

ORDINANCE NO. 2, 1996  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AMENDING CERTAIN CRITERIA CONTAINED IN SECTION 29-526  
OF THE CITY CODE, WHICH CRITERIA PERTAIN TO THE REVIEW OF PROPOSED  
RESIDENTIAL USES UNDER THE LAND DEVELOPMENT GUIDANCE SYSTEM

WHEREAS, the City of Fort Collins, as a home-rule municipality, is authorized by Article XX, Section 6 of the Colorado Constitution, the provisions of State statute and its City Charter to develop and implement policies and ordinances regulating the development of property within the City; and

WHEREAS, the City has previously adopted various elements of its Comprehensive Plan, as well as various sections of its City Code pertaining to the zoning and development of property, including the Land Development Guidance System (the "LDGS"); and

WHEREAS, on August 2, 1994, the Council adopted Ordinance No. 114, 1994, making certain changes to the LDGS, including changes to Activity Chart H, "Residential Uses," which changes were determined by the Council to be necessary as interim measures, pending the development of a proposed long-term capital improvement plan, as well as any recommended amendments to the City's Comprehensive Plan and/or LDGS as might thereafter be made by the Council; and

WHEREAS, on March 3, 1995, the City issued a Request for Proposals outlining a multi-phase land use planning process and soliciting proposals from outside consultants to work with City staff in developing a new Comprehensive Plan for the City, to be known as the "City Plan," which would serve to integrate the various elements of the City's Comprehensive Plan and allow for individual land use proposals to be evaluated by the City within an improved, overall planning context, rather than on a site-specific basis; and

WHEREAS, on or about July 5, 1995, the City entered into a contract (the "Contract") with Balloffet and Associates ("the Consultants") to provide such consulting services to the City; and

WHEREAS, the work to be performed under the Contract has been undertaken by the Consultants and City staff, and the completion of said work, including the adoption of certain ordinances implementing the recommendations contained in the City Plan, is expected to occur no later than July 31, 1997 ; and

WHEREAS, on December 5, 1995, the City Council amended Ordinance No. 114, 1994, by the adoption of Ordinance No. 161, 1995, so as to extend the effective date of Ordinance No. 114, 1994, and so as to add certain additional "phasing criteria" to remain in effect pending the completion of the City Plan; and

WHEREAS, the Council has determined that Activity Chart H, "Residential Uses" of the LDGS should be amended pending the completion and implementation of the "City Plan," to better protect against the risk of fringe development that is not adequately supported by existing services

urban sprawl, and development that may be inconsistent with the regulations that emerge from the City Plan process; and

WHEREAS, the foregoing objectives can best be achieved by: (1) terminating the awarding of points under the LDGS for proximity to shopping centers, parks and community facilities not constructed; (2) ensuring that points be awarded for proximity only to child care centers and major employment centers that are existing or are to be promptly constructed as part of the approved project; and (3) amending the LDGS Activity H, "Residential Uses" point chart so that, in order to earn approval by the City, projects must earn at least 40 "base points" under said Chart; and

WHEREAS, the Council has further determined that the construction of affordable housing is a pressing community need that must be balanced against the foregoing concern about fringe development, and that this balance can best be taken into consideration in the review of particular development proposals under the above-referenced Activity Chart II by modifying the system for awarding points for "affordable housing" so as to allow fifteen (15) points to be awarded under "base point" criteria for qualifying affordable housing project, with an additional fifteen (15) points to also be available as "bonus points"; and

WHEREAS, the amendments referred to above were presented to and reviewed by the Planning and Zoning Board (the "Board") at a public hearing on January 22, 1996, and the Council has received and considered the Board's recommendation with regard to the same; and

WHEREAS, the Council has further determined that, until City Plan has been implemented, preliminary planned unit development plans approved after the effective date of this Ordinance should be valid for a period of one (1) year; that no preliminary planned unit development plan (whenever approved) should be extended after the effective date of this ordinance.

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

Section 1. That Section 29-526(D)(2), Activity Chart H, "Residential Uses" Density Chart, is hereby amended to read as provided on Exhibit "A" attached hereto and incorporated herein by this reference.

