

First Reading: December 15, 2015
Second Reading: _____

ORDINANCE NO. _____

**AN ORDINANCE REPEALING TITLES 16, 17, 18 AND 19 OF THE LOVELAND
MUNICIPAL CODE AND REENACTING AND ADOPTING THE SAME BY
REFERENCE**

WHEREAS, pursuant to Section 4-12 of the Charter of the City of Loveland the City Council is authorized to adopt, by ordinance, any code by reference in accordance with the procedures established by state law; and

WHEREAS, over the course of several years City of Loveland staff has worked to update Titles 16, 17, 18, and 19 of the Loveland Municipal Code ("Titles 16-19") related to land use planning and zoning with assistance from the Title 18 Committee; and

WHEREAS, the City of Loveland Planning Commission conducted a public hearing on the proposed changes to Titles 16-19 and recommended approval of such changes to the City Council; and

WHEREAS, due to the lengthiness of Titles 16-19 the proposed changes are most suitably made by repealing Titles 16-19 and reenacting them by an adoption by reference; and

WHEREAS, the City Council conducted a public hearing pursuant to C.R.S. §31-16-203 concerning the adoption of Titles 16-19 by reference and finds and determines that it is necessary for the health, safety and general welfare of the public that the City regulate conditions affecting land use planning and zoning by the adoption of Titles 16-19.

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

Section 1. That Titles 16-19 are in their entirety repealed and reenacted by adoption by reference to the copies of Titles 16, 17, 18, and 19 of the Loveland Municipal Code, which have been certified by the mayor and city clerk and are on file in the office of the city clerk and may be inspected during regular business hours.

Section 2. That pursuant to C.R.S. § 31-16-204 that requires penalty clauses be published in full, Section 16.04.020 is hereby repealed and reenacted to read in full as follows:

16.04.020 Penalty.

Any person, firm, or corporation violating any provisions of this Title 16, upon conviction therefore, shall be fined not more than one thousand dollars or incarcerated not more than one year, or both. Each day during which the violation continues is deemed a separate offense.

Section 3. That pursuant to C.R.S. § 31-16-204 that requires penalty clauses be published in full, Paragraph C. of Section 16.43.080 is hereby repealed and reenacted to read in full as follows:

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%

Section 4. That pursuant to C.R.S. § 31-16-204 that requires penalty clauses be published in full, Subpart i. of Part 4. of Paragraph A of Section 18.50.100 is hereby repealed and reenacted to read in full as follows:

i. Every person found guilty of violating any provision of this section shall be subject to the penalty provisions provided in Section 1.1.2.010. Notwithstanding the penalty provisions in Chapter 1.12.010, a violation of any provision of this section shall result in the following: The first offense shall result in a written notice and order to the property owner specifying the cause of violation and shall provide a twenty-four hour period to bring the sign into compliance with the standards of the Code. A second offense within a one year period shall result in a summons into municipal court. If judgment is entered for a violation of this section, a mandatory minimum fine of five hundred dollars shall be imposed. If judgment is entered for any subsequent violations within a one year period, a mandatory minimum fine of one thousand dollars shall be imposed.

Section 5. That pursuant to C.R.S. § 31-16-204 that requires penalty clauses be published in full, Paragraph B of Section 18.50.150 is hereby repealed and reenacted to read in full as follows:

B. Prohibited, illegal, nonconforming, abandoned or hazardous signs are declared nuisances and shall not be allowed within the city nor continued by variance. If any person fails to comply with the provisions of this chapter, in addition to the penalty provided therefor, a written order may be served upon the owner or agent in charge of such property, such order to be served personally or by mail, requiring the abatement of the nuisance within fifteen days, excluding weekends and official holidays, after mailing such notice. Such notice shall also advise the owner or agent of his or her right to appeal pursuant to Chapter 18.80. If the abatement has not occurred within the stated time and an appeal has not been filed pursuant to the provisions of Chapter 18.80, then the city may remove said sign, provided that the sign is either an off-premise sign, portable sign, free standing sign made of paper, balloons, pennants or banners, and charge the direct cost incurred by the city for removal of the sign, including five percent for inspection and other incidental costs in connection therewith. Such assessment shall be a perpetual lien upon the land on which the sign is located until the assessment is paid. In addition to any other means provided by law for collection, if any such assessment is not paid within thirty days after it is made and notice thereof is mailed, the same may be certified by the city clerk to the county treasurer and by him placed upon the tax list for the current year, and thereby collected in the same manner as other taxes are collected, with ten percent penalty thereon to defray the cost of collection.

