



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: October 3, 2017

AGENDA TITLE: Third reading and consideration of a motion to adopt Ordinance 8201 recommending City Council repeal and replace Chapter 9-13 “Inclusionary Housing,” B.R.C. 1981 and amending and adding related definitions to Chapter 9-16, “Definitions,” B.R.C. 1981. The replacement ordinance includes a middle-income housing requirement, incentives to provide affordable units on-site, requires a new design review process, is reorganized to improve readability and sets forth related details.

PRESENTERS

Jane S. Brautigam, City Manager
Jim Robertson, Director for Planning, Housing + Sustainability (PH+S)
Kurt Firnhaber, Deputy Director for Housing (PH+S)
Michelle Allen, Inclusionary Housing Program Manager (PH+S)
Jay Sugnet, Senior Planner (PH+S)

EXECUTIVE SUMMARY

The purpose of this item is for City Council to deliberate and vote on a Planning Board recommendation to replace the city’s inclusionary housing ordinance with an updated version. A second reading was held on Sept. 5. At the Sept. 5 public hearing, City Council asked for additional information on various topics and the staff responses are **Attachment E**.

On Jan. 10, City Council and Planning Board held a joint study session to learn more about the city’s current inclusionary housing program and how affordable housing financing works. The Jan. 10 memo (available [here](#)) and study session summary (available [here](#)) provide background on inclusionary housing outcomes of the past 16 years, program basics, trends and observations.

On Mar. 21 City Council held a study session to provide guidance on the specific elements of the inclusionary housing program update. The Mar. 21 staff memo included statements of the problems to be addressed with the update as well as initial recommendations (available [here](#)). The Council discussion and direction is recorded in the study session summary (available [here](#)).

The Planning Board recommendation is organized around the Council directed focus areas of the update:

- **Adding a middle income** affordable housing requirement for households earning between 80 and 150 percent of the area median income (**i.e., deed restricted**) to the inclusionary housing program as identified in the [*Middle Income Housing Strategy*](#);
- Providing incentives to **achieve more on-site affordable units**; and
- Requiring a **review for all affordable off-site projects** to ensure quality design and materials.

Planning Board recommends that that majority of the ordinance become effective 30 days after adoption. However, the additional middle income inclusionary housing requirement would be effective Jul. 1, 2018 to allow time for the market to adjust to increased requirements. A grace period avoids impacting projects that are currently in predevelopment and have been proceeding, based on existing requirements.

The proposed Ordinance is provided as **Attachment A**.

STAFF RECOMMENDATION

Staff recommends the following motion: Motion to introduce and order published by title only Ordinance 8201 repealing and replacing Chapter 9-13, “Inclusionary Housing,” B.R.C 1981 and amending and adding related definitions to Chapter 9-16, “Definitions,” B.R.C. 1981 in order to include a middle-income housing requirement, incentivize new affordable units on-site, create a new design review process and set forth related details.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- **Economic:** This recommended ordinance provides a positive economic impact by creating opportunities for housing for middle income households to work and live in the same community. The program changes provide economic incentives for developers to provide affordable units on the same site as market rate ownership units.
- **Environmental:** Providing housing opportunities for middle income households working in Boulder to live in Boulder, thereby reducing in-commuting and advancing the city’s overall climate commitment goals.
- **Social:** The ability for middle income households to remain in Boulder provides important social and economic diversity.

OTHER IMPACTS

- **Fiscal:** It is anticipated that additional affordable units available to low, moderate and middle-income households will be constructed, either directly or through cash-in-lieu contributions to be paid by a developer. Additionally, the cash-in-lieu amount will track more closely with market increases over time with the recommended ordinance.
- **Staff Time:** This recommended ordinance is expected to result in minimal additional demands on staff.

PUBLIC INPUT

To date, the public has been supportive of the inclusionary housing program and making minor changes to improve outcomes. At a joint open house with the Boulder Valley Comprehensive

Plan on Apr. 3, staff heard numerous concerns about the cash-in-lieu option. Many attendees perceived it as a way for developers to “buy out” of the requirement. Therefore, any efforts to increase the number of affordable units provided on-site and reduce the number of developments that meet the obligation with cash-in-lieu were supported. Staff also provided reasons why rental developments pay cash-in-lieu (i.e., state prohibition of rent control). A portion of attendees left with a clearer understanding of why cash contributions are allowed. It was also an opportunity to describe how the city uses the cash contribution to leverage state and federal funds to build and preserve homes for lower income and special needs households.

In addition, staff reached out to area developers to understand the potential impact of an increased inclusionary housing requirement. Concern was expressed with the marketability of future middle-income home-ownership homes. They also voiced concerns with an increase to cash-in-lieu amounts, but believed the increase could be absorbed over time, if implemented with enough of a lead time. They also indicated that any increases in affordable housing requirements should be offset with options for increased density to enable developments to absorb these higher expectations.

In response to community input, staff made minor clarifications to the Ordinance between first and second reading. Those edits are included in the attached proposed Ordinance.

BOARD AND COMMISSION INPUT

Planning Board held a public hearing on Aug. 24 and voted unanimously to recommend City Council repeal and replace Chapter 9-13, “Inclusionary Housing,” B.R.C. 1981 and amending and adding related definitions to Chapter 9-16, “Definitions,” B.R.C. 1981. In addition, Planning Board offered the following recommendations:

- Recommend that 9-13-5 be amended, adding the phrase “distribution within a project” between the words “size” and “design” [*staff included this change in the attached proposed Ordinance*];
- Further recommend that City Council directs the City Manager to prepare a data collection reporting plan on the effectiveness of these changes; and
- Further recommends that City Council direct the City Manager to study the feasibility of allowing limited short-term rental use for affordable units.

The draft minutes are **Attachment B**.

BACKGROUND

Boulder’s housing challenges are well known and long standing. Household incomes have not kept pace with rising home values and rents. In the past three years, median household income has increased 7 percent while over this same period, detached home values have increased 34 percent and attached home values have increased 52 percent. As a result, an increasing number of low, moderate and now middle-income households are unable to afford to live here. In 2000, the city responded with an ambitious initiative requiring all new residential development provide 20 percent of new homes as permanently affordable. The inclusionary housing program, along with other housing tools, has been highly successful and exceeded this target with more than 24 percent of all new development being built as affordable housing. However, when the program was adopted, the need for middle-income affordable housing was not as significant and the implications of the state statute on rent control were not yet understood.

The inclusionary housing program was a significant expansion of the city's efforts to address the city's dwindling supply of affordable housing. As originally designed, a minimum of one half of the affordable units were required on site. Developers for all residential developments were given three relatively equal options to provide the other half of the affordable units (i.e., off-site units, land, or cash-in-lieu). Flexibility and adaptability were important features of an adoptable and successful program. Further, cash-in-lieu funds could be added to other funding sources to produce more affordable housing benefits than could be realized on- or off-site.

In 2000 when inclusionary housing was first adopted it included the requirement that 50 percent of the required affordable units be provided on-site. In 2010, the 50 percent on-site requirement was lifted for rental developments to ensure they complied with the state prohibition on rent control. Rental developments were relieved of the 50 percent on-site requirement and allowed to choose any combination of options to meet the requirement. Additionally, the program has always included an alternative to providing half of the affordable units on-site if additional community benefit was provided. The standard for meeting that requirement in for-sale developments was set at 150 percent of the standard cash-in-lieu for those affordable units required but not provided on-site.

The city's inclusionary housing program has demonstrated considerable success over the years by having a balance of implementation paths. New residential development continues to significantly assist the city to meet its affordable housing goals through a variety of means. As a result, the program has greatly increased the amount of permanently affordable housing, provided housing that meets the needs of a diverse range of households and incomes, and resulted in a reasonable dispersal of affordable housing throughout the city.

In 2014, the city embarked on a community conversation about housing known as [Housing Boulder](#). This was a comprehensive review of the community's housing needs, goals and programs. As part of the public process, an update to the inclusionary housing program was identified. In January and March 2017, City Council held study sessions to provide guidance on the specific elements of the update. The Mar. 21 staff memo is available [here](#) and the study session summary is available [here](#).

To support the update, Keyser Marston Associates conducted a financial analysis of current market conditions, the potential for additional inclusionary housing requirements, and implementation recommendations. The recommendation incorporates the consultant's analysis, research and program implementation experience.

ANALYSIS

[Economic Analysis](#)

At the Mar. 21 Council Study Session, staff presented the consultant analysis. Keyser Marston Associates (KMA) prepared an analysis (available [here](#)) to evaluate the financial feasibility of residential development projects in Boulder under existing requirements and a potential new middle-income requirement. The analysis evaluated the market adjustments, such as decreases in land values and appreciation in market prices and rents, that could absorb a new requirement. The analysis also quantified the cost to developers in terms of forgone revenue per unit and per square foot that is associated with providing middle income units on-site. This cost was then compared to the cost of meeting the city's existing 20 percent inclusionary housing requirement

for low and moderate-income households for context purposes. Following is a summary of KMA's recommendations based on the analysis:

- KMA analyzed a 2.5, 5, 10, and 20 percent middle income requirement that could be added onto the current 20 percent low/moderate inclusionary housing requirement. KMA recommended a middle-income requirement of up to 5 percent;
- The new 5 percent requirement could be absorbed over time by a 10-15 percent decrease in land values. However, KMA cautioned that, as a built-out community where development often involves recycling sites with existing income-generating uses, there may be limited ability for developers to obtain concessions on site acquisition costs. If the cost of sites remains high, housing production could be constrained for a period until values recover; and
- KMA recommended a grace period for the 5 percent increase of approximately 18-24 months to allow time for the market to adjust to increased requirements. A grace period avoids impacting projects that are currently in predevelopment and have been proceeding, based on existing requirements. Due to the pressing concern about the loss of middle income households staff recommends a shorter grace period of 10 months to coincide with the annual adjustment to cash-in-lieu on July 1, 2018.

KMA provided additional analysis after the Mar. 21 study session to help staff understand the market implications of increasing the cash-in-lieu premium and offering incentives for building for-sale units on-site rather than paying cash-in-lieu. That analysis is discussed below in the recommended ordinance and regulations sections.

Anticipated Benefits of the Proposed Ordinance

Staff identified the following potential benefits of the proposed Ordinance:

- The new middle income inclusionary housing requirement will create needed units affordable to middle-income households (earning between 80 and 150 percent of the Area Median Income);
- The adjustments to cash-in-lieu and the added options for compliance with the inclusionary housing requirements will incentivize for-sale developments to construct on-site where previously the lowest cost option was to pay cash-in-lieu;
- The requirement for a staff level design review of affordable buildings not subject to site review will ensure that new development meets the city's high design expectations while keeping the cost and time required for the review to a minimum; and
- A delayed implementation date of July 1, 2018 for the 5 percent middle-income requirement to allow the market time to adjust to the new requirement and implementation of the Affordable Housing Design Review. Additional program changes not related to the increased requirement will be effective 30 days after the adoption of the ordinance.

Proposed Changes to the Ordinance

Due to the number of proposed changes to the Ordinance, Planning Board is recommending a repeal and replacement of the ordinance. Additionally, some implementation details currently found in the ordinance are recommended to be moved to the Administrative Regulations. This will allow the City Manager to make *minor* changes to implement the Ordinance efficiently based on how the market changes. A comprehensive table of all proposed changes to the

Ordinance is in **Attachment C**. Below is a summary of the significant changes to the Ordinance and regulations with staff proposed effective dates.

Section 9-13-3 General Inclusionary Housing Requirements

- Increase the inclusionary housing requirement from 20 to 25 percent. A 20 percent requirement for low and moderate-income households will remain and a 5 percent increase specific to middle income households is added.

Effective July 1, 2018.

Section 9-13-3 General Inclusionary Housing Requirements

- Authorize the city manager to use rule-making authority to adjust the cash-in-lieu amount due and percentage split between low/moderate and middle priced affordable units to incentivize on-site affordable units (see Recommended Changes to the Administrative Regulations section below). Rule changes will focus on improving how the Ordinance is implemented and making on-site affordable homes in for-sale developments the lowest cost option for developers.

