

<p>Fort Collins Municipal Court 215 N. Mason Fort Collins, CO 80521 (970) 221-6800</p> <hr/> <p>Plaintiffs: Erik Sutherland and Brian Dwyer</p> <p>v.</p> <p>Defendants: THE CITY COUNCIL OF THE CITY OF FORT COLLINS, the governing body of a Colorado Municipal corporation; and THE ADMINISTRATION BRANCH OF THE CITY OF FORT COLLINS, by and through its City Manager, Darin Atteberry</p> <p>Intervenor: Next Chapter Properties, LLC, an Illinois limited liability company.</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Jeffrey B. Cullers, No. 41969 Herms & Herrera, LLC Attorneys for Next Chapter Properties, LLC 3600 S. College Ave., Suite 204 Fort Collins, CO 80525 Phone Number: 970-498-9999 Fax Number: 970-472-5365 E-Mail: jeff@hhlawoffice.com</p>	<p>Case Number: 2018civil01</p>
<p>NEXT CHAPTER PROPERTIES, LLC's ANSWER BRIEF</p>	

Comes now Next Chapter Properties, LLC, (“Next Chapter”), by and through its attorney Jeffrey Cullers of the law firm Herms & Herrera, LLC, and submits this Answer Brief as follows:

I. INTRODUCTION

Next Chapter intervened in this lawsuit because it is the owner of the development project at issue. The project is known as the Johnson Drive Apartments, a student-oriented

housing development near Colorado State University. For the reasons stated herein, Next Chapter prays that the Court render judgment forthwith against Plaintiffs on all claims.

II. RULE 106 ARGUMENTS

Plaintiffs' Opening Brief appears to allege two varieties of claims. Plaintiffs clearly bring claims under C.R.C.P. 106 ("Rule 106"), but also reference the Uniform Declaratory Judgments Law, codified at C.R.S. § 13-51-101 *et seq.* and C.R.C.P. 57. Plaintiffs identify claims 1 and 2 as brought under C.R.C.P. 106. For the reasons stated herein, Plaintiffs' Rule 106 claims fail.

A. Rule 106 Burden of Proof and Standard of Review.

Plaintiffs' claims 1 and 2 seek judicial review of action taken by the Fort Collins City Council, specifically the decision to uphold the Planning and Zoning Board's approval of the Johnson Drive Apartments Project Development Plan (the "Project"). Plaintiffs' substantive arguments appear to begin on Page 7 of the Opening Brief. Plaintiffs make certain unsubstantiated pronouncements regarding the burden of proof during the land use review process. *See* Opening Brief, at 7-8. However, Plaintiff's opinions on the proper procedure and burden of proof in the context of the land use review process are not relevant. The Court has previously recognized that pursuant to Rule 106(a)(4)(I), such judicial review is "limited to a determination of whether the body [the Fort Collins City Council] has exceeded its jurisdiction or abused its discretion." *See* Order Amending Schedule for Certification and Filing of Record and for Filing of Briefs.

When a court reviews government proceedings under Rule 106(a)(4), such proceedings "are accorded a presumption of validity and regularity, and all reasonable doubts as to the

correctness of the governmental body's rulings must be resolved in its favor. The burden is on the party challenging a governmental body's action to overcome the presumption that the government's acts were proper.” *See, e.g., Kruse v. Town of Castle Rock*, 192 P.3d 591, 601 (Colo. App. 2008) (internal citations omitted). Thus, contrary to Plaintiffs’ assertions, Plaintiffs carry the burden when challenging government action under Rule 106(a)(4).

Plaintiffs do not appear to contend that the Fort Collins City Council exceeded its jurisdiction in approving the Project; instead, Plaintiffs appear to focus their arguments on abuse of discretion. *See*, Opening Brief, at 5 (top of page), 9, and 10. As described by the Colorado Supreme Court:

Abuse of discretion means that the decision under review is not reasonably supported by any competent evidence in the record. A record lacking any competent evidence means that the ultimate decision of the administrative body is so devoid of evidentiary support that it can only be explained as an arbitrary and capricious exercise of authority. *Widder v. Durango School Dist. No. 9-R*, 85 P.3d 518, 526 (Colo. 2004).

The reviewing court may not weigh evidence or substitute its own judgment. *See, e.g., Board of County Com'rs of Routt County v. O'Dell*, 920 P.2d 48, 50-581 (Colo. 1996).

B. Plaintiffs’ Rule 106 Arguments Regarding the Trash Enclosure are Unconvincing.

1. Plaintiff’s argument.

Plaintiffs’ argument regarding the trash enclosure can be summarized as the following series of premises, followed by a conclusion: (1) the Land Use Code § 3.2.5(A) states the purpose of the trash enclosure regulations, which includes compatibility with surrounding areas; (2) the Planning and Zoning Board approved of the Project with no more than a basic footprint for the trash enclosure before it; (3) doing so was an abuse of discretion because the Board could not have properly evaluated compatibility, hence noncompliance with Land Use Code § 3.2.5(A)

and § 2.4.2(H)¹; (4) City Council did not agree with Plaintiffs’ argument. Conclusion: City Council abused its discretion by discounting Plaintiffs’ argument.

2. The Planning and Zoning Board properly approved of the Project with conditions.

Next Chapter disagrees with Plaintiffs’ position that the Planning and Zoning Board actually “approved” the incomplete trash enclosure proposal. Specifically, the Planning and Zoning Board approved the Project *on the condition* that no later than final plan approval, Next Chapter must submit a detailed trash and recycling enclosure design in compliance with Land Use Code § 3.2.5 and submit materials samples and colors in compliance with Land Use Code § 3.10.5(c). *See* Record A, Item 1, Part 7, Verbatim Transcript, internal page numbers 20-22. Land Use Code § 3.2.5 provides detailed regulations regarding trash and recycling enclosures and § 3.10.5 provides requirements on exterior materials. *See* Record H, Land Use Code §§ 3.2.5, 3.10.5. Essentially, the Planning and Zoning Board approved of the Project *on the condition that* Next Chapter submit additional materials demonstrating compliance with two specific provisions of the Land Use Code concerning the trash enclosure.

The conditional approval is proper under the Land Use Code. As mentioned by Plaintiffs, the applicable review process for the Project is laid out in Land Use Code § 2.4.2. *See* Appendix, Land Use Code § 2.4.2. Land Use Code § 2.4.2 indicates which of the Land Use Code’s “Common Development Review Procedures for Development Applications” (codified at Article 2.2) apply. *See id.* Among the applicable steps are Step 5 (Staff Report), and Step 9 (Conditions

¹ This Section is not part of the record submitted to the Court. However, the entire Land Use Code is a matter of public record available at https://library.municode.com/co/fort_collins/codes/land_use. This section and others are attached as an appendix for the Court’s convenience. It states the Project Development Plan Review Procedures. Plaintiffs cite Step 8, which simply provides that a project development plan comply with, *inter alia*, Article 3 (which includes the trash enclosure provisions).

of Approval). *See id* §§ 2.4.2(E), (I). Turning to the “Staff Report” step indicates that staff may recommend “conditions for approval ... to eliminate any areas of non-compliance...” *See* Appendix, Land Use Code § 2.2.5. In a similar vein, Step 9 (Conditions of Approval) permits the decision maker to “impose such conditions on approval of the development application as are necessary to accomplish the purpose and intent of [the Land Use Code].” *See* Appendix, Land Use Code § 2.2.9. Finally, the Land Use Code provides enforcement mechanisms should a project owner such as Next Chapter fail to comply with conditions of approval. *See* Appendix, Land Use Code § 2.14.1, 2.14.6(B).

In the case at bar, Planning and Zoning staff recommended in the presentation to the Board certain conditions on approval to ensure compliance with the trash enclosure provisions of the Land Use Code. *See* Record A, Item 1, Part 6, at internal numbering page 36. These conditions were clearly designed to ensure compliance with the Land Use Code, which is a proper purpose under Land Use Code Sections 2.2.5 and 2.2.9. If Next Chapter or its successor fails to comply with the condition, it is subject to enforcement remedies. Thus, the Planning and Zoning Board did not abuse its discretion or act without jurisdiction² when it approved of the Project on the condition that Next Chapter make future submissions to demonstrate compliance with the trash enclosure provision. Such is expressly contemplated by and permitted under the Land Use Code.

² Read carefully, it appears that the thrust of Plaintiffs’ argument is that the Planning and Zoning Board should not have conditionally approved the Project without full design submissions regarding the trash enclosure. This argument possibly invokes the “without jurisdiction” standard of C.R.C.P. 106(a)(4), rather than “abuse of discretion.” Nevertheless, Plaintiff cannot prevail under either standard because the Planning and Zoning Board is empowered to conditionally approve of a project.

Plaintiffs appear to suggest that by conditionally approving of the Project, the Planning and Zoning Board violated Land Use Code § 2.4.2(H), which generally requires that project development plan such as the Project at issue comply with Articles 3 and 4 of the Land Use Code. *See* Appendix, Land Use Code § 2.4.2(H). Plaintiffs appear to construe this this section as prohibiting a conditional Planning and Zoning Board approval like the one in this case. However, this provision does not specifically address the Planning and Zoning Board’s approval power. Furthermore, this provision should be read together with § 2.4.2(E) which, as noted above, contemplates that staff may recommend approval with conditions to ensure future compliance with the Code.

Plaintiffs’ argument that conditional approval like the one in this case somehow violates the Land Use Code becomes even weaker when considering the remaining approval process for the Project. Land Use Code § 2.2.11(D) is applicable to the project. *See* Appendix, Land Use Code § 2.4.2(K). Section 2.2.11(D) requires submission of a “final plan” for a project development plan like the one at issue. *See* Appendix, Land Use Code § 2.2.11. Planning and Zoning staff and the Board were aware this provision and that it applied to the Project—as noted above, they required fulfillment of the conditions *before final plan approval*. The applicable final plan approval procedures appear at Land Use Code § 2.5.2. *See* Appendix, Land Use Code § 2.5.2. This code section is similar to § 2.4.2 and identifies which steps are applicable to a final plan approval, vesting approval with the Planning Director. *See* Appendix, Land Use Code § 2.5.2(G).

In contrast to the project development plan procedure, the final plan approval procedure does not include Step 5 (staff report), which contemplates imposition of conditions to assure

future compliance. *See* Appendix, Land Use Code § 2.5.2(E). The only permissible conditions are ones that “are necessary to accomplish the purposes and intent of this Code, or such conditions that have a reasonable nexus to potential impacts of the proposed development, and that are roughly proportional, both in nature and extent, to the impacts of the proposed development.” *See* Appendix, Land Use Code §§ 2.5.2(I) and 2.2.9. Thus, contrary to Plaintiffs’ assertions, the Fort Collins Land Use Code allows the Planning and Zoning Board to conditionally approve a project development plan like the Project in a way that addresses future compliance with all applicable provision; furthermore, the Code provides a final review “backstop” mechanism to ensure that such compliance occurred.

