

CITY OF BOULDER
PLANNING BOARD AGENDA ITEM

MEETING DATE: September 19, 2019

AGENDA TITLE: Public hearing and recommendation to City Council on an ordinance amending Title 9, "Land Use Code" by amending the building height regulations for certain areas of the City to require enhanced community benefit and amending Ordinance 8028 by deleting the expiration date of the standards established in Ordinance 8028 (and extended Ordinance 8172 and 8252).

REQUESTING DEPARTMENT:

Planning Department

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OBJECTIVES:

1. Hear staff presentation
2. Hold public hearing
3. Planning Board discussion
4. Planning Board recommendations to City Council on the proposed ordinance

I. EXECUTIVE SUMMARY

Staff is requesting that Planning Board make a recommendation to City Council on an ordinance ([Attachment A](#)) amending the Land Use Code to establish a new community benefits program that would amend Title 9, "Land Use Code" by amending the building height regulations for certain areas of the City to require enhanced community benefit and amending Ordinance 8028 by deleting the expiration date of the standards established in Ordinance 8028 (and extended Ordinance 8172 and 8252).

The proposed changes are consistent with the [Boulder Valley Comprehensive Plan \(BVCP\)](#) goals and policies for permanently affordable housing and addressing the jobs:housing imbalance. The proposed ordinance addresses residential and non-residential projects separately. The Inclusionary Housing requirement would increase from 25% to 36% for the "bonus area" of residential projects (i.e., floor area above the zoning maximum and below the 55-foot height limit). Additionally, for-sale projects would be required to provide at least 50% of the required units within the building in exchange for the bonus. The bonus area of a commercial project would be subject to a 43% increase in the affordable housing portion of the capital facility impact fee. As proposed, these Phase I community benefit requirements would only apply to projects within the Appendix J map areas.

II. KEY ISSUES

1. Does Planning Board support new Site Review criteria that would require permanently affordable housing benefits in areas designated in Appendix J where a building exceeds the maximum height of the zoning district up to 55-feet?
2. Does Planning Board agree with staff's recommendation to continue to limit the areas where height modifications may be sought to the areas shown in Appendix J, "Areas Where Height Modifications May Be Considered," at this time?

III. BACKGROUND

In 1971, a City Charter amendment set the maximum building height (measured from the lowest point within 25 feet of a building) at 55-feet where previously there was no specified height limit. Despite the maximum charter height, most zoning districts have lower maximum building height allowances of 35-feet. Some zoning districts permit 38-feet (e.g., downtown zones, business main street areas etc.) and industrial zones permit 40-feet by-right. Following enacting of the charter height limit, requests for height modifications above the zone district maximum up to 55-feet have been considered on any property in the city. In recent years, this has been done through height modifications in the Site Review process, which requires Planning Board review at a public hearing and compliance with specific criteria on building and site quality, compatibility with the surrounding neighborhood and a finding that building heights are in general proportion with other building heights in its vicinity. No specific requirements for community benefits have been required through the current Site Review process.

In response to community concern that height modifications could be considered on any property in the city through the Site Review process, City Council adopted Ordinance 8028 on April 19, 2017 ([Attachment B](#)) as an interim measure which allowed height modifications to be considered only in areas designated by [Appendix J, "Area Where Height Modifications May Be Considered"](#) of the code or in any of the following circumstances:

- If at least forty percent of the floor area of the building is used for units that qualify as permanently affordable under the city's Inclusionary Housing regulations;
- Industrial General, Industrial Service, and Industrial Manufacturing districts if the building has two or fewer stories or if the height is necessary for a manufacturing, testing or other industrial process or equipment;
- In all zoning districts, if the height modification is to allow the greater of two stories or the maximum number of stories permitted in Section 9-7-1 in a building and the height modification is necessary because of the topography of the site; or
- For emergency operations antenna.

Approval of any height modification following the adoption of Ordinance 8028 continues to require public review and input, action by the Planning Board at a public hearing. These decisions are also subject to City Council call up. Other Site Review applications without height modifications can still be considered in other areas of the city subject to the [Site Review thresholds found in Table 9-2](#). Following adoption of Ordinance

8028, height modification requests outside of the areas identified in Appendix J to Title 9, are not allowed unless the project can satisfy the specific criteria in the Land Use Code described above.

Following this action, the [Boulder Valley Comprehensive Plan](#) was updated in 2017 and included several policies related to community benefit and requests for additional height and intensity:

1.11 Enhanced Community Benefit

For land use or zoning district changes that result in increases in the density or intensity of development beyond what is permitted by the underlying zoning or for added height that increases intensity, the city will develop regulations and incentives so that the new development provides benefits to the community beyond those otherwise required by the underlying zoning. Any incentives are intended to address the community economic, social and environmental objectives of the comprehensive plan. Community objectives include without limitation affordable housing, affordable commercial space, spaces for the arts, community gathering space, public art, land for parks, open space, environmental protection or restoration, outdoor spaces and other identified social needs and services. Community objectives also may be identified through other planning or policymaking efforts of the city.

2.35 Building Height

The city will review and update site review regulations to provide clear guidance on height and intensity of land uses and to address relationship of building height to aesthetics and view protection. The city will consider additional height (up to the City Charter 55-foot height limit) as an incentive in exchange for community benefits that further other community objectives such as the provision of permanently affordable housing (as described in Policy 1.11).

7.11 Permanently Affordable Housing for Additional Intensity

The city will develop regulations and policies to ensure that when additional intensity is provided through changes to zoning, a larger proportion of the additional development potential for the residential use will be permanently affordable housing for low, moderate and middle-income households.

In 2017, staff began exploring ways to consider height modifications in exchange for permanently affordable housing as part of the BVCP implementation. During its 2018 retreat, council broadened the project scope to include a range of “triggers” (e.g., FAR, density) and a larger array of community benefits and improvements to the Site Review criteria. Additionally, council requested that staff develop ordinances to remove or extend the expiration date of the existing Height Modification ordinance. City Council adopted an ordinance in June 2018 extending the current height restrictions to May 31, 2020 to enable further progress on the community benefit project.

In April 2019, council directed staff to accelerate a portion of the project this year and to complete the balance of the project in 2020. The accelerated portion of the project includes an affordable housing requirement for projects seeking height modifications (Phase I). The second phase will identify a full suite of community benefits, Site Review criteria amendments and design standards.

Project Why Statement

A community benefits program has been discussed as one tool to ensure that new growth and development contribute positively to the community’s quality of life. While higher quality of development is often attained through the [Site Review](#) process, in recent years community sentiment has expressed that more specific community benefits in exchange for additional height, intensity or density should be required.

Project Purpose Statement

Consistent with newly adopted Boulder Valley Comprehensive Plan (BVCP) policies (see above), staff will update the Land Use Code to create regulations and incentives for obtaining certain community benefits when considering height modification requests and/or additional floor area, density requests and rezoning applications.

III. DISCUSSION

Consistent with City Council's direction in April 2019 to move forward on a Community Benefit program to obtain more affordable housing in exchange for additional height, staff has prepared a draft ordinance ([Attachment A](#)) that would require permanently affordable housing benefits in exchange for buildings that exceed the zoning district height limit. The proposed ordinance is informed by an economic analysis to ensure the program requirements are feasible under current market conditions.

Economic Analysis

The city contracted with Keyser Marston Associates (KMA) to conduct an economic analysis to evaluate the additional Inclusionary Housing (IH) requirement or commercial linkage fee that could be supported by projects receiving a height modification based on the economics of residential and commercial development in Boulder. Refer to [Attachment C](#).

The analysis includes development pro formas for a set of base and bonus prototype projects representative of the type of development likely to occur, including rental residential, for-sale residential, office and hotel. The analysis uses a "residual land value" approach, which is calculated by subtracting all the costs of a development, except land value, from all the total value of the development. The amount remaining is the residual land value, or the amount a project can afford to pay for a development site. The residual value must be positive for a community benefits program to be attractive to a developer. In the case of the study, a profit margin of 15 percent or 1 million dollars was assumed to make a project attractive for a developer to proceed.

Table 1 below, summarizes the community benefit requirements that could be supported by projects receiving a height bonus based on the economics of residential and commercial development in Boulder.

Table 1: Community benefit requirements supported in current market conditions.

	Residential Bonus Area IH Requirement		Non-residential Bonus Area Commercial Linkage Fee	
	For-Sale Residential	Rental Residential	Office	Hotel
Base Requirement	25% (on-site units, or Cash In-Lieu combination)	25% (CIL Assumed)	\$30.00 per gross square foot (gsf) ¹	\$7.70/gsf ²
Additional Requirement Supported	11% (on-site units, CIL or combination)	16% (CIL Assumed)	\$13/sf bonus (\$15/sf Height Bonus \$11/sf FAR Bonus) 43% increase	\$9/sf bonus 116% increase
Total Requirement Applicable to Bonus Area	36% (on-site units, CIL or combination)	41% (CIL assumed)	\$43.00/sf bonus	\$16.70/sf bonus

¹ Base office commercial linkage includes affordable housing component only at 2021 rate.

² Base hotel commercial linkage fee converted to a per square foot requirement (assuming average of 650 gsf/room).

The analysis reflects the assumption that for-sale base and bonus projects provide 50 percent of affordable units on site. KMA tested other IH compliance scenarios for for-sale projects including payment of all Cash-in-Lieu (CIL) and providing more than 50 percent of units on site. Ultimately, the analysis found that providing 50 percent of units onsite was financially favorable to other scenarios for the higher-density prototypes analyzed. Also, the IH program includes incentives for providing ownership units on site (i.e., if 50 percent or more of the units are provided on site – the remaining cash-in-lieu is reduced by half; and if 75 percent or more are provided on site then the split between low- and moderate-income units to middle-income units changes from 80/20 to 50/50).

1. Does Planning Board support new Site Review criteria that would require permanently affordable housing benefits in areas designated in Appendix J where a building exceeds the maximum height of the zoning district up to 55-feet?

Under current regulation, projects within designated areas of the map in Appendix J may include a request for a height modification subject to Planning Board approval of a Site Review application. Such requests are subject to all the [Site Review criteria in Section 9-2-14\(h\), B.R.C. 1981](#) including but not limited to the following specifically related to height:

- (i) The building height, mass, scale, orientation, architecture and configuration are compatible with the existing character of the area or the character established by adopted design guidelines or plans for the area.
- (ii) The height of buildings is in general proportion to the height of existing buildings and the proposed or projected heights of approved buildings or approved plans or design guidelines for the immediate area;

As discussed above, projects that include 40 percent of their floor area as permanently affordable housing as well as height modifications for specified reasons (e.g., restrictive slope on properties that does not enable the allowance number of stories, industrial buildings no more than two-stories etc.) may be requested anywhere in the city. Because of the high amount of affordable housing required, projects qualifying for this are typically Boulder Housing Partner projects supported by tax credits, alternative funding sources etc. Otherwise, height modifications may be requested only in areas designated in Appendix J, albeit without any requirement for community benefit under current regulations.

Proposed Language: Currently, the Site Review criteria have a section entitled "Land Use Intensity Modifications" where modifications to density (dwelling units per acre) or intensity (floor area) may be granted in specific zones, if specific criteria are met (see [Section 9-2-14\(h\)\(2\)\(l\), B.R.C. 1981](#)). For instance, floor area may be exceeded in the Business Regional – 1 (BR-1) zone or open space may be reduced by a specified amount in the Downtown (DT) or Business Regional – 2 (BR-2) zones if specific criteria are met. Staff finds that the review of additional floor area above zone height limit ("height bonus") as a land use intensity modification is consistent with the BVCP policies noted above.

