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RESOLUTION NO. 21-36

EL PASO COUNTY BOARD OF COUNTY COMMISSIONERS, STATE OF COLORADO

APPROVAL OF AMENDMENT TO THE LAND DEVELOPMENT CODE (LDC-20-001) Fire Protection and Wildfire Mitigation

WHEREAS, the Planning and Community Development Department of El Paso County requests approval of Amendment(s) to Chapter(s) 1, 5, and 6 of the Land Development Code as herein described, including other conforming amendments throughout the Code;

WHEREAS, a public hearing was held by the El Paso County Planning Commission on January 7, 2021, upon which date the Planning Commission did by formal resolution recommend approval of the proposed amendments, and

WHEREAS, a public hearing was held by this Board on January 26, 2021; and

WHEREAS, based on the evidence, testimony, exhibits, consideration of the master plan for the unincorporated area of the County, presentation and comments of the El Paso County Planning and Community Development Department and other County representatives, comments of public officials and agencies, comments from all interested persons, comments by the general public, comments by the El Paso County Planning Commission Members, and comments by the Board of County Commissioners during the hearing, this Board finds as follows:

1. The proposed amendment(s) to the El Paso County Land Development Code Choose an item. properly submitted for consideration by the Planning Commission.
2. Proper publication and public notice were provided as required by law for the hearing before the Planning Commission.
3. The hearing before the Planning Commission was extensive and complete, that all pertinent facts, matters and issues were submitted and that all interested persons were heard at that hearing.
4. All data, surveys, analyses, and studies, as are required by the State of Colorado and El Paso County have been submitted, reviewed, and were received into evidence and found to meet the intent of the Introductory Provisions of the Land Development Code.

5. For the above-stated and other reasons, the proposed Amendment(s) are in the best interest of the health, safety, morals, convenience, order, prosperity and welfare of the citizens of El Paso County.

NOW, THEREFORE, BE IT RESOLVED the El Paso County Board of County Commissioners hereby approves the amendment(s) to Chapter(s) 1, 5, and 6 of the El Paso County Land Development Code, including other conforming amendments throughout the Code, as represented on the attached Exhibit "A" by underlining (additions) and strike-through (deletions):

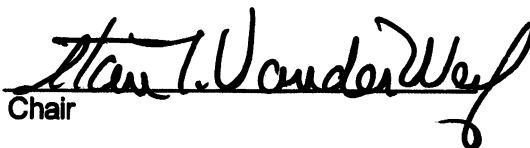
AND BE IT FURTHER RESOLVED that the Executive Director of Planning and Community Development is hereby authorized and directed to develop procedures for the provision of public notice of and opportunity to submit comments on applications for administrative plat approval and for the appeal of administrative plat approval or denial to the Board of County Commissioners.

AND BE IT FURTHER RESOLVED the record and recommendations of the El Paso County Planning Commission be adopted, except as modified herein.

DONE THIS 26th day of January, 2021 at Colorado Springs, Colorado.



BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

By: 
Chair

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EXHIBIT A

See attached redline revisions.

EL PASO COUNTY

COMMISSIONERS:
MARK WALLER (CHAIR)
LONGINOS GONZALEZ, JR. (VICE-CHAIR)

COLORADO

HOLLY WILLIAMS
STAN VANDERWERF
CAMI BREMER

PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT
CRAIG DOSSEY, EXECUTIVE DIRECTOR

TO: El Paso County Board of County Commissioners
Chair

FROM: Nina Ruiz, Planning Manager
Mark Gebhart, Deputy Director
Craig Dossey, Executive Director

RE: LDC-20-001 -- Land Development Code Amendment --
Fire Protection and Wildfire Mitigation Amendment to Chapters 1, 5,
and 6 of the El Paso County Land Development Code (2019) to
remove discrepancies, and add and modify language to eliminate the
term "Fire Marshal"

Commissioner District: All

Planning Commission Hearing Date	1/7/2020
Board of County Commissioners Hearing Date	1/26/2020

EXECUTIVE SUMMARY

A request by the El Paso County Planning and Community Development Department to amend Chapters 1, 5, and 6 of the El Paso County Land Development Code (2019) to remove discrepancies and add and modify language to eliminate the term "Fire Marshal".

