

# AGENDA ITEM SUMMARY

July 7, 2015

City Council

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## STAFF

Cameron Gloss, Planning Manager

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## SUBJECT

First Reading of Ordinance No. 082, 2015, Amending the Land Use Code with Regard to City Development Projects.

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## EXECUTIVE SUMMARY

The purpose of this item is to amend the Land Use Code to require any development review project in which the City is an applicant to be reviewed by the Planning and Zoning Board (P&Z) and eliminate formal appeals to the City Council while allowing a Council override of a P&Z decision.

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## STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

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## BACKGROUND / DISCUSSION

Currently, City development projects are subject to the same development review process as any private sector development project. As such, the project is required to meet all Land Use Code (LUC) requirements and be subject to a Type 1 or Type 2 hearing as outlined in the LUC. Any resulting decision may be appealed to the City Council. Therefore the Council has been prevented from participating in ex parte discussions in order to avoid procedural issues in the event an appeal of the decision is sought. In many cases the City Council has authorized a City project to advance through the development review process through a strategic planning and budgeting process. Since the Council has input at the beginning of the project it has been confusing to the public when the Council is not allowed to participate during the development review process except in deciding appeals that are brought to Council.

At its May 26, 2015 Work Session on this topic, Council agreed to consider changing the current Ordinance and directed staff to proceed with drafting a new Ordinance. Council further directed staff to include the new alternate process requirements for Council if the current appeal process is eliminated. Those requirements include the number of days a Council member can have to file an appeal and the method to be used to review the decision by the P&Z.

The proposed ordinance recommended by staff includes the following review process for projects where the City is the applicant:

1. All City projects are subject to Type 2 (P&Z) Review.
2. There is no right of appeal to City Council for City projects.
3. Any Councilmember may initiate the alternate Council review for the City project in question with a written request made within 14 days of the P&Z decision.
4. The Council may, by majority vote, overturn or modify the P&Z decision through a resolution.

5. Projects subject to Council review may be evaluated under the same Land Use Code review criteria as the P&Z, except the Council also has the authority, in its legislative discretion, to consider factors in addition to or in substitution of the standards of the Land Use Code.

### **CITY FINANCIAL IMPACTS**

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None.

### **BOARD / COMMISSION RECOMMENDATION**

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At its February 12, 2015 meeting, the Planning and Zoning Board held a public hearing and voted 5-0 (Boardmembers Heinz and Hobbs absent) to recommend the LUC amendments. (**Attachment 1**)

### **PUBLIC OUTREACH**

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In addition to outreach conducted during the Planning and Zoning Board hearing on February 12, 2015, City Council held a work session on May 26, 2015. (**Attachment 2**)

### **ATTACHMENTS**

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1. Planning and Zoning Board minutes, February 12, 2015 (PDF)
2. Work Session Summary, May 26, 2015 (PDF)
3. Powerpoint presentation (PDF)

**Planning and Zoning Board  
February 12, 2015**

**Project: Review of City Projects and Land Use Code Amendment**

**Project Description:** This is a request to subject all City projects to a Type II review, with that review coming before the Planning and Zoning Board. Therefore, the appeal process would be amended in a manner that would be a legislative review by the City Council, rather than a judicial review.

**Recommendation: Recommendation to City Council**

**Hearing Testimony, Written Comments and Other Evidence**

**Staff and Applicant Presentations**

Director Kadrich explained the purpose of this item, which is to request that the Board recommend to City Council a Land Use Code (LUC) amendment. She stated that, if a City project is going through the development review process, it is subject to the code requirement that assigns it to a Type I or II hearing. That project would also be subject to the current appeal process. City Council would be cautious in the type of communications that they had with any parties belonging to or having interest in the project (defined as *ex parte* communications). Therefore, if an appeal is sought, the City Council would be able to hear the project information without bias from those other parties.

If all City projects were brought before the P&Z Board, their decision could ultimately be overturned by the City Council by a majority vote. The reason for this is that, sometimes a City project will begin through a budget or appropriation process, and the City Council may be involved until the project goes to a development review. They may only hear of the project again if it is later appealed. This has created a lot of confusion for citizens who may be engaged in the project process. This proposal is similar to the Site Plan Advisory Review (SPAR) process, which is subject to decision overturning by the specific governing body.