New criteria for height bonuses are proposed that would require that any building adding floor area above the height limit in a 4th or 5th story to provide community benefit supporting permanently affordable housing. As proposed, these Phase I community benefit requirements would only apply to projects within the Appendix J map areas.

The section is been designed so that newly identified community benefits such as below market commercial space or space for the arts could be added as future criteria once the amounts and conditions are determined. A section for alternative proposals for community benefit is also suggested as part of this phase for other benefits that may not have yet been identified that could be considered by the city. The option for alternative benefit is focused on special government or community services. The proposed language is as follows:

- E. **Height Modifications:** A development which exceeds the permitted height requirements of Section 9-7-5, "Building Height," or 9-7-6, "Building Height, Conditional," B.R.C. 1981, is required to complete a site review and is not subject to the minimum threshold requirements. No standard other than height may be modified under the site review unless the project is also eligible for site review. A development

that exceeds the permitted height requirements of Sections 9-7-5 or 9-7-6, B.R.C. 1981, must meet any one of the following circumstances in addition to the site review criteria:

- (i) The height modification is to allow a roof that has a pitch of 2:12 or greater in a building with three or fewer stories and the proposed height does not exceed the maximum height permitted in the zoning district by more than 10 feet.
- (ii) The building is in the Industrial General, Industrial Service, or Industrial Manufacturing Zoning District and has two or fewer stories or the height is necessary for a manufacturing, testing, or other industrial process or equipment.
- (iii) The height modification is to allow up to the greater of two stories or the maximum number of stories permitted in Section 9-7-1, B.R.C. 1981, in a building and the height modification is necessary because of the topography of the site.
- (iv) At least forty percent of the floor area of the building is used for units that meet the requirements for permanently affordable unit in Chapter 9-13, "Inclusionary Housing," B.R.C. 1981.
- (v) The height modification is to allow an emergency operations antenna.
- (vi) The building or use is located in an area designated in Appendix J, "Areas Where Height Modifications May Be Considered," and meets the requirements of Paragraph 9-2-14(h)(2)(K), "Additional Criteria for Height Bonuses and Land Use Intensity Modifications for Properties Designated Within Appendix J," B.R.C. 1981.

Additional Criteria for Height Bonuses and Land Use Intensity Modifications for Properties Designated within Appendix J:

A building proposed with a fourth or fifth story or addition thereto that exceeds the permitted height requirements of Sections 9-7-5, "Building Height," or 9-7-6, "Building Height, Conditional," B.R.C. 1981, together with any additional floor area or residential density approved under subparagraph (h)(2)(l)(iii), may be approved if it meets the requirements of this subparagraph (h)(2)(K). For purposes of this subparagraph (h)(2)(K), bonus floor area shall mean floor area that is on a fourth or fifth story and is partially or fully above the permitted height and any floor area that is the result of an increase in density or floor area described in subparagraph (h)(2)(l)(iii). The approving authority may approve a height up to fifty-five feet if the building is in an area designated in Appendix J, "Areas Where Height Modifications May Be Considered," and one of the following criteria is met:

- (i) Residential Developments: If the development is residential, it will exceed the requirements of Subparagraph 9-13-3(a)(1)(A), B.R.C. 1981, as follows:
 - a. For bonus units, the inclusionary housing requirement shall be increased as follows: Instead of twenty-five percent, at least thirty-six percent of the total number of bonus units shall be permanently affordable units. If the building is a for-sale development, at least fifty percent of the required permanently affordable units shall be built in the building; this fifty percent on-site requirement may not be satisfied through an alternative means of compliance. A minimum of one bonus unit shall be assumed to be provided in the building if any bonus floor area is in the building.
 - b. For purposes of this subparagraph (i), bonus units shall mean a number of units that is determined as follows: A percentage of all the units in the building that equals in number the percentage of bonus floor area in the building. For example, if twenty percent of the building's floor area is bonus floor area and the building has one hundred units, twenty percent of those one hundred units are bonus units, resulting in twenty bonus units.
 - c. The city manager shall review the development's compliance with this increased inclusionary housing requirement pursuant to the standards and review procedures of 9-13, "Inclusionary Housing," B.R.C. 1981.

- (ii) Non-Residential Developments. For non-residential developments, the applicant shall pay the affordable housing portion of the capital facility impact fee in Section 4-20-62, B.R.C. 1981, at a rate of 1.43 above the base requirement for the bonus floor area. In a building with several types of non-residential uses, the bonus floor area of each type identified under Section 4-20-62, B.R.C. 1981, shall be a percentage of the bonus floor area that equals in number the percentage of the total floor area in the building of such use type. For lodging uses with a fee that is calculated per room, the increased rate for the affordable housing portion of the fee shall apply to bonus rooms; the number of bonus rooms shall be determined consistent with the methodology for bonus units in subparagraph (i)b., above.
- (iii) Mixed Use. If the development is a residential mixed-use development, the requirements of subsection (i) and (ii) above shall apply to the bonus floor area according to the percentage of the total building floor area of each use.
- (iv) Alternative Community Benefit. The approving authority may approve an alternative method of compliance that is proposed by the applicant to provide additional benefits to the community to qualify for a height bonus together with any additional floor area or density that may be approved under subparagraph (h)(2)(I). An applicant proposing an alternative method of compliance shall demonstrate that the proposed method may improve the facilities or services delivered by the city, including without limitation any police, fire, library, human services, parks and recreation, or other municipal office, or land or service the value of which is equivalent to or greater than the benefits required by this subparagraph (h)(2)(K).
- (v) Nursing Homes and Assisted Living. One hundred percent of the building's floor area is used for nursing home or assisted living uses.

Land Use Intensity and Density Modifications with Height Bonus:

In an area designated in Appendix J, "Areas Where Height Modifications May Be Considered," and as part of a height bonus approved under Subparagraph 9-2-14(h)(2)(K), the density and floor area of a building may be increased above the maximum allowed in Chapter 9-8, "Intensity Standards," B.R.C. 1981, as follows, provided the building meets the requirements for a height bonus under Subparagraph 9-2-14(h)(2)(K), B.R.C. 1981:

1. In the BMS zoning district outside a general improvement district providing off-street parking, and in the IMS, IS, and MU-1 zoning districts, the base floor area ratio (FAR) in Table 8-2, Section 9-8-2, "Floor Area Ratio Requirements," BR.C. 1981, may be increased by up to 0.5 FAR.
2. In the BR-1 zoning district, the allowed number of dwelling units per acre in Table 8-1, Section 9-8-1, "Schedule of Intensity Standards," B.R.C. 1981 may be increased by up to fifty percent.

Analysis:

Part 1. Revision to Section 9-2-14(h)(2)(I) would allow a Land Use Intensity Modification with height bonus requests

The proposed language above and found in **Attachment A** is informed by the KMA analysis and is designed such that the community benefit requirement is directly proportional to the amount of floor area that is built above the height limit up to the maximum city charter height of 55-feet. Projects subject to the requirements would continue to be subject to the Site Review criteria for compatibility and quality as well as Planning Board review at a public hearing and the option for City Council call up.

As stated in the language above, "bonus floor area" is any floor area that is typically within a 4th or 5th story that is either partially or wholly above the zoning district height limit that is achieved through a height bonus.

Bonus floor area also means any floor area that may be above a zoning district floor area ratio (FAR) limit (if the zone has a FAR limit) or above the maximum dwelling units per acre for the zone (if the zone has a dwelling units per acre or open space per dwelling unit requirement).

The KMA analysis indicated that projects requesting the additional story or stories would typically need more floor area than currently allowed in some zone districts, particularly zones that have a FAR maximum less than 1.0. For reference of scale, FAR of between 2.0 and 2.2, is typically the scale of projects seen in the downtown zones or in the Business Regional zones (areas around Twenty Ninth Street) for larger four or five story buildings. KMA found that if no flexibility were afforded in terms of FAR limits or density limits (i.e., dwelling units per acre) for the zones less than 1.0 FAR, it may greatly impact the feasibility of a community benefit program in these areas. Therefore, staff is proposing an additional land use intensity modification in Section 9-2-14(h)(2)(I), B.R.C. 1981 that would permit height bonus requests with community benefit the ability to exceed the allowed base FAR by 0.5 in zones that have FAR limits below 1.0 FAR. In most cases this would equate to a 0.9 FAR. This would apply to these zones found within Appendix J:

- BMS: The Business Main Street (BMS) outside the University Hill general improvement district where FAR is limited to 0.67;
- The industrial zones of IMS and IS: Industrial Mixed Service (IMS) and Industrial Service (IS) have FAR limits of 0.54 and 0.6 FAR. These are relatively low FARs and specifically intended to limit non-residential growth in the industrial areas.
- MU-1: The Mixed Use – 1 zone exists in North Boulder and has a maximum FAR of 0.6. MU-1 is the location of the Armory Community development project which is now under construction. The Armory project was the subject of debate back in 2015 during its review process where the developer proposed a project exceeding the 0.6 FAR up to 1.0 FAR in exchange for accommodations for the North Boulder arts community. This option would have required approval of a special ordinance at the time. The developer ultimately opted against this option given difficulties in legally ensuring the arts related uses on the site. The development under construction, therefore, conforms to the 0.6 FAR limit. Nevertheless, because the site was included within Appendix J and is one of the zones allowing less than a 1.0 FAR, staff is proposing the option of increased FAR in the zone.

The KMA report also pointed out how the feasibility of developers doing height bonuses with community benefit could be deterred by the current 27 dwelling units per acre cap in zones like the Business Regional – 1 (BR-1) in the areas around Twenty Ninth and the Boulder Valley Regional Center (BVRC). The Boulder Valley Comprehensive Plan (BVCP) also speaks to increasing the housing capacity in areas like the BVRC. Staff recommends that applicants have the option of requesting additional density up to 50 percent through the height bonus review process and finds that this is supported by the following policies:

1.10 Jobs: Housing Balance

Boulder is a major employment center, with more jobs than housing for people who work here. This has resulted in both positive and negative impacts, including economic prosperity, significant in-commuting and high demand on existing housing. The city will continue to be a major employment center and will seek opportunities to improve the balance of jobs and housing while maintaining a healthy economy. This will be accomplished by encouraging new housing and mixed-use neighborhoods in areas close to where people work, encouraging transit-oriented development in appropriate locations, preserving service commercial uses, converting commercial and industrial uses to residential uses in appropriate locations, improving regional transportation alternatives and mitigating the impacts of traffic congestion.

1.11 Enhanced Community Benefit

For land use or zoning district changes that result in increases in the density or intensity of development beyond what is permitted by the underlying zoning or for added height that increases intensity, the city will develop regulations and incentives so that the new development provides benefits to the community beyond those otherwise required by the underlying zoning. Any incentives are intended to address the community economic, social and environmental objectives of the comprehensive plan. Community objectives include without limitation affordable housing, affordable commercial space, spaces for the arts, community gathering space, public art, land for parks, open space, environmental protection or restoration, outdoor spaces and other identified social needs and services. Community objectives also may be identified through other planning or policymaking efforts of the city.

Part 2. New Section 9-2-14(h)(2)(K), B.R.C. 1981 on Community Benefit requirements

As previously stated, new criteria could be applied to other community benefits in the second phase of the project. As part of this first phase the focus is permanently affordable housing. The new requirements are based on KMA recommendations on how to exceed current requirements for bonus floor area received as a result of a height bonus.

Current requirements: Current requirements for development projects require at least 25 percent of residential units be permanently affordable. While the code anticipates that at least half of the affordable units be provided on site, the Inclusionary Housing requirements in Chapter 9-13 permit alternative options of fulfilling this requirement including paying an in-lieu fee. Because state rent control laws generally prohibit rent restrictions through ordinances, Inclusionary Housing requirements for rental developments are usually satisfied with in lieu fees. Commercial projects must pay the commercial linkage fee which applies based on the amount of square footage constructed. No additional fees or requirements apply to projects over the height limit.

