

AGENDA  
LAKEWOOD CITY COUNCIL  
STUDY SESSION  
CITY OF LAKEWOOD, COLORADO  
**VIRTUAL MEETING**  
APRIL 18, 2022  
7:00 P.M.

To watch the Council Workshop live, please use either one of the following links:

City of Lakewood Website: <https://www.Lakewood.org/CouncilVideos>

or

Lakewood Speaks: <https://lakewoodspeaks.org/>

\*\*\*\*\*

**How to Connect to provide Public Comment:**

**By Computer:** <https://lakewood.zoom.us/j/83620828098>

**By iPad, iPhone, or Android device on the Zoom App, enter webinar ID: 836 2082 8098**

**By Telephone: 720-707-2699**

**Webinar ID: 836 2082 8098, #**

**Participant ID: #**

**Press \*9 to Request to Speak, you will be prompted when to speak.**

**Press \*6 to Unmute**

\*\*\*\*\*

The City of Lakewood does not discriminate on the basis of race, age, national origin, color, creed, religion, sex, sexual orientation or disability in the provision of services. People with disabilities needing reasonable accommodation to attend or participate in a City service program, can call 303-987-7080 or TDD 303-987-7057. Please give notice as far in advance as possible so we can accommodate your request.

**ITEM 1 – CALL TO ORDER**

**ITEM 2 – ROLL CALL**

**ITEM 3 – PRESENTATION – CITY MANAGER’S OFFICE OVERVIEW**

**PUBLIC INPUT**

**ITEM 4 – DISCUSSION – LAKEWOOD MUNICIPAL CODE CHAPTER 14.27-RESIDENTIAL GROWTH LIMITATIONS**

**PUBLIC INPUT**

**ITEM 5 – DISCUSSION – CODE OF ETHICS FOR LOCAL GOVERNMENT OFFICIALS**

**PUBLIC INPUT**

**ITEM 6 – REPORTS**

**ITEM 7 – ADJOURNMENT**



**Lakewood**  
Colorado

## STAFF MEMO

**DATE OF STUDY SESSION: APRIL 18, 2022 / AGENDA ITEM NO. 3**

To: Mayor and City Council

From: Benjamin B. Goldstein, Deputy City Manager, 303-987-7050

Subject: **CITY HALL 101 – CITY MANAGER’S OFFICE**

---

**SUMMARY STATEMENT:** As part of the City Hall 101 series, staff from the City Manager’s Office will be providing an overview of the core functions of the Manager’s Office. There is no formal action is required by City Council for this item.

**BACKGROUND INFORMATION:** Staff will be providing an overview of the core functions that are performed in the City Manager’s Office. This presentation is being given as part of the City Hall 101 series, which is intended to provide City Council and the community with a better understanding about the breadth of activities that are performed as part of the regular operations of the City of Lakewood.

**BUDGETARY IMPACTS:** There is no budget impact associated with this presentation.

**STAFF RECOMMENDATIONS:** Staff does not have a recommendation associated with this presentation.

**ALTERNATIVES:** City Council could choose not to hear the presentation or to delay it until a future meeting.

**PUBLIC OUTREACH:** This item was promoted through the regular communication channels of any item considered by City Council.

**NEXT STEPS:** None.

**ATTACHMENTS:** None.

**REVIEWED BY:** Kathleen E. Hodgson, City Manager  
Benjamin B. Goldstein, Deputy City Manager  
Alison McKenney Brown, City Attorney

# STAFF MEMO

**DATE OF STUDY SESSION: APRIL 18, 2022 / AGENDA ITEM NO. 4**

To: Mayor and City Council

From: Travis Parker, Director of Planning, 303-987-7908

Subject: **Discussion of Lakewood Municipal Code Chapter 14.27**

---

## **SUMMARY STATEMENT:**

City Council will be holding a study session on April 18<sup>th</sup> to discuss Article 14.27 of the Lakewood Municipal Code and the need, if any, for edits or amendments. This memo provides background information for City Council in having that discussion. There is no current proposed action in front of City Council.

## **BACKGROUND INFORMATION:**

In July 2019, Lakewood voters passed a ballot measure to require residential growth limitations in the city. Ordinance O-2019-35 codified the provisions of the ballot measure as chapter 14.27 of the Lakewood Municipal Code (LMC) and went into effect on January 1, 2020. Among other things, the provisions of LMC chapter 14.27 requires that allocations are created each year equal to 1% of existing residential units and that each new residential unit (with some exceptions) receive an allocation prior to building permit issuance. Chapter 14.27 is attached to this memo.

