

# **ARTICLE 12. ZONING PROCEDURES & ENFORCEMENT**

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## ARTICLE 12. ZONING PROCEDURES & ENFORCEMENT

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## **DIVISION 12.1 GENERAL PROVISIONS**

### **SECTION 12.1.1 GENERAL**

#### **12.1.1.1 Purpose**

This Article 12 establishes the procedures and criteria by which the City will review proposed land use and development for compliance with this Code.

#### **12.1.1.2 Applicability**

In addition to compliance with other D.R.M.C. requirements, all use and development of land or structures, construction of buildings and improvements to land, and changes in the use of land or structures, shall be required to obtain permits and approvals according to this Article 12, unless specifically exempted.

#### **12.1.1.3 Zoning Approval Required Prior to Building or Occupancy**

No building permit shall be issued prior to the approval of a zoning permit required by this Article 12 for the proposed development, occupancy, or activity, unless specifically permitted by the Zoning Administrator.

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## **DIVISION 12.2 REVIEW AND DECISION MAKING BODIES**

Division 12.2 states the roles and responsibilities of all bodies with respect to administering and enforcing this Code.

### **SECTION 12.2.1 CITY COUNCIL**

#### **12.2.1.1 General Authority**

The City Council may exercise powers described by the charter, ordinances, and rules and regulations.

#### **12.2.1.2 Authority for Final Action**

The City Council is responsible for final action regarding:

- A. Official Map Amendments (Rezoning)
- B. Text Amendments

### **SECTION 12.2.2 PLANNING BOARD**

#### **12.2.2.1 General Authority**

The Planning Board may exercise the powers described by D.R.M.C. Sec. 12-45, Powers and Duties of the Planning Board, and as described in this Code.

#### **12.2.2.2 Authority for Final Action**

The Planning Board is responsible for final action regarding:

- A. District Sign Plans in the Downtown Theater zone district.
- B. Site development plan applications for certain construction and exceptions in the Campus Healthcare (CMP-H and CMP-H2) zone districts, as specified in Article 9, Division 2 (Campus Context) of this Code.

#### **12.2.2.3 Review Authority**

The Planning Board shall review and make recommendations to the authority responsible for final action shown in Section 12.2.9, Summary Table of Authority and Notice, regarding:

- A. Official Map Amendments (Rezoning)
- B. Text Amendments
- C. General Development Plans (GDPs)
- D. Comprehensive Sign Plans for Large Facilities

### **SECTION 12.2.3 MANAGER OF COMMUNITY PLANNING & DEVELOPMENT**

#### **12.2.3.1 Short Title**

The Manager of Community Planning and Development shall be known as “Manager” for the purposes of this Code.

#### **12.2.3.2 General Authority**

The Manager may exercise powers described by the Charter and D.R.M.C., Section 12-17, General Powers and Duties, and other ordinances, rules and regulations. In addition, the Manager shall:

- A. Maintain the Official Map showing the current zoning classification of all land in the city;
- B. Record with the Denver County Clerk and Recorder and file with the Denver City Clerk all matters and documents required by this Code to be recorded or filed;

- C. Maintain written records of all actions taken by the department under this Code; and
- D. Adopt rules and regulations when necessary to implement this Code, according to Chapter 12 (Community Planning and Development), Section 12-18 (Rule-making) of the Denver Revised Municipal Code.

#### **12.2.3.3 Enforcement Authority**

The Manager shall be responsible for the enforcement of this Code through the powers and procedures stated in Chapter 12 (Community Planning and Development) of the Denver Revised Municipal Code and stated in Article 12, Division 11 (Enforcement, Violations and Penalties) of this Code.

#### **12.2.3.4 Review Authority**

The Manager shall review and make recommendations to the City Council or other final decision-making body regarding:

- A. Official Map Amendments (Rezoning)
- B. Text Amendments
- C. Site Development Plan Review
- D. Zoning Permit with Special Exception Review

#### **12.2.3.5 Delegation of Authority**

The Manager may designate any staff member to represent the Manager in any function or authority assigned by this Code. The Manager shall remain responsible for any final action.

### **SECTION 12.2.4 ZONING ADMINISTRATOR**

#### **12.2.4.1 Appointment by Manager**

The Manager shall appoint a Zoning Administrator to exercise the authority granted under this Section 12.2.4.

#### **12.2.4.2 Authority for Final Action**

The Zoning Administrator is responsible for final action regarding:

- A. Zoning Permit
- B. Zone Lot Amendment
- C. Administrative Adjustment
- D. Comprehensive Sign Plan for Large Facilities; and
- E. Code Interpretation and Determination of Unlisted Uses.

#### **12.2.4.3 Review Authority**

With respect to this Code, the Zoning Administrator shall review and make recommendations to the Manager regarding text amendments and site development plans, and shall review and make recommendations to the Board of Adjustment regarding variances, special exceptions, and appeals of administrative decisions.

#### **12.2.4.4 Delegation of Authority**

The Zoning Administrator may designate any staff member to represent the Zoning Administrator in any function or authority assigned by this Code.



## **SECTION 12.2.5 DEVELOPMENT REVIEW COMMITTEE**

### **12.2.5.1 Creation**

The Development Review Committee (“DRC”) shall consist of the Manager, the manager of Public Works, the Zoning Administrator, the chief of the Fire Department, and the manager of Parks and Recreation, or their designated representatives, provided that additional agencies may participate at the discretion of the Manager.

### **12.2.5.2 Authority for Final Action**

The Development Review Committee is responsible for final action regarding:

- A. Site Development Plan Review
- B. General Development Plans

### **12.2.5.3 Review Authority**

The Development Review Committee shall review and make recommendations to the Zoning Administrator regarding:

- A. Zoning Permit Review, as the Zoning Administrator may determine on a case-by-case basis.

## **SECTION 12.2.6 BOARD OF ADJUSTMENT**

### **12.2.6.1 Authority for Final Action**

The Board of Adjustment is responsible for final action regarding:

- A. Variances (see Section 12.4.7);
- B. Appeals from Administrative Decisions (see Section 12.4.8); and
- C. Zoning Permit with Special Exception Review (see Section 12.4.9).

### **12.2.6.2 Creation; Alternates**

- A. Consistent with the City Charter, there shall be and hereby is created a Board of Adjustment consisting of 5 members. The members of the Board shall be appointed by the mayor for a term of 5 years. Any vacancy which occurs in the Board of Adjustment shall be filled by the mayor for the unexpired term of any member whose term became vacant.
- B. A member of the Board of Adjustment may be removed only for cause upon written charges and after public hearing. Should a member of the Board of Adjustment fail to attend one-third of the meetings scheduled during any period of 12 consecutive months, that failure shall be deemed cause for removal upon written charges being made and after a public hearing.
- C. The mayor may appoint for a term of between 1 to 5 years 2 alternate members of the Board of Adjustment in addition to the 5 members. When a member of the Board is recused or is absent, the alternate member first appointed by the mayor shall act with full authority. The alternate members shall thereafter rotate or substitute, one for the other, their service on the Board as the need arises. Except as to attendance, the provisions with regard to removal for cause and vacancies shall apply to such alternates.
- D. The compensation of the members of the Board of Adjustment and the alternate members shall be fixed by City Council. No member of the Board of Adjustment or an alternate member shall be on the staff of the Board or be employed by Community Planning and Development.

### **12.2.6.3 Staff**

The staff of the Board of Adjustment shall consist of a director and such other assistants as may be authorized by City Council. The director shall be the technical advisor to the Board of Adjustment and custodian of its records, shall conduct official correspondence, and generally supervise

the clerical and technical work of the Board of Adjustment. The director shall be appointed by the Board of Adjustment and shall devote all time to the duties of the office. The salary of the director, the number of additional assistants, and the salaries of such additional assistants shall be fixed by City Council.

#### **12.2.6.4 Rules for Proceedings Before Board**

The Board of Adjustment shall adopt rules governing all proceedings before it. Such rules of the Board of Adjustment shall be maintained and available for public review in the office of director.

#### **12.2.6.5 Officers**

For the purpose of exercising the powers provided under this Code, the Board of Adjustment shall elect a chairperson and vice-chairperson.

#### **12.2.6.6 Oaths and Attendance of Witnesses**

The chairperson or, in the chairperson's absence, the vice-chairperson or acting chair shall administer oaths to or accept affirmations from all witnesses, and may compel the attendance of witnesses. A failure or a refusal to appear in response to a subpoena issued by the Board of Adjustment shall constitute a violation of this Code.

#### **12.2.6.7 Stay of Effective Date of Orders**

- A. Whenever Community Planning and Development has issued an order to cease and desist from the operation of dwelling units in excess of the number authorized by this Code, and the Board of Adjustment also finds that literal enforcement of the provisions of this Code by reason of unique and exceptional circumstances including owner's physical condition, age, or other factors as deemed by the Board of Adjustment to be unique or exceptional, will result in unnecessary hardship, then the Board of Adjustment may order a delay, for no more than 5 years, of the enforcement of such order.
- B. Upon expiration of any delayed enforcement or other order, the Board of Adjustment may review, at a public hearing before the Board, an applicant's request for a further extension and grant any such extension not to exceed a cumulative total of 5 years from the date of the original order, should the Board of Adjustment find that condition(s) found in Section 12.2.6.7.A. still exists.
- C. All such actions by the Board of Adjustment shall be recorded in the real property records of the Denver County Clerk and Recorder. Such stay shall not be a variance on the use of a premises, shall be personal to the applicant therefor, shall only allow continued operation of the excess dwelling units by the persons occupying such unit at the time of the Board of Adjustment's original order, and shall not be transferable.

#### **12.2.6.8 Six-Month Delay of Enforcement**

- A. Whenever Community Planning and Development has issued an order to cease and desist from any use not authorized by this Code, except as provided in Section 12.2.6.7, the Board of Adjustment, upon appeal, may find that the literal enforcement of the provisions will result in unnecessary hardship by reason of unique and exceptional circumstances, including but not limited to the owner's physical condition, age, and/or other factors as deemed by the board to be unique or exceptional. The Board of Adjustment may order a delay, for no more than 6 months, of the enforcement of such cease and desist order.
- B. Upon expiration of any order delaying enforcement of such cease and desist order, the Board of Adjustment may review, at a public hearing, an applicant's request for an additional 6 months' extension and grant only one such extension should the Board of Adjustment find that the unique and exceptional circumstances justifying the original order to delay still exist.

- C. All such actions by the Board of Adjustment shall be recorded in the real property records of the Denver County Clerk and Recorder. Such stay shall not be a variance on the use of a premises, shall be personal to the applicant, and shall not be transferable.

#### **12.2.6.9 Limitations on Powers**

##### **A. Concurring Vote Required**

The concurring vote of 4 members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision or determination of any administrative official authorized to act under this Code, or to decide in favor of the applicant on any matter upon which the Board of Adjustment is required to pass under this Code or to grant a variance to this Code.

##### **B. Recording of Hearings and Findings of Fact**

1. All proceedings before the Board of Adjustment shall be recorded.
2. Every decision of the Board of Adjustment shall be based upon findings of fact and every finding of fact shall be supported in the record of its proceedings. The enumerated conditions herein shall be construed as limitations on the power of the Board of Adjustment. Mere recitation of the conditions unaccompanied by findings of specific facts shall not constitute compliance with this Code. All findings of fact shall be available for public review within 21 days from the date of the Board of Adjustment's final decision.

##### **C. Powers Strictly Construed**

Nothing herein contained shall be construed to empower the Board of Adjustment to amend the text of this Code, to effect changes in the Official Zoning Map, or to add to the specific uses permitted in any district. The powers of the Board of Adjustment shall be construed to strictly enforce this Code and the Official Zoning Map.

#### **12.2.6.10 Appeals from the Board of Adjustment to District Court**

##### **A. Procedure**

Any person or any taxpayer aggrieved, the City, or any officer or department of the City may have a decision of the Board of Adjustment reviewed in the manner provided by the Colorado Rules of Civil Procedure. The plaintiff in any appeal to District Court shall be responsible for all costs to prepare the Board of Adjustment's record for transmittal to the court, according to fees set by the Board, which shall be paid prior to transmittal of the record to the District Court.

##### **B. Effect of Appeal**

The filing of an appeal to District Court shall not stay proceedings upon the decision appealed from, unless the court grants a restraining order or stay.

### **SECTION 12.2.7 CHERRY CREEK NORTH DESIGN ADVISORY BOARD**

#### **12.2.7.1 Creation**

- A. The Cherry Creek North Design Advisory Board shall consist of seven members appointed by the mayor.
- B. The board shall consist of the following individuals to be appointed by the mayor from a list of nominations provided by the board of Cherry Creek North Business Improvement district: three licensed architects and one licensed landscape architect who reside in Denver; one member of the board of Cherry Creek North Business Improvement District or its designated successor; one property owner from the district; and one retailer from the district.
- C. The members of the board shall be appointed by the mayor for a term of three years and shall serve at the pleasure of the mayor. Vacancies shall be filled within 30 days by the mayor from the date on which the vacancy occurs.

### **12.2.7.2 Review Authority**

- A. Within the C-CCN zone districts, the Cherry Creek North Design Advisory Board shall review and make recommendations to the Development Review Committee or the Zoning Administrator as specified in adopted rules and regulations, as may be amended from time to time.

## **SECTION 12.2.8 DOWNTOWN ARAPAHOE SQUARE DESIGN ADVISORY BOARD**

### **12.2.8.1 Creation**

- A. The Downtown Arapahoe Square Design Advisory Board shall consist of seven members appointed by the Mayor. The seven members shall include individuals from the following categories: four design professionals, including architects, landscape architects, and urban designers, at least one of whom shall be a landscape architect; one owner of property in the Arapahoe Square area; one resident of the downtown area (including the Ballpark, Curtis Park and Enterprise Hill areas, as well as other nearby parts of the Five Points, Central Business District and Union Station statistical neighborhoods); and one representative of the development/construction industry, including but not limited to engineers, contractors, and developers. All board members must be residents of Denver.
- B. The members of the board shall be appointed by the Mayor for terms of three years and shall serve at the pleasure of the Mayor. Terms of office shall be staggered by making the appointments so that approximately one-third of the members' terms expire each year. Vacancies shall be filled by the mayor within 30 days from the date on which the vacancy occurs.

### **12.2.8.2 Board Meetings**

- A. All meetings of the Downtown Arapahoe Square Design Advisory Board shall be open to the public and allow opportunity for public comment.

### **12.2.8.3 Review Authority**

- A. Within the Downtown Arapahoe Square 12+ (D-AS-12+) and Downtown Arapahoe Square 20+ (D-AS-20+) zone districts, the Downtown Arapahoe Square Design Advisory Board shall review and make recommendations to the Development Review Committee or Zoning Administrator, as specified in adopted rules and regulations, which may be amended from time to time.

## SECTION 12.2.9 SUMMARY TABLE OF AUTHORITY AND NOTICE

	REVIEW AND DECISION-MAKING AUTHORITY						TYPE OF PUBLIC NOTICE REQUIRED				
	<b>D = Decision-Making Authority</b> <b>R = Review and Recommendation Authority</b> <b>* = Public Hearing Required</b>						<b>■ = Notice Required</b> <b>Blank Cell = Notice Not Required</b>				
							Informational Notice		Notice of Public Hearing		
Zoning Administrator	Manager	DRC	Board of Adjustment	Planning Board	City Council	Written and Posted Notice of Receipt of Application	Posted Notice of Final Administrative Decision	Written	Posted	Published	
Zoning Permit Review	D										
Zoning Permit Review with Informational Notice	D					■	■				
Site Development Plan Review	R	R	D/R See Sec. 12.4.3 for site development plans where DRC has review and recommendation authority		D* See Sec. 12.4.3 for site development plans that require public notice	■ See Sec. 12.4.3 for site development plans that require public notice	■ See Sec. 12.4.3 for site development plans that require public notice	■ See Sec. 12.4.3 for site development plans that require notice of a public hearing			
Zone Lot Amendment	D										
Administrative Adjustment	D										
Code Interpretation, Determination of Unlisted Use	D										
Comprehensive Sign Plan	D				R*	■	■	■	■		
Variance	R			D*		Refer to rules of Board of Adjustment					
Appeal of Administrative Decision	R			D*		Refer to rules of Board of Adjustment					
Special Exception	R	R		D*		Refer to rules of Board of Adjustment					
Official Map Amendment (Rezoning)		R			R*	D*	■ - Written Notice Only	■	■	■	
Text Amendment	R	R			R*	D*		■		■	
General Development Plan	R		D		R*			■	■		
Regulating Plan	R	D									

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## **DIVISION 12.3 REQUIREMENTS COMMON TO ALL ZONING PROCEDURES**

Division 12.3 states those procedural steps or requirements that are generally common to all zoning procedures stated in this Article, unless otherwise stated in this Code. Division 12.4 states the procedural steps and requirements specific to each type of zoning application procedure, which will include references to the common requirements stated in this Division 12.3 as applicable.

### **SECTION 12.3.1 GENERAL**

The following review procedures are common to all zoning procedures, unless otherwise stated in this Code, and shall apply to applications submitted under this Code. Additional details may be included in the specific procedures included in Division 12.4 of this Article.

### **SECTION 12.3.2 PRE-APPLICATION MEETING/ CONCEPT PLAN REVIEW**

#### **12.3.2.1 Optional**

Except as stated in Section 12.3.2.2 below, an applicant may schedule a pre-application meeting or concept plan review with the Manager to discuss the procedures, standards and regulations required for approval in accordance with this Code.

#### **12.3.2.2 Mandatory**

Before submitting an application for the following, an applicant shall schedule a pre-application meeting or concept plan review with the Manager to discuss the procedures, standards, and regulations required for approval in accordance with this Code.

- A. Zoning Permit with Informational Notice
- B. Site Development Plan
- C. Zoning Permit with Special Exception Review
- D. Official Map Amendment (Rezoning)
- E. Text Amendment
- F. General Development Plan

#### **12.3.2.3 Effect of the Pre-Application Meeting or Concept Plan Review**

Except as otherwise expressly stated in this Code or in any rules or regulations for administering this Article 12, Manager and other staff opinions or comments made during a pre-application meeting or concept plan review are informational only and do not represent a commitment on behalf of the City regarding a final decision on the development proposal. However, at the pre-application meeting, the Manager may waive application submittal requirements or request that additional information be submitted.

#### **12.3.2.4 Timely Application Submittal Required**

Except as otherwise expressly stated in this Code or in any supplementary rules or regulations for administering this Article 12, if an application is not submitted within 180 days after a mandatory pre-application meeting or concept plan review, the Manager may require a new pre-application meeting or concept plan review.

### **SECTION 12.3.3 SUBMISSION OF APPLICATIONS**

#### **12.3.3.1 Authority to File Applications**

The person having legal authority to take action according to the approval sought shall file an application for review or approval under this Code, and is hereinafter referred to as the "Applicant." That

person is presumed to be the owner of record, purchaser under a sale with the owner's consent, or the duly authorized agent of the owner of record, unless otherwise authorized in Division 12.4.

### **12.3.3.2 Applications**

Applications shall be submitted only after a pre-application meeting or concept plan review, if mandatory. All applications shall be submitted to Community Planning and Development.

### **12.3.3.3 Application Contents**

#### **A. Application Contents—General**

The Manager is authorized to establish submittal requirements for all applications required by this Code, and to update and amend such requirements as necessary to ensure effective and efficient review.

#### **B. Submittal Waivers**

The Manager may waive certain application submittal requirements:

1. To tailor the requirements to the information necessary to review a particular application; or
2. Where the Manager finds that the projected size, complexity, anticipated impacts, or other factors associated with the proposed development clearly justify such waiver.

#### **C. Additional Information Requested**

The Manager shall have the authority to request additional information from the applicant when necessary to complete review of the application.

### **12.3.3.4 Application Fees**

- A. Except as specified in paragraph B. below, the Manager shall adopt, and may amend from time to time, a fee schedule setting forth an assessment of fees to defray the cost of processing applications under this Code.
- B. The Board of Adjustment shall recommend, and the City Council shall approve, processing fees for all applications determined by the Board of Adjustment, including applications for variances, zoning permit with special exception reviews, and appeals from administrative decisions. The application fee schedule for Board of Adjustment applications, as may be amended from time to time, can be found in the rules of the Board of Adjustment.
- C. At the time of submittal, all applications shall include payment of the application fee, except that application fees are not required for an application initiated by the City Council, an individual City Council member, the Manager, or the manager of a city agency or department.
- D. An applicant may submit a written request to the Manager for the waiver of all or a portion of fees. Upon a finding by the Manager that, owing to exceptional or extraordinary circumstances, collection of the required fees will result in unnecessary hardship, the fees may be reduced or waived by the Manager.
- E. Other fees, such as recording fees, may be applicable in addition to Community Planning and Development application fees.

### **12.3.3.5 Statements During Review**

- A. Except as otherwise expressly stated in this Code or in any rules or regulations for administering this Article 12, statements that are necessary for compliance with this Code that are made by the applicant in the course of the application review process and/or public hearings may, in the sole discretion of the decision-making body, be made specific conditions of approval.



#### **12.3.3.6 False or Misleading Information**

Any false or misleading information given by the applicant in an application, or in other statements to staff, or in a public hearing as applicable, may result in suspension or rescission of a permit, as permitted under Division 12.11, Enforcement, Violations and Penalties, of this Article.

#### **12.3.3.7 Complete Applications Required for Processing**

- A. All applications shall be complete and sufficient for processing before any review of the application will begin.
- B. An application is complete when the Manager finds that it is submitted in the required form, includes all information necessary to decide whether the application will comply with the requirements of this Code, including all items or exhibits specified during a pre-application meeting or concept plan review, and is accompanied by the applicable fee or fees.
- C. An application shall be considered incomplete if the Manager determines that the submittal is inconsistent or contrary to a previous plan or permit approval that is regulatory and controlling.
- D. An application for an official map amendment (rezoning) shall be considered incomplete if the Manager determines that the submittal does not meet the location and adjacency requirements or any other minimum requirements for rezoning to the proposed zone district. See Section 12.4.10, Official Map Amendments.

#### **12.3.3.8 Determination of Complete Application**

- A. Except as otherwise expressly stated in this Code or in any rules or regulations for administering this Article 12, the Manager shall review the application and make a determination of completeness by no later than 15 days from the date of receipt of the applicant's submittal. Failure to make a determination of completeness within the requisite 15-day time period shall automatically deem the application "complete."
- B. A "complete" application shall be processed according to this Article.
- C. If the Manager determines that the application is incomplete, the Manager shall notify the applicant and specifically identify how the application is deficient and state that Community Planning and Development will not process incomplete applications. The application shall then be classified as "Incomplete."
- D. Community Planning and Development shall not review an incomplete application, and shall not forward such application to any review or decision-making bodies, until the application is made complete. Wherever this Code refers to the forwarding or referral of an application to any review or decision-making body, the obligation to forward or refer the application shall not arise until the application is determined to be complete.

#### **12.3.3.9 Concurrent Applications**

- A. Applications may be filed and reviewed concurrently, at the option of the applicant, and with the approval of the Manager. Any application that also requires a variance shall not be eligible for final approval until the variance has been granted.
- B. Applications submitted concurrently may be subject to approval of all other related applications. Disapproval of any concurrently submitted application may stop consideration of related applications until the disapproved application is resolved.
- C. Notwithstanding Section 12.4.10.2, zone districts Not Available for Rezoning, creation of a new zone district by text amendment according to Section 12.4.11, Text Amendment, may, with the Manager's approval, be filed and reviewed concurrent with a map amendment according to Section 12.4.10, Official Map Amendment (Rezoning). In no case, however, shall a map amendment

rezoning land into a new zone district be approved until the text amendment creating the new zone district is approved.

#### **12.3.3.10 Modification of a Pending Application**

With the Manager's approval, a pending application may be modified at the applicant's request at any time before public notice of a public hearing, as applicable, is given. After public notice for a public hearing has been given, the applicant may request modifications to the application at the public hearing, which the review- or decision-making body may accept as conditions of approval.

#### **12.3.3.11 Withdrawal of Pending Applications**

- A. Except where otherwise expressly provided (e.g., see Section 12.3.3.12, Inactive Applications), only the applicant may withdraw an application. The applicant shall request the withdrawal in writing, and after such withdrawal, the Manager will not take further action on the application. To re-initiate review after withdrawal, the applicant shall resubmit the application, which in all respects shall be treated as a new application for purposes of review, scheduling, and payment of fees.
- B. Withdrawal from consideration of an application from a public meeting or hearing agenda is discretionary with the applicable review or decision-making body.

#### **12.3.3.12 Inactive Applications**

Except as otherwise expressly stated in this Code or in any supplementary rules or regulations for administering this Article 12, the following provisions shall apply to inactive applications:

- A. The Manager shall notify the applicant in writing that an application is considered inactive and will be automatically withdrawn unless the applicant takes action to revive the application according to the Manager's direction within thirty (30) days, if at any point in a review process either:
  1. The Manager has notified the applicant that additional or corrected materials are required, and the applicant has not submitted such materials or responded with a request for a reasonable extension within 45 days after the date of such notification; or
  2. As applicable, the applicant has not responded to a staff report, or has not agreed to a date for a required meeting or hearing before the Planning Board, City Council, or Board of Adjustment, or has not given proper public notice as required by this Code, or has not taken other affirmative steps within a reasonable time frame that is within the applicant's control and is necessary to advance the application for a final determination.
- B. No further processing of an inactive application shall occur until the deficiencies are corrected and the application revived. If the applicant does not correct the deficiencies or take other substantial action to address the deficiency within the 30-day correction period, the inactive application shall be considered automatically withdrawn. Any re-submittal of the application thereafter by the applicant will be treated as a new application for purposes of review, scheduling, and payment of application processing fees.

### **SECTION 12.3.4 PUBLIC NOTICE REQUIREMENTS**

#### **12.3.4.1 General Provisions and Intent**

All applications that require public hearings before the Planning Board, the Board of Adjustment, or the City Council shall be subject to this Section's public notice of hearing requirements. In addition, certain applications require public notice of receipt of such application and/or notice of the final decision or appeal opportunities. Public notice is intended to provide an the opportunity for public participation or public information regarding land use and development applications under this Code.

### 12.3.4.2 Types of Public Notice

There are two types of public notice addressed by this Section:

#### A. Notice of Public Hearings

When required by Section 12.2.9, Summary Table of Authority and Notice, “Notice of Public Hearings” provides the public with advance notice of a required hearing at which a review- or decision-making body will take action on an application under this Code. Such notice may be provided in writing (mailed), by posting (signs), or by publication.

#### B. Informational Notice

When required by Section 12.2.9, Summary Table of Authority and Notice, “Informational Notice” provides the public with notice of Community Planning and Development’s receipt of an application for review (e.g., a zoning permit or site development plan), and/or the approving authority’s final decision on such application and available avenues for appeal. Such notice may be provided in writing (mailed) and/or by posting (signs).

