these Regulations.

(6) Applicable regulations, review procedures and submission requirements.

(7) Other regulatory reviews or procedures to which the applicant is subject, the applicant's time frame for the proposed development plan, and other applicant concerns.

(B) To schedule the pre-application area or activity review, the applicant must first provide the Director with the following:

(1) Names and addresses of all persons proposing the activity or development;

(2) Name and qualifications of the person(s) responding on behalf of the applicant;

(3) A written summary of the desired location of the proposed development plan including a vicinity map showing the location of three (3) siting and design alternatives, one of which is the preferred location, drafted at approximately thirty percent (30%) completeness. One (1) of the three (3) alternatives submitted shall avoid natural features and historic and cultural resources and avoid the need for mitigation to the maximum extent feasible;

(4) A vicinity map of the preferred siting and proposed development plan projected at an easily readable scale showing the outline of the perimeter of the parcel proposed for the project site (for linear facilities, the proposed centerline and width of any corridor to be considered), property parcels, location of all residences and businesses, any abutting subdivision outlines and names, the boundaries of any adjacent municipality or growth management area, roads (clearly labeled) and natural features within a half (1/2) mile radius and identified historic and cultural resources within a two hundred (200) foot radius of the project site boundary; an Ecological Characterization Study as defined by Land Use Code Section 5.6.1 within a half (1/2) mile radius of the impact area; and a cultural and historic resource survey documentation and determinations of Fort Collins landmark eligibility for resources within two hundred (200) feet of the project site boundary for each of the three siting alternatives. All final determinations of eligibility for designation as a Fort Collins landmark shall be made in the reasonable discretion of City Historic Preservation staff after reviewing the cultural and historic resource survey and such determinations are not subject to appeal.

(5) A written summary of the cumulative impacts on natural features within a half (1/2) mile radius and on historic and cultural features within 200 feet of the preferred location of the proposed development plan;

(6) A written summary as to whether the proposed development plan has the potential for a significant impact or not. The review of significance must include specifics related to the scale, magnitude, duration, or likelihood of the impact occurring.

(7) Any required certificate of appropriateness pursuant to Chapter 14 of the Code of the City of Fort Collins allowing proposed alterations to any designated historic or cultural resource that may be affected by the proposed development plan.

(8) Any conceptual mitigation plans for the preferred location of the proposed development plan;

(9) The required application fee and applicant agreement to pay the costs of (1) the Director retaining third-party consultants necessary to assist the Director in making a FONSI determination pursuant to Section 6.27.6.5; (2) the Director retaining third-party consultants necessary to assist the Director with the completeness review of any submitted application pursuant to Section 6.27.6.8; and (3) the Director retaining third-party consultants necessary to assist City staff in reviewing a complete permit application or City Council in rendering a decision on a permit; and

(10) Any additional information requested by the Director as necessary to make a FONSI determination pursuant to Section 6.27.6.5.

SECTION 6.27.6.4 FONSI PUBLIC COMMENT PERIOD

(A) Upon the Director deeming the application for a pre-application area or activity review as complete, written notice shall be mailed pursuant to (B). The Director shall not issue a FONSI determination pursuant to Section 6.27.6.5 for at least fourteen (14) days from the date of mailing to allow for any person to submit written comments for the Director's consideration.

(B) At the applicant's cost, notifications for the Director's pending FONSI determination shall be mailed to the property owners and occupants within one thousand feet (1,000) in all directions of the location of the proposed development plan as determined by the Director in their reasonable discretion and shall also be posted on the City's website at www.fcgov.com.

SECTION 6.27.6.5 DETERMINATION OF APPLICABILITY OF REGULATIONS - FONSI

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

(A) The Director shall make a finding related to whether the proposed development plan will result in significant impacts. In order for the Director to determine that a proposed development plan will not result in significant impacts and to issue a FONSI, they must determine that the proposed project does not meet any of the below criteria (1) through (8). The decision by the Director of potential significant impacts may or may not include consideration of proposed mitigation depending on factors that may include, but are not limited to, the scale, magnitude, and complexity of mitigation, and the sensitivity of the resource being mitigated. The FONSI shall be evaluated under the following criteria:

(1) Is located wholly or partly on, under, over or within an existing or planned future City natural area or park, whether developed or undeveloped;

(2) Is located wholly or partly on, under, over or within a City-owned, non-right-of-way, property or current or anticipated City building site, whether developed or undeveloped;

(3) Is located within a buffer zone of an existing natural habitat or feature, as defined in Land Use Code Section 5.6.1;

(4) Is located within a buffer of a high priority habitat as identified by Colorado Parks and Wildlife;

(5) Has potential to significantly impact a natural feature as defined by the Land Use Code;

(6) Has the potential to significantly impact natural habitat corridors identified by the City's Natural Area Department;

(7) Has potential to significantly impact historic or cultural resources within a two hundred (200) foot outer boundary of the proposed development plan; or

(8) Has potential to significantly impact disproportionally impacted communities.

(B) If the Director issues a FONSI, the applicant does not need to submit a permit application under these Regulations. However, issuance of a FONSI does not exempt the proposed development plan from all Land Use Code requirements, and an alternative review process may be required.

(C) If the Director issues a FONSI and the applicant subsequently makes material changes to the development plan, the applicant is required to schedule another pre-application area or activity review pursuant to Section 6.27.6.3 to discuss the changes. Based on the new information and whether the revised development could result in significant impacts, the Director may rescind the FONSI by issuing a written determination pursuant to below Subsection (F) and require a permit under these Regulations.

(D) Permit Not Required. If the Director has made a finding of no significant impacts, or FONSI, a permit pursuant to these Regulations is not required. However, the proposed development plan may be subject to a different Land Use Code development review process. If the Director's decision includes consideration of proposed mitigation, the applicant must provide to the City a guarantee in the form of a development bond, performance bond, letter of credit, cash, certificate of deposit or other city-approved means to guarantee the completion of all mitigation to be constructed as shown on the approved development plan.

(E) Permit Required. If the Director determines a FONSI is not appropriate, the proposed development plan requires a permit and is subject to these Regulations. The Director shall provide the applicant with written comments, to the extent such comments differ from comments provided for any conceptual review, regarding the proposal to inform and assist the applicant in preparing components of the permit application; including a submittal checklist pursuant to Section 6.27.6.7, and additional research questions to address common review standards pursuant to Section 6.27.7.1.

(F) Notice of Director's Determination.

(1) The Director's determination to either issue a FONSI and not require a permit or to not issue a FONSI and require a permit shall be in writing and describe in detail the reasons for the determination. Subject to the fourteen (14) day comment period described in Section 6.27.6.4, the Director shall make this determination within twenty-eight (28) days after the date the preapplication review has occurred or any

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

(2) If a permit is required, the Director shall provide additional information needed to deem a permit application complete; including additional scope of analysis needed to review.

(3) The Director shall provide the written determination to the applicant by email if an email address has been provided and promptly mail a copy of the written determination, at the applicant's cost, to the applicant and to property owners within one-thousand (1000) feet in all directions of the location of the proposed development plan as determined by the Director in their reasonable discretion and shall also be posted on the City's website at www.fcgov.com.

(G) Appeal of the Director's Determination. The Director's determination whether to issue or not issue a FONSI is subject to appeal to the Planning and Zoning Commission pursuant to Land Use Code Section 6.3.12(D). The Planning and Zoning Commission decision on the appeal is further subject to appeal to City Council pursuant to the Code of the City of Fort Collins Ch. 2, Art. 2, Div. 3. After the filing of a timely notice of appeal pursuant to Section 6.3.12(D), the Director shall not accept any application that may be affected by an appeal decision and, if an application has been accepted, shall cease processing such application until the appeal has been decided, which in the case of an appeal to Council shall be the date of adoption of the appeal resolution. The filing of a timely notice of appeal shall reset any time period set forth in 6.27.6.8 and 6.27.6.12 and such time period shall begin from the date the appeal is decided as previously described.

SECTION 6.27.6.6 NEIGHBORHOOD MEETING

(A) Before the Director may determine that a permit application is complete pursuant to Section 6.27.6.8, a neighborhood meeting is required pursuant to Land Use Code Section 6.3.2. The neighborhood meeting may be held no sooner than fifteen (15) days after the date of the Director FONSI determination pursuant to Land Use Code Section 6.27.6.5 that a permit is required pursuant to these Regulations. Should a FONSI determination requiring a permit be appealed, the neighborhood meeting requirement will be paused until the appeal has been decided. Should a FONSI determination that no permit is required be reversed on appeal, a neighborhood meeting is required.

(B) At the applicant's cost, notifications for the neighborhood meeting shall be mailed to the property owners and occupants within one thousand feet (1,000) in all directions of the location of the proposed development plan as determined by the Director in their reasonable discretion and shall also be posted on the City's website at www.fcgov.com.

SECTION 6.27.6.7 APPLICATION SUBMISSION REQUIREMENTS

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

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

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

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

SECTION 6.27.6.8 DETERMINATION OF COMPLETENESS

(A) No permit application may be processed, nor shall a permit be deemed received pursuant to Section 24-65.1-501(2)(a), C.R.S., until the Director has determined it to be complete. The applicant may submit an application only after at least fifteen (15) days have passed since the FONSI determination. Upon submittal of the application, the Director shall determine whether the application is complete or whether additional information is required, and if so, shall inform the applicant and pause the completeness review until information is received. Any request for waiver of a submission requirement shall be processed prior to the Director making a determination that an application is complete. The Director may retain at the applicant's cost third-party consultants necessary to assist the Director with the completeness review. If the Director retains a third-party consultant for permit review, the scope of work will be available for review by the applicant.

(B) No determination of completeness may exceed sixty (60) days unless one or more of the following occurs:

(1) The Director determines in writing that more than sixty (60) days is necessary to determine completeness in consideration of the size and complexity of the proposed development plan or available City resources. In such case, the Director shall determine how many additional days are needed, which shall not exceed sixty (60) additional days; or

(2) The Director and the applicant agree in writing to exceed sixty (60) days.

(C) When the Director has determined that a submitted application is complete, or the time limit for making the completeness determination has elapsed even though the application may not be complete, the Director shall inform the applicant in writing of the date of its receipt. Only upon the Director's determination that an application is complete, or the time limit for making the completeness determination has elapsed even though the application may not be complete, may the City's formal review process commence pursuant to these Regulations.

SECTION 6.27.6.7 REFERRAL AGENCIES

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

SECTION 6.27.6.8 SIMULTANEOUS PROCESSING OF ASSOCIATED DEVELOPMENT APPLICATIONS

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

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

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

SECTION 6.27.6.10 PERMIT DECISION MAKING PROCEDURES

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

(A) No later than thirty (30) days after the receipt of a completed application, the Director will schedule a hearing before City Council. The thirty (30) day period to schedule the hearing may be extended if the applicant agrees to an extension in writing. Prior to such hearing, the Planning and Zoning Commission shall forward a recommendation to City Council to approve, approve with conditions, or deny the permit application.

(B) The Director may retain third-party consultants at the applicant's expense necessary to assist City staff in reviewing a complete permit application or assist City Council in rendering a decision on a permit.

(C) Upon setting a permit hearing date, the Director shall publish notice once in a newspaper of general circulation in the City of Fort Collins containing:

(1) The date, time, and place of the permit hearing not less than thirty (30) nor more than sixty (60) days before the date set for the hearing. The thirty (30) and sixty (60) day periods may be extended if the applicant agrees to an extension in writing.

(D) The date, time, and place of the Planning and Zoning Commission hearing where a recommendation will be made at least seven (7) days prior to the hearing.At least fourteen (14) days prior to the City Council permit hearing, the Director shall mail notice of the date, time, and place of the hearing to the applicant and to property owners pursuant to Section 6.3.6. Notice of the Planning and Zoning Commission hearing where a recommendation will be made shall also be mailed at least fourteen (14) days prior to such hearing pursuant to Section 6.3.6 and may be combined with the mailed notice for the City Council hearing.

SECTION 6.27.6.11 CONDUCT OF PERMIT HEARING.

(A) Planning and Zoning Commission hearings where a recommendation is made shall follow the requirements and procedures of Section 6.3.7.

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

SECTION 6.27.6.12 APPROVAL OR DENIAL OF PERMIT APPLICATION

(A) The burden of proof shall be upon the applicant to show compliance with all applicable standards of the Regulations. To the extent a permit application may not comply with a particular standard, the applicant may demonstrate compliance with such standard by proposing mitigation measures that sufficiently offset the extent of noncompliance.

(B) A permit application to conduct a designated activity of state interest or develop in a designated area of state interest may not be approved unless the applicant satisfactorily demonstrates that the development plan, in consideration of all proposed mitigation measures and any conditions, complies with all applicable standards. If City Council finds the development plan does not comply with all applicable standards, the permit shall be denied unless City Council, in its sole discretion, imposes conditions pursuant to Section 6.27.6.15 which if fulfilled would bring the development plan into compliance with all applicable standards, in which case City Council may approve the permit. City Council may also impose additional conditions pursuant to Section 6.27.6.15 on any permit.

(C) If City Council finds that there is insufficient information concerning any of the applicable standards to determine that such standards have been met, City Council may deny the permit, may approve with conditions pursuant to Section 6.27.6.15 which if fulfilled would bring the development plan into compliance with all applicable standards, or may continue the public hearing or reopen a previously closed public hearing for additional information to be received. However, no continuance to receive additional evidence may exceed sixty (60) days unless agreed to by City Council and the applicant.

(D) City Council shall approve a permit application only if the proposed development plan satisfies all applicable standards of these Regulations in consideration of proposed mitigation measures and any conditions necessary to attain compliance with any standards. City Council may also impose additional conditions pursuant to Section 6.27.6.15 on any permit.

(E) City Council may close the public hearing and make a decision, or it may continue the matter for a decision only. However, City Council shall make a decision by majority vote within ninety (90) days after the closing of the public hearing, or the permit shall be deemed approved. To the extent the public hearing is reopened and closed, the closing date of the public hearing shall be measured from the most recent closing date.

(F) City Council shall adopt by resolution findings of fact in support of its decision and, if approved, the written permit shall be attached to such resolution. To the extent a permit is deemed approved because City Council has not made a decision, adoption of such a resolution is not required.

SECTION 6.27.6.13 ISSUANCE OF PERMIT; CONDITIONS

(A) City Council may attach conditions to the permit pursuant to Section 6.3.9 and additional conditions to ensure that the purpose, requirements, and standards of these Regulations are continuously met throughout the development, execution, operational life, and any decommissioning period. A development agreement between the City and the permittee may be required as a condition of approval.

(B) Issuance of a permit signifies only that a development plan has satisfied, or conditionally satisfied, the applicable Regulations, and prior to commencing any development, conditions of the permit, additional Land Use Code, Code of the City of Fort Collins, other City requirements, or other state or federal requirements, may need to be met.

(C) Subject to (D) below and Section 6.27.11.1, the permit may be issued for an indefinite term or for a specified period of time with such period depending upon the size and complexity of the development plan.

(D) If the permittee fails to take substantial steps to initiate the permitted development plan within twelve (12) months from the date of the approval of the permit or such other time period specified in the permit, or if such steps have been taken but the applicant has failed to complete the development with reasonable diligence, then the permit may be revoked or suspended in accordance with Section 6.27.11.1. This time may be extended by the Director for only one (1) additional year upon a showing of substantial progress.

SECTION 6.27.7 COMMON REVIEW STANDARDS

6.27.7.1 Review Standards for All Applications

SECTION 6.27.7 REVIEW STANDARDS FOR ALL APPLICATIONS

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

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

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

(B) The health, welfare and safety of the community members of the City will be protected and served.

(C) The proposed activity is in conformance with the Fort Collins Comprehensive Plan and other duly adopted plans of the City, or other applicable regional, state or federal land development or water quality plan.

(D) The development plan is not subject to risk from natural or human caused environmental hazards. The determination of risk from natural hazards to the development plan may include but is not limited to the following considerations:

(1) Unstable slopes including landslides and rock slides.

(2) Expansive or evaporative soils and risk of subsidence.

(3) Wildfire hazard areas.

(4) Floodplains.

(E) The development plan will not have a significant impact on the capability of local governments affected by the development plan to provide local infrastructure and services or exceed the capacity of service delivery systems. The determination of the effects of the development plan on local government services may include but is not limited to the following considerations:

(1) Current and projected capacity of roads, schools, infrastructure, drainage and/or stormwater infrastructure, housing, and other local government facilities and services necessary to accommodate development, and the impact of the development plan upon the current and projected capacity.

(2) Need for temporary roads or other infrastructure to serve the development plan for construction and maintenance.

(F) The development plan will not have a significant impact on the quality or quantity of recreational opportunities and experience. The determination of impacts of the development plan on recreational opportunities and experience may include but is not limited to the following considerations:

(1) Changes to existing and projected visitor days.

(2) Changes in quality and quantity of fisheries.

(3) Changes in instream flows or reservoir levels.

(4) Changes in access to recreational resources.

(5) Changes to quality and quantity of hiking, biking, multi-use or horseback riding trails.

(6) Changes to regional open space.

(7) Changes to existing conservation easements.

(8) Changes to City parks, playgrounds, community gardens, recreation fields or courts, picnic areas, and other City park amenities.

(G) The development plan when completed will not have a significant impact on existing visual quality. The determination of visual impacts of the development plan may include but is not limited to the following considerations:

(1) Visual changes to ground cover and vegetation, streams, or other natural features.

(2) Interference with viewsheds and scenic vistas.

(3) Changes in landscape character of unique land formations.

(4) Compatibility of structure size and color with scenic vistas and viewsheds.

(5) Changes to the visual character of regional open space.

(6) Changes to the visual character of existing conservation easements.

(7) Changes to the visual character of City parks, trails, natural areas, or recreation facilities.

(8) Changes to the visual character of historic and cultural resources.

(H) The development plan will not have a significant impact on air quality. The determination of effects of the development plan on air quality may include but is not limited to the following considerations:

(1) Changes in visibility and microclimates.

(2) Applicable air quality standards.

(3) Increased emissions of greenhouse gases.

(4) Emissions of air toxics.

(I) The development plan will not have a significant impact on surface water quality. The determination of impacts of the development plan on surface water quality may include but is not limited to the following considerations:

(1) Changes to existing water quality, including patterns of water circulation, temperature, conditions of the substrate, extent and persistence of suspended particulates and clarity, odor, color or taste of water;

(2) Applicable narrative and numeric water quality standards.

(3) Changes in point and nonpoint source pollution loads.

(4) Increase in erosion.

(5) Changes in sediment loading to waterbodies.

(6) Changes in stream channel or shoreline stability.

(7) Changes in stormwater runoff flows.

(8) Changes in trophic status or in eutrophication rates in lakes and reservoirs.

(9) Changes in the capacity or functioning of streams, lakes or reservoirs.

(10) Changes to the topography, natural drainage patterns, soil morphology and productivity, soil erosion potential, and floodplains.

(11) Changes to stream sedimentation, geomorphology, and channel stability.

(12) Changes to lake and reservoir bank stability and sedimentation, and safety of existing reservoirs.

(J) The development plan will not have a significant impact on groundwater quality. The determination of impacts of the development plan on groundwater quality may include but is not limited to the following considerations:

(1) Changes in aquifer recharge rates, groundwater levels and aquifer capacity including seepage losses through aquifer boundaries and at aquifer-stream interfaces.

(2) Changes in capacity and function of wells within the impact area.

(3) Changes in quality of well water within the impacted area.

(K) The development plan will not have a significant impact on wetlands and riparian areas (including riparian forests) of any size regardless of jurisdictional status. In determining impacts to wetlands and riparian areas, the following considerations shall include but not be limited to:

(1) Changes in the structure and function of wetlands.

(2) Changes to the filtering and pollutant uptake capacities of wetlands and riparian areas.

(3) Changes to aerial extent of wetlands.

(4) Changes in species' characteristics and diversity.

(5) Transition from wetland to upland species.

(6) Changes in function and aerial extent of floodplains.

(L) The development plan shall not have a significant impact on the quality of terrestrial and aquatic animal life. In determining impacts to terrestrial and aquatic animal life, the following considerations shall include but not be limited to:

(1) Changes that result in loss of oxygen for aquatic life.

(2) Changes in flushing flows.

(3) Changes in species composition or density.

(4) Changes in number of threatened or endangered species.

(5) Changes to habitat and critical habitat, including calving grounds, mating grounds, nesting grounds, summer or winter range, migration routes, or any other habitat features necessary for the protection and propagation of any terrestrial animals.

(6) Changes to habitat and critical habitat, including stream bed and banks, spawning grounds, riffle and side pool areas, flushing flows, nutrient accumulation and cycling, water temperature, depth and circulation, stratification and any other conditions necessary for the protection and propagation of aquatic species.

(M) The development plan shall not have a significant impact on the quality of terrestrial and aquatic plant life. In determining impacts to terrestrial and aquatic animal life, the following considerations shall include but not be limited to:

(1) Changes to high priority habitat identified by the Colorado Parks and Wildlife and the Fort Collins Natural Areas Department.

(2) Changes to the structure and function of vegetation, including species composition, diversity, biomass, and productivity.

(3) Changes in advancement or succession of desirable and less desirable species, including noxious weeds.

(4) Changes in threatened or endangered species.

(N) The development plan will not have a significant impact on natural habitats and features as defined in Land Use Code Section 5.6.1.

(O) The development plan will not have a significant impact on historic or cultural resources as defined in Section 6.27.1.9 of these Regulations.

(P) The development plan will not have a significant impact on significant trees as defined in Land Use Code Section 5.10.1.

(Q) The development plan will not have a significant impact on soils and geologic conditions. The determination of impacts of the development plan on soils and geologic conditions may include but is not limited to the following considerations:

(1) Loss of topsoil due to wind or water forces.

(2) Changes in soil erodibility.

(3) Physical or chemical soil deterioration.

(4) Compacting, sealing and crusting.

(R) The development plan will not cause a nuisance. The determination of nuisance impacts of the development plan may include but is not limited to the following considerations: increase in odors, dust, fumes, glare, heat, noise, vibration or artificial light.

(S) The development plan will not result in risk of releases of, or exposures to, hazardous materials or regulated substances. The determination of the risk of release of, or increased exposures to, hazardous materials or regulated substances caused by the development plan may include but is not limited to the following considerations:

(1) Plans for compliance with federal and state handling, storage, disposal, and transportation requirements.

(2) Use of waste minimization techniques.

(3) Adequacy of spill and leak prevention and response plans.

(T) The development plan will not have disproportionately greater impact on disproportionately impacted communities within the City considering, for example, the distribution of impacts to the following:

(1) Air quality.

(2) Water quality.

(3) Soil contamination.

(4) Waste management.

(5) Hazardous materials.

(6) Access to parks, natural areas, trail, community services, cultural activities, and historic and cultural resources, and other recreational or natural amenities.

(7) Nuisances.

(U) The development plan shall include mitigation plans that avoid or minimize significant impacts by limiting the degree or magnitude of the action. Mitigation plans shall include detailed information on how the proposed project will avoid or minimize significant impacts identified and related to all applicable common and specific review standards, including but not limited to the following:

(1) Detailed information on how the proposed project will avoid or minimize significant impacts on natural features must include an adaptive management plan and established performance criteria based on a local reference site and analogous habitat type. Plans submitted must address success criteria regarding quantity, quality, diversity and structure of vegetative cover or habitat value; and

(2) Detailed information on how the proposed project will avoid or minimize significant impacts on historic and cultural features during the full span of ground disturbance and construction activities, to include an archeological monitoring plan that anticipates the possibility of new discoveries related to that activity; and plan(s) of protection that detail mitigation strategies for any identified historic and cultural resources.

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

6.27.8.1 Applicability
6.27.8.2 Purpose and Intent

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

SECTION 6.27.8.1 APPLICABILITY

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

SECTION 6.27.8.2 PURPOSE AND INTENT

The specific purpose and intent of this Section are:

(A) To ensure that site selection and construction of major new domestic water and sewage treatment systems and major extensions of such systems are conducted in such a manner as to avoid or fully mitigate impacts associated with such development;

(B) To ensure that site selection and construction of major new domestic water and sewage treatment systems and major extensions of such systems are planned and developed in a manner so as not to impose an undue economic burden on existing or proposed communities within the City;

(C) To ensure that the off-site significant impacts of new domestic water and sewage treatment systems are avoided or fully mitigated; and

(D) To ensure that the surface and groundwater resources of the City are protected from any significant impact of the development of major water and sewage treatment systems and major extensions of such systems.

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

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

(A) New domestic water and sewage treatment systems shall only be constructed in areas which will result in the proper use of existing treatment plants and the orderly development of domestic water and sewage treatment systems within the City; and

(B) Area and community development and population trends must demonstrate clearly a need for such development.

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

SECTION 6.27.9.1 APPLICABILITY

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

SECTION 6.27.9.2 PURPOSE AND INTENT

The specific purpose and intent of this Section are:

(A) *To ensure that community traffic needs are met;*

(B) *To provide for the continuation of desirable community traffic circulation patterns by all modes;*

(C) *To discourage expansion of demand for government services beyond the reasonable capacity of the community or region to provide such services as determined by the City;*

(D) *To prevent direct conflicts with local, regional and state master plans;*

(E) *To ensure that highway and interchange development is compatible with surrounding land uses;*

(F) *To encourage the coordination of highway planning with community and development plans;*

(G) *To discourage traffic hazards and congestion;*

(H) *To minimize sources of traffic noise, air and water pollution; and*

(I) *To protect scenic, natural, historical and cultural resources from destruction.*

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

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

(A) The proposed arterial highway, interchange or collector highway will be located so that natural habitats and features, historic and cultural resources, City natural areas and parks and other local government facilities and resources are protected to the maximum extent feasible;

(B) The proposed arterial highway or interchange or collector highway will be located only in a corridor for which a clear and reasonable local and regional need has been demonstrated;

(C) The location and access limitations for the arterial highway, interchange or collector highway will not isolate community neighborhoods from and, where practicable, will enhance access from community neighborhoods to public facilities including schools, hospitals, mass transit, pedestrian walkways and bikeways, recreational facilities and areas, community centers, government and social services provider offices and facilities, natural areas, and open spaces;

(D) The construction of the arterial highway and interchange or collector highway shall be phased to minimize interference with traffic movement;

(E) The location and access limitations for the arterial highway, interchange or collector highway will not restrict access to other roadways, mass transit facilities, pedestrian walkways and bikeways, local commercial services, residential developments, business and employment centers, and public facilities including schools, hospitals, recreational facilities and areas, natural areas, and open spaces;

(F) Alternative modes of transportation will be incorporated into the proposal to the extent feasible;

(G) If park-and-ride facilities are utilized, they shall be located in areas approved by the City;

(H) The location of the proposed new or expanded arterial highway, interchange or collector highway will not impede the delivery of essential community services and goods;

(I) Desirable local and regional community land use patterns will not be disrupted by the location of the proposed new or expanded arterial highway, interchange or collector highway;

(J) The location and access limitations for the arterial highway, interchange or collector highway will not create safety hazards to motorists, pedestrians or bicyclists by causing or contributing to overuse, improper use or congestion, or cause unnecessary diversion of regional traffic onto other City roadways or inappropriate or inadequate connections to pedestrian and bicycle routes;

(K) The proposed location of the new or expanded arterial highway, interchange or collector highway will be located so as to complement the efficient extension of planned public services, utilities and development in general, both regionally and within the City;

(L) The proposed location of the new or expanded arterial highway, interchange or collector highway will adhere to the plan, process, procedure and requirements of the State and the Federal Highway Administration, and such construction, expansion or modification will be included in local and regional transportation plans;

(M) The proposed location of the new or expanded arterial highway, interchange or collector highway will not result in the destruction, impairment or significant alteration of sensitive, key commercial, tourist or visitor areas or districts within the City;

(N) The proposed location of the new or expanded arterial highway, interchange or collector highway will not contribute to a negative economic impact to residential, commercial, tourist or visitor areas or districts within the City;

(O) To the extent tolling is proposed, the use or level of tolling is appropriate in light of existing toll levels, if any, and any prior or projected public infrastructure investment;

(P) The proposed highways can be integrated into the regional transportation network;

(Q) The new or expanded arterial highway, or interchange or collector highway will not have a significant impact on prime or unique farmland as defined by the U.S. Department of Agriculture, Natural Resources Conservation Service;

(R) The proposed location and design of the arterial highway, interchange or collector highway does not cause lighting impacts from headlights or streetlights to nearby residential neighborhoods or other developments or night sky objectives and plans;

(S) Noise levels caused by the new or expanded arterial highway, interchange or collector highway will follow federal noise regulations;

(T) Vertical structures will match the character of the City through materials and design; and

(U) The local air quality impacts of the new or expanded arterial highway, interchange or collector highway shall support attainment of federal and state ambient air quality standards and shall not increase risks to human health and the environment posed by air pollutants.

SECTION 6.27.10FINANCIAL SECURITY

6.27.10.1Financial Security

SECTION 6.27.10.1 FINANCIAL SECURITY

(A) Before any development occurs pursuant to an approved permit issued pursuant to these Regulations, the applicant shall provide the City with a guarantee of financial security deemed adequate by the Director to accomplish the purposes of this Section, in a form approved by the City Attorney and payable to the City of Fort Collins.

(B) The purpose of the financial guarantee is to ensure that the permittee shall faithfully perform all requirements of the permit and the Director shall determine the amount of the financial guarantee in consideration of the following standards, to the extent applicable or relevant to the approved development plan:

(1) The estimated cost of returning the site of the permitted development plan to its original condition or to a condition acceptable in accordance with standards adopted by the City for the matter of state interest for which the permit is being granted;

(2) The estimated cost of implementing and successfully maintaining any revegetation required by the permit.

(3) The estimated cost of completing the permitted development plan; and

(4) The estimated cost of complying with any permit conditions, including mitigation, monitoring, reporting, and City inspections to ensure compliance with the terms of the permit.

(C) Estimated cost shall be based on the applicant's submitted cost estimate. The Director shall consider the duration of the development plan and compute a reasonable projection of increases due to inflation over the entire life of the development plan. The Director may require, as a condition of the permit, that the financial security shall be adjusted upon receipt of bids.

(D) The financial guarantee may be released in whole or in part with the approval of the Director only when:

(1) The permit has been surrendered to the Director before commencement of any physical activity on the site of the approved development plan;

(2) The approved development plan has been abandoned and the site thereof has been returned to its original condition or to a condition acceptable to the Director in accordance with standards adopted by the Permit Authority for the matter of state interest for which the permit is being granted;

(3) The approved development plan has been satisfactorily completed; or

(4) Applicable guaranteed conditions have been satisfied.

(E) Any security may be cancelled by a surety only upon receipt of the Director's written consent which may be granted only when such cancellation will not detract from the purposes of the security.

(F) If the license to do business in Colorado of any surety upon a security filed pursuant to these Regulations is suspended or revoked by any State authority, then the permittee, within sixty (60) days after receiving notice thereof, shall substitute a good and sufficient surety licensed to do business in the State. Upon failure of the permittee to make substitution of surety within the time allowed, the Director shall suspend the permit until proper substitution has been made.

(G) No security is acceptable if signed by or drawn on an institution for or in which the permittee is an owner, shareholder, or investor other than simply an account holder.

(H) The Director may determine at any time that a financial guarantee should be forfeited because of any violation of the permit. The Director shall provide written notice of such determination to the surety and the permittee of their right to written demand of the Director within thirty (30) days of receiving written notice from the Director.

(1) If no demand is made within said period, then the Director shall order in writing that the financial guarantee be forfeited and provide a copy of such order to the surety and permittee.

(2) If a timely demand is received, the Director shall make good faith efforts to meet with the permittee and surety within thirty (30) days after the receipt of such demand. At the meeting the permittee and surety may present any information with

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

(I) If the forfeiture results in inadequate revenue to cover the costs of accomplishing the purposes of the financial guarantee, the City Attorney shall take such steps as deemed proper to recover such costs, including imposing and foreclosing a City lien on real property and/or certifying the same to the County Treasurer for collection in the same manner as real property taxes, pursuant to Sections 31-20-105 and 106, C.R.S.

(J) The financial security under this Section may be waived, in the Director's sole discretion, if a proposed development plan is solely financed by state agencies, a political subdivision of the state, or a special or enterprise fund that has established to the Director's satisfaction the availability of funds required to complete the proposed development plan.

SECTION 6.27.11 SUSPENSION OR REVOCATION OF PERMITS

6.27.11.1 Suspension or Revocation of Permits

SECTION 6.27.11.1 SUSPENSION OR REVOCATION OF PERMITS

(A) If the Director has reason to believe that the permittee has violated any provision of the permit or the terms of any regulation for administration of the permit, and such violation poses a danger to public health, safety, welfare, the environment or wildlife resources, the Director has the authority to order the immediate suspension of all operations associated with implementing the approved development plan and suspension of the permit until the danger has been eliminated. At such time as the Director has determined the danger is eliminated and any violations of the permit or the terms of any regulation for administration of the permit, the Director shall withdraw the suspension. Should the danger be eliminated but violations of the permit still exist, the Director shall suspend the permit for up to an additional one-hundred and eighty (180) days pursuant to (B)(3) below.

(B) If the Director has reason to believe that the permittee has violated any provision of any permit or the terms of any regulation for administration of the permit, and such violation does not pose a danger to public health, safety, welfare, the environment or wildlife resources, the Director may temporarily suspend the permit for an initial period of up to thirty (30) days or until the violation is corrected, whichever occurs first.

(1) Before imposing such temporary suspension, the Director shall provide written notice to the permittee of the specific violation and shall allow the permittee a period of at least fifteen (15) days to correct the violation from the date notice was provided.

(2) If the permit holder does not agree that there is a violation, the permittee shall, within fifteen (15) days of the date notice was provided, submit a written response to the Director detailing why the temporary suspension should not occur. Upon receiving such response, the Director shall within ten (10) days issue a written response either withdrawing the notice of violation or imposing the temporary permit suspension. The Director's decision is not subject to appeal.

(3) Should a violation remain uncorrected after the initial period of temporary suspension has elapsed, the Director shall extend in writing the period of temporary suspension for up to an additional one-hundred and eighty (180) days or until the violation is corrected, whichever occurs first. Notice of such extension shall be provided to the permittee and the extended suspension may be appealed pursuant

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

(C) Subsequent to any extended temporary suspension imposed under (B)(3) above, the Director may permanently revoke the permit upon a written determination that the violation for which the temporary suspension was premised remains uncorrected. The determination shall be provided to the permittee and such revocation may be appealed pursuant to Chapter 2, Article VI, of the Code of the City of Fort Collins, however, pending the decision of such appeal, the revocation shall remain in effect.

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

SECTION 6.27.12 PERMIT REVIEW, RENEWAL, AMENDMENT, TRANSFER

SECTION 6.27.12.1 ANNUAL REVIEW; PROGRESS REPORTS

(A) Within thirty (30) days prior to each annual anniversary date of the granting of a permit, the permittee shall submit a report detailing any and all activities conducted by the permittee pursuant to the permit including, but not limited to, a satisfactory showing that the permit has complied with all conditions of the permit and applicable regulations for administration of the permit.

(B) Director shall review the report within thirty (30) days from the date of submittal thereof. If the Director determines, based upon its review, that the permittee was likely to have violated the provisions of the permit or applicable regulations, or both, the Director shall make a good faith effort to meet with the permittee to discuss the matter. If the Director determines after any meeting that the permittee has violated the provisions of the permit or applicable regulations, or both, the Director may suspend and/or revoke the permit in accordance with Section 6.27.11.1.

(C) Upon fulfillment of all permit conditions, this annual review requirement may be waived by the Director.

(D) At any time, the Director may require the permittee to submit an interim progress report.

SECTION 6.27.12.2 PERMIT RENEWAL

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

SECTION 6.27.12.3 PERMIT AMENDMENT

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

SECTION 6.27.12.4 MINOR REVISION NOT CONSTITUTING A MATERIAL CHANGE

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

SECTION 6.27.12.5 TRANSFER OF PERMITS

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

SECTION 6.27.12.6 INSPECTION

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

SECTION 6.27.13 ENFORCEMENT

6.27.13.1 Enforcement

SECTION 6.27.13.1 ENFORCEMENT

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

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

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

SECTION 6.28.1 PURPOSE.

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

SECTION 6.28.2 APPLICABILITY.

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

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

SECTION 6.28.3 PROCESS.

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

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

(B) ***Step 2*** (Neighborhood Meeting): Pursuant to Section 6.27.6.6, a neighborhood meeting is required before the Director may determine that a permit application is complete pursuant to Section 6.6.8 and no sooner than fifteen (15) days after the date the Director issues a FONSI determination. The ten (10) day period after the neighborhood meeting before an application may be submitted shall not apply.

(C) ***Step 3*** (Development Application Submittal): Applicable. The simultaneous processing of development applications submitted in association with an application for a permit to conduct a designated activity or develop in an area of state interest is addressed in Section 6.27.6.10, and combined applications for a permit to conduct multiple activities or develop in multiple areas of state interest is addressed in Section 6.27.6.11.

(D) ***Step 4*** (Review of Application): Applicable except that Section 6.27.6.8 shall substitute for Land Use Code Section 6.3.4(A).

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

(F) ***Step 6*** (Notice): Applicable with particular timing for published and mailed notice as set forth in Section 6.27.6.12.

(G) ***Step 7*** (Public Hearing):

7(A) (Decision Maker): Not applicable and in substitution therefor, City Council is the decision maker on permits pursuant to Division 6.27 after receiving a Planning and Zoning Commission recommendation.

Steps 7(B) (Conduct of Public Hearing), ***7(C)*** (Order of Proceedings at Public Hearing):

Applicable to Planning and Zoning Commission hearings where a recommendation on a permit application will be made.

Not applicable to City Council hearings where a decision on a permit application will be made. City Council shall adopt into its rules of procedure a procedure for conducting such hearings.

Applicable to appeals of Director FONSI determinations to the Planning and Zoning Commission as modified pursuant to Section 6.3.12(D)(5).

Not applicable to appeals to City Council of Planning and Zoning Commission decisions on appeals of Director FONSI decisions. The procedures set forth in the Code of the City of Fort Collins Chapter 2, Article II, Division 3 shall apply.

7(D) (Decision and Findings): Not applicable and in substitution therefor, see Section 6.27.6.5 regarding Director FONSI determinations, Section 6.3.12(D) regarding appeals of Director FONSI decisions, and Section 6.27.6.12 regarding Planning and Zoning Commission recommendations on permits and City Council permit decisions.

7(E) (Notification to Applicant), ***7(F)*** (Record of Proceedings), ***7(G)*** (Recording of Decisions and Plat)**:** *Applicable.*

(H) ***Step 8*** (Standards): Applicable except that the applicable standards that must be met are set forth in Division 6.27.

(I) ***Step 9*** (Conditions of Approval): Applicable to Planning and Zoning Commission recommendations on permit applications and City Council decisions on permit applications as modified pursuant to Section 6.27.6.15.

(J) ***Step 10*** (Amendments): Not applicable and in substitution thereof, the requirements of Sections 6.27.12.3 and 6.27.12.4 shall apply.

(K) ***Step 11*** (Lapse): Only 6.3.11(A) is applicable and approved permits for areas and activities of state interest are not eligible for vested rights pursuant to the Land Use Code. Sections 6.27.6.15 and 6.27.11.1 require that the permittee make substantial steps toward initiating and completing the proposed development plan or the permit may be subject to revocation.

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

ARTICLE 7

RULES OF MEASUREMENT and DEFINITIONS

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ARTICLE 7
RULES OF MEASUREMENT and DEFINITIONS

DIVISION 7.1 MEASUREMENT

7.1.1 GENERAL.

The rules of measurement set forth in 7.1.2 shall generally apply to this Code unless otherwise specified. For words, terms, and phrases words used in the Rules of Measurement that are not defined in Sections 7.1.2, or Division 7.2, the Director shall have the authority and power to interpret or define such words, terms and phrases. In making such interpretations or definitions, the Director may consult appropriate secondary sources.

7.1.2 RULES OF MEASUREMENT.

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

Block shall mean a unit of land bounded by streets or by a combination of streets and public lands, railroad rights-of-way, waterways or any barrier to the continuity of development, but shall not include in the calculation of the block size measurement the barriers creating the boundary.

Building frontage shall mean that side of a building that faces and is parallel to or most nearly parallel to a public or private street. The length of the frontage is determined by measuring along the outside walls of the building and including eaves that are at least eight (8) feet above grade and are an integral part of the roof or building wall. There can be only one (1) building frontage for each street upon which a building faces.

Build-to line shall mean the line on which the front of a building or structure must be located or built and which is measured as a distance from a public right-of-way street. To establish "build-to" lines, buildings shall be located and designed to align or approximately align with any previously established building/sidewalk relationships that are consistent with this standard. block patterns. Accordingly, at least thirty (30) percent of the total length of the building along the street shall be extended to the build-to line area. If a parcel, lot or tract has multiple streets, then the building shall be built to at least two (2) of the built to lines m according to (A) through (C) below, i.e. to a street corner. If there is a choice of two (2) or more corners, then the building shall be built to the corner that is projected to have the most pedestrian activity associated with the building.

(A) Buildings shall be located no more than fifteen (15) feet from the right-of-way of an adjoining street if the street is smaller than a full arterial or has on-street parking.
(B) Buildings shall be located at least ten (10) and no more than twenty-five (25) feet behind the street right-of-way of an adjoining street that is larger than a two-lane arterial that does not have on-street parking.
(C) Exceptions to the build-to line standards shall be permitted:

(1) in order to form an outdoor space such as a plaza, courtyard, patio or garden between a building and the sidewalk. Such a larger front yard area shall have landscaping, low walls, fencing or railings, a tree canopy and/or other similar site improvements along the sidewalk designed for pedestrian interest, comfort and visual continuity.

(2) if the building abuts a four-lane or six-lane arterial street, and the Director has determined that an alternative to the street sidewalk better serves the purpose of connecting commercial destinations due to one or more of the following constraints:

(a) high volume and/or speed of traffic on the abutting street(s),

(b) landform,

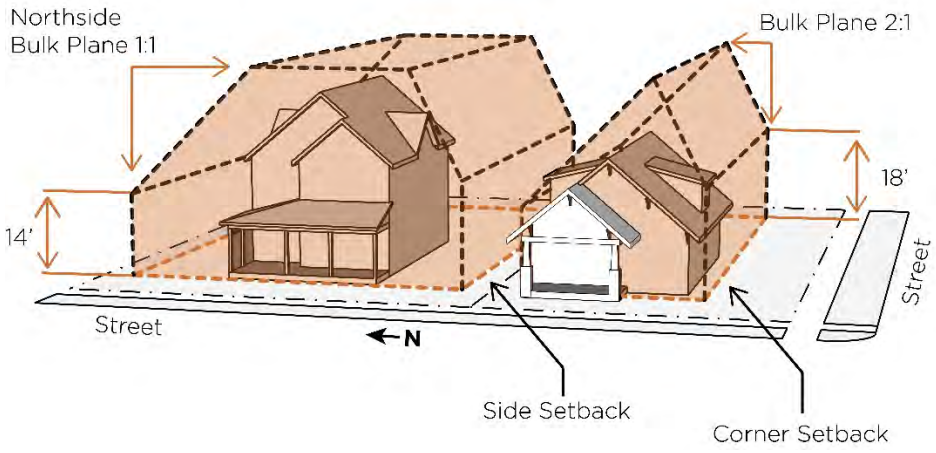
(c) an established pattern of existing buildings that makes a pedestrian-oriented streetfront infeasible. Such an alternative to the street sidewalk must include a connecting walkway(s) and may include internal walkways or other directly connecting outdoor spaces such as plazas, courtyards, squares or gardens.

(3) in the case of Large Retail Establishments, Supermarkets or other anchor-tenant buildings that face internal connecting walkways with pedestrian frontage in a development that includes additional outlying buildings abutting the street(s).

(4) if a larger or otherwise noncompliant front yard area is required by the City to continue an established drainage channel or access drive, or other easement.

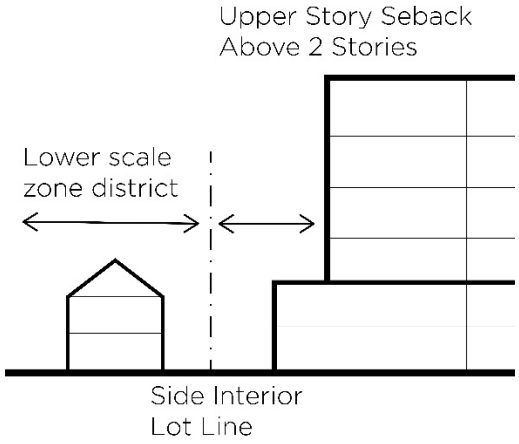
(5) in order to conform to an established pattern of building and street relationships, a contextual build-to line may fall at any point between the required build-to line and the build-to line that exists on a lot that abuts, and is oriented to, the same street as the subject lot. If the subject lot is a corner lot, the contextual build-to line may fall at any point between the required build-to line and the build-to line that exists on the lot that is abutting and oriented to the same street as the subject lot. A contextual build-to line shall not be construed as allowing a vehicular use area between the building and the street.

Bulk plane shall mean the imaginary plane that limits the allowable space a building may occupy. Dormer, eaves, chimneys and other architectural details are exempt from the bulk plane requirements. Bulk Plane requirements vary by zone district. Specific dimensions vary for lots with north facing walls along side-interior lot lines with an adjoining property.



Contextual build-to line shall mean a build-to line that falls at any point between the required build-to line and the build-to line that exists on a lot that abuts, and is oriented to, the same street as the subject lot, in order to conform to an established pattern of building and street relationships. A contextual build-to line shall not be construed as allowing a vehicular use area between the building and the street.

Contextual Height Setback. Properties adjacent to lower scaled residential zone districts shall comply with the Contextual Height Setback, which requires floors above the second story to be setback an additional 25' from the property line. This does not apply to detached homes, duplexes, or accessory structures.



Density shall mean the overall number of dwelling units located on the gross or net residential acreage (as applicable) contained within the development and calculated on a per-acre basis.

(A) Calculation of the gross residential density shall be performed (and included on the development plan) in the following manner:

(1) Determining the gross acreage. The gross acreage of all the land within the boundaries of the development shall be included in the density calculation except:

(a) any interest in land that has been deeded or dedicated to any governmental agency for public use prior to the date of approval of the development plan; provided, however, that this exception shall not apply to any such acquisition of an interest in land solely for open space, parkland or stormwater purposes; and

(b) land devoted to nonresidential uses such as commercial, office, industrial or civic uses.

(2) The foregoing gross acreage calculation shall be shown in a table format on the development plan and shall form the basis for calculating the gross residential density.

(3) The total number of dwelling units shall be divided by the gross residential acreage. The resulting gross residential density shall also be shown in a table format on the development plan.

(B) Calculation of the net residential density shall be performed (and included on the development plan) in the following manner:

(1) Determining the net residential acreage. The net residential acreage shall be calculated by subtracting the following from the gross acreage, as determined in subsection (A) above:

(a) land to be dedicated for arterial streets;

(b) land containing natural areas or features that are to be protected from development and disturbance in accordance with the requirements of LUC Section 5.6.1, "Natural Habitats and Features,";

(c) land set aside from development due to a geologic hazard in accordance with the requirements of LUC Section 5.6.5, "Hazards,";

(d) land containing outdoor spaces that are to be dedicated to the public or deeded to the homeowner's association and preserved for a park or central green, but only if the total area of land does not exceed twenty-five (25) percent of the gross acreage of the project development plan and the outdoor space meets the following criteria:

(I) At least thirty-five (35) percent of the boundary of the outdoor space is formed by nonarterial, public streets, and the rear facades and rear yards of houses abut not more than two (2) sides or more than fifty (50) percent of the boundary frontage of the outdoor space.

(II) At a minimum, the outdoor space consists of maintained turf. In addition, such outdoor spaces may include features such as: buildings containing recreation or meeting rooms;, playgrounds;, plazas;, pavilions;, picnic tables;, benches;, orchards;, walkways or other similar features.

(III) The outdoor space is no less than ten thousand (10,000) square feet in area.

(IV) The outdoor space does not consist of a greenbelt or linear strip but has a minimum dimension of fifty (50) feet in all directions in any nonrectangular area, or seventy-five (75) feet in any rectangular area.

(V) The outdoor space is located and designed to allow direct, safe and convenient access to the residents of surrounding blocks.

(VI) Storm drainage functions that are integrated into outdoor spaces allow adequate space for active recreation purposes and do not result in slopes or gradients that conflict with active recreation. Stormwater retention areas (which have no outlet) shall not be allowed. No more than ten (10) percent of an outdoor space shall consist of gradients greater than four (4) percent.

(e) land dedicated to public alleys.

(f) land dedicated to pedestrian/bicycle path connections when required pursuant to subsection 5.9.1(C)(6) or subsection 5.3.2(E)(3) or when provided voluntarily by the applicant to connect cul-de-sacs to nearby streets, provided that such connections do not exceed two hundred fifty (250) feet in length.

(g) land dedicated to landscaped traffic circles, squares, islands and boulevard strips separating the travel lanes of collector or local streets, provided that such features have the following minimum width dimensions:

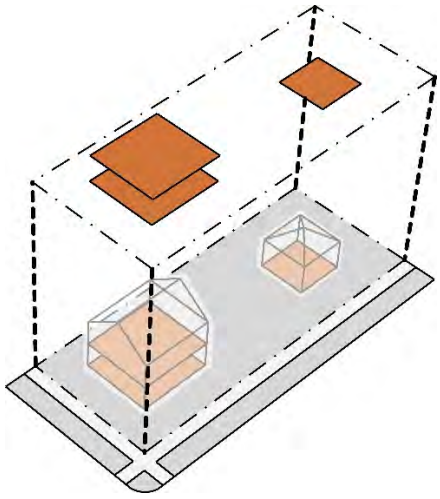
(I) boulevard strips: twenty-five (25) feet at any point; and.

(II) traffic circles, squares, or islands: forty (40) feet at any point.

(2) The foregoing net acreage calculation shall be shown in a table format on the development plan and shall form the basis for calculating the net residential density.

(3) The total number of dwelling units shall be divided by the net residential acreage. The resulting density shall also be shown in a table format on the development plan.

Floor area shall mean the gross floor area of all buildings on the property, greater than 120sf or greater than 8ft in height, as measured along the outside walls of a building and shall be calculated to include each floor level.



Floor area shall be calculated as follows:

(A) In all zone districts except in the Old Town zone district Floor area calculations shall not include open balconies, the first seven hundred twenty (720) square feet of the total of all sheds, garages or other enclosed automobile parking areas, basements and one-half (½) of all storage and display areas for hard goods.

(B) In the Old Town Zone district floor area shall be calculated to include the floor area of the following spaces and building elements.

(1) One hundred (100) percent of the floor area of the following spaces and building elements:

(a) The total floor area of all principal buildings as measured along the outside walls of such buildings; and
(b) each finished floor level at and above grade; and
(c) unfinished floor levels at and above grade excluding unfinished attic space; and

(d) basement floor areas where any exterior basement wall is exposed by more than three (3) feet above the existing grade at the interior side lot line adjacent to the wall; and

(e) roofed porches, balconies and breezeways that are enclosed on more than two (2) sides; and

(f) attached carports, garages and sheds; and

(g) Detached accessory buildings larger than one hundred and twenty (120) square feet, including the area of the uppers story having a ceiling of height of seven and one-half (7½) feet. **Detached accessory building floor area shall not be calculated into the allowed floor area of the primary building.**

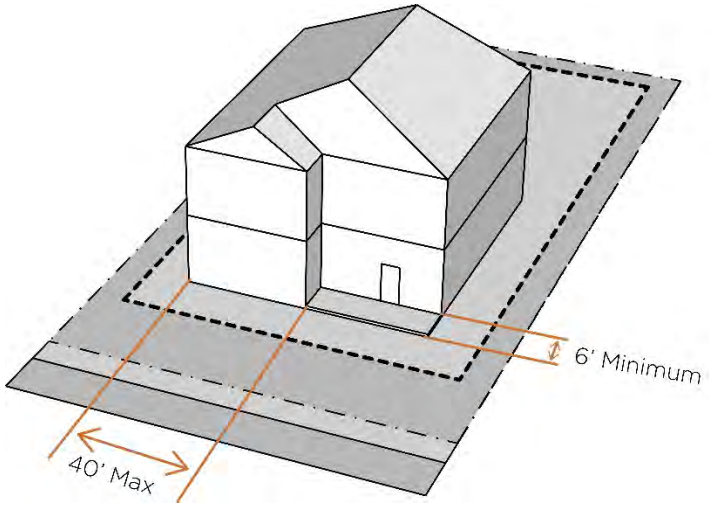
(2) Two hundred (200) percent for the floor area of the following spaces and building elements:

(a) High volume spaces on the first or second floor where the distance between the floor and the ceiling or roof rafters directly above is greater than fourteen (14) feet.

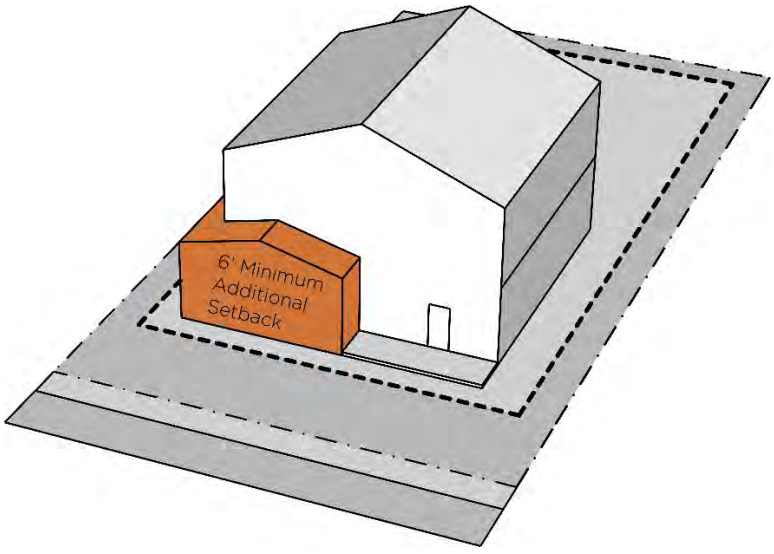
Floor Area Ratio (FAR) shall mean the amount of gross floor area of all principal buildings on a lot or block, as the case may be, divided by the total area of such lot, or the block size, respectively, on which such buildings are located. For mixed-use blocks, the residential square footage shall be added to the commercial development for a total block FAR.

