CITY OF LAFAYETTE

ORDINANCE NO. 19, Series 2022
INTRODUCED BY: Mayor Pro Tem Brian Wong

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAFAYETTE, COLORADO, AMENDING CHAPTERS 7, "ADMINISTRATIVE CITATIONS," AND 120, "WATER," OF THE CODE OF ORDINANCES PERTAINING TO WATERING RESTRICTIONS AND ENFORCEMENT, AS AMENDED ON SECOND READING

WHEREAS, Section 120-13, "Irrigation – Restricted," of the Code of Ordinances of the City of Lafayette, Colorado ("Code") imposes time, manner, and place restrictions and limitations on the use of water from the City of Lafayette's municipal water utility system to irrigate, sprinkle, or otherwise apply water from the municipal water utility system to outdoor vegetation and paved areas, with certain limited exceptions; and

WHEREAS, Section 120-15, "Irrigation – Finding of noncompliance," of the Code provides that a finding by a duly authorized representative of the City of improper irrigation as provided in section 120-13 shall constitute presumptive evidence of a violation of section 120-13 by the head of the household and any person occupying or owning the premises where such violation is found to occur; and

WHEREAS, Section 120-13(g) sets forth certain procedures and penalties for enforcement of the watering restrictions in section 120-13 of the Code; and

WHEREAS, the City Council for the City of Lafayette ("City Council") desires to protect and preserve the health, safety, and welfare of its citizens in times of ongoing drought conditions by protecting and preserving, to the greatest extent possible, the water resources of the City of Lafayette; and

WHEREAS, the City Council finds that the Boulder Creek and Colorado River basins provide a portion of the City's water; and

WHEREAS, since 2000, the Colorado River basin has been experiencing an historic, extended drought that has impacted regional water supplies, including in Colorado; and

WHEREAS, Colorado has been experiencing an extended moderate to severe drought, which has the potential to impact local water supplies and resources; and

WHEREAS, based on information obtained from United States Department of Agriculture, Natural Resources Conservation Service, the City Council finds that the snow water equivalent in the Boulder Creek basin peaked at below average levels for the water year 2022; and

WHEREAS, the City Council finds that, below average snow pack and dry soil conditions

have contributed to below average runoff in the Boulder Creek basin; and

WHEREAS, City Council finds that runoff to-date has been insufficient for the water rights required to fill City reservoirs to come into priority; and

WHEREAS, warm temperatures and high winds contributed to an increase in outdoor water use approximately one month earlier than normal, resulting in an abnormally high use of available water supply; and

WHEREAS, the City Council finds that moderate to severe drought conditions throughout the State of Colorado and across the Colorado River, South Platte River, and Boulder Creek basins are putting a great strain on water resources locally and regionally; and

WHEREAS, the City Council finds that projections of the City's Public Works Department show that, assuming the continuation of drought conditions and without water conservation measures, the City of Lafayette may not have adequate supply to meet unconstrained outdoor demand while preserving sufficient water storage to meet essential indoor use needs; and

WHEREAS, the City Council finds that, while the City of Lafayette has been diligent in pursuing and acquiring a diverse water supply portfolio, the ongoing extended drought in the region is likely to directly and adversely impact the water resources that supply the City's municipal water utility system; and

WHEREAS, the City Council finds that the enforcement and penalties for violation of the City's watering restrictions in section 120-13 must be strengthened and broadened to encourage compliance in order to conserve water and to preserve and protect the City's water supplies in light of the ongoing drought conditions; and

WHEREAS, the City Council desires to amend section 120-13(g) of the Code to provide that a third or subsequent violation of the watering restrictions in section 120-13 of the Code should be subject to the maximum fine established by the state for municipal ordinance violations; and

WHEREAS, the City Council desires to amend Chapter 7 of the Code to provide for the enforcement of violations of section 120-13 by administrative citation, in addition to all other enforcement actions and remedies that are or may be available to the City for such violations; and

WHEREAS, the City Council determines that such measures are necessary to protect and preserve the public health, safety, and welfare in the present drought, to facilitate the preservation and protection of the City's water resources, and to minimize the impacts of ongoing drought conditions on the City's water resources.

