

Chapter 18.44

FLEXIBLE ZONING OVERLAY DISTRICT

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18.44.010 Purpose.

The purpose of this chapter is to provide standards and procedures for the establishment of flexible zoning overlay districts in areas of the community that are experiencing disinvestment or under-utilization of land. The flexible zoning overlay is intended to stimulate innovative development and promote reinvestment by providing relief from regular land use controls, including the opportunity for relief from use restrictions, development intensity limitations and associated standards included in the provisions of the underlying zoning.

18.44.020 Objectives of the flexible zoning overlay district.

Objectives to be achieved through the establishment of a flexible overlay zoning district are to:

- A. Further the intent and goals of adopted land use plans;
- B. Encourage investment in areas experiencing blight, disinvestment or underutilization of land;
- C. Create opportunities for development and redevelopment that would otherwise be unachievable.
- D. Promote coordination and cooperation between property owners that are interested in pursuing redevelopment initiatives;
- E. Facilitate design innovation with the reduction or elimination of certain land use and zoning controls;
- F. Ensure adequate public safety within and adjacent to district boundaries;
- G. Maintain quality standards for the provision of city services for properties within and adjacent to district boundaries; and
- H. Protect land uses and neighborhoods that are adjacent to flexible overlay zoning districts from material negative impacts.

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18.44.030 Definitions.

The words, terms and phrases in this section shall have the meanings as set forth below, unless the context requires otherwise.

- A. "Flexible zoning overlay district" or "district" shall mean all land within a designated area that has been approved by the council following a public hearing with public notice that will be subject to the provisions of this chapter.
- B. "Flexible zoning overlay district plan" or "district plan" shall mean a general plan of development that complies with the requirements specified in this chapter.
- C. "Flexible zoning project" or "project" shall mean a development project located within a district that conforms to the established district plan.
- D. "Flexible zoning project plan" or "project plan" shall mean a site specific plan of development located within a district that complies with the requirements specified in this chapter.
- E. "Greenfield sites" shall mean open land that is not surrounded by or substantially constrained by development, including leapfrog development, and where there has been no previous development activity other than agricultural uses or similar low-intensity uses.
- F. "Sensitive uses" shall mean single family and two-family homes, ~~public and private~~ schools ~~with on-site enrollment of 25 or more students and daycare facilities~~, medical care facilities including hospitals, clinics and nursing facilities, or other uses that may be materially impacted in a negative manner by the location of a district or development project.

18.44.040 Establishment of flexible zoning overlay districts.

Establishment of a flexible zoning overlay district includes the following:

- A. Submittal of a complete application signed by owners of real property within the district boundaries;
- B. Review of the application by the development review team for completeness;
- C. Conducting a neighborhood meeting and public hearings by the planning commission and the council all of which shall be publicly noticed; and
- D. Approval of the district, district plan, and, if applicable, the project plan by council following the public hearing.

18.44.050 Eligibility criteria.

All districts shall meet the following eligibility requirements:

- A. District boundaries shall be consistent with the city's infill definition where at least eighty percent of the district boundary is ~~abutting and~~ contiguous to properties within the city limits; greenfield sites are unsuitable for district designation;
- B. Property within the district boundaries is contiguous or separated only by public rights-of-way;
- C. District boundaries are reasonably discernable and distinguishable from adjacent land;

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- D. The district use meets applicable Adequate Community Facilities (ACF) standards set forth in chapter 16.41;
- E. The district plan is consistent with the intent and goals of applicable land use plans and policies; however, a district plan may exceed vary from the use, density and intensity provisions specified in the land use plan component of the Comprehensive Plan;
- F. The district plan has been designed to prevent incompatibility with adjacent and nearby property and land uses, particularly sensitive uses;
- G. Community benefits of the flexible zoning overlay district and the associated district plan shall outweigh any negative impacts to surrounding properties or to the community; and
- H. Establishment of the district encourages property investment and development which might otherwise not occur, and furthers a valid public purpose.

