

TOWN OF ERIE
BOARD OF TRUSTEES
January 25, 2022

SUBJECT: Inclusionary housing overview

PURPOSE: A presentation to Trustees to review the process and schedule for the Town's inclusionary housing ordinance, typical elements of an inclusionary housing ordinance to help prepare for a future DOLA funding opportunity. Inclusionary Housing is one of the 2022 Work Plan elements.

DEPARTMENT: Planning & Development

PRESENTER: Paul Glasgow, AICP, Interim Director of Planning & Development

Board Action Requested:

Provide feedback to staff regarding the process, schedule for adopting an inclusionary housing ordinance, and provide comments and questions on the common elements of inclusionary housing. Provide or suggest any additional information that staff should consider.

Summary of Subject Matter:

The Town of Erie is one of the fastest-growing communities in the Front Range. Construction materials and labor are also at an all-time high, thereby increasing the cost of housing for new homeowners as well as for existing and future renters. Wages, on the other hand, have not kept paced with the cost of living. Housing is becoming less affordable over time.

The U.S. Department of Housing and Urban Development (HUD) defines affordable housing as "housing on which the occupant pays no more than 30% of gross income for housing costs including utilities." The term "cost-burdened" is a statistic the Census Bureau uses to define households that spend more than 30% of their income on housing.

In 2019 the average cost of a home in Erie was approximately \$468,000, which in rough calculations requires a household income of more than \$90,000 to avoid being cost-burdened. In 2019 the average rent in Erie was \$2,177 per month, requiring an even higher household income not to be considered cost-burdened.

Currently, statistics show that 18% of owner-occupied households in Erie and 49.8% of renters are cost-burdened. Today, approximately 2,500 people working in Erie cannot afford to buy a home in Erie. The Department of Local Affairs estimates that more than 3,100 people commute into Erie to work each day. As home prices rise, businesses will

struggle to retain or hire new employees. With a lack of transit options in and out of Erie, most commuters travel in single occupancy vehicles which has a side effect of adding to the greenhouse gas emissions in our region. Affordable housing can not only minimize the impact on the climate by reducing commuting trips, but also encourages a more inclusive community by allowing people of diverse incomes to live in Erie.

Background:

In 2000, the Town of Erie recognized the lack of affordability when it adopted the Comprehensive Plan. The Plan stated that the Town lacks affordable housing and starter homes and is seeing a rising cost of housing, effectively putting housing out of reach for many families, empty-nesters, and retirees. The situation hasn't improved in the 20+ years since the adoption of the Plan.

The Plan also identified actions to mitigate the lack of housing affordability. It recommended the development of an Inclusionary Housing Ordinance and encouraged participation in regional partnerships. In addition, the Plan recommended that the Town modify its Unified Development Code to allow:

- 1) Varied lot sizes (including small lots)
- 2) Varied lot configurations
- 3) Clustering
- 4) A mix of builders
- 5) Efficiency standards

Since 2000, the Town has taken on many of these recommendations. The Planning & Development Department has continued to refine the Unified Development Code to encourage a variety of lot sizes and configurations. In planned development and annexation negotiation, the Town staff has negotiated clustering of housing and small-lot configurations. The Board of Trustees recently approved an update to the building code to require more energy efficient homes and is reviewing significant modifications that would increase building efficiency. Staff plans to implement greener, more energy efficiency standards per the Board's 2022 Work Plan. Highly efficient homes, while more expensive to build, lower the cost of utilities in the long run. The Town has not yet adopted an Inclusionary Housing Ordinance.

In 2021, in collaboration with the Boulder County Regional Partnership, the Board of Trustees adopted Resolution 21-140 to expand access to affordable housing and set a goal that 12% of the housing stock be affordable to low-, moderate- and middle-income households by 2035. Low-income housing is considered a house affordable to households <50% of the average median income (AMI), moderate-income housing is considered housing affordable to those making between 50-80% AMI, housing units affordable between 80 and 120% AMI is regarded as middle income.

Inclusionary Housing Ordinances:

Inclusionary Housing Ordinances are a set of regulations that require some portion of new housing to be reserved or dedicated at below-market prices. Most municipalities attempt to provide housing for their workforce, and some also recognize regional housing needs. Income ranges included in the Ordinances vary substantially from city to city but range from 30% of the area median income to 120% of the area median income.

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In 2021, the Town's Economic Development department applied for and received a Planning Grant from DOLA authorized by Colorado House Bill 21-1721. The staff is currently revising a draft Housing Needs Assessment and Affordable Housing Strategy Request For Qualifications for a consulting company to help identify the extent of the affordable housing problem and develop the strategies required to address affordability in Erie. The selected consultant will create data-driven strategies sensitive to Erie's market and identify the population that needs housing assistance. It will inform us how to tailor elements of the Inclusionary Housing Ordinance to fit Erie's specific affordable housing needs. It will also identify the possible long-term impact of the Inclusionary Housing Ordinance on the Erie housing market. The Town is hoping to solicit bids in the next few weeks, with a project completion date of June 2022. Town staff also expects to have an Inclusionary Housing Ordinance ready for review by June 2022.

