USE-SPECIFIC STANDARDS

Source: Clarion Associates

HAZARDS ADDRESSED

HOW IT WORKS

Use-specific standards are used by communities to place limitations on, or apply conditions or specific standards to, certain land uses. Use-specific standards are an effective strategy for neighborhood protection, resource protection, and risk avoidance. Use-specific standards are adopted by ordinance as part of the zoning code, but the complexity and organization of these standards varies widely across communities. As with many other zoning tools, use-specific standards can be calibrated to serve a particular purpose (such as hazard mitigation), can apply to some or all zoning districts or subareas, and can be linked to one or multiple land uses. Communities commonly apply use-specific standards to potentially problematic land uses such as liquor stores, late-night uses, pawn shops, and marijuana facilities. Such uses often come with specific challenges, such as perceptions of increased crime or traffic. Use-specific standards might require limited hours of operation, added security measures, or limiting the number of such uses within a geographic area.

For hazard mitigation purposes, use-specific standards can be applied to any use that has the potential to create or exacerbate a known hazard. One example could be to require industrial uses that store explosive materials to be set back an additional distance from residential areas. An example of the need for such setbacks occurred in April 2013 in West, Texas, when an explosion at a fertilizer storage and distribution facility resulted in 15 deaths, hundreds injured, and more than 150 buildings damaged or destroyed, due in part to the fact that the factory was located too close to residential neighborhoods, including an apartment building and nursing home.

Storage of explosive materials is one example where use-specific standards can establish safeguards against potential accidents or spills. In this example, industrial storage might be a permitted use in a particular zoning district, but the use-specific standards would indicate that storage of explosive or hazardous materials triggers additional criteria that must be met in order to proceed with that use. Those criteria might include distance requirements from residential areas, sign-off from local fire and

building safety officials, and/or additional public hearings for approval (as a conditional or special use).

Use-specific standards also can be helpful in addressing other types of hazards, beyond storage of hazardous materials; for example, setback requirements can provide buffer zones from areas prone to avalanche, flood, or landslide. They could also be used to help mitigate potential fire danger in the wildland-urban interface (WUI).

IMPLEMENTATION

A typical zoning code will describe the types of uses permitted within each zoning district and reference any additional standards that apply to that use. Communities should consider the following when developing new use-specific standards:

- Define the purpose for the use-specific standard. Is the standard necessary to protect people or property from hazards? Is it connected to other community-wide goals or policies?
- Define the areas where the use-specific standard applies. Should the additional standard apply to certain zoning districts or subareas? Should it apply to any parcel that proposes that particular land use?
- Articulate the minimum standard required to mitigate the problem. Determine whether the standard can be reviewed for compliance without a public hearing.
- Is the standard enforceable given current community resources?

Once the standards have been adopted, they should be integrated into the existing zoning regulations either in a dedicated section or throughout the applicable sections that relate to a particular use. Most codes today include a permitted land use table indicating which uses are permitted by district. That table can include cross-references for any applicable use-specific standards.

Several federal laws preempt local zoning authority when it comes to regulating specific uses, including telecommunications, signs, religious institutions, and individuals covered under the Federal Fair Housing Act. State licensing regulations may also apply to certain uses, such as group homes. Communities sometimes simply defer to federal and/or state laws when developing use-specific standards for those types of uses, but sometimes do have the ability to regulate above and beyond minimum standards established at the federal and/or state level.

WHERE IT'S BEEN DONE

Durango applies use-specific standards to dozens of allowable uses. In particular, heavy industry must comply with use-specific standards such as limited parcel areas for proposed development, additional setbacks, limitations on outdoor storage, and requirements for a truck routing plan (for hazardous materials). Durango's permitted use matrices make it clear to the reader which land uses are required to meet additional use-specific standards (*Durango Land Use and Development,* 2014).

