

ORDINANCE 8601

AN ORDINANCE AMENDING SECTION 9-2-14, "SITE REVIEW," CHAPTER 9-13, "INCLUSIONARY HOUSING," AND SECTION 9-16-1, "GENERAL DEFINITIONS," B.R.C. 1981, MODIFYING AFFORDABLE HOUSING REQUIREMENTS AND INCENTIVES; AND SETTING FORTH RELATED DETAILS

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

Section 1. Section 9-2-14, "Site Review," B.R.C. 1981, is amended to read as follows:

...

(h) Criteria: No site review application shall be approved unless the approving agency finds that the project is consistent with the following criteria:

...

(6) Land Use Intensity and Height Modifications: Modifications to minimum open space on lots, floor area ratio (FAR), maximum height, and number of dwelling units per acre requirements will be approved pursuant to the standards of this subparagraph:

...

(C) Additional Criteria for a Height Bonus and Land Use Intensity Modifications: A building proposed with a fourth or fifth story or addition thereto that exceeds the permitted height requirements of Section 9-7-5, "Building Height," or 9-7-6, "Building Height, Conditional," B.R.C. 1981, together with any additional floor area or residential density approved under Subparagraph (h)(6)(B), may be approved if it meets the requirements of this Subparagraph (h)(6)(C). For purposes of this Subparagraph(h)(6)(C), bonus floor area shall mean floor area that is on a fourth or fifth story and is partially or fully above the permitted height and any floor area that is the result of an increase in density or floor area described in Subparagraph (h)(6)(B). The approving authority may approve a height up to fifty-five feet if one of the following criteria is met:

(i) Residential Developments: If the development is residential, it will exceed the requirements of Subparagraph 9-13-3(a)(1)(A), B.R.C.

1981, as follows:

- a. For bonus units, the inclusionary housing requirement under Chapter 9-13, "Inclusionary Housing," B.R.C. 1981, shall be increased by eleven percent. The resulting inclusionary requirement may be satisfied by any option allowed in Chapter 9-13 to meet inclusionary housing requirements. For example, if Chapter 9-13 requires twenty-five percent of units to be permanently affordable, for bonus units that requirement is increased by eleven percent so that at least thirty-six percent of the total number of bonus units must be permanently affordable units. ~~For bonus units, the inclusionary housing requirement shall be increased as follows: Instead of twenty-five percent, at least thirty-six percent of the total number of bonus units shall be permanently affordable units. If the building is a for sale development, at least fifty percent of all the permanently affordable units required for the building shall be built in the building; this fifty percent on-site requirement may not be satisfied through an alternative means of compliance. A minimum of one bonus unit shall be assumed to be provided in the building if any bonus floor area is in the building.~~

...

Section 2. Chapter 9-13, "Inclusionary Housing," B.R.C. 1981, is amended to read as follows:

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.

...

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

(a) Inclusionary Housing Requirements.