Thus, for the foregoing reasons, the Planning and Zoning Board properly approved of the Project with conditions addressing compliance with the trash enclosure standards. Fort Collins City Council did not abuse its discretion or exceed its jurisdiction in disagreeing with Plaintiffs’ arguments.

C. Plaintiffs’ Rule 106 Arguments Regarding “Connectivity” are Unconvincing.

For claim 2, Plaintiffs appear to allege that the Project does not comply with Land Use Code § 3.2.2(B) or 3.6.2(O). *See* Amended Opening Brief, at 9-10. Section 3.2.2(B) requires (1) that a development generally accommodate vehicles, pedestrians, bicycles; (2) that the on-site pedestrian system meet the standards in Section 3.2.2; and (3) that the on-site bicycle system connect to the City’s on-street bikeway network, and also to the off-road trail system “to the extent reasonably feasible.” Section 3.6.2(O) provides easement requirements as cited by Plaintiffs: “Pedestrian and bicycle paths shall be provided to accommodate safe and convenient

pedestrian and bicycle movement throughout the subdivision and to and from existing and future adjacent neighborhoods and other development.” *See* 3.6.2(O).

Plaintiffs generally allege that the Project proposals provided no details to indicate compliance with the foregoing pedestrian and bicycle connectivity provisions and no connectivity easements. Thus, Plaintiffs argue, Planning and Zoning should not have approved the Project and the Fort Collins City Council abused its discretion in upholding the approval. *See* Amended Opening Brief, at 10.

Contrary to Plaintiffs’ arguments, Next Chapter and Planning and Zoning staff submitted copious information regarding the Project’s accommodation of pedestrians, bicycles, and vehicles. Such evidence is deftly reviewed in the City’s Answer Brief at section IV.B, which is incorporated herein by reference.

Accordingly, both of Plaintiff’s arguments brought under Rule 106 lack substantial justification and the Court should not hesitate to dismiss them.

III. DECLARATORY JUDGMENT ARGUMENTS

A. Plaintiff’s Arguments.

In claims 3 and 4, Plaintiffs discuss the Land Use Code’s provisions regarding the required number of parking spaces for the Project. Land Use Code § 3.2.2(K) provides for the minimum number of parking spaces based on the number of bedrooms per dwelling unit. Consistent with the purpose of the TOD Overlay Zone to encourage high density, transit-dependent developments with reduced reliance on car ownership, Section allows reduction in the minimum number of spaces for a Transit Oriented Development project like the Project at issue

using various “Demand Mitigation Strategies.” Such strategies are laid out in a chart at § 3.2.2(K)(1)(a)1.a. and include the items “Transit Passes for each tenant” and “Car Share.”

Plaintiffs complain that the terms “transit passes” and “car share” are too vague to serve as a basis for reducing the minimum required parking spaces, and so seek a remand of this matter so that “sufficient definitions and conditions could be adopted and imposed.” *See* Amended Opening Brief, at 10, 11.

In claim 5, Plaintiffs articulate frustration that, in their view, neither the Land Use Code nor conditions on the approval of the Project contain mechanisms to enforce the various parking demand mitigation strategies in Land Use Code § 3.2.2(K)(1)(a)1.a. *See* Opening Brief, at 11-13. Plaintiffs’ arguments fail for multiple reasons.

B. Plaintiffs Lack Standing.

Plaintiffs couch claims 3, 4, and 5 as declaratory judgment claims even though Plaintiff Sutherland presented such arguments to City Council. *Compare* Opening Brief, “Conclusion,” at 13 (referring to declaratory judgments) *and* Second Amended Complaint, at 1, 9, 10 (same) *with* Record D, Transcript, at 17:20-30 (Sutherland commentary at City Council appeal). Should the Court construe such claims 3, 4, and 5 as declaratory judgment claims, the Court should dismiss them because Plaintiffs have no standing to challenge the content of the Land Use Code via declaratory judgment.

In order to establish legal standing to litigate a matter in court, a plaintiff must allege injury-in-fact to a legally-protected or cognizable interest. *See, e.g., Bd. of Cty. Comm’rs v. Bowen/Edwards Assocs., Inc.*, 830 P.2d 1045, 1052 (Colo. 1992). For purposes of a declaratory judgment action regarding a regulatory scheme, “the injury-in-fact element of standing is

established when the allegations of the complaint, along with any other evidence submitted on the issue of standing, establishes that the regulatory scheme threatens to cause injury to the plaintiff's present or imminent activities.” *Id.* at 1053. A plaintiff must show an existing legal controversy that can be effectively resolved by a declaratory judgment. *Id.* Colorado case law is quite clear that when challenging a statute or regulation via a declaratory judgment action, a plaintiff must have some interest of his own at stake that is affected by the statute or regulation. *See, e.g., Citizens Progressive Alliance v. Southwestern Water Conservation Dist.*, 97 P.3d 308, 310–11 (Colo. App. 2004) (collecting cases).

In the case at bar, Plaintiffs offer no basis at all for how either one of them have legal standing to seek a declaratory judgment regarding the Fort Collins Land Use Code § 3.2.2(K)(1)(a)1.a. The Project as issue belongs to Next Chapter. Neither Plaintiffs’ pleadings nor Brief alleges any stake in the Project.³ Plaintiffs do not allege that they are prosecuting or may prosecute development projects in which such provision would apply. Read liberally, Plaintiffs arguments express, at most, a general concern about the future parking situation. However, Plaintiffs have no legally-protected interest in a convenient or uncongested parking situation. In sum, Plaintiffs cannot show how the challenged provisions in the Fort Collins Land Use Code “threaten[] to cause injury to [their] present or imminent activities.” *See Bowen/Edwards*, 830 P.2d at 1052. For these reasons, claims 3, 4, and 5 should be dismissed because Plaintiffs have no standing.

³ Next Chapter notes that J&M Distributing, Inc. *may* have standing to challenge provisions of the Land Use Code as it relates to this Project due to the proximity of the Project to J&M Distributing’s business. *See* Complaint, at _____. However, Plaintiff Brian Dwyer substituted for J&M Distributing as a party in this case in order to avoid having to hire an attorney to represent J&M Distributing. Mr. Dwyer, like Mr. Sutherland, appears to be nothing more than a concerned citizen, which does not confer standing to seek a declaratory judgment regarding the Fort Collins Land Use Code.

Claim 5 should also be dismissed because it is speculative. Plaintiffs express a concern that a perceived lack of enforcement mechanisms will cause parking issues associated with the Project. Opening Brief, at 12, 13. *See also* Record D, Transcript, at 17:31-33 (Sutherland commentary about parking problems of other projects), 18:25-31 (Dwyer expressing concern about future parking problems). In other words, Plaintiffs posit that for a Project which is not even under construction, the City of Fort Collins will fail to enforce parking mitigation strategies, thereby causing harm in the form of parking congestion. Such harm is far too speculative, hypothetical, and remote to confer standing on anyone to complain about the Land Use Code. *GF Gaming Corp. v. Hyatt Gaming Management, Inc.*, 77 P.3d 894, 897 (Colo. App. 2003) (finding that casino owners who may hypothetically suffer economic harm in the form of competition from a newly-licensed casino was “too speculative and too indirect” to confer standing).

For these reasons, the Court should not hesitate to dismiss Plaintiffs’ claims 3, 4, and 5 for lack of standing.

C. Plaintiff’s “Void for Vagueness” Claims 3 and 4 Fail on the Merits.

1. Burden of proof for a “void for vagueness” challenge.

Plaintiffs appear to allege that the terms “car share” and “transit pass” are unconstitutionally vague. *See* Amended Opening Brief, at 4 n. 2. Since Plaintiffs themselves do not claim that the Land Use Code is being applied to them, they essentially bring a facial challenge to this portion of the Land Use Code. In such a challenge, “plaintiffs face a heavy burden: They must demonstrate that the law is impermissibly vague in all of its applications.” *Table Services, LTD v. Hickenlooper*, 257 P.3d 1210, 1215 (Colo. App. 2011). “A municipal

ordinance is presumed to be constitutional, and the assailant thereof has the burden of proving it unconstitutional beyond a reasonable doubt.” *City of Leadville v. Rood*, 600 P.2d 62, 63, 198 Colo. 328, 329 (Colo., 1979). A provision is not unconstitutionally vague simply because it could have been drafted with greater precision. *Table Services*, 257 P.3d at 1214. “Words and phrases ... are to be accorded their generally accepted meaning, and courts have a duty to interpret such language in a reasonable and practical manner so as to impart a rational and cogent meaning to it.” *Id.* at 1215.

2. *The terms “car share” and “transit passes” are not unconstitutionally vague.*

Even if the Court considers the merits of Plaintiffs’ “vagueness” arguments in claims 3 and 4, the Court should dismiss them. Plaintiffs complain of the term “transit passes,” however, the Fort Collins Traffic Code defines this term at § 1416(4)(d). *See* Appendix, Traffic Code § 1416. This section confirms common sense by defining “transit pass” as “any pass, coupon, transfer, card, identification, token, ticket or other document, issued by a public transportation entity or issued pursuant to an agreement with a public transportation entity, used to obtain public transit.” Thus, Plaintiffs cannot seriously contend that “transit pass” suffers from a fatally vague or obscure meaning when the City of Fort Collins has precisely defined it in the Traffic Code, and that in a way consistent with the word’s plain meaning.

Next Chapter has found no definition for the term “car share” in any Fort Collins code provisions. However, considering such term in context reveals its meaning. As noted earlier, Land Use Code § 3.2.2(K)(1)(a)1.a provides a chart showing strategies to reduce the minimum parking spaces for a development like the Project. Record H, Land Use Code § 3.2.2. Most strategies (such as providing transit passes to the residents or providing affordable housing)

result in a percentage reduction in parking space requirements. *See id* § 3.2.2(K)(1)(a)1.a. The line in the chart for “Car Share” provides a reduction of “5 spaces/1 car share.” *See id*. The notion that parking requirements are reduced by five spaces for every one car share space is borne out in the Record both at the Planning and Zoning level and the City Council Appeal. *See* Record A, Item 1, Part 7, Verbatim Transcript, at internal p. 3:21-24, 8:7-12, 16:25-30; Record A, Item 6, staff presentation to Planning and Zoning Board, at internal p. 26; Record A, Item 6, applicant presentation to Planning and Zoning Board, at internal p. 33, 36; Record A, Item 8, staff presentation at City Council appeal, at internal p. 42.

While the meaning of “car share” may not be immediately obvious to every lay person, such does render the term overly vague. Courts in other jurisdictions have noted that specialized terms from specific fields or industries do not automatically render a statute void for vagueness. *See, e.g., U.S. v. Caseer*, 399 F.3d 828, 837 (6th Cir. 2005) (“The use of scientific or technical terminology or terms of art common in a regulated field does not automatically render a statute unconstitutionally vague.”); *State v. Kirvin*, 718 So.2d 893, 900 (Fla. App.1998) (construing the term “territorial sea” as a term of art in the maritime context and referencing other sources to determine that a statute is not facially vague for using such term); *Omaechevarria v. State of Idaho*, 246 U.S. 343 (1918) (noting that, in a statute prohibiting sheep herders from grazing ranges previously occupied by cattle, people familiar with range conditions would “have little difficulty in determining what [conduct] is prohibited by the [the statute]”).

