

FIRST READING June 16, 2009

SECOND READING July 21, 2009

ORDINANCE #5433

AN ORDINANCE AMENDING THE LOVELAND MUNICIPAL CODE AT CHAPTER 16.38 AND CHAPTER 16.43 CONCERNING CAPITAL EXPANSION FEES FOR AFFORDABLE HOUSING

WHEREAS, the Affordable Housing Commission recommends that the City Council adopt an ordinance establishing a predictable schedule for waiver of capital expansion fees and other fees imposed by the City of Loveland upon qualified affordable housing in order to encourage construction of affordable housing in Loveland; and

WHEREAS, the Affordable Housing Commission also recommends that the ordinance contain provisions for reimbursement to the City of fees waived if the qualified affordable housing is sold or rented contrary to the requirements of the Loveland Municipal Code; and

WHEREAS, the City Council finds that adoption of the ordinance is in the best interests of the citizens of Loveland.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:

Section 1. That Section 16.38.070 of the Loveland Municipal Code is hereby amended to read as follows:

16.38.070 Exemption from capital expansion fees – generally.

The city council may by resolution grant an exemption from all or part of the capital expansion fees or any other fees imposed by the city upon new development, whether for capital or other purposes, upon a finding that such waiver is in the best interests of the public by encouraging activities that provide significant social, economic, or cultural benefits. When a capital-related fee is waived pursuant to this section, the city council shall direct that the waived fee be paid by the general fund or another appropriate fund.

Section 2. That subsection A. of Section 16.38.072 of the Loveland Municipal Code is hereby amended to read as follows:

16.38.072 Exemption for Historic Downtown Loveland.

A. The capital expansion fees (CEFs) imposed by this chapter and any building permit fees imposed upon a construction project by the city, shall not be charged or collected for any construction project located within the boundaries of Historic Downtown Loveland. When a construction project is exempt from capital related

fees pursuant to this section, there shall be no reimbursement to the capital expansion fund by the general fund or any other fund, unless the capital-related fee is a utility fee or charge in which case the affected utility fund shall be reimbursed by the general fund.

Section 3. That Section 16.38.075 of the Loveland Municipal Code is hereby amended to read as follows:

16.38.075 Exemption from capital expansion fees – not-for-profit facilities.

- A. The city council may by resolution grant an exemption from all or part of the capital expansion fees or any other fees imposed by the city upon new development, whether for capital or other purposes, upon a finding, set forth in a development agreement, that the project for which the fees would otherwise be imposed will provide not-for-profit facilities open to Loveland area residents that might otherwise be provided by the city at taxpayer expense, that such facilities relieve the pressures of growth on city-provided facilities, and that such facilities do not create growth or growth impacts. When a capital-related fee is waived pursuant to this section, there shall be no reimbursement to the capital expansion fund by the general fund or any other fund, unless the capital-related fee is a utility fee or charge in which case the affected utility fund shall be reimbursed by the general fund.
- B. No certificate of occupancy shall be issued for any not-for-profit facility that obtains a fee waiver pursuant to this section unless a deed restriction or encumbrance, in a form approved by the city attorney, prohibiting the sale of the not-for-profit facility to any person or entity for a use that does not meet the requirements of subsection A. for a period of twenty years from the date on which a certificate of occupancy was first issued for the property. The deed restriction or encumbrance shall contain a provision stating that it is the intent of the parties that the respective rights and obligations set forth in the deed restriction or encumbrance shall constitute covenants, equitable servitudes, and/or liens that run with the land and shall benefit and burden any personal representatives, successors, and assigns of the parties. The deed restriction or encumbrance shall also contain a provision indicating that it automatically expires: (1) if title to property mortgaged by an institutional lender is transferred to the institutional lender, or to the institutional lender's successor or assign, by foreclosure or deed-in-lieu of foreclosure; or (2) twenty years after the date on which a certificate of occupancy was first issued for the property, provided there is no existing default under the deed restriction or encumbrance.

Section 4. That the Loveland Municipal Code is hereby amended by addition of a new Section 16.38.080 to read as follows:

16.38.080 Exemption from capital expansion fees – qualified affordable housing.

- A. The city council may by resolution grant an exemption from all or part of the capital expansion fees or any other fees imposed by the city upon new development, whether for capital or other purposes, upon a finding, set forth in a development agreement, that the project for which the fees would otherwise be imposed is a qualified affordable housing development. When a capital-related fee is waived pursuant to this section, there shall be no reimbursement to the capital expansion fund by the general fund or any other fund, unless the capital-related fee is a utility fee or charge in which case the affected utility fund shall be reimbursed by the general fund.
- B. Exemptions granted pursuant to this section shall be done in accordance with the following tables:
 - 1. If granted for rental housing, the exemption shall be as follows:

Percentage of area median income to be served	Minimum percentage of units in development set aside as affordable housing	Percentage of fees waived for affordable housing only
30%	10%	100%
40%	15%	90%
50%	20%	80%
60%	40%	70%

