

Strategic Growth Initiative Ballot Language and Ordinance

Title and Submission Clause:

Shall the City of Lakewood limit residential growth to no more than one (1) percent per year by implementing a permit allocation system for new dwelling units, and by requiring City Council approval of allocations for projects of forty (40) or more units?

Purpose/Intent

- Establish a building permit management system that limits residential growth in the City of Lakewood to no greater than one (1) percent per annum, which will assure the preservation of its unique environment and exceptional quality of life;
- Encourage redevelopment of blighted and distressed areas;
- Encourage preservation of larger open space parcels;
- Assure that such growth proceeds in an orderly and timely manner and does not exceed the availability of public facilities and urban services;
- Avoid degradation in air and water quality;
- Avoid increases in crime and urban decay associated with unmanaged growth;
- To allow mitigation of the effects of past and future growth on infrastructure and schools.

Implementation/Exceptions

The provisions of this chapter shall apply to the issuance of building permits for all new dwelling units within the City of Lakewood except:

- 1) Structures located, or to be located, upon land that is designated “blighted”.
- 2) Structures located, or to be located, upon land located on a campus owned by a college or university, including, but not limited to, Colorado Christian University and Rocky Mountain College of Art and Design, and which are used to house only college or university students, staff, or faculty.
- 3) A dwelling unit may be replaced with another dwelling unit without obtaining an allocation, provided that the replacement unit is located on the same parcel, tract, or lot.
- 4) Mobile homes in operating mobile home parks may be removed and replaced with another mobile home without obtaining an allocation.
- 5) Industrial or commercial construction, unless such industrial or commercial construction includes structures which, in whole or in part, are to be occupied as a dwelling.

Administration of this chapter

- 1) Planning commission may recommend and city council may adopt rules as necessary to administer this chapter.

- 2) Calculations performed in the administration of this chapter shall be rounded downward for all partial numbers.

General Provisions

A system of managing the issuance of residential building permits in the city is established with the following general provisions:

- 1) Allocation required for a building permit. Except as otherwise provided in this chapter, an allocation is required as a condition precedent to the issuance of a building permit which will result in the creation of a new dwelling unit. For structures containing more than one dwelling unit, one allocation for each dwelling unit in the structure is required as a condition precedent to issuance of a building permit for such structure.
- 2) Maximum allocations. The city shall not grant more than forty (40) allocations to a development in a calendar year except upon a finding after hearings held upon reasonable notice to the public - pursuant to the provisions of Lakewood municipal code 17.2.2.3 applicable to initial zoning and rezoning - that such accumulation of allocations will not prejudice the allocation process; and:
 - a. That there is an unmet community need for such development; or
 - b. That insufficient applications have been submitted to exhaust the allocations available and such allocations are available for distribution in the current calendar year.
- 3) Residential development projects may be specifically exempted from this ordinance according to either of the following procedures:
 - a. Residential developments may be exempted by the adoption by the electors of the City of Lakewood at a regular or special election of an initiated or referred ordinance enacting such an exemption. Such election shall be held according to the applicable provisions of the Lakewood City Charter, with any expenses covered by the applicant requesting the exemption.
 - b. City council may upon a finding of compliance with the below-listed criteria grant an exemption from the specific provisions of this chapter for a residential development within the city. City council's action shall be by ordinance, shall include two public hearings, and shall occur following public hearing and recommendation by planning commission. Planning commission's hearing and recommendation, and city council's hearing and decision on the requested exemption

shall follow the hearing and notice procedures in section 17.2.2.3 of Lakewood municipal code. City council may grant an exemption from the provisions of this chapter upon a finding that all of the following criteria, as may be applicable, are met:

- i. That the residential project requesting an exemption is a multifamily "senior housing project" which is and will remain housing for individuals over the age of 55; and
- ii. That the project requesting an exemption demonstrates compliance with Lakewood Comprehensive Plan and any applicable neighborhood plan(s); and
- iii. A senior housing project developed based upon an exemption granted shall not be converted to another residential use without first having secured an allocation for each dwelling to be so converted, according to the provisions of this chapter.