Effective 30 days after ordinance adoption.

9-13-4 Affordable Housing Design Review

- Require an Affordable Housing Design Review to provide a uniform and consistent method for evaluating proposals for meeting the inclusionary housing obligation where Site Review is not required. The review will be administrative with a lower cost than Site Review while ensuring that the city's design expectations are maintained.

Effective July 1, 2018.

Section 9-13-10 Alternative Options for Satisfaction of Inclusionary Housing Requirement

- Increase the annual adjustment to cash-in-lieu from a maximum of 7 percent to 10 percent. The current program restricts the annual adjustment of cash-in-lieu to a maximum of 7 percent. However, the affordability gap in some years increases at an accelerated rate and the 7 percent limit is no longer adequate to function as intended (i.e., cash-in-lieu as a roughly equal option to the cost to provide an affordable unit on-site). The next annual adjustment will occur on July 1, 2018.

Effective 30 days after ordinance adoption.

[Proposed Changes to add Incentives to the Administrative Regulations](#)

Changes to the regulations are separate from the Ordinance and are approved by the City Manager. Below is a summary of the significant changes and the anticipated effective date. The administrative regulations will be routed for city manager signature to coincide with the effective date of ordinance adoption.

Using the Keyser Marston Associates analysis, staff identified the following incentives to encourage developers to provide affordable units on-site in for-sale developments. The analysis shows that the on-site option would be the lowest cost option when paired with the incentives described below.

- A. Create an additional middle-income housing category for cash-in-lieu and pricing.** The current pricing for for-sale affordable homes has two categories (i.e., single-family detached and attached). As a result, townhomes and other “missing middle” housing types are restricted to the attached housing sales pricing. This update adds a third middle category (e.g., townhomes and duplexes, triplexes or any building with 2-8 units) that provides an incentive to build this housing type by allowing a slightly higher resale value or rent. Additionally, if units are not provided on-site, the city will receive a slightly higher cash-in-lieu contribution per unit.

Effective 30 days after ordinance adoption.

- B. Cash-in-lieu reduction when greater than 50 percent of the required affordable units are provided on-site.** In for-sale developments, when 50 percent or more of the affordable units are provided on-site, the remaining required cash-in-lieu may be reduced by half.

	EXISTING	PROPOSED	
	A. 100% Cash-in-lieu	B. 100% Cash-in-lieu	C. 50% or more Affordable Units on-site
Inclusionary Housing Requirement	20%	25%	25%
Cash-in-lieu Incentive	No reduction	No reduction	50% reduction on remaining cash-in-lieu

Effective 30 days after ordinance adoption.

- C. Modify the mix of low-moderate and middle income affordable units.** In for-sale developments where greater than 75 percent of the affordable units are provided on-site, the unit mix may be modified from 80 percent low/moderate and 20 percent middle income to a 50/50 split between the two pricing categories.

Because a middle-income priced affordable unit generates higher sales prices, allowing a greater percentage of middle income units can incentivize a developer to provide units on-site. It is important to note that the overall 25 percent inclusionary housing requirement is not reduced. The analysis shows that by changing the mix of unit types to allow 50 percent low/moderate units and 50 percent middle units, coupled with the incentives described above, on-site affordable homes become more attractive than cash-in-lieu (see **Attachment D** for compliance costs for sample projects from the KMA analysis).

	EXISTING	PROPOSED		
	A. 100% Cash-in-lieu	B. 100% Cash-in-lieu	C. 50% – 74% Affordable Units on-site	D. 75% – 100% Affordable Units on-site
Inclusionary Housing Requirement	20%	25%	25%	25%
Mix of Units Incentive	NA	NA	80% Low/Mod 20% Middle	50% Low/Mod 50% Middle

Effective 30 days after ordinance adoption.

- D. Allow projects with 20 or fewer total units to provide affordable units as middle-income.** Complying with the inclusionary housing requirement is challenging for smaller projects lacking economies of scale and facing high land costs. Only projects with more than 20 units produce one full middle-income unit (i.e., projects with less than 20 units create a fraction less than one middle-income unit). Allowing smaller projects to meet the inclusionary housing requirement with only on-site middle-income units – rather than the standard mix of 80 percent low/moderate and 20 percent middle-income units – will incentivize a developer to provide units on-site rather than paying cash-in-lieu.

Effective 30 days after ordinance adoption.

Other Significant Changes to the Administrative Regulations

Remove “live in Boulder” from the affordable buyer preferences. The city currently provides a preference for buyers that live and work in Boulder. This preference applies when there is greater than one interested buyer for a deed restricted affordable home. Staff is concerned that a “live” preference could violate the Federal Fair Housing Act. The Act states that a policy may be considered discriminatory if it has a disproportionate “adverse impact” against any group based on race, national origin, color, religion, sex, familial status, or disability when there is not legitimate, nondiscriminatory business need for the policy. Even if the policy does not intend or call out any discriminatory practice, if the policy results in an adverse impact to a protected group it can be ruled discriminatory. This unintended result is referred to as a disparate impact. In a disparate impact case, a person can challenge practices that have a “disproportionately adverse effect” and are “otherwise unjustified by a legitimate rationale.” Disparate impact is often not intentional; however, the city remains potentially liable.

The original intent of the “live and work” preference was to give priority to current members of the community. Continuing the “work in Boulder” preference stills support the original intent. Those who work in our community but cannot afford to live here would have preference over others for the affordable housing. The result will be that affordable housing will be available to our workforce and our community while helping to protect the city from disparate impact claims.

Additional Community Benefit. The current program requires for-sale developments to provide half of the affordable units on-site. The other half of the requirement may be met with cash-in-lieu, off-site or with a land dedication. However, a developer may request that the half required on-site be provided as cash-in-lieu resulting in no affordable units on-site. The request will be granted *only* if additional affordable housing community benefit is provided.

In 2010, City Council determined that 150 percent of the cash-in-lieu was sufficient additional community benefit. However, over time the 150 percent cash-in-lieu was not in and of itself adequate to incentivize on-site units. KMA analysis shows that combined with the new incentives outlined in this section the 150 percent additional community benefit becomes effective to incentivize on-site units while cash-in-lieu remains a viable option.

ITEMS NOT ADDRESSED IN THE STAFF RECOMMENDATION

On Mar. 21 staff provided options for providing fee waivers for affordable housing. Based on Council direction, staff continues to explore how best to support affordable housing activities with current financial resource. However, based on Council feedback and additional staff analysis, staff is not recommending fee waivers for the following reasons:

- While some Council members expressed support for the concept of fee waivers, other Council members expressed concerns with the potential implications of adopting fee waivers (e.g., how the lost revenue is offset, who is eligible, etc.);
- An evaluation of fees charged by municipalities in the region demonstrate that city fees are comparable with other communities;
- Upon further discussions with our housing and funding partners, city fees do not impact the competitiveness of projects competing for funds (e.g., Low Income Housing Tax Credits, Private Activity Bonds, etc.);
- While a fee waiver provides some financial relief to the cost of affordable housing production, the city's affordable housing fund effectively offsets fees for funded affordable housing development; and
- The complexity of implementing and tracking a fee waiver program are avoided.

NEXT STEPS

The second reading / public hearing was held on Sep. 5 and was continued to Sep. 19. If Council votes to approve the Ordinance, a third reading will be scheduled for Oct. 3. Most provisions will take effect 30 days from the time of adoption (approximately Nov. 2) and the remainder will be effective on July 1, 2018 to allow time for the market to adjust to the new requirements and for the development of the Affordable Housing Design Review process.

In 2016, staff developed and implemented an on-line affordable unit and cash-in-lieu calculator that was well received by developers. After this update is completed, staff will expand the calculator to include updates, regulations and incentives to estimate the number and level of affordable units required to meet the inclusionary housing obligation.

ATTACHMENTS

- A. Proposed Ordinance
- B. Draft Planning Board Minutes Aug. 22, 2017
- C. Summary of Proposed Changes
- D. Compliance Costs for Sample Projects
- E. Additional information requested by Council

ORDINANCE 8201

AN ORDINANCE TO REPEAL AND REPLACE CHAPTER 9-13, "INCLUSIONARY HOUSING," B.R.C. 1981, AND ADDING A FIVE PERCENT MIDDLE INCOME REQUIREMENT, INCREASING THE ANNUAL ADJUSTMENT TO THE CASH-IN-LIEU AMOUNT, ADDING A TOWNHOME AND SMALL ATTACHED UNIT CATEGORY TO CASH-IN-LIEU AND AFFORDABLE UNIT PRICING, ADDING A REQUIREMENT FOR AFFORDABLE HOUSING DESIGN REVIEW, MODIFYING THE LAND DEDICATION OPTION, UPDATING THE CHAPTER AND DEFINITIONS, AND SETTING FORTH RELATED DETAILS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER,
COLORADO:

Section 1. Chapter 9-13, "Inclusionary Housing," is repealed and reenacted to read:

Chapter 13 - Inclusionary Housing

9-13-1. - Findings.

- (a) A diverse housing stock is necessary in this community to serve people of all income levels. Based upon the review and consideration of recent housing studies, reports and analysis, it has become clear that the provisions of this chapter are necessary to preserve a diversity of housing opportunities for the city's residents and working people.
- (b) The program defined by this chapter is necessary to provide continuing housing opportunities for very low-, low-, moderate-, and middle-income households. It is necessary to help maintain a diverse housing stock and to allow people to have better access to jobs and upgrade their economic status. It is necessary to provide housing to persons of all needs and abilities to have a place in the community. The strong employment base in this region, combined with the special attractiveness of Boulder, its University-related population and its environmentally sensitive urban service boundaries, all combine to make the continued provision of decent housing options for very low-, low-, moderate and middle-income and working people in Boulder a difficult but vital objective. The regional trend toward increasing housing prices will, without intervention, result in inadequate supplies of affordable housing here for very low-, low-, moderate and middle-income households. This in turn will have a negative effect upon the ability of local employers to maintain an adequate local work force.
- (c) It is essential that appropriate housing options exist for university students, faculty and staff so that the housing needs of university-related populations do not preclude non-university community members from finding affordable housing.

- (d) A housing shortage for persons of very low-, low-, moderate and middle-income is detrimental to the public health, safety and welfare. The inability of such persons to reside within the city negatively affects the community's jobs/housing balance and has serious and detrimental transportation and environmental consequences.
- (e) Because remaining land appropriate for residential development within the city is limited, it is essential that a reasonable proportion of such land be developed into housing units affordable to very low-, low-, moderate and middle-income residents and working people. This is particularly true because of the tendency, in the absence of interventions, for large expensive housing to be developed within the city, which both reduces opportunities for more affordable housing and contributes to a general rise in prices for all of the housing in the community, thus exacerbating the scarcity of affordable housing within the city.
- (f) The primary objective of this chapter is to obtain a significant amount of permanently affordable dwelling units. Provisions of this chapter provide for various approaches to creating additional affordable housing units. Those provisions recognize the fact that individual site, legal and economic factors have an impact on which alternatives will work for different developments.
- (g) The intent of this chapter is that any resulting affordable housing units and developments will be distributed either within each development when provided on-site or at a building/neighborhood level when provided off-site and will be found throughout the community and not concentrated in certain areas of the city.
- (h) As land for new residential development becomes scarcer, redevelopment of existing housing will increase. The newly built housing that results will likely be more expensive than the housing it replaces. This is especially true of larger redevelopments. Smaller scale developments are less able to absorb development costs than are larger developments that can benefit from economies of scale. This chapter recognizes the differences between developments of different sizes and the inherent inefficiencies in smaller developments and seeks to not disproportionately affect smaller redevelopments within the City.
- (i) This inclusionary housing requirement is based upon the city's power to enact zoning regulations that promote the health, safety and welfare of the community. For the reasons cited above, the promotion and maintenance of a diverse housing stock is an important component of the city's zoning regulations.

9-13-2. - Purpose.

