

ORDINANCE NO.04, SERIES 2020
INTRODUCED BY: COUNCILOR TIM BARNES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAFAYETTE, COLORADO, AMENDING CHAPTER 25 OF THE CODE OF ORDINANCES OF LAFAYETTE, COLORADO, REGARDING PRAIRIE DOGS

WHEREAS, the Lafayette City Council recognizes the importance of existing and planned uses of urban properties and human land uses in urban areas to the Lafayette community, but also believes that protection of biodiversity and of natural ecosystems are important community goals; and

WHEREAS, the Lafayette City Council believes it is important to find a way to balance all the elements and processes of naturally evolving ecosystems, including the natural abundance, diversity and ecological integrity of plants and wildlife, with human needs; and

WHEREAS, the Lafayette City Council further believes it is important to minimize adverse impacts of any conflicts between the presence of wildlife and desired land uses on the health, safety and welfare of the City and its citizens and natural ecosystems through the exercise of police power; and

WHEREAS, increased development in Lafayette, coupled with Lafayette's strategic location near Denver and Boulder, and other factors, have resulted in significant increases in human land use activities, conflicts between prairie dogs and landowners and conflicts between prairie dog control measures and other wildlife species and habitats and local ecological processes; and

WHEREAS, increases in conflicts between wildlife and urban life have further resulted in increased relocation of prairie dogs from private lands onto publicly-owned open space when conflicts between the animals and existing or planned land uses were irresolvable; and

WHEREAS, the Lafayette City Council finds that continued increases in conflicts between wildlife and urban life, coupled with the lack of available publicly-owned open space for prairie dog relocations, negatively impact Lafayette's citizens and natural ecosystems; and

WHEREAS, the Lafayette City Council further finds that the present regulations of the City of Lafayette that relate to wildlife and ecosystem management inadequately address such impacts; and

WHEREAS, the City Council further finds and determines that the amendments herein to Chapter 25 of the Code of Ordinance of Lafayette, Colorado will help to minimize adverse impacts to publicly-owned open space, local biological diversity, local natural ecosystems and wildlife habitat, and the public health and safety, and help to balance ecosystem and wildlife protection with human land uses in the community.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LAFAYETTE, COLORADO, AS FOLLOWS: ¹

Section 1. Section 25-2, Definitions, of the Code of Ordinances of Lafayette, Colorado, is hereby amended by the addition of the following new definition, to be inserted alphabetically, to read as follows:

Prairie dog means those mammal species of the *Cynomys* genus.

Section 2. Subsection 25-50(a), General Prohibitions, of the Code of Ordinances of Lafayette, Colorado, is hereby amended to read as follows:

(a) Wildlife. In accordance with state statute, all wildlife, except as permitted by the state is deemed to be the property of the state, and right, title, interest, acquisition, transfer, sale, importation, exportation, release, donation, possession, hunting, *taking, relocation* and removal is permitted only as provided by state or federal statute, rule or regulation (C.R.S. 33-1-101).

Section 3. Subsection 25-50(a)(1), General Prohibitions, of the Code of Ordinances of Lafayette, Colorado, is hereby amended to read as follows:

(1) Trapping, *capture, relocation, removal, transport, taking or control* of wild animals, including but not limited to skunks, squirrels, raccoons, bats and prairie dogs, is permitted provided that such wildlife is trapped, released, *removed, relocated, exterminated* or disposed of in accordance with the applicable state laws, rules and regulations *and any Colorado Division of Wildlife or Department of Agriculture permitting process.*

Section 4. Chapter 25 of the Code of Ordinance of Lafayette, Colorado, is hereby amended by the addition of a new Article IX, entitled “Prairie Dog Control,” to read as follows:

ARTICLE IX PRAIRIE DOG CONTROL

Sec. 25-119. Definitions.

For the purpose of this Article, the following terms shall have the following meaning:

Control means to take, to trap, to capture, to possess, to transport, to remove, to relocate, to exterminate, or to dispose of.

Department means the department of planning and development services.

Director means the director of planning and development services, or such director’s designee.

¹ Additions to the current text of the Code are indicated by *italics*, and deletions are indicated by ~~strikethrough~~.

Prairie dog shall have the same meaning as the term “Prairie Dog,” as defined in Section 25-2.

Sec. 25-120. Permit Required.

(a) Except as otherwise specifically permitted under this Article, the control of prairie dogs located on property within the City requires a prairie dog control permit issued by the Director, in addition to any applicable permit under any Colorado Division of Wildlife or Department of Agriculture permitting processes relating to the control of prairie dogs.

(b) Notwithstanding subsection (a) of this section, the Director may issue, in writing, a special permit to a person authorizing the control of prairie dogs located on property within the City in conformity with Section 25-122.

