

DIVISION 9. B-5 AND B-5-T DISTRICTS*

Sec. 59-216. Generally.

The provisions of this division apply to all lands, uses and structures in the B-5 and B-5-T districts.

(Ord. No. 361-03, § 3, eff. 5-23-03; Ord. No. 439-07, § 8, eff. 8-20-07)

Sec. 59-217. Uses allowed in this district.

The following is a list of uses with notations as to whether they are permitted, conditional, limited, require short review or have other requirements as listed in the matrix and the sections which follow. Uses not listed are not allowed in this district. Permitted uses are uses by right.

Sec. 59-217. Uses allowed in these districts.

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<i>Key:</i>	
<i>P = Permitted</i>	
<i>L = Uses permitted with limitations</i>	
<i>C = Uses permitted with conditions</i>	
<i>D = Uses permitted with distance requirements</i>	
<i>* = Need not be enclosed</i>	
<i>Use</i>	<i>B-5, B-5-T</i>
Residential	
Assisted living facility	P
Dwelling, multiple unit	P
Dwelling, single unit	P
Residential, institutional/special	L13
Residence for older adults	P
Retail, service, office	
Adult establishment as follows:	
Adult amusement or entertainment	D1
Bookstore, adult	D1
Eating place with adult amusement	D1
Photo studio, adult	D1
Theater, adult	D1

***Editor’s note**—Section 7 of Ord. No. 439-07, effective Aug. 20, 2007, amended div. 9, title to include B-5-T districts.

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<i>Use</i>	<i>B-5, B-5-T</i>
Animal sales, service, care, household pets only	P
Auto pawn lot, auctioneer for automobiles, large vehicles or heavy equipment	P
Automobile gasoline filling station, emissions inspection	L24
Automobile repair garage	P
Automobile wash, laundry and/or polishing shop*	L31
Automobile, motorcycle, light truck sales, leasing, rental*	P
Banking and financial services	P
Bed and breakfast	P
Body art establishment	D4
Bookstore	P
Brewpub	P
Communications service	L41
Eating place	L43
Food preparation and sales, commercial	P
Food sales or market, large	L50
Food sales or market, small	L50
Furniture, furnishings, retail sale, large scale	P
Garden supply store	P*
Home building materials and supplies, sales, or rental	P
Hotel	P
Laboratory, research, development, technological service	P
Liquor store	D7
Motel	P
Office: nondental, nonmedical	P
Pawn shop	P
Printing service, publishing, business support	P
Retail, service, repair, consumer, large scale	P
Retail, service, repair, consumer, medium scale	P
Retail, service, repair, consumer, small scale	P
Retail, service, repair, consumer, special	L81
Service, repair, commercial	L86
Vehicle, equipment sales, leasing, service, rental*	L90
Industrial, wholesale, transportation, utilities	
Assembly, without fabrication	P

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<i>Use</i>	<i>B-5, B-5-T</i>
Helipad, helistop, heliport*	L97/D12
Manufacturing, fabrication, and assembly, custom	P
Manufacturing, fabrication, and assembly, general	L6
Manufacturing, fabrication, and assembly, heavy	L100
Manufacturing, fabrication, and assembly, light	P
Parking of vehicles*	C
Railroad facilities	L106
Railway right-of-way*	P
Terminal and service facility for bus system*	L114
Terminal, freight, air courier services	P
Terminal, public transportation, local*	P
Utility, major impact	L115*
Utility, minor impact	L117
Vehicle storage, commercial*	L119/C
Wholesale trade, general, and/or storage of toxic and/or hazardous materials	L122
Wholesale trade, light, and/or storage of nontoxic, nonhazardous materials	P
Arts, entertainment, recreation, institutions	
Ambulance service	P
Child care center	P
Church, religious institution	P
Clinic, office, laboratory, dental or medical	P
Club or lodge	P
Community or senior center or recreational facility	P
Conference center, meeting hall	P
Fire station	P
Golf course*	P
Hospital	P
Library	P
Mortuary	P
Museums, other special purpose cultural institutions	P
Parks, public, open space, associated buildings*	P
Police station	P
Postal facility, neighborhood	P

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<i>Use</i>	<i>B-5, B-5-T</i>
Recreation services, indoor	P
Recreation services, outdoor*	P
School, elementary or secondary	P
School, vocational or professional	P
Theater, indoor	P
University or college	P
Construction, mining, agriculture	
Aquaculture	L164
Contractors, special trade, general	P
Contractors, special trade, heavy, contractor yard*	L166
Uses allowed in all districts unless restricted by special limitations (See chapter 59, article III, division 2)	
Residential care uses (See § 59-82)	
Uses allowed by temporary permit (See § 59-86)	

(Ord. No. 361-03, § 3, eff. 5-23-03; Ord. No. 909-05, § 3, eff. 12-16-05; Ord. No. 439-07, § 9, eff. 8-20-07; Ord. No. 57-09, § 12, eff. 1-30-09)

Sec. 59-218. Distance requirements.

The following define the distance requirements enumerated in the use chart in section 59-217:

D1

- a. The following permitted uses shall not be established, operated or maintained within five hundred (500) feet of a residential district, a dwelling unit (single or multiple), a single unit dwelling, a church, a school meeting all the requirements of the compulsory education laws of the state, an arts education center, a learning center, an amusement/special interest park, a child care center, or a children's indoor play center, or within one hundred twenty-five (125) feet of a pedestrian and/or transit mall:
 - 1. Adult amusement or entertainment;
 - 2. Bookstore, adult;
 - 3. Eating place with adult amusement or entertainment;
 - 4. Photo studio, adult;

5. Theater, adult.
- b. For the purposes of this limitation, D-1, only:
 1. Learning center shall mean a commercial business that regularly provides on site, specialized or intensive educational services or tutoring to persons under eighteen (18) years of age;

2. Arts education center shall mean a place where instruction is regularly provided to persons under eighteen (18) years of age in the fields of painting, drawing, sculpture, etching, craft work, fine arts, dance, drama, photography, music, martial arts, or other similar fields of art.
- c. Not more than two (2) of the following permitted uses may be established, operated or maintained within one thousand (1,000) feet of each other:
 1. Amusement center;
 2. Adult amusement or entertainment;
 3. Bookstore, adult;
 4. Eating place with adult amusement or entertainment;
 5. Photo studio, adult;
 6. Theater, adult.

D4 Not more than two (2) of the following permitted uses may be established, operated or maintained within one thousand (1,000) feet of each other: Body art establishment.

