

ORDINANCE NO. 045, 2021  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AMENDING SECTION 23-354 OF THE CODE OF THE CITY OF FORT COLLINS  
REGARDING DISPOSITION OF LAND BANK PROPERTY

WHEREAS, on April 17, 2001, the City Council adopted Ordinance No. 048, 2001, enacting Article XIII of Chapter 23 of the City Code regarding land banking; and

WHEREAS, the purpose of the land bank program is to enable the City to acquire, hold and sell real property to assist housing providers in providing affordable rental and homeownership housing for low income residents; and

WHEREAS, on April 5, 2016, the City Council adopted Ordinance No. 034, 2016, which amended Section 23-354 of the City Code to provide flexibility in income targets for the land bank program and facilitate the first sale and development of a land bank parcel (the "Horsetooth Project"); and

WHEREAS, in 2016 the City Council also directed City staff to conduct a comprehensive review of the land bank program and recommend updates; and

WHEREAS, to protect the City's interest in maintaining affordable housing units in perpetuity, the land bank Code provisions were originally drafted to include a requirement that if the housing provider who purchased a land bank parcel did not meet certain development deadlines, or if the housing provider or future owners of the property did not continue to use it for affordable housing, the property would automatically revert to the City's ownership; and

WHEREAS, during the Horsetooth Project it became clear that this right of reverter retained by the City makes it difficult, if not impossible, for affordable housing developers to secure financing for a project on a land bank parcel, because of the risk to lenders that, if the developer defaulted on the City's requirements, the City could retake the property and the lender would lose the collateral for its loan; and

WHEREAS, on March 6, 2018, the City Council adopted Ordinance No. 037, 2018, making numerous updates to the land bank provisions of the City Code, including a requirement that the City give the housing provider and any lenders notice and an opportunity to cure any defaults before retaking title to a property; and

WHEREAS, while the 2018 changes were a step in the right direction, housing providers and lenders have since advised City staff that the right of reverter is still too severe a remedy, and will likely prevent housing providers from securing financing for future development projects on land bank properties; and

WHEREAS, the City has other alternatives for ensuring compliance with the project timeline and affordability requirements of the land bank Code provisions, including deed restrictions, covenants, or deeds of trust, which would still give the City the right to legally enforce

its requirements, but would not allow the City to retake ownership of a land bank parcel without making financial arrangements with the primary lender or lenders on a housing project; and

WHEREAS, which legal instruments would be appropriate for each development project depends on the nature of the development and the funding sources required, so City staff has recommended amendments to the City Code that would give the City Manager, in consultation with the City Attorney, the flexibility to determine which legal instruments are most appropriate for a given project, and negotiate the specific terms of those instruments with a selected housing provider and its lenders; and

WHEREAS, the sale of a land bank parcel for a particular project would still be subject to approval by the City Council; and

WHEREAS, the City Council finds it is in the best interests of the City and its citizens to facilitate the sale and development of City-owned land bank properties by amending the City Code as described herein.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2 That Section 23-354 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 23-354. - Disposition of land bank property.**

In addition to the criteria established for the disposition of property in Article IV of this Chapter, no property or portion of a property acquired pursuant to this Article shall be sold by the City except in accordance with the following criteria:

...

(3) The City's conveyance of the property to the housing provider shall be made subject to a deed restriction, covenant or such other instrument or instruments as the City Manager, in consultation with the City Attorney, deems appropriate, which shall run with the title to the property and obligate the housing provider to commence development of all housing within twenty-four (24) months of having acquired the land and to obtain building permits for the construction of all such housing units within forty-eight (48) months of acquisition of the property. If the development requirements are not met, the City will be entitled to pursue the remedies described in such instruments. Any extension of the aforesaid periods of time shall be valid only if approved by the City Manager upon finding that the housing provider has exerted a good faith and diligent effort in pursuing the development but has suffered delays caused by unforeseen circumstances not reasonably within the control of the housing provider.


(4) Any property sold by the City for affordable housing under the authority of this Section shall also be made subject to a deed restriction, covenant or such other instrument or instruments as the City Manager, in consultation with the City Attorney, deems appropriate, which shall run with the title to the property, limiting the use of the property to affordable housing as described herein and requiring, to the greatest extent feasible, that if the property is subsequently resold or transferred by the original housing provider, all subsequent owners of such property must continue to use such property for affordable housing. If said property is ever not so used, then the City will be entitled to pursue the remedies described in such instruments.

...

Introduced, considered favorably on first reading, and ordered published this 16th day of March, A.D. 2021 and to be presented for final passage on the 20th day of April, A.D. 2021.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk



Passed and adopted on final reading on this 20th day of April, A.D. 2021.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk

