

DATE: September 20, 2011
STAFF: Ted Shepard

AGENDA ITEM SUMMARY
FORT COLLINS CITY COUNCIL

11

SUBJECT

Second Reading of Ordinance No. 120, 2011, Making Various Amendments to the Land Use Code.

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on September 6, 2011, makes various changes, additions and clarifications in the 2011 annual update of the Land Use Code.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

ATTACHMENTS

1. Copy of First Reading Agenda Item Summary - September 6, 2011
(w/o attachments)

DATE: September 6, 2011
STAFF: Ted Shepard

AGENDA ITEM SUMMARY
FORT COLLINS CITY COUNCIL

20

SUBJECT

First Reading of Ordinance No. 120, 2011, Making Various Amendments to the Land Use Code.

EXECUTIVE SUMMARY

Staff has identified a variety of proposed changes, additions and clarifications in the 2011 annual update of the Land Use Code.

BACKGROUND / DISCUSSION

The Land Use Code was first adopted in March 1997. Subsequent revisions have been recommended on a regular basis to make changes, additions, deletions and clarifications that have been identified since the last update. The proposed changes are offered in order to resolve implementation issues and to continuously improve both the overall quality and "user-friendliness" of the Code.

Most of the items were taken to the July 21, 2011 Planning and Zoning Board meeting. One item was deleted from consideration for further study. Two items were taken to the August 18, 2011 Planning and Zoning Board meeting. All of the proposed revisions included in the Ordinance have received unanimous approval from the Planning and Zoning Board.

The list of revisions has been reviewed by City Council at two work sessions. First, on March 9, 2010, Council recommended that the Ecological Characterization Study be submitted 10 working days prior to submittal. This has been done as described in Code revision number 873. Second, on June 14, 2011, Council indicated general support for all of the revisions but specifically recommended that the waiting period between the neighborhood meeting and application submittal be increased from five to ten days. This has been done as described in Code revision number 883. All items related to the East Side and West Side Neighborhoods Design Standards for Single Family Detached Dwellings have been forwarded to the appropriate staff working on the Reset Project.

FINANCIAL / ECONOMIC IMPACTS

A Land Use Code that is systemically updated is able to respond to changing trends and conditions. This continuous improvement provides for an adaptable regulatory environment yet remains predictable for all users and decision-makers. While there may be no direct financial and economic impacts in the typical fiscal sense, a dynamic Land Use Code creates a valid and credible legal framework that serves a vibrant local economy.

ENVIRONMENTAL IMPACTS

Proposed revision Item 873 would provide for the submittal of an Ecological Characterization Study at least 10 days prior to submittal of a P.D.P. This allows staff and the applicant to evaluate the results of the study and make the appropriate adjustments prior to submitting for a Project Development Plan.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BOARD / COMMISSION RECOMMENDATION

On July 21, 2011, the Planning and Zoning Board considered the proposed revisions to the Land Use Code and took two actions:

1. The Board discussed the items and voted 7 – 0 to recommend approval of all items with the exception of Item 888. As proposed, Item 888 would amend Section 3.4.1(E) – Establishment of Buffer Zones – to clarify that the point of measurement for streams should be the top of bank instead of full-bank discharge.
2. The Board then separately discussed Item 888. The Board expressed concerns that this particular item would benefit from further analysis. In addition, specific examples and pictures from the field would help illustrate the concept being proposed. Further, a specific provision should address a stream channel that is braided. The overall intent of clarifying the standard is supported but questions about stream character and hydrology remain and should be addressed.

The Board then voted 4 – 3 to not recommend approval of this one revision. Staff agreed that additional work on this item is warranted. Consequently, this one item has been pulled from consideration. Staff will endeavor to refine the standard and offer evidence and field data for the Board's consideration. Staff commits to bringing this item forward expeditiously. If found favorable, this revision will be acted upon when ready, and not held to the annual review cycle.

