

# PLANNING COMMISSION (PC)

## Roles and Duties

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### Background

The Commission was originally established as the Planning Commission on October 18, 1966 with seven members (Ordinance #951). The Planning Commission was authorized to serve as the Zoning Board of Adjustments in December 19, 1989 (Ordinances #3950). On December 21, 1993 Council increased the number of regular members to nine, all appointed by City Council and all members must reside in the corporate boundaries of the City of Loveland. On January 15, 2003, City Council allowed the Planning Commission acting in their capacity as the Zoning Board of Adjustments to appoint one or more hearing officers to hold public hearings for matters to be considered by the Board of Adjustments (Ordinance #4814). There is no Council liaison to this Commission.

### Roles and Duties of the Commission

The duties are established by Municipal Code 2.60.210, as follows:

#### *Planning commission*

*A. There is established a planning commission consisting of nine members appointed by the city council. All nine members shall be bona fide residents of the city of Loveland. The term of office of each member shall be three years.*

*B. The purpose of the planning commission shall be to consider and pass upon all plats and make recommendations as to approval, modification, and disapproval thereof to the city council. The commission also shall consider and advise the city council on all proposed changes to the zoning and subdivision ordinances and recommend adoption of comprehensive plans for the physical development of the city, which plans may be adopted by resolution of the city council, and perform such other duties as required by state statutes and as the city council may by ordinance or resolution prescribe.*

#### **18.60.020 Board of Adjustment**

*\*For statutory provisions regarding boards of adjustment, see CRS §§ 31-23-301 and 31-23-307.*

*The board of adjustment shall have the powers and duties to grant variances from certain standards set forth in this title 18 subject to and in compliance with this chapter and the laws of the state. Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this title, the board of adjustment may vary or modify certain regulations or provisions of the title so that the spirit of the title is observed, public safety and welfare secured, and substantial justice done. The board of adjustment has the power to vary or modify the application of the regulations or provisions of this title related to the following:*

- A. Standards for lot area, lot dimensions, and setback requirements;*
- B. Square footage of accessory structures;*
- C. Percentage of open space; and*
- D. Setbacks for a freestanding sign, spacing between freestanding signs and the area for freestanding and wall mounted signs. After considering if the proposed variance meets the applicable criteria in Section 18.60.030 and 18.60.040 below, the board shall take action to approve, approve with conditions, or deny the application.*

**Current Commission Operations, 2017**

Membership:	Nine (9) members; PC members must live in City Limits
Terms/Renew schedule	Three (3) years - December
Qualifications:	General provisions found in 2.60.020. Must be a resident of Loveland.
Meetings:	Bimonthly, 2nd and 4th Monday, 6:30 p.m., City Council Chambers
Council Liasons are exclusive to interviews and recommended appointments	
City Council Liaison:	Jeremy Jersvig
City Council Liaison Alt:	Leah Johnson
Department:	City Manager's Office/Community Partnership
Staff Liaison:	Bob Paulsen

TITLE 31. GOVERNMENT - MUNICIPAL  
POWERS AND FUNCTIONS OF CITIES AND TOWNS  
ARTICLE 23. PLANNING AND ZONING  
PART 3. ZONING

**31-23-301. Grant of power**

(1) Except as otherwise provided in [section 34-1-305, C.R.S.](#), for the purpose of promoting health, safety, morals, or the general welfare of the community, including energy conservation and the promotion of solar energy utilization, the governing body of each municipality is empowered to regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, the height and location of trees and other vegetation, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes. Regulations and restrictions of the height, number of stories, and the height and location of trees and other vegetation shall not apply to existing buildings, structures, trees, or vegetation except for new growth on such vegetation. Such regulations shall provide that a board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules contained in such regulations. Subject to the provisions of subsection (2) of this section and to the end that adequate safety may be secured, said governing body also has power to establish, regulate, restrict, and limit such uses on or along any storm or floodwater runoff channel or basin, as such storm or floodwater runoff channel or basin has been designated and approved by the Colorado water conservation board, in order to lessen or avoid the hazards to persons and damage to property resulting from the accumulation of storm or floodwaters. Any ordinance enacted under authority of this part 3 shall exempt from the operation thereof any building or structure as to which satisfactory proof is presented to the board of adjustment that the present or proposed situation of such building or structure is reasonably necessary for the convenience or welfare of the public.

(2) The power conferred by subsection (1) of this section for flood prevention and control shall not be exercised to deprive the owner of any existing property of its future use or maintenance for the purpose to which it was lawfully devoted on February 25, 1966, but provisions may be made for the gradual elimination of uses, buildings, and structures, including provisions for the elimination of such uses when the existing uses to which they are devoted are discontinued, and for the elimination of such buildings and structures when they are destroyed or damaged in major part.

(3) The governing body of any municipality or the board of adjustment thereof, in the exercise of powers pursuant to this section, may condition any zoning regulation, any amendment to such regulation, or any variance of the application thereof or the exemption of any building or structure therefrom upon the preservation, improvement, or construction of any storm or floodwater runoff channel designated and approved by the Colorado water conservation board.

(4) A statutory or home rule city or town or city and county shall not enact an ordinance prohibiting the use of a state-licensed group home for either persons with intellectual and developmental disabilities or behavioral or mental health disorders that serves not more than eight persons with intellectual and developmental disabilities or eight persons with behavioral or mental health disorders and appropriate staff as a residential use of property for zoning purposes. As used in this subsection (4), the phrase "residential use of property for zoning purposes" includes all forms of residential zoning and specifically, although not

exclusively, single-family residential zoning.

(5) (a) As used in this subsection (5), unless the context otherwise requires:

(I) "Manufactured home" means a single family dwelling which:

(A) Is partially or entirely manufactured in a factory;

(B) Is not less than twenty-four feet in width and thirty-six feet in length;

(C) Is installed on an engineered permanent foundation;

(D) Has brick, wood, or cosmetically equivalent exterior siding and a pitched roof; and

(E) Is certified pursuant to the "National Manufactured Housing Construction and Safety Standards Act of 1974", 42 U.S.C. 5401 et seq., as amended.

(II) "Equivalent performance engineering basis" means that by using engineering calculations or testing, following commonly accepted engineering practices, all components and subsystems will perform to meet health, safety, and functional requirements to the same extent as required for other single family housing units.

(b) (I) No municipality shall have or enact zoning regulations, subdivision regulations, or any other regulation affecting development which exclude or have the effect of excluding manufactured homes from the municipality if such homes meet or exceed, on an equivalent performance engineering basis, standards established by the municipal building code.

(II) Nothing in this subsection (5) shall prevent a municipality from enacting any zoning, developmental, use, aesthetic, or historical standard, including, but not limited to, requirements relating to permanent foundations, minimum floor space, unit size or sectional requirements, and improvement location, side yard, and setback standards to the extent that such standards or requirements are applicable to existing or new housing within the specific use district of the municipality.

(III) Nothing in this subsection (5) shall preclude any municipality from enacting municipal building code provisions for unique public safety requirements such as snow load roof, wind shear, and energy conservation factors.

(IV) Nothing in this subsection (5) shall be deemed to supersede any valid covenants running with the land.

### **31-23-302. Districts**

For any of the purposes enumerated in [section 31-23-301](#), the governing body may divide the municipality into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this part 3, and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land. All such regulations shall be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts

### **31-23-303. Legislative declaration**

(1) Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic, floodwaters, and other

dangers; to promote health and general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to promote energy conservation; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. Such regulations shall be made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality.

(2) (a) The general assembly declares that the establishment of state-licensed group homes for the exclusive use of persons with intellectual and developmental disabilities, which homes are known as community residential homes as defined in [section 25.5-10-202, C.R.S.](#), is a matter of statewide concern and that a state-licensed group home for eight persons with intellectual and developmental disabilities is a residential use of property for zoning purposes. As used in this subsection (2), the phrase "residential use of property for zoning purposes" includes all forms of residential zoning and specifically, although not exclusively, single-family residential zoning. As used in this section, "persons with intellectual and developmental disabilities" has the same meaning as set forth in [section 25.5-10-202, C.R.S.](#)

(b) (I) (Deleted by amendment, L. 2001, p. 104, § 2, effective March 21, 2001.)

