

STAFF MEMO

DATE OF STUDY SESSION: AUGUST 26, 2019 / AGENDA ITEM NO. 3

To: Mayor and City Council

From: Travis Parker, Director of Planning, 303-987-7908
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Date: August 9, 2019

Subject: **RESIDENTIAL GROWTH LIMITATIONS**

SUMMARY STATEMENT: This memo summarizes and outlines the city staff assessment and application of the Residential Growth Limitation Ordinance. This municipal code amendment has been codified as Chapter 14.27: Residential Growth Limitations.

The Residential Growth Limitation Ordinance was approved as part of the Initiative process outlined in Article XIII of the Lakewood Charter. Once approved by the voters, a citizen-initiated ordinance is considered a legislative amendment just as if the City Council had adopted it. The initial role of the City Council as it pertains to the Residential Growth Limitations Ordinance is to determine rules relating to the administration of the ordinance. Specifically, Section 14.27.030(A) states: “City Council may adopt rules as necessary to administer this chapter.”

The purpose of this Memorandum is for staff to identify administrative issues that require policy direction from City Council to assist in the orderly implementation of the ordinance. For each such issue, staff is providing the Council with both background information and a recommended course of action.

ISSUES:

1. Planning Commission role in administrative rule changes

Background:

Section 14.27.030.A states “Planning Commission may recommend and City Council may adopt rules as necessary to administer this chapter.” It is unclear from this language whether the Planning Commission is required to hold a hearing and provide recommendations on any changes to administrative rules.

Recommendation:

Under the City’s Charter, the Planning Commission advises the City Council on land use matters. While there may be exceptions, administrative rulemaking is generally not considered a “land use matter.” Additionally, the Ordinance states that the Planning Commission *may* recommend rules and the Council may adopt them, but neither is mandatory. Consequently, unless the particular rule being considered truly involves a “land use

matter,” it would appear that the Planning Commission’s participation on the rule-making process is not required.

2. Guidance on determining “development”

Background:

The ordinance defines the word “development” as “the entire plan to construct or place one or more dwelling units on a particular parcel or contiguous parcels of land within the city including, but not limited to, a subdivision approval, a planned unit development, and a mobile home park.”

For the purpose of determining whether a group of new residential units must be treated as a single request for allocations or as multiple requests for allocations it is important to further define when a group of new homes constitutes a single development. Specifically, if different buildings are built on adjacent or nearby lots by the same or different owners, do the buildings constitute one or more than one development?

The ordinance does give some guidance on this issue in Section 14.27.080.C: “Allocation requests within a development under common ownership shall be combined and treated as a single application. Lots in such developments which are held in separate ownership shall be treated as separate applications.”

Two questions appear to need clarification, particularly for large single family detached-home developments. First, does each subdivision filing on a large property constitute one single development, multiple developments, or a part of a larger development? Second, do public rights-of-way interrupt contiguity of parcels?

Recommendation:

For single family detached-home developments, staff recommends that each entire subdivision filing constitute a single development, provided it remains in single ownership, based on the language “a subdivision approval” within the definition. This would mean that each filing would constitute a development rather than each block within a filing being considered separately or multiple subdivisions being combined based on contiguity. This also means disregarding public rights-of-way when determining contiguity. For example, in a large single-family subdivision, public streets would not divide the project into multiple developments.

3. Guidance on the definition of “dwelling unit”

Background:

The ordinance defines the word “dwelling unit” as “one or more habitable rooms constituting a unit for permanent occupancy, with facilities for eating, sleeping, bathing, that occupies a structure or a portion of a structure.”

For the purpose of applying the ordinance, there are land uses that clearly fit within the definition, land uses that do not fit within the definition and land uses types that need further clarification. The land uses that clearly *fit within* the definition of “dwelling unit” are: single-family detached home, accessory dwelling unit, duplex, attached dwelling unit (townhomes), multifamily residential and mobile home. The land uses that may have persons staying overnight but clearly *don’t fit within* the definition are shelter, bed & breakfast, emergency

medical facility, hotel, motel, correctional institution and hospital. The uses that appear need clarification are group home and group residential facility.

The ordinance gives guidance in Section 14.27.020 on how some particular uses are to be handled. For example, university or college student housing is excepted from the ordinance; however, group residential facilities are not addressed in the ordinance. More specifically, the group residential facility sub uses, including skilled nursing facilities, memory care facilities and assisted living facilities further, need clarification defining the use category. Additionally, the number of allocations for a group home are not defined.

For clarification purposes, the following terms are defined in the Lakewood Zoning Ordinance:

Group Home: A facility that provides for the care, treatment and/or supervision, on a temporary or permanent basis, for 8 or fewer individuals, or for more than 8 individuals when reasonable accommodations have been approved per the Federal Fair Housing Act. A group home may include central or private kitchens, dining, recreational, health care, and other facilities.

Group Residential Facility: A facility that provides for the care, treatment and/or supervision, on a temporary or permanent basis and which does not meet the definition of a group home. A group residential facility may include central or private kitchens, dining, recreational, health care, and other facilities. A group living facility may include, but is not limited to, assisted living facilities and college dormitories.