The proposed amendments include:

- Amend throughout to replace the term "Fire Marshal" with "Fire Authority"
- Amend Chapter 1 to amend the definition of what will be termed "Fire Authority", to include a Fire District, Fire Department, or Third-Party Fire Reviewer;
- Amend Chapter 1 to add the term "Third Party Fire Reviewer" to apply to those areas of the County outside of a fire district or fire department;
- Amend Chapter 5, Fireworks Sales, to add language specifying that firework sales are not permitted if the Sherriff has implemented a fire ban;
- Amend Chapter 6, Fire Protection and Wildfire Mitigation, throughout to revise all occurrences where authority currently lies with the "Fire Marshal" to instead

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place such authority with the Board of County Commissioners or PCD Director, where applicable.

- Amend Chapter 6, Fire Protection and Wildfire Mitigation, to specifically state that PCD will request a recommendation from the "Fire Authority" in regard to alternatives as well as compliance with the applicable regulations;
- Amend Chapter 6, Fire Protection and Wildfire Mitigation, to amend the required content of the Fire Protection Report to add that the report must include an analysis of how the request complies with the Code and any applicable fire code;
- Amend Chapter 6, Fire Protection and Wildfire Mitigation, to add an additional subsection regarding Development Outside Fire District or Fire Department Boundaries which requires that the property either annex into a fire district or fire department or receive approval of a waiver from the Board of County Commissioner based upon specific criteria;
- Amend Chapter 6, Fire Protection and Wildfire Mitigation, to remove specific requirements regarding automatic fire protection and instead to require development to meet the requirements of the adopted building code;
- Amend Chapter 6, Fire Protection and Wildfire Mitigation, to specify that the Fire Authority may determine the most appropriate location for fire hydrants; and
- Amend Chapter 6, Fire Protection and Wildfire Mitigation, to require that dry hydrants meet the NFPA standards in place of the hydrants being approved by the "Fire Marshall" without specific standards being referenced.

Staff is also requesting authority to make all other conforming amendments necessary to carry out the intent of the BoCC.

A. PLANNING COMMISSION SUMMARY

Request Heard: As a Regular item at the January 7, 2021 hearing.

Recommendation: Approval

Waiver Recommendation: N/A

Vote: 8-0

Vote Rationale: N/A

Summary of Hearing: Ms. Ruiz presented the LDC revisions.

Legal Notice: Advertised in Shopper's Press on January 6, 2021.

B. APPLICABLE RESOLUTIONS:

See attached Resolution.

C. REQUEST

A request by the El Paso County Planning and Community Development Department to amend the El Paso County Land Development Code (2019) to include:

- Amend throughout to replace the term "Fire Marshal" with "Fire Authority"
- Amend Chapter 1 to amend the definition of what will be termed "Fire Authority", to include a Fire District, Fire Department, or Third-Party Fire Reviewer;

- Amend Chapter 1 to add the term “Third Party Fire Reviewer” to apply to those areas of the County outside of a fire district or fire department;
- Amend Chapter 5, Fireworks Sales, to add language specifying that firework sales are not permitted if the Sherriff has implemented a fire ban;
- Amend Chapter 6, Fire Protection and Wildfire Mitigation, throughout to revise all occurrences where authority currently lies with the “Fire Marshall” to instead place such authority with the Board of County Commissioners or PCD Director, where applicable.
- Amend Chapter 6, Fire Protection and Wildfire Mitigation, to specifically state that PCD will request a recommendation from the “Fire Authority” in regard to alternatives as well as compliance with the applicable regulations;
- Amend Chapter 6, Fire Protection and Wildfire Mitigation, to amend the required content of the Fire Protection Report to add that the report must include an analysis of how the request complies with the Code and any applicable fire code;
- Amend Chapter 6, Fire Protection and Wildfire Mitigation, to add an additional subsection regarding Development Outside Fire District or Fire Department Boundaries which requires that the property either annex into a fire district or fire department or receive approval of a waiver from the Board of County Commissioner based upon specific criteria;
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Staff is also requesting authority to make all other conforming amendments necessary to carry out the intent of the BoCC.

D. BACKGROUND

Staff has worked with stakeholders as well as governmental agencies to draft proposed amendments to the Fire Protection and Wildfire Mitigation section of Code. Those stakeholders that provided input include the Colorado Springs Housing and Building Association, fire districts, Fire Chief, El Paso County Sheriff's Office, the Pikes Peak Regional Office of Emergency Management, as well as homeowners' association groups. All previous comments received have been addressed.