In the urban development field, “car share” or “carsharing” has an established meaning, especially in the context of transit oriented development projects like the Project at issue;

specifically, it refers to short term car rentals as an alternative to owning a personal vehicle.⁴

Zipcar, a car sharing service, is currently serving Fort Collins.⁵

Thus, contrary to Plaintiff's assertions, any person of ordinary intelligence could easily determine that "car share," as implemented in the Fort Collins Land Use Code § 3.2.2(K)(1)(a)1.a, refers to parking spaces dedicated to a car share service that reduce the overall number of parking spaces required by the Land Use Code.

For these reasons, Plaintiffs fail to show that § 3.2.2(K)(1)(a)1.a of the Land Use Code is, beyond a reasonable doubt, void for vagueness.

D. Plaintiff's "Enforcement" Argument Fails (claim 5).

Even if the Court considers Plaintiffs' contention that there are inadequate enforcement mechanism regarding the parking reduction strategies, such complaint fails on the merits. The Fort Collins Land Use Code contains enforcement provisions at Division 2.14. Section 2.14.1 lays out various enforcement remedies, including inspections, criminal and civil proceedings, injunctions, and abatement proceedings. *See* Appendix, Land Use Code § 2.14.1. Section 2.14.6 provides that the developer and owner of a project are subject to such remedies if any of the following occur:

(A) failure to comply with any terms, conditions or limitations contained on the site plan, landscape plan, building elevations or other approved documents pertaining

⁴ *See, e.g.,* Colin Dentel-Post, *Less Parking, More Carsharing: Supporting Small-Scale Transit-Oriented Development*, Berkeley Institute of Urban and Regional Development working paper (Oct. 2012), available at <https://iurd.berkeley.edu/wp/2012-04.pdf>. *See also* California Department of Transportation, *Special Report: Parking and TOD: Challenges and Opportunities* (Feb. 2002), available at <http://www3.drcog.org/documents/archive/parking%20and%20tod.pdf> (defining and discussing car sharing to reduce parking requirements of a transit-oriented development). *See also* next footnote.

⁵ *See* Kevin Duggan, *Zipcar expanding Fort Collins presence*, Fort Collins Coloradoan May 20, 2016, available at <https://www.coloradoan.com/story/news/2016/05/20/zipcar-expanding-fort-collins-presence/84657906/>; <https://www.zipcar.com/universities/colorado-state-university> (providing a sign-up page for Colorado State University users of Zipcar's car sharing service).

to a development which has received final approval from the city, whether under the provisions of this Land Use Code or under the provisions of prior law.

(B) failure to comply with any conditions of record imposed by the appropriate decision maker upon its review of the site specific development plan for the development, whether under the provisions of this Land Use Code or under the provisions of prior law. *See* Appendix, Land Use Code § 2.14.6.

Under this provision, if Next Generation or a subsequent owner fails to comply with the parking scheme as approved, that person is subject to enforcement actions. Thus, Plaintiffs' argument that the Land Use Code lacks an enforcement mechanism regarding parking or any other aspect of the Project is simply wrong.

WHEREFORE, Intervenor Next Chapter Properties, LLC prays that the Court find that Plaintiffs' arguments are wholly without merit and affirm the Fort Collins City Council's decision upholding the Planning and Zoning Boards' approval of the Project.

Respectfully submitted this 20th day of September, 2018

HERMS & HERRERA, LLC

/s/ Jeffrey B. Cullers [Signature on File]

Jeffrey B. Cullers, #41969

Attorney for Intervenors

E-Filed copy of document with original signature maintained by the filing party

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 20th day of September, 2018 a true and correct copy of the above and foregoing was filed via email and served on all parties via email as follows:

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DIVISION 2.2 - COMMON DEVELOPMENT REVIEW PROCEDURES FOR DEVELOPMENT APPLICATIONS

Sections:

2.2.1 - Step 1: Conceptual Review/Preliminary Design Review

(A) **Conceptual Review:**

- (1) *Purpose* . Conceptual review is an opportunity for an applicant to discuss requirements, standards and procedures that apply to his or her development proposal. Major problems can be identified and solved during conceptual review before a formal application is made.

Representatives of the Department, Poudre Fire Authority, Police Services, Water & Wastewater Utilities, Electric Utility, Stormwater Utility, and other departments as appropriate, and special districts where applicable.

- (2) *Applicability*. A conceptual review is mandatory for all overall development plans and for project development plans not subject to an overall development plan. Conceptual review must occur at least one (1) day prior to submittal of any application for an overall development plan or project development plan which is not subject to an overall development plan. The conceptual review may be waived by the Director for those development proposals that, in his or her opinion, would not derive substantial benefit from such review.
- (3) *Concept Plan Submittal* . The applicant shall bring a sketch showing the location of the proposed project, major streets and other significant features in the vicinity to the Conceptual Review meeting.
- (4) *Staff Review and Recommendation* . Upon receipt of a concept plan, and after review of such plan with the applicant, the Director shall furnish the applicant with written comments regarding such plan, including appropriate recommendations to inform and assist the applicant prior to preparing the components of the development application.

(B) **Preliminary Design Review:**

- (1) *Purpose* . Preliminary design review is an opportunity for an applicant to discuss requirements, standards, procedures, potential modifications of standards or variances that may be necessary for a project and to generally consider in greater detail the development proposal design which has been evaluated as a part of the conceptual review process. While the conceptual review process is a general consideration of the development proposal, preliminary design review is a consideration of the development proposal in greater detail. Problems of both a major and minor nature can be identified and solved during the preliminary design review before a formal application is made.

Representatives of the Department, Poudre Fire Authority, Police Services, Water and Wastewater Utilities, Electric Utility, Stormwater Utility, and other departments as appropriate, and special districts where applicable. Additionally, other public or quasi-public agencies which may be impacted by the development project are invited and encouraged to attend the preliminary design review. These agencies may include the gas utility, water and/or wastewater utility districts, ditch companies, railroads, cable television service providers and other similar agencies.

- (2) *Applicability* . Although a preliminary design review is not mandatory, it may be requested by the applicant for any development proposal. A request for preliminary design review may be made in an informal manner, either in writing or orally, but must be accompanied by the payment of the application fee as established in the development review fee schedule. Preliminary design review, if requested by the applicant, must occur at least seven (7) days prior to the submittal of any application for overall development plan or project development plan which is not subject to an overall development plan.

- (3) *Preliminary Plan Submittal* . In conjunction with a preliminary design review, the applicant shall submit all documents required for such review as established in the development application submittal requirements master list.
- (4) *Staff Review and Recommendation*. Upon receipt of a preliminary development proposal for review, and after review of such proposal with the applicant, the Director shall furnish the applicant with written comments and recommendations regarding such proposal in order to inform and assist the applicant prior to preparing components of the development application. In conjunction with the foregoing, the Director shall provide the applicant with a "critical issues list" which will identify those critical issues which have surfaced in the preliminary design review as issues which must be resolved during the review process of the formal development application. The critical issues list will provide to applicants the opinion of the Director regarding the development proposal, as that opinion is established based upon the facts presented during conceptual review and preliminary design review. To the extent that there is a misunderstanding or a misrepresentation of facts, the opinion of the Director may change during the course of development review. The positions of the Director that are taken as a part of the critical issues list may be relied upon by applicants, but only insofar as those positions are based upon clear and precise facts presented in writing, either graphically or textually on plans or other submittals, to the Director during the course of preliminary design review.

(Ord. No. 161, 2005 §1, 12/20/05; Ord. No. 005, 2007 §1, 2/6/07; Ord. No. [063, 2018](#), §4, 6/5/18))

2.2.2 - Step 2: Neighborhood Meetings

- (A) **Purpose**. In order to facilitate citizen participation early in the development review process, the City shall require a neighborhood meeting between citizens of area neighborhoods, applicants and the Director for any development proposal that is subject to P&Z review unless the Director determines that the development proposal would not have significant neighborhood impact. Citizens are urged to attend and actively participate in these meetings. The purpose of the neighborhood meeting is for such development applications to be presented to citizens of area neighborhoods and for the citizens to identify, list and discuss issues related to the development proposal. Working jointly with staff and the applicant, citizens help seek solutions for these issues. Neighborhood meetings are held during the conceptual planning stage of the proposal so that neighborhoods may give input on the proposal before time and effort have been expended by the applicant to submit a formal development application to the City. At least ten (10) calendar days shall have passed between the date of the neighborhood meeting and the submittal to the City of the application for development approval for the project that was the subject of the neighborhood meeting.
- (B) **Applicability** . A neighborhood meeting shall be required on any development proposal that is subject to Planning and Zoning Board review unless the Director determines as a part of the staff review and recommendation required pursuant to Section 2.2.1(A)(4) that the development proposal would not have significant neighborhood impacts.
- (C) **Notice of Neighborhood Meeting** . Notice of the neighborhood meeting shall be given in accordance with Section 2.2.6(A), (B) and (D).
- (D) **Attendance at Neighborhood Meeting**. If a neighborhood meeting is required, the meeting shall be held prior to submittal of a development application to the Director for approval of an overall development plan and/or project development plan. The applicant or applicant's representative shall attend the neighborhood meeting. The Director shall be responsible for scheduling and coordinating the neighborhood meeting and shall hold the meeting in the vicinity of the proposed development.
- (E) **Summary of Neighborhood Meeting** . A written summary of the neighborhood meeting shall be prepared by the Director. The written summary shall be included in the staff report provided to the decision maker at the time of the public hearing to consider the proposed development.