D7

- a. No liquor store or drugstore licensed to sell package liquors, not existing or operating on August 31, 1997, shall be established, operated, or maintained within one thousand (1,000) feet of another liquor store or drugstore licensed to sell package liquors.
- b. No liquor store or drugstore licensed to sell package liquors, not existing or operating on July 31, 2000, shall be established, operated, or maintained within one thousand (1,000) feet of a community corrections facility.

D12 Must be a minimum of one thousand (1,000) feet from a residential district or a PUD district which allows residential uses.

(Ord. No. 361-03, § 3, eff. 5-23-03)

Sec. 59-219. Limitations.

The following define the limitations enumerated in the use chart in section 59-217:

L6 Fabrication: the fabrication only of the following articles: art goods, including church art goods, needlework and mannequins and figurines; awnings; bakery products; beverage bottling; bottling or packaging of prepared specialty food products, excluding processing of ingredients; brooms, brushes; buttons; cameras; cigars, custom; clocks; clothing, custom; cosmetics, excluding the manufacture of pigments and other basic raw materials, but including the compounding of the final product by mixing; costumes, custom; costume jewelry; dyeing, custom; engraving; fishing tackle; fur dyeing, finishing and apparel (no tanning); furniture, custom; glass products from glass stock; ink mixing and packaging (no pigment manufacture); instruments, professional, scientific controlling, musical and similar precision, and instrument equipment and parts; jewelry; lithography; millinery, custom; needlework; newspaper publishing; optical goods and equipment; orthopedic appliances;

photographic supplies (no film); plastic products, but not involving casting or molding processes; religious art goods; taxidermy; toys; umbrellas; upholstery, custom; venetian blinds or window shades, except preliminary milling of the wood or metal slats; watches.

L13 Limited to parish house.

L24 Limited to emissions inspection station.

L31 Automobile laundry, including steam cleaning, if visible steam is not discharged directly into outside air. Need not have doors. Must comply with the following conditions:

- a. A minimum of five (5) parking spaces is provided on the same zone lot for each washing stall;
- b. All off-street parking areas shall be hard-surfaced and dust-free;
- c. All lights used to illuminate the area shall be directed away from adjacent residential properties.

L41 Limited to radio and television broadcasting, including transmitter.

L43 Need not be enclosed to the extent that tables and seats may be placed out of doors, and food served thereat, subject to all of the following conditions:

- a. The outdoor eating area shall be contiguous to the eating place to which it is accessory; and
- b. The eating area shall be clearly delimited.
- c. Any part of the serving area located outside of the completely enclosed structure shall have a hard, all weather surface.

L50 Fruit or vegetable store need not be enclosed to the extent that the unenclosed portion shall not exceed in area one-fourth the gross floor area of the structure containing the use by right.

L81 Excludes: LP Gas; Gun shop.

L86 Limited to diaper service, linen supply, laundry, metal sharpening, mirror silvering.

L90 Limited to:

- a. Boat sales or repair, not including dismantling or wrecking; need not be enclosed, provided that the unenclosed part of such use shall comply with all specifications for maintenance of off-street parking space except the limitation against sales;
- b. Automobile trailers, house trailers and recreation vehicles but no commercial wrecking, dismantling or junkyard; need not be enclosed, provided that the unenclosed part of such use shall comply with all specifications for maintenance of off-street parking space except the limitation against sale.

L97 Helipad or helistop, not including maintenance, repair, fueling or hangar facilities.

L100 Limited to: tire recapping shop; koshering of poultry sold at retail on the premises, with no slaughtering, eviscerating or dressing of poultry conducted outside an enclosed structure and with all wastes deposited outdoors to be in completely enclosed containers.

L106 Limited to passenger terminal.

L114 Limited to terminal, no service facilities.

L115 Limited to water reservoir, need not be enclosed.

L117 Electric substation excluded.

L119 Use by right is limited to garage for commercial and public utility vehicles. Commercial storage of automobiles and light trucks, vans and sport utility vehicles limited to a capacity of not more than one-and-one-half tons only is a conditional use.

L122 Sale at wholesale and warehousing: the sale at retail, the sale at wholesale or the warehousing of any commodity the fabrication or assembly of which is a permitted use in this district, plus automobiles; automobile trailers; house trailers; recreation vehicles, boats, trucks having a capacity of not more than one and one-half (1½) tons; automobile and truck parts, accessories, tires and tubes; beauty shop equipment and supplies; drugs; flowers; household furniture, furnishing and equipment; medical and hospital equipment and supplies; tobacco products; (automobile, truck and trailer sales need not be enclosed).

L164 Limited to tropical fish hatchery.

L166 Special trades contractor: a contractor specializing in one (1) or more trades of which the following are examples: plumbing, heating, refrigerator and air conditioning; painting, paper hanging and decorating; wiring and electrical work; glass and glazing work; damp proofing; fire proofing; tile, linoleum floor laying and other floor work; insulation, asbestos and acoustical work; carpentry and cabinet making; excavating; well drilling; masonry and stone work; ornamental iron work. Trucks having a manufacturer's capacity of more than two (2) tons shall not remain on the premises except as necessary to load and discharge contents.

(Ord. No. 361-03, § 3, eff. 5-23-03)

Sec. 59-220. Conditional uses.

(a) Parking and/or commercial storage of vehicles, limited to automobiles, sport utility vehicles and light trucks and vans limited to a manufacturer's capacity of not more than one and one-half (1½) tons:

- (1) In a structure, provided, however, that such use meets at least one (1) of the following conditions:
 - a. The use was operated in a structure before October 10, 1994; or
 - b. The use is operated in a structure constructed or converted from other uses after October 10, 1994, that:
 1. Was constructed or converted by or on behalf of a public entity to serve the general public; or
 2. Serves only buildings that do not contain office uses; or
 3. Serves one (1) or more buildings that contain office uses and does not contain more than one (1) parking space per five hundred (500) gross square

feet of office space in the building or buildings served by the structure. Parking spaces restricted for use by non-office uses within the building or buildings served by the parking structure shall be exempt from such parking ratio restriction;

- (2) Need not be enclosed. Surface parking lots shall only be allowed if such use:
- a. Was in existence before May 25, 1990, and has been in continuous use as a parking lot since that date, provided, however, that a temporary use properly permitted under the provisions of sections 59-81 or 59-86 shall not destroy the continuity of use, or
 - b. Received a use permit between May 25, 1990, and October 10, 1994, and has been in continuous use as a parking lot since the date of such permit, provided, however, that a temporary use properly permitted under the provisions of sections 59-81 or 59-86 shall not destroy the continuity of use, and complies with all specifications for use and maintenance contained in Ordinance 140, series of 1986 and Ordinance 270, series of 1990, or
 - c. Began operation after October 10, 1994, and meets the following conditions:
 1. Such use shall not be located within the area bounded by 14th Street, Colfax Avenue, Broadway Street, 18th Street, and the Larimer Street-Market Street alley; and
 2. Such use shall not be located where necessary curb cuts will interfere with pedestrian activity on Larimer Street, Curtis Street, Cleveland Place, or on any street frontage facing a light rail line.