On August 18, 2011, the Planning and Zoning Board considered two additional revisions. These items are:

1. Item 896 slightly revises the language of the Order Of Proceedings At a Public Hearing to provide consistent criteria for both applicant and public testimony, and to provide guidance for the Planning and Zoning Board Chairperson or Hearing Officer to determine relevancy of testimony.
2. Item 897 revises the Preliminary Feedback from City Council Regarding Complex Development Proposals by broadening the criteria by which a developer may bring a project to City Council for a pre-hearing prior to submittal.

The Board voted 5 – 0 to recommend approval of these two additional items. These two items are now included in the Ordinance.

PUBLIC OUTREACH

Public outreach included a meeting with the Chamber of Commerce Legislative Affairs Committee as well as the general notice that accompanies both of the Planning and Zoning Board public hearings.

ATTACHMENTS

1. List of Land Use Code Issues
2. Summary report of all the issues
3. Cross-reference of the issues to the Ordinance section numbers
4. Planning and Zoning Board minutes, July 21, 2011
5. Planning and Zoning Board minutes, August 18, 2011
6. Work Session Summary, June 14, 2011
7. Work Session Summary, March 9, 2010

ORDINANCE NO. 120, 2011
OF THE COUNCIL OF THE CITY OF FORT COLLINS
MAKING VARIOUS AMENDMENTS
TO THE CITY OF FORT COLLINS LAND USE CODE

WHEREAS, on March 18, 1997, by its adoption of Ordinance No. 051, 1997, the City Council enacted the Fort Collins Land Use Code (the "Land Use Code"); and

WHEREAS, at the time of the adoption of the Land Use Code, it was the understanding of staff and the City Council that the Land Use Code would most likely be subject to future amendments, not only for the purpose of clarification and correction of errors, but also for the purpose of ensuring that the Land Use Code remains a dynamic document capable of responding to issues identified by staff, other land use professionals and citizens of the City; and

WHEREAS, City staff and the Planning and Zoning Board have reviewed the Land Use Code and identified and explored various issues related to the Land Use Code and have made recommendations to the Council regarding such issues; and

WHEREAS, the City Council has determined that the recommended Land Use Code amendments are in the best interest of the City and its citizens.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS that the Land Use Code is hereby amended as follows:

Section 1. That Section 1.6.5(B) of the Land Use Code is hereby amended to read as follows:

- (B) Where a proposed building addition exceeds five thousand (5,000) square feet or twenty-five (25) percent of the gross floor area of such building as it existed on March 27, 1997, whichever results in the least amount of square footage, the building and the parcel of ground upon which the building is located shall be brought into compliance with the applicable general development standards contained in Article 3 and the applicable district standards contained in Article 4 of this Land Use Code, to the extent reasonably feasible. Any new structure that is added to said parcel of ground shall also comply with the applicable general development standards and district standards referenced above.

Section 2. That Section 2.1.2(H) of the Land Use Code is hereby amended to read as follows:

- ...
- (H) *Is it possible to receive preliminary feedback from the City Council regarding complex development proposals?* If an application for approval

of a development plan also entails City Council approval of an annexation petition, an amendment to the city's Comprehensive Plan, or some other kind of formal action by the City Council, other than a possible appeal under this Land Use Code, and if a land development or renewal project is determined by the City Manager to be of community-wide impact, the applicant for such approval may request that the City Council conduct a hearing for the purpose of receiving preliminary comments from the City Council regarding the applicant's overall proposal in order to assist the developer in determining whether to file a development application or annexation petition. All pre-application hearings scheduled by the City Manager under this provision will be held in accordance with the provisions contained in Steps 6, 7(B) and 7(C) of the Common Development Review Procedures, except that the signs required to be posted under Step 6(B) shall be posted subsequent to the scheduling of the hearing and not less than fourteen (14) days prior to the date of the hearing. At the time of requesting the hearing, the applicant must advance the city's estimated costs of providing notice of the hearing. Any amounts paid that exceed actual costs will be refunded to the applicant. At the conclusion of the hearing, members of the City Council may, but shall not be required to, comment on the proposal. Any comment, suggestion or recommendation made by any Councilmember with regard to the proposal does not bind or otherwise obligate any City decision maker to any course of conduct or decision pertaining to the proposal. Only one (1) such hearing may be requested.

