

Code Amendments – Articles 2, 3, and 4

City Council – December 1, 2020

City Staff Representative: Shannon McDowell – Long Range Planner

Purpose

- To review proposed amendments to the Land Use and Development Code

Strategic Focus Area

- Recognizable and Well-Planned Community



Background

- Staff was directed by City Council to modify the family child care home regulations
- New *Land Use and Development Code* was effective January 1, 2020
 - Adjustments
 - Corrections

Summary of Proposed Regulations

Article 2 – Processes and Procedures

- Neighborhood Meetings
 - Eliminate neighborhood meeting requirement for Conditional Use Permits for large family child care homes
 - Allow virtual neighborhood meetings
- Posted Notice
 - If hearing is delayed, allow removal of sign and reposting with new dates
- Appeal of an Administrative Decision
 - Correct the code to reflect that applications should be submitted to the Director of Community Development rather than the City Clerk

Summary of Proposed Regulations

Article 3 – Subdivision Standards

- Performance Guarantees
 - Correct the code to require a written request for release of a performance guarantee to be submitted to the Director of Community Development, rather than City Council

Summary of Proposed Regulations

Article 4 – Zone District Standards

- Storage
 - Remove all storage uses from the C-3 zone district

	MU-R/EC	C-3	BP	I-1	I-2
Storage and Warehousing – Personal, Indoor	P	P	P	P	P
Storage and Warehousing, Personal, Outdoor	C	€	C	P	P
Storage and Warehousing – Commercial, Indoor		P	P	P	P
Storage and Warehousing – Outdoor, Minor		€	C	C	P
Storage and Warehousing – Outdoor, Major				C	P

Summary of Proposed Regulations

Article 4 – Zone District Standards

- Family Child Care Homes
 - For operations meeting the state exemption criteria, do not require home occupation permit
- Temporary Uses
 - *Land Use and Development Code* regulates uses on private property
 - Create two categories of temporary uses:
 - Short term: 90 days or less (unless Director approves a longer period)
 - Long term: up to 1 year at a time (unless Director approves a longer period)
 - Adjust processing time to 15 days (2 weeks)

Public Notice and Comment

- Public notice was provided in accordance with the *Land Use and Development Code*.
- By November 16, 2020:
 - ✓ Notice was published on the City of Brighton website on November 12, 2020.
 - ✓ Notice was published on social media outlets as well.
- Planning staff has not received any formal comments.
- There were public comments made at the Planning Commission hearing.

Summary of Findings

- Staff finds the code amendment furthers the purposes of the *Land Use and Development Code* as stated in Section 1.01.C.
- Staff finds the amendment is in accordance with the Comprehensive Plan and has been considered for both its long-range affects as well as immediate impacts.
- Staff finds the amendment promotes the public safety, health and general welfare of the community in the City of Brighton.
- Staff also finds the amendment improves the effectiveness and efficiency of administering the *Land Use and Development Code*.

City Staff Recommendation

- The Planning Commission heard the request on November 12, 2020 and recommended approval unanimously.
- Staff is recommending approval of the code amendments as drafted.

Options for City Council

The City Council has four (4) options when reviewing this code amendment application. City Council may:

- Approve the code amendment as drafted;
- Approve the code amendment with specific changes;
- Deny the code amendment with specific reasons for the recommendation; or
- Continue the item to be heard at a later, specified date if the Council feels it needs more information to ensure compliance with the approval criteria as set forth in the Land Use and Development Code.

2.01 General – All Applications

Table 2-1: Procedures Summary (Gray background indicates change to table.)