Proposed requirements: Staff recommends retaining the current exceptions outlined in Section 9-2-14(c), B.R.C. 1981 related to two story buildings in industrial areas, height modifications necessary due to the slope of a property etc. In addition, staff is proposing a new exception in Section 9-2-14(c) for pitched roofs to enable projects that are no more than three stories and include pitched roofs of at least a 2:12 pitch to be exempt from the community benefit requirements. These projects would be permitted to have a roof ridge of no more than 10 feet above the zoning district maximum and would require a height modification with Planning Board review. The new criteria for Appendix J areas would require that for bonus floor area granted through the Site Review above the height, floor area and density, that the inclusionary housing requirements would be increased as follows:

- **Residential units:** The standard 25 percent IH requirement would apply to units that are not bonus units. Bonus units would have to meet a 36 percent IH requirement, and if the development is a for-sale development, 50 percent of the IH requirement would have to be met with permanently affordable units that are provided within the building. The number of bonus units would be based on the percentage of bonus floor area in the building, but no less than one bonus unit would be required. As noted in the Table 1 above, the economic analysis suggests that the market could support a 41 percent IH requirement in rental projects and 36 percent in for-sale projects. To avoid code complexity and apply a consistent requirement to both rental and for-sale bonus projects, staff recommends using the lower 36 percent bonus IH requirement for both rental and for-sale projects.
- **Commercial uses:** Commercial uses would be required to pay the current commercial linkage fee for floor area that is not bonus floor area. Bonus floor area would be subject to an increased commercial linkage fee; the fee is multiplied by a factor of 1.43 for bonus floor area (e.g., 43%

greater than the base impact fee). The economic analysis found that this fee increase for the bonus area is supported in the current market conditions.

- **Mixed-Use projects:** The community benefit requirement for mixed-used projects will be determined by determining the total percentages of uses in the entire building (base and bonus) and then applying the overall percentages to the bonus floor area to calculate how the different uses must meet the community benefit requirements.
- **Alternative Community Benefit:** An applicant may propose an alternative community benefit that enhances community or local government service. The applicant must demonstrate that the “proposed method may improve the facilities or services delivered by the city, including without limitation any police, fire, library, human services, parks and recreation, or other municipal office, or land or service the value of which is equivalent to or greater than the benefits” required by the new criteria. This option adds some flexibility to the code and enables the option for unforeseen benefits that could be accomplished through a height bonus project.
- **Nursing Homes and Assisted Living:** Nursing Homes and Assisted Living projects would be exempt from the increased fee because such uses have been identified as a community benefit. Further incentives and community benefit requirement for these types of human service uses will be examined during Phase II.

Public Feedback: Community sentiment about height modifications have appeared to remain consistent throughout the last several years. Staff inquired about the issue through the last BVCP survey and a more recent Be Heard Boulder questionnaire with specific questions about allowing buildings over the maximum height up to 55-feet. In the BVCP questionnaire, a majority of respondents agreed that permanently affordable housing was the most important community benefit. More specifically, 44 percent of respondents were supportive of granting height modifications only if additional community benefits were provided. Permanently affordable housing is the most favored benefit followed by energy efficiency improvements, open spaces, and nonprofit space or affordable commercial space.

In the recent Be Heard Boulder questionnaire, 46 percent of respondents were opposed to any additional buildings over three stories. Thirty-eight percent found that buildings should be permitted above three-stories if community benefit were provided. Nearly 50 percent of respondents were opposed to allowing additional floor area above the maximum (35 percent supported if community benefits for required). Similar percentages resulted from whether a developer should be allowed to build more than the maximum number of dwelling units on a site if community benefit were provided. The full summary of responses can be found in [Attachment D](#).

The following sentiments were expressed about community benefit, height modifications and affordable housing during focus group sessions:

- Most agreed that affordable housing is the right priority to focus on now;
- Building height allowances can contribute to more housing for low- and moderate-income community members. A diverse housing mix is important to the vitality and vibrancy of our local economy;
- Some respondents, particularly those in the development field, believe that making affordable housing requirements too onerous will actually work against obtaining more affordable housing. To address this, they encouraged the city to create incentives that the market will respond to and examine the current regulations with an eye towards identifying regulatory barriers that are

preventing projects. Many of those individuals also provided insight into the market feasibility of the city's current temporary ordinance. Some in the development community also noted that allowing some flexibility for pitched roofs might result in less flat roofed buildings;

- Subsequent impacts of additional housing, like city infrastructure and traffic, should be considered; and
- Some in the community felt that affordable housing, despite being a needed use in the community, did not on its own merit the allowance for additional height. Rather, the more important consideration was whether the building was contextually appropriate, aesthetically pleasing and provided palpable benefits to the average citizen (e.g., accessible open space, uses that serve nearby neighborhoods etc.).

2. Does Planning Board agree with staff's recommendation to continue to limit the areas where height modifications may be sought to the areas shown in Appendix J, "Areas Where Height Modifications May Be Considered," at this time?

Appendix J was created in 2015 as an interim measure to allow additional height in specific areas where additional height and intensity were anticipated and planned for through adopted area plans. Staff recommends modifying or removing Appendix J as part of Phase II of the project (2020). While Boulder Junction is in one of the Appendix J areas where height modifications may be considered, it should be noted that Form-Based Code (FBC) projects are not required to obtain height modifications as the buildings are permitted up to the anticipated heights of that area per the FBC (no more than 55-feet). Such projects would not be subject to additional permanently affordable housing requirements, which would only apply through the Site Review process. Much of Boulder Junction already has agreements in place to secure on-site permanently affordable housing.

Proposed Language: The current proposal keeps Appendix J in place and removes the expiration of May 31, 2020 to allow adequate time for this consideration at least until the end of Phase II.

Analysis: During a September 2018 study session, council indicated that it would not be appropriate to amend or eliminate Appendix J until such time that the community could see the results of any adopted community benefit program. For this reason and because Appendix J has been effective in focusing height modifications in areas where height is anticipated, staff recommends that Appendix J remain in place. However, staff will also monitor projects built according to the new regulations and raise the question again at the end of Phase II of the community benefit project. Phase II will examine other community benefits such as below market rate commercial space, space for the arts, human services etc.

Staff would like to receive more feedback on this topic before moving forward with the Phase II portion of the project. For instance, staff finds that Appendix J is useful in making it clear and predictable in the community about where taller buildings are expected, but this is not to say that the areas within it would not require any changes. Staff finds that in the future it would be appropriate to amend Appendix J to:

- Add appropriate sites from the Alpine Balsam Area Plan;
- Remove the Armory site as construction is already underway and without need for a height modification; and
- Expand the Boulder Valley Regional Center beyond just Twenty Ninth Street as this area is likely to be a focal point in more mixed use and housing.

Public Feedback:

Generally, community members appear to oppose allowing buildings up to 55 feet in additional locations of the city unless certain community benefits are required. The BVCP survey conducted in 2016 found that fully 71 percent of participants were opposed to taller buildings in additional locations than what is currently identified in Appendix J. Reaction to that question was more balanced if those taller buildings included a community benefit requirement (47 percent were opposed). More recently, the city's Be Heard Boulder questionnaire showed that nearly half of respondents were against any more buildings over the zoning district height limits with around 40 percent being open to additional height if community benefits were included. Those survey and questionnaire results are generally consistent with community input received throughout the project.

IV. PUBLIC FEEDBACK

The community engagement process kicked off with a series of focus groups in 2018. About half of the focus groups were organized by a local research and planning organization, RRC Associates, and half by city staff. Focus group sessions focused on height modifications (e.g., location, criteria, etc.) and affordable housing as a community benefit.

Per council direction during its January 2018 retreat, engagement efforts expanded to explore a full “menu of options” for the community benefits program. Engagement activities in 2018 focused on small group meetings, presentations to community organizations and board input. Some examples of local, targeted outreach include: PLAN Boulder, Better Boulder, a local chapter of the Urban Land Institute (ULI), members of the Boulder arts community and a survey of the Boulder County Human Service Alliance membership.

Table 2 below summarizes several themes that surfaced throughout the engagement process and how the staff recommendation does or does not address each. Refer to [Attachment D](#) for Phase I meeting summaries.

Table 2: Community input themes.

Community Input Theme	Staff Recommendation
<i>Themes most relevant to Phase I</i>	
1. Many prefer to encourage on-site housing units rather than other options to satisfy the city's Inclusionary Housing requirements (e.g., in-lieu fee).	The staff proposal requires that at least 50% of the total affordable housing required for a residential use be provided within the building if the building contains for-sale units.
2. The lifespan of the building shouldn't outlast the community benefit.	Phase I of the community benefits project requires permanently affordable housing.
<i>Themes more relevant to Phase II work</i>	
3. The Site Review process should be more predictable.	Staff is currently working on updating the Site Review criteria to be less subjective and more prescriptive taking some guidance from the Form-Based Code (FBC) adopted in 2016.
4. Community benefits should be a tangible benefit to the surrounding neighborhood (e.g., usable space).	Publicly accessible open space and roof top decks continue to be on the list for possible community benefits and will be explored further in Phase II.

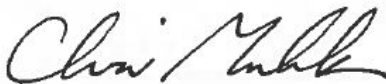
5. Parking, traffic, views of the mountain backdrop and building design appear to be the primary concerns with larger projects.	Some has stated that the impact of taller buildings is not necessarily the height but rather other impacts as stated to the left. Staff will look at some design requirements that could be required for all height modification projects to could mitigate concerns.
6. Enforcement mechanisms are important.	Specific enforcement mechanisms will be developed for each additional community benefit requirement.
7. Context, or how the overall development fits within the neighborhood, is an important consideration.	The Site Review criteria aim to create buildings that are compatible with context and consistent with areas plans applicable to an area. The update to the criteria will continue to explore this while also working towards a greater level of predictability in reviews.

Staff has only recently received the final KMA economic analysis and recommendations ([Attachment C](#)) and has been on a tight schedule to bring the code change forward per City Council requests. Staff intends to post the KMA report on the Community Benefits webpage and distribute to interested members of the community prior to Planning Board to receive feedback on the findings and proposed code language.

V. STAFF RECOMMENDATION

Staff is requesting that Planning Board make a recommendation to City Council on an ordinance ([Attachment A](#)) amending the Land Use Code to establish a new community benefits program that would amend Title 9, "Land Use Code" by amending the building height regulations for certain areas of the City to require enhanced community benefit and amending Ordinance 8028 by deleting the expiration date of the standards established in Ordinance 8028 (and extended Ordinance 8172 and 8252).

Approved By:



**Chris Meschuk, Asst. City Manager / Interim Director of Planning
Department of Planning**

ATTACHMENTS:

- A: [Draft Ordinance for Phase I, Community Benefits](#)
- B: [Ordinance 8028](#)
- C: [Economic Analysis Link](#)
- D: [Phase I Engagement Summaries Link](#)
- E: [Community Benefit Case Studies Link](#)

ORDINANCE _____

AN ORDINANCE AMENDING TITLE 9, "LAND USE CODE," B.R.C. 1981, BY AMENDING THE BUILDING HEIGHT REGULATIONS FOR CERTAIN AREAS OF THE CITY TO REQUIRE ENHANCED COMMUNITY BENEFIT AND AMENDING ORDINANCE 8028 BY DELETING THE EXPIRATION DATE OF THE STANDARDS ESTABLISHED IN ORDINANCE 8028 (AND EXTENDED BY ORDINANCES 8172 AND 8252 TO MAY 31, 2020); AND SETTING FORTH RELATED DETAILS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER,
COLORADO:

Section 1. Section 9-2-14, "Site Review," B.R.C 1981, is amended to read as follows:

9-2-14. - Site Review.

