Chapter 16.08

DEFINITIONS

Sections:

16.08.010 Definitions.

As used in this title, the following words and phrases shall be interpreted and defined as follows:

"Affordable housing unit" means a single unit of housing that is located within an affordable housing development, or a single unit of housing constructed on a single lot as part of development or redevelopment within a previously platted subdivision, and that is made available to a qualifying household.

"Affordable housing development" means:

1. A housing development in which at least twenty percent of the total proposed units are sold to households earning seventy percent or less of Qualified Income and in which the units are owner-occupied; or
2. A housing development in which at least twenty-five percent of the total proposed units are sold to households earning seventy-five percent or less of Qualified Income, and in which the units are owner-occupied; or
3. A housing development in which at least thirty percent of the total proposed units are sold to households earning eighty percent or less of Qualified Income, and in which the units are owner-occupied; or
4. A rental housing development in which at least twenty percent of the total proposed units are affordable to households earning fifty percent or less of Qualified Income; or
5. A rental housing development in which at least twenty-five percent of the total proposed units are affordable to households earning fifty-five percent or less of Qualified Income; or
6. A rental housing development in which at least forty percent of the total proposed units are affordable to households earning sixty percent or less of Qualified Income.
7. As used in subsections 4 through 6, above, "affordable" shall mean that the monthly cost of a rental housing unit is no more than the monthly rent set forth by income and rent tables released annually by the United States Department of Housing and Urban Development, a copy of which is on file with the City Clerk's office.

"Alley" means a public way with less width than a street and designated for special access to the rear of buildings.

"Annexation" means the process by which land is added to the city in accordance with the provisions of the Colorado Revised Statutes and this code.

"Annexation map" means that map prepared and filed in accordance with the Colorado Revised Statutes and this title.

"Applicant" means the owner of record or a duly designated representative who submits an application for development approval.

"Application acceptance date" means the date on which the director finds that an application is complete, as defined in this title.

"Application, complete" means for any development review, an application that is reviewable as defined in this title, and which, as determined by the director, contains adequate information on which to determine compliance with the review and design standards of this title and other applicable code provisions, city ordinances and policies, and state laws.

"Application, reviewable" means that for any development review requested, that information, in the form and quantity required by the pertinent parts of this title and any checklist employed by the

development center. Such information may include, but need not be limited to any city-provided application form(s) and necessary supporting information.

"Application for development approval" means an application for approval of a preliminary or final development plan, site plan, special review use, or preliminary or final subdivision plat.

"Approved but uncompleted development" means any project for which an application for approval of a preliminary or final development plan, site plan, special review use, or preliminary or final subdivision plat has been approved by the city of Loveland for which a building permit has not been issued. This phrase shall include similar approvals made by Larimer County for property annexed by the city of Loveland following county approval but for which a building permit has not been issued by the county or the city.

"Boundary line adjustment" means the relocation or adjustment of a lot line, which meets the requirements of Chapter 16.28 of this code.

"Capacity" means the maximum demand that can be accommodated by a community facility without exceeding the adopted level of service.

"Capital improvements program" or "CIP" means the city of Loveland's most current adopted budget, which includes a five-year program for providing community facilities and includes the anticipated date by which community facilities will be constructed or when the capacity added by community facilities will be available.

"City engineer" means the manager of the city of Loveland community services engineering division, or that person's designee.

"Commencement of construction" means that construction of a portion of improvements shown on final construction drawings approved by the city has begun and the city has inspected and determined that the improvements that have been installed are in compliance with the approved final construction drawings.

"Common ownership" means lots in a subdivision are either owned by a single person or entity, or owned by persons having a familial relationship or by entities owned in whole or in part by one person or such person and family members, or any combination thereof.

"Community facilities" means capital improvements provided by the city of Loveland or another governmental entity including, but not limited to facilities for providing water, wastewater, fire protection, emergency rescue services, public schools, parks, stormwater, power, and transportation facilities which are required by this Title 16 to be adequate and available as a condition of development approval.

