ORDINANCE NO. 11, SERIES 2013 INTRODUCED BY: MAYOR PRO TEM KRACHA

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAFAYETTE, COLORADO, AMENDING ARTICLE XI, OF THE CODE OF ORDINANCES OF LAFAYETTE, COLORADO REGARDING RESIDENTIAL GROWTH MANAGEMENT

WHEREAS, Sections 6.10 through 6.15 of the City of Lafayette Home Rule Charter provides for a system of Residential Growth Management that limits the number of new dwelling units that may be constructed within the City; and

WHEREAS, Section 6.10 of the City of Lafayette Home Rule Charter was significantly amended by a vote of the people in the November 6, 2012, election to require City Council to allocate the number of new dwelling unit permits over a six year period, to adopt an ordinance pertaining to the criteria to be used in such allocation, and to exempt from the Residential Growth Management Program certain properties, including those who had received priority prior to November 6, 2012; and

WHEREAS, Article XI of Chapter 30 of the Lafayette Code of Ordinances implements the residential growth management provisions of the Lafayette Home Rule Charter; and

WHEREAS, in accordance with the provisions of Section 6.10 of the Charter, the Lafayette City Council wishes amend Article XI of Chapter 30 of the Lafayette Code of Ordinances to implement the 2012 amendments to Section 6.10 of the Charter.

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

<u>Section 1.</u> That Article XI of Chapter 30 of the Code of Ordinances of the City of Lafayette, Colorado, be amended to read as follows:

ARTICLE XI. RESIDENTIAL GROWTH MANAGEMENT

Sec. 30-269. - Findings.

The City Council of the City of Lafayette, Colorado, finds that there is substantial evidence from comprehensive plan and long range planning studies that excessively rapid community growth coupled with substantial demand for construction of new dwelling units within the city has the potential to strain the capacities of public facilities and services. Specifically, the city council finds that demand for construction of new dwelling units may, in the short term, exceed:

- (1) The ability of the city to deliver and treat additional water;
- (2) The ability of the city to treat sewage safely within acceptable federal and state standards;

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(3) The ability of the city to acquire and store sufficient additional raw water resources to meet all seasonal water needs of the existing community when added to increased demands from additional dwelling units.

The city council further finds from a review of the comprehensive plan and long range planning studies and budget documents of the city, and from a review of the city's capital programs and its plans to expand the city's existing water treatment and wastewater treatment plants, that sound management of the city's fiscal condition and management of the city's future growth mandate a plan for growth management.

The city council further finds that it has enacted certain review criteria pertaining to all residential planned unit developments codified in section 26-18-5 of this Code, and that proper application of said criteria may require management of the city's future growth.

The city council further finds that the adoption of Article X, Section 20 of the Colorado Constitution mandates a steady and substantially uniform growth from year to year, in order to protect the city's ability to provide municipal services to its existing and future citizens.

On November 7, 1995, the city's electors adopted an amendment to the city's Charter, finding that it is the will of the people of Lafayette to maintain the economic, social and environmental advantages of having a small town character; that it is the will of the people of Lafayette to prevent actions that will increase city operating and capital construction expenses that would necessitate a tax increase or increases for these purposes; and determining that a cap of two hundred (200) dwelling units per year, allowing for approximately three (3) percent annual growth in the existing population of Lafayette, is an appropriate level of growth to preserve and maintain the economic, social and environmental advantages of having a small town character and preserving the quality of services provided by the city to its citizens and the quality of life enjoyed by those citizens. The City Council of the City of Lafayette hereby adopts these findings by the city's electors.

The city council further finds that on November 7, 2000, the city's electors adopted an amendment to the Charter stating that (i) the approximately twelve-acre parcel located in the SE quarter of Section 35, Township 1 North, Range 69 West, north of the intersection of Brooks Avenue and Dounce Street, shall be exempt from the limitations of section 6.10 of the Charter so long as it is developed for residential purposes by the Boulder County Housing authority or its agent, and (ii) that dwelling units located within mixed use building complexes within the Urban Renewal Area - Lafayette Old Town, as that area existed as of January 1, 2000, shall also be exempt from the limitations of section 6.10 of the Charter.