Recommendation:

Staff recommends that uses such as assisted living facilities, rehabilitation stay facilities, skilled nursing facilities, memory care facilities and other types of similar Group Residential Facilities not intended for permanent occupancy with bath, sleeping, and kitchen facilities in each unit should not be required to obtain allocations because they do not fit entirely within the definition of Dwelling Unit. Any other type of Group Residential Facility intended for permanent occupancy, such as college dormitories, (with facilities for eating, sleeping and bathing directly associated with each unit) shall be required to obtain allocations. And, if a facility that did not get allocations converts to a facility intended for permanent occupancy, allocations will be required at that time.

Based on the regulations in the Federal Fair Housing Act, group homes should be treated like single-family homes so each new group home not replacing a single family home shall be required to obtain one allocation.

4. Threshold of units for affordable housing pool

Background:

The allocation pool for “affordable/low income housing” is established by the following language: “The affordable/low income housing pool is created for distribution of allocations for residential projects creating dwelling units for households earning up to 120 percent of area median income.” It is unclear from this language how to handle projects with mixed affordability; some affordable units and some market rate units. A literal reading of the language would mean that any project that creates two or more affordable dwelling units regardless of how many market rate units would be able to process the entire development under the affordable housing pool.

Recommendation:

Staff recommends creating a threshold percentage of affordable units to qualify for this pool. Under this proposal, developments with 25% or more units at or below 120% AMI could apply under the affordable pool. If unable to achieve full allocations through the pool they would still be able to apply for the remainder in the open pool.

5. Dwelling unit replacement

Background:

One of the listed exceptions from the allocation process is when one one dwelling unit is replaced with another dwelling unit. 14.27.020.C states “A dwelling unit may be replaced with another dwelling unit without obtaining an allocation, provided that the replacement unit is located on the same parcel, tract, or lot.” The ordinance does not, however, give any guidance on how long ago the demolition may have happened or what proof is required. Historically, city staff has not retained and tracked the number of dwelling units demolished under each demolition permit.

Recommendation:

City staff has begun keeping a record of residential units demolished as of the enactment of the ordinance. Any unit existing at the time the ordinance was enacted that is subsequently demolished, may be replaced without an allocation at any time in the future. Units demolished prior to July 12, 2019 are not eligible for replacement without an allocation.

6. Determination of “Blighted”

Background:

Chapter 14.27 refers to blighted and distressed areas twice:

Under 14.27.010 Purpose/Intent, item B: “Encourage redevelopment of blighted and distressed areas;”

Under 14.27.020 Implementation/Exceptions, item A: “Structures located, or to be located, upon land that is designated ‘blighted.’”

However, the ordinance does not provide further guidance on which properties meet these standards.

Definitions of blighted and distressed areas generally rely on assessments of properties in relationship to:

- Area Median Gross Income (AMGI)
- conditions endangering life or property by fire or other causes
- defective title; deteriorating structures and/or site improvements
- environment contamination
- faulty lot layout
- health, safety or welfare factors requiring high levels of municipal services
- housing overcrowding
- inadequate public improvements or utilities

- inadequate street layout
- per capita income
- population growth lag in relationship to other metropolitan areas
- poverty rate
- substantial underutilization or vacancy of building
- sites or improvements
- unemployment rates
- unsafe conditions
- unsafe/unhealthy buildings
- unusual topography

Lakewood properties are currently designated as blighted and/or distressed areas if any of six (6) Federal, State and Local definitions are used:

A. Properties within an area previously designated through the Lakewood Reinvestment Authority's (LRA) Urban Renewal Area (URA) program.

Urban Renewal Areas are designated through the acceptance, by the LRA, of an independently conducted conditions survey including a determination of the existence of blighting conditions within the area surveyed as defined in C.R.S. § 31-25-101 et seq.

B. Properties within a Federally designated Opportunity Zone (OZ).

Opportunity Zones consist of U.S. Census blocks which meet minimum thresholds of poverty rate, median family income, and were nominated by States' Governor's Offices for OZ designation. The Opportunity Zones Program is authorized under the Tax Cuts and Jobs Act, approved by the U.S. Congress on December 22, 2017

C. Properties within a Federally designated Low-Income Housing Tax Credit (LIHTC) Qualified Census Tract.

Qualified Census Tracts defined under the section 42(d)(5)(C) of the Internal Revenue Code of 1986, include any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least 50 percent of households have an income less than 60 percent of the Area Median Gross Income (AMGI), or which has a poverty rate of at least 25 percent.

D. Properties within a qualified Community Development Block Grant (CDBG) Target Area.

CDBG Target Areas consist of U.S. Census blocks where the majority of households earn eighty percent or less of the area median income. The area median income is calculated annually by the U.S. Department of Housing and Urban Development. Communities are allocated an annual amount of CDBG based on a formula that examines poverty rate, population, housing overcrowding, age of housing and population growth lag in relationship to other metropolitan areas. The CDBG program is authorized under Title 1 of the Housing and Community Development Act of 1974, Public Law 93-383, as amended; 42 U.S.C.-5301 et seq

E. Properties within a Colorado State Enterprise Zone (EZ) Program Area

Colorado Enterprise Zone Program Areas consist of properties which have qualified through meeting minimum requirements including high unemployment rates, low per capita income, and/or slower population growth and have been approved for EZ designation by the Colorado Economic

Development Commission. The Colorado Enterprise Zone program is authorized under C.R.S. § 39-30-101 et seq.

