

ORDINANCE NO. _____
SERIES 2022

**AN EMERGENCY ORDINANCE ADDRESSING ZONING REGULATIONS AFFECTING
STRUCTURES DAMAGED OR DESTROYED BY THE MARSHALL FIRE AND
AUTHORIZING THE ZONING ADMINISTRATOR TO RECONCILE DISCREPANCIES
TO FACILITATE REBUILDING OF THE SAME.**

WHEREAS, on December 30, 2021, the Marshall Fire ignited and quickly spread to the City of Louisville, resulting in severe damage or total loss of almost six hundred (600) structures within the City of Louisville, most of them residential homes; and

WHEREAS, also on December 30, 2021, the Mayor of the City of Louisville, pursuant to Chapter 2.32 of the Louisville Municipal Code and C.R.S. § 24-33.5-709, executed a Declaration of Local Disaster Emergency in and for the City of Louisville, which Declaration was thereafter continued in effect by resolution of the City Council, and the Governor of the State of Colorado issued a Declaration of Statewide Emergency in response to the Marshall Fire; and

WHEREAS, on January 1, 2022, President Joseph R. Biden approved a Major Disaster Declaration for the Event (DR-4634-CO) beginning on December 30, 2021 and continuing thereafter; and

WHEREAS, the structures damaged and destroyed by the Marshall Fire comprise significant portions of several residential subdivisions within the City and are generally within the areas shown on the Marshall Fire 2021 Burn Area map attached hereto as Exhibit A (the “Burn Areas”), as the same may be updated as more information is developed regarding affected structures; and

WHEREAS, the City regulates land use and development in Title 17 of the Louisville Municipal Code (the “Zoning Code”); and

WHEREAS, the City’s Zoning Code establishes zone district categories and boundaries of such zone districts are shown on the Zoning Map of the City of Louisville, which is from time to time amended by the City Council; and

WHEREAS, Chapter 17.12 of the Louisville Municipal Code sets forth regulations for each of the zone districts within the City; and

WHEREAS, Title 17 further provides for planned unit developments (PUDs), and approval of a PUD development plan may vary or waive the requirements applicable to the underlying zoning district or districts in which a property is located, including, but not limited, to lot area, lot coverage, lot width, height, setbacks, parking, signage, and buffers; and

WHEREAS, Section 17.28.110 provides that to the extent not modified or waived in the PUD development plan, the requirements of the underlying zone districts apply; and

WHEREAS, City staff have identified PUDs within the Burn Areas where homes were built with setbacks and other dimensional aspects that do not comply with the PUD development plan or underlying zone district; and

WHEREAS, the City Council finds it would be a hardship for lot owners within such subdivisions to be required to rebuild utilizing more restrictive dimensional criteria than were applied for the original structure; and

WHEREAS, Section 17.28.200.D of the Louisville Municipal Code provides that, for any area covered by a final development plan for a residential PUD approved after August 1, 1995, no building permit may be issued more than 36 months after City Council approval of the plan unless an extension of time is approved pursuant to subsection 17.28.210.B and issuance is within such extended time; and

WHEREAS, the City Council finds this time limitation should not be applicable to prevent rebuilding of any residence damaged or destroyed by the Marshall Fire; and

WHEREAS, Chapter 17.72 of the Louisville Municipal Code provides regulations for a Planned Community Zone District (“PCZD”), the purpose of which is to encourage, preserve and improve the health, safety and general welfare of the people of the City by encouraging the use of contemporary land planning principals and coordinated community design; and

WHEREAS, each PCZD is governed by an approved general development plan that controls all development within the district and which controls the issuance and validity of all building and occupancy permits within the district; and

WHEREAS, Section 17.72.190 of the Louisville Municipal Code requires yard and bulk requirements under a PCZD to be specified in the approved general development plan (“GDP”); and

WHEREAS, for residential development, such yard and bulk requirements are to be in general conformance with R-E, R-L, R-M, R-H, and SF Zones, each of which Zones provide different yard and bulk requirements as set forth in Section 17.12.040 of the Louisville Municipal Code; and

WHEREAS, City staff have identified GDPs within the Burn Areas where yard and bulk standards were not established and therefore no controlling regulations exist; and

WHEREAS, the City Council finds that lot owners seeking to rebuild homes within the areas covered by these GDPs would have a reasonable expectation that they could rebuild their homes to reflect similar yard and bulk standards as existed in the built subdivision prior to the Marshall Fire; and

WHEREAS, each of the subdivisions within the Burn Areas are located is governed by a PUD development plan or a PCZD general development plan (the “Approved Development Plan”); and

WHEREAS, these Approved Development Plans were intended to control the development therein in accordance with the purpose and authority set forth in Title 17; and

WHEREAS, in addition to the discrepancies and gaps noted above that have been identified thus far, other discrepancies between Approved Development Plans and how homes within the subdivisions were actually constructed, and other gaps in applicable standards and regulations, may be discovered during the course of rebuilding, which will cause uncertainty regarding how the Approved Development Plans should be applied to building permit applications for rebuilding of damaged or destroyed structures; and

WHEREAS, Section 17.52.040 of the Louisville Municipal Code provides the City’s Zoning Administrator is charged with the interpretation of and the enforcement of Title 17, which includes interpretation and enforcement of the Approved Development Plans, and the Zoning Administrator is authorized to approve administrative variances in accordance with the procedures and criteria set forth in Section 17.52.050; and