(c) Except as otherwise specifically permitted under this Article, it shall be unlawful for any person to control, or perform any control activity on, a prairie dog located on property within the city, without a special permit or prairie dog control permit issued under authority of the Director, or in a manner contrary to the terms and conditions set out in such permit.

(d) No permit shall be issued pursuant to this Article between March 1 through June 1.

(e) The prairie dog control permit issued pursuant to this Article shall only authorize the permittee to use carbon monoxide as a means of lethal control of prairie dogs.

Sec. 25-121. Exemptions.

A prairie dog control permit under Section 25-120 shall not be required for the following:

(a) Acts by a person who owns or operates an airport facility, or by a person acting at the direction of the owner or operator of an airport facility, which are necessary to promote human safety or to comply with Federal Aviation Administration standards or regulations.

(b) Acts by a person who owns or operates a dam or irrigation ditch, where the structural integrity or the safety thereof is threatened by prairie dog burrows or burrowing.

(c) Public or utility-related construction projects conducted in conformity with the city’s prairie dog management policy.

(d) Acts by public law enforcement personnel, including animal control officers, for the purposes of carrying out their official duties.

(e) Acts by Colorado Division of Wildlife employees or state law enforcement personnel.

(f) Acts undertaken by a person pursuant a special permit issued under Section 25-122.

Sec. 25-122. Special Permit.

(a) The Director may grant a special permit, in writing, authorizing the control of one or more prairie dogs for the following qualifying activities:

- (1) Prairie dogs that interfere with completion or maintenance of a public improvement project approved by the city council.
- (2) To prevent recolonization of lands from which prairie dogs had previously been lawfully removed.
- (3) Prairie dogs that constitute an immediate and verified health hazard or safety risk; provided, however, that the proposed control activity is necessary to eliminate the health hazard or safety risk.
- (4) Removal or lethal control activities on real property deemed unsuitable wildlife habitat for ecological reasons based upon a Phase I Biological Survey prepared by a qualified biologist.
- (5) Removal and relocation activities on real property undertaken by a person holding a CDOW permit to capture, hold, transport and relocate prairie dogs, or contractor hired or retained by such person to perform such activities; provided; however, a copy of the CDOW permit must be submitted at the time of permit application, and must be available for inspection at all times throughout the control activity authorized by such permit.
- (6) Removal or lethal control activities on residential lots used or developed as a single-family residence; provided, however, that the proposed control activity is conducted in conformity with any applicable state and federal laws, rules and regulations pertaining to the control of prairie dogs and utilization of lethal control measures.

(b) The special permit issued under this section:

- (1) Shall contain conditions of operation or other special conditions that the Director determines are necessary to minimize impacts to wildlife habitat resources or adjoining properties, or to safeguard against inhumane treatment of wildlife during the control activity authorized under the permit.

- (2) Shall relieve the person from payment of the habitat restoration fee provided in Section 25-123.
- (3) May be based, whenever practicable, on the recommendations contained in an on-site evaluation performed by an employee, representative, or consultant of the Department.
- (4) Shall only authorize the permittee to use carbon monoxide as a means of lethal control of prairie dogs, unless such permit is issued pursuant to a valid CDOW permit to capture, hold, transport and relocate prairie dogs for raptor rehabilitation programs.

(c) In addition to the qualifying activities set forth in subsection (a), the Director may consider the following factors in assessing whether an activity is eligible for, or in determining whether to issue, a special permit under this section:

- (1) whether the nature of the threat allows enough time to obtain some other form of permit or is prompt action required to reduce or eliminate the threat;
- (2) whether the emergency poses a direct threat to public health or safety or substantial property, including but not limited to a dwelling, transportation, structure, farm or cropland;
- (3) whether the proposed action is the minimal amount necessary to reduce or eliminate the threat and whether it minimizes, to the extent practicable, adverse impacts to wildlife habitat.

(d) An applicant seeking a special permit under this section must agree that an employee, representative, or consultant of the Department may enter and inspect the site, lot or parcel upon which the proposed control activity will occur, prior to the issuance of a special permit.

(e) An applicant seeking a special permit under this section must agree that an employee, representative, or consultant of the Department may be present during the proposed control activity.

(f) An applicant seeking a special permit under this section must agree to reimburse the City for the fees of a consultant retained by Department if the Director determines that the services of a consultant are necessary to perform an on-site evaluation or inspection of the site, or that the presence of a consultant during the proposed control activity is necessary to ensure compliance with permit conditions or City regulations.

Sec. 25-123. Application for permit; costs and fees.

(a) An applicant for a special permit or prairie dog control permit shall file an application with the Director on forms supplied by the Director for that purpose,

which shall include such information as is reasonably necessary for the Director to act on such application and the expected outcomes of the proposed control activity.