Front Facade Design. At least one (1) front façade feature from the menu below shall be included to promote pedestrian orientation and compatibility with the character of the structures on the block face:

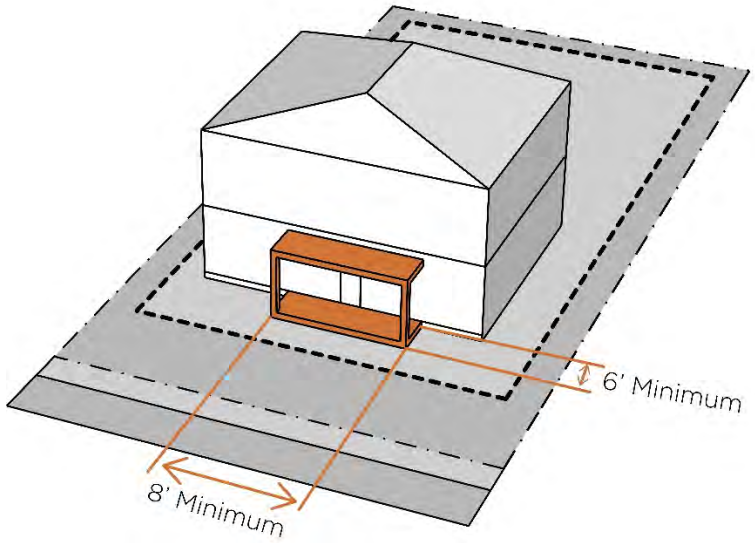
(A) *Limited 2-story facade.* Two-story front-facade width is no more than 40', with any remaining two-story front facade setback an additional six (6) feet.



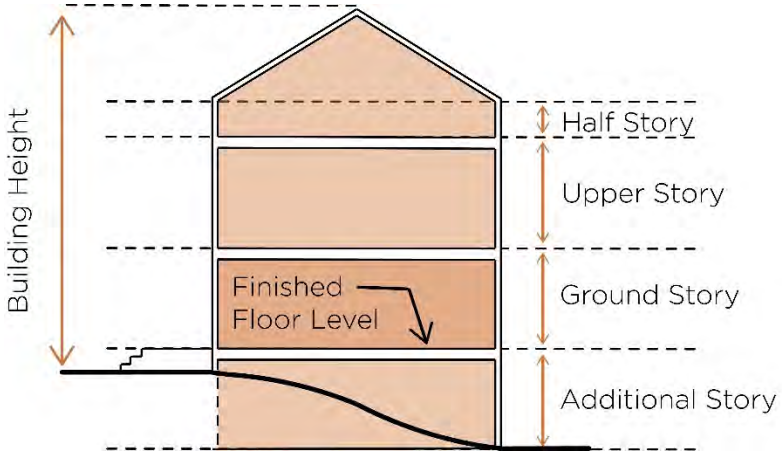
(B) *1-story element.* The portion of the facade closest to the street is one- story, with any two-story facade setback an additional six (6) feet from the street.



(C) *Covered entry.* The portion of the facade closest to the street is one- story, with any two-story facade setback an additional six (6) feet from the street.



Half story. When the floor area of the top story is less than, or equal to half of the ground floor area.



Height shall mean the distance above a given level. Depending upon the context, height may be measured according to any of several methods, as follows:

(A) Building Height Measured in Stories. In measuring the height of a building in stories the following measurement rules shall apply:

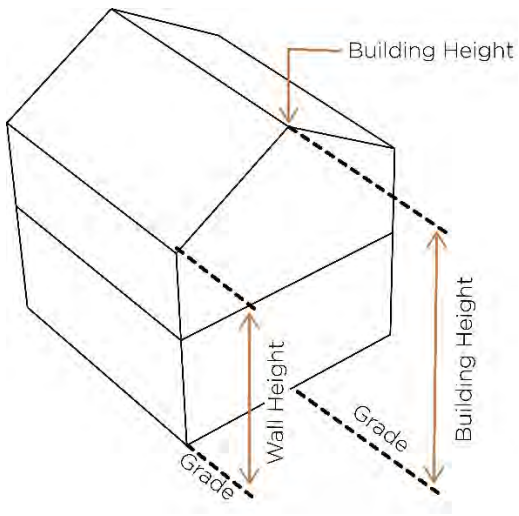
(1) A balcony or mezzanine shall be counted as a full story when its floor area is in excess of one-third (1 /3) of the total area of the nearest full floor directly below it.

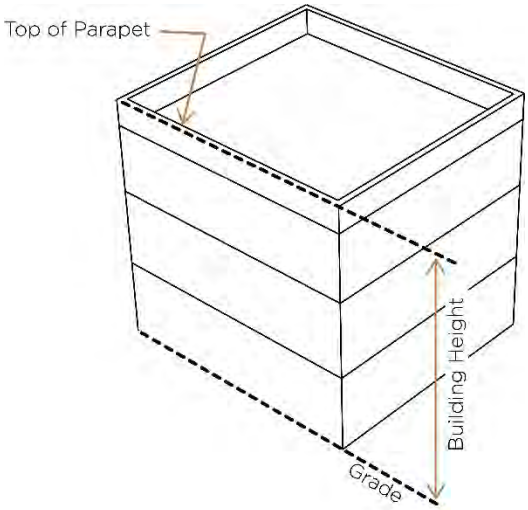
(2) Half (1/2) story shall mean a space under a sloping roof that has the line of intersection of the roof and wall face not more than three (3) feet above the floor level, and in which space the possible floor area with head room of five (5) feet or less occupies at least forty (40) percent of the total floor area of the story directly beneath.

(3) No story of a commercial or industrial building shall have more than twenty-five (25) feet from average ground level at the center of all walls to the eave/wall intersection or wall plate height if there is no eave, or from floor to floor, or from floor to eave/wall intersection or wall plate height as applicable.

(4) A maximum vertical height of twelve (12) feet eight (8) inches shall be permitted for each residential story measured from average ground level at the center of all walls to the eave/wall intersection or wall plate height if there is no eave, or from floor to floor, or from floor to eave/wall intersection or wall plate height as applicable. This maximum vertical height shall apply only in the following zone districts: U-E; R-F; R-L; L-M-N; M-M-N; OT-A; OT-B; OT-C; R-C; C-C-N; N-C; H-C; and M-H.

(B) Building Height Measured in Feet. When measured in feet, building height shall be measured from the average of the finished ground level at the center of all walls of a building or structure to the highest point of the roof surface or structure.





(C) Transitional Height. Regardless of the maximum building height limit imposed by the zone district standards of this Land Use Code, applicants shall be allowed to use a "transitional" height limit. The allowed "transitional" height may fall at or below the midpoint between the zone district maximum height limit and the height, in feet, of a building that exists on a lot that abuts the subject lot and faces the same street as the building on the subject lot. This provision shall not be interpreted as requiring greater minimum heights or lower maximum heights than imposed by the underlying zone district.

Integrate with existing structure shall mean using the existing structure to achieve a new use and/or using the existing structure to achieve an increase in the number of dwelling units at an existing use. In order to meet the definition of *integrate existing structure*, the following requirements must be met:

(A) Exterior walls must remain and cannot be demolished except for the following:
(1) New windows, doors, or entry features may be added and only the area of the new features may be removed from the existing wall;
(2) 0% of front walls, 25% of side walls, and 100% of rear walls may be removed; and
(3) Exterior finishes may be maintained or replaced without increasing the footprint.

(B) In conjunction with the demolition exceptions in (A), additions to existing structure may occur. Additions shall be subordinate to the existing structure by satisfying all of the following requirements:

(1) The addition must be the same height as the existing structure or lower;
(2) The addition must be placed to the rear of the existing structure;
(3) The addition must be designed to be compatible with defining features including but not limited to materials, finishes, windows, doors, entries, porches, decks, and balconies of the existing structure; and
(4) The addition may not increase the footprint of the existing structure by more than 50%.

(C) Any allowed demolition or additions shall be identified in the building permit submittal.

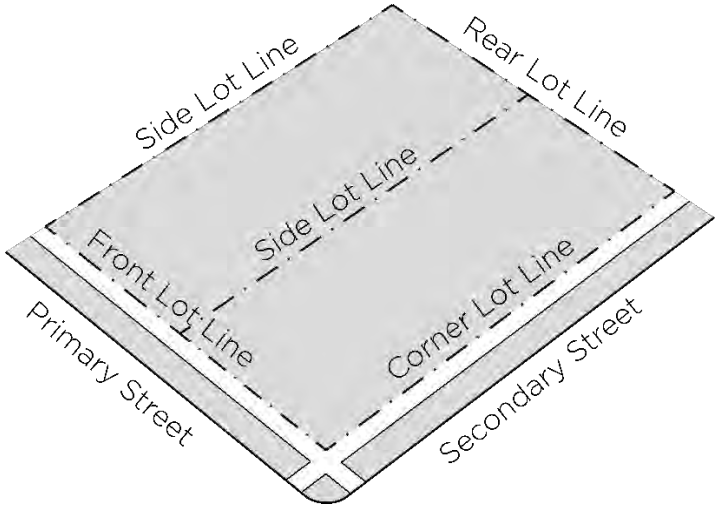
Lot shall mean a designated parcel, tract or area of land established by plat, subdivision or otherwise permitted by law to be used, occupied or designed to be occupied by one (1) or more buildings, structures or uses, that abuts a dedicated right-of-way, private street or private drive, any of which is at least twenty (20) feet wide at all points.

Lot area shall mean the amount of horizontal (plan view) land area within lot lines. (See also Section 5.7.4)

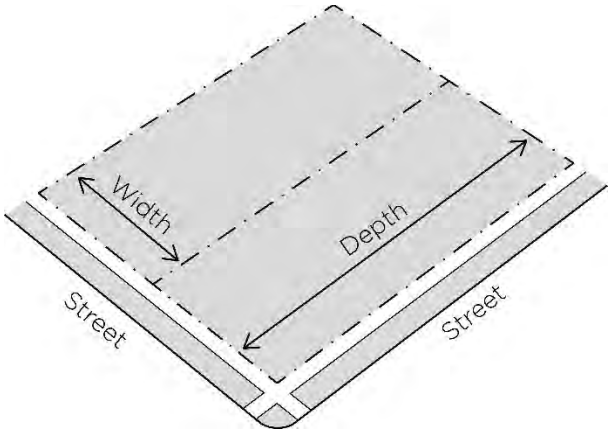
Lot line, front shall mean the property line dividing a lot from a street. On a corner lot only one (1) street line shall be considered as a front line, and the street to which the primary entrance of the principal building faces or to which the building is addressed, shall be considered the front line.

Lot line, rear shall mean the line opposite the front lot line.

Lot line, side shall mean any lot lines other than front lot line or rear lot line.



Lot width shall mean the horizontal (plan view) distance between the side lot lines as measured along a straight line parallel to the front lot line or the chord thereof. The minimum lot width shall be measured between the side lot lines along a line that is parallel to the front lot line and located at the minimum front setback distance from the front lot line. In the case of cul-de-sac lots, the minimum lot width may be measured between the side lot lines along a line that is parallel to the front lot line and located at the actual front building line.



Measuring distances between uses. When a distance is required between uses, the distance shall be measured in a straight line from the closest point on the boundary line of one (1) property to the closest point on the boundary line of the other property.

Minimum frontage or minimum building frontage shall mean a measurement equal to a fraction, the denominator of which is the sum of the length of all perimeter streets bounding the block, and the numerator of which is the sum of the length (as measured within twenty [20] feet of the perimeter street right-of-way) of all buildings that have windows and entries oriented to the street, plus twenty (20) percent of the length (as measured within thirty [30] feet of the perimeter street right-of-way) of any plazas or pedestrian accessible landscaped areas within the block. In no case shall parking lots or blank rear or side walls be included in the minimum frontage calculation.

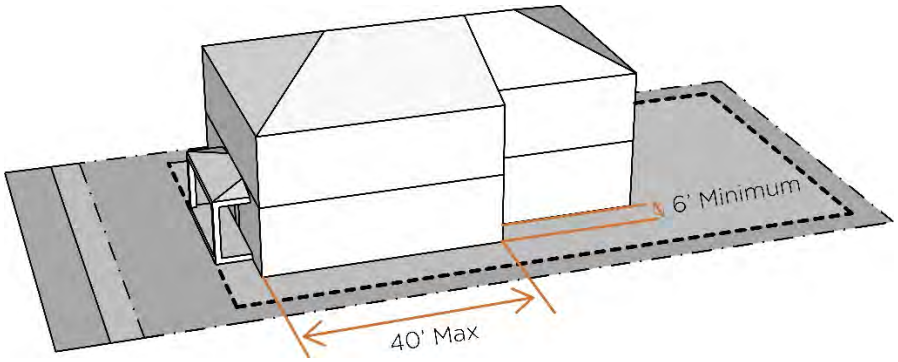
Mounting height (MH) shall mean the vertical distance between the finish grade and the center of the apparent light source of the luminaire.

Secondary roof shall mean a flat roof structure that is at least 10 feet lower than another roof structure on the same building.

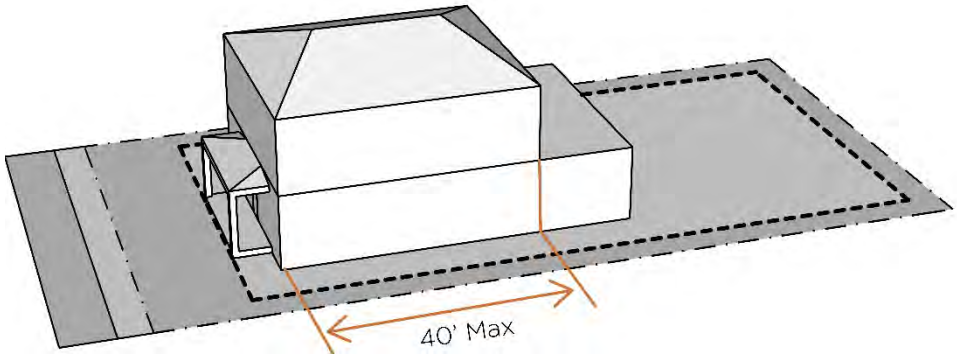
Setback shall mean the required unoccupied open space between the nearest projection of a structure and the property line of the lot on which the structure is located, except as modified by the standards of this Code. Required setbacks shall be unobstructed from the ground to the sky except as specified in Section 5.13.2.

Side Facade Design. Side facade design can be accomplished by offsetting the floor plan, recessing or projection of design elements, change in materials and/or change in contrasting colors. Projections shall fall within setback requirements.

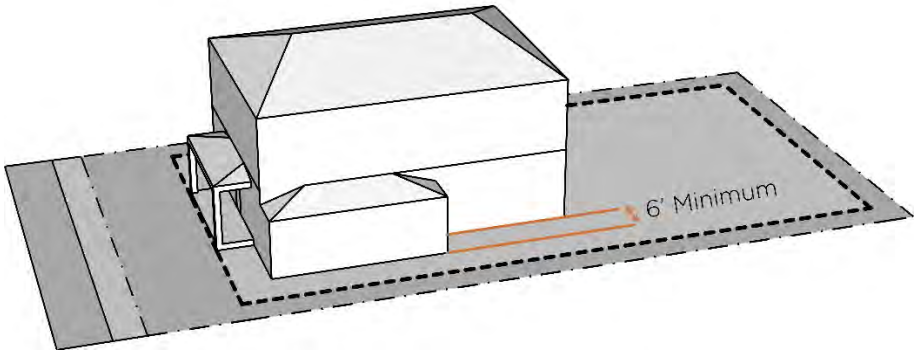
(A) *Wall Offset.* Two-story facade width at minimum is no more than forty (40) feet, with any remaining two-story facade setback an additional six (6) feet beyond the minimum required side yard.



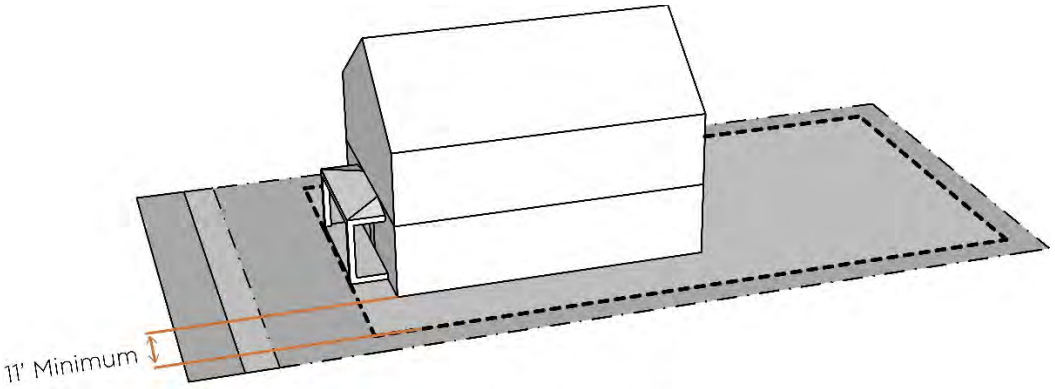
(B) *Step Down in Height.* Two story facade width at minimum is no more than forty (40) feet, with any remaining facade width at the side yard reduced to one-story.



(C) *One-Story Element.* One-story building element with a minimum depth of six (6) feet is located at the minimum side yard.



(D) *Additional Setback.* Any two-story facade is set back an additional six (6) feet beyond the minimum required side yard.


11' Minimum

DIVISION 7.2 DEFINITION

7.2.1 GENERAL.

For words, terms and phrases used in this Land Use Code that are not defined in Section 7.2.2 or elsewhere in this Land Use Code, the Director shall have the authority and power to interpret or define such words, terms and phrases. In making such interpretations or definitions, the Director may consult appropriate secondary sources.

7.2.2 DEFINITIONS.

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

Abut or abutting shall mean touching. An abutting condition shall not be affected by the parcelization or division of land that results in an incidental, nonbuildable, remnant lot, tract or parcel.

Accessory building (or structure) shall mean a building (or structure) detached from a principal building and customarily used with, and clearly incidental and subordinate to, the principal building, and ordinarily located on the same lot with such principal building.

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 independent living facilities including habitable space. 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 independent living facilities which constitute habitable space. 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.

Accessory use shall mean a use of land or of a building or portion thereof customarily used with, and clearly incidental and subordinate to, the principal use of the land or building and ordinarily located on the same lot with such principal use.

Adequate public facilities ("APF") shall mean the public facilities and services necessary to maintain the adopted level of service standards.

Adequate public facilities management system ("APF management system") shall mean the procedures and/or process that the city utilizes to assure that development approvals and permits, including but not limited to building permits and site-specific development plans, are not issued unless the necessary facilities and services are available concurrently with the impacts of development.

Adjacent shall mean nearby, but not necessarily touching. The determination of "nearby" shall be made by the City on a case-by-case basis, taking into consideration the context in which the term is used and the variables (such as but not limited to size, mass, scale, bulk, visibility, nature of use, intensity of use) that may be relevant to deciding what is "nearby" in that particular context. Adjacency shall not be affected by the existence of a platted street or alley, a public or private right-of-way, or a public or private transportation right-of-way or area.

Administrative review shall mean review by the Director in accordance with the provisions of Article 6. Also known as Type 1 review.

Adult day/respite care center shall mean a nonresidential facility providing for the care, supervision, protection and social activities of adults and persons over sixteen (16) years of age during normal daytime working hours and allowing overnight stay on a short-term basis as a subordinate function.

Adult material shall mean any material including, but not limited to, books, magazines, newspapers, movie films, slides or other photographic or written materials, video tapes, video disks, computer software and/or other items or devices that are distinguished or characterized by their emphasis on depicting, describing or relating to "specified anatomical areas" or "specified sexual activities."

Adult-oriented use shall mean a use of property where the principal use, or a significant or substantial adjunct to another use of the property, is the sale, rental or display of adult material, or is an offering of live entertainment, dancing or material that is distinguished or characterized by its emphasis on depicting, exhibiting, describing or relating to "specified sexual activities" or "specified anatomical areas" as the primary attraction to the premises, including, but not limited to:

(A) *Adult bookstore, adult novelty store or adult retail store:* any establishment that has adult material as a significant or substantial portion of its stock-in-trade, or derives a significant or substantial portion of its revenues from such material, or devotes a significant or substantial portion of its interior business or interior advertising to such material, or maintains a substantial or significant portion of its gross floor area or display space for the sale or rental, for any form of consideration, of such material, including, but not limited to, books, magazines, newspapers, movie films, slides or other photographic or written material, video tapes, video disks, computer software and/or other items or devices. For the purpose of this subparagraph (1), "significant or substantial" shall mean more than twenty (20) percent.

(B) *Adult cabaret, restaurant or place of business:* a cabaret, restaurant or place of business that features waitresses, waiters, dancers, go-go dancers, exotic dancers, strippers, gender impersonators or similar entertainers attired in such manner as to display "specified anatomical areas."

(C) *Adult hotel or motel:* any hotel or motel in which the presentation of adult material is the primary or principal attraction.

(D) *Adult mini-motion picture theater:* any theater or establishment with a capacity of less than fifty (50) persons in which the presentation of adult material is the primary or principal attraction.

(E) *Adult motion picture theater:* any theater or establishment with a capacity of fifty (50) or more persons in which the presentation of adult material is the primary or principal attraction.

(F) *Adult photo studio:* any establishment that, upon payment of a fee, provides photographic equipment and/or models for the purpose of photographing, sketching, drawing, painting or sculpturing "specified anatomical areas," but shall not include a private school licensed by the State of Colorado or a college, junior college or university supported entirely or in part by public funds or a private college or university that maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or in part by public funds.

(G) *Other adult amusement or entertainment:* any other amusement, entertainment or business which is distinguished or characterized by an emphasis on acts or adult material depicting, describing or relating to "specified sexual activities" or "specified anatomical areas."

Adverse effect, for purposes of Section 5.8.1 only, shall mean that a project or undertaking may alter, directly or indirectly, any of the characteristics that qualify a property for designation in a manner that would diminish

the property's integrity. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be removed in distance, or be cumulative.

Affordable housing development shall mean a development project in which at least ten (10) percent of said dwelling units (the "affordable housing units") are to be available for rent or purchase on the terms described in the definitions of affordable housing unit for rent or affordable housing unit for sale (as applicable).

Affordable housing unit for rent shall mean a dwelling unit that is available for rent on terms that would be affordable to households earning eighty (80) percent or less of the Area Median Income (AMI) as calculated for Fort Collins by the Department of Housing and Urban Development (HUD) and adjusted for household size, and at a cost that results in a household paying thirty (30) percent or less of their gross income for housing, including rent and utilities.

Affordable housing unit for sale shall mean a dwelling unit that is available for purchase on terms that would be affordable to households earning one hundred (100) percent or less of the Area Median Income (AMI) as calculated for Fort Collins by the Department of Housing and Urban Development (HUD) and adjusted for household size, and at a cost that results in a household paying less than thirty-eight (38) percent of their gross income for housing, including principal, interest, taxes, insurance, utilities and homeowners' association fees.

Air contaminant shall mean any fume, smoke, particulate matter, vapor, gas or any combination but not including water vapor or steam condensation.

Air contamination source shall mean any source whatsoever at, from or by reason of which there is emitted or discharged into the atmosphere any air contaminant.

Alley shall mean a minor way used primarily for vehicular service access to the back of properties abutting on a street.

Animal boarding shall mean the operation of an establishment in which domesticated animals other than household pets are housed, groomed, bred, boarded, trained or sold. This term shall not include the operation of a kennel.

Antenna(s) shall have the meaning set forth in § 29-27-402, Colorado Revised Statutes.

Architectural Features shall mean the architectural elements embodying style, design, general arrangement, and components of the exterior of any building or structure, include, but not limited to, the kind, color, and texture of the building materials, and the style and type of such items as a porch, covered stoop, portico or other similar feature.

Arterial street shall mean a street that is anticipated to carry in excess of three thousand five hundred (3,500) vehicles per day in traffic volume, at desirable speeds ranging from thirty (30) to forty-five (45) miles per hour, and that is defined specifically as such on the Master Street Plan of the City and is used for travel between areas within and outside the City.

Artisan and photography studio and gallery shall mean the workshop or studio of an artist, craftsperson, sculptor or photographer, which workshop is primarily used for on-site production of unique custom goods through the use of hand tools or small-scale equipment, and only incidentally used, on an infrequent basis if at all, as an accessory gallery or for incidental sales.

Auto-oriented development shall mean development that is designed primarily to attract or accommodate customers, workers or residents who travel to the site by automobile, rather than pedestrians.

Auto-related and roadside commercial shall mean those retail and wholesale commercial activities that are typically found along highways and arterial streets. Uses include freestanding department stores; auction rooms; automobile service stations; repair facilities, car washes; boat, car, trailer, motorcycle showrooms, sales

and repair; fuel and ice sales; greenhouses and nurseries; warehouses and storage; repair or rental of any article; exterminating shops; drive-in restaurants; adult-oriented uses; and other uses that are of the same general character. *This definition applies only for the purpose of clarifying the classification and measurement system as found in the Sign Regulations of this Code, and shall not be deemed to permit such uses under this Code.*

Auto-related uses shall mean establishments primarily engaged in the sale, rental, service, repair, storage or salvage of automobiles and trucks.

Banner shall mean a type of temporary sign that is painted or printed on cloth, vinyl, or other flexible material, which is designed to be stretched between poles, fence posts or wire, mounted in a freestanding frame, or hung on walls with ties, clips, rails, brackets, hooks, or frames.

Banner frame shall mean a type of wall sign composed of a frame that is secured to a building wall and used to stretch banners such that they are tightly stretched and their mounting hardware is hidden from view.

Bar shall mean an establishment providing or dispensing fermented malt beverages, and/or malt, special malt, vinous or spirituous liquors and in which the sale of food products such as sandwiches or light snacks is secondary (also known as a tavern).

Base station shall mean a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network, except that a base station does not include or encompass a tower or any equipment associated with a tower, as defined herein. *Base station* does include:

(1) Equipment associated with wireless communications services such as private broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul that, at the time the relevant application is filed with the City under this Article, has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

(2) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplied, and comparable equipment, regardless of technological configuration that, at the time the relevant application is filed with the City under this Article, has been reviewed and approved under the applicable state or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

Base station does not include any structure that, at the time the relevant application is filed with the City under this Article, does not support or house equipment described in sub-paragraphs (1) and (2) above.

Basic development review shall mean a review without a public hearing by the Director for the purpose of determining compliance with the applicable standards of this Code for any use that is not subject to a Type 1 or Type 2 review.

Bay (building bay) shall mean a wall plane projection or recess that forms an articulated wall surface on a building elevation, and that can be formed by pilasters, columns or other vertical elements such as a group of windows. Building bay does not mean a service bay for autos or trucks and does not mean a bay window.

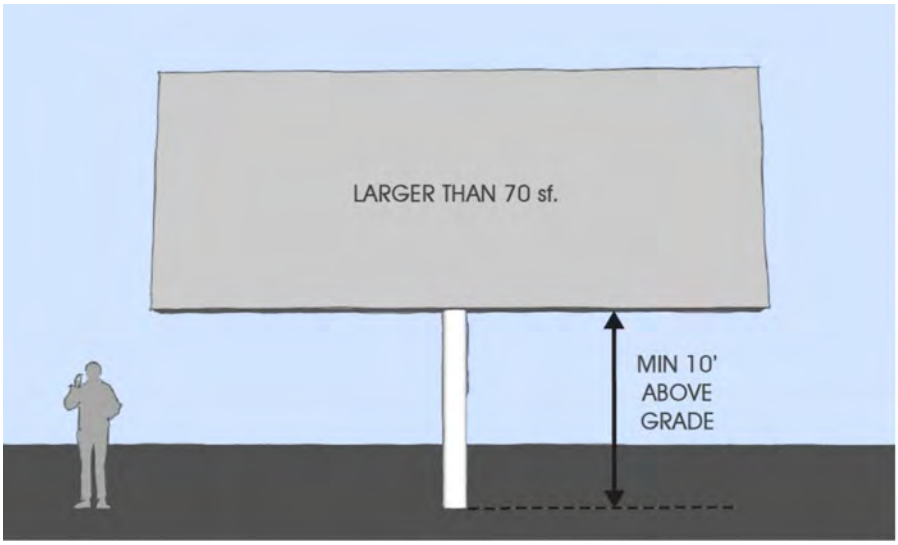
Bed and breakfast shall mean an establishment operated in a private residence or portion thereof, that provides temporary accommodations for a fee to overnight guests, a morning meal limited to guests only, and that is occupied by the operator of such establishment. A bed and breakfast may provide accommodations to individuals or multiple separate parties concurrently on both a reservation and walk-in basis. The term party as used in this definition shall mean one (1) or more persons who stay at a bed and breakfast as a single group pursuant to a single reservation and payment.

Bicycle parking, enclosed shall mean bicycle storage in lockers, a garage, a room or other space within a parking structure or other building, including a shed or carport. All types of enclosed bicycle storage must be easily accessible to entrances and walkways, secure, lighted and protected from the weather. Each storage space shall provide a minimum of six (6) square feet in area. The storage space shall not impede fire exits or be located so that parked bicycles interfere with public access.

Bicycle parking, fixed shall mean bicycle parking that allows the bicycle frame and both wheels to be securely locked to the parking structure. The structure shall be of permanent construction such as heavy gauge tubular steel with angle bars permanently attached to the pavement foundation. Fixed bicycle parking facilities shall be at least two (2) feet in width and five and one-half (5½) feet in length, with additional back-out or maneuvering space of at least five (5) feet.

Billboard shall mean a type of freestanding sign that incorporates a sign face that is larger than seventy (70) square feet, mounted on one or more pole structures, such that the lowest part of the sign face is ten (10) feet or more above adjacent grade.

Illustrative Billboard



Blank wall shall mean an exterior building wall with no openings and a single material and uniform texture on a single plane.

Block (See Section 7.1.2)

Block face shall mean the portion of a block that abuts a street.

BUG (Backlight, Uplight, Glare) Rating shall mean the quantity of light within various beam angles, consisting of:

(A) Backlight - the percent lamp lumens (non-LED luminaires) or the luminaire initial lumens (LED luminaires) distributed behind a luminaire between zero (0) degrees vertical (nadir) and ninety (90) degrees vertical.

(B) Uplight - the percent lamp lumens (non-LED luminaires) or the luminaire initial lumens (LED luminaires) distributed above a luminaire between ninety (90) and one hundred eighty (180) degrees vertical.

(C) Glare - the percent lamp lumens (non-LED luminaires) or the luminaire initial lumens distributed sixty (60) and ninety (90) degrees vertical.

Buffer yards shall mean land area devoted to providing separation between two (2) land uses of different intensity for the purpose of providing a transition. Such area may consist of passive open space, landscaping, fences, walls, earthen berms, topographic elevation changes or any combination thereof used to physically separate one (1) use or property from another so as to visually shield or block or mitigate noise, lights or other aspects of the urban environment.

Building shall mean any permanent structure built for the shelter or enclosure of persons, animals, chattels or property of any kind, that is governed by the following characteristics:

(A) Is permanently affixed to the land;

(B) Has one (1) or more floors and a roof; and

(C) Is bounded by either open space or the lot lines of a lot.

Building elevation, for the purposes of Division 5.16 only, shall mean the external face of a building, projected onto a two-dimensional plane. For purposes of calculating allowed sign area, the building elevation is the two-dimensional representation of the side of the building upon which the sign is proposed.

Building mass shall mean the three-dimensional bulk of a building: height, width and depth.

Building permit valuation shall mean the dollar amount used for the valuation of Building Permit fees as calculated by the city's Building and Zoning Director for the issuance of a Building Permit.

Building-mounted solar energy system shall mean a solar energy system mounted on a building.

Bulletin board shall mean a type of wall sign composed of a cork, letter board, white board, or comparable surface that is within a secured, weather-resistant enclosure and used for the display of temporary messages. Bulletin board does not include manual changeable copy center.

Caliper shall mean the American Association of Nurserymen standard for trunk measurement of nursery stock, as measured at six (6) inches above the ground for trees up to and including four-inch caliper size, and as measured at twelve (12) inches above the ground for larger sizes.

Camouflage design techniques shall mean measures used in the design and siting of wireless communications facilities with the intent to minimize or eliminate the visual impact of such facilities to surrounding uses. A WCF site utilizes camouflage design techniques when it (i) is integrated as an architectural feature of an existing structure such as a cupola, or (ii) is integrated in an outdoor fixture such as a flagpole, while still appearing to some extent as a WCF. This definition does not include the use of concealment design elements.

Candela (see luminous intensity), (cd) shall mean the unit of luminous intensity.

Carport shall mean an accessory building attached or detached from a principal building and customarily used with, and clearly incidental and subordinate to the principal building or use, consisting of a roof but no more than one (1) wall and typically intended to provide weather protection for vehicles, boats, trailers, and the like.

Certified xeriscape landscaping shall mean a plant (or grouping of plants) that does not require any supplemental irrigation for survival, as determined by the City Forester, and that is used to meet the standards of Section 5.10.1, Landscaping and Tree Protection.

Change of use shall mean the act of changing the occupancy of a building or land to a different use that is specifically listed as a "Permitted Use" in Article 4. A change of use occurs whenever:

(A) The occupancy of a single-tenant building or of a parcel of land changes from the most recent previously existing use to a different use;

(B) The occupancy of a tenant space in a multi-tenant building changes to a use that is not currently existing in another tenant space of the building or that did not previously exist in any tenant space of the building within the last twenty-four (24) months; or

(C) The most recent previously existing use of a building or land has been abandoned, by cessation of active and continuous operations during a period of twenty-four (24) consecutive months, and either the same type of use is proposed to be reestablished or a different use that did not exist on the property is proposed to be established.

Character shall mean those attributes, qualities and features that make up and distinguish a development project and give such project a sense of purpose, function, definition and uniqueness.

Child care center shall mean a facility, by whatever name known, that is maintained for the whole or part of a day for the care of seven (7) or more children under the age of sixteen (16) years who are not related to the owner, operator or manager, whether such facility is operated with or without compensation for such care and with or without stated educational purposes, except that a child care center shall not include any of the following five (5) types of family child care homes as defined by the State of Colorado: regular family child care home, three under two family child care home, infant/toddler home, experienced family child care provider home or large family child care home. The term includes, but is not limited to, facilities commonly known as day care centers, day nurseries, nursery schools, preschools, play groups, day camps, summer camps, centers for developmentally disabled children and those facilities that give twenty-four-hour-per-day care for dependent and neglected children. Child care centers are also those facilities for children under the age of six (6) years with stated educational purposes that are operated in conjunction with a public, private or parochial college or a private or parochial school, except that the term shall not apply to a kindergarten maintained in connection with a public, private or parochial elementary school system of at least six (6) grades.

Clubs and lodges shall mean organizations of persons for special purposes or for the promulgation of sports, arts, literature, politics or other common goals, interests or activities, characterized by membership qualifications, dues or regular meetings, excluding clubs operated for profit and/or places of worship or assembly.

Cohesive shall mean having a natural or logical agreement of parts; connected; as in a cohesive neighborhood. If used in this Land Use Code, coherent shall mean cohesive.

Collector street shall mean a street that is anticipated to carry from two thousand five hundred (2,500) to five thousand (5,000) vehicles per day in traffic volume at desirable speeds ranging from twenty-five (250 to thirty-five (35) miles per hour and that serves a collecting function by distributing traffic between local streets and arterial streets, thereby providing access to adjacent properties and linking neighborhoods with arterial streets.

Collector street system shall mean a system of one (1) or more collector street(s) that allows traffic to be distributed to at least two (2) arterial streets.

Collocation shall mean:

(A) For the purposes of eligible facilities requests, the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

(B) For the purposes of other WCFs subject to presumptively reasonable time frames set by the FCC, accounting for any tolling or extension, within which the City generally must act pursuant to 47 U.S.C.

Section 332, i.e. “shot clocks”, attachment of facilities to existing structures, regardless of whether the structure or location has previously been zoned or otherwise approved for wireless facilities.

Color shade shall mean the degree of lightness or brightness, as opposed to darkness or neutrality, of a color as determined by the proportion of black, white or gray.

Commercial development shall mean any land development activity except development activity intended solely for residential, industrial and/or light industrial use.

Commercial speech shall mean expression by a speaker for the purposes of commerce, where the intended audience is actual or potential consumers, and where the content of the message is commercial in character. Commercial speech typically advertises a business or business activity or proposes a commercial transaction.

Community based shelter services shall mean an accessory use to a facility owned and operated by a place of worship, public benefit corporation as defined by the Colorado Revised Statutes, or a tax exempt corporation as defined by Section 503 of the U.S. Internal Revenue Code, that provides overnight accommodations on a temporary basis for a maximum of fifteen (15) persons.

Community facility shall mean a publicly owned or publicly leased facility or office building that is primarily intended to serve the recreational, educational, cultural, administrative or entertainment needs of the community as a whole.

Community park shall mean a city-owned park of not less than thirty (30) acres that serves the recreational and open space needs of the community as a whole.

Community shopping center shall mean a shopping and service center located in a complex that is planned and developed as a unit, and that is intended to serve consumer demands from residents and employees who live and work in surrounding neighborhoods as well as the community as a whole. A community shopping center provides, in addition to the convenience goods of a neighborhood service center, a wider range of facilities for the sale of goods, such as, but not limited to, food, books, apparel and furniture. A community shopping center may include multi-unit residential, as well as nonretail employment generating uses (such as professional offices) within the retail component of the center.

Compatibility shall mean the characteristics of different uses or activities or design that allow them to be located near or adjacent to each other in harmony. Some elements affecting compatibility include height, scale, mass and bulk of structures. Other characteristics include pedestrian or vehicular circulation, access and parking design. Other important characteristics that affect compatibility are landscaping, lighting, noise, odor and architecture. Compatibility does not mean "the same as." Rather, compatibility refers to the sensitivity of development proposals in respecting the character of existing development.

Composting facility shall mean any site where decomposition processes are used on solid waste (including leaves, grass, manures and nonmeat food production wastes received from residential, commercial, industrial nonhazardous and community sources, but not including bio-solids) to produce compost; provided, however, that the term composting facility shall not include composting as an accessory use.

Concealment shall mean utilization of elements of stealth design in a facility so that the facility looks like something other than a wireless tower or base station. Language such as “stealth,” “camouflage,” or similar in any existing permit or other document required by the City Code is included in this definition to the extent such permit or other document reflects an intent at the time of approval to condition the site’s approval on a design that looks like something else. *Concealment* can further include a design which mimics and is consistent with the nearby natural, or architectural features (such as an artificial tree), or is incorporated into (including without limitation, being attached to the exterior of such facility and painted to match it) or replaces existing permitted facilities (including without limitation, stop signs or other traffic signs or freestanding light standards) so that the presence of the WCF is not apparent. This definition does not include conditions that merely minimize visual

impact but do not incorporate *concealment* design elements so that the facility looks like something other than a wireless tower or base station.

Connecting walkway shall mean (1) any street sidewalk, or (2) any walkway that directly connects a main entrance of a building to the street sidewalk without requiring pedestrians to walk across parking lots or driveways, around buildings or around parking lot outlines that are not aligned to a logical route.

Connector street shall mean a local street for residential areas that is anticipated to carry from one thousand (1,000) to two thousand five hundred (2,500) vehicles per day in traffic volume at desirable speeds of up to twenty-five (25) miles per hour and that connects with collector and arterial streets and adjoining neighborhoods.

Convenience retail store (also known as convenience store) shall mean a retail store containing less than five thousand (5,000) square feet of gross floor area that sells everyday goods and services which may include, without limitation, ready-to-eat food products, groceries, over-the-counter drugs and sundries.

Convenience shopping center shall mean a shopping and service center situated on seven (7) or fewer acres with four (4) or more business establishments with separate exterior entrances, located in a complex that is planned, developed and managed as a single unit, and located within and intended to primarily serve the consumer demands of adjacent employment areas. The principal uses permitted include retail stores; business services; convenience retail stores with fuel sales (possibly including an accessory one-bay automatic carwash); personal business and service shops; standard or fast food restaurants (without drive-up windows); vehicle minor repair, servicing and maintenance uses; liquor sales (for on- or off-premise consumption); beauty or barber shops; dry-cleaning outlets; equipment rental (not including outdoor storage); limited indoor recreational uses; pet shops; and uses of similar character. Secondary uses may include professional offices; limited banking services such as branch banks (with limited drive-up facilities) and automated teller machines; multi-unit dwellings; medical offices and clinics; small animal veterinary clinics; child care centers; and elderly day care facilities.

Convenience stores with fuel sales shall mean a convenience retail store that also sells gasoline or other fuel products.

Convention and conference center shall mean a facility used for business or professional conferences and seminars, often with accommodations for sleeping, eating and recreation.

Correlated color temperature (CCT) shall mean the absolute temperature of a blackbody whose chromaticity most nearly resembles that of the light source.

Day shelter shall mean a facility that provides temporary daytime shelter and/or food and that may also provide personal care, social or counseling services to those experiencing homelessness or indigency, provided that such a facility contains a private, outdoor space.

Department shall mean the Community Development and Neighborhood Services Department, or the successor department existing from time-to-time in the City's organizational structure.

Development shall mean the carrying out of any building activity or mining operation, the making of any material change in the use or appearance of any structure or land, or, except as is authorized in LUC Section 6.24.7, the dividing of land into two (2) or more parcels.

(A) Development shall also include:

(1) Any construction, placement, reconstruction, alteration of the size, or material change in the external appearance of a structure on land;

(2) Any change in the intensity of use of land, such as an increase in the number of dwelling units in a structure or on a tract of land or a material increase in the intensity and impacts of the development;

(3) Any change in use of land or a structure;

(4) Any alteration of a shore or bank of a river, stream, lake, pond, reservoir or wetland;

(5) The commencement of drilling (except to obtain soil samples), mining, stockpiling of fill materials, filling or excavation on a parcel of land;

(6) The demolition of a structure;

(7) The clearing of land as an adjunct of construction;

(8) The deposit of refuse, solid or liquid waste, or fill on a parcel of land;

(9) The installation of landscaping within the public right-of-way, when installed in connection with the development of adjacent property;

(10) The construction of a roadway through or adjoining an area that qualifies for protection by the establishment of limits of development.

(B) Development shall not include:

(1) Work by the City, or by the Downtown Development Authority (if within the jurisdictional boundary of the Downtown Development Authority and if such work has been agreed upon in writing by the City and the Authority), or work by a highway or road agency or railroad company for the maintenance or improvement of a road or railroad track, if the work is carried out on land within the boundaries of the right-of-way, or on land adjacent to the right-of-way if such work is incidental to a project within the right-of-way. Nothwithstanding, such work shall be considered development if it is determined to require a permit pursuant to Land Use Code Division 6.27, *Guidelines and Regulations for Areas and Activities of State Interest*;

(2) Work by the City or any public utility for the purpose of restoring or stabilizing the ecology of a site, or for the purpose of inspecting, repairing, renewing or constructing, on public easements or rights-of-way, any mains, pipes, cables, utility tunnels, power lines, towers, poles, tracks or the like; provided, however, that this exemption shall not include work by the City or a public utility in constructing or enlarging mass transit or railroad depots or terminals or any similar traffic-generating activity. Nothwithstanding, such work shall be considered development if it is determined to require a permit pursuant to Land Use Code Division 6.27, *Guidelines and Regulations for Areas and Activities of State Interest*;

(3) Work by any person to restore or enhance the ecological function of natural habitats and features, provided that such work does not result in adverse impacts to rivers, streams, lakes, ponds, wetlands other natural habitats or features, or adjacent properties as determined by the Director; and provided that all applicable State, Federal, and local permits or approvals have been obtained;

(4) The maintenance, renewal, improvement, or alteration of any structure, if the work affects only the interior or the color of the structure or the decoration of the exterior of the structure (however, Chapter 14 of the Code of the City of Fort Collins is still applicable);

(5) The use of any land for the purpose of growing plants, crops, trees and other agricultural or forestry products; for raising or feeding livestock (other than in feedlots); for other agricultural uses or purposes; or for the delivery of water by ditch or canal to agricultural uses or purposes, provided none of the above creates a nuisance, and except that an urban agriculture license is required in accordance with LUC Section 4.3.5(I) of this Code;

(6) A change in the ownership or form of ownership of any parcel or structure;

(7) The creation or termination of rights of access, easements, covenants concerning development of land, or other rights in land;

(8) The installation, operation, maintenance, or upgrade of a small cell or broadband facility by a telecommunications provider principally located within a public highway as the terms small cell facility, telecommunications provider, and public highway are defined in Section 38-5.5-102, C.R.S. The regulation of such activities is addressed in Chapter 23 of the Code of the City of Fort Collins.

(C) When appropriate in context, development shall also mean the act of developing or the result of development.

Development application shall mean any application or request submitted in the form required by the Land Use Code and shall include only applications for an overall development plan, a PUD Overlay, a project development plan, a final plan, a basic development review, a Building Permit, a modification of standards, amendments to the text of this Code or the Zoning Map, a variance or an appeal from administrative decisions prescribed in this Code, a minor or major plan amendment, or a permit application pursuant to Division 6.27, *Guidelines and Regulations for Areas and Activities of State Interest*.

Development application for permitted use shall mean a development application submitted in the form required by this Code to the City for an overall development plan, a project development plan, a final plan or a Building Permit, including only uses described as permitted uses in the applicable zone district. A PUD Overlay is also considered to be a development application for a permitted use even though the PUD Overlay may request uses that are not permitted in the applicable underlying zone district.

Development plan shall mean an application submitted to the City for approval of a permitted use that depicts the details of a proposed development. Development plan includes an overall development plan, a project development plan, a final plan, a basic development review, and/or an amendment of any such plan. A PUD Overlay is also considered to be a development plan even though the PUD Overlay may request uses that are not permitted in the applicable underlying zone district. Additionally, an application for a permit pursuant to Division 6.27, *Guidelines and Regulations for Areas and Activities of State Interest,* is considered a development plan even though the application may propose uses that are not permitted in the applicable zone district or districts.

Development project shall mean a project that has been reviewed under the applicable city review process and has been approved and is ready for development construction to begin. For the purposes of the Development Construction Permit and its related requirements, bonds, warranties and fees, if such a project has defined phases, then each phase shall be considered a development project independent from the other phases.

Development site shall mean the real property, whether consisting of one (1) or more lots or areas of land, that is the subject of any application allowed under the Land Use Code.

Developmentally disabled shall mean a person five (5) years of age or older with a severe, chronic disability that:

(A) Is attributable to a mental or physical impairment or combination of mental and physical impairments;
(B) Is manifested before the person attains age twenty-two (22);
(C) Results in substantial functional limitations in three or more of the following areas of major life activity:
(1) Self-care;
(2) Receptive and expressive language;
(3) Learning;
(4) Mobility;
(5) Self-direction;
(6) Capacity for independent living;
(7) Economic self-sufficiency; and
(D) Reflects the person's need for a combination and sequence of special, interdisciplinary or generic care, treatment or other services and supports that are of lifelong or extended duration and are individually planned and coordinated; except that such term, when applied to infants and young children, shall mean individuals from birth to age five (5) years, inclusive, who have substantial developmental delay or specific congenital or acquired conditions with a high probability of resulting in developmental disabilities if services or supports are not provided.

Diameter-at-breast-height (DBH) shall mean tree trunk diameter as measured in inches at a height of four and one-half (4.5) feet above the ground or, in the case of a tree that is divided into multiple trunks below four and one-half (4.5) feet, as measured at the most narrow point beneath the point of division.

Digital electronic message center shall mean a display surface that is composed of light emitting diodes (LEDs) or comparable light sources that is capable of displaying variable messages and graphics, which are generally created on a computer. Digital electronic message centers are also known as EMCs.

Director shall mean the Director of the Department.

Dog day care facility shall mean a facility providing such services as canine day care for all or part of a day, obedience classes, training, grooming and/or behavioral counseling, provided that overnight boarding is not permitted.

Dormitory shall mean a building used as group living quarters for students or religious adherents as an accessory use for a bona fide college, university, boarding school, seminary, convent, monastery or other similar institutional use.

Drip line shall mean a vertical line extending from the outermost edge of the tree canopy or shrub branch to the ground.

Drive aisles shall mean the lanes in a parking lot devoted to the passage of vehicles, as opposed to the parking stalls. The term drive aisle does not include lanes used only or primarily for drive-in customer service.

Drive-in use shall mean an establishment that by design, physical facilities, service or packaging procedures encourages or permits customers to receive services, obtain goods or be entertained while remaining in their motor vehicles.

Drop-in child care center shall mean a center that provides occasional care for forty (40) or fewer children between the ages of twelve (12) months and thirteen (13) years for periods of time not to exceed six (6) hours in any twenty-four-hour period or fifteen (15) hours in any seven-day period.

Dust control manual shall mean the dust control and prevention standards enacted to protect air quality adopted under Chapter 12 of the City Code.

Dwelling shall mean a building with habitable space used exclusively for residential occupancy and for permitted accessory uses. The term dwelling shall not include hotels, motels, homeless shelters, seasonal overflow shelters, tents or other structures designed or used primarily for temporary occupancy with the exception of short term primary and non-primary rentals.

Dwelling, multi-unit shall mean a dwelling containing three (3) or more dwelling units, not including hotels, motels, fraternity houses and sorority houses and similar group accommodations.

Dwelling, single-unit shall mean a dwelling containing no more than one (1) dwelling unit.

Dwelling, single-unit attached shall mean a single-unit dwelling attached to one (1) or more dwellings or buildings, with each dwelling located on its own separate lot.

Dwelling, single-unit detached shall mean a single-unit dwelling that is not attached to any other dwelling or building by any means, including mobile homes and manufactured housing situated on a permanent foundation.

Dwelling, two-unit shall mean a dwelling containing two (2) dwelling units.

Dwelling, two-unit attached shall mean a two-unit dwelling attached to one other two-unit dwelling with each such two-unit dwelling located on its own separate lot.

Dwelling unit shall mean habitable floor space intended for the exclusive use of a single household with a single kitchen, or including a second kitchen pursuant to Section 5.3.6.

ECMC shall mean the Colorado Energy and Carbon Management Commission.

Elderly shall mean a person sixty (60) years of age or older.

Electronic message center, or EMC, shall mean the portion of an on-premise ground or wall sign that is capable of displaying words or images that can be electronically changed by remote or automatic means.

Eligible facilities request or *EFR* shall mean any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station involving: (i) collocation of new transmission equipment, (ii) removal of transmission equipment, or (iii) replacement of transmission equipment. A request for modification of an existing tower or base station that does not comply with the generally applicable building, structural, electrical, and safety codes or with other laws codifying objective standards reasonably related to health and safety, or does not comply with any relevant federal requirements, is not an eligible facilities request.

Eligible support structure shall mean any tower or base station as defined in this Section, provided it exists at the time the relevant application is filed with the City under this Code.

Employees shall mean the total number of persons reasonably anticipated to be employed in a building or on land during normal periods of use.

Enclosed mini-storage shall mean a building containing separate, individual, private storage spaces, that may be of various sizes, and that are rented pursuant to individual leases for varying periods of time.

Engineer shall mean the City Engineer, who shall have those duties and powers as set forth in Section 24-39 of the City Code.

Entertainment facilities and theaters shall mean a building or part of a building devoted to showing motion pictures or dramatic, musical or live performances.

Equipment Cabinets shall mean a structure used to house equipment used by service providers at a WCF. This definition does not include relatively small electronic components, such as remote radio units, radio transceivers, amplifiers, or other devices mounted behind antennas, if they are not used as physical containers for smaller, distinct devices.

Exhibit hall shall mean a privately owned building or part of a building devoted to the routine display for public viewing (but not sale) of works of art or other similar articles or collectibles of enduring interest or value, and where such display is intended, in part, to serve the educational and cultural needs of the community as a whole.

Exists and Existing shall mean a constructed tower or base station that was reviewed, approved, and lawfully constructed in accordance with all requirements of applicable law as of the time of an eligible facilities request is received by the City, provided that a tower that exists as a legal, non-conforming use and was lawfully constructed is existing for purposes of this definition.

Existing limited permitted use shall mean any use that was permitted for a specific parcel of property pursuant to the zone district regulations in effect for such parcel on March 27, 1997, that is not specifically listed as a permitted use under the zone district regulations of the zone district of this Code in which the parcel of property is located, and that physically existed upon such parcel on March 27, 1997. Such use is permitted in the various zone districts established in Article 2 under the limitation that such use shall constitute a permitted use only on such parcels of property.

Extent reasonably feasible shall mean that, pursuant to the City's determination, under the circumstances, reasonable efforts have been undertaken to comply with the regulation, that the costs of compliance clearly outweigh the potential benefits to the public or would unreasonably burden the proposed project, and reasonable steps have been undertaken to minimize any potential harm or adverse impacts resulting from noncompliance with the regulation.

Extra occupancy shall mean the use of a building or portion of a building by a number of occupants that exceeds the occupancy limits set forth in Section 5.14.1.

FAA shall mean the United States Federal Aviation Administration.

Family shall mean any number of persons who are all related by blood, marriage, adoption, guardianship or other duly authorized custodial relationship, and who live together as a single housekeeping unit and share common living, sleeping, cooking and eating facilities.

Family-care home shall mean a facility for child care in a place of residence of a family or person for the purpose of providing family care and training for a child under the age of sixteen (16) years who is not related to the occupants of such home, or a facility in a place of residence of a family or person for the purposes of providing elderly day care. The three (3) categories of family-care homes are defined as follows:

(A) Day care home shall mean a facility licensed by the State of Colorado that provides on a regular basis in a place of residence, less than twenty-four-hour care for two (2) or more children from different family households who are not related to the caregiver. Such a facility may be any of the following three (3) types of family care homes as defined by the State of Colorado: family child care home, infant/toddler home or experienced family child care provider home.

(B) Family foster home shall mean a facility providing care and training for a child or children not related to the caretaker for regular twenty-four-hour care, provided that such child or children are received from

any state-operated institution for child care or from any child placement agency as defined in Section 26-6-903(10), C.R.S.

(C) Elderly day care home shall mean a home in a place of residence of a family or person for the daytime care, protection and supervision of persons of at least sixty (60) years of age, who are not related to the caretakers, for more than two (2) full days per week.

Farm animals shall mean animals commonly raised or kept in an agricultural, rather than an urban, environment, including, but not limited to, chickens, pigs, sheep, goats, horses, cattle, llamas, emus, ostriches, donkeys and mules; provided, however, that farm animals shall not include chicken hens, ducks or pygmy or dwarf goats kept pursuant to Section 4-121 of the City Code.

FCC shall mean the United States Federal Communications Commission.