- (a) Purpose: The purpose of site review is to allow flexibility and encourage innovation in land use development. Review criteria are established to promote the most appropriate use of land, improve the character and quality of new development, to facilitate the adequate and economical provision of streets and utilities, to preserve the natural and scenic features of open space, to assure consistency with the purposes and policies of the Boulder Valley Comprehensive Plan and other adopted plans of the community, to ensure compatibility with existing structures and established districts, to assure that the height of new buildings is in general proportion to the height of existing, approved, and known to be planned or projected buildings in the immediate area, to assure that the project incorporates, through site design, elements which provide for the safety and convenience of the pedestrian, to assure that the project is designed in an environmentally sensitive manner, ~~and~~ to assure that the building is of a bulk appropriate to the area and the amenities provided and of a scale appropriate to pedestrians, and to set requirements for additional height, density, and floor area that provide additional benefits to the community beyond the underlying zoning.
- (b) Scope: The following development review thresholds apply to any development that is eligible or that otherwise may be required to complete the site review process:
- (1) Development Review Thresholds:
- (A) Minimum Thresholds for Voluntary Site Review: No person may apply for a site review application unless the project exceeds the thresholds for the "minimum size for site review" category set forth in Table 2-2 of this section or a height modification pursuant to Subparagraph (E) below on any lot is requested.
- (B) Minimum Thresholds for Required Site Review: No person may apply for a subdivision or a building permit for a project that exceeds the thresholds for the "concept plan and site review required" category set forth in table 2-2 of this section until a site review has been completed.

- (C) Common Ownership: All contiguous lots or parcels under common ownership or control, not subject to a planned development, planned residential development, planned unit development, or site review approval, shall be considered as one property for the purposes of determining whether the maximum site review thresholds below apply. If such lots or parcels cross zoning district boundaries, the lesser threshold of the zoning districts shall apply to all of the lots or parcels.
- (D) Previously Approved Developments: Previously approved valid planned unit developments that do not otherwise meet the minimum site review thresholds may be modified or amended consistent with the provisions of this title pursuant to Subsections (k) and (l) of this section.
- (E) Height Modifications: A development which exceeds the permitted height requirements of Section 9-7-5, "Building Height," or 9-7-6, "Building Height, Conditional," B.R.C. 1981, is required to complete a site review and is not subject to the minimum threshold requirements. No standard other than height may be modified under the site review unless the project is also eligible for site review. A development that exceeds the permitted height requirements of Sections 9-7-5 or 9-7-6, B.R.C. 1981, must meet any one of the following circumstances in addition to the site review criteria:
 - (i) The height modification is to allow a roof that has a pitch of 2:12 or greater in a building with three or fewer stories and the proposed height does not exceed the maximum height permitted in the zoning district by more than 10 feet.
 - (ii) The building is in the Industrial General, Industrial Service, or Industrial Manufacturing Zoning District and has two or fewer stories or the height is necessary for a manufacturing, testing, or other industrial process or equipment.
 - (iii) The height modification is to allow up to the greater of two stories or the maximum number of stories permitted in Section 9-7-1, B.R.C. 1981, in a building and the height modification is necessary because of the topography of the site.
 - (iv) At least forty percent of the floor area of the building is used for units that meet the requirements for permanently affordable unit in Chapter 9-13, "Inclusionary Housing," B.R.C. 1981.
 - (v) The height modification is to allow an emergency operations antenna.
 - (vi) The building or use is located in an area designated in Appendix J, "Areas Where Height Modifications May Be Considered," and meets the requirements of Paragraph 9-2-14(h)(2)(K), "Additional Criteria for Height Bonuses and Land Use Intensity Modifications for Properties Designated Within Appendix J," B.R.C. 1981.

TABLE 2-2: SITE REVIEW THRESHOLD TABLE

<i>Zoning District Abbreviation</i>	<i>Use</i>	<i>Form</i>	<i>Intensity</i>	<i>Minimum Size for Site Review</i>	<i>Concept Plan and Site Review Required</i>	<i>Former Zoning District Abbreviation</i>
A	A	a	1	2 acres	-	(A-E)

BC-1	B3	f	15	1 acre	3 acres or 50,000 square feet of floor area	(CB-D)
BC-2	B3	f	19	1 acre	2 acres or 25,000 square feet of floor area or any site in BVRC	(CB-E)
BCS	B4	m	28	1 acre	3 acres or 50,000 square feet of floor area	(CS-E)
BMS	B2	o	17	0	3 acres or 50,000 square feet of floor area	(BMS-X)
BR-1	B5	f	23	0	3 acres or 50,000 square feet of floor area	(RB-E)
BR-2	B5	f	16	0	3 acres or 50,000 square feet of floor area	(RB-D)
BT-1	B1	f	15	1 acre	2 acres or 30,000 square feet of floor area	(TB-D)
BT-2	B1	e	21	0	2 acres or 30,000 square feet of floor area	(TB-E)
DT-1	D3	p	25	0	1 acre or 50,000 square feet of floor area	(RB3-X/E)
DT-2	D3	p	26	0	1 acre or 50,000 square feet of floor area	(RB2-X)
DT-3	D3	p	27	0	1 acre or 50,000 square feet of floor area	(RB2-E)
DT-4	D1	q	27	0	1 acre or 50,000 square feet of floor area	(RB1-E)
DT-5	D2	p	27	0	1 acre or 50,000 square feet of floor area	(RB1-X)

ATTACHMENT A

IG	I2	f	22	2 acres	5 acres or 100,000 square feet of floor area	(IG-E/D)
IM	I3	f	20	2 acres	5 acres or 100,000 square feet of floor area	(IM-E/D)
IMS	I4	r	18	0	3 acres or 50,000 square feet of floor area	(IMS-X)
IS-1	I1	f	11	2 acres	5 acres or 100,000 square feet of floor area	(IS-E)
IS-2	I1	f	10	2 acres	5 acres or 100,000 square feet of floor area	(IS-D)
MH	MH	s	-	5 or more units are permitted on the property	-	(MH-E)
MU-1	M2	i	18	0	1 acre or 20 dwelling units	(MU-D)
MU-2	M3	r	18	0	3 acres or 50,000 square feet of floor area	(RMS-X)
MU-3	M1	n	24	5 or more units are permitted on the property	1 acre or 20 dwelling units or 20,000 square feet of nonresidential floor area	(MU-X)
MU-4	M4	o	24.5	0	3 acres or 50,000 square feet of floor area	-
P	P	c	5	2 acres	5 acres or 100,000 square feet of floor area	(P-E)
RE	R1	b	3	5 or more units are permitted on the property	-	(ER-E)
RH-1	R6	j	12	0	2 acres or 20 dwelling units	(HR-X)

RH-2	R6	c	12.5	0	2 acres or 20 dwelling units	(HZ-E)
RH-3	R7	l	14	5 or more units are permitted on the property	2 acres or 20 dwelling units	(HR1-X)
RH-4	R6	h	15	5 or more units are permitted on the property	2 acres or 20 dwelling units	(HR-D)
RH-5	R6	c	19	5 or more units are permitted on the property	2 acres or 20 dwelling units	(HR-E)
RH-6	R8	j	17.5	5 or more units are permitted on the property	3 acres or 20 dwelling units	-
RH-7	R7	i	14	5 or more units are permitted on the property	2 acres or 20 dwelling units	-
RL-1	R1	d	4	5 or more units are permitted on the property	3 acres or 18 dwelling units	(LR-E)
RL-2	R2	g	6	5 or more units are permitted on the property	3 acres or 18 dwelling units	(LR-D)
RM-1	R3	g	9	5 or more units are permitted on the property	2 acres or 20 dwelling units	(MR-D)
RM-2	R2	d	13	5 or more units are permitted on the property	2 acres or 20 dwelling units	(MR-E)
RM-3	R3	j	13	5 or more units are permitted on the property	2 acres or 20 dwelling units	(MR-X)

RMX-1	R4	d	7	5 or more units are permitted on the property	2 acres or 20 dwelling units	(MXR-E)
RMX-2	R5	k	8	0	2 acres or 20 dwelling units	(MXR-D)
RR-1	R1	a	2	5 or more units are permitted on the property	-	(RR-E)
RR-2	R1	b	2	5 or more units are permitted on the property	-	(RR1-E)

- (2) Poles Above the Permitted Height: The city manager will follow the following procedures for the review, recommendation, call-up and effective date for the approval of poles above the permitted height.
 - (A) Light Poles at Government-Owned Facilities: The city manager will determine whether or not to approve an application for light poles at government-owned recreation facilities between thirty-five and fifty-five feet in height, subject to call-up by the planning board pursuant to the procedures set forth in Subsection 9-2-7(b), B.R.C. 1981.
 - (B) Poles Over Fifty-Five Feet in Height: The city manager will determine whether or not to approve all applications for poles over fifty-five feet in height, subject to call-up by the city council pursuant to the procedures set forth in Subsection 9-2-7(c), B.R.C. 1981.
- (3) Exceptions: The following developments that exceed the minimum site review thresholds set forth in this section shall not be required to complete a site review:
 - (A) Minor modifications and amendments under this section to approved development review applications;
 - (B) Building permits for additions to existing structures that do not exceed a cumulative total, over the life of the building, of twenty-five percent of the size of the building on which the addition is proposed and that do not alter the basic intent of an approved development;
 - (C) Subdivisions solely for the purpose of amalgamating lots or parcels of land;
 - (D) Subdivisions solely for the purpose of conveying property to the City;
 - (E) City of Boulder public projects that are otherwise required to complete a public review process; and
 - (F) Projects located in areas defined by Appendix L, "Form-Based Code Areas," that are required to complete form-based code review pursuant to Section 9-2-16, "Form-Based Code Review," B.R.C 1981.

- (c) Modifications to Development Standards: The following development standards of B.R.C. 1981 may be modified under the site review process set forth in this section:
- (1) 9-7-1, "Schedule of Form and Bulk Standards" and standards referred to in that section except that the standards referred to as "FAR Requirements" may not be modified under this paragraph and are subject to Section 9-8-2, B.R.C. 1981, and the maximum height or conditional height for principal buildings or uses may be modified only,[‡] except as permitted ~~in in Paragraph 9-2-14(b)(1)(E), B.R.C. 1981~~ paragraph (c)(2) below.
 - (2) ~~The maximum height or conditional height for principal buildings or uses may be modified in any of the following circumstances:~~
 - (A) ~~For building or uses designated in Appendix J "Areas Where Height Modifications May Be Considered."~~
 - (B) ~~Industrial General, Industrial Service, and Industrial Manufacturing districts if the building has two or fewer stories or if the height is necessary for a manufacturing, testing or other industrial process or equipment.~~
 - (C) ~~In all zoning districts, if the height modification is to allow up to the greater of two stories or the maximum number of stories permitted in Section 9-7-1 in a building and the height modification is necessary because of the topography of the site.~~
 - (D) ~~In all zoning districts if at least forty percent of the floor area of the building is used for units that meet the requirements for permanently affordable units in Chapter 9-13, "Inclusionary Housing," B.R.C. 1981.~~
 - (E) ~~For emergency operations antenna.~~^{+‡}
 - (32) 9-8-1, "Schedule of Intensity Standards," table 8-1, minimum lot area (in square feet unless otherwise noted) and the floor area ratio standards to permit the averaging of floor area across multiple building sites within a zoning district.
 - (43) 9-8-4, "Housing Types and Density Bonuses Within an RMX-2 Zoning District."
 - (54) 9-9-2(b), "Maximum Permitted Buildings on a Lot."
 - (65) 9-9-2(e), "Entire Use Located on One Lot."
 - (76) 9-9-3(a), "Window Requirements for Buildings."
 - (87) 9-9-4, "Public Improvements" and Subsection 9-12-12(a), "Standards for Lots and Public Improvements," "Conditions Required," only to the extent that certain development criteria for alternative street standards are noted in the City of Boulder Design and Construction Standards.
 - (98) 9-9-5, "Site Access Control."
 - (109) 9-9-6, "Parking Standards."
 - (140) 9-9-7, "Sight Triangles."
 - (121) 9-9-9, "Off-Street Loading Standards."