(Ord. No. 472, § 1, eff. 9-14-07)

(b) Process for approval of conditional uses. Applicants for conditional uses shall submit to the zoning administrator a complete application for such use demonstrating compliance with all applicable conditions required for such use. Upon receipt of such completed application, the zoning administrator shall refer the application to the planning office for a review and determination of compliance. The planning office shall return its determination of compliance to the zoning administrator within fifteen (15) days of receipt of such application, and the zoning administrator shall promptly approve or deny the application in accordance with the determination of compliance. If the planning office does not return a determination of compliance to the zoning administrator within fifteen (15) days of receipt of the application, such application shall be deemed to be in compliance as submitted.

(Ord. No. 361-03, § 3, eff. 5-23-03)

Sec. 59-221. Required ground floor uses.

In portions of new buildings and outdoor areas constructed within thirty (30) feet of the 16th Street pedestrian and transit mall, and in portions of existing buildings and outdoor areas within thirty (30) feet of the 16th Street pedestrian and transit mall that are renovated where (i) the cost of renovation is more than fifty (50) percent of the replacement cost of the existing building or outdoor area excluding land costs, and (ii) the renovation includes all or a part of

the leasable ground floor areas of the building, at least sixty-five (65) percent of the linear frontage of the property along the 16th Street pedestrian and transit mall shall be occupied by pedestrian-active uses.

(Ord. No. 361-03, § 3, eff. 5-23-03)

Sec. 59-222. Limitations on external effects of uses.

External effects of uses, as regulated by section 59-92.

(Ord. No. 361-03, § 3, eff. 5-23-03)

Sec. 59-223. Permitted structures.

(a) *Zone lot for structures.*

- (1) *All structures.* A ground area, herein called the zone lot, shall be designated, provided and continuously maintained for all structures or uses by right and conditional uses. Each zone lot shall have at least one (1) front line and may be occupied only by one (1) or more structures. Two (2) or more abutting zone lots intersected or divided by one (1) or more public streets or alleys may be designated as a single zone lot and as such shall be recorded with the clerk.
- (2) *Open space required.* For each structure designed, used or occupied either in whole or in part as a multiple unit dwelling, there shall be provided a minimum of thirty (30) square feet of unobstructed open space for each dwelling unit; such unobstructed open space may be located on the ground or on several usable roofs or balconies but shall not include space provided for off-street parking; provided however such requirement shall not apply to any structure converted from nonresidential to residential uses.

(b) *Maximum gross floor area in structures.*

- (1) *Basic maximum gross floor area.* The sum total of the gross floor area of all structures on a zone lot shall not be greater than ten (10) times the area of the zone lot on which the structures are located.
- (2) *Floor area premiums.* In addition to the basic maximum gross floor area permitted under subsection 59-223(b)(1) above, a premium of additional floor area may be constructed under the following circumstances, provided, however, that: (i) no use of the premiums described in those subsections c. through h. below, either alone or in combination with one another, shall cause the maximum gross floor area on any zone lot to be increased by more than two (2) times the size of such zone lot; and (ii) any area for which a premium has been granted pursuant to subsections a., c., d., or e. below shall continue to be occupied by the use which originally earned the premium, or by other uses that would earn at least an equal amount of premium space; and (iii) no facility that receives a premium under subsection c. or d. or e. below shall receive a premium under either of the other two (2) such subsections.
 - a. *Premium for housing.* Two (2) square feet for each square foot of housing constructed in a new building, or through conversion of all or a part of an existing

building from other uses, provided that such housing does not have a residential entrance located within two hundred (200) feet from the public right-of-way of 17th Street, or one (1) square foot for each square foot of housing constructed in a new building, or through conversion of all or a part of an existing building from other uses, if such housing has a residential entrance located within two hundred (200) feet of the public right-of-way of 17th Street.

In addition, applicants may receive floor area premiums in return for cash contributions to the housing special revenue fund (Fund/Org. No. 1150-6330) to be used to create additional housing units within the B-5, OD-2/B-5, OD-3/B-5, OD-4/B-5, B-5-T, OD-2/B-5-T, or OD-4/B-5-T zone districts. Such cash-in-lieu fee or fees shall be based on the standard that a floor area premium of two (2) square feet shall be available in return for each contribution equal to the average cost of creating one (1) additional square foot of downtown housing. The planning office is hereby granted authority:

(Ord. No. 439-07, § 10, eff. 8-20-07)

1. To adopt and to revise rules and regulations setting a cash-in-lieu fee or fees which, if contributed to such fund, would earn floor area premiums; and
2. To determine whether such fee or fees shall be based on the average cost of constructing new housing units or the average cost of creating a new housing unit through conversion of an existing building from nonresidential uses; and
3. To determine whether such fee or fees shall be based on the cost of creating new market rate housing units or new affordable housing units; and
4. To determine whether such fee or fees shall be based on a per square foot or per unit basis.

Such cash-in-lieu fee or fees shall be reviewed, and if necessary revised, at least once every three (3) years following their initial adoption. No such rule or regulation shall be effective unless and until adopted pursuant to article VI, chapter 2 of the Revised Municipal Code.

- b. *Premium for rehabilitation of a structure designated for preservation pursuant to chapter 30 of the Revised Municipal Code.* Four (4) square feet for each square foot of a structure designated for preservation pursuant to chapter 30 of the Revised Municipal Code is rehabilitated (1) to the U.S. Secretary of the Interior's standards for historic preservation, (2) to the standards of the landmark preservation commission, or (3) to the standards of the Denver Building Code.
- c. *Premium for child care facility.* Four (4) square feet for each square foot of child care facility constructed in a new building, or through conversion of all or a part of an existing building from other uses, and constructed to at least the minimum licensing standards of the department of environmental health.
- d. *Premium for residential support facility.* Four (4) square feet for each square foot of ground floor area constructed in a new building, or through conversion of all or

a part of an existing building from other uses, and occupied as a grocery store, hardware store, drug store, variety store, elementary or secondary school meeting all requirements of the compulsory education laws of the state, or similar residential support use.