### 12.3.4.3 Public Notice – When Required

Required public notices are summarized in the table shown in Section 12.2.9, Summary Table of Authority and Notice. More detailed information may be included with each specific zoning procedure described in Division 4 of this Article 12.

### 12.3.4.4 Notice of Public Hearing

#### A. Written Notice of Public Hearings

When required by Section 12.2.9, Summary Table of Authority and Notice, written notice of a public hearing shall be provided in compliance with the following standards:

##### 1. Written Notice of Planning Board Public Hearings

No later than 15 days before a required Planning Board public hearing on an application, the Manager shall notify the city council members in whose district the subject property is located and the at-large city council members. In addition, if the subject application affects areas within, or within 200 feet of, a registered neighborhood organization’s boundaries, the Manager shall notify such registered neighborhood organizations registered according to D.R.M.C. Section 12-94.

##### 2. Written Notice of City Council Public Hearings

No later than 21 days before a required City Council public hearing on an application, the Manager shall notify the city council members in whose district the subject property is located and the at-large city council members. In addition, if the subject application affects areas within, or within 200 feet of, a registered neighborhood organization’s boundaries, the Manager shall notify such registered neighborhood organizations registered according to D.R.M.C. Section 12-94.

##### 3. General Requirements

- a. The notice shall be sent via U.S. mail first class or by electronic mail if the recipient has indicated their acceptance of notice by electronic mail.
- b. Notification shall include, where applicable, the location and general description of the proposed action; the process to be followed, including the date, time and place of the scheduled public hearing and/or public meeting.

##### 4. Minor Defects in Notice Do Not Impair Hearing

Minor defects in a notice shall not impair the notice or invalidate proceedings under the notice if a *bona fide* attempt has been made to comply with applicable notice requirements. Where written notice was properly mailed, failure of a party to receive written notice shall not invalidate any subsequent action. In all cases, however, the requirements for the timing of the notice and for specifying the time, date, and place of a hearing and the location of the subject property shall be strictly construed. If questions arise at the

hearing regarding the adequacy of notice, the review or decision-making body shall make a finding regarding whether there was substantial compliance with the notice requirements of this Code before proceeding with the hearing.

**B. Posted Notice of Public Hearings**

When required by Section 12.2.9, Summary Table of Authority and Notice, posted notice of a required public hearing shall be provided in compliance with the following standards:

1. No later than 15 days prior to the required Planning Board public hearing, and no later than 21 days prior to the required City Council public hearing, the applicant shall be responsible for posting signs on the subject property providing public notice thereof.
2. Posted notice shall be in number, size, location, and content as prescribed by the Manager and shall indicate the time and place of the public meeting or hearing, and any other information prescribed by the Manager.
3. The applicant shall take all reasonable efforts to assure that posted signs remain on the site in the number and location prescribed by the Manager, and in good condition to maintain legibility, during the posting period.
4. Posted notices shall be removed by the applicant from the subject property no later than 15 days after the public hearing has been held. Failure to do so shall constitute a violation of this Code.

**C. Published Notice of City Council Public Hearing**

No later than 21 days prior to the required City Council public hearing, the Office of the City Council, together with the Denver City Clerk's Office, shall publish notice of the time and place of a required public hearing before the City Council in the official newspaper.

**12.3.4.5 Informational Notice – General Provisions**

**A. Written Notice of Receipt of Application**

When required by Section 12.2.9, Summary Table of Authority and Notice, written notice of receipt of application shall be provided in compliance with the following standards:

**1. Official Map Amendment (Rezoning) - Timing of Notice**

For an official map amendment (rezoning) application, Community Planning and Development shall cause written informational notice to be provided no later than 10 days after the determination that a complete application has been received in accordance with Section 12.3.3.8, Determination of Complete Application. Community Planning and Development shall cause written informational notice to be sent to the city council members in whose district the subject property is located, to the at-large city council members, and to those neighborhood organizations registered according to D.R.M.C. Section 12-94, whose boundaries encompass or are within 200 feet of the proposed development.

**2. All Other Applications - Timing of Notice**

Except for an official map amendment (rezoning) application, no later than 10 days after receipt of a complete application, Community Planning and Development shall cause written informational notice to be sent to the city council members in whose district the subject property is located, to the at-large city council members, and to those neighborhood organizations registered according to D.R.M.C. Section 12-94, whose boundaries encompass or are within 200 feet of the proposed development.

**3. Notice to Landmark Preservation Commission**

If the subject property falls within an area designated as a structure or district for preservation according to the D.R.M.C., Chapter 30 (Landmark Preservation), Community Planning and Development shall notify the Denver Landmark Preservation Commission

regarding the application within the same time periods specified in paragraphs 1 and 2 above.

#### **4. General Rules**

- a. The informational notice shall be sent via U.S. mail first class or by electronic mail if the recipient has indicated their acceptance of notice by electronic mail.
- b. Notification shall include the location and general description of the application and proposed action; and the process to be followed, including the date, time and place of any related public meeting or hearing, if such has been scheduled; and information concerning, as applicable, when and where written comments may be submitted.
- c. The failure of a registered neighborhood organization for whatever reason to receive a notification required hereunder shall not invalidate any final action by the city.

#### **B. Posted Notice of Receipt of Application**

When required by Section 12.2.9, Summary Table of Authority and Notice, posted notice of receipt of an application shall be provided in compliance with the following standards:

1. No later than 10 days after receipt of a complete application, the applicant shall post the subject property in a conspicuous location for 10 days with a sign or sign template provided by Community Planning and Development. The start of the 10-day period shall be the first day of the posting of the sign.
2. Such sign shall describe the proposal, give directions for submitting comments to Community Planning and Development within 30 days from the beginning of the posting period, and state that any final decision to approve the application shall be posted at the same location for 15 days as soon as it is effective.
3. Posted notices shall be removed by the applicant from the subject property by no later than 15 days after the end of the posting period. Failure to do so shall constitute a violation of this Code.

#### **C. Posted Notice of Final Administrative Action**

When required by Section 12.2.9, Summary Table of Authority and Notice, posted notice of final administrative action on an application shall be provided in compliance with the following standards:

1. Within 7 days after reaching a final decision to approve an application subject to informational notice, Community Planning and Development shall cause the applicant to post the property with a copy of the approving decision for a period of 15 days.
2. The applicant shall post the property in a conspicuous location with a sign or sign template provided by Community Planning and Development.
3. The effective date of the final administrative action and the start of the 15-day period during which appeals may be made to the Board of Adjustment shall be the first day of the posting of the sign. Such sign shall describe how an appeal from the final administrative decision may be filed and state that any appeal must be filed within 15 days, and shall provide contact information for obtaining the standards and criteria that will govern the appeal.

### **SECTION 12.3.5 EFFECT OF APPROVED APPLICATIONS, PLANS AND PERMITS**

All applications, plans and permits approved under this Article 12 and this Code shall be binding upon the applicants, their successors and assigns, shall limit and control the issuance and validity of all subsequent site

development plans and zoning permits, and shall restrict and limit the construction, location, use, and operation of all land and structures in accordance with such plans or permits. See also Section 12.3.7, Modification and Amendment of Approved Applications, Plans and Permits, below.

## **SECTION 12.3.6 LAPSE OF APPROVAL PROVISIONS AND EXTENSION OF APPROVAL PERIOD**

### **12.3.6.1 In General - Lapse of Approved Applications, Plans and Permits**

An application, site development plan, or zoning permit approved under this Code may lapse if certain actions related to the approved application are not taken within a specified time period as set forth in Division 12.4, Zoning Application and Review Procedures. Specific actions that must be taken with regard to each application, plan or permit to avoid lapsing of the approval are set forth in Division 4 of this Article for each type of zoning application.

### **12.3.6.2 Beginning of Approval Period - General Rule**

Unless otherwise specified in Division 4 of this Article 12, the approval period of an approved application, plan or permit, after which lapse will occur, shall begin on the date of the decision-making body's final action, which shall be interpreted to mean:

- A. Except as stated in Section 12.3.6.2.B regarding site development plans, for approved plans or permits that this Code requires to be recorded: the date of recordation.
- B. For all other approved applications, plans or permits, including site development plans: the date of the decision-making body's final action, which shall be affixed to all approved applications, plans or permits.

### **12.3.6.3 Extension of Approval Period**

- A. The Zoning Administrator may grant an extension of an approval period up to 12 months for good cause, including but not limited to a showing that development was delayed by economic or physical problems beyond the applicant's or property owners' control.
- B. In no case shall the Zoning Administrator grant an extension if, since the date of the original approval, the subject property's zoning designation has changed or the applicant proposes an amendment to the approved application, plan or permit with the request for extension. See Section 12.3.7, Modification or Amendment of Applications, Plans and Permits, below.
- C. All requests for extensions shall be submitted to Community Planning and Development in writing at least 30 days before the expiration of the approval period. An extension request shall include:
  1. Payment of any required fee for the extension review; and
  2. A narrative stating the reasons for the applicant's or owner's inability to comply with the specified deadlines, listing any changes in the character of the neighborhood, any changes to the Comprehensive Plan or this Code that have occurred since the original approval date and that affect the subject development, and the anticipated time schedule for completing the development.
- D. Additional review of the application, permit or plan may result in additional conditions placed on the extended approval, application, permit or plan, as applicable.
- E. If the extension is denied, the applicant may re-submit a new application, subject to the fees, standards, and regulations in effect at the time of re-submittal, for the same project.



## **SECTION 12.3.7 MODIFICATION OR AMENDMENT OF APPLICATIONS, PLANS AND PERMITS**

### **12.3.7.1 Modifications to Pending or Approved Applications, Plans or Permits**

This Section 12.3.7.1 shall not apply to modifications to GDPs; instead see Section 12.4.12.17.

The following types of minor modifications, changes, removal, or release of either (1) the Code standards applicable to a pending application; or (2) the Code provisions applicable to, or the conditions attached to, an approved application, plan or permit, shall be treated as "modifications" rather than "amendments," and may be approved administratively by the Zoning Administrator according to this Section.

#### **A. Modifications to Regulating Plans, Site Development Plans or Zoning Permits**

1. Modifications to a pending or approved regulating plan, site development plan or zoning permit application that are expressly permitted as "administrative adjustments" under Section 12.4.5 (Administrative Adjustments) of this Code, may be approved by the Zoning Administrator according to the procedures and criteria in Section 12.4.5.
2. The Zoning Administrator may allow minor changes to an approved regulating plan, site development plan or zoning permit provided such minor changes do not constitute an "amendment" under Section 12.3.7.2.B, "Amendments to Approved Regulating Plans, Site Development Plans and Zoning Permits," below.
3. All modifications to an approved regulating plan, site development plan or zoning permit shall be submitted to the Zoning Administrator as "redline" edits to the previously approved plan or permit documents. After approval, the Zoning Administrator shall record a modified regulating plan or site development plan in the records of the Denver County Clerk and Recorder's Office, and shall register a modified zoning permit in the records of Community Planning and Development.

#### **B. Other Modifications to Approved Applications, Plans, or Permits**

Changes, modifications, removal, or release of all or some of the provisions of an approved application, plan or permit, which do not otherwise qualify as "modifications" under Section 12.3.7.1.A above, or as an "amendment" under Section 12.3.7.2, Amendment to Approved Applications, Plans and Permits, below, may be approved by the Manager, using the same review process and criteria applicable to Administrative Adjustments stated in Section 12.4.5 of this Code.

### **12.3.7.2 Amendments to Approved Applications, Plans and Permits**

This Section 12.3.7.2 shall not apply to amendments to GDPs. See Section 12.4.12.17.

#### **A. Procedure for Amendments**

1. An "amendment" to an approved application, plan or permit shall be reviewed according to the same procedures and subject to the same limitations and requirements, including the payment of fees, as if it were a new application, including, where applicable, review at a public hearing before the Planning Board.
2. Unless otherwise allowed by this Code, each application for amendment shall include the entire land area of the original approved application, plan or permit, and may be initiated by the owner(s) or agent of the owner(s) of the property to which the amendment applies.
3. The Manager shall record all amendments to a site development plan approved according to this Section in the records of the Denver County Clerk and Recorder's Office.

## **B. Amendments to Approved Regulating Plans, Site Development Plans and Zoning Permits**

1. All changes to all or some of the provisions of an approved regulating plan, site development plan or zoning permit, including but not limited to a site development plan in a PUD District (but excluding a PUD District Plan amendment which requires City Council approval), which do not qualify as a “modification” under Section 12.3.7.1 above, shall be considered amendments subject to this Section 12.3.7.2.
2. In addition, any of the following changes to an approved regulating plan, site development plan or zoning permit, including but not limited to a site development plan in a PUD District (but excluding a PUD District Plan amendment which requires City Council approval), shall be considered amendments subject to this Section 12.3.7.2:
  - a. An increase in overall project density;
  - b. An increase in the maximum height of any building by more than 5 feet or 5 percent, whichever is less;
  - c. An increase in the floor area ratio (FAR) by greater than 10 percent as calculated on a total project basis;
  - d. A change to the permitted uses or mix of uses if the proposed uses are more intensive than the approved uses, as determined by the Zoning Administrator according to the criteria in Section 12.4.6 (Code Interpretations and Determination of Unlisted Uses);
  - e. A change to the location of permitted land uses that would substantially change the development's character or impacts on surrounding property, as determined by the Zoning Administrator;
  - f. A reduction in required minimum setbacks from zone lot lines;
  - g. An increase in required build-to location from zone lot lines;
  - h. An increase in permitted building coverage, including coverage by surface parking;
  - i. A reduction by more than 5 percent in the land area designated for landscaping;
  - j. A reduction in the ratio of parking or loading spaces to overall gross floor area or dwelling units;
  - k. A change in the permitted number, size or lighting of signs;
  - l. Changing the vehicle access from and through public rights-of-way; provided, however, that curb cut locations may shift unless specifically established by the approved plan or permit;
  - m. Changing or negating a condition of approval; or
  - n. Modifying any other element of an approved application, plan or permit, including but not limited to architectural concepts, building elevations, facade treatments, and exterior building materials, which would substantially change its character or impacts on surrounding property, as determined by the Manager.

## **SECTION 12.3.8 WITHDRAWAL OF RECORDED SITE DEVELOPMENT PLANS AND GENERAL DEVELOPMENT PLANS**

Pursuant to the same procedure and subject to the same limitations and requirements by which such site development plans or General Development Plans (GDPs) were approved and recorded, all site development plans and GDPs recorded under this Code may be withdrawn, either partially or completely, if all land and structures remaining under such site development plans can be made to comply with all regulations established by this Code. Upon approval of an application to withdraw, the Manager shall record in the real property records of the Denver County Clerk and Recorder an appropriate certificate of such withdrawal.



## DIVISION 12.4 ZONING APPLICATION AND REVIEW PROCEDURES

Division 12.4 contains the specific procedures and review criteria for land use and development applications required by this Code (collectively referred to as “zoning applications”). Applicants should also refer to Division 12.3, Requirements Common to All Zoning Procedures, for procedural requirements generally applicable to all zoning applications, including provisions governing pre-application meetings, application submittals, public notice, and vested rights.

### SECTION 12.4.1 ZONING PERMIT REVIEW

#### 12.4.1.1 Purpose

The purpose of the zoning permit review process is to ensure compliance with the standards and provisions of this Code, while encouraging quality development in Denver reflective of the goals, policies, and strategies found in the Comprehensive Plan.

#### 12.4.1.2 Applicability

A zoning permit is required prior to the following:

##### A. Structures

1. The construction or alteration of any structure, not including fences and walls but including retaining walls, that is greater than 12 inches in height.
2. The construction or alteration of any fence and wall greater than 4 feet.
3. The construction or alteration of any fence and wall less than 4 feet when located on property that:
  - a. Contains a structure for preservation designated under D.R.M.C., Chapter 30 (Landmark Preservation); or
  - b. Contains a structure in a district for preservation designated under D.R.M.C., Chapter 30 (Landmark Preservation); or
  - c. Abuts a Parkway designated under D.R.M.C., Chapter 49.
4. The erection, alteration, or maintenance of any sign, except where the requirement for a zoning permit is expressly waived in Division 10.10, Signs.
5. Establishment or construction of a new off-street parking area or expansion of an existing off-street parking area.

##### B. Uses

1. Establishment of a primary use.
2. Change of a primary use.
3. Change in the gross floor area of a structure that increases the off-street parking requirements for a use.
4. The establishment of an accessory use, or the change of accessory use, only when a zoning permit is required in the Use and Parking Tables found in Articles 3-9.
5. The establishment of a temporary use of any structure or land.

#### 12.4.1.3 Prohibitions and Requirements Prior to Zoning Permit Issuance

##### A. Prohibitions on Activities Prior to Zoning Permit

No development shall occur on property subject to these requirements for zoning permit review until a zoning permit has been approved, unless the Zoning Administrator allows an exception in writing.

**B. Approval of Required Site Development Plan**

When a Site Development Plan is required by Section 12.4.3, no zoning permit for construction shall be issued until a Site Development Plan is approved.

**C. Payment of Gateway Regional Systems Development Fee**

No zoning permit for an applicable zone lot, except a zoning permit only for a sign or fence and wall, shall be issued until the regional systems development fee established by the Gateway Regional Metropolitan District on land within the Gateway Regional Metropolitan District has been paid for the subject zone lot.

**D. Manager of Parks and Recreation Approval of Uses and Development in the OS-A District**

No zoning permit for an applicable zone lot shall be issued for any use or development in an OS-A zone district until the Manager of Parks and Recreation, or designee, has agreed to the approval of the zoning permit in writing.

**E. Denver International Airport (DIA) Review of Uses and Development in the DIA Influence Area Overlay District (AIO)**

No zoning permit shall be issued for any use, development, or structure in the DIA Influence Area Overlay District until the Manager of Aviation, or designee, has found that the proposed use, development, or structure complies with the DIA Influence Area Overlay District standards in Article 9 of this Code. The Manager of Aviation shall comment within 14 days from the referral of the complete application. Non-response by the Manager of Aviation within the 14-day time period, or any extension agreed to by the Zoning Administrator, shall be deemed a recommendation of approval.

**12.4.1.4 Review Process**

**A. Initiation**

The owner[s] of the subject property or the owner's authorized agent may initiate an application for zoning permit review.

**B. Pre-Application Meeting**

A pre-application meeting is optional before submittal of a zoning permit review application. See Section 12.3.2, Pre-Application Meeting/ Concept Plan Review.

**C. Application and Fees**

**1. Submittal in Writing**

All applications for zoning permit review shall be submitted in writing to Community Planning and Development. The applicant shall pay all required fees at the same time the application is submitted. See Section 12.3.3, Submission of Applications.

**2. Concurrent Applications**

The applicant may submit a zoning permit review application concurrent with the submittal of other applications according to Section 12.3.3.9, Concurrent Applications. In no case, however, shall a building permit be issued until the zoning permit according to this Section is approved, unless the Zoning Administrator allows an exception in writing.

**D. Review, Referral and Final Decision**

The Zoning Administrator may refer the zoning permit application to other affected or interested agencies and parties for review and comment, as deemed necessary to make a decision on the application. The Zoning Administrator shall make a final decision to approve, approve with conditions, or deny the zoning permit application, taking into consideration relevant agency or other party comments. Wherever higher or more restrictive standards are established by the provisions of any other applicable statute or ordinance than are established by the provisions of this Code, the Zoning Administrator may take the provisions of such other governing statute or ordinance into consideration in making a final decision. For example, the Zoning Administrator may deny a zoning permit application for a plant husbandry use that, while permitted by

the provisions of this Code, is prohibited by D.R.M.C., Chapter 6 Licenses, due to proximity to a school. See Section 1.1.3.3.A, Conflicting Provisions.

#### **12.4.1.5 Review Criteria**

The Zoning Administrator shall use the following criteria in making a decision on an application for zoning permit review:

- A. The zoning permit is consistent with all prior approvals that are regulatory and controlling for the subject property, as applicable. For example, all zoning permits shall be consistent with a previously approved General Development Plan, Regulating Plan, or Site Development Plan.
- B. The zoning permit complies with all applicable regulations in this Code.

#### **12.4.1.6 Requirements and Limitations After Zoning Permit Issuance**

##### **A. Expiration**

- 1. Except as otherwise allowed in subsection C. below, all approved zoning permits authorizing construction shall expire after 180 days after the date of issuance if a building permit has not been issued within the 180-day time period and is not thereafter cancelled.
- 2. Except as otherwise allowed in subsection C. below, an approved zoning permit authorizing a permitted use shall expire if a building permit has not been issued within the 180-day time period or if the permitted use is not established within the 180-day time period. After the use is validly established, an approved zoning use permit shall run with the land except as otherwise restricted by this Code.
- 3. If a zoning permit is granted upon review and approval of a Site Development Plan according to Section 12.4.3 of this Code, then the zoning permit authorizing construction or a permitted use shall expire at the same time as the approved Site Development Plan.

##### **B. Modification and Rescission**

The Zoning Administrator may change, modify, or rescind any zoning permit decision, whether or not the decision has been appealed to the Board of Adjustment. Rescission of a permit is allowed according to the procedure and criteria stated in Section 12.11.6 of this Code.

##### **C. Modifications and Amendments to an Approved Zoning Permit**

Modifications and amendments to an approved zoning permit are allowed according to Section 12.3.7 of this Code.

### **SECTION 12.4.2 ZONING PERMIT REVIEW WITH INFORMATIONAL NOTICE**

#### **12.4.2.1 Purpose**

The purpose of the zoning permit review with informational notice process is to ensure compliance with the standards and provisions of this Code, while encouraging quality development in Denver reflective of the goals, policies, and strategies found in the Comprehensive Plan. Zoning permit review with informational notice is intended for specific types of development or establishment of specific permitted uses that are consistent with the intent of the zone district and generally compatible with surrounding building forms and uses, but which have the potential for adverse off-site impacts. Zoning permit review with informational notice provides an opportunity for potentially affected parties to be notified of the city's receipt of the application, the process for making comments, the final decision, and appeal opportunities.

#### **12.4.2.2 Applicability**

Zoning permit review with informational notice is required for the following types of development:

- A. Establishment, expansion or enlargement of a primary, accessory, or temporary use permitted subject to informational notice, as indicated by the designation "ZPIN" (Zoning Permit with

Informational Notice) in the applicable Use and Parking Tables found in Articles 3 through 9 of this Code.

- B. Establishment, expansion or enlargement of a primary, accessory, or temporary use permitted in a zone district under Articles 3 through 9 or under any other provision in this Code, where such provision explicitly requires zoning permit review with informational notice and approval prior to establishment of the use.
- C. Deviations from the Sign Code permitted with a Comprehensive Sign Plan for Large Facilities authorized under Division 10.10, Signs.
- D. Construction of any new building on a Small Zone Lot that includes a request for a parking exemption in accordance with Section 10.4.5.1.A.

#### **12.4.2.3 Prohibitions and Requirements Prior to Zoning Permit Issuance**

##### **A. Prohibitions on Activities Prior to Zoning Permit**

No development shall occur on property subject to these requirements for zoning permit review until a zoning permit has been approved, unless the Zoning Administrator allows an exception in writing.

##### **B. Payment of Gateway Regional Systems Development Fee**

No zoning permit for an applicable zone lot, except a zoning permit only for a sign or fence and wall, shall be issued until the regional systems development fee established by the Gateway Regional Metropolitan District on land within the Gateway Regional Metropolitan District has been paid for the subject zone lot.

##### **C. Denver International Airport (DIA) Review of Uses and Development in the DIA Influence Area Overlay District (AIO)**

No zoning permit shall be issued for any use, development, or structure in the DIA Influence Area Overlay District until the Manager of Aviation, or designee, has found that the proposed use, development, or structure complies with the DIA Influence Area Overlay District standards in Article 9 of this Code. The Manager of Aviation shall comment within 14 days from the referral of the complete application. Non-response by the Manager of Aviation within the 14-day time period, or any extension agreed to by the Zoning Administrator, shall be deemed a recommendation of approval.

#### **12.4.2.4 Review Process**

##### **A. Initiation**

The owner[s] of the subject property or the owner's or owners' authorized agent may initiate an application for zoning permit review with informational notice.

##### **B. Pre-Application Meeting**

A pre-application meeting is mandatory before submittal of an application for zoning permit review with informational notice. See Section 12.3.2, Pre-Application Meeting/ Concept Plan Review.

##### **C. Application and Fees**

###### **1. Submittal in Writing**

All applications for zoning permit review with informational notice shall be filed in writing with Community Planning and Development. The applicant shall pay all required fees at the same time the application is submitted. See Section 12.3.3, Submission of Applications.

###### **2. Concurrent Applications**

The applicant may submit a zoning permit review with informational notice application concurrent with other required applications according to Section 12.3.3.9, Concurrent

Applications. In no case, however, shall a building permit, as applicable, be issued until the zoning permit is issued according to this Section, unless the Zoning Administrator allows an exception in writing.

**D. Informational Notice**

**1. Written and Posted Notice of Receipt of Application**

Written and posted notice of receipt of application shall be provided according to Sections 12.3.4.5.A and 12.3.4.5.B.

**2. Supplemental Information Notice Requirements for Large Residential Care Uses**

In addition to the general Informational Notice requirements in Section 12.3.4, information notice for proposed Large Residential Care Uses shall include a packet including a copy of the completed application; a detailed explanation of applicant's and operator's experience; the facility's operational plan as set forth by the operator; the name, address and telephone number of a staff member of the applicant and operator designated as the contact person; and a summary of licensing procedures required for the proposed facility.

**E. Review, Referral and Final Decision**

**1. Review and Referral**

The Zoning Administrator may refer the zoning permit review with information notice application to other affected or interested parties and agencies for review and comment as deemed necessary to make a decision on the application.

**2. Planning Board Review of Comprehensive Sign Plans**

The Zoning Administrator shall forward zoning permit applications for review of Comprehensive Sign Plan for Large Facilities (authorized under Division 10.10, Signs) to the Planning Board for the Planning Board's review and recommendation.

- a. The Planning Board shall hold a public hearing to review the zoning permit application and make a recommendation to the Zoning Administrator.
- b. The applicant shall provide written and posted public notice of such public hearing according to Section 12.3.4, Public Notice Requirements.
- c. The Planning Board shall review the public testimony and the criteria for review, and shall adopt a recommendation for denial, approval, or approval with conditions. The Planning Board recommendation shall be forwarded to the Zoning Administrator no later than 15 days following the Planning Board's recommendation.

**3. Final Decision**

- a. The Zoning Administrator shall make a final decision to approve, approve with conditions, or deny the zoning permit application, taking into consideration relevant agency or other party comments.
- b. The Zoning Administrator may attach conditions to the zoning permit approval reasonably necessary to protect the health, safety and welfare of the community and to minimize adverse impacts on adjacent properties, as authorized by this Code.