"Complete application" see definition for "application, complete".

"Comprehensive master plan" means the comprehensive master plan, as amended from time to time.

"Concept review team" see definition for "development review team".

"Cost" for rental units means the gross monthly rental payment, plus estimated monthly utilities.

"Customary Closing Costs" shall mean the following customary and reasonable costs a seller incurs in the sale of real property: title insurance and endorsements premium; abstracting and title examination costs; recording fees; documentary fee; certificate of taxes fee; survey costs; credit report fee; appraisal fee; broker's fee; attorneys' fees; title insurance company document preparation and closing fees; and any other closing costs that would ordinarily result in the reduction of a seller's basis in the real property being sold for the purpose of determining any capital gain under the Internal Revenue Code.

"Date of public hearing" means the date on which the planning commission or the city council shall hold a public hearing on an application for development approval pursuant to this code.

"Determination of adequacy" means a determination that each community facility will be available concurrent with the impacts of the proposed development at the adopted levels of service or will be available subject to certain conditions. A determination of adequacy shall be made by the city council, the planning commission, or administrative personnel that is vested with authority pursuant to

this Title 16 or in Title 17 or 18 of the Loveland Municipal Code to review and render a final approval of an application for development approval.

"Development" as defined in the site development performance standards and guidelines.

"Development agreement" means an agreement that shall be executed between the applicant and the city, and shall contain such reasonable conditions and requirements as the city may require.

"Development center" means the place to which any person shall submit an application for all phases and any type of development review contemplated in this title. Through the development center, the city gives and distributes information regarding the city's development process and associated fees and status of a specific project or parcel of land. The development center is the organizational umbrella for the community services department which includes the city's building, current planning, land records management and a portion of the engineering divisions.

"Development review team" means a selected committee of city department or division representatives including, but not limited to, representatives from building, engineering, water and power, fire marshal, police, current and long range planning, private utilities and other agencies and city personnel as required by the community services director. The community services director or the director's designee serves as chairperson.

"Development standards and guidelines" means plans and guidelines adopted by reference in the municipal code or as a part of the comprehensive plan including, but not limited to "development standards and specifications governing the construction of public improvements," "fire master plan," "site development performance standards and guidelines," "plat and map digital submission standards," "traffic impact study guidelines and policies," "transportation plan," and "water conservation plan".

"Development standards and specifications governing the construction of public improvements" means the most current version, as amended from time to time, of the development standards and guidelines.

"Director" means the director of community services or that person's designee. The director shall be the administrator of this title.

"Double frontage lot" means any lot which abuts two or more streets other than a corner lot, which abuts two intersecting streets.

"Dwelling units" as defined in Section 18.04 of this code.

"Easement" means any platted or designated easement dedicated to the city by plat or otherwise, whether or not it has been used as such, to which the public, the city and/or the public utilities are entitled to use without interference for a specified purpose. Where an easement is granted to the public for a specified purpose, the grant of said easement shall vest in the city and/or the public utilities rights including but not limited to, the right to conduct certain operations and to perform all necessary maintenance thereon; and "without interference" shall mean that persons are prohibited from constructing fences or structures of any kind, or installing landscaping or anything else that interferes with the city's ability to access, operate, install, and maintain any city facility within said easement. Easements for specified purposes include, but are not limited to access easements, drainage easements, landscape easements, postal easements, and utility easements.

"Easement, public access" means any platted or designated public strip of land dedicated to the public by plat or otherwise for purposes of vehicular, pedestrian or bicycle access or travel over, including ingress and egress to, or from, another parcel of property, whether or not it has ever been used as such. All public access easements dedicated or granted do not relieve the property owner of maintenance responsibilities of the property unless otherwise approved by the city.

"Easement, drainage" means a right to use property to provide surface or subsurface drainage or convey stormwaters.