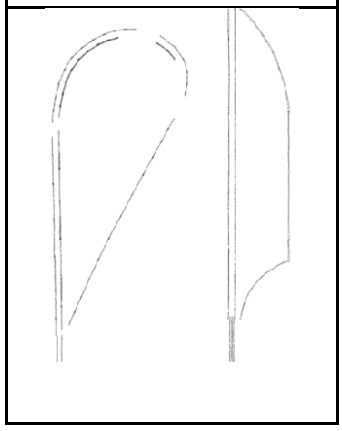
Feedlot shall mean any tract of land or structure, pen or corral, wherein cattle, horses, sheep, goats, emus, ostriches or swine are maintained in close quarters for the purpose of fattening such livestock for final shipment to market.

Festoon lighting shall mean electric lighting with individual bulbs suspended along a string that incorporates power wiring and is suspended between two (2) or more points.

Flag shall mean a flexible piece of fabric, that is attached along one (1) edge to a straight, rigid flagpole (directly or with rope), and that is designed to move when the wind blows. Flags are typically (but not necessarily) rectangular in shape, and often (but not always) include printed or embroidered insignia that symbolizes a nation, state, or organization, or that display a graphic or message.

Flag, feather shall mean a flexible piece of fabric that is attached to a flexible pole along a long edge such that the pole stretches the fabric taut regardless of wind conditions. Feather flags are also commonly referred to as "teardrop banners," "teardrop flags," and "flutter flags."

Illustrative Feather Flags



Flowback shall mean the process of allowing fluids and entrained solids to flow from a well following stimulation, either in preparation for a subsequent phase of treatment or in preparation for cleanup and placing the Well into production. The term flowback also means the Fluids and entrained solids that emerge from a Well during the flowback process.

Flowline shall mean a segment of pipe transferring oil, gas, or condensate between a wellhead and processing equipment to the load point or point of delivery to a U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration or Colorado Public Utilities Commission regulated gathering line or a segment of pipe transferring produced water between a wellhead and the point of disposal discharge or loading. This definition of flowline does not include gathering line.

Food catering or small food product preparation shall mean an establishment in which the principal use is the preparation of food and/or meals on the premises, and where such food and/or meals are delivered to another location for consumption or distribution, and where such use occupies not more than five thousand (5,000) square feet in gross floor area.

Food membership distribution site shall mean a site where a producer of agricultural products delivers them for pick-up by customers who have pre-purchased an interest in the agricultural products.

Food truck rally shall mean a temporary or periodic special event, operating under a Special Vending License, of more than two (2) outdoor vendors (such as food trucks and carts), held on an improved private lot with permission of the owner thereof, and only serving pedestrians.

Foot-candle shall mean a unit of measurement referring to illumination incident to a single point. One (1) foot-candle is equal to one (1) lumen uniformly distributed over an area of one (1) square foot.

Fraternity and sorority houses shall mean residences housing students in organizations established primarily to promote friendship and welfare among the members (i.e., Greek-letter social fraternities and similar organizations), and which residences are affiliated with Colorado State University.

Fully shielded shall mean shielded or constructed so that no light rays are emitted by the installed outdoor light fixtures at angles above the horizontal plane, as certified by a photometric test report.

Funeral home shall mean a building used for the preparation of the deceased for burial or cremation, for the display of the deceased and/or for ceremonies or services related thereto, including cremation and the storage of caskets, funeral urns, funeral vehicles and other funeral supplies.

Gasoline station shall mean any building, land area, premises or portion thereof, where gasoline or other petroleum products or fuels are sold and light maintenance activities such as engine tune-ups, lubrication, minor repairs and carburetor cleaning may be conducted. *Gasoline station* shall not include premises where heavy automobile maintenance activities such as engine overhaul, automobile painting and body fender work are conducted.

Gathering line shall mean a gathering pipeline or system as defined by the Colorado Utilities Commission, Regulation No. 4, 4 C.C.R. 723-4901, Part 4, (4 C.C.R. 723-4901) or a pipeline regulated by the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration pursuant to 49 C.F.R. §§ 195.2 or 192.8. 49 C.F.R. §§ 195.2 or 192.8 and 4 C.C.R. 723-4901 in existence as of the date of this regulation and does not include later amendments.

Geologic hazards shall mean unstable or potentially unstable slopes, faulting, landslides, rockfalls, flood, wildfire or similar naturally occurring dangerous features or soil conditions or natural features unfavorable to development.

Glare shall mean the sensation produced by luminances within the visual field that are sufficiently greater than the luminance to which the eyes are adapted that causes annoyance, discomfort, or loss in visual performance or visibility.

Grade shall mean the elevation of the edge of the paved surface of the street at the closest point to the sign for the purpose of measuring the height of signs.

Grocery store shall mean a retail establishment that primarily sells food, but also may sell other convenience and household goods, and that occupies a space of at least five thousand (5,000) square feet but not more than forty-five thousand (45,000) square feet.

Gross leasable area shall mean the total floor area designed for tenant occupancy and exclusive use, including basements, mezzanines and upper floors, if any, expressed in square feet measured from centerlines of joint partitions and exteriors of outside walls.

Ground-mounted solar energy system shall mean a solar energy system with a supporting framework that is placed on, or anchored in, the ground and that is structurally independent from any building. Carports, garages, breezeways, covered walkways or similar nonclimatized accessory structures that incorporate building-mounted solar energy systems shall not be classified as ground-mounted solar energy systems and shall instead be subject to height and setback regulations governing accessory structures.

Group home shall mean either of the following:

(A) Residential group home shall mean a residence operated as a single dwelling, licensed by or operated by a governmental agency, or by an organization that is as equally qualified as a government agency and having a demonstrated capacity for oversight as determined by the Director, for the purpose of providing special care or rehabilitation due to homelessness, physical condition or illness, mental condition or illness, elderly age or social, behavioral or disciplinary problems, provided that authorized supervisory personnel are present on the premises.

(B) Large group care facility shall mean a residential facility that is planned, organized, operated and maintained to offer facilities and services to a specified population and is licensed by or operated by a governmental agency, or by an organization that is as equally qualified as a government agency and having a demonstrated capacity for oversight as determined by the Director, for the purpose of providing special care or rehabilitation due to homelessness, physical condition or illness, mental condition or illness, elderly age or social, behavioral or disciplinary problems, provided that authorized supervisory personnel are present on the premises.

Habitable floor space shall mean the space in a building approved for living, sleeping, eating, cooking, bathing and personal hygiene. Crawl spaces, storage, laundry rooms, utility spaces and similar areas are not considered habitable spaces.

Hard goods shall mean bulky, durable goods such as household appliances, furniture, automobiles and farm and construction equipment, that all require extensive floor area for display.

Hardscape shall mean any non-living horizontal site element, including but not limited to patios, decks, walkways, sidewalks, driveways, and steps.

Hazardous materials shall mean those chemicals or substances that are physical or health hazards as defined and classified in the Fire and Building Codes. Hazardous materials categories include explosives and blasting agents, compressed gases, flammable and combustible liquids, flammable solids, organic peroxides, oxidizers, pyrophoric materials, unstable (reactive) materials, water-reactive solids and liquids, cryogenic fluids, highly toxic and toxic materials, radioactive materials, corrosives, carcinogens, irritants, sensitizers and other health hazards. Each category is defined separately in the Fire and Building Codes in accordance with the Code of Federal Regulations Title 29 and other nationally recognized standards.

Health club shall mean an establishment that is open only to members and guests and that provides facilities for at least three (3) of the following: aerobic exercises, running and jogging, exercise equipment, game courts and swimming facilities, and that also includes amenities such as spas, saunas, showers and lockers.

Heavy industrial uses shall mean uses engaged in the basic processing and manufacturing of materials or products predominately from extracted or raw materials, or a use engaged in storage of, or manufacturing processes using flammable or explosive materials, or storage or manufacturing processes that potentially involved hazardous conditions. *Heavy industry* shall also mean those uses engaged in the operation, parking and maintenance of vehicles, cleaning of equipment or work processes involving solvents, solid waste or sanitary waste transfer stations, recycling establishments, and transport terminals (truck terminals, public works yards, container storage).

High occupancy building unit shall mean:

(a)Any public or private school, nursing facility as defined in § 25.5-4-103(14), C.R.S., hospital, life care institution as defined in § 12-13-101, C.R.S., or correctional facility as defined in § 17-1-102(1.7), C.R.S., provided the facility or institution regularly serves 50 or more persons;

(b)An operating Child Care Center as defined in § 26-6-102(5), C.R.S.; or

(c) A multiunit dwelling with four or more units

Historic comparison boundary shall mean the two hundred (200) foot boundary measured in all directions from the perimeter of each historic resource identified in Section 5.8.1(C)(2)(a), (b), or (c).

Historic influence area shall mean the overlapping area formed when the outer boundary of a development site and a historic comparison boundary overlap.

Historic preservation staff shall mean City Historic Preservation Division staff who meet the professional qualification standards provided in Code of Federal Regulations, 36 CFR Part 61.

Historic resource shall mean a building, site, structure, or object that is located on a lot, lots, or area of property and is (1) designated as a Fort Collins landmark or is contributing to a Fort Collins landmark district; (2) designated on the Colorado State Register of Historic Properties, either individually or contributing to a district, or the National Register of Historic Places, either individually or contributing to a district; or (3) determined to be eligible for designation as a Fort Collins landmark either through a binding or non-binding determination pursuant to Land Use Code Section 5.8.1(D).

Home occupation shall mean an occupation or business activity that results in a product or service and is conducted in whole or in part in a dwelling unit, and is subordinate to the residential use of the dwelling unit.

Homeless shelters shall mean a fully enclosed building other than a hotel, motel, or lodging establishment that is suitable for habitation and that provides residency only for people experiencing homelessness at no charge at any time during the year. Community based shelter services are exempt from this definition.

Hoop house shall mean a structure used for the purpose of growing crops that has a semi-flexible, nonmetallic frame covered by a flexible polyethylene film of not more than six (6) mil, but not containing any mechanical or electrical systems or equipment or storage items.

Hotel/motel/lodging establishment shall mean a building intended and used for occupancy as a temporary abode for individuals who are lodged with or without meals, in which there are five (5) or more guest rooms. The terms *hotel/motel/lodging establishment* shall not include homeless shelters, seasonal overflow shelters, and short term primary and non-primary rentals.

Housing model shall mean a single-unit or two-unit dwelling having at least three (3) distinguishing major exterior features, including elevations, material treatments, front facade, rooflines and entryway.

Hydrozone shall mean an area within the landscape defined by a grouping of plants requiring a similar amount of water to sustain health. 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.

I-25 activity center (located as described in the I-25 Subarea Plan) shall mean an area of concentrated development containing more than one (1) principal land use type and generally served by high frequency transit. Such land uses may include office, retail, residential or service uses such as hotels, motels and personal and business services. In an I-25 activity center, the different types of land uses are in close proximity, planned as a unified complementary whole, and functionally integrated to the use of vehicular and pedestrian access and parking areas.

Ideally oriented luminaire shall mean a luminaire mounted with the backlight portion of the light output oriented perpendicular to and towards the property line of concern.

Illuminance shall mean the incidental light falling on a surface as measured in footcandles (fc). Total illuminance at a point is a combination of all light sources that contribute.

Improved arterial street shall mean that portion of an arterial street which has been totally or partially constructed to arterial street standards and accepted by the City.

Improved arterial street network shall mean the system of improved arterial streets that are interconnected and that are defined on the city map titled Improved Arterial Streets Network maintained by the City Engineer.

Improvement shall mean any man-made, immovable item that becomes part of, is placed upon or is affixed to real estate.

Indoor kennel shall mean an establishment in which twenty-four (24) hour care and boarding is provided for household dogs or cats within a soundproof building (or buildings) that contains exercise facilities, separate ventilation systems for dogs and cats if they are boarded in the same building, and wherein other services such as grooming and training are offered. Dogs in an indoor kennel are only allowed in an outdoor exercise area during the hours of 8am-5pm.

Infrastructure shall mean those man-made structures that serve the common needs of the population, such as: potable water systems; wastewater disposal systems, solid waste disposal sites or retention areas; storm drainage systems; electric, gas or other utilities; bridges; roadways; bicycle paths or trails; pedestrian sidewalks, paths or trails; and transit stops.

Inhabitant shall mean a person who dwells and is domiciled in a place, as distinguished from a lodger or visitor.

Initial luminaire lumens shall mean the light output of the lamp or luminaire before any light loss factors are considered.

Junkyard shall mean an industrial use (not permitted in residential, business or commercial districts) contained within a building, structure or parcel of land, or portion thereof, used for collecting, storing or selling wastepaper, rags, scrap metal or discarded material or for collecting, dismantling, storing, salvaging or

demolishing vehicles, machinery or other material and including the sale of such material or parts thereof. Junkyard shall not include a recycling facility.

Kennel shall mean a facility where the overnight boarding of dogs, cats or other household pets is conducted as a business.

Kitchen shall mean a portion of a dwelling unit used, or designated to be used for, the purposes of cooking, preserving, or otherwise preparing food and contains a range or a combination of a cook-top and oven. An area of a dwelling unit with a cooking appliance that is not a range or combination of a cook-top and oven, such as a microwave or hot-plate, is not a kitchen.

Landscaping shall mean any combination of living plants such as trees, shrubs, plants, vegetative ground cover or turf grasses, and may include structural features such as walkways, fences, benches, works of art, reflective pools, fountains or the like. Landscaping shall also include irrigation systems, mulches, topsoil use, soil preparation, revegetation or the preservation, protection and replacement of existing trees.

Large base industry shall mean a firm that:

(A) Produces, or will produce, manufactured goods, at least eighty (80) percent of which are, or will be, produced for export to areas outside of the City; or provides medical, internet, telecom, education or publishing products and services for local and regional users; or establishes corporate offices;

(B) Employs, or will employ, no fewer than one hundred (100) persons for at least thirty-five (35) hours of year-round employment per week; and

(C) Owns or leases, or will own or lease, real property or equipment within the city limits that is used in the operation of the firm's business and that has, or will have, as of the date of the commencement of the firm's operation, a fair market value of no less than one hundred million dollars ($100,000,000).

Large retail establishment shall mean a retail establishment, or any combination of retail establishments in a single building or in separate but abutting buildings, or a movie theater or an indoor recreational use, occupying more than twenty-five thousand (25,000) gross square feet of floor area.

Laundry and dry-cleaning retail outlet shall mean a laundry or dry-cleaning outlet whose business consists primarily of serving retail customers, provided that any laundry and dry-cleaning processing that occurs on the premises is limited to items that are brought directly to the premises by the retail customer.

Level of service shall mean an indicator of the extent or degree of service provided by, or proposed to be provided by, a facility based on, and related to, the operational characteristics of the facility. Level of service shall indicate the capacity per unit of demand for each public facility.

Lifestyle shopping center shall mean a shopping center that is planned and developed as a unit and intended to serve consumer demands from the community as a whole and the region, with primary offerings of specialty retailers such as apparel, home furnishings/accessories, books/music, bath/body, sporting goods and grocery stores, and that offers sit-down restaurants, coffee shops, ice cream parlors, entertainment facilities and theatres, office uses and/or uses of similar character. Such a center is designed with architectural distinction, individual identity for each store and buildings that are brought together along a sidewalk network in an open-air setting, with a small park or plaza, and a high level of amenity in landscaping and urban furnishings.

Light industrial shall mean uses engaged in the manufacture, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales or distribution of such products. Further, light industrial shall mean uses such as the manufacture of electronic instruments, preparation of food products, pharmaceutical manufacturing, research

and scientific laboratories or the like. Light industrial shall not include uses such as mining and extracting industries, petrochemical industries, rubber refining, primary metal or related industries.

Light loss factor (LLF) shall mean a depreciation factor that describes the drop in light output over the life of the system. The total LLF is determined by a combination of factors, such as lumen depreciation and luminaire dirt depreciation. Light Loss Factors = 1.0 for evaluating compliance with Section 5.12.1.

Lighting, indirect when applied to the lighting of signs, shall mean reflected light only from a concealed light source outside the sign face that reflects from the sign face only or from the sign face and sign copy.

Limited indoor recreation use shall mean facilities established primarily for such activities as exercise or athletic facilities; and amusement or recreational services, such as billiard or pool parlors, pinball/video arcades, dance studios, martial art schools, arts or crafts studios; or exercise clubs, but not including bowling alleys or establishments which have large-scale gymnasium-type facilities for such activities as tennis, basketball or competitive swimming. This definition is intended to restrict the type of recreational use allowed to those small-scale facilities containing no more than five thousand (5,000) square feet that would be compatible with typical buildings and uses in the zone district in which this use is allowed.

Limits of development shall mean the areas described and established pursuant to Section 5.6.1(N).

Local street shall mean a street that is anticipated to carry under two thousand five hundred (2,500) vehicle trips per day in traffic volume at desirable speeds of up to twenty-five (25) miles per hour, and that provides access to abutting property and primarily serves local traffic.

Local street system shall mean a system of one (1) or more local streets that allow traffic to be distributed throughout a neighborhood.

Lodging establishment shall mean hotel/motel.

Logo shall mean a graphic symbol or emblem that conveys a recognizable meaning, which symbol or emblem may include script (words) provided that such script is contained entirely within the boundaries of the symbol or emblem; and script alone, or outside of the boundaries of the symbol or emblem, whether registered as a trademark or not, is not included within the meaning of the term logo.

Long-term care facility shall mean any of the following:

(A) Convalescent or rehabilitation center shall mean a health institution that is planned, organized, operated and maintained to offer facilities and services to inpatients requiring restorative care and treatment and that is either an integral patient care unit of a general hospital or a facility physically separated from, but maintaining an affiliation with, all services in a general hospital.

(B) Nursing or memory care facility shall mean a health institution planned, organized, operated and maintained to provide facilities and health services with related social care to inpatients who require regular medical care and twenty-four (24) hour per day nursing services for illness, injury or disability. Each patient shall be under the care of a physician licensed to practice medicine in the State of Colorado. The nursing services shall be organized and maintained to provide twenty-four (24) hour per day nursing services under the direction of a registered professional nurse employed full time.

(C) Intermediate health care or assisted living facility shall mean a health-related institution planned, organized, operated and maintained to provide facilities and services which are supportive, restorative or preventive in nature, with related social care, to individuals who because of a physical or mental condition, or both, require care in an institutional environment but who do not have an illness, injury or disability for which regular medical care and twenty-four (24) hour per day nursing services are required.

(D) Independent living or continuing care facility shall mean a single-unit, two-unit and/or multi-unit dwelling that is located within a development that contains one (1) or more of the facilities described in (A) through (C) above, wherein the residents of such dwellings have access to the common amenities and services available to residents of the facilities described in (A) through (C) above.

Long-term parking shall mean parking that has limited turnover during a normal working weekday. Long-term parking includes employee-type parking or residential-type parking.

Lumen (lm) shall mean the luminous flux emitted within a unit solid angle by a point source (one steradian) having a uniform luminous intensity of one candela (cd). See luminous flux.

Luminaire shall mean a complete lighting device consisting of the light source, lens, reflector, refractor, driver, housing and such support as is integral with the housing. If the driver is located within the housing, it is considered integral and therefore part of the luminaire. The pole, posts, and bracket or mast arm are not considered to be part of the luminaire.

Luminance (candelas per square meter, cd/m^{2}or nits) shall mean the luminous intensity of any surface in a given direction per unit of projected area of the surface as viewed from that direction; i.e., the apparent brightness of a surface.

Luminous flux (lumen, lm) shall mean a unit of measure of the quantity of light. One lumen is the amount of light that falls on an area of one square meter, every point of which is one meter from a source of one candela. A light source of one candela emits a total of 12.57 lumens. Light sources are rated in terms of luminous flux. Lumens are used for evaluating compliance with Section 5.12.1.

Luminous intensity (candela, cd) shall mean the basic unit of light quantity as measured in candelas. The candela can be thought of as the number of photons per second emitted by the light source.

Maintenance (of a newly constructed street) shall mean keeping the street free of dirt, mud, debris and any other foreign material that would constitute a safety hazard or a nuisance or cause damage to the newly constructed street, and shall also include repainting traffic control striping, repairing and replacing traffic control signs and signals as necessary, and maintaining median/parkway landscaping and irrigation systems and supplying water therefor.

Major addition shall mean the extension of an existing building where the cost of the addition, not including repairs and reconstruction of the existing building, is in excess of the assessed valuation of the existing building as assessed by the county Assessor during the year immediately preceding the year in which such major addition takes place.

Major public facilities shall mean structures or facilities, such as electrical generation plants, water treatment plants, wastewater treatment plants, natural gas generation power plants, railroad depots and transportation fleet maintenance facilities, that are generally occupied by persons on a daily basis to conduct operations and that contain or involve traffic-generating activities. *Major public facilities* include outdoor storage but shall not include wireless communication facilities.

Major walkway spine shall mean a tree-lined connecting walkway that is at least five (5) feet wide, with landscaping along both sides, located in an outdoor space that is at least thirty-five (35) feet in its smallest dimension, with all parts of such outdoor space directly visible from a street.

Manual changeable copy message center shall mean a sign element in which letters, numbers, or symbols may be changed manually without altering the face of the sign (e.g., by placement of letters into tracks that are enclosed within a cabinet structure). Manual changeable copy centers are sometimes known as "readerboards."

Manufactured home shall mean a preconstructed, transportable dwelling unit built on a permanent chassis and anchored at the site where it will be occupied as a dwelling unit. The term manufactured home shall also include mobile homes, which are similar transportable dwelling units constructed prior to federal manufactured home standards adopted in 1976.

Manufactured housing community shall mean a parcel of land that has been planned, improved, or is currently used for the placement of five or more manufactured homes. Manufactured housing communities may also contain accessory uses intended primarily for the use and benefit of their residents, including but not limited to clubhouses, playgrounds and recreational amenities, childcare, meeting and assembly spaces, retail, and personal and business services.

Marginal-access street shall mean a local street that is parallel to and adjacent to expressways or arterials and that provides access to abutting properties and protection from through traffic.

Marijuana products shall mean concentrated marijuana products and marijuana products that are comprised of marijuana and other ingredients and are intended for use or consumption, such as, but not limited to, edible products, ointments, and tincture as defined in Section 16 (2)(k) of Article XVIII of the Colorado State Constitution.

Massing shall refer to the perception of the overall shape, form, and size of a building.

Maximum extent feasible shall mean that pursuant to the City's determination, no feasible and prudent alternative exists, and all possible efforts to comply with the regulation or minimize potential harm or adverse impacts have been undertaken.

Medical marijuana center shall mean a person licensed pursuant to Title 12, Article 43.3, C.R.S., to operate a business as described in Section 44-10-103(34) C.R.S., that sells medical marijuana to registered patients or primary caregivers as defined in Section 14 of Article XVIII of the State Constitution, but is not a primary caregiver.

Medical marijuana-infused products manufacturer shall mean a person licensed pursuant to Title 12, Article 43.3, C.R.S., to operate a business as described in Section 12-44-10-103(39), C.R.S.

Medical marijuana optional premises cultivation operation shall mean a person licensed pursuant to Title 12, Article 43.3, C.R.S., to operate a business as described in Section 12-43.3-404, C.R.S.

Medical marijuana research and development cultivation shall mean a facility used by a person or entity licensed pursuant to Title 12, Article 43.3, C.R.S., to operate a business as described in Section 12-44-10-103(37), C.R.S.

Medical marijuana research and development facility shall mean a facility used by a person or entity licensed pursuant to Title 12, Article 43.3, C.R.S., to operate a business as described in Section 12-44-10-103(35), C.R.S.

Medical marijuana testing facility shall mean a facility used by a person or entity licensed pursuant to Title 12, Article 43.3, C.R.S., to operate a business as described in Section 12-44-10-103(35), C.R.S.

Microbrewery shall mean a facility that produces no more than fifteen thousand (15,000) barrels per year of fermented malt beverages on site and shall include a taproom in which guests/customers may sample the product.

Microdistillery shall mean a facility that produces no more than fifteen thousand (15,000) gallons per year of spirituous beverages on site and shall include a tasting room in which guests/customers may sample the product.

Microwinery shall mean a facility that produces no more than one hundred thousand (100,000) gallons per year of vinous beverages on site and shall include a tasting room in which guests/customers may sample the product.

Minor public facilities shall mean structures or facilities, such as electrical generating and switching stations, substations, underground vaults, poles, conduits, water and sewer lines, pipes, pumping stations, natural gas pressure-reducing stations, repeaters, antennas, transmitters and receivers, valves and stormwater detention ponds, that are not occupied by persons on a daily basis except for periodic inspection and maintenance, are capable of operation without daily oversight by personnel and do not generate daily traffic. Such facilities also include similar structures for fire protection, emergency service, parks and recreation and natural areas. *Minor public facilities* shall not include outdoor storage and wireless communication facilities.

Minor subdivision shall mean the subdivision of a lot, tract or parcel into not more than one (1) new lot and may include adjustments to lot lines.

Mixed use shall mean the development of a lot, tract or parcel of land, building or structure with two (2) or more different uses, including, but not limited to, residential, office, retail, public uses, personal service or entertainment uses (but not including accessory uses), designed, planned and constructed as a unit.

Mobility Assisted Device shall mean a wheelchair, motorized scooter, or other tool that aids those living with physical or mental disabilities in moving along City sidewalks, non-vehicular paths, and trails. These do not include recreational motorized devices such as skateboards and toy vehicles or road machinery/road tractor as defined in the City of Fort Collins Traffic Code.

Monument style shall mean a style of freestanding sign characterized by a supporting sign structure that is at least seventy (70) percent of the width of the sign face, and that contains not more than two (2) sign faces.

Music facility, multi-purpose, shall mean a facility that may include indoor and outdoor space for the purpose of music workshops, meetings, informal gatherings, occasional small-scale music performances, and occasional recitals and open microphone sessions where performance spaces do not include permanent or designated seating or paid admission.

Music studio shall mean a fully enclosed soundproof studio for the recording, producing, writing or rehearsing of music.

Native vegetation 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.

Natural area shall mean all areas shown as "natural areas" on the City's *Parks and Natural Areas Map* or the *Natural Habitats and Features Inventory Map.* Any land that qualifies as a "wetland" pursuant to the Federal Clean Water Act shall also be deemed a natural area, in addition to the areas designated as wetlands on the City's *Natural Habitats and Features Inventory Map.* Any land area that possesses such characteristics as would have supported its inclusion on the *Natural Habitats and Features Inventory Map,* or contains natural habitats or features that have significant ecological value listed in subparagraph 5.6.1(A), if such area is discovered during site evaluation and/or reconnaissance associated with the development review process, shall also be deemed a natural area.

Natural area buffer zone shall mean any area described and established pursuant to subsection 5.6.1(E).

Natural features shall mean the following:

(A) natural springs,
(B) areas of topography which, because of their steepness, erosion characteristics/geologic formations, high visibility from off-site locations and/or presence of rock outcroppings, and

(C) view corridors that present vistas to mountains and foothills, water bodies, open spaces and other regions of principal environmental importance, provided that such natural features are either identified on the City's *Natural Habitats and Features Inventory Map*, or otherwise meet the definition of *natural area* as contained in this Article.

Neighborhood center shall mean a combination of at least two (2) uses as listed in the Low Density Mixed-Use Neighborhood zone district in addition to an outdoor space, which together provide a focal point and a year-round meeting place for a neighborhood.

Neighborhood park shall mean a publicly owned park as defined in the Parks and Recreation Policy Plan.

Neighborhood plan shall mean a document adopted by the City Council as a part of the Comprehensive Plan of the City containing public policies relating to a specific neighborhood.

Neighborhood service center shall mean a shopping and service center, approximately fifteen (15) acres in size, designed to meet consumer demands from an adjacent neighborhood. The primary functional offering is usually a supermarket with an approximately equivalent amount of associated mixed retail and service-oriented gross square footage. Other functional offerings may include employment uses, such as offices and/or commercial development traditionally located along arterial streets.

Neighborhood support/recreation facilities shall mean recreation/pool facilities and/ or meeting rooms intended for the use and enjoyment of residents and guests of the neighborhood.

Nightclub shall mean a bar or similar nonalcoholic establishment containing more than one hundred (100) square feet of dance floor area.

Nonconforming building shall mean a building that was lawful and nonconforming under prior law on the day before the effective date of this Code or subsequent amendment thereof.

Nonconforming structure shall mean a structure that was lawful and nonconforming under prior law on the day before the effective date of this Code or subsequent amendment thereof.

Nonconforming use shall mean either a use that was lawful and nonconforming under prior law on the day before the effective date of this Code or subsequent amendment thereof, or with respect to lands newly annexed, a use that was lawful immediately before annexation but that does not conform to the use regulations for the zone district in which such use is located either at the time of annexation or as the result of subsequent amendments to this Code.

Nonconformities shall mean a nonconforming use, structure or building.

Object, for purposes of Section 5.8.1 only, shall mean a material thing of functional, aesthetic, cultural, historical or scientific value that may be, by nature or design, movable.

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.

Off-site construction staging shall mean the use of land or building or portion thereof for activities commonly associated with and supportive of construction or development, when such activities are not located on the parcel, or in the building, being constructed or developed. Such activities include but are not limited to storage of construction material and equipment, parking for those working on the construction or development, temporary restrooms and construction offices.

Off-street parking area or vehicular use area shall mean all off-street areas and spaces designed, used, required or intended to be used for the parking, storage, maintenance, service, repair, display or operation of motor vehicles, including driveways or accessways in and to such areas, but not including:

(A) any outdoor storage area used principally as *recreational vehicle, boat or truck storage* use;

(B) any parking area that is primarily used for long-term storage of vehicles that more closely resembles an outdoor storage area than it does a parking lot (such as impound lots, junkyards or other similar uses);
(C) any internal drive lane located in an enclosed mini-storage facility; or
(D) any public street or right-of-way.

Oil and gas facility shall mean equipment or improvements used or installed at an oil and gas location for the exploration, production, withdrawal, treatment, or processing of crude oil, condensate, exploration, development, and production waste, or gas.

Oil and gas location shall mean the area where an operator has disturbed or intends to disturb the land surface in order to locate an oil and gas facility.

Oil and gas pipeline shall mean a flowline, crude oil transfer line, gathering line, as such terms are defined by the ECMC, and transmission lines.

Oil and gas operation shall mean exploration for oil and gas, including the conduct of seismic operations and the drilling of test bores; the siting, drilling, deepening, recompletion, reworking or abandonment of an oil and gas well, underground injection well or gas storage well; production operations related to any such well, including the installation of flow lines and gathering systems; the generation, transportation, storage, treatment or disposal of exploration and production wastes; and any construction, site preparation or reclamation activities associated with such operations.

Opacity shall mean the degree to which air contaminant emission obscures the view of an observer, expressed in percentage of the obstruction, or the degree (percent) to which the transmittance of light is reduced by an air contaminant emission.

Open-air farmers market shall mean an occasional or periodic market held in an open area or in a structure where groups of individual sellers offer for sale to the public such items as fresh produce, seasonal fruits, fresh flowers, arts and crafts items, and food and beverages (but not to include second-hand goods) dispensed from booths located on-site. *Operator* as used in Section 4.3.4(F) shall mean any person who exercises the right to operate and control an oil and gas facility or oil and gas pipeline.

Orient shall mean to bring in relation to, or adjust to, the surroundings, situation or environment; to place with the most important parts facing in certain directions; to set or arrange in a determinate position: *to orient a building*.

Outdoor amphitheaters (other than *community facilities*) shall mean permanent stage and seating facilities that are open or partially open to the outdoors, the principal use of which is the showing of motion pictures or the presentation of dramatic, musical or live performances, which facilities are accessible to persons only by permission given at the doors or gates.

Outdoor café shall mean that portion of a restaurant with tables located on the sidewalk or other open area in front of or adjoining the restaurant premises.

Outdoor recreation facility shall mean an area devoted to active sports or recreation such as go-cart tracks, miniature golf, archery ranges, sport stadiums or the like, and may or may not feature stadium-type seating.

Outdoor storage shall mean the keeping, in an unroofed area, of any equipment, goods, junk, material, merchandise or vehicles in the same place for more than twenty-four (24) hours.

Outdoor vendor shall mean any person, whether as owner, agent, consignee or employee, who sells or attempts to sell, or who offers to the public free of charge, any services, goods, wares or merchandise, including, but not limited to, food or beverage, from any outdoor location, except for those activities excluded from the definition of *outdoor vendor* in §15-381 of the City Code.

Over the air reception device or *OTARD* shall mean:

(A) An antenna that is designed to receive direct broadcast satellite service, including direct-to-home satellite services, that is one (1) meter or less in diameter; or

(B) An antenna that is designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instruction television fixed services, and local multipoint distribution services, and that is one (1) meter or less in diameter or diagonal measurement; or

(C) An antenna that is designed to receive television broadcast signals.

Owner shall mean any person (as defined in Code of the City of Fort Collins Section 1-2) whose name appears on the tax bill for the property or who, alone or jointly or severally with others, has legal title to any dwelling or dwelling unit, with or without actual possession thereof, or has charge, care or control of any dwelling or dwelling unit as owner, executor, executrix, administrator, trustee, guardian of the estate of the owner, mortgagee or assignee of rents. *Owner* shall not include any person who holds only a security interest or easement on the real property upon which the dwelling or dwelling unit is situated.

Parking garage shall mean an off-street parking area within a building.

Parking lot shall mean off-street parking area or vehicular use area.

Parking structure shall mean any building containing motor vehicle parking that is a principal use, with or without any additional uses.

Parks, recreation and open lands shall mean natural areas as described in the Natural Areas Policy Plan, parks and recreation facilities as described in the Parks and Recreation Policy Plan whether such facilities are owned or operated by the City or by another not-for-profit organization, environmental interpretation facilities, outdoor environmental research or education facilities, or public outdoor places.

Party-in-interest shall mean a person who or organization that has standing to appeal the final decision of the decision maker. Such standing to appeal shall be limited to the following:

(A) The applicant;

(B) Any party holding a proprietary or possessory interest in the real or personal property which was the subject of the decision of the decision maker whose action is to be appealed;

(C) Any person to whom or organization to which the City mailed notice of the hearing of the decision maker;

(D) Any person who or organization which sent written comments to the decision maker prior to the action which is to be appealed;

(E) Any person who appeared before the board or commission at the hearing on the action that is to be appealed;

(F) The City Council as represented by the request of a single member of the City Council.

Passive open space shall mean land area devoted exclusively to activities such as walking, nature walks, wildlife observation, sitting, picnicking, card games, chess, checkers and similar table games, which space may be used in conjunction with buffer yards.

Pedestrian frontage shall mean an area abutting a connecting walkway, developed to provide continuous safety, interest and comfort for people walking or sitting; pedestrian frontage shall consist of building faces, site design features and/or landscape areas on one (1) or both sides, and not parking stalls on both sides.

Pedestrian-oriented development shall mean development that is designed with a primary emphasis on the street sidewalk and/or connecting walkway access to the site and building, rather than on auto access and parking lots. In *pedestrian-oriented developments*, buildings are typically placed relatively close to the street and the main entrance is oriented to the street sidewalk or a walkway. Although parking areas and garages may be provided, they are not given primary emphasis in the design of the site.

Pedestrian scale (human scale) shall mean the proportional relationship between the dimensions of a building or building element, street, outdoor space or streetscape element and the average dimensions of the human body, taking into account the perceptions and walking speed of a typical pedestrian.

Pennant shall mean a narrowing or tapering flag or similar shape that is two (2) square feet in size or less, that is repeated along a common line and is not attached to a flag pole.

Personal and business service shops shall mean shops primarily engaged in providing services generally involving the care of the person or such person's apparel or rendering services to business establishments such as laundry or dry-cleaning retail outlets, portrait/photographic studios, beauty or barber shops, employment service, or mailing or copy shops.

Place shall mean a minor way used primarily for vehicular access to the abutting properties, provided that no *place* shall have a greater length than three hundred fifty (350) feet, and provided further that no *place* shall provide access to more than fifteen (15) lots, and provided further that no discontinuous *place* (cul-de-sac) shall provide access to more than fifteen (15) dwelling units.

Place of worship or assembly shall mean a building containing a hall, auditorium or other suitable room or rooms used for the purpose of conducting religious or other services or meetings of the occupants of such structure. *Places of worship or assembly* shall include churches, synagogues or the like, but shall not include buildings used for commercial endeavors, including, but not limited to, commercial motion picture houses or stage productions.

Planned Unit Development (PUD) Overlay shall mean an area of land approved for development pursuant to a PUD Comprehensive Plan under Division 2.6.3. An approved PUD Overlay overlays the PUD Comprehensive Plan entitlements and restrictions upon the underlying zone district requirements.

Planned Unit Development (PUD) Comprehensive Plan shall mean an approved plan for development of an area within an approved PUD Overlay, which identifies the general intent of the development and establishes vested uses, densities and certain modification of development standards. An approved PUD Comprehensive Plan substitutes for the requirement for an Overall Development Plan. A PUD Comprehensive Plan is considered a site specific development plan solely with respect to vested property rights regarding specific uses, densities, Land Use Code development standards, and variances from Engineering Design Standards granted pursuant to Division 2.6.3(K).

Planning and Zoning Commission review shall mean review by the Planning and Zoning Commission in accordance with the provisions in Article 6. Also known as Type 2 review.

Plant nursery and greenhouse shall mean any land or structure used primarily to raise trees, shrubs, flowers or other plants for sale or for transplanting and may include the sale of nonliving landscape and decorating products.

Plat shall mean:

(A) a map of a subdivision;

(B) a map of a parcel or parcels contained within an annexation;

(C) a map representing a tract of land showing the boundaries and location of individual properties and streets.

Plugging and abandonment shall mean the cementing of a well, the removal of its associated production facilities, the abandonment of its flowline(s), and the remediation and reclamation of the wellsite.

Pole cover shall mean a durable, permanent decorative cover that encloses the structural supports of a detached sign. The phrase "pole cover" does not include paints, stains, powder coating, or other finishes that are applied directly to the structural supports.

Primary residence shall mean the dwelling unit in which a person resides for nine (9) or more months of the calendar year. Under this definition, a person has only one (1) primary residence at a time.

Principal building entrance, for purposes Division 5.16 only, shall mean a street-level primary point of public pedestrian access into a building. The phrase "principal building entrance" does not include doors used principally as emergency exits, or doors that provide restricted access (e.g., for employees or deliveries).

Print shop shall mean an establishment in which the principal business consists of duplicating and printing services using photocopy, blueprint or offset printing equipment, and may include the collating of booklets and reports.

Private drive shall mean a parcel of land not dedicated as a public street, over which a private easement for road purposes has been granted to the owners of property adjacent thereto, which intersects or connects with a public or private street, and where the instrument creating such easement has been recorded in the Office of the Clerk and Recorder of Larimer County. A *street-like private drive* is a type of private drive that may be used instead of a street under the provisions of Section 5.4.6(M).

Private driveway shall mean the area of a platted lot that is specifically designed for the parking and movement of the vehicles of the property owner and that generally leads directly to a garage, carport or other such structure. Such area shall not include the area of a private street or private drive, except that a private driveway may be shared between two (2) abutting platted lots.

Private street shall mean a parcel of land not dedicated as a public street, over which a public access easement for street purposes has been granted to the City, and where the instrument creating such easement has been recorded or filed in the Office of the Clerk and Recorder of Larimer County. The public access easement shall allow for access by police, emergency vehicles, trash collection and other service vehicles, utility owners and the public in general.

Professional office shall mean an office for professionals such as physicians, dentists, lawyers, architects, engineers, artists, musicians, designers, teachers, accountants or others who through training are qualified to perform services of a professional nature and where no storage or sale of merchandise exists.

Property, for the purposes of Division 5.16 only, shall mean the real property owned or controlled by the applicant for a sign permit or alternative sign program. Property may be a single lot or parcel, or may be a combination of abutting lots or parcels that will be bound by the approval.

Property frontage, for purposes of Division 5.16 only, shall mean the length of a front, side, or rear property line that abuts a public street right-of-way.

Property manager shall mean any person, group of persons, company, firm or corporation charged with the care and control of rental housing as defined in Section 5-236 of the City Code who performs services with respect to such rental housing under a contract with the owner thereof or who otherwise acts as representative of an owner with respect to such rental housing.

Public highway shall have the meaning set forth in § 38-5.5-102, Colorado Revised Statutes.

Public use shall mean any use intended to be conducted in a facility or upon land that is owned by and operated for public use by school districts or by city, county, state or federal governments.

Public utility shall mean a common carrier supplying electricity, wire telephone service, natural gas, water, wastewater or stormwater service, railroads or similar public services, but shall not include mass transit or railroad depots or terminals or any similar traffic-generating activity, or any person or entity that provides communication services to the public.

Qualified Preservation Partner (QPP) shall mean an organization that has applied to, and been selected by, the City for inclusion on the list of entities that will qualify as an eligible buyer for affordable home ownership projects as defined under *affordable housing unit for purchase*. To be a QPP the organization shall agree that the homes purchased will be affordable for a time period prescribed by the City upon purchase as an Eligible Buyer and that it will promptly convey the property to a natural person who qualifies as an Eligible Buyer pursuant to the terms of the restricted home ownership program.

Rare, threatened or endangered species shall mean those species of wildlife and plants listed by the Colorado Parks and Wildlife Division, the Colorado Natural Heritage Program, or the U.S. Fish and Wildlife Service as rare, threatened or endangered.

Reclamation shall mean the process of returning or restoring the surface of disturbed land to its condition prior to development.

Recreational space shall mean privately owned space that is designed for active recreational use for more than three (3) families and that meets either of the following criteria:

(A) Active open space. A parcel of not less than ten thousand (10,000) square feet and not less than fifty (50) linear feet in its smallest dimension, where no public dedication has contributed to its area. Such open space areas may include areas devoted to flood control channels or areas encumbered by flowage, floodway or drainage easements.

(B) Active indoor space. Recreational facilities or structures, and their accessory uses, that are located in city approved areas, including, but not limited to, game rooms, swimming pools, gymnasiums, bowling alleys, exercise rooms or tennis or racquetball courts; provided, however, that the residents of the projects for which such facilities are planned must automatically be members of such facilities without additional charge.

Recreational vehicle, boat and truck storage shall mean the renting of space in an unroofed area for the purpose of storing any recreational vehicle, boat or truck. For the purposes of this definition, a *recreational vehicle* shall be a transportable structure that is primarily designed as a temporary living accommodation for recreational, camping and travel use, including, but not limited to, travel trailers, truck campers, camping trailers and self-propelled motor homes.

Recyclable material shall mean reusable material, including, but not limited to, metals, glass, plastic and paper, that are intended for reuse or reconstitution for the purpose of using the altered form. *Recyclable material* shall not include refuse or hazardous materials.

Recycling facility shall mean a building or land used for the collection and/or processing of recyclable material. *Processing* shall mean the preparation of material for efficient shipment by such means as baling, compacting, flattening, grinding, crushing, mechanical sorting or cleaning. Such a facility, if entirely enclosed within a building or buildings, shall be considered a warehouse.

Redevelopment shall mean the intensification of use of existing buildings and/or development sites, building rehabilitation, or removal or demolition of existing buildings, followed promptly by construction of replacement buildings.

Regional shopping center shall mean a cluster of retail and service establishments designed to serve consumer demands from the community as a whole or a larger area. The primary functional offering is at least one (1) full-line department store. The center also includes associated support shops that provide a variety of shopping goods including general merchandise, apparel and home furnishings, as well as a variety of services, and perhaps entertainment and recreational facilities.

Research laboratory shall mean a building or group of buildings in which are located facilities for scientific research, investigation, testing or experimentation, but not facilities for the manufacture or sale of products except as incidental to the main purpose of the laboratory.

Resource extraction, processes and sales shall mean removal or recovery by any means whatsoever of sand, gravel, soil, rock, minerals, mineral substances or organic substances other than vegetation, from water or land on or beneath the surface thereof, exposed or submerged, but does not include oil and gas operations.

Resource recovery shall mean the process of obtaining materials or energy, particularly from solid waste.

Restaurant, drive-in (also known as *Restaurant, drive-thru*) shall mean any establishment in which the principal business is the sale of foods and beverages to the customer in a ready-to-consume state and in which the design or principal method of operation of all or any portion of the business is to allow food or beverages to be served directly to the customer in a motor vehicle without the need for the customer to exit the motor vehicle.

Restaurant, drive-thru: See *Restaurant, drive-in*.

Restaurant, fast food shall mean any establishment in which the principal business is the sale of food and beverages to the customer in a ready-to-consume state, and in which the design or principal method of operation includes all of the following characteristics:

(A) food and beverages are usually served in edible containers or in paper, plastic or other disposable containers; and

(B) there is no drive-in facility as a part of the establishment.

Restaurant, limited mixed-use shall mean any establishment in which the principal business is the sale of food and beverages to the customer in a ready-to-consume state, and in which the design or principal method of operation includes all of the following characteristics:

(A) food and beverages are usually served in edible containers or in paper, plastic or other disposable containers;

(B) there is no drive-in or drive-through facility as a part of the establishment;

(C) the establishment is contained within or physically abuts a multi-unit dwelling;

(D) the establishment is clearly subordinate and accessory to a multi-unit dwelling;

(E) the establishment shall not exceed one thousand five hundred (1,500) feet in gross leasable floor area;

(F) the establishment shall not engage in serving alcohol; and

(G) the establishment shall not engage in the playing of amplified music.

Restaurant, standard shall mean any establishment in which the principal business is the sale of food and beverages to customers in a ready-to-consume state; where fermented malt beverages, and/or malt, special malt or vinous and spirituous liquors may be produced on the premises as an accessory use; and where the design or principal method of operation includes one (1) or both of the following characteristics:

(A) customers are served their food and/or beverages by a restaurant employee at the same table or counter at which the items are consumed; or

(B) customers are served their food and/or beverages by means of a cafeteria-type operation where the food or beverages are consumed within the restaurant building.

Retail establishment (also known as retail store) shall mean an establishment of twenty-five thousand (25,000) square feet or less of gross leasable floor area in which sixty (60) percent or more of the gross floor area is devoted to the sale or rental of goods, including stocking, to the general public for personal or household consumption or to services incidental to the sale or rental of such goods.

Retail marijuana cultivation facility shall mean an entity licensed to cultivate, prepare and package marijuana, and to sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities and to other marijuana cultivation facilities, but not to consumers.

Retail marijuana product manufacturing facility shall mean an entity licensed to purchase marijuana; manufacture, prepare and package marijuana products; and sell marijuana and marijuana products to other marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers.

Retail marijuana store shall mean an entity licensed to purchase marijuana from marijuana cultivation facilities and marijuana and marijuana products from marijuana product manufacturing facilities and to sell marijuana and marijuana products to consumers.

Retail marijuana testing facility shall mean an entity licensed to analyze and certify the safety and potency of marijuana as defined in Section 16(2)(1) of Article XVIII of the Colorado State Constitution.

Retail stores with vehicle servicing shall mean an establishment in which vehicle parts are sold and are ordinarily installed on the premises, and where the majority of the floor area of the establishment is devoted to the installation and maintenance of such parts (e.g., tire shops and muffler shops).

Revegetation shall mean restoration and mitigation measures for a disturbed natural area or buffer zone in accordance with the requirements of LUC subsections 5.6.1(D)(2) and 5.10.1(F).

Reverse vending machine shall mean an automated mechanical device that accepts one (1) or more types of empty beverage containers, including, but not limited to, aluminum cans, glass or plastic bottles; and that issues a cash refund or a redeemable credit. A *reverse vending machine* may be designed to accept more than one (1) container at a time, paying by weight instead of by container.

Rider shall mean a subordinate sign panel that is attached to a swing sign, either above the horizontal member or below the principal sign face. To illustrate, but without limiting the range of messages that a rider may convey, if the swing sign is used to advertise a property as "for sale," a rider is often used to convey a related message such as "contract pending."

Ridgeline protection area shall mean the area described and established pursuant to Section 5.6.1(G).

Rights-of-way shall mean any portion of a public highway dedicated to the City. Rights-of-way shall not include (i) trails and (ii) specific-purpose utility easements, when the specific purpose of the utility easement dedication does not include communication facilities or public access.

River shall mean the Cache la Poudre River unless the context indicates a general meaning.

School facility shall mean any discrete facility or area, whether indoor or outdoor, associated with a public or private school, that students use commonly as part of their curriculum or extracurricular activities. A school facility is either adjacent to or owned by the school or school governing body, and the school or school governing body has the legal right to use the school facility at its discretion. The definition includes future school facility as defined by the ECMC.

Screen shall mean an opaque structure, typically located on top of, but integrated with the design of, a building that conceals mechanical, communications or other equipment from view from the surrounding rights-of-ways and properties.

Seasonal overflow shelters shall mean a homeless shelter that allows homeless persons to stay on its premises overnight from the beginning of November through the end of April, unless, because of inclement weather, specific and limited exceptions to such seasonal limitations are granted by the Director. Community based shelter services are exempt from this definition.

Semipublic use shall mean uses operated by recognized religious, philanthropic, educational or other charitable institutions on a nonprofit basis and in which goods, merchandise and services are not provided for sale on the premises.

Sensitive or specially valued species shall mean species included on the City of Fort Collins Species of Interest List, as developed and updated by the Natural Areas Department.

Services shall mean the programs and employees determined necessary by the city to provide for the adequate operation and maintenance of its public facilities and infrastructure, including, but not limited to, those educational, healthcare, social and other programs necessary to support the programs, public facilities and infrastructure required by this Land Use Code, the City Code, the policies and administrative manuals promulgated pursuant thereto, or state or federal law.

Shared parking shall mean required parking that is provided both on-site and in a municipal parking lot or a private lot constructed and located in accordance with the requirements of the city, where the same parking spaces are assigned to more than one (1) use at one (1) time.

Shelters for victims of domestic violence shall mean a residential facility operating twenty-four (24) hours per day and seven (7) days per week, the purpose of which facility is to receive, house, counsel and otherwise serve victims of domestic violence, as that term is defined in Section 18-6-800.3, C.R.S. and their dependents. Such facility may also include day care, professional, administrative and security staff.

Short term non-primary rental shall mean a dwelling unit that is not a primary residence and that is leased in its entirety to one (1) party at a time for periods of less than thirty (30) consecutive days. The term party as used in this definition shall mean one (1) or more persons who as a single group rent a short term non-primary rental pursuant to a single reservation and payment. The term short term non-primary rental shall not include the rental of a dwelling unit to the former owner immediately following the transfer of ownership of such dwelling unit and prior to the former owner vacating the dwelling unit. Short term non-primary rental is a distinct use from short term primary rental under the Land Use Code.

Short-term parking shall mean customer parking that has regular turnover. Parking that is intended to serve a retail business and provide access to commercial activity is short-term parking.

Short term primary rental shall mean a dwelling unit that is a primary residence of which a portion is leased to one (1) party at a time for periods of less than thirty (30) consecutive days. The term party as used in this definition shall mean one (1) or more persons who as a single group rent a short term primary rental pursuant to a single reservation and payment. An accessory dwelling unit that is not a primary residence is eligible to be

a short term primary rental if it is located on a lot containing a primary residence. A dwelling unit of a two-unit dwelling that is not a primary residence is eligible to be a short term primary rental if the connected dwelling unit is a primary residence and both dwelling units are located on the same lot. The term short term primary rental shall not include the rental of a dwelling unit to the former owner immediately following the transfer of ownership of such dwelling unit and prior to the former owner vacating the dwelling unit. Short term primary rental is a distinct use from short term non-primary rental under the Land Use Code.

Side alley, for purposes of Section 5.8.1 only, shall mean a minor way used primarily for vehicular or pedestrian access to the side, rather than the rear, of a historic resource. On a corner where a historic resource and a development site are divided by a single alley that serves as a side alley for the historic resource and a rear alley for the development site, the alley shall be considered a side alley.

Sign shall mean any writing (including letter, word or number), pictorial representation (including illustration or declaration), product, form (including shapes resembling any human, animal or product form), emblem (including any device, symbol, trademark, object or design that conveys a recognizable meaning, identity or distinction) or any other figure of similar character that is a structure or any part thereof or is written, painted, projected upon, printed, designed into, constructed or otherwise placed on or near a building, board, plate or upon any material object or device whatsoever, that by reason of its form, location, manner of display, color, working, stereotyped design or otherwise attracts or is designed to attract attention to the subject or to the premises upon which it is situated, or is used as a means of identification, advertisement or announcement. The term *sign* shall not include the following:

(A) Window displaying merchandise or products;

(B) Works of art that do not include commercial speech, such as branding;

(C) Products, merchandise or other materials that are offered for sale or used in conducting a business, when such products, merchandise, or materials are kept or stored in a location that is designed and commonly used for the storage of such products, merchandise or materials; and

(D) Any display that would otherwise be considered a sign, but that has been found by the Landmark Preservation Commission to be an integral part of a building that is designated as an historic landmark, and the display is a contributing feature of the historic character of such building. Sign face means the surface area of a sign that is designed for placement of text, symbols, or images. The sign face does not include the supporting structure, if any, unless the supporting structure is used for the display of text, symbols, or images. For wall signs, the sign face is equal to the sign area of the wall sign, or the area within any frame or color used to define, differentiate, or mount the wall sign, whichever is larger.

Sign, abandoned shall mean a sign that does not contain a message, or contains a commercial or event-based message that is obviously obsolete (*e.g.*, the name of a business that is no longer operational, or an advertisement for an event that has already occurred), for a continuous period of sixty (60) days or more.

Sign, applied or painted shall mean a type of wall sign that is applied to or painted on a building wall, such that the sign appears flush with, or within not more than one (1) inch of, the surface of the wall.

Sign, attached shall mean a flush wall sign, a window sign, a roof sign, or a projecting sign.

Sign, awning shall mean a sign that is painted on, integrated into, or attached to an awning. For the purposes of this definition, an awning is a projection from the building that is supported entirely from the exterior wall of the building, and that gives shelter from the sun or weather over doors, windows, or storefronts. An awning is different from a canopy in that an awning is covered with fabric or other flexible material.

Sign, cabinet shall mean a type of sign composed of a frame or external structure with a box-like design that encloses a sign face and other functional elements of the sign, including dimensional or electrical components.

Sign, canopy shall mean a type of sign with one face affixed to a canopy. For the purposes of this definition, a canopy is an attached or detached structure, open on at least one side, that is designed to provide overhead shelter from the sun or weather. Canopies include, but are not limited to, service station canopies, carports, porte-cochères, arcades, and pergolas. A canopy is different from an awning in that a canopy is not covered with fabric or flexible material.