- 4) *Period of validity.* Allocations are only valid and can be used only from the date of issue through the last day of the allocation period for which they are issued, at which time they expire, unless a part of an approved banking plan.
- 5) *Use of allocations.* An allocation is used by applying for and being issued a building permit or setting up a mobile home, as applicable. Unused allocations are those for which a building permit has not been issued, or a mobile home not set up, during the period for which the allocation is valid.
- 6) *Surrender of allocations.* Allocations which a recipient does not expect to use during the period for which they are valid may be voluntarily surrendered without penalty at any time up until 30 days prior to the end of that allocation period. Allocations which are surrendered at least 30 days prior to the expiration of the allocation period shall be added to the number of available allocations for the next allocation period in the same calendar year for the same allocation pool, or to the year-end pool, as appropriate. Allocations in the year end pool may not be surrendered.
- 7) *Transferability.* Allocations are site specific and not transferable to other developments. Allocations are issued to a specific building lot, and may only be transferred within a development to other lots which are under the same ownership as the holder of the allocation. Allocations may be transferred with the conveyance of a lot.

Available allocations

- 1) In January of each year city council shall determine by resolution the number of allocations which will be available for issuance and use during that year. The annual resolution shall assign a sufficient number of allocations directly for satisfaction of a previously exempted project(s) whose banking plan(s) included a planning commission recommendation for commitment of future allocations, if city council approves such commitment. The resolution shall then assign those remaining available allocations to the "open pool", "hardship pool", "affordable/low income pool", and "surplus pool", and determine the number of allocations within each such pool as will be available for the respective allocation periods.
- 2) The total number of allocations available for issuance and use during each calendar year shall be equal to one percent of the number of dwelling units which are estimated to exist in the city on December 31 of the prior calendar year. The number of allocations available for issuance for 2018 will be based on figures from the city of Lakewood and the US Census statistics (152,590 residents divided by 2.27 = 67,220) and thus 672 allocations for new dwelling units will be available in 2018.
- 3) The number of dwelling units which exist in the city on December 31 of the prior year shall be estimated as follows:
 - a. Begin with the number of dwelling units in the city which existed at the beginning of the previous calendar year.
 - b. Add the number of new dwelling units for which building permits were issued during the previous calendar year which required an allocation for issuance.
 - c. Add the number of allocations secured by, or assigned to, previously exempted projects or dwellings during the previous calendar year.
 - d. Add the number of dwelling units added to the city by reason of annexations during the previous calendar year.
 - e. Subtract the number of dwelling units which were destroyed (and not replaced within 12 months), abandoned or otherwise ceased to be used as such during the prior calendar year.

- f. Subtract the number of dwelling units for which building permits had previously been issued, but which expired in the previous year without issuance of a certificate of occupancy.

Establishment of allocation pools

For the purpose of administration of this chapter city council hereby creates the following described allocation pools:

- 1) *Open pool*. The open pool is created for all developments within the city that do not otherwise qualify to request allocations.
- 2) *Hardship pool*. The hardship pool is created for distribution of allocations by city council upon a finding that a hardship or unusual circumstance exists which merits relief. All developments otherwise eligible to apply for allocation in general may participate in the hardship pool. Allocations are awarded as requests are granted by city council, and not as of a specified allocation date.
- 3) *Affordable/low income housing pool*. The affordable/low income housing pool is created for distribution of allocations for residential projects creating dwelling units for households earning up to 120 percent of area median income.
- 4) *Surplus pool*. The year-end pool is created for the purpose of distributing unused and excess allocations which are available as of November 1 of each calendar year. All developments otherwise eligible to apply for allocation in general may participate in the surplus pool.

Schedule of allocation periods

- 1) For all calendar years, the open pool will have two allocation periods which occur from January 1 through May 31, and from June 1 through October 31.
- 2) For all calendar years, the hardship pool will have an allocation period from January 1 to October 31.
- 3) For all calendar years, the affordable/low income housing pool will have one allocation period from January 1 through May 31. Excess allocations in the pool at the conclusion of the allocation period will be transferred to the open pool for the allocation period beginning on June 1.
- 4) The surplus pool allocation period will occur from November 1 through December 31.

Applications

- 1) Applications for allocations shall be on a form provided by the city. A separate application submitted by the property owner is required for each allocation period. Except as provided otherwise, complete applications must be submitted to the city at least seven calendar days prior to the beginning of the allocation period for which the application is made. Applications may not be submitted more than 210 days before the beginning of the applicable allocation period. Applications for excess allocations may be made at any time that excess allocations are available, but prior to the last 30 calendar days of any allocation period.
- 2) Eligibility. To apply for allocations, a development must have completed all steps otherwise necessary to apply for and receive a building permit including the requisite zoning and subdivision approval, but not including the preparation of building construction plans. Site development review, if necessary, need not be complete prior to applying for allocations, although a pre-submittal conference and review of the site plan by staff must be completed, with an indication that approval of the concept may be achieved.
- 3) Allocation requests within a development under common ownership shall be combined and treated as a single application. Lots in such developments which are held in separate ownership shall be treated as separate applications.
- 4) No applicant shall request allocations in excess of the lesser of: The available number of allocations in the appropriate pool in that allocation period, or the available number of lots or units in the subject development.