"Easement, landscape" means a right to use property for the installation and maintenance of landscaping materials. Except where combined with easements of other types and dedicated by plat or otherwise, it shall be unlawful for any person to use the surface or subsurface of a landscape easement for any purpose other than for installing and maintaining landscaping.

"Easement, pedestrian" means the designated property where the general public is entitled to travel on foot or by other nonmotorized methods, including but not limited to, skis, bicycles, skate boards and roller blades, unless otherwise prohibited by official traffic control devices or ordinances.

"Easement, postal" means a right to use property for the installation and maintenance of one or more mailboxes or facilities used for receiving or sending mail.

"Easement, private access" means any property designated by plat or otherwise, which one or more persons, but not the general public, has the right to use for purposes of vehicular or pedestrian access or travel over, including ingress and egress to, or from, another parcel of property and the surface of which is not maintained by the city.

"Easement, private drainage" means a right for any private property designated, by plat or otherwise, to provide surface or subsurface drainage to convey stormwaters. All private drainage easements shall be maintained by the property owner unless that maintenance has been assigned to a common ownership association.

"Easement, utility" means a right to use property for the installation, operation and maintenance of water, sewer, storm drainage, electrical, gas and communication lines and facilities.

"Environmentally sensitive areas" means an area with one or more of the following characteristics: (1) slopes in excess of twenty percent; (2) floodplain; (3) soils classified as having high water table; (4) soils classified as highly erodible, subject to erosion or highly acidic; (5) land incapable of meeting percolation requirements; (6) land formerly used for landfill operations or hazardous industrial use; (7) fault areas; (8) stream corridors; (9) estuaries; (10) mature stands of vegetation; (11) aquifer recharge and discharge areas; (12) habitat for wildlife; or any other area possessing environmental characteristics similar to those listed here.

"Final approval for development" means the approval required by this code after which the land may be developed and used for any purpose permitted in the zoning district in which the land is located, without the requirement of further approval pursuant to Titles 16 and 18 of this code.

1. A credit shall be given toward satisfaction of the total amount of water rights required, which credit shall be in the amount of the water rights previously furnished in conjunction with zoning or rezoning requirements, prorated among all the acreage in conjunction with which such water rights were furnished.
2. In the event the final approval for development upon which the water rights requirement is based is subsequently revised and approved by the city council, the total amount of water rights required shall be computed as set forth in this section, and additional water rights shall be furnished to the city to make up any deficit, or a credit shall be granted in the city's water bank as a refund of any surplus.

"Final plat" means the plat or plats of certain described land prepared in accordance with this title, as an instrument for recording real estate interests with the Larimer County clerk and recorder. The final plat shall serve as the "plat" for purposes of C.R.S. § 31-23-215. The final plat shall be submitted as part of the final subdivision application.

"Fire master plan" means the most current version, as amended from time to time, of the Development Standards and Guidelines.

"Floor area" means the total area of all floors of a building included within the surrounding exterior walls, exclusive of open courts.

"Future street" means a right-of-way that will not be opened or improved for present use as a public way, but the right-of-way is dedicated to the public for future use as a street, and present or future use for the installation of all public utilities.

"Industrial development" means any premises devoted primarily to manufacturing, processing, assembly or storage of tangible personal property, research facilities, experimental or testing laboratories, warehouses, distribution and wholesale uses, utility service facilities, aircraft hangars and repair facilities for aircraft, and caretaker's quarters and other accessory buildings reasonably required for maintenance or security of the above uses.

“Institutional Lender” means any bank, savings and loan association, or any other lender which is licensed by the federal government or any state government to engage in the business of providing purchase money mortgage financing on residential real property.

“Level of service” means an indicator of the extent or degree of service provided by, or proposed to be provided by, a community facility based upon and related to the operational characteristics of the community facility or the capacity per unit of demand for each community facility.