18.44.060 Permitted uses and applicable development standards.

- A. When a flexible zoning overlay district is established, the underlying zoning designation remains in place except as modified by the district plan.
- B. Once a district has been established and a district plan approved, subsequent development and redevelopment within the district must conform to the district plan.
- C. All property within a flexible zoning overlay district is subject to this title, except where specifically exempted in the district plan.

18.44.070 Overlay district application requirements.

- A. An application for establishment of a flexible zoning overlay district may be submitted by a property owner within the proposed district boundaries or by written consent of three city council members.
- B. An applicant must present preliminary plans for a proposed district at a concept review meeting prior to making an application to establish a district.
- C. Written consent from all owners of property within the proposed district boundaries must be provided before notice of a public hearing before the planning commission.
- D. The application shall include the following information along with information specified on the city's submittal checklist for establishment of a district:
 1. A written explanation of the community benefit that the district and district plan will provide and how the proposed development furthers the intent and goals of applicable land use plans and policies;
 2. A written explanation of how the proposed development achieves compatibility with surrounding uses, particularly sensitive uses;
 3. A purpose statement indicating how the district plan achieves compliance with the eligibility criteria listed in Section 18.44.050;
 4. A map of the proposed district boundaries, including all lots, tracts, outlots and rights-of-way;
 5. A list of all owners of real property within the district boundaries;

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6. A district plan which specifies the type and extent of development proposed, including the following components:
 - a. A master plan indicating the intensity and general configuration of the proposed use or uses;
 - b. An architectural concept plan that includes a building massing and height study;
 - c. A phasing plan, including a projected timeframe for each phase; and,
 - d. A listing of zoning standards that will be applicable to development within the district.

18.44.080 Procedures for approval of flexible zoning overlay districts.

- A. Review process. Upon receipt of a complete application within the allowed timeframe, the development review team will undertake the review procedures specified in chapter 18.39 of this title.
- B. Public notice requirements. Notice shall be provided in accordance with chapter 18.05, and conform to the notice distance requirements for rezoning applications as specified in Table 18.05-1.
- C. Neighborhood meeting. Prior to completion of the review process by the development review team, the applicant shall provide public notice for and conduct a neighborhood meeting.
- D. Planning commission.
 1. A public hearing shall be conducted with public notice before the planning commission following the neighborhood meeting.
 2. Notes from the neighborhood meeting, relevant application materials, written input from interested parties and a recommendation from the current planning manager as to whether the district plan meets the eligibility criteria of section 18.44.050 shall be forwarded to the planning commission for review at the public hearing.
 3. Based upon information received at the public hearing, the planning commission shall, by resolution within thirty days of the hearing, recommend approval, approval with conditions or denial of the district and district plan based on eligibility criteria of Section 18.44.050.
 4. The public hearing may be continued if the planning commission determines that additional information is necessary to consider before a decision can be rendered.
 5. If the applicant objects to any condition of approval placed by the planning commission upon the district plan, the planning commission shall recommend denial.
 6. The planning commission's recommendation shall be forwarded to the council along with the approved minutes of the public hearing and all other material considered by the planning commission in making its recommendation.
- E. City council. The council shall conduct a public hearing with public notice upon receipt of the recommendation of the planning commission, the approved minutes of any planning commission public hearing, and all materials considered by the planning commission in

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making its recommendation, and any materials submitted following any such planning commission hearing.

1. Council shall approve, approve with conditions or to deny the district and the associated district plan based on eligibility criteria of section 18.44.050.
2. Council may establish an expiration date for a district and for associated district plans.
3. If the applicant objects to any condition of approval placed upon the district plan by the council, the district plan shall not be approved.
4. The council may remand a district plan to the planning commission for any reason.
5. If the council approves a district plan, it shall adopt an ordinance establishing the district and the district plan. The adopted plan, signed by the mayor, the city attorney and the current planning manager, shall be recorded with the Larimer County clerk and recorder's office along with the adopting ordinance.
6. The adopted overlay zone shall be designated on the official zoning map.

~~F. Development within a designated overlay zone shall not occur unless a project plan has been approved for the district.~~

~~G.F.~~ A project plan may be considered concurrently with a district plan. When a concurrent submittal is made, the council shall have final decision making authority on both plans.