The purposes of this chapter are to:

- (a) Implement the housing goals of the Boulder Valley Comprehensive Plan;
- (b) Promote the construction of housing that is affordable to the community's workforce;
- (c) Retain opportunities for people that work in the city to also live in the city;
- (d) Maintain a balanced community that provides housing for people of all income levels;
and

- (e) Ensure that housing options continue to be available for very low-income, low-income, moderate, and middle -income residents, for special needs populations and for a significant proportion of those who work or live in the city.

9-13-3. - General Inclusionary Housing Requirements.

(a) Inclusionary Housing Requirements.

(1) Developments Containing Five or More Dwelling Units:

(A) Any development containing five or more dwelling units is required to include at least twenty-five percent of the total number of dwelling units as permanently affordable dwelling units.

(B) Twenty percent of the required affordable units shall be affordable to low/moderate income households.

Five percent of the required affordable units shall be affordable to middle income households.

i. The city manager is authorized to use rule-making authority to annually adjust the percentages in A and B to incentivize on-site affordable units.

(C) In for sale developments a minimum of fifty percent of the units shall be built on the site of the development, unless such units are provided for in another manner consistent with the provisions of this chapter.

(D) Rental developments do not have a minimum on-site requirement and may provide the permanently affordable units through any combination of the alternative means of compliance set forth in section 9-13-10, "Options for Satisfaction of Inclusionary Housing Requirement" B.R.C. 1981.

(2) Developments with One to Four Dwelling Units: Any development containing one to four dwelling units must include at least twenty percent of the total number of dwelling units as permanently affordable dwelling units. Developments of this size may comply with this obligation either by including one permanently affordable dwelling unit within the development or through any combination of the alternative means of compliance set forth in section 9-13-10, "Options for Satisfaction of Inclusionary Housing Requirement.," B.R.C. 1981(b) Rounding Rule: In determining the number of affordable units required on or off-site, any inclusionary housing obligation resulting in a fractional value with a decimal point that is 0.5 or greater will be rounded up to the next whole number. Any remaining fraction may be met through other options as allowed in 9-13-10 Options for Satisfaction of Inclusionary Housing Requirement.

(b) Scope of Chapter: No person shall fail to conform to the provisions of this chapter for any new development which applies for a development approval or building permit for a dwelling unit after the effective date of this chapter.

(c) Income Eligibility Required: No person shall sell, rent, purchase or lease a permanently affordable dwelling unit created pursuant to this chapter except to a program eligible household. A private owner of a single affordable unit may rent the unit in accordance

1 with the provisions of this chapter as set forth in section 9-13-6 “Program Requirements
2 for ‘For Sale Units.’ All sales, rentals, purchases and leases shall comply with the
3 provisions of this chapter.

4 (d) Deed Restriction Required: No person offering a permanently affordable dwelling unit
5 for rent or sale shall fail to lawfully reference in the grant deed conveying title of any
6 such unit, and record with the county recorder, a covenant or declaration of restrictions in
7 a form approved by the city. Such covenant or declaration of restrictions shall reference
8 applicable contractual arrangements, restrictive covenants and resale restrictions as are
9 necessary to carry out the purposes of this chapter.

10 (e) Good Faith Marketing Required: All sellers or owners of permanently affordable
11 dwelling units shall engage in good faith marketing and public advertising efforts each
12 time a permanently affordable dwelling unit is rented or sold such that members of the
13 public who are qualified to rent or purchase such units have a fair chance to become
14 informed of the availability of such units.

15 (f) Reference Information: Whenever this chapter refers to information generated by HUD
16 but no such information is generated by or available from that agency, the city manager is
17 authorized to adopt or create any necessary equivalent information, which can be utilized
18 in the enforcement of the provisions of this chapter.

19 (g) Required Agreements: Those applicants creating residential developments shall enter into
20 a permanently affordable housing agreement with the city manager and shall execute
21 such restrictive covenants and additional agreements, in a form acceptable to the city, as
22 necessary to carry out the purposes of this chapter. Such agreements shall be on a form
23 provided by the city manager and shall document how the applicant will meet the
24 requirements of this chapter. The applicant shall provide all documentation and any other
25 material requested by the city manager. An applicant shall not be eligible to submit for a
building permit until the affordable housing agreement and any required restrictive
covenants are approved by the city manager.

(h) Residency Requirement: No owner of a permanently affordable dwelling unit shall fail to
occupy the purchased dwelling unit as a primary residence, except as otherwise agreed by
the city manager.

9-13-4. - Affordable Housing Design Review.

(a) Purpose: The Affordable Housing Design Review is established to provide a uniform and
consistent method for evaluating proposals for meeting inclusionary housing obligation
where site review is not required.

(b) Affordable Housing Design Review Required: All developments with more than five
units providing affordable units on-site to meet an inclusionary housing obligation and all
off-site developments in excess of five units providing affordable units shall be subject to
the Affordable Housing Design Review unless the development is approved pursuant to a
site review

9-13-5. - Livability Standards.

The city manager is authorized to establish minimum livability standards which will address size, distribution within a project, design and materials of all affordable units to ensure that the affordable housing is comparable to the market rate units which created the obligation. No person shall fail to comply with the adopted livability standards.

9-13-6. - Quality, Size, and Amenities of Affordable Units.

- (a) Quality of Units. Affordable units shall be of comparable quality, design and materials to the market units creating the inclusionary housing obligation and constructed with durable materials that promote sustainable, energy efficient and attractive affordable housing. If provided off-site, the affordable units shall also be comparable to the surrounding market housing in quality, design, and general appearance.
- (b) Size of Permanently Affordable Dwelling Units: The city manager is authorized to establish minimum and maximum sizes for permanently affordable units annually to reflect the type of units that are being constructed in the previous year and are sized to meet unmet community needs.
- (c) Affordable Owner and Renter Access to Amenities: When affordable units are provided on-site in any location or configuration, the affordable owners and renters shall have access equal to that of the owners and renters of the market units. Such amenities shall include but not be limited to: parks, outdoor play areas, pools, exercise facilities and equipment, dog washing rooms, bicycle repair facilities, internet cafes, and similar on-site amenities.

9-13-7. - Relationship of Affordable Units to Market Units.

- (a) Purpose: Affordable housing shall be comparable in quality, design and general appearance to the market units creating the inclusionary housing obligation.
- (b) Detached Dwelling Units: When a development contains single-family detached dwelling units, a proportional number of the required permanently affordable dwelling units shall also be single-family detached dwelling units.
- (c) Mixed Dwelling Unit Types: In developments with a mixture of dwelling unit types, including, without limitation, single family detached dwelling units, townhomes, duplex, triplex, four-plex, eight-plex, stacked flats, the required permanently affordable dwelling units shall be comprised of the different dwelling unit types in the same proportion as the dwelling units that are not permanently affordable within the development.
- (d) Number of Bedrooms and Bathrooms: Affordable units shall have the same proportion of zero bedroom/studio, one-, two-, three- and four-bedroom dwelling units as in its market rate dwelling units. The city manager will determine the minimum numbers of bathrooms required for affordable units with these numbers of bedrooms. Middle income affordable units shall have at least one bedroom.
- (e) Ownership Type: Permanently affordable dwelling units shall be for sale in the same proportion as the dwelling units intended for sale that are not permanently affordable within the development; for example, if fifty percent of the units in the original

development are for sale units, then at least fifty percent of the affordable units must be for sale units. Rental developments may provide either rental or for-sale units.

9-13-8. - Location and Timing.

Except as otherwise provided in this chapter, permanently affordable dwelling units shall be provided as follows:

- (a) Location of For Sale Permanently Affordable Units: For sale permanently affordable units shall be distributed evenly throughout the development to achieve integration and avoid concentration or segregation of the affordable households unless otherwise approved by the city manager.
- (b) Location of Rental Permanently Affordable Units: Rental permanently affordable units do not have a requirement for distribution throughout the development.
- (c) Timing of Construction: The construction of on-site permanently affordable dwelling units in any development shall be timed such that the units shall be constructed and pass final inspection concurrently or prior to the market-rate dwelling units in that development.
- (d) Timing of Marketing: On-site permanently affordable dwelling units shall be marketed concurrently with or prior to the market-rate dwelling units in that development.

9-13-9. - Developments Containing a Single Dwelling Unit.

A single lot owner that intends to construct one single dwelling unit on one buildable site that will be the primary residence of the owner for not less than three years immediately following the issuance of a certificate of occupancy shall meet the standards set forth in subsection 9-13-3(a), "Inclusionary Housing Requirements" B.R.C. 1981, or meet the following standards:

- (a) Designation of Home as a Permanently Affordable Dwelling Unit: The owner shall make the dwelling unit a permanently affordable dwelling unit, except that such initial owner does not have to meet income or asset qualifications imposed by this chapter. The income and asset limitations shall apply to subsequent owners of the affordable dwelling unit.
- (b) In-Lieu Contribution: If the owner of a dwelling unit described in this subsection chooses to comply with inclusionary housing requirement by making a cash-in-lieu contribution, the owner shall have the option of deferring payment of that contribution until the property is conveyed to a subsequent owner or ten years from the date of execution of an agreement to that effect whichever is sooner, subject to the following:
 - (1) Amount: The amount of the cash-in-lieu contribution shall be based on the in-lieu amount for a similar single-family home that is in place at the time the contribution is made, no later than at the time of transfer of title to a subsequent owner or ten years from the date of execution of an agreement to that effect whichever is sooner.
 - (2) Legal Documents: The owner executes legal documents, the form and content of which are approved by the city manager, to secure the city's interest in receipt of the deferred in-lieu contribution.

9-13-10. - Options for Satisfaction of Inclusionary Housing Requirement.

- (a) Purpose: To obtain a significant amount of permanently affordable dwelling units. To the extent permitted by this chapter, developers may satisfy the inclusionary housing requirement through any combination of the following alternate means:
- (b) Cash-in-Lieu Contribution: Developers may satisfy permanently affordable housing requirements by making cash contributions to the city's affordable housing fund. The cash-in-lieu contribution will be calculated by the city manager annually. The city manager may consider the number of units in the development, the size and type of units which created the obligation (including small attached units and townhomes), the amount that would incentivize on-site construction of affordable units, and the affordability gap between market and affordable home prices when determining the cash-in-lieu calculation.
- (1) Annual Escalator for Developments with Five or More Dwelling Units: The city manager is authorized to increase the cash-in-lieu contribution annually on July 1 of each year up to a maximum of ten percent, compounded each year until seventy-five percent of the affordability gap in a given year is reached.
- (2) Annual Escalator for Developments with One to Four Dwelling Units: The city manager is authorized to increase the cash-in-lieu contribution for developments with one to four dwelling units annually on July 1 of each year by up to a maximum of ten percent compounded each year until fifty percent of the affordability gap in any given year is reached.
- (3) Affordable Housing Fund Established: The city manager will establish an affordable housing fund for the receipt and management of permanently affordable dwelling unit cash-in-lieu contributions. Monies received into that fund will be utilized solely for the construction, purchase and maintenance of affordable housing and for the costs of administering programs consistent with the purposes of this chapter.
- (c) Provision of Affordable Units Off-site:
- (1) The intent of this option is that the off-site unit mix of building type (attached, townhome, detached) and number of units with specific number of bedrooms units will be proportionate to the mix of market units on the sending site. Recognizing that an off-site location is unique and may have different zoning and other planning considerations than the sending site, the city manager may meet the intent of this chapter by modifying the requirements in chapters 9-13-6 and 9-13-7 to accommodate receiving site constraints.
- (2) To the extent permitted by this chapter, inclusionary housing requirements may be satisfied by restricting existing or newly constructed rental or for sale off-site dwelling units which are approved by the city as suitable affordable housing dwelling units through covenants, contractual arrangements or resale restrictions, the form and content of which are acceptable to the city manager. Off-site affordable dwelling units shall be located within the City of Boulder.