“Lot” means a portion of a subdivision intended as a unit for transfer of ownership or for development, which has access to a public right-of-way.

“Lot merger” means the merging of contiguous lots into a lesser number of lots than had originally existed, which meets the requirements of Chapter 16.32 of this code.

“Major subdivision” means all other subdivisions not falling within the definition of a minor subdivision, and which are not boundary line adjustments, or lot mergers, shall be referred to in this title as a “major subdivision” or “subdivision.” Except where otherwise specified or where the context requires otherwise, the term subdivision as used in this title shall mean major subdivision. The classification of a subdivision as “major” or “minor” shall be made by the director at the concept review team meeting in accordance with the criteria stated below in Chapter 16.20 of this code.

“Minor subdivision” means the division of land into no more than four additional lots, which meets the requirements of Chapter 16.20 of this code.

‘Net acreage” means all land except dedicated road right-of-ways, lakes and ponds over one-fourth acre in size, areas over one-fourth acre in size determined by the water and power department to be incapable of sustaining irrigated vegetation because of geologic or topographic constraints, or that will not be irrigated, such as conservation easements or detention ponds planted to dryland types of vegetation, areas legally served by domestic water sources other than the city's or areas irrigated with non-potable water as provided in Title 19.

“Net Proceeds” shall mean the seller’s sales price for the real property being sold less seller’s original purchase price for the real property and less seller’s Customary Closing Costs reasonably incurred in such sale.

“Non-retail” means any premise that is devoted to any commercial purpose not included within the definitions of retail or industrial development set forth herein. For purposes of assessing a capital expansion fee, non-retail shall include residential-type uses not intended for permanent occupation or residency including, but not limited to, hotels and bed and breakfast establishments.

“Obsolete subdivision” means any legally platted property that is not in substantial compliance with current regulations regarding the subdivision and development of land, has been of record for more than five years, in which two-thirds or more of the lots are undeveloped, and city council has declared it obsolete in accordance with Section 16.36.030 of this code.

“Outlot” means a portion of land included in a subdivision that is not intended for development with buildings containing residential, commercial or industrial uses. It may or may not have public right-of-way access. Common uses include, but are not limited to, easements, recreation gardens, open space or drainage detention.

“Person” means any individual, corporation, partnership, or any other legal entity.

“Photo reduction” means a legible eleven inches by seventeen inches photographic reduction, also known as a stat or photo mechanical transfer, which is required for all original twenty-four inches by thirty-six inches drawings submitted with an application for development approval under this Title 16 or in Title 17 or 18.

“Planned capital improvements” means a capital improvement or an extension or expansion of a capital improvement which does not presently exist, but which is included within a capital improvement program.

“Planning commission” means the planning commission of the city of Loveland as duly constituted by law.

"Plat and map submission standards" means a set of digital or electronic data standards for plat and map submissions that is recommended by the manager of the land records management division and approved by the planning commission.

"Preliminary plat" means the plat or plats of a proposed subdivision and specified supporting materials, drawn and submitted in accordance with this title, for the purpose of reviewing and evaluating the proposal prior to submission of a final plat. A preliminary plat is not a plat for purposes of C.R.S. § 31-23-215.

"Primary community route" means U.S. Highway 34, between Madison Avenue and Wilson Avenue, and U.S. Highway 287, between 8th Street S.E. and 50th Street, all located within the Loveland city limits.

"Public improvement construction plans" means the set of twenty-four inches by thirty-six inches construction drawings prepared by the applicant's professional engineer and reviewed by the city for the street, water, sewer, and storm drainage improvements required to serve the proposed development.

"Qualified affordable housing development" means an affordable housing development which has been reviewed by the city of Loveland human services administrator and for which the human services administrator has issued a letter finding that the project qualifies as an affordable housing development under this title and is eligible to receive all incentives available under city rules and regulations for such developments.

"Qualified Income" means the median annual family income as adjusted for household size, as established by the United States Department of Housing and Urban Development.