At the beginning of each year when allocations are created, they are put into one of three pools: Open Pool, Affordable Pool, or Hardship Pool. The Hardship Pool runs from January 1 to October 31 each year. The Affordable Pool and the 1<sup>st</sup> Open Pool run from January 1 to May 31. On June 1, any remaining allocations in the Affordable Pool or 1<sup>st</sup> Open Pool are put into the 2<sup>nd</sup> Open Pool which runs from June 1 to October 31. On November 1, any allocations remaining in the Hardship Pool or 2<sup>nd</sup> Open Pool are put into the Surplus Pool until the end of the year.

Allocations must be used in the same pool timeframe in which they are received unless a banking plan is created. A banking plan may be created administratively through the end of the current calendar year. A banking plan may be created beyond the calendar year and for up to five years through a public hearing.

In 2020, 413 allocations were created (less than 1%, which would have been 693). Only 184 allocations were used, entirely from the Open Pool. None were used from the Affordable or Hardship Pools.

In 2021, 355 allocations were created (less than 1% which would have been 701). Only 163 allocations were used, 127 from the Open Pool and 36 from the Hardship Pool, none from the Affordable Pool.

In 2022, 705 allocations were created equal to 1% of existing housing. As of the date of this memo, 169 allocations have been applied for from the Open Pool, 44 from the Hardship Pool, and none from the Affordable Pool.

No affordable units of any kind or multifamily buildings have received allocations since the ordinance went into effect. Allocations in all three years have been used for market rate single family structures, both attached and detached.

On August 16, 2021, City Council held a workshop to discuss potential changes to Article 14.27. These potential changes included language clean up and more substantive changes. The memo from that meeting is attached to this memo.

**BUDGETARY IMPACTS:** N/A

**STAFF RECOMMENDATIONS:** N/A

**PUBLIC OUTREACH:** This meeting was posted in the normal channels. Further public outreach will precede any public hearing.

**NEXT STEPS:** Staff will conduct research as necessary and produce draft changes, if any, based on Council guidance.

**ATTACHMENTS:** Attachment A – Existing Chapter 14.27  
Attachment B – August 16, 2021, memo

**REVIEWED BY:** Kathleen E. Hodgson, City Manager  
Benjamin B. Goldstein, Deputy City Manager  
Alison McKenney Brown, 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.

# STAFF MEMO

DATE OF WORKSHOP: \_\_\_\_\_ / AGENDA ITEM NO. \_\_\_\_\_

To: Mayor and City Council

From: Travis Parker, Department Director (303-987-7908)

Subject: **Discussion Items for 14.27**

---

## SUMMARY STATEMENT:

City Council will be holding a workshop on August 16<sup>th</sup> to discuss Article 14.27 of the Lakewood Municipal Code and the need, if any, for edits or amendments. Multiple Council members have submitted discussion topics. The City Attorney's Office and other City staff have also proposed discussion items for City Council. A non-comprehensive, preliminary list of discussion items is below along with questions for consideration.

## BACKGROUND INFORMATION:

### 1. *Non-substantive language edits proposed by City Attorney's Office*

A review by the City Attorney's office has identified multiple places where language is potentially inconsistent or unclear. The Attachment A contains no substantive changes to the document, but identifies suggested language changes for clarity and consistency.

In addition to grammar and punctuation changes, the edits include legal clarifications, including:

- Inserting the word "quasi-judicial" in front of "hearing" to clarify that hearings on this matter impact due process;
- moving the standard for "good cause", a term that is not legal in nature, out of definitions and into 14.27.100(G).
- Combining reporting and annual review into one section

### 2. *Blight Exemption*

City Council members have asked to discuss the exemption in 14.27.020.B of "structures located, or to be located, upon land that is designated 'blighted,'" and the related resolution 2020-07 that set the policy for Council designated blighted properties.

- Should the exemption be removed?
- If retained, should allocations for all non-blighted properties be lowered by the number of units built in blighted areas?

### 3. *Affordable Housing*

City Council has identified barriers to affordable housing in 14.27 as a discussion item. The timing of the allocation process and the uncertainty both make affordable dwelling units impracticable under the current ordinance. City Council has previously discussed adopting the "(City of) Golden Rule" which would allow projects with affordable units to receive building permits prior to receiving allocations.

- Should Lakewood consider adopting Golden Rule?
- Other ways to remove affordable housing barriers?

### 4. *Setting fees in 14.27*

The current ordinance is mostly silent on fees for various applications.