F. Properties with a Federally designated Difficult Development Area (DDA).

Difficult Development Areas (DDA) for the Low-Income Housing Tax Credit program are designated by U.S. Department of Housing and Urban Development (HUD) and defined in statute as areas with high construction, land, and utility costs relative to its Area Median Gross Income (AMGI). DDAs in metropolitan areas are designated along Census ZIP Code Tabulation Area (ZCTA) boundaries.

Recommendation:

Staff recommends that for the purposes of implementing Chapter 14.27 blighted and/or distressed areas be defined as follows:

- A. Any property within an area previously designated as blighted through the Lakewood Reinvestment Authority's (LRA) Urban Renewal Area (URA) program, or
- B. Any property within a Federally designated Opportunity Zone (OZ), or
- C. Any property within a Federally designated Low-Income Housing Tax Credit (LIHTC) Qualified Census Tract, or
- D. Any property within a qualified Community Development Block Grant (CDBG) Target Area, or
- E. Any property within a Colorado State Enterprise Zone (EZ) Program Area

NOTE: For the purpose of implementing Chapter 14.27, staff does not recommend including areas of Lakewood designated within a Federally defined Difficult Development Area (DDA) as blighted or distressed areas. DDAs are largely determined by the ratio of high construction, land and utility costs relative to area median income. In Lakewood, areas designated as a DDA are largely the result of low population (and therefore low AMGI) within the Census ZIP Code Tabulation Area (ZCTA) boundaries and are largely located in areas where current zoning would preclude residential building. The DDA's exclusion from the definition of blighted or distressed areas within the context of Chapter 14.27 would mean housing allocations would be required if residential dwelling units were to be developed in the DDA areas of Lakewood.

7. Interaction of vesting with allocation process

Background:

Some projects have received vested rights from City Council to build particular developments. Vested rights protect landowners from changes in zoning and the lawful use of land. Two questions have come up so far: first, does vesting exempt a project from needing allocations and second, can a project that is vested for more than 40 units be reviewed and possibly denied by Council?

Recommendation:

The answer to the first question is no. Vested rights protect landowners from changes in zoning and the lawful use of land; the allocation system concerns the issuance of building permits. The timing of the building permit issuance by allocations does not by itself prevent the project from being built. Projects with vested rights will still need to receive allocations.

The second question will likely be case dependent. Outright and permanent denial of a vested project may not be legal, but a denial that allows for subsequent attempts or retains some use of the land may be legally permissible.

8. Planning Commission role for projects over 40 units

Background:

Per Section 14.27.040.B, no project may receive more than 40 allocations within a calendar year without approval by City Council through a public hearing. The ordinance is silent on whether Planning Commission has a role in this process.

Recommendation:

Nothing in the Ordinance prohibits or requires Planning Commission review or a Planning Commission hearing related to the approval of a request for more than 40 allocations for an individual project. City Council could create a procedure for Planning Commission review if desired.

9. Timing of hearings for over 40-unit developments

Background:

The ordinance is silent on the timing of public hearings for projects needing more than 40 allocations. Can they only take place in the current year or can they be done in the prior year in preparation?

City Council determines the number of allocations available at the beginning of the year, so it might be difficult to determine whether the criteria could be met; specifically, accumulation of allocations will not prejudice the allocation process and either there is an unmet community need for such development or there will be enough allocations available in the following calendar year to fulfill all other applications. The safer interpretation appears to be to require the request to be made in the current year, however due to the timing of the allocation application at the very end of the development process this may hamper or eliminate the ability for these projects to get allocations or use them within the pool window.

Recommendation:

Staff recommends that this question be revisited upon application for the first project over 40 units. Staff can then present a recommendation based on actual timing of a project through the development and allocation process.

10. Criteria for over-40 unit projects

Background:

In reviewing requests for development of more than 40 units, the ordinance directs City Council to consider whether the “accumulation of allocations will prejudice the allocation process,” and if not, then whether the project fills an “unmet community need” or whether “insufficient applications have been submitted to exhaust the allocations available and such allocations are available for distribution in the current calendar year.” The criteria use primarily words with commonly accepted meanings, but additional guidance on these criteria is needed.