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The city council further finds that on November 6, 2001, the city's electors adopted an amendment to the Charter stating that (i) in addition to the other dwelling units authorized by section 6.10 of the Charter, the city council may authorize the construction of up to fifty (50) permanently affordable dwelling units per year, and (ii) "permanently affordable dwelling unit" shall mean a dwelling unit that is deed restricted for perpetuity to permit persons whose household income is less than or equal to eighty (80) percent of the then-current Boulder County area median income, as may be adjusted from time to time, to qualify to purchase or rent the dwelling unit, and (iii) unissued building permits for permanently affordable dwelling units may not be carried forward from year to year, but the council may approve the issuance of building permits for more than fifty (50) permanently affordable dwelling units in a single calendar year if the number of building permits for permanently affordable dwelling units approved in the following year is reduced by an equal amount.

The city council further finds that on November 6, 2012 the city's electors adopted an amendment to the Charter stating that the total number of new dwelling units between January 1, 2013, and January 1, 2019, shall not exceed one thousand two hundred (1,200), and that city council shall adopt an ordinance setting out criteria it will utilize in determining the annual number of new dwelling units that are allowed to be built in any such year, which will address allocation of permits for new dwelling units over the entire six (6) year period. In addition, this Charter amendment stated that those developments within the City for which city council, prior to November 6, 2012, had determined and assigned by resolution a priority classification and building permit allocation pursuant to the City's Residential Growth Management Program that was in place prior to November 6, 2012, shall be exempt from the above limitation and may receive such building permits without regard to the calendar year for which their permits were allocated, but only to the extent that such properties are developed substantially in compliance with the approved preliminary plan upon which their allocations are based, and that those properties within the City that, prior to November 6, 2012, were eligible to be in the category of "otherwise entitled to priority," pursuant to the City's Residential Growth Management Program, by reason of commitments made by the City that existed prior to May 23, 1995, with respect to annexation, shall be exempt from the above limitation.

The city council further finds that section 6.10 of the Charter is not self-executing, and it is therefore necessary to adopt, by ordinance, certain policies and procedures as set forth in this article, to implement the Charter requirements and to administer the issuance of residential building permits in accordance with the Charter's requirements.

Based on its review and its knowledge of future growth plans of the city, the city budget and capital programs, various comprehensive plan and long range planning studies, reports from its water engineers and attorneys, and in consideration of the review criteria applicable to residential P.U.D.s, and in order to comply with the requirements of

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section 6.10 of the Charter, the City Council of the City of Lafayette finds that it is essential to the public health, safety and welfare of all the residents and property owners within the city, both present and future, and it is further essential in order to maintain and promote orderly and planned growth, that a reasonable balance be maintained between the construction of additional buildings creating new demands on city services and facilities and the ability of the city to expand its services and facilities. In order to achieve such a balance, the city council finds that the issuance of building permits, which controls all new construction, should be managed in accordance with the provisions set forth in this article.

Sec. 30-270. - Definitions.

City means the City of Lafayette, Colorado.

Development (when used as a noun and when the context requires) mean any proposed or approved residential project, including residential subdivisions and planned unit developments, that are intended to increase the number of dwelling units within the City.

Development's Annual Allocation means the maximum number of building permits for new nonexempt dwelling units, as established or modified by city council on an annual basis as provided herein, that may be issued to or on behalf of any nonexempt development in any particular calendar year.

Development's Annual Allocation schedule means the multi-year (if necessary) projection, as established or modified by city council as provided herein, of a particular development's annual allocations that will accommodate full build-out of the development.

Dwelling Unit means a structure or portion of a structure designed for occupancy as a residence by a single-family or a single housekeeping unit.

