



**CITY OF BOULDER  
CITY COUNCIL MEMORANDUM**

**TO:** Mayor and Members of City Council

**FROM:** Nuria Rivera-Vandermyde, City Manager  
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**DATE:** September 7, 2023

**SUBJECT:** Inclusionary Housing Update and Discussion

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**EXECUTIVE SUMMARY**

The purpose of this item is to present update options to the city's Inclusionary Housing (IH) program, as recommended by staff and the project consultant, and receive feedback on upcoming code changes. City Council identified two priorities related to middle income housing for the 2022-2023 Housing and Human Services work program. The first is to launch the [Middle Income Down Payment Assistance Pilot](#) that was adopted by voters in 2019 (launched earlier this month). The second is to consider updates to the existing Inclusionary Housing (IH) program focused on increasing middle income homeownership units.

This project is part of a larger effort to address the current housing crisis by expanding housing supply and diversity of available housing types, and in turn reduce housing costs and limit displacement. In recent years land use policies combined with labor and material costs have made it harder and more expensive to build residential development in the city. Other projects to address these housing challenges include zoning amendments, loosening regulations on accessory dwelling units (ADUs), and occupancy reform.

City Council provided direction on the IH update at a study session on [Oct. 27, 2022](#). A summary of the study session discussion can be found [here](#). A joint study session was also held on [Jan. 31, 2023](#) for the Planning Board, Housing Advisory Board, and Affordable Housing Technical Review Group in preparation for upcoming updates to the IH program. At the study

session, the board members asked questions about the IH program and commented on the update. The minutes from the meeting can be found [here](#). Staff has kept the community informed through updates to the department newsletter and the project website, and by reaching out to interested neighborhood representatives and housing advocacy groups. An outreach event was held on Feb. 22, where other planning, housing, and inclusionary housing code change projects were discussed. Additional community engagement will occur after receiving feedback on options related to this update and prior to bringing forward a formal ordinance for board and council consideration in the fall. Refer to **Attachment B** for additional information.

The purpose of this memo is to present update options as recommended by staff and the project consultant. Major topics of this update include:

- Update to the Cash-in-lieu (“CIL”) methodology, amounts and structure to align with a feasibility analysis and nationwide best practices.
- Evaluate incentives to secure on-site middle-income, for-sale projects.
- Consider, as a next step, requiring a Nexus Study to set an affordable housing linkage fee that would apply when smaller houses are demolished and replaced by larger houses and when significant additions are constructed.

Additional components of this update include:

- Adjustments to the code and regulations to clarify requirements, simplified code language, and reduced redundancies.
- A financial analysis of potential program options (**Attachment A**).
- A review of Inclusionary Housing program best practices (**Attachment A**).

Staff is requesting council feedback and guidance on the proposed updates to the IH program, with the goal of preparing revised code language to update the Inclusionary Housing Ordinance, scheduled for consideration and adoption Fall 2023.

## QUESTIONS FOR COUNCIL

Staff is seeking input on the following specific topics:

1. Does the City Council agree with the recommended policy options for the IH program update?
2. Is there any other input on the IH program updates that City Council would like to provide?

## BOARD AND COMMISSION FEEDBACK

A study session was held with the Housing Advisory Board and members of the Affordable Housing Technical Review Group (TRG) on [Aug. 23, 2023](#). At the meeting, board members asked questions about the proposed changes and consultant findings. The board was supportive of the proposed changes, particularly the recommended Nexus Study for demolitions and rebuilds of homes and recommended that the study be conducted in 2024. They encouraged staff

to consider how IH modifications would interact with proposed zoning changes currently being considered. Overall, board members acknowledged that proposed changes to IH may not move the needle significantly on the production of for-sale middle income units, but that on-going large area plans such as Phase II of the Transit Village area could offer opportunities.

A study session is scheduled for Planning Board on Sep. 5, 2023. Staff plans to summarize the feedback given by Planning Board during the staff presentation before Council on Sep. 7, 2023.

## **BACKGROUND**

Half a century ago, Boulder recognized that housing affordability was an emerging issue and took bold steps to address those challenges. Boulder's affordable housing programs have evolved over that time into a nationally respected approach for addressing housing needs. Details of the City's affordable housing history, changes, and current challenges facing Boulder's affordable housing programs can be found in the [Oct. 27, 2022 Study Session Memorandum](#).