...

Section 3. That Section 2.2.2(A) of the Land Use Code is hereby amended to read as follows:

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.

Section 4. That Section 2.2.7(C) of the Land Use Code is hereby amended to read as follows:

- (C) ***Order of Proceedings at Public Hearing.*** The order of the proceedings at the public hearing shall be as follows:
- (1) ***Staff Report Presented.*** The Director shall present a narrative and/or graphic description of the development application. The Director shall present a Staff Report which includes a written recommendation. This recommendation shall address each standard required to be considered by this Land Use Code prior to approval 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 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.
 - (4) ***Public Testimony.*** Members of the public may comment on the application and present evidence, subject to the determination of the Chair as to relevance.
 - (5) ***Applicant Response.*** The applicant may respond to any testimony or evidence presented by the public.
 - (6) ***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.

Section 5. That Section 2.2.11(C) of the Land Use Code is hereby amended to read as follows:

- (C) ***Project Development Plan and Plat.*** Within a maximum of three (3) years 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 proceed by obtaining the Director's approval of a final plan for all or part of the project development plan. 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 three-year 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.

Section 6. That Section 2.2.11(D) of the Land Use Code is hereby amended to read as follows:

(D) ***Final Plan and Plat and Other Site Specific Development Plans.***

(1) *Approval.* A site specific development plan shall be deemed approved upon the approval by the decision maker relating thereto.

...

(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 granting of an exception to this requirement would not be detrimental to the public good and would: (a) substantially alleviate an existing, defined and described problem of City-wide concern; or (b) result in a substantial benefit to the City by reason of the fact that the proposed project would substantially address an important community need specifically and expressly defined and described in the City's Comprehensive Plan or in an adopted policy, ordinance or resolution of the City Council.

(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 county Clerk and Recorder, any property right which might otherwise have been vested shall be deemed to be not vested.

Section 7. That Section 2.3.2(H)(1) of the Land Use Code is hereby amended to read as follows:

(H) **Step 8 (Standards):** Applicable. An overall development plan shall comply with the following criteria:

(1) The overall development plan shall be consistent with the permitted uses and applicable zone district standards (Article 4) of all zone districts contained within the boundaries of the overall development plan. The plan shall also be consistent with any zone district standards (Article 4) and general development standards (Article 3) that can be applied at the level of detail required for an overall development plan submittal. Only one (1) application for an overall development plan for any specific parcel or portion thereof may be pending for approval at any given time. Such application shall also be subject to the provisions for delay set out in Section 2.2.11.

...

Section 8. That Section 2.4.2(H) of the Land Use Code is hereby amended to read as follows:

(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, the project development plan shall be consistent with the overall development plan. 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.

Section 9. That Section 3.2.2(L) of the Land Use Code is hereby amended to read as follows:

(L) **Parking Stall Dimensions.** Off-street parking areas for automobiles shall meet the following minimum standards for long- and short-term parking of standard and compact vehicles:

...

Section 10. That Section 3.4.1(D)(1) of the Land Use Code is hereby amended to read as follows:

(D) **Ecological Characterization and Natural Habitat or Feature Boundary Definition.** The boundary of any natural habitat or feature shown on the

Natural Habitats and Features Inventory Map is only approximate. The actual boundary of any area to be shown on a project development shall be proposed by the applicant and established by the Director through site evaluations and reconnaissance, and shall be based on the ecological characterization of the natural habitat or feature in conjunction with the map.