(Ord. No. 091, 2004 §3, 6/15/04; Ord. No. 161, 2005 §2, 12/20/05; Ord. No. 120, 2011 §3, 9/20/2011)

2.2.3 - Step 3: Development Application Submittal

- (A) **Development Application Forms.** All development applications shall be in a form established by the Director and made available to the public.
- (B) **Consolidated Development Applications and Review.** Development applications combining an overall development plan and a project development plan for permitted uses for the same development proposal may be consolidated for submittal and review, in the discretion of the Director, depending upon the complexity of the proposal. For these consolidated applications, the applicant shall follow the project development plan development review procedures. Such consolidated applications shall be reviewed, considered and decided by the highest level decision maker that would have decided the development proposal under Section 2.2.7 had it been submitted, processed and considered as separate development applications. Decision makers, from highest level to lowest level, are the Planning and Zoning Board and the Director, respectively.
- (C) **Development Application Contents.**
- (1) **Development Application Submittal Requirements Master List.** A master list of development application submittal requirements shall be established by the City Manager. The master list shall, at a minimum, include a list of all information, data, explanations, analysis, testing, reports, tables, graphics, maps, documents, forms or other items reasonably necessary, desirable or convenient to (1) determine whether or not the applicant, developer and/or owner have the requisite power, authority, clear title, good standing, qualifications and ability to submit and carry out the development and/or activities requested in the development application; and (2) determine whether or not the development activities and development application address and satisfy each and every applicable general development standard, district standard or other requirement or provisions of this Land Use Code.
 - (2) **Submittal Requirement.** Each development application shall be submitted to the Director and shall include the items on the master list that are identified as submittal requirements for that development application. The Director may waive items on the master list that are not applicable due to the particular conditions and circumstances of that development proposal.
 - (3) **Execution of Plats/Deeds; Signature Requirements.** All final plats and/or deeds (for conveyances of real property either off the site described on the plat or at a time or in a manner separate from the plat), submitted to the City shall:
 - (a) be signed by all current owners of any recorded fee interest in the surface of the land described on the plat (or in the deed), whether full or defeasible and whether solely or partially owned.
 - (b) be signed by all current owners of any equitable interest arising out of a contract to purchase any fee interest in the surface of the land described on the plat (or in the deed), whether full or defeasible and whether solely or partially owned.
 - (c) be signed by all current record owners of any non-freehold interest arising from any recorded lease of the surface of the land described on the plat (or in the deed) if such lease has a remaining term of six (6) years following approval of the final development plan by the decision maker or if such lease contains any right of extension which, if exercised by the tenant, would create a remaining term of six (6) years following approval of the final development plan by the decision maker.
 - (d) be signed by all current owners of any recorded mortgage, deed of trust or other lien, financial encumbrance upon or security interest in the lands described on the plat (or deed) which, if foreclosed would take, injure, diminish or weaken the city's interest in any land,

easement or right-of-way which is dedicated to the city or to the public on the plat (or in the deed).

- (e) be signed by all current owners of any easement or right-of-way in the lands described on the plat (or in the deed) whether on, above or below the surface, which includes rights which will take, injure, diminish or weaken the city's interest in any land, easement or right-of-way which is dedicated to the city or to the public on the plat (or in the deed).
- (f) be signed by an attorney licensed to practice law in the State of Colorado certifying to the city that all signatures as required pursuant to subparagraphs (a) through (e) above have lawfully and with full authority been placed upon the plat (or in the deed). Said certification may be limited by the attorney so certifying to only those ownership interests that are of record or, if not of record, are either actually known to the certifying attorney to exist, or in the exercise of reasonable diligence, should have been known to the certifying attorney to exist. For purposes of such certification, the terms "record," "recorded" and "of record" shall mean as shown by documents recorded in the real estate records in the Clerk and Recorder's Office of Larimer County, Colorado prior to the date of certification.
- (g) contain a maintenance guarantee, a repair guarantee and a certificate of dedication signed by the developer and the owner (as described in subparagraph (a) above), which provide a two-year maintenance guarantee and five-year repair guarantee covering all errors or omissions in the design and/or construction. The specific provisions of the maintenance guarantee, repair guarantee and certificate of dedication shall be established by the City Engineer.
- (h) contain the legal notarization of all signatures as required pursuant to subparagraphs (a) through (e) above to be placed upon the plat (or deed).

The Director may waive or modify the requirements of subparagraphs (b) through (e), and the requirements of subparagraph (g) above upon a clear and convincing showing by the applicant that such waiver or modification will not result in any detriment to the public good, including without limitation, detriment to the interest of the public in the real property conveyed to it on the plat (or in the deed); and will not result in any harm to the health, safety or general welfare of the City and its citizens.

(D) ***Development Review Fees*** .

- (1) *Recovery of Costs* . Development review fees are hereby established for the purpose of recovering the costs incurred by the City in processing, reviewing and recording applications pertaining to development applications or activity within the municipal boundaries of the City, and issuing permits related thereto. The development review fees imposed pursuant to this Section shall be paid at the time of submittal of any development application, or at the time of issuance of the permit, as determined by the City Manager and established in the development review fee schedule.
- (2) *Development Review Fee Schedule* . The amount of the City's various development review fees shall be established by the City Manager, and shall be based on the actual expenses incurred by or on behalf of the City. The schedule of fees shall be reviewed annually and shall be adjusted, if necessary, by the City Manager on the basis of actual expenses incurred by the City to reflect the effects of inflation and other changes in costs. At the discretion of the City Manager, the schedule may be referred to the City Council for adoption by resolution or ordinance.
- (3) Notwithstanding the foregoing, the City Council may, by ordinance, waive the imposition of any fee imposed by the provisions of this Chapter for an affordable housing project if the City Council, in its sole discretion, determines that:
 - (a) the affordable housing project is intended to house homeless or disabled persons, as such terms are defined by the Department of Housing and Urban Development, or households with an annual income that does not exceed thirty (30) percent of the area median income

for the applicable household size in the Fort Collins-Loveland metropolitan statistical area, as published by the Department of Housing and Urban Development; and

- (b) the proposed waiver, if approved by the City Council, will not jeopardize the financial interests of the City.

Any waiver of fees hereunder must be applied for in accordance with City application requirements prior to the City's issuance of any certificates of occupancy for the project that is the subject of the waiver request.

(Ord. No. 90, 1998, 5/19/98; Ord. No. 178, 1998 §3, 10/20/98; Ord. No. 19, 1999 §4, 2/16/99; Ord. No. 99, 1999 §1, 6/15/99; Ord. No. 165, 1999 §9, 11/16/99; Ord. No. 204, 2001 §3, 12/18/01; Ord. No. [037, 2013](#) §8, 3/19/13; Ord. No. [086, 2014](#) §3, 7/1/14; [Ord. No. 175, 2014 §4, 12/16/14](#); Ord. No. [148, 2017](#), §6, 11/21/17)

2.2.4 - Step 4: Review Of Applications

- (A) **Determination of Sufficiency** . After receipt of the development application, the Director shall determine whether the application is complete and ready for review. The determination of sufficiency shall not be based upon the perceived merits of the development proposal.
- (B) **Processing of Incomplete Applications** . Except as provided below, if a submittal is found to be insufficient, all review of the submittal will be held in abeyance until the Director receives the necessary material to determine that the submittal is sufficient. The development application shall not be reviewed on its merits by the decision maker until it is determined sufficient by the Director. Notwithstanding the foregoing, if an application has been determined to be incomplete because the information provided to the Director shows that a portion of the property to be developed under the application is not yet under the ownership and control of the applicant or developer, the Director may nonetheless authorize the review of such application and the presentation of the same to the decision maker, as long as:
 - (1) the applicant, at the time of application, has ownership of, or the legal right to use and control, the majority of the property to be developed under the application;
 - (2) the Director determines that it would not be detrimental to the public interest to accept the application for review and consideration by the decision maker; and
 - (3) the applicant and developer enter into an agreement satisfactory in form and substance to the City Manager, upon consultation with the City Attorney, which provides that:
 - (a) until such time as the applicant has acquired full ownership and control of all property to be developed under the application, neither the applicant nor the developer will record, or cause to be recorded, in the office of the Larimer County Clerk and Recorder any document related to the City's review and approval of the application; and
 - (b) the applicant will indemnify and hold harmless the City and its officers, agents and assigns from any and all claims that may be asserted against them by any third party, claiming injury or loss of any kind whatsoever that are in any way related to, or arise from, the City's processing of the application.

The denial of an incomplete application that has been allowed to proceed to the decision maker under the provisions of this Section shall not cause a post denial re-submittal delay under the provisions of Paragraph 2.2.11(D)(9) for property that was not owned by the applicant or within the applicant's legal right to use and control at the time of denial of the application.

(Ord. No. [149, 2012](#) §1, 12/18/12)

2.2.5 - Step 5: Staff Report

Within a reasonable time after determining that a development application is sufficient, the Director shall refer the development application to the appropriate review agencies, review the development application, and prepare a Staff Report. The Staff Report shall be made available for inspection and copying by the applicant and the public prior to the scheduled public hearing on the development application. The Staff Report shall indicate whether, in the opinion of the Staff, the development application complies with all applicable standards of this Code. Conditions for approval may also be recommended to eliminate any areas of noncompliance or mitigate any adverse effects of the development proposal.

2.2.6 - Step 6: Notice

- (A) **Mailed Notice** . The Director shall mail written notice to the owners of record of all real property within eight hundred (800) feet (exclusive of public rights-of-way, public facilities, parks or public open space) of the property lines of the parcel of land for which the development is planned. Owners of record shall be ascertained according to the records of the Larimer County Assessor's Office, unless more current information is made available in writing to the Director prior to the mailing of the notices. If the development project is of a type described in the Supplemental Notice Requirements of subsection 2.2.6(D), then the area of notification shall conform to the expanded notice requirements of that Section. In addition, the Director may further expand the notification area. Formally designated representatives of bona fide neighborhood groups and organizations and homeowners' associations within the area of notification shall also receive written notice. Such written notices shall be mailed at least fourteen (14) days prior to the public hearing/meeting date. The Director shall provide the applicant with a map delineating the required area of notification, which area may be extended by the Director to the nearest streets or other distinctive physical features which would create a practical and rational boundary for the area of notification. The applicant shall pay postage and handling costs as established in the development review schedule.
- (B) **Posted Notice** . The real property proposed to be developed shall also be posted with a sign, giving notice to the general public of the proposed development. For parcels of land exceeding ten (10) acres in size, two (2) signs shall be posted. The size of the sign(s) required to be posted shall be as established in the Supplemental Notice Requirements of subsection 2.2.6(D). Such signs shall be provided by the Director and shall be posted on the subject property in a manner and at a location or locations reasonably calculated by the Director to afford the best notice to the public, which posting shall occur within fourteen (14) days following submittal of a development application to the Director.
- (C) **Published Notice** . Notice of the time, date and place of the public hearing/ meeting on the development application and the subject matter of the hearing shall be published in a newspaper of general circulation within the City at least seven (7) days prior to such hearing/meeting.
- (D) **Supplemental Notice Requirements** .

	<i>Minimum Notice Radius</i>	<i>Sign Size</i>
All developments except as described below.	800 feet	12 square feet
Developments proposing more than fifty (50) and less than one hundred (100) single-family or two-family lots or dwelling	800 feet	12 square feet

units.		
Developments proposing more than twenty-five (25) and less than one hundred (100) multi-family dwelling units.	800 feet	12 square feet
Nonresidential developments containing more than twenty-five thousand (25,000) and less than fifty thousand (50,000) square feet of floor area.	800 feet	12 square feet
Developments proposing one hundred (100) or more single-family or two-family lots or dwelling units.	1,000 feet	12 square feet
Developments proposing one hundred (100) or more multi-family dwelling units.	1,000 feet	12 square feet
Nonresidential developments containing fifty thousand (50,000) or more square feet of floor area.	1,000 feet	12 square feet
Nonresidential developments which propose land uses or activities which, in the judgment of the Director, create community or regional impacts.	1,000 feet; plus, with respect to neighborhood meetings, publication of a notice not less than seven (7) days prior to the meeting in a newspaper of general circulation in the City.	12 square feet
Off-site construction staging	500 feet	12 square feet
Zonings and rezonings of forty (40) acres or less.	800 feet	12 square feet
Zonings and rezonings of more than forty (40) acres.	1,000 feet	12 square feet

- (E) The following shall not affect the validity of any hearing, meeting or determination by the decision maker:
- (1) The fact that written notice was not mailed as required under the provision of this Section.
 - (2) The fact that written notice, mailed as required under the provision of this Section, was not actually received by one (1) or more of the intended recipients.
 - (3) The fact that signage, posted in compliance with the provision of this Section, was subsequently damaged, stolen or removed either by natural causes or by persons other than the person responsible for posting such signage or his or her agents.