- 2. If granted for “for-sale” housing, the exemption shall be as follows:

Percentage of area median income to be served	Minimum percentage of units in development set aside as affordable housing	Percentage of fees waived for affordable housing only
40%	5%	90%
50%	10%	80%
60%	15%	70%
70%	20%	60%
75%	25%	25%
80%	30%	15%

- 3. Notwithstanding the above provisions of this paragraph B., the city council may increase the percentage of fees waived under this section upon making a finding in its resolution waiving the fees that such percentage increase will serve a public purpose, which public purpose shall be specified in the resolution.
- C. Exemptions granted pursuant to this section shall be effective for one year from the date on which the exemption is granted unless extended by the city council for good cause shown. Any such extension shall be set forth in an amendment to the development agreement approved by resolution of the city council.

Section 5. That Section 16.38.085 of the Loveland Municipal Code is hereby amended to read as follows:

16.38.085 Capital expansion fees for qualified affordable housing.

- A. As used in this section, the term "application" shall mean a substantially complete application for approval of a qualified affordable housing development that has been submitted to the city in compliance with applicable ordinances, rules, and regulations, and the term "first application" shall mean the original application at the first stage of any process that may culminate in ultimate approval of a site specific development plan for a qualified affordable housing development.
- B. Capital expansion fees, water rights requirements and fees, and any other fees imposed by the city upon a qualified affordable housing development, whether for capital or other purposes (collectively, "development fees"), shall be calculated as of the date the first application for the qualified affordable housing development was submitted to the city. The development fees calculated under this section shall be valid for five years from the date on which the housing development is first qualified as affordable.
- C. For housing developments qualified as affordable on or after July 1, 2009, the following rules shall apply:
 1. At the end of the five-year period set forth in paragraph B. above, the development fees shall be calculated each year thereafter on the basis of those development fees in effect five years prior. This adjustment shall continue each year until the last affordable housing unit within the affordable housing development receives a building permit, or the housing development loses its affordable designation in accordance with subparagraph C.3. below.
 2. In the event any such fees are reduced or eliminated after the date of the first application for the qualified affordable housing development, the owner or developer of the qualified affordable housing development shall receive a credit in the amount of such reduction at the time such fees for the qualified affordable housing development are paid.
 3. At the end of ten years, the housing development shall lose its affordable designation unless at least one affordable housing unit within the housing development has received a certificate of occupancy, in which case the development fees shall continue to be calculated as set forth in subparagraph C.1 above. Notwithstanding the foregoing, any developer that has not obtained a certificate of occupancy at the end of the ten-year period may request that the affordable housing commission consider and make a recommendation to the city council to extend the development's affordable designation and the fee reduction provided for herein for good cause shown. Any such extension shall be set forth in a development agreement approved by resolution of the city council.

- D. For housing developments qualified as affordable prior to July 1, 2009, the following rules shall apply:
1. The housing development shall lose its affordable designation unless at least one affordable housing unit within the housing development has received a certificate of occupancy within twelve years of the date on which it was first qualified as affordable.
 2. Notwithstanding the foregoing, any developer that has not obtained a certificate of occupancy at the end of the twelve-year period may request that the affordable housing commission consider and make a recommendation to the city council to extend the development's affordable designation and the fee reduction provided for herein for good cause shown. Any such extension shall be set forth in a development agreement approved by resolution of the city council.
- E. Takings Determinations.
1. The purpose of this subsection is to provide a procedure for relief, where appropriate, for owners of housing developments qualified as affordable prior to July 1, 2009 ("property owners") who claim that their property has been taken by reason of the application of this Section 16.38.085. The provisions and procedures of this subsection shall be followed to conclusion prior to seeking relief from the courts based upon any claim of an alleged deprivation of due process that causes a taking, or any other taking of real property.
 2. The city shall provide property owners with notice of the adoption of this Section 16.38.085 within thirty days of its adoption. Property owners must file a request for relief with the city manager on or before December 31, 2009. When a property owner timely files a request for relief under this subsection, the city manager shall schedule a public hearing for the matter to be heard by the city council no later than sixty days after the date the request for relief is filed.
 3. The city council shall conduct the public hearing. The council shall adopt at the public hearing, or within thirty days of the public hearing, its written findings and conclusions. The city council's written findings and conclusions shall be considered the city council's final decision for purposes of any appeal of the city council's decision to the Larimer County District Court under Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

Section 6. That Section 16.43.080 of the Loveland Municipal Code is hereby amended to read as follows:

16.43.080 Deed restriction for affordable housing units required.

- A. "For sale" units. No certificate of occupancy shall be issued for any "for-sale" single-family dwelling, multi-family building, or duplex containing an affordable housing unit(s) unless: (1) the applicant provides documentation satisfactory to the director of development services that the building for which the certificate of occupancy is requested contains the

required number of affordable housing units identified on the final plat; and (2) a deed restriction or encumbrance, in a form approved by the city attorney, prohibiting the sale of the affordable housing unit(s) to any person or entity other than a qualifying household, and prohibiting the rental of the property, for a period of twenty years from the date of the initial purchase of the affordable housing unit(s) has been placed on the property. The deed restriction or encumbrance shall contain a provision stating that it is the intent of the parties that the respective rights and obligations set forth in the deed restriction or encumbrance shall constitute covenants, equitable servitudes, and/or liens that run with the land and shall benefit and burden any personal representatives, successors, and assigns of the parties. The deed restriction or encumbrance shall also contain a provision indicating that it automatically expires: (1) if title to property mortgaged by an institutional lender is transferred to the institutional lender, or to the institutional lender's successor or assign, by foreclosure or deed-in-lieu of foreclosure; or (2) twenty years after the date of the initial purchase of the affordable housing unit by the initial qualifying household, provided there is no existing default under the deed restriction or encumbrance. All "for-sale" affordable housing units must be owner-occupied.

- B. "For rent" units. No certificate of occupancy shall be issued for any "rental" multi-family building or duplex containing an affordable housing unit(s) unless: (1) the applicant provides documentation satisfactory to the director of development services that the building for which the certificate of occupancy is requested contains the required number of affordable housing units identified on the final plat; and (2) a deed restriction or encumbrance, in a form approved by the city attorney, prohibiting the rental of the affordable housing units to any person(s) other than a qualifying household, and prohibiting the conversion of the affordable housing units from "rental" units to "for-sale" units without the prior written approval of the city, for a period of twenty years from the date of the issuance of a certificate of occupancy. The deed restriction or encumbrance shall contain a provision stating that it is the intent of the parties that the respective rights and obligations set forth in the deed restriction or encumbrance shall constitute covenants, equitable servitudes, and/or liens that run with the land and shall benefit and burden any personal representatives, successors, and assigns of the parties. The deed restriction or encumbrance shall also contain a provision indicating that it automatically expires: (1) if title to property mortgaged by an institutional lender is transferred to the institutional lender, or to the institutional lender's successor or assign, by foreclosure or deed-in-lieu of foreclosure; or (2) twenty years after the date on which a certificate of occupancy was first issued for the property, provided there is no existing default under the deed restriction or encumbrance.
- C. Payment required. If an owner sells a "for sale" unit to a household that does not meet the city's definition of a qualifying household, or rents a "for rent" unit to a household that does not meet the definition of a qualifying household at a rent defined as affordable by the Colorado

Housing and Finance Authority Rent and Income Table, the owner shall pay the city the amounts set forth below.

1. If all or any part of the capital expansion fees or any other fees imposed by the city upon new development were waived in accordance with Section 16.38.080, the owner shall pay the city an amount as required by the following table:

Number of years from original sale (if a "for sale" unit), or number of years from the issuance of the first certificate of occupancy (if a "for rent" unit)	Amount owed to city
1	95% of amount waived
2	90% of amount waived
3	85% of amount waived
4	80% of amount waived
5	75% of amount waived
6	70% of amount waived
7	65% of amount waived
8	60% of amount waived
9	55% of amount waived
10	50% of amount waived
11	45% of amount waived
12	40% of amount waived
13	35% of amount waived
14	30% of amount waived
15	25% of amount waived
16	20% of amount waived
17	15% of amount waived
18	10% of amount waived
19	5% of amount waived
20	\$0

2. If capital expansion fees or any other fees imposed by the city upon new development were not waived in accordance with Section 16.38.080, the owner shall pay the city an amount as required by the following table:

Number of years from date of original sale	Percentage of net proceeds due to city
0-5 years	25%
5-10 years	20%
10-15 years	15%
15-20 years	10%

- D. Hardship waiver. The city council may waive all or any portion of the repayment obligations set forth in this section on a case-by-case basis for good cause shown.

Section 7. That Section 16.43.090 of the Loveland Municipal Code is hereby deleted in its entirety.

Section 8. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

ADOPTED this 21st day of July, 2009.



Eugene N. Pielin, Mayor

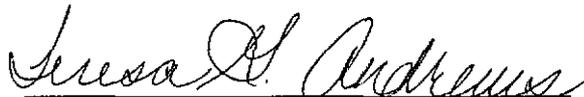
ATTEST:


City Clerk

APPROVED AS TO FORM:


Assistant City Attorney

I, Teresa G. Andrews, City Clerk of the City of Loveland, Colorado, hereby certify that the above and foregoing Ordinance was introduced at a regular (or special) meeting of the City Council, held on June 16, 2009 and was initially published in the Loveland Daily Reporter-Herald, a newspaper published within the city limits in full on June 20, 2009 and by title except for parts thereof which were amended after such initial publication which parts were published in full in said newspaper on July 25, 2009


City Clerk

Effective Date: August 4, 2009