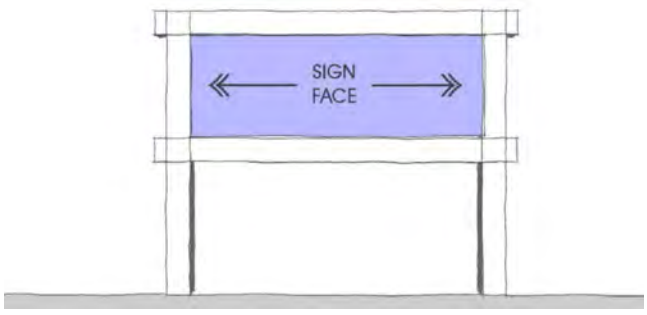
Sign, detached shall mean a sign that is not attached to or located inside of a building.

Sign, dimensional wall shall mean a three-dimensional sign that is attached to building wall, such that the elements of the sign do not extend more than eight (8) inches from the building wall. Dimensional wall signs include but are not limited to channel lettering.

Illustrative Dimensional Wall Sign

Sign face shall mean the surface area of a sign that is designed for placement of text, symbols, or images. The sign face does not include the supporting structure, if any, unless the supporting structure is used for the display of text, symbols, or images. For wall signs, the sign face is equal to the sign area of the wall sign, or the area within any frame or color used to define, differentiate, or mount the wall sign, whichever is larger.

Illustrative Sign Face



Sign, fin shall mean a projecting sign that is mounted on or affixed to a building wall, such that the sign face is generally perpendicular to the building wall. In addition to the wall mount or mounts, a fin sign may include ground-mounted support structures.

Illustrative Fin Signs

Sign, flush wall shall mean any sign attached to, painted on or erected against the wall of a building in such a manner that the sign face is parallel to the plane of the wall and is wholly supported by the wall. Framed banners attached directly to the building fascia are considered to be a type of flush wall sign. Unframed banners attached directly to the building fascia are not considered to be flush wall signs and shall be subject to the banner regulations contained in Section 5.16.2.

Sign, freestanding shall mean a detached sign that is supported by one (1) or more columns, uprights, poles or braces extended from the ground or from an object on the ground, or a detached sign that is erected on the ground, provided that no part of the sign is attached to any part of any building, structure or other sign.

Sign, ground shall mean a type of freestanding sign that is erected on the ground and that contains no more than twenty (20) percent total free air space. Free air space shall mean any open area between the top of the sign and the ground, vertically, and between the extreme horizontal limits of the sign extended perpendicular to the ground.

Sign, hanging shall mean a sign that is mounted under an awning or canopy as such terms are defined above, or under a cantilevered portion of a building. Generally, hanging signs are oriented perpendicular to the building wall.

Sign, illegal shall mean any sign that was erected in violation of the City Code at the time of its erection and has never been in conformance with the City Code, including this Land Use Code and that shall include signs that are posted, nailed or otherwise fastened or attached to or painted upon structures, utility poles, trees, fences or other signs.

Sign, individual letter shall mean a type of flush wall sign consisting of individual letters, incised letters, script or symbols with no background material other than the wall of the building to which the letters, script or symbols are affixed.

Sign, inflatable shall mean a sign that is constructed from an envelope flexible material that is given shape and/or movement by inflation. The phrase inflatable sign does not include balloons that are less than eighteen (18) inches in all dimensions.

Sign, interactive window shall mean one (1) or more illuminated screens that are displayed inside storefront windows that can be programed to allow customers to navigate content interactively from outside the window.

Sign, legal nonconforming shall mean any sign that was lawful and nonconforming under prior law on the day before the effective date of this Land Use Code or subsequent amendment thereof.

Sign, marquee shall mean a projecting sign that is designed as a canopy structure, which includes a combination of permanent lettering or graphics and either manual changeable copy or electronic message center components.

Sign, off-premise shall mean a sign or billboard that is used or intended for use to advertise, identify, direct or attract the attention of the public to a business, institution, product, organization, event or location offered or existing elsewhere than upon the same lot, tract or parcel of land where such sign or billboard is displayed.

Sign, optional residential shall mean a wall sign, affixed to a residential building on a street-facing elevation, with a single sign face that does not exceed four (4) square feet in area.

Sign, permanent shall mean a durable sign that is mounted or affixed for long-term use, not easily removed, and resistant to weather and other wear and tear.

Sign, portable shall mean a sign that is designed to be easily moved from one location to another, and when placed, is neither fastened to a permanent structure or building, nor staked or otherwise installed into the ground.

Illustrative Portable Sign

Sign, primary detached shall mean a detached sign that is visually dominant over other detached signs on the same property, due to its taller height and/or larger sign area.

Sign, primary fin shall mean a fin sign that is visually dominant over other fin signs on the same building, due to its taller height and/or larger sign area.

Sign, projected light shall mean any image, text, or other content that is projected onto an outdoor surface (e.g., a building wall or sidewalk) by a laser projector, video projector, video mapping, or other comparable technology, in a location such that the image, text, or content is obviously visible from outside of the premises.

Sign, projecting shall mean a type of attached sign that extends from a building wall, usually perpendicular to the wall's surface. Projecting signs include awning signs, fin signs, marquee signs, and hanging signs.

Sign, projecting wall shall mean any sign other than a flush wall sign that projects from and is supported by a wall or a building.

Sign, required shall mean a sign that is required by an applicable building code (e.g., address numbers) or health and safety regulations (e.g., the Occupational Safety and Health Act ("OSHA") or other laws or regulations, whether such sign is temporary or permanent.

Sign, roof shall mean a type of attached sign that is mounted onto a building's roof structure.

Sign, rooftop shall mean a sign erected upon or above a roof or above a parapet wall of a building.

Sign, secondary detached shall mean a detached sign that is subordinate to a primary detached sign in terms of height and/or sign area.

Sign, secondary fin shall mean a fin sign that is subordinate to a primary fin sign in terms of height and/or sign area.

Sign, secondary roof shall mean a sign that is mounted upon the horizontal plane of a flat roof structure of secondary roof of a building, which may include the roof of a canopy or porte-cochère that is attached to a building.

Sign side shall mean the combination of all faces or modules of a freestanding or ground sign that can be viewed from a single direction, except when such sign faces or modules are separated by an angle of more than two hundred seventy (270) degrees.

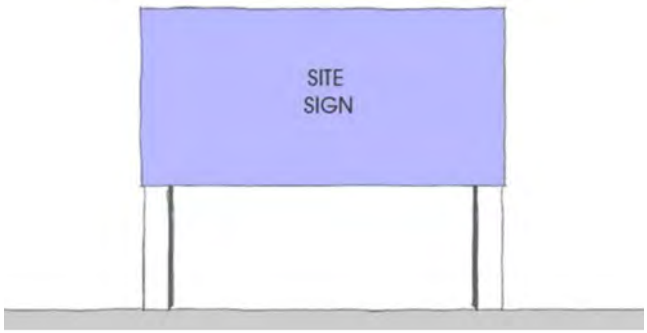
Sign, sidewalk shall mean a type of portable sign that is designed to be placed upon a hard surface in order to attract the attention of pedestrians.

Illustrative Sidewalk Sign

Sign, under-canopy shall mean a sign that is located beneath a permanent-roofed shelter covering a sidewalk, driveway or other similar area, which shelter may be wholly supported by a building or may be wholly or partially supported by columns, poles or braces extended from the ground.

Sign, site shall mean a type of temporary sign that is constructed of vinyl, plastic, wood, metal, or other comparable rigid material, that is displayed on a structure that includes at least two (2) posts.

Illustrative Site Sign



Sign, swing shall mean a type of temporary sign that is suspended from a horizontal swing post that is attached to a post that is staked into the ground. Swing signs may include riders that are mounted to the swing post or suspended under the sign panel.

Sign, temporary shall mean a sign that is designed or intended to be displayed for a short period of time.

Sign, vehicle-mounted shall mean any sign that is painted on, affixed to or otherwise mounted on any vehicle or on any object that is placed on, in or attached to a vehicle. For the purposes of this definition, the term vehicle shall include trucks, buses, vans, railroad cars, automobiles, tractors, trailers, motor homes, semi-tractors or any other motorized or nonmotorized transportational device, whether or not such vehicle is in operating condition.

Sign, wall shall mean a sign that is painted on, applied to, or affixed to a building wall. Wall signs include applied or painted signs, bulletin boards, cabinet signs, and dimensional wall signs.

Sign, wind-driven shall mean any sign consisting of one (1) or more banners, flags, pennants, ribbons, spinners, streamers, captive balloons, inflatable signs, or other objects or material fastened in such a manner as to move, upon being subjected to pressure by wind or breeze.

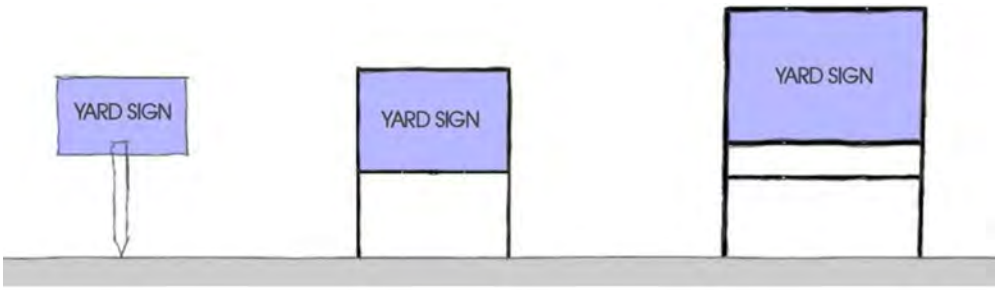
Sign, window shall mean a sign that is painted on, applied or attached to a window or door, or located within three (3) feet of the interior of the window or door and is visible from the exterior of the building.

Sign with backing shall mean any sign that is displayed upon, against or through any material or color surface or backing that forms an integral part of such display and differentiates the total display from the background against which it is placed.

Sign without backing shall mean any word, letter, emblem, insignia, figure or similar character or group thereof that is neither backed by, incorporated in nor otherwise made a part of any larger display area.

Sign, yard shall mean a type of temporary sign that is constructed of paper, vinyl, plastic, wood, metal or other comparable material, that is mounted on a stake or a frame structure (often made from wire) that includes one (1) or more stakes.

Illustrative Yard Signs



Site, for purposes of Section 5.8.1 only, shall mean the location of a significant event, a prehistoric or historic occupation or activity or a structure or object whether standing, ruined or vanished, where the location itself maintains historical or archeological value regardless of the value of any existing structure.

Site, for the purposes of Section 4.3.5(H) only, shall mean that area comprising the base of a City-owned structure on which is mounted wireless communication equipment subject to this Code and to other related transmission equipment already deployed on the ground surrounding such vertical structure; regarding private property structures, the site shall include the current boundaries of the leased or owned property and any access or utility easements currently related thereto.

Site specific development plan shall mean and be limited to a final plan as approved pursuant to this Land Use Code, including a plan approved pursuant to basic development review; or, under prior law in effect on the day before the effective date of this Land Use Code, any of the following: the final plan; the final subdivision plat; a minor subdivision plat; cluster development plans; group home review; a PUD Comprehensive Plan for the purpose of acquiring a vested property right with respect to uses, densities, development standards and engineering standards for which variances have been granted pursuant to Section 2.6.3(K); and a development agreement in connection with a PUD Comprehensive Plan that grants a vested property right for a period exceeding three (3) years. In addition, a site specific development plan shall mean a final plan or plat that was approved by Larimer County for property that, at the time of approval, was located in the county but has been subsequently annexed into the city. All references to districts or sections herein pertain to the law in effect on the day before the effective date of this Land Use Code and which is repealed by the adoption of this Land Use Code.

Small cell facility or SCF shall mean a WCF where each antenna is located inside an enclosure of no more than three (3) cubic feet in volume, or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three (3) cubic feet, and primary equipment enclosures are not larger than seventeen (17) cubic feet in volume. The following associated equipment may be located outside the primary equipment enclosure and, if so located, is not included in the calculation of equipment volume: electric meter, concealment, telecommunications demarcation box, ground-based enclosure, back-up power systems, grounding equipment, power transfer switch and cut-off switch. All associated equipment, even if located outside the primary equipment enclosure, shall be included within the definition of small cell facility.

Small scale reception center shall mean a place of assembly that may include a building or structure containing a hall, auditorium, a structure for housing such events (barns are the new rage) or ballroom used for celebrations or gatherings (such as weddings, graduations or anniversaries) for which the owner receives compensation for the use. The building or structure may also include meeting rooms and facilities for serving food. Outdoor spaces such as lawns, plazas, gazebos and/or terraces used for social gatherings or ceremonies are a common component of the center. A small scale reception center shall not include sporting events or concerts.

Solar energy system shall mean a system of solar collectors and other equipment that relies upon sunshine as an energy source and is capable of collecting, distributing and storing (if appropriate to the technology) the sun's radiant energy. A *solar energy system* includes, but is not limited to, ground-mounted and building-mounted photovoltaic, solar thermal or solar hot water panels, and light pole and electric charging station-mounted solar panels. Solar energy systems may be considered accessory uses to other uses on a lot, or principal uses if located on vacant lots.

Solar energy system, large-scale shall mean a solar energy system covering more than five (5) acres.

Solar energy system, medium-scale shall mean a solar energy system covering between one half (0.5) acre and five (5) acres.

Solar energy system, small-scale shall mean a solar energy system covering less than one-half (0.5) acre.

Solar-oriented lot shall mean:

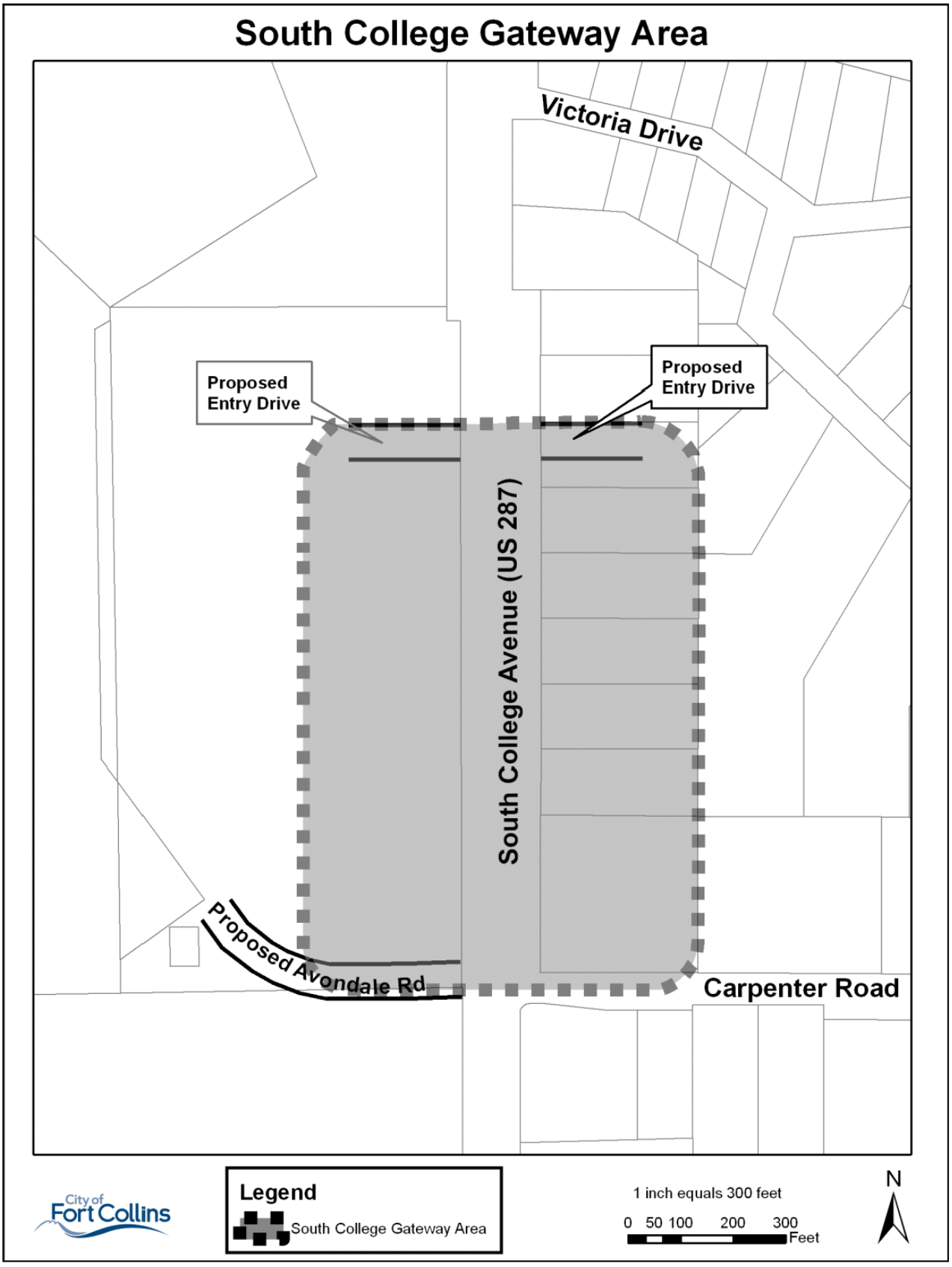
(A) A lot with a front lot line oriented to within thirty (30) degrees of a true east-west line. When the lot line abutting a street is curved, the "front lot line" shall mean the chord or straight line connecting the ends of the curve. For a flag lot, the "front lot line" shall mean the lot line that is most parallel to the closest street, excluding the "pole portion of the flag lot"; or

(B) A lot that, when a straight line is drawn from a point midway between the side lot lines at the required front yard setback to a point midway between the side lot lines at the required rear yard setback, is oriented to within thirty (30) degrees of true north along said line; or

(C) A corner lot with a south lot line oriented to within thirty (30) degrees of a true east-west line, which south lot line adjoins a public street or permanently reserved open space; provided, however, that the abutting street right-of-way or open space has a minimum north-south dimension of at least fifty (50) feet. For the purposes of this definition, "permanently reserved open space" shall include, without limitation, parks, cemeteries, golf courses and other similar outdoor recreation areas, drainage ditches and ponds, irrigation ditches and reservoirs, lakes, ponds, wetlands, open spaces reserved on plats for neighborhood use and other like and similar permanent open space.

Solid-to-void pattern shall mean the area of the façade covered by openings divided by the area of the solid wall, as a measure of the proportion of the area of fenestrations to that of the wall.

South College Gateway Area shall mean that area shown on the figure below:



Special habitat features shall mean specially valued and sensitive habitat features including key raptor habitat features including nest sites, night roosts and key feeding areas as identified by the Colorado Parks and Wildlife Division ("CPW") or the Fort Collins Natural Areas Department ("NAD"); key production areas, wintering areas and migratory feeding areas for waterfowl; key use areas for wading birds and shorebirds; heron rookeries; key use areas for migrant songbirds; key nesting areas for grassland birds; fox and coyote dens; mule deer winter concentration areas as identified by the CPW or NAD; prairie dog colonies one (1) acre or greater in size; key areas for rare, migrant or resident butterflies as identified by the NAD; areas of high terrestrial or aquatic insect diversity as identified by the NAD; remnant native prairie habitat; mixed foothill shrubland; foothills ponderosa pine forest; plains cottonwood riparian woodlands; and wetlands of any size.

Specified anatomical areas shall mean less than completely and opaquely covered human genitals, pubic region, buttocks, female breast or breasts below a point immediately above the top of the areola or human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Specified sexual activities shall mean:

(A) Human genitals in a state of sexual stimulation or arousal;

(B) Acts of human masturbation, sexual intercourse or sodomy;

(C) Fondling or other erotic touching of human genitals, pubic region, buttocks or female breast or breasts.

Stationary vendor shall mean an outdoor vendor who is licensed under Article XIV, Chapter 15 of the City Code to engage in stationary vending.

Stationary vending shall mean one (1) or more outdoor vendors vending on the same private parcel of land or lot for more than three (3) consecutive calendar days, or for more than three (3) calendar days within any calendar week, defined for purposes of this definition as Sunday through Saturday, and when vending, do so from a mobile food truck, pushcart, or any other vehicle as such terms are defined in Section 15-381 of the City Code.

Stockpiling shall mean the act by which soil or similar inorganic material to be used in connection with anticipated development on such parcel of property is deposited on such property. The stockpiling of material is intended to be temporary in terms of the appearance, shape and grade of the material. Stockpiling shall not include activities such as the grading, leveling or compaction of the deposited material or the surrounding ground. *Stockpiling* shall also not include residential landscaping activities.

Storefront the front portion of building façade at street level that belongs to one occupant.

Stormwater criteria manual shall mean the standards for design, planning, and implementation of practices and improvements to manage stormwater adopted under Chapter 26 of the City Code.

Street shall mean a public way (whether publicly or privately owned) used or intended to be used for carrying vehicular, bicycle and pedestrian traffic and shall include the entire area within the public right-of-way and/or public access easement; provided, however, that with respect to the application of Division 5.16, the term *street* shall only mean a dedicated public right-of-way (other than an alley) used or intended to be used for carrying motorized vehicular traffic.

Street-facing building elevation shall mean Building Elevation that is oriented toward a public or private street that abuts the property.

Street sidewalk shall mean the sidewalk within the right-of-way of a public street designed to the standards specified in the *Larimer County Urban Area Street Standards* or the sidewalk within the public access easement of a private street designed in accordance with the standards specified in subsection 5.4.6(J) of this Code.

Structure shall mean a combination of materials to form a construction for use, occupancy or ornamentation whether installed on, above or below the surface of land or water.

Structures associated with an occupied roof shall mean improvements to the primary or lowest portion of a roof deck of a structure that may include, but not be limited to, accessory rooftop improvements such as pools, decks, raised planters, outdoor furniture, shade structures, snack bars, televisions, clubhouse or other clubhouse-like elements. *Structures associated with an occupied roof* is not a story as that term is used in this Land Use Code.

Subdivider or *developer* shall mean any person, partnership, joint venture, limited liability company, association or corporation who participates as owner, promoter, developer or sales agent in the planning, platting, development, promotion, sale or lease of a development.

Subdivision shall mean the platting of a lot or the division of a lot, tract or parcel of land into one (1) or more lots, plots or sites.

Substantial change, for the purposes of Section 4.3.5(H) only, shall mean a modification which, after the modification of an eligible support structure, the structure meets any of the following criteria:

(A) For towers, it increases the height of the tower by more than ten percent (10%) or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty (20) feet, whichever is greater, as measured from the top of an existing antenna to the bottom of a proposed new antenna; for other eligible support structures, it increases the height of the structure by more than ten percent or more than ten (10) feet, whichever is greater, as measured from the top of an existing antenna to the bottom of a proposed new antenna;

(B) For towers, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty (20) feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six (6) feet;

(C) For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, as determined on a case-by-case basis based on the location of the eligible support structure but not to exceed four cabinets per application; or for base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than ten percent (10%) larger in height or overall volume than any other ground cabinets associated with the structure;

(D) It entails any excavation or deployment outside of the current site, except that, for towers other than towers in the public rights-of-way, it entails any excavation or deployment of transmission equipment outside of the current site by more than thirty (30) feet in any direction. The site boundary from which the 30 feet is measured excludes any access or utility easements currently related to the site.

(E) For any eligible support structure, it would defeat the concealment elements of the eligible support structure by causing a reasonable person to view the structure's intended stealth design as no longer effective; or

(F) For any eligible support structure, it does not comply with record evidence of conditions associated with the siting approval of the construction or modification of the eligible support structure or base

station equipment, unless the non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that would not exceed the thresholds identified in paragraphs (1)-(4) of this definition.

For purposes of determining whether a substantial change exists, changes in height are measured from the original support structure in cases where deployments are or will be separated horizontally, such as on building rooftops; in other circumstances, changes in height are measured from the dimensions of the tower or base station, inclusive of approved appurtenances and any modifications that were approved prior to February 22, 2012.

Supermarket shall mean a retail establishment primarily selling food, as well as other convenience and household goods, that occupies a space of not less than forty-five thousand one (45,001) square feet.

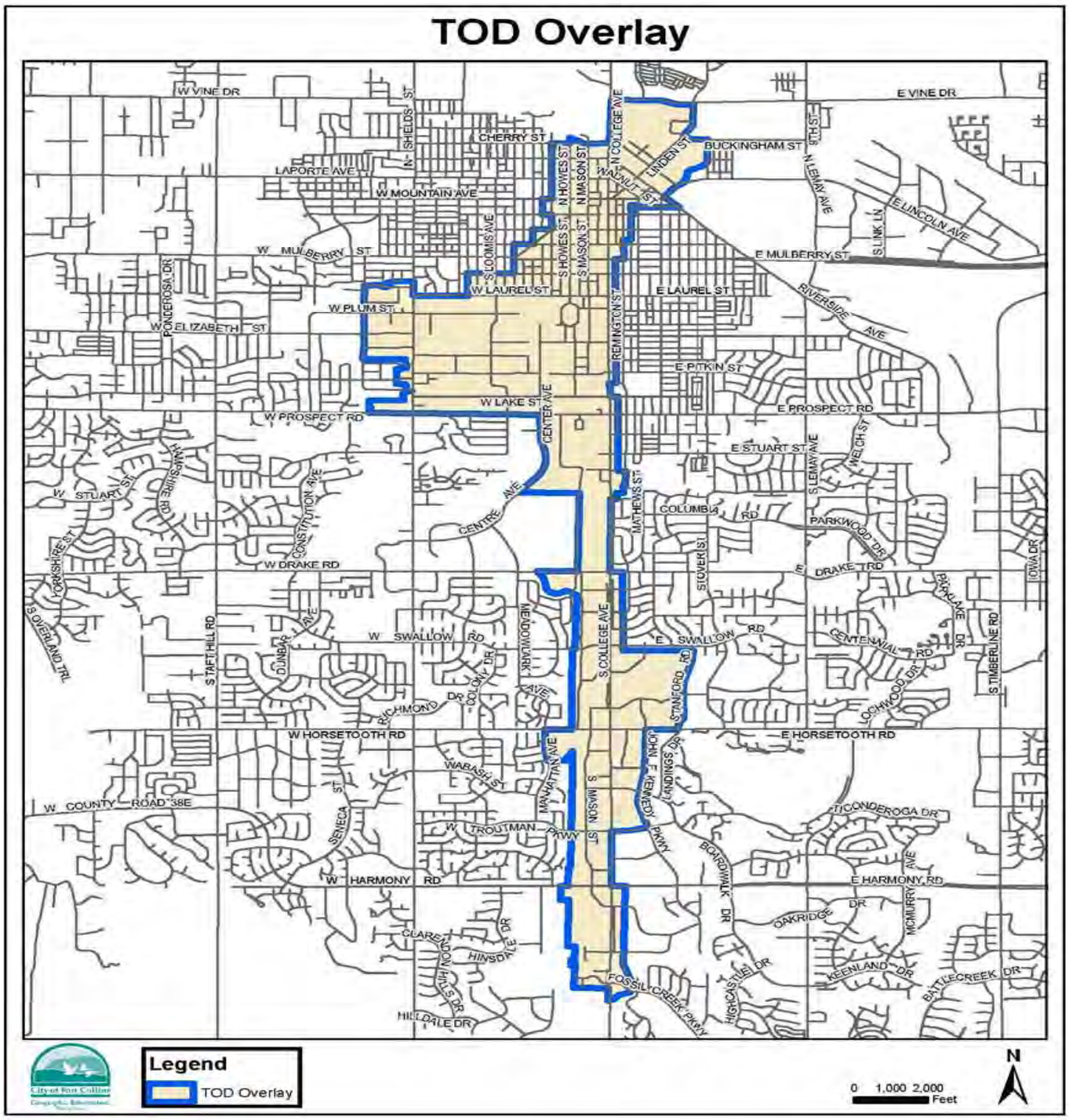
Temporary seasonal decorations shall mean decorations and signs that are clearly incidental, customary, and commonly associated with a holiday.

Temporary sign cover shall mean a type of temporary sign that is constructed of flexible material, designed to fit over a permanent sign face or mount.

Top of bank shall mean the topographical break in slope between the bank and the surrounding terrain. When a break in slope cannot be found, the outer limits of riparian vegetation shall demark the top of bank.

Tower shall mean any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including private, broadcast, and public safety services, unlicensed wireless services, fixed wireless services such as microwave backhaul, and the associated site. The term includes radio and television transmission towers, self-supporting lattice towers, guy towers, monopoles, microwave towers, common carrier towers, cellular telephone towers and other similar structures, though not including utility or light poles that are less than thirty-five (35) feet in height.

Transit-oriented development (TOD)Overlay Zone shall mean that area shown on the figure below:



Transit facility shall mean bus stops, bus terminals, transit stations, transfer points or depots without vehicle repair or storage.

Transmission equipment shall mean equipment that facilitates transmission for any FCC licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

Transportation Demand Management shall mean a comprehensive program utilizing strategies to be implemented that result in more efficient use of transportation and parking resources. These strategies typically include, but are not limited to, transit subsidies, enhanced bicycle facilities, car/vanpool options, and shared parking.

Tree shall mean:

(A) any self-supporting woody plant growing upon the earth that usually provides one (1) main trunk and produces a more or less distinct and elevated head with many branches; or
(B) any self-supporting woody plant, usually having a single woody trunk and a potential DBH of two (2) inches or more.

Tree significant shall mean any tree with a DBH of six (6) inches or more.

Truck stop shall mean an establishment engaged primarily in the fueling, servicing, repair or parking of tractor trucks or similar heavy commercial vehicles, including the sale of accessories and equipment for such vehicles. A truck stop may also include overnight accommodations, showers or restaurant facilities primarily for the use of truck crews.

Truck terminal shall mean an area or building where cargo or containers are stored and where trucks load and unload cargo or containers on a regular basis. The terminal cannot be used for permanent or long-term accessory storage for principal land uses at other locations. The terminal facility may include storage areas for trucks or buildings or areas for the repair of trucks associated with the terminal.

Type 1 review shall mean review by the Director in accordance with the provisions of Article 6. Also known as administrative review.

Type 2 review shall mean review by the Planning and Zoning Commission in accordance with the provisions of Article 6.

Unlimited indoor recreational use and facility shall mean establishments primarily engaged in operations and activities contained within large-scale gymnasium-type facilities such as for tennis, basketball, swimming, indoor soccer, indoor hockey or bowling.

Urban agriculture shall mean gardening or farming involving any kind of lawful plant, whether for personal consumption, sale and/or donation, except that the term *urban agriculture* does not include the cultivation, storage and sale of crops, vegetables, plants and flowers produced on the premises in accordance with Section 4.4.5(A) of this Code. Urban agriculture is a miscellaneous use that does not include plant nursery and greenhouse as a principal use and that is subject to licensing in accordance with Section 4.4.5(D) of this Code.

Vegetation shall mean trees, shrubs or vines.

Vehicle shall mean a truck, bus, van, railroad car, automobile, tractor, trailer, motor home, recreational vehicle, semi-tractor or any other motorized transportation device, regardless of whether it is in operating condition.

Vehicle major repair, servicing and maintenance shall mean any building, or portion thereof, where heavy maintenance activities such as engine overhauls, automobile/truck painting, body or fender work, welding or the like are conducted. Such use shall not include the sale of fuel, gasoline or petroleum products.

Vehicle minor repair, servicing and maintenance shall mean the use of any building, land area, premises or portion thereof, where light maintenance activities such as engine tune-ups, lubrication, carburetor cleaning, brake repair, car washing, detailing, polishing or the like are conducted.

Vehicle rentals for cars, light trucks and light equipment shall mean the use of any building, land area or other premises for the rental of cars, light trucks and/or light equipment.

Vehicle rentals for heavy equipment, large trucks and trailers shall mean the use of any building, land area or other premises for the rental of heavy equipment, large trucks or trailers.

Vehicle sales and leasing for cars and light trucks shall mean the use of any building, land area or other premises for the display and sale or lease of any new or used car or light truck, and may include outside storage of inventory, any warranty repair work or other repair service conducted as an accessory use.

Vehicle sales and leasing for farm equipment, mobile homes, recreational vehicles, large trucks and boats with outdoor storage shall mean the use of any building, land area or other premises for the display and sale or lease of new or used large trucks, trailers, farm equipment, mobile homes, recreational vehicles, boats and watercraft, and may include the outside storage of inventory, any warranty repair work or other repair service conducted as an accessory use.

Vested property right shall mean the right to undertake and complete the development and use of property under the terms and conditions of a site specific development plan.

Veterinary facilities, hospital shall mean any facility that is maintained by or for the use of a licensed veterinarian in the diagnosis, treatment or prevention of animal diseases.

Veterinary facilities, small animal clinic shall mean any facility maintained by or for the use of a licensed veterinarian in the diagnosis, treatment or prevention of animal diseases wherein the animals are limited to dogs, cats or other comparable household pets and wherein the overnight care of said animals is prohibited except when necessary in the medical treatment of the animal.

Veterinary facilities, small animal hospital shall mean any facility that is maintained by or for the use of a licensed veterinarian in the diagnosis, treatment or prevention of animal diseases wherein the animals are limited to dogs, cats or other comparable household pets and wherein the overnight care of said animals is permitted.

Visibility shall mean the quality or state of being perceivable by the eye. Visibility may be defined in terms of the distance at which an object can be just perceived by the eye or it may be defined in terms of the contrast or size of a standard test object, observed under standardized view-conditions, having the same threshold as the given object.

Walkway shall mean an off-street pedestrian path.

Warehouse shall mean a building used primarily for the storage of goods or materials excluding marijuana products.

Where physical conditions permit shall mean that the development application must comply with the regulation unless the applicant can demonstrate that it is not physically possible to do so due to land form, sight line requirements, existing trees, utilities, drainage requirements, access requirements or other constraints of the land.

Wholesale distribution shall mean a use primarily engaged in the sale and distribution of manufactured products, supplies or equipment, including accessory offices or showrooms, and including incidental retail sales, but excluding marijuana products, bulk storage of materials that are inflammable or explosive or that create hazardous or commonly recognized offensive conditions, and where the products, supplies or equipment that are distributed from the facility are not used or consumed on the premises. Activities customarily include receiving goods in bulk or large lots and assembling, sorting or breaking down such goods into smaller lots for redistribution or sale to others for resale.

Wildlife rescue and education center shall mean a facility that provides shelter services for the rescue and care of injured birds or other wildlife with associated education and research.

Window transparency shall mean the surface area of a window that is not covered or obstructed by a sign, such that the visibility through the window in both directions is not blocked by a sign.

Wireless communications facility or *WCF* shall mean a facility used to provide personal wireless services as defined at 47 U.S.C. Section 332 (c)(7)(C); or wireless information services provided to the public or to such classes of users as to be effectively available directly to the public via licensed or unlicensed frequencies; or wireless utility monitoring and control services. A WCF does not include a facility entirely enclosed within a permitted building where the installation does not require a modification of the exterior of the building; nor does it include a device attached to a building, used for serving that building only and that is otherwise permitted under other provisions of the Code. A WCF includes an antenna or antennas, including without limitation, directional, omni-directional and parabolic antennas, support equipment, small cell facilities, alternative tower structures, and towers. It does not include the support structure to which the WCF or its components are attached if the use of such structures for WCFs is not the primary use. The term does not include mobile transmitting devices used by wireless service subscribers, such as vehicle or handheld radios/telephones and their associated transmitting antennas, nor does it include other facilities specifically excluded from the coverage of this Code.

Working pad surface shall mean the portion of an oil and gas location that has an improved surface upon which oil and gas facilities are placed.

Workshop and custom small industry shall mean a facility wherein goods are produced or repaired by hand, using hand tools or small-scale equipment, including small engine repair, furniture making and restoring, upholstering, custom car or motorcycle restoring or other similar uses.

Yard shall mean that portion of the open area on a lot extending open and unobstructed from the ground upward from a lot line for a depth or width specified by the regulations for the district in which the lot is located.

Yard, front shall mean a yard extending across the full width of the lot between the front line and the nearest line or point of the building.

Yard, rear shall mean a yard extending across the full width of the lot between the rear lot line and the nearest line or point of the building.

Yard, side shall mean a yard extending from the front yard to the rear yard between the side lot line and the nearest line or point of the building.

Zero lot line development plan shall mean a development plan where one (1) or more buildings are placed on lots in such a manner that at least one (1) of the building's sides rests directly on a lot line, as measured from the outer edge of the foundation at the ground line, so as to enhance the usable open space on the lot.

Zero lot line structure shall mean a structure with at least one (1) wall conterminous with the lot line, which wall may include footings, eaves and gutters that may encroach onto the abutting lot under the authority of an encroachment and maintenance easement.

Zone district shall mean a zone district of the City as established in Article 2 unless the term is used in a context that clearly indicates that the term is meant to include both the zone district(s) of the City and the zone district(s) of an adjoining governmental jurisdiction.

Zoning Map shall mean the official zoning map adopted by the City by ordinance, as amended.

ORDINANCE NO. 137, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
UPDATING CITY CODE REFERENCES TO ALIGN WITH THE
ADOPTION OF THE REVISED LAND USE CODE

WHEREAS, City Council is adopting the revised Land Use Code pursuant to Ordinance No. 136, 2023, to replace the existing Land Use Code adopted in 1997 ("1997 Land Use Code") that will be codified separately as the Pre-2024 Transitional Land Use Regulations; and

WHEREAS, upon adoption of the Land Use Code, it will not go into effect until January 1, 2024; and

WHEREAS, the purpose of this Ordinance is to update various references in the City Code to the 1997 Land Use Code to align with the revised Land Use Code; and

WHEREAS, the City Council finds that the changes in this Ordinance are in the best interests of the City of Fort Collins in furthering adoption and utilization of the revised Land Use Code.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That Section 1-15 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 1-15. - General penalty and surcharges for misdemeanors offenses, petty offenses, traffic offenses, and traffic and civil infractions.

. . .

(f) Except as provided in Paragraph (4) below, any person found responsible for a violation of this Code designated as a civil infraction shall pay a civil penalty for such infraction of not more than three thousand dollars ($3,000). Said amount shall be adjusted for inflation on January 1 of each calendar year. For the purpose of this provision, *inflation* shall mean the annual percentage change in the United States Department of Labor, Bureau of Labor Statistics, consumer price index for Denver-Boulder, all items, all urban consumers, or its successor index, plus costs, damages and expenses as follows:

. . .

(3) If a defendant fails to answer a citation for a civil infraction or notice to appear in court or before a Referee for such infraction, a default judgment shall enter

in the amount of the civil penalty plus all costs, expenses and damages. In the event a defendant fails to pay a civil penalty, costs, damages or expenses within thirty (30) days after the payment is due or fails to pay a default judgment, the City may pursue any legal means for collection and, in addition, may obtain an assessment lien against the property that was the subject of the violation if the Code violation is designated as a nuisance in Chapter 20, is a violation of any civil infraction contained in Chapter 5, 12, 20, 24 or 27, or is a violation of Land Use Code Division 5.14 and was committed by an owner or tenant of the property.

. . .

Section 3. That Section 2-174 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 2-174. - Historic Preservation Commission.

. . .

(c) The Commission shall also have the following additional functions:

. . .

(4) To coordinate with the various other City boards, commissions and City staff members whose actions may affect the preservation of historic resources in the community; and

(5) To provide advice and written recommendations to the appropriate decision maker and/or administrative body regarding plans for properties containing or adjacent to sites, structures, objects or districts that: (a) have been determined to be individually eligible for local landmark designation or for individual listing in the State or National Registers of Historic Places; (b) are officially designated as a local or state landmark or are listed on the National Register of Historic Places; or (c) are located within an officially designated historic district or area.

. . .

Section 4. That Section 2-176 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 2-176. - Planning and Zoning Commission.

. . .

(b) The Commission shall have the following functions:

. . .

(2) To exercise the authority vested in it by state planning and zoning laws subject to the provisions of this Section and the following additional provisions and limitations:

. . .

c. The procedures for development review within the City shall be as established in the Land Use Code or, if applicable, the Pre-2024 Transitional Land Use Regulations. Accordingly, Section 31-23-215, C.R.S., shall have no force or effect in the City; and

. . .

Section 5. That Section 2-177 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 2-177. - Land Use Review Commission.

. . .

(b) The Commission shall have the following powers and duties:

(1) In accordance with and as limited by Land Use Code Division 6.18, to hear and decide appeals from and review any order, requirement, decision or determination made by an administrative official charged with enforcement of the regulations established by the Land Use Code or, if applicable, the Pre-2024 Transitional Land Use Regulations; and

(2) To authorize upon appeal in specific cases, and in accordance with the provisions of Division 6.14 of the Land Use Code, variances from the terms of the Land Use Code or, if applicable, of the Pre-2024 Transitional Land Use Regulations.

Section 6. That Section 4-2 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 4-2. - Exceptions.

The provisions of this Chapter are subject to such exceptions as may be provided in the Land Use Code or, if applicable, the Pre-2024 Transitional Land Use Regulations.

Section 7. That Section 4-117 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 4-117. - Sale of chickens and ducklings; quantity restricted; keeping of chickens and ducks.

. . .

(b) In those zone districts where the keeping of farm animals (as that term is defined in Article 7 of the Land Use Code) is not otherwise allowed, the keeping of chickens and/or ducks (poultry) shall be permitted subject to the following requirements and subject to all other applicable provisions of this Chapter.

. . .

Section 8. That Section 5-27 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 5-27. - Amendments and Deletions to the 2021 International Building Code.

The *2021 International Building Code* adopted in §5-26 is hereby amended to read as follows:

. . .

51. A new **CHAPTER 36 SUSTAIANABLE BUILDING CONSTRUCTION PRACTICES** is hereby added to read as follows:

. . .

3604.2 Definitions applicable to this Chapter:

Affordable Housing: Residential occupancies that meet the criteria established in the Land Use Code Article 7 as affordable housing.

. . .

Section 9. That Section 5-264 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 5-264. - Certificate required for occupancy of dwelling units contained in single-family or two-family dwellings in excess of limit; conditions; revocation or suspension.

(a) No dwelling unit contained in a single-family or two-family dwelling shall be occupied by more persons than the number of persons permitted under Section 5.14.1 of the Land Use Code unless a certificate of occupancy for an extra-occupancy rental house has been issued for such dwelling by the Building Official.

. . .

Section 10. That Section 5-265 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 5-265. - Posting; inspection of books and records; disclosure.

. . .

(c) Any person selling or leasing a dwelling unit shall forthwith provide all purchasers, lessees or sublessees of such unit with a written disclosure statement, on a form provided by the City, specifying the maximum permissible occupancy of such unit under Section 5.14.1 of the Land Use Code. Such disclosure statement shall be signed and dated by all parties to the transaction immediately upon execution of any deed, contract for purchase and sale or lease pertaining to such unit. In the case of a lease, the following shall apply:

. . .

Section 11. That Section 7.5-17 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 7.5-17. - Definitions.

When used in this Article, the following words and terms shall have the following meanings:

Building permit shall mean the permit required for new construction and additions under Division 6.1 of the Land Use Code, or, if applicable, Division 2.7 of the Pre-2024 Transitional Land Use Regulations, and the permit required for the installation of a mobile home pursuant to Subsection 18-8(b) of this Code; provided, however, that the term *building permit*, as used herein, shall not be deemed to include permits required for the following:

. . .

Dwelling shall mean a building used exclusively for residential occupancy, including single-family dwellings, two-family dwellings and multi-family dwellings, and which contains: (a) a minimum of eight hundred (800) square feet of floor area, or (b) in the case of a dwelling to be constructed on the rear portion of a lot in the LMN, MMN, OT, CCN, CCR, HC, or E zone districts, a minimum of four hundred (400) square feet of floor area, so long as a dwelling already exists on the front portion of such lot. The term dwelling shall not include hotels, motels, tents or other structures designed or used primarily for temporary occupancy. Any dwelling shall be deemed to be a principal building.

. . .

Section 12. That Section 7.5-19 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 7.5-19. - Imposition, computation and collection of fees.

. . .

(b) Notwithstanding any language to the contrary contained in this Article, development projects for which final approval of the associated Project Development Plan, as such terms are defined and described in the Pre-2024 Transitional Land Use Regulations, had been received prior to June 6, 2017, shall be required to pay the capital expansion fees at the rates in effect prior to June 6, 2017.

Section 13. That Section 7.5-24.1 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 7.5-24.1. - Entitlement to refund upon abandonment.

Fees collected pursuant to this Article may be refunded to the current owner of the real property for which the fee was paid in the event that the right to develop the property in accordance with the approved plan has been abandoned as provided in Section 6.3.10(B)(3) of the Land Use Code. Any such refund shall be processed in accordance with the procedures described in § 7.5-25. No such refund based upon abandonment shall be made until the following conditions have been met:

. . .

(2) the property is adequately fenced in accordance with the standards contained in Article 4 of the Land Use Code in such manner as to adequately protect, in the judgment of the City Manager, public safety;

. . .

Section 14. That Section 7.5-25 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 7.5-25. - Procedure to obtain refund.

(a) All applications for refund under this Article shall be submitted to the Financial Officer. Each application shall be in a form established by the Financial Officer, and shall contain the following:

. . .

(3) for refunds based upon abandonment, a copy of the approval of abandonment in accordance with Section 6.3.10(B)(3) of the Land Use Code; and

. . .

Section 15. That Section 7.5-47 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 7.5-47. - Definitions.

When used in this Article, the following words and terms shall have the following meanings:

. . .

Dwelling unit shall mean habitable floor space intended for the exclusive use of a single household with a single kitchen, or including a second kitchen pursuant to Land Use Code Section 5.3.6 located in any *single-unit* (attached or detached)*, two-unit* (attached or detached), or *multi-unit dwelling* or *building* containing dwelling unit(s) and nonresidential use(s), as these terms are defined in the Land Use Code.

. . .

Section 16. That Section 7.5-81 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 7.5-81. - Definitions.

When used in this Article, the following words and terms shall have the following meanings:

. . .

Traffic-generating development, commencement of shall mean the point of approval of a site specific development (as that term is defined in Article 7 of the Land Use Code), or the issuance of a building permit, whichever occurs first after the effective date of this Division.

. . .

Section 17. That Section 10-30 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 10-30. - Takings determinations.

Any person who claims that his or her property has been taken by reason of the application of any provision of this Article may apply to the Utilities Executive Director for a Takings Determination using the procedural and substantive requirements and criteria set forth in Division 6.19 of the City's Land Use Code, provided that, for the purpose of this Section, any reference therein to the Director of Community Development and Neighborhood Services shall be deemed to constitute a reference to the Utilities Executive Director and any reference to

the Land Use Code therein shall be deemed to constitute a reference to this Article. Said Takings Determination Procedures shall be exhausted before the institution of any judicial proceeding against the City claiming a taking of affected property.

Section 18. That Section 12-18 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 12-18. - Collection and disposal of refuse and rubbish.

. . .

(b) All refuse containers and recyclable materials that are not required to be enclosed at all times per Land Use Code Division 5.11 shall be screened except on collection day, or within twelve (12) hours preceding the time of regularly scheduled collection from the premises, when they may be placed curbside as defined in §15-411 of this Code. Refuse containers and recyclable materials shall not, at any time, be placed on the sidewalk or in such a manner as to impair or obstruct pedestrian, bicycle or vehicular traffic.

. . .

Section 19. That Section 14-21 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 14-21. - Purpose.

The standards and procedures in this Article apply in whole or in part to determine the eligibility of resources for designation as landmarks or landmark districts for (1) landmark or landmark district designation pursuant to Article III, (2) the analysis of proposed development pursuant to Land Use Code Division 5.8, and (3) property owner information.

Section 20. That Section 14-23 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 14-23. - Process for determining the eligibility of sites, structures, objects and districts for designation as Fort Collins landmarks or landmark districts.

(a) *Application*. An application for determining the eligibility of a resource or district for designation as a Fort Collins landmark or Fort Collins landmark district may be made by the owner(s) of the resource(s). A non-binding eligibility determination may be made by a development review applicant pursuant to Land Use Code Section 5.8.1(D)(2). Said application shall be filed with the Director. Staff may require a current intensive-level Colorado Cultural Resource Survey Form for each resource contained in an application. The applicant shall reimburse the City for the cost of having such a survey generated by a third-party expert selected by the City. Within fifteen (15) days of the filing of such application, and receipt of the intensive-level survey if required, staff shall determine whether the property or properties containing or comprising the

site, structure, object or district is eligible for designation as a Fort Collins landmark or landmark district based on the information contained in the application and any additional information that may be provided by others. A determination of eligibility shall be valid for five (5) years unless (1) the Director determines that significantly changed circumstances require a reevaluation of the prior eligibility determination, or (2) the site, structure, object or district is undergoing designation proceedings pursuant to Article 3 of this Chapter in which case, new determinations of eligibility shall occur pursuant to such Article. Staff shall promptly publish the determination in a newspaper of general circulation in the City and cause a sign to be posted on or near the property containing the resource under review stating that the property is undergoing historic review. Said sign shall be readable from a point of public access and shall state that more information may be obtained from staff.

. . .

Section 21. That Section 15-108 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 15-108. - All solicitation prohibited by posting of "No Solicitation" or "No Trespassing" sign.

(a) No solicitor, whether commercial or noncommercial, shall enter or remain upon any private premises in the City if a "No Solicitation" or "No Trespassing" sign is posted at or near the entrance(s) to such premises. For the purposes of this provision, if an occupant of a multi-unit dwelling, as defined in Division 7.2 of the Land Use Code, wishes to prohibit door-to-door solicitation by the posting of a sign, the sign prohibiting solicitation must be posted at or near the entrance(s) to the occupant's individual dwelling.

. . .

Section 22. That Section 15-381 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 15-381. - Definitions.

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

. . .

Neighborhood zone district shall mean one (1) of the following zone districts, as established and described in Article 6 and Article 2 of the Land Use Code: Rural Lands (RUL); Urban Estate (UE); Residential Foothills (RF); Low Density Residential (RL); Low Density Mixed-Use Neighborhood (LMN); Medium Density Mixed-Use Neighborhood (MMN); Old Town (OT); and High Density Mixed-Use Neighborhood (HMN).

Non-neighborhood zone district shall mean any zone district, as established in and described in Article 6 and Article 2 of the Land Use Code, that is not a neighborhood zone district.

. . .

Section 23. That Section 15-387 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 15-387. - Restrictions and operation.

. . .

(b) The vehicles, structures, devices and other similar items described in the license for any outdoor vendor shall not be located by the vendor in any of the following manners or places:

. . .

(5) Upon a public sidewalk within the Downtown Zone District, as defined and established in Article 2 and Article 6 of the Land Use Code (except as a concessionaire of the City);

. . .

(p) The following additional requirements shall apply to particular types of outdoor vendor licensees, as specified:

. . .

(6) Stationary vendors shall only vend on private parcels of land or lots within non-neighborhood zone districts, as defined and established in Article 2 and Article 6 of the Land Use Code, and they shall not vend from a private parcel or lot within any neighborhood zone district.

Section 24. That Section 15-475 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 15-475. - Location and selection criteria.

(a) No medical marijuana store shall be issued a license if, at the time of application for such license, the proposed location is:

. . .

(4) Within the boundaries of any RUL, UE, RF, RL, LMN, MMN, OT or HMN residential zone district;

(5) In a residential unit.

. . .

Section 25. That Section 15-615 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 15-615. - Location criteria.

(a) No applicant shall be issued a retail marijuana store license if, at the time of application for such license, such location is:

. . .

(4) Within the boundaries of any RUL, UE, RF, RL, LMN, MMN, OT or HMN residential zone district;

(5) In a residential unit;

. . .

Section 26. That Section 15-641 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 15-641. - Definitions.

The following definitions shall apply to this Article:

. . .

Dwelling unit shall mean habitable floor space intended for the exclusive use of a single household with a single kitchen, or including a second kitchen pursuant to Land Use Code Section 5.3.6, located in a single-unit (attached or detached), two-unit (attached or detached), or multi-unit dwelling or building containing dwelling unit(s) and nonresidential use(s) as such terms are defined in the Land Use Code.

. . .

Short term primary rental shall mean a dwelling unit that is a primary residence of which a portion is leased to one (1) party at a time for periods of less than thirty (30) consecutive days. An accessory dwelling unit, as defined in the Land Use Code, that is not a primary residence is eligible to be a short term primary rental and may be licensed as a short term primary rental if it is located on a lot containing a primary residence. A dwelling unit of a two-unit dwelling, as defined in the Land Use Code, that is not a primary residence is eligible to be a short term primary rental and may be licensed as a short term primary rental if the connected dwelling unit is a primary residence

and both dwelling units are located on the same lot. The term short term primary rental shall not include the rental of a dwelling unit to the former owner immediately following the transfer of ownership of such dwelling unit and prior to the former owner vacating the dwelling unit.

Section 27. That Section 15-644 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 15-644. - Licensing requirements.

(a) The following are the minimum requirements that must be satisfied by the applicant for the issuance of a short term primary rental license.

. . .

(3) The dwelling unit must comply with all applicable federal, state, and local laws including, but not limited to, the Code of the City of Fort Collins and Land Use Code, and in particular, Land Use Code Section 5.9.1(K)(1)(m) which sets forth applicable parking requirements.

. . .

(b) The following are the minimum requirements that must be satisfied by the applicant for the issuance of a short term non-primary rental license.

. . .

(3) The dwelling unit must comply with all applicable federal, state, and local laws, including, but not limited to, the Code of the City of Fort Collins and Land Use Code, and in particular, Land Use Code Section 5.9.1(K)(1)(m) which sets forth applicable parking requirements.

. . .

Section 28. That Section 15-646 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 15-646. - Licensing of short term primary and non-primary rentals existing prior to Land Use Code restrictions.

. . .

(b) In addition to satisfying (a) above, the applicant must satisfy the requirements set forth in § 15-644 in order to be eligible for a license. License applications submitted pursuant to this Section on or before October 31, 2017, do not need to comply with the parking requirements in Land Use Code Section 5.9.1(K)(1)(m).

. . .

(e) Should ownership of a dwelling unit licensed pursuant to § 15-646 be transferred, and such license was continuously valid until the transfer of ownership, the new owner is eligible for a license identical in scope to the previously issued license provided: (1) the new owner applies for a license within thirty (30) calendar days of the transfer of ownership; (2) the dwelling unit complies with the parking requirements in the Land Use Code Section 5.9.1(K)(1)(m); and (3) any license issued pursuant to § 15-646 is continuously maintained. Should a license issued to the new owner under this Section be revoked, not be renewed, or lapse for any period of time, the new owner shall no longer be eligible for a license for such dwelling unit pursuant to this Section.

. . .