- Should City Council amend the document to specify fee setting?
- Should fees be set annually based on administrative costs?

5. *Criteria in 14.27.040.B are unclear*

The current criteria for City Council review of projects with more than 40 units is unclear and is potentially confusing.

- Should criteria be amended to add specific, objective criteria?
- If so, what criteria?

6. *Process for surrendering allocations*

The current system of requiring allocations to be “surrendered” thirty days prior to the end of an allocation period creates tracking and communication challenges. The current surrender procedure could be removed so that allocations that are both unused and unbanked at the end of an allocation period automatically surrender. This change would not change the lifespan of allocations; they would continue to transfer to the next pool within the calendar year and expire at the end of the year.

- Any concerns with this procedural change?

7. *“Pro-rata” distribution method vs “deck of cards” distribution method*

The current ordinance language requires allocation distribution proportionally rather than one at a time. City Council has previously identified this as a desired change.

- Should allocations be distributed one at a time or as a percentage of the number requested?

8. *Additional language edits proposed by Council Member Able*

Proposed edits are listed in Attachment B.

**BUDGETARY IMPACTS:** N/A

**STAFF RECOMMENDATIONS:** N/A

**PUBLIC OUTREACH:** This meeting was posted in the normal channels. Further public outreach will precede any public hearing.

**NEXT STEPS:** Staff will conduct further research as necessary and produce draft changes, if any, based on Council guidance.

**ATTACHMENTS:** Attachment A – Proposed edits from City Attorney’s Office  
Attachment B – Proposed edits from Council Member Able

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

# STAFF MEMO

**DATE OF STUDY SESSION: APRIL 18, 2022 / AGENDA ITEM NO. 5**

To: Mayor and City Council

From: Alison McKenney Brown, City Attorney

Subject: **Code of Ethics for Local Government Officials**

---

**SUMMARY STATEMENT:** The City Council directed staff to draft a Code of Ethics for the City of Lakewood that complies with the most recent interpretations of Section 7 of Article XXIX, so as to allow the City to locally address ethical concerns associated with Local Government Officials.

**BACKGROUND INFORMATION:** In 2006 the Colorado Constitution was amended to require that public officials of the State be required to conform to certain ethical standards. That law was made specifically applicable to Local Government Officials, which is defined by the Constitution to include “elected or appointed officials of a local government but does not include an employee of a local government.” Ethical standards for employees are typically dealt with separately through personnel policies.

Section 7 of Colorado Constitution Article XXIX provides language that allows home rule municipalities to exempt themselves from the provisions of that Constitutional provision if the home rule municipality should adopt local laws that address the matters covered by Article XXIX. The provisions of Section 7 were reviewed and interpreted by the Court of Appeals of Colorado in October 2020. Following that decision, the Independent Ethics Commission (IEC), the body charged with applying the law of Article XXIX, Ethics in Government, stated in a subsequent decision of that body that they would only accept as valid home rule actions those Ethics Codes that include the following provisions **“in order to trigger the exemption in § 7 because, without any one of those matters “covered by this article,” a home rule entity’s purported regulation of ethics lacks effect.”** (IEC, Complaint No. 17-28, (June 18, 2021)).

- (1) a gift ban, *see* § 3;
- (2) a complaint and investigative process, *see* § 5(3)(a), (c);
- (3) a penalty provision or discipline process, *see* §§ 5(3)(d), 6; and
- (4) an independent decisionmaker, *see* § 5(1), (2).

The IEC also found that “[t]he IEC does not consider whether the locality’s code or charter provisions are adequate, but the IEC does look to the plain language of the locality’s code or charter to determine whether such provisions are in place.” This determination followed a finding by the District Court for the City and County of Denver that the plain language of Article XXIX allows home rule municipalities to pass less stringent ethical standards than those set forth within that Article.

Because the City of Lakewood has not passed an Ordinance adopting a local code of ethics for Local Government Officials, it remains subject to Article XXIX of the Colorado Constitution.

Staff is providing the City Council with a proposed draft Code of Ethics that is intended to conform to the most recent interpretations of the requirements of Section 7 of Article XXIX.

**BUDGETARY IMPACTS:** There will be a cost associated with administering the investigative process of this draft Code, but those costs are undetermined at this time.

**STAFF RECOMMENDATIONS:** Staff recommends that the City Council review this draft Ethics Code and determine whether it meets the needs of the City in its current form, or in a modified form, and then take such action as they deem appropriate.