Exempt Dwelling Unit means any dwelling unit:

- i. in a single-family residence, a duplex, a triplex or a four-plex constructed on a lot that existed pursuant to a recorded plat, prior to May 23, 1995, or on a lot that results from the subdivision of any lot that existed pursuant to a recorded plat, prior to May 23, 1995; or
- ii. constructed on the approximately twelve-acre parcel located in the SE quarter of Section 35, Township 1 North, Range 69 West, north of the intersection of Brooks Avenue and Dounce Street, so long as said parcel is developed for residential purposes by the Boulder County Housing authority or its agent; or

- iii. constructed within mixed use building complexes within the Urban Renewal Area Lafayette Old Town, as that area existed as of January 1, 2000; or
- iv. constructed within any developments within the city for which city council, prior to November 6, 2012, had determined and assigned by resolution a priority classification and building permit allocation pursuant to the city's residential growth management program that was in place prior to November 6, 2012, but only to the extent that such properties are developed substantially in compliance with the approved preliminary plan upon which their allocations are based; or
- v. constructed on those properties within the city that, prior to November 6, 2012, were eligible to be in the category of "otherwise entitled to priority," pursuant to the city's residential growth management program, by reason of commitments made by the city that existed prior to May 23, 1995, with respect to annexation.

Nonexempt Dwelling Unit means any new dwelling unit that is not an exempt dwelling unit or a permanently affordable dwelling unit.

Nonexempt Dwelling Unit Maximum means the number of nonexempt dwelling units authorized by the city council for construction during the current year, in accordance with section 30-271(b).

Permanently Affordable Dwelling Unit means a dwelling unit that is deed restricted for perpetuity to permit persons whose household income is less than or equal to eighty (80) percent of the then-current Boulder County area median income, as may be adjusted from time to time, to qualify to purchase or rent the dwelling unit.

Permanently Affordable Dwelling Unit Maximum means the number of permanently affordable dwelling units, if any, authorized by the city council for construction during the current year, in accordance with section 30-271(c).

Sec. 30-271. - Establishment of dwelling unit maximum.

(a) By January 31 of the first year of each six (6) year growth management cycle, as referenced in section 6.10 of the Charter, city council shall adopt a resolution designating the number of building permits for nonexempt dwelling units that will be made available to allocate to nonexempt developments during the first half of the six (6) year cycle, with the balance of the total number of building permits allowed by section 6.10 of the Charter for that six (6) year cycle being be reserved for allocation to nonexempt developments during the second half of the cycle (the "Cycle Distribution Resolution"). For the purposes of the Cycle Distribution Resolution, an allocation to a nonexempt development shall be deemed to occur u

pon approval of the development's annual allocation schedule and shall consist of the total number of building permits assigned to the developer for the entire period of the schedule.

- (b) By January 31 of each year city council shall adopt a resolution that will establish the nonexempt dwelling unit maximum for the current year and the anticipated nonexempt dwelling unit maximum for the following year (the "Annual Resolution"). In adopting each Annual Resolution, the city council shall take into consideration each of the following:
 - (1) The water and sewer service capability of the City available for commercial and industrial development.
 - (2) The water and sanitary sewer service capability of the City available for special and unanticipated needs of the city.
 - (3) The anticipated pace of dwelling construction of all nonexempt units, as well as prior commitments that the City has made to issue building permits, such as development agreements, vesting agreements or permanently affordable housing project authorized by this section.
 - (4) The number of dwelling units which can be served with utilities during the applicable calendar years.
 - (5) The provisions of section 6.10 of the Charter, all of the factors listed in section 30-269 of the Lafayette Code of Ordinances, the findings stated in this article, the review criteria applicable to residential P.U.D.s set out in section 26-18-5 of the Lafayette Code of Ordinances, the needs of the community, and the city's ability to service additional growth.
- (c) The city council may, by resolution at any time, authorize the issuance of building permits for the construction of up to fifty (50) permanently affordable dwelling units per year, which authorization shall be the permanently affordable dwelling unit maximum for the current year. Notwithstanding the foregoing, the council may approve the issuance of building permits for more than fifty (50) permanently affordable dwelling units in a single calendar year if the number of any building permits for permanently affordable dwelling units authorized for issuance in the following year is reduced by an equal amount.
- (d) At any time when the city council shall find that the actual pace of development within the city requires, in the best interests of the city, an adjustment to the Annual Resolution's nonexempt dwelling unit maximum, the city council may, by resolution, adjust any or all of said nonexempt dwelling unit maximums for the current year, so long

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as the total number does not exceed the number authorized by the Cycle Distribution Resolution. In making such an adjustment, the city council shall consider all of the criteria set forth in subsections (b) and (c) of this section.

