

**CITY OF BOULDER  
CITY COUNCIL AGENDA ITEM**

**MEETING DATE: April 21, 2009**

**AGENDA TITLE:** Consideration of a motion to accept the March 31, 2009 Study Session Summary regarding Affordable Housing Review – Phase II regulatory tools

**PRESENTER/S:**

Jane S. Brautigam, City Manager  
Stephanie A. Grainger, Deputy City Manager  
Karen Rahn, Housing and Human Services Interim Director  
Robert Ray, Housing Division Manager  
Michelle Allen, Housing Planner

**EXECUTIVE SUMMARY:**

This agenda item provides a summary of the March 31, 2009 City Council Study Session on the Affordable Housing Review: Phase II, Regulatory Tools. The purpose of this study session was to provide council with background information on the city's Inclusionary Zoning Program and potential options for changes. The key questions for council consideration were:

1. Does council have questions or comments about the Inclusionary Zoning goal to require some of the affordable units on-site to meet social integration goals while some may be provided through other options such as cash-in-lieu of units to meet the goal of maximizing the number of units obtained?
2. Does council have questions or feedback on the options proposed for:
  - a) How the cash-in-lieu amount is determined;
    - a. phasing in cash-in-lieu increases over time;
    - b. mitigating cash-in-lieu impacts on small projects;
  - b) The on-site requirement and how this requirement is administered;
  - c) Serving middle income households through Inclusionary Zoning;
  - d) Modifications to the land swap option?

Attached is a summary of council's discussion of the issues and questions that were presented at the study session.

**STAFF RECOMMENDATION:**

**Suggested Motion Language:**

Staff requests Council consideration of this summary and action in the form of the following motion:

Motion to accept the study session summary for March 31, 2009 regarding the affordable housing program review of Phase II – Regulatory Tools.

Approved by:

---

Jane S. Brautigam,  
City Manager

Attachment:

- A. March 31, 2009 Study Session Summary for the Affordable Housing Review Phase II, Regulatory Tools

**March 31, 2009**  
**City Council Study Session Summary**  
**Affordable Housing Program Review Phase II: Regulatory Tools**

**PRESENT**

**City Council:** Mayor Matthew Appelbaum, Crystal Gray, Suzy Ageton, Macon Cowles, Angelique Espinoza, Lisa Morzel, Susan Osborne, and Ken Wilson

**Staff:** Jerry Gordon, City Attorney; Karen Rahn, Housing and Human Services Interim Director; Robert Ray, Housing Division Manager; Michelle Allen, Housing Planner; Heather Shea, Homeownership Program Manager; Barbara Long, Finance

**Consultants:** Dan Guimond, and Josh Birks of Economic & Planning Systems, Inc. (EPS)

**PURPOSE**

This study session was part of the city's Affordable Housing Review which consists of three phases:

- Phase I - Goals and Strategies Review
- Phase II - Regulatory Review
- Phase III - New Initiatives

Staff is currently conducting Phase II, Regulatory Review of the city's affordable housing programs. The purpose of the study session was to provide council with background information on the city's Inclusionary Zoning program and information concerning potential options for changes to the Inclusionary Zoning Ordinance and Regulatory Rules. Council was asked to provide feedback to staff on proposed options to modify Inclusionary Zoning. Staff and the consultants from Economic & Planning Systems (EPS) developed two alternative cash-in-lieu approaches based on affordability gap analysis and cost to construct methodologies which, along with a no change option make up three possible approaches for modifications to the cash-in-lieu amounts. Changes to the percentage of affordable housing units required on-site, three possible options for including middle income households in Inclusionary Zoning and one proposed modification to the land dedication option were also presented. In addition, details of the Inclusionary Zoning program were discussed including a variance procedure for requesting less than half of the required affordable units be built on-site, mitigation for smaller projects for any possible cash-in-lieu increases, and phasing in possible cash-in-lieu increases.

Additional background information was provided in the study session memo on the following topics:

1. Inclusionary Zoning and site review;
2. Current economic conditions that may affect the local affordable housing program;
3. The possible effects of the affordable housing program on the housing market;
4. Background information on key program decisions for the affordable housing program;
5. Determining the need for affordable housing;
6. How other communities address Inclusionary Zoning and achieve on-site units;
7. Progress on the administrative and process changes discussed at the December 16, 2008 council meeting.

## **OVERVIEW OF THE PRESENTATION**

The presentation was made by Karen Rahn, Housing and Human Services Interim Director, Robert Ray, Housing Division Manager, Michelle Allen, Housing Planner, and Dan Guimond and Josh Birks, consultants with Economic and Planning Systems.

Karen Rahn introduced the speakers, reviewed the three phases of the Affordable Housing Program Review and the agenda for the study session and provided details on the feasibility process used in the development of the Inclusionary Zoning options being presented. Robert Ray reviewed the basics of Inclusionary Zoning and the results of both the city-wide affordable housing program and the Inclusionary Zoning program. Robert defined area median income, explained the affordability gap and introduced the first key question concerning the goals of the Inclusionary Zoning program. At this point in the presentation council engaged in a discussion considering the first key question.

Michelle Allen provided details on why specific aspects of Inclusionary Zoning were being called for review and the pros and cons for proposed modifications. She presented options for changes to the cash-in-lieu amounts and on-site requirement. As part of this section of the presentation she updated council on the proposed Planning and Housing Division analysis of the downtown density bonus and height variance that would include a provision for additional community benefit. She noted that these tools could be used effectively to address the specific equity concern that housing units in the more expensive downtown area have the same Inclusionary Zoning and cash-in-lieu requirements as housing units in other areas of the city.

Two alternative cash-in-lieu approaches based on affordability gap analysis and cost-to-construct methodologies along with a no change option were presented as the three possible approaches for modifications to the cash-in-lieu amounts. The first two methodologies resulted in an amount that would approximately double current cash-in-lieu amounts, should either to be adopted outright. On-site options are dependent on the

ultimate cash-in-lieu amount and include retaining the 50 percent requirement or increasing the requirement to 60 or 70 percent.

Dan Guimond and Josh Birks with EPS discussed their preliminary findings concerning the effects of a substantial cash-in-lieu increase on development feasibility and the ability of developers to achieve a reasonable return on investment.

After a brief council discussion on the EPS analysis and question and answer period with staff and the consultants, staff finished the presentation of pros and cons for serving middle income households through Inclusionary Zoning along with a possible modification of the land dedication option. The analysis showed that including middle income households as recipients of Inclusionary Zoning units would reduce benefits of housing and/or funding that currently assist lower income households thereby extending the amount of time it would take for the city to reach agreed upon goals for serving lower income groups.

### **COUNCIL DISCUSSION:**

The Study Session memo provided two questions for council consideration:

- 1. Does council have questions or comments about the Inclusionary Zoning goal to require some of the affordable units on-site to meet social integration goals while some may be provided through other options such as cash-in-lieu of units to meet the goal of maximizing the number of units obtained?***
  
- 2. Does council have questions or feedback on the options proposed for:***
  - a) How the cash-in-lieu amount is determined;***
    - a. phasing in cash-in-lieu increases over time;***
    - b. mitigating cash-in-lieu impacts on small projects;***
  - b) The on-site requirement and how this requirement is administered;***
  - c) Serving middle income households through Inclusionary Zoning;***
  - d) Modifications to the land swap option?***

Council comments relative to each question are listed below.

- 1. Does council have questions or comments about the Inclusionary Zoning goal to require some of the affordable units on-site to meet social integration goals while some may be provided through other options such as cash-in-lieu of units to meet the goal of maximizing the number of units obtained?***

Council was in general agreement that the program should continue to be flexible and balance the two goals of social integration with maximizing the numbers of housing units obtained and also agreed that the current one-size-fits-all program may not work given the variation in costs and value around the community.

Several council members expressed less concern about social integration on a project by project basis, pointing out that integration could occur neighborhood wide. Most indicated that acquiring more units off-site than what would have been provided on-site was a good

trade-off and acknowledged the benefit gained from the five single family homes build off-site. Council requested staff provide additional information on leveraging; how other types of funding relate to and increase the buying power of cash-in-lieu funds.

Council acknowledged that the study session would be somewhat circular and that the overall goal of Inclusionary Zoning was relative to the cash-in-lieu (CIL) discussion and decisions and as such could change. Several council members indicated they thought the initial goal of the Inclusionary Zoning program was to achieve social integration through on-site units.

It was pointed out that due to the failed affordable housing tax, Inclusionary Zoning has become a counted upon source for funding for affordable rentals and for maintenance of the existing affordable housing stock. Council generally agreed that it was important to look at how affordable housing programs can help to keep families in Boulder and children in their schools. There was interest expressed in financing and other methods for provision of affordable housing being used by other cities.

***2. Does council have questions or feedback on the options proposed for:***

- a) How the cash-in-lieu amount is determined;***
  - a. phasing in cash-in-lieu increases over time;***
  - b. mitigating cash-in-lieu impacts on small projects;***
- b) The on-site requirement and how this requirement is administered;***
- c) Serving middle income households through Inclusionary Zoning;***
- d) Modifications to the land swap option?***

**Cash-in-lieu**

Council had a number of concerns and desires for possible modifications to the Inclusionary Zoning program and generally endorsed moving forward as soon as possible with some change to the cash-in-lieu amounts. Some council members also supported phasing in any increases in cash-in-lieu amounts and exploring mitigation for smaller projects. Council requested that staff analyze and propose modifications to the methodology used to make annual cash-in-lieu adjustments.