**ALTERNATIVES:** Because the City of Lakewood has not passed an Ordinance adopting a local code of ethics for Local Government Officials, it remains subject to Article XXIX of the Colorado Constitution.

**PUBLIC OUTREACH:**

**NEXT STEPS:** Staff recommends that the City Council review this draft Ethics Code and determine whether it meets the needs of the City in its current form, or in a modified form, and then take such action as they deem appropriate.

**ATTACHMENTS:** DRAFT Code of Ethics (040122)

**REVIEWED BY:** Kathleen E. Hodgson, City Manager  
Benjamin B. Goldstein, Deputy City Manager  
Alison McKenney Brown, City Attorney

## Chapter 2.03 – CODE OF ETHICS

### City of Lakewood

#### 2.03.010 - PURPOSE AND AUTHORITY

- A. The City Council finds and determines that its regulation of the subject of the ethical conduct of elected representatives of the City is a matter of local concern upon which the City of Lakewood is empowered to legislate pursuant to the home rule authority granted in Article XX of the Constitution of the State of Colorado. Accordingly, this Code of Ethics supersedes all conflicting state statutes, including, but not limited to:
1. Title 24, Article 18, Colorado Revised Statutes;
  2. C.R.S. § 24-6-203; and
  3. C.R.S. § 31-4-404.
- B. The City Council finds and determines that this chapter addresses the matters covered by Article XXIX of the Constitution of the State of Colorado, including a gift ban, a complaint and investigative process, a discipline process, and an independent decisionmaker. Therefore, Article XXIX shall not apply to the City or any City Councilmember and the independent ethics commission created by Section 5 of said Article XXIX shall have no jurisdiction over any City Councilmember.
- C. The provisions of this Code of Ethics are distinct from and in addition to the reporting requirements for candidates for elected position, and do not relieve an incumbent in or elected candidate to public office from reporting financial matters in accordance with State law and the City's Campaign Finance laws.

#### 2.03.020 - PUBLIC TRUST; FIDUCIARY DUTY

The holding of public office is a public trust and imposes a fiduciary duty to protect the interests of the people of the City upon every City Councilmember. Each member of City Council or a Board shall carry out their duties for the benefit of the people of the City in accordance with this Code of Ethics.

#### 2.03.030 - DEFINITIONS

As used in this chapter, the following terms shall have the meanings ascribed thereto, unless the context requires otherwise:

**BOARD:** Any board, committee, commission, authority or other body appointed by the City Council, whether standing, provisional or temporary.

**BOARD MEMBER:** A member of any board, commission or committee appointed by the City Council, pursuant to the authority vested in the City Council through the Charter, any City ordinance, or state law, including both regular and alternate members. Board Member does not include or cover any compensated full-time or part-time City employee.

**BUSINESS:** Any corporation, limited liability company, partnership, sole proprietorship, trust or foundation, or other individual or organization providing a service, resource(s) or goods, whether or not operated for profit.

**CHARTER:** The City of Lakewood home rule charter.

**CITY COUNCILMEMBER OR COUNCILMEMBER:** A member of the Governing Body of the City of Lakewood, Colorado, including both the Mayor and the elected representatives of the five wards of the City.

**CODE OF ETHICS:** This chapter 2.03 of the Lakewood Municipal Code.

**COMPENSATION:** Any money, thing of value, or economic benefit conferred on or received by any person in exchange for goods or services rendered, whether rendered by such individual or another.

**COMPLAINANT:** Any person who files a verified complaint with the City Clerk alleging that a City Councilmember or a Board Member has violated an applicable provision of this Code of Ethics.

**CONFLICT OF INTEREST (Personal or Private):** A personal or pecuniary right or liability that would materially (i.e., not de minimis) affect a financial interest of a City Councilmember, Family Member, or any Business with which the City Councilmember is associated. A Conflict of Interest does not include a Public Interest.

Examples of a Conflict of Interest include: (i) a City Councilmember or their family member being employed by or consulting for a Business that will directly benefit by a decision of the City Council; (ii) a City Councilmember or a Family Member owning a share of a Business that is pursuing a new development that requires City Council action to move forward; or (iii) a City Councilmember or a Family Member owning an interest in property the City desires to purchase.

**ECONOMIC BENEFIT:** Any benefit that can be quantified in terms of either money specifically received as a result of an action, money generated or derived as the result of an action, or a reduction in monetary debt or increase in monetary credit as the result of an action.