Adopting an Inclusionary Housing Ordinance with analysis funded by the DOLA grant, in addition to the development of two other housing strategies, will allow the Town to apply for a second DOLA-funded grant opportunity in 2022. This second funding opportunity, the Affordable Housing Incentives Program, can offer seed capital to an affordable housing fund that assists with affordable housing developments. A perpetual funding source like inclusionary housing is a prerequisite to apply for seed capital in the second DOLA grant.

Town staff has been reviewing other ordinances in neighboring municipalities and having discussions with the Boulder County Regional Housing Partnership, other jurisdiction's housing professionals (managers, regulators), and local housing developers to determine the elements of successful Inclusionary Housing Ordinances. Although it can be tempting to take an Inclusionary Housing Ordinance adopted in one jurisdiction and embrace it in another, that typically doesn't lead to desirable outcomes. Each municipality's market is different, and each Town has a unique municipal code to consider. Still, lessons can be gained by reviewing other regulations and seeing what worked well and what didn't. Attached to this memo are the Louisville, Boulder, and Vail Inclusionary Housing Ordinances for your consideration; some of their elements are not directly transferable to the Town of Erie.

The following list of inclusionary housing elements was created from reviewing several inclusionary housing ordinances and via staff discussions with housing professionals.

- 1) **Requirements** – The requirements of an Inclusionary Housing Ordinance stipulate the percent of inclusionary housing development needs to provide. For example,

Boulder requires 25%, Superior requires 15%, and Longmont and Louisville 12% affordable housing. The rapid pace of development in Erie can allow the Town to provide a substantial share of the affordable housing in Boulder County. Erie housing stock is slated to double by 2035. To hit the goal of 12% of Erie's housing to low-moderate- and middle-income stock by 2035, the Town may need a very high inclusionary housing percent like the percent required in Boulder. Vail requires a percentage of the inclusionary housing produced to be offered to employees, which can be helpful but may also limit the ability of developers to use capital stacks that include federal financing due to fair housing laws. Sometimes requirements apply to all development, but Longmont's does not apply when developing a single single-family home. Often, inclusionary housing requirements do not equally apply to rental and homeownership development ; rentals are often required to build units in the lower income ranges <60% or 70% AMIs while are often required in homeownership developments at the higher end 70-120% AMIs although there can be some overlap between the two approaches.

2) Options – Inclusionary housing ordinances also often include other options developers can choose to satisfy the requirements.

- a. **On-site** – On-site development is the most desired option for a Town and the primary tool in inclusionary housing. Sometimes the requirements include the income targets of the inclusionary housing ordinance, which often vary between ownership and rental developments. Boulder's Inclusionary Housing Ordinance requires homeownership to create 50% of their units on site but does not require rental units to develop on-site. Louisville encourages all development on site.

Generally, lower-tier units are created in the on-site program where middle-income units are developed via fee-in-lieu

- b. **Fee-in-lieu** – Inclusionary housing zoning allows a fee-in-lieu option, which is a fee paid to the Town if a developer chooses to opt out of the inclusionary housing requirement. Fee-in-lieu is often calculated as the amount it would cost to build an affordable unit, and others are structured at a lower rate than would not cover the cost of construction of but the gap it would cost to buy down market-rate units. Fee-in-lieu can be used to help offset the cost of administration.

For example, Boulder's fee-in-lieu [mythology](#) is simple to review and set yearly by City staff and is calculated at or near the amount it would cost to construct an affordable unit. Boulder's fee-in-lieu calculations create fee-in-lieu via ranges of square footage and is easy to game, e.g., developers can remove a few square feet to move from one range to another. Longmont's methodology, known as the Market-Affordability Gap approach, is set on a square footage dollar amount which fills the difference between the price a household at 80% of the AMI could affordable and the market price of for sale housing. It is based on an analysis of historical sales data. It is set to buy

down market-rate units. It is also easy for developers to game. Developers report different square footage based on a variety of calculation methods. Longmont's fee is not sufficient to cover the cost of constructing an affordable unit. And the compliance and administration of a per square foot fee-in-lieu methodology take significant staff time.

Keeping fee-in-lieu high can encourage more on-site development and promote affordable housing to develop more quickly even with fee-in-lieu. Still, a good understanding of the housing market that the RFQ described above will help Erie target and establish its fee-in-lieu mythology.

- c. **Land dedication** – Land dedications are generally evaluated on a case-by-case basis; usually, the land value should equate to the fee-in-lieu commitment required. Land dedications require appraisals and often entitlements and infrastructure (or surety to get that infrastructure in place) to construct affordable housing. Phase I environmental studies are necessary to ensure the site is suitable for residential development.
 - d. **Off-site development** – This option allows developers to select a different site to develop affordable housing. It can be helpful if another location is more beneficial to the Town. It often requires the units to match the neighborhood where the units are placed, hence can change the type of development. Louisville requires Board approval for off-site development. Most off-site development provisions require concurrent review and development between affordable and market-rate housing.
 - e. **Preservation** - Conversion of existing market-rate housing, either ownership or rental, can substitute for the development of an affordable unit if that market-rate unit is in good condition and location. This can be a strategy offered outside of the inclusionary housing ordinance for homeowners that wish to preserve their homes as affordable.
 - f. **Credits** – Credit programs can be challenging to administer, but they can also provide affordable unit credits for additional affordable units above and beyond inclusionary requirements. In Louisville, the City Manager keeps track of recognition, and they expire in five years if not used.
 - g. **Developer negotiated approach** – To encourage creativity, some ordinances allow developers to be creative and propose alternative methods. These can take significant time and require all parties to negotiate in good faith.
- 3) **Equity** – To fill the affordable housing gap, affordable housing programs target those in need and help provide equity between affordable and market-rate units.