(e) At any time when the city council shall find that the an adjustment to the Cycle Distribution Resolution is in the best interest of the city, the city council may amend the Cycle Distribution Resolution to adjust the number of building permits available for allocation during the first half or the second half of the six (6) year growth management cycle, provided that the total number of dwelling unit allocations may not exceed the number authorized by the City Charter.

Sec. 30-272. - Conditions for residential building permit issuance.

- (a) No building permits for structures containing new, nonexempt or permanently affordable dwelling units, which will require new or enhanced city utility services, shall be issued to permit the construction of dwelling units in excess of the nonexempt dwelling unit maximum, or the permanently affordable dwelling unit maximum, respectively, in effect for the current calendar year.
- (b) At any time after approval of a sketch plan for a development, but before that development receives final plat approval, the city council shall, by resolution, determine whether said development is, or is not, exempt from the growth management limitations of section 6.10 of the Charter. Any development that is not found to be exempt from the limitations of section 6.10 of the Charter ("nonexempt development") will receive building permits for new dwelling units only upon compliance with the process and procedures as provided in this Article.
- (c) Residential building permits for permanently affordable dwelling units will be issued on a first-come, first-served basis, permitting the construction of permanently affordable dwelling units up to the permanently affordable dwelling unit maximum authorized under the provisions of section 30-271(c) for any given calendar year. After the permanently affordable dwelling unit maximum has been reached, residential building permit applications for permanently affordable dwelling units will be accepted and placed on a waiting list. When residential building permit issuance for permanently affordable dwelling units is resumed, those applications on the waiting list will be processed in the order in which they were received, and prior to the processing of any new applications.
- (d) Residential building permits for nonexempt dwelling units will be issued on a first -come, first-served basis, but only up to the amount of a development's annual allocation, as determined below, authorizing the construction of nonexempt dwelling units up to the nonexempt dwelling unit maximum authorized for any given calendar year:

- (1) Each proposed nonexempt development shall submit its projected annual allocation requirements for the issuance of dwelling unit permits with the preliminary plan submittal. The preliminary plan for such development shall not be approved if the total allocation requirement for build-out of the development cannot be fulfilled under the City's growth management limitation, as established by this Article. If such total allocation requirements can be fulfilled, the Planning Director will assign to the development in conjunction with preliminary plan approval a proposed development's annual allocation and schedule for dwelling unit building permits in sufficient numbers to achieve the proposed build-out of the development. The proposed development annual allocation and schedule shall be subject to approval by city council in conjunction with the development's Final Plan
- (2) Beginning in the calendar year following the approval of a nonexempt development's final plan, and every year thereafter until build-out, each nonexempt development shall submit a "building permit status report", which may request a modification to development's annual allocation for the next calendar year. The building permit status report shall be in written form and shall be submitted to the Planning Director no sooner than December 1, and no later than December 15. In November city staff shall send written notice to the affected developments advising the development of the requirement to provide a building permit status report. Such notice shall be by U.S. mail, and shall be addressed to the last address that the developer has on file with the city. The purpose of the building permit status report is to ensure that the pace of construction (by reference to the issuance of building permits for dwelling units) reasonable conforms to the schedule for the development's annual allocation. Each building permit status report shall include the following information:
 - a. The most current development's annual allocation schedule and the original development's annual allocation schedule as approved in conjunction with development's final plan;
 - b. The actual number of dwelling units for which building permits were issued within the nonexempt development, on a month-by-month basis for the current calendar year;
 - c. The number of dwelling units allocations that are being requested, and are reasonably anticipated to be utilized in the next calendar year"
 - d. Any additional information necessary to justify the annual allocation number requested.
- (3) The Planning Director shall take into account the information included in the building permit status report and shall recommend a development's annual allocation for each nonexempt development to city council as part of the next

