

ORDINANCE NO: 1887

INTRODUCED BY: BENSON, BULLOCK, CARSON, DOUGLAS, ELLOITT, FORD,
MCELDOWNEY, MORENO, TETER

AN ORDINANCE AMENDING VARIOUS SECTIONS OF THE LAND DEVELOPMENT CODE

WHEREAS, the City Council of the City of Commerce City adopted the Land Development Code by Ordinance 1720; and

WHEREAS, the Land Development Code became effective March 1, 2009; and

WHEREAS, the ongoing application and interpretation of the Land Development Code has identified areas where additional regulation and/or clarification are needed; and

WHEREAS, the City Council of the City of Commerce City wishes to address those areas.

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

SECTION 1. The following sections of the Land Development Code of the City of Commerce City are hereby amended to read as follows:

Sec. 21-3220. Height Exceptions.

(3) **Approval Criteria.** An application for a height exception may be approved if:

- (a) All of the following criteria are met:
 - i. The structure and development, if applicable, complies with all other standards not specifically waived by the city;
 - ii. The exception would have minimal effect upon adjacent properties with respect to solar access, visual access, and rights of privacy, light, and air;
 - iii. The exception will not interfere with the city's ability to provide public services to the site at the level currently enjoyed by the area, or at adequate levels per existing city policies and regulations;
 - iv. There is no evidence to suggest that the exception would interfere with or complicate emergency services or otherwise impair public safety; and

- (b) One of the following criteria is met:
 - i. The exception provides a demonstrated benefit to the city; or
 - ii. The architecture and character of the proposed building or structure that will exceed the height standards are compatible with existing development on surrounding or adjacent parcels.

Sec. 21-3221. Uses-by-Permit.

(3) **Approval Criteria.** A use-by-permit application may be approved if:

- (a) All of the following criteria are met:
 - i. The use at the proposed location will not result in a substantial or undue adverse effect on adjacent property, the character of the neighborhood, traffic conditions, parking, public improvements, either as they presently exist or as they may exist in the future as a result of the implementation of provisions and policies of the comprehensive plan, this land development code, or any other plan, program, or ordinance adopted by the city. Such compatibility may be expressed in appearance, architectural scale and features, site design, and the control of any adverse impacts, including noise, dust, odor, lighting, traffic, safety, and impact on property values of the surrounding area;
 - ii. The characteristics of the site are suitable for the use considering size, shape, location, topography, existence of improvements and natural features; and
 - iii. The use at the proposed location will be adequately served by and will not impose an undue burden on any of the improvements, facilities, and services of the city special districts, or its residents. Where any such improvements, facilities, utilities or services are not available or adequate to service the use in the proposed location, the applicant shall, as a part of the application and as a condition of approval of the use-by-permit, be responsible for establishing an ability, a willingness, and a binding commitment to provide such improvements, facilities, utilities and services in sufficient time to serve the proposed use; and

- (b) One of the following criteria is met:
 - i. The use is in harmony with the general purposes, goals, objectives, and standards of the comprehensive plan, or any other plan or program adopted by the city; or
 - ii. There is a proven community need for the use at the proposed location, given existing and proposed uses of a similar nature in the area and of the need to provide or maintain a proper mix of uses both within the city and the immediate area of the proposed use.

Sec. 21-3222. Variances.

(1) **Description.** Variances are used to address circumstances where the bulk standards of this land development code inflict unnecessary hardship and practical difficulties on a landowner that are not shared generally by other properties in the same zone district and

vicinity. Variances, other than those from floodplain regulations, are governed by the process outlined in this section. Variances from the floodplain regulations shall follow the procedures and criteria set forth in section 21-3213 (Floodplain Development Permits).