**FAMILY or FAMILY MEMBER:** Any person related to the City Councilmember by one degree of kinship (i.e., parents, siblings, children) by blood, adoption or marriage and shall also include spouses, domestic partners, persons living as a member of the City Councilmember's household, and persons in a civil union.

**FIDUCIARY DUTY:** A duty to act for the benefit of the City on matters within the scope of one's position.

**FINANCIAL INTEREST:** An interest that can be quantified monetarily and is:

1. An ownership interest in a Business;
2. A creditor interest in an insolvent Business;
3. An employment relationship;
4. A prospective employment relationship for which negotiations have begun;
5. A Business relationship established by contract;
6. An ownership interest in real or personal property;
7. A loan or any other debtor interest; or
8. A directorship or position of corporate officer in a Business.

**GIFT:** The acceptance by a City Councilmember of goods, services or money, for such Councilmember's own personal benefit, offered by a person who is at the same time providing goods or services to the City under a contract or other arrangement over which the City Councilmember has a measure of control or decision-making authority, unless the totality of the circumstances attendant to the acceptance of the goods or services indicates that the transaction is legitimate, the terms are fair to both parties, the transaction is supported by full and adequate consideration, and the City Councilmember does not receive any substantial benefit resulting from such person's official or governmental status that is unavailable to members of the public generally.

**OFFICIAL ACT or OFFICIAL ACTION:** Any vote, decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority.

**PERSON:** Any individual or any other legal entity.

**PUBLIC INTEREST:** Something in which the community at large has the same general interest as any Councilmember. Public Interests do not cause a Conflict of Interest even when the Councilmember may indirectly benefit.

Examples of Public Interest include: (i) interests in general City goals, such as facilitating economic opportunity or protecting the natural environment, are shared by all citizens of the City, whether or not they are a Councilmember; (ii) a Councilmember who patronizes a grocery store or other Business does not have a Conflict of Interest if the Business seeks some type of licensing or land use approval from the City because the Councilmember's interest as a customer is shared with the public; (iii) a Councilmember living in the City, attending church or having children who attend local schools..

RESPONDENT: The individual who is the subject of the complaint

SUBSTANTIAL BENEFIT: A monetary benefit in excess of \$100.

THING OF VALUE: Any tangible or intangible thing having a market value.

### **2.03.040 - RULES OF CONDUCT**

- A. It shall be a breach of a Councilmember's Fiduciary Duty and the public trust to:
1. Disclose or use confidential information acquired in the course of the Councilmember's official duties in order to substantially further their own or another's personal Financial Interest. Confidential or privileged information, including information learned within an executive session, shall not be disclosed except as provided by law.
  2. Engage in a substantial financial transaction for a private Business purpose with a Person who is inspected or supervised by a Councilmember in their capacity as a Councilmember.
  3. Perform an Official Act when the Official Act directly and substantially provides a direct or indirect Economic Benefit to/for a Business or other undertaking in which the Councilmember or a Family Member either have a substantial Financial Interest or are engaged as counsel, consultant, representative, or agent, or when there is a significant risk that a Councilmember's ability to consider, recommend or carry out an appropriate course of action for the City will be materially limited as a result of the Councilmember's personal or professional responsibilities or interests.
  4. Vote on any matter when that Councilmember has been recused from voting by the unanimous consent of the other Councilmembers present at such meeting.
  5. Vote on any question or issue relative to the conduct of that individual Councilmember.
- B. Each Councilmember present shall vote on all ordinances, resolutions, or motions at any regular, special, or emergency meeting of the City Council unless recused due to a Conflict of Interest or as otherwise provided in this Code of Ethics.

### **2.03.050 - GIFTS**

- A. No Councilmember shall solicit or accept any Gift from any Person, either directly or indirectly through a Family Member, which Gift the Councilmember knows or which a reasonable Person in such Person's position should know, under the circumstances, is either:
1. that would tend to improperly influence the Councilmember to depart from the faithful and impartial discharge of the Councilmember's public duties; or
  2. is being solicited or given for the primary purpose of rewarding the Councilmember for an Official Action the Councilmember has taken;
- B. Rebuttable presumption of ethical violation arising from the acceptance of Gift.
1. There shall be a rebuttable presumption the Councilmember knows such they are prohibited from accepting a Gift from a Person who has submitted a pending application, proposal, or contract to the City, or whom the Councilmember knows is considering submitting such request.

