



STAFF REPORT

Planning Commission

Ordinance #1992	
PC Date:	January 6, 2014
Staff Contact:	Steve Timms and Karen Stevens
CC Date:	February 3, 2014
Location:	City-Wide
Applicant:	The City of Commerce City
Address:	7887 E. 60 th Avenue Commerce City, CO 80022

Case Summary	
Request:	The Commerce City staff is requesting several amendments to the floodplain regulations found in the Land Development Code (LDC).
Project Description:	<p>The Land Development Code (LDC) was adopted by City Council in January of 2009 and went into effect on March 1, 2009. The adoption of the LDC was a comprehensive update to the Commerce City Zoning Ordinance, which included a wide variety of topics related to development, land use, and procedures for development. The updated version has been a tremendous help to staff and applicants as development occurs in the City.</p> <p>In late 2010, the Colorado Water Conservation Board (CWCB) adopted revised Rules and Regulations for Floodplains in Colorado, effective January 14, 2011. The rules provide stricter floodplain management standards to help communities reduce the risks to people and property caused by flooding. An approximate three- year transition period was established and Colorado communities have through the end of the 1st quarter of 2014 to adopt floodplain regulations consistent with the State.</p> <p>Since its original adoption, the LDC has been and will continue to be a “living document” that is amended and updated on a consistent basis so that the information in the document stays relevant and reflective of the needs of the Commerce City community.</p>
Staff Recommendation:	Approval

Land Development Code History

Since its adoption in 2009, several amendments have been made to the LDC in an effort to maintain a “living document”. As a growing community, Commerce City’s needs are constantly evolving and monitoring development regulations helps to ensure that the regulations are relevant and reflect the community’s values. Therefore, future amendments and updated should be expected.

The list below highlights the previous LDC Amendments.

Ordinance	Date	Request	Action
Ord. #1720	January 2009	Adoption of the Land Development Code	Approval
Ord. #1770	October 2009	Amendments to the LDC	Approval
Ord. #1785	April 2010	Amendments to the LDC	Approval
Ord. #1810	May 2010	Amendments to the LDC	Approval
Ord. #1854	March 2011	Amendments to the LDC	Approval
Ord. #1887	June 2012	Amendments to the LDC	Approval
Ord. #1891	June 2012	Amendments to the LDC	Approval
Ord. #1916	August 2012	Amendments to the LDC	Approval
Ord. #1938	December 2012	Amendments to the LDC	Approval
Ord. #1948	March 2013	Amendments to the LDC	Approval
Ord. #1956	June 2013	Amendments to the LDC	Approval
Ord. #1976	October 2013	Amendments to the LDC	Approval

Ordinance #1720:

In January of 2009, City Council voted unanimously to adopt the Land Development Code.

Ordinance #1770:

In October of 2010, City Council unanimously approved amendments to the Land Development Code to regulate medical marijuana dispensaries.

Ordinance #1785:

In April of 2010, City Council unanimously approved 24 minor amendments to the Land Development Code.

Ordinance #1810:

In May of 2010, City Council unanimously approved amendments to the Land Development Code for garage requirements for non-profit agencies.

Ordinance #1854:

In March of 2011, City Council unanimously approved 20 minor amendments to the Land Development Code.

Ordinance #1887:

In June of 2012, City Council unanimously approved 28 minor amendments to the Land Development Code.

Ordinance #1891:

In June of 2012, City Council unanimously approved amendments to the Land Development Code to regulate oil and gas operations.

Ordinance #1916:

In August of 2012, City Council unanimously approved minor amendments to the Land Development Code related to alcohol establishments.

Ordinance #1938:

In December of 2012, City Council unanimously approved minor amendments to the Land Development Code for Floor Area Ratio revisions.

Ordinance #1948:

In March of 2013, City Council unanimously approved minor amendments to the Land Development Code related to a trail's proximity to medical marijuana dispensaries.

Ordinance #1956:

In June of 2013, City Council unanimously approved minor amendments to the Land Development Code related to the use of limited moving trucks in the C-3 zone district.

Ordinance #1976:

In October of 2013, City Council unanimously approved minor amendments to the Land Development Code related to the updating of the city's sign code.

The Request

Following the City Council's unanimous adoption of the Land Development Code (LDC) in 2009, City Council unanimously approved an updated version of the Comprehensive Plan in May of 2010. The revised Comprehensive Plan identifies provisions for regular amendments and updates to the City's LDC. Therefore, the general concept of regular LDC amendments is supported by the Comprehensive Plan and the specific amendments are compliant with the Comprehensive Plan as identified below.

Project Description/Background

The Commerce City Land Development Code (LDC) Article IV is the regulatory basis for the Floodplain Overlay Zone District within Commerce City. Commerce City is required to adopt and enforce floodplain regulations in order to be a participant in the National Flood Insurance Program (NFIP). The NFIP is a Federal program enabling property owners in participating communities to purchase flood insurance as a protection against flood losses in exchange for community floodplain management regulations that reduce future flood damages.