(II) The general assembly declares that the establishment of group homes for the aged for the exclusive use of not more than eight persons sixty years of age or older per home is a matter of statewide concern. The general assembly further finds and declares that it is the policy of this state to enable and assist persons sixty years of age or older who do not need nursing facilities, and who so elect, to live in normal residential surroundings, including single-family residential units. Group homes for the aged shall be distinguished from nursing facilities, as defined in section 25.5-4-103 (14), and institutions providing life care, as defined in [section 11-49-101 \(6\)](#). Every municipality having adopted or that shall adopt a zoning ordinance shall provide for the location of group homes for the aged. A group home for the aged established under this subsection (2)(b) shall not be located within seven hundred fifty feet of another such group home, unless otherwise provided for by the municipality. Nothing in this subsection (2)(b) shall be construed to exempt the group homes from compliance with any state, county, or municipal health, safety, and fire codes. On April 29, 1976, every person sixty years of age or older who resides in a skilled or intermediate health care facility and who may be transferred or discharged therefrom to a group home for the aged shall not be so discharged or transferred unless he or she has received ninety days' advance written notice thereof or has agreed in writing to the proposed transfer or discharge.

(b.5) The general assembly declares that the establishment of state-licensed group homes for the exclusive use of persons with behavioral or mental health disorders, as that term is defined in [section 27-65-102](#), is a matter of statewide concern and that a state-licensed group home for eight persons with behavioral or mental health disorders is a residential use of property for zoning purposes, as defined in [section 31-23-301 \(4\)](#). A group home for persons with behavioral or mental health disorders established pursuant to this subsection (2)(b.5) must not be located within seven hundred fifty feet of another such group home, unless otherwise provided for by the municipality. A person must not be placed in a group home without being screened by either a professional person, as defined in [section 27-65-102 \(17\)](#), or any other such mental health professional designated by the director of a facility approved by the executive director of the department of human services pursuant to [section 27-90-102](#). Persons determined to be not guilty by reason of insanity to a violent offense must not be placed in such group homes, and any person who has been convicted of

a felony involving a violent offense is not be eligible for placement in such group homes. The provisions of this subsection (2)(b.5) must be implemented, where appropriate, by the rules of the department of public health and environment concerning residential treatment facilities for persons with behavioral or mental health disorders. Nothing in this subsection (2)(b.5) exempts such group homes from compliance with any state, county, or municipal health, safety, and fire codes.

(c) Nothing in this subsection (2) shall be construed to supersede the authority of municipalities and counties to regulate such homes appropriately through local zoning ordinances or resolutions, except insofar as such regulation would be tantamount to prohibition of such homes from any residential district. This section is specifically not to be construed to permit violation of the provisions of any zoning ordinance or resolution with respect to height, setbacks, area, lot coverage or external signage or to permit architectural designs substantially inconsistent with the character of the surrounding neighborhood. This section is also not to be construed to permit conducting of the ministerial activities of any private or public organization or agency or to permit types of treatment activities or the rendering of services in a manner substantially inconsistent with the activities otherwise permitted in the particular zoning district. If reasonably related to the requirements of a particular home, a local zoning or other development regulations may, without violating the provisions of this section, also attach specific location requirements to the approval of the group home, including the availability of such services and facilities as convenience stores, commercial services, transportation, and public recreation facilities.

(3) The general assembly declares that the availability and affordability of housing for residents of this state is a matter of statewide concern. It is the purpose of [section 31-23-301 \(5\)](#) to promote the public health, safety, and welfare by allowing residents of this state an additional opportunity to be able to live in decent, safe, and affordable housing on a permanent basis by prohibiting the exclusion of manufactured homes on single site lots from municipalities where the manufactured homes meet or exceed on an equivalent performance engineering basis the standards established by the municipal building code.31-

#### **31-23-304. Method of procedure**

The governing body of such municipality shall provide for the manner in which such regulations and restrictions and the boundaries of such districts are determined, established, enforced, and, from time to time, amended, supplemented, or changed. However, no such regulation, restriction, or boundary shall become effective until after a public hearing thereon at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen days' notice of the time and place of such hearing shall be published in an official paper or a paper of general circulation in such municipality.