2. There shall be a rebuttable presumption that a Gift exceeding \$100.00, trips outside the jurisdiction for non-work-related purposes, or tickets to an event outside the jurisdiction for a non-work-related purpose is a prohibited Gift unless enumerated under subsection (C) below.
- C. The following Gifts shall not be deemed to improperly influence a Councilmember as described in subsection (A)(1) or to be an unlawful reward for Official Action as described in subsection (A)(2) and shall not be prohibited for that reason:
1. Campaign contributions and contributions in kind as authorized by law;
  2. An unsolicited, occasional non-pecuniary Gift that is of trivial value not exceeding one hundred dollars (\$100.00);
  3. An unsolicited token or award of appreciation in the form of a plaque, trophy, desk item, wall memento, or similar item;
  4. Unsolicited informational material, publications, or subscriptions related to the recipient's performance of official duties;
  5. Payment of, or reimbursement for, meals, lodging, travel expenses, and admission for attendance at a convention or other meeting at which the Councilmember is scheduled to participate;
  6. Gifts similarly available to the general public;
  7. Gifts given to the City which may be used by a Councilmember during such Councilmember's term in office, but that never become the Councilmember's property;
  8. Educational scholarships, fellowships, and grants (hereafter collectively referred to as "scholarships") awarded by any person, whether such scholarships and grants are awarded to the Councilmember or a Family Member; provided however, the scholarships must be awarded based on merit, competitive application, or ongoing performance requirements, and they must be awarded on the basis of objective and non-discriminatory criteria;
  9. Gifts received pursuant to fundraising activities within the community at large when a Councilmember Family Member has special medical or financial needs resulting from an accident, medical condition, or other extraordinary event;
  10. Gifts received pursuant to fundraising activities within the community at large when a Councilmember or Family Member retires;
  11. An occasional, unsolicited opportunity to participate in a Business meeting or social function where a meal is served and/or entertainment is provided if the Councilmember's attendance would not be considered extraordinary when viewed in light of the position held by the Councilmember, including sponsored group dinners at Colorado Municipal League or similar sponsored events to which a group of similarly situated individuals from multiple municipalities are invited, and from which there is no expectation of benefit to the sponsoring organization.
  12. Anything given by an individual who is a relative;
  13. Anything given by a personal friend of the Councilmember and such Gift is given for personal reasons, including wedding, birthday, or similar commonly understood reason for Gift giving;
  14. Any ticket to a sporting, recreational, or cultural event where the Councilmember's attendance is reasonably related to the official or ceremonial duties of the Councilmember;
  15. Payment for a speech, appearance, or publication with an organization unrelated to the City and not anticipated to enter into a contract with the City;
  16. Payment of salary from employment;
  17. Anything given as part of an inter-office gift exchange; or

18. Gifts or things of value received by a Councilmember from the City or received by a Councilmember arising from Councilmember's non-City employment and which is unrelated to Councilmember's official City duties.

### **2.03.060 - APPEARANCE OF IMPROPRIETY DISCOURAGED**

An appearance of impropriety is created when a Councilmember will or may take a direct Official Action that, although not constituting a Conflict of Interest, will create a reasonable perception that the Councilmember's ability to carry out their official duties with integrity, impartiality, and competency is impaired.

### **2.03.070 - DISCLOSURE AND RECUSAL PROCEDURE; REVIEW BY THE BODY**

#### A. Disclosure.

1. Conflict of Interest. Disclosure of a personal/private Conflict of Interest is mandatory and shall be made by the Councilmember on the record at the time of any Official Action by the City Council upon such matter, or sooner when appropriate. In addition, and when necessary, such conflict may also be disclosed in writing to the City Manager for distribution to all other members of the City Council.
2. Disclosure of an appearance of impropriety is voluntary and may be made by the Councilmember on the record at the time of any Official Action by the City Council upon such matter, or sooner when appropriate.
3. Approving an ordinance on first reading shall not be recognized as an Official Action as the purpose of such approval is merely to notify the public of a future action upon the ordinance.

#### B. Recusal.

1. When a Councilmember must be rescued from participating in a matter pending before the City Council due to a Conflict of Interest, or the Councilmember has been excused following a voluntary request due to an appearance of impropriety, the Councilmember shall thereafter refrain from communicating with any other Councilmember regarding the matter or attempting to influence any other City Councilmember's Official Action concerning the matter by speaking as a City Councilmember on the matter during official meetings in the capacity;
2. The City Council may require the recusal of a Councilmember in accordance with subsection (C) below.