- a. **Target Need** – Inclusionary housing ordinances can be targeted to local or local and regional needs. Targeting requires understanding economic, demographic, and housing trends in Erie and the surrounding area. The Housing Needs Assessment and Affordable Housing Strategy RFQ described above and attached to this agenda item will create that data.
- b. **Equality in Construction** – Often, affordable units are required to be as livable as market-rate units, unless there is a significant public benefit, i.e., permanently supportive housing, senior housing, where housing type variation can be required to meet that need.
- c. **Equal Access to Amenities** – All affordable units must be given equal access to amenities that the market-rate units have, e.g., pools, workout rooms, play equipment, parking, etc.
- d. **Equal Representation in HOAs** – Most require affordable units to be given equal “footing” in a homeowner’s association, one vote for one unit.
- e. **Marketing affordable Rentals** - Marketing for affordable units is often required before Certificate of Occupation (CO) as it takes more time for affordable owners or tenants to income qualify, etc.

4) Management –

- a. **Concierge** – Development is complex; adding inclusionary housing adds to that complexity. A staff person who can work with developers to help ensure that they achieve the program requirements will help ensure the Town produces development that conforms to the program. That oversight should start in planning and end at CO. Having affordable housing staff that helps walk developers through the process can also expedite development review.
- b. **Perpetual affordability** – Most programs now require all affordable units to remain affordable in perpetuity to the maximum extent allowed under state and federal programs. Boulder had a 20-year time frame with its original inclusionary housing ordinance; after 20 years, the owner could sell the property at market rate. This approach diminishes the overall supply of affordable housing in the long term.
- c. **Concurrency in certificates of occupancy** – Certificates of occupancy (CO) should be issued one-for-one, affordable for market rate to the greatest extent possible. COs issued first to an affordable unit, then market unit, next affordable, then market or in some other equivalent fashion. This helps ensure affordable units become available when the market rate units are available and avoids issues.

- d. **Fee-in-Lieu timing** – for development should satisfy inclusionary requirements such as fee-in-lieu before submitting for a building permit, with specific waiver criteria to allow the issuance of a building permit. Although some communities accept fee-in-lieu before a certificate of occupancy, this should be avoided. It isn't easy when residents cannot move in because the developer didn't pay fees-in-lieu.
- e. **Administrative Policies and procedures** - As the market and demographics change, the affordability gap and need also change, allowing the administration to set fee-in-lieu yearly but caps the percent it can grow in any year without Board approval. Boulder allows up to a 10% change yearly. It is ideal to create administrative and policy procedures to be managed administratively to the greatest extent acceptable to allow adjustments without ordinance revisions.
- f. **Trustee Reports** – Most ordinances require annual reports to the elected body to report progress. They also are times when the staff presents proposed modifications to the ordinance.

In closing I wanted to offer a few final notes:

First, some municipalities believe Inclusionary Housing Ordinances is the housing strategy; some communities think it will solve their affordable housing needs. That is not the case; an overall housing strategy that includes Inclusionary Housing as one tool of many tools is required. The Town should consider establishing public-private partnerships; it can benefit from a relationship with a housing authority that can negotiate for the Town or build affordable housing. It should often be developed with design exceptions and development incentives (through code modifications). Sometimes fee waivers that encourage waiving inclusionary housing requirements can help incentivize affordable housing. Longmont wanted more density and offered developments above specific densities to opt-out of inclusionary housing requirements. The Boulder County Regional Partnership Report attached details other affordable housing strategies communities can take.

Inclusionary housing programs also require staff, the City of Boulder's program has 16 FTEs. The Boulder County Regional Partnership is looking into developing some regional administration for compliance and program management. Still, they had not developed a clear strategy when this report was written, but the Town of Erie hopes to participate in the regional administration program.

Statutory Town Limitations?

Most-but not all-communities that have adopted inclusionary housing ordinances are Home Rule municipalities. The Town Attorney is reviewing what restrictions may apply to Erie as a statutory town.

Attachments:

1. DRAFT Town of Erie Housing Needs Assessment and Affordable Housing Strategy RFQ
2. Expanding Access to Diverse Housing for Our Community A Boulder County Regional Partnership Report
3. Example ordinances
 - a. Boulder Inclusionary housing ordinance
 - b. Louisville Inclusionary housing ordinance
 - c. Vail Inclusionary housing ordinance
4. Inclusionary Housing Creating and Maintaining Equitable Communities -Lincoln Institute