[‡] The provisions adopted pursuant to Ordinance No. 8028 expire on May 31, 2020.

- (132) 9-7-13, "Mobile Home Park Form and Bulk Standards."
 - (143) 9-9-12, "Landscaping and Screening Standards."
 - (154) 9-9-11(c), "Open Space Standards for Buildings Over Twenty-Five Feet in Height."
 - (165) 9-9-11, "Useable Open Space," to the extent permitted in Paragraphs 9-9-11(f)(2), (f)(4), (f)(6) and (i)(7), B.R.C. 1981.
 - (176) 9-9-13, "Streetscape Design Standards."
 - (187) Land use intensity modifications pursuant to Paragraphs 9-2-14(h)(2)(I) and (h)(2)(J), land use intensity modifications for nonresidential buildings.
 - (198) 9-9-14, "Parking Lot Landscaping Standards."
 - (209) 9-9-15, "Fences and Walls."
 - (210) 9-9-17, "Solar Access."
 - (221) Standards for wall signs on parapet walls to the extent permitted by Paragraph 9-9-21(d)(14)(D), B.R.C. 1981.
 - (232) 9-10-3(c)(4)(B), "No Reduction in Affordable Units."
 - (243) 10-12-7, "Accessory Structures."
 - (254) 10-12-13, "Mobile Home Park Environmental Standards."
 - (265) 10-12-14, "Nonresidential Uses in Mobile Home Parks."
 - (276) 10-12-18, "Windbreaks."
 - (287) 10-12-19, "Mobile Home Park Streets and Walkways."
 - (298) 10-12-23, "Permanent Buildings."
- (d) Application Requirements: An application for approval of a site plan may be filed by any person having a demonstrable property interest in land to be included in a site review on a form provided by the city manager that includes, without limitation:
- (1) All materials and information required by Subsection 9-2-6(a), B.R.C. 1981;
 - (2) A site plan with a north arrow showing the major details of the proposed development, prepared on a scale of not less than one inch equals one hundred feet providing sufficient detail to evaluate the features of the development required by this section. The site plan shall contain, insofar as applicable, the information set forth in this subsection;
 - (3) The existing topographic character of the land, showing contours at two-foot intervals;
 - (4) The site and location of proposed uses with dimensions indicating the distance from lot lines;
 - (5) The location and size of all existing and proposed buildings, structures and improvements, and the general location of adjacent streets, structures and properties;
 - (6) The maximum height of all buildings and building elevations showing exterior colors and materials;
 - (7) The density and type of uses;

- (8) The internal traffic and circulation systems, off-street parking areas, service areas, loading areas and major points of access to public rights-of-way;
- (9) The location, height and size of proposed signs, lighting and advertising devices;
- (10) The areas that are to be conveyed, dedicated or reserved as parks, recreation areas, playgrounds, outlots or open space and as sites for schools and other public buildings;
- (11) The areas that are to be conveyed, dedicated or reserved for streets, alley and utility easements;
- (12) The areas subject to the one hundred-year flood as defined in chapter 9-16, "Definitions," B.R.C. 1981, and any area of the site that is within a designated space conveyance zone or high hazard zone;
- (13) A general landscaping plan at the time of initial submission to be followed by a detailed landscaping plan prior to or as a condition of approval, showing the spacing, sizes, specific types of landscaping materials, quantities of all plants and whether the plant is coniferous or deciduous. All trees with a diameter of six inches and over measured fifty-four inches above the ground on the property or in the landscape setback of any property adjacent to the development shall be shown on the landscaping plan.
- (14) A shadow analysis depicting shadows on December 21, as described in the solar analysis instructions provided by the city manager, and depicting shadows calculated pursuant to Subsection 9-9-17(d), B.R.C. 1981, for those buildings that affect adjacent properties;
- (15) A written statement containing the following information:
 - (A) A statement of the current ownership and a legal description of all of the land included in the project;
 - (B) An explanation of the objectives to be achieved by the project, including, without limitation, building descriptions, sketches or elevations that may be required to describe the objectives;
 - (C) A development schedule indicating the approximate date when construction of the project or phases of the project can be expected to begin and be completed; and
 - (D) Copies of any special agreements, conveyances, restrictions or covenants that will govern the use, maintenance and continued protection of the goals of the project and any related parks, recreation areas, playgrounds, outlots or open space;
- (16) Materials required by the City of Boulder Design and Construction Standards, including, without limitation, a traffic study, master utility plan, utility report and storm water report and plan for any application that proposes to construct or have an impact on public improvements; and
- (17) Plans for preservation of natural features existing on the site or plans for mitigation of adverse impacts to natural features existing on the site from the proposed development and anticipated uses. Natural features include, without limitation, healthy long-lived trees, significant plant communities, ground and surface water, wetlands, riparian areas, drainage areas and habitat for species on the federal Endangered Species List, "Species

of Special Concern in Boulder County" designated by Boulder County, or prairie dogs (*Cynomys ludiovicianus*) which is a species of local concern.

- (18) A tree inventory that includes the location, size, species and general health of all trees with a diameter of six inches and over measured fifty-four inches above the ground on the property or in the landscape setback of any property adjacent to the development. The inventory shall indicate which trees will be adversely affected and what if any steps will be taken to mitigate the impact on the trees. The tree inventory shall be prepared by a certified arborist that has a valid contractor license pursuant to chapter 4-28, "Tree Contractor License," B.R.C.
- (e) Additional Application Requirements for Height Modification: The following additional application requirements apply if the development proposal includes a request for the modification of the permitted height:
 - (1) Preliminary building plans including sketches and elevations illustrating the proposed building or pole and indicating how the height was calculated;
 - (2) ~~For developments in all Downtown (DT) districts, a~~ model, at a scale of no less than one inch equals thirty feet, of the proposed building and all buildings and property within one hundred feet of the proposed project;
 - (3) ~~For developments in all Downtown (DT) districts, an~~ illustration of the proposed building shown from street level demonstrating the pedestrian view, including, without limitation, a perspective, computer model or photographic montage;
 - (4) A shadow analysis, as described in the solar analysis instructions provided by the city manager, that shows the shadow cast by a thirty-five-foot building located at the required setback and the shadow cast by the proposed building;
 - (5) A list of the height of each principal building located or known to be proposed or approved within one hundred feet of the proposed project;
 - (6) A written statement and drawings which describe the way in which the proposal accommodates pedestrians, including, without limitation, uses proposed for the ground level, percent of transparent material at the ground level, and signage and graphics; ~~and~~
 - (7) A detailed plan showing the useable open space and a written statement of how it serves the public interest; ~~and~~
 - (8) Plans and a written statement demonstrating that the development meets the requirements for a height bonus specified in Subparagraph 9-2-14(h)(2)(K), B.R.C. 1981.
- (f) Public Notification: After receiving an application the city manager shall provide public notification pursuant to Section 9-4-3, "Public Notice Requirements," B.R.C. 1981, shall be provided.
- (g) Review and Recommendation: The city manager will review and decide an application for a site review in accordance with the provisions of Section 9-2-6, "Development Review Application," B.R.C. 1981, except for an application involving the following, which the city manager will refer with a recommendation to the planning board for its action:
 - (1) A reduction in off-street parking of more than fifty percent subject to compliance with the standards of Subsection 9-9-6(f), B.R.C. 1981.
 - (2) A reduction of the open space or lot area requirements allowed by subparagraph (h)(2)(I) of this section.

- (3) An application for any principal or accessory building above the permitted height for principal buildings set forth in Section 9-7-1, "Schedule of Form and Bulk Standards," B.R.C. 1981.
- (4) An increase in density in the RH-1, RH-2 and RH-3 districts consistent with Section 9-8-3, "Density in the RH-1, RH-2, RH-3 and RH-7 Districts," B.R.C. 1981.
- (h) Criteria for Review: No site review application shall be approved unless the approving agency finds that:
 - (1) Boulder Valley Comprehensive Plan:
 - (A) The proposed site plan is consistent with the land use map and the service area map and, on balance, the policies of the Boulder Valley Comprehensive Plan.
 - (B) The proposed development shall not exceed the maximum density associated with the Boulder Valley Comprehensive Plan residential land use designation. Additionally, if the density of existing residential development within a three-hundred-foot area surrounding the site is at or exceeds the density permitted in the Boulder Valley Comprehensive Plan, then the maximum density permitted on the site shall not exceed the lesser of:
 - (i) The density permitted in the Boulder Valley Comprehensive Plan, or
 - (ii) The maximum number of units that could be placed on the site without waiving or varying any of the requirements of Chapter 9-8, "Intensity Standards," B.R.C. 1981, except as permitted for building sites with permanently affordable units meeting the requirements of Paragraph 9-10-3(c)(4), "Nonconforming Permanently Affordable Units," B.R.C. 1981.
 - (C) The proposed development's success in meeting the broad range of BVCP policies considers the economic feasibility of implementation techniques required to meet other site review criteria.
 - (2) Site Design: Projects should preserve and enhance the community's unique sense of place through creative design that respects historic character, relationship to the natural environment, multi-modal transportation connectivity and its physical setting. Projects should utilize site design techniques which are consistent with the purpose of site review in Subsection (a) of this section and enhance the quality of the project. In determining whether this subsection is met, the approving agency will consider the following factors:
 - (A) Open Space: Open space, including, without limitation, parks, recreation areas and playgrounds:
 - (i) Useable open space is arranged to be accessible and functional and incorporates quality landscaping, a mixture of sun and shade and places to gather;
 - (ii) Private open space is provided for each detached residential unit;
 - (iii) The project provides for the preservation of or mitigation of adverse impacts to natural features, including, without limitation, healthy long-lived trees, significant plant communities, ground and surface water, wetlands, riparian areas, drainage areas and species on the federal Endangered Species List, "Species of Special Concern in Boulder County" designated

- by Boulder County, or prairie dogs (*Cynomys ludiovicianus*), which is a species of local concern, and their habitat;
- (iv) The open space provides a relief to the density, both within the project and from surrounding development;
 - (v) Open space designed for active recreational purposes is of a size that it will be functionally useable and located in a safe and convenient proximity to the uses to which it is meant to serve;
 - (vi) The open space provides a buffer to protect sensitive environmental features and natural areas; and
 - (vii) If possible, open space is linked to an area- or city-wide system.
- (B) Open Space in Mixed Use Developments (Developments That Contain a Mix of Residential and Nonresidential Uses):
- (i) The open space provides for a balance of private and shared areas for the residential uses and common open space that is available for use by both the residential and nonresidential uses that will meet the needs of the anticipated residents, occupants, tenants and visitors of the property; and
 - (ii) The open space provides active areas and passive areas that will meet the needs of the anticipated residents, occupants, tenants and visitors of the property and are compatible with the surrounding area or an adopted plan for the area.
- (C) Landscaping:
- (i) The project provides for aesthetic enhancement and a variety of plant and hard surface materials, and the selection of materials provides for a variety of colors and contrasts and the preservation or use of local native vegetation where appropriate;
 - (ii) Landscape design attempts to avoid, minimize or mitigate impacts on and off site to important native species, healthy, long lived trees, plant communities of special concern, threatened and endangered species and habitat by integrating the existing natural environment into the project;
 - (iii) The project provides significant amounts of plant material sized in excess of the landscaping requirements of Sections 9-9-12, "Landscaping and Screening Standards," and 9-9-13, "Streetscape Design Standards," B.R.C. 1981; and
 - (iv) The setbacks, yards and useable open space along public rights of way are landscaped to provide attractive streetscapes, to enhance architectural features and to contribute to the development of an attractive site plan.
- (D) Circulation: Circulation, including, without limitation, the transportation system that serves the property, whether public or private and whether constructed by the developer or not:
- (i) High speeds are discouraged or a physical separation between streets and the project is provided;
 - (ii) Potential conflicts with vehicles are minimized;