(1) ~~Developments Containing Five or More Dwelling Units:~~

- 1 (A) — Any development containing five or more dwelling units is required to include at
2 least twenty-five percent of the total number of dwelling units as permanently
3 affordable dwelling units.
- 4 (2B) For required for-sale permanently affordable units, townhouses and single-family
5 homes shall have prices set to be affordable to one hundred twenty percent of the
6 AMI. All other types of permanently affordable for-sale units shall have prices set
7 to be affordable to one hundred percent of the AMI. ~~eighty percent~~ Twenty percent
8 of the required affordable units shall be affordable to
9 low/moderate income households.
- 10 Five percent of the required affordable units shall be affordable to middle
11 income households.
- 12 i. — The city manager is authorized to use rule-making authority to
13 annually adjust the percentages in A and B to incentivize on-site
14 affordable units.
- 15 (3C) Required rental permanently affordable units shall include eighty percent of the
16 required permanently affordable units as low/moderate income dwelling units and
17 twenty percent of the required permanently affordable units shall have rents set to
18 be affordable to households earning no greater than fifty percent of the AMI. ~~In for~~
19 ~~sale developments a minimum of fifty percent of the units shall be built on the site~~
20 ~~of the development, unless such units are provided for in another manner~~
21 ~~consistent with the provisions of this chapter.~~
- 22 (4D) As an alternative to providing permanently affordable units on-site Rental
23 developments do not have a minimum on-site requirement and may provide the
24 permanently affordable units satisfy the inclusionary housing requirement through
25 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.
- (5) The city manager is authorized to use rule-making authority to annually adjust the
percentages in Subsection 9-13-3(a) to incentivize on-site affordable units.
- (6) Rounding Rule: In determining the number of permanently affordable units
required on or off-site, any inclusionary housing requirement 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 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 Section 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 permanently affordable unit may rent the unit in accordance with the provisions of this chapter as set forth in Section 9-13-126 “Program Requirements for For-Sale Units,” B.R.C. 1981. All sales, rentals, purchases and leases shall comply with the provisions of this chapter.
- (d) Deed Restriction Required: No person offering a permanently affordable ~~dwelling~~ unit for rent or sale shall fail to lawfully reference in the grant deed conveying title of any such unit, and record with the county recorder, a covenant or declaration of restrictions in a form approved by the city manager. Such covenant or declaration of restrictions shall reference applicable contractual arrangements, restrictive covenants and resale restrictions as are necessary to carry out the purposes of this chapter.
- (e) Good Faith Marketing Required: All sellers or owners of permanently affordable ~~dwelling~~ units shall engage in good faith marketing and public advertising efforts each time a permanently affordable ~~dwelling~~ unit is rented or sold such that members of the public who are qualified to rent or purchase such units have a fair chance to become informed of the availability of such units.
- (f) Reference Information: Whenever this chapter refers to information generated by HUD but no such information is generated by or available from that agency, the city manager is authorized to adopt or create any necessary equivalent information, which can be utilized in the enforcement of the provisions of this chapter.
- (g) Required Agreements: ~~Those applicants creating residential for a developments with~~ dwelling units shall enter into a permanently affordable housing agreement with the city manager and shall execute such restrictive covenants and additional agreements, in a form acceptable to the city manager, as necessary to carry out the purposes of this chapter. Such agreements shall be on a form provided by the city manager and shall document how the applicant will meet the requirements of this chapter. The applicant shall provide all documentation and any other material requested by the city manager. An applicant shall not be eligible to submit an application for a building permit until the affordable housing agreement ~~and~~, any additional agreements, and 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 ~~A~~affordable ~~H~~housing ~~D~~design ~~R~~review is established to provide a uniform and consistent method for evaluating proposals for meeting inclusionary housing ~~obligation~~ requirements where site review or form-based code review is not required.

- (b) Affordable Housing Design Review Required: All developments with more than ~~five~~ forty units providing permanently affordable units on or off-site to meet an inclusionary housing ~~obligation requirement~~ and all off-site developments in excess of ~~five~~ forty units providing permanently affordable units shall be subject to the ~~Affordable Housing~~ Design Review unless the development is approved pursuant to a site or form-based code 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 the permanently~~ affordable units to ensure that the ~~affordable housing units are~~ functional and designed with adequate circulation, room sizes, kitchen components and storage, 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 Permanently Affordable Units.

- (a) Quality of permanently affordable ~~Units~~. ~~Permanently Affordable units provided on-site~~ shall be of comparable quality, design and materials to the market rate units creating the inclusionary housing ~~obligation requirement~~ and constructed with durable materials that promote sustainable, energy efficient and attractive affordable housing. ~~If Permanently affordable units provided off-site, the affordable units shall also be comparable to the surrounding market housing in quality, design, and general appearance and constructed with durable materials that promote sustainable, energy efficient and attractive affordable housing.~~ Permanently affordable units shall be constructed, installed and finished in a quality workmanlike manner consistent with industry standards.
- (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 permanently affordable units are provided on-site in any location or configuration, the affordable owners and renters shall have access equal to amenities to that of the owners and renters of the market rate 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.
- (d) Housing Inspections: The city manager is authorized to require housing inspections for permanently affordable units during construction to ensure the permanently affordable units comply with the affordable housing requirements as defined in this chapter and required agreements, standards, and covenants, and are constructed, installed, and finished in a quality, workmanlike manner consistent with industry standards. All actual costs for the inspector's time and any actual costs incurred related to the inspections shall be borne by the affordable housing developer.