Table 2-1-3-8
Industrial, Wholesale, and Solid Waste Processing and Recycling Uses

Land Use	Standards Reference [1]	Zoning Districts															
		Residential					Mixed-Use			Nonresidential				Rural and Open Space		Public and Planned	
		EN-#	EN-MF	RL	RM	RH	CB	MU-N	MU-A	CG	CR	BP	LI	RA	OS	PB	PD
Industrial and Wholesale Uses																	
Brewery / Distillery / Winery	§ 2-2-3-16	-	-	-	-	-	-	-	-	-	-	S	A	-	-	-	A[2]
Extraction, Coal, Gravel, Minerals, or Sand	§ 2-2-3-16	-	-	-	-	-	-	-	-	-	-	-	C	C	C	-	A[2]
Extraction, Minor Oil and Gas Facility	Division 4-4-10	-	-	L	L	L	-	-	-	L	L	L	L	L	L	L	A[2]
Extraction, Major Oil and Gas Facility	Division 4-4-10	-	-	C	C	C	-	-	-	C	C	C	C	C	C	C	C
Heavy Industry	§ 2-2-3-16	-	-	-	-	-	-	-	-	-	-	C	L	-	-	-	A[2]
Light Industry	§ 2-2-3-16	-	-	-	-	-	-	-	-	-	L	A	A	-	-	-	A[2]
Wholesale	§ 2-2-3-16	-	-	-	-	-	-	-	-	C	L	A	A	-	-	-	A[2]

Durango's use table above provides a cross-reference to additional standards applicable to each land use (column in red).

Source: online.encodeplus.com/regs/durango-co/doc-viewer.aspx#secid-95

Similarly, **San Miguel County** adopted use-specific standards as part of its zoning code amendments prepared for the Wright's Mesa area in 2010. The standards reflect efforts in a rural community to control the size and scale of various uses such as logging, stables, and feedlots. Many standards focus on natural protection issues such as wildlife habitat and water quality protection.

ADVANTAGES AND KEY TALKING POINTS

Developing use-specific standards to address potential hazard risks can be undertaken along with other zoning code amendments, and offer the following benefits:

- Accommodate safety and nuisance protection while allowing reasonable economic use of the property. A particular use might still be viable on a site, as long as it meets additional conditions.
- Can be tailored to a community's needs. Use-specific standards can apply to a land use in certain geographies, zoning districts, or based on adjacencies. They can also be drafted to require a higher level of scrutiny through the approval process.
- Use-specific standards encourage consistent treatment of similar uses across the board.
- Use-specific standards can accomplish multiple community goals. For example, standards can be drafted for industrial uses that protect surrounding neighborhoods from noise and air pollution, while also preserving open space and natural hazard areas.

CHALLENGES

As with any zoning code amendment, writing and passing new use-specific standards can be politically and administratively challenging. Developers may object to any new standards without a clear rationale. Other potential challenges include:

- Use-specific standards can result in the inability to develop a particular use on a landowner's parcel if it cannot meet defined standards for public safety and welfare.
- Use-specific standards can be perceived as inequitably targeting certain uses in a community.
- Developing use-specific standards requires substantial analysis (e.g., reviewing technical standards as they apply to industry standards and/or researching national best practices) to effectively accomplish the purpose without over-regulating.

MODEL CODE LANGUAGE AND COMMENTARY

Use-specific standards vary widely depending on the community, the type of use being regulated, and the issue being mitigated through the standard. Most use-specific standards are developed under one or more of the following categories:

- **Proximity** – How close can the use be located to another property or another type of land use?
- **Compatibility** – What types of standards ensure that the use will be compatible with surrounding properties, districts, or land uses?
- **Safety** – What conditions are necessary to protect the public health, safety, and welfare of the community?
- **Environmental** – What standards help the community protect its valuable natural environment and resources?
- **Aesthetics** – What types of standards are necessary to protect the overall character of the community from an aesthetic point of view?