**F. Posted Informational Notice of Final Administrative Action**

The applicant shall provide posted informational notice of the final administrative action according to Section 12.3.4.5.C.

**12.4.2.5 Review Criteria**

The Zoning Administrator shall consider all public comment and the following criteria in making a decision on an application for zoning permit with informational notice review:

- A. The zoning permit is consistent with all prior approvals that are regulatory and controlling for the subject property, as applicable. For example, all zoning permits shall be consistent with a previously approved General Development Plan, Regulating Plan, or Site Development Plan.
- B. The zoning permit complies with all applicable regulations in this Code.
- C. The proposal will not substantially or permanently injure the appropriate use of adjacent conforming properties, taking into consideration all proposals for mitigation of such impacts.

**D. Additional Review Criteria for Homeless Shelters**

In addition to the review criteria above, the Zoning Administrator shall approve a zoning permit for a homeless shelter only if the Zoning Administrator finds the proposed shelter will not substantially or permanently injure the appropriate use of conforming residential properties located within 500 feet of the proposed use. Evidence of such injury shall clearly establish the anticipated specific problems attributed to residents of the proposed shelter for the homeless while in or around the shelter as distinct from the general problems attributed to persons using or passing through the subject area.

### 12.4.2.6 Requirements and Limitations After Zoning Permit Issuance

**A. Expiration**

- 1. Except as otherwise allowed in subsection C. below, all approved zoning permits authorizing construction shall expire after 180 days after the date of issuance if a building permit has not been issued within the 180-day time period and is not thereafter cancelled.
- 2. Except as otherwise allowed in subsection C. below, an approved zoning permit authorizing a permitted use shall expire if a building permit has not been issued within the 180-day time period or if the permitted use is not established within the 180-day time period. After the use is validly established, an approved zoning use permit shall run with the land.
- 3. If a zoning permit is granted upon review and approval of a Site Development Plan according to Section 12.4.3 of this Code, then the zoning permit authorizing construction or a permitted use shall expire at the same time as the approved Site Development Plan.

**B. Modification and Rescission**

The Zoning Administrator may change, modify, or rescind any zoning permit decision, whether or not the decision has been appealed to the Board of Adjustment. Rescission of a permit is allowed according to the procedure and criteria stated in Section 12.11.6 of this Code.

**C. Modifications and Amendments to an Approved Zoning Permit**

Modifications and amendments to an approved zoning permit are allowed according to Section 12.3.7 of this Code.

## SECTION 12.4.3 SITE DEVELOPMENT PLAN REVIEW

### 12.4.3.1 Purpose

The purpose of the site development plan review process is to ensure compliance with the standards and provisions of this Code and other applicable city standards, rules and regulations, while encouraging quality development in Denver reflective of the goals, policies, and strategies found in the Comprehensive Plan. Site development plan review is generally reserved for development with the potential for significant on-site and off-site impacts necessitating inter-departmental and inter-agency referral, review, and, in some cases, approval prior to final action by Community Planning and Development. After the City's approval of a site development plan, Community Planning and Development is authorized to issue requisite zoning permits under this Code.



### 12.4.3.2 Applicability

- A. Site development plan review is required for the following (see Article 13, Division 13.3, for definition of the term "development" as used below):
  - 1. Development in all zone districts, including development of a Detached Accessory Dwelling Unit building form or development of a Tandem House building form on a single zone lot, but not including the following types of residential development:
    - a. Establishment of a single-unit or two-unit dwelling use on a single zone lot in a SU, TU, TH, RH, RO, or MU zone district; or
    - b. Construction of a suburban house, urban house, or duplex building form on a single zone lot.
  - 2. Creation of or development on a flag lot.
  - 3. Development subject to an approved General Development Plan (GDP).
  - 4. Development within a PUD District; however, development within a PUD District subject to an approved Detailed PUD District Plan under Section 9.6.1.3, Requirement for a PUD District Plan, is exempt from this requirement for site development plan review.
  - 5. Development on a Parkway designated according to Chapter 49 of the D.R.M.C.
  - 6. Establishment of a primary, accessory, or temporary use permitted in a zone district under Articles 3 through 9, Article 11, or any other provision of this Code, where such provision explicitly requires site development plan review and approval prior to establishment of the use.
  - 7. Requests for shared parking or participation in an off-site car-sharing program to meet minimum parking requirements, as specified in Article 10, Section 10.4.5.4, Shared Vehicle Parking, and Section 10.4.5.3.B, Off-Site Car Sharing Program.
- B. The Zoning Administrator may require site development plan review for any development not listed in subsection A. above, where the proposed development requires approval by a city agency or department other than Community Planning and Development.
- C. No development shall occur on property subject to these requirements until a site development plan has been approved and requisite zoning and building permits issued, unless the Zoning Administrator expressly allows an exception.

### 12.4.3.3 Review Process

#### A. Initiation

The owner(s) of the subject property or the owner's or owners' authorized agent may initiate an application for site development plan review.

#### B. Pre-Application Concept Plan Review

- 1. A pre-application concept plan review is mandatory before submittal of a formal site development plan application. During the concept plan review, the DRC will confirm the applicability of site development plan review to the proposed development activity and the specific procedure steps and submittal requirements the applicant will follow. See also Section 12.3.2, Pre-Application Meeting/ Concept Plan Review.
- 2. During the concept plan review, the DRC may waive an otherwise mandatory requirement for site development plan review if the DRC finds that the nature and complexity of the proposed development, and the development's compliance with this Code, can be fully addressed through the zoning permit review procedure in Section 12.4.1.

### **C. Application and Fees**

#### **1. Submittal in Writing**

All applications for site development plan review shall be filed in writing with Community Planning and Development. The applicant shall pay all required fees at the same time the application is submitted. See Section 12.3.3, Submission of Applications.

#### **2. Concurrent Applications**

Concurrent applications may be allowed according to Section 12.3.3.9, Concurrent Applications. In no case, however, shall a building permit, as applicable, be issued until the site development plan is approved and all zoning permits issued according to this Article, unless the Zoning Administrator allows an exception in writing.

### **D. Public Notice Requirements**

Informational Notice shall be provided according to Section 12.3.4.5, Informational Notice-General Provisions, for the following types of site development plan review applications only:

1. Site development plans where multiple primary buildings will be sited on the same zone lot in a Residential Zone District, but not including development of a tandem house building form on a single zone lot. For such site development plans, written informational notice shall be given only for receipt of the application.
2. Certain construction and exceptions in the Campus Healthcare (CMP-H and CMP-H2) zone districts, as specified in Article 9, Section 9.2.3.2.3, Construction Subject to Review and Final Decision by Planning Board.

### **E. Review, Referral and Decision by Development Review Committee**

1. The DRC shall refer the site development plan application to other affected or interested agencies for review and comment.
  - a. For proposed development in the DIA Influence Area Overlay District, the DRC shall refer the site development plan application to the Department of Aviation for review. The DRC shall not approve a site development plan in the DIA Influence Area Overlay District until the Manager of the Department of Aviation, or designee, has found that the proposed development complies with the DIA Influence Area Overlay District standards in Article 9 of this Code. The Manager of Aviation shall comment within 14 days from the referral of the complete application. Non-response by the Manager of Aviation within the 14-day time period, or any extension agreed to by the DRC, shall be deemed a recommendation of approval.
2. If required by Section 12.4.3.3.F, Review and Final Decision by Planning Board, the DRC shall forward the site development plan application, together with the DRC's recommendation, to the Planning Board for the Planning Board's review and final decision on the site development plan application.
3. The DRC shall consider the relevant comments of all interested parties, the actions taken by other agencies on the site development plan, as applicable, the recommendation by the Planning Board, as applicable, and the review criteria stated below, in approving, approving with conditions, or denying a site development plan application.
4. The DRC may attach conditions to the site development plan approval reasonably necessary to protect the health, safety and welfare of the community and to minimize adverse impacts on adjacent properties, as authorized by this Code.

### **F. Review and Final Decision by Planning Board**

#### **1. Applicability**

The DRC shall forward the following site development plan applications to the Planning Board for the Planning Board's review and final decision:



**a. Campus Healthcare Zone Districts**

Site development plan applications for certain construction and exceptions in the Campus Healthcare (CMP-H and CMP-H2) zone districts, as specified in Article 9, Section 9.2.3.3, Construction Subject to Review and Final Decision by Planning Board.

**2. Review and Decision by the Planning Board at Public Hearing**

- a. The Planning Board shall hold a public hearing to review the site development plan application and make a final decision.
- b. The applicant shall provide written and posted public notice of such public hearing according to Section 12.3.4, Public Notice Requirements.
- c. The Planning Board shall review the DRC's recommendation, the actions taken by other agencies on the site development plan, as applicable, and the review criteria stated below, in approving, approving with conditions, or denying a site development plan application.
- d. The Planning Board may attach conditions to the site development plan approval reasonably necessary to protect the health, safety and welfare of the community and to minimize adverse impacts on adjacent properties, as authorized by this Code.

**12.4.3.4 Review Criteria**

The following criteria shall be considered in making a decision on an application for site development plan review:

- A. The site development plan has been reviewed and approved by the DRC, where such approval is authorized and required by the D.R.M.C. The DRC or Planning Board shall not approve a site development plan until all DRC departments have approved the site development plan pursuant to their charter or D.R.M.C. authority.
- B. The site development plan is consistent with all prior approvals that are regulatory and controlling for the subject property, as applicable. For example, the site development plan shall be consistent with a previously approved General Development Plan or Regulating Plan.
- C. The site development plan complies with all applicable regulations in this Code.

**D. Additional Review Criteria for Certain Construction in the CMP-H and CMP-H2 Districts**

The following additional criteria shall be considered in making a decision on an application for site development plan review submitted to permit certain construction and exceptions in the Campus Healthcare (CMP-H and CMP-H2) zone districts, as specified in Article 9, Section 9.2.3.3, Construction Subject to Review and Final Decision by Planning Board:

1. Whether the project is generally compatible with the Comprehensive Plan, including any neighborhood plans, and with the campus facility's plans for future development;
2. Whether there has been demonstrated neighborhood involvement in reviewing the project and its potential impacts, including meetings with applicable RNOs, and whether neighborhood concerns have been appropriately addressed;
3. Whether the project has a significant adverse impact on historically designated or architecturally significant buildings as determined by Community Planning and Development; and
4. Whether the construction project is consistent with the Campus zone district in which it is proposed to be located.
5. Consideration for the growth needs and viability of healthcare districts in CMP-H and CMP-H2 zone districts.

### **12.4.3.5 Appeal**

Section 12.4.8, Appeal of Administrative Decision, shall apply.

### **12.4.3.6 Requirements and Limitations After Site Development Plan Approval**

#### **A. Recordation of Approved Site Development Plans**

Community Planning and Development shall register a copy of the approved site development plan among its records and shall record the approved site development plan in the real property records of the Denver County Clerk and Recorder.

#### **B. Effect of Approval**

1. A site development plan approved according to this Section shall regulate the future use and development of the subject property.
2. Approval of a site development plan means a proposed development complies with the standards and provisions of this Code and, consequently, the City may issue zoning permits and building permits to an applicant, assuming all other City standards and regulations have been satisfied.
3. After approval of the site development plan and all requisite zoning permits, if the Zoning Administrator finds that development is not proceeding in accordance with the approved site development plan, the Manager, through its enforcement authority, may immediately issue an order stopping any or all work on the property that does not comply with such plans, until such time as any noncompliance is remedied. See Division 12.11, Enforcement, Violations and Penalties.

#### **C. Expiration**

1. An approved site development plan shall expire after 18 months from the date of approval if an approved zoning permit and building permit (as applicable) have not been obtained and if construction, (as applicable), has not started. See Article 13, for definition of "start of construction."
2. The Zoning Administrator may extend the original 18-month validity period for site development plans for up to an additional 12 months according to Section 12.3.6.3., Extension of Approval Period.

#### **D. Modification and Rescission**

The Zoning Administrator may change, modify, or rescind any site development plan decision, whether or not the decision has been appealed to the Board of Adjustment. Rescission of an approved site development plan is allowed according to the procedure and criteria stated in Section 12.11.6 of this Code.

#### **E. Modifications and Amendments to or Withdrawal of Approved Site Development Plans**

Modifications and amendments to an approved site development plan are allowed according to Section 12.3.7 of this Code. Withdrawal of an approved and recorded site development plan is allowed according to Section 12.3.8 of this Code.

### **12.4.3.7 Site Development Plan Rules and Regulations**

The Manager has the authority to adopt rules and regulations to establish alternative procedures for review of different types of site development plans, including but not limited to different review process for relatively less complex site development plans. In no case, however, shall rules and regulations vary the review criteria established in this Section 12.4.3 for approval of a site development plan. Once adopted by the Manager, such rules and regulations shall supersede the process, time frames, and application contents for site development plan review established in this Section 12.4.3.

## SECTION 12.4.4 ZONE LOT AMENDMENTS

### 12.4.4.1 Purpose

This Section establishes the administrative process to amend the boundaries of a previously designated zone lot. See also, Article 1, Division 1.2, Zone Lots, for general requirements related to zone lots.

### 12.4.4.2 Review Process

#### A. Initiation

All owners of the subject property shall initiate an application for a zone lot amendment.

#### B. Pre-Application Meeting

A pre-application meeting is optional before submittal of an application for zone lot amendment. See Section 12.3.2, Pre-Application Meeting/Concept Plan Review.

#### C. Application and Fees

##### 1. Submittal in Writing

All applications for zone lot amendment shall be filed in writing with Community Planning and Development. The applicant shall pay all required fees at the same time the application is submitted. See Section 12.3.3, Submission of Applications.

##### 2. Concurrent Applications

The applicant may submit a zone lot amendment application concurrent with other required applications according to Section 12.3.3.9, Concurrent Applications.

#### D. Review, Referral and Final Decision by Zoning Administrator

1. The Zoning Administrator may refer the zone lot amendment application to other affected or interested parties and agencies for review and comment as deemed necessary to make a decision on the application.
2. In deciding to approve, approve with conditions, or deny the proposed zone lot amendment, the Zoning Administrator shall consider relevant comments of all interested parties.
3. The Zoning Administrator may attach any condition to the zone lot amendment reasonably necessary to protect the health, safety and welfare of the community and to minimize adverse impacts on adjacent properties.

### 12.4.4.3 Review Criteria

The Zoning Administrator may approve an application for zone lot amendment only if the application meets the following review criteria:

- A. All owners of the zone lot have indicated in writing their agreement to the amendment.
- B. Except in the case of adding or removing land by an act of government through right-of-way vacation, condemnation, or threat of condemnation, the following criteria shall be met:
  1. A zone lot amendment shall not result in the creation of a new nonconforming or compliant zone lot, structure or land use.
  2. Nor shall a zone lot amendment increase an existing nonconforming or compliant structure's degree of nonconformity with this Code's standards (e.g., a zone lot amendment that would further decrease an existing compliant side interior setback is not allowed).

### 12.4.4.4 Recordation

The Zoning Administrator shall record all approved zone lot amendments in the real property records in the office of the Denver County Clerk and Recorder.

## **SECTION 12.4.5 ADMINISTRATIVE ADJUSTMENT**

### **12.4.5.1 Purpose**

The Zoning Administrator may adjust, in minor ways, certain provisions of this Code otherwise applicable to a property pursuant to the procedures in this Section. Administrative adjustments may authorize minor changes to pending applications, or to approved plans and permits, and relief from specified standards as stated in this Section. Administrative adjustments are intended to relieve unnecessary hardship in complying with the strict letter of this Code or with overriding federal law, and to promote context-sensitive development in Denver's established neighborhoods. Administrative adjustments are not intended to relieve specific cases of financial hardship, nor to allow circumventing the intent of this Code and its standards.

### **12.4.5.2 Applicability**

#### **A. Adjustments to Approved Applications, Plans and Permits**

##### **1. General Allowance**

The Zoning Administrator may grant administrative adjustments to a previously approved application, plan or permit approved pursuant to this Code, except that the Zoning Administrator may grant administrative adjustments to a previously approved site development plan or zoning permit for development in an approved PUD District only when the terms of the PUD District Plan and documents expressly authorize administrative adjustments according to this Section 12.4.5.

##### **2. Limits on Authority to Grant Adjustments**

The Zoning Administrator may approve administrative adjustments to a previously approved plan or permit according to the allowances and limits stated in Section 12.4.5.3, Permitted Types of Administrative Adjustments, below. In no circumstance, however, shall the Zoning Administrator approve an administrative adjustment to a previously approved application, plan or permit that qualifies as an "amendment" under Section 12.3.7.2, Amendments to Approved Applications, Plans or Permits.

#### **B. Adjustments to Pending Zoning Applications**

The Zoning Administrator may grant administrative adjustments as part of the review of a pending zoning application otherwise required by this Code according to the allowances and limits stated in Section 12.4.5.3, Permitted Types of Administrative Adjustments, below, except that the Zoning Administrator may grant administrative adjustments to a pending site development plan or zoning permit for development in an approved PUD District only when the terms of the PUD District Plan and documents expressly authorize administrative adjustments according to this Section 12.4.5.

### **12.4.5.3 Permitted Types of Administrative Adjustments**

#### **A. Administrative Adjustments to Relieve Unnecessary Hardship**

The Zoning Administrator may grant administrative adjustments to the following zoning standards shown in the table below, subject to any limitations stated in the table and subject to compliance with the review criteria stated in Section 12.4.5.5:

ZONING STANDARD	MAXIMUM ADJUSTMENT "NA" = NOT APPLICABLE OR AVAILABLE	
	Suburban House, Urban House, Duplex, Tandem House and Any Associated Detached Accessory Structure Building Forms Only	All Other Building Forms
<b>HEIGHT AND BULK STANDARDS:</b>		
<b>1. NON-HISTORIC STRUCTURES</b>		
• Maximum height (in stories or feet)	May exceed maximum standards , but the subject building and its elements shall be no taller in feet than a similar building form located within the "existing neighborhood" as defined in Section 12.4.7.5.D.2, "Compatibility with Existing Neighborhood." In addition, a height adjustment to a Detached Accessory Dwelling Unit building shall not result in more than 2 stories.	na
• Bulk Plane Dimensions		na
<b>2. NON-HISTORIC STRUCTURES IN THE D-GT ZONE DISTRICT ONLY</b>		
• Maximum height (in feet)	Up to an additional 25' permitted, according to Section 8.6.1.3 (Maximum Height) of this Code.	
<b>3. HISTORIC STRUCTURES</b>		
• Maximum height (in stories or feet)  • Bulk Plane Dimensions	The Zoning Administrator may approve an adjustment that results in a structure taller than a similar building form located within the existing neighborhood, as defined in Section 12.4.7.5.D.2, "Compatibility with Existing Neighborhood," if the landmark approving authority (pursuant to D.R.M.C., Chapter 30, Landmark Preservation) finds specifically that development on the Zone Lot conforming to this Code's height or bulk regulations would have an adverse impact upon the historic character of the individual landmark or the historic district, if a historic district is involved.	
<b>SITING STANDARDS:</b>		
Determination of Primary Street Zone Lot Line(s) on Corner Lots of Oblong Blocks or Square Blocks	Zoning Administrator may designate either or both zone lot lines parallel to the intersecting streets as a Primary Street Zone Lot Line, provided the resulting street setback standards shall be more compatible with an established pattern of street setbacks for buildings on the same face blocks containing the subject property.	
Minimum zone lot width requirements	5%	5%
Block sensitive primary street setback	No limit, provided the resulting primary street setback range (min/max) shall be more compatible with an established pattern of primary street setbacks for buildings on the same face block as the subject building.	
Side Interior Setback requirements on Zone Lots from 31 to 40' wide	No limit when based on a finding of neighborhood compatibility (see Section 12.4.7.5.D), provided the adjustment results in a side interior setback no less than 3'.	na
Setback requirements, all others, except primary street setback in the C-CCN Zone Districts	10%	20%
Build-to requirement -- Adjustment applies only to the min/max range of required build-to (e.g., an adjustment is permitted to the 0' to 5' range, but not to the minimum 70% build-to portion of the standard).	na	Adjustment for irregularly shaped lots only, not to exceed a min/max build-to range of 0' to 15'

ZONING STANDARD	MAXIMUM ADJUSTMENT "NA" = NOT APPLICABLE OR AVAILABLE	
	Suburban House, Urban House, Duplex, Tandem House and Any Associated Detached Accessory Structure Building Forms Only	All Other Building Forms
Build-to requirement to accommodate required water quality and/or detention/retention facilities.	na	Adjustment to allow a build-to alternative (e.g., a garden wall) to count up to 40% (e.g., a standard states up to 25% of the 70% build-to may be met by a garden wall - with adjustment, 25% may be increased to 40%)
Build-to requirement - Adjustment applies only to zone lots that are 80' wide or less.	na	Adjustment to the required minimum internal drive dimension for the purposes of public street access required by the City.
Build-to requirement - Adjustment applies only to sites with gas station uses existing on June 25, 2010.	na	Adjustment not to exceed 40%, The adjustment is permitted only when compliance with the build-to requirement is not feasible because of the impracticality of moving existing underground fuel tanks.
Maximum building coverage	5%	na
<b>DESIGN ELEMENT STANDARDS:</b>		
Building Configuration	na	15%
Attached Garage	Attached garage may be located closer to the minimum Primary Street setback line than the Primary Street facing facade(s) of the primary structure enclosing the primary use, provided the resulting attached garage shall be more compatible with a predominant established pattern on the same or opposite face block as the subject property.	na
<b>OTHER STANDARDS:</b>		
Garden wall alternative to build-to standards	na	Adjustment permitted for use of alternative garden wall materials when Zoning Administrator finds alternative garden wall materials will better complement primary building materials.
Required Amount of Parking in the Historic Structure Use Overlay District (UO-3) Only	<ul style="list-style-type: none"> <li>Required parking for office/art studio use in a Historic Structure: no maximum limit if applicant can show compliance with required parking is physically impossible.</li> <li>Required parking for bed and breakfast use in a Historic Structure: 20%</li> <li>See Section 9.4.4.8</li> </ul>	
Required Parking for Limited Nonresidential Uses Permitted in Existing Business Structures	Adjustment permitted to relieve hardship due to physical limitations of the site <ul style="list-style-type: none"> <li>See Section. 11.4.5</li> </ul>	na
Required Amount of Parking to Preserve Established Trees	na	Adjustment permitted when Zoning Administrator finds the adjustment is necessary to preserve existing, mature trees See Section 10.4.5. and Section 10.5.3
Required Bicycle Parking and Required Mix of Bicycle Parking Facilities	na	20% See Section 10.4.3.3.

ZONING STANDARD	MAXIMUM ADJUSTMENT "NA" = NOT APPLICABLE OR AVAILABLE	
	Suburban House, Urban House, Duplex, Tandem House and Any Associated Detached Accessory Structure Building Forms Only	All Other Building Forms
Minimum Width of Parking Aisles or Internal Drives in Off-Street Parking Areas	na	Adjustment permitted when Zoning Administrator finds adjustment is necessary to relieve hardship associated with providing safe vehicle access and circulation on unusually small or narrow lots.
Minimum Landscaping Standards	na	Adjustment permitted when Zoning Administrator finds the adjustment is necessary to: (1) preserve existing, mature trees; (2) mitigate excessive improvement costs; (3) relieve impractical hardship due to physical limitations of the site. See Section 10.5.4.1.
As expressly permitted in other parts of this Code, the Zoning Administrator may grant administrative adjustments according to the allowances and limits expressed, and according to the procedures in this Section 12.4.5.		

**B. Administrative Adjustments to Ensure Compliance with Federal Law**

**1. Compliance with Federal Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA)**

**a. General**

The Zoning Administrator may grant administrative adjustments to any use, building form, or design standard stated in Articles 3 through 9, Contexts and Zone Districts, Article 11, Use Limitations, or Article 10, General Design Standards in order to eliminate a substantial burden on religious exercise as guaranteed by the Federal Religious Land Use and Institutionalized Persons Act of 2000, as amended.

**b. Limitations**

In no circumstance shall the Zoning Administrator approve an adjustment that allows a religious assembly use, or any uses/structures/activities accessory to it, in a zone district where Articles 3 through 9 prohibit such use or accessory use/structure/activity.

**c. Conditions of Approval**

In granting an administrative adjustment, the Zoning Administrator may require conditions that will secure substantially the objectives of the modified standard and that will substantially mitigate any potential adverse impact on the environment or on adjacent properties, including but not limited to additional landscaping or screening.

**2. Reasonable Accommodations under Federal Fair Housing Act (FFHA)**

- a. The Zoning Administrator may grant administrative adjustments to provide reasonable accommodations under the Federal Fair Housing Act. In the application for an administrative adjustment under this subsection, the applicant shall identify the type of housing being provided and cite the specific provisions of the Federal Fair Housing Act that require reasonable accommodations be made for such housing. The Zoning Administrator may grant the following types of administrative adjustments to assure reasonable accommodations required by law:



- i. Modify any minimum distance or spacing requirements, building setback, height, open space or building coverage, or landscaping requirement by no more than 10 percent; or
  - ii. Reduce any off-street parking requirement by no more than 1 space.
- b. The Zoning Administrator may approve a type of reasonable accommodation different from that requested by the applicant if the Zoning Administrator concludes that a different form of accommodation would satisfy the requirements of the Federal Fair Housing Act with fewer adverse impacts on adjacent areas. The decision of the Zoning Administrator shall be accompanied by written findings of fact as to the applicability of the Federal Fair Housing Act, the need for reasonable accommodations, and the authority for any reasonable accommodations approved. Requests for types of accommodation that are not listed above may only be approved through a Variance or Official Map Amendment (Rezoning) process.

**3. Compliance with Other Federal Laws**

The Zoning Administrator is authorized to grant administrative adjustments necessary to ensure compliance with any other applicable federal law, provided the adjustment is no greater than any adjustment specifically authorized by this Section 12.4.5. Requests for adjustments that are not otherwise authorized by this Section may only be approved through a Variance or Official Map Amendment (Rezoning) process.

**12.4.5.4 Review Process**

**A. Initiation**

The owner of the subject property or the owner's authorized agent may initiate an application for an administrative adjustment.

**B. Pre-Application Meeting**

A pre-application meeting is mandatory before submittal of an application for administrative adjustment. See Section 12.3.2, Pre-Application Meeting/\_Concept Plan Review.

**C. Application and Fees**

**1. Concurrent Review for Administrative Adjustments**

Requests for administrative adjustments may be submitted concurrently with any other required zoning application according to Section 12.3.3.9, Concurrent Applications. In such cases, the Zoning Administrator shall review and take action on the administrative adjustment during the review of the primary application.

**2. All Other Requests for Administrative Adjustments**

All applications for administrative adjustment shall be filed in writing with Community Planning and Development. The applicant shall pay all required fees at the same time the application is submitted. See Section 12.3.3, Submission of Applications.