(4) **Approval Criteria.** A variance may be approved if:

- (a) All of the following criteria are met:
 - i. The physical character of the property, including dimensions, topography or other extraordinary situation or condition of the property, create a situation where the strict enforcement of the standards in this land development code will deprive the property of privileges generally enjoyed by property of the same classification in the same zoning district (hardship);
 - ii. The hardship is not self imposed;
 - iii. The variance will not be of substantial detriment to adjacent property; and
- (b) One of the following criteria is met:
 - i. The variance granted is the minimum needed for the reasonable use of the land, building, or structure; or
 - ii. The character of the district will not be changed by the granting of the variance.

Sec. 21-3230. Conditional Use Permits.

(3) **Approval Criteria.** A conditional use permit may be granted if:

- (a) All of the following criteria are met:
 - i. The proposed use will not result in a substantial or undue adverse effect on adjacent property, the character of the neighborhood, traffic conditions, parking, public improvements, either as they presently exist or as they may exist in the future as a result of the implementation of provisions and policies of the comprehensive plan, this land development code, or any other plan, program or ordinance adopted by the city.
 - ii. Any adverse effect has been or will be mitigated to the maximum extent feasible, including but not limited to sufficient landscaping and screening to ensure harmony for adjoining uses.

- iii. The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, existence of improvements and natural features.
- iv. The proposed use will be adequately served by and will not impose an undue burden on any of the existing improvements, facilities, and services of the city or its residents. Where any such improvements, facilities, utilities or services are not available or are not adequate to service the proposed use in the proposed location, the applicant shall, as a part of the application and as a condition of approval, be responsible for establishing an ability, a willingness, and a binding commitment to provide such improvements, facilities, utilities and services in sufficient time to serve the proposed use;
- v. The applicant has provided adequate assurances of continuing maintenance;
- vi. There is no evidence to suggest that the use violates any federal, state, or local requirements; and

(b) One of the following criteria is met:

- i. There is a community need for the use at the proposed location, given existing and proposed uses of a similar nature in the area and of the need to provide and maintain a property mix of uses both within the city and the immediate area of the proposed use; or
- ii. The use complies with the general purposes, goals, objectives, policies, and standards of the comprehensive plan and all other plans or programs adopted by the city.

Sec. 21-4510

(6) Outdoor storage and Truck and/or truck-trailer sales, repair, and/or maintenance (including oil, lube, and/or wash). These uses may be allowed in the I-1S district through the use-by-permit process.

Sec. 21-5235. Fuel Sales

(2) Pump Islands.

- (a) A maximum of 2 pump islands shall be permitted on a 12,000-square foot lot. One pump island may be added for each additional 2,000-square feet of lot area, provided that the total number of pump islands shall not exceed 4 per lot
- (b) The addition of 1 pump island may be administratively approved if the director finds:
 - i. The on-site circulation will not be negatively impacted;
 - ii. The off-site circulation will not be negatively impacted;
 - iii. Access to the property will not be negatively impacted;
 - iv. Appropriate screening and/or landscaping will mitigate the visibility of the pump island; and
 - v. The total area for fuel pumps is not increased.

Sec. 21-5335 Charitable Collection Devices

(1) **Definition.** The term “charitable collection device” means roll-off containers, semi-trailers, non-permanent drop-off containers, or similar devices used for the collection of donated items.

Sec. 21-5258 Refuse Transfer Facility and/or Transfer Facility

The following standards shall apply to all refuse collection facilities:

(12) Rodent and pest control programs will be provided and maintained at all times. The operator of a refuse transfer facility shall submit to the city a written vector control plan.

Sec. 21-5420. Standards.

(7) **Accessory Living Space Restricted.** Except as expressly allowed, no accessory structure shall be used to provide any type of living area normally associated with a dwelling unit, including without limitation, spaces devoted to sleeping, permanent dining or cooking areas, and greater than a half bathroom.

Sec. 21-7515. Prohibited Practices and Elements

(2) **Native grass applied as seed.** Primary landscape areas, including detention or retention ponds when incorporated into the landscape design, shall not utilize a dry-land seed mix as landscape coverage. The use of native grasses from seed is hereby restricted to implementation as set forth in the approved landscape plant list.