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Annual Resolution. If a nonexempt development's actual permitted dwelling units are less than seventy percent (70%) of its annual allocation for the preceding year, then the Planning Director may recommend that city council reduce the development's annual allocation to the actual number of dwelling units permitted in the development during the preceding year, plus twenty percent (20%) of the actual number of dwelling units permitted during the preceding year. If a nonexempt development maximized, or came within ten percent (10%) of maximizing, its annual allocation during the preceding year, then the Planning Director may recommend city council increase the development's annual allocation, if an increase has been requested by the developer.

- (4) In the event that a nonexempt development's annual allocation is modified to a lesser number, the development will not lose its right to the total number of dwelling units necessary to build-out the development. However, the developer's annual allocation schedule shall be modified to reflect a reduction in future years of the same number, and the number of years for build-out to occur will be extended in order to accommodate the slower construction pace. If a nonexempt development's annual allocation is modified to a greater number, the annual allocation schedule shall be modified to reflect an increase in future years of the same number, and the number of years allowed for build-out will be shortened.
- (5) In the event that a nonexempt development fails to timely submit a building permit status report, the development's annual allocation for the following year only shall be reduced to ten percent (10%) of its annual allocation of the preceding year, and the developer's annual allocation schedule shall be modified accordingly. Once the development has built equaling the reduced allocation, the development may petition council to amend the Annual Resolution and reinstate the developments annual allocation, in full or in part, upon providing the building permit status report. City Council may grant the petition, in full or in part, if city council, in its discretion, is satisfied that good cause has been established, and that sufficient allocations remain to fulfill other requests for allocations.

During any period after the nonexempt dwelling unit maximum has been reached, residential building permit applications for nonexempt dwelling units will be accepted and placed on a waiting list. When residential building permit issuance for nonexempt dwelling units has resumed those applications on the waiting list will be processed in the order in which they were received.

(e) If construction authorized by any building permit has not commenced within one hundred eighty (180) days after it is issued, the permit shall become void and may be reissued, by the city, but only on a first come, first served basis, up to the applicable dwelling unit maximum.

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- (f) In the event that applications for nonexempt dwelling unit building permits do not exceed the nonexempt dwelling unit maximum in a given calendar year, the authorized, but unissued permits for nonexempt dwelling units may be carried forward to the following year, subject to the 1,200 per six (6) year limitation. Any such unissued permits for nonexempt dwelling units cannot be carried forward beyond the six (6) year growth management cycle.
- (g) Building permits issued in violation of this article shall be void. Nothing in this article shall alter or affect other requirements for compliance with all applicable zoning, subdivision and building regulations, codes, and ordinances.
- <u>Section 2</u>. If any article, section, paragraph, sentence, clause or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.
- <u>Section 3</u>. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof is hereby repealed to the extent of such inconsistency or conflict.
- Section 4. The repeal or modification of any provision of the Code of Ordinances of Lafayette, Colorado by this ordinance shall not release, extinguish, alter, modify or change in whole or in part any penalty, forfeiture or liability, either civil or criminal, which shall have been incurred under such provision. Each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions for enforcement of the penalty, forfeiture or liability, as well as for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered or made in such actions, suits, proceedings or prosecutions.
- <u>Section 5</u>. This ordinance is deemed necessary for the protection of the health, welfare and safety of the community.
- <u>Section 6</u>. This ordinance shall become effective upon the latter of the 10th day following enactment, or the day following final publication of the ordinance.

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PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED THE $21^{\rm st}\,$ DAY OF MAY 2013.

	CITY OF LAFAYETTE, COLORADO
	Carolyn D. Cutler, Mayor
ATTEST:	APPROVED AS TO FORM:
Susan Koster, CMC City Clerk	David S. Williamson, City Attorney