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

Section 1. That the definitions of "enforcement official" and "responsible party" in section 7-1, "Definitions," of the Code of Ordinances, City of Lafayette, Colorado, are hereby amended to read as follows:

Enforcement official means any officer, employee, or agent of the city authorized to enforce ordinances of the city, including, but not limited to, community service officers, code enforcement officers, police officers, the chief building official, building inspector, and city personnel authorized by ordinance to enforce specific provisions of the Code.

Responsible party shall mean a person or entity who has or is alleged to have violated a specific provision of the Code, ordinance, or any rule, order, or regulation adopted through a rulemaking process as provided by ordinance. *Responsible party* includes the property owner, occupant, or a person or an entity who, acting as an agent for or other legal capacity on behalf of the property owner, has authority over property where a violation occurred that is subject to an administrative citation under this chapter.

Section 2. That subsection (a) of section 7-2, "Authority," of the Code of Ordinances, City of Lafayette, Colorado, is hereby amended to read as follows:

(a) An enforcement official may issue an administrative citation to any responsible party for violating the following ordinances, rules, orders, or regulations of the city:

(1) Violation of an order, rule, regulation, or directive issued pursuant to section 1-11 of the Code, or willfully obstructing, hindering, or delaying any duly authorized city officer or employee in the enforcement of such orders, rules, regulations, or directives issued pursuant to section 1-11 of the Code.

(2) Violation of any provision in chapter 120 (Water) of the Code.

Section 3. That section 7-3, "Procedures," of the Code of Ordinances, City of Lafayette, Colorado, is hereby repealed and reenacted to read as follows:

Sec. 7-3. Procedures.

(a) The enforcement official shall personally serve the administrative citation upon the responsible party at the site of any violation or at the responsible party's business or personal address. In lieu of personal service, service may be made by leaving a copy of the administrative citation with a person over the age of eighteen years residing or working at the site or at the responsible party's business or personal address, or by mailing a copy to the responsible party's last known address by certified mail, return receipt requested.

(b) For purposes of this section, "last known address" shall mean the most recent mailing address of the responsible party contained in the records of any municipal, state, or federal agency,

including but not limited to the Boulder County Assessor's Office and the Colorado Secretary of State's Office.

(c) Notice shall be deemed served on the date of receipt by the responsible party, if personally served, or upon the fifth day after mailing of the administrative citation.

Section 4. That section 120-13, "Irrigation—Restricted," of the Code of Ordinances, City of Lafayette, Colorado, is hereby amended to read as follows:

Sec. 120-13. Irrigation—Restricted.

(a) It shall be unlawful for any consumer or other person, or for the owner or occupant of any property to cause, permit, suffer, or allow any person to irrigate, sprinkle, or otherwise apply water from the municipal water utility system to any outdoor vegetation, including, but not limited to, lawns and gardens, between the hours of 10:00 a.m., and 6:00 p.m. or such other times established by resolution of the city council in accordance with subsection (f) of this section. The foregoing restrictions shall not apply to:

(1) Irrigation of land used for commercial agriculture; or

(2) Watering by hand of any outdoor vegetation using a manually operated hose equipped with an automatic shut-off valve; or

(3) Watering by hand of any community gardens using a manually operated hose equipped with an automatic shut-off valve; or

(4) Irrigation of short grass on city-owned or operated golf courses and city-owned athletic fields.

(b) It shall be unlawful for any consumer or other person, or for the owner or occupant of any property to cause, permit, suffer, or allow any person to irrigate, sprinkle, or otherwise apply water from the municipal water utility system to any outdoor vegetation, including, but not limited to, lawns and gardens, more than 3 days per week.

(c) It shall be unlawful for any consumer or other person, or for the owner or occupant of any property to cause, permit, suffer, or allow any person to irrigate, sprinkle, or otherwise apply water from the municipal water utility system to any lawn, garden, or other area of land in a manner that allows water to be cast upon a paved area or onto any other area not covered by vegetation.

(d) It shall be unlawful for any consumer or other person, or for the owner or occupant of any property to cause, permit, suffer, or allow any person to wash any paved area with a hose using water from the municipal water utility system.