(Ord. No. 204, 2001 §§4, 5, 12/18/01; Ord. No. 104, 2006 §§1, 2, 7/18/06; Ord. No. 068, 2010 §2, 7/6/10; Ord. No. [051, 2012](#) §4, 7/17/12; Ord. No. [086, 2014](#) §§4, 5, 7/1/14; Ord. No. [129, 2017](#) , § 2, 10/3/17)

2.2.7 - Step 7: Public Hearing

(A) **Decision maker .**

- (1) *Administrative Review (Type 1 review)*. An administrative review process is hereby established wherein certain development applications shall be processed, reviewed, considered and approved, approved with conditions, or denied by the Director pursuant to the general procedural requirements contained in Division 2.1, and the common development review procedures contained in Division 2.2. For those development applications that are subject to administrative review, the Director shall be the designated decision maker.
- (2) *Planning and Zoning Board Review (Type 2 review)*. A Planning and Zoning Board review process is hereby established wherein certain development applications shall be processed, reviewed, considered and approved, approved with conditions, or denied by the Planning and Zoning Board pursuant to the general procedural requirements contained in Division 2.1, and the common development review procedures contained in Division 2.2. For those development applications that are subject to Planning and Zoning Board review, the Planning and Zoning Board shall be the designated decision maker.

(B) **Conduct of Public Hearing .**

- (1) *Rights of All Persons*. Any person may appear at a public hearing and submit evidence, either individually or as a representative of a person or an organization. Each person who appears at a public hearing shall state his or her name, address and, if appearing on behalf of a person or organization, the name and mailing address of the person or organization being represented.
- (2) *Exclusion of Testimony*. The decision maker conducting the public hearing may exclude testimony or evidence that it finds to be irrelevant, immaterial or unduly repetitious.
- (3) *Continuance of Public Hearing*. The decision maker conducting the public hearing may, on its own motion or at the request of any person, continue the public hearing to a fixed date, time and place. All continuances shall be granted at the discretion of the body conducting the public hearing.

(C) **Order of Proceedings at Public Hearing**. The order of the proceedings at the public hearing shall be as follows:

- (1) *Director Overview* . The Director shall provide an overview of the development application.
- (2) *Applicant Presentation*. The applicant may present information in support of its application, subject to the determination of the Chair as to relevance. Copies of all writings or other exhibits

that the applicant wishes the decision maker to consider must be submitted to the Director no less than five (5) working days before the public hearing.

- (3) *Staff Report Presented.* The Director shall present a narrative and/or graphic description of the development application, as well as a staff report that includes a written recommendation. This recommendation shall address each standard required to be considered by this Code prior to approval of the development application.
- (4) *Staff Response to Applicant Presentation.* The Director, the City Attorney and any other City staff member may respond to any statement made or evidence presented by the applicant.
- (5) *Public Testimony.* Members of the public may comment on the application and present evidence, subject to the determination of the Chair as to relevance.
- (6) *Applicant Response.* The applicant may respond to any testimony or evidence presented by the public.
- (7) *Staff Response to Public Testimony or Applicant Response .* The Director, the City Attorney and any other City staff member may respond to any statement made or evidence presented by the public testimony or by the applicant's response to any such public testimony.

(D) ***Decision and Findings .***

- (1) *Decision — Administrative Review (Type 1 review).* After consideration of the development application, the Staff Report and the evidence from the public hearing, the Director shall close the public hearing. Within ten (10) working days following the public hearing, the Director shall issue a written decision to approve, approve with conditions, or deny the development application based on its compliance with the Standards referenced in Step 8 of the Common Development Review Procedures (Section 2.2.8). The written decision shall be mailed to the applicant and any person who provided testimony at the public hearing.
- (2) *Decision — Planning and Zoning Board Review (Type 2 review).* After consideration of the development application, the Staff Report and the evidence from the public hearing, the Chair of the Planning and Zoning Board shall close the public hearing and the Board shall approve, approve with conditions, or deny the development application based on its compliance with the Standards referenced in Step 8 of the Common Development Review Procedures (Section 2.2.8).
- (3) *Findings.* All decisions shall include at least the following elements:
 - (a) A clear statement of approval, approval with conditions, or denial, whichever is appropriate.
 - (b) A clear statement of the basis upon which the decision was made, including specific findings of fact with specific reference to the relevant standards set forth in this Code.

(E) ***Notification to Applicant.***

Notification of the decision maker's decision shall be provided by the Director to the applicant by mail within three (3) days after the decision. A copy of the decision shall also be made available to the public at the offices of the Director, during normal business hours, within three (3) days after the decision.

(F) ***Record of Proceedings.***

- (1) *Recording of Public Hearing.* The decision maker conducting the public hearing shall record the public hearing by any appropriate means. A copy of the public hearing record may be acquired by any person upon application to the Director, and payment of a fee to cover the cost of duplication of the record.
- (2) *The Record.* The record shall consist of the following:

- (a) all exhibits, including, without limitation, all writings, drawings, maps, charts, graphs, photographs and other tangible items received or viewed by the decision maker at the proceedings;
- (b) all minutes of the proceedings;
- (c) if appealed to the City Council, a verbatim transcript of the proceedings before the decision maker. The cost of the transcript shall be borne by the City.
- (d) if available, a videotape recording of the proceedings before the decision maker.

(G) **Recording of Decisions and Plats.**

- (1) *Filing with City Clerk* . Once approved, and after the appeal period has expired (if applicable), the decision of the decision maker shall be filed with the City Clerk.
- (2) *Final Plats and Development Agreements Recorded with County Clerk and Recorder* . Once the final utility plans, final plat and all other applicable Final Development Plan Documents are approved and the development agreement has been executed, the final plan has been approved, and any applicable conditions of final plan approval have been met, and after the appeal period has expired, the final plat and Development Agreement shall be recorded by the City in the Office of the Larimer County Clerk and Recorder and shall be filed with the City Clerk. The date that the recording with the Larimer County Clerk and Recorder of both the Final Plat and the Development Agreement is accomplished by the City shall establish the date of approval under Section 2.2.11(D)((1) of this Land Use Code.

(Ord. No. 59, 2000 §4, 6/6/00; Ord. No. 070, 2005 §1, 7/5/05; Ord. No. 120, 2011 §4, 9/20/2011; Ord. No. [092, 2013 §2, 7/16/13](#); [Ord. No. 175, 2014 §5, 12/16/14](#))

2.2.8 - Step 8: Standards

To approve a development application, the decision maker must first determine and find that the development application has satisfied and followed the applicable requirements of this Article 2 and complies with all of the standards required for the applicable development application (see Step 8: "Standards" referenced in Divisions 2.3 through 2.11), as modified by any modification of standards approved under Section 2.8.

(Ord. No. 177, 1998 §4, 10/20/98)

2.2.9 - Step 9: Conditions of Approval

The decision maker may impose such conditions on approval of the development application as are necessary to accomplish the purposes and intent of this Code, or such conditions that have a reasonable nexus to potential impacts of the proposed development, and that are roughly proportional, both in nature and extent, to the impacts of the proposed development.

2.2.10 - Step 10: Amendments and Changes of Use

- (A) **Minor Amendments and Changes of Use.** (1) Minor amendments to any approved development plan, including any Overall Development Plan, Project Development Plan, or PUD Master Plan, any site specific development plan, or the existing condition of a platted property; and (2) Changes of use, either of which meet the applicable criteria of below subsections 2.2.10(A)(1) or 2.2.10(A)(2), may be approved, approved with conditions, or denied administratively by the Director and may be authorized without additional public hearings. With the exception of PUD Master Plans, such minor amendments and changes of use may be authorized by the Director as long as the development plan, as so amended, continues to comply with the standards of this Code to the extent reasonably feasible. PUD Master Plan Minor amendments may be authorized by the Director as long as the

PUD Master Plan, as so amended, continues to comply with the standards of this Code, as such standards may have been modified in the existing PUD Master Plan, and so long as the amendments are consistent with the existing PUD Master Plan. Minor amendments and changes of use shall only consist of any or all of the following:

- (1) Any change to any approved development plan or any site specific development plan which was originally subject only to administrative review and was approved by the Director, or any change of use of any property that was developed pursuant to a basic development review or a use-by-right review under prior law; provided that such change would not have disqualified the original plan from administrative review had it been requested at that time; and provided that the change or change of use complies with all of the following criteria applicable to the particular request for change or change of use:
 - (a) Results in an increase by one (1) percent or less in the approved number of dwelling units, except that in the case of a change of use of any property that was developed pursuant to a basic development review or use-by-right review under prior law, the number of dwelling units proposed to be added may be four (4) units or less;
 - (b) Results in an increase or decrease in the amount of square footage of a nonresidential land use or structure that does not change the character of the project;
 - (c) Results in a change in the housing mix or use mix ratio that complies with the requirements of the zone district and does not change the character of the project;
 - (d) Does not result in a change in the character of the development;
 - (e) Does not result in new buildings, building additions or site improvements, such as parking lots and landscaping, that are proposed to be located outside the boundaries of the approved Project Development Plan or approved site specific development plan;
 - (f) Results in a decrease in the number of approved dwelling units and does not change the character of the project, and that the plan as amended continues to comply with the requirements of this Code; and
 - (g) In the case of a change of use, the change of use results in the site being brought into compliance, to the extent reasonably feasible as such extent may be modified pursuant to below subsection 2.2.10(A)(3), with the applicable general development standards contained in Article 3 and the applicable district standards contained in Article 4 of this Code.
- (2) Any change to any approved development plan or any site specific development plan which was originally subject to review by the Planning and Zoning Board (either as a Type 2 project or as a project reviewed by the Planning and Zoning Board under prior law) or City Council review of a PUD Overlay, or any change of use of any property that was approved by the Planning and Zoning Board; provided that the change or change of use complies with all of the following criteria applicable to the particular request for change or change of use:
 - (a) Results in an increase or decrease by one (1) percent or less in the approved number of dwelling units;
 - (b) Results in an increase or decrease in the amount of square footage of a nonresidential land use or structure that does not change the character of the project;
 - (c) Results in a change in the housing mix or use mix ratio that complies with the requirements of the zone district and does not change the character of the project;
 - (d) Does not result in a change in the character of the development; and
 - (e) Does not result in new buildings, building additions or site improvements, such as parking lots and landscaping, that are proposed to be located outside the boundaries of the approved Project Development Plan or approved site specific development plan.
- (3) *Waiver of Development Standards for Changes of Use.*