Sec. 21-7631. Housing Composition

(1) **Mixed Housing Required.** All new residential subdivisions and new home builders wishing to construct model homes in existing subdivisions shall provide the amount of housing types, housing series, and housing models as set forth in the table below.

SECTION 2. The following definitions contained in Section 21-11200 of the Land Development Code of the City of Commerce City are hereby amended as follows (underlined indicates additional language and strike through indicates a deletion of language):

Carport shall mean a one-story structure that is attached to a dwelling unit and entirely open on one or more sides that is used by the legal occupant of the dwelling unit for vehicle parking or vehicle storage storing operable vehicles.

Church (See Religious ~~Assembly~~ Institution)

Religious Assembly Institution shall mean a use category comprised of structures or places in which worship, ceremonies, rituals, and education pertaining to a particular system of beliefs are held, together with its accessory buildings and uses (including buildings used for educational and recreational activities), operated, maintained, and controlled under the direction of a religious group. Accessory uses include school facilities, parking, caretaker's housing, pastor's housing, and group living facilities such as convents. Examples include churches, temples, synagogues, and mosques.

Transfer Station Facility shall mean a facility or site at which the exchange or deposit of ~~trash~~ material is made for ultimate transfer and disposal elsewhere.

Refuse Collection and Transfer Facilities shall mean any facility that accepts garbage, trash, rubbish, debris and other types of discarded or waste materials for the purposes of collection, temporary storage, or transfer to other locations for disposal.

SECTION 3. The Land Development Code of the City of Commerce City is hereby amended by the addition of the following sections:

Sec. 21-3210 Building and Sign Permits.

(8) **Application Inactivity.** In the event that an applicant, having been notified that additional information or corrected materials are required, fails to submit such information or materials within the time specified in the building code or the residential code, as applicable, the application shall be deemed inactive and shall be considered withdrawn.

Sec. 21-4201 Floor Area Ratio (FAR) Applicability

The Floor Area Ratio requirements shall only apply to new structures.

Sec. 21-5226. Community Gardens.

(1) General Standards.

- (a) All community gardens shall have on-site irrigation.
- (b) The growing and/or cultivation of marijuana, for any purpose, is prohibited.
- (c) The keeping of animals is prohibited.
- (d) No community garden shall be permitted on any property on which a single-family dwelling, either attached or detached, exists.
- (e) Off-street parking, if any, shall include a dust-free surface approved by the city engineer.
- (f) Tools and equipment must be stored in sheds. Hoop houses and green houses shall not be used to store tools or equipment.
- (g) All compost materials shall be kept in an enclosure that limits the negative impacts to adjacent properties.

(2) Sign Standards.

- (a) Identification signs shall be monument type and shall not exceed 20 sf. in area or 6 feet in height. Each community garden shall be limited to one identification sign per street frontage that is setback a minimum of 10 feet.
- (b) Each community garden shall be allowed one entrance sign per entrance that is intended to communicate garden information, rules, regulations, or policies. Entrance signs shall not exceed 15 square feet in area or 6 feet in height. Entrance signs shall be setback a minimum of 10 feet.
- (c) Signage to communicate and/or distinguish specific crops or garden orientation shall be limited to 3 sf. and shall not require a permit from the Planning Division.

(3) **Accessory Structures Limited.** The following accessory structures may be located on property being used as a community garden: sheds, hoop houses, green houses, fences, compost enclosures, and vertical growing structures. All other accessory structures are prohibited.

(4) **Accessory Structure Standards.** Unless a different standard is specified in this section, all accessory structures must comply with the general standards of this code.