"Qualifying household" means a household in which the combined income of all wage earners, who are over the age of eighteen (18) and who are not full-time students, is eighty percent (80%) or less of Qualified Income and in which no household member has an ownership interest in an existing residential property.

"Residential" means a development that includes one or more dwelling units.

"Retail" means any premises devoted primarily to the sale of merchandise to the general public.

"Reviewable application" see "Application, reviewable".

"Right-of-way" means a strip of land dedicated to the public, the city and/or public utilities which have been constructed or will be constructed, for public transportation, drainage or utility improvements including but not limited to street paving, curb and gutter, sidewalks, bicycle lanes and buried or overhead utilities.

"Simple plat" means a plat representing a tract of land showing the boundaries of the property to create a legal lot for property previously legally described by a metes and bounds description and which has never been previously subdivided or platted by a governmental entity.

"Site development performance standards and guidelines" means the most current version, as amended from time to time, of the development standards and guidelines, pursuant to Chapter 18.47 of this code.

"Staff" means city of Loveland employees or subcontractors assigned to perform or participate in the review of an application for development approval.

"Storm water criteria manual" means the current version as amended from time to time, of the standards and specifications for water drainage.

"Street" see "Street, public".

"Street, arterial" means a street used primarily for through traffic.

"Street, collector" means a street that connects a local street to an arterial street and is used to some extent for through traffic and partly for access to abutting properties.

"Street, cul-de-sac" means a street used primarily for access to abutting property, which is open at one end only.

"Street, local" means a street used primarily for access to abutting property.

“Street, part width” means the dedication of a portion of a street, usually along the edge of a subdivision where the remaining portion of the street could later be dedicated in another subdivision.

“Street, private” means a private way for sidewalk, right-of-way and utility installations, and including the suffixes “street,” “avenue,” “drive,” “circle,” “place,” “court” or other similar designations, generally intended for use by specified adjacent property owners, public utilities, emergency services, and city operations including city inspections.

“Street, public” or “street” means a public way for sidewalk, right-of-way and utility installations, being the entire width from lot line to lot line, and including the suffixes “street,” “avenue,” “drive,” “circle,” “place,” “court” or other similar designations.

“Street, temporary no outlet or dead-end” means a street that does not connect with another street, but which will connect with another street when the city obtains the right-of-way for such connection.

“Subdivider” means any person dividing or proposing to divide land which division constitutes a subdivision.

“Subdivision” means the division or subdivision of any lot, tract or parcel of land for the purpose, whether immediate or future, of transfer of ownership, development, or building development. The term subdivision refers to a “major subdivision” unless noted otherwise.

“Substantial revision” means a revision which includes, but is not limited to, a change in density, use, lot layout or a change that impacts drainage or public improvements.

“Tract” means a portion of a subdivision intended as, but not limited to, a unit for transfer of ownership or for development, typically being substantially larger than a lot and intended for large scale development, future subdivision into smaller lots, or preservation as open space or buffer yards, in accordance with dedications or notes on the plat.

“Traffic impact study guidelines and policies” means the most current version, as amended from time to time, of the development standards and guidelines.

“Transportation plan” means the most current version, as amended from time to time, of reports, maps, and other related portions of the development standards and guidelines, which documents the city's transportation policies and requirements.

“Undeveloped” means that a lot does not contain a principal or accessory structure nor is being used for a principal or accessory use.

“Vacation of right-of-way/easement” means the extinguishment of any right-of-way or easement as provided in Chapter 16.36 of this Code.

“Vacation of obsolete subdivision” means the extinguishment by ordinance of a subdivision plat.