1 **9-13-7. – Relationship of Permanently Affordable Units to Market Units.**

- 2 (a) Purpose: ~~Permanently Affordable units housing~~ shall be comparable in quality, design
3 and general appearance to the market rate units creating the inclusionary housing
4 ~~obligation requirement~~.
- 5 (b) Detached Dwelling Units: When a development contains single-family detached dwelling
6 units, a proportional number of the required permanently affordable ~~dwelling~~ units shall
7 also be single-family detached dwelling units or attached townhouses.
- 8 (c) Mixed Dwelling Unit Types: In developments with a mixture of dwelling unit types,
9 including, without limitation, single-family detached dwelling units, townhouses,
10 duplexes, triplexes, four-plexes, eight-plexes, and stacked flats, the required permanently
11 affordable ~~dwelling~~ units shall be comprised of the different dwelling unit types in the
12 same proportion as the dwelling units that are not permanently affordable within the
13 development except as allowed in Subsection (b) above.
- 14 (d) Number of Bedrooms and Bathrooms: ~~Permanently Affordable~~ units shall have the same
15 proportion of zero bedroom/studio, one-, two-, three- and four-bedroom dwelling units as
16 ~~in its~~ the market rate ~~dwelling~~ units of the development. The city manager will determine
17 the minimum numbers of bathrooms required for permanently affordable units with these
18 numbers of bedrooms. ~~Middle income affordable units shall have at least one bedroom.~~
- 19 (e) Ownership Type: Permanently affordable ~~dwelling~~ units shall be for-sale in the same
20 proportion as the ~~dwelling~~ market rate units that are for-sale intended for sale that are not
21 ~~permanently affordable~~ within the development that generated the requirement; for
22 example, if fifty percent of the units in the ~~original~~ development are for sale units, then at
23 least fifty percent of the permanently affordable units must be for-sale units except as
24 otherwise approved by the city manager. Rental developments may provide either rental
25 or for-sale permanently affordable units.

16 **9-13-8. – Location and Timing for Providing Permanently Affordable Units.**

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

- 19 (a) Location of ~~For Sale~~ Permanently Affordable Units: ~~For sale p~~ Permanently affordable
20 units provided on-site shall be distributed evenly throughout the development to achieve
21 integration and avoid concentration or segregation of the affordable households unless
22 otherwise approved by the city manager.
- 23 (b) ~~Location of Rental Permanently Affordable Units: Rental permanently affordable units do~~
24 ~~not have a requirement for distribution throughout the development.~~
- 25 (c) Timing of Construction: The construction of on-site permanently affordable dwelling
units in any development shall be timed such that the permanently affordable 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 the development.

1 **9-13-9. - Developments Containing a Single Dwelling Unit.**

2 A single lot owner that intends to construct one single dwelling unit on one buildingable
3 ~~lot-site~~ that will be the primary residence of the owner for not less than three years immediately
4 following the issuance of a certificate of occupancy ~~shall meet the standards set forth in~~
5 Subsection 9-13-3(a), "Inclusionary Housing Requirements" B.R.C. 1981, or meet the following
6 standards: may satisfy the inclusionary housing requirement by making

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

15 **9-13-10. - Options for Satisfaction of Inclusionary Housing Requirement.**

- 16 (a) Purpose: ~~To obtain~~ In order to create a significant amount of permanently affordable
17 ~~dwelling units.~~ To the extent permitted by this chapter, developers may satisfy the
18 inclusionary housing requirement through any combination of the following alternate
19 means:
20 (b1) Cash-in-Lieu Contribution: Developers may satisfy permanently affordable
21 housing requirements by making cash contributions to the city's affordable
22 housing fund. ~~The cash in lieu contribution will be calculated by the city manager~~
23 ~~annually. The cash-in-lieu contribution will be based on the residential square~~
24 ~~footage of the development creating the inclusionary housing requirement and the~~
25 ~~applicable rate will be determined annually by the city manager. 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 permanently affordable
units, and the affordability gap between market rate and permanently affordable
home-unit prices when determining the cash-in-lieu calculation.
(1A) Annual Cash-in-lieu Escalator for Developments with Five or More
Dwelling Units: The city manager is authorized to ~~increase~~ adjust 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.~~

(2B) ~~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.~~

(e2) Provision of Affordable Units Off-site:

(1A) ~~The intent of this option is that the off-site unit mix of permanently affordable units building type (attached, townhome, detached) and number of units with specific number of bedrooms will be proportionate in type and size to the mix of market rate units in the sending site development that generated the requirement for the permanently affordable units (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 Sections 9-13-6 and 9-13-7, B.R.C. 1981, to accommodate receiving the off-site constraints.~~

(2B) 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 manager as suitable permanently 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 permanently affordable dwelling units shall be located within the City of Boulder.