#### C. Challenges for Conflict of Interest.

In accordance with Article VII of the Charter, the City Council may review whether any individual member has a Conflict Of Interest under this Code. By unanimous vote of those present and voting (excluding the member under review) the City Council may render a determination whether a Conflict of Interest exists and whether recusal of the challenged Councilmember is required. Such determination is final and not subject to appeal. The City Clerk shall note in the minutes of the meeting the recused Councilmember's vote on such matter as "an abstention due to Conflict of Interest."

### **2.03.080 – COMPLAINT AND INVESTIGATION OF ETHICAL VIOLATIONS**

#### A. Filing Complaints.

1. A Complainant may file a verified complaint with the City Clerk, upon a form provided by the City Clerk, identifying:
  - a. The Complainant's name, address, telephone number and email address, if applicable;
  - b. The name of the Councilmember who is the subject of the complaint (Respondent);

- c. The nature of the alleged violation, including the specific provision of this Code of Ethics or other law allegedly violated;
  - d. A statement of facts giving rise to the complaint, including dates or time period in which the alleged violation occurred; and
  - e. Any other relevant documents or materials in support the alleged violation.
2. Any complaint must be filed within one (1) year of the date the violation is alleged to have occurred.

B. Complaint Process.

1. The City shall use independent, non-City personnel to address ethics complaints filed against Councilmembers. The City Clerk shall establish a list of Independent Ethics Officers (IEOs) with experience in either local government law or human resources law. To avoid perceptions of conflict of interest, such IEOs shall not otherwise be retained by the City.
2. Upon receipt of a complaint against any Councilmember, the City Clerk shall promptly transfer such complaint to an IEO, selected on a rotating basis from the established list. The IEO will conduct an initial screening of the complaint to determine whether it states a cause of action under this Code of Ethics. Within ten (10) days following receipt of such complaint, the IEO shall make one of the following four findings and shall issue a written determination.
  - a. Dismiss the complaint as incomplete or untimely;
  - b. Dismiss the complaint if the complaint, on its face, fails to state allegations, that, if true, would violate this Code of Ethics;
  - c. Refer alleged violations of municipal, state or federal laws to the appropriate law enforcement agency if the complaint states, on its face, allegations, that, if true, would constitute a violation of law; or
  - d. If the complaint states, on its face, allegations that may constitute a violation of this Code of Ethics, the matter shall be referred for independent investigation and administrative hearing in accordance with this Code of Ethics.
3. The IEO shall notify, in writing, the Complainant, the Respondent and the City Clerk of the outcome of the IEO's initial review in accordance with subsection (B)(2) above. In all circumstances, the City Clerk shall follow the IEO's determination.
4. If the IEO makes a determination pursuant to section 2.03.080(B)(2)(d), the Respondent may:
  - a. Submit a written response in defense of such complaint to be incorporated into the official investigative record;
  - b. Agree, in writing, that the complaint establishes that the Respondent violated a provision of this Code of Ethics. Such agreement shall be deemed an admission and a waiver of the investigation and hearing process. If the investigation and hearing are waived, enforcement action will be pursuant to section 2.03.090 of this Code of Ethics.
5. If the Respondent does not agree with the allegations of the Complaint, the IEO shall recommend an independent investigation and administrative hearing. The investigation will be conducted by an independent investigator selected by the IEO in consultation with the City Clerk. Any hearing shall be scheduled no earlier than thirty-five (35) days following receipt by the City of the investigative report.
6. Upon completion of the independent investigation, the independent investigator shall provide the investigative report to the IEO, who shall then submit the report to the City Clerk. The City Clerk, within three days of receipt of such report, shall transmit copies thereof to both the Respondent and the Complainant.