Issuance of allocations

- 1) *Open pool.* For each respective allocation period in the open pool, one allocation will automatically be issued to each applicant if sufficient allocations are available. The remainder of requests is then tallied, and available allocations are distributed on a pro-rata basis to applicants based upon their requested number.
- 2) *Hardship pool.* Hardship pool allocations are distributed by the city council at their discretion upon request from an applicant, and subject to a finding that all of the following conditions exist:

- a. That the issuance of an allocation is necessary to prevent undue hardship on the applicant; and
 - b. That the issuance of an allocation(s) will not adversely affect the public interest or the purposes of this chapter; and
 - c. Allocations are available in the hardship pool; and
 - d. That the requested allocation and the resulting building permit would be proper and in accordance with all of the ordinances and regulations of the City of Lakewood, excepting the provisions of this chapter.
- 3) *Affordable/low income housing pool.* Allocations assigned to the “affordable/low income” housing pool shall only be available for use by qualifying projects in the initial allocation period of each year. Any excess allocations in the affordable/low income housing pool at the end of the initial allocation period of the year will be transferred to the open pool for distribution pursuant to subsection (1) above.
- a. In addition to the application requirements, allocations from the affordable/low income housing pool will contain documentation in a form acceptable to the city attorney of the provisions that will be put in place to assure that rental units created by affordable/low income housing pool allocations will remain available to households making up to 120 percent of area median income for a period of at least 15 years after completion of construction, or assurances that the initial sale of the dwelling units created by the affordable/low income housing pool allocations will be by a bona fide, "arms length sale" to individual households making no more than 120 percent of area median income, and at an initial sales price that is reasonably calculated to allow an otherwise qualified buyer to obtain a loan for the purchase of the dwelling unit with a down payment of no more than 20 percent of the sale price.
 - b. If the number of affordable/low income housing pool allocations requested does not exceed the number assigned by city council, the allocations will be distributed in the same manner as the open pool. However, if the number of allocations requested exceeds the number of allocations available in the affordable/low income housing pool, the applications will be presented to Planning Commission for review. The Planning Commission will award the affordable/low income housing

pool allocations to those proposed dwelling units serving the households with the lowest area median income. In such circumstances, no building permit shall be issued based upon any preference pool allocations until 16 days after the Planning Commission has issued a decision. Any aggrieved party may appeal the Planning Commission decision to City Council. Applicants for allocations from the affordable/low income housing pool may amend the application submitted to change from the affordable/low housing pool to the open pool, at any time prior to the beginning of the allocation period.

- (4) *Surplus pool.* All unused open pool and hardship pool allocations which remain on November 1 of each year will be available in the surplus allocation pool. One allocation will automatically be issued to each applicant if sufficient allocations are available. The remainder of requests is then tallied, and available allocations are distributed on a pro rata basis to applicants based upon their requested number. Allocations which are unclaimed during the surplus pool or which are due to expire will be assigned by the city council. Acquisition of the final remaining allocation by a banking plan for a specific project during the surplus pool shall trigger the expiration of the banking plan at the end of the first allocation period in the following year.
- (5) *Insufficient allocations.* Except as noted above, if there are insufficient allocations available to issue at least one allocation to each applicant for a particular allocation period due to demand, a lottery shall be held to determine the recipients of the allocations. Those applicants who are unable to obtain an allocation during that particular allocation period will be given first preference to receive an allocation in the following allocation period in the same pool if a timely application is filed.
- (6) Following the issuance of allocations, staff shall present a report to planning commission and city council summarizing the results of the allocation period.