(e) The provisions of this section shall apply to all real property within the city, whether publicly or privately owned, and all land outside of the city that is served by the municipal water utility system. In addition to other actions and remedies available to the city for the enforcement of this section, the provisions of this section may be enforced with respect to land located outside

of the city by a suit for injunctive relief in a court of competent jurisdiction. Notwithstanding the foregoing, the testing of fire hydrants or fire sprinkler systems shall be exempt from the provisions of this section.

(f) In addition to the restrictions set forth in this section, city council may by resolution impose additional time restrictions on the use of water from the municipal water utility system to irrigate, sprinkle, or otherwise apply water to any outdoor vegetation.

(g) In addition to any other officers, employees, or agents of the city authorized to enforce the ordinances of the city, water conservation enforcement personnel, as designated by the city's public works director, shall be authorized to enforce the provisions of this section, including the issuance of warnings, municipal court summons and complaints, and administrative citations.

(h) A consumer or other person alleged to have violated any provision of this section may be issued a warning before issuance of a summons and complaint, administrative citation, or commencement of any other enforcement action by the city; provided, however, that issuance of a warning shall not be considered a prerequisite to, or affect the validity of, any summons and complaint, administrative citation, or other enforcement action by the City, or any subsequent proceedings thereof.

(i) Any consumer or other person issued a municipal court summons and complaint and convicted of violating any of the provisions of this section shall upon first conviction be punished by a fine of not less than one hundred dollars ($100.00), which fine shall not be suspended by the court; upon a second conviction of such consumer or other person, there shall be imposed a fine of not less than two hundred fifty dollars ($250.00), which fine shall not be suspended by the court; and upon a third and each subsequent conviction of such consumer or other person, there shall be imposed a fine of not less than five hundred dollars ($500.00), which fine shall not be suspended by the court.

(j) Any consumer or other person issued an administrative citation for violating any of the provisions of this section shall be subject to the procedures and penalties in chapter 7 (Administrative Citations) of the code for such citation, provided, however, that, notwithstanding the penalty amounts prescribed in section 7-12(a) of the code, the administrative penalty for violations of this section shall not exceed the following amounts regardless of the number of violations per citation:

(1) First administrative citation: $50.00

(2) Second administrative citation: $100.00

(3) Third or subsequent administrative citation(s): $150.00

(k) Actions to enforce the provisions of this section are intended to be cumulative and the city may pursue any and all available actions, penalties, judgments, and remedies simultaneously or in succession.

Section 5. That section 120-15, "Irrigation—Finding of noncompliance," of the Code of Ordinances, City of Lafayette, Colorado, is hereby amended to read as follows:

Sec. 120-15. Irrigation—Finding of noncompliance.

A finding by any water conservation enforcement personnel or any other officer, employee, or agent of the city authorized to enforce the ordinances of the city of improper irrigation, sprinkling, or other application of water from the municipal water utility system as provided in section 120-13 shall constitute presumptive evidence of a violation of section 120-13 by the consumer and any other person occupying, owning, managing, or who, acting as an agent for or other legal capacity on behalf of the property owner, has authority over, the premises where such violation is found to occur.

Section 6. If any article, section, paragraph, sentence, clause or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 7. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof is hereby repealed to the extent of such inconsistency or conflict.

Section 8. The repeal or modification of any provision of the Code of Ordinances, City of Lafayette, Colorado, by this ordinance shall not release, extinguish, alter, modify or change in whole or in part any penalty, forfeiture or liability, either civil or criminal, which shall have been incurred under such provision. Each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions for enforcement of the penalty, forfeiture or liability, as well as for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered or made in such actions, suits, proceedings or prosecutions.

Section 9. This ordinance is deemed necessary for the protection of the health, welfare and safety of the community.

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

Section 11. This ordinance shall become effective upon the latter of the 10th day following enactment, or the day following final publication of the ordinance.

INTRODUCED AND PASSED ON FIRST READING THE 7TH DAY OF JUNE 2022.

PASSED ON SECOND AND FINAL READING, AS AMENDED, AND PUBLIC NOTICE ORDERED THE 21ST DAY OF JUNE, 2022.

CITY OF LAFAYETTE, COLORADO

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Jaideep Mangat, Mayor

ATTEST:

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Lynnette Beck, City Clerk

APPROVED AS TO FORM:

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Mary Lynn Macsalka, City Attorney