In 2000, Boulder became one of the first communities in the country to adopt Inclusionary Zoning as a strategy to address rising housing prices. Renamed Inclusionary Housing (IH), the program has undergone two major updates in 2009 and 2018. In general, "inclusionary housing" refers to a policy or set of policies that requires developers to set aside a percentage of new units to low or moderate income households at below market prices. The intent is to increase the supply of affordable homes and socioeconomic diversity in the city. IH programs typically include multiple options for satisfying the requirement, such as making a cash-in-lieu contribution or dedicating land for affordable housing development. Thus, the cash-in-lieu option is not a fee but rather an alternative to providing affordable units on-site.

In Boulder, the IH requirements are zoning standards and codified in the land use code as mandatory requirements for new residential developments. A permanent deed restriction is placed on the affordable units, which must be rented or resold to households at the identified incomes. 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.

In the early years of the city's IH program (2000-2010) developments were primarily for-sale homes with very few rentals. After the housing crisis circa 2010 fewer condo units have been constructed. This shift from ownership to rental development mirrored national trends, and is linked to several factors including changing lending practices and the state's construction defect law. Recent inflationary pressures, including escalating material and labor costs and higher interest rates, have created new challenges to housing affordability.

Inclusionary Housing (IH) is a living program that should be updated regularly to address current housing challenges and goals, in this case exploring ways to create more homeownership opportunities for middle income households in Boulder and updating the methodology and feasibility of the program's CIL option.

The city's IH program has demonstrated considerable success over the years. New residential development continues to significantly contribute to the city's affordable housing goals. In many instances, payment of a CIL contribution to the Affordable Housing Fund is preferable to on-site

affordable units. Local funding produced through CIL contributions generates more affordable housing in a greater diversity of housing types, in a variety of affordability ranges, and dispersed throughout the city. Local funding can be leveraged two to three times with state and federal funding to produce more affordable housing than could be produced on-site. Locally funded projects support a wide range of desirable outcomes including senior, transitional, and special needs affordable housing.

Keyser Marston Associates (KMA) was hired to support this IH program update and conducted a financial feasibility study and best practices analysis to identify housing development trends in the area and to inform potential alternatives in the IH program (**Attachment A**). This memo incorporates KMA's analysis, research, and program implementation guidance.

## **SUMMARY OF FINANCIAL ANALYSIS AND REVIEW OF BEST PRACTICES**

KMA evaluated the feasibility of the current IH program and explored nationwide inclusionary housing best practices. The analysis presents an assessment of financial feasibility for a range of development types, tests program alternative requirements, and reviews best practices and policy approaches elsewhere. The following is a summary of KMA's recommendations based on this analysis.

Continued Difficulty Achieving On-site For-sale Outcomes. Market factors and perceived risk of construction defects liability have contributed to limited for-sale housing development in recent years. Changes to the IH program are unlikely to alter these dynamics.

Feasibility of Meeting the For-Sale IH Requirement On-site. Contributing cash in lieu of units is currently feasible for for-sale developments. If the city would like to enable the provision of on-site for-sale inclusionary units, rather than receive CIL, a reduction in the inclusionary on-site requirement is recommended, such that the on-site cost is comparable with CIL.

Align the Program with Nationwide Best Practices. Modification of the CIL structure and methodology is necessary to align the city's program with nationwide best practices. The proposed square foot methodology will remove disincentives to smaller, more affordable market-rate units and is straightforward to administer and apply.

## **ANALYSIS AND RECOMMENDATIONS FOR PROGRAM UPDATE OPTIONS**

Staff proposes the following options and recommendations to update the IH program. The options are organized based on the major topics of the update: 1) CIL modifications; 2) approaches for on-site, for-sale middle income affordable units; 3) exploring a residential linkage fee for rebuilt dwelling units and significant additions; and 4) updates, clarification, and clean-up code changes.

Staff requests council feedback on whether or not the following options are the desired direction of the update.

## I. Cash-In-Lieu Modifications

The structure and amount of the IH program's cash-in-lieu ("CIL") option is a critical component of this update. There are three avenues to improve CIL methodology to reflect nationwide best practices: CIL rate structure, establishing a feasible CIL amount, and setting annual CIL amount updates.