- (a) *Applicability.* The procedure and standards contained in this Section shall apply only to changes of use reviewed pursuant to Section 2.2.10(A) of this Code.
 - (b) *Purpose.* In order for a change of use to be granted pursuant to Section 2.2.10(A), the change of use must result in the site being brought into compliance with all applicable general development and zone district standards to the extent reasonably feasible. The purpose of this Section is to allow certain changes of use that do not comply with all general development standards to the extent reasonably feasible to be granted pursuant to Section 2.2.10(A) in order to:
 - 1. Foster the economic feasibility for the use, maintenance and improvement of certain legally constructed buildings and sites which do not comply with certain Land Use Code General Development Standards provided that:
 - a. Existing blight conditions have been ameliorated; and
 - b. Public and private improvements are made that address essential health and life safety issues that are present on-site.
 - 2. Encourage the eventual upgrading of nonconforming buildings, uses and sites.
 - (c) *Review by Director.* As part of the review conducted pursuant to Section 2.2.10(A) for a proposed change of use, the Director may waive, or waive with conditions, any of the development standards set forth in subsection (d) below. In order for the Director to waive, or waive with conditions, any such development standard, the Director must find that such waiver or waiver with conditions would not be detrimental to the public good and that each of the following is satisfied:
 - 1. The site for which the waiver or waiver with conditions is granted satisfies the policies of the applicable Council adopted subarea, corridor or neighborhood plan within which the site is located;
 - 2. The proposed use will function without significant adverse impact upon adjacent properties and the district within which it is located in consideration of the waiver or waiver with conditions;
 - 3. Existing blight conditions on the site are addressed through site clean-up, maintenance, screening, landscaping or some combination thereof; and
 - 4. The site design addresses essential health and public safety concerns found on the site.
 - (d) *Eligible Development Standards.* The Director may grant a waiver or waiver with conditions for the following general development standards:
 - 1. Sections 3.2.1(4), (5) and (6) related to Parking Lot Perimeter and Interior Landscaping, and connecting walkways.
 - 2. Section 3.2.2(M) Landscaping Coverage.
 - 3. Section 3.2.4 Site Lighting, except compliance with minimum footcandle levels described in 3.2.4(C).
 - 4. Section 3.2.5 Trash and Recycling Enclosure design.
 - 5. Section 3.3.5 Engineering Design standards related to water quality standard, including Low Impact Development.
- (4) *Referral.* In either subsection (1) or (2) above, the Director may refer the amendment or change of use to the decision maker who approved the development plan proposed to be amended. The referral of minor amendments to development plans or changes of use allowed or approved under the laws of the City for the development of land prior to the adoption of this Code shall be processed as required for the land use or uses proposed for the amendment or change of use as set forth in Article 4 (i.e., Type 1 review or Type 2 review) for the zone district in which the

land is located. The referral of minor amendments or changes of use to project development plans or final plans approved under this Code shall be reviewed and processed in the same manner as required for the original development plan for which the amendment or change of use is sought, and, if so referred, the decision maker's decision shall constitute a final decision, subject only to appeal as provided for development plans under Division 2.3, 2.4, 2.5, or 2.15 as applicable, for the minor amendment or change of use. City Council approval of a minor amendment to a PUD Master Plan shall be by resolution.

- (5) *Appeals.* Appeals of the decision of the Director regarding the approval, approval with conditions or denial of, a change of use, or a minor amendment of any approved development plan, site specific development plan, or the existing condition of a platted property, shall be to the Planning and Zoning Board. Any such appeal shall be taken by filing a notice of appeal of the final decision with the Director within fourteen (14) days after the action that is the subject of the appeal. The decision of the Planning and Zoning Board on such appeals shall constitute a final decision appealable pursuant to Section 2.2.12 (Step 12).

(B) ***Major Amendments and Changes of Use Not Meeting the Criteria of 2.2.10(A).***

- (1) *Procedure/Criteria.* Amendments to any approved development plan, including any Overall Development Plan, Project Development Plan, or PUD Master Plan, or any site specific development plan, and changes of use that are not determined by the Director to be minor amendments or qualifying changes of use under the criteria set forth in subsection (A) above, shall be deemed major amendments. Major amendments to approved development plans or site specific development plans approved under the laws of the City for the development of land prior to the adoption of this Code shall be processed as required for the land use or uses proposed for the amendment as set forth in Article 4 (i.e., Type 1 review or Type 2 review) for the zone district in which the land is located, and, to the maximum extent feasible, shall comply with the applicable standards contained in Articles 3 and 4. Major amendments to development plans or site specific development plans approved under this Code shall be reviewed and processed in the same manner as required for the original development plan for which amendment is sought. Any major amendments to an approved project development plan or site specific development plan shall be recorded as amendments in accordance with the procedures established for the filing and recording of such initially approved plan. City Council approval of a major amendment to a PUD Master Plan shall be by resolution. Any partial or total abandonment of a development plan or site specific development plan approved under this Code, or of any plan approved under the laws of the City for the development of land prior to the adoption of this Code, shall be deemed to be a major amendment, and shall be processed as a Type 2 review; provided, however, that if a new land use is proposed for the property subject to the abandonment, then the abandonment and new use shall be processed as required for the land use or uses proposed as set forth in Article 4 (i.e., Type 1 review or Type 2 review) for the zone district in which the land is located.

- (2) *Appeals.* Appeals of decisions for approval, approval with conditions or denial of major amendments, or abandonment, of any approved development plan or site specific development plan shall be filed and processed in accordance with Section 2.2.12 (Step 12).

(C) ***Additional Criteria*** . In addition to the criteria established in (A) and (B) above, the criteria established in subsection 2.1.4(C) shall guide the decision maker in determining whether to approve, approve with conditions, or deny the application for partial or total abandonment.

(D) ***Parkway Landscaping Amendments*** . Amendments to parkway landscaping in any approved development plan may be approved, approved with conditions or denied administratively by the Director. No public hearing need be held on an application for a parkway landscaping amendment. Such amendments may be authorized by the Director as long as the development plan, as so amended, continues to comply with the Fort Collins Streetscape Standards, Appendix C, Section 6.1 in the Larimer County Urban Area Street Standards. Appeals of the decision of the Director regarding the approval, approval with conditions or denial of parkway landscaping amendments of any approved development plan shall be made in accordance with paragraph (A)(4) of this Section.

(Ord. No. 90, 1998, 5/19/98; Ord. No. 228, 1998 §§3, 4, 12/15/98; Ord. No. 99, 1999 §3, 6/15/99; Ord. No. 59, 2000 §5, 6/6/00; Ord. No. 183, 2000 §§3—6, 12/19/00; Ord. No. 107, 2001 §§3, 4, 6/19/01; Ord. No. 204, 2001 §§1, 6, 12/18/01; Ord. No. 177, 2002 §3, 12/17/02; Ord. No. 104, 2006 §3, 7/18/06; Ord. No. 061, 5/7/13; Ord. No. [092, 2013](#) §3, 7/16/13; Ord. No. [086, 2014](#) §§6—8, 7/1/14; [Ord. No. 155, 2015 §3, 12/15/15](#); Ord. No. [059, 2017](#), § 4, 5/2/17; Ord. No. [091, 2018](#), §7, 7/17/18)

2.2.11 - Step 11: Lapse

- (A) **Application Submittals.** An application submitted to the City for the review and approval of a development plan must be diligently pursued and processed by the applicant. Accordingly, the applicant, within one hundred eighty (180) days of receipt of written comments and notice to respond from the City on any submittal (or subsequent revision to a submittal) of an application for approval of a development plan, shall file such additional or revised submittal documents as are necessary to address such comments from the City. If the additional submittal information or revised submittal is not filed within said period of time, the development application shall automatically lapse and become null and void. The Director may grant one (1) extension of the foregoing one-hundred-eighty-day requirement, which extension may not exceed one hundred twenty (120) days in length, and one (1) additional extension which may not exceed sixty (60) days in length. This subsection (A) shall apply to applications which are, or have been, filed pursuant to this Code and to applications which are, or have been, filed pursuant to the laws of the City for the development of land prior to the adoption of this Code. On transfer of ownership of any real property that is the subject of a pending application, whether in whole or in part, such transfer shall bar a new owner or transferee from taking further action on such application unless, prior to taking any action, the new owner provides evidence satisfactory to the Director that the transferor of such property intended that all rights of the owner under the pending application be assigned to the transferee.
- (B) **Overall Development Plan.** There is no time limit for action on an overall development plan. Because an overall development plan is only conceptual in nature, no vested rights shall ever attach to an overall development plan. The approval of, or completion of work pursuant to, project development plans or final plans for portions of an overall development plan shall not create vested rights for those portions of the overall development plan which have not received such approvals and have not been completed.
- (C) **PUD Master Plan.** A PUD Master Plan shall be eligible for a vested property right solely with respect to uses, densities, development standards, and Engineering Standards for which variances have been granted pursuant to Section 4.29(L), as all are set forth in an approved PUD Master Plan, and an approved PUD Master Plan shall be considered a site specific development plan solely for the purpose of acquiring such vested property right.
- (1) *Specification of Uses, Densities, Development Standards, and Engineering Standards.* The application for a PUD Master Plan shall specify the uses, densities, development standards, and Engineering Standards granted variances pursuant to Section 4.29(L), for which the applicant is requesting a vested property right. Such uses, densities, and development standards may include those granted modifications pursuant to Section 4.29 and uses, densities, and development standards set forth in the Land Use Code which are applicable to the PUD Master Plan.
- (2) *Term of Vested Right .* The term of the vested property right shall not exceed three (3) years unless: (a) an extension is granted pursuant to paragraph (3) of this subsection, or (b) the City and the developer enter into a development agreement which vests the property right for a period exceeding three (3) years. Such agreement may be entered into by the City if the Director determines that it will likely take more than three (3) years to complete all phases of the development and the associated engineering improvements for the development, and only if warranted in light of all relevant circumstances, including, but not limited to, the overall size of

the development and economic cycles and market conditions. Council shall adopt any such development agreement as a legislative act subject to referendum.