#### **31-23-305. Changes**

Such regulations, restrictions, and boundaries may from time to time be amended, supplemented, changed, modified, or repealed. In case, however, of a protest against changes in regulations or restrictions, or changes in the zone district applicable to particular land, which protest is filed with the municipal clerk at least twenty-four hours prior to the governing body's vote on the change and is signed by the owners of twenty percent or more of the area of land which is subject to the proposed change or twenty percent or more of the area of land extending a radius of one hundred feet from the land which is subject to the proposed change, disregarding intervening public streets and alleys, such changes shall not become effective except by the favorable vote of two-thirds of all the members of the governing body of the municipality. The provisions of [section 31-23-304](#) relative to public hearings and official notice shall apply equally to all changes or amendments.

### **31-23-306. Zoning commission**

In order to avail itself of the powers conferred by this part 3, the governing body shall appoint a commission, known as the zoning commission, to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report. The governing body shall not hold its public hearings or take action until it has received the final report of such commission. Where a municipal planning commission already exists, it shall be appointed as the zoning commission.

### **31-23-307. Board of adjustment**

(1) The governing body shall provide for the appointment of a board of adjustment consisting of five members, each to be appointed for three years, unless the governing body by ordinance establishes a different number of members or term of office. The governing body may provide by ordinance for filling vacancies on the board, for designation of alternate members, and for removal of members for inefficiency, neglect of duty, or malfeasance in office. The board of adjustment shall hear and decide appeals from and review any order, requirement, decision, or determination made by any administrative official charged with the enforcement of any ordinance adopted pursuant to this part 3. It shall also hear and decide all matters referred to it or upon which it is required to pass under such ordinance. Unless otherwise provided by ordinance, the concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant any matter upon which it is required to pass under any such ordinance, or to effect any variation in such ordinance. Every decision of such board shall be subject, however, to review by certiorari by the district court of the county within which the municipality or any part thereof is located. Such appeal shall be filed not later than thirty days from the final action taken by the board of adjustment. Such appeal may be taken by any person aggrieved or by an officer, department, board, or bureau of the municipality.

(2) An appeal to the board of adjustment shall be taken within such time as prescribed by the board of adjustment by general rule by filing with the officer from whom the appeal is taken with the board of adjustment a notice of appeal, specifying the grounds thereof. The officer from whom the appeal is taken shall at once transmit to the board of adjustment all the papers constituting the record upon which the action appealed from was taken.

(3) An appeal stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal has been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by the district court on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

(4) The board of adjustment shall fix a reasonable time for the hearing of the appeal, give due notice thereof to the parties, and decide the same within a reasonable time. Upon hearing, any party may appear in person or by agent or attorney. The board of adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and shall make such order, requirement, decision, or determination as in its opinion ought to be made in the premises and to that end has all the powers of the officer from whom the appeal is taken. Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of such ordinance, the board of adjustment has the power, in passing upon appeals, to vary or modify the application of the regulations or provisions of such ordinance relating to the use,

construction, or alteration of buildings or structures, or the use of land, so that the spirit of the ordinance is observed, public safety and welfare secured, and substantial justice done. The governing body by ordinance may eliminate the board of adjustment's authority to grant use variances or use modifications, or may transfer that authority to some other board, agency, or commission, or to the governing body of the municipality. Where feasible, the board of adjustment may vary or modify the application of the regulations for the purpose of considering access to sunlight for solar energy devices.

(5) The governing body of a municipality that has entered into an intergovernmental agreement with the county or counties within which it is located for the purposes of joint participation in land use planning, subdivision procedures, and zoning pursuant to the authority granted in [section 31-23-227 \(2\)](#) may, by ordinance, enter into an intergovernmental agreement with the county or counties within which it is located for the purpose of joint participation in the establishment of a joint zoning board of adjustment for a specific area designated in the intergovernmental agreement.