



## Land Use

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### BOULDER COUNTY

#### BOARD OF COUNTY COMMISSIONERS

Thursday, October 4, 2018 at 10:30AM

Commissioners Hearing Room, Third Floor  
Boulder County Courthouse, 1325 Pearl Street, Boulder, CO

#### Authorization under Article 16-100.A of the Boulder County Land Use Code for Text Amendments to the Land Use Code

**Staff:** Sinead O'Dwyer, Planner I, Land Use Department  
Nicole Wobus, Long Range Planning Manager, Land Use Department

*Public testimony will not be taken – action requested*

#### SUMMARY

Staff requests Board authorization to pursue text amendments to the Land Use Code. The Code is in need of amendment to address grammar and clerical mistakes, outdated references and terminology (e.g., following updates to Boulder County Comprehensive Plan elements), and minor changes to clarify code provisions and improve processes. Staff gathered information for the proposed clean-up through meetings, internal communications, and a record of historical interpretations. Many changes are minor text corrections, while others involve inserting missing words which are critical to conveying the content clearly, or replacing or removing language which has become antiquated with procedural changes within the department and other County agencies. Additionally, staff would like to add clarifying language to the Code, which demonstrates the intent and historic interpretations of the Code.

#### CHANGES CONSIDERED

- Correct typos and outdated cross-references
- Update terms and procedures to reflect current practices
- Add definitions and language which clarify the intent of the Code
- Codify the policies with which the Land Use department already interprets the Code
- Minor policy changes to improve effectiveness of review processes

Attachment A shows a preliminary list of example items to be considered for amendment. It is important to note the list is an example of areas of the Code where corrections, clarification and further direction warrant additional review through this process. In some instances through the process the changes or amendments listed might be found to have greater policy or process

implications. In these cases an item might be pulled from this general update so it can be reviewed through a more individualized process.

**ACTION REQUESTED**

Staff requests the Board of County Commissioners authorize staff to pursue the text amendments to the Boulder County Land Use Code for a general edit, update to terms and policies, and clarification of historic interpretations.

# Potential Code Clean-up Items

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## Typos / Mis-references

- Consider capitalizing all uses of terms defined in Article 18.
  - This would make it easier for readers to know which terms for which the Code includes Article 18 definitions.
- Consistent use for references “Article” or “Subsection”
- Consistent referencing format – parentheses, periods or neither?
- **1-300** “Enactment, amendment, and administration of this Code shall in accordance with and shall serve to implement the Colorado Revise Statutes”
- **4-516.S.5.a** “see 4-501D Keeping of Nondomestic Animals” should read “4-501(E)Keeping of Nondomestic Animals
- **4-804 B.1** “Section 3-202” should be 3-203
- **4-808. E** “of this subsection G” should read “of this subsection E.” Confirm this is not referring to the subsection G of the State regulations
- **4-809.E** “of this Subsection G” should read “of this Subsection E.” Confirm this is not referring to the subsection G of the State regulations
- **4-1003.A.2. b** Change Use of Community Significance to match correct section of code: Section 4-506(H) to 4-504
- **4-1003.F.3** Change “of this Section 4-1004(F)” to “ of this Section 4-1003(F)”
- **4-1301.A.1** Mountain Area- “as defined in Section 18-178A” should be 18-178C
- **5-102.A.4** “the development proposal conforms with the Comprehensive Plan”
- **7-1600. I a.** “all other outdoor light fixtures lawfully installed prior to and operable on (effective date), 2003”: Remove parenthetical, insert effective date
- **15-600**
  - **C** refers to “Design Review subcommittee” and **E** refers to “Application Review subcommittee” change one
  - **E.1.a** “The criteria as described in 15-600(E) below” and subsection F contains the criteria
  - **H.5** “may appeal hat denial,” should read “may appeal that denial”
- Telecommunication Facility vs. Telecommunications facility → be consistent throughout uses
- Consistency for Special Use Review vs. Special Review
  - Some places “special review” refers to LU and SU and in some places it means SU

## Updated Terms or Procedures

- **Update references to BCCP Environmental Resources Element (ERE) maps / concepts that have changed**
  - Open Corridor-Roadside and Open Corridor, Roadside to View Protection Corridor
  - Note: This Code clean up effort will focus just on clear changes that need to be made to reflect updated terminology. A separate effort will focus on potential substantive Code changes that are necessary or appropriate as a result of the updated ERE.
- **1-1400.A.11** Revise to reflect Fire Code changes

- **4-804 Application and Submittal Requirements**
  - B. change “minimum of five copies” to “minimum of 3 copies”
  - B.2 strike all content and replace with, “maps provided to the applicant at pre-application meeting”
  - B.4.j update to match current ERE terms or just reference all Comprehensive Plan maps
  - B.4.k strike
  - Add B.7 proof of legal access
  - C.12 strike all (Wildfire Mitigation Plan is now not required till BP), add “outdoor lighting plan”
- **Development Rights and Development Credits are not defined in Article 18 or included in the relevant Code content for TDRs (6-700) or TDCs (4-1300)**
  - Ideas include TDC definition and acronym in Introduction to 4-1300? 4-1300: Expanded TDR program –describes only TDCs, not TDRs (TDRs in a different place)
  - 6-700 – TDRs
  - Adding definitions would be quick step with more to come later