- e. *Premium for pedestrian-active facility.* Four (4) square feet for each square foot of ground floor area constructed as a pedestrian-active facility within a new building or through conversion of all or a portion of an existing building from other uses, provided, however, that such ground floor area is constructed:
 - 1. Between 15th Street and 17th Street; or
 - 2. With frontage on, and with doorways allowing direct public access from, any of the following streets: 15th Street, 17th Street, Larimer Street, Curtis Street, Cleveland Place, or any street segment containing a light rail line.
- f. *Premium for supporting mass transit facilities.* Three (3) square feet for each square foot of land dedicated for a light rail station integrated into a new or existing building. An integrated station is one (1) in which the building extends over all or part of a light rail facility and the station is constructed as part of the new building or a renovation of the existing building.
- g. *Premium for outdoor art.* A floor area premium equal to twenty-five (25) percent of the zone lot area if, in connection with the construction of a new building or the renovation of an existing building at a cost of more than fifty (50) percent of the replacement cost of the existing building excluding land costs, public art costing at least (i) one (1) percent of the cost of the new building or one (1) percent of the cost of the building renovation, as reflected in approved building permits, or (ii) five hundred thousand dollars (\$500,000.00), whichever is smaller, is placed outside or on the exterior surface of such new or renovated building where it is visible from at least one (1) public street.
- h. *Premium for underground parking.* A floor area premium equal to one and one-half (1 ½) square feet for each square foot of underground parking provided under a new building, provided, however, that no premium shall be earned for the first level of underground parking.
- i. *Premium for moderately priced dwelling units.* A floor area premium equal to the zone lot area if the structure qualifies under the provisions of article IV, chapter 27 (affordable housing), provided all of said floor area premium is dedicated to residential uses.

- (3) *Transfer of undeveloped floor area.* In addition to the two (2) types of floor area permitted by sections 59-223(b)(1) and 59-223(b)(2), a certain amount of floor area may be constructed by using undeveloped floor area. Undeveloped floor area shall be created, transferred and administered as set forth in this subsection (3).
- a. *Types of undeveloped floor area.* The following types of undeveloped floor area may be transferred between zone lots after certification by the zoning administrator:
1. Undeveloped floor area from a structure designated for preservation or included in a district for preservation pursuant to chapter 30 of the Revised Municipal Code:
 - (i) Where such designation or inclusion in a district occurred after October 10, 1994; or
 - (ii) Where such designation or inclusion in a district occurred before October 10, 1994, and certificates of undeveloped floor area were issued before October 10, 1994; or
 - (iii) Where such designation or inclusion in a district occurred before October 10, 1994, and certificates of undeveloped floor area were not issued before October 10, 1994.
 2. Undeveloped floor area from a structure that (i) has received a floor area premium pursuant to section 59-223(b)(2)b., or (ii) would have received such a floor area premium if such premium had existed at the time of the rehabilitation.
- b. *Calculation of undeveloped floor area.*
1. In the case of undeveloped floor area defined in section 59-223(b)(3)a.1 above, the amount of undeveloped floor area available for transfer from each structure shall be equal to one (1) times the size of the zone lot on which such structure is located, plus the difference between (i) the gross floor area in the structure, and (ii) the maximum gross floor area permitted on the zone lot containing the structure pursuant to sections 59-223(b)(1) and 59-223(b)(2), assuming that section 59-223(b)(2) had been in effect at the time the structure was constructed.
 2. In the case of undeveloped floor area defined in section 223(3)a.2. above, the amount of undeveloped floor area that may be transferred is equal to the amount of floor area premiums that have been earned pursuant to section 59-223(b)(2)b., or that would have been earned if such premium had existed at the time of the rehabilitation.
- c. *Option to use previous system.* Notwithstanding anything to the contrary contained in this section 59-223(b)(3):
1. In the case of undeveloped floor area defined in subsection (3)a.1.ii. above, the holders of such certificates of undeveloped floor area shall have the right to use or transfer such certificates pursuant to Ordinance 63, series of 1980,

- Ordinance 224, series of 1985, or Ordinance 99, series of 1991. As an alternative, each holder of such a certificate shall have the right to exchange such certificate for a new certificate to be calculated pursuant to section 59-223(b)(3)b.1. and used or transferred pursuant to subsections 59-223(b)(3)d. through g. below by filing a written request for such exchange with the zoning administrator on or before October 19, 1995.
2. In the case of undeveloped floor area defined in section 223(3)a.1.iii. above, the owners of such property may retain the right to calculate and use or transfer undeveloped floor area pursuant to Ordinance 63, series of 1980, Ordinance 224, series of 1985, or Ordinance 99, series of 1991 by filing a complete application for a certificate of undeveloped floor area and a request for application of such ordinances on or before October 10, 1995. If the owners of such property do not submit such a filing on or before October 10, 1995, undeveloped floor area from such property shall be calculated pursuant to section 59-223(b)(3)b.1. and shall be used or transferred pursuant to subsections 59-223(b)(3)d. through g. below.
 - d. *Evidence of title.* The zoning administrator shall not issue a zoning permit with respect to the property on which floor area is to be constructed using undeveloped floor area ("receiving property") unless the owners of the receiving property furnish evidence to the zoning administrator of their title to the undeveloped floor area acquired. Such evidence may be a current title commitment, a current endorsement to a prior title policy or other acceptable evidence of title including an opinion of counsel.
 - e. *Limitation on use.* No receiving property shall be enlarged by more than six (6) times the area of the zone lot through one (1) or more applications of this procedure.
 - f. *Procedures.* Undeveloped floor area shall be administered according to the following procedures:
 1. Applications for certification of undeveloped floor area shall be submitted for a contiguous parcel of land in common ownership, by or with the written consent of the owners of the included property, in triplicate, and shall include:
 - (i) The names and signatures of all owners and security interest holders of the property included in the application;
 - (ii) The names of the owners to be designated as owners on the certificate applied for;
 - (iii) A legal description of the included property;
 - (iv) A current endorsement by a title insurance company to the owners' title policy covering such legal description or other acceptable evidence of title including an opinion of counsel;
 - (v) A survey of the included property;