For hazard mitigation, most use-specific standards will relate to the categories of **proximity**, **safety**, and **environmental**. Those categories are discussed below, with additional detail on how to apply hazard mitigation principles through use-specific standards. Model language is in blue shading. Commentary is located in *italics* in the column at the right. The model language used in this document is based on several existing ordinances and programs from varying communities around the state, including municipalities and counties. The language is illustrative only; consult local counsel to tailor language for your jurisdiction.

Commentary

Categories of Use-Specific Standards: *Many of the categories of use-specific standards overlap. For example, a use-specific standard aimed at distancing critical facilities from hazard areas ("proximity") could also be considered within the "safety" category.*

Proximity

The physical distance of a proposed new land use from existing land uses, particularly sensitive uses like schools, is an important consideration when local governments evaluate

applications for new development. Proximity to sensitive uses and areas is an important general consideration when communities establish use-specific standards. For example, uses known for generating noise, dust, or odors should not be located close to residential neighborhoods.

The same is true for hazard mitigation. Consider appropriate distance requirements for particular land uses as they relate to hazards or known hazard areas. Examples include:

A. Fueling stations shall be located at least [*150 feet, or appropriate distance as determined by the local fire authority*] from any [*moderate or extreme wildfire risk area – or however defined on local maps*];
B. Hazardous material storage facilities shall be located at least 500 feet from any residential zoning district or residential use;
C. Heavy industrial uses shall be set back from all property lines a minimum distance of [*150-500 feet or more – may vary for residential and non-residential*];
D. Critical facilities, such as public safety facilities, emergency medical facilities, emergency shelters, public utility or distribution plants, communication facilities, and air transportation lifelines and corridors, shall be located at least [*150 feet, or appropriate distance as determined by the local fire authority, or local flood authority*] from any [*moderate or extreme wildfire risk area, or flood hazard area – or however defined on local maps*];

Considerations for Use-Specific Standards: *When developing use-specific standards, use the local hazard mitigation plan (especially the risk assessment) to identify particular vulnerabilities to certain hazards. Then, review the table or list of land uses permitted within the community to determine which uses could potentially create, exacerbate, or be largely impacted by the potential hazards in the community. With that information, review current use-specific standards to determine if additional standards are necessary to reduce the overall risk to hazards.*

In addition, similar proximity standards can also apply to uses where large numbers of people visit at one time, or to densely populated residential development. These uses may include religious institutions, hospitals, stadiums, hotels, community centers, and schools. For example, a community may want to prohibit a hotel or school from locating in an area with steep or unstable slopes whereas a single-family home could do so with proper mitigation.

Safety

The safety of individuals is an important consideration for land use regulations. For hazard mitigation, this means keeping people out of harm's way and paying particular attention to critical facilities and vulnerable or at-risk populations.

As an example, the Colorado Water Conservation Board (CWCB) Rule 6 for regulatory floodplains in Colorado requires uses under the following categories to be given special

attention (location and/or elevation or floodproofing) through adopted floodplain regulations:

A. Critical facilities. Critical facilities can include many types of services and uses, including:

1. Public safety (police, fire, and emergency operation centers)
2. Emergency medical (hospitals, ambulance service)
3. Emergency shelters
4. Public utility plants or distribution
5. Communications (telephone, television, power, gas, internet, others)
6. Air transportation lifelines and corridors (airports, helipads)

Critical Facilities: *Critical facilities should be identified in the local hazard mitigation plan. If a local hazard mitigation plan does not exist, this section is a good starting point for consideration.*

The best practice is to locate critical facilities outside the floodplain and other high risk areas.

B. Hazardous materials facilities. These types of uses can include:

1. Chemical plants
2. Laboratories using volatile materials
3. Refineries
4. Hazardous waste storage or disposal sites
5. Above ground storage of volatile materials

C. Vulnerable populations. Vulnerable or at-risk populations may include:

1. Elderly care facilities
2. Day care homes or facilities for youth or disadvantaged
3. Institutions of learning

D. Facilities vital to restoring normal services. This includes:

1. Essential governmental operations
2. Essential structures for colleges and universities

Under the CWCB rule, uses in one or more of these categories shall be protected using one of the following:

A. Location outside the regulatory floodplain; or
B. Elevation or floodproofing the structure per the standards outlined in the Rule.