Recommendation:

The criteria should be interpreted and applied by City Council, perhaps with the following in mind:

- Accumulation of allocations will not prejudice the allocation process:
 - Council must decide whether granting allocations in excess of 40 for a given project creates any problems for the overall allocation process, but such determination cannot be based on whether sufficient allocations exist. This is because “not prejudicing the allocation process” is a threshold question before Council can apply the (1) “unmet community need” or (2) “insufficient applications have been submitted to exhaust the allocations available and such allocations are available for distribution in the current calendar year” criteria. Because there is a secondary criterion for available allocations, the threshold question cannot be whether there are or will be available allocations.
- Unmet community need
 - “Unmet” and “need” should be given their plain and ordinary meanings. City Council could consider borrowing from liquor licensing, which requires a license applicant to show that the proposed establishment meets the “needs and desires of the neighborhood.” That is, City Council could decide what constitutes the “community’s unmet needs” by first determining what constitutes the “community” for that project, based on the project’s impacts. In other words, some projects could have a city-wide impact, where others might affect only a few surrounding blocks.

11. Notification rules for senior housing hearings

Background:

Section 14.27.040(C)(2) allows for a public hearing to exempt senior housing projects from the requirements of the ordinance. The Ordinance refers to the notice requirements in Section 17.2.2.3 of the Code, but does not distinguish between the different requirements for notification set out in that section.

Recommendation:

Because approved senior housing projects are exempt from the allocation process, staff recommends following the notification requirements in 17.2.3(B)(3)(c) for major variances and major waivers, which seem the most similar.

12. Proof for senior housing exemption

Background:

Section 14.27.040(C)(2) allows for City Council to exempt age-restricted housing from needing allocations. However, the section does not specify the documentation or proof needed to verify that the development “is and will remain housing for individuals over the age of 55”?

Recommendation:

Senior housing projects always contain provisions, whether in a declaration of covenants or deed restrictions or other document, that limit tenants/buyers to individuals over a certain age. The developer should provide the

proof that the project will remain housing for individuals over the age of 55 in the same form as is used in other contexts.

13. Planning Commission review of affordable housing requests

Background:

Sec. 14.27.090(C)(2) requires the Planning Commission to review affordable housing allocation requests when the number of requests exceeds the number of allocations. However, the section does not specify the process for that review. Does Planning Commission “review” for affordable housing pool distribution require a hearing?

Recommendation:

While the ordinance is silent, staff recommends that Planning Commission hold a hearing to determine distribution.

14. Approval of banking plans

Issue:

Section 14.27.100 establishes the ability to create banking plans that allow allocations to be used beyond a single allocation period. Subsection A provides a list of banking that is permitted “in the following circumstances only,” but only includes projects under 40 units within that list. Projects over 40 are mentioned later in Section B so it is clear the intent was to allow banking in either circumstance, but because of the way the list is written clarification is needed.

Section 14.27.100 reads:

- A. Banking of allocations will be permitted *in the following circumstances only*:
 - 1. The Director of Planning shall approve an application for banking of allocations for **residential** projects of **forty (40) units or fewer** if the number of units to be banked corresponds to that found in an entire building or buildings in the project, and if the allocations are proposed to be used within the same calendar year as the initial award of allocation.
 - 2. The Planning Commission may approve a banking plan for **multifamily** projects of **forty (40) units or fewer** for the purpose of banking beyond the end of a calendar year, upon a finding that building configuration, site constraints, or infrastructure phasing reasonably require that a larger increment of the development be built at one time.
 - 3. The Planning Commission may approve a banking plan for **residential** projects of **forty (40) units or fewer** upon a finding that building configuration, site constraints, or infrastructure phasing reasonably require that a larger increment of the development be built at one time.
- B. Application for banking of allocations for projects **over forty (40) units** shall be made at the time of the allocation application. The application shall set forth a banking plan which includes the total number of dwelling units in the project, the number of allocations sought to

be banked, the time period during which the validity of allocations is proposed for extension and the reason therefore.

The only effective difference between 2 and 3 is the use of the words “multi-family” or “residential.” Neither word is defined by the ordinance so it is unclear if the difference is intentional or if there is a mistake and the third item on the list was intended to be for 40 or more units.

The text of the Ordinance cannot be changed at this time, even in the case of ambiguity or internal conflict. If a plain reading of the language does not answer the question or leads to an absurd result, then a rule adopted by Council can be used to supplement the information in the ordinance.

Recommendation:

Since Subsection B clearly anticipates banking for projects over 40 units, staff recommends creating a process for approval of banking plans for these projects. The ordinance seems to anticipate banking plan decisions being made by the Planning Commission, but also allows for appeal to the City Council. Since Council already reviews projects with more than 40 units in a single year, it follows that Council could approve a banking plan at the same meeting. Staff recommends that either body have the authority to approve banking plans for projects over 40 units.

15. Building Permit Application Review Deadline

Background:

14.27.130 of the ordinance states, “All building permit applications will be reviewed within fifteen working days after submission of a complete application.” This requirement applies to any building permit application that includes a dwelling unit except those projects specifically excepted in 14.27.020 or exempt under the provisions of 14.27.040. It does not apply to the majority of permit applications such as home remodels, non-residential work and other permits that do not include a new dwelling unit.

If building plan review begins after the submittal of a permit application, the fifteen-day deadline probably cannot be met with current resources and will extend the time necessary for the review of all other permits because new dwelling unit projects will be the constant top priority.