Section 6. That pursuant to C.R.S. § 31-16-204 that requires penalty clauses be published in full, Section 18.50.170 is hereby repealed and reenacted to read in full as follows:

18.50.170 Enforcement, legal procedures and penalties.

It shall be unlawful for any person to erect, maintain, or allow upon any property over which they own, manage, lease or control, any sign which is not permitted pursuant to the provisions of this sign code. Enforcement, legal procedures and penalties shall be in accordance with Chapter 18.68 of this title. Additionally, unauthorized signs on public property may be confiscated by the city and held pending notification of the owner by the city. The owner may obtain said signs from the city manager upon payment of a confiscation and storage charge in an amount established by council. For the purposes of the enforcement of this chapter, the Building Official and his or her designee is authorized and duly appointed to issue summonses and complaints and penalty assessment notices for a violation of this chapter.

Section 7. That pursuant to C.R.S. § 31-16-204 that requires penalty clauses be published in full, Paragraph A of Section 18.55.100 is hereby repealed and reenacted to read in full as follows:

18.55.100 Maintenance and inspections requirements.

A. To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable city building codes, regulations of the FCC and the applicable standards for towers that are published by the Electronic Industries Association (“EIA”), as amended from time to time. If, upon inspection, the city concludes that a tower fails to comply with such codes, regulations or standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have thirty days to bring such tower into compliance with such codes, regulations and standards. If the owner fails to bring such tower into compliance within said thirty days, the city may remove such tower at the owner's expense, the costs of which shall constitute a lien against the property.

Section 8. That pursuant to C.R.S. § 31-16-204 that requires penalty clauses be published in full, Chapter 18.68 is hereby repealed and reenacted to read in full as follows:

Chapter 18.68

ENFORCEMENT – PENALTIES

Sections:

18.68.005	Purpose.
18.68.010	Methods.
18.68.020	Building permit.
18.68.030	Certificate of occupancy.
18.68.040	Inspection.
18.68.045	Code enforcement guidelines.
18.68.050	Violation.
18.68.060	Injunction.
18.68.070	Penalty.

18.68.080 Liability for damages.

18.68.005 Purpose.

The purpose of this chapter is to establish the methods for enforcing this title and the penalty for violations.

18.68.010 Methods.

The provisions of this title shall be enforced by the following methods:

- A. Requirement of a building permit;
- B. Requirement of a certificate of occupancy;
- C. Inspection and ordering removal of violations;
- D. Proceedings in municipal court; and
- E. Injunction.

18.68.020 Building permit.

No building shall be erected, moved or structurally altered unless a building permit therefore has been issued by the city building official or his authorized representative. All permits shall be issued in conformance with the provisions of this title and all other applicable city ordinances.

18.68.030 Certificate of occupancy.

A. No land or building shall hereafter be changed to a business, commercial, industrial or residential use nor shall any new structure, building or land be occupied for a business, commercial, industrial or residential use unless the owner first has obtained a certificate of occupancy from the city building official.

B. Provided the use is in conformance with the provisions of this title, a certificate of occupancy shall be issued within three days of the time of notification that the building is completed and ready for occupancy. A copy of all certificates of occupancy shall be filed by the city building official and shall be available for examination by any person with either proprietary or tenancy interest in the property or building.

18.68.040 Inspection.

A. The city building official and his authorized representatives are empowered to cause any building, other structure or tract of land to be inspected and examined in accordance with Chapter 1.08, and to order in writing the remedying of any condition found to exist therein or thereat in violation of any provision of this title.

B. After any such order has been served, no work shall proceed on any building, other structure or tract of land covered by such order, except to correct or comply with such violation. Such building official and his authorized representatives are authorized and duly appointed to issue summonses and complaints and penalty assessment notices for any violation of the provisions of this title.

18.68.045 Code enforcement guidelines.

A duly appointed peace officer or code enforcement officer of the city may enforce the provisions of this title and of Titles 15 and 16 of the City Code by the

issuance of a summons and complaint as provided in Rule 204 of the Colorado Municipal Courts Rules of Procedure.

18.68.050 Violation.

A person is guilty of a violation of this title in any case where:

A. Any violation of any of the provisions of this title or of any agreement or development plan approved under this title or under Title 16, exists in any building, other structure or tract of land; or

B. An order to remove any alleged violation has been served upon the owner, general agent, lessee or tenant of the building, other structure or tract of land (or any part thereof) or upon the architect, builder, contractor or any other person who commits or assists in any alleged violation, and such person fails to comply with such order within fifteen days, excluding weekends and legal holidays, after the service thereof.

18.68.060 Injunction.

In addition to any of the foregoing remedies, the city attorney acting in behalf of council may maintain an action for an injunction to restrain any violation of this title.

18.68.070 Penalty.

Any person, firm or corporation violating any provisions of this title, upon conviction therefore, shall be fined not more than one thousand dollars or incarcerated not more than one year, or both. Each day during which the illegal erection, construction, reconstruction, alteration, maintenance, use, or any other violation of this title continues, is deemed a separate offense.

18.68.080 Liability for damages.

This title shall not be construed to hold the city responsible for any damage to persons or property by reason of the inspection or reinspection authorized herein or failure to inspect or reinspect or by reason of issuing a building permit as herein provided.