(C) The city manager is authorized to develop rules for approving, assessing, and monitoring the off-site development.

(3D) Off-site Agreement: Any development meeting the requirements of this chapter by providing permanently 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 application for any residential building permit submittal for the sending site.

(4E) 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.

(5E) Timing of Construction for Off-site Units: The intent of this section is to provide concurrency of construction and marketing between permanently affordable units and market rate units.

(Ai) If ~~a~~-newly constructed dwelling units are~~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.~~ as permanently affordable units the applicant shall demonstrate that such units meet the following minimum requirements:

- a. The permanently affordable units shall pass final inspection no later than one year after the last market rate unit in the Sending Site passes final inspection; and
- b. The permanently affordable units shall be offered for sale or rent no later than one year after the final inspection of the last market rate unit in the Sending Site.

(iiB) If ~~an~~-existing dwelling units are~~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.~~ as permanently affordable units, the applicant shall demonstrate that such units meet the following minimum requirements:

- a. The applicant provides a letter of completion for any rehabilitation or remodeling, subject to city manager review and approval, that establishes that the permanently affordable units are habitable no later than one year after the last market rate unit in the Sending Site receives a certificate of occupancy; and
- b. The permanently affordable units are offered for sale or rent no later than one year after the last market rate unit in the Sending Site receives a certificate of occupancy.

(6G) Timing of Marketing: The marketing of the permanently affordable ~~dwelling units should start within two months of when before the~~ permanently affordable units are expected to receive a certificate of occupancy~~can be. Marketing shall occur no later than ten months after the first residential building permit for the site that generated the requirement is issued.~~

(7H) Off-Site Location Subject to Inclusionary Requirement: All newly constructed ~~dwelling~~ permanently affordable units ~~on the~~ receiving~~provided off-~~site are subject to the requirements of this chapter.

(8I) Off-Site Location Review and Approval: Any proposed off-site location is required to be approved by the city manager.

(d3) Land Dedication:

- (1A) 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.
- (2B) General Requirements: A land dedication shall meet all of the following criteria to the satisfaction of the city:
- (Ai) ~~Any proposed off-site~~ The location is required to be approved by the city manager of the land would meet city affordable housing objectives and is required to be approved by the city manager;
- (Bii) ~~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~~ can reasonably be developed for affordable housing;
- (Ciii) 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;
- (Dii) No greater than ten percent of the land may be within the high hazard zone, or conveyance floodplain zone. 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 zone, conveyance zone 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.
- (Ev) Satisfactory proof of ~~fee~~ title is provided to the city manager within thirty days ~~of before~~ the effective date of dedication to the city or an entity designated by the city for such dedication. 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~~ special warranty deed before issuance of a building permit for the ~~originating residential development~~ Sending Site.
- (Fvi) 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 the land 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.
- (Gvii) 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.

(C) Open Space Requirement: If land proposed to be dedicated under this subparagraph is part of the same site review as the market rate units that create the inclusionary housing requirement the open space requirements for any permanently affordable units constructed on the land proposed to be dedicated shall be met entirely on the land proposed to be dedicated and the open space requirements for the market rate units shall be met entirely within the market rate unit development.

(e4) 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:

(+A) Will result in additional affordable housing benefits for the city consistent with the purposes of this chapter; or

(2B) Will address unmet housing needs~~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~~

(3C) Is necessary to prevent an unlawful taking of property without just compensation in accordance with Section 9-13-150, "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.

(+a) ~~Developments with Four or Fewer Dwelling Units: An applicant may request an exemption from the inclusionary housing requirements of this section-chapter 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.~~

(2b) 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 dwelling unit.