The city does not structure staff resources to review plans for any type of permit within a pre-defined amount of time. Workload varies considerably over time and the complexity of reviews varies significantly. The city’s staffing approach has reasonably served the community throughout seasonal and market fluctuations in workload for the past several decades. In addition, this approach has provided the capability to review more than 75% of projects while the applicant is at the counter, which allows permits to be issued in those instances with one visit from the resident, property owner, contractor or builder.

Recommendation:

A partial procedural change can make this new deadline feasible without shifting the impact to homeowners and other permit applicants not proposing a new dwelling unit, to projects excepted or exempt from the ordinance provisions, and to one-stop, while-you-wait permits. The change would broaden the use of a process currently in-place for applicants who build multiple units from a single base model plan. In those instances, the plans are

reviewed and approved prior to a permit application being submitted. The builder then submits a permit application at the time it is ready for construction and any pre-approved options have been decided by the builder or future owner. This current procedure separates the building plan review and approval (not addressed in 14.27.130) from the building permit application (the subject of the fifteen-day deadline).

The building permit application review will continue to include, when applicable, steps such as confirmation of water and sewer availability; execution of a Public Improvements Agreement; payment of any fees such as school, park land and permit fees; and submission of acceptable collateral for erosion control and public improvements.

Staff recommends the building code be amended to clearly express that the building plan review process is separate from the building permit application process.

16. Timing of allocations in the development process

Background:

Concerns exist regarding the timing of the allocation process and its relationship to the overall development process. The ordinance specifies that the allocation application takes place late in the planning and design of any development project. A minimum of a year of time and investment (and often more) will have gone into most any multi-family project before the allocations can be applied for. Then, the pro-rata distribution of allocations will often result in fewer allocations awarded than requested. The result is starting over with the building and site design with fewer units, which is hampered by the short window for use of allocations.

The problem is further complicated for affordable housing projects. Affordable housing projects in Colorado generally rely on tax credits awarded by the Colorado Housing and Finance Authority (CHFA). The process for CHFA awards takes place prior to work with the City on site and building design but requires a level of entitlement that won't exist under the residential growth ordinance. The hearing and allocation assignment required by the ordinance at the end of the process may prevent projects in Lakewood from being awarded CHFA tax credits.

Recommendation:

Staff recommends a study session scheduled for December or January, and annually thereafter, to further describe and discuss this problem and to identify language changes, possibly including earlier assignment of allocations and longer allocation pool periods, to mitigate the issues.

BUDGETARY IMPACTS: While the ordinance as a whole may impact the City budget in the coming years, there are no specific budgetary impacts associated with the policy recommendations made in this report. Some of the alternative actions proposed may have budgetary impacts that can be assessed if Council chooses an alternative course of action.

STAFF RECOMMENDATIONS: Staff recommendations are included for each item. Staff will prepare a formal resolution or ordinance for adoption by City Council based on the recommendations in this memo as amended by Council at the study session.

ALTERNATIVES: Where alternatives exist, they are identified within each item.

PUBLIC OUTREACH: The ballot initiative was placed on the ballot in accordance with the initiative procedures outlined in Article XIII of the Lakewood City Charter.

ATTACHMENTS: Ordinance – Chapter 14.27 – Residential Growth Limitations

REVIEWED BY: Kathleen E. Hodgson, City Manager
Benjamin B. Goldstein, Deputy City Manager
Timothy P. Cox, City Attorney

Chapter 14.27 Residential Growth Limitations

14.27.010 Purpose/Intent

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

14.27.020 Implementation/Exceptions

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

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

14.27.030 Administration of this Chapter

- A. Planning Commission may recommend and City Council may adopt rules as necessary to administer this chapter.
- B. Calculations performed in the administration of this chapter shall be rounded downward for all partial numbers.

14.27.040 General Provisions

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

- A. Allocation Required for a Building Permit. Except as otherwise provided in this chapter, an allocation is required as a condition precedent to the issuance of a building permit which will result in the creation of a new dwelling unit. For structures containing more than one dwelling unit, one allocation for each dwelling unit in the structure is required as a condition precedent to issuance of a building permit for such structure.
- B. Maximum Allocations. The city shall not grant more than forty (40) allocations to a development in a calendar year except upon a finding after hearings held upon reasonable notice to the public - pursuant to the provisions of Lakewood municipal code 17.2.2.3 applicable to initial zoning and rezoning - that such accumulation of allocations will not prejudice the allocation process; and:
 - 1. That there is an unmet community need for such development; or
 - 2. That insufficient applications have been submitted to exhaust the allocations available and such allocations are available for distribution in the current calendar year.

