

A GENERAL INTRODUCTION TO INCLUSIONARY ZONING

(March, 2009)

This paper is intended to provide general, introductory information about the provisions of the inclusionary zoning ordinance found in Chapter 9-13 of the Boulder Revised Code, 1981.

What is “inclusionary zoning”?

Inclusionary zoning requires that most new residential development contribute something toward permanently affordable housing in the city. Generally speaking, Inclusionary Zoning requires that 20% of the total number of units be permanently affordable to low income households.

There are a variety of ways to meet the inclusionary requirement, including units on-site, dedicating existing units off-site, land donation and cash-in-lieu contribution.

Which projects are subject to inclusionary zoning?

All projects with residential units are subject to the requirements of inclusionary zoning except for developments with affordable housing requirements in their annexation agreements made prior to February 4, 2000.

General Inclusionary Zoning Requirement

Inclusionary zoning requires that new residential development contribute at least 20% of the total units as permanently affordable housing. Options for meeting this requirement include on-site permanently affordable units, dedicating off-site existing units as permanently affordable, dedicating vacant land for affordable unit development or a cash-in-lieu payment. For-sale projects must provide at least half of the required permanently affordable units on-site. Developers of rental projects may choose to fulfill the inclusionary zoning requirement with on- or off-site for-sale permanently affordable units, land dedication or a cash-in-lieu payment. Private sector, affordable rental units are illegal. Permanently affordable units are to be constructed or provided at the same time as or prior to the market rate units.

What does “permanently affordable” mean?

Permanently affordable means a given unit has an ongoing resale restriction that is designed to keep the unit affordable, in perpetuity, to low income households. The exact terms of the resale restriction are contained in the covenant which is recorded against each property. Permanently affordable units must also be occupied by income eligible households.

Affordability and income eligibility are defined in terms of the Area Median Income (AMI). The AMI is a figure set by the Federal government each year, for Boulder, and is given in terms of household size. The Department of Housing and Urban Development (HUD) then defines “low income” for the city of Boulder as a percentage of the AMI. For example, the 2009 AMI for a household of three is \$78,300, while the HUD low income limit is approximately 71% of the AMI or \$55,350 for a three person household.

In terms of first quarter prices for the year 2009, the maximum allowable sale price for a 1,150 square foot, 2 bedroom, 2 bath attached unit would be approximately \$146,500; for a 1,200 square 3 bedroom, 2 bath detached unit the price would be approximately \$165,500. Smaller units result in lower prices; larger units or units with more bedrooms result in higher prices. Maximum allowable prices are calculated on a quarterly basis to take into account interest rate changes and coincide with the allocation process for RGMS. There is a separate sheet which details the allowable prices for the various sized permanently affordable units and this may also be found on the city's website. Please note that these are the maximum allowable sales price, not a guaranteed minimum price. Depending upon the market and desirability of a given permanently affordable unit, prices may need to be adjusted downward in order to successfully complete a sale.

Permanently Affordable Unit Minimum Sizes

In addition to the requirement that the total number of permanently affordable units be at least 20% of the total number of units in the development, there is a total square footage requirement for the permanently affordable units. Generally, the average size of permanently affordable units is to equal 80% of the average size of the market units, up to a maximum required average of 1,200 square feet for each permanently affordable unit.

Rental Projects

The City is prohibited by state statute from controlling the rents in private sector rental projects. The private sector developer of a rental project has all of the off-site options discussed below for fulfilling the inclusionary zoning requirement. Additionally, the private sector rental project developer could form a lawful non-profit corporation, the primary purpose of which is to provide affordable housing. The non-profit corporation must be found by the city to be an agency similar to that of the Housing Authority. In order to complete this option, the developer must sign a similar agency agreement, deed a small interest in the property to the City for the purpose of controlling the rents as well as sign the necessary deed restrictions to accomplish the permanent affordability of the units in question.

Off-Site Options

Developers of for-sale projects may provide up to half of the required permanently affordable units off-site. If a developer does not want to include at least half of the required permanently affordable for-sale units on-site, an application for an exemption to this requirement must be submitted. In order for this variance application to be considered, the applicant must demonstrate that providing less than half of the requirement as on-site permanently affordable units will result in at least 50% more permanently affordable units than required or that zoning, environmental or legal constraints prevent the provision of at least half of the required number of permanently affordable units on-site. There are three off-site options:

Existing Unit Dedication

Any existing units proposed to fulfill the inclusionary requirement are subject to inspection and must be generally equivalent to the new units that would have been built on-site. If accepted, a permanently affordable covenant is recorded against the property to secure its affordability.