**D. Review, Referral and Final Decision by Zoning Administrator**

1. The Zoning Administrator may refer the administrative adjustment application to other affected or interested parties and agencies for review and comment, as deemed necessary to make a decision on the application.
2. In deciding to approve, approve with conditions, or deny the proposed adjustment, the Zoning Administrator shall consider relevant comments of all interested parties and agencies.
3. The Zoning Administrator may attach any condition to approval of an administrative adjustment reasonably necessary to protect the health, safety and welfare of the community, to secure substantially the objectives of the modified standard, and to minimize adverse impacts on adjacent properties.



#### **12.4.5.5 Review Criteria**

The Zoning Administrator may approve an Administrative Adjustment only upon finding that:

- A. The adjustment is necessary to satisfy the federal requirements for reasonable accommodation of housing for protected groups under the Federal Fair Housing Act as provided in Section 12.4.5.3.B.2.; or
- B. The adjustment is necessary to eliminate a substantial burden on religious exercise as guaranteed by the federal Religious Land Use and Institutionalized Persons Act of 2000 as provided in Section 12.4.5.3.B.1.; or
- C. The adjustment is necessary to satisfy the mandates under any other federal law or requirements as provided in Section 12.4.5.B.3.; or
- D. All of the following criteria have been met:
  1. The requested adjustment is consistent with the stated intent and purpose of this Code.
  2. The requested adjustment is consistent with the stated intent and purpose of the applicable zone district.
  3. The requested adjustment is consistent with the stated intent and purpose of a previously approved PUD District Plan, as applicable.
  4. The requested adjustment will have no significant adverse impact on the health, safety, or general welfare of surrounding property owners or the general public, or such impacts will be substantially mitigated.
  5. The requested adjustment is needed to compensate for unnecessary hardship. For purposes of satisfying these administrative adjustment review criteria, determination of "unnecessary hardship" shall mean the application satisfies the review criteria for a zoning variance stated in Sections 12.4.7.5 and 12.4.7.6, except that compliance with the criteria stated in Section 12.4.7.5.E, Nonconforming or Compliant Uses in Existing Structures, shall not be applicable to an application for administrative adjustment.

#### **12.4.5.6 Requirements and Limitations After Administrative Adjustment Approval**

##### **A. Administrative Adjustments to Approved Plans or Permits**

Adjustments to an approved plan or permit shall be noted on a revised plan or permit, which shall be plainly marked as "Revised," and submitted to the Zoning Administrator. The Zoning Administrator shall note the terms of the approved administrative adjustment directly on the revised plan or permit and affix his signature and the date of approval. If the original plan or permit was required to be recorded, the Zoning Administrator shall record such revised plan or permit in the real property records of the Denver County Clerk and Recorder within 30 days of the Zoning Administrator's approval of the adjustment.

##### **B. Noted on Pending Application**

The Zoning Administrator shall specify any approved administrative adjustment from building form or design standards and the justifications for such adjustment on the pending zoning application for which the adjustments were sought. Alternately, the Zoning Administrator may include such final determination, in writing, as part of staff report for a required public hearing.

##### **C. Expiration**

1. As applicable, an approved administrative adjustment shall be valid for the same time frame as the approval with which it was joined or for the same time frame as the originally approved plan or permit.

2. In all other cases, an administrative adjustment shall be valid for the same time frame and have the same effect as the zoning application with which it is joined, as such application is ultimately approved.

## **SECTION 12.4.6 CODE INTERPRETATIONS AND DETERMINATION OF UNLISTED USES**

### **12.4.6.1 Purpose and Applicability**

- A. This Section establishes a procedure whereby interpretation of this Code's provisions may be sought and determined, including but not limited to:
  1. Interpretations of terms, words, and phrases not otherwise defined in this Code;
  2. Interpretations of Code provisions when additional clarity is required to apply such provisions to a specific case or to guide general application of the Code;
  3. Determination which of two or more conflicting provisions apply generally or to a specific case;
  4. Determination of whether a specific unlisted primary, accessory, or temporary use type may be permitted in one or more zone districts, and what type of use review is required (i.e., no zoning permit, ZP, ZPIN, or ZPSE); and
  5. Interpretations regarding disputed boundaries of zone districts shown on the Official Zone Map.
- B. The provisions of this Section shall not apply to permit any specific use that is expressly prohibited in a zone district or by this Code's provisions. If, pursuant to this Section, a specific use type cannot clearly be determined to be in a use classification or category permitted in a particular zone district or by this Code's provisions, such use may be incorporated into the zoning regulations only by a text amendment to this Code, as provided in Section 12.4.11.

### **12.4.6.2 Authority to Make Code Interpretations**

The Zoning Administrator shall be the final decision-maker for all Code Interpretations and Determinations of Unlisted Uses.

### **12.4.6.3 Review Process**

#### **A. Initiation**

Any of the following persons may initiate a request for Code Interpretations and Determinations of Unlisted Uses:

1. A member of the City Council;
2. A member of the Planning Board;
3. The City Attorney;
4. The Manager;
5. The manager or director of any other city department or agency; or
6. A private party with an interest in the subject real property when the Code Interpretation would affect the status or treatment of a proposed or submitted zoning application, or the status of an existing or proposed use, related to such property.

**B. Pre-Application Meeting**

A pre-application meeting is optional prior to submittal of a request for Code Interpretations and Determinations of Unlisted Uses. See Section 12.3.2, Pre-Application Meeting/ Concept Plan Review.

**C. Application and Fees**

All applications for Code Interpretations and Determinations of Unlisted Uses shall be filed in writing with Community Planning and Development. The applicant shall pay all required fees at the same time the application is submitted. See Section 12.3.3, Submission of Applications.

**D. Review by Zoning Administrator**

Within 30 days of receipt of a complete application for Code Interpretations and Determinations of Unlisted Uses, the Zoning Administrator shall:

1. Review and evaluate the application in light of this Code, the Comprehensive Plan, established administrative practices and past interpretations, the potential for establishing a precedent with the interpretation, and any other relevant policy and regulatory documents;
2. Review and evaluate the application with consideration of the general rules of interpretation specified in this Section 12.4.6.3.F, as applicable; and
3. Consult with the Manager, City Attorney, other agencies and staff, as necessary.

**E. Final Decision by Zoning Administrator**

**1. Timing of Final Decision**

Within 30 days of receipt of a complete application for Code Interpretations and Determinations of Unlisted Uses, the Zoning Administrator shall complete the review and make a final interpretation or determination unless the applicant agrees to an extension of time.

**2. Authority to Impose Reasonable Conditions**

In making a determination to allow an unlisted use, the Zoning Administrator may impose reasonable conditions on such use, which conditions shall be uniform throughout the zone district. In imposing conditions, the Zoning Administrator shall consider, at a minimum, the compatibility of the use within the zone districts in which the use may be permitted, the intensity of the use, the amount and configuration of physical space occupied by the use, and the potential for adverse impacts on adjacent properties.

**3. Determination of Applicable Zoning Procedure**

As part of a Code Interpretation or Determination of Unlisted Uses, the Zoning Administrator shall, as applicable, make a determination whether one or more of this Code's zoning procedures apply. For example, in determining that an unlisted use is permitted as a primary use in a zone district, the Zoning Administrator shall also determine what zoning procedure applies (e.g., ZP, ZPIN or ZPSE). The Zoning Administrator's determination of applicable zoning procedure shall be based on consideration of the zoning procedure(s) applicable to similar land uses or subject matter, and/or the degree to which the zoning procedure may inform mitigation of possible adverse impacts from the subject Code Interpretation or Use Determination.

**4. Form of Determination**

The Zoning Administrator shall provide the Code Interpretation or Determinations of Unlisted Uses to the applicant in writing. Such interpretation or determination shall also be kept in the files of the Zoning Administrator.

**F. General Rules of Interpretation**

When making a Code Interpretation or Determination of Unlisted Uses, the Zoning Administrator shall employ the following general rules, as applicable:

1. Employ the definitions contained in Article 13 to determine the meaning of words and phrases, or if not defined in Article 13, apply the plain meanings of all other words and phrases. When not defined in Article 13, if a word or phrase is subject to differing interpretations, then the Zoning Administrator shall apply the meaning assigned first by the D.R.M.C., as applicable, and then by a dictionary in general use.
2. Employ the definitions of land uses in Article 11 to determine the appropriate use classification, use category and/or specific use type in which to classify an unlisted use.
3. Where more than one interpretation of required procedures is possible, the Zoning Administrator shall select the interpretation of procedures that requires the lesser time and expense to the applicant consistent with the provisions of the charter, the D.R.M.C., and this Code.
4. Where more than one interpretation of required provisions or procedures is possible, the Zoning Administrator shall choose that interpretation that best implements the Comprehensive Plan and/or this Code in a manner consistent with applicable law.
5. In the case of any conflict between the General Rules for Interpretation in this Section 12.4.6.3.F and the Rules of Interpretation found in Division 13.2 of this Code, the General Rules for Interpretation in this Section 12.4.6.3.F shall apply.

#### **12.4.6.4 Review Criteria**

##### **A. General Review Criteria for All Code Interpretations and Determinations of Unlisted Uses**

The Zoning Administrator shall make Code Interpretations and Determinations of Unlisted Uses only upon finding that the interpretation or determination is:

1. Consistent with the intent of this Code; and
2. Consistent with the intent of the subject Neighborhood Context and zone district(s), and with the intent of any specific Code provision(s) at issue.

##### **B. Additional Review Criteria for Unlisted Use Determinations**

In addition to applying the general review criteria stated in Section 12.4.6.4.A, the Zoning Administrator shall apply the following criteria for a Determination of Unlisted Use:

1. The proposed use has a character and impact that are similar in nature, function, and duration to the other uses permitted in the zone district(s). In making such finding, the Zoning Administrator shall assess all relevant characteristics of the proposed use, including but not limited to the following, as applicable:
  - a. The typical volume and type of sales (retail or wholesale); size and type of items sold; and nature of inventory on the premises;
  - b. Any processing done on the premises, including assembly, manufacturing, warehousing, shipping, distribution; and any dangerous, hazardous, toxic, or explosive materials used in the processing;
  - c. The nature and location of storage and outdoor display of merchandise; whether storage is enclosed, open, inside, or outside the principal building; and predominant types of items stored (such as business vehicles, work-in-process, inventory, and merchandise, construction materials, scrap and junk, and raw materials including liquids and powders hazardous or not);
  - d. The type, size, and typical massing of buildings and structures associated with the unlisted use;
  - e. Transportation requirements, including the modal split for people and freight, by volume type and characteristics of traffic generation to and from the site; trip purposes and whether trip purposes can be shared by other uses on the site;

- f. Parking requirements, turnover and generation, ratio of the number of spaces required per unit area or activity, and the potential for shared parking with other uses;
- g. The amount and nature of any external effects generated on the premises, including but not limited to noise, smoke, odor, glare, vibration, radiation and fumes;
- h. Any special public utility requirements for serving the proposed use, including but not limited to water supply, waste water, pre-treatment of wastes and emissions required or recommended, and any significant power structures and communications towers or facilities; and
- i. The type and extent of impacts on adjacent properties created by the proposed use in comparison to impacts from other uses permitted in the zone district.

## **SECTION 12.4.7 VARIANCE**

### **12.4.7.1 When Authorized**

The Board of Adjustment may authorize variances from the terms of this Code pursuant to the charter, subject to terms and conditions fixed by the Board of Adjustment, as will not be contrary to the public interest where, owing to unusual conditions or disability or owing to a property's historic designation, or where a variance would produce a more compatible development, literal enforcement of the provisions of this Code will result in unnecessary hardship.

### **12.4.7.2 Related Procedure**

Under certain circumstances, modifications of this Code's standards may be permitted according to the Administrative Adjustment procedure in Section 12.4.5, without resort to this Variance procedure. The Zoning Administrator may grant administrative adjustments to relieve unnecessary hardship and practical difficulties, without review by the Board of Adjustment for a variance.

### **12.4.7.3 Limitations on Variances for Signs**

#### **A. General Limitations on Sign Variances**

No variance from the provisions of Division 10.10, Signs, on permitted signs shall be granted or authorized by the Board of Adjustment, which would result in any of the following:

1. Any variance from the provisions of Section 10.10.20, Outdoor General Advertising Devices;
2. An existing roof sign that is higher than 32 feet above grade or a new or existing projecting sign that is higher than 32 feet above grade;
3. A new roof sign;
4. A new projecting sign that exceeds 20 square feet in sign area in a Residential Zone District or in the MX-2x, MS-2x, or O-1 zone districts; or that exceeds 50 square feet in sign area in the MX-2A, MX-2, MX-3A, MX-3, MS-2, MS-3, I-MX, I-A, or M-IMX zone districts; or that exceeds 80 square feet in sign area in all other zone districts;
5. A new or existing projecting sign where more than 1 other sign is maintained or is to be maintained for the same primary use on the same building front;
6. A new or existing ground sign that is higher than 32 feet above grade, except that a variance permitting the maintenance of an existing ground sign that is not higher than 35 feet above grade may be granted where said ground sign and all other signs for the same primary use comply with all other applicable provisions of Division 10.10, Signs;
7. A new or existing sign with a sign area larger than that which is permitted under the provisions of Division 10.10, Signs, for the primary use in the zone district in which the primary use is or will be maintained, except that a variance permitting the maintenance

of an existing sign with a sign area up to 50 percent larger than the maximum sign size permitted under the provisions of Division 10.10, Signs, for the primary use in the zone district in which the use by right is maintained may be granted where no other signs are maintained for the same primary use on the same building front and where the total area of signs maintained for the same primary use does not exceed that permitted under the applicable provisions of Division 10.10, Signs; or

8. A greater total area of signs than that which is permitted under the provisions of Division 10.10, Signs, for the primary use in the zone district in which the primary use is or will be maintained.

**B. Variances for Signs for Religious Assembly Uses**

Notwithstanding the limitations set forth in this Section 12.4.7.3, Limitations on Variances for Signs, the Board of Adjustment shall have the power to grant variances from the provisions of Division 10.10, Signs, for signs that identify religious assembly uses when such signs are located on the same zone lot as the religious assembly use.

**12.4.7.4 Review Process**

**A. Initiation**

The owner of the subject property or the owner's authorized agent may initiate an application for a variance.

**B. Application and Fees**

All applications for variance shall be filed in writing according to the rules of the Board of Adjustment. The applicant shall pay all required fees at the same time the application is submitted. See Section 12.3.3, Application.

**C. Public Hearing and Decision by Board of Adjustment**

1. Following notice and a public hearing according to the rules of the Board of Adjustment, the Board of Adjustment shall approve, approve with conditions, or deny the variance request based on whether the applicant has evidenced an unnecessary hardship according to the review criteria below, and subject to any limitations in Section 12.4.7.7 regarding variances for signs.
2. The Board may attach any condition to a variance approval necessary to protect the health, safety and welfare of the community and minimize adverse impacts on adjacent properties, including but not limited to a condition changing the location or dimensions of a proposed development directly related to the request for a variance.

**12.4.7.5 Review Criteria - Showing of Unnecessary Hardship**

The Board of Adjustment may grant a variance only if it finds that there is an unnecessary hardship whereby the application satisfies the criteria of **any one of** paragraph A. **or** B. **or** C. **or** D. **or** E. of this subsection **and** satisfies the criteria of Section 12.4.7.6, Review Criteria - Applicable to All Variance Requests.

**A. Disability**

1. There is a disability affecting the owners or tenants of the property or any member of the family of an owner or tenant who resides on the property, which impairs the ability of the disabled person to utilize or access the property.

**B. Unusual Conditions**

1. There are unusual physical circumstances or conditions, including, without limitation:
  - a. Irregularity, narrowness or shallowness of the lot, or



- b. Exceptional topographical or other physical conditions peculiar to the affected property; or
  - c. Unusual physical circumstances or conditions arising from an existing, nonconforming or compliant structure on the affected property, and
2. The circumstances or conditions do not exist throughout the neighborhood or zone district in which the property is located, or the circumstances or conditions relate to drainage conditions and challenges found consistently throughout the neighborhood or zone district in which the property is located; and
  3. The development or use of the property cannot yield a reasonable return in service, use or income as compared to adjacent conforming property in the same district; however, loss of a financial advantage, hardship that is solely financial, or the fact that a more profitable use of the property might be had if a variance were granted are not grounds for a variance; and
  4. The unusual physical circumstances or conditions have not been created by the applicant.

**C. Designated Historic Property or District**

The property could be reasonably developed in conformity with the provisions of this Code, but the building has been designated as a Historic Structure or is in a designated historic district. As part of the review pursuant to D.R.M.C., Chapter 30 (Landmark Preservation), the approving authority has found that development on the Zone Lot conforming to this Code's regulations would have an adverse impact upon the historic character of the individual landmark or the historic district, if a historic district is involved.

**D. Compatibility with Existing Neighborhood**

1. The property could be reasonably developed in conformity with the provisions of this Code, but the proposed adjustment or variance will result in a building form that is more compatible, in terms of building height, siting, and design elements, with the existing neighborhood in which the subject property is located. In making a determination of whether the subject property, with the proposed variance, would be more compatible with the existing neighborhood, the decision-making body may choose not to consider primary or accessory buildings in the existing neighborhood that have been granted variances or administrative adjustments based on unusual physical circumstances or conditions of such properties.
2. "Existing neighborhood" shall mean:
  - a. For changes in building or site elements within the rear 35% of a zone lot: Any similar zone lot or building on a zone lot which is located on the same face block or on an adjacent face block (i.e., across a rear property line or rear alley).
  - b. For changes in building or site elements within the front 65% of a zone lot: Any zone lot or primary building on a zone lot which is located on the same face block or the face block across a public street from the subject building.
3. For purposes of a variance review only, the Board of Adjustment may consider similar buildings located beyond the same face block, opposite face block, or adjacent face block from the subject building if the Board deems doing so reasonable and necessary to make its determination of compatibility with the existing neighborhood. This allowance does not apply to review of a request for an administrative adjustment.

**E. Nonconforming or Compliant Uses in Existing Structures**

A variance to increase the floor area occupied by a nonconforming or compliant use in an existing structure may be granted only if the Board of Adjustment finds the following conditions to exist:

1. The use is a nonconforming or compliant use, as defined in this Code, and such use is in full compliance with all requirements under this Code applicable to nonconforming or compliant uses and is authorized to continue in operation and to exist;
2. The structure in which an increase in floor area is sought was in existence on the date on which the nonconforming or compliant use became nonconforming or compliant, and is in existence at the time of the hearing;
3. On the date on which the use became nonconforming or compliant, the use was in occupancy and in operation on a portion of the floor area of the structure in which an increase in floor area is sought;
4. The applicant does not propose or intend to enlarge the existing structure, does not propose or intend to increase the floor area of such structure, and that any authorized increase in occupancy of floor area by the nonconforming or compliant use will not involve remodeling, changing or altering any load-bearing member of such structure; and
5. That, owing to exceptional and extraordinary circumstances, literal enforcement of the provisions of this Code will result in unnecessary hardship.

#### **12.4.7.6 Review Criteria - Applicable to All Variance Requests**

The Board of Adjustment may grant a variance only if the Board finds that, if granted, the variance:

- A. Would not authorize the operation of a primary use other than those uses specifically enumerated as permitted primary uses for the zone district in which the property is located.
- B. Would not grant a change to either (a) a waiver or condition attached to an approved rezoning, or (b) an approved PUD District plan that would constitute an "amendment" under Section 12.3.7.2, Amendments to Approved Applications, Plans and Permits, or (c) an approved GDP that would constitute an "amendment" under Section 12.3.7.2, Amendments to Approved Applications, Plans and Permits.
- C. Would not, other than allowed in Section 12.4.7.5.A. above to accommodate persons with disabilities, relate to either the persons, or the number of persons, who do, will, or may reside in a residential structure.
- D. Would not substantially impair the intent and purpose of this Code.
- E. Would not substantially impair the intent and purpose of the applicable zone district.
- F. Would not substantially or permanently impair the reasonable use and enjoyment or development of adjacent property.
- G. Would be the minimum change that would afford relief and would be the least modification of the applicable provisions of this Code.
- H. Would adequately address any concerns raised by the Zoning Administrator or other city agencies in their review of the application.

#### **12.4.7.7 Requirements and Limitations After Variance Approval**

##### **A. Expiration**

1. A variance authorizing construction shall expire unless substantial construction has started within 3 years and is completed within 5 years from the date the variance was granted. Upon the completion of construction, the variance shall run with the land.
2. For variances unrelated to construction, the variance shall run with the land unless the Board of Adjustment specifies otherwise as a condition of the variance.



3. A variance shall automatically lapse and have no further effect if the Zoning Administrator finds that redevelopment of the subject property makes compliance with this Code possible without the previously approved variance.

## **SECTION 12.4.8 APPEAL OF ADMINISTRATIVE DECISION**

### **12.4.8.1 Review Process**

#### **A. Initiation**

1. Any person aggrieved or any officer or department of the City may appeal to the Board of Adjustment from any administrative order, requirement, or any decision or determination made by a Community Planning and Development administrative official in the enforcement of this Code.
2. Such appeal shall be filed within the time provided by the rules of the Board of Adjustment and must specify the particular grounds upon which the appeal is taken.

#### **B. Application**

##### **1. Appeal and Fees**

All appeals of an administrative order or decision shall be filed in writing according to the rules of the Board of Adjustment. The appellant shall pay all required fees at the same time the application is submitted. See Section 12.3.3, Submission of Applications.

#### **C. Effect of Appeal – Stay of Enforcement Proceedings**

An appeal to the Board of Adjustment of a cease and desist order issued by Community Planning and Development shall stay all enforcement proceedings of the cease and desist order unless the Zoning Administrator certifies that, by reason of the facts stated in the certificate, a stay in the Zoning Administrator's opinion would cause imminent peril to life or property. When such a certificate is filed, proceedings shall not be stayed except by a restraining order granted, after due notice to Community Planning and Development, by the Board of Adjustment or a court of proper jurisdiction.

#### **D. Action by Zoning Administrator**

Upon receipt of a notice of appeal, the Zoning Administrator shall transmit to the Board of Adjustment all of the original documents and materials, or true copies thereof, constituting the record upon which the order or decision appealed from was based.

#### **E. Public Hearing and Decision by Board of Adjustment**

Following notice and a public hearing according to the rules of the Board of Adjustment, the Board of Adjustment shall approve or deny the appeal based on the review criteria below, and to that end the Board of Adjustment shall have all the powers of the officer from whom the appeal is taken.

#### **F. Presumption and Review Criteria**

##### **1. Presumption**

Any order or decision of an administrative official authorized to act under this Code shall be presumed to be correct unless the preponderance of the evidence introduced before the Board of Adjustment supports a contrary determination or finding.

##### **2. Review Criteria**

The Board of Adjustment shall consider whether or not the action by the administrative officer complied with the applicable portions of this Code when approving or denying an administrative appeal.

## **SECTION 12.4.9 ZONING PERMIT WITH SPECIAL EXCEPTION REVIEW**

### **12.4.9.1 Applicability**

Zoning permit with special exception review is required for the following:

- A. Establishment, expansion or enlargement of any use listed as a “Special Exception” use (“ZPSE”) in the Use and Parking Tables found in Articles 3 through 9.
- B. Establishment, expansion or enlargement of any use where an applicable use limitation in Articles 3 through 9, or in Article 11, Use Limitations and Definitions, or any other provision of this Code, states that Special Exception review under this Section is required.

### **12.4.9.2 Review Process**

#### **A. Initiation**

The owner of the subject property or the owner’s authorized agent may initiate an application for a zoning permit with special exception review.

#### **B. Pre-Application Meeting**

A pre-application meeting with the Zoning Administrator is mandatory for review of a use qualifying as a zoning permit with special exception review under this Section. See Section 12.3.2, Pre-Application Meeting/ Concept Plan Review. Pre-application meetings for all other special exceptions are optional.

#### **C. Application and Fees**

##### **1. Submittal in Writing**

All applications for zoning permit with special exception review shall be filed in writing with the Zoning Administrator. The applicant shall pay all required fees at the same time the application is submitted. See Section 12.3.3, Submission of Applications.

##### **2. Concurrent Applications**

The applicant may submit an application for zoning permit with special exception review concurrent with other applications according to Section 12.3.3.9, Concurrent Applications. In no case, however, shall the City issue a building permit, as applicable, until the Board of Adjustment approves the special exception use and Community Planning and Development issues a zoning permit.

#### **D. Public Notice Requirements**

Informational Notice shall be provided as stated in Section 12.3.4.5, Informational Notice - General Provisions.

#### **E. Review, Referral, and Recommendation by Zoning Administrator**

1. The Zoning Administrator shall refer the application to the Board of Adjustment. The Board of Adjustment shall schedule the application for review and final decision at a public hearing, according to the rules of the Board of Adjustment.
2. The Zoning Administrator may refer the application to other affected or interested agencies for review and comment.
3. The Zoning Administrator shall consider the comments from all interested agencies, prepare a written recommendation based on the application’s compliance with the review criteria below, and submit a written recommendation to the Board of Adjustment according to the rules of the Board of Adjustment.

#### **F. Public Hearing and Final Decision by Board of Adjustment**

1. The Board of Adjustment shall provide public notice and hold a public hearing on the proposed special exception according to the rules of the Board of Adjustment. The Board

shall consider the recommendation of the Zoning Administrator and any relevant public comments, in addition to the review criteria below, and approve, approve with conditions, or deny the application for a zoning permit with special exception review.

2. The Board of Adjustment may place conditions and restrictions upon the establishment, location, construction, maintenance, and operation of a special exception use as it deems necessary to promote the public health, safety, and general welfare of the community.

**G. Issuance of Zoning Permits after BOA Final Decision**

After the Board of Adjustment's final decision on an application for a zoning permit with special exception review, Community Planning and Development shall either issue or deny a zoning permit consistent with the Board of Adjustment's final decision. Community Planning and Development shall expressly note on the face of the zoning permit any conditions or restrictions approved by the Board of Adjustment.

**12.4.9.3 Review Criteria**

No application for a zoning permit with special exception review shall be approved by the Board of Adjustment unless the Board finds that all of the following conditions are met or can be met through conditions placed on approval of the application:

- A. The special exception is consistent with the Comprehensive Plan;
- B. The proposed special exception shall be consistent with the purposes and objectives of the zone district in which it is located;
- C. If located within a GDP area, the special exception shall be consistent with the GDP;
- D. The special exception is in compliance with all applicable regulations in this Code, including but not limited to, any specific use limitations stated in Articles 3 through 9, and in Article 11, Use Limitations and Definitions;
- E. The establishment, maintenance, and operation of the special exception will not be detrimental to or endanger the public health, safety, or general welfare of the community;
- F. The use and enjoyment of other existing uses on the surrounding property will not be substantially impaired by the establishment, maintenance, and operation of the special exception;
- G. The establishment of the special exception will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district;
- H. The aggregate impacts of similar special exceptions shall not result in harmful external effects or environmental impacts; and
- I. Any potential adverse impacts from the proposed special exception can and will be adequately mitigated.