As confirmed in the KMA analysis, Boulder's CIL rate structure could potentially incentivize larger units over smaller units, and rental over for-sale projects. Changing the existing CIL rate structure can simplify administration, while creating a more equitable CIL requirement across development types.

### *Policy Options*

#### a. **STAFF RECOMMENDATION**

*Adopt Square Footage Based CIL.* Modify the city's methodology to a "per square foot" CIL structure and adopt a feasible CIL range as recommended by KMA. Adjust the CIL amounts annually and conduct a feasibility analysis at least every 5 years to ensure the square foot amount is comparable over time.

- b. *No change.* Retain the current per affordable unit owed CIL structure, current CIL amounts, and adjust up to 10% annually based on the affordability gap. Boulder's CIL structure shares some attributes of a per square foot structure, but there is still variability in size. Based on the KMA financial analysis, a continued 10% percent annual increase will result in CIL amounts that are not feasible for developments to meet.

### *Rationale*

Structuring CIL on a per square foot basis is a best practice and widely used approach. This approach results in CIL amounts that scale with unit size, resulting in a fair burden across different sized units. It also avoids a disincentive for smaller, more affordable market rates units and is straightforward to administer and apply. This option would remove the existing 1,200 square foot cap for calculating CIL, whereby units larger than 1,200 sq. ft. are assessed at the same rate regardless of unit size.

The proposed cost envelope for CIL square foot amounts range between \$45 and \$50 per square foot, depending on unit type and size and is estimated to produce similar CIL revenues to what is currently realized. To ensure that the square foot amount remains feasible in future market conditions, annual updates will be linked to a composite of the Construction Cost Index and Building Cost Index (BCI). These indexes have seen a combined annualized increase of 4.6% over the last five years. A more thorough feasibility study will be conducted at least every 5 years.

## II. On-site Middle-Income, For-Sale Affordable Units

Using the existing program requirements, paying CIL in for-sale developments is the financially feasible and preferred option to satisfy IH. Current incentives to encourage on-site development of for-sale units have not been effective. Larger market factors such as tax incentives for rental

development and construction defects liability risks are more likely to influence unit-type preference than IH requirements, as noted in the KMA report.

It is important to note that any modification of the on-site percentage will NOT change the CIL amounts required. The square foot methodology for CIL described above would be utilized if the IH required affordable units are not built on-site.

### ***Policy Options***

#### **a. STAFF RECOMMENDATION**

*Reduce For-Sale On-Site Requirement.* Reduce the for-sale required on-site percentage to 15% and allow middle income pricing for all affordable units up to 120% area median income (AMI). Decreasing the percent requirement makes providing units on-site comparable to CIL, which may encourage developers to provide some or all of the affordable units on-site.

*Increase Middle Income Pricing.* Retain the 25% on-site requirement for **for-sale** developments but modify the unit price requirements to allow more middle-income priced homes (up to 120% AMI). This option is likely to yield similar outcomes to the current program, in which almost all developments utilize the CIL option. However, affordable units provided on-site will be priced for middle income households.

*No Change:* Retain the required 25% on-site requirement, with 20% affordable to low/moderate income households (60% AMI) and 5% affordable to middle income households (80%-120% AMI). This option is likely to yield similar outcomes to the current program, in which almost all developments utilize the CIL option.

### ***Rationale***

The feasibility analysis conducted by KMA shows the current 25% on-site requirement is unworkable. Under the current program, on-site, for-sale affordable unit development is economically infeasible; therefore, developers will always choose CIL to satisfy IH. Additionally, current incentives meant to encourage on-site for-sale units have not been effective because they cannot overcome the cost of providing for-sale units on-site. The staff recommended change simplifies the IH program on-site requirements by removing the current incentive structure, lowers the overall on-site requirement to make it comparable with the cash-in-lieu option, and allows more affordable units to be priced for middle income households to make on-site ownership development a realistic option. One trade-off of having on-site, for-sale units is that traditional cash-in-lieu would have resulted in the construction of a greater number of rental units, serving lower income residents.

Regardless of policy choice, developers have emphasized that larger market forces determine the high cost of for-sale development in the city and nation-wide. The requirements of city's IH program are not a major driver of the development trend favoring rental products. Any policy option that contemplates a program change to encourage on-site development might not significantly promote the desired outcomes. The larger housing market forces and development limitations means that for-sale housing development is limited. If few developments are for-sale, there will be few on-site for-sale affordable units regardless of policy changes.