The El Paso County Land Development Code is routinely amended to respond to current land use trends, recurring issues, changes in legislation, and errors/oversights. The Planning and Community Development Department staff maintains a running list of necessary and recommended revisions to the Code as issues arise. Section 6.3.3 of the Land Development Code was written in 2006 when coordination with the Fire Marshal was in place. The amendments proposed with this specific request are in response to El Paso County no longer having a Fire Marshal position. The internal procedures have been amended over time to reflect the loss of the Fire Marshal position, but the regulations have not been updated. The proposed amendments include revisions to Chapters 1, 5, and 6. The topical items included within the proposed revisions include amendments pertaining to the elimination of the term "Fire Marshal" and the addition of the term "Third Party Fire Reviewer". Staff anticipates additional future amendments to the Wildfire Protection section to remove inconsistencies with other rules and regulations but chose to keep the proposed amendments limited to the "Fire Marshal" concern only.

Replace "Fire Marshal" with "Fire Authority"

El Paso County has not recently employed a Fire Marshal but utilizes a Fire Warden who had different powers and authorities than a Fire Marshal. Chapter 6 of the Land Development Code (2019) refers to a Fire Marshal multiple times. Planning and Community Development has relied upon the recommendations of the fire districts and departments, who are the subject matter experts, in place of the Fire Marshal. Each one of the Fire Districts or Fire Departments has their own Fire Marshal. Planning and Community Development is proposing to amend the Code to mirror our current practices to remove the term "Fire Marshal" and replace it with "Fire Authority" in order to avoid confusion.

If approved, the Fire Authority will include fire departments, fire districts, and a third-party fire authority. The current regulations rely heavily on the Fire Marshal approving many fire protection elements. Staff is not proposing to defer all approval authority to the Fire Authority, but instead to rely upon their recommendations. The Fire Authorities are not governed by El Paso County and, therefore, need not report to El Paso County. Staff believes for this reason it is appropriate that the ultimate authority remain with El Paso County.

Third Party Fire Reviewer

The majority of properties in El Paso County are within a Fire District or Fire Department, however, there are still some areas without fire protection. The unserved areas are primarily in the mountainous portions of the County, the numerous enclaves within the City of Colorado Springs, and the land generally between the eastern limits of Colorado Springs and the Ellicott Fire Protection District (see attached map).

Without a Fire Marshal, the proposed Land Development Code amendments rely on the expertise of the fire departments and fire districts to provide comment

when proposed development will not meet the standards. Staff is proposing the addition of the term Third Party Fire Reviewer which will apply to those parcels without fire protection. The proposed definition includes language as to who may be qualified to serve as the Third Party Fire Reviewer.

In addition to the additional definition, staff is proposing to add language to require all parcels undergoing a development application to annex into a fire district or fire department. If they cannot, they must request a waiver from this requirement before the Board of County Commissioners. The Board of County Commissioners then must review the request based upon specific criteria including evidence that it is not feasible to annex into a fire district or fire department and that the request meet all other Sections included in the Fire Protection and Wildfire Mitigation section of the Code.

E. RECOMMENDED AMENDMENTS

A request by the El Paso County Planning and Community Development Department to amend the El Paso County Land Development Code (2019) to include:

- Amend throughout to replace the term “Fire Marshal” with “Fire Authority”
- Amend Chapter 1 to amend the definition of what will be termed “Fire Authority”, to include a Fire District, Fire Department, or Third-Party Fire Reviewer;
- Amend Chapter 1 to add the term “Third Party Fire Reviewer” to apply to those areas of the County outside of a fire district or fire department;
- Amend Chapter 5, Fireworks Sales, to add language specifying that firework sales are not permitted if the Sherriff has implemented a fire ban;
- Amend Chapter 6, Fire Protection and Wildfire Mitigation, throughout to revise all occurrences where authority currently lies with the “Fire Marshall” to instead place such authority with the Board of County Commissioners or PCD Director, where applicable.
- Amend Chapter 6, Fire Protection and Wildfire Mitigation, to specifically state that PCD will request a recommendation from the “Fire Authority” in regard to alternatives as well as compliance with the applicable regulations;
- Amend Chapter 6, Fire Protection and Wildfire Mitigation, to amend the required content of the Fire Protection Report to add that the report must include an analysis of how the request complies with the Code and any applicable fire code;
- Amend Chapter 6, Fire Protection and Wildfire Mitigation, to add an additional subsection regarding Development Outside Fire District or Fire Department Boundaries which requires that the property either annex into a fire district or fire department or receive approval of a waiver from the Board of County Commissioner based upon specific criteria;
- Amend Chapter 6, Fire Protection and Wildfire Mitigation, to remove specific requirements regarding automatic fire protection and instead to

require development to meet the requirements of the adopted building code;