- (vi) A certificate of a licensed engineer or architect as to the gross floor area of all structures to be included in the calculation of undeveloped floor area and a copy of the ordinance designating the property for preservation or including the property in a district for preservation;
 - (vii) Evidence of the maximum gross floor area permitted on the property, calculated in accordance with section 59-223(b)(3)a.1.;
 - (viii) Satisfactory evidence that each structure to be included in the calculation of undeveloped floor area is utilized by a use by right and that the exterior has been renovated or restored to the U.S. Secretary of the Interior's standards for historic preservation or to the standards of the landmark preservation commission;
 - (ix) In the case of undeveloped floor area defined in section 223(3)a.2. above, satisfactory evidence that the interior of the structure has been rehabilitated to the U.S. Secretary of the Interior's standards for historic preservation or to the standards of the landmark preservation commission; and
 - (x) Such other information as the zoning administrator may reasonably require.
2. Applications shall be filed with the zoning administrator together with a one-thousand-five-hundred-dollar filing fee. Upon filing, the zoning administrator shall deny the application if it is incomplete. If the application is complete, the zoning administrator shall forward one (1) copy to the planning board and one (1) copy to the landmark preservation commission, and promptly shall grant the application or grant the application with conditions if it complies with subsection (3)f.1., but otherwise shall deny the application. All actions of the zoning administrator in denying the application shall be without prejudice to the owners to resubmit additional applications respecting the same zone lot. If an amended application covering the same property is made within ninety (90) days after denial by the zoning administrator, no additional filing fee shall be required.
 3. If the application is granted, the zoning administrator shall issue a certificate of undeveloped floor area in the following form:

CERTIFICATE OF UNDEVELOPED AREA

(Applicants-Owners)

(Address)

having filed an application for Certification of Undeveloped Floor Area according to section 59-223(b)(3) of the Revised Municipal Code of the City and County of Denver, as amended, and the Zoning Administrator having granted such application, certifies and grants as follows:

- 1. The legal description of the property referred to in the application is:

The future development of this property is physically limited as a result of this certification.

- 2. The Applicants are hereby determined to have _____ square feet of Undeveloped Floor Area as a result of the above described property.
- 3. Subsequent transfers of Undeveloped Floor Area are subject to the provisions of section 59-223(b)(3) and shall be effectuated in the same manner as transfers of real property.

DATED: _____

CITY AND COUNTY OF DENVER

By ZONING ADMINISTRATOR

By

(STATE OF COLORADO)

City and County (of Denver) ss.

The foregoing instrument was acknowledged before me this _____ day of _____, 20_____,

by _____, Zoning Administrator of the City and County of Denver, Colorado.

Witness my hand and official seal.

My commission expires:

Notary Public

(NOTARY SEAL)

- 4. The original certificate of undeveloped floor area shall be recorded by the zoning administrator in the office of the clerk and recorder of the City and

County of Denver and State of Colorado. When the certificate has been recorded, it shall be filed with the zoning administrator. A copy of the certificate shall be given to the applicant.

5. Upon the issuance of a certificate of undeveloped floor area by the zoning administrator, undeveloped floor area shall be created and shall be an independent right in the owner to whom the certificate is issued and may be transferred. Such transfer need not be made appurtenant to another zone lot until a permit is requested using the undeveloped floor area.
 6. If the structure is partially or completely destroyed after a certificate of undeveloped floor area has been issued, no new structure shall be built exceeding the floor area of the former structure unless undeveloped floor area is acquired or through a combining of zone lots or other transfer procedures.
 7. Until such time as undeveloped floor area is made appurtenant to another zone lot, and upon the payment of a seventy-five-dollar fee, the holder of one (1) or more certificates of undeveloped floor area may surrender such certificate or certificates to the zoning administrator and request the issuance of one (1) or more replacement certificates reflecting the division of such undeveloped floor area into smaller units for transfer or the combination of such undeveloped floor area into larger units for transfer, provided that the total amount of all undeveloped floor area represented by the applicant's certificates does not exceed the total amount of undeveloped floor area represented by the surrendered certificates.
- g. *Transfer requirements.* Undeveloped floor area shall be transferred to and made appurtenant to another zone lot according to the following requirements:
1. The instrument of conveyance shall identify the undeveloped floor area transferred by amount, the zone lot creating the undeveloped floor area and certification date and be signed by both the transferor and the transferees.
 2. The instrument of conveyance shall legally describe the receiving property which shall be in the B-5, OD-2/B-5, OD-3/B-5, OD-4/B-5, B-5-T, OD-2/B-5-T, or OD-4/B-5-T zone districts.
(Ord. No. 439-07, § 11, eff. 8-20-07)
 3. No subsequent transfer of undeveloped floor area made appurtenant to another zone lot shall become effective until approved by the zoning administrator upon a finding that no construction using the undeveloped floor area has occurred, and any permit authorizing the use of undeveloped floor area has been canceled. Such approval shall be applied for by the owners of the receiving property by written application accompanied by a filing fee of one thousand five hundred dollars (\$1,500.00) and supported by all information necessary to justify approval by the zoning administrator.

(4) *Final maximum gross floor area.*

- a. Limits for designated areas. Notwithstanding sections 59-223(b)(1), (2) and (3) above, the final maximum gross floor areas that may be constructed on zone lots shall be limited as described below and shown on exhibit 1:
 1. For structures located within the area bounded by 14th Street, Colfax Avenue, Broadway Street, 18th Street, and the Market Street-Larimer Street alley:
 - (i) A floor area ratio of 17:1; or
 - (ii) If structures contain over fifty (50) percent of their gross floor area in housing uses, then a floor area ratio of 20:1.
 2. For structures located in other areas:
 - (i) A floor area ratio of 12:1; or
 - (ii) If structures contain over fifty (50) percent of their gross floor area in housing uses, then a floor area ratio of 17:1.