#### Items identified by staff for Clarification or Update

- **Vacations**
  - Change recordation requirements to be one year instead of 45 days, as requested by Planning Commission and the BOCC
- **Animal Units**
  - Add language clarifying that fractions of animal units are allowed
  - Revise table to show animal units converted to number of animal units rounded down
  - 8 pets – reference age of pets somewhere in the code? – There is a reference to 8 under Kennel (came up in DRT – information in multiple places)
    - 4-516.S – age of pets – clarify 7 weaned – defines pets
    - Clarification in kennel definition– 8 number is **weaned** animals?
- **4-100** Add “Listed uses are a Use By right except as noted in 4-802. A. 10”
- **Accessory Forestry Structures**
  - We have been treating these similar to Agricultural structures, exempt from RFA and must demonstrate use
- **Add Carport Definition**
  - Defined in Building Code. Either reference the Building Code or clarify here.
- **18-131A Covered Porch definition**
  - Open on at least one side
  - No Knee walls? Where are knee walls defined?
- **4-516.O Accessory Grading** update to include grading less than 500 cubic yards
- **18-121. B.3 and B.5** “ this subsection C” should read “subsection B” see email from Kathy Parker 5/8/17
- **18-126 Community Service Area** – refers to IGAs, many of which are outdated, where is this referenced in the code in addition to Article 8-210(B)(1)? What would be the effects of updating this? Consider removing reference to municipalities with which IGAs are no longer in effect
- **18- 168 Grading** references old building code needs an update

#### Policy Center Items

- **18-130 Contiguous**
  - **These changes may need to be included into DC-18-0001 instead**

- Prior to the adoption the definition of contiguous, the split of a parcel by public acquisition of a fee simple right-of-way, which break contiguity by the current definition (i.e. Highways), creates parcels subject to the zoning in effect at the time of acquisition.
- Contiguity is not broken by the items in section 18-130(B), even if they are on fee simple ownership parcels.
- **18- 137 Dwelling (detached structure)**
  - A detached structure can be used for sleeping as long as only the principal structure supplies cooking and bathing.
  - Kitchens and full bathrooms (i.e. anything more than a sink & toilet) are typically not allowed in detached structures, since those things comprise a “ dwelling unit” (Article 18-138 of the Land Use Code defines “dwelling unit” ).
- **18-162 Floor Area (habitable space)**
  - Habitable Basement space, rooms, or hallways shall have a ceiling height not less than 7 feet per the IRC. Uninhabitable basement space is less than 6’8’ and not counted as floor area
- **18- Pergolas**
  - Lattice roofed structures such as pergolas or open slat type roofs, do not count as RFA or Floor Area (per building code)
- **18-194 Setback**
  - Add reference to 18-175 and 18-175A Lot Line
  - Construction within 20% of the minimum setback requires that a surveyor verify that the foundation or construction is placed outside of the minimum setback (not codified anywhere just a BP policy)
  - Swimming Pools: at grade swimming pool, non-enclosed, does not require setback  
Earthwork cut for pool is considered foundational. Parcels with building envelopes are required to have at grade pools located inside the building envelope area. If a building envelope is specifically applied to protect view corridors then an in-ground swimming pool most likely would not interfere with the purpose of the building envelope.
    - Maybe add Accessory Swimming Pool Use with these provisions?
  - Decks and Platforms
    - Under 30” do not meet the definition of Structure under 18-203 (that are not over a basement or story below) and do not need to meet setbacks. Guard rails on these decks are akin to a fence along the side of the deck but do require a building permit.
    - If over 30” then the deck itself is required to have a permit and meet setbacks (Article 7-1402)
  - Retaining walls less than 4 ft, fences not over six feet high and platforms less than 30" can encroach the zoning and supplemental setback. Window wells can encroach the setback as long as no portion of it or the appurtenances exceed 30" above existing grade. The items in this section are subject to floodplain development permits if applicable. (There currently is a discrepancy between building code and land use code). According to building code, all platforms require a building permit even if under 30".

- **18-203 Structure**

- Generators are considered structures and are required to be out of the setback
- This one we need to research how other places handle generators, air conditioning units, pool pumps and heaters, and other above ground mechanical equipment – could be broader than generators.

**Minor Policy Changes**

- **4-805.C Review by the Director**

- Add “When an applicant requests that the decision period is suspended, on the date that the applicant subsequently requests for the decision period to resume, the Director has at least 14 days to issue a determination.” Or similar

- **18-189D Residential Floor Area**

- (Exemptions: Gazebos, carports, detached greenhouses and hoop houses up to a total combined size of 400 square feet and any sheds which do not require a building permit.)

- **Article 1-1000 .A. 11**

- Review the possibility of adding e-mail

- **Article 3 -205 B.2.b**

- edit provision to allow for signs to be posted off site where permitted to allow for proper notification of those potentially impacted. Same change for SPR and any other code provision that might mention a sign posting.

- **Article 3**

- Variance referral provisions to 15 day referral instead of 35 days.