Section 2. That Section 29-526(D)(2), Activity Chart H, "Residential Uses:, Criteria 2 is hereby amended to read as follows:

2.	DOES THE PROJECT EARN AT LEAST 40 PERCENTAGE POINTS AS CALCULATED ON THE FOLLOWING "DENSITY CHART H" FROM BASE POINTS?	YES	NO	N/A
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Section 3. That the definition of "major employment center" as contained in Section 29-1 and in Appendix D of Section 29-526, is hereby amended to read as follows:

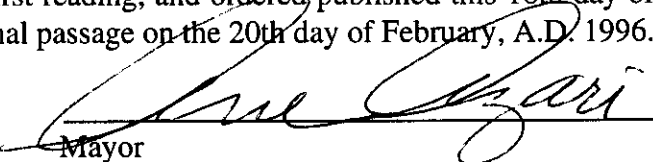
**Major employment center** shall mean any building, any office or business park, or any combination of two or more adjacent shopping centers, which provides employment for more than one hundred (100) full-time employees during a single eight-hour shift.

Section 4. That the amendments contained in Sections 1, 2 and 3 of this ordinance shall apply to all planned unit development applications for preliminary approval filed with the City on or after the effective date of this ordinance, as well as all applications for final approval of such planned unit developments; provided, however, that said amendments shall not apply to planned unit development applications for any property for which an Application for a Determination of Vested Rights has been granted under the provisions of the "Vested Rights Determination Procedure" as contained on Exhibit "B", attached hereto and incorporated herein by this reference.

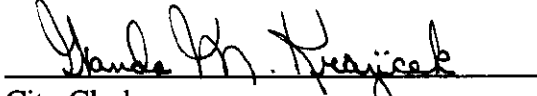
Section 5. That notwithstanding any provision of Section 29-526(H)(2) to the contrary, all planned unit development applications filed with the City after the effective date of this Ordinance and subsequently approved by the City shall remain in effect for a maximum period of one (1) year unless a final plan covering all or part of the development has been filed with the City within said period of time. Additionally, with respect to any planned unit development that received preliminary approval prior to or after the effective date of this Ordinance, neither the Director of Planning nor the Planning and Zoning Board shall grant any extension of the period of time within which a final plan must be filed for such development under Section 29-526(H)(2).

Section 6. That the amendments to Section 29-526 contained in Sections 1 and 2 of this Ordinance and the provisions contained in Section 5 of this Ordinance are temporary in nature and are intended to be replaced by subsequent legislative enactment. Accordingly, said amendments shall become null and void as of July 31, 1997.

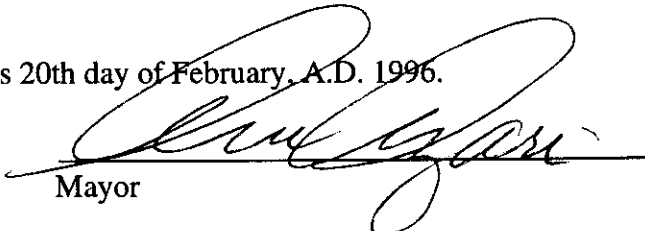
Introduced, considered favorably on first reading, and ordered published this 16th day of January, A.D. 1996, and to be presented for final passage on the 20th day of February, A.D. 1996.

  
Mayor

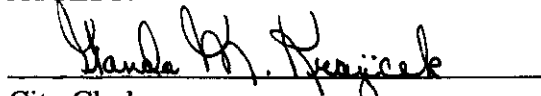
ATTEST:

  
City Clerk

Passed and adopted on final reading this 20th day of February, A.D. 1996.

  
Mayor

ATTEST:

  
City Clerk

**EXHIBIT "A"**

**DENSITY CHART**

Criterion		Maximum Credit	Earned Credit
<b>B</b>	<b>a</b>	2000 feet of an existing neighborhood service center; or a neighborhood service center to be constructed as a part of the project. (If the project is proposed to be constructed in multiple phases, such neighborhood service center must be constructed as a part of the phase for which approval is sought.)	20%
	<b>b</b>	650 feet of an existing transit stop (applicable only to projects having a density of at least six [6] dwelling units per acre on a gross acreage basis)	20%
	<b>c</b>	4000 feet of an existing community/regional shopping center, or a community/regional shopping center to be constructed as a part of the project. (If the project is proposed to be constructed in multiple phases, such community/regional shopping center must be constructed as a part of the phase for which approval is sought.)	10%
<b>A</b>	<b>d</b>	3500 feet of an existing neighborhood or community park, or a community facility (EXCEPT GOLF COURSES); or	20%
		3500 feet of a publicly owned, but not developed, neighborhood or community park, or community facility (EXCEPT GOLF COURSES) or	10%
		3500 feet of a publicly owned golf course, whether developed or not	10%
<b>S</b>	<b>e</b>	2500 feet of an existing school, meeting all requirements of the State of Colorado compulsory education laws	10%
	<b>f</b>	3000 feet of an existing major employment center, or a major employment center to be constructed as a part of the project. (If the project is proposed to be constructed in multiple phases, such major employment center must be constructed as a part of the phase for which approval is sought.) No building, office or business park, or shopping center which has served as the basis for the claiming of credit under any other "base" criteria of this Density Chart can also be used as the basis for claiming credit under this criterion.	20%
<b>E</b>	<b>g</b>	1000 feet of an existing child care center, or a child care center to be constructed as a part of the project. (If the project is proposed to be constructed in multiple phases, such child care center must be constructed as a part of the phase for which approval is sought.)	5%
	<b>h</b>	"North Fort Collins"	20%
	<b>i</b>	The Central Business District	20%
	<b>j</b>	A project whose boundary is contiguous to existing urban development. Credit may be earned as follows:  0% For projects whose property boundary has 0 - 10% contiguity; 10 - 15% For projects whose property boundary has 10 - 20% contiguity; 15 - 20% For projects whose property boundary has 20 - 30% contiguity; 20 - 25% For projects whose property boundary has 30 - 40% contiguity; 25 - 30% For projects whose property boundary has 40 - 50% contiguity.	30%
	<b>k</b>	If the project contains dwelling units set aside for individuals earning 80% or less of the median income of City residents, as adjusted for family size, and paying less than 30% of their gross income for housing, including utilities ("Affordable Dwelling Units"), calculate the percentage of Affordable Dwelling Units to the total number of dwelling units in the project and enter that percentage, up to a maximum of 15%. (If the project is proposed to be constructed in multiple phases, the Affordable Dwelling Units must be constructed as a part of the phase for which approval is sought.) In order to insure that the Affordable Dwelling Units remain affordable for a period of not less than 25 years, the developer shall record such protective covenants as may be required by the City under Sec. 29-526(J)(4).	15%

Criterion		Maximum Credit	Earned Credit
B  O  N  U  S	<b>l</b>	If it can be demonstrated that the project will reduce non-renewable energy usage either through the application of alternative energy systems or through committed energy conservation measures beyond those normally required by City Code, a 5% bonus may be earned for every 5% reduction in energy use.	
	<b>m</b>	Calculate a 1% bonus for every 50 acres included in the project.	
	<b>n</b>	Calculate the percentage of the total acres in the project that are devoted to recreational use. Enter ½ of that percentage as a bonus.	
	<b>o</b>	If the applicant commits to preserving permanent off-site open space that meets the City's minimum requirements, calculate the percentage of this open space acreage to the total development acreage and enter this percentage as a bonus.	
	<b>p</b>	If part of the total development budget is to be spent on neighborhood public transit facilities which are not required by City Code, enter a 2% bonus for every \$100 per dwelling unit invested.	
	<b>q</b>	If part of the total development budget is to be spent on neighborhood facilities and services which are not otherwise required by City Code, enter a 1% bonus for every \$100 per dwelling unit invested.	
	<b>r</b>	If the project contains dwelling units set aside for individuals earning 80% or less of the median income of City residents, as adjusted for family size, and paying less than 30% of their gross income for housing, including utilities ("Affordable Dwelling Units"), calculate the percentage of Affordable Dwelling Units to the total number of dwelling units in the project and enter that percentage as a bonus, up to a maximum of 15%. (If the project is proposed to be constructed in multiple phases, the Affordable Dwelling Units must be constructed as a part of the phase for which approval is sought.) In order to insure that the Affordable Dwelling Units remain affordable for a period of not less than 25 years, the developer shall record such protective covenants as may be required by the City under Sec. 29-526(J)(4).	
	<b>s</b>	If a commitment is being made to develop a specified percentage of the total number of dwelling units for Type "A" and Type "B" handicapped housing as defined by the City of Fort Collins, calculate the bonus as follows:  Type "A" $.5 \times \frac{\text{Type "A" Units}}{\text{Total Units}}$  Type "B" $1.0 \times \frac{\text{Type "B" Units}}{\text{Total Units}}$  In no case shall the combined bonus be greater than 30%	
	<b>t</b>	If the site or adjacent property contains a historic building or place, a bonus may be earned for the following:  3%     For preventing or mitigating outside influences adverse to its preservation (e.g. environmental, land use, aesthetic, economic and social factors); 3%     For assuring that new structures will be in keeping with the character of the building or place, while avoiding total units; 3%     For proposing adaptive use of the building or place that will lead to its continuance, preservation and improvement in an appropriate manner	
	<b>u</b>	If a portion or all of the required parking in the multiple family project is provided underground, within the building, or in an elevated parking structure as an accessory use to the primary structure, a bonus may be earned as follows:  9%     For providing 75% or more of the parking in a structure; 6%     For providing 50 - 74% of the parking in a structure; 3%     For providing 25 - 49% of the parking in a structure.	
<b>v</b>	If a commitment is being made to provide approved automatic fire extinguishing systems for the dwelling units, enter a bonus of 10%		
<b>w</b>	If the applicant commits to providing adequate, safe and convenient pedestrian and bicycle connections between the project and any of the destination points described below, calculate the bonus as follows:  5%     For connecting to the nearest existing City sidewalk and bicycle path/lane; 5%     For connecting to any existing public school, park and transit stop within the distances as defined in this Density Chart; 5%     For connecting to an existing City bicycle trail which is adjacent to or traverses the project.		
		<b>TOTAL</b>	