- C. Residential development projects may be specifically exempted from this chapter according to either of the following procedures:
1. Residential developments may be exempted by the adoption by the electors of the City of Lakewood at a regular or special election of an initiated or referred ordinance enacting such an exemption. Such election shall be held according to the applicable provisions of the Lakewood City Charter, with any expenses covered by the applicant requesting the exemption.
 2. City Council may upon a finding of compliance with the below-listed criteria grant an exemption from the specific provisions of this chapter for a residential development within the city. City Council's action shall be by ordinance, shall include two public hearings, and shall occur following public hearing and recommendation by Planning Commission. Planning Commission's hearing and recommendation, and City Council's hearing and decision on the requested exemption shall follow the hearing and notice procedures in section 17.2.2.3 of Lakewood municipal code. City Council may grant an exemption from the provisions of this chapter upon a finding that all of the following criteria, as may be applicable, are met:
 - a. That the residential project requesting an exemption is a multifamily "senior housing project" which is and will remain housing for individuals over the age of 55; and
 - b. That the project requesting an exemption demonstrates compliance with Lakewood Comprehensive Plan and any applicable neighborhood plan(s); and
 - c. A senior housing project developed based upon an exemption granted shall not be converted to another residential use without first having secured an allocation for each dwelling to be so converted, according to the provisions of this chapter.
- D. Period of Validity. Allocations are only valid and can be used only from the date of issue through the last day of the allocation period for which they are issued, at which time they expire, unless a part of an approved banking plan.
- E. Use of Allocations. An allocation is used by applying for and being issued a building permit or setting up a mobile home, as applicable. Unused allocations are those for which a building permit has not been issued, or a mobile home not set up, during the period for which the allocation is valid.
- F. Surrender of Allocations. Allocations which a recipient does not expect to use during the period for which they are valid may be voluntarily surrendered without penalty at any time up until 30 days prior to the end of that allocation period. Allocations which are surrendered at least 30 days prior to the expiration of the allocation period shall be added to the number of available allocations for the next allocation period in the same calendar year for the same allocation pool, or to the year-end pool, as appropriate. Allocations in the year end pool may not be surrendered.
- G. Transferability. Allocations are site specific and not transferable to other developments. Allocations are issued to a specific building lot, and may only be transferred within a development to other lots which are under the same ownership as the holder of the allocation. Allocations may be transferred with the conveyance of a lot.

14.27.050 Available Allocations

- A. In January of each year City Council shall determine by resolution the number of allocations which will be available for issuance and use during that year. The annual resolution shall assign a sufficient number of allocations directly for satisfaction of a previously exempted project(s) whose banking plan(s) included a Planning Commission recommendation for commitment of future allocations, if City Council approves such commitment. The resolution shall then assign those remaining available allocations to the "open pool," "hardship pool," "affordable/low income pool," and "surplus pool," and determine the number of allocations within each such pool as will be available for the respective allocation periods.

- B. The total number of allocations available for issuance and use during each calendar year shall be equal to one percent of the number of dwelling units which are estimated to exist in the city on December 31 of the prior calendar year. The number of allocations available for issuance for 2018 will be based on figures from the City of Lakewood and the US Census statistics (152,590 residents divided by 2.27 = 67,220) and thus 672 allocations for new dwelling units will be available in 2018.
- C. The number of dwelling units which exist in the city on December 31 of the prior year shall be estimated as follows:
 1. Begin with the number of dwelling units in the city which existed at the beginning of the previous calendar year.
 2. Add the number of new dwelling units for which building permits were issued during the previous calendar year which required an allocation for issuance.
 3. Add the number of allocations secured by, or assigned to, previously exempted projects or dwellings during the previous calendar year.
 4. Add the number of dwelling units added to the city by reason of annexations during the previous calendar year.
 5. Subtract the number of dwelling units which were destroyed (and not replaced within 12 months), abandoned or otherwise ceased to be used as such during the prior calendar year.
 6. Subtract the number of dwelling units for which building permits had previously been issued, but which expired in the previous year without issuance of a certificate of occupancy.

14.27.060 Establishment of Allocation Pools

For the purpose of administration of this chapter City Council hereby creates the following described allocation pools:

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

14.27.070 Schedule of Allocation Periods

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

14.27.080 Applications

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

14.27.090 Issuance of Allocations

- A. Open Pool. For each respective allocation period in the open pool, one allocation will automatically be issued to each applicant if sufficient allocations are available. The remainder of requests is then tallied, and available allocations are distributed on a pro-rata basis to applicants based upon their requested number.
- B. Hardship Pool. Hardship pool allocations are distributed by the City Council at their discretion upon request from an applicant, and subject to a finding that all of the following conditions exist:
 - 1. That the issuance of an allocation is necessary to prevent undue hardship on the applicant; and
 - 2. That the issuance of an allocation(s) will not adversely affect the public interest or the purposes of this chapter; and
 - 3. Allocations are available in the hardship pool; and
 - 4. That the requested allocation and the resulting building permit would be proper and in accordance with all of the ordinances and regulations of the City of Lakewood, excepting the provisions of this chapter.
- C. Affordable/Low Income Housing Pool. Allocations assigned to the “affordable/low income” housing pool shall only be available for use by qualifying projects in the initial allocation period of each year. Any excess allocations in the affordable/low income housing pool at the end of the initial allocation period of the year will be transferred to the open pool for distribution pursuant to subsection (1) above.
 - 1. In addition to the application requirements, allocations from the affordable/low income housing pool will contain documentation in a form acceptable to the city attorney of the provisions that will be put in place to assure that rental units created by affordable/low income housing pool allocations will remain available to households making up to 120 percent of area median income for a period of at least 15 years after completion of construction, or assurances that the initial sale of the dwelling units created by the affordable/low income housing pool allocations will be by a bona fide, “arms-length sale” to individual households making no more than 120 percent of area median income, and at an initial sales price that is reasonably calculated to allow an otherwise