	Eligible Applicants			Pre-application Conference	Neighborhood meeting	Notice			Review Body			
	Owner	PC	CC			Post	Publish	Mall	Staff	PC	CC	BoA
Administrative Plat	■			☑					D	A		
Subdivision Plan	■			☑	☑	☑	☑	☑	R	D/PH	Ac/PH	
Final Plat	■			☑					D	A		
Zoning Map Amendment	■	■	■	☑	☑	☑	☑	☑	R	R/PH	D/PH	
Planned Development – Regulating Plan	■	■	■	☑	☑	☑	☑	☑	R	R/PH	D/PH	
Conditional Use Permit	■			☑	☑	☑	☑	☑	R	D/PH	A	
Conditional Use Permit – Large Family Child Care Home	■			☑		☑	☑	☑	R	D/PH	A	
Site Improvement Permit	■								D	A		
Site Plan				☑					D	A		
Variance	■			☑		☑	☑	☑				D/P H
Appeal of Administrative Decision	■	■	■			–	–	–				D/P H
Text Amendment		■	■				☑		R	R/PH	D/PH	
Annexation	■		■	☑		☑	☑	☑	R		D/PH	
<div> <div>☑ – Required</div> <div>■ – Authorized</div> <div>PC – Planning Commission</div> <div>CC – City Council</div> <div>BoA – Board of Adjustment</div> </div> <div> <div>R – Review and Recommending Authority</div> <div>D – Decision Making Authority</div> <div>Ac – Acceptance of Decision</div> <div>A – Appeal of Decision</div> <div>PH – Public Hearing Required</div> </div>												

2.01 - General—All Applications.

- D. **Neighborhood Meeting.** A neighborhood meeting shall be required as indicated in Table 2-1, and for any application involving oil, gas or mineral extraction as specified in **Section 10.01**. The Director may require a neighborhood meeting for other projects where the nature of the project is particularly complex or presents potential for significant changes and unanticipated impacts on property in the vicinity. A required neighborhood meeting may be waived only when the Director determines that the application is so routine in nature, and based on the context of the project that the general public notice and review process is sufficient to communicate the purposes of the meeting. Neighborhood meetings shall meet the following:
1. Be held prior to a formal application to the City.
 2. The applicant is responsible for coordinating the meeting location, and the meeting shall be held at a public meeting facility within the City, such as a school, community recreation center, or other convenient and accessible meeting center.

- The Director may approve the virtual facilitation of the neighborhood meeting in lieu of or in addition to the meeting held at a public meeting facility.
3. The applicant is responsible for all content of the meeting, which at a minimum shall include:
 - a. The general nature and scope of the proposed project;
 - b. A summary of the proposed land use, including planned or all potential future uses under the request;
 - c. The most recent plans and submittals available for the project, depicting the scale, location and design of any buildings and the relation of all site improvements to the streets and adjacent property; and
 - d. Identify and explain the subsequent formal review steps with the City, and note that official and formal review by the City may result in changes from the initial concepts.
 4. The applicant is responsible for notification of the neighborhood in the manner and format prescribed by the City on the application forms. The applicant shall receive confirmation of the time and location of the meeting from the Director prior to scheduling and notice.
 5. The applicant shall prepare minutes of the meeting including evidence of the notice, attendance, content and presentation, issues and discussion summary, and outcomes of the meeting. These minutes shall be included as part of the formal application.
- F. Notice. Notice shall be provided for each application as indicated in Table 2-1, which shall provide the date, time, place, type and general nature of the application, the general location of the subject property, a description of the proposal, and the location and contact where additional details may be found. Prior to the hearing or review meeting, the applicant shall verify to the Director that all required notice has been posted, and the City shall be responsible for mailed and published notice. Required notice shall include the following requirements:
1. *Published.* Where published notice is required, at least 15 days prior to the public hearing or meeting, the Director shall publish the notice electronically on the City website in a manner that best advises the public of the application.
 2. *Posted.* Where posted notice is required, notice shall be posted on the property or near the proposed site, visible to surrounding properties and the general public from adjacent public ways, according to the following:
 - a. The Director shall determine the number, type and specific location of signs based on the context of the property and supply the signs.
 - b. The applicant shall ensure that all signs are posted at least 15 days prior to the public hearing or meeting.
 - c. The notice shall state that the land use proposal is under review and contain the contact information for the Community Development Department for specific information about the type of application or nature of the project.
 - d. The applicant shall make a reasonable good faith effort to maintain posted notice throughout the proceedings. When the public hearing is delayed more than 30 days from the date on the posted notice, the applicant may remove the posted notice and post new signs with the new public hearing date at least 15 days prior to the new public hearing date. Any failure to maintain posted notice beyond reasonable good faith efforts shall not invalidate any subsequent action.
 3. *Mailed.* Where mailed notice is required, the City shall mail notice of the date, time, place, type and general nature of the application, general location of the subject

property, and a description of the proposal and where additional details may be found. When mailed notice has been properly addressed and deposited in the mail, failure of a party to receive notice shall not invalidate any subsequent action. Notice shall be sent by regular mail to the following, at least 15 days prior to the hearing or review meeting:

- a. All property owners within 300 feet shown by the records of the county assessor no more than seven days prior to the date of application;
- b. For oil and gas applications, the distance for property owners shall be increased to 1,000 feet;
- c. Where notice is not required, or where notice beyond these requirements is determined necessary at the discretion of the Director, mailed notice to all property owners within 1,000 feet may be required in the following situations:
 - (1) Where large parcel sizes on the perimeter of the project result in notification to only immediately adjacent owners;
 - (2) Where a large project is more than 1,000 feet in any dimension; or
 - (3) Other situations where the Director determines that additional notice may be necessary due to the context or nature of the project causing potential impacts beyond the required notice distance.
4. *Surface Development Notification.* Where mailed notice is required by state statutes for any project related to mineral estate owner identified on the county tax assessor's records or who has filed in the office of the county clerk and recorder in which the subject property is located a request for notification, the applicant shall be responsible for notification. The applicant shall certify that notice has been provided as required by this code and Colorado law prior to a public hearing.
5. *Additional Hearing or Meeting Dates.* For any application where mailed or published notice is required by this code or Colorado law, and the reviewing authority adjourns or continues to the review to a certain date, time and location, no new notice shall be required.

2.09 - Appeal of Administrative Decision

- A. *Applicability.* The appeal of administrative decisions is a process to determine if there was an error in any final decision in the interpretation, administration or enforcement of this code by an administrative official of the City. Except for where this Article and Table 2-1 establish a different appeal process and review body, appeals of administrative decisions may be filed with the Board of Adjustments by any person aggrieved, or by any officer, department, board, or official public body of the City affected by any decision of the officer administering the zoning standards in this ordinance. Appeals of administrative decisions shall be filed in writing with the ~~City Clerk~~ Director within 30 days of the date of the decision being appealed.

3.04 Required Improvements

A. Intent. The intent of this section is to:

1. Ensure that all improvements necessary to serve lots within a subdivision are constructed, inspected or otherwise assured of completion prior to the issuance of building permits.
2. Prevent the location or design of a subdivision from placing an undue burden on public utility systems and community facilities serving other areas.
3. Provide appropriate apportionment of costs and offset higher net costs or premature costs to the public necessitated by the subdivision.
4. Protect against subdivisions where soil, subsoil or flooding conditions would create potential dangers to public health or safety.
5. Coordinate subdivisions and construction of required improvements with other anticipated improvements or with future growth.

B. General Requirements.

1. All required improvements shall be outlined in the subdivision plan, and be incorporated into the final design at the time of final plat as provided in **Section 2.02**.
2. The applicant shall post a performance bond, letter of credit or similar security instrument drawn in favor of the City in an amount equal to 115% of the estimated cost of the construction of improvements, determined by the City Engineer.
3. The schedule for construction of improvements may be divided into phases according to an approved preliminary or final plat as specified in **Section 2.02**.
4. Required improvements shall be constructed in accordance with the Public Works Standards and Specifications and in accordance with approved plans and profiles and the construction requirements and specifications of the City.
5. Finished plans of all public improvements as built shall be required before the City shall accept improvements. The approved design plans are acceptable if they remain true after construction and if attested to by a registered engineer.
6. The performance guarantee shall be released upon written request by the applicant to the ~~City Council~~ Director or his or her designee, only after all improvements for the subdivision, or any particular phases noted on a phasing plan, are completed, inspected and finally accepted by the City.
7. The applicant shall be responsible for the repair, replacement and maintenance of any required improvement which fails to function or meet the standards of the City due to defects in material or workmanship, within 2 years from the date of final acceptance.

Land Use and Development Code Amendments – Article 4

4.02 Allowed Uses

Gray shading of cell indicates a proposed change.