- (iii) Safe and convenient connections are provided that support multi-modal mobility through and between properties, accessible to the public within the project and between the project and the existing and proposed transportation systems, including, without limitation, streets, bikeways, pedestrian_ways and trails;
 - (iv) Alternatives to the automobile are promoted by incorporating site design techniques, land use patterns and supporting infrastructure that supports and encourages walking, biking and other alternatives to the single-occupant vehicle;
 - (v) Where practical and beneficial, a significant shift away from single-occupant vehicle use to alternate modes is promoted through the use of travel demand management techniques;
 - (vi) On-site facilities for external linkage are provided with other modes of transportation, where applicable;
 - (vii) The amount of land devoted to the street system is minimized; and
 - (viii) The project is designed for the types of traffic expected, including, without limitation, automobiles, bicycles and pedestrians, and provides safety, separation from living areas and control of noise and exhaust.
- (E) Parking:
- (i) The project incorporates into the design of parking areas measures to provide safety, convenience and separation of pedestrian movements from vehicular movements;
 - (ii) The design of parking areas makes efficient use of the land and uses the minimum amount of land necessary to meet the parking needs of the project;
 - (iii) Parking areas and lighting are designed to reduce the visual impact on the project, adjacent properties and adjacent streets; and
 - (iv) Parking areas utilize landscaping materials to provide shade in excess of the requirements in Subsection 9-9-6(d), and Section 9-9-14, "Parking Lot Landscaping Standards," B.R.C. 1981.
- (F) Building Design, Livability and Relationship to the Existing or Proposed Surrounding Area:
- (i) The building height, mass, scale, orientation, architecture and configuration are compatible with the existing character of the area or the character established by adopted design guidelines or plans for the area;
 - (ii) The height of buildings is in general proportion to the height of existing buildings and the proposed or projected heights of approved buildings or approved plans or design guidelines for the immediate area;
 - (iii) The orientation of buildings minimizes shadows on and blocking of views from adjacent properties;
 - (iv) If the character of the area is identifiable, the project is made compatible by the appropriate use of color, materials, landscaping, signs and lighting;

- (v) Projects are designed to a human scale and promote a safe and vibrant pedestrian experience through the location of building frontages along public streets, plazas, sidewalks and paths, and through the use of building elements, design details and landscape materials that include, without limitation, the location of entrances and windows, and the creation of transparency and activity at the pedestrian level;
 - (vi) To the extent practical, the project provides public amenities and planned public facilities;
 - (vii) For residential projects, the project assists the community in producing a variety of housing types, such as multifamily, townhouses and detached single family units, as well as mixed lot sizes, number of bedrooms and sizes of units;
 - (viii) For residential projects, noise is minimized between units, between buildings and from either on-site or off-site external sources through spacing, landscaping and building materials;
 - (ix) A lighting plan is provided which augments security, energy conservation, safety and aesthetics;
 - (x) The project incorporates the natural environment into the design and avoids, minimizes or mitigates impacts to natural systems;
 - (xi) Buildings minimize or mitigate energy use; support on-site renewable energy generation and/or energy management systems; construction wastes are minimized; the project mitigates urban heat island effects; and the project reasonably mitigates or minimizes water use and impacts on water quality;
 - (xii) Exteriors of buildings present a sense of permanence through the use of authentic materials such as stone, brick, wood, metal or similar products and building material detailing;
 - (xiii) Cut and fill are minimized on the site, the design of buildings conforms to the natural contours of the land, and the site design minimizes erosion, slope instability, landslide, mudflow or subsidence, and minimizes the potential threat to property caused by geological hazards;
 - (xiv) In the urbanizing areas along the Boulder Valley Comprehensive Plan boundaries between Area II and Area III, the building and site design provide for a well-defined urban edge; and
 - (xv) In the urbanizing areas located on the major streets shown on the map in Appendix A to this title near the Boulder Valley Comprehensive Plan boundaries between Area II and Area III, the buildings and site design establish a sense of entry and arrival to the City by creating a defined urban edge and a transition between rural and urban areas.
- (G) Solar Siting and Construction: For the purpose of ensuring the maximum potential for utilization of solar energy in the City, all applicants for residential site reviews shall place streets, lots, open spaces and buildings so as to maximize the potential for the use of solar energy in accordance with the following solar siting criteria:

- (i) Placement of Open Space and Streets: Open space areas are located wherever practical to protect buildings from shading by other buildings within the development or from buildings on adjacent properties. Topography and other natural features and constraints may justify deviations from this criterion.
 - (ii) Lot Layout and Building Siting: Lots are oriented and buildings are sited in a way which maximizes the solar potential of each principal building. Lots are designed to facilitate siting a structure which is unshaded by other nearby structures. Wherever practical, buildings are sited close to the north lot line to increase yard space to the south for better owner control of shading.
 - (iii) Building Form: The shapes of buildings are designed to maximize utilization of solar energy. Buildings shall meet the solar access protection and solar siting requirements of Section 9-9-17, "Solar Access," B.R.C. 1981.
 - (iv) Landscaping: The shading effects of proposed landscaping on adjacent buildings are minimized.
- (H) Additional Criteria for Poles Above the Permitted Height: No site review application for a pole above the permitted height will be approved unless the approving agency finds all of the following:
- (i) The light pole is required for nighttime recreation activities which are compatible with the surrounding neighborhood, light or traffic signal pole is required for safety or the electrical utility pole is required to serve the needs of the City; and
 - (ii) The pole is at the minimum height appropriate to accomplish the purposes for which the pole was erected and is designed and constructed so as to minimize light and electromagnetic pollution.
- (I) Land Use Intensity Modifications:
- (i) ~~Potential-General~~ Land Use Intensity Modifications:
 - a. The density of a project may be increased in the BR-1 district through a reduction of the lot area requirement or in the Downtown (DT), BR-2 or MU-3 districts through a reduction in the open space requirements.
 - b. The open space requirements in all Downtown (DT) districts may be reduced by up to one hundred percent.
 - c. The open space per lot requirements for the total amount of open space required on the lot in the BR-2 district may be reduced by up to fifty percent.
 - d. Land use intensity may be increased up to twenty-five percent in the BR-1 district through a reduction of the lot area requirement.
 - (ii) Additional Criteria for General Land Use Intensity Modifications: A land use intensity increase pursuant to subparagraph (i) will be permitted up to the maximum amount set forth below if the approving agency finds that the

criteria in paragraph (h)(1) through Subparagraph (h)(2)(H) of this section and following criteria have been met:

- a. Open Space Needs Met: The needs of the project's occupants and visitors for high quality and functional useable open space can be met adequately;
- b. Character of Project and Area: The open space reduction does not adversely affect the character of the development or the character of the surrounding area; and
- c. Open Space and Lot Area Reductions: The specific percentage reduction in open space or lot area requested by the applicant is justified by any one or combination of the following site design features not to exceed the maximum reduction set forth above:
 1. Close proximity to a public mall or park for which the development is specially assessed or to which the project contributes funding of capital improvements beyond that required by the parks and recreation component of the development excise tax set forth in chapter 3-8, "Development Excise Tax," B.R.C. 1981: maximum one hundred percent reduction in all Downtown (DT) districts and ten percent in the BR-1 district;
 2. Architectural treatment that results in reducing the apparent bulk and mass of the structure or structures and site planning which increases the openness of the site: maximum five percent reduction;
 3. A common park, recreation or playground area functionally useable and accessible by the development's occupants for active recreational purposes and sized for the number of inhabitants of the development, maximum five percent reduction; or developed facilities within the project designed to meet the active recreational needs of the occupants: maximum five percent reduction;
 4. Permanent dedication of the development to use by a unique residential population whose needs for conventional open space are reduced: maximum five percent reduction;
 5. The reduction in open space is part of a development with a mix of residential and nonresidential uses within a BR-2 zoning district that, due to the ratio of residential to nonresidential uses and because of the size, type and mix of dwelling units, the need for open space is reduced: maximum fifteen percent reduction; and
 6. The reduction in open space is part of a development with a mix of residential and nonresidential uses within a BR-2 zoning district that provides high quality urban design elements that will meet the needs of anticipated residents, occupants, tenants and visitors of the property or will accommodate public gatherings, important activities or events in the life of the community and its

people, that may include, without limitation, recreational or cultural amenities, intimate spaces that foster social interaction, street furniture, landscaping and hard surface treatments for the open space: maximum twenty-five percent reduction.

(iii) Land Use Intensity and Density Modifications with Height Bonus: In an area designated in Appendix J, "Areas Where Height Modifications May Be Considered," and as part of a height bonus approved under Subparagraph 9-2-14(h)(2)(K), the density and floor area of a building may be increased above the maximum allowed in Chapter 9-8, "Intensity Standards," B.R.C. 1981, as follows, provided the building meets the requirements for a height bonus under Subparagraph 9-2-14(h)(2)(K), B.R.C. 1981:

1. In the BMS zoning district outside a general improvement district providing off-street parking, and in the IMS, IS, and MU-1 zoning districts, the base floor area ratio (FAR) in Table 8-2, Section 9-8-2, "Floor Area Ratio Requirements," BR.C. 1981, may be increased by up to 0.5 FAR.
2. In the BR-1 zoning district, the allowed number of dwelling units per acre in Table 8-1, Section 9-8-1, "Schedule of Intensity Standards," B.R.C. 1981 may be increased by up to fifty percent.

(J) Additional Criteria for Floor Area Ratio Increase for Buildings in the BR-1 District:

- (i) Process: For buildings in the BR-1 district, the floor area ratio ("FAR") permitted under Table 8-2, Section 9-8-2, "Floor Area Ratio Requirements," B.R.C. 1981, may be increased by the city manager under the criteria set forth in this subparagraph.
- (ii) Maximum FAR Increase: The maximum FAR increase allowed for buildings thirty-five feet and over in height in the BR-1 district shall be from 2:1 to 4:1.
- (iii) Criteria for the BR-1 District: The FAR may be increased in the BR-1 district to the extent allowed in subparagraph (h)(2)(J)(ii) of this section if the approving agency finds that the following criteria are met:
 - a. Site and building design provide open space exceeding the required useable open space by at least ten percent: an increase in FAR not to exceed 0.25:1.
 - b. Site and building design provide private outdoor space for each office unit equal to at least ten percent of the lot area for buildings twenty-five feet and under and at least twenty percent of the lot area for buildings above twenty-five feet: an increase in FAR not to exceed 0.25:1.
 - c. Site and building design provide a street front facade and an alley facade at a pedestrian scale, including, without limitation, features

such as awnings and windows, well-defined building entrances and other building details: an increase in FAR not to exceed 0.25:1.