- (1) *Ecological Characterization Study.* If the development site contains, or is within five hundred (500) feet of, a natural habitat or feature, or if it is determined by the Director, upon information or from inspection, that the site likely includes areas with wildlife, plant life and/or other natural characteristics in need of protection, then the developer shall provide to the city an ecological characterization report prepared by a professional qualified in the areas of ecology, wildlife biology or other relevant discipline. At least ten (10) working days prior to the submittal of a project development plan application for all or any portion of a property, a comprehensive ecological characterization study of the entire property must be prepared by a qualified consultant and submitted to the City for review. The Director may waive any or all of the following elements of this requirement if the city already possesses adequate information required by this subsection to establish the buffer zone(s), as set forth in subsection (E) below, and the limits of development ("LOD"), as set forth in subsection (N) below. The ecological characterization study shall describe, without limitation, the following:

...

Section 11. That Section 3.4.7(C) of the Land Use Code is hereby amended to read as follows:

- (C) ***Determination of Landmark Eligibility.*** The determination of individual eligibility for local landmark designation will be made in accordance with the applicable provisions of Chapter 14 of the City Code. A site, structure or object may be determined to be individually eligible for local landmark designation if it meets one (1) or more of the criteria as described in Section 14-5, "Standards for Designation of Sites, Structures, Objects and Districts For Preservation" of the City Code. If a property is determined to be eligible for designation, the applicant will provide a completed Colorado Cultural Resource Survey Architectural Inventory Form for the property.

The determination of individual eligibility for the National or State Register of Historic Places shall be according to the processes and procedures of the Colorado Historical Society.

Section 12. That Section 3.5.1(H) of the Land Use Code is hereby amended to read as follows:

- (H) ***Land Use Transition.*** When land uses with significantly different visual character are proposed adjacent to each other and where gradual transitions are not possible or not in the best interest of the community, the development plan shall, to the maximum extent feasible, achieve compatibility through compliance with the standards set forth in this Division regarding scale, form, materials and colors, buffer yards and adoption of operational standards including limits on hours of operation, lighting, placement of noise-generating activities and similar restrictions.

Section 13. That Section 3.6.2(L) of the Land Use Code is hereby amended to read as follows:

(L) ***Private Drives and Street-like Private Drives.***

(1) *When Allowed.*

- (a) Internal access or additional cross-access. Private drives shall be allowed in a development, provided that their function will only be to provide access to property within the development or *additional* cross-access between developments that are also connected by a street(s). Private drives shall not be permitted if (by plan or circumstance) such drives would, in the judgment of the City Engineer, attract "through traffic" in such volumes as to render such drives necessary as connections between developments, neighborhoods or other origins and destinations outside of the development plan.
- (b) Primary access. A private drive shall be allowed to provide primary access to development, provided that the drive is in compliance with paragraph (a) above.
- (c) Street-Like Private Drives. A street-like private drive shall be allowed as primary access to facing buildings or to parcels internal to a larger, cohesive development plan, or for the purposes of meeting other requirements for streets. Street-like private drives shall be designed to include travel lanes, on-street parking, tree-lined border(s), detached sidewalk(s), and crosswalks. Other features such as bikeways, landscaped medians, corner plazas and pedestrian lighting may be provided to afford an appropriate alternative to a street in the context of the development plan.

On-street parking for abutting buildings may be parallel or angled. Head-in parking may only be used in isolated parking situations.

Such street-like private drives must be similar to public or private streets in overall function and buildings shall front on and offer primary orientation to the street-like private drive.

Street-like private drives may be used in conjunction with other standards, such as block configuration, orientation to connecting walkways, build-to-lines, or street pattern and connectivity.

(d) Neither a private drive nor a street-like private drive shall be permitted if it prevents or diminishes compliance with any other provisions of this Land Use Code.

(2) *Design Requirements.* Private drives shall be designed to meet the following criteria:

(a) If any property served by the private drive cannot receive fire emergency service from a public street, then all emergency access design requirements shall apply to the private drive in accordance with Section 3.6.6. An "emergency access easement" must be dedicated to the city for private drives that provide emergency access.