- qualified buyer to obtain a loan for the purchase of the dwelling unit with a down payment of no more than 20 percent of the sale price.
2. If the number of affordable/low income housing pool allocations requested does not exceed the number assigned by City Council, the allocations will be distributed in the same manner as the open pool. However, if the number of allocations requested exceeds the number of allocations available in the affordable/low income housing pool, the applications will be presented to Planning Commission for review. The Planning Commission will award the affordable/low income housing pool allocations to those proposed dwelling units serving the households with the lowest area median income. In such circumstances, no building permit shall be issued based upon any preference pool allocations until 16 days after the Planning Commission has issued a decision. Any aggrieved party may appeal the Planning Commission decision to City Council. Applicants for allocations from the affordable/low income housing pool may amend the application submitted to change from the affordable/low housing pool to the open pool, at any time prior to the beginning of the allocation period.
- D. Surplus Pool. All unused open pool and hardship pool allocations which remain on November 1 of each year will be available in the surplus allocation pool. One allocation will automatically be issued to each applicant if sufficient allocations are available. The remainder of requests is then tallied, and available allocations are distributed on a pro rata basis to applicants based upon their requested number. Allocations which are unclaimed during the surplus pool or which are due to expire will be assigned by the City Council. Acquisition of the final remaining allocation by a banking plan for a specific project during the surplus pool shall trigger the expiration of the banking plan at the end of the first allocation period in the following year.
- E. Insufficient Allocations. Except as noted above, if there are insufficient allocations available to issue at least one allocation to each applicant for a particular allocation period due to demand, a lottery shall be held to determine the recipients of the allocations. Those applicants who are unable to obtain an allocation during that particular allocation period will be given first preference to receive an allocation in the following allocation period in the same pool if a timely application is filed.
- F. Following the issuance of allocations, staff shall present a report to Planning Commission and City Council summarizing the results of the allocation period.

14.27.100 Banking of Allocations

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

- A. Banking of allocations will be permitted in the following circumstances only:
1. The Director of Planning shall approve an application for banking of allocations for residential projects of forty (40) units or fewer if the number of units to be banked corresponds to that found in an entire building or buildings in the project, and if the allocations are proposed to be used within the same calendar year as the initial award of allocation.
 2. The Planning Commission may approve a banking plan for multifamily projects of forty (40) units or fewer for the purpose of banking beyond the end of a calendar year, upon a finding that building configuration, site constraints, or infrastructure phasing reasonably require that a larger increment of the development be built at one time.
 3. The Planning Commission may approve a banking plan for residential projects of forty (40) units or fewer upon a finding that building configuration, site constraints, or infrastructure phasing reasonably require that a larger increment of the development be built at one time.

- B. Application for banking of allocations for projects over forty (40) units shall be made at the time of the allocation application. The application shall set forth a banking plan which includes the total number of dwelling units in the project, the number of allocations sought to be banked, the time period during which the validity of allocations is proposed for extension, and the reason therefore.
- C. For applications submitted under subsection (A)(2) or (A)(3) of this section, the Planning Commission shall determine at a hearing upon reasonable notice to the public has been posted, whether the requested banking is appropriate as provided in this section.
- D. A nonrefundable fee shall be assessed in conjunction with each approved multiyear banking plan to cover the city's cost of the administrating banking plans. The fee shall be set by City Council by resolution and shall be based upon the number of dwelling units in the approved banking plan. The fee shall be payable on a pro rata (per unit) basis at the time of distribution of allocations to the banking plan. Failure to pay any installment of the fee within 30 days of distribution of allocations to the banking plan shall cause a forfeiture of such allocations.
- E. A decision of the Planning Commission or the Director of Planning with respect to an application to bank allocations may be appealed to the City Council.
- F. Requests for banking of allocations beyond the end of the calendar year of the application shall be subject to the following conditions:
 1. The maximum number of years in which allocations may be acquired pursuant to any banking plan of allocations shall be five. All allocations acquired within the banking period must be used during this time period.
 2. The maximum number of allocations that may be in the bank at any one time during the banking program shall not exceed the total number of allocations available in the city in the first year of approval of said banking.
 3. Banking plans will be approved only for a number of units which correspond to that found in an entire building or buildings in the project.
 4. Subject to City Council's annual distribution of allocations, Planning Commission may recommend a commitment of future allocations to an approved banking plan project. Such commitment shall not bind City Council's action, but shall serve to be an indication of support for a specific project.
- G. Surrendered or forfeited allocations distributed to an approved banking plan from calendar years prior to the year during which they are surrendered or forfeited shall be deemed to have expired and shall not be available for distribution. Surrendered or forfeited allocations distributed to an approved banking plan in the same calendar year in which they are surrendered or forfeited shall be made available for redistribution in accordance with the applicable provisions of this chapter.
- H. The Planning Commission, may, upon a show of good cause, approve an extension of up to one year to an existing banking plan, to allow use of the banked allocations. The holder of the allocations may not acquire further allocations during the period of such extension.
- I. For the purpose of defining the total number of available allocations, the total number of dwelling units in the city shall not include banked allocations which have not received building permits.
- J. An applicant banking allocations within the same calendar year, shall notify the Director of Planning in writing within ten days after the allocations are granted of the number of allocations being banked and the reasons therefore.
- K. The annual reports to Planning Commission and City Council pertaining to the administration of this chapter shall include information regarding the number of banked allocations approved in the current year, used in the current year, and the total number of banked allocations by individual project.
- L. Approval of a "banking plan" shall not constitute a "vested right" to develop the project.