“Water conservation plan” means the most current version, as amended from time to time, of the development standards and guidelines. (Ord. 5262 § 1, 2007; Ord.5048 § 1, 2005; Ord. 4976 § 1, 2005; Ord. 4881 § 6, 2004) (Ord. 4522 § 1, 2000; Ord. 4476 § 1, 1999; Ord. 4444 § 1 (part), 1999; Ord. 4320 § 5, 1998; Ord. 4298 § 1 (part), 1997)

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. (Ord. 5433 § 3, 2009; Ord. 4661 § 4, 2001; Ord. 4444 § 1 (part), 1999; Ord. 4365 § 1, 1998)

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. (Ord. 5433 § 4, 2009)

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 it 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, or is not reasonably likely to obtain, a certificate of occupancy before the end of the twelve-year period may request at any time 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. (Ord. 5469 § 1, 2009)

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. (Ord. 5433 § 5, 2009; Ord. 4522 § 2, 2000; Ord. 5433 § 5, 2009)

16.38.090 Reduction in fee for minimal traffic.

The street capital expansion fee may be reduced for a specific land use if data deemed reliable by the city establishes that traffic for both peak hour and total daily volumes for the property are each less than sixty (60) percent of the traffic assumptions used in establishing the fees for that specific land category in the adopted fee tables. The new fee will be based on a simple average of the data deemed reliable by the city for the property and the traffic assumptions used to establish the adopted fees. (Ord. 4661 § 6, 2001; Ord. 4444 § 1 (part), 1999; Ord. 4298 § 1 (part), 1997)

16.38.100 Disposition of fees.

All fees collected pursuant to this chapter shall be deposited in a public works fund to be created by resolution of the city council, and to be used for the projects therein identified. Such resolution shall be established to comply with the provisions of Section 31-15-302(1)(f)(I), Colorado Revised Statutes. (Ord. 4444 § 1 (part), 1999; Ord. 4298 § 1 (part), 1997)

16.38.110 Review.

Chapter 16.43

AFFORDABLE HOUSING

Sections:

16.43.010 Purpose.

The purposes of this chapter are to:

A. Implement the housing goals of the City of Loveland Affordable Housing Policy as adopted by resolution of the City Council;
B. Promote the construction of housing that is affordable to the community's workforce;
C. Retain opportunities for people that work in the City to also live in the City;
D. Maintain a balanced community that provides housing for people of all income levels; and
E. Promote availability of housing options for low and moderate income residents and for special needs populations.

16.43.020 Affordable housing fund established.

There is created a special fund to be known as the Affordable Housing Fund for the purpose of receiving all revenues related to affordable housing programs and services. The fund and any interest earned in that fund shall be for the specific use of those programs and services as determined by the City Council.

16.43.030 Revenue sources for affordable housing fund.

The Affordable Housing Fund shall be funded through revenues derived from payments to the City as set forth in Section 16.43.080.B of this Chapter, from gifts or grants, and from appropriations from the General Fund or other funds, as the City Council may from time to time establish or approve.

16.43.040 Design standards for affordable housing.

The design standards set forth in Chapter 16.24 of this Title 16 may be modified for subdivisions which are affordable housing developments in accordance with the "Site Development Performance Standards and Guidelines for Affordable Housing" found in chapter 7 of the "Site Development Standards and Guidelines" adopted by the City, so long as the design of the subdivision remains at all times consistent with the overall health, safety and welfare of the future residents of the subdivision. All design modifications for affordable housing developments shall be subject to the approval of the Community Services Department Director.

16.43.050 Expedited development review for affordable housing developments.

The City shall process all applications for affordable housing developments on an expedited time line. Complete applications for affordable housing developments shall be placed ahead of all other complete applications in the review process. All required reviews of applications for affordable housing

developments by City staff members and City boards and commissions shall be accomplished in as expeditious a manner as possible consistent with good planning principles.

16.43.060 Dispersion of affordable housing.

Where affordable housing units are part of a residential development also containing market-rate housing, the planning commission shall review the preliminary plat to ensure that affordable housing units shall, to the extent possible without creating practical difficulties, be mixed with the other residential units and not clustered together or segregated in any way from market-rate housing in the development. The Community Services Department Director, in all instances, shall have the discretion to approve the final location and distribution of affordable housing units in the development on the final plat, provided that such locations are in substantial compliance with the planning commission's approval of the preliminary plat.