- (3) *Extensions* . Extensions for two (2) successive periods of one (1) year each may be granted by the Director, upon a finding that (a) the applicant has been diligently pursuing development pursuant to the PUD Master Plan, and (b) granting the extension would not be detrimental to the public good. Any additional one-year extensions shall be approved, if at all, only by the original PUD Master Plan decision maker, upon a finding that (a) the applicant has been diligently pursuing development pursuant to the PUD Master Plan, and (b) granting the extension would not be detrimental to the public good. A request for an extension of the term of vested right under this Section must be submitted to the Director in writing at least thirty (30) days prior to the date of expiration. Time is of the essence. The granting of extensions by the Director under this Section may, at the discretion of the Director, be referred to the original PUD Master Plan decision maker.
 - (4) *Publication* . A "notice of approval" describing the PUD Master Plan and stating that a vested property right has been created or extended, shall be published by the City once in a newspaper of general circulation within the City, not later than fourteen (14) days after the approval of a PUD Master Plan, an extension of an existing vested right, or the legislative adoption of a development agreement as described in paragraph (2) of this subsection. The period of time permitted by law for the exercise of any applicable right of referendum or judicial review shall not begin to run until the date of such publication, whether timely made within said fourteen-day period, or thereafter.
 - (5) *Minor and Major Amendments*. In the event that a minor or major amendment to a PUD Master Plan is approved under the provisions of Section 2.2.10, and such amendment alters or adds uses, densities, development standards, or Engineering Standards for which variances have been granted pursuant to Section 4.29(L), a new vested property right may be created upon the applicant's request and pursuant to paragraph 2 of this subsection. If the applicant wants the term of the new vested property right to exceed three (3) years, such extended term must be approved and legislatively adopted pursuant to paragraph 2 of this subsection.
- (D) ***Project Development Plan and Plat***. Following the approval of a project development plan and upon the expiration of any right of appeal, or upon the final decision of the City Council following appeal, if applicable, the applicant must submit a final plan for all or part of the project development plan within three (3) years unless the project development plan is for a large base industry to be constructed in phases, in which case the application for approval of a final plan must be submitted within twenty-five (25) years. If such approval is not timely obtained, the project development plan (or any portion thereof which has not received final approval) shall automatically lapse and become null and void. The Director may grant one (1) extension of the foregoing requirement, which extension may not exceed six (6) months in length. No vested rights shall ever attach to a project development plan. The approval of, or completion of work pursuant to, a final plan for portions of a project development plan shall not create vested rights for those portions of the project development plan which have not received such final plan approval and have not been completed.
- (E) ***Final Plan and Plat and Other Site Specific Development Plans*** .
- (1) *Approval*. A site specific development plan shall be deemed approved upon the recording by the City with the Larimer County Clerk and Recorder of both the Final Plat and the Development Agreement and upon such recording, a vested property right shall be created pursuant to the provisions of Article 68 Title 24, C.R.S., and this Section 2.2.11.
 - (2) *Publication* . A "notice of approval" describing generally the type and intensity of use approved and the specific parcel or parcels affected, and stating that a vested property right has been created or extended, shall be published by the City once, not later than fourteen (14) days after the approval of any final plan or other site specific development plan in a newspaper of general circulation within the City. The period of time permitted by law for the exercise of any applicable right of referendum or judicial review shall not begin to run until the date of such publication, whether timely made within said fourteen-day period, or thereafter.

- (3) *Term of Vested Right* . Within a maximum of three (3) years following the approval of a final plan or other site specific development plan, the applicant must undertake, install and complete all engineering improvements (water, sewer, streets, curb, gutter, street lights, fire hydrants and storm drainage) in accordance with city codes, rules and regulations. The period of time shall constitute the "term of the vested property right." The foregoing term of the vested property right shall not exceed three (3) years unless: (a) an extension is granted pursuant to paragraph (4) of this subsection, or (b) the City and the developer enter into a development agreement which vests the property right for a period exceeding three (3) years. Such agreement may be entered into by the City only if the subject development constitutes a "large base industry" as defined in Article 5, or if the Director determines that it will likely take more than three (3) years to complete all engineering improvements for the development, and only if warranted in light of all relevant circumstances, including, but not limited to, the size and phasing of the development, economic cycles and market conditions. Any such development agreement shall be adopted as a legislative act subject to referendum. Failure to undertake and complete such engineering improvements within the term of the vested property right shall cause a forfeiture of the vested property right and shall require resubmission of all materials and reapproval of the same to be processed as required by this Code. All dedications as contained on the final plat shall remain valid unless vacated in accordance with law.
- (4) *Extensions* . Extensions for two (2) successive periods of one (1) year each may be granted by the Director, upon a finding that the plan complies with all general development standards as contained in Article 3 and Zone District Standards as contained in Article 4 at the time of the application for the extension. Any additional one-year extensions shall be approved, if at all, only by the Planning and Zoning Board, upon a finding that the plan complies with all applicable general development standards as contained in Article 3 and Zone District Standards as contained in Article 4 at the time of the application for the extension, and that (a) the applicant has been diligent in constructing the engineering improvements required pursuant to paragraph (3) above, though such improvements have not been fully constructed, or (b) due to other extraordinary and exceptional situations unique to the property, completing all engineering improvements would result in unusual and exceptional practical difficulties or undue hardship upon the applicant, and granting the extension would not be detrimental to the public good. A request for an extension of the term of vested right under this Section must be submitted to the Director in writing at least thirty (30) days prior to the date of expiration. Time is of the essence. The granting of extensions by the Director under this Section may, at the discretion of the Director, be referred to the Planning and Zoning Board.
- (5) *Minor Amendments*. In the event that minor amendments to a final plan or other site-specific development plan are approved under the provisions of Section 2.2.10 (or under prior law, if permissible), the effective date of such minor amendments, for purposes of duration of a vested property right, shall be the date of the approval of the original final plan or other site-specific development plan.
- (6) *Major Amendments* . The approval of major amendments to a final plan or other site-specific development plan under the provisions of Section 2.2.10 (or under prior law, if permissible), shall create a new vested property right with effective period and term as provided herein, unless expressly stated otherwise in the decision approving such major amendment.
- (7) *Planning over old plans* . In the event that a new final plan is approved for a parcel of property which includes all of a previously approved site-specific development plan, the approval of such new final plan shall cause the automatic expiration of such previously approved site-specific development plan. In the event that a new final plan is approved for a parcel of property which includes only a portion of a previously approved site-specific development plan, the approval of such new final plan shall be deemed to constitute the abandonment of such portion of the previously approved plan as is covered by such new plan, and shall be reviewed according to the abandonment criteria contained in subsection 2.1.4(C) and all other applicable criteria of this Code.

- (8) *Other provisions unaffected.* Approval of a final plan or other site-specific development plan shall not constitute an exemption from or waiver of any other provisions of this Code pertaining to the development and use of property.
- (9) *Post denial re-submittal delay .* Property that is the subject of an overall development plan or a project development plan that has been denied by the decision maker or denied by City Council upon appeal, or withdrawn by the applicant, shall be ineligible to serve, in whole or in part, as the subject of another overall development plan or project development plan application for a period of six (6) months from the date of the final decision of denial or the date of withdrawal (as applicable) of the plan unless the Director determines that the new plan includes substantial changes in land use, residential density and/or nonresidential intensity.
- (10) *Automatic repeal; waiver .* Nothing in this Section is intended to create any vested property right other than such right as is established pursuant to the provisions of Article 68, Title 24, C.R.S. In the event of the repeal of said article or a judicial determination that said article is invalid or *unconstitutional* , this Section shall be deemed to be repealed and the provisions hereof no longer effective. Nothing herein shall be construed to prohibit the waiver of a vested property right pursuant to mutual agreement between the City and the affected landowner. Upon the recording of any such agreement with the Larimer County Clerk and Recorder, any property right which might otherwise have been vested shall be deemed to be not vested.

(Ord. No. 90, 1998, 5/19/98; Ord. No. 99, 1999 §4, 6/15/99; Ord. No. 59, 2000 §6, 6/6/00; Ord. No. 107, 2001 §5, 6/19/01; Ord. No. 173, 2003 §3, 12/16/03; Ord. No. 161, 2005 §3, 12/20/05; Ord. No. 081, 2007 §3, 7/17/07; Ord. No. 066, 2009 §2, 7/7/09; Ord. No. 068, 2010 §3, 7/6/10; Ord. No. 120, 2011 §§5, 6, 9/20/2011; Ord. No. [024, 2013](#) §2, 2/26/13; Ord. No. [040, 2013](#), 3/19/13; Ord. No. [092, 2013](#) §§4, 5, 7/16/13; Ord. No. [086, 2014](#) §§9, 10, 7/1/14; [Ord. No. 175, 2014 §6, 12/16/14](#); Ord. No. [091, 2018](#), §8, 7/17/18)

2.2.12 - Step 12: Appeals/Alternate Review

- (A) *Appeals.* Appeals of any final decision of a decision maker under this Code shall be only in accordance with Chapter 2, Article II, Division 3 of the City Code, unless otherwise provided in Divisions 2.3 through 2.11 and 2.16 of this Code.
- (B) *Alternate Review.* Despite the foregoing, if the City is the applicant for a development project, there shall be no appeal of any final decision regarding such development project to the City Council. In substitution of an appeal of a development project for which the City is the applicant, the City Council may, by majority vote, as an exercise of its legislative power and in its sole discretion, overturn or modify any final decision regarding such project, by ordinance of the City Council. Any Councilmember may request that the City Council initiate this exercise of legislative power but only if such request is made in writing to the City Clerk within fourteen (14) days of the date of the final decision of the Planning and Zoning Board. City Council shall conduct a hearing prior to the adoption of the ordinance in order to hear public testimony and receive and consider any other public input received by the City Council (whether at or before the hearing) and shall conduct its hearing in the manner customarily employed by the Council for the consideration of legislative matters. When evaluating City projects under alternate review, the City Council may, in its legislative discretion, consider factors in addition to or in substitution of the standards of this Land Use Code.

(Ord. No. 165, 1999 §10, 11/16/99; [Ord. No. 082, 2015 §1, 7/21/15](#).)

2.4.2 - Project Development Plan Review Procedures

A project development plan shall be processed according to, in compliance with and subject to the provisions contained in Division 2.1 and Steps 1 through 12 of the Common Development Review Procedures (Sections 2.2.1 through 2.2.12, inclusive) as follows:

- (A) **Step 1** (Conceptual Review): Applicable, only if the project development plan is not subject to an overall development plan.
- (B) **Step 2** (Neighborhood Meeting): Applicable.
- (C) **Step 3** (Development Application Submittal): All items or documents required for project development plans as described in the development application submittal master list shall be submitted. The Director may waive or modify the foregoing submittal requirements if, given the facts and circumstances of the specific application, a particular requirement would either be irrelevant, immaterial, redundant or otherwise unnecessary for the full and complete review of the application.
- (D) **Step 4** (Review of Applications): Applicable.
- (E) **Step 5** (Staff Report): Applicable.
- (F) **Step 6** (Notice): Applicable.
- (G) **Step 7(A)** (Decision Maker): Applicable as follows:
 - (1) Administrative review (Type 1 review) applies to a project development plan that satisfies all of the following conditions:
 - (a) it was submitted after the effective date of this Land Use Code and is subject to the provisions of this Land Use Code; and
 - (b) it contains only permitted uses subject to administrative review as listed in the zone district (set forth in Article 4, District Standards) in which it is located.
 - (2) Planning and Zoning Board review (Type 2 review) applies to a project development plan that does not satisfy all of the conditions in (1), above.
Step 7(B)-(G) (Conduct of Public Hearing, Order of Proceedings at Public Hearing, Decision and Findings, Notification to Applicant, Record of Proceedings, Recording of Decisions and Plats): Applicable.
- (H) **Step 8** (Standards): Applicable. A project development plan shall comply with all General Development Standards applicable to the development proposal (Article 3) and the applicable District Standards (Article 4); and, when a project development plan is within the boundaries of an approved overall development plan or PUD Overlay, the project development plan shall be consistent with the overall development plan or PUD Master Plan associated with such PUD Overlay. Only one (1) application for a project development plan for any specific parcel or portion thereof may be pending for approval at any given time. Such application shall also be subject to the provisions for delay set out in Section 2.2.11.
- (I) **Step 9** (Conditions of Approval): Applicable.
- (J) **Step 10** (Amendments): Applicable.
- (K) **Step 11** (Lapse): Applicable.
- (L) **Step 12** (Appeals): Applicable.