Section 29. That Section 15-648 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 15-648. - License regulations.

Upon issuance of a license pursuant to this Article, the following requirements must be met in order for the license to remain valid. Failure to comply with any of the following regulations may result in revocation, suspension, or non-renewal of the issued license pursuant to § 15-649:

. . .

(3) The licensee shall comply with all applicable Code of the City of Fort Collins and Land Use Code provisions including, but not limited to, the Code of the City of Fort Collins Chapter 5, Buildings and Building Regulations, and the Code of the City of Fort Collins Chapter 20, Nuisances, Chapter 25, Taxation, and Land Use Code Section 5.9.1(K)(1)(m).

. . .

Section 30. That Section 20-23 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 20-23. - Maximum permissible noise levels.

(a) A noise measured or registered in the manner provided in § 20-24 from any source at a level which is in excess of the dB(A) established for the time period and zoning districts listed in this Section is hereby declared to be a noise disturbance and is unlawful. When a noise source can be identified and its noise measured in more than one (1) zoning district, the limits of the most restrictive zoning district shall apply.

Zoning Districts

Maximum Nose [dB(A)]

Areas zoned:

. . .

Old Town (OT)

. . .

Section 31. That Section 20-42 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 20-42. - Weeds, unmowed grasses, refuse and rubbish nuisances prohibited.

. . .

(g) Notwithstanding any other provision of this Section which may be construed to the contrary, the owner or occupant of any property that includes an area that has been established as a natural habitat or feature pursuant to Section 5.6.1(D) of the Land Use Code, or a buffer zone for natural habitat or feature pursuant to Section 5.6.1(E) of the Land Use Code, which area is managed and maintained in accordance with specific conditions established in a site-specific development plan or development agreement, shall not be required to mow said areas other than as required in such development plan or agreement.

. . .

Section 32. That Section 20-111 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 20-111. Definitions.

Unless the context clearly requires otherwise, the following words, terms, and phrases, when used in this Article, shall have the meanings ascribed to them in this Section:

. . .

Nuisance activity means any of the following violations and nuisances occurring or existing on a property and committed by any person, including, without limitation, by an owner, lessee, agent, occupant, or trespasser:

. . .

(8) Dwelling unit occupancy limits - Section 5.14.1 of the Fort Collins Land Use Code.

. . .

Section 33. That Section 22-99 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 22-99. - Reallocation of assessments.

(a) In the event that any parcel of land subject to assessment under this article undergoes subdivision, as defined in Article 7 of the Land Use Code, the owner(s) of all parcels constituting the original tract shall immediately propose in writing to the Financial Officer a reallocation of the assessment as to all such smaller parcels. Such proposal shall include the following information as to each parcel within the original tract:

. . .

Section 34. That Section 23-83 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 23-83. Investigation of application information; fee; permit modification and revocation.

(a) The application shall be made to the City Manager. The City Manager shall make or cause to be made an investigation of the information contained in the application and prior to the issuance of a permit. In investigating the application, the City Manager may consult with such City departments as they deem necessary to determine whether the application should be approved. The City Manager may issue the permit for such duration and upon such other terms and conditions as the City Manager determines are necessary to protect the public welfare if the following criteria are met:

. . .

(4) In addition to satisfying the above three criteria, the following requirements apply to the following proposed encroachments:

. . .

b. As a condition of the issuance of any permit for the purpose of serving food and/or beverages as referenced in Subsection 23-82(b), the permittee shall:

. . .

4. In order for an application for an encroachment for a wireless communication facility (as defined in Article 7 of the Land Use Code) to be approved, the applicant must show to the satisfaction of the City Manager that the applicable criteria contained in Section 4.3.5(H) of the Land Use Code have been met.

. . .

Section 35. That Section 23-176 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 23-176. - Design standards.

. . .

(c) *Conditions*.

. . .

(5) Landscape requirements.

. . .

d. No tree may be removed in siting a SCF, unless authorized by the City Forester. To obtain authorization the applicant shall show wireless services are not technically feasible without tree removal; the applicant's plan minimizes the total number of trees to be removed, avoids removal of any tree larger than four (4) inches at four and one-half (4 ½) feet high, and replaces any tree to be removed at a ratio of 2:1; and all new trees meet the replacement size standards in Section 5.10.1(D) of the Land Use Code.

. . .

Section 36. That Section 24-1 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 24-1. - Signs on streets, sidewalks and public rights-of-way prohibited; removal; exceptions; permit.

Notwithstanding the provisions of § 17-42, the following signs shall be permitted on streets, sidewalks and other areas owned by the City:

(1) Signs hanging above City sidewalks provided that such signs are solely connected to private property and provided that such signs are allowed under Division 5.16 of the City's Land Use Code.

. . .

Section 37. That Section 24-42 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 24-42. - Maintenance.

. . .

(c) It shall be the duty of any property owner whose property is adjacent to a pedestrian/bicycle path which was required by the City to be constructed pursuant to the provisions of the Land Use Code or, if applicable, the Pre-2024 Transitional Land Use Regulations, to maintain the paved surface of said pedestrian/bicycle path so that the condition of the same does not endanger the public.

Section 38. That Section 24-95 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 24-95. - Obligation for construction.

. . .

(c) If the City has constructed such local portion of a public street adjacent to undeveloped property or property that may be redeveloped, the City may require, at or before the time of issuance of any building permit for new development or change of use, that the owner of any benefitted adjacent property repay to the City its cost in acquiring the necessary right-of-way and constructing such local portion of such street or other related improvements. For the purpose of this provision, benefit to the adjacent property may include, among other things, the construction of improvements that will allow the adjacent property to be developed in accordance with the requirements of Section 5.4.10 of the Land Use Code where, in the absence of the improvements, such development would not be allowed to proceed. The amount of reimbursement to be paid to the City under this Subsection shall be no less than the original cost of the right-of-way and improvements plus any mutually agreed-upon amount to reflect the effects of inflation, if any. These adjustments may be based on the construction cost index for Denver, Colorado, as published monthly by the Engineering News Record. (If said index shows deflation, the adjustment shall be made accordingly, but not below the original cost as submitted by the Installing Developer and approved by the City Engineer.) The *original cost of the right-of-way and improvements* shall mean the cost of right-of-way acquisition, financing, engineering, construction and any other costs actually incurred by the City which are directly attributable to the improvements.

Section 39. That Section 26-94 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 26-94. - Individual service lines for each building required.

(a) Each property shall be served by its own service line, and no connection with the water utility shall be made by extending the service line from one (1) property to another property. Each building shall be served by a separate service line; however, the Utilities Executive Director may require that a building be served by more than one (1) service line. Separate service lines and meters for irrigation purposes shall be required for all properties, except for: (1) single-family residences; (2) duplex residences; and (3) properties where the annual use for irrigation under the water budget chart under the Land Use Code Section 5.10.1(E)(3)(b) is less than 30,000 gallons per year. For

purposes of this Section, the term *building* means a structure standing alone, excluding fences and covered walkways. A separate accessory structure is a separate building. To qualify as one (1) building, all portions, additions or extensions must be connected by an attachment that is an enclosed part of the building and usable by the occupants.

(b) Notwithstanding the provisions of Subsection (a) of this Section, the Utilities Executive Director may, after review and approval of the related plans and specifications, authorize the service of more than one (1) building by a single service line, provided that each of the following requirements is met:

. . .

(3) If the service is for residential use, only one (1) of the buildings may be used as a residential dwelling unless the buildings are located on a single platted lot and one (1) of the buildings is an accessory dwelling unit. For purposes of this Section, the term accessory dwelling unit shall have the same meaning as in the Land Use Code.

(4) Plant investment fees, water supply requirements and any other applicable charges required in connection with the additional building to which service is to be provided shall be remitted as provided in this Article. For an accessory dwelling unit, additional plant investment fees and water supply requirements, as well as monthly meter rates and any other water-related charges, shall be determined based on the addition of a new dwelling unit on the property; and

. . .

(c) Notwithstanding the provisions of Subsection (a) above, the Utilities Executive Director may, after review and approval of the related plans and specifications, authorize the service of more than one (1) property by a single, common, private water service line, provided that:

(1) The properties to be served by the line must be single-family attached dwellings on separate platted lots as the term lot is defined in the Land Use Code.

. . .

Section 40. That Section 26-149 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 26-149. - Water supply requirement (WSR); nonresidential service.

. . .

(b) The minimum WSR shall be calculated using the table in this subsection. The Utilities Executive Director shall determine the type of use to be used based on all relevant information and the common meaning of the listed uses. If various portions of a property are used for separate uses, the WSR for the various portions of the property shall be calculated separately and aggregated to determine the WSR for the entire property. The WSR for any use not addressed by the table shall be calculated pursuant to Subsection (c).

Use	***WSR Calculation***
. . .	. . .
Irrigation	Pursuant to water budget chart, Land Use Code Section 5.10.1(E)(3)(b)
. . .	. . .

. . .

Section 41. That Section 26-256 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 26-256. - Individual service lines for each building required.

. . .

(b) Notwithstanding the provisions of Subsection (a) of this Section, the Utilities Executive Director may, after review and approval of the related plans and specifications, authorize the service of more than one (1) building by a single service line, provided that each of the following requirements is met:

. . .

(3) If the service is for residential use, only one (1) of the buildings may be used as a residential dwelling unless the buildings are located on a single platted lot and one (1) of the buildings is an accessory dwelling unit. For purposes of this Section, the term accessory dwelling unit shall have the same meaning as in the Land Use Code;

(4) Plant investment fees and any other applicable charges required in connection with the additional building to which service is to be provided shall be remitted as provided in this Article. For an accessory dwelling unit, additional plant investment fees, as well as monthly meter rates and any other water-related charges, shall be determined based on the addition of a new dwelling unit on the property; and

. . .

(c) Notwithstanding the provisions of Subsection (a) above, the Utilities Executive Director may, after review and approval of the related plans and specifications, authorize the service of more than one (1) property by a single, common, private sewer service line, provided that:

(1) The properties to be served by the line must be single-family attached dwellings on separate platted lots as the term lot is defined in the Land Use Code.

. . .

Section 42. That Section 26-464 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 26-464. - Residential energy service, schedule R.

. . .

(b) *Applicability*. This schedule applies to residential customers for all domestic uses in single-family dwellings, individually metered apartments and home occupations as defined in Article 7 of the Land Use Code. This schedule may also be applied to existing master metered residential buildings served under this schedule prior to January 1, 1980. Master metering is not available for new or remodeled residential buildings with more than one (1) dwelling unit unless authorized by the Utilities Executive Director. This schedule does not apply to auxiliary or standby service.

. . .

Section 43. That Section 26-465 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 26-465. - All-electric residential service, schedule RE.

. . .

(b) *Applicability.* This schedule applies to residential customers qualifying under subsection (a) who opt not to receive services under schedule R, for all domestic uses in single-family private dwellings, individually metered apartments and home occupations as defined in Article 7 of the Land Use Code.

. . .

Section 44. That Section 26-466 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 26-466. - General service, schedule GS.

. . .

(b) *Applicability.*

. . .

(2) This schedule does not apply to single-family, individually metered residential units unless:

. . .

b. The unit is not eligible for a Home Occupation License as specified in Article 4 of the Land Use Code.

. . .

Section 45. That the changes in this Ordinance No. 137, 2023, shall not go into effect until the revised Land Use Code goes into effect.

Section 46. That Ordinance No. 123, 2022, Updating City Code References to Align with the Adoption of the Land Development Code, is hereby rescinded and shall be of no further force or effect.

Introduced, considered favorably on first reading and ordered published this 3rd day of October, 2023, and to be presented for final passage on the 17th day of October, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

Passed and adopted on final reading this 17th day of October, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

ORDINANCE NO. 138, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING THE ZONING MAP OF THE CITY OF FORT COLLINS
TO RENAME ALL NEIGHBORHOOD CONSERVATION LOW DENSITY,
NEIGHBORHOOD CONSERVATION MEDIUM DENSITY, AND NEIGHBORHOOD
CONSERVATION BUFFER ZONE DISTRICTS TO THE OLD TOWN ZONE DISTRICT IN
CONJUNCTION WITH THE ADOPTION OF THE REVISED LAND USE CODE

WHEREAS, the City is adopting the revised Land Use Code to replace the Land Use Code originally adopted on December 2, 1997, ("1997 Land Use Code") via Ordinance 190, 1997; and

WHEREAS, the revised Land Use Code will, among other changes, rename all existing Neighborhood Conservation Low Density ("N-C-L"), Neighborhood Conservation Medium Density ("N-C-M"), and Neighborhood Conservation Buffer ("N-C-B") zone districts to become the Old Town ("OT") zone district which is further divided into the following sub-districts:

- OT-A, Old Town District, Low;
- OT-B, Old Town District, Medium; and
- OT-C; Old Tow District, High

; and

WHEREAS, the renaming is to better align the purpose of the Old Town zone district under the revised Land Use Code with its name to facilitate public understanding and use of the revised Land Use Code; and

WHEREAS, the rezoning to effectuate the renaming will change only the name of the zone districts and will not affect the existing Sign District Map or Lighting Context Area Map designations within the zone districts being renamed; and

WHEREAS, whereas the existing N-C-L, N-C-M, and N-C-B zone districts are greater than 640 acres in size and pursuant to 1997 Land Use Code Section 2.9.4(H), any rezoning greater than 640 acres in size is a legislative rezoning committed to the legislative discretion of the City Council; and

WHEREAS, the City Planning and Zoning Commission, at its meeting on September 27, 2023, recommended on a 4-1 vote (Haefele Nay) that City Council rename the N-C-L, N-C-M, and N-C-B zone districts to become the OT zone district; and

WHEREAS, the required notice of this rezoning was published in the *Fort Collins Coloradoan* and the text of the notice is attached hereto as Exhibit "A"; and

WHEREAS, the City Council has determined that the proposed rezoning is consistent with the City's Comprehensive Plan, better aligns the purpose of the zone district with its name under the revised Land Use Code, and facilitates public understanding and use of the revised Land Use Code; and

WHEREAS, City Council has considered the rezoning and finds it to be in the best interests of the City and has determined that the N-C-L, N-C-M, and N-C-B zone districts shall hereafter be renamed the Old Town (OT) zone district.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That the Zoning Map of the City of Fort Collins adopted pursuant to Section 1.3.2 of the Land Use Code of the City of Fort Collins, and referenced in revised Land Use Code Section 6.1.2, is hereby changed and amended to rename all existing Neighborhood Conservation Low Density (N-C-L), Neighborhood Conservation Medium Density (N-C-M), and Neighborhood Conservation Buffer (N-C-B) zone districts to the Old Town (OT) zone district, as further divided in sub-districts OT-A, OT-B, and OT-C as shown on Exhibit "B" attached hereto and incorporated herein.

Section 3. That the existing Sign District Map and Lighting Context Area Map designations within the existing N-C-L, N-C-M, and N-C-B shall not be affected by the renaming to the OT zone district and shall remain in effect in the same locations within the OT zone district.

Section 4. That the renaming to the OT zone district set forth in this Ordinance shall not go into effect until the Land Use Code adopted by Ordinance 136, 2023, goes into effect.

Section 5. That the City Manager is hereby authorized and directed to amend said Zoning Map in accordance with this Ordinance.

Section 6. That Ordinance No. 115, 2022, Amending the Zoning Map of the City of Fort Collins to Rename All Neighborhood Conservation Low Density, Neighborhood Conservation Medium Density, and Neighborhood Conservation Buffer Zone Districts to the Old Town Zone District In Conjunction With the Adoption of the Land Development Code, is hereby rescinded and shall be of no further force or effect.

Introduced, considered favorably on first reading and ordered published this 3rd day of October, 2023, and to be presented for final passage on the 17th day of October, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

Passed and adopted on final reading this 17th day of October, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

FTC-003160

EXHIBIT A TO ORDINANCE NO. 138, 2023

FORT·COLLINS
COLORADOAN

Invoice Text
NOTICE OF PUBLIC HEARING NOTICE is hereby given th

STATE OF COLORADO
COUNTY OF LARIMER
AFFIDAVIT OF PUBLICATION

CITY OF FC-CLERK-LEGALS
300 LAPORTE AVE

FORT COLLINS CO 80521

I, being duly sworn, deposes and says that said is the legal clerk of the Fort Collins Coloradoan; that the same is a daily newspaper of general circulation and printed and published in the City of Fort Collins, in said county and state; that the notice or advertisement, of which the annexed is a true copy, has been published in said daily newspaper and that the notice was published in the regular and entire issue of every number of said newspaper during the period and time of publication of said notice, and in the newspaper proper and not in a supplement thereof; that the publication of said notice was contained in the issues of said newspaper dated on

09/10/23

that said Fort Collins Coloradoan has been published continuously and uninterruptedly during the period of at least six months next prior to the first publication of said notice or advertisement above referred to; that said newspaper has been admitted to the United States mails as second-class matter under the provisions of the Act of March 3, 1879, or any amendments thereof; and that said newspaper is a daily newspaper duly qualified for publishing legal notices and advertisements within the meaning of the laws of the State of Colorado.

Legal Clerk

Subscribed and sworn to before me, within the County of Brown, State of Wisconsin this 10th of September 2023.

Notary Public

4-6-27

Notary Expires

DENISE ROBERTS
Notary Public
State of Wisconsin

Legal No.0005820245

Affidavit Prepared
Sunday, September 10, 20 4:17 am

Ad#:0005820245
P O :
This is not an invoice
# of Affidavits:1

avits:

NOTICE OF PUBLIC HEARING

NOTICE is hereby given that, on October 3, 2023, at 6:00 p.m., or as soon thereafter as the matter may come on for hearing in the Council Chambers in the City Hall, 300 Laporte Avenue, Fort Collins, Colorado, the Fort Collins City Council will hold a public hearing on the rezoning to rename the existing Neighborhood Conservation Low Density ("N-C-L"), Neighborhood Conservation Medium Density ("N-C-M"), and Neighborhood Conservation Buffer ("N-C-B") zone districts under the current Land Use Code to the Old Town Neighborhood ("OT") zone district effective upon the effective date of the revised Land Use Code. Because the combined area of the N-C-L, N-C-M, and N-C-B zone districts exceed 640 acres, this is a legislative rezoning pursuant to Land Use Code Division 2.9.

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 970.221.6515 (TDD 224-6001) for assistance.

Dated this 10th day of September, 2023.

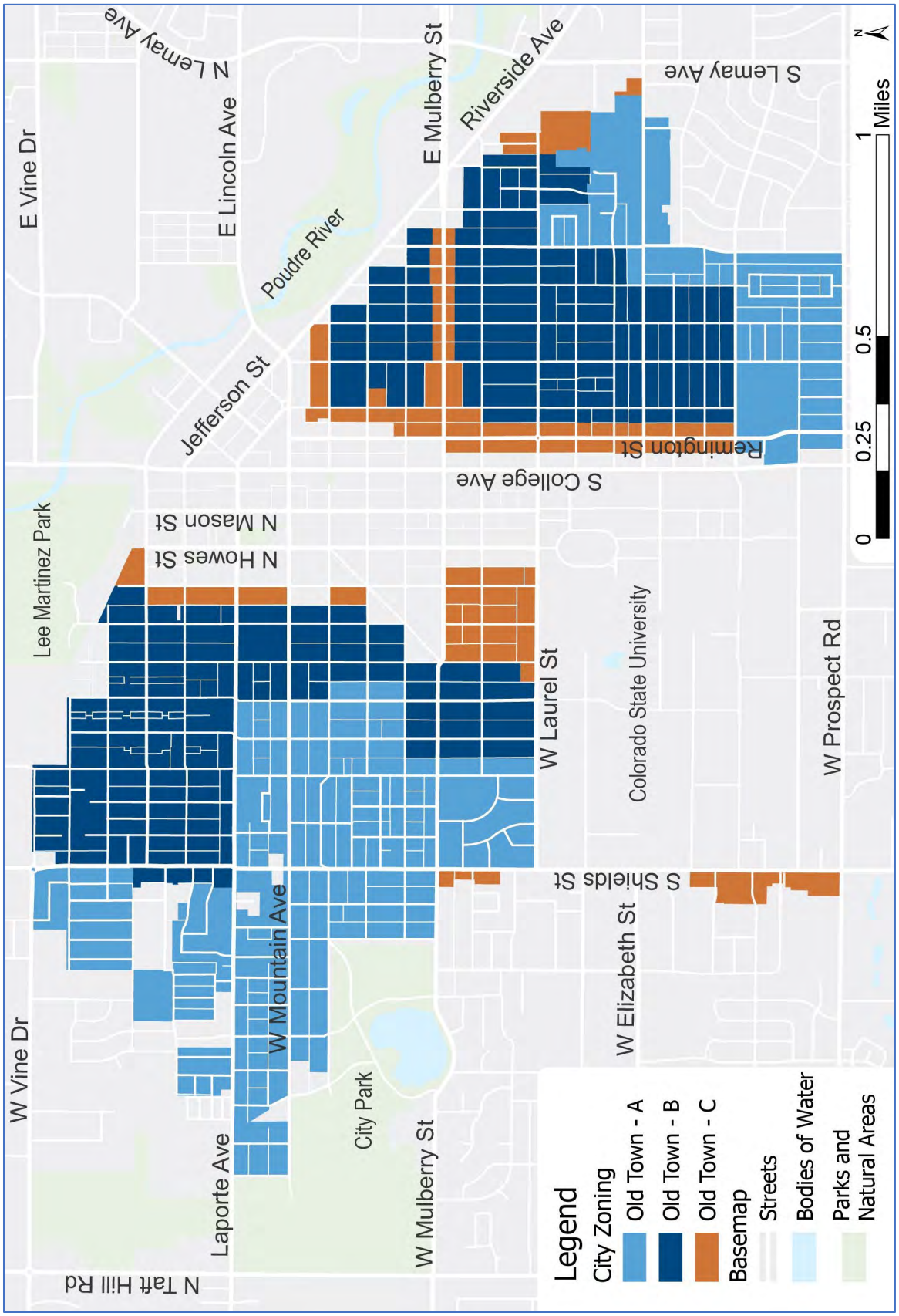
Anissa Hollingshead
City Clerk

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 48 hours advance notice when possible.

A peticion, la Ciudad de Fort Collins proporcionara servicios de acceso a idiomas para personas que no dominan el idioma ingles, 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 48 horas de aviso previo cuando sea posible.

0005820245
Coloradoan
Sept 10, 2023

OLD TOWN DISTRICT VICINITY MAP



Summary of Relevant Code Changes by Zone District			
Residential, Low Density (RL)	**Current Code**	**Repealed Code**	**Draft Land Use Code**
Housing Types	Detached house, detached accessory structure	Detached house; duplex; ADU; detached accessory structure	Detached House; ADU; detached accessory structure
Max Density	1 unit per lot	3 units per lot	2 units per lot (detached house + ADU)
Lot Size	6,000 square feet or 3 times house size min.	6,000 square feet or 3 times house size min.	6,000 square feet or 3 times house size min.
Height	2 to 3 stories for detached house	28ft max; 24ft for ADU	28ft max; 24ft for ADU; 15ft for detached ADU with no alley
Parking	1 space per house	1-3 spaces per unit depending on number of bedrooms	1 space per house; 1 space for ADU (tandem space may count toward requirement)
Other	No incentive for affordable housing	Affordable housing allowed 3-unit apartment; 3-unit rowhouse; and cottage court housing types	No additional housing type incentive for affordable housing; HOA may limit to internal ADU only; require resident manager; prohibit short term rentals
Neighborhood Conservation, Low Density (NCL / OT-A)	**Current Code**	**Repealed Code**	**Draft Land Use Code**
Housing Types	Detached house; carriage house on lots >12,000 sf; detached accessory structure	Detached house; duplex; ADU; detached accessory structure	Detached house; duplex; ADU; detached accessory structure
Max Density	1 unit or 2 units for lots >12,000 sf; lot coverage limits	3 units per lot; 2,400 sf floor area cap for detached house; lot coverage limits	3 units per lot; 2,400 sf floor area cap for detached house; lot coverage limits
Lot Size	6,000 sf min.	4,500 sf min.	4,500 sf; 6,000 sf for 3-unit apartment/rowhouse; 9,000 sf for 3-unit cottage court
Height	2 stories; 24 ft for carriage house	35 ft max; 24 ft for ADU	35 ft max; 24 ft for ADU; 15 ft for detached ADU with no alley
Parking	1-2 spaces per unit	1-3 spaces per unit	1-3 spaces per unit; 1 space for ADU (tandem space may count)
Other	No incentive for affordable housing	Affordable housing allowed 3-unit apartment, rowhouse, and cottage court	Affordable housing allows 3-unit apartment, rowhouse, and cottage court. Requirements to integrate existing structure; HOA may limit to internal ADU only; require resident manager; prohibit STR
Neighborhood Conservation, Medium Density (NCM / OT-B)	**Current Code**	**Repealed Code**	**Draft Land Use Code**
Housing Types	Detached house; duplex; multi-unit up to 4 units; carriage house on lots >10,000 sf; detached accessory structure	Detached house; duplex; multi-unit up to 5 units; ADU; detached accessory structure	Detached house; duplex; multi-unit up to 5 units; ADU; detached accessory structure
Max Density	4 units per lot; lot coverage limits	6 units per lot; 2,400 sf floor area cap for detached house; lot coverage limits	6 units per lot; 2,400 sf floor area cap for detached house; lot coverage limits
Lot Size	5,000 sf min.	4,500 sf min.	4,500 sf min.; 6,000 sf for 4-unit apartment/rowhouse; 9,000 sf for 3-6 unit cottage court
Height	2 stories; 24 ft for carriage house	35 ft max; 24 ft for ADU	35 ft max; 24 ft for ADU; 15 ft for detached ADU with no alley
Parking	1-3 spaces per unit	1-3 spaces per unit	1-3 spaces per unit; 1 space for ADU (tandem space may count)
Other	No incentive for affordable housing	Affordable housing allowed 6-unit apartment and 5-unit rowhouse	Affordable housing allows 6-unit apartment, 5-unit rowhouse, and 3-6 unit cottage court. Requirements to integrate existing structure; HOA may limit to internal ADU only; require resident manager; prohibit STR

Summary of Relevant Citywide Code Changes			
Private Covenants/Homeowners' Associations (HOAs)	**Current Code**	**Repealed Code**	**Draft Land Use Code**
Cannot Prohibit or Limit	Xeriscape landscaping, solar panels on roofs, clothes lines in backyards, odor controlled compost bins, cannot require turf grass	In addition to current code, could not prohibit or limit regulations to implement its housing policies (i.e., increased density, height, and occupancy)	Cannot prohibit or limit number and/or type of dwelling units when they would otherwise be permitted; cannot prohibit or limit ability to subdivide property when it would otherwise be permitted
Can prohibit or limit	External aesthetics including (but not limited to) site placement/ setbacks, color, window placement, height, and materials	External aesthetics including (but not limited to) site placement/ setbacks, color, window placement, height, and materials	External aesthetics including (but not limited to) site placement/ setbacks, color, window placement, height, and materials
Accessory Dwelling Units (ADUs)	**Current Code**	**Repealed Code**	**Draft Land Use Code**
Where Allowed	NCL, NCM, NCB ("Old Town")	All residential and mixed-use zones	All residential and mixed-use zones
Setbacks	Same as house; no separation required from house	Same as house; 5 ft separation required from house	Same as house; 5 ft separation required from house
Height	24 ft max	24-28 ft max	28 ft max, 24 ft in OT, one-story only without alley
Size	1,000 sf max	1,000 sf max	1,000 sf max
Parking	1 per bedroom	none required	1 required; tandem space may count
Other	no internal ADU permitted; 10,000 sf minimum lot size in NCM, 12,000 sf in NCL	internal ADU permitted; no minimum lot size	internal ADU permitted; no minimum lot size; HOA may limit to internal ADU only; require resident manager; prohibit STR
Affordable Housing	**Current Code**	**Repealed Code**	**Draft Land Use Code**
Where	All Zones	All Zones	All Zones
Type	Voluntary Incentives	Voluntary Incentives	Voluntary Incentives
Review	Varies; most are Type 1 or Type 2 review (public hearing)	Adminstrative (BDR)	Adminstrative (BDR)
Requirements	20 year deed restriction; 10% of units must be affordable for incentives	99 year deed restriction; 10-20% of units must be affordable for incentives	60 year deed restriction; 10-20% of units must be affordable for incentives
Incentives	Limited density bonus of 3 dwelling units per acre in LMN (from 9 to 12); 50% parking reduction in Transit-Oriented Development Overlay; reduced tree sizes	Citywide density bonus of additional units, density, or height depending on zone; ~50% reduction in parking requirements for all affordable projects; reduced tree sizes	Citywide density bonus of additional housing types, units, density, or height depending on zone; ~50% reduction in parking requirements for affordable projects with 7 or more units; reduced tree sizes

Social Sustainability
222 Laporte Ave.
PO Box 580
Fort Collins, CO 80522
970.221.6758

MEMORANDUM

DATE: October 4, 2023
TO: Mayor and City Council
THRU: Tyler Marr, Deputy City Manager
Jacob Castillo, Chief Sustainability Officer
Beth Yonce, Social Sustainability Director

FROM: Meaghan Overton, Housing Manager
Susan Beck-Ferkiss, Social Policy and Housing Programs Manager

RE: Proposed Land Use Code – Fee in Lieu Information

Purpose: The purpose of this memo is to provide more information regarding "fee in lieu" for affordable housing in response to a request from first reading of the Land Use Code on October 3, 2023

Bottom Line: This memo provides information about the possibility of implementing a fee in lieu for smaller affordable housing developments as discussed at First Reading of the proposed Land Use Code on October 3, 2023. It is common to provide a fee in lieu option to satisfy mandatory affordable housing requirements; however, this fee is typically established as part of designing a mandatory Inclusionary Housing Ordinance (IHO) policy. The approach in the proposed LUC is a voluntary, incentive-based approach to encouraging affordable housing. As such, a fee in lieu is not currently applicable.

Background: Inclusionary Housing Ordinances (IHO)
As outlined in a Council memo on July 17, 2023, Staff proposes a phased approach to designing a mandatory IHO policy, beginning with the voluntary affordable housing incentives and other housing-related Land Use Code (LUC) changes currently in progress. IHO policy must be paired with incentives based on market conditions to ensure development feasibility. Coordinating policy development for a mandatory IHO policy to follow the pending LUC changes will help staff more accurately assess the impact of a mandatory IHO policy, evaluate potential tradeoffs, and ensure that these complementary efforts are designed carefully to reinforce and support the City's adopted housing goals.

Implementing a mandatory IHO policy would require City Council to adopt an Ordinance that outlines the key elements of the policy. There are several critical choices that will need to be considered and evaluated:

- What amount (%) of affordable housing will be required for new developments?
- What income levels (% AMI) should the required affordable units serve?
- Should developments under a certain size or number of units be exempt?
- Alternatively, should smaller developments and/or nonresidential developments be required to pay an affordable housing linkage fee or similar?
- What options does the City wish to provide in lieu of building the required affordable units on site? (Examples: land in lieu, fee in lieu or building offsite units)

It is important to note that state legislation (HB21-1117) requires local governments to provide a choice of options or alternatives for developments of all sizes (land in lieu, fee in lieu, building off-site, etc.) if they implement a mandatory IHO policy.

Applicability of Fee in Lieu:

When a developer is required to build affordable units onsite but is allowed to pay a fee as an alternative, the fee is called an "in lieu" fee. These fees typically accrue in a City-administered affordable housing fund and can be used by the City or its designated development partners to construct affordable units in another location.

Fee in Lieu is an important strategy as part of a mandatory inclusionary housing policy; however, even under an incentive program it may be possible to structure a fee in lieu program that would allow a property owner to essentially "purchase" additional density for a project by paying into a fund in order to obtain affordable housing incentives. There are two reasons why staff has not recommended a fee in lieu be included in the current iteration of the Land Use Code.

- First, fee-in-lieu is a complex program that must be based on detailed market analysis and calibrated to fit within a larger IHO policy. This structure does not yet exist in Fort Collins. At this time, staff would be unable to guarantee that the fee being collected is right-sized to providing affordable housing and lacks the mechanism to ensure the housing is provided.
- Second, a common theme in the public feedback on affordable housing is that many residents feel that additional density in neighborhoods should be deed-restricted affordable housing. If a developer were able to purchase additional density for their project without those specific units being affordable, it would be contrary to this public sentiment.

Previous Council Direction:

In August 2020, Economic & Planning Systems, Inc. (EPS) conducted a Feasibility Study that analyzed the economic viability of implementing mandatory IHO and established a rational nexus for adoption of an Affordable Housing Linkage Fee for residential and nonresidential development. This study was partially updated in 2022 and was previously shared with Council via memorandum on July 17, 2023.

At a work session in April 2021, City Council reviewed the study findings and recommendations from the Feasibility Study. Council supported staff's recommendation to pursue a linkage fee alongside capital expansion fee updates, and to monitor conditions and periodically evaluate policy appropriateness of IHO.

Next Steps for Fort Collins:

The passage of HB21-1117 means that the legal conditions from the August 2020 Feasibility Study have changed, and that another evaluation of an IHO policy is appropriate. Staff proposes a phased approach to exploration and design of a mandatory IHO policy, beginning with the housing-related Land Use Code (LUC) changes currently in progress. Affordable housing incentives are a key topic of the LUC updates project and will set the foundation for future policy decisions about appropriate set-asides, applicability of an IHO policy, fees in lieu and alternative compliance options, impact fees, program administration, etc.

Summary of Accessory Dwelling Unit (ADU) Policies by Municipality / County

Municipality	Where ADUs are allowed		Additional Parking Req'd		Owner Occupancy		HOAs		Review Body	Other
	Single-Family	Detached	1 Off-Street Parking Space	None	Required	Not Required	No Additional Powers	Ability to Ban		
Timnath, Colorado	✓		✓		✓		✓		Planning Commission	
Windsor, Colorado		✓	✓		✓			✓	Staff	
Loveland, Colorado		✓	✓			✓	✓		Staff	
Greeley, Colorado		✓		✓		✓	✓		Staff	
Berthoud, Colorado	✓			✓		✓	✓		Staff	No Short-Term Rentals
Estes Park, Colorado	✓		✓			✓	✓		Staff	No Short-Term Rentals
Longmont, Colorado		✓	✓		✓		✓		Staff	Only in Old Town Residential Zone District
Lafayette, Colorado	✓			✓		✓	✓		Staff	No new Short-Term Rentals
Boulder, Colorado	✓		✓		✓		✓		Staff	
Brighton, Colorado		✓	✓		✓		✓		Staff	Max occupancy is 2
Broomfield, Colorado	✓		✓			✓		✓	Staff	No Short-Term Rentals
Northglenn, Colorado	✓			✓	✓		✓		Staff	
Thornton, Colorado		✓	✓		✓		✓		Dependent on size	
Arvada, Colorado		✓	✓		✓			✓	Staff	
Wheat Ridge, Colorado		✓		✓	✓		✓		Staff	
Golden, Colorado		✓	✓		✓		✓		Staff	
Denver	✓			✓	✓		✓		Staff	
Lakewood, Colorado	✓		✓		✓		✓		Staff	Detached only, lot must have an alley
Aurora, Colorado	✓		✓		✓		✓		Staff	Owner occupancy required for STR
Sheridan, Colorado		✓	✓			✓	✓		Staff	
Englewood, Colorado		✓	✓		✓		✓		Staff	
Littleton, Colorado	✓		✓			✓	✓		Staff	
Castle Rock, Colorado	✓			✓	✓		✓		Staff	Only attached allowed in single-family zones

Summary of Accessory Dwelling Unit (ADU) Policies by Municipality / County

Colorado Springs, Colorado	✓		✓		✓			✓	Dependent on type and zone district	No Short-Term Rentals
Larimer County, Colorado	✓		✓			✓	✓		Staff	
Adams County, Colorado	✓		✓			✓	✓		Staff w/ public notice	No Short-Term Rentals
Arapahoe County, Colorado		✓	✓		✓			✓	Staff	
Jefferson County, Colorado		✓	✓		✓		✓		Staff w/ public notice	

October 3, 2023

AGENDA ITEM SUMMARY

City Council

STAFF

Noah Beals, Development Review Manager
Paul Sizemore, Director of CDNS
Caryn Champine, Director of PDT
Brad Yatabe, Senior Assistant City Attorney

SUBJECT

Items Related to the Adoption of a New Land Use Code.

EXECUTIVE SUMMARY

This item consists of three separate ordinances:

A. First Reading of Ordinance No. 136, 2023, Repealing and Reenacting Section 29-1 of the Code of the City of Fort Collins to Adopt the Revised Land Use Code and Separately Codifying the 1997 Land Use Code as the "Pre-2024 Transitional Land Use Regulations."

B. First Reading of Ordinance No. 137, 2023, Updating City Code References to Align With the Adoption of the Revised Land Use Code.

C. First Reading of Ordinance No. 138, 2023, Amending the Zoning Map of the City of Fort Collins to Rename All Neighborhood Conservation Low Density, Neighborhood Conservation Medium Density, and Neighborhood Conservation Buffer Zone Districts to the Old Town Zone District In Conjunction With the Adoption of the Land Use Code.

The purpose of this item is to consider adopting of changes to the City's Land Use Code. The Land Use Code (LUC) Phase 1 Update implements policy direction in City Plan, the Housing Strategic Plan, and the Our Climate Future Plan. Changes are intended to address one or more of the following Guiding Principles:

1. Increase overall housing capacity and calibrate market-feasible incentives for affordable housing.
2. Enable more affordability, especially near high frequency transit and priority growth areas.
3. Allow more diverse housing choices that fit in the existing context and priority place types.
4. Make the Code easier to use and understand.
5. Improve predictability of the development review process, especially for housing.

If adopted by Council, staff recommend that the proposed Code changes take effect on January 1, 2024.

In addition to changes to the Land Use Code updates to City Code references to the revised Land Use Code are proposed.
Finally, because the revised Land Use Code rename the Neighborhood Conservation Low Density, Neighborhood Conservation Medium Density, and Neighborhood Conservation Buffer zone districts to the Old Town zone district with corresponding subdistricts A, B, and C, updates to the zoning map to reflect the name changes are proposed. This change only affects the name of the zone districts and no changes to the boundaries are proposed.

STAFF RECOMMENDATION

Staff recommend adoption of the Ordinances on First Reading.

BACKGROUND / DISCUSSION

Following the submission and certification of a petition sufficient for referendum, Council reconsidered Ordinance No. 114, 2022, at the Regular Meeting on January 17, 2023. Council voted unanimously (7-0) to repeal Ordinance No. 114, 2022, *Repealing and Reenacting Section 29-1 of the Code of the City of Fort Collins to Adopt the Land Development Code and Separately Codifying the 1997 Land Use Code As "Transitional Land Use Regulations."* Council directed staff to explore next steps to allow for additional community engagement and refinement of housing-related Land Use Code (LUC) changes.

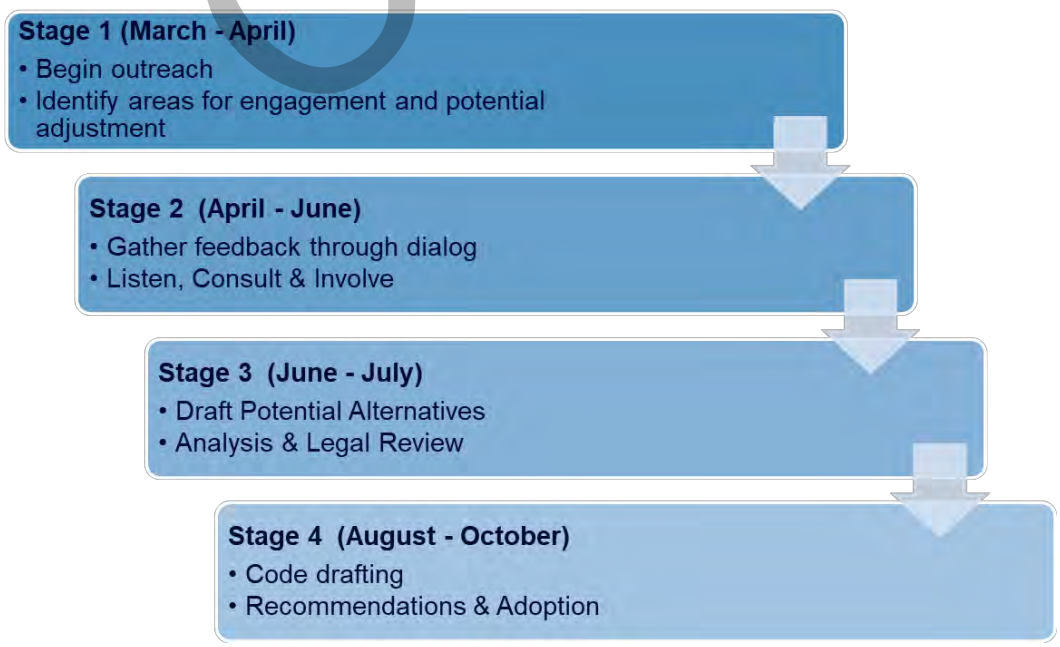
Project Overview

The LUC Phase 1 project began in summer 2021. From July 2021-October 2022, staff led a process to explore changes to the Land Use Code. This process included:

- Community engagement
- Policy analysis and synthesis
- Development of guiding principles
- Diagnostic report of the existing Land Use Code
- Code drafting
- Public review of the draft Land Development Code

City Council adopted Ordinance No. 114, 2022, adopting the Land Development Code. In November and December 2022, a group of voters gathered enough signatures through the City's referendum process to require that Council reconsider the Ordinance. On January 17, 2023, Council repealed Ordinance No. 114, 2022, and directed staff to conduct additional community engagement and further refine housing-related Land Use Code changes.

Staff re-launched the Land Use Code engagement process in March 2023. The project followed the timeline below:



Key Topic Areas from Community Engagement

Potential changes to the LUC have resulted in robust community dialogue and many comments shared with City Leaders and staff. Between March and August 2023, staff engaged with hundreds of residents through online comments, virtual engagement opportunities, and in-person events, including the August 9th open house event. Feedback was also collected at Planning and Zoning work sessions. Feedback received most recently includes the following topics:

- General questions on timeline and feedback received to date.
- Concern that accessory dwelling units (ADUs) could have negative impacts in neighborhoods.
- Comments in support of ADUs as a viable housing option.
- Support for requiring owner-occupancy of ADUs.
- Concerns that permitting Cottage Courts in the neighborhood conservation, medium density (NCM) zone district could result in a change in neighborhood character.
- Concerns that incentives to allow up to five units in the NCM could result in removing existing housing and a change in neighborhood character.
- Questions about whether the community's involvement in the Development Review process will change in the future.

More detailed information regarding specific Community Engagement events and resulting feedback can be found in the Public Outreach section of this document. Throughout the engagement process and the development of potential Code alternatives, staff continued to explore Code options that could both address community concerns and achieve the project's Guiding Principles outlined below.

Guiding Principles

The LUC Phase 1 update re-launch has continued to be informed by five guiding principles, originally supported by Council at the November 9, 2021, Work Session and re-affirmed by a majority of Councilmembers at a work session in February 2023:

1. Increase overall housing capacity (market rate and affordable).
2. Enable more affordability, especially near high frequency transit and priority growth areas.
3. Allow more diverse housing choices that fit in with the existing context and priority place types.
4. Make the Code easier to use and understand.
5. Improve predictability of the development review process, especially for housing.

Exploration of Polarities and Council Direction for Code Drafting

At the May 23, 2023, Work Session, staff presented an approach to potential Code alternatives using a quadrant framework that highlighted the spectrum of options for Code revisions and the potential trade-offs. At that work session, Council feedback generally supported an approach with "more emphasis on changes to address both housing capacity/choices and choices that fit in with existing character." Given the feedback from the work session, staff formulated potential Code alternatives informed by community feedback that address housing capacity while emphasizing existing neighborhood character.

Summary of Proposed Code Alternatives and Changes and Which Changes are Included in the Draft Land Use Code Being Presented to Council

Utilizing feedback received through engagement events and other correspondence, including online feedback forms and emails, staff formulated a menu of 33 potential Code alternatives for Council consideration to address the key topics raised during community engagement. These Code alternatives attempted to respond to community feedback regarding preservation of existing neighborhood character

while still adhering to the guiding principles outlined above. Council explored all 33 potential Code alternatives at the July 31, 2023, and August 22, 2023, Work Sessions. A document outlining the Code alternatives is attached to this Agenda Item Summary.

Where applicable, potential alternatives were organized into different zone districts. Other potential alternatives addressed city-wide topics:

- Zone-Specific Alternatives
  - RL – Low Density Residential Zone District
  - NCL – Neighborhood Conservation, Low Density Zone District
  - NCM – Neighborhood Conservation, Medium Density Zone District
- Citywide Alternatives
  - Affordable Housing
  - Private Covenants/Homeowners Associations
  - Parking/Infrastructure
  - Development Review Process
  - Short Term Rentals

Alternatives that received general support from Councilmembers at the July 31 and August 22, 2023, Work Sessions have been incorporated into the Draft of the Land Use Code as summarized below. The following summary of proposed changes is organized based on the Guiding Principles the changes are intended to support.

Principle #1: Increase overall housing capacity (market rate and affordable)

Current regulations constrain housing capacity in certain areas of the City. As a result, the inventory of housing options is not keeping pace with demand. To ensure that Fort Collins has sufficient housing capacity to meet our community's needs now and into the future, the proposed LUC updates make several changes to the regulation of housing development.

Code Alternatives - Parking: Alternatives considered by Council primarily addressed concerns around parking. Councilmembers generally supported alternatives that would: require one parking space for ADUs; permit tandem parking spaces to count toward required ADU parking; reduce parking requirements for studio, one-, and two-bedroom units in multi-unit developments; and reduce parking requirements for affordable housing if the development has seven or more units.

Proposed changes include:

- Targeting increases in housing capacity to zones in transit corridors and zones with the greatest amount of buildable land.
- Increasing maximum density in the LMN zone from nine to twelve dwelling units per acre.
- Regulating building size through floor area and form standards instead of units per building.
- Regulating density through form standards and building types.
- Reducing parking requirements for studio, one- and two-bedroom units in multi-unit developments and for affordable housing developments with seven or more units.
- Requiring one parking space for ADUs.
- Permitting tandem parking spaces to count toward required ADU parking.

If Council adopts the housing capacity changes proposed, staff estimates that overall housing capacity will increase by about 52% overall, and by about 61% within a five-minute walk of current and future transit corridors.

Principle #2: Enable more affordability, especially near high frequency transit and priority growth areas

The current Code provides limited incentives for affordable housing development. To encourage production of affordable housing and align with community needs identified in the Housing Strategic Plan, the Land Use Code updates propose more effective incentives for deed-restricted affordable housing. After conducting pro forma and market analyses, significant improvements to affordable housing incentives have been calibrated and proposed.

Code Alternatives – Affordable Housing: Councilmembers expressed general support for alternatives that would: expand affordable housing incentives citywide; increase the length of time units must be deed-restricted; and update definitions of affordable housing to match market needs for ownership and rental.

Proposed changes include:

- Expanding affordable housing incentives to most residential and mixed-use zones.
- Modifying income criteria (currently 80% AMI) so incentives help address the most critical shortages in affordable rental (60% AMI or below) and ownership (100% AMI or below).
- Raising the density bonus incentive in the LMN zone.
- Creating height bonus and parking reduction incentives in higher density zones.
- Requiring 60 years of deed restriction instead of the current 20 years.
- Continuing to require a minimum 10% of units to be affordable for any development seeking incentives.
- Updating definitions for affordable housing, reviewing for consistency. Staff has reviewed all affordable housing terms and definitions and purposes for the creation of a new affordable housing section within Article 5 Section 5.2 to consolidate incentives, definitions, and terms in one place.

If Council adopts the housing affordability changes proposed, staff estimates that capacity for affordable units will increase by about 194%.

Principle #3: Allow for more diverse housing choices that fit with the existing context

The Diagnostic Report that supported this Code update suggests that the current Code does not provide a clear, context-specific framework for infill and redevelopment. Rather, the LUC has many standards that assume a “greenfield” or undeveloped site. This can create challenges for compatibility, as most of the land in the City has already been developed. Constrained choices for housing contribute to limited housing supply and do not meet the needs of the variety of household types in our community, both today and in the future.

Code Alternatives – Neighborhood Context: Many of the 33 alternatives Councilmembers discussed were focused on ways to both allow additional housing choices and ensure that new development fits in with the existing context. Some alternatives were zone-specific, while others addressed the function of Homeowners Associations (HOAs) and short-term rentals (STRs) citywide.

Residential, Low Density (RL): Most Councilmembers expressed general support for alternatives that would: limit ADUs to one story when there is no alley; allow an ADU with single unit dwelling, not with a duplex; require ADU properties to be owner-occupied; and allow two units maximum in the RL zone.

Neighborhood Conservation, Low Density (NCL): Most Councilmembers expressed general support for alternatives that would: decrease the minimum lot size to 4,500 square feet; allow two units maximum on lots 4,500 to 6,000 square feet; require ADU properties to be owner-occupied; and restrict ADU height to the height of the primary building.

Neighborhood Conservation, Medium Density (NCM): Most Councilmembers expressed general support for alternatives that would: decrease the minimum lot size to 4,500 square feet; allow three units maximum on lots 4,500 – 6,000 square feet; allow five units maximum on lots larger than 6,000 square feet; and require ADU properties to be owner-occupied.

Private Covenants and HOAs: Councilmembers expressed general support for alternatives that would: allow an HOA to regulate the option for detached or attached ADU; specify that HOAs can continue to regulate aesthetics within the bounds of their existing rules; and allow HOAs to regulate site placement of ADUs.

Short Term Rentals (STRs): Councilmembers generally supported alternatives that would: restrict new ADUs from being used as STRs; and allow existing STRs in ADUs to continue to operate under their current license. A request was made to follow up regarding how many STRs exist in accessory buildings. There are approximately 375 STRs citywide and 48 of those are in accessory buildings.

Based upon Council feedback at the work sessions regarding the above discussed alternatives, the Public Review Draft of the Land Use Code being presented to Council on first reading **includes** the following changes:

- Allowing Accessory Dwelling Units (ADUs) in all residential and mixed-use zones.
  - In the RL zone, limiting ADUs to one story where there is no alley and only with a single-unit primary dwelling (not a duplex).
  - In the NCL zone, limiting ADUs to the height of the primary dwelling.
  - In all zones, prohibiting new ADUs from being used as STRs
- Adding “cottage court” as a housing type allowed in most residential zones.
- Creating a menu of building types and standards that apply to all proposed development.
- Illustrating form standards for ease of use including (but not limited to) building height, lot dimensions, massing and articulation, and build-to lines.
- Adjusting standards to enable more small-lot infill development and developing form-based standards to guide compatibility more effectively.
  - In the historic core (Old Town/Neighborhood Conservation Districts):
    - Floor area maximum of 2,400 square feet (sf) for single-unit detached homes
    - Reducing minimum lot sizes from 6,000 square feet to 4,500 square feet for single-unit detached dwellings
    - Allowing “missing middle” housing types
      - Up to two units in NCL/OT-A
      - Up to three units in NCM/OT-B on lots 4,500-6,000 square feet
      - Up to five units in NCM/OT-B on lots larger than 6,000 square feet and a sixth unit if it is deed-restricted affordable housing.
  - Outside the historic core:
    - Allowing ADUs in the RL zone
    - Consolidating duplicative standards
- Clarifying language related to HOAs and private covenants that specifies that HOAs can continue to regulate aesthetics within the bounds of their existing rules
- Allowing an HOA to regulate the option for detached or attached ADU and to regulate site placement of ADUs
- Updating use standards, rules of measurement, and definitions to align with new building types and standards.

- Defining new terms and rules of measurement (ex: detached accessory structure, cottage court, bulk plane)
- Removing unneeded or duplicative definitions

Principles #4 and #5: Make the Code easier to use and understand, and improve predictability of the development review process

The project team has heard from many different groups that the Code is hard to understand, inaccessible and cumbersome to navigate. The intent of the proposed Code reorganization changes is to make the Code easier to use and understand for all users, including neighbors, customers, staff, decision-makers, and others. These improvements will provide benefits to users by making it easier to understand what is allowed, what can be built, and what can change in a neighborhood. These improvements will also provide common understanding and clarity to users engaged in decision making.

The proposed Code will add predictability to the development review process by being clearer about what uses are permitted and by clearly explaining design standards through easy to understand graphics. The new menu of Building Types (Article 3) will provide more clarity about how buildings should be designed, leading to more predictable outcomes.

Code Alternatives - Development Review Process: Councilmembers were generally in agreement that no changes should be made to the Development Review Process. Councilmembers did *not* support alternatives that would: change review types for residential development; change neighborhood meeting requirements; and change current public hearing requirements. Based on Council feedback, no changes to the draft Land Use Code were made regarding these issues. One exception supported by Councilmembers was to allow Affordable Housing projects to go through a Basic Development Review (BDR) process to expedite such projects.

Based upon Council feedback at the work sessions regarding the above discussed alternatives, the Public Review Draft of the Land Use Code being presented to Council on first reading **includes** the following changes:

- Allowing Affordable Housing projects to be reviewed through a BDR process
- Using a consistent, graphic approach to communicate land use standards
- Reorganizing content so the most used information is first in the LUC
- Reformatting all zone districts to use consistent graphics, tables, lists, and illustrations
- Creating a new article (Article 3 – Building Types) to consolidate form standards in one place and develop consistent graphic templates
- Creating a new article (Article 4 – Use Standards) to consolidate use standards in one place and reformat into a clear and comprehensive Land Use Table
- Updating definitions and rules of measurement for consistency; remove duplicative definitions; consolidate all rules of measurement in Article 7 – Rules of Measurement and Definitions
- Renaming some zones and creating subdistricts (ex: Neighborhood Conservation District) to improve usability and consolidate similar standards

Staff plans to revise the Public Review Draft to incorporate revisions and changes after Council consideration at First Reading. The Code document will also be edited for grammar, clarity, and consistency.

Code Alternatives for Further Decision

Alternatives that required additional consideration from Councilmembers at the July 31, 2023, and August 22, 2023, Work Sessions **are** incorporated into the Public Review Draft of the Land Use Code being presented to Council on first reading. Council will instead consider each of the following alternatives at First Reading. Any alternatives below that are adopted by Council will be incorporated into the Public Review Draft for Second Reading.