- (3) Off-site Agreement: Any development meeting the requirements of this chapter by providing affordable units off-site shall be subject to the provisions of an off-site Agreement as approved by the city manager. The off-site Agreement must be executed prior to any residential building permit submittal for the sending site.
- (4) Financial Guarantee: The city manager may require a financial guarantee to secure the off-site units prior to issuing a building permit for the sending site, the development generating the need for the affordable units.
- (5) Timing of Construction for Off-site Units: The intent of this section is to provide concurrency of construction and marketing between affordable units and market rate units.
- (A) If a newly constructed dwelling unit is used to satisfy the requirements of this chapter, the units shall pass final inspection no later than one year after the first market-rate dwelling unit in the site that generated the requirement passes final inspection.
- (B) If an existing dwelling unit is used to satisfy the requirements of this chapter, the applicant shall provide a letter of completion for any rehabilitation or remodeling, subject to city manager review and approval, that establishes that the unit is habitable no later than one year after the first market rate dwelling unit in the site that generated the requirement passes final inspection.
- (6) Timing of Marketing: The marketing of the permanently affordable dwelling units should start within two months of when the units can be occupied. Marketing shall occur no later than ten months after the first residential building permit for the site that generated the requirement is issued.
- (7) Off- Site Location Subject to Inclusionary Requirement: All newly constructed dwelling units on the receiving site are subject to the requirements of this chapter.
- (8) Off- Site Location Review and Approval: Any proposed off-site location is required to be approved by the city manager.
- (d) Land Dedication:
- (1) Purpose: The inclusionary housing requirement may be fully or partially satisfied by the dedication of land to the City of Boulder or an entity designated by the City of Boulder for permanently affordable dwelling units in accordance with the provisions of this chapter.
- (2) General Requirements: A land dedication shall meet all of the following criteria to the satisfaction of the city manager:
- (A) Any proposed off-site location is required to be approved by the city manager.
- (B) The land is in the City of Boulder and has either a medium or high density residential land use and zoning classification or the city manager determines that such classification may be pursued;
- (C) The land is in an environmentally acceptable condition as supported by a Phase I Environmental Assessment as approved by the city manager. The city manager may require other studies or assessments to make this determination;

(D) No greater than ten percent of the land may be within the high hazard, or conveyance floodplain. No greater than twenty-five percent of the land may be within the one-hundred-year floodplain. If any portion of the land is in the high hazard, conveyance or one-hundred-year flood plain the city manager will have the sole discretion to determine if the land is appropriate for affordable housing development.

(E) Satisfactory proof of fee title is provided to the city manager within thirty days of the effective date of dedication to the city. The land will be free of all liens and encumbrances and all property taxes and special taxes will be current before the title for the dedicated land is conveyed. The land will be conveyed by general warranty deed before issuance of a building permit for the originating residential development.

(F) Dedicated land plus any cash-in-lieu contributed must be of equivalent or greater value to the total cash-in-lieu contribution amount. The land must equal no less than seventy-five percent of the cash-in-lieu contribution amount, including any in-lieu requirements of subsection 9-13-3(d), B.R.C. 1981, for providing less than one-half of the required affordable dwelling units on-site that would have been required of the originating residential development. The value of land to be dedicated will be determined, at the cost of the developer, by an independent appraiser, who will be selected from a list of Colorado Certified General Appraiser provided by the city, or by such alternative means of valuation to which a developer and the city may agree.

(G) If the land does not equal the full amount of the cash-in-lieu owed, the applicant shall contribute cash-in-lieu to make up any gap between the value of the donated land and the total cash-in-lieu contribution amount.

(e) Alternative methods of compliance.

The city manager is authorized to enter into agreements to allow alternative methods of compliance for the inclusionary housing requirements contained within this chapter. The applicant shall provide all documentation and any other material requested by the city manager. An applicant for an alternative method of compliance will demonstrate that the proposed method of compliance:

- (1) Will result in additional affordable housing benefits for the city consistent with the purposes of this chapter; or
- (2) Will result in additional affordable housing benefits that are equivalent to or greater than the cash-in-lieu contribution as set forth in subsection 9-13-9(a), including any additional cash-in-lieu that is contributed if less than fifty percent of any for-sale permanently affordable units are not provided on-site; or
- (3) Is necessary to prevent an unlawful taking of property without just compensation in accordance with section 9-13-10, "No Taking of Property Without Just Compensation," B.R.C. 1981.

9-13-11. - Rebuilt Dwelling Units.

The provisions of this chapter apply to any dwelling unit that is removed and rebuilt, except as provided in this subsection.

- (1) Developments with Four or Fewer Dwelling Units: An applicant may request an exemption from the inclusionary housing requirements of this section for each dwelling unit removed and replaced by a dwelling unit in a development that has four or fewer units proposed for construction. The exemption shall be valid for three years after the issuance of any permit that results in the removal of a unit if the applicant applies for a building permit for a dwelling unit, uses due diligence to commence and complete the construction of such building and meets all deadlines set by city building codes or that otherwise may be set by the city manager. Any removal of a dwelling unit undertaken without the issuance of a permit will not qualify for the above exemption regardless of the number of units removed.
- (2) Developments with Five or More Dwelling Units: When the total number of redeveloped or newly constructed dwelling units in a development equals five or more dwelling units, the requirements of this chapter shall apply regardless of the date of issuance of any permit resulting in the removal of a unit.
- (3) Calamity: The provisions of this subsection shall not apply to non-affordable dwellings that may have been removed or caused to be removed by fire, flood, wind, act of nature or another calamity. Such dwelling units may be replaced without meeting the inclusionary housing requirements of this chapter at the time preferred by the property owner. Deed restricted affordable dwelling that may have been removed or caused to be removed by fire, flood, wind, act of nature or other calamity must be replaced and include the deed restriction.
- (4) Safe and Habitable: The provisions of this subsection shall not apply dwellings to be removed, if, at the time of removal, such unit is considered to be an unsafe structure, a structure unfit for human occupancy, or a dangerous structure under the 1997 Uniform Code for the Abatement of Dangerous Buildings, Section 302 adopted by the city by section 10-5-3, B.R.C., unless otherwise excepted by the Boulder Revised Code.

9-13-12 Program Requirements for For-Sale Units.

- (a) Affordable Unit Price: The city manager will set the maximum allowable sales price for affordable dwelling units required by this chapter based upon the unit type, total floor area, number of bedrooms and bathrooms.
 - (1) The prices charged for permanently affordable low/moderate priced dwelling units shall not exceed a price that is affordable to a household earning the HUD low-income limit for the Boulder PMSA.
 - (2) Middle Income priced dwelling units shall not exceed a price that is affordable to one hundred and twenty (120) percent of the area median income as determined by HUD for the Boulder PMSA. The city manager is authorized to adopt or create

pricing categories within this income range to be utilized in the enforcement of the provisions of this chapter.

- (b) Maximum Sales Price for Permanently Affordable Dwelling Units: The maximum sale price for an affordable ownership unit shall be set by the city on at least a quarterly basis.
- (c) Real Estate Commissions: A real estate commission shall be paid by any seller of an affordable unit to a real estate agent representing the buyer. This amount shall be established by the city manager and specified in the inclusionary housing administrative regulation.
- (d) Approved Purchasers for Permanently Affordable Dwelling Units: A developer or owner shall sell to a qualified purchaser after completing a good faith marketing and selection process approved by the city manager.
- (e) Asset Limitations for Program-eligible Households: Program-eligible households that wish to purchase affordable dwelling units shall be subject to reasonable asset limitations set by the city manager. The city manager will establish maximum asset limitation requirements for purchasers of affordable dwelling units in order to accomplish the purposes of this chapter. The standard that the city manager will use to set the asset limitation is that the housing be available to people who, without assistance, would have difficulty marshaling the financial resources to obtain appropriate housing within the city.
- (f) Sale Restriction: No person shall sell a permanently affordable dwelling unit except to a person that meets the income, asset and other eligibility requirements of this chapter or any asset and income eligibility requirement that is included in any contract, covenant or any other agreement to which the city is a party or beneficiary.
- (g) Rental Restrictions for For-Sale Permanently Affordable Units:
- (1) Rental Restrictions Pursuant to Sale: Newly constructed or existing units that are deed restricted are initially owned by a developer. Prior to the first sale of such units to a program eligible buyer and after receipt of a temporary or final certificate of occupancy a developer who initially owns an affordable unit is required to actively market the affordable unit for a minimum of 120 days to facilitate a sale. Subsequent program-eligible owners must also market the affordable unit for a minimum of 120 days to facilitate a sale. If, after this period, the affordable home has not sold, the unit may be rented for a one-time period not to exceed 18 months. The developer or owner is required to continue to market the unit while it is being rented but may defer the sale to the end of the lease period. A written lease or rental agreement is required. The lease or agreement must be provided to the city division of housing.
- (2) An owner may rent one bedroom in an affordable unit for any period of time subject to city requirements concerning the renting of residential property.
- (3) The provisions below apply to rental of the entirety of the affordable units. The provisions of this section do not apply to any affordable housing developer who owns the affordable unit initially prior to the first sale to a program-eligible owner.

- 1 (A) No owner shall fail to occupy an affordable unit for a minimum of five years
2 before renting the entirety of the unit.
- 3 (B) No owner shall fail to provide thirty days' notice to the city manager of intent
4 to rent an affordable unit.
- 5 (C) No owner shall allow an affordable unit to be rented for more than one year
6 out of seven years. The one year period may be continuous or an aggregation
7 of shorter time periods.
- 8 (D) No owner shall fail to provide a written lease or rental agreement to the city
9 division of housing when renting the entirety of an affordable unit. The city
10 manager may require additional documents the city finds reasonably
11 necessary to comply with this section.
- 12 (E) No owner shall allow an affordable unit to be rented for a period of less than
13 thirty days.
- 14 (h) Resale Restrictions: All permanently affordable ownership dwelling units developed
15 under this chapter shall be subject to the following resale restrictions:
- 16 (1) Approved Purchasers: A seller of a permanently affordable dwelling unit must
17 select an income-eligible purchaser by a method that complies with the good faith
18 marketing and selection process approved by the city manager. All purchasers of
19 permanently affordable dwelling units shall be part of program eligible
20 households.
- 21 (2) Resale Price: The resale price of any permanently affordable dwelling unit shall
22 not exceed the purchase price paid by the owner of that unit with the following
23 exceptions:
- 24 (A) Closing Costs: Customary closing costs and costs of sale as reviewed and
25 approved by the city manager.
- (B) Permanent Capital Improvements: Consideration of eligible permanent capital
 improvements installed by the seller that have been approved in advance by
 the city manager in accordance with rules or administrative guidance
 established by the city manager.
- (C) Resale Price: The resale price may include an inflationary factor or shared
 appreciation factor as applied to the original sale price pursuant to rules as
 may be established by the city manager to provide for such consideration. In
 developing rules, the city manager may consider the purposes of this chapter,
 common private, nonprofit and governmental lending practices, as well as any
 applicable rules or guidelines issued by federal or state agencies affecting the
 provision or management of affordable housing. In the event that the city has
 not adopted rules that contemplate a particular arrangement for the use of an
 inflationary factor or shared appreciation factor, the city manager is
 authorized to approve a resale price formula that is consistent with the
 purposes of this chapter, common private, nonprofit and governmental lending
 practices, as well as any applicable rules or guidelines issued by federal or
 state agencies affecting the provision or management of affordable housing.

(3) Special Fees: The seller of a permanently affordable dwelling unit shall neither levy nor charge any additional fees or any finder's fee nor demand any other monetary consideration other than provided in this chapter.

(i) Ownership Associations: When accepting a for sale unit as meeting the inclusionary housing obligation, the city manager will review the condominium association declarations to assess the impact on buyers of affordable units. The city manager is authorized to establish rules regarding allowable terms in condominium declarations in order to ensure that the purposes of this chapter are accomplished.

9-13-13. - Program Requirements for Rental Units.

(a) Maximum Rent: Rents charged for permanently affordable units in any one development must be affordable to households earning no more than sixty percent (60%) of the AMI for low/moderate permanently affordable rental units and eighty percent (80%) of the AMI for middle income permanently affordable rental units.