**Staff/Applicant Response to Citizen Concerns**

Member Schneider asked who could appeal the decision of this Board. Deputy City Attorney Eckman responded that no one could appeal a decision based on the way this proposal is drafted; as a substitution, the City Council may, by a majority vote, exercise its legislative power and overturn or modify any final decision regarding the project. He continued by saying that this amendment would allow citizens to communicate directly with the City Council their opinions on P&Z Board decisions. Vice Chair Kirkpatrick asked whether this amendment would result in making the P&Z Board's decisions more political in the future. Deputy City Attorney Eckman responded by saying there would no longer be a necessity for Council to determine whether the LUC was properly interpreted; Council could overturn a P&Z Board decision under their legislative powers. Member Hart stated that he thought the purpose of this amendment was to provide a more transparent process for the people. Director Kadrich responded that citizens had been confused when a City project went to a Type I hearing instead of coming to the P&Z Board. Options other than an appeal process were also considered. With respect to how the SPAR process works, she believes it is reasonable to request that P&Z Board would hear all City project reviews.

**Board Questions and Staff Response**

## **Planning and Zoning Board**

### **February 12, 2015**

#### **Public Input**

Eric Sutherland stated that he believes that many of the problems in the past have been the result of citizen misinterpretations, which he also believes have been manufactured by City government. He stated that the role of the City Council as defined by the City Charter has also been misinterpreted, which places the City Council's authority over the P&Z Board.

#### **Board Deliberation**

Member Hart feels this amendment will give citizens better access to the City Council and will also give the Council more flexibility in dealing with those concerns. Member Hansen feels it will protect the rights of the developers and property owners, let more citizens be fully engaged, but still uphold the LUC requirements. Director Member Schneider asked how the process would work if a P&Z decision was overturned (if the case would return to the P&Z Board at a later date). Kadrach clarified that staff would still recommend compliance with the LUC. Deputy City Attorney Eckman added that the P&Z Board would make their decision based on the LUC; City Council would make their decisions based on their legislative prerogative, and the project would not return to the P&Z Board. City Council would be able to overturn or modify a decision, but not remand. Member Schneider asked how the P&Z Board would be held accountable for the standards in place. Deputy City Attorney Eckman stated that this is a hybrid situation where the City must first comply with the LUC to get a favorable vote from the P&Z Board, but City Council would not be required to uphold the LUC. Member Hansen stated that this amendment could be beneficial to both citizens and the City, depending on the issue. Chair Carpenter expressed her discomfort with this proposal; while she likes some parts of the proposal, she still wants the Board to be more transparent. Deputy City Attorney Eckman stated that he is noticing some dissidence – he can foresee some friction arising in the future. He also stated that he thought Estes Park was another municipality that had exempted themselves from their LUC. Member Hart clarified that the City Council has a broader charter and, while they may be intentionally ignoring LUC, they can vote to “better serve community needs”.

Vice Chair Kirkpatrick asked whether this process would only be applicable when the City is an applicant, rather than when the City is involved in other ways (i.e. through TIF). There was a question as to what does the term “City-Sponsored” projects refer specifically. Deputy City Attorney Eckman could not recall the specific reasons why “sponsored” is listed. Director Kadrach stated that it would be helpful to clarify exactly which types of projects this amendment would apply to. Vice Chair Kirkpatrick stated that she could more easily support this amendment if City is applicant; other situations will require more deliberation. Member Hansen stated he believes this change will open up City projects to the community and improve transparency overall.

Director Kadrach requested the Board to make some sort of decision at this hearing. There was more discussion as to how a motion should be worded and whether “City-Sponsored” and “City-Funded” should be excluded from the motion. Director Kadrach stated that she did not know of any projects that would be compromised with this amendment at this time. Deputy City Attorney Eckman added that, if the City Council has to make some decision about sponsorship or other matters, they would prefer that it is not quasi-judicial in order to avoid the *ex parte* issues or possibility of appeals. Vice Chair Kirkpatrick stated her difficulty in supporting a potentially political process that meets the LUC but may be contentious. Member Schneider asked if the applicant could legally refuse to comply with the LUC because, for example, they know they will

**Planning and Zoning Board**  
**February 12, 2015**

be financially supported by Tax Increment Financing (TIF) dollars. Director Kadrich clarified that there is nothing proposed that would suggest that the City would not comply with the LUC. The intent of this amendment to the ordinance is that any City project that is required to go through the development review process would have to comply with the LUC and be reviewed by the P&Z Board. If the City Council decides to hear it as a legislative matter, then they could exercise their legislative powers at that time. Member Hart asked to forward their concerns to the City Council so they could decide on the actual wording of the amendment. Deputy City Attorney Eckman added that TIF or other quasi-judicial issues could be carved out. Member Hart asked to define what "City-sponsored" projects include.