WHEREAS, such administrative variances are for minor impact variances of up to 10% of certain measurable yard and bulk standards set forth in Title 17, but many of the discrepancies identified by City staff are well in excess of this 10% maximum, and this administrative authority does not extend to providing standards where none were originally established; and

WHEREAS, the City Council finds that expanding the authority of the Zoning Administrator to interpret, approve variances, fill in gaps that may be discovered with regard only to the rebuilding of homes in the Burn Areas as set forth herein is necessary and appropriate and will facilitate an expedient and orderly process of rebuilding homes in the Burn Areas, which will benefit those residing in the affected subdivisions and the residents of the City at large; and

WHEREAS, by this ordinance, the City Council desires to establish a policy that facilitates rebuilding of structures damaged or destroyed by the Marshall Fire as efficiently as possible, authorize the Zoning Administrator to reconcile discrepancies in accordance with such policy; and further authorize the Zoning Administrator to administratively approve amendments to the applicable development plans and City zoning ordinances that will enable such homes to incorporate more current building and development approaches, so long as the nature, intent, and essential character of the original Approved Development Plans is preserved; and

WHEREAS, the City Council finds that an emergency exists because the preservation of public property, health, safety, and welfare requires the City to take immediate action to respond to deficiencies in Approved Development Plans and conflicts with the City’s Zoning Code so as to eliminate confusion and facilitate rebuilding of homes within the Burn Areas.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOUISVILLE, COLORADO:

Section 1. Definitions. Those terms defined in the recitals to this ordinance are hereby incorporated.

Section 2. The City Council recognizes those residents whose homes were damaged or destroyed by the Marshall Fire have suffered great losses and it is the policy of the City to provide clear regulations to guide the repair, restoration, and rebuilding of their homes and encourage these residents to return to the community.

Section 3. Notwithstanding any limitations on the Zoning Administrator's authority to interpret and apply the provisions of the City's Zoning Code and Approved Development Plans set forth in the Louisville Municipal Code, the Zoning Administrator is hereby authorized to make such interpretations and determinations to reconcile conflicting provisions between the City's Zoning Code and the Approved Development Plans, to provide regulations to fill "gaps" that may exist in the same in order to most closely reflect the built subdivisions as they existed prior to the Marshall Fire, and to permit rebuilding of such structures despite any time limitations that may have applied to the Approved Development Plans.

Section 4. In order to preserve consistency in development standards throughout each of the affected subdivisions in the Burn Areas, the Zoning Administrator shall prepare a summary of applicable yard, bulk and other dimensional standards that shall apply to lots within each subdivision, and shall make this summary available to lot owners and other interested persons. The Zoning Administrator may amend the summary from time to time to address unforeseen issues, reconcile additional conflicting provisions, or in response to new or additional information not available when such summary is first prepared.

Section 5. Minor impact variances to the Zoning Administrator's summaries prepared pursuant to Section 4 of this ordinance may be approved pursuant to Section 17.52.050.E.1 of the Louisville Municipal Code, but the criteria set forth in subsection E.2 of that section and the public notice in subsection E.3 of that section shall not apply to minor impact variances requested in conjunction with a building permit to restore or rebuild a damaged or destroyed structure in the Burn Areas.

Section 6. Appeal of any decision of the Zoning Administrator made pursuant to the authority granted by this ordinance may be filed with the Board of Adjustment pursuant to Section 17.52.030.A of the Louisville Municipal Code.

Section 7. This ordinance shall become effective upon adoption and shall continue in effect and shall apply to the rebuilding of homes on lots in residential subdivisions located in the Burn Areas. The summary for each subdivision prepared by the Zoning Administrator pursuant to Section 4 of this ordinance shall become a permanent and enforceable part of each of the Approved Development Plans, and the use of land and the construction, modification, or alteration of any

buildings or structures within the areas governed by the Approved Development Plans shall be governed by the Approved Development Plans as amended by the Zoning Administrator's summary and shall be subject to enforcement as provided in the Louisville Municipal Code. Thereafter, changes to the Approved Development Plans shall be governed by Section 17.28.230 (PUD) or Section 17.72.060 (PCZD) of the Louisville Municipal Code

Section 8. If any portion of this ordinance is held to be invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each part hereof irrespective of the fact that any one part be declared invalid.

Section 9. The repeal or modification of any provision of the Municipal Code of the City of Louisville 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, and 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 the 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 10. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

Section 11. The City Council herewith finds, determines and declares that this ordinance is genuinely and urgently necessary for the immediate preservation of the public health, safety, and welfare to respond to deficiencies in Approved Development Plans and conflicts with the City's Zoning Code so as to eliminate confusion and facilitate rebuilding of homes within the Burn Areas.

INTRODUCED, READ, PASSED AND ADOPTED AS AN EMERGENCY ORDINANCE BY TWO-THIRDS OF THE ENTIRE CITY COUNCIL, AND ORDERED PUBLISHED this ____ day of _____, 2022.

Ashley Stolzmann, Mayor

ATTEST:

Meredyth Muth, City Clerk

APPROVED AS TO FORM:

Kelly PC, City Attorney