

ORDINANCE O-2023-

A BILL FOR AN ORDINANCE AMENDING SECTION 15.05.220 OF THE LONGMONT
MUNICIPAL CODE ON INCLUSIONARY HOUSING

THE COUNCIL OF THE CITY OF LONGMONT, COLORADO, ORDAINS:

Section 1

In this ordinance, ellipses indicate material not reproduced as the Council intends to leave that material in effect as it now reads.

Section 2

The Council amends section 15.05.220 D. 2 of the Longmont Municipal Code, by adding italicized material and deleting stricken material, to read as follows:

2. For rent. Developments of units for rental may satisfy the requirements of this section using any of the options listed in subsection E of this section, ~~except the on-site or off-site location options described in subsections E.1 and 3 of this section, but including the alternative agreement option in subsection E.6 of this section.~~

Section 3

The Council amends section 15.05.220 E of the Longmont Municipal Code, by adding italicized material and deleting stricken material, to read as follows:

1. On-site location. The developer or builder may satisfy its obligations under this section by providing affordable housing at the same location as market-rate units.

...

b. Phasing. Phasing of construction of affordable units and securities for each phase shall be detailed in an affordable housing agreement approved by the ~~community services director~~ *city manager or designee* under the same standards and procedures as a public improvement agreement.

• • •

2. **Fee in lieu.** A developer may pay a fee in lieu of providing affordable units.

a. Amount. The council finds that Inclusionary Housing Fee in Lieu Methodology for the City of Longmont, ~~dated November 30, 2018,~~ reasonably calculates the impact to the city, including the city's finances and the welfare of the city's residents, of market-rate dwelling units being developed in the city.

~~Accordingly, the fee in lieu is set initially at \$7.90 per square foot of finished market rate for sale housing, and \$1.90 per square foot of finished market rate rental housing. The fee in lieu of providing any required fraction of a unit shall be~~

based on its proportional share (fractional quantity divided by total number of units required) of the amount of fee in lieu that would be required for the whole development. The *city manager or designee*~~community services director~~ shall recalculate the fee in lieu every three years and present the recalculation to the council.

b. Timing of payment. A developer or builder shall pay the fee in lieu for each ~~market rate~~ unit as a prerequisite for receiving the certificate of occupancy for that unit. The fee paid shall be the fee in effect at the time of the final plat or site plan for the development, whichever is later.

• • •

d. Conversion of rental developments to ownership dwelling units. A rental development may be converted to a for sale development from time to time. If the inclusionary housing requirement for a rental development was satisfied with a fee in lieu contribution and the rental development is converted to a for-sale development within five years of the issuance of a final certificate of occupancy, the property owner shall pay the city the difference between the fee in lieu amount paid and the amount that would have been due at the time of the final plat or site plan for a for-sale development. An owner of a rental development shall enter into an agreement with the city, acting by and through its *city manager or designee*~~community services director~~, where the form of such agreement is approved by the *city manager or designee*~~community services director~~, agreeing to pay the difference between the rental fee in lieu and the for-sale fee in lieu if the rental development, or any unit therein, is converted to for-sale in the five-year period. The agreement shall indicate the difference between the fee in lieu amount owed upon conversion to a for-sale unit during the five-year term. No additional fee in lieu shall be required if such conversion occurs after the expiration of the five-year term.

3. Off-site location. A developer or builder may seek to provide affordable units within the city in a different location than the development of the market-rate units.

• • •

c. New or existing housing. Existing homes may be acquired and deed restricted as affordable if they are in good repair in the determination of the *city*

1 *manager or designee* ~~community services director~~ based on an inspection paid for
2 by the developer but commissioned by the city, carry a warranty of sufficient scope
3 and duration to protect the resident from significant preexisting deficiencies, and
4 are not already burdened by restrictions requiring them to be kept affordable or
5 restrictions similar in effect.

6 . . .

7 6. Voluntary alternative agreement. A developer may propose an alternative
8 manner in which the development will satisfy its obligations under this section.
9 Such an agreement need not meet the otherwise applicable substantive
10 requirements of this section, but must be approved by the city council under the
11 provisions of subsection K.2 of this section. ~~Specifically, developers of rental~~
12 ~~housing may voluntarily agree to limit rent on a property or unit and accept deed~~
13 ~~restrictions to that effect in order to designate the units as affordable, rather than~~
14 ~~pay the fee in lieu or dedicate land. Also, t~~The agreement may facilitate the
15 construction of lower-priced affordable homes as follows:

16 . . .

17 Section 4

18 The Council amends section 15.05.220 F of the Longmont Municipal Code, by adding
19 italicized material and deleting stricken material, to read as follows:

20 F. Middle-tier housing. Prior to issuance of building permits, a developer or
21 builder may enter an agreement with the city, acting by and through ~~its community~~
22 ~~services director~~*the city manager or designee*, where the form of such agreement is
23 approved by the *city manager or designee*~~community services director~~, providing

1 that the development may include less affordable housing than this section would
2 otherwise require, due to the developer's commitment to provide middle-tier
3 housing. The agreement shall provide as follows:

4 1. ~~No obligation shall arise under this section to satisfy any affordable~~
5 ~~housing~~The requirements for any units sold for occupancy at a price affordable
6 between 80.1 percent and 100 percent of the area median income *shall be reduced*
7 *to 55 percent of the otherwise applicable requirement.*

8 2. The requirements for any units sold for occupancy at a price affordable
9 between 100.1 percent and 110 percent of the area median income shall be reduced
10 to ~~40-70~~ percent of the otherwise applicable requirement.

11 3. The requirements for any units sold for occupancy at a price affordable
12 between 110.1 percent and 120 percent of the area median income shall be reduced
13 to ~~80-90~~ percent of the otherwise applicable requirement.

14 4. *For-sale units sold for occupancy at a price that exceeds the median sales*
15 *price in the city of Longmont for a given unit type, as published by the City of*
16 *Longmont, shall be precluded from the otherwise applicable reductions in*
17 *subsections F.1 through F.3.*

18 45. The developer or builder shall state the price tiers for which the homes will
19 qualify.

20 56. The developer or builder shall use best efforts to ensure that the initial owner
21 or owners of each such individual home shall have a bona fide intent to occupy the
22 premises, and shall provide documentation thereof.

67. In order to receive building permits for such middle-tier homes, the developer or builder shall confirm in writing to the ~~community services director~~*city manager or designee*, in the form provided by the ~~community services director~~*city manager or designee*, that each home will sell for a price within the applicable range described in the agreement. In order to receive a certificate of occupancy for such a middle-tier home, the developer or builder shall produce proof, to the satisfaction of the ~~community services director~~*city manager or designee*, that the home will actually sell for a price within that applicable range. Promptly upon sale of the home, the developer or builder shall provide proof, to the satisfaction of the ~~community services director~~*city manager or designee*, that the home did actually sell for a price within the applicable range.

78. Middle-tier true-up. Where a developer or builder sells some of such middle-tier homes for more than the designated tier, and the development's obligations under this section increase as a result, the developer or builder may still receive approvals for such homes, including certificates of occupancy, by paying to the city the amount of the fee in lieu for the difference.

Section 5

The Council amends section 15.05.220 G of the Longmont Municipal Code, by adding italicized material and deleting stricken material, to read as follows:

G. Deed restrictions. All required affordable housing shall carry deed restrictions and covenants in the form set by the *city manager or designee*~~community services director~~.

...

2. Content. The deed restrictions shall contain all terms determined by the *city manager or designee* ~~community services director~~ to be appropriate to ensure the affordability of the unit and compliance with this section.

...

5. Sale.

a. Ownership covenants. Ownership covenants shall allow sale to another homeowner qualifying under subsection H of this section. These covenants shall allow for appreciation of the home at a rate determined based on changes in the area median income, plus an allowance for the value of capital improvements to the home installed by the owner. The rate may be capped so as to ensure the continued affordability of a unit to a new purchaser, to ensure that unit price does not fall unreasonably below the level at which a unit would be considered affordable, and to facilitate the economically practical sale of a unit once its owner's income increases sufficiently for the owner to afford a market-rate unit. The seller of the home shall charge to the buyer no other special or unusual fees, including any finder's fee. The council may consider allowing an owner of an affordable unit to sell to a buyer who does not meet the qualifications of subsection H of this section in exceptional circumstances involving significant disruption to the local economy or individual financial hardship. In exchange, the owner would transfer equity to the city at that time. The *city manager or designee* ~~community services director~~ may specify in the deed restriction the amount of such equity. The amount shall be revised upon each sale of the affordable unit, and shall be based on the difference

1 between the most recent affordable sales price and the estimated market price of
2 the unit at the time of most recent sale.