(b) Conversion of Rental Developments to Ownership Dwelling Units.

(1) A rental development may be converted to a for sale development. If the inclusionary housing requirement for a rental development was met with a cash-in-lieu contribution and the rental development is converted to a for sale development within five years of the issuance of a final Certificate of Occupancy, the property owner shall pay the city the difference between the cash-in-lieu amount paid and the amount that would have been due at the time of building permit issuance for a for sale development.

(2) An owner of a rental development shall enter into an agreement with the city to agree to pay the difference if the rental development is converted to for sale units in the five-year period.

(3) An agreement shall be executed in a form acceptable to the city manager and shall indicate the difference between the cash-in-lieu amount owed if the development were a for sale development instead of a rental development at issuance of the initial residential building permit. The term of the agreement shall be for five years starting from the date of the issuance of a residential building permit. After this period, no additional cash-in-lieu is required if such a conversion occurs. The agreement shall provide for the appropriate adjustment to the inclusionary housing requirements of this chapter.

9-13-14. - Residential Developments with Prior Affordable Housing Agreements.

Developments of the type described in this subsection will be permitted to develop utilizing the following provisions:

(a) Prior Development Approvals and Applications: The inclusionary housing requirements of 9-13-3(a)(1)(A) & (C), 9-13-4(a) & (b) in place prior to the adoption of this Chapter will apply to the following developments:

(1) A development for which a site review application was filed prior to July 1, 2018;

(2) A developments subject to an affordable housing agreement and requirements imposed by prior inclusionary housing agreements; or

(3) A dwelling unit for which a building permit has been submitted prior to July 1, 2018.

After July 1, 2018 any development subject to this subsection for which the site review, affordable housing agreement or building permit is expired, denied, revoked, or otherwise is not diligently pursued must conform to the rule in effect at the time of application.

(b) City Subsidized Developments: Developments subject to agreements with the city executed prior to the effective date of this chapter in order to receive Affordable Housing Funds, Community Housing Assistance Program, HOME or Community Development Block Grant funds may either:

(1) Develop in compliance with affordable housing and restricted housing agreements executed prior to the effective date of this chapter and provide restricted units as required pursuant to ordinances in effect at the time such developments were approved;

(2) Enter into a new agreement with the city manager to allow the development to retain funding pursuant to the earlier agreements, provide permanently affordable units as required pursuant to the earlier agreements and law, be relieved of all obligations to provide restricted units and provide ten percent additional permanently affordable units as such units are defined by this title; or

(3) Refund all monies received pursuant to such agreements and agree that contracts providing for the provision of such funding shall be void. The development shall then develop in compliance with the provisions of this chapter.

(c) Developments Subject to Annexation Agreements: Developments subject to affordable housing requirements imposed by annexation contracts may develop in conformity with those contract provisions.

(d) Moderate Income Housing Program: Any development subject to Ordinance 4638, "Moderate Income Housing," as amended, and which has not entered into a separate agreement with the city manager to fulfill those requirements prior to the effective date of this chapter shall be relieved of its obligations under Ordinance 4638, as amended, and shall be subject to the requirements of this chapter.

9-13-15. - No Taking of Property Without Just Compensation.

(a) Purpose: It is the intention of the city that the application of this chapter not result in an unlawful taking of private property without the payment of just compensation.

(b) Request for Review: Any applicant for the development of a housing project who feels that the application of this chapter would effect such an unlawful taking may apply to the city manager for an adjustment of the requirements imposed by this chapter.

(c) City Manager Review: If the city manager determines that the application of the requirements of this chapter would result in an unlawful taking of private property without just compensation, the city manager may alter, lessen or adjust permanently affordable dwelling unit requirements as applied to the particular development under consideration such that there is no unlawful uncompensated taking.

(d) Administrative Hearing: If, after reviewing such application, the city manager denies the relief sought by an applicant, the applicant may request an administrative hearing within which to seek relief from the provisions of this chapter. Any such hearing shall be conducted pursuant to the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981. At such hearing, the burden of proof will be upon the applicant to establish that the fulfillment of the requirements of this chapter would effect an unconstitutional taking without just compensation pursuant to applicable law of the United States and the state of Colorado. If it is determined at such administrative hearing that the application of the requirements of this chapter would effect an illegal taking without just compensation, the city manager will alter, lessen or adjust permanently affordable dwelling unit requirements as applied to the particular development under consideration such that no illegal uncompensated taking takes place.

9-13-16. - Administrative Regulations.

To the extent the city manager deems necessary, rules and regulations pertaining to this chapter will be developed, maintained and enforced in order to assure that the purposes of this chapter are accomplished. No person shall violate any rule or regulation issued by the city manager under this chapter.

9-13-17. - Monitoring.

Periodically, the city manager will present sufficient information to the city council so that it can effectively review the operation of this chapter and determine whether any of the provisions of this chapter should be amended, adjusted or eliminated. Such information should be sufficient to allow the city council to evaluate the following:

- (a) Effectiveness: The effectiveness of this chapter in contributing to the purposes of this chapter;
- (b) Trends: Any demographic trends affecting housing affordability indicating the need for amendments or alterations to the provisions of this chapter;
- (c) Integration: The level of integration of the provisions of this chapter with other tools being utilized by the city as part of a comprehensive approach toward obtaining the goals of this chapter.

Section 2. Subsection 9-16-1, "Definitions," B.R.C. 1981, is amended to include the following sections:

9-16-1. - General Definitions.

....

Area median income means the midpoint of household incomes ~~for federal government defined areas as determined by HUD for the Boulder Primary Metropolitan Statistical Area (PMSA), and~~ adjusted for family size; half of ~~the all~~ household incomes are higher and half are lower than the AMI. ~~Annually, HUD publishes the AMI for the Boulder, Colorado MSA (Metropolitan Statistical Area, Boulder County).~~ Income limits based on AMI are used to determine if a household's gross income qualifies for affordable housing and other assistance programs.

....

Floor area for detached single-family dwelling units means the total habitable square footage of all levels measured to the outside surface of ~~all buildings~~ the exterior framing, or to the outside surface of the exterior walls if there is no exterior framing or portions thereof, which includes stairways, storage, excluding any additional required storage per "Livability Standards for Permanently Affordable Units," and mechanical rooms internal to the structure, excluding garages, but excluding up to two hundred fifty square feet of unfinished floor area in basements and up to five hundred square feet of floor area in attached or detached garages that are primarily used for personal storage or for the parking of automobiles for the occupants of the dwelling unit. (Inclusionary Housing)

....

Floor area for townhomes and attached small units means the total habitable square footage of all levels measured to the outside surface of the exterior framing, or to the outside surface of the exterior walls if there is no exterior framing, or to the mid-wall for interior unit-defining walls or portions thereof, which includes stairways, storage, excluding any additional required storage per "Livability Standards for Permanently Affordable Units", and mechanical rooms, internal to the unit. (Inclusionary Housing)

....

Livability Standards for Permanently Affordable Housing means a set of criteria established by the city manager to clarify acceptable minimum standards for safety and habitability in affordable dwelling units. These standards may include, but are not limited to, minimum amount of kitchen counters and cabinetry, closets and storage, room, fixtures and appliances, required warranty periods, and noise mitigation. (Inclusionary Housing)

....

Low/moderate income dwelling unit means a dwelling unit with a price which is permanently restricted to be affordable to households with annual incomes no greater than the HUD low income limit for the Boulder Primary Metropolitan Statistical Area (PMSA). Or a dwelling unit with a rent which is permanently restricted to be affordable to households with annual incomes no greater than sixty percent of the area median income (60% AMI) for the Boulder Primary Metropolitan Statistical Area (PMSA). (Inclusionary Housing)

....

Middle income dwelling unit means a dwelling unit with a price which is permanently restricted to be affordable to households with annual incomes between eighty and one hundred and twenty

percent of the Area Median Income (80% - 120% AMI) as determined by HUD for the Boulder Primary Metropolitan Statistical Area (PMSA). (Inclusionary Housing)

....

Off-site dwelling unit means an existing or newly constructed dwelling unit restricted as permanently affordable provided to fulfill an inclusionary housing requirement and not located within the residential development that incurred the inclusionary housing requirement. (Inclusionary Housing)

....

On-site dwelling unit means a dwelling unit restricted as permanently affordable located within the residential development that incurred an inclusionary housing requirement. (Inclusionary Housing)

....

Permanently affordable unit means a dwelling unit that is pledged to remain affordable in perpetuity forever to households earning no more than the maximum income limits specified in this Chapter 9-13, "Inclusionary Housing," B.R.C. 1981, and the unit:

- (1) Is owner occupied; or
- (2) Is owned or managed by the Housing Authority of the City of Boulder or its agents; or
- (3) Is a rental unit in which the city has an interest through the Housing Authority of the City of Boulder or a similar agency that is consistent with § 38-12-301, C.R.S., or that is otherwise legally bound by rent restrictions consistent with § 38-12-301, C.R.S., or successor statutes. (Inclusionary Housing)

Permanently affordable unit means a dwelling unit that is restricted to remain permanently affordable forever to households earning up to eighty percent of the area median income consistent with Chapter 9-13, "Inclusionary Housing," B.R.C. 1981, through contractual arrangements, restrictive covenants, and resale restrictions, subject to reasonable exceptions, including, without limitation, subordination of such arrangements, covenants and restrictions to a mortgagee. No unit shall be considered a permanently affordable unit until the location, construction methods and techniques used to ensure that the dwelling unit will remain affordable to a household earning up to eighty percent of the area median income has been approved by the city manager. (RGMS)

Program eligible household means a household who meets the income and asset limitations and other requirements established pursuant to this title for the purposes of owning or renting and affordable home.

- (1) Low and moderate-income homebuyer households' income shall not exceed ten percentage points more than the HUD low income limit for the Boulder Primary Metropolitan Statistical Area (PMSA), with adjustments for family size.
- (2) Low and moderate-income renter households' income shall not exceed sixty percent of the area median income (60% AMI) as determined by HUD for the Boulder PMSA.

(3) Middle income homebuyer households' income shall not exceed one hundred and fifty (150) percent of the area median income as determined by HUD for the Boulder PMSA

(4) Middle income renter households' income shall not exceed eighty percent of the area median income (80% AMI) as determined by HUD for the Boulder PMSA. (Inclusionary Housing)

....

....

Section 3. This ordinance is necessary to protect the public health, safety, and welfare of the residents of the city, and covers matters of local concern.

Section 4. The city council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the city clerk for public inspection and acquisition.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY
TITLE ONLY this 15th day of August 2017.

Suzanne Jones, Mayor

Attest:

Lynnette Beck, City Clerk

1
2 READ ON SECOND READING, AMENDED AND ORDERED PUBLISHED BY
3 TITLE ONLY this 19th day of September 2017.
4

5
6 Attest: Suzanne Jones, Mayor
7

8 Lynnette Beck, City Clerk
9

10
11 READ ON THIRD READING, PASSED, AND ADOPTED this 3rd day of October 2017.
12

13
14 Attest: Suzanne Jones, Mayor
15

16 Lynnette Beck, City Clerk
17
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20
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24
25

**CITY OF BOULDER
PLANNING BOARD ACTION MINUTES
August 24, 2017
1777 Broadway, Council Chambers**

A permanent set of these minutes and a tape recording (maintained for a period of seven years) are retained in Central Records (telephone: 303-441-3043). Minutes and streaming audio are also available on the web at: <http://www.bouldercolorado.gov/>

PLANNING BOARD MEMBERS PRESENT:

John Putnam, Chair
Liz Payton, Vice Chair
Bryan Bowen
Crystal Gray
Peter Vitale
Harmon Zuckerman

PLANNING BOARD MEMBERS ABSENT:

David Ensign

STAFF PRESENT:

Charles Ferro, Development Review Manager
Hella Pannewig, Assistant City Attorney
Cindy Spence, Administrative Specialist III
Kurt Firnhaber, Deputy Director of Housing
Jay Sugnet, Senior Planner
Lesli Ellis, Comprehensive Planning Manager
Jim Robertson, Director of Planning, Housing + Sustainability
Lauren Holm, Associate Planner
Christin Whitco, Energy Code Coordinator
Katie Knapp, Engineering Project Manager
Alysha Geiger, Civil Engineer I
Chris Meschuk, Assistant City Manager
Karl Guiler, Senior Planner

1. CALL TO ORDER

Chair, **J. Putnam**, declared a quorum at 6:05 p.m. and the following business was conducted.