### III. Residential Linkage Fee

The IH requirement can be waived for homes in developments with four or fewer units that are demolished and replaced within three years. As a result, almost all newly constructed single-family homes in the city are exempt from affordable housing requirements. These demolitions often remove a smaller, relatively affordable home and replace it with a large expensive home. Similarly, substantial additions effectively replace more affordable smaller homes with larger more expensive homes, reducing affordability. There are currently no affordable housing linkage fees tied to residential additions.

#### ***Policy Options***

a. **STAFF RECOMMENDATION**

*Residential Nexus Study.* Explore the feasibility of a Nexus Study to inform a possible Residential Linkage Fee to apply to rebuilt dwelling units and significant additions. The current code language would be retained until such a study is completed and a linkage fee adopted. The study and possible code changes would be considered separately from the other items described in this memo, potentially in 2024.

- b. *No Change.* Continue to allow IH to be waived for dwelling units that are demolished and rebuilt within three years. Do not assess linkage fees or excise taxes for significant additions to single family homes.

#### ***Rationale***

The legal basis for the current IH program may be found in in Section 9-13-1, “Findings”, B.R.C 1981: *“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”*. Therefore, the program only applies to “new” residential development. Replacing one older home with a newer home or making an addition does not utilize land in the city remaining for development. As a result, these scenarios cannot be addressed through the IH program.

As described in the ‘Background’ section above, inclusionary housing is a zoning tool based on the premise that the city has the right to enact regulations for the health, safety, and welfare of the public. Specifically, Boulder’s IH ordinance states that 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 affordable housing units. This is particularly true because, in the absence of interventions, available land is often developed with large expensive housing, which both reduces opportunities for more affordable housing and contributes to a general rise in prices for all housing in the community. The cash-in-lieu option for meeting IH is not a fee and has not been subject to the same scrutiny as other impact fees in the code.

Based on this information, imposing an IH payment for an addition to an existing home could be considered a fee that the city has not undertaken the necessary study to support. A Nexus Study is necessary to determine to what extent replacement homes and substantial additions contribute to the need for affordable housing.

## IV. Additional Updates and Clean-Up Code Changes

In addition to the above program change options, several updates to the IH code are recommended to comply with changing market conditions, address undesired outcomes, clarify requirements, and simplify the IH program. The anticipated changes are described individually below.

Item	Current Code/Regulation	Proposed Change	Rationale	Code Citation
<b>A. Required Rents</b>				
	Current Rent Mix: -80% affordable units for 60% AMI households. -20% affordable units for 80% AMI households.	Proposed Rent Mix: -80% affordable units for 60% AMI households. -20% affordable units for <b>50% AMI</b> households.	Retain a diversity of unit prices but include deeper affordability in IH-developed units.	<a href="#">Section 9-13-3(a)(1)(B).</a> B.R.C. 1981
<b>B. CIL Deferral</b>				
	Single family homes may defer the payment of required CIL to the time of first sale or 10 years, whichever is shorter.	Remove deferral option and require CIL be paid at permit issuance.	Deferral creates an administrative burden on the city and uncertainty for owners since the CIL amount is not calculated until the payment is due.	<a href="#">Section 9-13-9(b).</a> B.R.C. 1981
<b>C. Homeownership On-site Incentives &amp; Penalties</b>				
	Half of the for-sale affordable units must be provided on site or contribute 50% more CIL.	Remove incentive and penalty per consultant recommendation.	Has not resulted in on-site outcomes and increases the CIL owed beyond feasibility.	<a href="#">Section 9-13-3(a)(1)(C).</a> B.R.C. 1981
<b>D. Land Dedication</b>				
	A separate site review is not required for dedicated land in or adjacent to the market development.	Dedicated land in or adjacent to the market development: 1. Reviewed under the same land use review or building permit will be considered on-site. 2. Subdivided and reviewed under a separate land use review or building permit may be considered a land dedication.	Clarifies when dedicated land contiguous to the market development must be developed under on-site rules, including the required % of on-site units, shared amenities, and concurrency of construction.	<a href="#">Section 9-13-10(d).</a> B.R.C. 1981