Banking of allocations

Notwithstanding any other provisions of this chapter, the period of validity of an allocation may be extended through, and the allocation may be used in subsequent allocation periods upon approval by the city as provided in this section. The process of extending the period of validity of allocations in this section is as follows:

- (1) Banking of allocations will be permitted in the following circumstances only:
 - (a) The director of planning shall approve an application for banking of allocations for residential projects of forty (40) units or fewer if the number of units to be banked corresponds to that found in an entire building or buildings in the project, and if the allocations are proposed to be used within the same calendar year as the initial award of allocation.
 - (b) The Planning Commission may approve a banking plan for multifamily projects of forty (40) units or fewer for the purpose of banking beyond the end of a calendar year, upon a finding that building configuration, site constraints, or infrastructure phasing reasonably require that a larger increment of the development be built at one time.
 - (c) The Planning Commission may approve a banking plan for residential projects of forty (40) units or fewer upon a finding that building configuration, site constraints, or infrastructure phasing reasonably require that a larger increment of the development be built at one time.
- (2) Application for banking of allocations for projects over forty (40) units shall be made at the time of the allocation application. The application shall set forth a banking plan which includes the total number of dwelling units in the project, the number of allocations sought to be banked, the time period during which the validity of allocations is proposed for extension, and the reason therefore.
- (3) For applications submitted under subsection (1)(b) or (1)(c) of this section, the planning commission shall determine at a hearing upon reasonable notice to the public has been posted, whether the requested banking is appropriate as provided in this section.
- (4) A nonrefundable fee shall be assessed in conjunction with each approved multiyear banking plan to cover the city's cost of the administering banking plans. The fee shall be set by city council by resolution and shall be based upon the number of dwelling units in the approved banking plan. The fee shall be payable on a pro rata (per unit) basis at the time of distribution of allocations to the banking plan. Failure to pay any installment of the fee within 30 days of distribution of allocations to the banking plan shall cause a forfeiture of such allocations.

- (5) A decision of the planning commission or the director of planning with respect to an application to bank allocations may be appealed to the city council.
- (6) Requests for banking of allocations beyond the end of the calendar year of the application shall be subject to the following conditions:
 - (a) The maximum number of years in which allocations may be acquired pursuant to any banking plan of allocations shall be five. All allocations acquired within the banking period must be used during this time period.
 - (b) The maximum number of allocations that may be in the bank at any one time during the banking program shall not exceed the total number of allocations available in the city in the first year of approval of said banking.
 - (c) Banking plans will be approved only for a number of units which correspond to that found in an entire building or buildings in the project.
 - (d) Subject to city council's annual distribution of allocations, planning commission may recommend a commitment of future allocations to an approved banking plan project. Such commitment shall not bind city council's action, but shall serve to be an indication of support for a specific project.
- (7) Surrendered or forfeited allocations distributed to an approved banking plan from calendar years prior to the year during which they are surrendered or forfeited shall be deemed to have expired and shall not be available for distribution. Surrendered or forfeited allocations distributed to an approved banking plan in the same calendar year in which they are surrendered or forfeited shall be made available for redistribution in accordance with the applicable provisions of this ordinance.
- (8) The planning commission, may, upon a show of good cause, approve an extension of up to one year to an existing banking plan, to allow use of the banked allocations. The holder of the allocations may not acquire further allocations during the period of such extension.
- (9) For the purpose of defining the total number of available allocations, the total number of dwelling units in the city shall not include banked allocations which have not received building permits.

- (10) An applicant banking allocations within the same calendar year, shall notify the director of planning in writing within ten days after the allocations are granted of the number of allocations being banked and the reasons therefore.
- (11) The annual reports to planning commission and city council pertaining to the administration of this chapter shall include information regarding the number of banked allocations approved in the current year, used in the current year, and the total number of banked allocations by individual project.
- (12) Approval of a "banking plan" shall not constitute a "vested right" to develop the project.

Excess and unused allocations

- (1) Excess allocations in the open pools will be used to supplement other approved banking plans.
- (2) Excess allocations which have not been issued at the end of the allocation period and unused allocations will be added to the available number of allocations for the next allocation period in the same calendar year for the same pool, or to the surplus pool, as appropriate.

Failure to use allocations; penalties

- (1) Failure to use an allocation which is not part of an approved banking plan during the period for which it is issued, without surrendering it at least 30 days prior to the expiration of the allocation period for which it has been issued, shall cause the holder of such allocation to be ineligible to receive allocations for a period of one year from the last day that the unused allocation is valid. This penalty may be waived by the planning commission for good cause.
- (2) Failure to use an allocation which is part of an approved banking plan during the period of the banking plan, without surrendering it at least 60 days prior to the expiration of the period of the banking plan, shall cause the holder of such allocation to be ineligible to receive allocations for a period of two years from the last day that the unused allocation is valid. This penalty may be waived by the planning commission for good cause.
- (3) Use of an dwelling unit constructed by reason of an allocation from the affordable/low income housing pool in a manner inconsistent with the affordability criteria listed in this ordinance, or contrary to the assurances

provided pursuant to such section, including, without limitation the initial sale of a dwelling unit at a price that exceeds the maximum price contemplated in such section, shall cause the holder of such allocation to be ineligible to receive further allocations for a period of three years from the date of the violation. This penalty may be waived by the planning commission for good cause.