**Member Hart made a motion to recommend to City Council to amend section 2.212 of the LUC for City-development projects in which the City is the applicant and that all such projects be subject to a Type II hearing before the Planning and Zoning Board. Vice Chair Kirkpatrick added that, if the City definitions are to be more expansion, we would also recommend that there be a larger public engagement process undertaken. Vice Chair Kirkpatrick seconded the motion. Vote: 5:0.**



**Planning, Development & Transportation Services**

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**MEMORANDUM**

Date: May 29, 2015

To: Mayor and Councilmembers

From: Laurie Kadrach, Community Development & Neighborhood Services Director   
Karen Cumbo, Planning, Development & Transportation Services Director 

Through: Jeff Mihelich, Deputy City Manager   
Darin Atteberry, City Manager 

Re: 5-26-15 Work Session Summary – City Projects

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An option to considering a Land Use Code Amendment for City Projects was presented to Council by Laurie Kadrach, Community Development and Neighborhood Services Director and Carrie Daggett, City Attorney. The Mayor and all Council members were present.

Staff was seeking direction on whether to draft regulations to eliminate procedural issues raised for City Project Development Review by modifying the current appeal process and replacing it with a new method. Council agreed to consider changing the current Ordinance and directed staff to proceed with drafting a new Ordinance.

Council further directed staff to include the new process requirements for Council if the current appeal process is eliminated. Those requirements should include the number of days a member can have to file an appeal and the method to be used to review the decision by the Planning and Zoning Board.



# **Amending Land Use Code City Projects**

May 26, 2015

Planning Manager, Community Development & Neighborhood Services

Cameron Gloss

- Land Use Code designates various processes under which City Projects are to be reviewed
- Processes are subject to Appeal:
  - Appeals to City Council
  - Procedural concern with citizen communications

- Projects in which the City is an applicant
- Planning and Zoning Board (P & Z) review
- No right of Appeal to Council
- Any Councilmember may initiate alternate City Council Review within 14 days of P & Z decision
- Majority vote by Council to overturn or modify P& Z decision

ORDINANCE NO. 082, 2015  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AMENDING THE LAND USE CODE WITH REGARD TO  
CITY DEVELOPMENT PROJECTS

WHEREAS, currently the Land Use Code provides that City development projects must go through the same process and analysis as any other project subject to the Land Use Code; and

WHEREAS, the City Council has determined that although such City projects should be reviewed under the full terms and conditions of the Land Use Code, all such reviews should be conducted by the Planning and Zoning Board, and there should be no right of quasi-judicial appeal to the City Council of any final decision regarding such City projects; and

WHEREAS, the City Council has further determined that in substitution of right of quasi-judicial appeal, the City Council in its legislative function should, by majority vote, have the power to overturn or modify any final decision regarding such City project; and

WHEREAS, the City Council has determined that it is in the best interests of the City that the Land Use Code be amended accordingly.

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

Section 1. That Section 2.2.12 of the Land Use Code is hereby amended to read as follows:

**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.

Section 2. That Article 2 of the Land Use Code is hereby amended by the addition of a new Division 2.17 which reads in its entirety as follows:

**Division 2.17 City Projects**

Development projects for which the City is the applicant shall be processed in the manner described in this Land Use Code, as applicable, but shall be subject to review by the Planning and Zoning Board in all instances, despite the fact that certain uses would otherwise have been subject to administrative review.

Introduced, considered favorably on first reading, and ordered published this 7th day of July, A.D. 2015, and to be presented for final passage on the 21st day of July, A.D. 2015.

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Mayor

ATTEST:

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City Clerk

Passed and adopted on final reading on the 21st day of July, A.D. 2015.

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Mayor

ATTEST:

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City Clerk