3 b. Rental covenants. The *city manager or designee*~~community services~~
4 ~~director~~ may release and discharge a rental covenant after 30 years' duration,
5 allowing sale or rental of the property to people who do not qualify under
6 subsection H of this section, so long as the owner of the units seeking the removal
7 of the deed restriction pays to the city at that time, for each deed-restricted
8 affordable rental unit, the amount of the difference between the value of the unit
9 with and without the deed restriction, as calculated by the *city manager or*
10 *designee*~~community services director~~ based on reasonable market data collection
11 or projections. If an arm's-length sale of the property accompanies the termination,
12 the units shall be valued proportionally to the value at which the property is priced
13 in the sale, so long as the *city manager or designee* ~~director~~ determines that
14 valuation to be a reasonable market price.

15 Section 6

16 The Council amends section 15.05.220 H of the Longmont Municipal Code, by adding
17 italicized material and deleting stricken material, to read as follows:

18 H. Income qualification and local live/work preference. Affordable units may
19 be sold or rented only to a person selected by the *city manager or designee*
20 ~~community services director~~ who meets the city's qualifications. Such
21 qualifications shall be based on the person's income and assets and shall be intended
22 to ensure that only those who require affordable housing shall be eligible. In
23 selecting particular qualified applicants for particular affordable units, the *city*

1 *manager or designee* ~~community services director~~ shall consider applicants'
2 household size compared to the size of available affordable units. If more qualified
3 applicants of the appropriate household size request housing in an affordable unit
4 than there are affordable units available, the *city manager or designee* ~~community~~
5 ~~services director~~ shall give priority to applicants who prove their residency or
6 employment within the city to the satisfaction of the *city manager or*
7 *designee* ~~community services director~~. If applicants are equally so prioritized, the
8 *city manager or designee* ~~community services director~~ may select among the
9 applicants by lottery.

10 Section 7

11 The Council amends section 15.05.220 I of the Longmont Municipal Code, by adding
12 italicized material and deleting stricken material, to read as follows:

13 I. Restriction on rental of for-sale units. No owner of a for-sale affordable unit
14 may fail to continuously occupy the unit as a primary residence, or lease or rent out
15 the unit to any person. The *city manager or designee* ~~community services director~~
16 may grant an exception to this restriction if the owner proves to the satisfaction of
17 the *city manager or designee* ~~community services director~~ that the lease or rental is
18 directly necessitated by a bona fide hardship, the property has no outstanding down
19 payment assistance loan from the city, and the lessee or renter will be a person
20 approved by the *city manager or designee* ~~community services director~~ as meeting
21 the qualifications of a purchaser of an affordable unit under subsection H of this
22 section. The owner must notify the *city manager or designee* ~~community services~~
23 ~~director~~ at least 90 days prior to leasing or renting out the unit, to give the *city*

~~community services director~~adequate time to consider the proposed exception.

Section 8

The Council amends section 15.05.220 K of the Longmont Municipal Code, by adding italicized material and deleting stricken material, to read as follows:

1. Administrative approval.

a. ~~For-sale-off-site. For-sale-~~On-site. ~~D~~developments which opt to satisfy this section by producing all required affordable for-sale units on-site under subsection E.1 of this section, may memorialize their commitments on the plat or site plan without requiring council approval.

...

4. The *city manager or designee* ~~community services director~~ shall recommend approval or denial of each proposal before the council.

Section 9

The Council amends section 15.05.220 L of the Longmont Municipal Code, by adding italicized material and deleting stricken material, to read as follows:

L. Credits for excess affordable housing.

1. Award of credit.

a. By agreement. At the time of plat or site plan, a developer may enter into an agreement with the city, acting by and through the *city manager or designee*~~community services director~~, and in a form acceptable to the *city manager or designee*~~community services director~~, to memorialize that the developer shall

1 develop more affordable housing than would otherwise be required under this
2 section.