	Items for Council Discussion
1.	In RL, Allow duplexes under one of the following site-specific conditions: • 100ft wide lots • Duplex integrates an existing structure • Duplex includes one unit of deed-restricted affordable housing • Lot located within 1/4 mile of current or future high-frequency transit
2.	In OT-A (NCL), allow three units on lots 6,000 sf or larger under one the following site-specific conditions: • Combination of a duplex + ADU • Triplex integrates an existing structure • Triplex includes one deed-restricted affordable housing unit • A 3-unit Cottage Court includes one deed-restricted affordable housing unit
3.	In OT-B (NCM), allow six units on lots 6,000sf or larger under the following site-specific condition: • Approved building types that both integrate with the existing structure and includes a deed restricted affordable housing unit.
4.	In OT-B (NCM), allow six units on lots 9,000sf or larger with under the following site-specific condition: • A six-unit Cottage Court includes one deed-restricted affordable housing unit
5.	Allow a Private Covenant/HOA to regulate site placement of all structures (additional setbacks, separation requirements)
6.	Require properties with a new ADU to have a resident manager.

Article 2, Section 2.1.4, Pg. 2-5

1. In RL, allow duplexes under one of the following site-specific conditions:

   - 100 feet (ft) wide lot
   - Duplex integrates an existing structure
   - Duplex includes one deed-restricted affordable housing unit
   - Lot located within 1/4 mile of current or future high-frequency transit

Duplex	2 max.	6000 ft² min.	MUST MEET ONE OF THE BELOW REQUIREMENTS
			At least 100' Lot Width
			Integrates existing structure**
			Within 1/4 Mile of High Frequency transit or higher***
			Affordable Housing Development

Integrate With Existing Structure

Integrate with existing structure shall mean using the existing structure to achieve a new use and/or using the existing structure to achieve an increase in the number of dwelling units at an existing use. In order to meet the definition of *integrate existing structure*, the following requirements must be met:

(A) Exterior walls must remain and cannot be demolished except for the following:

(1) New windows, doors, or entry features may be added and only the area of the new features may be removed from the existing wall;

(2) 0% of front walls, 25% of side walls, and 100% of rear walls may be removed; and

(3) Exterior finishes may be maintained or replaced without increasing the footprint.

(B) In conjunction with the demolition exceptions in (A), additions to existing structure may occur. Additions shall be subordinate to the existing structure by satisfying all of the following requirements:

(1) The addition must be the same height as the existing structure or lower;

(2) The addition must be placed to the rear of the existing structure;

(3) The addition must be designed to be compatible with defining features including but not limited to materials, finishes, windows, doors, entries, porches, decks, and balconies of the existing structure; and

(4) The addition may not increase the footprint of the existing structure by more than 50%.

(C) Any allowed demolition or additions shall be identified in the building permit submittal.

Article 2, Section 2.1.6, Pg. 2-10

2. In OT-A (NCL), allow three units on lots 6,000 sf or larger under one the following site-specific conditions:

   - Combination of a duplex + ADU
   - Triplex integrates an existing structure
   - Triplex includes one deed-restricted affordable housing unit
   - A 3-unit Cottage Court includes one deed-restricted affordable housing unit

Building Type	Units	Lot Area	Additional Site Requirement
Duplex + ADU	3 units max.	6,000sf min.	N/A
Triplex	3 units max.	6,000 sf min.	**Must meet one of the following two requirements**
			Integrate with existing structure
			Affordable Housing Development
Cottage Court	3 units max.	9,000 sf min.	Affordable Housing Development

Article 2, Section 2.1.6, Pg. 2-11

3. In OT-B (NCM), allow six units on lots 6,000 sf or larger under the following site-specific condition:

   - Approved building type both integrates an existing structure and includes one deed-restricted affordable housing unit.

Old Town –B (OT-B)			
Building Type	**Units**	**Lot Area**	**Site Specific Requirement**
	3 units min. and 6 units max.	9,000 sf min.	**Must Meet Both of the requirement below**
5plex + ADU; or			Integrate with existing structure
6plex			Affordable Housing Development

Article 2, Section 2.1.6, Pg. 2-11

4. In the OT-B (NCM), allow six units on lots 9,000 sf or larger with under the following site-specific condition:
   - A six-unit Cottage Court includes one deed-restricted affordable housing unit

Old Town –B (OT-B)		
Building Type	**Units**	**Lot Area**
Cottage Court	3 units min. and 6 units max.	9,000 sf min.

Article 1, Section 1.3.3, Pg. 1-4

5. Allow a Private Covenant/HOA to regulate site placement for all structures (additional setbacks, separation requirements)

1.3.3 CONFLICTS WITH PRIVATE HOUSING COVENANTS

No person shall create, cause to be created, enforce or seek to enforce any provision contained in any contract or restrictive covenant that prohibits or has the effect of prohibiting the number and/or type of dwelling units permitted on a lot when such number and/or type of dwelling unit(s) would otherwise be permitted by the City's zoning regulations. A Homeowner's Association may enforce private covenants which reasonably regulate external aesthetics including, but not limited to, site placement/setbacks, color, window placement, height, and materials with the intent of furthering compatibility with the existing neighborhood.

No person shall create, cause to be created, enforce or seek to enforce any provision contained in any contract or restrictive covenant that prohibits or has the effect of prohibiting subdivision of property when such subdivision would otherwise be permitted by the City's zoning regulations.

Article 4, Section 4.3.1, Pg. 4-10

6. Require properties with a new ADU to have a resident manager.

(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.

Conforming Changes to City Code References

City Code contains numerous references to the Land Use Code. If Council adopts the revised Land Use Code, the attached ordinance should also be adopted to ensure that City Code references to the Land Use Code are correct.

Rezoning to Rename the Neighborhood Conservation Low Density, Neighborhood Conservation Medium Density, and Neighborhood Conservation Buffer zone districts to the Old Town Zone District

The revised Land Use Code renames the Neighborhood Conservation Low Density, Neighborhood Conservation Medium Density, and Neighborhood Conservation Buffer zone districts to the Old Town zone district with corresponding subdistricts A, B, and C. This is solely a name change to be more reflective of the zone district than the existing names and the boundaries of the zone districts will not be affected by this change. If Council adopts the revised Land Use Code, the attached rezoning ordinance should be adopted to ensure that the City's zoning map corresponds to the revised Land Use Code zone districts.

CITY FINANCIAL IMPACTS

As with any regulatory change, additional work will be needed following adoption to align existing processes and procedures with updated Code requirements. For this reason, staff recommend an effective date of January 1, 2024, for the proposed Code changes. This implementation work will not require additional funding but will require utilization of existing staff capacity and departmental resources.

The LUC Phase 1 updates are focused on housing-related changes and Code reorganization, and multiple phases will be required to update the entire LUC. Accordingly, staff is also planning a LUC Phase 2 Update, which will address remaining issues in commercial, industrial, environmental and other areas and will also incorporate Code changes that are not directly tied to housing. Funding has been approved for the LUC Phase 2 project in the 2023-2024 budget cycle.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

Three Boards and Commissions have provided formal recommendations and specific feedback on the draft Land Development Code for Council consideration, as follows:

- Planning and Zoning Commission: Reviewed the proposed draft of the Land Use Code at their September 27, 2023, meeting. A full report of their recommendation will be provided separately prior to Council's meeting.
- Planning and Zoning Commission: Reviewed the proposed rezoning to change the names of the Neighborhood Conservation Low Density, Neighborhood Conservation Medium Density, and Neighborhood Conservation Buffer zone districts to the Old Town zone district with corresponding subdistricts A, B, and C at their September 27, 2023, meeting. Their recommendation will be provided separately prior to Council's meeting.
- Affordable Housing Board: At their September meeting, the Affordable Housing Board unanimously passed a recommendation to City Council to adopt the proposed Code changes (copy attached).
- Historic Preservation Commission (HPC): At their September hearing, the Historic Preservation Commission discussed the Draft Code. Their recommendation will be provided separately prior to Council's meeting.
- Economic Advisory Board (EAB): At their September meeting, the Economic Advisory Board discussed the Draft Code. Their recommendation will be provided separately prior to Council's meeting.

PUBLIC OUTREACH

A wide range of engagement events were scheduled in accordance with Council direction received at the February 14, 2023, Work Session. Engagement opportunities were announced with a postcard (English/Spanish) mailed to all residents (97,000+ households) and a parallel social and print media effort. Events have included monthly Council work sessions, presentations to community groups, Boards, and Commissions, virtual and in-person sessions, small group meetings with residents and HOA groups, tabling at community events, and deliberative dialogue opportunities. Formal events and presentations are listed below. Staff also met with community groups, HOA representatives, individual residents, and others at many small-group or one-on-one meetings during this time period. In total, staff hosted more than 50 meetings and events during 2023.

- **Early April** – Postcards arrived in mailboxes
- **April 12th** – CityWorks 101 presentation on LUC updates
- **April 22nd** – Tabling at Earth Day
- **April 24th** – Virtual Information Session
- **April 26th** – Deliberative Forum with Center for Public Deliberation
- **April 29th** – Next Level Neighborhood Walking Tour

- **Thursdays, Fridays, and Saturdays in May** – 14 Neighborhood Walking Tours
- **May 8th** – In-Person Community Open House
- **May 10th** – Historic Preservation Commission
- **May 12th** – Planning & Zoning Commission
- **May 22nd** – Boards and Commissions Super Issues Meeting
- **June 1st** – Affordable Housing Board
- **June 4th** – Tabling at Open Streets
- **July 12th** – Tabling at CSU Lagoon Concert Series
- **June 21st** – General "catch-all" walking tour for those who couldn't attend other tours
- **June 28th** – Tabling at Bike to Work Day
- **July 14th** – Planning and Zoning Commission
- **July 26th** – Economic Advisory Board
- **August 9th** – Public exhibit at Foothills Mall summarizing potential alternatives
- **August 10th** – Public exhibit at 281 N College summarizing potential alternatives
- **September 7th** – Affordable Housing Board
- **September 15th** – Planning and Zoning Commission
- **September 20th** – Economic Advisory Board
- **September 20th** – Historic Preservation Commission

Participation to Date

Potential changes to the LUC have resulted in robust community dialogue and many comments shared with City Leaders and staff. Throughout summer 2023, staff engaged with hundreds of residents through online comments, virtual engagement opportunities, and in-person events:

- 200+ General Comments received through the FCGov.com general comment form
- 60 Attendees at the Virtual Info Session
- 70 attendees at the Deliberative Forum
- 175 Attendees at the May 8, 2023, event
- Over 100 attendees at the 14 completed Walking Tours, including a general tour for those who were not able to attend one in their neighborhood.

Engagement Techniques

To provide as many ways to engage as possible, the staff team utilized multiple engagement techniques throughout the project timeline, which are summarized below:

Webpage and OurCity Platform: A project-specific webpage through the City's main "fcgov.com" website hosts project information and history, RSVP sign-up opportunities for events, documents and summaries of community feedback, comments received through comment cards, and an opportunity to sign up for the project newsletter. The OurCity platform offers additional online engagement opportunities.

Walking Tours: Tours were held in 14 different locations across the community, organized and run by City staff from several departments, including Planning, Neighborhood Services, Historic Preservation, and City Manager's Office. Each tour averaged about 12 attendees, not inclusive of City staff. After each tour, participants were asked to fill out a survey to rate their experience and

offer specific feedback regarding the Code, including specific suggestions for changes to address concerns.

Deliberative Forum: About 70 community members gathered for a facilitated discussion focused on the Land Use Code. Participants discussed concerns and interests related to the impact on their neighborhoods and the broader Fort Collins community.

Open House Event: Nearly 180 community members gathered at the Lincoln Center to learn more about land use issues in Fort Collins and offer their feedback. This event included topic-specific stations for participants to visit, pose questions, share concerns, and explore how the Code is applied to different situations across the community.

Engagement with Boards and Commissions: Throughout the process, Boards & Commissions members have received updates through direct presentations, including a discussion at a Super Issues meeting in May 2023, various board-specific presentations by staff, and links to materials shared with Council.

Engagement Summary

Note: the "final" version of the Engagement Summary will be provided as a separate attachment as the most recent community feedback is being incorporated into the final report. The previous report is attached for review.

The attached engagement summary report assembled by Dr. Martin Carcasson organizes feedback received from community members throughout "phase 2" of engagement for the Land Use Code project (between February 2023 through May 2023). This summary is meant to be an interim draft as engagement has continued through June and is ongoing. Therefore, a final engagement summary will be presented later in the summer to include feedback gathered at all stages of the engagement process between February and May of this year.

While much of the engagement feedback has continued to fall within the six topic areas explored within previous Work Session presentations (explained below), Dr. Carcasson has taken a deep dive into several of these topic areas to better understand the nuance of community feedback. Dr. Carcasson analyzed feedback from the events outlined above, in addition to information gathered from two other sources. These include comments shared by community groups that have been engaged in the project, and discussions from the Coloradoan specifically related to this project (Fort Collins local newspaper).

Some of the key themes and feedback listed below are concerns that are not addressed solely through the Land Use Code, though they are topics that surfaced through engagement feedback. Those topics include U+2, supply and demand issues, growth, and water and additional infrastructure. For more information on the analysis, please see the methodology section within the attached report.

The attached summary focuses on the most referenced 12 Key Themes:

1. Accessory Dwelling Units (ADUs)
2. Transit and Transit Oriented Development
3. Parking
4. Protecting the Character of Neighborhoods
5. Homeowners Associations (HOAs)
6. U+2
7. Compliments About the Walking Tours and Open House
8. Supply and Demand Issues
9. Review Process for Developments

10. Multiplexes
11. Growth
12. Water and Additional Infrastructure

ATTACHMENTS

1. Ordinance A for Consideration - Adopt the Revised Land Use Code
2. Exhibit A to Ordinance A
3. Exhibit B to Ordinance A
4. Exhibit C to Ordinance A
5. Exhibit D to Ordinance A
6. Exhibit E to Ordinance A
7. Exhibit F to Ordinance A
8. Exhibit G to Ordinance A
9. Ordinance B for Consideration - Making Conforming Changes to Land Use Code References Contained in City Code
10. Ordinance C for Consideration - Renaming the Neighborhood Conservation Low Density, Neighborhood Conservation Medium Density, and Neighborhood Conservation Buffer Zone Districts to the Old Town Zone District
11. Exhibit A to Ordinance C
12. Exhibit B to Ordinance C
13. Review of Alternatives Included in the Draft Code
14. Affordable Housing Board Recommendation
15. Public Engagement Summary (Draft; final forthcoming.)
16. Zone District Abbreviations and Purposes
17. Presentation

City of Fort Collins

Land Use Code Phase 1 Updates: Second Reading

Housing Strategic Plan Implementation

October 17, 2023

Purpose of the Land Use Code Updates:

To Align the LUC with Adopted City Plans and Policies with a focus on:

- Housing-related changes
- Code Organization
- Equity

FIVE GUIDING PRINCIPLES

Revisions to the code will continue to support the five guiding principles confirmed by City Council in November 2021 with an emphasis on Equity.

1. *Increase overall housing capacity* (market rate and affordable) and calibrate market-feasible incentives for deed restricted affordable housing
2. *Enable more affordability* especially near high frequency transit and growth areas
3. *Allow for more diverse housing choices* that fit in with the existing context
4. *Make the code easier to use* and understand
5. *Improve predictability* of the development permit review process, especially for housing

No proposed changes to:

- Basic Development Review (BDR)
- Type 1 Review (Hearing Officer)
- Type 2 Review (Planning and Zoning Commission)
- Site Plan Advisory Review (SPAR)
- Existing 12-step review process
- Level of review required for residential development (except Affordable Housing)
- Non-residential uses
- Historic Preservation requirements
- Environmental/Natural Resources requirements
- Landscaping requirements
- Street design requirements
- Engineering requirements
- Planned Unit Development (PUD) requirements
- Addition of Permitted Use (APU) requirements
- Modification and Variance standards
- Adequate Public Facilities
- Occupancy Regulations (i.e., U+2)

Summary of Code Changes

1. *…e overall housing capacity*
(market rate and affordable)
and calibrate market-feasible incentives for deed restricted affordable housing

- Increasing housing types and number of units allowed in residential, mixed-use, and commercial zones
- Reducing parking requirements for studio, one-, and two-bedroom units in multi-unit developments and for affordable housing developments with 7 or more units
- Requiring parking for ADUs

2. *Enable more affordability*
especially near high frequency transit and growth areas

- Expanding Affordable housing incentives
- Updating and modifying Affordable housing definitions + requirements
- Requiring 60 years of deed restriction instead of the current 20 years

3. *Allow for more diverse housing choices*
that fit in with the existing context

- Allowing ADUs in all residential and mixed-use zones (with some requirements)
- Creating a menu of building types with zone-specific standards
- Adding form-based regulations to enhance compatibility in RL, NCM, NCL, and NCB
- Clarifying language related to HOAs and private covenants

4. *Make the code easier to use*
and understand

- Allowing Affordable Housing projects to be reviewed through a BDR process
- Using a consistent, graphic and form-based approach to code standards
- Reorganizing code content and sections to consolidate and simplify information

5. *Improve predictability*
…evelopment permit review process, especially for housing

- Updating definitions and rules of measurement for consistency

City of Fort Collins

Discussion Items from First Reading

Items for Council Discussion

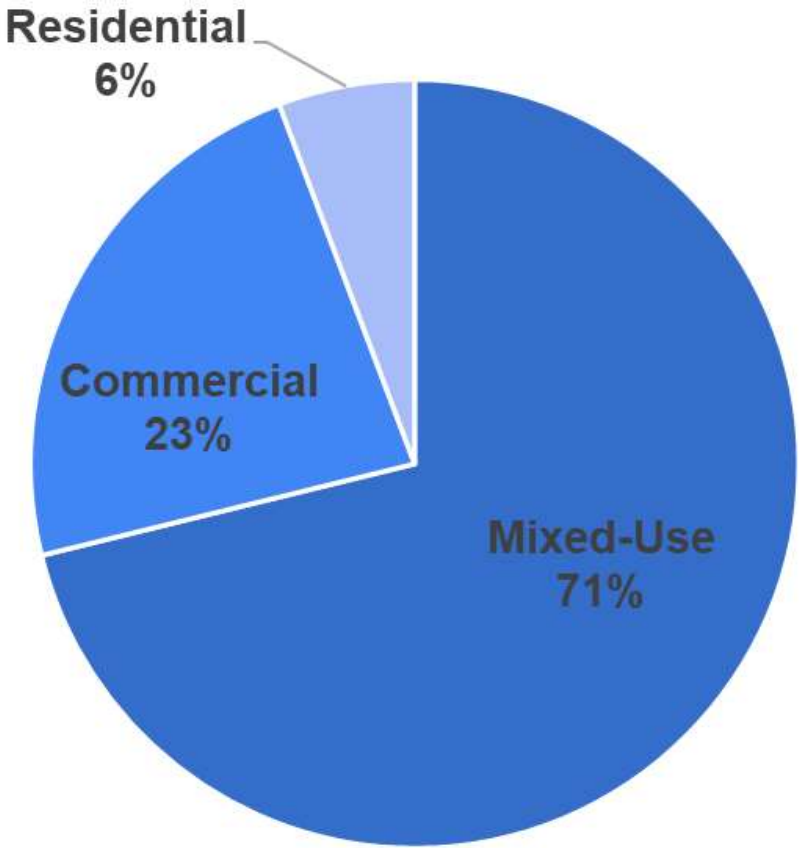
1.	In RL, Allow duplexes under one of the following site-specific conditions: • 100ft wide lots • Duplex integrates an existing structure • Duplex includes one unit of deed-restricted affordable housing • Lot located within 1/4 mile of current or future high-frequency transit
2.	In OT-A (NCL), allow three units on lots 6,000 sf or larger under one the following site-specific conditions: • Combination of a duplex + ADU • Triplex integrates an existing structure • Triplex includes one deed-restricted affordable housing unit • A 3-unit Cottage Court includes one deed-restricted affordable housing unit
3.	In OT-B (NCM), allow six units on lots 6,000sf or larger under the following site-specific condition: • Approved building types that both integrate with the existing structure and includes a deed restricted affordable housing unit.
4.	In OT-B (NCM), allow six units on lots 9,000sf or larger with under the following site-specific condition: • A six-unit Cottage Court includes one deed-restricted affordable housing unit
5.	Allow a Private Covenant/HOA to regulate site placement of all structures (additional setbacks, separation requirements)
6.	Require properties with a new ADU to have a resident manager.
	Did Council intend the Short Term Rental prohibition to apply to the ADU and primary house or just the ADU?

Amended - removed from draft LUC at First Reading

Housing Capacity in Proposed LUC by Zone Type

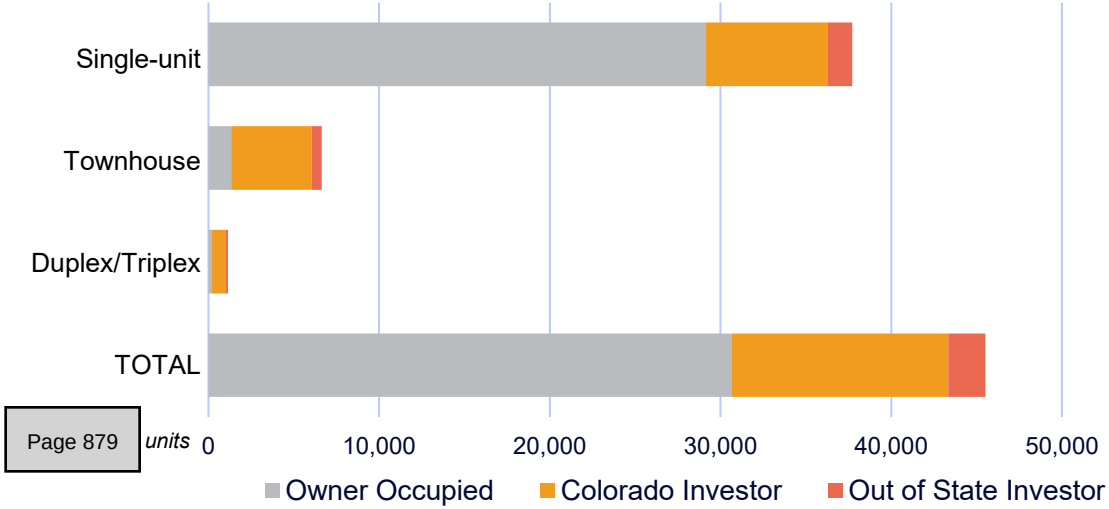
Breakdown of Zone Types:

- **Mixed-Use**: 71% (often commercial and residential mixes, either stacked as a single building or within a larger development, including Low-Density Mixed Use (LMN) and Medium Density Mixed Use (MMN))
- **Commercial**: 23% (Different mix of commercial zone districts, including Community Commercial (CC), General Commercial (CG), etc.)
- **Residential**: 6% (Lower-density, residential-only zones, such as Residential, Low-Density (RL), Neighborhood Conservation Districts (NCL, NCM), and Urban Estate (UE))



Investor and Out-of-State Ownership (2021 data)

Housing Type	Owner Occupied	Investor Owned		Total Housing Units	% Owner Occ.	% Investor Owned
		CO Investor	Out of State Investor			
Single-unit	29,148	7,117	1,464	37,729	77%	23%
Townhouse	1,329	4,714	601	6,644	20%	80%
Duplex/Triplex	164	866	115	1,145	14%	86%
Total	30,614	12,697	2,180	45,491	67%	33%



- About 5% of all single-unit, townhouse, and duplex/triplex units are owned by out-of-state investors
- The vast majority (85%) of investors are located in Colorado
- About 90% of investors (both in- and out-of-state) own 1 property in addition to their own residence.
- About 0.2% of investors own more than 10 units

Low Density Residential (RL) Zone

CURRENT CODE

Base Housing Types: Detached house; detached accessory structure

Max Density: 1 dwelling unit per lot

Lot Size: 6,000sf or 3 times house size min.

Height: 28ft for detached house and accessory structures. 3-stories for all other uses

Parking: 1 space per house

Other: No incentive for affordable housing. May have multiple accessory structures. No STR al

REPEALED CODE

Base Housing Types: Detached house; duplex; ADU; detached accessory structure

Max Density: 3 dwelling units per lot

Lot Size: 6,000sf or 3 times house size min.

Height: 28 ft max; 24 ft for ADU

Parking: 1-3 spaces per unit depending on number of bedrooms. No additional parking for ADU.

Other: Affordable housing allowed 3-unit apartment; 3-unit rowhouse; and cottage court housing types

Neighborhood Character: *Remove duplex, apartment, rowhouse, and cottage court; reduce maximum density to 2 units per lot; reduce ADU height where there is no alley; require resident manager; prohibit short term rentals (STR)*

Parking: *Require parking for ADUs*

HOA: *Permit HOAs to limit ADU types and site placement*

DRAFT LUC

Base Housing Types: Detached house; ~~**duplex**~~; ADU; detached accessory structure

Max Density: **2 units per lot (detached house + ADU only)**

Lot Size: 6,000sf or 3 times house size min.

Height: 28 ft max; 24 ft for ADU; **15 ft for detached ADU with no alley**

Parking: 1 space per house; **1 space for ADU (tandem space may count toward requirement)**

Other: **No additional housing type incentive for affordable housing; HOA may limit to internal ADU only; require resident manager**

Neighborhood Conservation, Low Density (NCL / OT-A) Zone

CURRENT CODE

Base Housing Types: Detached house; carriage house on lots >12,000 sf; and accessory structures for any size lot

Max Density: 1 unit or 2 units for lots >12,000 sf; lot coverage limits

Lot Size: 6,000 sf min.

Height: 2 stories; 24 ft for carriage house

Parking: 1-2 spaces per unit

Other: No incentive for affordable housing. No S

REPEALED CODE

Base Housing Types: Detached house; duplex; ADU; triplex detached accessory structure

Max Density: 3 units per lot; 2,400 sf floor area cap for detached house; lot coverage limits

Lot Size: 4,500 sf min.

Height: 35 ft max; 24 ft for ADU

Parking: 1-3 spaces per unit. No additional parking for ADU

Other: Affordable housing allowed 3-unit apartment, rowhouse, and cottage court

Neighborhood Character: *Increase required lot size for 3-unit housing types; add requirements to integrate with existing structures; reduce ADU height where there is no alley; require resident manager; prohibit short term rentals (STR)*

Parking: *Require parking for ADUs*

HOA: *Permit HOAs to limit ADU types and site placement*

DRAFT LUC

Base Housing Types: Detached house; duplex; ADU; triplex detached accessory structure

Max Density: 3 units per lot; 2,400 sf floor area cap for detached house; lot coverage limits

Lot Size: 4,500 sf; **6,000 sf for 3-unit apartment/rowhouse; 9,000 sf for 3-unit cottage court**

Height: 35 ft max; 24 ft for ADU; **15 ft for detached ADU with no alley**

Parking: 1-3 spaces per unit; **1 space for ADU (tandem space may count)**

Other: Affordable housing allows 3-unit apartment, rowhouse, and cottage court. **Requirements to integrate existing structure; HOA may limit to internal ADU only; require resident manager**

Neighborhood Conservation, Medium Density (NCM / OT-B) Zone

CURRENT CODE

Base Housing Types: Detached house; duplex; multi-unit up to 4 units; carriage house on lots >10,000 sf; detached accessory structure

Max Density: 4 units per lot; lot coverage limits

Lot Size: 5,000 sf min.

Height: 2 stories; 24 ft for carriage house

Parking: 1-3 spaces per unit.

Other: No incentive for affordable housing. Primary-STR only

REPEALED CODE

Base Housing Types: Detached house; duplex; multi-unit up to 5 units; ADU; detached accessory structure

Max Density: 6 units per lot; 2,400 sf floor area cap for detached house; lot coverage limits

Lot Size: 4,500 sf min.

Height: 35 ft max; 24 ft for ADU

Parking: 1-3 spaces per unit. No additional parking for ADUs

Other: Affordable housing allowed 6-unit apartment and 5-unit rowhouse

Neighborhood Character: *Increase required lot size for housing types with 4 or more units; add max of 6 units to cottage courts; add requirements to integrate with existing structures; reduce ADU height where there is no alley; require resident manager; prohibit short term rentals (STR) in ADUs*

Parking: *Require parking for ADUs*

HOA: *Permit HOAs to limit ADU types and site placement*

DRAFT LUC

Base Housing Types: Detached house; duplex; multi-unit up to 5 units; ADU; detached accessory structure

Max Density: 6 units per lot; 2,400 sf floor area cap for detached house; lot coverage limits

Lot Size: 4,500 sf min.; **6,000 sf for 4-unit apartment/rowhouse; 9,000 sf for 3-6 unit cottage court**

Height: 35 ft max; 24 ft for ADU; **15 ft for detached ADU with no alley**

Parking: 1-3 spaces per unit; **1 space for ADU (tandem space may count)**

Other: Affordable housing allows 6-unit apartment, 5-unit rowhouse, and 3-6 unit cottage court. **Requirements to integrate existing structure; HOA may limit to internal ADU only; require resident manager; prohibit all STR in ADUs**

Private covenants/Homeowners' Associations (HOAs)

CURRENT CODE

HOAs are prohibited from creating or enforcing provisions that

Prohibit or limit:

- The installation or use of xeriscape landscaping
- The installation or use of solar/photovoltaic collectors on roofs
- The installation or use of clothes lines in back yards
- The installation or use of odor controlled compost bins

O

- Turf grass yards/lots

REPEALED CODE

In addition to current code, HOAs were also prohibited from creating or enforcing provisions that

Prohibit or limit:

- The City's regulations to implement its housing policies, as supported by the Housing Strategic Plan
- Including but not limited to provisions for increased density, height and occupancy

Neighborhood Character: *Permit HOAs to determine ADU type (internal or detached); permit HOAs to regulate site placement of all structures (additional setbacks, separation requirements)*

HOA: *Provide more clarity about where HOAs have authority to regulate (aesthetics, site placement)*

DRAFT LUC

In addition to current code, HOAs are also prohibited from creating or enforcing provisions that

Prohibit or limit:

- The **number and/or type** of dwelling units permitted on a lot when that number and/or type of dwelling unit(s) would otherwise be permitted
- The **ability to subdivide** property when that subdivision would otherwise be permitted

HOAs may enforce covenants that

Regulate:

- **External aesthetics including (but not limited to) site placement/ setbacks, color, window placement, height, and materials**
- **If the ADU is internal or detached**
- Other unrelated covenants (e.g. pets, maintenance of properties, fees, etc.)

Consideration of Adoption

Does Council wish to adopt Ordinance Nos. 136, 2023; 137, 2023; and 138, 2023, for the proposed Land Use Code updates on Second Reading?


City of
Fort Collins

October 17, 2023

AGENDA ITEM SUMMARY
City Council

STAFF

Kelly DiMartino, City Manager
Travis Storin, Chief Financial Officer
Lawrence Pollack, Budget Director
John Duval, Deputy City Attorney
Ryan Malarky, Assistant City Attorney

SUBJECT

First Reading of Ordinance No. 145, 2023, Being the Annual Appropriation Ordinance Relating to the Annual Appropriations for the Fiscal Year 2024; Amending the Budget for the Fiscal Year Beginning January 1, 2024, and Ending December 31, 2024; and Fixing the Mill Levy for Property Taxes Payable Fiscal Year 2024.

EXECUTIVE SUMMARY

The purpose of this item is to amend the adopted 2024 Budget. This Ordinance sets the amount of $802,507,950 to be appropriated for fiscal year 2024. This appropriated amount does not include what is also being appropriated by separate Council/Board of Director actions to adopt the 2024 budgets for the General Improvement District (GID) No. 1 of $318,275, the 2024 budget for GID No. 15 (Skyview) of $1,000, the Urban Renewal Authority (URA) 2024 budget of $6,121,898 and the Downtown Development Authority 2024 budget of $26,344,303. The sum of these ordinances results in City-related total appropriations of $835,293,426 for 2024. This Ordinance also sets the 2024 City mill levy at 9.797 mills, unchanged since 1991.

STAFF RECOMMENDATION

Staff recommend adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

Council previously adopted the 2023-2024 Biennial Budget and appropriated monies for expenditure in fiscal year 2023. State statutes and the City Charter both require an annual appropriation to cover expenses for the ensuing year (2024) based upon the adopted budget. Per City Charter, Second Reading must occur before the last day of November and is currently scheduled for November 21, 2023.

The Net City Budget, as amended, is broken down as follows:

TOTAL BUDGET (in Millions)

	Original 2024	Revised 2024	% Change
Operating	$716.4	$718.1	0.2%
Debt	45.8	52.0	13.5%
Capital*	64.8	65.2	0.6%
Total City Appropriations**	**$827.0**	**$835.3**	**1.0%**
Less			
Internal Service Funds	($98.3)	($99.4)	1.1%
Transfers to Other Funds	(78.4)	(78.0)	-0.5%
GIDs	(0.3)	(0.3)	1.2%
URAs	(6.1)	(6.1)	0.0%
DDA	(24.3)	(26.3)	8.6%
Total	($207.4)	($210.2)	1.3%
Net City Budget	**$619.6**	**$625.1**	**0.9%**

* Capital in this table includes all capital related items, which will be significantly greater than the sum of Capital Project offers

** This includes the GID #1, GID #15, URA and DDA all of which are appropriated in separate ordinances

This Ordinance also sets the 2024 City mill levy at 9.797 mills, unchanged since 1991.

Overview

The mid-cycle Budget Revision process is different from the biennial Budgeting for Outcomes (BFO) process in that:

1. There is no broad request for new and innovative Offers. This is because the City is operating within the approved 2023-24 Biennial Budget and these revisions should be exceptions based on information not known at the time the budget was adopted in November 2022.
2. Likewise, there is no review by BFO Teams or request for public engagement. However, the Executive Leadership Team and City Manager conducted a comprehensive review to determine which requests should be forwarded for Council's consideration. Revised revenue projections and available fund reserves were carefully considered when making these recommendations.

The 2024 Budget Revisions include offers for Council's consideration based on information that was not available at the time the 2023-24 Budget was adopted, as well as a few administrative adjustments explained below. The following are key objectives which the 2024 Budget Revision recommendations are intended to address:

- Matching appropriations for ongoing expenditures to current ongoing revenue estimates
- Council priorities
- High-priority projects and other needs not known at the time of the adoption of the 2023-24 Budget
- Fiduciary responsibilities and fund balance requirements

The recommended 2024 Budget Revisions meet these goals, as applicable. Recommended Revision Offers to the 2024 Budget must also meet one of the following criteria:

- The request is specifically directed by the City Manager or Council.
- The request is related to a previously approved offer where either revenue shortfalls or unforeseen expenses are significantly impacting the delivery of that program or service.

Revenue

Overall, most significant City revenue sources are coming in at, or above, the 2023 budget. Based on year-to-date actual collections and other information, both Sales Tax and Property Tax forecasts are recommended to be increased for 2024.

Sales tax collection through August is about $930k over budget. It is estimated that the total 2023 collections will be about $1.5M over budget, which raises the base of ongoing Sales Tax in 2024 by that same amount. Staff recommend keeping Sales Tax growth on that higher base at the 2.5% growth already included in the adopted 2023-24 Budget. This equates to about $1.5M of new ongoing revenue for City operations in 2024. Of that amount, about $1.1M would be available from the General Fund.

Property Tax assessments this year are seeing 25% to 35% growth, or more. This will be realized as increased Property Tax collections in 2024 over the budgeted increase of 13% already included in the 2023-24 Budget. This equates to about $2.1M of new ongoing revenue for City operations in 2024.

However, there are risks to that new property tax revenue associated with State Proposition HH, which is to be voted on this fall. If Proposition HH passes, the County Assessor is estimating reduced growth to be realized at about 23%. This would equate to about $1,450,000 of new ongoing revenue for City operations in 2024. This conservative lower amount has been modeled to ensure increased ongoing revenue is available to cover increased ongoing expenses approved by Council in the 2024 Budget Revisions process.

Twenty twenty-two (2022) Year-end reserve balances have been finalized and previously shared with the Council Finance Committee. Unassigned fund balances (i.e., reserves) are available in excess of the requested amounts for the 2024 Budget Revisions.

Summary of 2024 Revenue Changes and Available Reserves

Description	General Fund - Ongoing	General Fund - 1-Time	Cultural Services	Light & Power	Water	Stormwater	Broadband	Equipment	TOTAL
Summary of Revenue Changes & Reserves									
- Increased 2024 Sales Tax forecast for General Fund (ongoing)	$1,110,390								$1,110,390
- Increased 2024 Property Tax forecast for General Fund	1,450,000								$1,450,000
- Increased 2024 Carnegie Center revenue forecast (ongoing)			25,000						$25,000
- Available Ongoing Revenue from the 2023-24 Budget				3,200,000	360,000	1,200,000	1,159,674	203,947	$6,123,621
- Available Reserves (1-Time, if requested)		8,100,000							$8,100,000
- Less: 2023 Reappropriation (1-Time)		(602,754)			(52,500)				($655,254)
- Less: 2023 Supplemental Approps (ongoing)	(582,000)								($582,000)
- Less: 2023 Supplemental Approps (1-Time)		(1,125,100)							($1,125,100)
Subtotal of Funding Changes	1,978,390	6,372,146	25,000	3,200,000	307,500	1,200,000	1,159,674	203,947	14,446,657

The revenue and reserves above are available to fund the recommended additions to the 2024 Budget. The table below summarizes those proposed additions, and the attachment contains the details of those recommended offers. During the reconciliations for First Reading, it was determined that $63k of funding that had been characterized as General Fund was actually expenses related to the Equipment Fund, so these three tables have been modified to display that update.

Summary of 2024 Recommended Additions

Fund / Revision Requested	FTE	Ongoing $	One-Time $	Total
General Fund				
Rental Housing Program with 4.0 FTE	4.00	401,755	78,750	480,505
1.0 FTE Carnegie Center for Creativity Programming	1.00	111,722		111,722
Municipal Court Services - 1.0 FTE Deputy Court Clerk II	1.00	70,419	18,000	88,419
Municipal Court Services - Technology	-	189,201	146,410	335,611
Additional Prosecution Staff	1.00	155,150	19,472	174,622
Waste Contracting Operating Budget plus 2 FTE	2.00	300,896	-	300,896
Bringing the operations of the TRC in-house plus 3 FTE	3.00	232,900	311,476	544,376
Encampment cleaning and prevention additional funds	-	111,000	-	111,000
Expansion of the Enterprise Service Management (ESM) System	-	68,500	87,500	156,000
Household Hazardous Waste	-	-	114,240	114,240
Total General Fund	**12.00**	**$1,641,543**	**$775,848**	**$2,417,391**
Cultural Services & Facilities				
1.0 FTE Carnegie Center for Creativity Programming	-	25,000	-	25,000
Total Cultural Services & Facilities Fund	**0.00**	**$25,000**	**$0**	**$25,000**
Light and Power Fund				
Debt service for 2023 Bond Issuance	-	2,954,708	-	2,954,708
Total Light and Power Fund	**0.00**	**2,954,708**	**0**	**2,954,708**
Water Fund				
Poudre Instream Flows Plan: Early Design and Cost Estimating	-	-	60,000	60,000
Total Water Fund	**0.00**	**0**	**60,000**	**60,000**
Stormwater Fund				
Encampment cleaning and prevention additional funds	-	64,000	-	64,000
Household Hazardous Waste	-	-	89,760	89,760
Total Stormwater Fund	**0.00**	**$64,000**	**$89,760**	**$153,760**
Broadband Fund				
Debt service for 2023 Bond Issuance	-	1,159,674	-	1,159,674
Total Broadband Fund	**0.00**	**$1,159,674**	**$0**	**$1,159,674**
Equipment Fund				
Bringing the operations of the TRC in-house plus 3 FTE	-	63,524	-	63,524
Total Equipment Fund	**0.00**	**$63,524**	**$0**	**$63,524**
TOTAL ALL FUNDS	**12.00**	**5,908,449**	**925,608**	**6,834,057**

The table below summarizes the available funding (displayed at the bottom of the first table above). The 2024 Budget Revisions are then summarized into ongoing/one-time expenses and then subtracted from the available funding. In all cases, there is enough available funding to support the proposed 2024 Budget Revisions. Additionally, fund balances remain strong and well above minimum fund balance requirements.

Summary of Available Reserves and Revenue after Recommended Additions

Description	General Fund - Ongoing	General Fund - 1-Time	Cultural Services	Light & Power	Water	Stormwater	Broadband	Equipment	TOTAL
Available Revenue and Reserves	1,978,390	6,372,146	25,000	3,200,000	307,500	1,200,000	1,159,674	203,947	14,446,657
2024 Budget Revision Requests									
- Ongoing Requests	(1,641,543)		(25,000)	(2,954,708)		(64,000)	(1,159,674)	(63,524)	**(5,908,449)**
- One-Time Requests		(775,848)			(60,000)	(89,760)			**(925,608)**
Total of 2024 Revisions	**(1,641,543)**	**(775,848)**	**(25,000)**	**(2,954,708)**	**(60,000)**	**(153,760)**	**(1,159,674)**	**(63,524)**	**(6,834,057)**
Net Impact (positive = available)	$336,847	$5,596,298	$0	$245,292	$247,500	$1,046,240	$0	$140,423	N/A

The 2024 Budget Revisions allow the City to include a small number of additional budget requests in the 2024 Budget, which address Council priorities that benefit our community.

In addition to the recommended budget revisions, there are a few other recommended administrative changes for the 2024 Budget, as follows:

- Modification to 2023-24 Offers 14.4 and 17.1: After the budget was completed, an organizational staffing decision was made to move the Network Engineers from Broadband back to central Information Technology (IT). This removes the need for the transfer of money from IT to Broadband. Instead of being transferred, those funds will now be used to pay the personnel expenses within IT.
  a. There is no change in expenses for IT.
  b. The removal of the transfer of funds impacts Broadband by reducing the associated transfer revenue and the previously budgeted expenses by the same amount of $835k with no net financial impact.
- Modification to 2023-24 Offer 15.6: Police District One is located on the first floor of the Civic Center Parking Structure. In April 2022, when the budget offer was submitted, the building was owned by Post Modern Development, with a rent of $84k for 2024. In December of 2022, the Civic Center Parking Structure was purchased by the City. Now that the City owns the building, there is no longer any rent to be paid for this facility.
  a. The removal of the transfer of funds impacts Operations Services by reducing the associated transfer revenue and the previously budgeted expenses by the same amount of $84k with no net financial impact.
- Modification to 2023-24 Offer 1.42: This offer to update the Water Efficiency Plan was approved for $100k in 2023 and $150k in 2024. A Colorado Water Conservation Board (CWCB) grant for this effort was awarded and appropriated with Ordinance No. 034, 2023, thus the $150K in 2024 no longer needs to be appropriated.
  a. That budgeted amount of $150k will remain in Water Fund reserves for future use, as approved by Council.

During the review at the September 26, 2023, Work Session, and unrelated to the City's annual appropriation, a question was asked about what drove such a large use of reserves in the Airport's 2023 operating budget. This was primarily driven by a Purchased Services change related to a Small Community Air Service Development Program Grant for $750,000 that the Airport applied for and did not get. It showed

as a deficit pending the receipt of the grant. Since the Airport did not receive the grant, the $750,000 budgeted in Operating Expenses was not spent so there was no deficit. No backfill is needed from the Cities.

CITY FINANCIAL IMPACTS

This Ordinance amends the City Budget for fiscal year 2024 and represents the annual appropriation for fiscal year 2024 in the amount of $802,507,950, excluding the GID's, URA's and DDA. The Ordinance also sets the City mill levy at 9.797 mills, unchanged since 1991.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

The only material changes to the 2024 appropriations are the 2024 Revision Offers which do not go through the Budgeting for Outcomes (BFO) process. Rather, those items that met the specific criteria for the 2024 Revision process were thoroughly vetted by City staff, the executive management team, the Council Finance Committee during their meeting on September 7, and then Council during their work session conducted on September 26.

PUBLIC OUTREACH

The various methods of public outreach conducted as part of the 2023-24 Biennial Budget are not applicable to the 2024 Revision process. This process is only intended to revise the previously adopted budget to address items not known at the time it was adopted.

ATTACHMENTS

1. Ordinance for Consideration
2. Presentation

ORDINANCE NO. 145, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
BEING THE ANNUAL APPROPRIATION ORDINANCE
RELATING TO THE ANNUAL APPROPRIATIONS
FOR THE FISCAL YEAR 2024; AMENDING THE BUDGET FOR
THE FISCAL YEAR BEGINNING JANUARY 1, 2024, AND ENDING
DECEMBER 31, 2024; AND FIXING THE MILL LEVY FOR
PROPERTY TAXES PAYABLE FISCAL YEAR 2024

WHEREAS, on November 15, 2022, the City Council adopted on second reading Ordinance No. 126, 2022, approving the biennial budget for the years beginning on January 1, 2023, and January 1, 2024; and

WHEREAS, the City Manager has submitted to the City Council proposed amendments to the 2024 budget adopted by the City Council in Ordinance No. 126, 2022; and

WHEREAS, the 2024 fiscal year budgets, fixing of mill levies, and annual appropriations for the City's General Improvement District No. 1 and Skyview South General Improvement District No. 15 are not addressed in this Ordinance, but will be considered by City Council in separate ordinances; and

WHEREAS, Article V, Section 4 of the City Charter requires that, before the last day of November of each fiscal year, the City Council shall appropriate, on a fund basis and by individual project for capital projects and federal or state grant projects, such sums of money as it deems necessary to defray all expenditures of the City during the ensuing fiscal year, based upon the budget as approved by the City Council; and

WHEREAS, Article V, Section 5 of the City Charter provides that the annual appropriation ordinance shall also fix the tax levy in mills upon each dollar of the assessed valuation of all taxable real property within the City, such levy representing the amount of taxes for City purposes necessary to provide for payment during the ensuing fiscal year for all properly authorized expenditures to be incurred by the City, including interest and principal of general obligation bonds; and

WHEREAS, 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, and the transfers in this Ordinance are being made upon the City Manager's recommendation for one or more of these purposes; and

WHEREAS, Article V, Section 11 of the City Charter provides that all appropriations unexpended or unencumbered at the end of the fiscal year shall lapse to the applicable general or

special fund, except that City Council may designate in an ordinance appropriating funds for capital projects and for federal, state, and private grants and donations that such funds shall not lapse until the completion of the capital project or until the earlier of the expiration of the federal, state, or private grant or donation or the City's expenditure of all funds received from such grant or donation; and

WHEREAS, the appropriations in the Ordinance also include appropriations as needed to transfer monies from the dedicated funds receiving the revenues to the funds from which those monies will be expended; and

WHEREAS, the City Council finds and determines that the adoption of this Ordinance is necessary for the public's health, safety, and welfare, and therefore, wishes to approve the Proposed 2024 Budget, as hereafter amended, and authorize the expenditures described in this Ordinance for the 2024 fiscal year.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That the City Council, having reviewed the City Manager's recommended changes to the 2024 Proposed Appropriations section of the Fort Collins 2023 and 2024 Biennial Budget (the "Biennial Budget"), a copy of which is on file with the office of the City Clerk, and as shown in the 2024 budget revisions submitted to the City Clerk as part of the materials for the City Council's September 26, 2023, Work Session, hereby amends the Biennial Budget to reflect the following changes and adopts said Biennial Budget as amended:

	Existing	Additions	Reductions	As Amended
GENERAL FUND	**$240,354,974**	**$2,481,391**	**($83,457)**	**$242,752,908**
SPECIAL REVENUE FUNDS				
Capital Expansion Fund	$488,773	$0	$0	$488,773
Cemeteries Fund	$898,323	$0	$0	$898,323
Cultural Services Fund				
Operating Total	$7,541,711	$136,722	$0	$7,678,433
Capital				
Art in Public Places	$74,494	$0	$0	$74,494
Total Cultural Services Fund	**$7,616,205**	**$136,722**	**$0**	**$7,752,927**
General Employees' Retirement Fund	$6,839,500	$0	$0	$6,839,500
Keep Fort Collins Great Fund	$0	$0	$0	$0
Museum Fund	$1,190,246	$0	$0	$1,190,246

Natural Areas Fund	$15,061,361	$0	$0	$15,061,361
Parking Fund	$2,939,175	$0	$0	$2,939,175
Perpetual Care Fund	$40,000	$0	$0	$40,000
Recreation Fund	$10,199,381	$0	$0	$10,199,381
Sales & Use Tax Fund	$10,670,330	$0	$0	$10,670,330
Transit Service Fund	$23,154,839	$0	$0	$23,154,839
Transportation CEF Fund	$1,552,339	$0	$0	$1,552,339
Transportation Fund	$41,878,918	$0	$0	$41,878,918
Capital Leasing Corp Fund	$6,536,882	$0	$0	$6,536,882
TOTAL SPECIAL REVENUE & DEBT SERVICE FUNDS	**$129,066,272**	**$136,722**	**$0**	**$129,202,994**
CAPITAL IMPROVEMENT FUNDS				
General City Capital				
Capital				
CCIP Arterial Intersection Imp	$1,200,000	$0	$0	$1,200,000
CCIP Bicycle Infrastructure Im	$800,000	$0	$0	$800,000
CCIP Bike/Ped Grade Sep Cross	$1,200,000	$0	$0	$1,200,000
CCIP Bus Stop Improvements	$100,000	$0	$0	$100,000
CCIP Nature in the City	$400,000	$0	$0	$400,000
CCIP Pedestrian Sidewalk - ADA	$2,400,000	$0	$0	$2,400,000
City Bridge Program	$2,800,000	$0	$0	$2,800,000
East Community Park	$113,773	$0	$0	$113,773
Landfill Grndwater Remed IGA	$100,000	$0	$0	$100,000
Parks Assets Management	$65,000	$0	$0	$65,000
Railroad Crossing Replacment	$125,000	$0	$0	$125,000
Total General City Capital	**$9,303,773**	**$0**	**$0**	**$9,303,773**
Community Capital Improvement				
Afford Housing Capital Program	$500,000	$0	$0	$500,000
Arterial Intersection Imprvmnt	$1,200,000	$0	$0	$1,200,000
Bicycle Infrastructure Imprvmt	$800,000	$0	$0	$800,000
Bike/Ped Grade Separated Cross	$1,200,000	$0	$0	$1,200,000
Bus Stop Improvements	$100,000	$0	$0	$100,000
Carnegie Bldg Renovation	$25,000	$0	$0	$25,000
Linden St Renovation	$12,000	$0	$0	$12,000
Nature in the City	$400,000	$0	$0	$400,000

Pedestrian Sidewalk - ADA	$2,400,000	$0	$0	$2,400,000
Willow Street Improvements	$11,000	$0	$0	$11,000
Total Community Capital Improvement	**$6,648,000**	**$0**	**$0**	**$6,648,000**
Conservation Trust Fund				
Operating Total	$648,743	$0	$0	$648,743
Capital				
Trail Acquisition/ Development	$552,020	$0	$0	$552,020
Total Conservation Trust Fund	**$1,200,763**	**$0**	**$0**	**$1,200,763**
Neighborhood Parkland Fund				
Operating Total	$740,639	$0	$0	$740,639
Capital				
New Park Site Development	$3,021,212	$0	$0	$3,021,212
Total Neighborhood Parkland Fund	**$3,761,851**	$0	$0	**$3,761,851**
TOTAL CAPITAL IMPROVEMENT FUNDS	**$20,914,387**	**$0**	**$0**	**$20,914,387**
ENTERPRISE FUNDS				
Broadband Fund				
Operating Total	$29,564,608	$1,159,674	($834,702)	$29,889,580
Total Broadband Fund	**$29,564,608**	**$1,159,674**	**($834,702)**	**$29,889,580**
Golf Fund				
Operating Total	$4,902,600	$0	$0	$4,902,600
Total Golf Fund	**$4,902,600**	**$0**	**$0**	**$4,902,600**
Light & Power Fund				
Operating Total	$160,492,863	$2,954,708	$0	$163,447,571
Capital				
Grid Integrated Water Heater Installations	$355,000	$0	$0	$355,000
Direct Install Demand Response T-stat Replacement	$100,000	$0	$0	$100,000
Art in Public Places	$30,260	$0	$0	$30,260
CMMS–Maintenance Management	$380,000	$0	$0	$380,000
Dist. System Impr. & Replace.	$381,000	$0	$0	$381,000
Distribution Automation-Parent	$200,000	$0	$0	$200,000

New Capacity-Circuits	$1,730,000	$0	$0	$1,730,000
Operational Technology	$250,000	$0	$0	$250,000
Service Center - L&P Parent	$400,000	$0	$0	$400,000
Streetlights - Parent	$1,106,866	$0	$0	$1,106,866
Substation Cap Prj - Parent	$696,000	$0	$0	$696,000
System Relocations - Parent	$400,000	$0	$0	$400,000
Transformers - Parent	$2,000,000	$0	$0	$2,000,000
Capital Total	$8,029,126	$0	$0	$8,029,126
Total Light & Power Fund	**$168,521,989**	**$2,954,708**	**$0**	**$171,476,697**
Stormwater Fund				
Operating Total	$15,363,452	$268,000	$0	$15,631,452
Capital				
2021-Boxelder Watershed Dams	$90,000	$0	$0	$90,000
Art in Public Places	$47,000	$0	$0	$47,000
Poudre River Flow Consolidation Upstream of College Avenue - Conceptual Design	$250,000	$0	$0	$250,000
Cured in Place Pipe	$500,000	$0	$0	$500,000
Developer Repays	$200,000	$0	$0	$200,000
Master Planning	$200,000	$0	$0	$200,000
Stormwater Basin Improvements	$2,000,000	$0	$0	$2,000,000
Stream Rehabilitation Program	$4,000,000	$0	$0	$4,000,000
SW Land Acquisition	$250,000	$0	$0	$250,000
Utility Service Center Phase 2	$200,000	$0	$0	$200,000
Capital Total	$7,737,000	$0	$0	$7,737,000
Total Stormwater Fund	**$23,100,452**	**$268,000**	**$0**	**$23,368,452**
Wastewater Fund				
Operating Total	$21,247,009	$0	$0	$21,247,009
Capital				
Water Reclamation and Biosolids Master Plan	$150,000	$0	$0	$150,000
Art in Public Places	$35,500	$0	$0	$35,500
Collection Sys Replace Pgm	$1,750,000	$0	$0	$1,750,000
DWRF HVAC Improvements	$600,000	$0	$0	$600,000
Operational Technology	$500,000	$0	$0	$500,000
PARENT-Collect Small Projects	$1,500,000	$0	$0	$1,500,000

PARENT-Cured In Place Pipe	$1,000,000	$0	$0	$1,000,000
PARENT-Serv Center Improvemnts	$200,000	$0	$0	$200,000
PARENT-Water Recl Replcmt Prgm	$530,000	$0	$0	$530,000
Capital Total	$6,265,500	$0	$0	$6,265,500
Total Wastewater Fund	**$27,512,509**	**$0**	**$0**	**$27,512,509**
Water Fund				
Operating Total	$30,604,500	$60,000	($150,000)	$30,514,500
Capital				
Joe Wright Reservoir - Water Control Gate Replacement	$2,400,000	$0	$0	$2,400,000
Art in Public Places	$150,850	$0	$0	$150,850
Water Treatment Plant Master Plan	$700,000	$0	$0	$700,000
Distribution Sys Replac	$1,000,000	$0	$0	$1,000,000
Galvanized Service Repl	$1,200,000	$0	$0	$1,200,000
Halligan Res Enlargement Proj	$8,000,000	$0	$0	$8,000,000
PARENT-Cathodic Protection	$625,000	$0	$0	$625,000
PARENT-Distro Small Projects	$2,000,000	$0	$0	$2,000,000
PARENT-Service Cntr Improvm't	$300,000	$0	$0	$300,000
PARENT-Water Prod Replcmt Prgm	$1,030,000	$0	$0	$1,030,000
PARENT-Watershed Protection	$140,000	$0	$0	$140,000
PARENT-Wtr Meter Replacement	$850,000	$0	$0	$850,000
Capital Total	$18,395,850	$0	$0	$18,395,850
Total Water Fund	**$49,000,350**	**$60,000**	**($150,000)**	**$48,910,350**
TOTAL ENTERPRISE FUNDS	**$302,602,508**	**$4,442,382**	**($984,702)**	**$306,060,188**
INTERNAL SERVICE FUNDS				
Benefits Fund	$40,443,127	$0	$0	$40,443,127
Data & Communications Fund	$14,142,969	$156,000	$0	$14,298,969
Equipment Fund	$15,817,038	$63,524	$0	$15,880,562
Self Insurance Fund	$8,632,596	$0	$0	$8,632,596
Utility CS&A Fund	$24,322,219	$0	$0	$24,322,219
TOTAL INTERNAL SERVICE FUNDS	**$103,357,949**	**$219,524**	**$0**	**$103,577,473**

TOTAL CITY FUNDS	**$796,296,090**	**$7,280,019**	**($1,068,159)**	**$802,507,950**

Section 3. That there is hereby appropriated out of the revenues of the City, for the fiscal year beginning January 1, 2024, and ending December 31, 2024, the sum of EIGHT HUNDRED TWO MILLION FIVE HUNDRED SEVEN THOUSAND NINE HUNDRED FIFTY DOLLARS ($802,507,950) to be raised by taxation and otherwise, which sum is deemed by the City Council to be necessary to defray all expenditures of the City during said budget year, to be divided and appropriated for the purposes shown in Section 2 above.