J. Putnam proposed beginning the meeting with agenda items 6B, 6C and 6D after “*Agenda Item 3-Public Participation*”. The board agreed.

2. APPROVAL OF MINUTES

None to approve.

3. PUBLIC PARTICIPATION

No one spoke.

4. DISCUSSION OF DISPOSITIONS, PLANNING BOARD CALL-UPS / CONTINUATIONS

- A. Call Up Item: Wetland Map Revision (LUR2017-00057); 6247 63rd Street – Coot Lake. Wetland Map Revision for the northeast corner of Coot Lake. Currently the wetland boundary extends over an existing pedestrian path, the wetland map revision will make the west side of the pedestrian path the boundary for the wetlands. This decision may be called up before Planning Board on or before **September 1, 2017**.

The item was not called up.

5. PUBLIC HEARING ITEMS

- A. AGENDA TITLE: Public hearing to considering a recommendation to City Council to repeal and replace Chapter 9-13, “Inclusionary Housing,” B.R.C. 1981 and amending and adding related definitions to Chapter 9-16, “Definitions,” B.R.C. 1981. The replacement ordinance includes a middle-income housing requirement, incentives to provide affordable units on-site, requires a new design review process, is reorganized to improve readability and sets forth related details.

Staff Presentation:

K. Firnhaber presented the item to the board.

Board Questions:

K. Firnhaber and J. Sugnet answered questions from the board.

Public Hearing:

No one spoke.

Board Comments:

- **B. Bowen** stated that the only zone that would allow a density bonus for on-site affordability would be RMX-2 zone. While RH zone has a density bonus, it may be tied to other criteria. He would like to see us looking for incentives for on-site affordability to include height modification, widening the number of zones that allow a density for on-site affordable, and have dwelling units per acre zones.
- **H. Zuckerman** recommended removing limits on short term rentals for permanently affordable units. This could assist with housing affordability as well.
- **P. Vitale** agreed.
- **L. Payton** supported the design review requirement. She questioned if there was a provision to discourage putting affordable housing in high hazard areas. She appreciated that staff relying on real metrics and analysis for their recommendations. She asked staff to present to City Council the ways in which the incentives could be combined.
- **H. Zuckerman** suggested, regarding **L. Payton’s** comment pertaining to a distribution of units on site, *B.R.C. 9.13.5*, nothing directly relates to the distribution of the units on site

and adding “*distribution within a project*” between the words “*size*” and “*design*”. He stated that the term “*development*” in the proposed ordinance is confusing as to whether it applies to additional units as they currently exist. Inclusionary housing could be clarified in terms of what units it applies to and the definition of development.

- **C. Gray** questioned if annexations will be reviewed in the future and if more housing will be leveraged through annexations. She would like to see more thought put into the land dedication piece of inclusionary zoning.

Motion:

On a motion by **B. Bowen**, seconded by **L. Payton**, the Planning Board voted 6-0 (**D. Ensign** absent) to recommend City Council repeal and replace Chapter 9-13, “Inclusionary Housing,” B.R.C 1981 and amend and add related definitions to Chapter 9-16, “Definitions,” B.R.C. 1981.

Friendly amendment by **H. Zuckerman**, accepted by **B. Bowen** and **L. Payton**, to recommend that 9-13-5 be amended, adding the phrase “*distribution within a project*” between the words “*size*” and “*design*”. **B. Bowen** and **L. Payton** accepted.

Friendly amendment by **J. Putnam**, accepted by **B. Bowen** and **L. Payton**, to add that the Planning Board also recommends that City Council directs the City Manager to prepare a data collection reporting plan on the effectiveness of these changes.

Friendly amendment by **H. Zuckerman**, accepted by **B. Bowen** (**L. Payton** opposed), that Planning Board further recommends that City Council direct the City Manager to study the feasibility of allowing limited short-term rental use for affordable units.

On a motion by **H. Zuckerman**, seconded by **P. Vitale**, the Planning Board voted 4-2 (**L. Payton**, **C. Gray** opposed, **D. Ensign** absent) that Planning Board further recommends that City Council direct the City Manager to study the feasibility of allowing limited short-term rental use for affordable units.

- **C. Gray** stated that she would not support the motion. People do have an opportunity to rent a bedroom for additional income, but the short-term rental ordinance still has people, of all income levels, abusing it. The ordinance is currently difficult to enforce and there is an issue of city money entering subsidized housing. She would ask that the short-term rental ordinance problems be rectified before it would be extended to affordable units.
- **L. Payton** said that she would not support the motion. The staff’s recommendation for the asking rent will be adequate. There are plenty of people that would be happy to have affordable housing and forego making any additional income from a short-term rental.
- **P. Vitale** argued that all people have opportunities when their property is empty, yet we are saying this would be an opportunity they would not have to earn income that others have. If the problem is that there are abuses, then those need to be resolved, but not wait to give people in affordable homes an opportunity.
- **H. Zuckerman** reminded the board that the motion is for the City Manager to review short-term rental to see if it would be feasible. It is not the job of the Planning Board to administer the program. He would like to see what the results are after staff reviews the matter.

- **B. Bowen** said he would support the motion and stated that the people in the affordable housing would already be taking a hit on the resale value of their homes. Therefore, it would be fair to give them the opportunity to benefit from short-term rentals.
- **C. Gray** mentioned that staff will need to look at the downsides of the situation.
- **L. Payton** opposed because the staff's current policy for the frequency and the duration of allowed rentals in affordable units is adequate.

6. MATTERS FROM THE PLANNING BOARD, PLANNING DIRECTOR, AND CITY ATTORNEY

- A. AGENDA TITLE:** Initial discussion of proposed work plan for addressing Height Modifications through Site Review (up to 55-feet) and Community Benefit as it relates to *Ordinance 8172* amending the building height requirements of Title 9, "Land Use Code" B.R.C. 1981 for certain areas of the city.

Staff Presentation:

J. Robertson presented the item to the board.

Board Comments:

Key Issue #1: Should we only focus on Affordable Housing in Phase 1?

- **H. Zuckerman** felt the focus should be looking for ways to enhance community benefit, as stated in *Policy 1.11 (Enhanced Community Benefits)*. He suggested looking at ways to quantify additional community benefits, such as great architecture and spaces for the arts. He would rather see an approach where for any kind of increased height, which increases density or intensity, we still look at meeting these other community objectives and set a base line for what would be the minimum amount of affordable housing that would be required to support that increase. The applicant can either go higher and not meet any of the additional community benefits or they can stay at the minimum and achieve what they need to for the height in density and intensity with the additional community benefits.
- **P. Vitale** would like to focus on affordable housing if time allows, but not at the sake of meeting the July 2018 deadline.
- **L. Payton** supported City Council's suggestions to do a community benefit data collection at the same time but to not make it part of the July 2018 deadline.
- **J. Putnam** agreed affordable housing should be the focus. It would be a mistake to limit the code to just that benefit. He recommended an approach would provide a prescriptive way to understand the relationship between height and the community benefit if increasing the intensity based on housing, but provide a release valve that other community benefits would provide relief thereby making it more qualitative.
- **C. Gray** agreed with other board members and the City Council recommendations. She would prefer to concentrate on housing. She agreed with **H. Zuckerman's** comments. She would like to talk about incorporating the arts and local businesses getting displaced.
- **B. Bowen** mentioned when the Design Advisory Board (DAB) has discussed this before, their interest lied with having architectural beauty tie into achieving a taller building. In terms of limiting the focus to affordable housing, it is an innovative idea. The city needs affordable housing, but not in each neighborhood. Need to ask the neighborhoods and make it part of the public engagement process.

Key Issue #2: Agree with the approach?

- **B. Bowen** said he would like feedback from the planning staff regarding what most common height modifications are requested and granted. Many are requested but are not part of the large buildings or developments; they are requests from homeowners. These have little to no impact on others and need to be considered as part of the code simplification. He suggested creating a staff level or Board of Zoning Adjustments (BOZA) level height modification for an identified list of things to be simplified and focused (i.e. stair enclosure to access a roof deck, landing on upper floor to access and elevator stop, for open railings, and some incentivization for traditional roof forms). Over-lot grading, right-of-way grading, and mapped natural grade should be addressed as well by staff rather than pushing it to a board. He would approve of including FAR (*Floor to Area Ratio*) with intensity in this conversation to get a mix of uses. It would be a benefit to have an understandable explanation of what can be done on one's property by non-professionals and implementable for staff. Regarding FAR, he would like to see the existing table updated with a focus on where the threshold is and when parking begins to be pushed underground.
- **C. Gray** agreed that there should be an area plans to determine height modifications as they will give an element of predictability. She would like Landmarks Board to have more flexibility in granting height modifications for landmark properties. Regarding roof top decks, she stated that they have been done within the existing ordinance, therefore she is not in full agreement with **B. Bowen**. The type of projects that should seek a height modification should be ones that serve affordable housing and not just the minimum.
- **J. Putnam** stated there should be distinction in terms of geographic scope between height modifications that are aesthetic, project improvement not including intensity, and those that increase intensity. If it were increased for intensity, it should be based on zoning classifications. He disagreed with **C. Gray** regarding area plans due to lack of area plans and lack of resources. We should tie Criteria 2 area plans so there would be an incentive. The current Site Review Criteria 9.2.14(f) on building design related to height is vague.
- **L. Payton** said an analysis of unintended consequences was missing, areas where height modifications could be granted or automatically granted, this might incentivize demolitions. She was concerned that demolitions may be incentivized of properties that we do not want to lose or of historical structures. We need to differentiate between bulk and density. She does not support using this process to provide relief for the physical constraints of parcels, except for landmark properties. She informed the board that she wrote a letter to City Council regarding the views and to have a fair approach to height.
- **P. Vitale** agreed with **L. Payton** and **B. Bowen's** comments. He believes in preserving the viewsheds. The city should become an example. We need to get more creative on the built environment to coexist with affordability.
- **H. Zuckerman** added that this could be an opportunity to achieve good architecture. He supported **B. Bowen's** comments. He suggested staff solicit professional advice from architects as part of its community engagement for focused areas. He agreed with **J. Putnam's** comments regarding the need for greater clarity and the views to be protected. Finally, he supported **L. Payton** and **C. Grays'** comments to give Landmarks Board more leeway to allow for height modifications for historic structures.

- **B. Bowen** agreed with **C. Gray's** comments to give Landmarks Board more leeway to allow for height modifications for historic structures.

Key Issue #3: Process, Community Engagement, Overall Approach, Timeline, and Additional Input

- **H. Zuckerman** mentioned having outreach to professionals. He recommended asking about the enhanced community benefit as part of the study scope. The timeline is fine and he appreciated the commitment to meeting the deadline.
- **P. Vitale** agreed.
- **L. Payton**, regarding public engagement, said it would be helpful for public and the Planning Board to have an interim public hearing rather than waiting until the final date.
- **J. Putnam** agreed with **L. Payton**. He suggested more education regarding the history of the height limits. This could be an opportunity for visually based engagement or voting techniques to find what criteria matters to the public. It would be beneficial to capture what views are most important to people in their daily lives as well.
- **C. Gray** approved of the public process discussion and recognizing the Public Engagement Plan.
- **B. Bowen** agreed that an understanding of the history of the height limit will be important and doing a height visual survey would be beneficial.
- **H. Zuckerman** stated it will be important to educate the public regarding height modifications. Perhaps there should be a track for height modifications that should first be reviewed by staff to determine if it is simply a variance or truly a height modification that could provide a community benefit.