7. The administrative hearing shall be conducted as follows:
  - a. The hearing shall be open to the public.
  - b. Notice of the hearing shall be provided to the Complainant and to the Respondent (together, the "parties") at least ten (10) days prior to the hearing.
  - c. The hearing shall be recorded.
  - d. The IEO shall serve as the administrative hearing officer and shall have the discretion to conduct the hearing in a manner the IEO determines will best meet the intent of this Code of Ethics. To assure that the participants are best able to participate effectively in the hearing, the hearing will not be held in strict conformance with the rules of civil or criminal procedure, and the formal rules of evidence shall not apply.
  - e. The parties may, but are not required to, submit supplemental evidentiary material to the IEO prior to the date of the hearing, including the names of any individuals who such party intends to call as a witness at such hearing. If a party does wish to submit such evidentiary material, the party must file three (3) copies of the material with the City Clerk. One copy shall be forwarded to the IEO, one copy shall be forwarded to the opposing party, and one copy shall be maintained for the record.
  - f. The parties may, but are not required to, present their positions and facts to the IEO at the hearing. Each party shall be allotted a reasonable amount of time to make its presentation to the IEO. The IEO may ask questions of either party as the IEO deems necessary and appropriate.
  - g. Each party shall have the right to represent themselves and to have the assistance of legal counsel at their own expense, but a party may not be represented by non-attorneys. Participation of an attorney in this process shall not change the hearing standards set forth in subsection (6)(d) above.
  - h. All parties may call witnesses to give testimony at the hearing, which testimony shall be given under oath, with the witnesses stating their legal names. All witnesses shall be subject to cross-examination by both the IEO and the opposing party.
  - i. The IEO may ask questions of any party, counsel, or witness at any time during the hearing.
  - j. The IEO shall issue a written ruling within thirty (30) days of the conclusion of the hearing.
8. If, at any time prior to the hearing, the IEO determines that the complaint should not go forward in accordance with the provisions of this Code, the IEO shall issue a written dismissal with copies provided to the Complainant, the Respondent, and the City Clerk.
9. The IEO shall determine, by a preponderance of the evidence, whether the Respondent violated a provision of this Code of Ethics. The written decision shall be submitted to the City Clerk, for distribution to the parties, within thirty (30) days following the conclusion of the hearing.
10. The decision of the IEO may be appealed in accordance with C.R.C.P. 106(a)(4).

### **2.03.090 - ENFORCEMENT OF ETHICAL VIOLATIONS**

- A. Upon a finding that the Respondent has violated a provision of this Code of Ethics, the matter will be transferred to the City Council for disciplinary action.
- B. Disciplinary actions against Councilmembers shall be considered in a public session of the City Council in accordance with the provisions of Article VII of the City Charter.
- C. Disciplinary action may include public censure upon a majority vote of the City Council, or determination of specific action to bring the Respondent into compliance with the terms of this Code of Ethics, such as exclusion from executive sessions impacted by the Conflict, or exclusion from a vote

of the Body. Such specifically identified action must be found, by the affirmative vote of three-quarters (¾) of the membership of the City Council, to be necessary and appropriate to avoid further violations of this Code of Ethics.

- D. Any violation determined to be a violation subject to penalty as set forth within Charter § 2.13 and/or Title 2, Chapter 2.05, of the Lakewood Municipal Code shall be addressed in accordance with the terms of such laws.
- E. General Enforcement Provisions.
  - 1. Enforcement of this Code of Ethics shall not be pursuant to LMC Title 1, Chapter 16, Penalty for Violations.
  - 2. Enforcement action under this Code of Ethics shall not prohibit or prevent reporting such violations to a professional association, or the pursuit of criminal or civil action if a crime or civil wrong is deemed to have occurred.

### **2.03.100 - BOARD MEMBERS**

- A. It shall be a breach of a Board Member's fiduciary duty to the City to carry out any of the following acts:
  - 1. Vote on any matter proposed or pending before the Board or attempt to influence the decisions of the other members of the Board in voting on any matter in which such Board Member has a personal or private interest. The Board Member shall disclose such interest to the board pursuant to section 2.03.070. A public interest is not a personal or private interest.
  - 2. Fail to disclose an appearance of impropriety in any matter proposed or pending before the Board.
- B. Board Members shall comply with all prohibitions regarding Gifts as set forth above in section 2.03.050 of this Code of Ethics.
- C. Board Members shall follow the disclosure and recusal requirements set forth in section 2.03.070 with the exception that disclosure shall be made either orally during a meeting or in writing to all other members of the Board.
- D. A Complainant may challenge any Board Member's failure to declare a conflict of interest or failure to recuse by filing a complaint with the City Clerk in conformance with section 2.03.080(A) of this Code of Ethics.
- E. Upon receipt of a complaint against a Board Member (Respondent) regarding an alleged violation of this Code of Ethics, the City Clerk shall immediately forward the complaint to the City Council. The City Council shall review the complaint and take whatever action it deems appropriate and notify the Complainant and the Respondent. The actions available to the City Council shall be by majority vote and shall include:
  - 1. Dismissal of the complaint as incomplete or untimely;
  - 2. Dismissal of the complaint for failure to assert a violation of this Code of Ethics;
  - 3. Assigning the complaint to an *ad hoc* committee for further review and investigation;
  - 4. Requiring the Respondent to recuse themselves from matters associated with the area of Conflict;  
or
  - 5. Removal of the Respondent from the Board to which such individual had previously been appointed.