

ORDINANCE NO. 18, Series 2019
INTRODUCED BY: COUNCILOR JD MANGAT

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAFAYETTE,
COLORADO, AMENDING SECTION 28-10 THE LAFAYETTE CODE OF
ORDINANCES PERTAINING TO AFFORDABLE HOUSING DEVELOPMENT FEE**

WHEREAS, on December 1st, 2015, the Lafayette City Council enacted Ordinance No. 41, Series 2015, that, among other things, established an affordable housing development fee; and

WHEREAS, since the enactment of Ordinance No. 41, Series 2015, the City has undertaken significant steps to address the need for affordable housing, using both general fund monies and funds generated by affordable housing development fees; and

WHEREAS, on February 20, 2018, Lafayette City Council enacted Ordinance No. 08, Series 2018, which increased the affordable housing development fee from 30¢ to 60¢.

WHEREAS, on May 21, 2019, Lafayette City Council enacted Ordinance No. 16, Series 2019, which increased the affordable housing development fee from 60¢ to \$1.00; and

WHEREAS, new residential and non-residential development is demonstrably associated with the generation of new jobs at various income levels, with the number of jobs associated with any particular development being correlated with the type and size of the development; and

WHEREAS, when jobs at a low or moderate income level are generated as a direct consequence of new non-residential development, employees receiving such incomes will experience a lack of housing availability and affordability in Lafayette under current market conditions, unless efforts are taken by the city to increase housing opportunities to keep pace with job growth

WHEREAS, the high demand for housing in Lafayette continues to cause a lack of presently available housing options for low income and moderate income households and has significantly discouraged developers from creating housing that is affordable to lower and moderate income households; and

WHEREAS, job growth associated with new residential development is directly related to the income and spending capacity of the household occupying the residence and that the size of the residence, as measured in gross square footage, correlates with the income and spending capacity of the residents, thus causing a larger residence to drive more job growth and more concomitant secondary housing demand than a smaller residence; and

WHEREAS, to continue to offset the impacts attributable to new development and the lack of availability of, and need for, affordable housing in the City of Lafayette, City Council has determined that it is necessary to impose an affordable housing development fee on non-residential development and modification of existing structures; and

WHEREAS, City Council finds that the fee set forth herein per square foot for non-residential development and modification of existing structures does not place a disproportional burden on new development and is reasonably related to the burden to provide affordable housing that is generated by new development.

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

Section 1. Section 28-7—Definitions, of Article II—Affordable housing, of Chapter 28, of the Lafayette Code of Ordinances is hereby amended by the addition of the following definition, to be inserted alphabetically:

Non-residential development means the construction or provision of a facility or structure containing any industrial, manufacturing, commercial or agricultural uses as such terms are used in Chapter 26 of the Lafayette Development and Zoning Code.

Section 2. Section 28-10. – Affordable housing development fee, of Article II. – Affordable housing, of Chapter 28 – Community Development, of the Lafayette Code of Ordinances is hereby amended as follows:¹

Sec. 28-10. Affordable housing development fee.

- (a) No person engaged in residential development in the city shall fail to pay an affordable housing development fee as provided herein. Such fee shall be assessed and collected before the issuance of a building permit for any new structure that includes one (1) or more dwelling units or for any addition to an existing structure containing one (1) or more dwelling units that increases the gross floor area of the existing structure by one hundred twenty (120) or more square feet. The affordable housing development fee shall be assessed at the rate of one-dollar (\$1.00) per square foot of interior floor area of the structure, including unfinished areas, garages, accessory structures, and interior common areas in multi-unit structures. In mixed use structures, ~~the required fee shall be calculated on the basis of the square footage directly devoted to residential use based upon an apportionment of the gross floor area in the structure attributable to each of the proposed uses,~~ with common areas that are used for both commercial and residential uses being assessed such fee in the same proportion as the ratio of residential use to commercial use for the entire structure.
- (b) No person engaged in non-residential development in the city shall fail to pay an affordable housing development fee as provided herein. Such fee shall be assessed and collected before the issuance of a building permit for any new structure or for any addition to an existing structure that increases the gross floor area of the existing structure by four hundred (400) or more square feet. The affordable housing development fee shall be assessed at the rate of one-dollar (\$1.00) per square foot of gross floor area of the structure, including garages and accessory structures. In mixed use structures, the

¹ Additions to the current text of the Code are indicated by underlining, and deletions are indicated by ~~strikethrough~~.

required fee shall be based upon an apportionment of the gross floor area in the structure attributable to each of the proposed uses, with common areas that are used for both commercial and residential uses being assessed such fee in the same proportion as the ratio of residential use to commercial use for the entire structure.

(b) (c) The following are excluded from the requirement to pay the affordable housing development fee pursuant to this section:

- (1) Set-aside inclusionary zoning developments, as defined in this article.
 - (2) Those portions of new residential development structures that meet the definition of "permanently affordable dwelling units," as that term is defined in section 6.10 of the City of Lafayette Home Rule Charter.
 - (3) Dwelling units that replace a dwelling unit that is in existence as of January 1, 2016, and, therefore, does not increase the total number of dwelling units within the City of Lafayette, provided that such new dwelling unit is located on the same lot as the existing dwelling unit. A replacement dwelling unit shall not be exempted from payment of such fee to the extent that the interior gross floor area of the replacement dwelling unit exceeds the interior gross floor area of the original dwelling unit.
 - (4) Residential dwelling units that are built by any tax-exempt charitable organization under Section 501(c)(3) of the Internal Revenue Code and deed-restricted to ensure affordability of the dwelling unit to low and moderate income households.
 - (5) Non-residential projects that are built by any tax-exempt charitable organization under Section 501(c)(3) of the Internal Revenue Code and that are primarily used to provide shelter, housing, housing assistance or related services to low income households or persons experiencing homelessness.
 - (6) Construction by or on behalf of the federal, state or local governments or any department or agency thereof, to the extent any and all of the gross floor area in the structure will be used solely for a governmental or educational purpose.
- (c) The fees collected pursuant to this article are to be used to fund the purchase, development of, or otherwise provide for new affordable housing units in the City of Lafayette in accordance with section 28-11 below. The fee is not intended to, nor may it be used for the general costs of government.
- (d) The affordable housing development fee assessed by this article applies regardless of the value of the property developed.
- (e) The city council intends and specifically finds that the affordable housing development fee assessed by this section is generally applicable to broad classes of residential and non-residential property; the above fees reflect the reasonable impacts of proposed residential and non-residential development on the availability of affordable housing;

and these charges are set a level no greater than necessary to defray the impacts directly related to new development.

Section 2. 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.

Section 3. 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, City 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.

Section 5. This ordinance is deemed necessary for the protection of the health, welfare and safety of the community.

Section 6. Violations of this ordinance shall be punishable in accordance with Section 1-10 of the Code of Ordinances, City of Lafayette, Colorado.

Section _____ 7. This ordinance shall become effective upon the latter of the 10th day following enactment, or the day following final publication of the ordinance.

INTRODUCED AND PASSED ON FIRST READING THE 18th DAY OF JUNE 2019.

PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED
THE 2nd DAY OF JULY 2019.

CITY OF LAFAYETTE, COLORADO

Alexandra Lynch, Mayor

Ordinance No. 18-2019 – Affordable Housing Development Fee Amendment

ATTEST:

Susan Koster, CMC, City Clerk

APPROVED AS TO FORM:

David S. Williamson, City, Attorney