Land Dedication

There are two possible approaches for determining an acceptable land dedication. One is to provide land that is equivalent in value to the calculated cash-in-lieu contribution, plus an additional 50% to cover transaction costs. The other is to provide land that is of equivalent value to the land of the original development and that is appropriately zoned to allow for at least the same number of units that would have otherwise been constructed on-site.

Cash-in-Lieu Contribution

In certain cases, money may be paid in lieu of providing a permanently affordable unit. For each *detached* market rate unit to be built, the 2009 cash-in-lieu amount is equal to the lesser of \$23,984.47 or \$99.94 multiplied by 20% of the total floor area of the market rate unit. For each *attached* market rate unit to be built, the 2009 cash-in-lieu amount is equal to the lesser of \$22,035.54 or \$91.81 multiplied by 20% of the total floor area of the market rate unit. These amounts apply to projects with four or less total units and to projects which meet at least half of the inclusionary zoning requirement with on-site permanently affordable units.

If a developer elects to pay the cash-in-lieu amount for more than half of the inclusionary zoning requirement and the total number of units in the project is five or greater, an application for an exemption to the on-site unit requirement must be submitted.

What About Small Projects?

Projects with four or less units may choose to provide one on- or off-site permanently affordable unit, dedicate land or pay a cash-in-lieu contribution as calculated above.

What if I Only Own One Lot?

There are three additional alternatives for single lot owners.

- 1) An owner of a single lot may have their inclusionary zoning obligation waived one time if all of the following conditions are met:
 - * The lot was created prior to October 5, 1995;
 - * The new unit will be the primary residence of the lot owner for at least one year following construction; and
 - * The floor area is limited to 1600 square feet in perpetuity.
- 2) The newly constructed unit could be dedicated as permanently affordable with subsequent owners meeting the requirements of that permanent affordability. In other words, the original owner of the single lot would not have to be income qualified but any subsequent owners would be and the maximum allowable sale price would be set by the city.
- 3) The single lot owner could defer payment of the calculated cash-in-lieu contribution until the subsequent transfer of the property. The amount to be paid at that time would be the original cash-in-lieu amount plus an adjustment that reflects the change in the median sale price for housing in the city of Boulder.

Variances That May Be Applied For

There are several variances to the general inclusionary requirements for which a developer or property owner may apply and which may or may not be granted at the discretion of the city manager. They are as follows:

Finished Floor Area Requirement

The floor area requirements set forth in the ordinance refer to finished, habitable floor area. Unfinished floor area may be substituted for finished floor area in a 2:1 ratio; a maximum of 250 square feet of finished floor area may be requested to be substituted in this manner.

Total Floor Area Requirement for the Project

A developer or property owner may request to build a lesser amount of total square footage than that required by the Inclusionary Zoning Ordinance if doing so would accomplish additional affordable housing benefits for the city.

On-Site Construction Requirement

Developers of for-sale projects are required to build at least 50% of the required permanently affordable units on-site. Developers may make a request to provide more than 50% of the required units off-site if doing so would result in 50% more permanently affordable housing than required or if zoning, environmental or legal restrictions make it impossible to provide at least 50% of the permanently affordable units on-site.

Rental Projects

Developers of rental projects may propose to satisfy their inclusionary requirement in ways not listed in the ordinance as long as such a proposal would result in additional affordable housing benefits to the city.

Construction Timing

Permanently affordable units are required to be constructed such that they are able to be marketed concurrently with the market-rate units. A developer may request an alternative phasing arrangement if doing so would result in additional affordable housing benefits for the community.

Other Considerations for Permanently Affordable Housing

Permanently affordable units are exempt from the RGMS. In projects with at least 35% of the units as permanently affordable, all the units in the project are exempt from RGMS. Permanently affordable units are exempt from paying the Housing Excise Tax and may be eligible for a waiver from the Development Excise Tax. Projects which wish to provide more than 20% of their units as permanently affordable or wish to make the required inclusionary units affordable to lower income households are eligible to apply for housing subsidy funds. These funds are distributed one time per year through the Housing and Human Services Department.