	Residential Districts									Mixed-use Districts				Commercial Districts					Industrial Districts		Special Purpose & Overlay Districts					
	A/R	AE	RE	R1	RIA	RIB	R2	R3	MH	DT	MU-NC	MU-CC	MU-R/EC	C0	C1	C2	C3	BP	I1	I2	S4CR	S4GW	ME	FC	PL	OPEN
Industrial Uses																										
Manufacturing – Artisan / Limited	p	p					C	C	C	p	p	p	p	p	p	p	p	p	p	p	p	p				
Manufacturing – Light										C			p				C	C	p	p						
Manufacturing – General																			p	p						
Manufacturing - Heavy																				C						
Mineral Extraction																							p	p		
Asphalt Concrete mixing plant																			C	p			C	C	C	
Storage and Warehousing – Personal, Indoor													p				p	p	p	p						
Storage and Warehousing – Personal, Outdoor												C					p	C	p	p						
Storage and Warehousing – Commercial, Indoor																	p	p	p	p						
Storage and Warehousing – Outdoor, Minor																	p	C	C	p			p	C	C	C
Storage and Warehousing – Outdoor, Major																			C	p			p	C	C	C
Storage of Gasses or Liquefied Petroleum	p	p	C										C				C	C	p	p			p	C	C	
Railroad / Freight Yard																			p	p				C	C	
Oil and Gas – Drilling	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
Waste Processing – General																	C		p	p					C	
Waste Processing – Landfill																			C	C			C	C	C	
Waste Processing – Junk yard / salvage Yard																				C						

4.03 Accessory Uses

C. Home Occupation. Home occupations shall meet all of the following standards:

1. The occupation shall be limited to residents of the dwelling and no non-resident employees. If the resident applicant is not the homeowner, the homeowner shall provide a notarized authorization with the permit application.
2. No more than 25% of the floor area of any one floor of the dwelling unit shall be utilized for a home occupation except as may be required for state-licensed family child care homes.
3. Any materials or equipment used in the home occupation shall be stored within an enclosed structure.
4. No alteration of the exterior of the principal residential building or site shall be made which changes the residential character of the building or site.
5. Signs shall be limited to 1 non-illuminated sign, no more than 2 square feet, and within at least 10 feet of the primary entrance.
6. No traffic shall be generated by the home occupation that is abnormal to a residential neighborhood. Any deliveries shall be from vehicles 16 feet or less or rated 8,000 pound gross vehicle weight or less, except for limited larger vehicles at a frequency typical of the principal residential use.
7. All activity shall be conducted within an enclosed living area or the garage, except as required for state-licensed family child care homes.
8. No equipment, machinery or operation shall be used in such activities that is perceptible off the premises because of noise, smoke, odor, dust, radiation, electrical interference or vibration.
9. No home occupation shall produce on a regular or repeated basis quantities or types of refuse not customarily associated with a normal residential use in that zone district.
10. Only up to 10 customer or patron visits per day shall be permitted and limited to between the hours of 7 a.m. and 7 p.m. There is no restriction on the number of customers or patrons visiting at any given time, so long as the total number of visits per day does not exceed 10 and all other specific and general accessory use criteria are met. All parking necessary for the use shall be confined to the garage, driveway or street directly in front of the dwelling.
11. The operation of any wholesale or retail business is prohibited unless it is conducted entirely by mail or sales are transacted no more than once per week (i.e. Tupperware party). Incidental sales of products associated with a service shall be permitted (e.g. instructional books sold in conjunction with music lessons).
12. Any person operating a home occupation shall obtain a home occupation permit from the Community Development Department, and submit any other local, state or federal government or agency licenses necessary for the proposed business. The Director shall either issue the permit or notify the applicant in writing as to why the permit does not meet these standards. The Director may condition the permit on any specific conditions necessary to ensure these standards are met and maintained.
13. Permits shall be valid for up to 1 year, may be revoked at any time for non-compliance with these standards or conditions, and shall be void if the applicant ceases engaging in the home occupation or does not reside on the premises for more than 60 days.
14. Specific home occupations conditions:
 - a. Garage sales are limited no more than 4 per year and 3 days per event.
 - b. Family Child Care Homes shall receive all required a state licenses. Family child care homes are carried on within a residence for compensation, providing care and supervision for children who are away from their homes any part of

the day. They may be operated between the hours of 6 a.m. and 7 p.m. These homes are divided into the following ~~two~~ categories:

- (1) *Exempt*: Family child care homes that qualify for a State of Colorado licensure exemption according to Section 26-6-103, C.R.S. Exempt family child care homes shall not require a home occupation permit.
 - (2) *Small*: Family child care homes limited to the full- or part-time care of not more than 6 children at one time, including those of the operator under the age of 12, and not more than 2 additional children, for before- and after-school care. Small family child care homes are ~~allowed~~ permitted subject to the general accessory use standards
 - (3) *Large*: Family child care homes limited to the full- or part-time care of 7 to 12 children at one time, including those of the operator under the age of 12. Large family child care homes shall require a Conditional Use Permit subject to the procedures and criteria in Section 2.07.
- c. Firearms sales shall submit with their license a statement verifying the following:
- (1) No firearms, ammunition, or accessories shall be sold or offered for sale on the premises;
 - (2) The exchange of firearms shall only be conducted at gun shows, pursuant to all applicable firearms laws and regulations.
 - (3) No firearms, ammunition, parts or supplies related to the home occupation shall be kept on the premises, except those kept for the private use of the permit holder and unrelated to the business.
 - (4) No repair, service or gunsmithing shall be conducted.
 - (5) In the event that federal or state law prohibits the exchange of firearms merchandise outside of the dwelling in which the home occupation is conducted, any permit for firearms sales shall become void.
15. Prohibited home occupations. The following shall not be allowed as home occupations:
- a. Animal and pet-related services, including a veterinarian, grooming, kennel or animal daycare;
 - b. Bed and breakfast or boarding or rooming house;
 - c. Clinics, hospitals, or residential care services
 - d. Cosmetology services (barber shop or beauty parlor)
 - e. Repair services related to automobiles, motorcycles, large household appliances or other large-scale machinery;
 - f. Restaurants;
 - g. Dispatching of more than 1 vehicle to and from the residential premises (i.e. towing services, repair service, taxis, etc.)

4.03 Accessory Uses

J. Temporary Uses. Uses conducted on private property that may not otherwise be interpreted as being permitted by Table 4-2, and the general accessory uses in Section 4.03.A, may be permitted through a Temporary Use Permit.

1. *Types.* Temporary uses generally meet one of the following types:

a. **Short-term:**

- i. Trade shows, auctions or farmers markets, or other events where the commercial property grounds are set up for large-scale events or sales on a temporary basis.
- ii. Community recreation or entertainment events such as ~~street fairs~~, art fairs, carnivals or festivals.
- iii. Promotional ventures or special commercial events such as ~~sidewalk tent sales, truck sales, or seasonal holiday sales events for non-commercial uses.~~

b. **Long-term:**

- i. Construction Offices
- ii. Sales Offices
- iii. Temporary construction yards

2. *Duration.* Temporary uses may be permitted to operate according to the following:

- a. Short-term temporary use permits shall have a specified start and end date not more than 90 days per year or be based on a schedule that includes no more than 90 days per year, unless a longer period is approved by the Director.
- b. Long-term temporary use permits shall have a specified start and end date of not more than one year (365 days), unless a longer period is approved by the Director.

3. *Permit.* An application for a permit shall be submitted by the owner, or an agent of the owner with written permission from the owner at least ~~40~~ 15 days prior to the desired issue date.

a. Temporary use permit applications shall include the following:

~~The permit shall have a specified start and end date not more than 90 days per year or be based on a schedule that includes no more than 90 days per year.~~

- i. The applicant shall submit a complete description of the event or activity, including anticipated traffic, hours and peak times of operation, access and circulation plans, the ability to accommodate fire and police access, and any need for special protection or other public safety, health and welfare needs.
- ii. The applicant shall submit a plan identifying the extent of the grounds, gathering places and circulation routes, any streets or public spaces to be dedicated to the event, the location of all structures, equipment or other accessory facilities, and any utility needs for these structures, equipment or fixtures.

4. *Criteria.* A temporary use permit shall be evaluated based on the following, in addition to all other general procedures and criteria for conditional permits in **Section 2.07**:
 - a. The proposed use is of a scale, intensity and format that is ordinarily occurring in the vicinity considering the size, anticipated traffic, hours of operation and duration of the event.
 - b. The anticipated traffic and parking can be handled by the existing street network, site access and lot layout, or the applicant has demonstrated sufficient management strategies and procedures to mitigate any potential negative effects on the area.
 - c. The degree of potential negative impacts on adjacent property, and in particular the likelihood of the event violating the general District Performance Standards in **Section 4.06**. The applicant may submit mitigation plans for any potential impacts, including limiting hours of operation, neighborhood meeting plans or other evidence of limiting impacts on surrounding property owners or residents.
 - d. The Director or Chief Building Official may impose any other conditions on a permit necessary to protect the health, safety and welfare.