-  Maximum Density:
17:1 FAR
(or 20:1 FAR if structures
contain more than 50%
of gross floor area
in housing uses)

-  Maximum Density:
12:1 FAR
(or 17:1 FAR if structures
contain more than 50%
of gross floor area
in housing uses)

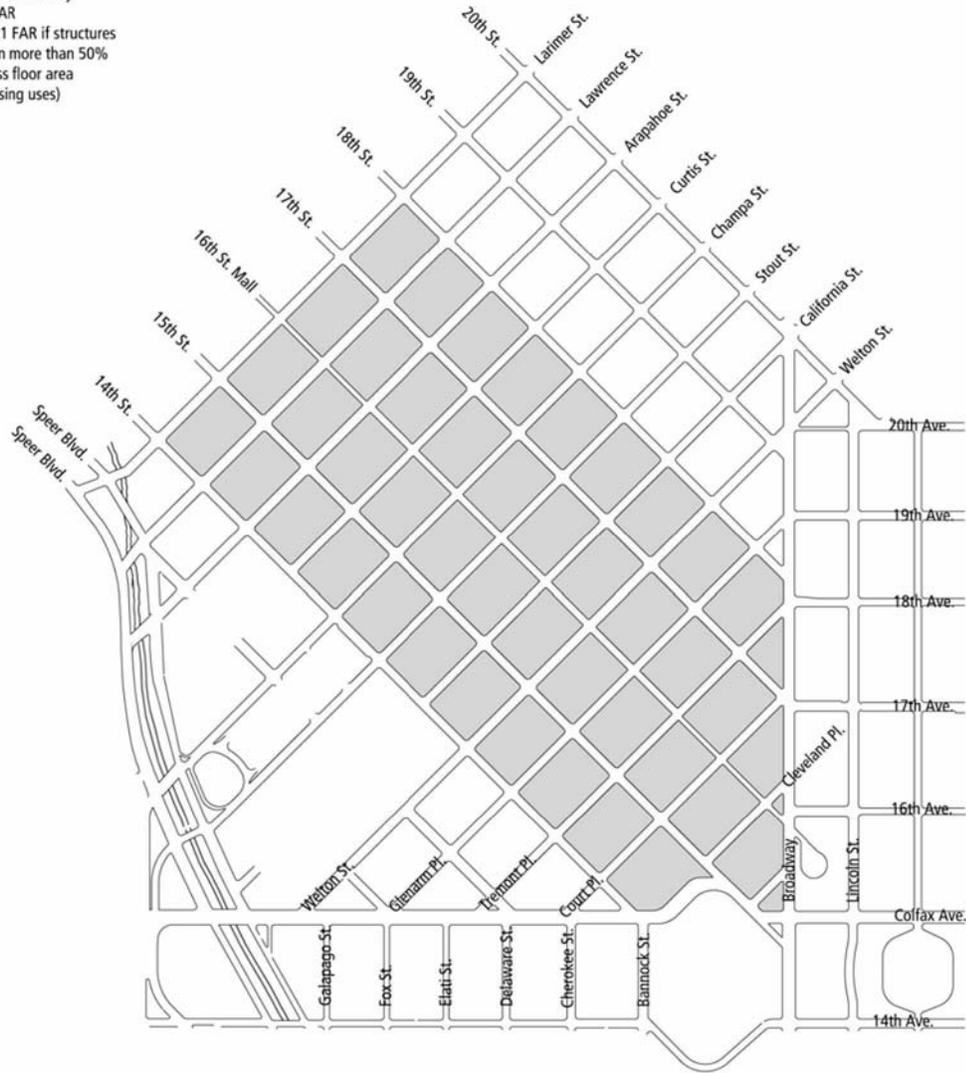


Exhibit 1



Exhibit 1

- b. *Floor area excluded from calculations.* Gross floor area occupied by pedestrian active uses located at street level and directly accessible from the public sidewalk shall be excluded from the calculation of the gross floor area of a structure or project. Any floor area so excluded from the calculation of gross floor area shall maintain clear glazing, providing visual access to the interior use, for not less than sixty (60) percent of the area of the ground floor, street facing elevations, as calculated between the finished floor and finished ceiling. Qualifying floor area shall continue to be occupied by pedestrian active retail uses and shall not be altered in such a way that the amount of glazing is reduced below the required amount. Window glazing shall be clear and shall transmit at least sixty-five (65) percent of visible daylight (visible transmittance shall be sixty-five one hundredths (.65) or greater). No interior or exterior modifications, including temporary and permanent signage, window tinting, furnishings, fixtures, equipment or stored items within three (3) feet of the windows will be allowed to reduce the effective minimum transparency standards by more than twenty-five (25) percent. Open display of individual merchandise is permitted.

(Ord. No. 720-08, § 1, eff. 12-26-08)

(Ord. No. 361-03, § 3, eff. 5-23-03)

Sec. 59-224. Permitted signs.

The provisions of article V of this chapter on permitted signs shall be in full force and effect in these districts.

(Ord. No. 361-03, § 3, eff. 5-23-03; Ord. No. 439-07, § 12, eff. 8-20-07)

Sec. 59-225. Off-street parking requirements.

Off-street parking space shall be provided in accordance with the following requirements:

- (1) The provisions of section 59-585 (use and maintenance of off-street parking space) of article VI of this chapter on off-street parking requirements shall be in full force and effect in these districts.

(Ord. No. 439-07, § 13, eff. 8-20-07)

- (2) Off-street parking spaces or structures placed in operation after October 10, 1989, shall provide the amount or number of off-street parking spaces for disabled persons as follows: For all uses other than multiple unit dwellings, the number of such parking spaces shall be one (1) percent of the number of spaces constructed; provided, however, that at least one (1) such parking space for disabled persons shall be required where twenty-five (25) or more spaces are constructed. For multiple unit dwellings off-street parking spaces for disabled persons shall be provided for one (1) percent of the dwelling units or for each dwelling unit occupied by a disabled person, whichever is the greater requirement; provided, however, that at least one (1) such parking space shall be required where fifty (50) or more spaces are constructed. Dwelling units requiring parking for disabled persons within a multiple unit dwelling shall be provided with such parking spaces at a ratio of one (1) space per dwelling unit and each such parking

space for disabled persons shall be a minimum of twelve (12) feet wide and seventeen and one-half (17 1/2) feet long or an alternative size as suggested by the PUD/PBG rules and regulations. Accessible routes, passenger loading zones and other facilities for disabled persons shall be provided according to the guidelines contained in the PUD/PBG rules and regulations for site plan review.

- (3) Bicycle parking spaces. Within the area bounded by 14th Street, Colfax Avenue, Broadway Street, 18th Street, and the Larimer Street-Market Street alley, all new parking structures shall contain at least one (1) designated bicycle parking space for each twenty (20) automobile parking spaces, provided, however, that in no event shall any new parking structure be required to contain more than fifty (50) bicycle parking spaces.

(Ord. No. 361-03, § 3, eff. 5-23-03)

Sec. 59-226. Off-street loading requirements.