## **EXHIBIT "B"**

### **VESTED RIGHTS DETERMINATION PROCEDURE**

#### **Section 1. ADMINISTRATIVE PROCESS/ HEARING OFFICER.**

There is hereby established the following Vested Rights Determination Procedure for the purpose of identifying certain parcels of real property in the City that should be made exempt, or partially exempt, from the application of Sections 1, 2 and 3 of Ordinance No. 2, 1996 (the "Ordinance"). Any person holding title to real property in the City, or any developer of such property, who claims that certain development rights have vested with regard to such property prior to the effective date of the Ordinance, may seek a Determination of Vested Rights in accordance with the procedures described below. Such persons will be provided an opportunity for a public hearing, the right to present and rebut evidence, a formal record and an impartial Hearing Officer in accordance with the following procedures. Said Hearing Officer shall be selected and appointed by the City Manager and shall be an attorney licensed to practice law in the State of Colorado with experience in land use matters. Subject to the procedures hereinafter provided, the Hearing Officer shall issue formal findings of fact, conclusions of law, and a Determination of Vested Rights. The claims shall be reviewed according to the following procedure:

#### **Section 2. APPLICATION.**

An Application for Determination of Vested Rights shall be submitted to the Director of Community Planning and Environmental Services (the "Director") in the form established by the Director. An application fee in the amount of Five Thousand Dollars (\$5,000.00) shall accompany and be part of the application. The application shall, at a minimum, include:

- The name, address and telephone number of the property owner and authorized applicant if other than the owner;
- The street address, legal description and acreage of the property; and
- All factual information and knowledge reasonably available to the owner and applicant to address the criteria established in Section 8.

The application fee shall be applied to all out-of-pocket expenses actually incurred by the City in connection with the hearing process, including without limitation fees for, and expenses incurred by, the Hearing Officer; costs of reporting and transcribing the proceedings before the Hearing Officer; and costs of producing of exhibits. The application fee shall not be applied to any in-house costs incurred by the City, such

as compensation for City staff time. Any portion of the application fee not used by the City to pay the costs referred to above shall forthwith be returned to the applicant upon completion of the hearing and appeal process.

**Section 3. DETERMINATION OF COMPLETENESS.**

After receipt of an Application for Determination of Vested Rights, the Director shall determine whether the application submitted is complete. If he or she determines that the application is not complete, the Director shall notify the applicant in writing of the deficiencies. The Director shall take no further steps to process the application until the deficiencies have been remedied.

**Section 4. REVIEW AND DETERMINATION OR RECOMMENDATION BY DIRECTOR AND CITY ATTORNEY.**

After receipt of a completed Application for Determination of Vested Rights, the Director and the City Attorney shall review and evaluate the application in light of all of the criteria in Section 8. Based on the review and evaluation, the Director and the City Attorney shall prepare a written recommendation to the Hearing Office that the application should be denied, granted or granted with conditions by the Hearing Officer. Such recommendation shall include findings of fact for each of the criteria established in Section 8 to the extent that the information is presented or obtained or inclusion is feasible or applicable.

