

# AGENDA ITEM SUMMARY

August 20, 2019

City Council

## STAFF

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Noah Beals, Senior City Planner/Zoning  
Brad Yatabe, Legal

## SUBJECT

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First Reading of Ordinance No. 104, 2019, Making Various Amendments to the City of Fort Collins Land Use Code.

## EXECUTIVE SUMMARY

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The purpose of this item is to make amendments to the Land Use Code. There are proposed revisions, clarifications and additions to the Code that address specific subject areas that have arisen since the last update was initiated in the spring of 2019.

## STAFF RECOMMENDATION

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Staff recommends adoption of the Ordinance on First Reading.

## BACKGROUND / DISCUSSION

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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. While most revisions are bundled and adopted on an annual basis, other changes may occur as needed so the Land Use Code retains maximum effectiveness. The proposed changes are offered to resolve implementation issues and to continuously improve both the overall quality and user friendliness of the Code. Additional details regarding the changes are contained in the attachments to this Agenda Item Summary.

There are two proposed items that provide clarification to the Land Use Code. These changes align with consistent application of the standards. The revisions, by Article, are summarized as follows:

- Article Two - Modification of Standards - Clarification that a modification request can be to both plans approved under the current Land Use Code and law existing prior to the Land Use Code. Additionally, clarification that modification requests can be submitted in conjunction with a basic development review application.
- Article Five - Definition of Development - Addition to exempt from the definition of development any private entity that is authorized by the federal or state government to restore or stabilize the ecology of a site.

## ARTICLE 2

The modification of standards procedure has been consistently applied to applications undergoing review under the Land Use Code. However, with regards to already approved development plans, Land Use Code Section 2.8.1 limited the applicability of the modification of standards procedure to development plans approved under laws that existed prior to the Land Use Code. The change clarifies that the modification of standards procedure also applies to development plans previously approved under the Land Use Code. Additionally, the change clarifies that the modification of standards procedure applies to applications subject to

basic development review and minor amendments of development plans, and that the decision maker regarding such modifications is the Director of Community Development and Neighborhood Services.

### ARTICLE 5

The Land Use Code definition of development has always included exemptions. These exemptions mostly applied to work conducted by the City itself. One exemption includes work by the City for the purpose of restoring or stabilizing the ecology of a site. This type of work requires permits from either or both the State and Federal government. The change also exempts any person (e.g. private property owner) from the definition of development for conducting work to restore or stabilize the ecology of a site if such person has been authorized by the State or Federal government. The requirement to obtain such authorization should provide sufficient review and oversight over the restoration or stabilization work.

### **BOARD / COMMISSION RECOMMENDATION**

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At its July 18, 2019, regular hearing, the Planning and Zoning Board in a 5 to 1 vote adopted staff recommendation that City Council approve the revisions. In the final discussion before the vote, the dissenting vote expressed concerns of public notice requirements for modification requests as it relates to the different types of development reviews, as the proposed changes did not include changes to the notification standards.

City staff will be following up with additional review of the notice requirements and will continue the discussion with Planning and Zoning Board.

### **PUBLIC OUTREACH**

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In addition to the Planning and Zoning Board public hearing, the proposed changes were listed on "This Week in Development Review," a weekly online notice that is posted on the Planning Department's website and sent to approximately 435 subscribers.

### **ATTACHMENTS**

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1. Planning and Zoning Board Minutes, July 18, 2019 (draft) (PDF)

## **Agenda Review**

Development Review Manager Everette reviewed the items on the Consent and Discussion agendas, stating that all items will be heard as originally advertised.

### **Public Input on Items Not on the Hearing Agenda:**

None noted.

### **Consent Agenda:**

1. Draft Minutes from May 16, 2019, P&Z Hearing

### **Public Input on Consent Agenda:**

None noted

Chair Hansen did a final review of the items that are on consent and reiterated that those items will not have a separate presentation unless pulled from the consent agenda.

**Vice Chair Schneider made a motion that the Planning and Zoning Board approve the May 16, 2019 Consent agenda as presented, based on the agenda materials and information that was presented tonight, during our work session and this hearing, along with the Board discussion of this item. Member Hobbs seconded the motion. Vote: 6:0.**

### **Discussion Agenda:**

#### **2. Land Use Code Minor Revisions**

**Project Description:** This is a request for a Recommendation to City Council regarding an update to the Land Use Code. There are proposed revisions, clarifications and additions to the Code that address specific subject areas that have arisen since the last update in the Spring of 2019.

**Recommendation: Approval**

Secretary Gerber reported that there were no citizen emails or letter received.

### **Staff and Applicant Presentations**

Planner Beals gave a brief verbal/visual overview of this item.

### **Public Input (3 minutes per person)**

None reported

### **Staff Response**

None noted

### **Board Questions / Deliberation**

Member Rollins enquired, if there were a Type II review, there is an approval and then the applicant comes in later for a modification of standard, what the process would be. Planner Beals stated they would have to determine the level of review the change would be (Major or Minor Amendment) and then the review would take place.