- 1 (3c) Calamity: The provisions of this subsection shall not apply to market rate units~~non-~~
2 ~~affordable dwellings~~ that may have been removed or caused to be removed by fire, flood,
3 wind, act of nature or another calamity. Such ~~dwellings~~ units may be replaced within ten
4 years from the time of the calamity to the time of building permit submittal for a
5 replacement dwelling unit without meeting the inclusionary housing requirements of this
6 chapter ~~at the time preferred by the property owner. Deed restricted~~ Property on which
7 permanently affordable ~~dwellings~~ units that may have been removed or caused to be
8 removed by fire, flood, wind, act of nature or other calamity will continue to be bound by
9 the permanently affordable deed restriction covenant which will apply to future
10 construction must be replaced and include the deed restriction.
- 11 (4d) Safe and Habitable: The provisions of this subsection shall not apply to dwellings to be
12 removed, if, at the time of removal, such unit is considered to be an unsafe structure, a
13 structure unfit for human occupancy, or a dangerous structure under the ~~1997 Uniform~~
14 ~~Code for the Abatement of Dangerous Buildings, City of Boulder Property Maintenance~~
15 ~~Code, Section 108302~~ adopted by the city by Section 10-2-25-3, B.R.C. 1981, unless
16 otherwise excepted by the Boulder Revised Code. The chief building official shall
17 determine if the unit meets these standards.

11 9-13-12. - Program Requirements for For-Sale Units.

- 12 (a) Affordable Unit Price: The city manager will set the maximum allowable sales price for
13 permanently affordable ~~dwellings~~ units required by this chapter based upon the unit type,
14 total floor area, and number of bedrooms and bathrooms.
- 15 (1) The prices charged for permanently affordable low/moderate priced ~~dwellings~~
16 units shall not exceed a price that is affordable to a household earning the HUD
17 low-income limit for the Boulder PMSA.
- 18 (2) Middle Income priced ~~dwellings~~ permanently affordable units shall not exceed a
19 price that is affordable to one hundred and twenty percent of the area median
20 income as determined by HUD for the Boulder PMSA. The city manager is
21 authorized to adopt or create pricing categories within this income range to be
22 utilized in the enforcement of the provisions of this chapter.
- 23 (b) Maximum Sales Price for Permanently Affordable ~~Dwellings~~ Units: The maximum sale
24 price for an permanently affordable ownership unit shall be set by the city on at least a
25 quarterly basis.
- 20 (c) Income Eligibility: The city manager shall determine the maximum household income
21 allowable for each sales price.
- 22 (ed) Real Estate Commissions: A real estate commission shall be paid by any seller of an
23 permanently affordable unit to a real estate agent representing the buyer. This amount
24 shall be established by the city manager ~~and specified in the inclusionary housing~~
25 ~~administrative regulation.~~
- 26 (de) Approved Purchasers for Permanently Affordable ~~Dwellings~~ Units: A developer or owner
27 shall sell to a qualified purchaser after completing a good faith marketing and selection
28 process approved by the city manager.
- 29 (ef) Asset Limitations for Program-eligible Households: Program-eligible households that
30 wish to purchase permanently affordable ~~dwellings~~ units shall be subject to reasonable
31 asset limitations set by the city manager. The city manager will establish maximum asset

1 limitation requirements for purchasers of permanently affordable ~~dwelling~~ units in order
2 to accomplish the purposes of this chapter. The standard that the city manager will use to
3 set the asset limitation is that the housing be available to people who, without assistance,
4 would have difficulty marshaling the financial resources to obtain appropriate housing
5 within the city.

6 (fg) Sale Restriction: No person shall sell a permanently affordable ~~dwelling~~ unit except to a
7 person that meets the income, asset and other eligibility requirements of this chapter or
8 any asset and income eligibility requirement that is included in any contract, covenant or
9 any other agreement to which the city is a party or beneficiary.

10 (gh) Rental Restrictions for For-Sale Permanently Affordable Units:

11 (1) Rental Restrictions Pursuant to Sale: Newly constructed or existing units that are
12 deed restricted are initially owned by a developer. Prior to the first sale of such
13 units to a program eligible buyer and after receipt of a temporary or final
14 certificate of occupancy, a developer who initially owns an permanently
15 affordable unit is required to actively market the permanently affordable unit for a
16 minimum of one hundred twenty days to facilitate a sale. Subsequent program-
17 eligible owners must also market the permanently affordable unit for a minimum
18 of one hundred twenty days to facilitate a sale. If, after this period, the
19 permanently affordable ~~home~~ unit has not sold, the unit may be rented for a one-
20 time period not to exceed eighteen months. The developer or owner is required to
21 continue to market the unit while it is being rented but may defer the sale to the
22 end of the lease period. A written lease or rental agreement is required. The lease
23 or agreement must be provided to the city division of housing.