- Amend Chapter 6, Fire Protection and Wildfire Mitigation, to specify that the Fire Authority may determine the most appropriate location for fire hydrants; and
- Amend Chapter 6, Fire Protection and Wildfire Mitigation, to require that dry hydrants meet the NFPA standards in place of the hydrants being approved by the "Fire Marshall" without specific standards being referenced.

Staff is also requesting authority to make all other conforming amendments necessary to carry out the intent of the BoCC.

F. APPROVAL CRITERIA

The statutory role of the Planning Commission and Board of County Commissioners is identified below:

30-28-116. Regulations may be amended.

From time to time the board of county commissioners may amend the number, shape, boundaries, or area of any district, or any regulation of or within such district, or any other provisions of the zoning resolution. Any such amendment shall not be made or become effective unless the same has been proposed by or is first submitted for the approval, disapproval, or suggestions of the county planning commission. If disapproved by such commission within thirty days after such submission, such amendment to become effective, shall receive the favorable vote of not less than a majority of the entire membership of the board of county commissioners. Before finally adopting any such amendment, the board of county commissioners shall hold a public hearing thereon, and at least fourteen days' notice of the time and place of such hearing shall be given by at least one publication in a newspaper of general circulation in the county.

G. PUBLIC COMMENT AND NOTICE

A summary of the proposed Code amendments and the date of the Board of County Commissioner hearing will be published in The Fountain Valley News pursuant to Colorado Revised Statute 30-28-116. A copy of this publication will be included in the backup materials for the Board of County Commissioners hearing. All the stakeholders were noticed by EDARP of the hearing date.

H. ATTACHMENTS

Proposed Amendments to the Land Development Code (2019) (redline version)
Proposed Amendments to the Land Development Code (2019) (clean version)
All Comments Received
Letter of Support from the Housing and Building Association
Planning Commission Resolution
Board of County Commissioners' Resolution

Replace "Fire Marshal" with "Fire Authority" throughout.

Chapter 1 Revisions

~~Fire Marshal Authority — For purposes of this Code, El Paso County Fire Marshal, a the person designated by the Fire District or Fire Department within whose their boundaries the property lies. This term shall also include a Third-Party Fire Reviewer for properties not located within the boundaries of a Fire District or Fire Department. "Fire Authority" may include the Sheriff's Office for certain fire events~~

~~**Third Party Fire Reviewer - a person with a minimum of an State of Colorado Inspector II, ICC or NFPA Certification who has provided El Paso County with a copy of such certification and who has self-certified that they are qualified to provide comment and recommendations.**~~

Chapter 5 Revisions

Fireworks Sales

(A) **Sales Period Limited.** Fireworks sales are limited to the period from May 31 to July 6th each year. ~~Firework sales is prohibited if the Sherriff has implemented a fire ban.~~

(B) ~~**Fire Department Authority Approval Required.** The fireworks sales area shall be located within an area provided with fire protection by a fire department.~~ **Fire Authority** approval is required prior to the approval of a temporary use permit.

(C) **Driveway Permit Required.** A driveway permit shall be issued to allow access to the fireworks sales area prior to the approval of a temporary use permit.

(D) **Required Signage.** A fireworks sales area shall post signage noting it is illegal to shoot fireworks within all towns and cities in El Paso County and violators will be prosecuted. Each fireworks sales area shall provide either one sign, with minimum 3 inch letter size, or 4 signs of 8½ by 11 inches, placed in a conspicuous location easily readable by the public, noting the language as stated or similar language approved by the PCD Director.

6.3.3. Fire Protection and Wildfire Mitigation

(A) General.

(1) **Purpose and Intent.** To ensure that proposed development is reviewed in consideration of the wildfire risks and need to provide adequate fire protection in order to:

- Regulate development, buildings, and structures so as to minimize the hazard to public health, safety, and welfare;
- Ensure that adequate fire protection is available for new development;
- Implement wildfire hazard reduction in new development;