The provisions of article VII of this chapter on off-street loading requirements shall be in full force and effect in these districts.

(Ord. No. 361-03, § 3, eff. 5-23-03; Ord. No. 439-07, § 14, eff. 8-20-07)

Sec. 59-227. Design requirements.

(a) *Design standards and guidelines.*

- (1) *Applicability.* All new structures and all structures that are being renovated where the renovation is valued a more than fifty (50) percent of the replacement cost of the existing structure excluding land costs, and the renovation includes alterations to the lower eighty (80) feet of the facade of the structure other than restoration of original design features with original materials, shall be subject to either:
 - a. Design standards and a design standards review process established by rules and regulations; or
 - b. Design guidelines and a design guidelines negotiation process established by rules and regulations.

Design standards and design guidelines shall be limited to those topics listed in subsection (4) below. For each element of building or project design listed in subsection (4), the applicant shall have the option of submitting proposed designs for a determination of consistency under the design standards review process or for approval under the design guidelines negotiation process. The applicant shall also have the option of submitting different design elements for determinations of consistency or for approval at different times. The design standards review process and the design guidelines negotiation procedures shall be conducted by the planning office staff. The zoning administrator shall not issue permits for use and construction until all applicable requirements have been met.

- (2) *Exclusions.* The design standards review process and the design guidelines negotiation process set forth in this section 59-227(a) shall not apply to (i) any structure that is subject to the design standards or design review procedures of the Civic Center overlay district, or (ii) any structure designated for preservation pursuant to chapter 30 of the Revised Municipal Code, or (iii) any structure in a district for preservation pursuant to chapter 30 of the Revised Municipal Code, or (iv) any facade of an existing structure that is not being altered.
- (3) *Intent.* The design standards and design guidelines are intended (i) to promote visibility of commercial activities at ground level; (ii) to provide human scale through

change, contrast, and intricacy in facade form, color and/or material where lower levels of structures face public streets and sidewalks; (iii) to spatially define the street space in order to concentrate pedestrian activity and create a clear urban character; (iv) to alleviate high wind conditions for pedestrians at the base of taller structures; (v) to encourage easy pedestrian entry and exit from structures facing the 16th Street pedestrian and transit mall and light rail stations, and (vi) to prevent significant blocking of sky exposure along the 16th Street pedestrian and transit mall.

- (4) *Design standards and design guidelines topics.* The planning office is authorized to develop design standards and design guidelines that address the following topics:
- a. For the lower thirty (30) feet of structures above street level:
 1. The percentage of the linear frontage of the structure that must be built within a short distance of property lines along public streets and sidewalks; and
 2. Requirements for direct entry doors leading onto the 16th Street pedestrian and transit mall and towards light rail stations.
 - b. For the lower eighty (80) feet of structures above street level:
 1. The percentage of glass to solid materials;
 2. The use of reflective glass; and
 3. The required use of scaling elements, insets, and projections to break up flat or monotonous facades and to respond to older structures nearby.
 - c. For all structures more than two hundred (200) feet in height: The use of building massing and stepbacks to prevent significant blocking of sky exposure along the 16th Street pedestrian and transit mall by tall buildings built very close to the right-of-way of the mall.
 - d. For all structures more than four hundred (400) feet in height: The use of massing and stepbacks to alleviate high wind conditions for pedestrians at ground level.

Each structure and multiple structure project shall be consistent with the adopted design standards for each design element listed above, or shall be approved pursuant to design guidelines negotiations for each element listed above. Design standards rules and regulations shall be specific, objective requirements related to each topic listed above. Design guidelines rules and regulations shall ensure that design elements meet the intents set forth in subsection 59-227(a)(3) and address the topics listed above while allowing more variation and architectural creativity than the design standards rules and regulations adopted pursuant to this subsection (4). No design standards or design guidelines shall be effective until adopted pursuant to section 12-18 of the Revised Municipal Code.

- (5) *Design standards review process.* The applicant may submit any or all elements of project design listed in subsection (d) above for review under the design standards review process. Design standards review and determination shall be completed by the planning office no later than fifteen (15) days after the submission of a completed

application to the zoning administrator, or the submitted design shall be considered consistent with adopted design standards. Such fifteen-day review period shall be extended by an amount of time equal to any delay caused by the applicant, and may also be extended with the applicant's consent. The design standards review process shall determine whether the project design is consistent, with the design standards adopted as rules and regulations pursuant to subsection 59-227(a)(4) and shall make a recommendation to the zoning administrator for approval, approval with conditions, or denial of the application. Any determination of consistency or inconsistency shall be in writing. If elements of the applicant's design are found to be inconsistent with such design standards, the applicant shall have the options of (i) resubmitting a new design for review pursuant to the design standards review process, (ii) submitting the existing design to the design guidelines negotiation process, or (iii) appealing the finding of inconsistency pursuant to subsection (9) below.

- (6) *Design guidelines negotiation process.* As an alternative to the design standards review process, the applicant may submit any or all elements of project design listed in subsection (4) above for review under the design guidelines negotiation process. The applicant's decision to submit design elements to the design guidelines negotiation process shall not result in the extension of design negotiations to any element of the design not presented by the applicant for review, or to any element of design that has been reviewed and found to be consistent with design standards rules and regulations on the same topic, and shall not result in the extension of design guidelines negotiations to any element of design that the applicant would not have had to address if applicant had proceeded under the design standards review process, except with the applicant's consent.

Design guidelines negotiation and determination shall be completed no later than forty-five (45) days after the submission of a completed application to the zoning administrator, or the submitted design shall be considered consistent with the intents set forth in subsection 59-227(a)(3). Such forty-five-day review period shall be extended by an amount of time equal to any delay caused by the applicant, and may also be extended with the applicant's consent. At the applicant's request, the planning office shall issue a denial of the applicant's application no later than fifteen (15) days after the submission of a completed application to the zoning administrator. The design guidelines negotiation determination shall be in writing and shall recommend either approval, approval with conditions consistent with the intent set forth in subsection 59-227(a)(3), or denial of the application.

- (7) *Downtown design review appeals committee.* A five-member downtown design review appeals committee shall be appointed by the mayor, shall be convened as required, and shall be made up of an at large city council member plus one (1) representative with experience in architectural, urban design or development issues nominated by each of the following organizations: (1) the Downtown Denver Partnership, (2) the Downtown Denver Business Improvement district, (3) the Denver Chapter of the American Institute of Architects, and (4) Historic Denver, Inc.