B. INFORMATION ITEM: Energy Code Update, Adoption of the 2017 National Electric Code, & Amendments to the International Building Code and International Plumbing Code.

Board Comments:

- The board had no comments.

C. INFORMATION ITEM: Amendment to Title 9, "Land Use Code," B.R.C. 1981, to update the effective date of the FEMA flood insurance rate maps. (*Continued from August 17, 2017*)

Board Comments:

- The board had no comments.

D. INFORMATION ITEM: Floodplain mapping revisions for Lower Boulder Slough. (*Continued from August 17, 2017*)

Board Comments:

- **L. Payton** stated that she hopes people understand that the hydrology report included in the floodplain maps had not been updated since 1977. She stated that she supports the revisions to the mapping to reflect the typography.

7. DEBRIEF MEETING/CALENDAR CHECK

8. ADJOURNMENT

The Planning Board adjourned the meeting at 8:49 p.m.

APPROVED BY

Board Chair

DATE

SUMMARY OF PROPOSED CHANGES TO THE INCLUSIONARY HOUSING ORDINANCE & RELATED ADMINISTRATIVE REGULATIONS

PROPOSED ORDINANCE CHANGES

	Description	Code Reference	Code Section Title	Summary of Proposed Change	Effective	Rationale
1	Clarify the primary objective of the Inclusionary Housing program	9-13-1 (f)	Findings	Modify the findings such that the primary objective of Inclusionary Housing is to obtain a “significant amount” of permanently affordable units rather than “on-site” units.	Oct. 5, 2017	Better reflects the program intent to provide roughly equivalent compliance options and acknowledges that cash-in-lieu is an important tool to build and preserve affordable units.
2	Increase the inclusionary housing requirement	9-13-3 (a) (1) (A) & (C)	General Inclusionary Housing Requirements	Increase the overall inclusionary requirement for deed restricted units from 20% to 25%.	Jul.1, 2018	Helps achieve the affordable housing goal as defined in the 2016 Middle Income Housing Strategy.
3	Add a middle-income requirement	9-13-3 (b), 9-13-12 (a) (2)	General Inclusionary Housing Requirements; Program Requirements for For-Sale-Units	Add an additional 5% of units in a development priced to be permanently affordable to middle income households.	Jul.1, 2018	Helps achieve the affordable housing goal as defined in the 2016 Middle Income Housing Strategy.
4	Adding a requirement to complete Site Review or Affordable Housing Design Review	9-13-4	Affordable Housing Design Review	Developments providing affordable unit on-site in one building or off-site must complete the Affordable Housing Design Review unless subject to Site Review.	Jul.1, 2018	Administrative level review to ensure that affordable units are of comparable quality in design and materials to the market units that generated the requirement.
5	Add language concerning the quality and amenities of affordable housing	9-13-6 (a)	Quality and Amenities of Affordable Units	Require affordable units to be of similar quality, design and materials – as compared to the market units creating the affordable housing obligation. Require that on-site affordable units have equal access to amenities provided to the market rate units.	Oct. 5, 2017	For-sale affordable units are typically offered equal access to amenities because the cost is passed on through HOA fees. It is currently unclear if this is required for rental units. This will clarify that renters are entitled to equal access to amenities to ensure there is no distinction between market and affordable renters.
6	Remove option to size restrict the unit	9-13-9	Developments Containing a Single Dwelling Unit	Remove the option to size restrict the unit to meet the inclusionary housing requirement for a single detached dwelling unit.	Oct. 5, 2017	This option is not utilized and size restrictions have not proven to ensure affordability over time. There is no active program to monitor these units and the city is currently buying out old size restrictions.

SUMMARY OF PROPOSED CHANGES TO THE INCLUSIONARY HOUSING ORDINANCE & RELATED ADMINISTRATIVE REGULATIONS

PROPOSED ORDINANCE CHANGES

	Description		Code Reference	Code Section Title	Summary of Proposed Change	Effective	Rationale
7	Increase the annual adjustment to cash-in-lieu		9-13-10 (b)	Alternative Options for Satisfaction of Inclusionary Housing Requirement	Increase the annual adjustment to cash-in-lieu from a maximum of 7% to 10%.	Oct. 5, 2017	Accelerates the increase in cash-in-lieu to more quickly meet the goal of having cash-in-lieu reflect the affordability gap.
8	Modify the land donation option		9-13-10 (d)	Alternative Options for Satisfaction of Inclusionary Housing Requirement	Combine the two existing land donations options -- the first based on land characteristics and the second based on equivalency to the cash-in-lieu owed -- into one option.	Oct. 5, 2017	The second option does not ensure that the land donated will be appropriate for affordable housing development. Combining the two land characteristics ensures that equivalency to cash-in-lieu.
9	Clarify requirement for on-site rentals		9-13-8 (b)	Location and Timing	Clarify that on-site rentals are not required to be distributed throughout a development.	Oct. 5, 2017	Due to the state prohibition on rent control, clarifies that rentals provided on site may be placed in a single building. This is a practical requirement for financing a project with tax credits.
10	Definitions		9-16-1	Definitions	New Definitions: <ul style="list-style-type: none"> • Low/moderate income dwelling unit • Middle income dwelling unit • Off-site dwelling unit • On-site dwelling unit • Livability standards for permanently affordable housing Updated Definitions: <ul style="list-style-type: none"> • Floor area for attached dwelling units • Floor area for detached/single-family dwelling units • Floor area for townhomes and attached small units • Program eligible household • Permanently Affordable Unit (IH & RGMS) • Area Median Income 	Oct. 5, 2017	Clarifies or adds terms found in the B.R.C.

SUMMARY OF PROPOSED CHANGES TO THE INCLUSIONARY HOUSING ORDINANCE & RELATED ADMINISTRATIVE REGULATIONS

PROPOSED ORDINANCE CHANGES

	Description		Code Reference	Code Section Title	Summary of Proposed Change	Effective	Rationale
11	Minor clarifications			Misc.	<ul style="list-style-type: none"> • Add language to bedroom count and bedroom proportionality to include micro, efficiency and studio zero bedroom units • Change name of the Livability Guidelines to Livability Standards • Add language to clarify that the waiver for demolished dwelling units only applies to safe habitable units • Change all reference to “income eligible” to “program eligible” • Change “off-site options” to “alternative options” • Clarify that meeting livability standards may require units be larger than the minimum allowed • Prohibit affordable units from being used as short-term rentals 	Oct. 5, 2017	Minor cleanup items to improve implementation of the ordinance, align with current practice and operationalize the major ordinance changes.
12	Sections moved from the Ordinance to the Administrative Regulations			<ul style="list-style-type: none"> • Details on how cash-in-lieu is calculated • Details concerning allowable minimum and maximum sizes for affordable units • Required Agreement details 	Move program details to the administrative regulations to allow minor changes that respond to market and programmatic changes.	Oct. 5, 2017	Typically, the charging language for a policy is found in the Ordinance and implementation details are in the Administrative Regulations. This allows flexibility and timeliness for implementation to respond to market and program changes.

SUMMARY OF PROPOSED ADMINISTRATIVE REGULATION CHANGES				
Description		Summary of Proposed Change	Effective	Rationale
a	Replace “average” with “median”	Replace “average” sales price with “median” sales price	Oct. 5, 2017	Corrects an error from the original ordinance.
b	Incent on-site outcomes in for-sale housing developments:	Staff identified the following three incentives to encourage the construction of affordable units on-site in for-sale developments.	Oct. 5, 2017	These incentives were analyzed and designed as a package. The proposed combination and level of incentives were found to be the most effective in delivering on-site affordable units.
b.1	<ul style="list-style-type: none"> Adds a pricing and cash-in-lieu category for “missing middle” building category 	Add a townhome and small attached dwelling unit (2-8 units) category for both cash-in-lieu and pricing. Currently, the only categories are detached single-family homes and all other housing types lumped together.	Oct. 5, 2017	Currently this missing middle housing type is discouraged by only having two categories. Creating a “townhome / small attached” category creates an incentive for developers by allowing pricing higher than larger attached products. It also generates additional cash-in-lieu by having a third category.
b.2	<ul style="list-style-type: none"> Allow adjustments to cash-in-lieu 	Allow adjustments to the remaining cash-in-lieu when the required affordable units are provided on-site (e.g., a 50% discount if half of required units are provided on-site).	Oct. 5, 2017	Based on the financial analysis, staff determined that a reduction in the remaining cash-in-lieu is sufficient to make on-site units the lower cost option for developers when combined with the other incentives.
b.3	<ul style="list-style-type: none"> Allow adjustments to the mix of units 	Allow adjustments to the mix of low/moderate versus middle income units when affordable units are provided on-site.	July 1, 2018	Based on the financial analysis, staff determined that allowing more middle-income units in place of low/moderate units creates an incentive for developers to build the affordable units on-site.

SUMMARY OF PROPOSED ADMINISTRATIVE REGULATION CHANGES				
Description		Summary of Proposed Change	Effective	Rationale
c	Remove preference for “live in Boulder”	Remove “live in Boulder” from the affordable home buyer preferences that applies when there is greater than one interested buyer	Oct. 5, 2017	Removing the “live in Boulder” preference while retaining the “work in Boulder” retains the original policy intent of the preference, but reduces the city’s risk of a fair housing claim. More details are provided in the memo analysis section.
d	Create middle-income pricing and income requirements	Create three pricing tiers within the 80-150% AMI range: <ul style="list-style-type: none"> • 80% - 100% AMI • 100% - 120% AMI • 120% - 150% AMI 	Jul.1, 2018	Add middle income units to the existing table that identifies what size unit will determine the price for each income and bedroom number category.
e	Modify the unit mix for developments with 20 or fewer units	Modify the requirement for developments with 20 or fewer units such that all required permanently affordable units may be provided as middle income.	Jul.1, 2018	Complying with the inclusionary housing requirement is challenging for smaller projects lacking economy of scale and often faced with high land cost per square foot. Allowing smaller projects to meet the inclusionary housing requirement with on-site middle-income units only -- rather than the standard mix of 80% low/moderate and 20% middle-income units will incent a developer to provide units on site rather than paying cash-in-lieu. 20 units is also the tipping point where the 5% middle income requirement results in less than one middle-income unit.

SUMMARY OF PROPOSED ADMINISTRATIVE REGULATION CHANGES				
Description		Summary of Proposed Change	Effective	Rationale
f	Modify unit sizes to accommodate micro/very- small units	Set the minimum affordable unit size for micro and studio units as equal to the average size of similar market units.	Oct. 5, 2017	The standard minimum affordable unit size is no smaller than 80% of the average size of market units with similar bedroom counts. Very small units cannot accommodate a reasonable floor plan at 80% of the market size.
g	Adjust the maximum size for 3- and 4-bedroom units	Increases the maximum size for 3 and 4 bedroom low and moderate priced units from 1,200 sq. ft. to 1,400 sq. ft. and sets the maximum size for middle income prices 3 and 4-bedroom units to 1,600 sq. ft.	Oct. 5, 2017	The current maximum size is set at 1,200 sq. ft. regardless of bedroom count. This is inadequate for larger family friendly 3 and 4-bedroom units which frequently include stairs.
h	Modify realtor fees	Modify rules concerning realtor fees to be paid by the developer and upon resales by owner.	Oct. 5, 2017	Currently, the first owner of a new unit pays the realtor fees at the time of purchase and again at the time of sale. Changes the rules so that the owner only pays realtor fees once at the end.
i	Modify cash-in-lieu option when an alternative method of compliance is requested for affordable units that do not meet the minimum size requirements	When affordable units meet the minimum size requirement no cash-in-lieu is required. An applicant can request to provide smaller units than required. This Regulation sets criteria for such a request that include providing an additional unit or paying cash-in-lieu for the shortfall of square footage. (e.g., 1-5 % smaller units would pay 150% of the cash-in-lieu rather than 100%; and 6-10% smaller units would pay 200% of the cash-in-lieu rather than 150%.	Oct. 5, 2017	Rarely used, this alternative method of compliance provides flexibility. Other possible solutions offered to a developer are to dedicate an additional unit, or reduce the selling price of the non-conforming unit.
j	Clarify policy allowing the rental of affordable units that have difficulty selling	After 120 days on the market and only if all city marketing requirements are met, then the owner may rent the home for up to 18 months. After that time, the above marketing is must be repeated. This provision may only be used once.	Oct. 5, 2017	Rarely used, this provision provides assurance to developers and affordable buyers that they will have recourse in the event an affordable unit is difficult to sell.