(b) Each application for a prairie dog control permit shall include or be accompanied by:

- (1) Proof that the applicant is the landowner or has authorization from the landowner on which the proposed control activity will be employed;
- (2) Payment of a processing fee of \$100.00 to offset administrative costs associated with issuing and monitoring prairie dog control permits.
- (3) The name, address and telecommunications numbers of (i) the applicant; (ii) the property manager of such property (if any); and (iii) any consultants retained or consulted with regard to proposed control activity.
- (4) If lethal control is proposed, a description of: (i) the reasons why lethal control measures are required; (ii) a description of any projected development that makes use of lethal control necessary; (iii) the proposed lethal control measures; (iv) the date and time on which the lethal control measures will be initiated; and (v) the steps that will be taken in order to preclude recolonization following the utilization of lethal control methods;
- (5) Authorization to the Director or to a designee to be present during all authorized control activities;
- (6) Documentation that the following options were considered and the reason(s) that they were not utilized: (i) nonlethal control measures; (ii) minimizing on-site conflicts between desired land uses and wildlife; (iii) relocation alternatives; and (iv) trapping and individual euthanization as a method of lethal control;
- (7) A description of steps considered in order to minimize potential negative impacts upon nontarget species;
- (8) If lethal control is proposed, a map of the property that includes the address or legal description of the property;
- (9) The number of acres of wildlife habitat on the property;
- (10) An estimate of the number of live prairie dogs inhabiting the site;
- (11) If lethal control is proposed, demonstration, to a reasonable degree of certainty, that: (i) the land on which the prairie dogs are

located will be developed within fifteen months of the date of the application and the continued presence of prairie dogs would make such development impractical or impossible; (ii) a principal use of the land will be adversely impacted in a significant manner by the presence of prairie dogs on the site; or (iii) established landscaping or an open space feature established and installed prior to any prairie dog colonization will be adversely impacted by the establishment of new prairie dog colonies;

- (12) A plan to protect, to the extent possible, non-prairie dog wildlife during the process of utilizing the proposed control activity;
- (13) If lethal control is proposed, the application shall establish that the applicant will utilize any measures required by state or federal regulations to protect, to the extent possible, non-prairie dog wildlife during the process of utilizing lethal control measures;
- (14) A plan designed to prevent the re-entry of prairie dogs onto the land on which the proposed control measures are to be utilized. No person shall fail to comply with the provisions of such a plan after having utilized control measures based upon an application containing it;
- (15) The efforts to be made to avoid utilizing lethal means of control for prairie dogs during prairie dog birthing periods;
- (16) If lethal control is proposed, the application shall establish that the applicant has identified and employed a person approved by the State of Colorado to utilize the proposed lethal control measures; and
- (17) If lethal control is proposed, information demonstrating that the applicant has undertaken good-faith efforts to identify and use relocation alternatives in lieu of lethal control measures and the results of those efforts, which include, at a minimum, but not limited to, two (2) of the following actions: (i) contacting private and public property owners in Boulder County or adjacent counties to request use of their land for prairie dog relocation; (ii) examining other personal property holdings of the applicant, developer, owner or other persons not listed, for suitability for prairie dog relocation; (iii) working with Colorado Parks and Wildlife and City Planning staff to examine the possibility of including the existing prairie dog colony in the proposed development; (iv) contacting at least one or more prairie dog relocation organizations to schedule prairie dog relocation; or (v) pursuing any other options known to the applicant.

(c) *Timeframe for review.*

- (1) Applications for a special permit shall be reviewed and approved by the Director within five business (5) days of the date on which the applicant submits the application.
- (2) Applications for a prairie dog control permit shall be reviewed and approved by the Director within 120 days of the date on which the applicant submits the application.
 - a. Not less than fifteen days after accepting an application as complete, the Director shall commence a sixty-day public comment period on the application, soliciting public comment on relocation alternatives for prairie dogs that would otherwise be lethally controlled under the permit application. The only information from the permit that the Director shall make available to the public for purposes of this subsection shall be information that is submitted by the applicant pursuant to paragraphs (b)(6), (b)(9) and (b)(10) of section 25-123. At the commencement of the public comment period, notice thereof shall be (i) prominently posted on the subject property, (ii) published in a newspaper of general circulation within the city, and (iii) posted on the city's website. All notices shall include a statement of the matter to be considered, a description of the location of the subject property, and a telephone number, email address, and mailing address for the Department where comments may be submitted.
 - b. The Director may delay issuing the prairie dog control permit for up to an additional twelve months, if the Director determines that reasonable relocation alternatives exist and are otherwise feasible and appropriate under the circumstances.
- (3) In the event the Director fails to act on a request seeking approval for a special permit or prairie dog control permit under this Article within the timeframe for review, the request shall be deemed granted. The deemed grant becomes effective when the applicant notifies the Director in writing after the review period has expired that the application has been deemed granted.

