

ORDINANCE NO: 2185

INTRODUCED BY: DAVIS, DOUGLAS, ELLIOTT, FORD, FRANK, GUARDIOLA,  
HUSEMAN, MADERA, TETER

AN ORDINANCE AMENDING SECTION 21-3220 OF THE LAND DEVELOPMENT CODE  
RELATING TO HEIGHT EXCEPTIONS

WHEREAS, the City Council of the City of Commerce City adopted the Land Development Code, effective March 1, 2009, by Ordinance 1720, which has been amended from time to time;

WHEREAS, the ongoing application and interpretation of the Land Development Code has identified a need to amend the provisions relating to exceptions to height limitations for buildings and structures in the City of Commerce City, including a description of the purpose of a height exception and one new criteria for approval;

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

**SECTION 1.** Section 21-3220 of the Land Development Code relating to Height Exceptions is amended as set forth in Exhibit A, which is attached and incorporated by reference.

**SECTION 2.** This ordinance is necessary and appropriate to protect the public health, safety, and welfare and in the general public interest.

**SECTION 3.** Except as specifically modified herein, the provisions of the Land Development Code shall remain unchanged and in full force and effect.

INTRODUCED, PASSED ON FIRST READING AND PUBLIC NOTICE ORDERED  
THIS 19TH DAY OF NOVEMBER, 2018.

PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED  
THIS 17TH DAY OF DECEMBER, 2017.

CITY OF COMMERCE CITY, COLORADO

\_\_\_\_\_  
Sean Ford, Mayor

ATTEST:

\_\_\_\_\_  
Laura J. Bauer, MMC, City Clerk

## EXHIBIT A TO ORDINANCE 2185

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

### **Sec. 21-3220 of the Land Development Code is amended as follows:**

#### **Sec. 21-3220. Height Exceptions**

- (1) Description. Height Exceptions are used to address situations where the height standards of this land development code inflict practical difficulties on the primary operations on a property that arise due to state or federal regulatory changes, technological advancements, or similar circumstances that require structures directly associated with the primary operation to surpass the zone district's maximum allowable height. Fences, signs, and secondary uses (such as outdoor storage) are not eligible for Height Exceptions.
- (2) ~~(1)~~ Requirement. Except for the specific situations outlined below, no structure or building shall exceed the height limitations provided in this land development code without first obtaining a height exception.
  - (a) Structures that exceed the approved height limit on the effective date of this land development code. Any such structure shall not be considered a non-conforming structure due to its height only;
  - (b) Development according to the terms and conditions of a final PUD permit or final subdivision plat that was approved prior to the effective date of this land development code and that has not lapsed in any way. Any structure exceeding the maximum height permitted in a zoning district, but which is developed in accordance with such approved final plan or plat, shall not be considered a non-conforming structure due to its height only;
  - (c) Development consistent with the intent, terms, and recommendations of an applicable comprehensive plan, or other special plan adopted by the city, when such plan specifically recommends and anticipates development of structures exceeding the maximum allowed height permitted in a zoning district, but which is developed in accordance with such approved comprehensive plan or other sub-area plan, shall not be considered a non-conforming structure due to its height only.
- (3) ~~(2)~~ Review.
  - (a) The director and the DRT review height exception applications, and the director provides a report to the board of adjustment regarding an application's acceptability in light of the approval criteria listed below.
  - (b) Applications are considered by the board of adjustment at a public hearing. After the hearing, the board of adjustment is authorized to approve, approve with conditions, or deny the application based on the approval criteria listed below.

- (4) ~~(3)~~ Approval Criteria. An application for a height exception may be approved if:
- (a) The requested structure height is required in order to reasonably comply with state or federal regulatory changes or needed to overcome technological limitations; or
  - (b) 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
  - (c) 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.
- (5) ~~(4)~~ Lapse. A height exception shall lapse unless a building permit is issued and construction is substantially completed within three years from the date of approval, unless another time frame is listed as an element of the approval of a related application (such as a conditional use permit). Amendments to a related development plan shall not affect the lapse period unless otherwise provided

**[END OF EXHIBIT A TO ORDINANCE 2185]**