

ORDINANCE NO. 2516

INTRODUCED BY: ALLEN-THOMAS, CHACON, DOUGLAS, FORD, HURST, HUSEMAN, KIM, MADERA, NOBLE

AN ORDINANCE ADDING SECTION 21-3219 AND AMENDING SECTION 21-3200 OF THE CITY OF COMMERCE CITY LAND DEVELOPMENT CODE ALLOWING FOR THE REVIEW AND APPROVAL OF EARLY GRADING PERMITS

WHEREAS, project owners desire to proceed with overall early grading of the property, which allows for the clearing and grading of a property, prior to final approval of the applicable Development Plans, PUD Development Permits, and Final Plats;

WHEREAS, there have been increased inquiries by the development community requesting early grading of sites for planned development;

WHEREAS, the City Council recognizes that the review and approval process may necessitate changes to the proposed grading, and that final approvals may or may not be given;

WHEREAS, City Council desires the City of Commerce City to arise to a premier development location by updating its allowable permit types which emulate common procedures practiced by surrounding communities;

WHEREAS, the City Council requires that any early grading and associated work conducted on the site prior to final approvals is at the owner's sole risk;

WHEREAS, the City Council recognizes that the Early Grading Permit will not be issued prior to City approval of the applicable Grading, Erosion and Stormwater Management Plan;

WHEREAS, the City Council desires to add section 21-3219 of the City of Commerce City Land Development Code to include the ability for the public to submit and receive an early grading permit; and

WHEREAS, in adding section 21-3219, City Council acts concurrently to modify section 21-3200. - Required Review, to reflect review process of for Early Grading permits.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COMMERCE CITY, COLORADO, AS FOLLOWS:

SECTION 1. Findings. The recitals to this ordinance are incorporated as findings of the City Council. This ordinance is found to be necessary for the preservation of the public health, safety, and welfare and in the public interest.

SECTION 2. Legislative Actions.

- a) Section 21-3219. – Early Grading Permits, is hereby adopted and added to the City of Commerce City Land Development Code as set forth in Exhibit A.
- b) Section 21-3200 Required Review, of the Land Development Code is hereby amended as set forth in Exhibit B to this ordinance, with the specific changes as depicted in Exhibit C to this ordinance.

SECTION 3. Repealer. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof are hereby repealed to the extent of such inconsistency.

SECTION 4. Effective Date. This ordinance shall be effective immediately upon passage on second and final reading.

INTRODUCED, PASSED ON FIRST READING AND PUBLIC NOTICE ORDERED THIS 24TH DAY OF JULY, 2023.

PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED THIS 14TH DAY OF AUGUST, 2023.

CITY OF COMMERCE CITY, COLORADO

Benjamin A. Huseman, Mayor

ATTEST

Dylan A. Gibson, City Clerk

Sec. 21-3219. Early Grading Permits

- 1) *Description.* If an applicant for development desires to proceed with overall grading of the property prior to final approval of the applicable development plan, PUD development permit, or plat by the city, or prior to final construction document approval(s), an applicant may apply for an early grading permit. An early grading permit allows for clearing, grubbing and grading only. No infrastructure or building construction is allowed with an early grading permit. A final grading permit will be required prior to infrastructure or building construction.
- 2) *Requirement.* Early grading permits are optional and not required.
- 3) *Review.* The city engineer reviews applications for grading permits and is authorized to approve, approve with conditions, or deny such applications based on the approval criteria below.
- 4) *Approval Criteria.* The city engineer, may, to the extent provided for in this section, authorize the issuance of an early grading permit prior to final approval of a development plan, PUD development permit, or plat, if the following requirements are satisfied:
 - a. Erosion and sediment control plans have been submitted and comply with the city's Engineering and Construction Standards and Specifications (ECSS) and Storm Drainage Design and Technical Criteria Manual;
 - b. The subject property is not part of any active public hearing application (zoning, conditional use permit, variance, etc.);
 - c. A preliminary drainage report, if applicable, has been approved by the city engineer;
 - d. The subject property is not located in any floodplain;
 - e. A grading surety, in a form acceptable to the city has been provided to and accepted by the city in accordance with the city's laws and regulations;
 - f. No waivers or alternative standards/requirements or variances related to grading requirements are being requested or are necessary in conjunction with the Final Subdivision application;
 - g. Applicable State stormwater permit has been acquired; and
 - h. Existing healthy trees greater than eight inches caliper are identified and preserved where possible.
- 5) *Conditions for Approval.* By accepting a grading permit, the applicant agrees to comply with the following requirements, in addition to any others which may be imposed by the city:

- a. The developer/owner understands that in the case of early grading all grading is done at their own risk. The issuance of this permit is no guarantee that the final site plan will be approved. Before issuing an early grading permit under this subsection, the applicant, developer, and property owner must execute an assumption of risk letter and a release of all rights and claims of any type whatsoever, including any claim of vested rights, against the city relating to the early grading permit, and any related approval, and indemnifying the city from any related claim for damages, and in a form acceptable to the city. An executed waiver and consent form by which the applicant, developer, and property owner acknowledges and agrees to the above is required.
 - b. Approval of an early grading permit shall not create a vested right or interest.
 - c. An early grading permit does not constitute approval of roadway design, construction documents, foundation plans, or building site pad grading. At no time will impervious areas or utilities be installed at the site as part of the early grading permit.
 - d. The grading activities shall be performed in accordance with all applicable laws, rules, and regulations pertaining to air, water, and noise pollution;
 - e. The owner shall schedule construction activities to minimize the total amount of soil exposed, including stockpiles, at any given time in order to reduce the period of accelerated soil erosion; and
 - f. The area of land disturbance must not be exposed for more than 60 consecutive days without temporary or permanent stabilization.
- 6) *Stop Work Orders.* If the site is not in compliance with the approved erosion and sediment control plan, the city's requirements for erosion and sediment control, or the above conditions, the city shall have the authority to issue a stop work order within 24 hours of notification to the owner or developer of non-compliance.
- 7) *Lapse.* If the work described in any early grading permit is not commenced within six months, the permit shall automatically lapse and be null and void.

EXHIBIT B TO ORDINANCE 2516

Sec. 21-3200. Required Review.

Applications shall be reviewed in accordance with the processes and standards set forth in this Code. Table III-2, Development Review Table, establishes the review steps required for specific forms of site development.

Table III-2. Development Review Table

Application Types	Required Reviews					Reference	Lapse Period
	Staff	DRT	PC	CC	BOA		
Administrative Applications							
Building and Sign Permits	R	R ¹			H ³	§ 21-3210	6 months
Concept Plans	R	R				§ 21-3211	n/a
Development Plans	R	R	H ¹	H ¹		§ 21-3212	2 years
Floodplain Development Permits	R	R ²			H ¹	§ 21-3213	2 years
Grading Permits	R				H ¹	§ 21-3214	30 days
Minor Modifications	R	R ¹			H ¹	§ 21-3215	1 year
Temporary Use Permits	R	R ¹			H ¹	§ 21-3217	§ 21-3217
Early Grading Permits	R				H ¹	§ 21-3219	6 months
Applications Requiring BOA Approval							
Height Exceptions	R	R			H	§ 21-3220	3 years
Uses-by-Permit	R	R			H	§ 21-3221	2 years
Variances	R	R			H	§ 21-3222	1 year
Applications Requiring Approval by City Council							
Annexations	R	R	H ¹	H		Division III-	n/a
Comprehensive Plan Amendments Minor	R	R	H ¹	H		§ 21-2110	n/a
Comprehensive Plan Amendments Non Minor	R	R	H	H		§ 21-2110	n/a
Conditional Use Permits	R	R	H	H		§ 21-3230	2 years
Model and Elevation Review	R	R ¹	R ¹	R ¹		§ 21-3231	90 days
Oil and Gas Permits	R	R	H	H		§ 21-3235	3 years
Rezoning or Zone Changes	R	R	H	H		§ 21-3232	n/a
Vacation of Rights-of-Way	R	R	H	H		§ 21-3233	60 days
Vested Property Right/Site Specific Development Plans	R	R	H	H		§ 21-3234	3 years
Developments with Multiple Steps							
Planned Unit Development (PUD)							
Concept Schematics	R	R	H ¹			§ 21-3250	n/a

Zone Documents/Amendments	R	R	H	H		§ 21-3251	n/a
Development Permits	R	R	H ¹	H ¹		§ 21-3252	2 years
Administrative Applications							
Subdivisions							
Consolidation Plats	R	R	H ²	H ²		§ 21-3243	60 days
Lot Line and Terminology Adjustments	R	R ¹	H ¹	H ¹		§ 21-3244	60 days
Plat Corrections and Revisions	R	R ¹	H ¹	H ¹		§ 21-3242	60 days
Sketch Plats	R	R				§ 21-3240	n/a
Final Plats (administrative)	R	R	H ²	H ²		§ 21-3241	60 days
Final Plats (public hearing required)	R	R	H	H		§ 21-3241	60 days

Key	
PC	Planning Commission
CC	City Council
BOA	Board of Adjustment
DRT	Development Review Team
H	Public Hearing
H ¹	Hearing upon appeal from staff decision or from director or city council request
H ²	Hearing upon appeal from staff decision or by request of director, city council, or public
H ³	Hearing on appeal of zoning related matters. Appeals related to building matters are heard by the board of building appeals.
R	Review
R ¹	Review requested by director
R ²	Review requested by floodplain administrator

EXHIBIT C TO ORDINANCE 2516

(Underlined text indicates new material; strikethrough text indicates deletions.)

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Temporary Use Permits	R	R ¹			H ¹	§ 21-3217	§ 21-3217
<u>Early Grading Permits</u>	<u>R</u>				<u>H¹</u>	<u>§ 21-3219</u>	<u>6 months</u>
Applications Requiring BOA Approval							
Height Exceptions	R	R			H	§ 21-3220	3 years
Uses-by-Permit	R	R			H	§ 21-3221	2 years
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Applications Requiring Approval by City Council							
Annexations	R	R	H ¹	H		Division III-	n/a
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Concept Schematics	R	R	H ¹			§ 21-3250	n/a

Zone Documents/Amendments	R	R	H	H		§ 21-3251	n/a
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