(d) All prairie dog control permittees shall be assessed, at the time of permit issuance, a wildlife habitat restoration fee of \$1,200 per acre of active wildlife habitat lost, prorated for any partial acres of lost habitat.

- (1) The fees collected pursuant to this article are to be used for acquiring additional public land to serve as native prairie or grassland ecosystem habitat, conducting relocation of prairie dogs to suitable prairie or grassland ecosystem habitat, creating new prairie or grassland ecosystem habitat or improving existing prairie or grassland ecosystem habitat for the species supported by such habitat, monitoring the success of these activities, protection of existing native prairie or grassland ecosystem habitat, educating the public regarding native prairie or grassland ecosystems, including the wildlife species supported by such habitat and the ecological processes or functions of such habitat, or funding human land-use and wildlife habitat conflict-related research, and may be used to offset the administrative costs of the foregoing. All revenues accruing to the city under this paragraph shall be placed in the wildlife habitat restoration fund established in Section 44-11.
- (2) The Director shall waive the habitat restoration fee, or any portion of such fee, in situations where the permittee establishes a habitat mitigation work plan approved by the Director, and completes, to the satisfaction of the Director, all activities proposed under the approved mitigation work plan.
- (3) Unless the habitat restoration fee is waived, no permittee shall fail to pay the habitat restoration fee prior to taking any control activity authorized under the prairie dog control permit.

(e) An applicant for a special permit or prairie dog control permit shall be responsible for all costs associated with the control activity authorized under such permit.

Sec. 25-124 Notice.

A prairie dog control permittee shall provide the Director with at least 14 days' advance written notice of the date and time on which the control activity authorized under the permit will be initiated, along with the name, address and telecommunications number of (i) the owner or property manager of the property on which the control activity will take place; (ii) the owner or property manager of the property to which the prairie dogs will be relocated (if relocation is the proposed control activity); and (iii) any consultants retained with regard to the authorized control activity.

Sec. 25-125. Refusal to grant; suspension or revocation of permit;

(a) The Director may refuse to grant a permit, or suspend or revoke a permit requested or issued pursuant to this Article, if the Director determines that any of the following have occurred:

- (1) Fraud, material misrepresentation or false statement in the initial application for the permit; or
- (2) Failure to comply with the terms or conditions of the permit, the provisions of this Article, any applicable rule or regulation prescribed by the Director under this Article, or any other applicable provision of federal, state, or local law including, but not limited to, the Code of Ordinances of Lafayette, Colorado.

Sec. 25-126. Appeals.

(a) An applicant or permittee may appeal to the City Administrator any action, decision, refusal, denial, or order of the Director under this Article in accordance with the procedures set forth in the rules and regulations promulgated under Section 25-127.

(b) The City Administrator shall conduct a hearing upon the appeal in accordance with the procedures set forth in the rules and regulations promulgated under Section 25-127.

(c) The City Administrator shall reverse the decision upon finding that the Director's decision was erroneous. The City Administrator's decision shall be final.

Sec. 25-127. Administration; rules and regulations.

The administration of this Article is hereby vested in the Director, who is empowered to promulgate such rules and regulations as may be necessary and proper to administer, implement, interpret, and enforce the provisions of this Article. The rules and regulations shall be reviewed by the city attorney's office and then adopted by the Director.

Sec. 25-128. Separate Violation.

Each prairie dog controlled on property within the city without a special permit or prairie dog control permit issued under this Article shall constitute a separate offense and shall be punishable as a separate offense.

Section 5. Chapter 44 of the Code of Ordinances of Lafayette, Colorado, is hereby amended by the addition of a new Section 44-11, "Wildlife Habitat Restoration Fund," to read as follows:

Sec. 44-11. Wildlife Habitat Restoration Fund

(a) *Fund established.* There is hereby created a Wildlife Habitat Restoration Fund for the purposes described in subsection 25-123(c) of this Code.

(b) *Revenue sources.* The Wildlife Habitat Restoration Fund shall be funded through revenues derived from collection of the habitat restoration fee pursuant to subsection 25-123(c) of this Code.

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

Section 11. Violations of this ordinance shall be punishable as set forth in Section 1.10(a)(1) of the Code of Ordinances of Lafayette, Colorado.

Section 12. Upon the effective date of this ordinance, Ordinance No. 42, Series 2019 extending the moratorium imposed upon the removal and relocation of, and the utilization of lethal control measure for, any black-tailed prairie dogs located on any property within the city is repealed.

INTRODUCED AND PASSED ON FIRST READING THE 7TH DAY OF JANUARY, 2020.

PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED THE 21ST DAY OF JANUARY, 2020.

CITY OF LAFAYETTE, COLORADO

Jamie Harkins, Mayor

ATTEST:

APPROVED AS TO FORM:

Susan Koster, CMC, City Clerk

Mary Lynn Macsalka, City Attorney