Participation in the NFIP is based on an agreement between communities, the State of Colorado, and the Federal Government. If a community adopts and enforces a floodplain management ordinance to reduce future flood risk to new construction in floodplains, the Federal Government will make flood insurance available within that community as a financial protection against flood losses.

Commerce City has been a participating agency and has had adopted floodplain management ordinances since 1978. This allows ALL the properties within Commerce City the option of purchasing flood insurance, and enables federally backed mortgage loans for properties within a Special Flood Hazard Area. Participating in the NFIP is also a requirement for certain grant funding and emergency funding sources.

The NFIP regulations are the minimum requirements for floodplain management. Each state must also adopt floodplain regulations and the Federal Government gives them authority to adopt stricter standards than what the NFIP has outlined in the Code of Federal Regulations. Furthermore, each jurisdiction must adopt the Federal and State regulations as the minimum requirements, but they too, are given the option of adopting stricter standards than what is required at the Federal and State level.

In late 2010, the Colorado Water Conservation Board (CWCB) adopted revised Rules and Regulations for Floodplains in Colorado which then became effective January 14, 2011. These rules provide higher floodplain management standards than the minimum standards set by the NFIP. The CWCB provided a three-year transition period and Commerce City has until the end of the 1st quarter of 2014 to adopt floodplain regulations that are consistent with the new State regulations. Failure to adopt updated regulations that are consistent with the new State regulations will lead to serious sanctions including suspension or probation from the NFIP which would severely impact the citizens of Commerce City.

Request:

The City Engineering and Building Divisions are proposing to use the language within a template ordinance the state has proposed to more clearly ensure that the City is compliant with both State and Federal Regulations. The City Engineering and Building Divisions are not proposing any higher standards beyond what the State is requiring us to adopt that would further restrict land use beyond what is in place in our current code or mandated by the NFIP.

Certain regulations that the State has adopted have already been enforced by Commerce City since the adoption of the first floodplain maps in the late 1970's. Furthermore, many updates were approved when the Land Development Code was first approved in 2009.

It is important to note that these updates are NOT a result of the September 2013 flooding across Colorado. These updates were already approved by the State prior to this time.

Request Summary:

The City's existing floodplain section of the LDC has a comprehensive format, meaning all the requirements can be found in one location that encompass uses and structures. The existing code covers all of the NFIP requirements, but the State Staff, along with City Staff, realized the need to update the ordinance to be in conformance with the new CWCB requirements. The changes required by the State to be included within the City's code are as follows and can be found on the attached exhibit:

- 1) Additional definitions to define the following terms: addition, critical facility, and letter of map revision based on fill.
- 2) To align the City's LDC with a reference to adopt and display the latest Flood Insurance Rate Maps and Flood Boundary- Floodway Maps.
- 3) The freeboard requirement for critical facilities has been set at two feet. Freeboard is basically the distance between the water level and the bottom of a structure. Previously, all structures within Commerce City were required to be raised to one foot. Critical facilities include:

- a. Essential facilities including public safety facilities (police and fire stations), emergency shelters, communication equipment areas and public utility plants;
 - b. Facilities that house hazardous materials including chemical and pharmaceutical plants and above-ground gasoline or propane storage or sales areas; and
 - c. Facilities for at-risk populations including nursing homes and day care and assisted living facilities with 12 or more persons. Note: these uses are currently prohibited within a floodplain in Commerce City.
- 4) Certain areas that are removed from the floodplain by using fill materials would still be regulated as if they are still in a floodplain with respect to freeboard. This basically means that new basements may not be allowed in those areas.
 - 5) The threshold for reconstruction or enlargement of a structure within the floodplain to bring it up to current standards is 50% of expansion size or 50% of the structure's replacement value. Elsewhere in the code, the threshold is 60%.

Analysis:

These updates are a direct result of State requirements. Failure to adopt these requirements may result in Commerce City being excluded from FEMA disaster dollars and penalized from other federal and state money. The impacts of these updates vary. Some of the updates are minor in nature, while other impacts are unknown at this time. In general, it is the City's policy to discourage or prevent any development in the floodplain, so there are not a lot of properties or specific businesses that would be impacted by these updates. The DRT believes that the City's overall policy of protecting floodplains will be strengthened by these updates.

The Development Review Team (DRT) Recommendation

Based on the information provided above, the Development Review Team recommends that the Planning Commission forward the requested amendments to the LDC to the City Council with a favorable recommendation.

The Development Review Team's Recommended Motion

To recommend approval:

I move that the Planning Commission recommend that City Council approve Ordinance #1992, an ordinance amending the Commerce City Land Development Code.

Alternative Motions

To recommend approval subject to condition(s):

I move that the Planning Commission recommend that City Council approve Ordinance #1992, an ordinance amending the Commerce City Land Development Code subject to the following conditions:

Insert Condition(s)

To recommend denial:

I move that the Planning Commission recommend that City Council deny Ordinance #1992, an ordinance amending the Commerce City Land Development Code because it fails to meet the following criteria:

List the criteria not met

I further move that, based upon this finding, the Planning Commission recommend that the City Council deny Ordinance #1992.