Members of the committee shall be appointed for terms of three (3) years each. The committee shall elect a chairperson and such officers as it may require. No official

business of the committee shall be conducted unless a quorum of not less than three (3) members is present. The concurring vote of at least three (3) members of the committee is necessary to constitute an official act of the committee. The committee may adopt any rules and regulations for the conduct of its business that are not inconsistent with this chapter.

- (8) *Amendments.* No amendments to the list of design standards and design guidelines topics listed in subsection (4) above, or to the review or negotiation processes set forth in subsections (5) or (6) above, or to any related rules and regulations may be approved until (1) the proposed amendments have been reviewed by the downtown design review appeals committee and such committee has forwarded its comments to the planning board, and (2) the planning board has complied with all requirements of article VI, chapter 2 of the Revised Municipal Code concerning notice and public hearing.
- (9) *Appeals.* Any decision of the planning office pursuant to subsections 59-227(a)(5) or (6) above may be appealed to the downtown design review appeals committee. The applicant shall initiate such appeals process by delivering written notice of appeal to the zoning administrator identifying the design review decision or decisions that it wishes to appeal, within thirty (30) days after the date of such decision. The applicant and the director of planning, or their representatives, shall have the right to attend and address meetings of the committee concerning the proposed project and the appeal. The committee shall consider all information regarding the proposed project that it deems relevant and shall make a recommendation to the zoning administrator regarding the appeal within thirty (30) days after the zoning administrator receives the applicant's notice of appeal. The recommendation of the committee shall be mailed to the applicant and delivered to the zoning administrator.
- (10) *Modifications.* If it becomes impossible or impractical to complete construction of a structure or a multiple structure project substantially in accordance with design consistency determinations or negotiated approvals obtained pursuant to sections 59-227(a)(5) or (6) above, the owner of such structure or project shall notify the zoning administrator of such impossibility or impracticality and shall submit to the zoning administrator an alternative design that is as close as reasonably possible to the consistent or approved design. The zoning administrator shall promptly refer such proposed alternative design to the planning office staff. The planning office shall treat such referral as an application for approval under the design standards review process and shall review and respond in the time period set forth in section 59-227(a)(5). If any or all elements of the proposed alternative design do not comply with such rules and regulations, the planning office shall treat any noncomplying aspects of the proposed alternative design as if they had been submitted to the design guidelines negotiation process and shall review and respond to such aspects of the design within the time period specified in section 59-227(a)(6). Decisions of the planning office staff pursuant to this section 59-227(a)(10) may be appealed as set forth in section 59-227(a)(9).

- (11) *Vesting of approvals.* Approvals granted pursuant to this section 59-227(a) shall become vested rights in accordance with the following provisions:
- a. If an application is submitted by or on behalf of a landowner for design standards review of some or all design elements, and it is determined that the design elements are consistent with adopted design standards, whether by (a) a planning office determination of consistency, (b) failure of the planning office to respond within the required time frame, (c) a downtown design review appeals committee determination of consistency, or (d) a successful appeal of such committee's determination of inconsistency; or
 - b. If an application is submitted by or on behalf of a landowner for design guidelines negotiations on some or all design elements, and some or all of the design aspects of a structure or a multiple structure project receive approval, whether by (a) an approval by the planning office, (b) failure of the planning office to respond within the required time frame, (c) an approval by the downtown design review appeals committee, or (d) a successful appeal of such committee's denial; then
 - c. The determination of consistency or approval of such design elements shall constitute a site specific development plan, as defined in section 24-68-102(4) of the Colorado Revised Statutes, and shall be deemed to be a vested property right of the landowner, its successors and assigns, pursuant to section 24-68-101 et seq. of the Colorado Revised Statutes. The determination of consistency or approval, and the fact of the site specific development plan approval and the vested property right creation shall be promptly described in and documented by a certificate prepared, dated as of the final determination of consistency or approval, and executed by the zoning administrator. The property right shall vest ninety (90) days after the recording and publication of the certificate, as described below, and the certificate shall so state. Thereafter, the landowner, its successors and assigns, shall be permitted to implement the consistent or approved design aspect or aspects of the structure, and shall receive all permits and approvals related to such consistent or approved design aspects in accordance with this section 59-227(a)(11).
 - d. The certificate advising the general public of the site specific development plan approval and the creation of a vested property right shall be recorded in the office of the clerk and recorder, and shall be published by the zoning administrator, at the expense of the landowner, within fourteen (14) days after the date of the certificate. In addition, a notice of the approval of a vested right shall be posted on the applicant's property within fourteen (14) days after the date of the certificate, and shall remain on such property for at least fourteen (14) days. The landowner shall be entitled to all of the rights of vested property right holders set forth in section 24-68-101 et seq. of the Colorado Revised Statutes. The approval represented by the certificate shall remain vested for a period of three (3) years. Upon good cause shown, the planning office may extend the duration of the

approval for additional periods of three (3) years each, and each such extension shall be certified, recorded and published in the same manner as the original establishment of the vested property right.

(b) *Exposure to the sky.* In order to allow reasonable levels of natural light to reach street level, while also promoting strong definition of the street space, all new structures located on zone lots containing more than fifteen thousand (15,000) square feet shall provide at least fifteen (15) percent sky exposure as measured from each adjacent public street on which the zone lot has greater than one hundred fifty (150) linear feet of frontage. All sky exposure measurements shall be calculated using a Waldram diagram.

(Ord. No. 150-08, § 1, eff. 3-28-08)

(c) *Ground floors of parking structures.* Each primary use or accessory use parking structure constructed after October 10, 1994, or renovated after October 10, 1994, at a cost of more than fifty (50) percent of the replacement cost of the existing structure excluding land costs, and which parking structure is located:

- (1) Between 15th Street and 17th Street; or
- (2) With frontage on 15th Street, 17th Street, Larimer Street, Curtis Street, or Cleveland Place, or any street segment containing a light rail line; shall either (1) have all ground floor frontages within thirty (30) feet of a public street or a pedestrian and transit mall occupied by pedestrian-active uses, or (2) have driving aisles, ceiling heights, utility layouts, and structural openings designed to be consistent with future occupancy of the ground floor street frontage by pedestrian-active uses, unless such requirements are inconsistent with the structural layout of existing structures being converted to parking uses.

(Ord. No. 361-03, § 3, eff. 5-23-03)

Secs. 59-228—59-230. Reserved.