(b) Private drives which must comply with Section 3.6.6 for emergency access shall be limited to an overall length of six hundred sixty (660) feet from a single point of access (measured as the fire hose would lay).

...

Section 14. That Section 3.8.11(D) of the Land Use Code is hereby amended to read as follows:

(D) For the purposes of this Section, the height of a fence or wall shall be the distance from the top of the fence or wall to the finished grade of the lot directly under the fence or wall as such grade existed at the time the fence or wall was constructed. Any berm, wall or similar feature that is constructed for the purpose of increasing the height of a fence or wall shall be considered to be a part of the fence or wall.

Section 15. That Section 3.10.1 of the Land Use Code is hereby amended to read as follows:

3.10.1 Applicability and Purpose

(A) *Applicability.* These standards apply to applications for development within the boundary of the TOD Overlay Zone, south of Prospect Road and provided further that the provisions contained in Section 3.4.10(D)

regarding parking structure design shall also apply to the H-M-N, High Density Mixed-Use Neighborhood and the C-C, Community Commercial zone districts throughout the City.

- (B) **Purpose.** The purpose of this Section is to modify the underlying zone districts south of Prospect Road to encourage land uses, densities and design that enhance and support transit stations along the Mason Corridor. These provisions allow for a mix of goods and services within convenient walking distance of transit stations; encourage the creation of stable and attractive residential and commercial environments within the TOD Overlay Zone south of Prospect Road; and provide for a desirable transition to the surrounding existing neighborhoods. Accordingly, in the event of a conflict between the provisions contained in this Division and the provisions contained in Article 4, this Division shall control. The purpose of this Section is also to apply the standards contained in Section 3.4.10(D) regarding parking structure design to all land within the City that is located in the H-M-N, High Density Mixed-Use Neighborhood and the C-C, Community Commercial zone districts.

Section 16. That Section 4.2(D)(1)(a) of the Land Use Code is hereby amended to read as follows:

(D) **Land Use Standards.**

- (1) **Density/Intensity.** All development shall meet the following requirements:
 - (a) Overall average density shall not exceed two (2) dwelling units per gross acre.

...

Section 17. That Section 4.2(E)(2)(c) of the Land Use Code is hereby amended to read as follows:

- (c) Minimum lot sizes do not apply provided that the overall average density of the proposed development does not exceed two (2) dwelling units per gross acre and the density of the cluster development does not exceed five (5) dwelling units per net acre.

Section 18. That Section 4.6(E) of the Land Use Code is hereby amended by the addition of a new subsection (3) which reads in its entirety as follows:

- (3) **Design standards for multi-family dwellings.**

- (a) **Orientation and setbacks.** Setbacks from the property line of abutting property containing single- and two-family dwellings shall be twenty-five (25) feet.
- (b) **Variation among repeated buildings.** For any development containing at least five (5) and not more than seven (7) buildings (excluding clubhouses/leasing offices), there shall be at least two (2) distinctly different building designs. For any such development containing more than seven (7) buildings (excluding clubhouses/leasing offices), there shall be at least three (3) distinctly different building designs. For all developments, there shall be no more than two (2) similar buildings placed next to each other along a street, street-like private drive or major walkway spine. Buildings shall be considered similar unless they vary significantly in footprint size and shape, architectural evaluations and entrance features, within a coordinated overall theme of roof forms, massing proportions and other characteristics. To meet this standard, such variation shall not consist solely of different combinations of the same building features.
- (c) **Variation of color.** Each multi-family building shall feature a palette of muted colors, earth tone colors, natural colors found in surrounding landscape or colors consistent with the adjacent neighborhood. For a multiple structure development containing at least forty (40) and not more than fifty-six (56) dwelling units, there shall be at least two (2) distinct color schemes used on structures throughout the development. For any such development containing more than fifty-six (56) dwelling units, there shall be at least three (3) distinct color schemes used on structures throughout the development. For all developments, there shall be no more than two (2) similarly colored structures placed next to each other along a street or major walkway spine.
- (d) **Entrances.** Entrances shall be made clearly visible from the streets and public areas through the use of architectural elements and landscaping.
- (e) **Roofs.** Roof lines may be either sloped, flat or curved, but must include at least two (2) of the following elements:

1. The primary roof line shall be articulated through a variation or terracing in height, detailing and/or change in massing.
2. Secondary roofs shall transition over entrances, porches, garages, dormers, towers or other architectural projections.
3. Offsets in roof planes shall be a minimum of two (2) feet in the vertical plane.
4. Termination at the top of flat roof parapets shall be articulated by design details and/or changes in materials and color.
5. Rooftop equipment shall be hidden from view by incorporating equipment screens of compatible design and materials.

(f) **Facades and Walls.** Each multi-family dwelling shall be articulated with projections, recesses, covered doorways, balconies, covered box or bay windows and/or other similar features, dividing large facades and walls into human-scaled proportions similar to the adjacent single- or two-family dwellings, and shall not have repetitive, undifferentiated wall planes. Building facades shall be articulated with horizontal and/or vertical elements that break up blank walls of forty (40) feet or longer. Façade articulation may be accomplished by offsetting the floor plan, recessing or projection of design elements, change in materials and/or change in contrasting colors. Projections shall fall within setback requirements.

(g) **Colors and materials.** Colors of non-masonry materials shall be varied from structure to structure to differentiate between buildings and provide variety and individuality. Colors and materials shall be integrated to visually reduce the scale of the buildings by contrasting trim, by contrasting shades or by distinguishing one (1) section or architectural element from another. Bright colors, if used, shall be reserved for accent and trim.

Section 19. That Section 4.7(B)(1)(b) of the Land Use Code is hereby amended to read as follows:

(b) **Accessory/Miscellaneous Uses:**

1. Accessory buildings, provided that they contain no habitable space.
2. Accessory buildings containing habitable space.
3. Accessory uses.

Section 20. That Section 4.7(B)(2)(c) of the Land Use Code is hereby deleted in its entirety:

Section 21. That Section 4.7(D) of the Land Use Code is hereby amended to read as follows:

(D) ***Land Use Standards.***

...

- (3) *Accessory Buildings With Habitable Space (or Potential Future Habitable Space).* Any accessory building with water and/or sewer service shall be considered to have habitable space. Any person applying for a building permit for such a building shall sign and record with the Larimer County Clerk and Recorder an affidavit stating that such accessory structure shall not be used as a dwelling unit. All applicable building permits issued for such buildings shall be conditioned upon this prohibition. Any such structure containing habitable space that is located behind a street-fronting principal building shall contain a maximum of six hundred (600) square feet of floor area. Floor area shall include all floor space within the basement and ground floor plus that portion of the floor area of any second story having a ceiling height of at least seven and one-half (7½) feet. Such accessory building may be located in any area of the rear portion of a lot, provided that it complies with the setback requirements of this District and there is at least a ten-foot separation between structures.

...

Section 22. That Section 4.8(B)(1)(d) of the Land Use Code is hereby amended to read as follows:

(d) **Accessory/Miscellaneous Uses:**

1. Accessory buildings, provided that they contain no habitable space.
2. Accessory buildings containing habitable space.
3. Accessory uses.

Section 23. That Section 4.8(B)(2)(c) of the Land Use Code is hereby deleted in its entirety:

Section 24. That Section 4.8(D) of the Land Use Code is hereby amended to read as follows:

(D) ***Land Use Standards.***

...