**12.4.9.4 Requirements and Limitations After Zoning Permit Issuance**

**A. Expiration and Extensions**

1. Except as otherwise allowed in subsection A.2. below, a zoning permit with special exception review shall expire 12 months from the date of the Board of Adjustment's decision unless the special exception use begins operating, or a valid building permit is issued. Upon a showing of good cause, the Zoning Administrator may extend the permit for the special exception for additional time periods not to exceed a total of 12 additional months.
2. If a zoning permit with special exception review is granted upon review and approval of a Site Development Plan according to Section 12.4.3 of this Code, then the zoning permit

authorizing construction or a permitted use shall expire at the same time as the approved Site Development Plan.

**B. Limit on Reapplication for Denied Special Exceptions**

No application for a zoning permit with special exception review denied by the Board of Adjustment shall be considered for a period of 1 year from the date of the original denial unless the Zoning Administrator determines that the application contains substantial changes that address the reasons for denial of the application.

## **SECTION 12.4.10 OFFICIAL MAP AMENDMENT (REZONING)**

### **12.4.10.1 Applicability**

An official map amendment may be required to correct an error in the map or, because of changed or changing conditions in a particular area or in the city generally, to rezone an area to implement adopted plans, or to change the regulations and restrictions of an area as reasonably necessary to promote the public health, safety or general welfare.

### **12.4.10.2 Zone Districts Not Available for Rezoning**

Except as otherwise provided in Section 9.4.2.1 and Section 12.3.3.9, no land may be rezoned into any zone district not established in this Code. In addition, the following zone districts established in this Code, while mapped on the Official Zoning Map, shall not be applied to any lands after June 25, 2010:

- A. D-GT Downtown Golden Triangle zone district
- B. D-AS Downtown Arapahoe Square zone district
- C. O-1 zone district
- D. Adult Use Overlay District (UO-1)
- E. Billboard Use Overlay District (UO-2)

### **12.4.10.3 Adjacency and Location Requirements**

**A. Requirements**

Official Map amendments for the following zone districts shall meet the following requirements:

1. Applications proposed to be zoned to the D-C, D-TD, D-LD, D-CV, D-AS-12+, or D-AS-20+ zone districts shall be adjacent to the same zone district sought for the subject property. For the purposes of this provision, adjacency shall not be destroyed by the existence of a dedicated public right-of-way.
2. Applications proposed to be zoned to the DIA zone district shall be adjacent to an existing DIA zone district if the application is not initiated by the Manager of Aviation. For the purposes of this provision, adjacency shall not be destroyed by the existence of a dedicated public right-of-way.
3. Applications proposed to be zoned to all Master Planned Context zone districts shall be located within a General Development Plan area where the GDP area is a minimum of 50 acres, and shall not include lands located within ¼ mile of an existing or planned Rail Transit Station Platform.

**B. Exceptions to Additional Requirements**

The following Official Map amendments are exempt from this section's requirements:

1. An Official Map amendment determined by the City Attorney to be a legislative zone map amendment.

2. An Official Map amendment applying zoning to lands newly included within the city's corporate boundaries after City Council approval of a minor boundary adjustment.

#### **12.4.10.4 Review Process**

##### **A. Initiation**

###### **1. By City Council**

- a. According to its authority under the City Charter, the City Council or any individual member of the City Council may initiate an official map amendment.
- b. The City Council or an individual City Council member may, but is not required to, follow the public notice or procedures in this Section 12.4.10.4. However, the City Council or any individual City Council member shall comply with the public notice and process provisions required by the Charter for an official map amendment (rezoning).

###### **2. By Other Parties**

Other than City Council or an individual City Council member, only the following parties may initiate an official map amendment:

- a. The Manager.
- b. All official map amendment applications for a PUD District, or for a zone district with waivers and/or conditions under Section 12.4.10.6, shall be initiated by all the owners of the entire land area subject to the rezoning application, or their representatives authorized in writing to do so.
- c. For official map amendment applications for other than a PUD District or zone district with waivers and/or conditions, an application for an official map amendment may be initiated by either:
  - i. All of the owners of the entire land area subject to the application for an official map amendment or their representatives authorized in writing to do so;  
or
  - ii. One or more of the owners of the real property subject to the application for amendment, or their representatives authorized in writing to do so, accompanied by a petition requesting the amendment and which petition, at the time of submittal, contains the signatures of the owner or owners of 51 percent or more of the total area of the zone lots subject to the application for amendment.

##### **B. Pre-Application Meeting**

1. A pre-application meeting is mandatory for an official map amendment (Rezoning). See Section 12.3.2, Pre-Application Meeting/Concept Plan Review.
2. The Manager shall determine at the pre-application meeting whether a General Development Plan (GDP) is required under Section 12.4.12, General Development Plan. If the Manager determines a GDP is required by Section 12.4.12, the applicant shall be advised that an official map amendment application will not be approved until a GDP is approved according to Section 12.4.12.

##### **C. Application and Fees - General**

1. All applications for official map amendments shall be filed in writing with the Manager. The applicant shall pay all required fees at the same time the application is submitted. See Section 12.3.3, Submission of Applications. This provision does not apply to map amendments initiated by the Manager.

#### **D. Review and Referral by Manager**

All applications for official map amendments shall be subject to the following review process:

##### **1. Referral and Examination of Application**

Upon receipt of a complete application, the Manager shall transmit copies of the application to other agencies that might be affected by the proposed application. If considered necessary, any such agency may require the applicant to furnish additional information of a pertinent and reasonable nature. Any such agency may transmit comments and recommendations concerning the application to the Manager. Any agency wishing to comment shall do so within 21 days from the referral of the complete application. Non-response by a reviewing agency within the 21-day time period, or any extension agreed to by the Manager, shall be deemed a recommendation of approval by such agency.

##### **2. Disposition of Application**

- a. Except as allowed in subsection D.2.b. below, when the Manager determines an application for an official map amendment, including agency comments and recommendations, is ready for Planning Board action, the Manager shall submit the application to the Planning Board together with the Manager's written recommendation to the Planning Board.
- b. Where an amendment is necessary only to correct an error in the official map, the Manager may submit the application, including agency comments and recommendations, directly to the Council Committee for its consideration under Section 12.4.10.4.F, below.

#### **E. Public Hearing and Recommendation by Planning Board**

1. The Planning Board shall notice and hold a public hearing on the application for an official map amendment according to Section 12.3.4, Public Notice Requirements. The Planning Board shall consider the recommendation of the Manager and any comments, in addition to the review criteria below, in recommending approval, approval with conditions, or denial of an official map amendment.
2. The Planning Board's recommendation shall be forwarded to the City Council for consideration within 30 calendar days after the closing of the public hearing, unless the applicant consents to an extension of such time.

#### **F. Consideration of Application by Council Committee**

1. City Council shall appoint a committee of its members to examine all applications for official map amendment and the related department reports, Manager's recommendation, and the Planning Board's recommendation. The Council committee may at that time require additional information from the applicant, from anyone submitting comments, or from city agencies, including information previously waived.
2. The Council committee shall direct any further action on the application under this Section and, when deemed ready for hearing, shall forward the application to the City Council.

#### **G. Public Hearing and Final Decision by City Council**

1. The Manager shall submit the complete application with such supporting material as designated by the Council committee.
2. The City Council shall notice and hold a public hearing on the proposed official map amendment according to Section 12.3.4, Public Notice Requirements. The City Council shall consider the recommendations of the Planning Board and Manager, and any other comments received, in addition to the review criteria below, in approving, approving with conditions, or denying an official map amendment.



### **12.4.10.5 Protest Petition**

#### **A. Effect of Protest to Amendment**

1. If a protest to an official map amendment signed by the owners of 20 percent or more either of (1) the total gross land area included in such proposed change; or (2) the total land area from the perimeter of the area proposed for change to a distance of 200 feet outside of the perimeter of the area proposed for change, is filed with the City Council per subsection B. below, then the amendment shall not become effective except by the favorable vote of 10 members of the City Council.
2. For the purpose of defining owners and the area of land represented by the owner, land owned by more than one owner shall be divided to the extent of each owner's percentage of ownership interest in determining whether a protest has the required percentage of signatures.
3. The Manager shall determine the adequacy of all protest petition signatures.

#### **B. Filing of Protests; Time Limitations; Withdrawal**

All protests to an official map amendment and any withdrawal of the protest or specific petition signatures shall be filed with the City Council on or before, and not later than, noon 7 days prior to the date for the public hearing before City Council on the official map amendment. No protests shall be signed until the official map amendment council bill is ordered published by City Council.

### **12.4.10.6 Waivers of Rights and Obligations and Approval of Reasonable Conditions**

- A. Whenever an application for an official map amendment, in whole or in part, is based upon a written representation by the applicant(s) that the applicant(s) wishes to waive certain rights or obligations under the proposed district classification, the City Council may adopt such waivers as a part of the ordinance amending the official map if such waivers are approved in writing by the applicant(s).
- B. Whenever public necessity, convenience, general welfare or good zoning practice justify the attachment of reasonable conditions to an official map amendment, the City Council may adopt such conditions as a part of the ordinance amending the official map if such conditions are approved in writing by the applicant(s).
- C. Upon adoption of an ordinance pursuant to subsections A. or B. above, no zoning permits shall be issued except in strict compliance with the approved waivers or conditions. Any person who applies for a permit to alter or erect a structure in such area shall be deemed to have assented to all of these waivers and conditions.
- D. Every official map amendment based, in whole or in part, upon waivers as set forth in subsection A. or conditions as set forth in subsection B. above, shall contain an exact description of any such waivers or conditions. Such ordinance may be amended by City Council upon application for an amendment either by the original applicant or by a successor in interest; provided, however, that prior to such amendment, public notice shall be given similar in all respects to the public notice required for an official map amendment. Nothing contained in this Section shall be construed as a requirement that all applications for rezoning must contain waivers or have conditions.
- E. When City Council approves a text amendment to the standards applicable in a zone district (see Section 12.4.11), such text amendment applies equally to all previously approved official map amendments to that zone district, including official map amendments that were based, in whole or in part, upon waivers or conditions.

#### **12.4.10.7 General Review Criteria Applicable to All Zone Map Amendments**

The City Council may approve an official map amendment if the proposed rezoning complies with all of the following criteria:

##### **A. Consistency with Adopted Plans**

The proposed official map amendment is consistent with the City's adopted plans, or the proposed rezoning is necessary to provide land for a community need that was not anticipated at the time of the adoption of the City's plan.

##### **B. Uniformity of District Regulations and Restrictions**

The proposed official map amendment results in regulations and restrictions that are uniform for each kind of building throughout each district having the same classification and bearing the same symbol or designation on the official map, but the regulations in one district may differ from those in other districts.

##### **C. Public Health, Safety and General Welfare**

The proposed official map amendment furthers the public health, safety and general welfare of the City.

#### **12.4.10.8 Additional Review Criteria for Non-Legislative Rezoning**

In addition to compliance with the general review criteria stated in Section 12.4.10.7, the City Council may approve an official map amendment that the City Attorney has determined is not a legislative rezoning only if the City Council finds the application meets the following criteria:

##### **A. Justifying Circumstances**

One of the following circumstances exists:

1. The existing zoning of the land was the result of an error;
2. The existing zoning of the land was based on a mistake of fact;
3. The existing zoning of the land failed to take into account the constraints on development created by the natural characteristics of the land, including, but not limited to, steep slopes, floodplain, unstable soils, and inadequate drainage;
4. The land or its surrounding environs has changed or is changing to such a degree that it is in the public interest to encourage a redevelopment of the area or to recognize the changed character of the area; or
5. It is in the public interest to encourage a departure from the existing zoning through application of supplemental zoning regulations that are consistent with the intent and purpose of, and meet the specific criteria stated in, Article 9, Division 9.4 (Overlay Zone Districts), of this Code.

##### **B. Consistency with Neighborhood Context Description, Zone District Purpose and Intent Statements**

The proposed official map amendment is consistent with the description of the applicable neighborhood context, and with the stated purpose and intent of the proposed zone district.

#### **12.4.10.9 Additional Review Criteria for Rezoning to PUD District**

In addition to the general review criteria stated in Section 12.4.10.7, for all proposed official map amendments requesting a PUD District, the City Council shall find:

- A. The PUD District is consistent with the intent and purpose of such districts stated in Article 9, Division 9.6 (Planned Unit Development) of this Code;
- B. The PUD District and the PUD District Plan comply with all applicable standards and criteria stated in Division 9.6;



- C. The development proposed on the subject property is not feasible under any other zone districts, and would require an unreasonable number of variances or waivers and conditions;
- D. The PUD District and the PUD District Plan establish permitted uses that are compatible with existing land uses adjacent to the subject property; and
- E. The PUD District and the PUD District Plan establish permitted building forms that are compatible with adjacent existing building forms, or which are made compatible through appropriate transitions at the boundaries of the PUD District Plan (e.g., through decreases in building height; through significant distance or separation by rights-of-way, landscaping or similar features; or through innovative building design).

#### **12.4.10.10 Appeal**

A decision by the City Council on a proposed official map amendment may be appealed to District Court.

#### **12.4.10.11 Requirements and Limitations After Rezoning Approval**

##### **A. Registration and Recording of Official Map Amendments**

###### **1. Recording Required**

The Manager shall record the final action of the City Council on an official map amendment in the real property records of the Denver County Clerk and Recorder, and shall cause the amendment of the official zone map to designate the subject property according to the amendment.

###### **2. Approved PUD District Plans**

The Manager shall record all approved PUD District Plans in the real property records of the Denver County Clerk and Recorder along with the ordinance approving such PUD District Plan, and the Manager shall cause the amendment of the official zone map to designate the area included in the approved PUD District Plans as follows:

- a. For approved PUD Districts with General PUD District Plans: "PUD-G #\_\_\_\_\_."
- b. For approved PUD Districts with Detailed PUD District Plans: "PUD-D #\_\_\_\_\_."

##### **B. Effect and Limitations on Approval**

###### **1. Effect of Rezoning Approval - In General**

Approval of an official zone map amendment does not automatically confer any right to development or construction. Development shall comply with all applicable standards and procedures in this Code and the D.R.M.C.

###### **2. Effect of Approved Detailed PUD District Plans**

- a. The standards and provisions of an approved Detailed PUD District Plan shall constitute the zoning regulations for use and development of the subject property. Approval of a Detailed PUD District Plan shall constitute site development plan review for zoning compliance purposes only under Section 12.4.3, and zoning permits may be issued and site work commenced according to the approved Detailed PUD District Plan.
- b. An approved Detailed PUD District Plan shall expire after 18 months from the date of City Council approval if an approved zoning permit and building permit (as applicable) has not been obtained and if construction (as applicable) has not started. See Article 13, for definition of "start of construction."
- c. The Zoning Administrator may extend the original 18-month expiration time frame for Detailed PUD District Plans for up to an additional 12 months according to Section 12.3.6.3., Extension of Approval Period.

### **3. Effect of Approved General PUD District Plans**

- a. Within a PUD District subject to an approved General PUD District Plan, no zoning permits may be issued and no work may commence until a site development plan has been approved according to Section 12.4.3, Site Development Plan Review, or unless a Detailed PUD District Plan for a portion or portions of the PUD District has been approved by City Council according to Section 9.6.1.3.A of this Code.
- b. A site development plan within a PUD District may be for the entirety of the district, or for only one or more phases of the entire PUD District area. The approval of a site development plan for any one phase of the PUD District may be contingent on improvements that involve other or all phases. In any site development plan application for less than the entirety of the PUD District, the applicant shall submit plan exhibits that clearly show the relation of the subject site development phase(s) to the remainder of the PUD District area.
- c. The standards and provisions of the approved PUD District subject to a General PUD District Plan, together with all approved site development plans for the PUD District, shall constitute the zoning regulations regulating all use and development of the subject property.

### **4. City Council Authority to Rezone in Case of No Progress in a PUD District with a General PUD District Plan**

Areas covered by an approved PUD District with a General PUD District Plan may be considered by City Council for rezoning to a more appropriate classification under this Section if a complete site development plan for at least one phase of the PUD District has not been submitted within 30 months following approval of the PUD District with a General PUD District Plan; provided all owners of property subject to such amendment or rezoning have been first notified in writing by Community Planning and Development that the City Council is considering such rezoning.

### **5. Modifications or Amendments to Approved PUD Districts**

- a. See Section 12.3.7, Modification or Amendment of Applications, Plans and Permits, for regulations governing permitted modifications and amendments to approved PUD Districts and associated PUD District Plans.
- b. All approved amendments to a recorded PUD District Plan shall be recorded.

#### **12.4.10.12 Limits on Re-Application for Denied Official Map Amendments**

No application for an official map amendment shall be made concerning any land area, or any portion thereof, that was the subject of a public hearing conducted by City Council within the immediately preceding 12 months period and which public hearing resulted in a rejection of the proposed official map amendment. However, this limitation shall not apply to those land areas or portions thereof for which a different zone district classification is proposed than that which was denied by City Council.

## **SECTION 12.4.11 TEXT AMENDMENT**

### **12.4.11.1 Applicability**

For the purpose of establishing and maintaining sound, stable and desirable development within the territorial limits of the City, the text of this Code shall not be amended except to correct a manifest error in the chapter, or because of changed or changing conditions in a particular area or in the city generally, including any change to the regulations and restrictions of an area thereof, or to implement adopted plans, or as otherwise reasonably necessary to the promotion of the public health, safety or general welfare.

### **12.4.11.2 Text Amendments to Create New Use Overlay Zones Not Allowed**

After June 25, 2010, no new Use Overlay District may be established through a text amendment to this Code.

### **12.4.11.3 Review Process**

#### **A. Initiation**

A proposed text amendment may be initiated by:

##### **1. City Council**

- a. According to its authority under the City Charter, the City Council or any individual member of the City Council may initiate a text amendment. The City Council or an individual City Council member may, but is not required to, follow the public notice or procedures in this Section 12.4.11.3. However, the City Council or any individual City Council member shall comply with the public notice and process provisions required by the Charter for a text amendment.

##### **2. Other Parties**

- a. The Manager on the Manager's initiative or upon request of private parties may initiate a text amendment; or the manager of any city department or agency may initiate a text amendment.

#### **B. Application**

1. All requests for proposed text amendments shall be filed in writing with the Manager. This provision does not apply to text amendments initiated by the Manager.

#### **C. Agency Referral and Recommendation**

1. Upon receipt of a written request for a proposed text amendment, the Manager shall transmit copies of the request to any other agencies, either public or private, which might be affected by the amendment. Any such agency may transmit comments and recommendations concerning the proposed text amendment to the Manager. Any agency wishing to comment shall do so within 21 days from the referral of the written request. Non-response by a reviewing agency within the 21-day time period, or any extension agreed to by the Manager, shall be deemed a recommendation of approval by such agency.
2. No text amendment shall be forwarded for City Council consideration until the amendment has been referred to affected agencies and the recommendations of those agencies, if any, considered.

#### **D. Disposition of Initiated Text Amendments**

1. Except as allowed in subsection D.2 below, when a request for a proposed text amendment, including agency comments and recommendations, is completely assembled, the Manager shall submit it, along with the Manager's written recommendation, to the Planning Board for the Planning Board's review and recommendation.
2. Where a text amendment is necessary only to correct an error or mistake in fact in the Code language, the Manager may submit the proposal, including agency comments and recommendations, directly to the Council Committee for its consideration under Section 12.4.11.3.F, below.

#### **E. Public Hearing and Recommendation by Planning Board**

The Planning Board shall notice and hold a public hearing on the proposed text amendment according to Section 12.3.4, Public Notice Requirements. The Planning Board shall consider the recommendation of the Manager and any comments received, in addition to the review criteria below, in recommending approval, recommending approval with conditions, or recommend-

ing denial of a text amendment. The Planning Board shall forward its recommendation to City Council.

**F. Consideration by Council Committee**

1. City Council shall appoint a committee of its members to examine all proposed text amendments and agency reports. The Council committee may at that time require additional information from the initiator of the proposed text amendment or from city agencies, including information previously waived.
2. The Council committee shall direct any further action on the proposed text amendment under this Section and, when deemed ready for hearing, shall forward the proposal to the City Council.

**G. Public Hearing and Final Decision by City Council**

1. The Manager shall submit the complete proposal with such supporting material as designated by the Council committee to the City Council for Council action.
2. The City Council shall notice and hold a public hearing on the proposed text amendment according to Section 12.3.4, Public Notice Requirements. The City Council shall consider the recommendations of the Planning Board and Manager, comments received, and the review criteria below, in approving or denying a text amendment.

**12.4.11.4 Review Criteria**

**A. Consistency With Adopted Plans**

All text amendments shall be consistent with the City's adopted plans, or the proposed text amendment is necessary to provide for a community need that was not anticipated at the time of the adoption of the Comprehensive Plan.

**B. Public Health, Safety and General Welfare**

All text amendments shall further the public health, safety and general welfare of the City.

**C. Uniformity of District Regulations and Restrictions**

A text amendment to this Code shall result in regulations and restrictions that are uniform for each kind of building throughout each district having the same classification and bearing the same symbol or designation on the official map, but the regulations in one district may differ from those in other districts.

**12.4.11.5 Appeal**

A decision by the City Council on a text amendment may be appealed to District Court.

**SECTION 12.4.12 GENERAL DEVELOPMENT PLAN**

**12.4.12.1 Intent**

**A. General Intent**

A General Development Plan (GDP) establishes a framework for future land use and development and resulting public infrastructure. The GDP provides an opportunity to identify issues and the development's relationship with significant public infrastructure improvements such as major multi-modal facilities and connections thereto, major utility facilities, and publicly accessible parks and open spaces. An approved GDP provides a master plan for coordinating development, infrastructure improvements, and regulatory decisions as development proceeds within the subject area. An approved GDP also constitutes a master plan that is a prerequisite to zoning within the Master Plan neighborhood context, as described in Division 9.7, Master Planned Context, of this Code.

**B. Intent of the GDP Review Process**

The review process for a GDP is intended to:

1. Provide for the coordinated assessment of general land development proposals by the City and other interested public agencies;
2. Ensure that the GDP is consistent with the Comprehensive Plan;
3. Identify subsequent regulatory steps, submittals, and approvals in order to determine the appropriate type and level of detail that may be needed in addition to the basic submittal requirements for the GDP; and
4. Provide for the notification and appropriate input from the public on the proposed GDP;
5. Identify the type and scope of any required technical studies, plans and documents necessary to achieve the intent of a GDP, and coordinate review of such studies, plans, and documents.

**12.4.12.2 When Required**

**A. Mandatory GDP**

Preparation of a GDP is mandatory when the Manager determines (1) the specific circumstances warrant a coordinated master framework plan to guide future development; and (2) land use, development, and infrastructure issues related to future development cannot be adequately resolved through other regulatory processes, such as subdivision or site development plan review. In determining whether circumstances warrant preparation of a GDP, all relevant factors shall be considered, including but not limited to the following:

**1. Adopted Plan Recommendation**

A citywide land use, or small area plan, adopted by City Council as a supplement to the Comprehensive Plan, recommends preparation of a GDP for all or portions of the plan area.

**2. Large-Scale Development**

The GDP area either: (a) is more than 10 acres, (b) is anticipated to be developed in phases; or (c) is owned by more than one person or entity.

**3. Infrastructure Network or System Improvements**

Future development in the GDP area anticipates any of the following infrastructure improvements:

- a. Establishing, extending, expanding, or otherwise changing the arterial or collector street grid; or
- b. Establishing, extending, expanding, or otherwise changing an existing regional stormwater system; or
- c. Establishing, extending, expanding, or otherwise changing publicly accessible park and open space.

**4. Development Adjacent to Major River or Trail Corridors**

Development within 100 feet from the Cherry Creek corridor or the South Platte River corridor, where publicly-accessible open space, pedestrian connections, or bike connections to such corridors is anticipated.

The Manager shall inform the applicant in writing when preparation of a GDP is mandatory.

**B. Optional GDP**

An owner may elect to submit a GDP for the property in order to establish a coordinated master plan for the property.

#### **12.4.12.3 Timing of GDP Review**

When preparation of a GDP is mandatory, the GDP shall be approved before final approval of the following, unless the Manager agrees to concurrent processing of such applications according to Section 12.3.3.9, Concurrent Applications:

- A. Official Map Amendment
- B. Subdivision under D.R.M.C., Chapter 50.

#### **12.4.12.4 Initiation**

- A. A GDP may be initiated by any one or combination of the following parties:
  - 1. The owner or owners of the entire subject property;
  - 2. The owner(s)'s authorized agent(s);
  - 3. The Manager;
  - 4. The manager of Parks and Recreation; or
  - 5. The manager of Public Works.
- B. The Manager shall be an applicant or co-applicant whenever a GDP includes a Secondary Area and/or when the owner or owners of the entire subject property are not applicants.

#### **12.4.12.5 Minimum Open Space Requirements for a GDP**

All applications for a General Development Plan shall comply with the following open space standards:

##### **A. Minimum Amount Required**

A minimum of 10% of the total GDP area (including the Primary Area plus any Secondary Areas) shall be included in the GDP as open space.

##### **B. Design Criteria**

- 1. The required open space shall be provided in one (1) or more areas.
- 2. The required open space shall remain publicly accessible and usable.
- 3. The required open space shall result in one or more of the following public benefits:
  - a. Enhanced connections to transit facilities, plazas, or streets;
  - b. Enhanced pedestrian environments; and/or
  - c. Enhances or creates public spaces.

#### **12.4.12.6 Development Review Committee – Final Approval Authority**

The Development Review Committee (“DRC”) shall have the authority to approve, approve with conditions, or deny a GDP application, after consideration of the recommendation from the Planning Board.

#### **12.4.12.7 Pre-Application Conference**

- A. A pre-application conference is mandatory prior to the start of the concept GDP review and preliminary GDP review required under this Section. See 12.3.2, Pre-Application Meeting/Concept Plan Review.
- B. The DRC shall attend the pre-application conference, at which the applicant shall present the land use and development concept for the subject property and identify the existing or desired neighborhood context. The DRC, as part of the pre-application conference, shall identify the

necessary regulatory processes applicable to development of the subject property, and on this basis confirm the need for and establish the contents of the GDP submittal.

#### **12.4.12.8 Application and Fees**

All applications for concept review, preliminary, and final GDP review shall be filed in writing with Community Planning and Development. The applicant shall pay all required fees at the same time the application is submitted. See Section 12.3.3, Submission of Applications.