- (a) No accessory structure shall exceed 15 feet in height.
- (b) No more than 3 sheds shall be permitted.
- (c) No more than a combined total of 3 hoop houses and/or green houses shall be permitted and the cumulative square footage of all such hoop houses and green houses shall not exceed ten (10) percent of the lot area.
- (d) Hoop houses, green houses, and sheds shall be set back ten (10) feet from the front property line, five (5) feet from the side and rear property lines, and ten (10) feet from any property line adjacent to a street.
- (e) No more than one (1) compost enclosure shall be permitted on any property that is one acre or less in size. No more than two (2) compost enclosures shall be permitted on any property that is more than one acre in size. Compost enclosures shall be set back ten (10) feet from all property lines and shall not exceed six feet in height. Compost enclosures may consist of multiple sections.

(5) **Fences.**

- (a) Electric and barbed wire fences are prohibited.
- (b) To the maximum extent feasible, fences shall be compatible in appearance and placement with the fences in the area.
- (c) Height and style:
 - i. Along the right-of-way, fences shall be open style, as that term is used in section 21-7730, and shall not exceed 42 inches in height.
 - ii. Portions not along the right-of-way shall comply with the fence standards of the applicable underlying zone district.
- (d) Setbacks:
 - i. Residential. Fences along the right-of-way shall be set back a minimum of 30 inches from the property line. Fences that are not along the right-of-way shall comply with the general setback requirements for fences in residential zone districts.
 - ii. Non-residential. Fences along the right-of-way shall be set back a minimum of 5 feet from the property line. Fences that are not along the right-of-way shall comply with the general setback requirements for fences in the applicable underlying zone districts.

Sec. 21-7663. Materials

(5) Pole Construction.

- (a) Eaves and rakes on structures that are pole construction shall be a minimum of 12-inches.
- (b) All facades of structures that are pole construction and are visible from a public or private right-of-way, public space, or residence shall be covered in a minimum of 25% masonry veneer, stucco veneer, or other material as approved by the Director.
- (c) All facades of structures that are pole construction and are visible from a public or private right-of-way, public space, or a residence shall have a minimum of 2 windows that are 20 square feet each and each window shall have shutter treatments.
- (d) Structures that are made of pole construction shall have a minimum of 2 paint colors that are complimentary to one another.

Sec. 21-7721. Exceptions to Underground Requirement.

(3) **Electrical Transmission Lines.** Electrical transmission lines with a rated voltage of 26 kilovolts or greater and used to distribute electricity to the utility provider substations.

SECTION 4. Section 21-5430(3) of the Land Development Code of the City of Commerce City is hereby repealed

SECTION 5. Section 21-11200 of the Land Development Code of the City of Commerce City is hereby by the addition of the following defined terms:

Accessory Parking Structure shall mean a permanent one-story structure that is open on one or more sides and is used for the temporary parking or storage of operable vehicles in conjunction with the primary use of the property.

Community Garden shall mean a use in which land is managed by a public or nonprofit organization or group of individuals used to grow plants and harvest food or ornamental crops for donation or for use by those cultivating the land. Community gardens may be organized by the operating agency or group into individual areas for cultivation by one or more persons or may be farmed collectively by members of the group and may include common areas maintained and used by group members.

Gun Club shall mean an establishment designed to provide target practice in the use of firearms under controlled conditions whether or not the use is conducted within an entirely enclosed soundproof building or outside of a building so that the public health and safety are protected. These establishments may also include the accessory sale of firearms, the sale of

ammunition, the sale of associated equipment or supplies, and the sale of food to the patrons of the establishment.

Hoop house shall mean an unheated greenhouse, most commonly constructed with arches of plastic or metal.

Pole Construction shall mean a type of construction for a building that is typically used for the storage of equipment, materials, product, livestock, or crops and is usually constructed of wooden or metal support poles and beams which serve as the primary support for the roof and walls.

Substance Abuse Treatment Facility, Inpatient Residential shall mean structures and land used for the treatment of alcohol or other drug abuse where one or more patients are provided with care, meals, and lodging.

Substance Abuse Treatment Facility, Outpatient Clinic shall mean structures and land used for the treatment of alcohol or other drug abuse where neither meals nor lodging is provided.