(Ord. No. 192, 2006 §1, 12/19/06; Ord. No. 120, 2011 §8, 9/20/2011; Ord. No. [086, 2014](#) §13, 7/1/14; Ord. No. [091, 2018](#), §9, 7/17/18)

DIVISION 2.5 - FINAL PLAN

2.5.1 - Purpose and Applicability

The purpose and applicability of a final plan is contained in Section 2.1.3(D).

2.5.2 - Final Plan Review Procedures

A final plan may only be submitted after approval of a project development plan for the subject property or concurrently with a project development plan for the subject property. For consolidated applications for a project development plan and a final plan, the applicant shall follow both the project development plan and final development plan review procedures.

A final plan shall be processed according to, in compliance with and subject to the provisions contained in Division 2.1 and Steps 1 through 12 of the Common Development Review Procedures (Sections 2.2.1 through 2.2.12, inclusive) as follows:

- (A) **Step 1** (Conceptual Review): Not applicable.
- (B) **Step 2** (Neighborhood Meeting): Not applicable.
- (C) **Step 3** (Development Application Submittal): All items or documents required for final plans as described in the development application submittal master list shall be submitted. The Director may waive or modify the foregoing submittal requirements if, given the facts and circumstances of the specific application, a particular requirement would either be irrelevant, immaterial, redundant or otherwise unnecessary for the full and complete review of the application.
- (D) **Step 4** (Review of Applications): Applicable.
- (E) **Step 5** (Staff Report): Not applicable.
- (F) **Step 6** (Notice): Not applicable.
- (G) **Step 7(A)—(C)** (Decision Maker, Conduct of Public Hearing, Order of Proceeding at Public Hearing): Not applicable, and in substitution therefor, the Director is hereby authorized to, and shall, review, consider and approve, approve with conditions or deny the development application for a final plan based on its consistency with a valid project development plan for the subject property and its compliance with all of the standards established in Step 8 of this Section. The Director may, but is not obligated to, confer or meet with the applicant or other city staff to obtain clarification or explanation, gain understanding, suggest revision, or otherwise discuss or learn about the development proposal and final plan, all for the purpose of ensuring a fully consistent and compliant final plan.
 - Step 7(D)** (Decision and Findings): Not applicable, except that Step 7(D)(3) shall apply.
 - Step 7(E)** (Notification to Applicant): Applicable.
 - Step 7(F)** (Record of Proceedings): Not applicable, except that Step 7(F)(2) shall apply.
 - Step 7(G)** (Recording of Decisions and Plats): Applicable.
- (H) **Step 8** (Standards): Applicable. A final plan shall comply with the General Development Standards applicable to the development proposal (Article 3) and the applicable District Standards (Article 4); and a final plan shall be consistent with the project development plan.
- (I) **Step 9** (Conditions of Approval): Applicable.
- (J) **Step 10** (Amendments): Applicable.
- (K) **Step 11** (Lapse): Applicable.

- (L) **Step 12** (Appeals): Not applicable. The Director's decision shall be final and no appeals of the Director's decision will be allowed; however, the Director may refer the decision to the Planning and Zoning Board when the Director is in doubt as to the compliance and consistency of the final plan with the approved project development plan. If the Director refers the decision to the Planning and Zoning Board, the decision of the Planning and Zoning Board shall be final and shall not be appealable to the City Council, notwithstanding any provision of the City Code to the contrary.

(Ord. No. [086, 2014](#) §14, 7/1/14)

DIVISION 2.14 - ENFORCEMENT

2.14.1 - Methods of Enforcement

The provisions of this Land Use Code shall be enforced by the following methods:

- (A) requirement of a Building Permit;
- (B) requirement of a certificate of occupancy;
- (C) inspection and ordering removal of violations;
- (D) criminal or civil proceedings; and
- (E) injunction or abatement proceedings.

(Ord. No. 177, 1998 §1, 10/20/98; Ord. No. 123, 2005 §1, 11/15/05)

2.14.2 - Permits and Certificates of Occupancy

- (A) No building shall be erected, moved or structurally altered unless a Building Permit has been issued by the Building and Zoning Director. All permits shall be issued in conformance with the provisions of this Land Use Code and shall expire six (6) months after the date that such Building Permit was issued unless properly acted upon in accordance with the provisions of the International Building Code, as amended. One (1) six-month extension may be granted by the Building and Zoning Director.
- (B) No land or building shall be changed in use, nor shall any new structure, building or land be occupied or used, unless the owner (or the owner's contractor, if any) shall have obtained a certificate of occupancy from the Building and Zoning Director. If the use is in conformance with the provisions of this Land Use Code, a certificate of occupancy shall be issued within three (3) days of the time of notification that the building is completed and ready for occupancy. A copy of all certificates of occupancy shall be filed by the Director and shall be available for examination by any person with either proprietary or tenancy interest in the property or building.

(Ord. No. 177, 1998 §1, 10/20/98; Ord. No. 177, 2002 §6, 12/17/02; Ord. No. 049, 2008 §2, 5/20/08)

2.14.3 - Inspection

The City manager is hereby empowered to cause any building, other structure or tract of land to be inspected and examined and to order in writing the remedying of any condition found to exist therein or thereat in violation of any provision of this land use code. after any such order has been served, no work shall proceed on any building, other structure or tract of land covered by such order, except to correct such violation or comply with the order.

(Ord. No. 177, 1998 §1, 10/20/98)

2.14.4 - Criminal and Civil Liability; Penalties

- (A) Except as otherwise specified in this Land Use Code, any person (including, without limitation, the developer of, owner of, or any person possessing, occupying or trespassing upon, any property which is subject to this Land Use Code, or any agent, lessee, employee, representative, successor or assign thereof) who violates this Land Use Code or who fails to comply with any of its requirements or who fails to comply with any orders made thereunder, shall be guilty of a

misdemeanor and upon conviction shall be subject to the penalties provided in § 1-15 of the City Code. Each day that such a violation occurs shall constitute a separate offense. Nothing contained herein shall prevent the City from taking such other lawful action as is necessary to prevent or remedy any violations of this Land Use Code.

- (B) An owner, property manager or occupant commits a civil infraction by violating any provision of Section 3.8.16 of this Land Use Code. Each day during which the limitation on the number of occupants is exceeded shall constitute a separate violation. A finding that such civil infraction has occurred shall subject the offender(s) to the penalty provisions of § 1-15(f) of the Code of the City of Fort Collins and any or all of the following actions:
- (1) the imposition of a civil penalty of not less than five hundred dollars (\$500.00) and not more than one thousand dollars (\$1,000.00) for each violation;
 - (2) an order to comply with any conditions reasonably calculated to ensure compliance with the provisions of Section 3.8.16 of this Land Use Code or with the terms and conditions of any permit or certificate granted by the city;
 - (3) an injunction or abatement order; and/or
 - (4) denial, suspension or revocation of any city permit or certificate relating to the dwelling unit.

(Ord. No. 177, 1998 §1, 10/20/98; Ord. 123, 2005 §2, 11/15/05; Ord. No. 085, 2008 §9, 7/15/08)

2.14.5 - Liability of City and Injunction

- (A) In addition to any of the foregoing remedies, the City Attorney acting on behalf of the City Council may maintain an action for an injunction to restrain any violation of this Land Use Code.
- (B) This Land Use Code shall not be construed to hold the city responsible for any damage to persons or property by reason of the inspection or reinspection authorized herein or failure to inspect or reinspect or by reason of issuing a Building Permit as herein provided, or by reason of pursuing or failing to pursue an action for injunctive relief as authorized in (A), above.

(Ord. No. 177, 1998 §1, 10/20/98)

2.14.6 - Enforcement of the Requirements and Conditions of Development Approval

The occurrence of either of the following events may subject the developer of, owner of, or any person possessing, occupying or trespassing upon, any property which is subject to this Land Use Code, or any agent, lessee, employee, representative, successor or assign thereof to the enforcement remedies contained in this Division:

- (A) failure to comply with any terms, conditions or limitations contained on the site plan, landscape plan, building elevations or other approved documents pertaining to a development which has received final approval from the city, whether under the provisions of this Land Use Code or under the provisions of prior law.
- (B) failure to comply with any conditions of record imposed by the appropriate decision maker upon its review of the site specific development plan for the development, whether under the provisions of this Land Use Code or under the provisions of prior law.

(Ord. No. 177, 1998 §1, 10/20/98)

1416. - Failure to pay fare or present a valid transit pass.

- (1) A person commits failure to present a valid transit pass if the person occupies, rides in or uses a public transportation vehicle without paying the applicable fare or providing a valid transit pass.
- (2) A person shall not occupy, ride in or use a public transportation vehicle without paying the applicable fare at the time of boarding the public transportation vehicle or without having possession of proof of prior fare payment. A person shall present proof of prior fare payment upon demand of a transit service officer, peace officer or any other employee or agent of a public transportation entity.
- (3) A violation of this Section is a traffic infraction.
- (4) As used in this Section, unless the context otherwise requires:
 - (a) *Proof of prior fare payment* means:
 - (I) A transit pass valid for the day and time of use;
 - (II) A receipt showing payment of the applicable fare for use of a public transportation vehicle during the day and time specified in the receipt; or
 - (III) A prepaid ticket or series of tickets showing cancellation by a public transportation entity used within the day and time specified in the ticket.
 - (b) *Public transportation entity* means a mass transit district, mass transit authority or any other public entity authorized under the laws of this state to provide mass transportation services to the general public.
 - (c) *Public transportation vehicle* means a bus, train, light rail vehicle or any other mode of transportation used by a public transportation entity to provide transportation services to the general public.
 - (d) *Transit pass* means any pass, coupon, transfer, card, identification, token, ticket or other document, issued by a public transportation entity or issued pursuant to an agreement with a public transportation entity, used to obtain public transit.

(Ord. [102, 2014](#) §2)