- d. For a building containing residential and nonresidential uses in which neither use comprises less than twenty-five percent of the total square footage: an increase in FAR not to exceed 1:1.
- e. The unused portion of the allowed FAR of historic buildings designated as landmarks under chapter 9-11, "Historic Preservation," B.R.C. 1981, may be transferred to other sites in the same zoning district. However, the increase in FAR of a proposed building to which FAR is transferred under this subparagraph may not exceed an increase of 0.5:1.
- f. For a building which provides one full level of parking below grade, an increase in FAR not to exceed 0.5:1 may be granted.

(K) Additional Criteria for Height Bonuses and Land Use Intensity Modifications for Properties Designated within Appendix J: A building proposed with a fourth or fifth story or addition thereto that exceeds the permitted height requirements of Sections 9-7-5, "Building Height," or 9-7-6, "Building Height, Conditional," B.R.C. 1981, together with any additional floor area or residential density approved under subparagraph (h)(2)(I)(iii), may be approved if it meets the requirements of this subparagraph (h)(2)(K). For purposes of this subparagraph (h)(2)(K), bonus floor area shall mean floor area that is on a fourth or fifth story and is partially or fully above the permitted height and any floor area that is the result of an increase in density or floor area described in subparagraph (h)(2)(I)(iii). The approving authority may approve a height up to fifty-five feet if the building is in an area designated in Appendix J, "Areas Where Height Modifications May Be Considered," and one of the following criteria is met:

- (i) Residential Developments: If the development is residential, it will exceed the requirements of Subparagraph 9-13-3(a)(1)(A), B.R.C. 1981, as follows:
 - a. For bonus units, the inclusionary housing requirement shall be increased as follows: Instead of twenty-five percent, at least thirty-six percent of the total number of bonus units shall be permanently affordable units. If the building is a for-sale development, at least fifty percent of the required permanently affordable units shall be built in the building; this fifty percent on-site requirement may not be satisfied through an alternative means of compliance. A minimum of one bonus unit shall be assumed to be provided in the building if any bonus floor area is in the building.
 - b. For purposes of this subparagraph (i), bonus units shall mean a number of units that is determined as follows: A percentage of all the units in the building that equals in number the percentage of bonus floor area in the building. For example, if twenty percent of the building's floor area is bonus floor area and the building has one hundred units, twenty percent of those one hundred units are bonus units, resulting in twenty bonus units.

- c. The city manager shall review the development's compliance with this increased inclusionary housing requirement pursuant to the standards and review procedures of 9-13, "Inclusionary Housing," B.R.C. 1981.
- (ii) Non-Residential Developments. For non-residential developments, the applicant shall pay the affordable housing portion of the capital facility impact fee in Section 4-20-62, B.R.C. 1981, at a rate of 1.43 above the base requirement for the bonus floor area. In a building with several types of non-residential uses, the bonus floor area of each type identified under Section 4-20-62, B.R.C. 1981, shall be a percentage of the bonus floor area that equals in number the percentage of the total floor area in the building of such use type. For lodging uses with a fee that is calculated per room, the increased rate for the affordable housing portion of the fee shall apply to bonus rooms; the number of bonus rooms shall be determined consistent with the methodology for bonus units in subparagraph (i)b., above.
- (iii) Mixed Use. If the development is a residential mixed-use development, the requirements of subsection (i) and (ii) above shall apply to the bonus floor area according to the percentage of the total building floor area of each use.
- (iv) Alternative Community Benefit. The approving authority may approve an alternative method of compliance that is proposed by the applicant to provide additional benefits to the community to qualify for a height bonus together with any additional floor area or density that may be approved under subparagraph (h)(2)(I). An applicant proposing an alternative method of compliance shall demonstrate that the proposed method may improve the facilities or services delivered by the city, including without limitation any police, fire, library, human services, parks and recreation, or other municipal office, or land or service the value of which is equivalent to or greater than the benefits required by this subparagraph (h)(2)(K).
- (v) Nursing Homes and Assisted Living. One hundred percent of the building's floor area is used for nursing home or assisted living uses.
- (L) Additional Criteria for Parking Reductions: The off-street parking requirements of Section 9-9-6, "Parking Standards," B.R.C. 1981, may be modified as follows:
- (i) Process: The city manager may grant a parking reduction not to exceed fifty percent of the required parking. The planning board or city council may grant a reduction exceeding fifty percent.
- (ii) Criteria: Upon submission of documentation by the applicant of how the project meets the following criteria, the approving agency may approve proposed modifications to the parking requirements of Section 9-9-6,

"Parking Standards," B.R.C. 1981 (see tables 9-1, 9-2, 9-3 and 9-4), if it finds that:

- a. For residential uses, the probable number of motor vehicles to be owned by occupants of and visitors to dwellings in the project will be adequately accommodated;
- b. The parking needs of any nonresidential uses will be adequately accommodated through on-street parking or off-street parking;
- c. A mix of residential with either office or retail uses is proposed, and the parking needs of all uses will be accommodated through shared parking;
- d. If joint use of common parking areas is proposed, varying time periods of use will accommodate proposed parking needs; and
- e. If the number of off-street parking spaces is reduced because of the nature of the occupancy, the applicant provides assurances that the nature of the occupancy will not change.

(M) Additional Criteria for Off-Site Parking: The parking required under Section 9-9-6, "Parking Standards," B.R.C. 1981, may be located on a separate lot if the following conditions are met:

- (i) The lots are held in common ownership;
- (ii) The separate lot is in the same zoning district and located within three hundred feet of the lot that it serves; and
- (iii) The property used for off-site parking under this subparagraph continues under common ownership or control.

- (i) Planning Board Call-Up: The planning board may call-up any final site review decision by the city manager pursuant to Section 9-4-4, "Appeals, Call-Ups and Public Hearings," B.R.C. 1981.
- (j) Subdivisions: An approved site plan may be subdivided under chapter 9-12, "Subdivision," B.R.C. 1981. The approved site plan may substitute for a preliminary plat if it meets the requirements of Section 9-12-6, "Application Requirements for a Preliminary Plat," B.R.C. 1981. As part of subdivision review, the city manager will consider conditions of the site plan approval and assure that they will be met within the future subdivision.
- (k) Minor Modifications to Approved Site Plans: Changes to the site plan, building plans, and landscaping plans may be approved by the city manager without an amendment to the site plan if such changes are minor. All minor modifications shall be noted, signed, and dated on the approved site plan. For proposed minor modifications of site review projects that are partially or totally developed, the applicant shall provide notice to any owners of property within the development that might be affected, as determined by the manager. In determining whether a proposed change is a minor modification, the following standards shall apply:
 - (1) Setbacks on the perimeter of a development cannot be varied by a minor modification to less than the minimum setbacks permitted by the underlying zoning district;
 - (2) The floor area of the development, including principal and accessory buildings, may be expanded by the cumulative total of no more than the greater of ten percent or two hundred square feet or, in the case of a building that exceeds the permitted height, no

more than five percent, except that the portion of any building over thirty-five feet in height may not be expanded under the provisions of this paragraph;

- (3) Commercial and industrial building envelopes may be moved or expanded by no more than the greater of ten feet, or ten percent of the length of the building, measured along the building's axis in the direction that the building is being moved;
 - (4) Principal and accessory buildings not within an approved building envelope may be expanded or moved by no more than ten feet in any direction within the development in residential districts and lots abutting residential districts. The resulting setbacks shall not be less than the minimum allowed setback of the underlying zone;
 - (5) Dwelling unit type may not be changed;
 - (6) The portion of any building over the permitted height under Section 9-7-1, "Schedule of Form and Bulk Standards," B.R.C. 1981, may not be expanded under the provisions of this subsection;
 - (7) No increase may be granted to an open space reduction or to a parking reduction in excess of that allowed in Subsection 9-9-6(f), B.R.C. 1981; and
 - (8) No change may alter the basic intent of the site plan approval.
- (I) Minor Amendments to Approved Site Plans:
- (1) Standards: Changes to approved building location or additions to existing buildings, which exceed the limits of a minor modification, may be considered through the minor amendment process if the following standards are met:
 - (A) In a residential zone as set forth in Section 9-5-2, "Zoning Districts," B.R.C. 1981, all approved dwelling units within the development phase have been completed;
 - (B) In residential zones, dwelling unit type is not changed;
 - (C) The required open space per dwelling unit requirement of the zone is met on the lot of the detached dwelling unit to be expanded; and
 - (D) The total open space per dwelling unit in the development is not reduced by more than ten percent of that required for the zone; or
 - (E) If the residential open space provided within the development or an approved phase of a development cannot be determined, the detached dwelling unit is not expanded by more than ten percent and there is no variation to the required setbacks for that lot;
 - (F) For a building in a nonresidential use module, the building coverage is not increased by more than twenty percent, the addition does not cause a reduction in required open space, and any additional required parking that is provided is substantially accommodated within the existing parking arrangement;
 - (G) The portion of any building over the permitted height under Section 9-7-1, "Schedule of Form and Bulk Standards," B.R.C. 1981, is not increased;
 - (H) The proposed minor amendment does not require public infrastructure improvements or other off-site improvements.

- (2) Amendments to the Site Review Approval Process: Applications for minor amendment shall be approved according to the procedures prescribed by this section for site review approval, except:
 - (A) If an applicant requests approval of a minor amendment to an approved site review, the city manager will determine which properties within the development would be affected by the proposed change. The manager will provide notice pursuant to Subsection 9-4-3(b), B.R.C. 1981, of the proposed change to all property owners so determined to be affected, and to all property owners within a radius of 600 feet of the subject property.
 - (B) Only the owners of the subject property shall be required to sign the application.
 - (C) The minor amendment shall be found to comply with the review criteria of Subparagraphs (h)(2)(A), (h)(2)(C), and (h)(2)(F) of this section.
 - (D) The minor amendment is found to be substantially consistent with the intent of the original approval, including conditions of approval, the intended design character, and site arrangement of the development, and specific limitations on additions or total size of the building which were required to keep the building in general proportion to others in the surrounding area or minimize visual impacts.
 - (E) The city manager may amend, waive, or create a development agreement.
- (m) Amendments to Approved Site Plans:
 - (1) No proposal to modify, structurally enlarge, or expand any approved site review, other than a minor modification or minor amendment, will be approved unless the site plan is amended and approved in accordance with the procedures prescribed by this section for approval of a site review, except for the notice and consent provisions of this subsection.
 - (2) No proposal to modify, structurally enlarge, or expand that portion of a building over the permitted height will be approved unless the site plan is amended and approved in accordance with the procedures prescribed by this section for approval of a building above the permitted height.
 - (3) If an applicant requests approval of an amendment to an approved site plan, the city manager shall provide public notice pursuant to Section 9-4-3, "Public Notice Requirements," B.R.C. 1981.
 - (4) The owners of all property for which an amendment is requested shall sign the application.

Section 2. This Ordinance amends Ordinances 8028, 8172 and 8252 and deletes the expiration clause of the height standards established in Section 5 of Ordinance 8028, extended by Section 2 of Ordinance 8172, and again extended by Section 2 of Ordinance 8252.

Section 3. The city council finds that this ordinance is necessary to protect the public health, safety, and welfare of the residents of the city and covers matters of local concern.

Section 4. The council deems it appropriate that this ordinance be published by title only and order that copies of this ordinance be made available in the office of the city clerk for public inspection and acquisition.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY
TITLE ONLY this ____ day of _____ 2019.

Suzanne Jones,
Mayor

Attest:

City Clerk,
Lynnette Beck

READ ON SECOND READING, PASSED AND ADOPTED this ____ day of
_____ 2019.