Parking Garage shall mean a permanent structure that is enclosed on all four sides and consists of one or more levels and is primarily dedicated to providing to the general public temporary parking or storage of operable vehicles, regardless of whether or not there is a fee.

Vertical growing structures shall mean a permanent structure used to encourage the vertical growing of plants. Traditional examples include arbors and trellis.

SECTION 6. Table V-1 of the Land Development Code is hereby amended as follows:

- (a) “Above Ground Storage Tanks < 50,000 gallons” shall be replaced with “Above Ground Storage Tanks < 48,000 gallons.”
- (b) “Above Ground Storage Tanks > 50,000 gallons” shall be replaced with “Above Ground Storage Tanks > 48,000 gallons.”
- (c) “Gun Club” shall be amended to “Gun Club (indoors)” and shall be permitted as a use by right in the I-1, I-2, I-3, AG, and Public zone districts.
- (d) “Gun Club (outdoors)” shall be added and the use shall be permitted as a conditional use in the AG and Public zone districts.
- (e) “Truck trailer sales, repair, and maintenance (including oil, lube, or wash)” shall be replaced with “Truck and/or truck-trailer sales, repair, and/or maintenance (including oil, lube, and/or wash).”

- (f) An asterisk shall be placed next to “Outdoor Storage” and “Truck and/or truck-trailer sales, repair, and/or maintenance (including oil, lube, and/or wash)” and such asterisk shall indicate the use is an allowed use, as a use-by-permit in the I-1S district.
- (g) A new use entitled “Substance abuse treatment facility, inpatient residential” shall be added and shall be permitted as a conditional use in the I-1, I-2, I-3, AG and Public zone districts. The table shall reference section 21-5238 in the “Additional Regulations” column.
- (h) A new use entitled “Substance abuse treatment facility, outpatient clinic” shall be added and shall be permitted as a use-by-right in the C-2, C-3, and I-1, zone districts and as a use-by-permit in the C-1 zone district.
- (i) A new use entitled “Parking garage” shall be added and shall be permitted as a use-by-right in the C-3, MU-1, I-1, I-2, I-3 and Public zone districts.
- (j) A new use entitled “Above ground storage tanks of propane < 10,000 cubic feet capacity” shall be added and such use shall be a use-by-right in all zone districts.
- (k) “Sandblasting operations” shall be changed to “Sandblasting operations – indoor.”
- (l) A new use entitled “Community Garden” shall be added and shall be permitted as a use-by-right in the R-1, R-2, R-3, R-4, MHP, C-1, C-2, C-3, MU, Public, and AG zone districts and as a use-by-permit in the I-1, I-2, and I-3 zone districts.

SECTION 7. Table V-5 is amended as follows:

- (a) The “Night Watchman’s Quarters” use shall be amended to reflect that it is permitted as a use-by-permit in the C-3, I-1, I-2, I-3, AG, and Public zone districts;
- (b) A new use entitled “Night Watchman’s Quarters, Religious Institution” shall be added and such use shall be permitted as a use-by-right in the R-1, R-2, R-3, R-4, MHP, C-1, C-2, C-3, MU-1, and I-1 zone districts;
- (c) A new use entitled “Accessory Parking Structures” shall be added and such use shall be permitted as a use-by-right in the R-3, R-4, MU-1, MHP, C-1, C-2, C-3, I-1, I-2, I-3, AG, Public zone districts.

SECTION 8. Table V-6 is amended as follows:

- (a) The locational regulations related to Swimming Pools shall be amended by eliminating all requirements except for “Not permitted in front yard.”

(b) The second bulleted paragraph in the additional regulations column related to Detached and Attached Garages shall be removed and replaced with two bulleted paragraphs that shall read as follows:

- *Attached Garage:*
All sides shall be a color and material that is the same or similar to the principal structure. Where the principal structure is all or partially of brick, stone, or stucco those exterior portions of the attached garage facing a public right-of-way shall be covered with brick, stone, or stucco in no less than the same proportion as the principal structure and shall wrap the brick, stone, or stucco a minimum of 3-feet on side elevations.