24 (2) An owner may rent one bedroom in an permanently affordable unit for any period
25 of time subject to city requirements concerning the renting of residential property.

(3) The provisions below apply to rental of the entirety of the for-sale permanently
affordable units. The provisions of this section do not apply to any affordable
housing developer who owns the permanently affordable unit initially prior to the
first sale to a program-eligible owner.

(A) No owner shall fail to occupy an permanently affordable unit for a
minimum of five years before renting the entirety of the unit.

(B) No owner shall fail to provide thirty days' notice to the city manager of
intent to rent an affordable unit.

(C) No owner shall allow an permanently affordable unit to be rented for more
than one year out of seven years. The one-year period may be continuous
or an aggregation of shorter time periods.

(D) No owner shall fail to provide a written lease or rental agreement to the
city division of housing when renting the entirety of an permanently
affordable unit. The city manager may require additional documents the
city finds reasonably necessary to comply with this section.

(E) No owner shall allow an permanently affordable unit to be rented for a
period of less than thirty days.

26 (hi) Resale Restrictions: All permanently affordable ownership ~~dwelling~~ units developed
27 under this chapter shall be subject to the following resale restrictions:

28 (1) Approved Purchasers: A seller of a permanently affordable ~~dwelling~~ unit must
29 select an income-eligible purchaser by a method that complies with the good faith

marketing and selection process approved by the city manager. All purchasers of permanently affordable ~~dwelling~~ units shall be part of program eligible households.

(2) Resale Price: The resale price of any permanently affordable ~~dwelling~~-unit shall not exceed the purchase price paid by the owner of that unit with the following exceptions:

(A) Closing Costs: Customary closing costs and costs of sale as reviewed and 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~~requirement, the city manager will review the condominium association declarations to assess the impact on buyers of permanently 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: Required rental permanently affordable units shall include eighty percent of the required permanently affordable units as low/moderate income dwelling units and twenty percent of the required permanently affordable units shall have rents set to be affordable to households earning no greater than fifty percent of the AMI~~Rents charged for permanently affordable units in any one development must be affordable to households earning no more than sixty percent of the AMI for low/moderate permanently affordable rental units and eighty percent of the AMI for middle income permanently affordable rental units.~~

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

- 2 ~~(1) A rental development may be converted to a for sale development. If the~~
3 ~~inclusionary housing requirement for a rental development was met with a cash-~~
4 ~~in-lieu contribution and the rental development is converted to a for sale~~
5 ~~development within five years of the issuance of a final Certificate of Occupancy,~~
6 ~~the property owner shall pay the city the difference between the cash-in-lieu~~
7 ~~amount paid and the amount that would have been due at the time of building~~
8 ~~permit issuance for a for sale development.~~
9 ~~(2) An owner of a rental development shall enter into an agreement with the city to~~
10 ~~agree to pay the difference if the rental development is converted to for sale units~~
11 ~~in the five-year period.~~
12 ~~(3) An agreement shall be executed in a form acceptable to the city manager and shall~~
13 ~~indicate the difference between the cash-in-lieu amount owed if the development~~
14 ~~were a for sale development instead of a rental development at issuance of the~~
15 ~~initial residential building permit. The term of the agreement shall be for five~~
16 ~~years starting from the date of the issuance of a residential building permit. After~~
17 ~~this period, no additional cash-in-lieu is required if such a conversion occurs. The~~
18 ~~agreement shall provide for the appropriate adjustment to the inclusionary~~
19 ~~housing requirements of this chapter.~~

20 **9-13-14. - Residential Developments with Prior Affordable Housing Agreements.** **Reserved**