- (3) *Accessory Buildings With Habitable Space (or Potential Future Habitable Space).* Any accessory building with water and/or sewer service shall be considered to have habitable space. Any person applying for a building permit for such a building shall sign and record with the Larimer County Clerk and Recorder an affidavit stating that such accessory structure shall not be used as a dwelling unit. All building permits issued for such buildings shall be conditioned upon this prohibition. An applicant may also declare an intent for an accessory building to contain habitable space. Any such structure containing habitable space that is located behind a street-fronting principal building shall contain a maximum six hundred (600) square feet of floor area. Floor area shall include all floor space within the basement and ground floor plus that portion of the floor area of any second story having a ceiling height of at least seven and one-half (7½) feet. Such accessory building may be located in any area of the rear portion of a lot, provided that it complies with the setback requirements of this District and there is at least a ten-foot separation between structures.

...

Section 25. That Section 4.9(B)(1)(d) of the Land Use Code is hereby amended to read as follows:

(d) **Accessory/Miscellaneous Uses:**

1. Accessory buildings, provided that they contain no habitable space.
2. Accessory buildings containing habitable space.
3. Accessory uses.

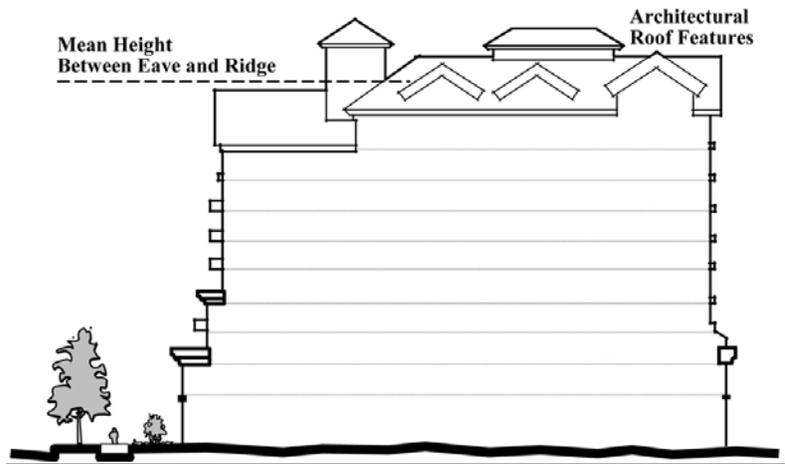
Section 26. That Section 4.9(B)(2)(d) of the Land Use Code is hereby deleted in its entirety:

Section 27. That Section 4.9(D)(3) of the Land Use Code is hereby amended to read as follows:

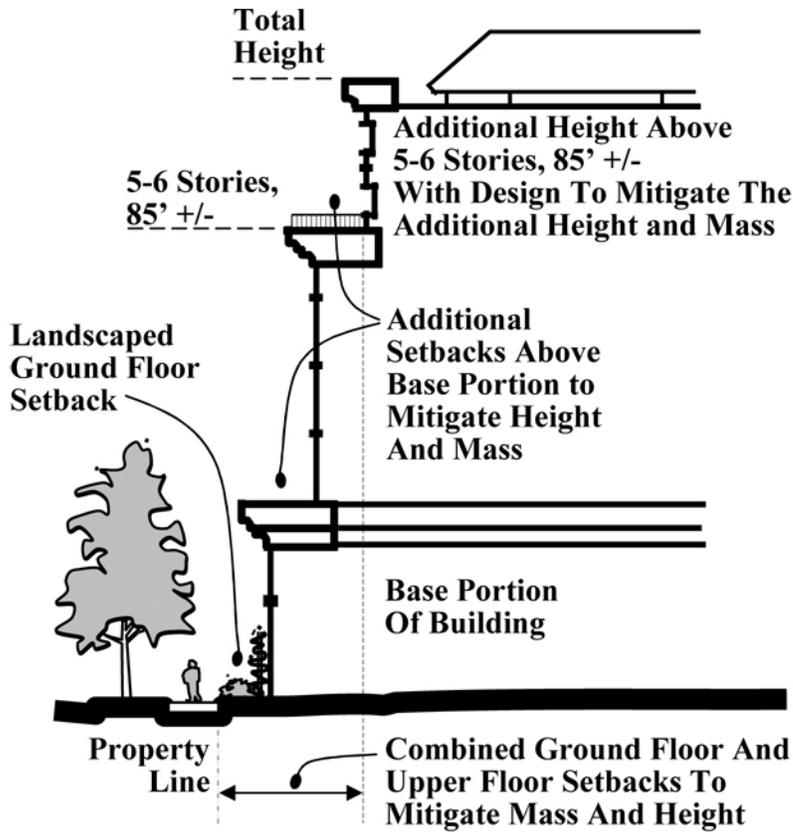
- (3) *Accessory Buildings With Habitable Space (or Potential Future Habitable Space)*. Any accessory building with water and/or sewer service shall be considered to have habitable space. An applicant may also declare an intent for an accessory building to contain habitable space. Any person applying for a building permit for such a building shall sign and record with the Larimer County Clerk and Recorder an affidavit stating that such accessory structure shall not be used as a dwelling unit. All building permits issued for such buildings shall be conditioned upon this prohibition. Any such structure containing habitable space that is located behind a street-fronting principal building shall contain a maximum six hundred (600) square feet of floor area. Floor area shall include all floor space within the basement and ground floor plus that portion of the floor area of any second story having a ceiling height of at least seven and one-half (7½) feet. Such accessory building may be located in any area of the rear portion of a lot, provided that it complies with the setback requirements of this District and there is at least a ten-foot separation between structures.