Member Hogestad wanted clarification as to who makes the decision on the Type I and Type II. Planner Beals; Type I is a hearing officer, Type II is the Planning and Zoning Board. If a request was made to change any of the

plans, whether Type I or Type II, the changes are allowed to be reviewed under a Minor Amendment, the decision maker is the Director, he would review the modification request as well. If the change rises to a level of Major Amendment, this goes back to the original decision maker, they would be the reviewer of the modification request. Member Hogestad; Does this change the criteria for a Minor Amendment? Planner Beals; no. Member Hogestad; What could the Director change if this were part of the Land Use Code? Planner Beals; those changes that would be considered a minor amendment, not a change of character to the development. Member Hogestad is concerned that there is the ability to make changes by one person, posing a possibility for abuse, he is also concerned that this change is not clearing up language, but rather introducing a whole different concept. Clarification was given by Development Review Manager Everette.

Vice Chair Schneider asked for the definition of Minor Amendment and Major Amendment.

Member Rollins questioned if something comes in as a Basic Development Review, it could come in with modifications of standard from the beginning, and it is up to the Director to make the decision, even if it comes in the beginning. Planner Beals; correct.

Member Rollins; if something comes in as a Type I review, has a hearing officer and they have amendments that kick it into a Major Amendment; can that happen during the application process, or does a Major Amendment have to happen post approval? Planner Beals; Type I's do not have an approval at this point, so the modifications would come with their application. If they went through a Type I and received an approval and then wanted to do a modification, the criteria of whether it is going to be a Major Amendment or Minor Amendment is based on how we define Minor Amendment.

Member Hobbs wanted to know if there was a process that allows a citizen or a group to appeal the judgement decision by the Director. Planner Beals; yes, the Director's decisions are all appealable back to the Planning and Zoning Board or Zoning Board of Appeals. Development Review Manager Everett clarified that the code states that the appeal of a Minor Amendment would go to the Planning and Zoning Board.

Member Rollins sees a great benefit to Minor Amendments. It makes it so one does not have to go through the entire formal process. Member Rollins supports staff and the decisions that are made.

Member Whitley is comfortable with the way the language as it exists.

Member Hobbs asked Member Hogestad; if the charge was to send this to City Council with a recommendation to approve or to not. Member Hobbs feels concerns should be heard and wonders if a recommendation should be sent forward.

Vice Chair Schneider would not have an issue with notifications being sent out to surrounding areas as provided by Planner Beals. This is an appealable step. Do we need to add to the language that the Director has the ability to appoint another individual? City Attorney Yatabe; no, the City Code and the Land Use Code both have a provision that allow for the delegation to subordinates.

Member Rollins received clarification; if a BDR comes through and then something happens in the field or prior to construction, it is decided that a modification to standard is needed, currently the Director looks at it and determines if it is a Minor or Major Amendment. If minor, they move forward. The suggestion is that if it is a minor that there is now notice to the area that goes out again? Planner Beals; yes.

Vice Chair Schneider enquired if the this should be opened to Micro Amendments as well. Planner Beals; no.

Chair Hansen asked the Board if language needed to be added. Planner Beals suggested adding, under step 6 notice; if a modification is being reviewed under a Minor Amendment that requires a two-week notification prior to the decision. The Board could add a definition of the notification area. Members Rollins would support notification to abutting neighbors but not expanding it into a larger notification area.

**Member Whitley made a motion that the Planning and Zoning Board recommend to City Council the approval of Land Use Code Minor Revisions Article 2, Division 2.8 Modification of Standards Items 2.8.1 and 2.8.2 and Article 5 Terms and Definitions Item 5.1.2. These are proposed revisions, clarifications and**

**additions to the code that address specific subject areas that have arisen since the last update in the Spring of 2019. This recommendation is based on the agenda materials, the information and materials presented during the work session and this hearing, and the Board discussion of this item. Member Hobbs seconded.** Member Hogestad will not be supporting this motion and is disappointed that there is no further discussion of public notice. Vice Chair Schneider takes no issue with supporting this motion as presented. Member Hobbs supports the motion. He requests the conversation on notifications continue at an upcoming work session. Member Rollins will be supporting the motion. Member Whitley likes Member Hogestad's idea of more notifications. Member Hogestad would like some notification and would like to continue the conversation comment. Chair Hansen commented he trusts the staff and feels that motion as it stands is appropriate. **Vote: 5:1.**

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**Other Business**

Member Rollins; is it appropriate when something is seen in work session that they are concerned, about and do not think there will be enough time during the hearing, to pull that item from the agenda such that more time can be spent on it? City Attorney Yatabe asked for clarification for understanding. This could be requested; you could also make a recommendation to continue the item as well.