Section 4. That, as provided by Article V, Section 11 of the City Charter, all appropriations for federal, state, and private grants and donations shall not lapse until the earlier of the expiration of the federal, state, or private grant or donation or the City's expenditure of all funds received from such grant or donation, and that all of the following funds appropriated herein for capital projects shall not lapse until the completion of the capital project:

a. $74,494 in the Cultural Services Fund for Art in Public Places;
b. $9,303,773 in Capital Improvements Funds for Total General City Capital;
c. $6,648,000 in the Community Capital Improvements Fund for Total Community Capital Improvement;
d. $552,020 in the Conservation Trust Fund for Capital Trail Acquisition/Development;
e. $3,021,212 in the Neighborhood Parkland Fund for Capital New Park Site Development;
f. $8,029,126 for Capital in the Light & Power Fund;
g. $7,737,000 for Capital in the Stormwater Fund;
h. $6,265,500 for Capital in the Wastewater Fund; and
i. $18,395,850 for Capital in the Water Fund.

Section 5. Mill Levy.

a. That the mill levy rate for the taxation upon each dollar of the assessed valuation of all the taxable real property within the City of Fort Collins shall be 9.797 mills to be imposed on the assessed value of such property as set by state law for property taxes payable in 2024, which levy represents the amount of taxes for City purposes is necessary to provide for payment during the 2024 budget year of all properly authorized expenditures to be incurred by the City, including interest and principal of general obligation bonds.

b. That the City Clerk shall certify this levy of 9.797 mills to the County Assessor and the Board of Commissioners of Larimer County, Colorado, in accordance with the applicable provisions of law, as required by Article V, Section 5 of the City Charter and no later than December 15, 2023; provided however, that if a majority of voters approve Proposition HH, the deadline to certify this tax levy shall be no later than January 5, 2024.

Introduced, considered favorably on first reading and ordered published this 17th day of October, 2023, and to be presented for final passage on the 21st day of November, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

Passed and adopted on final reading this 21st day of November, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

Attachment #2

City of Fort Collins

2024 Annual Appropriation Ordinance

City Council Meeting – October 17, 2023

24 Budget Revisions Timeline

7 Sept:	Council Finance Committee meeting
26 Sept:	Council Work Session
17 Oct:	**1st Reading of the 2024 Annual Appropriation**
21 Nov:	**2nd Reading (due to no Council meeting on Election Day)**

lture and Recreation

Ongoing Programs and Services

Recreational Programs, Centers and Pools (e.g., EPIC, Mulberry, Senior Center, Northside Aztlan Center, Foothills Activity Center, Club Tico, The Farm, Pottery Studio)

Adaptive Recreation

Parks and Trails

Fort Collins Museum of Discovery

Park Planning

Gardens on Spring Creek

Lincoln Center

Golf

Art in Public Places

onomic Health

Ongoing Programs and Services

- Business Support
- Downtown Landscaping and Maintenance
- Downtown Holiday Lighting
- Electric Utility Services
- Broadband
- Urban Renewal Authority
- Downtown Development Authority

vironmental Health

Ongoing Programs and Services

- Water Utility Services
- Wastewater Utility Services
- Conservation of Water and Electricity
- Natural Areas and Nature in the City
- Waste Reduction and Recycling (Timberline Recycling Center)
- Indoor and Outdoor Air Quality
- Climate Commitment
- City Sustainability

ighborhood Livability and Social Health

Ongoing Programs and Services

- Affordable Housing and Human Services Program
- Low-income, Senior and Disabled Rebate programs
- Homelessness Support
- Code Enforcement
- Mediation and Restorative Justice
- Construction and Building Permits
- Forestry management
- Larimer Humane Society Services
- Graffiti Abatement Program

e Community

Ongoing Programs and Services

Emergency Prevention and Response

Fire Protection and Prevention

911 Dispatch and Police Records

Community Policing

Police Patrol and K9 Unit

Municipal Court

Stormwater Utility Services

Cybersecurity and Protecting Customer Information

Natural Areas and Parks Rangers

West Nile Virus Program

nsportation and Mobility

Ongoing Programs and Services

- Transfort, MAX and Dial-A-Ride Services
- Sidewalk and Other Mobility Improvements
- Safe Routes to Everywhere and School Crossing Guards
- Street and Bridge Maintenance
- Snow and Ice Removal
- Road Construction and Capital Projects
- Traffic Operations
- Street Sweeping
- Parking Services

h Performing Government

Ongoing Programs and Services

- City Council and Elections
- Utility Customer Service
- Special Events and Volunteer Coordination
- FCTV, Communications and Public Engagement
- Purchasing of Equipment and Services
- Employment Services
- City Vehicles and Buildings
- Business Licenses and Sales Tax Collection

24 Budget Revisions Offers

Fund / Revision Requested	FTE	Ongoing $	One-Time $	Total
General Fund				
Rental Housing Program with 4.0 FTE	4.00	401,755	78,750	480,505
1.0 FTE Carnegie Center for Creativity Programming	1.00	111,722		111,722
Municipal Court Services - 1.0 FTE Deputy Court Clerk II	1.00	70,419	18,000	88,419
Municipal Court Services - Technology	-	189,201	146,410	335,611
Additional Prosecution Staff	1.00	155,150	19,472	174,622
Waste Contracting Operating Budget plus 2 FTE	2.00	300,896	-	300,896
Bringing the operations of the TRC in-house plus 3 FTE	3.00	232,900	311,476	544,376
Encampment cleaning and prevention additional funds	-	111,000	-	111,000
Expansion of the Enterprise Service Management (ESM) System	-	68,500	87,500	156,000
Household Hazardous Waste	-	-	114,240	114,240
Total General Fund	**12.00**	**$1,641,543**	**$775,848**	**$2,417,391**
Cultural Services & Facilities				
1.0 FTE Carnegie Center for Creativity Programming	-	25,000	-	25,000
Total Cultural Services & Facilities Fund	**0.00**	**$25,000**	**$0**	**$25,000**

24 Budget Revisions Offers

Fund / Revision Requested	FTE	Ongoing $	One-Time $	Total
Light and Power Fund				
Debt service for 2023 Bond Issuance	-	2,954,708	-	2,954,708
Total Light and Power Fund	**0.00**	**2,954,708**	**0**	**2,954,708**
Water Fund				
Poudre Instream Flows Plan: Early Design and Cost Estimating	-	-	60,000	60,000
Total Water Fund	**0.00**	**0**	**60,000**	**60,000**
Stormwater Fund				
Encampment cleaning and prevention additional funds	-	64,000	-	64,000
Household Hazardous Waste	-	-	89,760	89,760
Total Stormwater Fund	**0.00**	**$64,000**	**$89,760**	**$153,760**
Broadband Fund				
Debt service for 2023 Bond Issuance	-	1,159,674	-	1,159,674
Total Broadband Fund	**0.00**	**$1,159,674**	**$0**	**$1,159,674**
Equipment Fund				
Bringing the operations of the TRC in-house plus 3 FTE	-	63,524	-	63,524
Total Equipment Fund	**0.00**	**$63,524**	**$0**	**$63,524**
TOTAL ALL FUNDS	**12.00**	**5,908,449**	**925,608**	**6,834,057**

ange to 2024 Net City Budget after Revisions

TOTAL BUDGET (in Millions)

	Original 2024	Revised 2024	% Change
Operating	$716.4	$718.1	0.2%
Debt	45.8	52.0	13.5%
Capital*	64.8	65.2	0.6%
Total City Appropriations**	**$827.0**	**$835.3**	**1.0%**
Less			
Internal Service Funds	($98.3)	($99.4)	1.1%
Transfers to Other Funds	(78.4)	(78.0)	-0.5%
GIDs	(0.3)	(0.3)	1.2%
URAs	(6.1)	(6.1)	0.0%
DDA	(24.3)	(26.3)	8.6%
Total	($207.4)	($210.2)	1.3%
Net City Budget	**$619.6**	**$625.1**	**0.9%**

* Capital in this table includes all capital related items, which will be significantly greater than the sum of Capital Project offers

** This includes the GID #1, GID #15, URA and DDA all of which are appropriated in separate ordinances

Thank you!

Appendix

Highlighted Program and Service Enhancements

American Rescue Plan Act (ARPA) Funded Offers

- Increased Funding for the Reduced Fee Scholarship Program **Offer #43.17**
- Childcare Space Modifications at Northside Aztlan Community Center **Offer #43.23**
- Contractual Cultural Services Community Programs Mgr. w/ Program Support **Offer #50.7**
- Cultural Services Access Fund for Low-Income Residents **Offer # 50.8**

Asset Management

- Facility Improvements at The Farm and Northside Aztlan Center **Offers #43.19 / 43.27**
- Equipment Replacement investments across Parks and Recreation **Multiple Offers**

Customer Service / Technology

- Customer Database and Registration Software Upgrade **Offer #43.28**

onomic Health

Highlighted Program and Service Enhancements

American Rescue Plan Act (ARPA) Funded Offers

- Contractual staffing for a Multicultural Business and Entrepreneurship Center and Portal (Inclusive Business Support) **Offer #33.7**
- Contractual staffing and related Childcare System Support **Offer #45.2**

Local Business Support

- Capital Project Business Program and staffing **Offer #33.11**

Customer Service / Technology

- Connexion Buildout - Planned expansion of High-Speed Internet to the community **Offers #14.7 / 14.9 / 14.10 / 14.14 / 14.15**

Light and Power Utility

- Offer 2.20 - Utilities: Light & Power - 1.0 FTE Electrical Engineer – **Offer 2.20**

Environmental Health

Highlighted Program and Service Enhancements

Water Conservation

- Environmental Learning Center (ELC) Flow Restoration Project **Offer #1.45**

Waste Diversion

- Household Hazardous Waste Collection **Offer #1.24**
- Disposable Bag Ordinance Implementation and Ongoing Programs **Offer #32.9**
- Ultra-violet Wastewater Disinfection System and Infrastructure Improvements **Offer #1.43**

Air Quality

- Electric Vehicle Monitoring and Management Demonstration **Offer #1.6**
- Air Quality Monitoring Fund **Offer #32.11**

Additional Climate Action

- Innovate Fort Collins Challenge **Offer 32.12**
- Increasing Community Leadership for Our Climate Future **Offer #32.17**
- Seed Funding for a Partner-Led Sustainable Business Program **Offer #32.16**

ighborhood Livability and Social Health

Highlighted Program and Service Enhancements

American Rescue Plan Act (ARPA) Funded Offers

- Technical Assistance for Small Business **Offer #23.10**
- Eviction Legal Fund **Offer #24.7**
- Expanded Homelessness Initiatives for Recovery and Stabilization **Offer #31.12**
- Affordable Housing Land Bank Expansion **Offer #31.20**
- Equity Grant Fund **Offer #72.1**
- 1.0 FTE Contractual Mobile Home Park Code Compliance and Building Eval **Offer #24.12**

Urban Forestry Investments

- Urban Forestry Continuing Enhancements, including Emerald Ash Borer Infestation Management **Offers #59.10 / 59.5**
- Urban Forest Strategic Plan **Offer #59.6**

ighborhood Livability and Social Health

Highlighted Program and Service Enhancements

Focus on Diversity, Equity and Inclusion

- Digital Access & Equity Program Coordinator **Offer #11.6**
- Immigration Legal Fund **Offer #24.8**
- Advancing Accessible Permitting **Offer #23.26**

Housing and the Unhoused

- Affordable Housing Capital Fund **Offer #31.4**
- Continuing Homelessness Initiatives & Human Services Funding **Offers #31.3 / 31.7 / 31.11**

Building and Development

- 1 FTE - Historic Preservation Surveyor Specialist **Offer #23.17**
- 1.0 FTE - Building Services Building Inspector **Offer #23.18**
- 2.0 FTE Landscape Inspectors - Development Review **Offer #23.20**

...e Community

Highlighted Program and Service Enhancements

Community Health and Safety

- Encampment Cleaning and Prevention **Offer #66.2**
- Park Ranger **Offer #66.4**

Emergency Responsiveness and Police Services Staffing

- Dispatchers (one staff member added each year) **Offer #13.15**
- 5.0 FTE - Community Services Officers (CSO) **Offer 13.13**
- 1.0 FTE - Crimes Against Persons (CAP) Criminalist **Offer 13.31**

Stormwater Investments

- Poudre River Flow Consolidation Upstream of College Ave - Concept Design **Offer #4.52**
- Fossil Creek and Stanton Creek Stream Rehabilitation **Offer #4.53**
- ...tilities: Water Quality Services - 1.0 FTE Watershed Specialist **Offer 4.54**

nsportation and Mobility

Highlighted Program and Service Enhancements

Community Capital Improvement Program (CCIP) Funded Offers

- Arterial Intersections **Offer 25.4**
- ADA Pedestrian Sidewalk and Bus Stop Improvements **Offers 25.5 / 51.34**
- Pedestrian Grade-Separated Crossing Fund **Offer 25.11**
- Bicycle Infrastructure **Offer 27.5**

Alternative Modes

- Shift Your Ride Travel Options Program **Offer 27.13**
- Siphon Bicycle/Pedestrian Overpass (Construction) **Offer 25.19**

Traffic and Safety Improvements

- Vision Zero Action Plan Implementation **Offer 36.10**
- School Transportation Safety Assessments & Strategic Infrastructure for Youth **Offer 27.14**
- Neighborhood Traffic Mitigation Program Expansion **Offer 36.9**

h Performing Government

Highlighted Program and Service Enhancements

American Rescue Plan Act (ARPA) Funded Offers

- Contractual staffing to effectively run the ARPA Program **Offer 10.9 / 10.10 / 22.11**
- Local Match for State ARPA Grant Funds **Offer 10.11**

Public Engagement

- Enhancing Utilities Communications **Offer 3.24**

Effective Governance

- Staff Analyst Providing Elections Transparency and Technology Support **Offer 35.11**
- Legislative (Agenda) Management System Evaluation and Implementation **Offer 35.13**

City Facility Improvements

- Aging Facility Maintenance **Offer 15.14**
- Facility Restroom and Common Area High Use Cleaning **Offer 15.19**

ditional Offers Funded on 1st Reading of the 2023-24 Budget

Outcome	Offer Number and Title
C&R	Offer 43.28 - Customer Database and Registration Software Upgrade
C&R	Offer 54.8 - Parks Landscape Conversion and Irrigation Infrastructure Replacement
C&R	Offer 50.16 - Museum of Discovery Artifact Housing Furniture
C&R	Offer 50.15 - ARPA Support for Individual Creatives in the Community (Art to Live)
ECON	Offer 2.20 - Utilities: Light & Power - 1.0 FTE Electrical Engineer
ENV	Offer 1.24 - Household Hazardous Waste Collection
ENV	Offer 32.12 - Innovate Fort Collins Challenge
NLSH	Offer 24.8 - Immigration Legal Fund
NLSH	Offer 31.17 - ARPA - Social Services Recovery Grants
NLSH	Offer 23.26 - Advancing Accessible Permitting
NLSH	Offer 24.12 - ARPA - 1.0 FTE Contractual Mobile Home Park Code Compliance and Building Evaluation
NLSH	Offer 23.17 - 1 FTE - Historic Preservation Surveyor Specialist
NLSH	Offer 23.20 - 2.0 FTE Landscape Inspectors - Development Review
NLSH	Offer 59.6 - Urban Forest Strategic Plan
NLSH	Offer 71.1 - Assessment of Citywide Organizational Practices and Structure to Deliver on Compliance with Local Policies
NLSH	Offer 23.18 - 1.0 FTE - Building Services Building Inspector
NLSH	Offer 24.11 - ARPA Backflow Preventer Funding for Mobile Home Parks
SAFE	Offer 4.54 - Utilities: Water Quality Services - 1.0 FTE Watershed Specialist
T&M	Offer 27.13 - 1.0 FTE Shift Your Ride Travel Options Professional & Program
T&M	Offer 27.14 - School Transportation Safety Assessments and Strategic Infrastructure for Youth
T&M	Offer 36.13 - School Zone Safety Flasher Upgrade
T&M	Offer 7.10 - 1.0 FTE Street Sweeper Operator
T&M	Offer 36.9 - Neighborhood Traffic Mitigation Program Expansion
HPG	Offer 35.13 - Legislative Management System Evaluation and Implementation
HPG	Offer 17.10 - ARPA - Future of Work

October 17, 2023

AGENDA ITEM SUMMARY
City Council

STAFF

Lance Smith, Director of Finance, Planning & Analysis
Randy Reuscher, Lead Analyst, Utility Rates
Eric Potyondy, Assistant City Attorney
Cyril Vidergar, Assistant City Attorney

SUBJECT

Items Relating to 2024 Utility Rates, Fee, and Charges.

EXECUTIVE SUMMARY

A. First Reading of Ordinance No. 146, 2023, Amending Chapter 26 of the Code of the City of Fort Collins to Revise Electric Rates, Fees, and Charges and Updating the Related Income-Qualified Assistance Program.

B. First Reading of Ordinance No. 147, 2023, Amending Chapter 26 of the Code of the City of Fort Collins to Revise Water Rates, Fees, and Charges.

C. First Reading of Ordinance No. 148, 2023, Amending Chapter 26 of the Code of the City of Fort Collins to Revise Wastewater Rates, Fees, and Charges.

D. First Reading of Ordinance No. 149, 2023, Amending Chapter 26 of the Code of the City of Fort Collins to Revise Stormwater Rates, Fees, and Charges.

The purpose of this item is to propose 2024 Utility Rates for Council consideration, which align with the 2024 City Manager's Recommended Budget. Monthly utility charges are proposed to increase 5% for electric customers, 4% for water customers, 4% for wastewater customers, and 3% for stormwater customers.

STAFF RECOMMENDATION

Staff recommend adoption of the Ordinances on First Reading.

BACKGROUND / DISCUSSION

Proposed Changes to Monthly Utility Rates

The revenues needed to support the ongoing operation and maintenance costs of providing each of the four essential services to customers are collected through monthly utility rates. As costs change over time, it is necessary to adjust rates to reflect those changes. Long-term financial planning is important to ensure revenues are adequate and reserves are available to maintain and replace infrastructure in a timely fashion to continue to provide high quality and reliable services to our customers. Frequent review and updating of the cost-of-service allocation models behind the monthly utility rates maintains equity across rate classes and helps to reduce the impacts on customers of higher utility rates by providing gradual, modest rate adjustments over time rather than less frequent and larger rate adjustments. These actions help ensure the delivery of current and future utility services occurs in a fiscally responsible manner, balancing both costs and levels of service with affordability and prudent planning and investments.

A summary of the proposed rate increases for the four utility services is shown in the table below:

UTILITY	2024 PROPOSED INCREASE
ELECTRIC	5%
WATER	4%
WASTEWATER	4%
STORMWATER	3%

Electric

Staff are proposing a 5% retail rate increase for the electric utility enterprise fund in 2024. This increase is driven by a combination of a 5% increase in wholesale electric expenses in 2024, as well as an increase to cover distribution operating and maintenance costs and investments in capital projects. Roughly two-thirds of costs incurred each year to provide electric service are attributable to wholesale expenses (the largest part of which are power supply tariffs charged by Platte River Power Authority), while the other one-third is attributable to costs related to operating and maintaining the distribution system.

Staff have updated financial models to better understand future needs related to growing costs around operating and maintaining the distribution system, including the cost of capital projects. The outcome shows a need for a rate increase to cover future operating and maintenance costs and to continue to invest in updating the system for continued reliability and resiliency. The portion of the proposed 5% increase that is not applied to wholesale cost increases will be used to help fund distribution system needs.

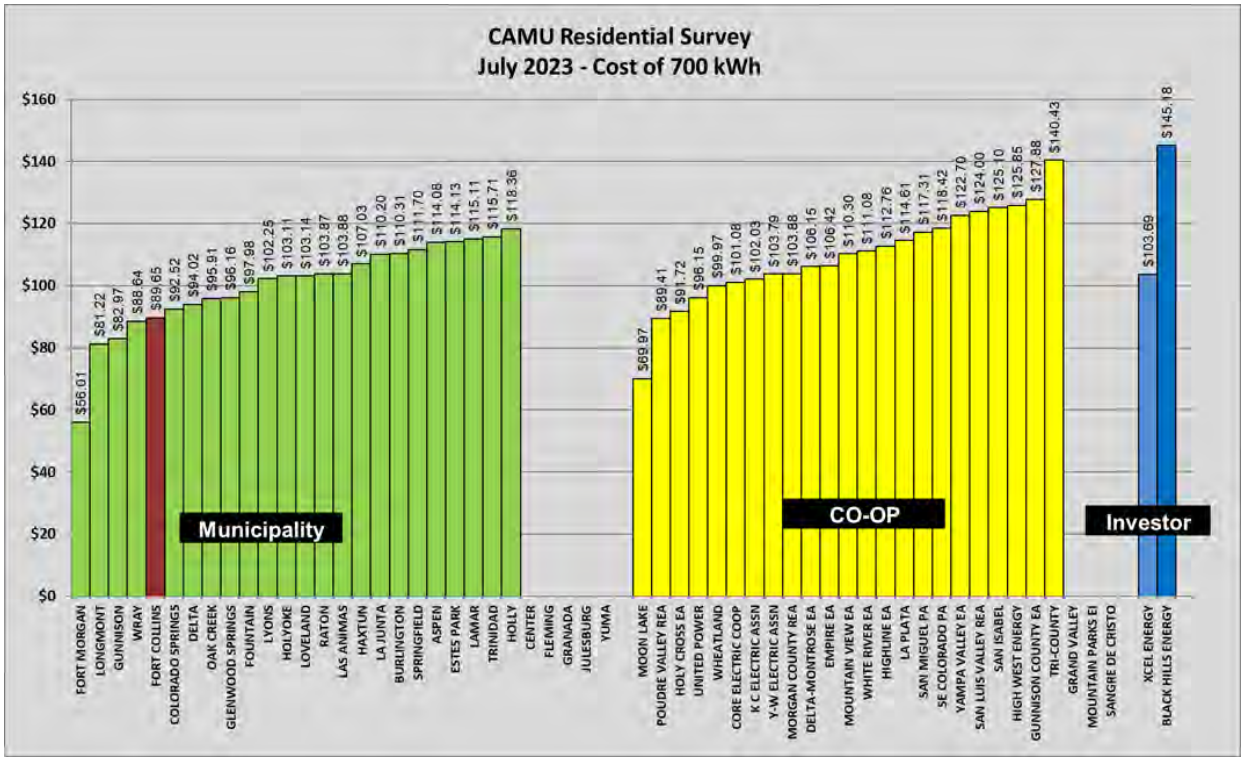
There are multiple capital projects necessary to meet future needs, some of which include feeder cable and transformer replacements, streetlighting upgrades, distribution automation, and demand response technology upgrades. Staff are also in the process of reviewing requirements and in contract negotiations to upgrade the utility billing system, which will occur over the next couple years.

Platte River Power Authority (PRPA) is planning to increase their wholesale blended rate ($/MWh) by 5% in 2024. There is variability in how the increase is applied to individual component charges. The owner community charge (1.3% decrease) and transmission charge (0.6% decrease) will be slightly lower than 2023. The generation demand charge will increase 7.5% during the summer months and 7.0% during the non-summer. The fixed energy charge will increase 6.0% and the variable energy charge will increase 6.8%.

The current rate forecast for the electric fund is shown here:

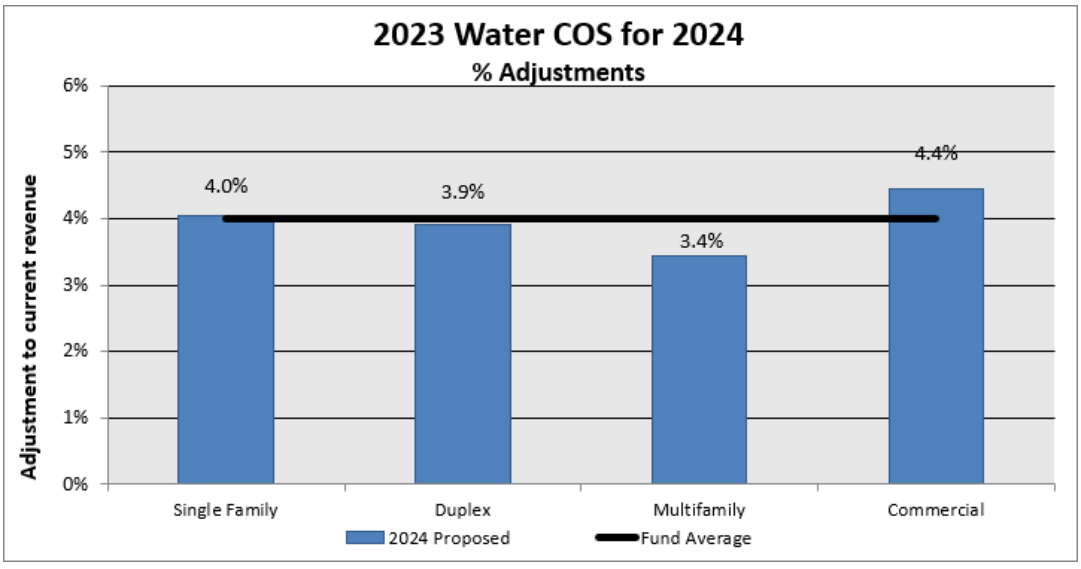
Utility Rate Forecast										
Fund	Actual 2023	Budget 2024	Forecast 2025	Forecast 2026	Forecast 2027	Forecast 2028	Forecast 2029	Forecast 2030	Forecast 2031	Forecast 2032
Electric Fund	5.0%	5.0%	4-5%	4-5%	4-6%	6-8%	6-8%	6-8%	4-7%	4-7%

Fort Collins Utilities participates in the Colorado Association of Municipal Utilities (CAMU) survey each year. Below are the residential electric rate comparisons for the electric utilities in Colorado that responded to the survey. Fort Collins is shown in the maroon colored bar within the graph. Based on the July 2023 survey, Fort Collins Utilities came in towards the lower end of average cost within the state, assuming 700 kWh of consumption in a month, at $89.65, or 7th lowest overall.



Water

Staff are proposing a 4% retail rate increase for the water fund in 2024. In addition, the cost-of-service model for the water fund has been updated for 2024. Minor rate class specific adjustments are proposed for 2024 based on the model updates. Due to the higher costs of materials and impacts to the cost of borrowing, the amount of interest being paid on any revenue bonds that will be needed in the coming decade for infrastructure investments will increase.

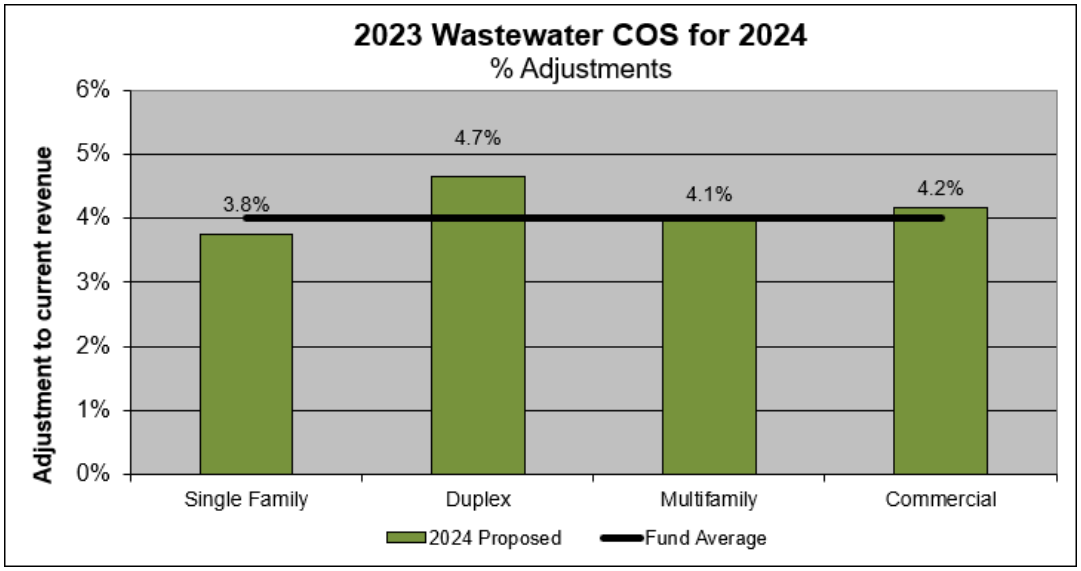


The long-term financial model has been updated for the water utility fund. The current rate forecast for the water fund is shown below. Just as for electric services, it may be necessary to have rate increases in the 5-8% range for a few years, if inflation stays above 5%, as seen the last few years.

Utility Rate Forecast										
Fund	Actual 2023	Budget 2024	Forecast 2025	Forecast 2026	Forecast 2027	Forecast 2028	Forecast 2029	Forecast 2030	Forecast 2031	Forecast 2032
Water Fund	4.0%	4.0%	4-7%	5-8%	5-8%	5-8%	4-7%	4-7%	4-7%	4-7%

Wastewater

Staff are proposing a 4% retail rate increase for the wastewater fund in 2024, as well. In addition, the wastewater cost-of-service model was updated for 2024, which is driving the need for minor adjustments by rate class. There has been a trend in recent years of declining operating revenues for this utility. As this utility is not immune to the impacts of inflation on its operating costs, it is necessary to increase operating revenues through rate adjustments to offset these higher costs of providing this service to our community. At this point, the financial model does not indicate a need to exceed 5% in any given year.



The current rate forecast for the wastewater fund is shown here:

Utility Rate Forecast										
Fund	Actual 2023	Budget 2024	Forecast 2025	Forecast 2026	Forecast 2027	Forecast 2028	Forecast 2029	Forecast 2030	Forecast 2031	Forecast 2032
Wastewater Fund	4.0%	4.0%	3-5%	3-5%	3-5%	3-5%	3-5%	3-5%	3-5%	3-5%

Stormwater

Staff are proposing a 3% retail rate increase for the stormwater fund in 2024. This is 1% higher than the December 2021 forecast, which is a smaller incremental increase than what is being proposed for the other utilities. The reasons for this smaller adjustment to the proposed rate increase for this utility are that a larger portion of operating revenues are available in this fund for infrastructure investments than the other utilities. There will be a need to issue revenue bonds for the Oak Street stormwater improvement project this budget cycle.

The current rate forecast for stormwater services is shown here:

Utility Rate Forecast										
Fund	Actual 2023	Budget 2024	Forecast 2025	Forecast 2026	Forecast 2027	Forecast 2028	Forecast 2029	Forecast 2030	Forecast 2031	Forecast 2032
Stormwater Fund	3.0%	3.0%	3-5%	3-5%	3-5%	3-5%	3-5%	3-5%	3-5%	3-5%

The table below shows the impacts of the proposed rate change to the average residential monthly bill. Under the proposed rate changes, a residential customer's total utility bill, for a customer receiving all four municipal utility services, would increase by 4.3%, or $8.35 per month.

Fort Collins Utilities Comparative Residential Monthly Bill				
Utility	2023	2024	$ Change	% Change
Electric	$ 84.20	$ 88.41	$ 4.21	5.0%
Water	$ 51.00	$ 53.04	$ 2.04	4.0%
Wastewater	$ 35.61	$ 37.04	$ 1.42	4.0%
Stormwater	$ 22.42	$ 23.09	$ 0.67	3.0%
Total Average Bill	$ 193.22	$ 201.57	$ 8.35	4.3%

The table below compares typical residential electric, water, wastewater, and stormwater monthly utility bills across neighboring utilities along the Front Range, based on proposed 2024 suggested rate adjustments and charges. In total, Fort Collins Utilities comes in the lowest at $201.57 for all four services. Including the proposed increases for 2024, Fort Collins will remain the lowest overall, as there are known increases proposed amongst the other utilities for the coming year, with some of them being substantially higher than the percentage increases proposed for our community.

2024 Residential Average Monthly Utility Bill					
Utility	Electric	Water	Wastewater	Stormwater	Total
	2024	2024	2024	2024	2024
Ft Collins	$ 88.41	$ 53.04	$ 37.04	$ 23.09	$ 201.57
Longmont	$ 82.56	$ 69.33	$ 41.33	$ 18.85	$ 212.07
Loveland	$ 89.76	$ 61.16	$ 43.04	$ 24.88	$ 218.84
Greeley	$ 100.63	$ 73.90	$ 36.99	$ 18.61	$ 230.13
Colorado Springs	$ 99.92	$ 96.95	$ 30.53	N/A	$ 227.40
Boulder	$ 100.63	$ 66.72	$ 48.43	$ 27.10	$ 242.89

Utilities Affordability Programs

Utilities staff are proposing improving access to the City's Utilities affordability programs. In November 2022, Council requested that staff review affordability programs to ensure they are accessible to the target customers, to reduce barriers to apply, and to add additional ways for customers to apply for the Income-Qualified Assistance Program (IQAP).

Council adopted the IQAP program in 2022. Currently, customers who are approved through the state's Low-income Energy Assistance Program (LEAP) are automatically enrolled in IQAP. While most customers who meet the income requirements are eligible to apply for LEAP, there are two populations that have been identified who are either not eligible to receive LEAP even though their income is within appropriate range, and those who may not be able to take advantage of the program due to additional household assistance they receive. Customers impacted are those where households with members who are not documented U.S. citizens, and renters who have HUD Housing Choice Vouchers (formerly Section 8) with heat included in their rent. Providing alternative income verification entry points for these customers who have Fort Collins Utilities accounts in their name will allow them to access IQAP, separate from the LEAP income verification process. Staff currently anticipates approximately 400 households impacted by this update. These changes would require amending Secs. 26-724.b, c, and e to remove the LEAP enrollment requirement.

As of August 2023, 1,636 customers were enrolled in IQAP. The average discount customers receive is $240 per year. Due to fluctuations in the number of customers enrolled, the cost to Utilities has been approximately $393,000 to $415,000 per year. Increasing the number of participants to 2,000 could increase the annual cost to Utilities to approximately $480,000.

CITY FINANCIAL IMPACTS

The 2024 City Manager's Recommended Budget includes these proposed increases in revenues available for the budget. The electric utility rate increase would offset increased wholesale costs for 2024, as well as contribute to increasing distribution system operating and maintenance and capital costs. The water, wastewater, and stormwater rate increases would contribute to operating and maintenance costs, as well as assist in funding future capital costs incorporated in the most recent capital plan update.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

Discussion of the proposed changes to the Utility water, wastewater, and stormwater rates, fees, and charges was scheduled for discussion at the Water Commission's September 21, 2023, meeting, which was ultimately cancelled. This item has been rescheduled for October 19, 2023. An excerpt of the Commission minutes will be included in a future Council packet for Second Reading.

Discussion of the proposed changes to the Utility electric rates, fees, and charges is scheduled for discussion with the Energy Board at its October 12, 2023, meeting. An excerpt of the Board minutes will be included in a future Council packet for Second Reading.

PUBLIC OUTREACH

The required postcard notice to electric utility customers outside city limits was mailed in early October and a notice was posted in the Coloradoan. Rates and fee presentations were provided to the Council Finance Committee on October 5, 2023, and will be shared at the Business Accounts meeting for all commercial customer accounts on October 24, 2023.

ATTACHMENTS

1. Ordinance A for Consideration
2. Ordinance B for Consideration
3. Ordinance C for Consideration
4. Ordinance D for Consideration
5. Presentation

ORDINANCE NO. 146, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING CHAPTER 26 OF THE CODE OF THE CITY OF FORT COLLINS TO REVISE ELECTRIC RATES, FEES, AND CHARGES AND UPDATING THE RELATED INCOME-QUALIFIED ASSISTANCE PROGRAM

WHEREAS, the City Council is empowered and directed by City of Fort Collins Charter Article XII, Section 6, to by ordinance from time to time fix, establish, maintain and provide for the collection of such rates, fees or charges for utility services furnished by the City as will produce revenues sufficient to pay the costs, expenses, and other obligations as set forth therein; and

WHEREAS, the rates, fees or charges for utility services set forth herein are necessary to produce sufficient revenues to provide the utility services described herein; and

WHEREAS, revenues from the rates, fees or charges for utility services set forth herein shall be used to defray the costs of providing such utility services as required by the Charter and the City Code; and

WHEREAS, the City purchases bulk wholesale electric power from Platte River Power Authority ("PRPA") pursuant to an Amended Contract for Supply of Electric Power and Energy, dated May 30, 2019; and

WHEREAS, Utilities staff has determined the increased system costs will require an additional average 5% rate increase at the Electric Utility Enterprise Fund level in 2024 in order to remain consistent with Article XII, Section 6, of the City Charter; and

WHEREAS, on May 1, 2018, City Council adopted Ordinance No. 054, 2018, creating the Income-Qualified Assistance Program ("IQAP") and service discounts for residential water, wastewater, and electric services, codified in City Code Chapter 26, Articles, III, IV, and VI; and

WHEREAS, in addition to adjusting electric rates, Utilities staff has identified formatting and terminology updates for Chapter 26 of the City Code to improve the clarity with which electric rates are stated and applied for billing and customer generation credit purposes and to further align IQAP eligibility with City Council priorities, market efficiencies and utility practices; and

WHEREAS, the Energy Board considered the proposed electric rates and methods of application at its October 12, 2023, regular meeting, and provided recommendations of approval of proposed rate sets and IQAP practices to City Council; and

WHEREAS, the City Council Finance Committee considered the proposed electric rates and methods of application as part of a progressive plan presented at its October 5, 2023, regular meeting, and provided recommendations of approval of proposed rates and IQAP practices to the full City Council; and

WHEREAS, the City Manager and staff recommend to the City Council the following electric rate adjustments and City Code rate language clarifications for all billings issued with meter readings, and applications to participate in IQAP received, on or after January 1, 2024; and

WHEREAS, pursuant to Colorado Revised Statutes Section 40-3.5-104, Utilities staff posted public notice and directly mailed postcard notices of the recommended electric rate changes to all customers living outside the City's corporate boundaries, at least 30 days prior to Council's consideration of this Ordinance; and

WHEREAS, based on the foregoing, it is the desire of the City Council to amend Chapter 26 of the City Code to revise the electric rates, fees and charges, and the IQAP program as set forth herein.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That Section 26-464 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 26-464. - Residential energy service, schedule R.

. . .

(c) Monthly rate. The monthly rates for this schedule shall be the sum of the following charges applied to all energy consumption on or after January 1, ~~2023~~2024.

Description	***Unit***	***Component Charge***	***Billed Charge (including PILOT)***
a. Payment in lieu of taxes (PILOT) and franchise. A charge based on all component charges pursuant to this Section		6 percent	
b. Fixed Charge	Per account	~~$10.05~~ $10.55	~~$10.65~~ $11.18
c. Distribution facilities charge (applied to energy charges in d.1. and d.2. below)	Per kWh	~~$0.0261~~ $0.0274	
d. Wholesale Energy Charge (combined energy and demand costs)			
1. Summer. For billings based on consumption during the months of May, June, July, August, and September			

(a) On-Peak (Mon-Fri, 2 pm to 7 pm, excluding holidays)	Per kWh	~~$0.2300~~ $0.2415	~~$0.2715~~ $0.2850
(b) Off-Peak	Per kWh	~~$0.0450~~ $0.0473	~~$0.0754~~ $0.0792
2. Non-summer. For billings based on consumption during the months of January through April and October through December.			
(a) On-Peak (Mon-Fri, 5 pm to 9 pm, excluding holidays)	Per kWh	~~$0.2100~~ $0.2205	~~$0.2503~~ $0.2628
(b) Off-Peak	Per kWh	~~$0.0450~~ $0.0473	~~$0.0754~~ $0.0792
e. Energy efficiency tier charge, per kilowatt hour for total consumption over 700 kWh in a billing month (regardless of on-peak or off-peak)	Per kWh	~~$0.0250~~ $0.0263	~~$0.0265~~ $0.0279
. . .		. . .	. . .

(d) *Medical assistance program.*

. . .

(3) a. Durable Medical Equipment (DME). The discounted monthly rates for customers with electrical durable medical equipment only shall be the sum of the following charges, applied to all energy consumption on or after January 1, ~~2022~~2024:

Description	***Unit***	***Component Charge***	***Billed Charge (including PILOT)***
1. Payment in lieu of taxes (PILOT) and franchise. A charge based on all component charges pursuant to this Section		6 percent	
2. Fixed Charge	Per account	~~$10.05~~$10.55	~~$10.65~~$11.18
3. Distribution facilities charge (applied to energy charges in 4.a) and 4.b) below)	Per kWh	~~$0.0261~~$0.0274	

4. Energy and demand charge			
a) Summer. For billings based on consumption during the months of May, June, July, August, and September			
(i) On-Peak (Mon-Fri, 2 pm to 7 pm, excluding holidays)	Per kWh	~~$0.1610~~$0.1691	~~$0.1983~~$0.2082
(ii) Off-Peak	Per kWh	~~$0.0315~~$0.0331	~~$0.0611~~$0.0641
b) Non-summer. For billings based on consumption during the months of January through April and October through December.			
(i) On-Peak (Mon-Fri, 5 pm to 9 pm, excluding holidays)	Per kWh	~~$0.1470~~$0.1544	~~$0.1835~~$0.1927
(ii) Off-Peak	Per kWh	~~$0.0315~~$0.0331	~~$0.0611~~$0.0641
5. Energy efficiency tier charge, per kilowatt hour for total consumption over 700 kWh in a billing month (regardless of on-peak or off-peak)	Per kWh	~~$0.0250~~$0.0263	~~$0.0265~~$0.0279

(4) a. Air Conditioning (A/C). The discounted monthly rates for customers with medical needs requiring air conditioning only shall be the sum of the following charges, applied to all energy consumption on or after January 1, ~~2022~~2024:

Description	***Unit***	***Component Charge***	***Billed Charge (including PILOT)***
1. Payment in lieu of taxes (PILOT) and franchise. A charge based on all component charges pursuant to this Section		6 percent	
2. Fixed Charge	Per account	~~$10.05~~$10.55	~~$10.65~~$11.18
3. Distribution facilities charge (applied to energy charges in 4.a) and 4.b) below)	Per kWh	~~$0.0261~~$0.0274	
4. Energy and demand charge			
a) Summer. For billings based on consumption during the months of May, June, July, August, and September			
(i) On-Peak (Mon-Fri, 2 pm to 7 pm, excluding holidays)	Per kWh	~~$0.0450~~$0.0473	~~$0.0754~~$0.0792
(ii) Off-Peak	Per kWh	~~$0.0450~~$0.0473	~~$0.0754~~$0.0792
b) Non-summer. For billings based on consumption during the months of January through April and October through December.			
(i) On-Peak (Mon-Fri, 5 pm to 9 pm, excluding holidays)	Per kWh	~~$0.2100~~$0.2205	~~$0.2503~~$0.2628
(ii) Off-Peak	Per kWh	~~$0.0450~~$0.0473	~~$0.0754~~$0.0792
5. Energy efficiency tier charge, per kilowatt hour for total consumption over 700 kWh in a billing month (regardless of on-peak or off-peak)	Per kWh	~~$0.0250~~ $0.0263	~~$0.0265~~$0.0279

(5) a. Durable Medical Equipment (DME) & A/C. The discounted monthly rates for customers with electrical durable medical equipment and medical needs requiring air conditioning shall be the sum of the following charges, applied to all energy consumption on or after January 1, ~~2022~~2024:

Description	***Unit***	***Component Charge***	***Billed Charge (including PILOT)***
1. Payment in lieu of taxes (PILOT) and franchise. A charge based on all component charges pursuant to this Section		6 percent	
2. Fixed Charge	Per account	~~$10.05~~$10.55	~~$10.65~~$11.18
3. Distribution facilities charge (applied to energy charges in 4.a) and 4.b) below)	Per kWh	~~$0.0261~~$0.0274	
4. Energy and demand charge			
a) Summer. For billings based on consumption during the months of May, June, July, August, and September			
(i) On-Peak (Mon-Fri, 2 pm to 7 pm, excluding holidays)	Per kWh	~~$0.0450~~$0.0473	~~$0.0754~~$0.0792
(ii) Off-Peak	Per kWh	~~$0.0315~~$0.0331	~~$0.0611~~$0.0641
b) Non-summer. For billings based on consumption during the months of January through April and October through December.			
(i) On-Peak (Mon-Fri, 5 pm to 9 pm, excluding holidays)	Per kWh	~~$0.1470~~$0.1544	~~$0.1835~~$0.1927
(ii) Off-Peak	Per kWh	~~$0.0315~~$0.0331	~~$0.0611~~$0.0641
5. Energy efficiency tier charge, per kilowatt hour for total consumption over 700 kWh in a billing month (regardless of on-peak or off-peak)	Per kWh	~~$0.0250~~ $0.0263	~~$0.0265~~$0.0279

. . .

(f) *Excess capacity charge.* The monthly capacity charge kilowatt set forth in this Subsection (f) may be added to the above charges for service to intermittent loads in accordance with the provisions of the Electric Service Standards.

Unit	***Component Charge***	***Billed Charge (including PILOT)***
Per kW	~~$2.58~~$2.71	~~$2.74~~$2.87

. . .

Section 3. That Section 26-465 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 26-465. - All-electric residential service, schedule RE.

. . .

(c) *Monthly rate.*

(1) The monthly rates for this schedule shall be the sum of the following charges, applied to all energy consumption on or after January 1, ~~2023~~2024.

Description	***Unit***	***Component Charge***	***Billed Charge (including PILOT)***
a. Payment in lieu of taxes (PILOT) and franchise. A charge based on all component charges pursuant to this Section		6 percent	
b. Fixed Charge	Per account	~~$10.05~~$10.55	~~$10.65~~$11.18
c. Distribution facilities charge (applied to charges in d.1. and d.2. below)	Per kWh	~~$0.0330~~$0.0347	
d. Energy and demand charge			
1. Summer. For billings based on consumption during the months of May, June, July and August, and September			
a) On-Peak (Mon-Fri, 2 pm to 7 pm, excluding holidays)	Per kWh	~~$0.2300~~$0.2415	~~$0.2788~~$0.2927
b) Off-Peak	Per kWh	~~$0.0450~~$0.0473	~~$0.0827~~$0.0869
2. Non-summer. For billings based on consumption during the months of January through April and October through December.			
a) On-Peak (Mon-Fri, 5 pm to 9 pm, excluding holidays)	Per kWh	~~$0.2100~~$0.2205	~~$0.2576~~$0.2705
b) Off-Peak	Per kWh	~~$0.0450~~$0.0473	~~$0.0827~~$0.0869
. . .		. . .	. . .

. . .

(e) *Excess capacity charge.* The monthly capacity charge kilowatt set forth in this Subsection (e) may be added to the above charges for service to intermittent loads in accordance with the provisions of the Electric Service Standards.

Unit	***Component Charge***	***Billed Charge (including PILOT)***
Per kW	~~$2.58~~$2.71	~~$2.74~~$2.87

(f) *Standby service charges*. Standby service, if available, will be provided on an annual contract basis at a level at least sufficient to meet probable service demand (in

kilowatts) as determined by the customer and approved by the utility according to the following:

(1) Monthly standby distribution charge:

Description	***Unit***	***Component Charge***	***Billed Charge (including PILOT)***
Contracted standby service, this charge shall be in lieu of the distribution facilities charge	Per kW	~~$2.60~~$2.73	~~$2.76~~$2.89
For all metered kilowatts in excess of the contracted amount	Per kW	~~$7.78~~$8.17	~~$8.24~~$8.66

. . .

Section 4. That Section 26-466 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 26-466. - General service, schedule GS.

. . .

(c) *Monthly rate*. The monthly rates for this schedule shall be the sum of the following charges:

Description	**Unit**	**Component Charge**	**Billed Charge (including PILOT)**
(1) Payment in lieu of taxes (PILOT) and franchise. A charge based on all component charges pursuant to this Section		6 percent	
(2) Fixed Charge			
a. Single-phase, two-hundred-ampere service	Per account	~~$10.05~~$10.55	~~$10.65~~$11.18
b. Single-phase, above two-hundred-ampere service	Per account	~~$21.50~~$22.57	~~$22.79~~$23.92
c. Three-phase, two-hundred-ampere service	Per account	~~$13.10~~$13.75	~~$13.89~~$14.58
d. Three-phase, above two-hundred-ampere service	Per account	~~$25.35~~$26.63	~~$26.87~~$28.23
(3) Distribution facilities charge (added to demand and energy charges below for "Billed Charge" shown in (5))	Per kWh	~~$.0340~~$0.0357	
(4) Demand charge			

a. Summer. For billings based on meter readings in the months of June, July, August, and September	Per kWh	~~$0.0350~~$0.0368	
b. Non-summer. For billings based on meter readings in the months of January through May and October through December	Per kWh	~~$0.0220~~$0.0231	
c. The meter reading date shall generally determine the summer season billing months; however, no customer shall be billed more than four (4) full billing cycles at the summer rate			
(5) Energy charge			
a. Summer. For billings based on meter readings in the months of June, July, August, and September	Per kWh	~~$0.0450~~$0.0473	~~$0.1208~~$0.1270
b. Non-summer. For billings based on meter readings in the months of January through May and October through December	Per kWh	~~$0.0450~~$0.0473	~~$0.1071~~$0.1125
c. The meter reading date shall generally determine the summer season billing months; however, no customer shall be billed more than four (4) full billing cycles at the summer rate			

. . .

(e) *Excess capacity charge.* The monthly capacity charge per kilowatt set forth in this Subsection (e) may be added to the above charges for service to intermittent loads in accordance with the provisions of the Electric Service Standards.

Unit	***Component Charge***	***Billed Charge (including PILOT)***
Per kW	~~$2.58~~$2.71	~~$2.74~~$2.87

. . .

(q) *Net metering.*

. . .

(5) The customer-generator's consumption of energy from the utility and production of energy that flows into the utility's distribution system shall be measured on a monthly basis. The energy from the utility consumed by the customer-generator shall be billed at the applicable rate as outlined in Subsection (c) of this Section.

The energy produced by the customer-generator shall be credited to the customer monthly as follows:

Description	***Unit***	***Component Credit***
a. Energy and demand credit	Per kWh	~~$0.0617~~$0.0648

(r) *Net metering—community solar projects*.

. . .

(3) Both the customer's consumption of energy from the utility and interest in the production of energy that flows into the utilities' distribution system shall be measured on a monthly basis. The energy from Fort Collins Utilities consumed by the customer shall be billed at the applicable seasonal tiered rate as outlined in Subsection (c) of this Section. The energy produced by the customer's portion of the qualifying facility shall be credited to the customer monthly as follows:

Description	***Unit***	***Component Credit***
a. Energy and demand credit	Per kWh	~~$0.0617~~$0.0648

. . .

Section 5. That Section 26-467 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 26-467. - General service 25, schedule GS25.

. . .

(c) *Monthly rate*. The monthly rates for this schedule shall be the sum of the following charges:

Description	***Unit***	***Component Charge***	***Billed Charge (including PILOT)***
1.Payment in lieu of taxes (PILOT) and franchise. A charge based on all component charges pursuant to this Section		6 percent	
2. Fixed Charge			
a. Single-phase, two-hundred-ampere service	Per account	~~$10.05~~$10.55	~~$10.65~~$11.18
b. Single-phase, above two-hundred-ampere service	Per account	~~$21.50~~$22.57	~~$22.79~~$23.92
c. Three-phase, two-hundred-ampere service	Per account	~~$13.10~~$13.75	~~$13.89~~$14.58

d. Three-phase, above two-hundred-ampere service	Per account	~~$25.35~~$26.63	~~$26.87~~$28.23
3. Distribution facilities charge (applied to energy charges in 5. below)	Per kWh	~~$0.0277~~$0.0291	
4. Demand charge			
a. Summer. For billings based on meter readings in the months of June, July, August, and September	Per kW	~~$10.70~~$11.24	~~$11.34~~$11.91
b. Non-summer. For billings based on meter readings in the months of January through May and October through December	Per kW	~~$6.10~~$6.40	~~$6.47~~$6.78
c. The meter reading date shall generally determine the summer season billing months; however, no customer shall be billed more than four (4) full billing cycles at the summer rate			
5. Energy charge			
a. Summer. For billings based on meter readings in the months of June, July, August, and September	Per kWh	~~$0.0450~~$0.0473	~~$0.0771~~$0.0810
b. Non-summer. For billings based on meter readings in the months of January through May and October through December	Per kWh	~~$0.0450~~$0.0473	~~$0.0771~~$0.0810

. . .