~~H.G.~~ A district plan shall be amended in the same manner it was approved unless the current planning manager determines that the proposed amendment meets the following criteria:

1. The amendment would not allow new uses;
2. The amendment would not allow an ~~increase~~ change in development density or intensity greater than 20%;
3. The amendment would not alter a condition approved by council; and
4. There is no reason to believe that any party would be aggrieved by the amendment.

Where these criteria have been met, the amendment shall be considered minor and the current planning manager shall have the authority to approve, approve with conditions or deny the amendment. Alternatively, the current planning manager may forward a minor amendment to the planning commission for determination at a public hearing with public notice.

~~I.H.~~ Planning commission decisions on district plan amendments may be appealed to council by a party in interest. The appeal shall be processed and heard as specified in chapter 18.80.

18.44.085 Flexible zoning project plan required.

~~Project plans are approved subsequent to or concurrently with approval of an associated district and district plan. Project plans are specific and detailed development plans that are reviewed and approved administratively unless approved concurrently with a district or district plan as specified in Section 18.44.80. Development within a flexible zoning overlay district must conform to an approved project plan.~~

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18.44.090 Flexible zoning project plan application requirements.

Applications for flexible zoning project plans, including associated subdivision, infrastructure and related applications, shall be subject to the requirements for site development plans specified in chapter 18.46 and any conditions adopted by Council.

18.44.100 Procedures for approval of flexible zoning project plans.

- A. Development within an established district must be consistent with the approved district plan.
- B. Applications for approving or amending project plans shall be subject to the procedures for site development plans specified in chapter 18.39 and 18.46 unless project plans are approved as otherwise authorized by this chapter.
- ~~C. Once a project plan is approved, the approval runs with the land unless the district or the district plan expires or is terminated prior to the issuance of a building permit for one or more structures within the district boundaries.~~
- ~~D.C. Building permits. Any building permit issued for development or redevelopment within a district shall be consistent with the district plan and with the project plan approved for the property.~~

18.44.110 ~~Continuance, expiration and of a district and termination of a districts and district plans.~~

Council has exclusive authority to establish, terminate, vacate, limit and extend districts, and to approve and terminate district plans.

- A. Districts and associated district plans shall be established for a period of forty-eight months from the date of the approval of the adopting ordinance, unless the adopting ordinance specifies otherwise or substantial development-related activity has occurred as specified by council and as described in Subsection B below. Expiration of a district results in the removal of the district overlay designation on the official zoning map. When a district expires or is terminated, vacated or removed, the authority of the underlying zoning regulations is reestablished except as specified in Section 18.44.100.
- B. Once a project plan is approved, the land shall be encumbered by the district and the district plan and these designations shall continue in force, unless the district, the district plan or the project plan expires or terminates prior to demonstrated substantial development-related activity as defined in the conditions of approval or as determined by council. If there are no conditions of approval defining demonstrated substantial development-related activity, the council, within 60 days of a request by the owner of the land, shall make a determination whether there has been demonstrated substantial development-related activity within the time frame allowed. The owner's request shall be made prior to the expiration or termination of the district or district plan.
 1. When substantial development-related activity has been demonstrated, the current planning manager shall provide certification to property owners;

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2. The city clerk's office shall submit the certification for recording with the Larimer County clerk and recorder's office; and
3. The district, the district plan and any approved project plans shall remain in effect unless vacated by the property owners.

C. The established expiration date for a flexible zoning overlay district may be extended by the council at the request of all property owners within the district. To be considered, a written~~An~~ request must be submitted to the city occur prior to the expiration date.

B.D. Any district with an expiration date shall be approved only after the applicant has provided an agreement, in a form approved by the city attorney, that acknowledges the limited term of the district and the absence of any right to use or rely on the district beyond such term and indemnifies the city for any claim related to the expiration of the district.

C.E. At the request of all property owners within a district, council may vacate the approval of the district and terminate district plans. Upon council approval, the district overlay designation on the official zoning map is removed and the authority of the underlying zoning regulations is reestablished. Any nonconforming uses or buildings resulting from a district vacation will be subject to Chapter 18.56 of this title.