#### **12.4.12.9 Concept GDP Review**

Before a preliminary GDP application is submitted, the applicant shall submit a concept GDP for review. During this concept GDP review, the DRC and the applicant shall agree upon the parameters for the preliminary GDP submittal, including, at a minimum, the following:

- A. GDP area boundaries, including designation of a Primary Area and one or more Secondary Areas, as applicable.
- B. Required community outreach and public participation.
- C. Technical studies required, as applicable.
- D. General development concepts for the following elements, as applicable:
  1. Land use
  2. Building scale and density ranges anticipated
  3. Pedestrian environment
  4. Existing and future street network; as part of this element, the applicant may designate Primary Streets (as defined and regulated by this Code).
  5. Existing and future publicly accessible open space and parks
  6. Existing and future public facilities.

#### **12.4.12.10 Preliminary GDP Review**

##### **A. Timing After Concept GDP Review**

The applicant shall submit an application for preliminary GDP review within 180 days after completion of the concept GDP review. The Manager may approve up to one 180-day extension of this filing deadline upon a showing of good cause by the applicant. If the 180 day filing period expires, and is not otherwise extended, the applicant shall be required to submit a new application for concept GDP review and pay all required fees.

##### **B. Submittal**

The preliminary GDP application shall contain all items and elements required through the concept GDP review above.

##### **C. Public Meeting, Notice, and Public Comment Period**

###### **1. Public Meeting and Public Notice**

Upon the Manager's determination that the application for preliminary GDP review is complete (see Section 12.3.3.8, Determination of Complete Applications), and at least 21 days prior to such meeting, the applicant shall schedule a public meeting to take place 21 to 45 days hence and send written notice of submittal of the preliminary GDP application and public meeting to:

- a. The City Council member(s) in whose district the GDP is located and the at-large Council members;
- b. All property owners within the defined GDP boundaries who are not co-applicants for the GDP;



- c. All property owners within 200 feet of the GDP boundary;
- d. Denver Public Schools if the GDP anticipates residential development;
- e. Any special districts of which any part of the district's boundaries is included in the GDP boundaries; and
- f. All Registered Neighborhood Organizations whose boundaries include or are within 200 feet of the GDP boundary.

**2. Conduct of Public Meeting**

At the public meeting, the applicant shall present the substantive content of the preliminary GDP application, record public comment, and submit a written report of such recorded comments to Community Planning and Development by no later than 7 days after the public meeting date. Such report shall be forwarded to the DRC for consideration.

**3. Public Comment Period**

Members of the public and anyone receiving notice of the preliminary GDP application may provide written comments on the application to the Manager up to 15 days after the date of the public meeting. Such written comments shall be forwarded to the DRC for consideration during review of the preliminary GDP.

**D. Review and Referral by Manager**

The Manager shall refer the GDP application to the DRC and to all affected or interested agencies and departments for review and comment. The Manager shall provide the applicant with a written compilation of all agency and department comments.

**E. Revisions by Applicant**

The applicant shall respond in writing to all comments received and submit a revised GDP as necessary. Subsequent rounds of DRC review and applicant revisions may follow until the DRC determines the application is ready for final GDP review, as described below.

**12.4.12.11 Final GDP Review**

**A. Determination by DRC**

When the DRC determines review of the preliminary GDP is complete, the preliminary GDP application is deemed to be the Final GDP application and ready for Planning Board recommendation and final DRC decision.

**B. Planning Board Review and Recommendation**

1. When the Final GDP application is ready for Planning Board recommendation, the Manager shall schedule the GDP application for the Planning Board's consideration at a public hearing. The Manager shall make a written recommendation to the Planning Board for its consideration.
2. Written and posted notice of the Planning Board public hearing shall be provided according to Section 12.3.4, Public Notice Requirements, and such written notice shall also be sent to the following:
  - a. All owners of land included in the boundaries of the Final GDP other than the applicant;
  - b. Owners of real property located within 200 feet of the boundary of the Final GDP area, including any Secondary Area, as applicable;
  - c. The City Council members in whose districts the Final GDP area is located, and the at-large Council persons;
  - d. Any neighboring municipality or county which is contiguous to any boundary of the Final GDP;
  - e. Denver Public Schools if the Final GDP anticipates residential development.

- f. Any special district of which any part of the district's boundaries is included in the GDP boundaries; and
  - g. All Registered Neighborhood Organizations whose boundaries include or are within 200 feet of the GDP boundary.
3. The Planning Board shall hold a public hearing on the Final GDP application and shall consider the recommendations of the Manager and the Managers of Parks and Recreation and Public Works, any comments received, and the review criteria below in making its recommendation to the DRC.
  4. The Planning Board's recommendation shall be forwarded to the DRC for action within 30 days after the public hearing is closed, unless the applicant requests an extension of such time.

**C. DRC Final Decision**

The DRC shall make all final decisions on a Final GDP after consideration of information received from the public hearing and otherwise and the recommendation by the Planning Board. The DRC shall approve, approve with conditions, or deny the Final GDP application based on the review criteria set forth below. The applicant shall revise the application as required, and submit a final GDP for execution and recording required herein.

**12.4.12.12 Review Criteria**

The DRC shall approve a Final GDP application only if the DRC finds:

- A. The Final GDP is consistent with applicable city plans;
- B. The pedestrian, transit, and street pattern is appropriate to serve the final GDP area and provide connectivity to surrounding properties, as applicable, and promotes and accommodates multi-modal transportation;
- C. The final GDP contains an adequate master plan for provision of drainage, sewage, and water systems through subsequent regulatory process;
- D. Unique natural resource features and sensitive areas can be adequately protected and accommodated through subsequent regulatory process;
- E. The Final GDP contains an adequate master plan for the provision of publicly accessible and usable open space that enhances the connection to transit facilities, plazas or streets, and the pedestrian environment through subsequent regulatory process; and
- F. The Final GDP provides an adequate master plan to ensure that all phases of development will occur in an orderly fashion, and that infrastructure improvements necessary to serve future development have been identified and will be provided concurrent with such development as further approved through subsequent regulatory processes.

**12.4.12.13 Appeals**

The final decision of the DRC on a GDP application may be appealed to the District Court.

**12.4.12.14 Execution and Recording**

- A. The applicant shall submit an electronic file of the final approved GDP for recording, which shall include an electronic copy of the original GDP mylar cover sheet signed by the following parties:
  1. When the City is not an applicant, then by all owners of the subject property and by the managers of Community Planning and Development, Public Works, and Parks and Recreation.
  2. When the City is an applicant, then by all applicants and by the managers of Community Planning and Development, Public Works, and Parks and Recreation.

- B. Following execution of the final GDP, the Manager shall record the electronic GDP in the records of the Denver County Clerk and Recorder's Office.

#### **12.4.12.15 Effect of Approved GDPs**

- A. A recorded GDP, including any subsequently recorded amendments, shall be in full force and effect until and unless such time as the GDP is either superseded or rescinded.
- B. The City Council may approve an official map amendment (rezoning) application for property located within an approved GDP area, taking into consideration the approved GDP.
- C. The City may issue subdivision approvals, site development plan approvals, zoning permits, and may approve the construction, location, use, and operation of all land and structures for properties located within an approved GDP area, only upon a finding that such subsequent zoning and building actions are consistent with the terms and conditions of the approved GDP.

#### **12.4.12.16 Vested Property Rights**

##### **A. Certain General Development Plans Eligible for Vested Rights**

- 1. A GDP initiated by an owner or owners of the subject property, or their authorized agents, and which by its express terms will not require one or more official map amendments (rezoning) to implement the GDP, shall result in vested rights, provided the GDP contains the specificity stated in Section 12.4.12.16.A.3 below.
- 2. A GDP approved prior to or concurrent with the City Council's approval of one or more official map amendment (rezonings) to implement the GDP may be amended after approval of the official map amendment(s) to obtain vested rights, provided the GDP contains the specificity stated in Section 12.4.12.16.A.3 below. All GDP amendments seeking the addition of vested rights shall be processed according to the same procedure and criteria stated in Section 12.4.12.17, Amendments and Minor Deviations to an Approved GDP.
- 3. Any GDP eligible for vested rights according to this subsection may be afforded vested rights only if the GDP provides specificity regarding:
  - a. The location and intensity of permitted land uses;
  - b. Building scale (heights) anticipated, including building height transitions to adjacent properties, as applicable;
  - c. The location and general specifications for a network of internal pedestrian walkways and connections to primary uses within the GDP area and to adjacent development or public amenities/facilities such as schools, parks, and open space.
  - d. The location and functional classification of the future street network within the GDP area, as applicable;
  - e. The designation of Primary Streets to guide future development in compliance with this Code;
  - f. The location of future publicly accessible open space and parks; and
  - g. The location of future public facilities, as applicable.
- 4. The vested rights in an approved GDP are directly proportional to the level of detail and specificity approved in the plan.

##### **B. Vesting Period**

Rights vested through approval of a General Development Plan shall remain vested until such time as the General Development Plan is either superseded or rescinded. Amendments to GDPs shall not affect vested rights unless expressly stated otherwise in the amendment.

## 12.4.12.17 Amendments and Minor Deviations to an Approved GDP

### A. Amendments to an Approved GDP

#### 1. Intent

In addition to Section 12.4.12.1, Intent, the amendment process is intended to allow for GDPs to change over time as needed and to establish appropriate procedures, including initiation of amendments and communication to property owners and the general public.

#### 2. Applicability

Any of the following changes to an approved GDP, if included in the GDP, shall be considered amendments subject to this Section 12.4.12.17.A. The DRC shall decide if the proposed change falls within any of the following:

- a. Significantly modifying or reallocating the permitted height, mix of uses, or density of development;
- b. Significantly altering the location or amount of land area intended for publicly accessible open space or other public purposes required by this Code or by other City ordinances, rules, or regulations;
- c. Substantially moving or altering the vehicle access and circulation to or within the development;
- d. Changing or negating a condition of approval; or
- e. Modifying any other element of the approved GDP that would substantially change its character or impacts on surrounding property, as determined by the Manager.

#### 3. Procedure for Amendments

An amendment to an approved GDP may be reviewed concurrently with other applications according to Section 12.3.3.9, Concurrent Applications. An amendment to an approved GDP shall be reviewed according to the same procedures and subject to the same limitations and requirements contained in Section 12.4.12.1 and Sections 12.4.12.4 through 12.4.12.16, with the following exceptions:

##### a. Initiation

In place of Section 12.4.12.4, a GDP amendment may be initiated by any one or combination of the following parties:

- i. One or more property owners or their authorized agent(s) within the area being amended;
- ii. The Manager;
- iii. The manager of Parks and Recreation; or
- iv. The manager of Public Works.

##### b. Public Meeting and Public Notice

In place of Section 12.4.12.10.C.1, upon the Manager's determination that the application for preliminary review of the GDP amendment is complete (see Section 12.3.3.8, Determination of Complete Applications), and at least 21 days prior to such meeting, the applicant shall schedule a public meeting to take place 21 to 45 days hence and send written notice of submittal of the preliminary GDP amendment application and public meeting to:

- i. The City Council member(s) in whose district the approved GDP is located and the at-large Council members;
- ii. All property owners within the GDP area being amended who are not co-applicants for the GDP amendment;
- iii. All property owners within 200 feet of the GDP area being amended;

- iv. Denver Public Schools if the approved GDP anticipates residential development;
  - v. Any special district of which any part of the district's boundaries is included in the approved GDP boundaries; and
  - vi. All Registered Neighborhood Organizations whose boundaries include or are within 200 feet of the approved GDP boundary.
- c. Planning Board Meeting Notice**  
In place of Section 12.4.12.11.B.2, written and posted notice of the Planning Board public hearing shall be provided according to Section 12.3.4, Public Notice Requirements, and such written notice shall also be sent to the following:
- i. All owners of land included in the boundaries of the GDP area being amended other than the applicant;
  - ii. Owners of real property located within 200 feet of the GDP area being amended;
  - iii. The City Council members in whose districts the approved GDP area is located, and the at-large Council persons;
  - iv. Any neighboring municipality or county which is contiguous to any boundary of the approved GDP;
  - v. Denver Public Schools if the approved GDP anticipates residential development.
  - vi. Any special district of which any part of the district's boundaries is included in the approved GDP boundaries; and
  - vii. All Registered Neighborhood Organizations whose boundaries include or are within 200 feet of the approved GDP boundary.
- d. Review Criteria**  
In addition to the review criteria in Section 12.4.12.12, the DRC shall approve the GDP amendment only if the DRC finds the amendment will not result in any material adverse effects on the remainder of the approved GDP.

**B. Minor Deviations to an Approved GDP**

The DRC may authorize minor deviations from a previously approved General Development Plan (GDP). Minor deviations are allowed provided such deviation does not constitute an "amendment" to a GDP under Section 12.4.12.17.A, Amendments. All minor deviations to a GDP approved by the DRC shall be submitted as "redline" edits to the previously approved electronic GDP, which, after approval, shall be recorded by the Manager in the records of the Denver County Clerk and Recorder's Office.

## **SECTION 12.4.13 REGULATING PLAN**

### **12.4.13.1 Intent**

**A. General Intent of a Regulating Plan**

A Regulating Plan is used to apply permitted building forms, building heights and land uses to specific street frontages and specific blocks and/or zone lots within a zone district. A Regulating Plan is also a vehicle for the designation of Primary Streets and Side Streets in advance of site development to increase the predictability and certainty of future development under this Code. A Regulating Plan is an optional step and process in all zone districts except in the M-GMX zone district. An approved Regulating Plan provides a binding plan that narrows the broad flexibility otherwise permitted in the zone district as site specific development proceeds within the subject area.

**B. Intent of Regulating Plan in the M-GMX Zone District**

For properties zoned to a Master Planned General Mixed Use ("M-GMX") District, a Regulating Plan is mandatory prior to site development. The M-GMX zone district allows a broad menu of potential building forms and land uses, which are intended to allow flexibility to create places with a specific character, as described in an approved General Development Plan. The broad menu of building forms and land uses must be restricted in their geographic location in order to successfully implement the approved General Development Plan, and to provide predictability and certainty for future property owners within the M-GMX zone district. The geographic application of specific building forms, building heights and land uses is shown through a Regulating Plan, which ensures the character described in the General Development Plan is implemented throughout the M-GMX zone district.

**12.4.13.2 When Required & General Allowances**

**A. When Required**

**1. Mandatory in the M-GMX Zone District**

Preparation of a Regulating Plan is mandatory in the M-GMX zone district, except when the subject property is included in a General Development Plan, which includes the same level of detail and information as required by this Section 12.4.13, including but not limited to the designation of Primary Streets.

**2. Mandatory for Development within Certain General Development Plan Areas**

Preparation of a Regulating Plan is mandatory prior to site development subject to a General Development Plan where the GDP does not include designation of Primary Streets.

**3. Optional in All Other Cases**

In all zone districts other than in the M-GMX zone district, and when a Regulating Plan is not otherwise mandatory under this Section, preparation of a Regulating Plan is optional.

**B. General Allowances**

1. A Regulating Plan may encompass all or a portion of the area within a General Development Plan, as applicable; in addition, there may be multiple Regulating Plans within the same GDP area.
2. There is no minimum area required for submittal of a Regulating Plan.

**12.4.13.3 Review Process**

**A. Intent of the Regulating Plan Review Process**

The review process established in this Section 12.4.13 for a Regulating Plan is intended to:

1. Narrow the application of the permitted building forms, land uses, and building heights within a zone district to specific geographic sites; and
2. Ensure that the implementation of the zone district standards are consistent with the approved General Development Plan.

**B. Timing of Regulating Plan Review**

When preparation of a Regulating Plan is required according to this Section, the Regulating Plan shall be approved before approval of any of the following zoning applications, as applicable, unless the Manager agrees to concurrent processing of such applications according to Section 12.3.3.9, Concurrent Applications. A Regulating Plan may also be incorporated into or a part of a Site Development Plan if applicable.

1. Special Exception Review
2. Variances



3. Site Development Plan Review
4. Zoning Permit

**C. Initiation**

A Regulating Plan may be initiated by any one or combination of the following parties:

1. All of the owners of the entire land area subject to the application for a regulating plan, or their representatives authorized in writing to do; or
2. The Manager.

**D. Pre-Application Meeting**

A pre-application meeting is mandatory. See 12.3.2, Pre-Application Meeting/ Concept Plan Review.

**E. Application and Fees**

**1. Submittal in Writing**

All applications for Regulating Plan review shall be filed in writing with Community Planning and Development. The applicant shall pay all required fees at the same time the application is submitted. See Section 12.3.3, Submission of Applications.

**F. Regulating Plan Contents**

**1. Regulating Plan**

- a. The regulating plan shall be provided in a digital format acceptable to the Manager.
- b. A regulating plan shall be produced at a scale appropriate for review, but at no less than 1"=200' scale.
- c. The regulating plan shall show:
  - i. The land area that is the subject of the Regulating Plan, including 250 additional feet beyond the plan area to establish context, and shall also show the immediately adjoining land uses, roads, water bodies, and other rights-of-way or easements.
  - ii. The boundaries of the area within the M-GMX zone district, as applicable.
  - iii. Proposed size and layout of blocks.
  - iv. The location of all streets, alleys and drives with the street type specification and width of each.
  - v. Designation of Primary Streets and Side Streets.
  - vi. The location of all publicly accessible open spaces, including public parks or open space, common open space, and schools.
  - vii. The assignment of one or more permitted building form standards (e.g., urban house building form, general building form), including the maximum or range of heights permitted for such building forms, to each face block or zone lot. Building forms to apply within the Regulating Plan may be chosen from any of the building forms permitted in the applicable zone district.
  - viii. The land use or land uses permitted on each face block or zone lot.
  - ix. Where applicable, the location of dwelling units meeting the developer's affordable housing obligations under the Denver Revised Municipal Code.
  - x. The applicant may also assign supplemental building form standards to specific face blocks or zone lots to achieve urban design objectives for the proposed development, provided such supplemental standards shall be no less restrictive than otherwise applicable building form standards.



For example, while the applicable building form standards may limit a building's height to a *maximum* of 5 stories, a Regulating Plan may require a building located at a critical focal point within the development to have a *minimum* height of 2 stories. On the other hand, a Regulating Plan in the same instance cannot allow a maximum building height of 8 stories.

## 2. Project Report

- a. The project report shall not be part of the recorded approval, but shall serve as background for the Manager in making a final decision on the Regulating Plan.
- b. The project report shall include the following components.
  - i. Description of how the Regulating Plan is consistent with and implements any precedent approved plan for the area, such as a Neighborhood or Small Area Plan approved by the city, and the approved General Development Plan.
  - ii. Development program for the proposed Plan area, including:
    - a) Description of land use concepts and general geographic distribution for each land use concept;
    - b) Tabulation of acreages, as applicable, of each building form; and
    - c) Estimated sequence and timing (where known) of project construction
  - iii. Description of proposed transitions at the edge of the Regulating Plan area to promote compatibility between the Regulating Plan area and adjacent land uses, where applicable. For example, a Regulating Plan might illustrate the use of building height, the location of open space, landscaping and buffers, or streets and streetscape as transition tools along Regulating Plan area edges adjacent to more or less intensive building forms and land uses.

## G. Review, Referral and Final Decision by Manager

### 1. Review and Referral

The Manager may refer the Regulating Plan application to other affected or interested agencies and parties for review and comment, as deemed necessary to make a decision on the application.

### 2. Final Decision

- a. The Manager shall make a final decision to approve, approve with conditions, or deny the Regulating Plan application, taking into consideration relevant agency or other party comments.
- b. The Manager may attach conditions to the Regulating Plan approval reasonably necessary to protect the health, safety and welfare of the community and to minimize adverse impacts on adjacent properties, as authorized by this Code.

### 12.4.13.4 Review Criteria

The Manager shall approve a Regulating Plan application only if the Manager finds:

- A. That the proposed allocation and geographic location of building forms, building heights, and land uses are consistent with applicable City plans, including but not limited to any approved General Development Plan, the Comprehensive Plan, Blueprint Denver, the Strategic Transportation Plan, small area plans, and all amendments and supplements to such plans;
- B. The Regulating Plan provides a plan that will enable the predictable development of building forms and heights, and the predictable establishment of land uses within the plan's area; and
- C. Design of the mix of building forms, heights, and land uses will respect existing adjacent neighborhood context, where applicable, and creates an appropriate transition at the edges of the Regulating Plan.

#### **12.4.13.5 Appeals**

The final decision of the Manager may be appealed to the Board of Adjustment according to Section 12.4.8, Appeal of Administrative Decision.

#### **12.4.13.6 Requirements and Limitations After Regulating Plan Approval**

##### **A. Execution and Recording**

1. The applicant shall submit an electronic file of the final approved Regulating Plan for recording, which shall include an electronic copy of the original Regulating Plan cover sheet signed by all owners of the subject property and by the Zoning Administrator.
2. Following execution of the final regulating plan, the Zoning Administrator shall record the electronic Regulating Plan in the records of the Denver County Clerk and Recorder's Office.

##### **B. Effect of Approved Regulating Plans**

1. All approved Regulating Plans and any Regulating Plan amendments shall be binding upon the applicants and their successors and assigns, shall control the issuance of all subdivision approvals, site development plan approvals, zoning permits, and the construction, location, use, and operation of all land and structures included within the Regulating Plan area.
2. A recorded Regulating Plan shall be in full force and effect until and unless such time as the Regulating Plan is amended or replaced by a new Regulating Plan for the same location according to this Section's procedures.

##### **C. Modifications and Amendments to an Approved Regulating Plan**

1. Modifications and amendments to an approved Regulating Plan are allowed according to Section 12.3.7 of this Code.
2. Except in cases where Section 12.4.13.2 mandates the use of a Regulating Plan, withdrawal of an approved and recorded Regulating Plan is allowed provided all land and structures remaining under such Regulating Plan can be made to comply with all regulations established by the applicable zone district and this Code. Upon approval of an application to withdraw, the Manager shall record in the real property records of the Denver County Clerk and Recorder an appropriate certificate of such withdrawal.

## **DIVISION 12.5 COMPLIANT USES**

### **SECTION 12.5.1 INTENT**

The creation in this Division of the legal status of "compliant use" is intended to provide greater flexibility than the category of "nonconforming uses" in the continuation, expansion or enlargement of existing land uses still permitted in the subject zone district, but which no longer comply with this Code's use limitations.

### **SECTION 12.5.2 DEFINITION**

See Article 13 for definition of "Use, Compliant," and "Use, Conforming."

### **SECTION 12.5.3 EFFECT**

#### **12.5.3.1 Right to Continue**

Compliant uses are legal uses for all purposes under this Code, and may continue to operate indefinitely.

#### **12.5.3.2 General Allowance and Limitation on Expansion**

- A. Provided it continues to comply with all provisions of this Division, any compliant use may continue in operation on the same zone lot and on the same floor area in a structure that was occupied by the compliant use on the date the use first became a compliant use.
- B. Except as authorized in this Division 12.5, the zone lot or the floor area in a structure devoted to the operation and maintenance of a compliant use shall not be increased if the extent or degree of noncompliance with this Code is increased.
- C. Continuance authorized in this Division shall not be construed to permit an increase in the number of dwelling units, a reduction of the ratio of land area to the number of dwelling units, or a change in any aspect of or the character of the compliant use that increases the amount, extent, or degree of noncompliance. This subsection shall not be construed to prohibit changes in the compliant use that result in a decrease in the amount, extent or degree of noncompliance (e.g., a reduction in the floor area of the compliant use that results in a decrease in the amount of parking required).

#### **12.5.3.3 Zoning Administrator Authority to Allow Limited Expansions**

##### **A. Zoning Administrator Authority in Special Cases Only**

1. The Zoning Administrator may authorize, upon application in specific cases, an exception permitting an increase in either or both the zone lot area or the floor area in a structure or structures occupied by a compliant use as are necessary and essential to enable the owner of the use to comply with lawful requirements of the federal, state, or municipal governments; or
2. As a result of an act of government through vacation of right-of-way that creates private land area abutting an existing zone lot, for that newly created private land, the Zoning Administrator may authorize, upon application in specific cases, an exception permitting the existing compliant use on the existing zone lot to expand in zone lot area, but not floor area in a structure or structures, onto the newly created private land.

##### **B. Procedure and Required Findings**

All applications for an allowance under this Section 12.5.3.3 shall be reviewed according to the procedures stated in Section 12.4.1, Zoning Permit Review. In addition to the review criteria stated in Section 12.4.1, the Zoning Administrator shall grant an allowance only upon finding the following conditions exist:

1. That the use is a compliant use as defined in this Code, and is in full compliance with all requirements of this Code applicable to compliant uses, and
2. The Zoning Administrator has found that the application complies with Section 12.5.3.3.A.

**C. Allowance Personal to Owner**

Every allowance authorized by this Section 12.5.3.3 shall be personal to the applicant and shall not be transferable, and shall run with the land only after construction of any authorized structure or structures and only for the life of such structure or structures.

**12.5.3.4 Board of Adjustment Authority to Grant Variances for Expansion**

The Board of Adjustment is authorized under its power to grant variances to permit an increase in the floor area occupied by a compliant use in an existing structure, subject to the procedures and applicable criteria stated in Section 12.4.7, Variance.

**SECTION 12.5.4 TERMINATION OF COMPLIANT USES**

**12.5.4.1 By Changes in Use**

**A. To a Conforming Use**

Changing a compliant use to a conforming use shall terminate the rights of the compliant use, and any re-establishment of the compliant use shall comply with all applicable use limitations in this Code.

**B. To a Temporary Use**

Changing a compliant use to a temporary use properly permitted under the provisions of this Code shall not terminate the rights of the compliant use.

**12.5.4.2 By Abandonment**

Abandonment of a compliant use shall terminate immediately the right to operate such compliant use.

**12.5.4.3 By Violation of this Code**

- A. Unless remedied according to Subsection 12.5.4.3.B below, any one of the following violations of this Code shall terminate the right to operate a compliant use:
  1. Failure to make a compliant use comply with the limitations on external effects of uses as established by this Code;
  2. Increasing the floor area occupied by a compliant use without the approval of the Board of Adjustment or the Zoning Administrator for such increase, as applicable; or
  3. Changing a compliant use to an unlawful use.
- B. Any of the following actions shall allow continuance of a compliant use in the event of a violation of this Code:
  1. Approval of a zoning variance that grants specific relief from compliance with the provision of the Code at issue in the use termination case. The Board of Adjustment shall act on such variance application within 120 days from the date the Zoning Administrator determines such use is in violation of this Code. For good cause, the Zoning Administrator may grant an extension of the 120-day period for up to one additional 90-day period. Grant of a variance according to this subsection shall not change the legal status of the use as "compliant."
  2. The Zoning Administrator finds that the violation is completely remedied within 90 days from the date the Zoning Administrator determines such use is in violation of this Code.