Item	Current Code/Regulation	Proposed Change	Rationale	Code Citation
<b>E. Land Dedication</b>				
	Land value must be $\geq$ than 75% of applicable CIL. If the land does not equal the full amount of the CIL owed, the applicant shall contribute CIL to make up any gap.	Remove land value $\geq$ than 75% of CIL and replace with "City must determine that the land can be reasonably developed for Affordable Housing".  Revise - CIL to be the difference between the appraised value of the land or 50% of the applicable CIL amount whichever is larger.	Clarifies details of the land dedication option and ensures that along with land the city receives some CIL funds to develop the site.	<a href="#">Section 9-13-10(d)</a> , B.R.C. 1981
<b>F. Affordable Housing Design Review</b>				
	Design review required unless the development is approved pursuant to a site review.	Add – or other development review including form-based code.	Update to include form-based code review.	<a href="#">Section 9-13-4</a> , B.R.C. 1981
<b>G. Small Projects with &lt; 4 Units</b>				
	Requires 20% of units affordable with lower CIL requirements.	Remove (if CIL methodology described in Item I is adopted).	If the proposed CIL methodology adopted the differentiation in development size is no longer needed.	<a href="#">Section 9-13-3(a)(2)</a> B.R.C. 1981
<b>H. Housing Inspection Requirement</b>				
	Inspection requirement is located in the administrative regulations for the program.	Add the inspection requirement to the B.R.C. (land use code).	Clarifies that housing inspections are required.	<a href="#">Section 9-13-6</a> , B.R.C. 1981
<b>I. Relationship of Affordable Units to Market Units</b>				
	When a development contains single-family detached dwelling units, a proportional number of the required affordable units must be single-family detached.	When a development contains single-family detached dwelling units, detached homes or <b>attached townhomes</b> may be provided to fulfill the obligations.	Provides an alternative to affordable single-family homes.	<a href="#">Section 9-13-7(b)</a> , B.R.C. 1981
<b>J. Number of Bedrooms and Bathrooms</b>				
	Middle income affordable units shall have at least one bedroom.	Remove.	Disallows middle income studios and is in conflict in the IH regulations.	<a href="#">Section 9-13-7(d)</a> , B.R.C. 1981
<b>K. Rebuilt Dwelling Units</b>				
	Safe and habitable determination.	Clarify that the Chief Building Inspector will determine if the building is safe and habitable.	Clarification of responsibility. If a demolished home is not safe and habitable it does not receive the waiver to IH for a replacement home.	<a href="#">Section 9-13-11(4)</a> , B.R.C. 1981

Item	Current Code/Regulation	Proposed Change	Rationale	Code Citation
<b>L. Residential Developments with Prior Affordable Housing Agreements</b>				
	Options for meeting new IH program changes.	Revise to indicate that this update will go into effect three months from adoption and apply to developments that have an approved technical documents or have submitted for at least one residential building permit.	Allow time for the IH program regulations to be updated before the code goes into effect. Clarify at what point a development may choose to comply with the new code provisions.	<a href="#">Section 9-13-14</a> , B.R.C. 1981
<b>M. Conversion of Rental to Ownership Dwelling Units</b>				
	An agreement is currently required to allow conversion of unit type.	Remove the required agreement language.	Redundant requirement.	<a href="#">Section 9-13-13(b)</a> , B.R.C. 1981
<b>N. Demolition and Replacement</b>				
	No time limit to replace units destroyed by fire, flood, wind.	Add an eight-year time limit for dwelling units removed by fire, flood, wind.	Ensures that replacement homes of units removed from the housing inventory many years ago are not exempt from IH.	<a href="#">Section 9-13-11</a> , B.R.C. 1981

## NEXT STEPS

After the Council meeting, staff will move forward with additional public engagement, including participating in the city's *What's Up Boulder?* event on Sep. 10. Staff will begin drafting ordinance language for Planning Board consideration in late September. Final public hearings are expected to be before City Council in Oct. and early Nov. Any changes to the IH Ordinance would be effective three months after final adoption to allow updates to the administrative regulations.

This effort is being considered in tandem with the update to the Zoning for Affordable Housing ordinance, which is scheduled for first reading before City Council on Sep. 7 and second reading on Sep. 21.

## ATTACHMENTS

Attachment A: Consultant Report  
Attachment B: Public Engagement Plan