- *Detached Garage:*
All sides shall be a color and material that is the same or similar to the principal structure. Where the principal structure is all or partially of brick, stone, or stucco those exterior portions of the detached garage (regardless of front, side, or rear) that face a public right-of-way and are not obstructed from view by items such as the primary structure, accessory structures, or fencing shall be covered with a base that is a minimum of 3-feet of brick, stone, or stucco that is the same or similar to the principal structure and shall provide a masonry wrap.

(c) The additional regulations section related to Barns and Stables is amended to require that the materials be of a commercial quality and that fiberglass and plywood are specifically prohibited.

(d) The language contained in the additional regulations section related to Greenhouses shall be deleted in its entirety.

(e) The section for Guard Residence/Caretaker’s Quarters shall be re-titled “Night Watchman’s Quarter - All” and the following language contained in the additional regulations column shall be deleted: “Use-by-permit required” and “On non-industrial properties, caretaker’s quarters are only allowed for an assembly or religious hall”;

(f) A new row shall be added that shall read as follows:

Structure	Locational Regulations	Size Height Restrictions	Additional Regulations
Accessory Parking Structure	Front yard: prohibited. Side on street: may be located no closer to the	Residential areas: 15-foot maximum height Non-residential areas: 25-foot maximum height	Allowed only for the storage of operable vehicles used in conjunction with the principal use.

	<p>street than the front façade of the nearest primary structure, but in no case closer than 20 feet from the right of way.</p> <p>5-foot side setback.</p> <p>5-foot rear setback.</p>		<p>Any accessory parking structure serviced by a right-of-way shall be provided access by a driveway consisting of concrete, asphalt, or similar hard-surface material.</p> <p>The color, style, and type of materials used in the construction of the exterior portions of an accessory parking structure shall match those of the principal structure. The use of prefabricated metal structures, corrugated metal, fiberglass, or similar panels is not allowed. For an accessory parking structure to match the principal structure, the follow criteria shall apply:</p> <ul style="list-style-type: none"> • The roofline, the type of roofing material, and the color of the roofing material shall be the same or similar to the principal structure. If the principal structure has a flat roof, the accessory parking structure may be allowed to have a pitched roof if approved by the Director. • Any painted surface shall be the same, similar, or complementary color as the principal structure.
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			<ul style="list-style-type: none"> • Any enclosed sides of the accessory parking structure shall meet the architectural requirements for a garage. <p>Nothing in this section shall supersede any garage requirements for any underlying zone district.</p> <p>Accessory parking structures may be used in addition to and not in place of any garage requirement.</p> <p>Accessory parking structures shall only be used to cover permanent and approved parking spaces.</p> <p>Accessory parking structures shall be constructed as one structure. At no time shall a series of structures be attached to one another to create an accessory parking structure.</p>
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SECTION 9. Table VII-17 of the Land Development Code is hereby amended as follows:

- (a) The column currently titled “Development Parcel Size” shall be re-titled “Development Filing Size.”

SECTION 10. The building separation sections of Tables IV-10, IV-11, IV-12, IV-13, IV-14, IV-15, and IV-19 of the Land Development Code shall be amended to read “N/A.”

SECTION 11. Except as specifically modified herein, the provisions of the Land Development Code shall remain unchanged and in full force and effect.

SECTION 12. This ordinance shall take effect August 1, 2012.

INTRODUCED, PASSED ON FIRST READING AND PUBLIC NOTICE ORDERED
THIS _____ DAY OF JUNE, 2012.

PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED
THIS _____ DAY OF JULY, 2012.

CITY OF COMMERCE CITY, COLORADO

Sean Ford, Mayor

ATTEST:

Laura J. Bauer, CMC, City Clerk