This concept could be further expanded to other hazards and other facilities and could include other mitigation for safety purposes, such as:

A. Requiring a conditional use when located within a designated wildland-urban interface area;
B. Requiring a truck routing plan for heavy industrial uses;
C. Required submittal of a geotechnical report for areas within a mapped geologic hazard area; and/or
D. Emergency ingress and egress provisions.

Conditional Use: Requiring a conditional use can ensure that the application will be subject to higher scrutiny among local government departments and other agencies such as the fire department.

Environmental

Similar to protection of life and property, use-specific standards can be used to protect the natural environment. Vulnerable natural areas such as forested land, steep slopes, riparian corridors, and open grasslands can be susceptible to devastation during or following a disaster event. For example, landslides and wildfire can lead to sedimentation and/or flooding of nearby rivers; prolonged periods of drought can lead to increased risk of wildfire in forests and grasslands; and earthquakes can trigger landslides and subsidence of already unstable slopes.

Through use-specific standards, communities can limit the impacts of development on already vulnerable environmental conditions. Consider the following standards that protect environmental areas:

Environmental Standards: Application of environmental standards that are not necessarily associated with a particular use is typically covered elsewhere in the code through sensitive area protection standards. Use-specific standards are generally created when they apply only when certain land uses are involved and would not otherwise pose environmental impacts with other land uses. For example, temporary fireworks stands near forested areas are a potential concern, whereas temporary produce stands are not.

A. Transmission lines shall avoid the following areas:
  1. Slopes greater than 20 percent;
  2. Wetlands;
  3. Forests, unless running near the fringe of a forest and minimizing cutting;
  4. Soils susceptible to erosions that could create pollution or sedimentation issues;
  5. Areas with high-water tables; and
  6. Areas of unstable soils subject to significant slippage.
B. Heavy manufacturing or hazardous manufacturing shall be subject to appropriate conditions including safeguards and performance bonds to protect the health, safety, and welfare of the residents of the community and the natural environment.
C. Industrial wastes shall be disposed of in a manner consistent with federal and state law and the requirements of the Colorado Department of Public Health and Environment. Flammable and/or explosive materials shall be stored in compliance with national, state, and local fire codes with written recommendations from the [*appropriate local fire protection district*].

Limitations on High-Water Uses: Another consideration for limiting environmental impacts is to place limitations on high-water uses (such as golf courses and car washes) during periods of drought. Many communities already have standards in place for these types of uses, so local laws and conditions should be carefully reviewed.

D. General or heavy industrial uses that include manufacturing or processing shall not be located within a [*water protection area, sensitive natural area – or other mapped water conservation area*].

KEY FACTS

Administrative capacity	Experienced planner
Mapping	Technical mapping potentially required if use-specific standards are tied to specific geographic areas or specific mapped hazard areas
Regulatory requirements	Zoning ordinance
Maintenance	Minimal
Adoption required	Yes
Statutory reference	Municipalities (C.R.S. § 31-23-301) and counties (C.R.S. § 30-28-111) are explicitly authorized to regulate the location and use of buildings and structures for trade, industry, residence, recreation, public activities, or other purposes
Associated costs	Staff time

EXAMPLES

City of Durango Land Use and Development Code	online.encodeplus.com/regs/durango-co/doc-viewer.aspx#secid-95 Section 2-1-3-1, Interpretation of Use/Zone Matrices
Garfield County Land Use and Development Code	garfield-county.com/community-development/land-use-code.aspx Use-specific standards, Article 7, Sections 7-601 through 7-1201
City of Longmont Land Use Code	municode.com/library/co/longmont/codes/code_of_ordinances Standards for critical facilities, Section 20.20.080
San Miguel County Land Use Code	www.sanmiguelcounty.org/DocumentCenter/Home/View/221 Wright's Mesa Code Amendments, Section 5-319 H