Suzanne Jones,
Mayor

Attest:

City Clerk,
Lynnette Beck

ORDINANCE NO. 8028

AN ORDINANCE AMENDING TITLE 9, "LAND USE CODE" B.R.C. 1981 BY AMENDING THE BUILDING HEIGHT REGULATIONS AND REQUIREMENTS FOR CERTAIN AREAS OF THE CITY; AND SETTING FORTH RELATED DETAILS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO:

Section 1. The City Council finds and recites the following facts leading to the adoption of interim development regulations related to the height of buildings.

- a. The city values its built environment, as is reflected in the Boulder Valley Comprehensive Plan. 2010 BVCP, pages 18 to 32.
- b. The voter approved a height limit for buildings no greater than 55 feet in 1971.
- c. City Charter Section 84 provides the purposes of the height limitation, which applies to buildings at 55 feet and below.
- d. The Boulder Revised Code allows buildings to be constructed up to 55 feet in all zoning districts, subject to a site review approval.
- e. Increasingly, more buildings are being approved at heights up to 55 feet in multiple areas of the community.
- f. The city council intends to limit the areas where buildings can be up to 55 feet to those areas where previous planning efforts have resulted in the adoption of a plan or clear policy intent that supports more intensive forms of development or in instances where important community values are implemented or site topography may result in height-compliance hardship.
- g. The council intends to study other areas in the community where buildings that exceed the underlying permitted or conditional height may be appropriate.
- h. The City Council determined that it is in the interest of the public health safety and welfare to consider whether existing zoning standards will result in development consistent with the goals and policies of the Boulder Valley Comprehensive Plan.

Section 2. Paragraphs 9-2-14 (c)(1) is amended and a new paragraph (2) is added and subsequent paragraphs renumbered, to read:

9-2-14 Site Review.

...

1 (c) Modifications to Development Standards: The following development standards of
 2 B.R.C. 1981 may be modified under the site review process set forth in this section:

3 (1) 9-7-1, "Schedule of Form and Bulk Standards" and standards referred to in that
 4 section except that the standards referred to as "FAR Requirements" may not be
 5 modified under this paragraph and are subject to Section 9-8-2, B.R.C. 1981 and the
 maximum height or conditional height for principal buildings or uses, except as
 permitted in paragraph (c)(2) below.

6 (2) The maximum height or conditional height for principal buildings or uses may be
 modified in any of the following circumstances:

7 (A) For building or uses designated in Appendix J "Areas Where Height
 8 Modifications May Be Considered."

9 (B) Industrial General, Industrial Service, and Industrial Manufacturing districts
 if the building has two or fewer stories or if the height is necessary for a
 10 manufacturing, testing or other industrial process or equipment.

11 (C) In all zoning districts, if the height modification is to allow the greater of two
 stories or the maximum number of stories permitted in Section 9-7-1 in a
 12 building and the height modification is necessary because of the topography
 of the site.

13 (D) In all zoning districts if at least forty percent of the floor area of the building
 is used for units that meet the requirements for permanently affordable units
 in Chapter 9-13, "Inclusionary Housing," B.R.C. 1981.¹

14 (E) For emergency operations antenna.

15 Section 3. The council adopts Attachment A, titled, "Appendix J to Title 9 - Areas Where
 16 Height Modifications May Be Considered," as an amendment to Title 9, "Land Use Code,"
 17 B.R.C. 1981.

18 Section 4. The council orders the city manager to add those areas north of Canyon
 19 Boulevard and within the DT-4 and DT-5 zoning districts, to the map designated as Appendix J,
 20 "Areas Where Height Modifications May be Considered," B.R.C. 1981 after the final completion
 21 and adoption by the City Council of amendments that are presently under review for the 2002
 22 Downtown Urban Design Guidelines.

23
 24
 25
¹ The provisions adopted pursuant to Ordinance No. 8028 expire on April 19, 2017.

1 Section 5. The provisions of this ordinance will expire on April 19, 2017. The council
2 intends that this ordinance will expire, be amended, or replaced with subsequent legislation after
3 further study of appropriate building heights in the city.

4 Section 6. This ordinance shall apply to all building permits or land use approvals for
5 which an application is made on January 21, 2015 or thereafter, unless specifically exempted.
6 Building permit applications for a development that received a site review approval for height
7 that exceeds the permitted height on or prior to January 21, 2015 may apply for and receive
8 building permits that are necessary to construct the approved development.

9 Section 7. Complete site review applications that have been submitted to the city prior to
10 January 21, 2015 that request additional height in areas that would not permit such height under
11 this ordinance will be permitted to continue through the process under the height regulations in
12 place at the time such application is made. Complete site review applications that have been
13 submitted to the city after January 21, 2015 and before February 20, 2015 that request additional
14 height in areas that would not permit such height under this ordinance will be permitted to
15 continue through the process under the height regulations in place at the time such application
16 was made, including the standards and requirements for the version this Ordinance No 8028
17 introduced and read on first reading at the January 20, 2015 city council meeting. Such
18 applicants shall be required to pursue such development approvals and meet all requirements
19 deadlines set by the city manager and the Boulder Revised Code. Pending developments may
20 apply for and receive building permits that are necessary to construct the approved development.

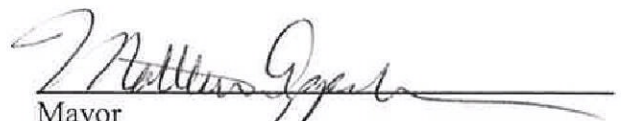
21 Section 8. For the limited purposes of this ordinance, the city council suspends the
22 provisions of Subsection 9-1-5(a), "Amendments and Effect of Pending Amendments," B.R.C.
23 1981 for the limited purpose of adopting this ordinance.
24
25

1 Section 9. If any section paragraph clause or provision of this ordinance shall for any
2 reason be held to be invalid or unenforceable such decision shall not affect any of the remaining
3 provisions of this ordinance.

4 Section 10. This ordinance is necessary to protect the public health, safety, and welfare
5 of the residents of the city, and covers matters of local concern.

6 Section 11. The city council deems it appropriate that this ordinance be published by title
7 only and orders that copies of this ordinance be made available in the office of the city clerk for
8 public inspection and acquisition.

9
10 INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY
11 TITLE ONLY this 23rd day of January, 2015.

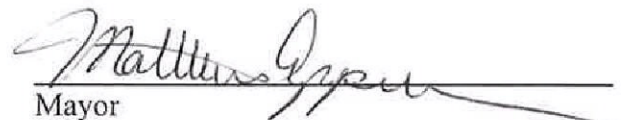


Mayor

14 Attest:

15 
16 _____
City Clerk

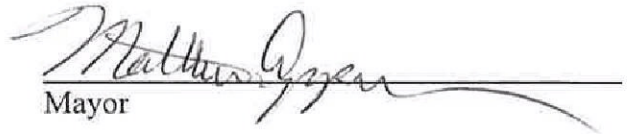
17
18 READ ON SECOND READING, AMENDED, AND ORDERED PUBLISHED BY
19 TITLE ONLY this 3rd day of February, 2015.

21 
22 _____
Mayor

23 Attest:

24 
25 _____
City Clerk

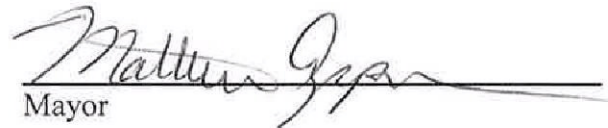
1 READ ON THIRD READING, AMENDED, AND ORDERED PUBLISHED BY
2 TITLE ONLY this 17th day of March, 2015.

3
4 
5 Mayor


6 Attest:

7 
8 City Clerk

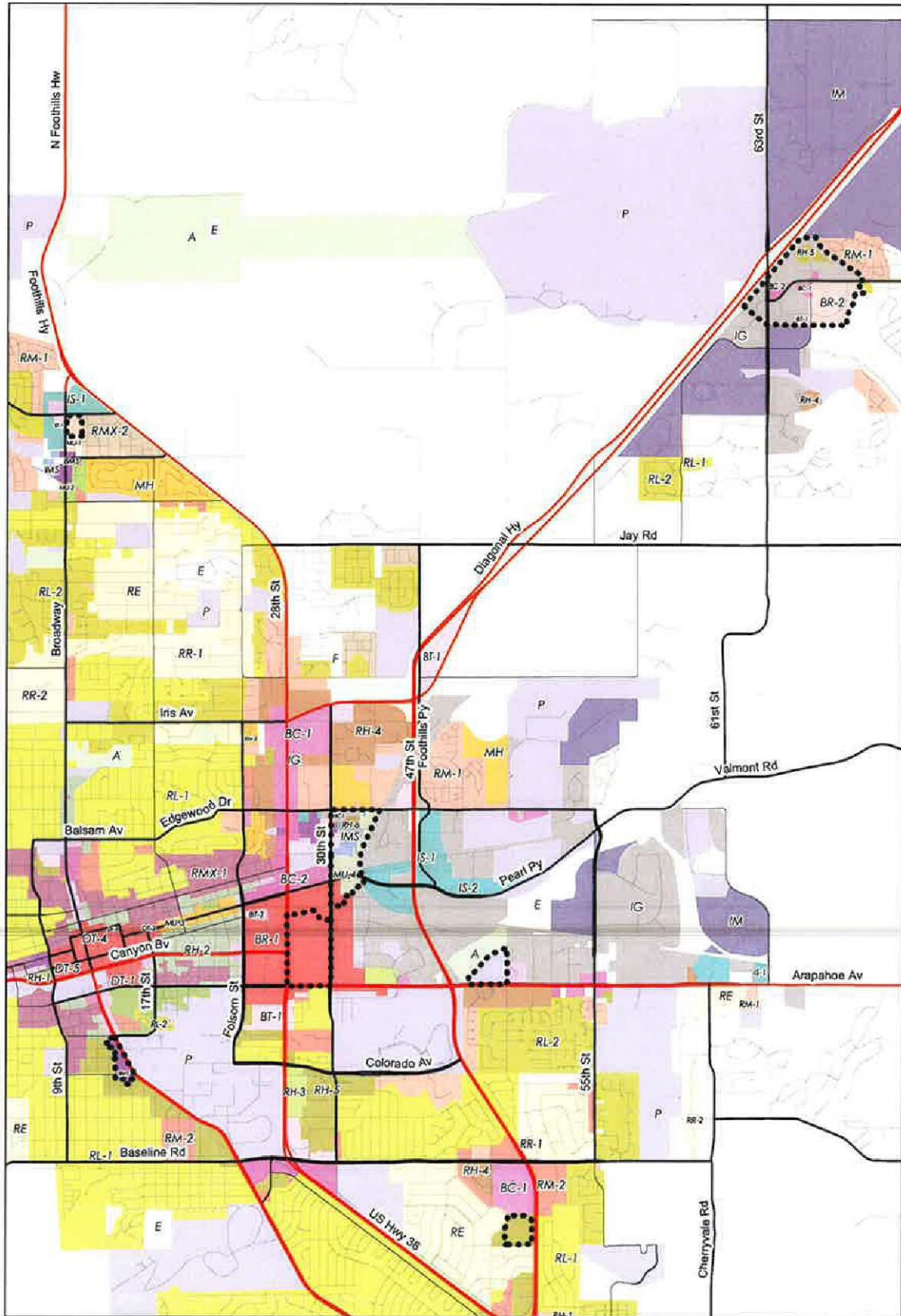
9
10 READ ON FOURTH READING, PASSED, ADOPTED, AND ORDERED
11 PUBLISHED BY TITLE ONLY this 7th day of April, 2015.

12
13 
14 Mayor

15 Attest:

16 
17 City Clerk

Appendix J to Title 9 – Areas Where Height Modifications May be Considered



 Areas Where Height Modifications May be Considered