Section 28. That the graphic contained Section 4.16(D)(2)(c) of the Land Use Code is hereby deleted in its entirety and replaced with the new graphic below:

Figure 18.6
Measurement of Height Limits



Section 29. That the graphic contained in Section 4.16(D)(4)(b)2 of the Land Use Code is hereby deleted in its entirety and replaced with the new graphic below:



Section 30. That Section 4.27(D)(4)(a) of the Land Use Code is hereby amended to read as follows:

...

(4) *Dimensional Standards.*

(a) Maximum height shall be four (4) stories.

...

Section 31. That the definition “*Development*” contained in Section 5.1.2 of the Land Use Code is hereby amended to read as follows:

Development shall mean the carrying out of any building activity or mining operation, the making of any material change in the use or appearance of any structure or land, or, except as is authorized in Section 1.4.7, the dividing of land into two (2) or more parcels.

...

(2) *Development shall not include:*

- (a) work by the City, or by the Downtown Development Authority (if within the jurisdictional boundary of the Downtown Development Authority and if such work has been agreed upon in writing by the City and the Authority), or work by a highway or road agency or railroad company for the maintenance or improvement of a road or railroad track, if the work is carried out on land within the boundaries of the right-of-way, or on land adjacent to the right-of-way if such work is incidental to a project within the right-of-way;

...

Section 32. That the definition “*Private drive*” contained in Section 5.1.2 of the Land Use Code is hereby amended to read as follows:

Private drive shall mean a parcel of land not dedicated as a public street, over which a private easement for road purposes has been granted to the owners of property adjacent thereto, which intersects or connects with a public or private street, and where the instrument creating such easement has been recorded in the Office of the Clerk and Recorder of Larimer County. A *street-like private drive* is a type of private drive that may be used instead of a street under the provisions of Section 3.6.2(L)(c).

Section 33. That the definition “*Private street*” contained in Section 5.1.2 of the Land Use Code is hereby amended to read as follows:

Private street shall mean a parcel of land not dedicated as a public street, over which a public access easement for street purposes has been granted to the city, and where the instrument creating such easement has been recorded or filed in the Office of the Clerk and Recorder of Larimer County. The public access easement shall allow for access by police, emergency vehicles, trash collection and other service vehicles, utility owners and the public in general.

Introduced, considered favorably on first reading, and ordered published this 6th day of September, A.D. 2011, and to be presented for final passage on the 20th day of September, A.D. 2011.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 20th day of September, A.D. 2011.

Mayor

ATTEST:

Chief Deputy City Clerk