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

- 23 (a) ~~Prior Development Approvals and Applications: The inclusionary housing requirements~~
24 ~~of Sections 9-13-3(a)(1)(A) and (C), 9-13-4(a) and (b) in place prior to the adoption of~~
25 ~~this chapter will apply to the following developments:~~
26 ~~(1) A development for which a site review application was filed prior to July 1, 2018;~~
27 ~~(2) A development subject to an affordable housing agreement and requirements~~
28 ~~imposed by prior inclusionary housing agreements; or~~
29 ~~(3) A dwelling unit for which a building permit has been submitted prior to July 1,~~
30 ~~2018.~~
31 ~~After July 1, 2018 any development subject to this subsection for which the site review,~~
32 ~~affordable housing agreement or building permit is expired, denied, revoked, or otherwise~~
33 ~~is not diligently pursued must conform to the rule in effect at the time of application.~~
34 (b) ~~City Subsidized Developments: Developments subject to agreements with the city~~
35 ~~executed prior to the effective date of this chapter in order to receive Affordable Housing~~
36 ~~Funds, Community Housing Assistance Program, HOME or Community Development~~
37 ~~Block Grant funds may either:~~
38 ~~(1) Develop in compliance with affordable housing and restricted housing agreements~~
39 ~~executed prior to the effective date of this chapter and provide restricted units as~~
40 ~~required pursuant to ordinances in effect at the time such developments were~~
41 ~~approved;~~
42 ~~(2) Enter into a new agreement with the city manager to allow the development to~~
43 ~~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.~~

(e) ~~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 No. 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.~~

...

Section 3. Section 9-16-1, "General Definitions," B.R.C. 1981, is amended to read as follows:

...

A—E

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

...

F—J

...

Floor area for attached dwelling units means the total square footage of all levels measured to the outside surface of the exterior framing, to the centerline of demising walls between units, and to the outside surface of the exterior walls if there is no exterior framing~~interior finished surface of the inside wall or portions thereof~~, which includes stairways, storage, and mechanical rooms, internal to the structure, ~~but excluding up to two hundred fifty square feet of unfinished floor area in basements, but excluding garages.~~ (Inclusionary Housing)

Floor area for detached single-family dwelling 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 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, but excluding garages. (Inclusionary Housing)

Floor area for townhouses and attached small units means the total habitable square footage of all levels measured to the outside surface of the exterior framing, to the centerline of demising walls between units, and 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, but excluding garages. (Inclusionary Housing)

...

P—T

...

Permanently affordable unit means a dwelling unit that is pledged to remain affordable in perpetuity 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)~~

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

(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~~ Initial renter households’ income shall not exceed sixty percent of the area median income (60% AMI) as determined by HUD for the Boulder PMSA, or as determined by the city manager, with adjustments for lower rent AMI levels.

(3) ~~Middle income h~~ Homebuyer households’ income shall not exceed one hundred and fifty percent of the area median income as determined by HUD for the

1 Boulder PMSA or as determined by the city manager, with adjustments for lower
2 pricing AMI levels.

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

6 ...


7 Section 4. The effective date of this Ordinance shall be 90 days after adoption. This
8 Ordinance shall apply to any development without an approved site review, use review, form-
9 based code review, technical document review or building permit and to any development
10 without an executed on-site agreement and deed restricting covenant; however, any development
11 that has an approved site review, use review, form-based code review, technical document
12 review, building permit or an executed on-site agreement or deed restricting covenant may be
13 allowed to develop according to either, a) the requirements in place when the review was
14 approved or agreement or covenant was executed, or b) the requirements of this Ordinance. Any
15 development subject to the requirements of this Ordinance for which the site, use, form-based
16 code or technical document review, affordable housing agreement or building permit is expired,
17 denied, revoked, or otherwise is not diligently pursued must conform to the rule in effect at the
18 time of re-application for review or permit.

19 Section 5. If any section, paragraph, clause, or provision of this Ordinance shall for any
20 reason be held to be invalid or unenforceable, such decision shall not affect any of the remaining
21 provisions of this ordinance.

22 Section 6. This Ordinance is necessary to protect the public health, safety, and welfare of
23 the residents of the City and covers matters of local concern.
24
25

Section 7. 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 19th day of October 2023.


Aaron Brockett,
Mayor

Attest:

Elesha M. Jordan
City Clerk

READ ON SECOND READING, PASSED AND ADOPTED this 2nd day of November
2023.


Aaron Brockett,
Mayor

Attest:

Elesha M. Jordan
City Clerk