16.43.070 Plat designation of affordable housing units required.

All preliminary and final plats which include affordable housing developments or affordable housing units shall indicate which dwelling units shall be constructed as affordable housing units. For single-family detached dwelling units, each lot upon which an affordable housing unit is to be constructed shall be designated on the preliminary and final plat. For multi-family housing or duplex housing, the preliminary and final plat shall indicate the percentage of units within the development which shall be constructed as affordable housing units. An affordable housing development may be developed in phases. For a phased development, each preliminary and final plat shall indicate which dwelling units shall be constructed as affordable housing units. The Community Services Department Director, in all instances, shall have the discretion to approve the number and phasing of affordable housing units within a phased development on the final plat. The Community Services Department Director shall also have the authority to approve administrative amendments to final plats changing the number or location of affordable housing units designated on a final plat, provided that such locations are in substantial compliance with the planning commission's approval of the preliminary plat and with all other applicable provisions of this Chapter.

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. (Ord. 5433 § 6, 2009)

16.43.100 Use tax credit for qualified affordable housing units.

A. Incentives Provided. An applicant who meets all of the applicable criteria set forth in this Section may receive, as a credit against any fees assessed by the City in connection with the construction of new qualified affordable housing units within the City, or in connection with the reconstruction or remodel of an existing dwelling unit within the City, a sum equal to the building materials use tax paid to the City in connection with the construction of such units.

B. Criteria to Receive Credit. The credit shall be issued at the time a certificate of occupancy is issued for the single family dwelling, multi-family building or duplex containing an affordable housing unit. In order to receive the use tax credit set forth in Subsection A, the applicant shall meet one of the following criteria:
   1. For "for-sale" dwelling units, the applicant shall provide documentation satisfactory to the Community Services Department Director that the building for which the certificate of occupancy is requested contains the required number of affordable housing units identified on the final plat.
   2. For "rental" dwelling units, the applicant shall provide documentation satisfactory to the Community Services Department Director and City Attorney that the multi-family building or duplex containing affordable housing rental unit(s) are located in an affordable housing development and will provide affordable housing units to qualifying households for not less than twenty (20) years.

C. Application. Any person or entity, which wishes to receive the incentive credit provided for in Subsection A, shall submit a completed use tax credit application to the Human Services Administrator. The application shall be accompanied by documentation in support of the criteria set forth in this Section. An application which fails to contain complete information and sufficient documentation to support the criteria set forth above shall not be considered. The completed application for the incentive credit shall be submitted and approved prior to issuance of a use tax credit and prior to issuance of a certificate of occupancy. (Ord. 5433 § 6, 2009)

16.43.110 Annual Review of affordable housing ownership.

Once each year, the Human Services Administrator shall obtain an ownership report concerning each "for-sale" affordable housing unit for which the City has issued a certificate of occupancy. In the event an affordable housing unit is owned or occupied by a person other than the initial qualifying household, the current owner of the affordable housing unit shall submit documentation to the Human Services Administrator verifying that the affordable housing unit is owned by a qualifying household and has not been rented. In the event the current owner fails to provide such information in a timely manner, or the information provided fails to support continuing compliance with the requirements set

forth in this Chapter, the Human Services Administrator shall advise the current owner in writing that the payment set forth in Section 16.43.080.B of this Chapter shall be paid to the City. If the current owner fails to pay the City within thirty (30) days of the date any decision is made by the Human Services Administrator pursuant to this Section, the City may institute appropriate legal proceedings to recover the amount owed. Any such funds recovered shall be placed in the Affordable Housing Fund. (Ord. 5262 § 2, 2007; Ord. 4881 § 6, 2004)