3. The subject property owner submits a mitigation plan to the Zoning Administrator that proposes specific steps and time frames the owner will take to remedy the violation by a date certain, but in no case longer than 180 days from the date the Zoning Administrator of the City determines such use is in violation of this Code. The Zoning Administrator shall take final action to either approve, approve with conditions, or deny the mitigation plan. For good cause, the Zoning Administrator may grant an extension of the mitigation period for up to one additional 180-day period.
4. This Section 12.5.4.3.B, which allows continuance of a compliant use if a violation of a type listed in Section 12.5.4.3.A is remedied, may be invoked and applied only one time to the same compliant use. After remedying a violation of the Code according to this Section 12.5.4.3.B, any future Code violation of a type prohibited in Section 12.5.4.3.A shall result in the automatic termination by law of the compliant use.

#### **12.5.4.4 By Vacancy**

Vacancy for a period of 12 or more successive calendar months of the structure or that part of a structure occupied by the compliant use shall terminate immediately the right to operate such compliant use.

#### **12.5.4.5 By Destruction, Damage or Obsolescence of Structure Housing Compliant Use**

##### **A. Involuntary Destruction or Damage**

The right to operate and maintain any compliant use shall terminate and shall cease to exist whenever the structure in which the compliant use is operated and maintained is damaged or destroyed, from any cause whatsoever, and the cost of repairing such damage or destruction exceeds 50 percent of the replacement cost of such structure on the date of such damage or destruction; provided, however, that the right to operate and maintain a compliant residential use located in a Residential Zone District or a compliant use located in a C-CCN zone district shall not be terminated regardless of the amount of damage or destruction suffered by the structure in which the use is operated.

##### **B. Obsolete or Substandard Structure**

The right to operate and maintain any compliant use shall terminate and shall cease to exist whenever the structure in which the compliant use is operated and maintained becomes obsolete or substandard under any applicable ordinance of the city and the cost of placing such structure in lawful compliance with the applicable ordinance exceeds 50 percent of the replacement cost of such structure on the date that the Zoning Administrator determines such structure is obsolete or substandard; provided, however, that in determining the replacement cost of any structure, there shall not be included therein the cost of land or any factors other than the structure itself.

##### **C. Voluntary Demolition**

Nothing in this subsection shall be deemed to permit the reconstruction or reestablishment of all or any part of a compliant use whenever the structure in which the compliant use is operated and maintained has been voluntarily demolished.

### **SECTION 12.5.5 DETERMINATION OF COMPLIANT STATUS**

Compliant status shall be determined by the Zoning Administrator.

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## **DIVISION 12.6 COMPLIANT STRUCTURES**

### **SECTION 12.6.1 INTENT**

The creation in this Division of the legal status of "compliant structures" is intended to provide greater flexibility than the more restrictive category of "nonconforming structures" in the continuation, expansion or enlargement of existing structures that no longer comply with certain of this Code's building form standards.

### **SECTION 12.6.2 DEFINITION**

See Article 13 for definitions of "Structure, Compliant," "Structure, Conforming," and "Structure, Nonconforming."

### **SECTION 12.6.3 EFFECT**

#### **12.6.3.1 Right to Continue**

Compliant structures are legal structures for all purposes under this Code, and may continue to be occupied, operated, and maintained as is, subject to any limitations in this Division 12.6 or unless terminated as provided in this Division 12.6.

#### **12.6.3.2 Expansions, Alterations, Enlargements to Compliant Structures**

##### **A. Applicability**

1. This Section 12.6.3.2 applies to any compliant structure in all zone districts.
2. This Section 12.6.3.2 applies to any compliant structure that was rebuilt under Section 12.6.3.3, Voluntary Demolition and Reconstruction.

##### **B. General Allowance**

1. Subject to all limitations of this Division 12.6, any compliant structure may be occupied, operated, and maintained in a good state of repair.
2. Subject to all limitations of this Code, compliant structure may be altered or enlarged if either of the following conditions exist:
  - a. No existing compliant element of the structure is increased and no new compliant element or nonconformity is created; or
  - b. An allowance under Sections 12.6.3.2.D through F. applies.

##### **C. Documentation Required**

In addition to the general submittal requirements under this Code and pursuant to the Denver Building and Fire Code, an application to permit expansions, alterations, or enlargements to a compliant structure according to Section 12.6.3.2.D-E below shall include the documentation described in Section 12.6.3.3.B.3.b below.

##### **D. Required Build-to Standards - Expansions, Enlargements and Alterations Allowed without Full Compliance**

1. Compliant structures that do not meet the requirements of the Primary or Side Street build-to standards may be altered without fully complying with the Primary or Side Street build-to standards provided that, if some portion of the compliant structure meets the build-to requirement, no alteration (including demolition) is permitted that would reduce the amount of that existing facade meeting the build-to requirement.
2. For any expansion or enlargement that does not fully comply with the Primary or Side Street build-to standards, and that expands the building's gross floor area by more than 25% cumulatively after June 25, 2010, shall comply with perimeter parking lot landscaping standards for surface parking located between the building and the Primary Street set forth in Division 10.5. See Figures 12.6-1 and 12.6-2 illustrating permitted alterations to compliant structures that do not meet Primary or Side Street build-to standards.



Figure 12.6-1

*Not to Scale. Illustrative Only.*

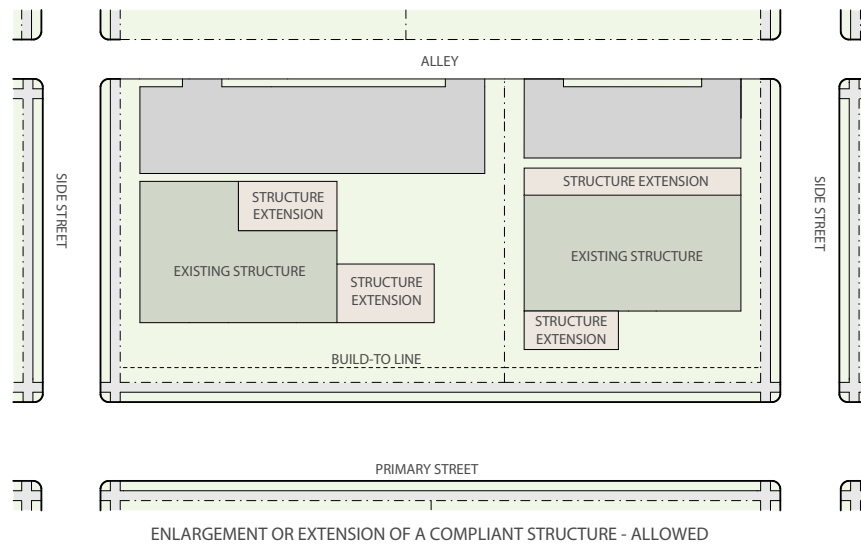
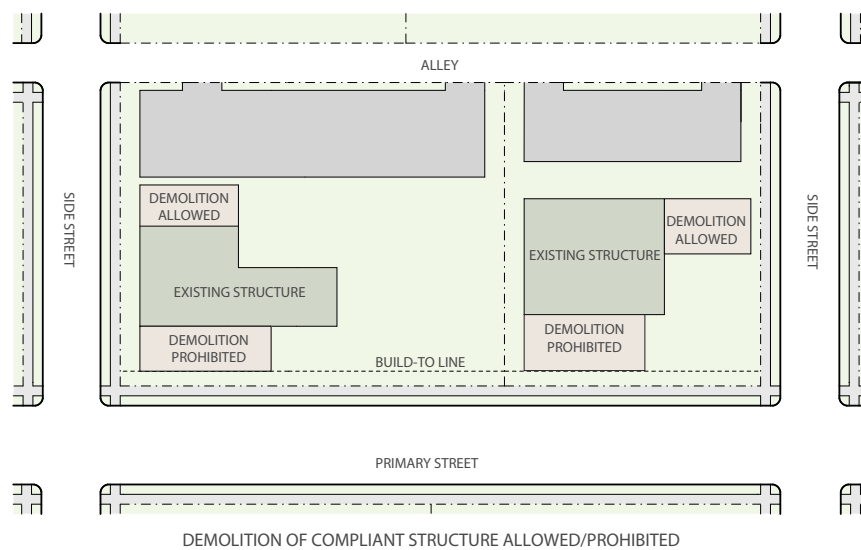


Figure 12.6-2

*Not to Scale. Illustrative Only.*

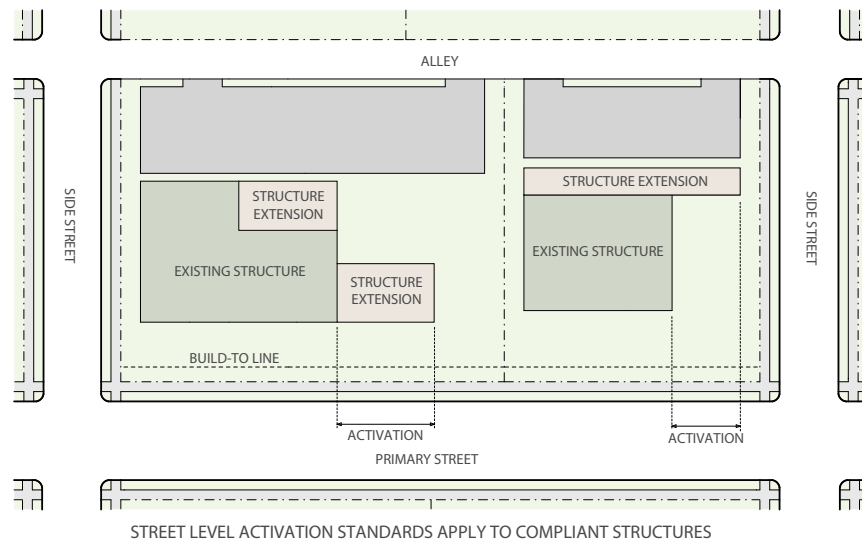


**E. Required Street Level Activation Standards - Expansions, Enlargements and Alterations Allowed without Full Compliance**

Compliant structures that do not meet the Street Level activation standards of this Code may be expanded without fully complying with the Street Level activation standards; however, any addition to the structure located within 80 feet of the Primary Street or Side Street where a Street Level activation standard applies must meet the Street Level activation standard and no alteration may be made that further reduces the structure's compliance with the transparency requirement. See Figure 12.6-3.

Figure 12.6-3

Not to Scale. Illustrative Only.



#### F. Required Side Setback - Expansions, Enlargements and Alterations Allowed without Full Compliance

Requirements as to side setbacks lines may be modified to permit an addition to a compliant structure located in a Residential Zone District and used solely for residential purposes if such compliant structure meets the following conditions:

1. The dimension of the structure that causes the structure to be compliant as to side setback exists for at least one-half of the sidewall length of the structure.
2. The length of the proposed addition shall not exceed the length of the existing compliant sidewall.
3. No wall or roof of the proposed addition to be built within the required side setback area shall be higher than the existing wall or roof to which it is attached, except that an existing roof structure may be removed and replaced to provide alignment with the wall or roof of the proposed addition.

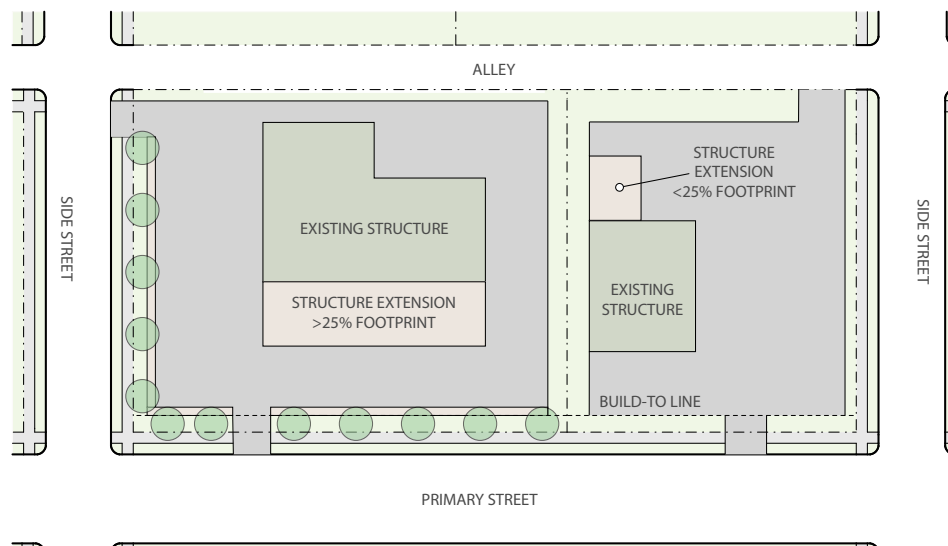
#### G. Surface Parking Between Primary Street and Side Street - Expansions, Enlargements and Alterations Allowed without Full Compliance

Compliant Structures that do not meet the Surface Parking between the Primary Street and Side Street standards of this Code may be altered without fully complying with the Surface Parking between Primary Street and Side Street standards. Such Compliant Structures may be expanded, enlarged, and altered resulting in parking located between a building and a primary or side street provided that:

1. Off-Street Parking may be established or expanded only if it meets the Surface Parking between the Primary Street and Side Street standards; and
2. Any expansion or enlargement that expands the building's Gross Floor Area by more than 25% cumulatively after June 25, 2010 shall comply with perimeter parking lot landscaping standards for Surface Parking located between the building and any street set forth in Division 10.5. See Figure 12.6.4:

Figure 12.6-4

Not to Scale. Illustrative



### 12.6.3.3 Voluntary Demolition and Reconstruction

#### A. Compliance Required

A compliant structure that is voluntarily demolished shall be reconstructed only in full compliance with all applicable zone district standards, unless eligible for the limited exception in Section 12.6.3.3.B below.

#### B. Exception in the CC, MX, MS and I-MX Zone Districts

##### 1. Applicability

- a. This Section 12.6.3.3 applies only in the CC, MX, MS, and I-MX zone districts.
- b. This Section 12.6.3.3 applies only to structures that were conforming on June 24, 2010 and shall not apply to structures that were nonconforming on June 24, 2010.
- c. This Section 12.6.3.3 shall not apply to any additions or expansions built under Section 12.6.3.3
- d. A compliant structure that has been rebuilt per this Section 12.6.3.3 may thereafter be voluntarily demolished and rebuilt per this Section 12.6.3.3, or in full compliance with all applicable zone district standards.

##### 2. General Rules for Reconstruction After Voluntary Demolition

A compliant structure that is voluntarily demolished may be reconstructed either:

- a. In full conformance with all applicable zone district standards; or
- b. According to Section 12.6.3.3.B.3, below.

##### 3. "As Was" Reconstruction of Compliant Structures

After voluntary demolition, a compliant structure may be reconstructed as it existed on June 24 2010, in compliance with the following conditions:

- a. The area and dimensions of the zone lot on which the replacement structure will be constructed are the same that existed on June 24, 2010.
- b. The applicant provides an improvement location survey prepared by a Qualified Professional describing the area and dimensions of the zone lot and the compliant structure's dimensions and location relative to zone lot lines. Documentation shall also include the dimensions and location of surface parking serving the compliant structure, dimensions and location of other structures and landscape features,

and existing exterior elevation drawings of the compliant structure that describe dimensions of building height and all exterior features and fenestration.

- c. All provisions of this Code shall apply except where compliance is not possible because of the location or dimensions of the replacement structure, required vehicle access to the zone lot, accessory parking spaces, or due to existing gas tank location and the impracticality of moving such tanks. For any reconstruction that does not fully comply with the Primary or Side Street Build-To standards, a garden wall shall be provided within 0 feet to 15 feet from the zone lot line for 100% of the Primary and Side Street frontage, excluding required vehicle access points and any portions of building located within the 0 feet to 15 feet range. The Zoning Administrator may approve an alternative to the required garden wall when on-site circulation constraints prevent installation of a garden wall, provided the alternative results in separating pedestrian activity from on-site vehicle circulation areas.
- d. The applicant shall obtain a zoning permit within one year of receiving a demolition permit for the compliant structure.

#### **12.6.3.4 Involuntary Destruction or Damage to Structure - Reconstruction Allowed**

A compliant structure that is involuntarily damaged or demolished in any manner and from any cause may be reconstructed as it previously existed. Any expansion or extension of such structure shall be subject to the standards governing expansions, alterations and enlargements in Section 12.6.3.2 above.

### **SECTION 12.6.4 DETERMINATION OF COMPLIANT STATUS**

Compliant status shall be determined by the Zoning Administrator.

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## **DIVISION 12.7 NONCONFORMING USES**

### **SECTION 12.7.1 INTENT**

The creation in this Division of the legal status of "nonconforming use" assures that land uses no longer permitted in a zone district are strictly limited in their right to continue, expand, or enlarge. Such nonconforming land uses are presumed to be incompatible with permitted uses in the zone district, typically because the nature or scale of the nonconforming use's operation create adverse impacts on surrounding properties or the character of the surrounding neighborhood context. Accordingly, the provisions in this Division 12.7 encourage nonconforming uses, over time, to terminate or relocate to a zone district where they are permitted.

### **SECTION 12.7.2 APPLICABILITY**

- 12.7.2.1 Division 12.7 applies to all nonconforming uses. For purposes of this Code, "nonconforming use" means any use which, at the time the use was first permitted or initiated, was lawfully operated, and has since that time been continuously lawfully operated, but which use is not a "conforming use" as defined in this Code and is not a "compliant use" as defined in this Code.
- 12.7.2.2 Nonconforming outdoor general advertising devices (billboards) and other nonconforming signs shall be subject to the nonconforming sign provisions in Division 12.9 of this Article instead of the nonconforming use standards stated in this Division 12.7.

### **SECTION 12.7.3 LIMITED CONTINUANCE OF NONCONFORMING USES ALLOWED**

#### **12.7.3.1 General Allowance and Limitation on Expansion**

- A. Provided it continues to comply with all provisions of this Section, any nonconforming use may be continued in operation on the same zone lot and on the same floor area in a structure that was occupied by the nonconforming use on the date the use first became a nonconforming use.
- B. Except as authorized in Section 12.7.3.2 below, the zone lot or the floor area in a structure devoted to the operation and maintenance of a nonconforming use shall not be increased.
- C. The continuance authorized hereunder shall not be construed to permit an increase in the number of dwelling units, a reduction of the ratio of zone lot area to the number of dwelling units, or a change in any aspect or the character of the nonconforming use that increases the amount, extent, or degree of nonconformity. This subsection shall not be construed to prohibit changes in the nonconforming use that result in a decrease in the amount, extent or degree of nonconformity (e.g., a reduction in the floor area of the nonconforming use that results in a decrease in the amount of parking required).

#### **D. Limitations on Continuance of a Nonconforming Trailer Camp or Court (Mobile Home Park) Uses**

A nonconforming trailer camp or court, also commonly known as a mobile home park, may continue subject to the provisions of this Section 12.7.3, except that any one of the following actions shall be considered a prohibited expansion of the nonconforming use and shall subject the use to the termination provisions in Section 12.7.7 below:

1. An increase in the total number of individual trailers or mobile homes sited within the nonconforming camp, court or park.
2. A reduction in an existing separation of less than 10 feet between individual trailers, mobile homes, or manufactured homes
3. Replacement of an individual trailer or mobile home with a manufactured home, regardless of size, if the manufactured home is constructed in compliance with U.S. Housing and Urban Development (HUD) standards and is labeled as HUD compliant. Replacement of

an individual trailer or mobile home with a trailer or mobile home of substantially similar construction and size (not including HUD labeled and HUD compliant manufactured homes) may be permitted only if the Zoning Administrator first approves a zoning permit for the replacement trailer or mobile home,

4. Replacement of an individual trailer or mobile home with a trailer, mobile home, or other manufactured or modular home that is placed on a permanent foundation (the use of tie-downs or ground anchors only is not considered a "permanent foundation").

### **12.7.3.2 Zoning Administrator Authority to Allow Limited Expansions**

#### **A. Zoning Administrator Authority in Special Cases Only**

1. The Zoning Administrator may authorize, upon application in specific cases, an exception permitting an increase in either or both the zone lot area or the floor area in a structure or structures occupied by a nonconforming use as are necessary and essential to enable the owner of the use to comply with lawful requirements of the federal, state, or municipal governments; or
2. As a result of an act of government through vacation of right-of-way that creates private land area abutting an existing zone lot, for that newly created private land, the Zoning Administrator may authorize, upon application in specific cases, an exception permitting the existing nonconforming use on the existing zone lot to expand in zone lot area, but not floor area in a structure or structures, onto the newly created private land.

#### **B. Procedure and Required Findings**

All applications for an allowance under this Section 12.7.3.2 shall be reviewed according to the procedures stated in Section 12.4.1, Zoning Permit Review. In addition to the review criteria stated in Section 12.4.1, the Zoning Administrator shall grant an allowance only upon finding the following conditions exist:

1. That the use is a nonconforming use as defined in this Code, is in full compliance with all requirements of this Code applicable to nonconforming uses, and is not a nonconforming use which, by the provisions of this Code, is to be terminated by operation of law; and
2. The Zoning Administrator has found that the application complies with Section 12.7.3.2.A.

#### **C. Allowance Personal to Owner**

Every allowance authorized by this Section 12.7.3.2 shall be personal to the applicant and shall not be transferable, and shall run with the land only after construction of any authorized structure or structures and only for the life of such structure or structures.

### **12.7.3.3 Board of Adjustment Authority to Grant Variances for Expansion**

The Board of Adjustment is authorized under its power to grant variances to permit an increase in the floor area occupied by a nonconforming use in an existing structure, subject to the procedures and applicable criteria stated in Section 12.4.7, Variance.

## **SECTION 12.7.4 COMPLIANCE WITH LIMITATIONS ON EXTERNAL EFFECTS OF USES**

Every nonconforming use shall comply with the limitations on external effects of uses established for the zone district in which such use is located.

## **SECTION 12.7.5 ZONE LOT FOR STRUCTURES CONTAINING NONCONFORMING USES**

Whenever a nonconforming use or uses is operated in a structure, a separate zone lot shall be designated, provided, and Continuously Maintained for the structure containing the nonconforming use or uses. Each zone lot shall have at least one Primary Street zone lot line. Upon application to and approval by the Zoning



Administrator; the boundaries and area of a designated zone lot may be amended if full compliance with all requirements of this Code can be maintained.

## **SECTION 12.7.6 MAINTENANCE OF OFF-STREET PARKING AND LOADING SPACES**

All off-street parking and loading space operated by, in connection with, or accessory to a nonconforming use shall be maintained in accordance with all specifications for maintenance of off-street parking space as established by this Code.

## **SECTION 12.7.7 TERMINATION OF NONCONFORMING USES**

### **12.7.7.1 By Change in Use**

#### **A. To a Conforming Use**

Changing any nonconforming use to a conforming use shall terminate the nonconforming use and the nonconforming use shall not be reestablished.

#### **B. To a Temporary Use**

Changing a nonconforming use to a temporary use properly permitted under the provisions of this Code shall not terminate the nonconforming use.

### **12.7.7.2 By Abandonment**

Abandonment of a nonconforming use shall terminate immediately the right to operate such use.

### **12.7.7.3 By Violation of this Code**

- A. Unless remedied according to Subsection 12.7.7.3.B below, any one of the following violations of this Code shall terminate the right to operate a nonconforming use:
  - 1. Failure to make a nonconforming use comply with the limitations on external effects of uses as established by this Code;
  - 2. Increasing the floor area occupied by a nonconforming use without the approval of the Board of Adjustment or the Zoning Administrator for such increase, as applicable;
  - 3. Increasing the number of dwelling units in the nonconforming use; or
  - 4. Changing a nonconforming use to an unlawful use.
- B. Any of the following actions shall allow continuance of a nonconforming use in the event of a violation of this Code:
  - 1. Approval of a zoning variance that grants specific relief from compliance with the provision of the Code at issue in the use termination case. The Board of Adjustment shall act on such variance application within 120 days from the date the Zoning Administrator determines such use is in violation of this Code. For good cause, the Zoning Administrator may grant an extension of the 120-day period for up to one additional 90-day period. Grant of a variance according to this subsection shall not change the legal status of the use as "nonconforming."
  - 2. The Zoning Administrator finds that the violation is completely remedied within 90 days from the date the Zoning Administrator determines such use is in violation of this Code.
  - 3. The subject property owner submits a mitigation plan to the Zoning Administrator that proposes specific steps and time frames the owner will take to remedy the violation by a date certain, but in no case longer than 180 days from the date the Zoning Administrator of the City determines such use is in violation of this Code. The Zoning Administrator shall take final action to either approve, approve with conditions, or deny the mitigation

plan. For good cause, the Zoning Administrator may grant an extension of the mitigation period for up to one additional 180-day period.

4. This Section 12.7.7.3.B, which allows continuance of a nonconforming use if a violation of a type listed in Section 12.7.7.3.A is remedied, may be invoked and applied only one time to the same nonconforming use. After remedying a violation of the Code according to this Section 12.7.7.3.B, any future Code violation of a type prohibited in Section 12.7.7.3.A shall result in the automatic termination by law of the nonconforming use.

#### **12.7.7.4 By Vacancy**

Vacancy for a period of 12 or more successive calendar months of the structure or that part of a structure occupied by the nonconforming use shall terminate immediately the right to operate a nonconforming use.

#### **12.7.7.5 By Destruction, Damage or Obsolescence of Structure Housing Nonconforming Use**

##### **A. Involuntary Destruction or Damage**

The right to operate and maintain any nonconforming use shall terminate and shall cease to exist whenever the structure in which the nonconforming use is operated and maintained is damaged or destroyed, from any cause whatsoever, and the cost of repairing such damage or destruction exceeds 50 percent of the replacement cost of such structure on the date of such damage or destruction; provided, however, that the right to operate and maintain a nonconforming residential use located in a Residential Zone District or a nonconforming use located in a C-CCN zone district shall not be terminated regardless of the amount of damage or destruction suffered by the structure in which the use is operated.

##### **B. Obsolete or Substandard Structure**

The right to operate and maintain any nonconforming use shall terminate and shall cease to exist whenever the structure in which the nonconforming use is operated and maintained becomes obsolete or substandard under any applicable ordinance of the city and the cost of placing such structure in lawful compliance with the applicable ordinance exceeds 50 percent of the replacement cost of such structure on the date that the Zoning Administrator determines such structure is obsolete or substandard; provided, however, that in determining the replacement cost of any structure, there shall not be included therein the cost of land or any factors other than the structure itself.

##### **C. Voluntary Demolition**

Nothing in this subsection shall be deemed to permit the reconstruction or reestablishment of all or any part of a nonconforming use whenever the structure in which the nonconforming use is operated and maintained has been voluntarily demolished.