Building Permit Approvals

All building permit applications will be reviewed within fifteen working days after submission of a complete application. At the end of the building permit review period, either a building permit will be made available for issuance or reasons will be given to the grantee why the permit cannot be issued, in which case the grantee has twenty work days in which to submit all required corrections. If the corrections are not completed in the time and manner required, the building permit application and related allocation are void unless reinstated by the city manager upon a finding that a longer increment of time would be reasonable.

Mandatory Review

- 1) City Council shall review this ordinance once every five years or as needed. City Council may temporarily reduce the 1% limit at will. Should City Council determine an increase in allocations is needed, council must send such requested increase to the voters of Lakewood.

Severability clause

If any part, section, sentence or clause of this Ordinance shall for any reason be questioned in any court and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions of this Ordinance. Any such part, section, sentence or clause shall not be taken to affect or prejudice in any way the remaining part or parts of this Ordinance.

Authority to Continue

Any building permit that has gone through the processes necessary to secure a building permit, including, but not limited to, rezoning and subdivision, and was legally and formally applied for prior to adoption of this ordinance, may be continued without obtaining an allocation.

Definitions

The following terms are defined for purposes of this chapter.

Allocation: "Allocation" means a right, granted by the city pursuant to this chapter, to make application for a building permit to build one dwelling unit. An allocation is not a guarantee of receiving approval for a building permit. Approval of the building permit itself will occur through the established building permit review process.

Allocation pools. "Allocation pools" mean separate categories of developments as described in this chapter which are created for the purpose of distributing available allocations.

Area median income. "Area median income" (AMI) means the median annual household income for Jefferson County, as adjusted by household size, and published annually by the United States Department of Housing and Urban Development.

Building permit. "Building permit" means a permit issued pursuant to the provisions of the Lakewood Municipal Code.

- Building permits shall be allocated in accordance with the provisions of this chapter such that those issued shall result in no more than a one-percent annual increase in the number of dwelling units.

Development. "Development" means the entire plan to construct or place one or more dwelling units on a particular parcel or contiguous parcels of land within the city including, but not limited to, a subdivision approval, a planned unit development, and a mobile home park.

Dwelling Unit: One or more habitable rooms constituting a unit for permanent occupancy, with facilities for eating, sleeping, bathing, that occupies a structure or a portion of a structure.

Excess allocations. "Excess allocations" means allocations which are available for issuance from a particular allocation pool and period, but which have not been issued by reason of lack of demand.

Good cause. "Good cause", when used as a basis for relief from timely compliance with specifically referenced provisions of this chapter, means the existence of unanticipated circumstances which are beyond the control of the property owner and which prevented timely compliance with the referenced provisions of this chapter. "Good cause" shall not include delays which are reasonably expected in the development process, including, but not limited to, preparation of plans or a securing of financing. The existence of "good cause", and availability of relief by reason thereof, shall be determined after a public hearing conducted by the planning commission. A party aggrieved by the decision of the planning commission on such issue may, within 15 days of the date of the decision thereon by the planning commission, apply to the city council for a review of said decision by filing a request for review with the city clerk. The city council shall, within 30 days of receipt of the review request, and based upon the record alone as certified to council by the planning commission, decide to uphold, deny, or modify the decision of the planning commission.

Lottery. "Lottery" shall mean a drawing held by the city to select applicants which will receive an allocation through a process based upon random chance. Each applicant in a lottery shall be treated equally regardless of the number of allocation requests.

Pro-rata. "Pro-rata" means the issuing of allocations to applicants in the same proportion that the total number of available allocations bears to the total number of requested allocations, as modified and elaborated in this chapter. For example, if applications for twice the number of allocations were received than the number available, each applicant would be granted approximately one-half the number requested.

Set-up. "Set-up", when used in connection with mobile homes, means the process of setting up a mobile home for the purpose of occupancy as a residence including by way of example, connection to utilities and installation tie-downs.

Unused allocation. "Unused allocation" means an allocation which has been issued but for which a building permit has not been issued or a mobile home set-up, as applicable, during the period for which the allocation is valid.