14.27.110 Excess and Unused Allocations

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

14.27.120 Failure to Use Allocations; Penalties

- A. Failure to use an allocation which is not part of an approved banking plan during the period for which it is issued, without surrendering it at least 30 days prior to the expiration of the allocation period for which it has been issued, shall cause the holder of such allocation to be ineligible to receive allocations for a period of one year from the last day that the unused allocation is valid. This penalty may be waived by the Planning Commission for good cause.
- B. Failure to use an allocation which is part of an approved banking plan during the period of the banking plan, without surrendering it at least 60 days prior to the expiration of the period of the banking plan, shall cause the holder of such allocation to be ineligible to receive allocations for a period of two years from the last day that the unused allocation is valid. This penalty may be waived by the Planning Commission for good cause.
- C. Use of an dwelling unit constructed by reason of an allocation from the affordable/low income housing pool in a manner inconsistent with the affordability criteria listed in this chapter, or contrary to the assurances provided pursuant to such section, including, without limitation the initial sale of a dwelling unit at a price that exceeds the maximum price contemplated in such section, shall cause the holder of such allocation to be ineligible to receive further allocations for a period of three years from the date of the violation. This penalty may be waived by the Planning Commission for good cause.

14.27.130 Building Permit Approvals

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

14.27.140 Mandatory Review

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

14.27.150 Severability Clause

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

14.27.160 Authority to Continue

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

14.27.170 Definitions

The following terms are defined for purposes of this chapter:

- A. Allocation. "Allocation" means a right, granted by the city pursuant to this chapter, to make application for a building permit to build one dwelling unit. An allocation is not a guarantee of receiving approval for a building permit. Approval of the building permit itself will occur through the established building permit review process.
- B. Allocation Pools. "Allocation pools" mean separate categories of developments as described in this chapter which are created for the purpose of distributing available allocations.
- C. Area Median Income. "Area median income" (AMI) means the median annual household income for Jefferson County, as adjusted by household size, and published annually by the United States Department of Housing and Urban Development.
- D. Building Permit. "Building permit" means a permit issued pursuant to the provisions of the Lakewood Municipal Code.
 - Building permits shall be allocated in accordance with the provisions of this chapter such that those issued shall result in no more than a one-percent annual increase in the number of dwelling units.
- E. Development. "Development" means the entire plan to construct or place one or more dwelling units on a particular parcel or contiguous parcels of land within the city including, but not limited to, a subdivision approval, a planned unit development, and a mobile home park.
- F. Dwelling Unit. One or more habitable rooms constituting a unit for permanent occupancy, with facilities for eating, sleeping, bathing, that occupies a structure or a portion of a structure.
- G. Excess Allocations. "Excess allocations" means allocations which are available for issuance from a particular allocation pool and period, but which have not been issued by reason of lack of demand.
- H. Good Cause. "Good cause," when used as a basis for relief from timely compliance with specifically referenced provisions of this chapter, means the existence of unanticipated circumstances which are beyond the control of the property owner and which prevented timely compliance with the referenced provisions of this chapter. "Good cause" shall not include delays which are reasonably expected in the development process, including, but not limited to, preparation of plans or a securing of financing. The existence of "good cause", and availability of relief by reason thereof, shall be determined after a public hearing conducted by the Planning Commission. A party aggrieved by the decision of the Planning Commission on such issue may, within 15 days of the date of the decision thereon by the Planning Commission, apply to the City Council for a review of said decision by filing a request for review with the city clerk. The City Council shall, within 30 days of receipt of the review request, and based upon the record alone as certified to Council by the Planning Commission, decide to uphold, deny, or modify the decision of the Planning Commission.
- I. Lottery. "Lottery" shall mean a drawing held by the city to select applicants which will receive an allocation through a process based upon random chance. Each applicant in a lottery shall be treated equally regardless of the number of allocation requests.
- J. Pro-rata. "Pro-rata" means the issuing of allocations to applicants in the same proportion that the total number of available allocations bears to the total number of requested allocations, as modified and elaborated in this chapter. For example, if applications for twice the number of allocations were received than the number available, each applicant would be granted approximately one-half the number requested.
- K. Set-up. "Set-up", when used in connection with mobile homes, means the process of setting up a mobile home for the purpose of occupancy as a residence including by way of example, connection to utilities and installation tie-downs.

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