SUMMARY OF PROPOSED ADMINISTRATIVE REGULATION CHANGES				
Description		Summary of Proposed Change	Effective	Rationale
k	Clarify timing requirements for “on- or off-site agreements” and land dedication	These agreements must be executed prior to building permit submittal.	Oct. 5, 2017	Clarifies when these agreements must be executed; not currently in the Regulations.
l	Establish a master bedroom size	For affordable units with 2 or more bedrooms, 1 bedroom must be 120 sq. ft. and remaining bedrooms may be 90 sq. ft.	Oct. 5, 2017	Currently all bedrooms must be a minimum of 90 sq. ft. This standard is adequate for children; a larger bedroom of 120 sq. ft. is required to accommodate larger adult sized bed and dresser.
m	Remove the “Substitute unfinished floor area for Finished Floor Area” provision	Currently included as an alternative compliance option to meeting the inclusionary housing obligation.	Oct. 5, 2017	This provision is obsolete and has not been used in over 10 years.
n	Add rules for Livability Standards	Clarifies possible remedies for units that do not meet the standards; unit will not be accepted, reduction in sales price or rent, monetary payment to off-set the deficiency. Also, clarifies that if the standards cannot be met in the minimum size the unit must be enlarged.	Oct. 5, 2017	Rarely used, allows flexibility.
o	Clarify that there is a housing policy that governs the use of financial guarantees	Reference the financial guarantee policy.	Oct. 5, 2017	Financial guarantees are used to secure the inclusionary requirement until the affordable units are constructed and issued certificates of occupancy.
p	Clarify that there is an off-site location review approval process	Reference the off-site location review process to ensure the appropriateness of any proposal to meet the inclusionary housing obligation off-site.	Oct. 5, 2017	The process includes; submitting a pre-application to planning, review criteria, 4-week review timeline, issuance of an approval or denial.
q	Affordable Housing Design Review	Adds details concerning conditions under which the review is required, purpose of the review.	Oct. 5, 2017	Requires that any receiving site or on-site building that is 100% affordable and does not complete a site review must complete the Affordable Housing Design Review.

SUMMARY OF PROPOSED ADMINISTRATIVE REGULATION CHANGES				
Description		Summary of Proposed Change	Effective	Rationale
r	Land Dedication	Adds details concerning timing of conveyance of the land and legal requirements.	Oct. 5, 2017	Deed must be conveyed prior to application for a residential building permit; land must be a fee simple parcel that will be fully owned by the city.
s	Clarify the HOA/unit type metric used in the affordable price calculation	Clarifies that the Homeowner Association (HOA) fee used in determining eligibility in the affordable homeownership program represents both the estimated HOA fee and the difference in price by building typology.	Oct. 5, 2017	The current estimate of HOA fees is \$50 for single family, \$200 for townhomes/small attached units and \$300 for attached units.
t	Clarify the residency and owner occupancy requirement	Clarifies the owner occupancy requirement for both an annual basis and multi-year basis.	Oct. 5, 2017	Affordable units must be owner occupied a minimum of 10 months per year or 6 out of 7 years after the first 5 years of ownership.
u	Disallow short-term rentals	For-sale affordable units may not be used as short-term rentals. Owners may rent a single room or rent the house long-term (more than 30 days) in accordance with the owner occupancy requirement (as described above).	Oct. 5, 2017	Provides consistency with recently adopted short-term rental ordinance.
v	Establish rule for the distribution of low/moderate and middle-income rental units	The low/moderate unit requirement must be met first	Oct. 5, 2017	Rental projects must provide the full 80% low/moderate priced units before any units will be priced at middle income.

Compliance Costs for Sample Projects

	EXISTING	PROPOSED		
	A. 100% Cash-in-lieu	B. 100% Cash-in-lieu	C. 50% – 74% Affordable Units On-site	D. 75% – 100% Affordable Units On-site
Inclusionary Housing Requirement	20%	25%	25%	25%
Cash-in-lieu Incentive	NA	NA	50% reduction on remaining	50% reduction on remaining
Low Mod / Middle Split	NA	NA	80% Low Mod / 20% Middle	50% Low Mod / 50% Middle
Condos, 160 units, 950 avg. sq. ft.				
Cost of Compliance (\$millions)	\$5.08	\$6.53	\$5.54	\$6.16
Cost of Compliance (\$/sq. ft.)	\$33	\$43	\$37	\$41
Condos, 40 units, 950 avg. sq. ft.				
Cost of Compliance (\$millions)	\$1.27	\$1.63	\$1.32	\$1.40
Cost of Compliance (\$/sq. ft.)	\$33	\$43	\$35	\$38
Townhomes / Rowhomes, 60 units, 1,600 avg. sq. ft.				
Cost of Compliance (\$millions)	\$2.40	\$4.19	\$2.77	\$2.97
Cost of Compliance (\$/sq. ft.)	\$25	\$44	\$30	\$32
Townhomes / Rowhomes, 25 units, 1,600 avg. sq. ft.				
Cost of Compliance (\$millions)	\$1.04	\$1.71	\$1.00	\$1.16
Cost of Compliance (\$/sq. ft.)	\$26	\$43	\$26	\$30

Attachment E – Additional information requested by Council

At the Sept. 5 Public Hearing, City Council asked for additional information related to the following items:

- A. What are the typical occupations for middle income households?
- B. Who may be affected by removing the current preference for “live in Boulder”?
- C. What are the potential next tools to address the need for middle income housing?
- D. What would potentially happen with a middle-income housing requirement higher than the recommended 5%?

Council also expressed interest in exploring fee waivers for affordable housing and expedited review process for affordable housing projects. Staff will propose that these items are added to the Division of Housing 2018 Action Plan.

A. What are the typical occupations for middle income households?

The city of Boulder defines middle income as those households that earn between 80% and 150% of the Area Median Income (AMI). This equates to households earning between \$68,000 and \$128,000 for a family of three. The table below includes a selection of occupations whose annual mean wage falls within these incomes. Note that dual wage-earning households are not addressed in this summary.

Middle Income Samples of Occupation & Income

Compensation, Benefits & Jobs analysis specialists	\$72,900
Police & Sheriff’s Patrol Officers	\$73,000
Post-Secondary Psychology Teachers	\$73,700
School Psychologists	\$73,800
Editors	\$74,000
Registered Nurses	\$74,400
Speech Pathologists	\$74,900
Veterinarians	\$75,500
Real Estate Brokers	\$76,600
Accountants	\$76,700
Librarians	\$77,400
Human Resource Specialists	\$79,800
Construction Managers	\$80,000
Dental Hygienists	\$81,400
Technical Writers	\$82,900
Civil Engineers	\$83,000
Computer Programmers	\$86,400
Loan Officers	\$88,600
Chemical Engineers	\$89,700
First Line Supervisors of Fire Fighters	\$93,510
Education Administrators, elementary & secondary	\$97,900
Database Administrators	\$100,300
Statisticians	\$105,200

Physician Assistants	\$107,700
Nurse Practitioners	\$114,900
Pharmacists	\$121,000
Legislators	\$126,400
Optometrists	\$128,000

*US Dept. of Labor, Bureau of Labor Statistics, 2016 for Boulder CO

B. Who may be affected by removing the current preference for “live in Boulder”?

A buyer selection process is conducted when a home in the permanently affordable program becomes available for sale and there is more than one interested purchaser. In this process the preferences are currently applied based on working or living in the City of Boulder and time qualified in the program. If there are multiple households within the same tier a random drawing is used to determine who is offered the purchase contract.

The chart below shows the effect of removing the “live in Boulder” category based on the 159 currently certified households. Since January 2015, ***98% of affordable buyers have lived and worked in Boulder. The remaining 2% worked in Boulder but lived elsewhere.*** Based on this information, staff concludes that removing the “live in Boulder” preference would have a minimal effect on current and future certified households. It is important to note that permanently disabled purchasers are automatically given a work preference. Retired purchasers are also given the work preference if their most recent employment was in the City of Boulder.

Tier	Work	Live	Percent of current applicants in tier	Effect if “live in Boulder” preference removed
1	Boulder	Boulder	76%	Slightly decrease in odds. Tier 1 would be combined with tier 2
2	Boulder	Not Boulder	8%	Greatly increased odds. Tier 2 would be combined with tier 1
3	Not Boulder	Boulder	9%	Decreased odds. Tier 3 would be combined with tier 4
4*	Not Boulder	Not Boulder	7%	Increased odds. Tier 4 would be combined with the tier 3

* In this category 36% live in Boulder County, 64% live in greater Colorado

Below is a proposed preference policy excerpt from the DRAFT Inclusionary Housing Administrative Regulations:

3.7 (b) ...At the conclusion of the mandatory marketing period, if more than one program - certified buyer has expressed an interest in purchasing the property, the City of Boulder Division

of Housing shall utilize a fair selection process to select among the prospective purchasers. Preference may be given including but not limited to the following:

- A. A household with at least one member that has worked in the City of Boulder continuously for a minimum of one year and has been certified by the homeownership program for a minimum of one year;*
- B. A household with at least one member that has worked in the City of Boulder continuously for a minimum of one year and has been certified by the homeownership program for less than one year; and*
- C. A household that does not have at least one member who has worked in the City of Boulder continuously for a minimum of one year and has been certified by the homeownership program for a minimum of one year.*

c. Within each category above, for homes with specific characteristics, any household with these characteristics will be prioritized:

- A. A household with a demonstrated need for accessible design features if the available home has the needed accessible design features;*
- B. A household with minor dependents; and*

C. What are the potential next tools to address the need for middle income housing?

The Division of Housing is currently making progress on several initiatives to expand middle income housing opportunities. These include targeted funding for the acquisition and preservation of middle income units (e.g., Tantra Lakes), home donation program or “Legacy Program” (e.g., Janice Zelazo), emphasizing middle income units in annexations (e.g., 90/96 Arapahoe), and a targeted update to the accessory dwelling unit ordinance. The following are potential 2018 work plan items:

Funding. Explore additional funding opportunities dedicated to middle income housing.

Community Benefit Policies and Regulations.

Division of Housing staff is working with Planning to craft a community benefit ordinance related to height. The current approach is to focus on affordable housing as the primary community benefit. Council could decide to direct the affordable housing for middle income households.

Down-payment assistance. Explore a potential bond to fund a revolving loan for middle income home purchases.

Explore Single Unit Middle Income Purchase Program.

This would be a new program to add middle income housing to the affordable inventory. Existing condominium units would be identified for purchase on the market. The city would purchase these properties and complete any upgrades as needed. A middle-income affordable housing deed restriction would then be applied to the unit and unit rehab would be completed, then the unit would be sold to an income-qualified household. Staff will identify any barriers to

implementation, identify program thresholds (e.g., unit cost, monthly HOA dues, HOA reserve, cost to rehab, basic livability, etc.), identify opportunities and determine the middle-income income sales price.

D. What would potentially happen with a middle-income housing requirement higher than the recommended 5%?

KMA analyzed a 2.5, 5, 10, and 20 percent middle income requirement that could be added on top of the current 20 percent low/moderate inclusionary housing requirement. The analysis shows the impact on land values of four different percentage increases when applied to five different housing types (Single Family/Larger Townhomes, Townhomes/Rowhouses Condominiums, Lower Density Apartments, Higher Density Apartments). Condos were the most sensitive to any increase in compliance costs and the difference between a 5 and 10 percent increase was dramatic in terms of residual land values and what the market overall could likely absorb.

The full KMA report is available [here](#). The analysis starts on page 13.