3 . . .

4 c. Exceptions. No credit shall be available for any affordable housing built on
5 land donated or sold at a significant discount for the purpose of developing
6 affordable housing in satisfaction of this section or any prior affordable housing
7 requirements of the city; or for any affordable housing receiving any *federal, state,*
8 *or local subsidies* ~~city funded or city administered assistance~~ whether financial
9 subsidy, tax relief or other credits or incentives from the city under chapter 4.79.
10 However, a development's use of a loan from the U.S. Department of Housing and
11 Urban Development shall not disqualify its affordable housing from generating a
12 credit.

13 . . .

14 2. Redemption of credit. The credit may be redeemed to offset an equivalent
15 number of affordable housing units that would otherwise be required under this
16 section. Such credit shall be freely transferable to any other developer but shall be
17 transferred in a manner acceptable to the *city manager or designee* ~~community~~
18 ~~services director~~ so as to ensure accurate tracking of the transfer of credits by the
19 city. A credit shall expire five years after it is awarded unless, within that time, the
20 city executes an agreement with the holder of the credit to apply the credit to a
21 specified development. Before the credit expires, the *city manager or designee*
22 ~~community services director~~ may, upon request, in writing, and for good cause,
23 extend the term of the credit by one additional term of two years.

1 Section 10

2 The Council amends section 15.05.220 N of the Longmont Municipal Code, by adding
3 italicized material and deleting stricken material, to read as follows:

4 N. Violation. It shall be unlawful and a violation of this development code for
5 any person to violate any provision of this section, any rule or regulation adopted
6 by the *city manager or designee* ~~community services director~~ under this section,
7 any agreement executed as described in this section, or any deed restriction
8 recorded as described in this section.

9 Section 11

10 The Council amends section 15.05.220 O of the Longmont Municipal Code, by adding
11 italicized material and deleting stricken material, to read as follows:

12 O. Rules and regulations. The *city manager or designee* ~~community services~~
13 ~~director~~ may propose such reasonable rules and regulations as may be necessary for
14 the purpose of administering, interpreting, or enforcing the provisions of this
15 section. The rules and regulations shall be reviewed by the city attorney's office and
16 then adopted by the city manager. Notice of adopted rules shall be published in a
17 newspaper of general circulation in the city.

18 Section 13

19 The Council amends section 15.05.220 P.1 of the Longmont Municipal Code, by adding
20 italicized material and deleting stricken material, to read as follows:

21 1. Appeal of decisions of the *city manager's designee* ~~community services~~
22 ~~director~~.

a. To the city manager. A developer or builder may appeal to the city manager, under the procedures listed in chapter 2.98, any action, decision, refusal, denial, or order by the *city manager's designee* ~~community services director~~ that finally disposes of a request or application under this section. The city manager shall reverse the decision of the *city manager's designee* ~~community services director~~ upon finding that the decision misapplied or misinterpreted this section.

. . .

Section 4

To the extent only that they conflict with this ordinance, the Council repeals any conflicting ordinances or parts of ordinances. The provisions of this ordinance are severable, and invalidity of any part shall not affect the validity or effectiveness of the rest of this ordinance.

Introduced this _____ day of _____, 2023.

Passed and adopted this _____ day of _____, 2023.

MAYOR

ATTEST:

CITY CLERK

NOTICE: THE COUNCIL WILL HOLD A PUBLIC HEARING ON THIS ORDINANCE AT 7:00 P.M. ON THE _____ DAY OF _____, 2023, AT THE LONGMONT CITY COUNCIL MEETING.

1 APPROVED AS TO FORM:

2
3
4
5 _____
6 ASSISTANT CITY ATTORNEY

_____ DATE

7
8
9 _____
10 PROOFREAD

_____ DATE

11
12 APPROVED AS TO FORM AND SUBSTANCE:

13
14
15 _____
16 ORIGINATING DEPARTMENT

_____ DATE

17
18 CA File: 23-002545