If the Director and the City Attorney agree, based on the review and evaluation, that the Application for Determination of Vested Rights clearly should be granted or granted with conditions, then they may enter into a written Stipulated Determination of Vested Rights with the applicant, in lieu of the written recommendation to the Hearing Officer and the provisions in Sections 5, 6, and 7. Any such Stipulated Determination shall be in writing, signed by the City Manager, the City Attorney and the applicant, and shall be approved by the City Council by resolution. Said Stipulated Determination shall include findings of fact and conclusions of law based on the criteria established in Section 8, and the determination granting or granting with conditions, in whole or in part, the vested rights. In the event that a proposed Stipulated Determination is rejected by the City Council, it shall be referred to the Hearing Officer for a hearing and Determination of Vested Rights in accordance with the procedures described in Sections 5 through 8 below.

**Section 5. REVIEW AND DETERMINATION OF VESTED RIGHTS DETERMINATION BY HEARING OFFICER.**

Upon receipt by the Hearing Officer of the Application for Determination of Vested Rights and the written recommendation of the Director and the City Attorney, the

Hearing Officer shall hold a public hearing on the application. Notice of the hearing shall be given by the City in accordance with the provisions of Section 29-526(F)(4) of the City Code. At the hearing, the Hearing Officer shall take evidence and sworn testimony in regard to the criteria set forth in Section 8, and shall follow such rules of procedure as may be established by the Director. The parties before the Hearing Officer shall include the City, the applicant, and any person to whom or organization to which the City mailed notice of the hearing. Testimony shall be limited to the matters directly relating to the standards set forth in Section 8. The City Attorney shall represent the City, shall attend the public hearing, and shall offer such evidence as is relevant to the proceedings. The other parties to the proceedings, or their authorized agents, may offer such evidence at the public hearing as is relevant to the proceedings and criteria. The order of presentation before the Hearing Officer at the public hearing shall be as follows: (1) The City's summary of the application, written recommendation, witnesses and other evidence; (2) the applicant's, witnesses and evidence; (3) other parties' witnesses and evidence; and (4) City rebuttal, if any.

**Section 6. ISSUANCE OF VESTED RIGHTS DETERMINATION BY HEARING OFFICER.**

Within thirty (30) working days after the completion of the public hearing under Section 5, the Hearing Officer shall consider the Application for Determination of Vested Rights, the recommendation of the Director and the City Attorney, and the evidence and testimony presented at the public hearing, in light of all of the criteria set forth in Section 8, and shall deny, grant, or grant with conditions the Application for Determination of Vested Rights for the property or properties at issue. The determination shall be in writing and shall include findings of fact for each of the applicable criteria established in Section 8, conclusions of law for each of such criteria, and a determination denying, granting, or granting with conditions, in whole or in part, the vested rights.

**Section 7. APPEAL TO THE CITY COUNCIL.**

Within thirty (30) days after issuance of the Hearing Officer's written determination of vested rights, the City Attorney, the Director, the applicant, its authorized attorney or agent, or any resident of the City who appeared at the public hearing before the Hearing Officer may appeal the determination of vested rights of the Hearing Officer to the City Council by filing a written notice of appeal with the City Clerk. A One Hundred Dollar (\$100.00) fee shall be paid for the application and processing of any such appeal except an appeal filed by the City Attorney or the Director. The appeal shall be determined by the City Council at a hearing based solely upon the record of the proceedings before the Hearing Officer. The City Council shall adopt the Hearing Officer's determination of vested rights, with or without modifications or conditions, or reject the Hearing Officer's determination of vested rights. Such determination shall be based upon the criteria established in Section 8.



**Section 8. CRITERIA FOR VESTED RIGHTS.**

This section is intended to strictly adhere to and implement existing Colorado case law and statutory law as they relate to the doctrine of vested rights and equitable estoppel as applied to a home rule municipality exercising its authority and powers in land use planning, zoning, the provisions of adequate public facilities concurrent with the development (concurrency), subdivision, site development, land development regulations, and related matters. It is the express intent of the City to require application of the provisions of the Ordinance to as much development and property in the City as is legally possible without violating the legally vested rights which the owner may have obtained in accordance with Colorado common law and statutory law. The criteria herein provided shall be considered in rendering a vested rights determination hereunder. It is intended that each case be decided on a case by case factual analysis. An applicant shall be entitled to a positive Determination of Vested Rights only if such applicant demonstrates, by clear and convincing evidence, entitlement to complete his or her development without regard to the otherwise applicable provisions of the Ordinance by reason of: (a) the provisions of Title 24, Article 68, C.R.S.; (b) Section 29-512, et. seq., of the City Code or; (c) the existence of all three of the following requirements:

1. some authorized act of the City;
2. reasonable good faith reliance upon such act by the applicant; and
3. such a substantial change in position or expenditure by the applicant that it would be highly inequitable and unjust to destroy the rights acquired.