**Adjournment**

Chair Hansen moved to adjourn the P&Z Board hearing. The meeting was adjourned at 7:19pm.

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*Minutes respectfully submitted by Shar Gerber.*

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Minutes approved by a vote of the Board on: \_\_\_\_\_.

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Rebecca Everette, Development Review Manager

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Jeff Hansen, Chair

ORDINANCE NO. 104, 2019  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
MAKING VARIOUS AMENDMENTS TO THE CITY  
OF FORT COLLINS LAND USE CODE

WHEREAS, on December 2, 1997, by its adoption of Ordinance No. 190, 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, since its adoption, City staff and the Planning and Zoning Board have continued to review the Land Use Code and identify and explore various issues related to the Land Use Code and have now made new recommendations to the Council regarding certain issues that are ripe for updating and improvement; and

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

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

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That Section 2.8 of the Land Use Code is hereby amended to read as follows:

**DIVISION 2.8 - MODIFICATION OF STANDARDS**

**2.8.1 - Purpose and Applicability**

The decision maker is empowered to grant modifications to the General Development Standards contained in Article 3 and the Land Use Standards and Development Standards contained in Article 4 and any separation or proximity standards that are established as a specific measurement of distance in the District Permitted Uses contained in Article 4, either for: (1) overall development plans, ~~and/or~~ project development plans, ~~and/or~~ applications subject to basic development review that ~~which~~ are pending approval at the time that the request for proposed modification is filed; (2) overall development plans and/or project development plans which the applicant intends to file, provided that such plans are in fact filed with the Director as development applications within one (1) year following the determination of the decision maker on the request for the proposed modification; ~~or~~ (3) development plans approved under ~~the Land Use Code or~~ prior law

and which are sought to be amended (either as a minor or major amendment) pursuant to Section 2.2.10. This modification of standards process shall not apply so as to allow any modification of the requirements contained in Division 4.29 of this Code.

## 2.8.2 - Modification Review Procedures

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- (G) *Step 7(A)* (Decision Maker): Applicable, and in explanation thereof and in addition thereto, if an application for a modification of standards pertains to a **minor amendment or a development plan which that** is subject to administrative review **or basic development review**, the Director shall be the designated decision maker, except that, at the option of the applicant, the application may be considered by the Planning and Zoning Board; and if an application for a modification of standards pertains to a development plan which is subject to Planning and Zoning Board review, the Planning and Zoning Board shall be the designated decision maker. If the application is for a modification of standards pertaining to a development plan previously approved under prior law or not yet filed, the Director shall determine whether such development plan would have been, or will be, subject to administrative review or Planning and Zoning Board review and shall identify the decision maker accordingly. In all cases, the decision maker shall review, consider and approve, approve with conditions or deny an application for a modification of standards based on its compliance with all of the standards contained in Step 8.

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Section 3. 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.

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- (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;

(b) Work by the City or any public utility for the purpose of restoring or stabilizing the ecology of a site, or for the purpose of inspecting, repairing,

renewing or constructing, on public easements or rights-of-way, any mains, pipes, cables, utility tunnels, power lines, towers, poles, tracks or the like; provided, however, that this exemption shall not include work by the City or a public utility in constructing or enlarging mass transit or railroad depots or terminals or any similar traffic-generating activity;

(c) Work by any person to restore or enhance the ecological function of natural habitats and features, provided that such work does not result in adverse impacts to rivers, streams, lakes, ponds, wetlands other natural habitats or features, or adjacent properties as determined by the Director; and provided that all applicable State, Federal, and local permits or approvals have been obtained;

(ed) The maintenance, renewal, improvement, or alteration of any structure, if the work affects only the interior or the color of the structure or the decoration of the exterior of the structure;

(de) The use of any land for the purpose of growing plants, crops, trees and other agricultural or forestry products; for raising or feeding livestock (other than in feedlots); for other agricultural uses or purposes; or for the delivery of water by ditch or canal to agricultural uses or purposes, provided none of the above creates a nuisance, and except that an urban agriculture license is required in accordance with Section 3.8.31 of this Code;

(ef) A change in the ownership or form of ownership of any parcel or structure;

(fg) The creation or termination of rights of access, easements, covenants concerning development of land, or other rights in land;

(gh) The installation, operation, maintenance, or upgrade of a small cell or broadband facility by a telecommunications provider principally located within a public highway as the terms small cell facility, telecommunications provider, and public highway are defined in Section 38-5.5-102, C.R.S. The regulation of such activities is addressed in Chapter 23 of the Code of the City of Fort Collins.

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Introduced, considered favorably on first reading, and ordered published this 20th day of August, A.D. 2019, and to be presented for final passage on the 3rd day of September, A.D. 2019.

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Mayor

ATTEST:

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City Clerk

Passed and adopted on final reading on the 3rd day of September, A.D. 2019.

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Mayor

ATTEST:

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City Clerk