### **SECTION 12.7.8 SIGNS FOR NONCONFORMING USES**

12.7.8.1 As accessory to a nonconforming use, no sign shall be erected except in compliance with the following regulations:

- A. Accessory to a nonconforming use which is a use by right for the MU districts, but which is located in a SU, TU, TH, or RH zone district, signs shall comply with the regulations herein established for permitted signs in the lowest-height multi-unit (MU) zone district allowed in the applicable neighborhood context.
- B. Accessory to a nonconforming use which is a use by right in any Mixed Use Commercial Zone District, but which is located in any Residential Zone District, signs shall comply with the regulations herein established for permitted signs in the MS-2x zone district.
- C. Accessory to a nonconforming use which is a use by right in a Mixed Use Commercial Zone District having less restrictive sign standards than the Mixed Use Commercial Zone District in

which the use is located, signs shall comply with the regulations herein established for permitted signs in the MS-3 zone district.

### **SECTION 12.7.9 REGULATIONS FOR SPECIFIC NONCONFORMING HEAVY AUTOMOBILE SERVICE USES**

Notwithstanding fence and wall height limitations stated in this Code, no nonconforming heavy automobile service use shall be operated unless the zone lot is enclosed with a solid fence or wall that is constructed to a height adequate to conceal any vehicles, equipment, or parts stored on the site. Such solid fence or wall shall comply with the following standards:

- 12.7.9.1 The front line of the zone lot shall not be required to have a fence or wall directly in front of the main building wall or main entrance to the principal structure;
- 12.7.9.2 The front line of the zone lot shall not be required to have a fence or wall along more than 40 percent of its length;
- 12.7.9.3 Any portion of the zone lot line that contains a building wall need not have a separate fence or wall;
- 12.7.9.4 If the owner or operator demonstrates to the Zoning Administrator that an alternate method of screening (for example, vegetation) would be adequate to screen some or all of the zone lot, the Zoning Administrator may approve such alternate screening method; and
- 12.7.9.5 The fence or wall shall be constructed of wood, brick, masonry or other similar quality and durable materials as approved by the Zoning Administrator.

### **SECTION 12.7.10 DETERMINATION OF NONCONFORMING STATUS**

Nonconforming status shall be determined by the Zoning Administrator.

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## **DIVISION 12.8 NONCONFORMING STRUCTURES**

### **SECTION 12.8.1 INTENT**

The creation in this Division of the legal status of "nonconforming structure" assures that structures that no longer comply with the building form standards of the applicable zone district are strictly limited in their right to physically alter, expand, enlarge, or rebuild. Such nonconforming structures are presumed to be incompatible with the neighborhood context and built character sought in the zone district, typically because of the nonconforming structure's mass or scale, site placement, or building design. Accordingly, the provisions in this Division 12.8 encourage redevelopment of or alterations to such nonconforming structures to ultimately achieve full compliance with the zone district's building form standards.

### **SECTION 12.8.2 APPLICABILITY**

Division 12.8 shall apply to all nonconforming structures. For purposes of this code, "nonconforming structure" means any structure that was lawfully erected or altered in conformity with all applicable municipal ordinances, but which structure does not comply with all of the provisions of this Code established for conforming structures in the zone district in which the structure is located and is not otherwise a "compliant structure" under Division 12.6, Compliant Structures.

### **SECTION 12.8.3 CONTINUANCE AND ENLARGEMENT**

#### **12.8.3.1 General Allowance to Continue and Enlarge Nonconforming Structures**

- A. Subject to all limitations of this Division 12.8, any nonconforming structure may be occupied, operated, and maintained in a good state of repair.
- B. Subject to all limitations of this Code, any nonconforming structure may be altered or enlarged so long as no existing nonconformity is increased and no new nonconformity is created.

### **SECTION 12.8.4 TERMINATION OF NONCONFORMING STRUCTURES**

#### **12.8.4.1 Involuntary Destruction or Damage to Structure**

The right to operate and maintain any nonconforming structure shall terminate and shall cease to exist whenever the nonconforming structure is damaged or demolished in any manner and from any cause whatsoever and the cost of repairing such damage or demolished exceeds 75 percent of the replacement cost of such structure on the date of such damage or demolished.

#### **12.8.4.2 Obsolescence of Structure**

The right to operate and maintain any nonconforming structure shall terminate and shall cease to exist whenever the nonconforming structure becomes obsolete or substandard under any applicable ordinance of the city and the cost of placing such structure in lawful compliance with the applicable ordinance exceeds 50 percent of the replacement cost of such structure on the date that the Zoning Administrator determines that such structure is obsolete or substandard.

#### **12.8.4.3 Determination of Replacement Cost**

In determining the replacement cost of any nonconforming structure there shall not be included therein the cost of land or any factors other than the nonconforming structure itself.

#### **12.8.4.4 The Right to Reconstruct Certain Structures**

Notwithstanding the provisions of subsections 12.8.4.1, 12.8.4.2, and 12.8.4.3, the right to operate and maintain any of the nonconforming structures listed below shall not be terminated regardless of the amount of damage, destruction or obsolescence; provided, however, that any such reconstructed nonconforming structures shall not be enlarged and/or extended beyond that which existed previously unless the enlargement and/or extension complies with all the provisions of this Code.

- A. A nonconforming structure containing a residential use or a residential care use located in a Residential Zone District, or
- B. A nonconforming structure located in a C-CCN zone district; or
- C. A structure located in the D-C or D-TD zone district that became a nonconforming structure on October 14, 1994, as a result of (a) changes to the prior B-5 zone district changing the floor area premiums and maximum gross floor area of structures; or (b) the creation of the OD-2, OD-3 and OD-4 overlay districts regarding maximum building height or sunlight preservation requirements; or
- D. A structure located in a Residential Zone District that became a nonconforming structure on June 26, 1998, as a result of the creation the OD-6, OD-7 and OD-8 overlay districts, or
- E. A residential structure located in a SU zone district that became a nonconforming structure July 21, 2008, as a result of the creation of the OD-10 overlay district.

#### **12.8.4.5 Voluntary Demolition**

Nothing in this Section 12.8.4 shall be deemed to permit the reconstruction or reestablishment of all or any part of a nonconforming structure that has been voluntarily demolished.

### **SECTION 12.8.5 DETERMINATION OF NONCONFORMING STATUS**

Nonconforming status shall be determined by the Zoning Administrator.

## **DIVISION 12.9 NONCONFORMING SIGNS**

### **SECTION 12.9.1 NONCONFORMING ON-PREMISE SIGNS**

#### **12.9.1.1 Intent and Declaration of Public Policy**

It is reasonable that a time limit be placed upon the continuance of existing nonconforming signs. An amortization program permits the owner to plan during a period when the owner is permitted to continue the nonconforming signs while at the same time assuring that the district in which the nonconforming signs exist will eventually benefit from a substantial uniformity of permanent signs.

#### **12.9.1.2 Definition of Nonconforming On-Premise Signs**

A nonconforming sign shall be any sign other than an outdoor general advertise device, which:

- A. On March 19, 1971, was lawfully maintained and had been lawfully erected in accordance with the provisions of any prior zoning ordinance but which sign does not conform to the limitations established by this Code on March 19, 1971, in the zone district in which the sign is located; or
- B. On or after March 19, 1971, was lawfully maintained and erected in accordance with the provisions of this Code effective March 19, 1971, but which sign, by reason of amendment to this chapter effective March 19, 1971, after the effective date, does not conform to the limitations established by the amendment to this chapter effective March 19, 1971, in the zone district in which the sign is located.

#### **12.9.1.3 Continuance of Nonconforming Signs**

Subject to the termination hereinafter provided, any nonconforming sign may be continued in operation and maintained after March 19, 1971; provided, however, that no such nonconforming sign shall be changed in any manner that increases the noncompliance of such nonconforming sign with the limitations established by the this Code effective March 19, 1971, or any amendment to this Code in the zone district in which the sign is located; and provided further, that the right to continue in operation and maintain any nonconforming sign shall be conditioned on the use by right not having more signs than permitted for the particular zone district in which the use by right is located, and that no such nonconforming sign shall flash, blink, fluctuate, be animated or portable.

#### **12.9.1.4 Determination of Nonconforming Status**

Nonconforming status shall be determined by the Zoning Administrator.

#### **12.9.1.5 Termination of Nonconforming Signs**

The following actions shall result in the termination immediately of the right to maintain a nonconforming sign:

##### **A. By Abandonment**

Abandonment of a nonconforming sign shall terminate immediately the right to maintain such sign.

##### **B. By Violation of this Code**

1. Unless remedied according to Section 12.9.1.5.B.2. below, any violation of this Code's sign regulations shall terminate immediately the right to maintain a nonconforming sign.
2. The following actions shall allow continuance of a nonconforming sign otherwise terminated pursuant to this Section 12.9.1.5.B., provided the nonconforming sign was not finally terminated prior to July 20, 2012:
  - a. The violation is completely remedied within 15 days from the date the Zoning Administrator gives notice that there is a violation of this Code's sign regulations, and the violation does not thereafter reoccur.



- b. Within 15 days from the date the Zoning Administrator gives notice that there is a violation of this Code's sign regulations, the subject property owner may submit to the Zoning Administrator a mitigation plan that proposes specific steps and time frames the owner will take to remedy the violation by a date certain, but in no case longer than 90 days from the date of the notice of violation. If the Zoning Administrator determines the violation cannot be corrected within 15 days from the notice of violation, the Zoning Administrator shall approve, approve with conditions or deny the property owner's plan, and may, for good cause, grant an extension of the mitigation period for up to one additional 90 day period. If the Zoning Administrator denies the plan, the property owner shall completely remedy the violation within 15 days of such denial.
3. Any reoccurrence of the same violation of this Code's sign regulations, or any violation of the approved mitigation plan, shall immediately terminate the right to maintain the nonconforming sign and no exceptions or variances shall be granted.

**C. By Destruction, Damage or Obsolescence**

The right to maintain any nonconforming sign shall terminate and shall cease to exist whenever the sign is damaged or destroyed, from any cause whatsoever, or becomes obsolete or substandard under any applicable ordinance of the city to the extent that the sign becomes a hazard or a danger.

## **SECTION 12.9.2 NONCONFORMING OUTDOOR GENERAL ADVERTISING DEVICES**

### **12.9.2.1 Intent**

This section's regulations assure that outdoor general advertising devices that no longer comply with this Code's standards are strictly limited in their right to continue or be substantially altered. Such nonconforming outdoor general advertising device is presumed incompatible with the character of the surrounding neighborhood context and zone district, typically because of adverse aesthetic and/or public safety impacts. Accordingly, the provisions in this section encourage nonconforming outdoor general advertising devices, over time, to terminate.

### **12.9.2.2 Definition**

A nonconforming outdoor general advertising device shall be any such device which:

- A. On June 25, 2010, was lawfully maintained and had been lawfully erected in accordance with the provisions of any prior zoning ordinance, but which sign does not conform to the limitations established by this Code; or
- B. On or after June 25, 2010, was lawfully maintained and erected in accordance with the provisions of this Code, but which device by reason of amendment to this Code after June 25, 2010, does not conform to the limitations resulting from such amendment.

### **12.9.2.3 Continuance**

Subject to the termination hereinafter provided, any nonconforming outdoor general advertising device may be continued in operation and maintained after January 1, 2010; provided, however, that, after January 1, 2010, no such device shall be modified as defined in Section 10.10.20.2.A.5., Permit to Modify an Existing Device.

### **12.9.2.4 Termination**

The following actions shall result in the termination immediately of the right to maintain a nonconforming outdoor general advertising device:

**A. By Abandonment**

Abandonment of a nonconforming outdoor general advertising device shall terminate immediately the right to maintain such device. If a message surface is vacant or contains obsolete advertising for any six consecutive month period, it shall be deemed to be abandoned. A "vacant" message surface shall mean a message surface that is void of any message content and shall not include a message surface displaying the name of the permit holder's business, a public service announcement or "for rent", "available for lease", or any similar message. "Obsolete advertising copy" shall mean advertising copy which pertains to an event or activity which has already occurred.

**B. By Violation of this Code**

Any violation of this Code, except for the failure to continuously display a city registration number on a device as required by Section 10.10.20.2.A.3, City Registration Number, shall terminate immediately the right to maintain a nonconforming outdoor general advertising device. In the event a city registration number which was displayed on a nonconforming outdoor general advertising device in conformance with Section 10.10.20.2.A.3, City Registration Number, becomes detached or unreadable, the permit holder shall have 90 days from receipt of notice of such violation to cure the violation.

**C. By Destruction, Damage or Obsolescence.**

The right to maintain any nonconforming outdoor general advertising device shall terminate and shall cease to exist whenever the device is damaged or destroyed, from any cause whatsoever and the cost of repairing such damage or destruction exceeds 50 percent of the replacement cost of such device on the date of such damage or destruction; or whenever the device becomes obsolete or substandard under any applicable ordinance of the city to the extent that the device becomes a hazard or a danger.

**12.9.2.5 Removal of Terminated Device**

The termination of a nonconforming outdoor general advertising device shall require its immediate removal. Furthermore, no terminated device shall receive credit pursuant to Section 10.10.20.2.A.7, Additional Requirements, to be used for a new device.

**12.9.2.6 Determination of Nonconforming Status**

The burden of establishing such a device to be nonconforming under this Section rests entirely upon the person claiming a nonconforming status for an outdoor general advertising device.

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## **DIVISION 12.10 NONCONFORMING ZONE LOTS**

### **SECTION 12.10.1 INTENT**

This Division 12.10 is intended to promote the use, development, and redevelopment of pre-existing zone lots throughout the City of Denver, while recognizing that such zone lots do not generally fit the predominant lot patterns of their surrounding neighborhood context. Accordingly, this Division makes clear that nonconforming zone lots can be used and developed in compliance with existing zoning rules, but the range of permitted building forms is limited to mitigate possible adverse impacts on surrounding properties.

### **SECTION 12.10.2 DEFINITION**

See Article 13 for definition of "Zone Lot, Nonconforming."

### **SECTION 12.10.3 USE & DEVELOPMENT ALLOWED**

#### **12.10.3.1 Applicability**

This Section 12.10.3 applies to:

- A. All Nonconforming Zone Lots that do not qualify as Carriage Lots; and
- B. All Nonconforming Zone Lots that qualify as Carriage Lots that contain a legally established Primary Dwelling Unit use in the event of Involuntary Demolition
- C. All other Carriage Lots shall comply with the standards in Section 12.10.4 below

#### **12.10.3.2 Use of Nonconforming Zone Lots**

A nonconforming zone lot may be used only for uses permitted in the zone district in which the zone lot is located. Establishment of a permitted use on a nonconforming zone lot shall comply with all applicable standards for that zone district and for the specific use.

#### **12.10.3.3 Development of Nonconforming Zone Lots in a Residential Zone District**

Development of a permitted use on a nonconforming zone lot shall comply with all applicable standards for that zone district, except any applicable minimum zone lot area or minimum zone lot width standard, and except as prohibited in Section 12.10.3.3.B below. Development on a nonconforming zone lot shall comply with the following:

- A. Compliance with one of the following primary building forms, as permitted in the zone district, according to the Setback and Building Coverage by Zone Lot Width form standards that align with the nonconforming zone lot's width:
  1. Suburban House building form;
  2. Urban House building form;
  3. Duplex building form; or
  4. Tandem house building form, excluding in the S-SU-F1 zone district.
- B. Compliance with the accessory building forms, as permitted in the zone district, with the following exception:
  1. Where permitted, the Detached Accessory Dwelling Unit building form may only be constructed on a nonconforming zone lot that meets the minimum zone lot size standards for the detached accessory dwelling unit building form within the zone district.

#### **12.10.3.4 Examples**

- A. For example, in the U-SU-C1 zone district, a zone lot of 4,500 square feet in total area and with a lot width of 40 feet, is nonconforming. The owner may develop an Urban House building form on the nonconforming zone lot, despite the lot's noncompliance with the 5,500 square foot area

and 50 foot width standards otherwise required for an Urban House form in that zone district. Development of the urban house on the existing 4,500 square foot zone lot must still comply with all other building height, siting, and design element form standards. Certain siting form standards, such as primary street and rear building setbacks or building coverage for an Urban House, are keyed to the lot width of the subject zone lot, including a nonconforming zone lot. In this example, the Urban House would be subject to setback and building coverage standards for a 40-foot wide zone lot, as shown in the Urban House Building Form Table in Article 5 of this Code.

- B. For example, in the U-SU-C1 zone district, a zone lot of 4,500 square feet in total area and with a lot width of 40 feet, is nonconforming. The building form standards for a Detached Accessory Dwelling Unit building requires a minimum of 5,500 square feet of zone lot area as a prerequisite for development of such form. In this case, the owner could not develop a Detached Accessory Dwelling Unit building on her lot because the lot is less than the 5,500 square feet required in the U-SU-C1 zone district for that form.

#### **SECTION 12.10.4 DEVELOPMENT ON CARRIAGE LOTS**

This Section 12.10.4 applies to:

- A. All Nonconforming Zone Lots that qualify as Carriage Lots and do not contain a legally established Primary Dwelling Unit use; and
- B. All Nonconforming zone lots that qualify as Carriage Lots that contain a legally established Primary Dwelling Unit use in the event of Voluntary Demolition

Notwithstanding the requirement for zone lots to have frontage on a named or numbered public street, the Zoning Administrator may grant a zoning permit for detached accessory structures used for the noncommercial parking of motor vehicles (residential vehicle garages) or used to house accessory dwelling units on carriage lots in specific cases, provided the following procedures and conditions are satisfied:

12.10.4.1 The permit application under this subsection shall be subject to Zoning Permit Review with Information Notice, according to Section 12.4.2 of this Code.

12.10.4.2 In deciding to approve, approve with conditions, or deny the application, the Zoning Administrator shall consider written comments of all interested parties and the impact of the proposed detached accessory structure and proposed use on adjoining properties.

12.10.4.3 The Zoning Administrator may grant the zoning permit provided the proposed detached accessory structure complies with the following standards:

**A. Ownership of the Subject Carriage Lot**

The applicant shall be the owner of the subject carriage lot or portion thereof, and shall have their principal residence located in the block surrounding the subject carriage lot or portion thereof. The granting of the zoning permit shall be personal to the applicant.

**B. Accessory Dwelling Unit Use of Detached Structure**

The detached accessory structure may be used for an accessory dwelling unit provided such accessory dwelling unit use is permitted in the applicable zone district, and provided the proposed accessory dwelling unit use complies, to the maximum extent feasible, with the accessory dwelling unit standards in Section 11.8.2, except as stated in this Section 12.10.4.3.

**C. Compliance with Building Form Standards**

A detached accessory structure on a carriage lot shall comply with the applicable zone district building form standards for either a detached garage or a detached accessory dwelling unit building form, except that such structure shall comply with the following lot area and setback standards instead of the otherwise applicable building form standards.

**1. Minimum Lot Area**

The carriage lot or portion thereof used for the detached accessory structure shall be at least 25 feet wide at the alley line and shall contain not less than 1,000 square feet in area.

**2. Setbacks**

Detached accessory structures shall set back from the alley line the minimum distance necessary to provide a total alley or aisle width of 20 feet for structures that are entered or accessed directly from the alley, and shall set back not less than 5 feet from every other boundary line of the carriage lot or portion thereof.

**D. Other Applicable Requirements**

Detached accessory structures shall comply with this Code's other applicable requirements for the use, location, size and operation of detached accessory structures for the zone district in which it is located.

**E. Operation**

Detached accessory structures shall only be used by other conforming primary uses located on the block surrounding the carriage lot; and the carriage lot or portion thereof shall be maintained in good condition, free of weeds, trash and debris.

**SECTION 12.10.5 ZONE LOT ALTERATIONS LIMITED**

A nonconforming zone lot shall not be further amended or have its boundaries altered in any manner that would compound, increase, or extend the nonconforming characteristics of the zone lot.

**SECTION 12.10.6 DETERMINATION OF NONCONFORMING STATUS**

Nonconforming status shall be determined by the Zoning Administrator.

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## **DIVISION 12.11 ENFORCEMENT, VIOLATIONS AND PENALTIES**

### **SECTION 12.11.1 GENERAL PURPOSE**

This Code shall be enforced in accordance with the provisions of Colorado law and as provided in this Division 12.11. Each enforcement remedy can be invoked independently or in conjunction with any or all of the other enforcement remedies available under the law.

### **SECTION 12.11.2 VIOLATIONS**

It shall be unlawful and shall be deemed a strict liability offense for any owner, lessee, occupant, or agent of an owner, lessee, or occupant to allow or permit to exist, or to otherwise let happen a violation of this Code on the land or in the structure to which the owner, lessee, occupant, or agent has legal or equitable title or right of possession. Any one of the following actions or activities shall constitute a violation of this Code:

#### **12.11.2.1 Use, Structure or Sign Without Permit or Approval**

To place any use, structure, or sign upon land that is subject to this Code without all of the approvals required by this Code.

#### **12.11.2.2 Activities Inconsistent with This Code**

Erect, construct, reconstruct, remodel, alter, maintain, expand, move, or use any land, building, structure, or sign; or engage in development of any land contrary to the regulations and procedures of this Code.

#### **12.11.2.3 Land Disturbing Activities Inconsistent with This Code**

Excavate, grade, cut, clear, or undertake any other land disturbance activity contrary to the provisions of this Code or without first obtaining all requisite approvals or permits required by this Code.

#### **12.11.2.4 Nonconformities and Compliance Inconsistent with This Code**

Create, expand, replace, or change a nonconforming or compliant use, structure, lot, or sign except in compliance with this Code.

#### **12.11.2.5 Making Zone Lots or Setbacks Nonconforming**

Reduce or diminish the zone lot area, setbacks, or unenclosed open space below the minimums required by this Code.

#### **12.11.2.6 Increasing Intensity of Use**

Increase the intensity of use of any land or structure, except according to the standards and procedures of this Code.

#### **12.11.2.7 Activities Inconsistent with Approval or Permit**

Engage in any development, use, construction, alteration, or other activity of any nature in any way inconsistent with the terms and conditions of any permit, approval, agreement, or other form of authorization required to engage in such activity under this Code.

#### **12.11.2.8 Failure to Remove Signs or Other Improvements**

Failure to remove any sign or other improvement installed, created, erected, or maintained in violation of this Code, or for which the permit has lapsed.

#### **12.11.2.9 Removing or Defacing Required Notice**

To remove, deface, obscure or otherwise interfere with any public notice required by this Code.

#### **12.11.2.10 Other Actions or Activities Specified by Code**

Engage in any other action or activity specified by one or more provisions of this Code to be a violation.

### **SECTION 12.11.3 OFFENSES AND LIABILITIES PRESERVED**

All offenses committed and all liabilities incurred prior to June 25, 2010 shall be treated as though all prior applicable zoning ordinances and amendments thereto were in full force and effect for the purpose of sustaining any proper suit, action or prosecution with respect to such offenses and liabilities.

### **SECTION 12.11.4 CONTINUING VIOLATIONS**

Every day on which a violation exists shall constitute a separate violation of this Code, and a separate offense.

### **SECTION 12.11.5 STATUTE OF LIMITATIONS FOR CITY ONLY**

All actions by the City to restrain, correct or abate the unlawful location, bulk, or gross floor area of or in a structure and alleged to result from the unlawful issuance of a permit to erect or alter such structure shall be brought within 3 years after the issuance of the particular permit alleged to have been unlawfully issued and not after that period.

### **SECTION 12.11.6 ENFORCEMENT POWERS, PENALTIES AND REMEDIES**

#### **12.11.6.1 Enforcement Powers**

The Manager shall have the duty of enforcing this Code and the power necessary for such enforcement, incidental to which duty and power the Manager may exercise the following authority:

- A. Conduct investigations and surveys to determine compliance or noncompliance with the provisions of this Code, including reinvestigations of any land or structure to determine if a violation under an earlier notice or order has been corrected. Incidental to such investigations and surveys, an authorized representative of the department may enter into and upon and cause any land or structure to be inspected and examined. The right to entry and inspection may be enforced by application to and proper orders from a court of proper jurisdiction;
- B. Issue written orders requiring compliance with the provisions of this Code. Such orders shall be served personally or by mail upon the person deemed by the department to be violating the provisions of this Code; provided, however, that if such person is not the owner of the land on or the structure in which the violation is deemed to exist or have occurred, a copy of the order shall be sent by mail to the owner of such land or structure, the owner to be determined from the tax roll for the preceding tax year in the office of the deputy county treasurer. In the case of a structure containing individual units owned by different owners, a copy of the order shall be sent by mail to the individual unit owner deemed by the department to be violating the provisions of this Code; and a copy of the order shall be sent to the corporation, organization, or association that either owns or controls the common areas. In case a violation occurs in the common areas of such a development, the order shall be sent by mail to the officers of the corporation, organization or association which either owns the common areas or is responsible under the condominium declaration for the maintenance and control of such common areas. The date of mailing shall be deemed the date of service of any order served by mail;
- C. Issue notices of violation for noncompliance with the provisions of this Code; and
- D. Institute, in courts of proper jurisdiction, proceedings to enforce the provisions of this Code, administrative orders and determinations made hereunder, and settlement agreements made hereunder.

#### **12.11.6.2 General Penalties Apply**

Any person violating any provision of this Code shall be subject to the general penalties provided by D.R.M.C., Section 1-13, by action brought in a court of appropriate jurisdiction.

#### **12.11.6.3 Remedies Are Cumulative**

The penalties, remedies, and enforcement powers established in this Division 12.11 shall be cumulative, and the City may exercise them in any order.

#### **12.11.6.4 Additional Remedies**

##### **A. In General**

In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained or any building, structure or land is used in violation of this Code, in addition to, or in lieu of, any administrative remedy allowed by the D.R.M.C., the Manager or any person with standing under applicable law may institute any appropriate action or proceedings to prevent or enjoin such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate such violation, to prevent the occupancy of the building, structure or land or to prevent or enjoin any illegal act, conduct, business or use in or about such premises. The imposition of any penalty hereunder, including any inspection for compliance fee, shall not preclude the City or any person with standing under applicable law from instituting any appropriate action or proceeding to require compliance with the provisions of this Code, and with administrative orders and determinations made hereunder.

##### **B. Suspend or Rescind Permits or Final Authorization**

Any permit issued or other form of authorization under this Code may be suspended or rescinded when the Manager determines:

1. That there is a material departure from the plans, specifications, or conditions required under the terms of the approved permit or plan;
2. That the approved permit or plan was procured by false representation or was issued by mistake;
3. That any of the provisions of this Code are being violated; or
4. In the case of a zoning permit for a temporary use only, that substantial complaints that one or more conditions of the permit are being violated are reported to the Zoning Administrator.

Unless the Manager determines there is imminent peril to life or property, the Manager shall provide the permittee with notice and an opportunity to be heard prior to any final decision to suspend or revoke a permit. No work, construction, or other development activity shall proceed after service of the suspension or revocation notice.

#### **12.11.6.5 Continuation of Previous Enforcement Actions**

Nothing in this Code shall prohibit the continuation of previous enforcement actions, undertaken by the City pursuant to previous and valid ordinances and laws.

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