(e) *Excess capacity charge.* The monthly capacity charge kilowatt set forth in this Subsection (e) may be added to the above charges for service to intermittent loads in accordance with the provisions of the Electric Service Standards.

Unit	***Component Charge***	***Billed Charge (including PILOT)***
Per kW	~~$2.58~~$2.71	~~$2.74~~$2.87

(f) *Standby service charges.* Standby service, if available, will be provided on an annual contract basis at a level at least sufficient to meet probable service demand (in kilowatts) as determined by the customer and approved by the utility according to the following:

(1) Monthly standby distribution charge:

Description	***Unit***	***Component Charge***	***Billed Charge (including PILOT)***
Contracted standby service, this charge shall be in lieu of the distribution facilities charge	Per kW	~~$4.73~~$4.97	~~$5.01~~$5.26
For all metered kilowatts in excess of the contracted amount	Per kW	~~$14.19~~$14.90	~~$15.04~~$15.79

. . .

(r) *Net metering*.

. . .

(5) The customer-generator's consumption of energy from the utility and production of energy that flows into the utility's distribution system shall be measured on a monthly basis. The energy from the utility consumed by the customer-generator shall be billed at the applicable rate as outlined in Subsection (c) of this Section. The energy produced by the customer-generator shall be credited to the customer monthly as follows:

Description	***Unit***	~~***Component***~~ ***Bill Credit***
a. Energy and demand credit	Per kWh	~~$0.0617~~$0.0648

. . .

Section 6. That Section 26-468 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 26-468. - General service 50, schedule GS50.

. . .

(c) *Monthly rate.* The monthly rates for this schedule shall be the sum of the following charges:

Description	***Unit***	***Component Charge***	***Billed Charge (including PILOT)***
(1) Payment in lieu of taxes (PILOT) and franchise. A charge based on all component charges pursuant to this Section		6 percent	

(2) Fixed Charge	Per account	~~$27.00~~$28.35	~~$28.62~~$30.05
(3) Coincident demand charge			
a. Summer. For billings based on meter readings in the months of June, July, August, and September	Per kW	~~$15.25~~$16.01	~~$16.17~~$16.97
b. Non-summer. For billings based on meter readings in the months of January through May and October through December	Per kW	~~$12.50~~$13.12	~~$13.25~~$13.91
c. The meter reading date shall generally determine the summer season billing months; however, no customer shall be billed more than four (4) full billing cycles at the summer rate			
(4) Distribution facilities charge	Per kW	~~$10.15~~$10.66	~~$10.76~~$11.30
(5) Energy charge			
a. Summer. For billings based on meter readings in the months of June, July, August, and September	Per kWh	~~$0.0450~~$0.0473	~~$0.0477~~$0.0501
b. Non-summer. For billings based on meter readings in the months of January through May and October through December	Per kWh	~~$0.0450~~$0.0473	~~$0.0477~~$0.0501

. . .

(e) *Excess capacity charge*. The monthly capacity charge per kilowatt set forth in this Subsection (e) may be added to the above charges for service to intermittent loads in accordance with the provisions of the Electric Service Standards.

Unit	***Component Charge***	***Billed Charge (including PILOT)***
Per kW	~~$2.58~~$2.71	~~$2.74~~$2.87

(f) *Standby service charges.* Standby service, if available, will be provided on an annual contract basis at a level at least sufficient to meet probable service demand (in kilowatts) as determined by the customer and approved by the utility according to the following:

(1) Standby distribution charge.

a. Monthly standby distribution charge shall be the sum of the following charges:

Description	***Unit***	***Component Charge***	***Billed Charge (including PILOT)***
Contracted standby service, this charge shall be in lieu of the distribution facilities charge	Per kW	~~$6.06~~$6.36	~~$6.43~~$6.74
For all metered kilowatts in excess of the contracted amount	Per kW	~~$17.70~~$18.59	~~$18.76~~$19.70

. . .

(g) *Excess circuit charge.* In the event a utility customer in this rate class desires excess circuit capacity for the purpose of controlling the available electric capacity of a backup circuit connection, this service, if available, will be provided on an annual contract basis at a level at least sufficient to meet probable backup demand (in kilowatts) as determined by the customer and approved by the utility according to the following:

(1) Monthly charge shall be the sum of the following charges:

Description	***Unit***	***Component Charge***	***Billed Charge (including PILOT)***
Contracted backup capacity per month	Per kW	~~$1.23~~$1.29	~~$1.30~~$1.37
Metered kilowatts in excess of the contracted amount	Per kW	~~$3.73~~$3.92	~~$3.96~~$4.15

. . .

(u) *Net metering*.

. . .

(5) The customer-generator's consumption of energy from the utility and production of energy that flows into the utility's distribution system shall be measured on a monthly basis. The energy from the utility consumed by the customer-generator shall be billed at the applicable rate as outlined in Subsection (c) of this Section. The energy produced by the customer-generator shall be credited to the customer monthly as follows:

Description	***Unit***	***Bill Credit***
a. Energy credit for billings based on generation during the months of June, July, August and September	Per kWh	~~$0.0450~~$0.0473

Section 7. That Section 26-469 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 26-469. - General service 750, schedule GS750.

. . .

(c) *Monthly rate.* The monthly rates for this schedule shall be the sum of the following charges:

Description	***Unit***	***Component Charge***	***Billed Charge (including PILOT)***
(1) Payment in lieu of taxes (PILOT) and franchise. A charge based on all component charges pursuant to this Section		6 percent	
(2) Fixed Charge	Per account	~~$37.00~~$38.85	~~$39.22~~$41.18
a. Additional charge for each additional metering point	Per account	~~$22.57~~$23.70	~~$23.92~~$25.12
(3) Coincident demand charge			
a. Summer. For billings based on meter readings in the months of June, July, August, and September	Per kW	~~$14.25~~$14.96	~~$15.11~~$15.86
b. Non-summer. For billings based on meter readings in the months of January through May and October through December	Per kW	~~$11.85~~$12.44	~~$12.56~~$13.19
c. The meter reading date shall generally determine the summer season billing months; however, no customer shall be billed more than four (4) full billing cycles at the summer rate			
(4) Distribution facilities charge			
a. First seven hundred fifty (750) kilowatts	Per kW	~~$11.08~~$11.63	~~$11.75~~$12.33
b. All additional kilowatts	Per kW	~~$6.55~~$6.88	~~$6.94~~$7.29
(5) Energy charge			
a. Summer. For billings based on meter readings in the months of June, July, August, and September	Per kWh	~~$0.0443~~$0.0466	~~$0.0470~~$0.0494
b. Non-summer. For billings based on meter readings in the months of January	Per kWh	~~$0.0443~~$0.0466	~~$0.0470~~$0.0494

through May and October through December			

. . .

(e) *Excess capacity charge.* The monthly capacity charge per kilowatt set forth in this Subsection (e) may be added to the above charges for service to intermittent loads in accordance with the provisions of the Electric Service Standards.

Unit	***Component Charge***	***Billed Charge (including PILOT)***
Per kW	~~$2.58~~$2.71	~~$2.74~~$2.87

(f) *Standby service charges.* Standby service, if available, will be provided on an annual contract basis at a level at least sufficient to meet probable service demand (in kilowatts) as determined by the customer and approved by the utility according to the following:

(1) Standby distribution charge.

(a) Monthly standby distribution charges shall be paid in the following amounts

Description	***Unit***	***Component Charge***	***Billed Charge (including PILOT)***
Contracted standby service, this charge shall be in lieu of the distribution facilities charge.	Per kW	~~$4.19~~$4.40	~~$4.44~~$4.66
For all metered kilowatts in excess of the contracted amount	Per kW	~~$12.60~~ $13.23	~~$13.36~~$14.02

. . .

(g) *Excess circuit charge.* In the event a utility customer in this rate class desires excess circuit capacity for the purpose of controlling the available electric capacity of a backup circuit connection, this service, if available, will be provided on an annual contract basis at a level at least sufficient to meet probable backup demand (in kilowatts) as determined by the customer and approved by the utility at the following rates:

(1) Monthly charge.

Description	***Unit***	***Component Charge***	***Billed Charge (including PILOT)***
Contracted backup capacity per month	Per kW	~~$0.87~~$0.91	~~$0.92~~$0.97

Metered kilowatts in excess of the contracted amount	Per kW	~~$2.59~~$2.72	~~$2.75~~$2.88

. . .

(v) *Net metering*.

. . .

(5) The customer-generator's consumption of energy from the utility and production of energy that flows into the utility's distribution system shall be measured on a monthly basis. The energy consumed from the utility by the customer-generator shall be billed at the applicable rate as outlined in Subsection (c) of this Section. The energy produced by the customer-generator shall be credited to the customer monthly as follows:

Description	***Unit***	***Bill Credit***
a. Energy credit for billings based on generation during the months of June, July, August, and September	Per kWh	~~$0.0443~~$0.0466

Section 8. That Section 26-470 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 26-470. - Substation service, schedule SS.

. . .

(c) *Monthly rate.* The monthly rates for this schedule shall be the sum of the following charges:

Description	***Unit***	***Component Charge***	***Billed Charge (including PILOT)***
(1) Payment in lieu of taxes (PILOT) and franchise. A charge based on all component charges pursuant to this Section.		6 percent	
(2) Fixed Charge	Per account	~~$90.00~~$94.50	~~$95.40~~$100.17
(3) Coincident demand charge			
a. Summer. For billings based on meter readings in the months of June, July, August, and September	Per kW	~~$14.00~~$14.70	~~$14.84~~$15.58
b. Non-summer. For billings based on meter readings in the months of January through May and October through December	Per kW	~~$11.10~~$11.65	~~$11.77~~$12.35

c. The meter reading date shall generally determine the summer season billing months; however, no customer shall be billed more than four (4) full billing cycles at the summer rate			
(4) Distribution facilities charge	Per kW	~~$5.71~~$6.00	~~$6.05~~$6.36
(5) Energy charge			
a. Summer. For billings based on meter readings in the months of June, July, August, and September	Per kWh	~~$0.0436~~$0.0458	~~$0.0462~~$0.0485
b. Non-summer. For billings based on meter readings in the months of January through May and October through December	Per kWh	~~$0.0436~~$0.0458	~~$0.0462~~$0.0485

. . .

(e) *Standby service charges*. Standby service, if available, will be provided on an annual contract basis at a level at least sufficient to meet probable service demand (in kilowatts) as determined by the customer and approved by the utility at the following rates:

(1) Standby distribution charge.

a. Monthly standby distribution charge:

Description	***Unit***	***Component Charge***	***Billed Charge (including PILOT)***
Contracted standby service, this charge shall be in lieu of the distribution facilities charge.	Per kW	~~$3.12~~$3.28	~~$3.31~~$3.47
For all metered kilowatts in excess of the contracted amount	Per kW	~~$9.36~~$9.83	~~$9.93~~$10.42

. . .

(s) *Net metering.*

. . .

(5) The customer-generator's consumption of energy from the utility and production of energy that flows into the utility's distribution system shall be measured on a monthly basis. The energy consumed from the utility by the customer-generator shall be billed at the applicable rate as outlined in Subsection (c) of this Section. The energy produced by the customer-generator shall be credited to the customer monthly as follows:

Description	***Unit***	***Bill Credit***
a. Energy credit for billings based on generation during the months of June, July, August, and September	Per kWh	~~$0.0436~~$0.0458

Section 9. That Section 26-471 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 26-471. - Special area floodlighting, schedule FL.

. . .

(b) *Monthly rate.* The monthly rates (including a six (6) percent charge in lieu of taxes and franchise) are as follows:

(1) Charge per lamp, mercury vapor:

Description	***Component Charge***	***Billed Charge (including PILOT)***
a. One hundred seventy-five (175) watt	~~$22.06~~$27.61	~~$23.38~~$29.27
b. Two hundred fifty (250) watt	~~$29.21~~$37.24	~~$30.96~~$39.47
c. Four hundred (400) watt	~~$43.37~~$56.60	~~$45.97~~$60.00

(2) Charge per lamp, high-pressure sodium:

Description	***Component Charge***	***Billed Charge (including PILOT)***
a. Seventy (70) watt	~~$14.41~~$15.34	~~$15.27~~$16.26
b. One hundred (100) watt	~~$15.41~~$17.85	~~$16.33~~$18.92
c. One hundred fifty (150) watt	~~$23.85~~$27.02	~~$25.28~~$28.64
d. Two hundred fifty (250) watt	~~$33.56~~$41.28	~~$35.57~~$43.76
e. Four hundred (400) watt	~~$47.36~~$60.90	~~$50.20~~$64.55

(3) Charge per lamp, LED:

Description	***Component Charge***	***Billed Charge (including PILOT)***
a. Fifty-four (54) watt (Cobra)	~~$8.60~~$9.97	~~$9.12~~$10.57
b. Seventy-two (72) watt (Cobra)	~~$10.45~~$12.19	~~$11.08~~$12.92
c. Eighty (80) watt (Cobra)	~~$11.12~~$13.80	~~$11.79~~$14.63
d. Eighty-eight (88) watt (Cobra)	~~$11.84~~$13.95	~~$12.55~~$14.79
e. Sixty-five (65) watt (Post Top)	~~$12.61~~$18.24	~~$13.37~~$19.33

. . .

Section 10. That Section 26-472 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 26-472. - Traffic signal service, schedule T.

. . .

(c) *Monthly rate.* The monthly rates (including a six (6) percent charge in lieu of taxes and franchise) shall be the sum of the following charges:

Description	***Unit***	***Component Charge***	***Billed Charge (including PILOT)***
(1) Fixed charge	Per account	~~$88.98~~$93.43	~~$94.32~~$99.03
(2) Energy charge	Per kWh	~~$0.0827~~$0.0868	~~$0.0877~~$0.092
(3) Service extensions and signal installations made by the utility shall be paid for by the City General Fund, subject to material and installation costs at the time of installation			

Section 11. That Section 26-724 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 26-724. - Residential income-qualified assistance program.

…

(b) *Qualification*. As set forth in this Section, a~~n opt-out~~ discount on certain components of City utility service rates applied under this Chapter shall be available for qualified customers who satisfy the following criteria:

…

(2) Have an annual household income that qualifies for the Larimer County Low-Income Energy Assistance Program (LEAP), and either:

~~(3)~~ (i) One or more users at the account address apply for and enroll in LEAP during the preceding or current LEAP program year (November 1 through April 30), and when LEAP qualification is based on a member of the household other than the customer, the customer produces proof of lawful presence in the U.S. in the valid forms accepted by LEAP; ~~and~~ or

(ii) For households not eligible to enroll in LEAP, the customer has worked directly with a City-approved community partner to verify household income otherwise qualifies for discounts under this Section.

; and

~~(4)~~ (3) Exercise reasonable efforts to improve the water and energy efficiency of the account premise, participate in Active Energy Management Education sessions, and meet program milestones determined according to guidelines established by the Utilities Executive Director, which guidelines may include procedures for disenrollment.

(c) *Enrollment*. Customers may begin receiving the discounts described in this Section through the following methods:

(1) *Auto enrollment; opt-out*. Customers identified by the Utility as qualified based on subsection (b)(2)(i) above shall be automatically enrolled in the program on an annual basis and receive the discounted service rates set forth in subsection (d) below. The Utility may rely on current enrollment in LEAP to qualify customers without requiring a program-specific application. Any customer who does not wish to receive such discount may contact the Utility customer service office to request removal from (i.e. "opt-out" of) the program created by this Section; and

(2) *Application*. Customers not otherwise automatically enrolled may enroll in the program via an application, provided the customer ~~'s enrollment in LEAP can be verified~~, if not eligible for LEAP, is working with a City-approved community partner identified in guidelines adopted by the Utilities Executive Director under Section 26-722(c).

(d) *Rates*. The discounts applied to monthly base and volumetric rates for qualified customers shall be as set forth in Sections 26-127(a), 26-280, 26-464(c), and 26-465(c) of this Code on meter readings on or after January 1, 202~~3~~4.

(e) *Appeal of decision*. A decision that an applicant does not qualify to participate in this program~~, except when the decision is based on lack of qualification for LEAP,~~ may be appealed to the Utilities Executive Director, who shall, prior to making ~~his or her~~their decision, and as ~~he or she~~they deem~~s~~ appropriate, confer with one (1) or more financial experts in reviewing such appeal, including LEAP officials.

Section 12. That the modifications set forth above shall be effective for all energy consumption on or after January 1, 2024.

Introduced, considered favorably on first reading and ordered published this 17th day of October, 2023, and to be presented for final passage on the 21st day of November, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

Passed and adopted on final reading this 21st day of November, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

ORDINANCE NO. 147, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING CHAPTER 26 OF THE CODE OF THE CITY OF
FORT COLLINS TO REVISE WATER RATES, FEES, AND CHARGES

WHEREAS, the City Council is empowered and directed by City of Fort Collins Charter Article XII, Section 6, to by ordinance from time to time fix, establish, maintain and provide for the collection of such rates, fees or charges for utility services furnished by the City as will produce revenues sufficient to pay the costs, expenses, and other obligations as set forth therein; and

WHEREAS, the rates, fees or charges for utility services set forth herein are necessary to produce sufficient revenues to provide the utility services described herein; and

WHEREAS, the revenue from the rates, fees or charges for utility services set forth herein shall be used to defray the costs of providing such utility services as required by the Charter and the City Code; and

WHEREAS, Article III, Chapter 26 of the City Code establishes the water utility as a utility service furnished by and as an enterprise of the City; and

WHEREAS, City Code Sections 26-126 and 26-127 concern various water-related rates, fees, and charges; and

WHEREAS, City Code Section 26-118 requires that the City Manager analyze the operating and financial records of the utility during each calendar year and recommend to the City Council user rates or adjustments to be in effect for the following year; and

WHEREAS, the City Manager and City staff have recommended to the City Council adjustment of the water-related rates, fees, and charges as set forth herein to be effective January 1, 2024; and

WHEREAS, this Ordinance increases the subject water rates by 4%; and

WHEREAS, based on the foregoing, City Council desires to amend Chapter 26 of the City Code to adjust the scope and rate of the water-related rates, fees, and charges as set forth herein.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes any and all determinations and findings contained in the recitals set forth above.

Section 2. That Section 26-126 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 26-126. - Schedule A, flat rates for unmetered construction water use.

For residential and nonresidential premises under construction with a planned meter size greater than one (1) inch, no flat unmetered water service will be provided. For residential and nonresidential premises under construction with a planned meter size of one (1) inch or less, the following flat rates will apply per month until the permanent meter is set: The use of construction water, pursuant to this Section, shall exclude the establishment of vegetation, landscape and other appurtenances.

Category	***Component Charge***	***Billed Charge (with PILOT)***
¾-inch construction service, flat charge per month	~~$31.36~~$32.61	~~$33.24~~$34.57
1-inch construction service, flat charge per month	~~$59.79~~$62.18	~~$63.38~~$65.91

Section 2. That Section 26-127 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 26-127. - Schedule B, meter rates.

(a) *Residential rates.*

(1) Residential customers with one (1) dwelling unit shall pay the sum of the following changes:

Category	***Component Charge***	***Billed Charge (with PILOT)***
a. Base monthly charge for residential customers with one (1) dwelling unit	~~$17.96~~$18.68	~~$19.04~~$19.80
b. Quantity monthly charge for residential customers with one (1) dwelling unit (volumetric)		
Tier 1 - For the first seven thousand (7,000) gallons used per month, per one thousand (1,000) gallons	~~$2.780~~$2.891	~~$2.947~~$3.065
Tier 2 - For the next six thousand (6,000) gallons used per month, per one thousand (1,000) gallons	~~$3.195~~$3.323	~~$3.387~~$3.522
Tier 3 - For all additional gallons used per month, per one thousand (1,000) gallons	~~$3.675~~$3.822	~~$3.896~~$4.051
. . .	. . .	. . .

(2) Residential customers with two (2) dwelling units shall pay the sum of the following charges:

Category	***Component Charge***	***Billed Charge (with PILOT)***
a. Base monthly charge for residential customers with two (2) dwelling units	~~$18.97~~$19.71	~~$20.11~~$20.89
b. Quantity monthly charge for residential customers with two (2) dwelling units (volumetric)		
Tier 1 - For the first nine thousand (9,000) gallons used per month, per one thousand (1,000) gallons	~~$2.409~~$2.502	~~$2.553~~$2.653
Tier 2 - For the next four thousand (4,000) gallons used per month, per one thousand (1,000) gallons	~~$2.768~~$2.877	~~$2.935~~$3.050
Tier 3 - For all additional gallons used per month, per one thousand (1,000) gallons	~~$3.186~~$3.310	~~$3.377~~$3.509
. . .	. . .	. . .

(3) Residential customers with more than two (2) dwelling units shall pay the sum of the following charges:

Category	***Component Charge***	***Billed Charge (with PILOT)***
a. Base monthly charge for residential customers with more than two (2) dwelling units		
First dwelling unit	~~$13.64~~$14.10	~~$14.46~~$14.95
Second and each additional dwelling unit	~~$4.54~~$4.70	~~$4.82~~$4.98
b. Quantity monthly charge for residential customers with more than two (2) dwelling units (volumetric)		
Winter - per one thousand (1,000) gallons used in the winter season months of November through April	~~$1.983~~$2.050	~~$2.102~~$2.173
Summer - per one thousand (1,000) gallons used in the summer season months of May through October	~~$2.479~~$2.563	~~$2.628~~$2.717
The meter reading date shall generally determine the seasonal monthly quantity charge; however, no customer shall be billed more than six (6) full billing cycles at the summer quantity charge.		
. . .	. . .	. . .

(b) *Nonresidential rates.*

(1) *Base charge.* Nonresidential, except for special users as described in Subsection 26-127(c) below, customers shall pay a base monthly charge based on meter size as follows:

Meter Size (inches)	*Monthly Base Charge*	***Billed Charge (with PILOT)***
¾	~~$15.97~~$16.67	~~$16.93~~$17.67
1	~~$44.57~~$46.54	~~$47.25~~$49.33
1½	~~$121.20~~$126.53	~~$128.47~~$134.12
2	~~$182.63~~$190.67	~~$193.59~~$202.11
3	~~$278.56~~$290.82	~~$295.28~~$308.27
4	~~$437.33~~$456.57	~~$463.57~~$483.97
6	~~$848.36~~$885.69	~~$899.26~~$938.83
8	~~$1,498.71~~$1564.66	~~$1,588.64~~$1658.54

(2) *Quantity charges.* Nonresidential customers shall pay monthly charges as follows:

Category	***Component Charge***	***Billed Charge (with PILOT)***
Winter - per one thousand (1,000) gallons used in the winter season months of November through April	~~$2.222~~$2.320	~~$2.356~~$2.459
Summer - per one thousand (1,000) gallons used in the summer season months of May through October	~~$2.778~~$2.900	~~$2.945~~$3.074
The meter reading date shall generally determine the seasonal monthly quantity charge; however, no customer shall be billed more than six (6) full billing cycles at the summer quantity charge.		

(3) *Charges for excess use.* Nonresidential customers shall also pay monthly water use charges in excess of the amounts specified in the following table:

Category	***Component Charge***	***Billed Charge (with PILOT)***
Winter - per one thousand (1,000) gallons used in the winter season months of November through April	~~$3.193~~$3.333	~~$3.384~~$3.533

Summer - per one thousand (1,000) gallons used in the summer season months of May through October	~~$3.994~~$4.169	~~$4.233~~$4.419
The meter reading date shall generally determine the seasonal monthly quantity charge; however, no customer shall be billed more than six (6) full billing cycles at the summer quantity charge.		

. . .

(c) *High volume industrial rates.* High volume industrial rates apply to any customer with an average daily demand in excess of two million (2,000,000) gallons per day. The specific rate for any qualifying customer shall be based upon the applicable peaking factor for that customer as follows:

Peaking Factor	***Monthly Charge per Thousand Gallons***	***Billed Charge (with PILOT)***
1.00—1.09	~~$1.74~~$1.82	~~$1.84~~$1.93
1.10—1.19	~~$1.80~~$1.88	~~$1.91~~$1.99
1.20—1.29	~~$1.87~~$1.95	~~$1.98~~$2.07
1.30—1.39	~~$1.92~~$2.00	~~$2.04~~$2.12
1.40—1.49	~~$1.99~~$2.08	~~$2.11~~$2.20
1.50—1.59	~~$2.03~~$2.12	~~$2.15~~$2.25
1.60—1.69	~~$2.09~~$2.18	~~$2.22~~$2.31
1.70—1.79	~~$2.15~~$2.24	~~$2.28~~$2.38
1.80—1.89	~~$2.20~~$2.30	~~$2.34~~$2.44
1.90—1.99	~~$2.28~~$2.38	~~$2.41~~$2.52
> 2.00	~~$2.33~~$2.43	~~$2.47~~$2.58

. . .

Section 3. That the modifications set forth above shall be effective for meter readings on or after January 1, 2024, and in the case of fees not based on meter readings, shall be effective for all fees paid on or after January 1, 2024.

Introduced, considered favorably on first reading and ordered published this 17th day of October, 2023, and to be presented for final passage on the 21st day of November, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

Passed and adopted on final reading this 21st day of November, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

ORDINANCE NO. 148, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING CHAPTER 26 OF THE CODE OF THE CITY OF FORT COLLINS TO REVISE WASTEWATER RATES, FEES, AND CHARGES

WHEREAS, the City Council is empowered and directed by City of Fort Collins Charter Article XII, Section 6, to by ordinance from time to time fix, establish, maintain and provide for the collection of such rates, fees or charges for utility services furnished by the City as will produce revenues sufficient to pay the costs, expenses, and other obligations as set forth therein; and

WHEREAS, the rates, fees or charges for utility services set forth herein are necessary to produce sufficient revenues to provide the utility services described herein; and

WHEREAS, the revenue from the rates, fees or charges for utility services set forth herein shall be used to defray the costs of providing such utility services as required by the Charter and the City Code; and

WHEREAS, Article IV, Chapter 26 of the City Code establishes the wastewater utility as a utility service furnished by and as an enterprise of the City; and

WHEREAS, City Code Sections 26-280 and 26-282 concern various wastewater-related rates, fees, and charges; and

WHEREAS, City Code Section 26-277 requires that the City Manager analyze the operating and financial records of the utility during each calendar year and recommend to the City Council user rates or adjustments to be in effect for the following year; and

WHEREAS, the City Manager and City staff have recommended to the City Council adjustment of the wastewater-related rates, fees, and charges as set forth herein to be effective January 1, 2024; and

WHEREAS, this Ordinance does not increase wastewater rates for the fund as a whole, although there are variations for individual customer rates classes based on recent cost-of-service model updates; and

WHEREAS, based on the foregoing, City Council desires to amend Chapter 26 of the City Code to adjust the scope and rate of the water-related rates, fees, and charges as set forth herein.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes any and all determinations and findings contained in the recitals set forth above.

Section 2. That Section 26-280 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 26-280. - Service charges established by category.

The schedule of rates for each category described in § 26-279 shall be as follows:

Category	*Class of Customer*	*Rate*	*Component Charge*	*Billed Charge (with PILOT)*
A	Single-family residential user (flat rate)	Per month	~~$41.40~~$42.97	~~$43.89~~$45.55
	Single-family residential user (metered water use)	1. Per month (base)	~~$18.50~~$19.20	~~$19.61~~$20.36
		2. Plus, per 1,000 gallons per month (volumetric)	~~$3.594~~$3.731	~~$3.810~~$3.954
		. . .	. . .	. . .
		Note: 1. For single family customers who have not yet established a winter quarter water use at the service address, a system average of 4,000 gallons per month shall be billed. 2. After establishment of a winter quarter water use at the service address, the monthly amount billed shall be based on a minimum of 3,000 gallons per month.		
B	Duplex (two-family) residential users (flat rate)	1. Per month (base)	~~$57.69~~$60.40	~~$61.15~~$64.03
		. . .	. . .	. . .
	Duplex (two-family) residential users (metered water use)	1. Per month (base)	~~$21.36~~$22.36	~~$22.64~~$23.71
		2. Plus, per 1,000 gallons per month, to be calculated on a monthly basis (volumetric)	~~$3.207~~$3.358	~~$3.400~~$3.559
		. . .	. . .	. . .

		Note: 1. For duplex customers who have not yet established a winter quarter water use at the service address, including new construction, a system average 6,200 gallons shall be billed. A change in ownership will continue to be billed on winter quarter average currently in effect. 2. After establishment of a winter quarter use at the service address, the monthly amount billed shall be based on a minimum of 4,000 gallons per month.		
C	Multi-family residential user (more than two dwelling units including mobile home parks) and winter quarter based nonresidential user	1. Base charge per month per dwelling unit served (base)	~~$2.90~~$3.02	~~$3.08~~$3.20
		2. Plus, per 1,000 gallons per month (volumetric)	~~$3.689~~$3.840	~~$3.910~~$4.071
		. . .	. . .	. . .
		Note: 1. For multi-family customers who have not yet established a winter quarter water use at the service address, including new construction, a system average of 3,200 gallons per living unit shall be billed. A change in ownership will continue to be billed on winter quarter average currently in effect. However, Category D rates will apply to multi-family residential units under construction during the period of service from the installation of the water meter to the date the certificate of occupancy is issued. 2. After establishment of a water quarter use at the service address, the monthly amount billed shall be per 1,000 gallons of winter quarter water use, calculated on a monthly basis.		
D	Minor nonresidential user	1. Per 1,000 gallons of water use, measured sewage flow or winter quarter water use, whichever is applicable, to be calculated on a monthly basis, plus the following applicable base charge:	~~$3.476~~$3.622	~~$3.684~~$3.839
		2. Size of water meter (inches)	Base charge	
		¾ or smaller	~~$10.03~~$10.45	~~$10.63~~$11.08

		1	~~$23.15~~$24.12	~~$24.54~~$25.57
		1½	~~$46.59~~$48.55	~~$49.39~~$51.46
		2	~~$79.73~~$83.08	~~$84.51~~$88.06
		3	~~$127.40~~$132.75	~~$135.04~~$140.72
		4	~~$201.20~~$209.65	~~$213.27~~$222.23
		6	~~$882.00~~$919.04	~~$934.92~~$974.19
		8	~~$1,018.40~~$1061.17	~~$1,079.50~~$1124.84
		Note: 1. For minor nonresidential customers who have not yet established a winter quarter water use at the service address, a system average of 6,000 gallons per month shall be billed.		
		User shall pay an amount calculated to include:		
		1. Rate per 1,000 gallons of water use, measured wastewater flow or winter quarter water use per month, whichever is applicable;	~~$3.476~~$3.622	~~$3.684~~$3.839
		2. PLUS a surcharge per million gallons for each milligram per liter of suspended solids in excess of 235 milligrams per liter;	~~$4.042~~$4.212	~~$4.285~~$4.464
		3. PLUS a surcharge based on the following criteria, whichever is applicable:		
		a. per million gallons for each milligram per liter of BOD in excess of 265 milligrams per liter; or	~~$3.369~~$3.510	~~$3.571~~$3.721

E and F	Intermediate nonresidential user and Significant industrial user	b. per million gallons for each milligram per liter of COD in excess of 400 milligrams per liter; or	~~$2.126~~$2.215	~~$2.253~~$2.348
		c. per million gallons for each milligram per liter of TOC in excess of 130 milligrams per liter.	~~$6.294~~$6.558	~~$6.672~~$6.952
		The user shall pay the calculated amount based on 1, 2 and 3 above, plus the applicable base charge set forth below:		
		Size of water meter (inches)	*Base charge*	
		¾ or smaller	~~$10.03~~$10.45	~~$10.63~~$11.08
		1	~~$23.15~~$24.12	~~$24.54~~$25.57
		1½	~~$46.59~~$48.55	~~$49.39~~$51.46
		2	~~$79.73~~$83.08	~~$84.51~~$88.06
		3	~~$127.40~~$132.75	~~$135.04~~$140.72
		4	~~$201.20~~$209.65	~~$213.27~~$222.23
		6	~~$882.00~~$919.04	~~$934.92~~$974.19
		8	~~$1,018.40~~$1,061.17	~~$1,079.50~~$1,124.84
		Note: 1. For intermediate and significant nonindustrial customers who have not yet established a winter quarter water use at the service address, a system average of 6,000 gallons per month shall be billed.		

G	User outside City limits	The rate for users outside the City limits shall be the same as for like service inside the City limits as is specified in Categories A—F and H in this Section.	
H	Special with agreement	The rate pursuant to a special wastewater services agreement approved by the City Council pursuant to § 26-290 shall be set forth in said agreement.	

Section 3. That Section 26-282(a) of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 26-282. - Wastewater strength or industrial surcharges and categories established.

(a) A monthly wastewater strength surcharge shall be paid by customers located either inside or outside the City limits in accordance with the following schedule:

Parameter	***Excess over (mg/l)***	***Rate per thousand gallons***	***Billed Charge (with PILOT)***
BOD	355	~~$0.003644~~$0.003797	~~$0.003863~~$0.004025
COD	540	~~$0.002395~~$0.002496	~~$0.002539~~$0.002645
TOC	170	~~$0.007609~~$0.007929	~~$0.008065~~$0.008404
TSS	365	~~$0.003667~~$0.003821	~~$0.003887~~$0.004050

. . .

Section 4. That the modifications set forth above shall be effective for meter readings on or after January 1, 2024, and in the case of fees not based on meter readings, shall be effective for all fees paid on or after January 1, 2024.

Introduced, considered favorably on first reading and ordered published this 17th day of October, 2023, and to be presented for final passage on the 21st day of November, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

Passed and adopted on final reading this 21st day of November, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

ORDINANCE NO. 149, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING CHAPTER 26 OF THE CODE OF THE CITY OF FORT COLLINS TO REVISE STORMWATER RATES, FEES, AND CHARGES

WHEREAS, the City Council is empowered and directed by City of Fort Collins Charter Article XII, Section 6, to by ordinance from time to time fix, establish, maintain and provide for the collection of such rates, fees or charges for utility services furnished by the City as will produce revenues sufficient to pay the costs, expenses, and other obligations as set forth therein; and

WHEREAS, the rates, fees or charges for utility services set forth herein are necessary to produce sufficient revenues to provide the utility services described herein; and

WHEREAS, the revenue from the rates, fees or charges for utility services set forth herein shall be used to defray the costs of providing such utility services as required by the Charter and the City Code; and

WHEREAS, Article VII, Chapter 26 of the City Code establishes the stormwater utility as a utility service furnished by and as an enterprise of the City; and

WHEREAS, City Council has adopted stormwater basin and citywide master plans recommending stormwater facilities necessary to provide for proper drainage and control of flood and surface waters within Fort Collins; and

WHEREAS, in 1998, City Council adopted Ordinance No. 168, 1998, determining that all lands within the city benefit by the installation of such stormwater facilities; and

WHEREAS, City Code Section 26-513 imposes stormwater utility fees on all parcels of land within the city to pay for the operation, maintenance, administration and routine functions of the existing and future City stormwater facilities established within the City; and

WHEREAS, City Code Section 26-514 sets forth the manner in which stormwater utility fees are to be determined; and

WHEREAS, the proposed stormwater utility fee adjustment reflects an increase of 3.0%; and

WHEREAS, pursuant to City Code Section 26-511, the City Manager recommends the proposed stormwater utility fee for 2024; and

WHEREAS, based on the foregoing, City Council desires to amend Chapter 26 of the City Code to adjust the scope and rate of the stormwater utility fee as set forth herein.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That Section 26-514(a)(3) of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 26-514. - Determination of stormwater utility fee.

(a) The stormwater utility fee shall be determined as set forth in this Section and shall be based upon the area of each lot or parcel of land and the runoff coefficient of the lot or parcel. For the purposes of this Section, the total lot or parcel area shall include both the actual square footage of the lot or parcel and the square footage of open space and common areas allocated to such lot as provided in Paragraph (4) of this Subsection. The stormwater utility fee shall recover the costs of both operations and maintenance and a portion of capital improvements. The Utilities Executive Director shall determine the rates that shall apply to each specific lot or parcel of land within the guidelines herein set forth and shall establish the utility fee in accordance with the rate together with the other factors set forth as follows:

. . .

(3) The base rate for the stormwater utility fee shall be ~~$0.00467~~$0.00481 per square foot per month for all areas of the City.

. . .

Section 3. That the modifications set forth above shall be effective for all fees accruing on or after January 1, 2024.

Introduced, considered favorably on first reading and ordered published this 17th day of October, 2023, and to be presented for final passage on the 21st day of November, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

Passed and adopted on final reading this 21st day of November, 2023.

_____
Mayor

ATTEST:

_____
City Clerk

Utilities: 2024 Rates

City of Fort Collins

City Council

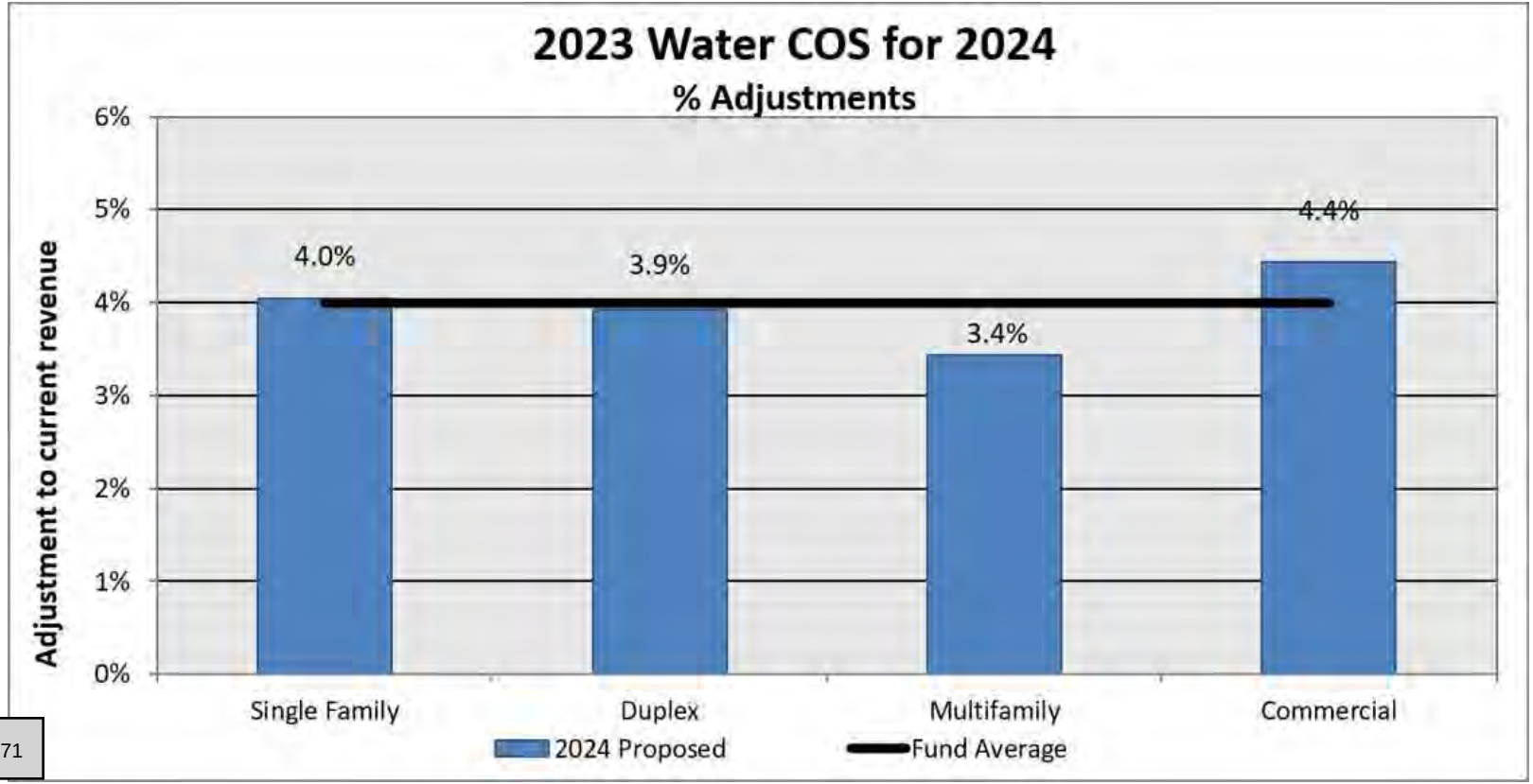
Randy Reuscher, Lead Analyst, Utility Rates
Lance Smith, Utilities Finance Director

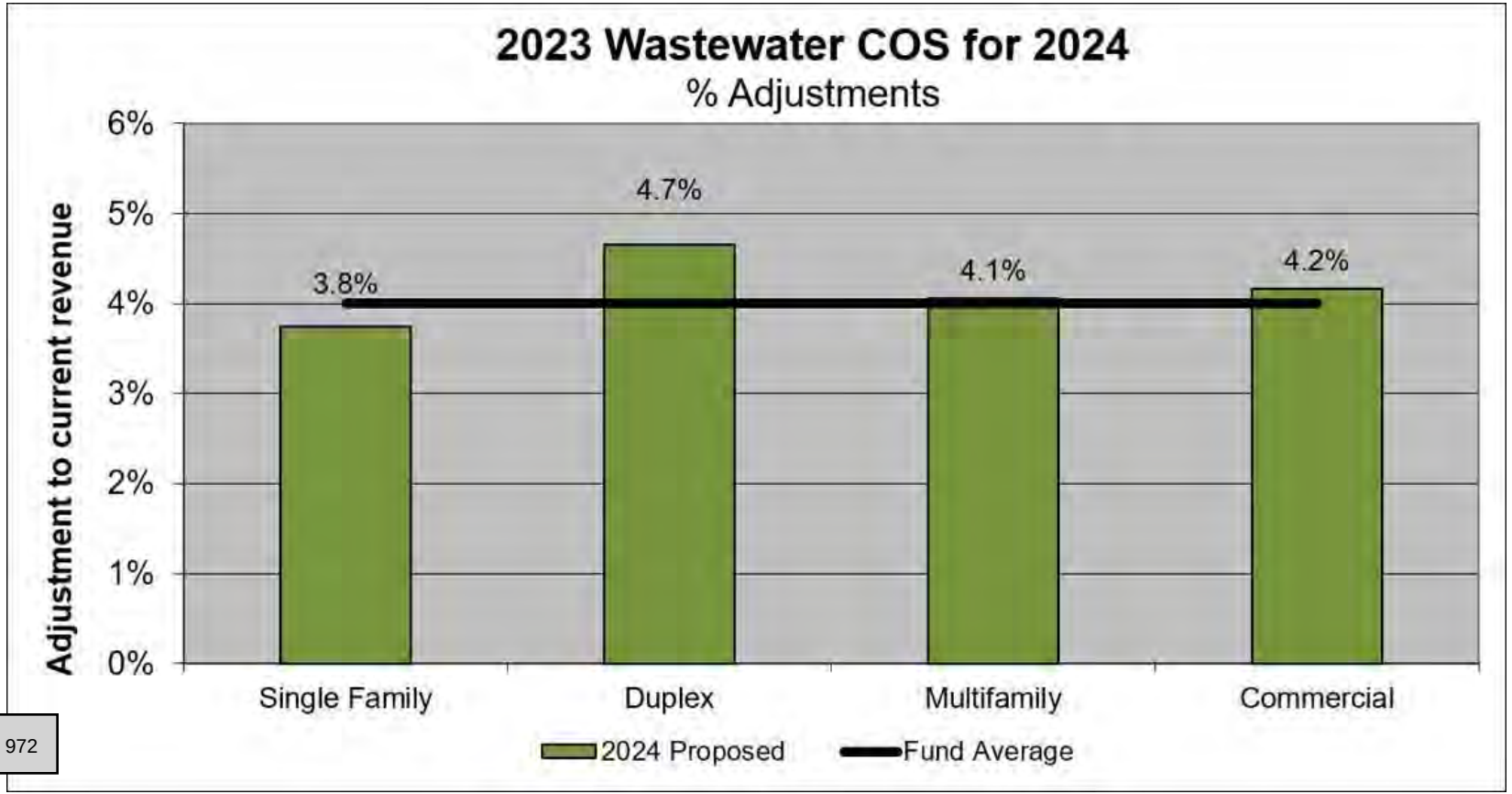
10-17-2023

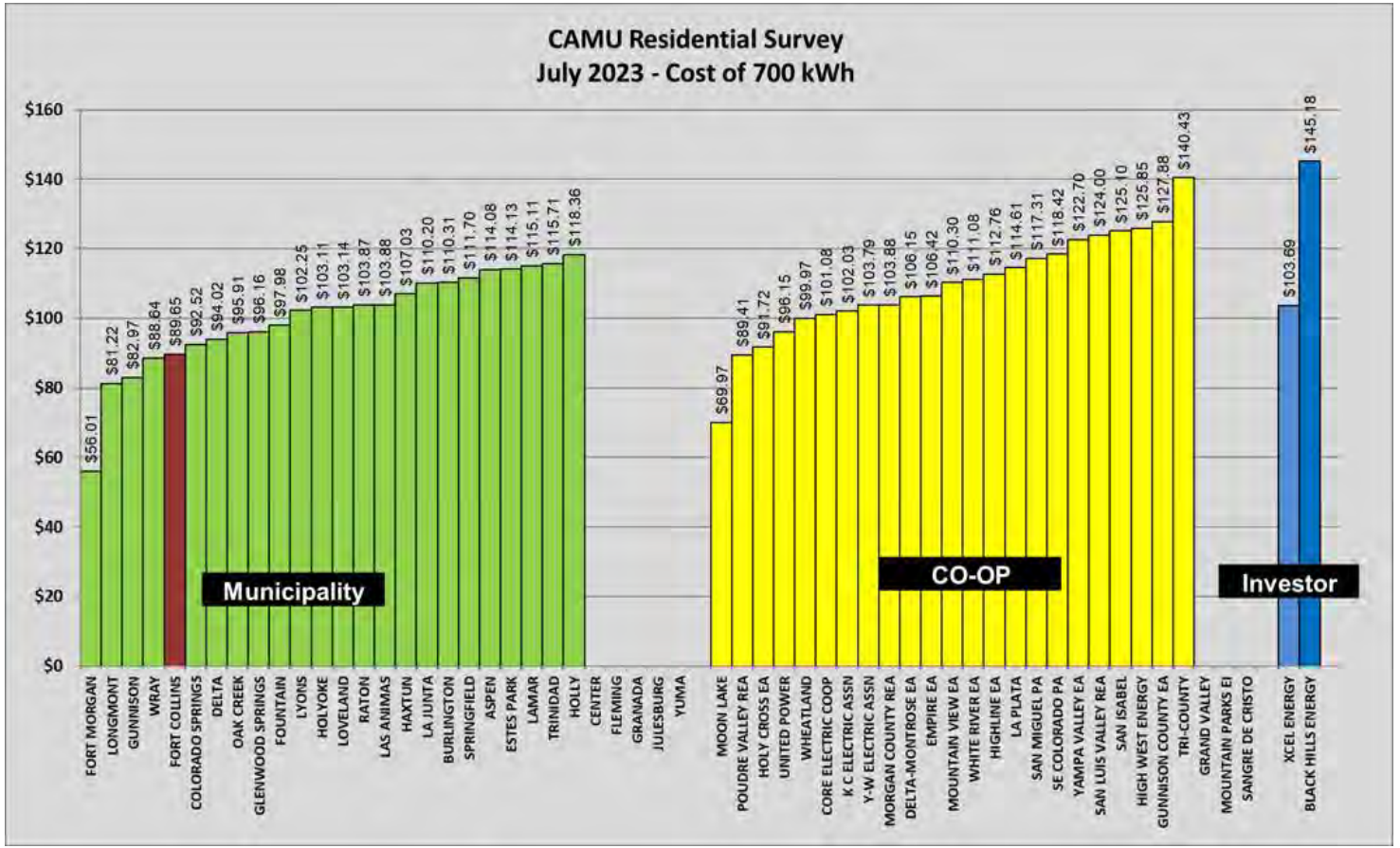

Ongoing Monthly Rates
Recover costs to operate the distribution system in order to provide service
Recoup expenses for ongoing maintenance & renewal of the distribution system
Collect for any associated wholesale costs


'One-Time' Fees & Charges
Recover capacity costs to buy-in to the existing system
Collect for site-specific costs
Provide funding for future growth-related capital investments

UTILITY	2024 PROPOSED INCREASE
ELECTRIC	5%
WATER	4%
WASTEWATER	4%
STORMWATER	3%


2023 Water COS for 2024
% Adjustments
Adjustment to current revenue
6%
5%
4%
3%
2%
1%
0%
4.0%
3.9%
3.4%
4.4%
Single Family
Duplex
Multifamily
Commercial
2024 Proposed
Fund Average


2023 Wastewater COS for 2024
% Adjustments
Adjustment to current revenue
6%
5%
4%
3%
2%
1%
0%
3.8%
4.7%
4.1%
4.2%
Single Family
Duplex
Multifamily
Commercial
2024 Proposed
Fund Average


CAMU Residential Survey
July 2023 - Cost of 700 kWh
$160
$140
$120
$100
$80
$60
$40
$20
$0
Municipality
CO-OP
Investor
$56.01
$81.22
$82.97
$88.64
$89.65
$92.52
$94.02
$95.91
$96.16
$97.98
$102.25
$103.11
$103.14
$103.87
$103.88
$107.03
$110.20
$110.31
$111.70
$114.08
$114.13
$115.11
$115.71
$118.36
$69.97
$89.41
$91.72
$96.15
$99.97
$101.08
$102.03
$103.79
$103.88
$106.15
$106.42
$110.30
$111.08
$112.76
$114.61
$117.31
$118.42
$122.70
$124.00
$125.10
$125.85
$127.88
$140.43
$103.69
$145.18
FORT MORGAN
LONGMONT
GUNNISON
WRAY
FORT COLLINS
COLORADO SPRINGS
DELTA
OAK CREEK
GLENWOOD SPRINGS
FOUNTAIN
LYONS
HOLYOKE
LOVELAND
RATON
LAS ANIMAS
HAXTUN
LA JUNTA
BURLINGTON
SPRINGFIELD
ASPEN
ESTES PARK
LAMAR
TRINIDAD
HOLLY
CENTER
FLEMING
GRANADA
JULESBURG
YUMA
MOON LAKE
POUDRE VALLEY REA
HOLY CROSS EA
UNITED POWER
WHEATLAND
CORE ELECTRIC COOP
K C ELECTRIC ASSN
Y-W ELECTRIC ASSN
MORGAN COUNTY REA
DELTA-MONTROSE EA
EMPIRE EA
MOUNTAIN VIEW EA
WHITE RIVER EA
HIGHLINE EA
LA PLATA
SAN MIGUEL PA
SE COLORADO PA
YAMPA VALLEY EA
SAN LUIS VALLEY REA
SAN ISABEL
HIGH WEST ENERGY
GUNNISON COUNTY EA
TRI-COUNTY
GRAND VALLEY
MOUNTAIN PARKS EI
SANGRE DE CRISTO
XCEL ENERGY
BLACK HILLS ENERGY

Fort Collins Utilities Comparative Residential Monthly Bill				
Utility	2023	2024	$ Change	% Change
Electric	$ 84.20	$ 88.41	$ 4.21	5.0%
Water	$ 51.00	$ 53.04	$ 2.04	4.0%
Wastewater	$ 35.61	$ 37.04	$ 1.42	4.0%
Stormwater	$ 22.42	$ 23.09	$ 0.67	3.0%
Total Average Bill	$ 193.22	$ 201.57	$ 8.35	4.3%

2024 Residential Average Monthly Utility Bill					
Utility	Electric	Water	Wastewater	Stormwater	Total
	2024	2024	2024	2024	2024
Ft Collins	$ 88.41	$ 53.04	$ 37.04	$ 23.09	$ 201.57
Longmont	$ 82.56	$ 69.33	$ 41.33	$ 18.85	$ 212.07
Loveland	$ 89.76	$ 61.16	$ 43.04	$ 24.88	$ 218.84
Greeley	$ 100.63	$ 73.90	$ 36.99	$ 18.61	$ 230.13
Colorado Springs	$ 99.92	$ 96.95	$ 30.53	N/A	$ 227.40
Boulder	$ 100.63	$ 66.72	$ 48.43	$ 27.10	$ 242.89

Emergency Assistance

- Neighbor to Neighbor
  - Rent and Utility Assistance
- Payment Assistance Fund
  - Electric and water assistance

Efficiency Upgrades

- Larimer County Conservation Corp (LCCC)
  - Home efficiency upgrades
- Colorado's Affordable Residential Energy Program (CARE)
  - Weatherization and energy efficiency upgrades
- Weatherization Assistance program (WAP)
  - Weatherization and energy efficiency upgrades for electric customers

Seasonal & Monthly Assistance

- Income-Qualified Assistance Program (IQAP)
  - Reduced electric, water and/or wastewater rate
  - **Proposing alternate entry for customers with a housing voucher and households with members that are not documented U.S. citizens**
- Medical Assistance Program (MAP)
  - Reduced electric rate due to medically necessary device

Emergency Assistance

- Neighbor to Neighbor
  - Overall Benefit: $176,911
  - Number of Customers: 726
  - Average benefit per month: $244
- Payment Assistance Fund
  - Overall Benefit: $161,600
  - Number of Customers: 574
  - Average benefit per month:$282

Efficiency Upgrades

- Larimer County Conservation Corp (LCCC) *2021
  - Overall Benefit: $118,025
  - Number of Customers: 233
  - Average benefit per month: $507
- Colorado's Affordable Residential Energy Program (CARE) *2021
  - Overall Benefit: $8,912
  - Number of Customers: 3
  - Average benefit per month: $2,971

Seasonal & Monthly Assistance

- Income-Qualified Assistance Program (IQAP)
  - Overall Benefit: $333,987
  - Number of Customers: 1,552
  - Average benefit per month: $13
- Medical Assistance Program (MAP)
  - Overall Benefit: $29,546
  - Number of Customers: 169
  - Average benefit per month: $15

THANK YOU!

For More Information, Visit

fcgov.com/utilities

City of Fort Collins