Council expressed interest in varying the cash-in-lieu and on-site requirements for different geographic areas, sizes or values of housing units and requested the city attorney analyze these approaches and any possible legal issues. Council requested that staff analyze an approach that would require off-site units be provided within some identified proximity to the new development project, such as within the school catchment area or within the same neighborhood. Additionally, council wants to address a discrepancy in the Inclusionary Zoning ordinance that imposes a lower requirement for fewer, larger units over more smaller units built in the same space.

Several council members discussed development feasibility and a developer's reasonable return on investment from their project. Pointing out that while these are useful tools, they

don't necessarily define limitations as the market will adjust to higher costs over time by either lowering land prices or increasing market values; most likely a combination of both.

Council discussed the possibility of decoupling the expectation of cash-in-lieu money through the Inclusionary Zoning program as general funding for affordable housing. Some council members thought that the current methodology is basically sound, but that there should be a phased in increase to cash-in-lieu amounts. One council member suggested involving community members that work in the housing industry such as developers, non-profits, lenders, etc. in a discussion on how to best meet the community's affordable housing goals and incentivize the construction of affordable housing.

During the presentation Dan Guimond and Josh Birks from EPS discussed their preliminary findings concerning the effects of doubling the cash-in-lieu amounts on development feasibility and the ability of developers to achieve a reasonable return on investment.

They found that the 2009 cash-in-lieu payment with no units provided on-site is feasible across all development scenarios; an on-site requirement of more than half of the affordable units provided on-site with an increased cash-in-lieu amount is not feasible under any of the test scenarios (assuming a 12% required return); a 50% on-site requirement and no change to the cash-in-lieu amounts is moderately feasible across all scenarios—excluding the downtown area. If on-site units are not required, downtown can achieve financial feasibility with higher cash-in-lieu amounts. They pointed out that the impacts of the proposed increases are greater on smaller projects.

Possible incentives such as density bonuses were discussed. Josh Birks pointed out that a density bonus is of limited use in Boulder due to the height restriction. Josh added that the impacts are different in the downtown area and suggested that the city should think about structuring the program differently for the downtown area. He also indicated that in the current market the ability to adjust for higher fees will be a timing issue and suggested that council might want staff to explore other incentives to assist the development community with any adjustments to the program that may result in additional impacts. EPS stressed that its findings were preliminary and added that additional work would be done on development feasibility pending the outcome of the study session.

### **On-site Requirement**

Council generally favors the 50% on-site requirement and supports continuing to allow the option to build fewer units on-site when, in the city's determination, on-site units are not desirable, such as projects with homeowner fees that make it difficult to maintain affordability. Council requested that staff analyze whether off-site units could be provided in the same geographic area as the site where they would have been provided on-site.

One council member expressed surprise that in some cases developers are allowed to build smaller units than required and pay for the difference with cash-in-lieu. Council requested that staff review the current rules that allow this buy-out of the size restriction.

### **Serving Middle Income Through Inclusionary Zoning**

There was general agreement among council on the importance of serving middle income households, however, there was no consensus on serving this demographic through Inclusionary Zoning at this time. Some council members stated that serving middle income households through Inclusionary Zoning was not as important to them as meeting the needs of lower income households and could result in an adverse impact on the current populations being served through Inclusionary Zoning. One council member thought there might be some land use fixes for this dilemma, i.e., modifying zoning to allow additional middle income units in some residential districts. Some council members also want to explore the use of accessory dwelling units and owners accessory units to meet the needs of middle income households.

Other council members stated that the problem of losing middle income households is of the highest priority and should be addressed as soon as possible. These council members wouldn't preclude using some housing funds to serve middle income households.

Council requested more information on the other types of programs and approaches it might want to consider as they move toward a decision about whether and how to modify the Inclusionary Zoning program.

### **Land Dedication Modification**

Council was in general agreement that staff could proceed with the recommended modifications to this option.

### **General Concerns**

Council expressed concerns with the following issues and requested staff follow up:

- Conduct a needs assessment that includes middle income households and the need for rental versus homeownership units.
- Establish priority for households with dependents for larger and family friendly affordable homes.
- Review requirements for annexations.
- Analyze homeowner association fee impacts and possible mitigation for affordable home owners.
- Assess the combination of all proposed development fee increases.
- Include substantive Inclusionary Zoning regulations and rules in the ordinance.
- Consider board oversight for the adoption of regulatory rules.
- Ensure that it is the city's option, rather than the developer's option, to allow fewer than half of the affordable units be provided on-site.
- Develop an outline of possible new affordable housing program elements and make an estimate of the funding that may result.

**NEXT STEPS:**

Council requested that staff return with options as soon as possible.

A council agenda item is scheduled for May 19, 2009 for a public hearing to begin implementation of any Inclusionary Zoning ordinance changes. The May 19, 2009 Council meeting will also include approval of social policy recommendations and prioritization of Phase III issues. Staff will update Planning Board on this project at the May 7, 2009 meeting.