Section 9. That pursuant to C.R.S. § 31-16-204 that requires penalty clauses be published in full, Section 18.77.090 is hereby repealed and reenacted to read in full as follows:

18.77.090 Emergency response costs.

The operator shall reimburse the Loveland Fire Rescue Authority for any emergency response costs incurred by the Authority in connection with fire, explosion or hazardous materials at the well or production site, except that the operator shall not be required to pay for emergency response costs where the response was precipitated by mistake of the Authority or in response to solely a medical emergency.

Section 10. That pursuant to C.R.S. § 31-16-204 that requires penalty clauses be published in full, Section 18.77.125 is hereby repealed and reenacted to read in full as follows:

18.77.125 Violations, suspension and revocation of permits, civil actions and penalties.

A. Violations. It shall be unlawful and a misdemeanor offense under this chapter for any person to do any of the following:

1. Conduct any oil and gas operation within the city without a validly issued permit;
2. Violate any enforceable condition of a permit; or
3. Violate any applicable and enforceable provision of this chapter and code.

B. Suspension and revocation. If at any time the director has reasonable grounds to believe than an operator is in violation of any enforceable provision of this chapter or code, the director may suspend the operator's permit. The director shall give the operator's designated agent written notice of the suspension and, upon receiving such notice, the operator shall immediately cease all operations under the permit, except those reasonably required to protect the public's health and safety. The director's written notice shall state with specificity the operator's violation(s). The suspension shall continue in effect until the director determines that the violation(s) has been satisfactorily corrected. At any time during the suspension, the operator may appeal the director's action to council by filing with the City Clerk a written notice of appeal stating with specificity the operator's grounds for appeal. Within thirty days of the City Clerk's receipt of that notice, a public hearing shall be held before council. The hearing shall be conducted as a quasi-judicial proceeding with the operator having the burden of proof and with the director defending the suspension of the permit. After hearing and receiving evidence and testimony from the operator, from the director and from other city staff and consultants, and after receiving public comment, council may revoke the permit, terminate the suspension of the permit or take such other action as it deems appropriate under the circumstances taking into consideration and balancing the protection of the public's health, safety and welfare and the operator's rights under this chapter and state law to conduct its oil and gas operations. Within twenty five days after the hearing, the Council shall adopt its written findings and conclusion supporting its decision. The Council's written findings and conclusions shall constitute the Council's final decision that may be appealed to the Larimer County District Court under Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

C. Civil actions. In addition to any other legal remedies provided under this chapter to enforce violations of this chapter, the city may commence a civil action against an operator committing any such violations in any court of competent jurisdiction and request any remedy available under the law or in equity to enforce the provisions of this chapter, to collect any damages suffered by the city as the result of any violation and to recover any fees, reimbursements and other charges owed to the city under this chapter and code. If the city prevails in any such civil action, the operator shall be liable to the city for all of the city's reasonable attorney's fees, expert witness costs and all other costs incurred in that action.

D. Penalties. A violation of any enforceable provision of this chapter shall constitute a misdemeanor offense punishable as provided in Section 1.12.010. A person committing such offense shall be guilty of a separate offense for each and every day, or a portion thereof, during which the offense is committed or continued to be permitted by such person, and shall be punished accordingly.

Section 11. That if Section 1. of this ordinance is, for any reason, held to be unconstitutional or invalid for any reason, then Section 2 through Section 10 of this ordinance. shall be null and void and Titles 16, 17, 18 and 19 of the Loveland Municipal Code in their entirety shall revert to the provisions of such titles prior to the enactment of this ordinance.

Section 12. That nothing in this ordinance shall be construed to affect any suit or proceeding pending in any court, or any rights acquired, liability incurred, or cause of action acquired or existing under any ordinance hereby repealed, nor shall any legal right or remedy of any character be impaired by this ordinance.

Section 13. That the City Clerk shall cause to be published twice in a newspaper of general circulation within the City, once at least fifteen days preceding the public hearing, and once at least eight days preceding the public hearing, the following notice:

Public notice is hereby given that the Loveland City Council has set a public hearing on January 19, 2016, at 6:30 p.m. or as soon as possible thereafter, in the City Council Chambers located at City Hall, 500 East Third Street, Loveland, Colorado, to consider on second reading an "Ordinance Repealing Titles 16, 17, 18 and 19 of the Loveland Municipal Code and Reenacting and Adopting the Same by Reference" related to land use planning and zoning. Copies of the above-referenced ordinance, the proposed Titles 16, 17, 18 and 19 of the Loveland Municipal Code adopted by reference within said ordinance and any secondary codes adopted by reference within said titles are on file with the Loveland City Clerk and are open to public inspection. Copies of said titles are available on the City of Loveland Current Planning and Loveland Public Library web pages.

Section 14. 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).

Signed this 12th day of January, 2016.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Assistant City Attorney