

1 3. Less expensive market-rate housing (middle-tier housing) generally has less
2 of an impact than larger market-rate housing, provides housing for an additional
3 segment of the population that is critical to the city’s workforce and economy, and
4 would be less likely to be developed were it to be required to include an affordable
5 housing component. The requirements of this section should therefore apply to
6 market-rate housing in a graduated manner.

7 4. The development of accessory dwelling units has only a de minimis impact
8 on land supply and the overall social, economic, and environmental health of the
9 city, and need not be included within the requirements of this section.

10 B. Applicability. This section applies to all developments except accessory
11 dwelling units.

12 C. Transitional provision—applicability by date. This section shall apply only
13 to any development receiving approval of a final plat, site plan, PUD plan, overall
14 development plan, or other similar planning approval after the enactment of this
15 section. For development of one single-family detached dwelling unit on a single
16 lot platted prior to the adoption of this section, this development code does not
17 require a subdivision plat, because no subdivision will occur, nor a site plan. See
18 § 15.02.070.C.2.

19 D. Requirements by unit type.

20 1. For sale. Developments of units for sale may satisfy the requirements of
21 this section using any of the options listed in subsection E, below.

22 2. For rent. Developments of units for rental may satisfy the requirements of
23 this section using any of the options listed in subsection E, below, except the on-

1 site or off-site location options described in paragraphs E(1) and (3), but including
2 the alternative agreement option in paragraph E(6).

3 3. Live/work. Live/work units shall be considered residential development for
4 the purposes of this section. However, for market-rate live/work units, only 80
5 percent of the unit shall be considered market-rate housing.

6 E. Options to satisfy requirements.

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

10 a. Quantity and design. At least 12 percent of the dwelling units in the
11 development shall be affordable.

12 b. Phasing. Phasing of construction of affordable units and securities for each
13 phase shall be detailed in an affordable housing agreement approved by the
14 community services director under the same standards and procedures as a public
15 improvement agreement.

16 c. Affordable units shall have equal access as market-rate units to all amenities
17 within the development, including but not limited to common areas, indoor and
18 outdoor facilities for convenience or recreation, and parking facilities.

19 d. Homeowner associations. Affordable units must be placed on a fair and
20 equal footing as market-rate units within the governing documents of any
21 homeowner association or similar entity.

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

1 a. Amount. The council finds that Inclusionary Housing Fee in Lieu
2 Methodology for the City of Longmont, dated November 30, 2018, reasonably
3 calculates the impact to the city, including the city's finances and the welfare of the
4 city's residents, of market-rate dwelling units being developed in the city.
5 Accordingly, the fee in lieu is set initially at \$7.90 per square foot of finished
6 market-rate for-sale housing, and \$1.90 per square foot of finished market-rate
7 rental housing. The fee in lieu of providing any required fraction of a unit shall be
8 based on its proportional share (fractional quantity divided by total number of units
9 required) of the amount of fee in lieu that would be required for the whole
10 development. The community services director shall recalculate the fee in lieu
11 every three years and present the recalculation to the council.

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

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

19 a. Quantity required. The developer or builder shall provide no less quantity
20 of affordable housing than would have been required on-site.

21 b. Location restrictions. The affordable units may not be located in a low to
22 moderate income area as designated by the U.S. Department of Housing and Urban
23 Development, unless an exception is granted under subsection K(3).

1 c. New or existing housing. Existing homes may be acquired and deed
2 restricted as affordable if they are in good repair in the determination of the
3 community services director based on an inspection paid for by the developer but
4 commissioned by the city, carry a warranty of sufficient scope and duration to
5 protect the resident from significant preexisting deficiencies, and are not already
6 burdened by restrictions requiring them to be kept affordable or restrictions similar
7 in effect.

8 d. Timing of off-site construction. No final plat or site plan shall be executed
9 for the location of the market-rate units until a final plat sufficient to facilitate the
10 development of the affordable units, and site plan if necessary, have been recorded.
11 Phasing and security shall be governed in the same manner as on-site locations as
12 described in paragraph (1)(b). The affordable housing agreement shall run with the
13 land and shall be recorded against the off-site location.

14 e. Approval of the use of this option does not guarantee approval of any land
15 use application or building permit for the off-site location. The developer risks
16 forfeiture of security if unable to build the off-site units as proposed.

17 4. Land dedication. A developer may seek to provide land to the city in lieu
18 of the development of affordable units. Dedicated land must meet the following
19 standards:

20 a. All off-site infrastructure necessary or proper for the development of the
21 land as affordable housing either: (i) must already be in place, and any outstanding
22 obligations paid to neighboring landowners for public infrastructure they installed,
23 (ii) the developer must agree to build the infrastructure within a time frame that will

1 not delay the development of the affordable housing and the developer may be
2 required to post securities for the infrastructure via a public improvement
3 agreement, or (iii) the land donation must be accompanied with additional
4 compensation to the city sufficient to construct such infrastructure.

5 b. The land must be able to support at least the quantity of affordable housing
6 as would be required on-site, without the need for a variance, modification,
7 rezoning, or reliance on any incentive for affordable housing found in this code,
8 such as a density or height bonus. The developer shall submit a concept plan
9 illustrating how it complies.

10 c. The land must not be encumbered in any manner including, but not limited
11 to, any lien, outstanding tax or fee accrued, or floodplain, which in any way
12 jeopardizes the city's ability to develop that quantity of housing.

13 d. The land may not be located in a low to moderate income area as designated
14 by the U.S. Department of Housing and Urban Development, unless an exception
15 is granted under subsection K(3).

16 e. The land must be dedicated to the city at the time of execution of the plat or
17 plan allowing the development of the market-rate units.

18 f. The developer and the owner of the land shall comply with all
19 environmental site assessment provisions of section 15.02.140 applicable to
20 dedications via plats or site plans, and associated development.

21 g. The land dedication must be in fee simple and by general warranty deed.

22 5. Redemption of credits. A developer may acquire, and redeem with the city,
23 credits generated as described in subsection L below, from the prior development

1 of affordable housing, to offset an equivalent quantity of required affordable
2 housing.

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

12 a. The agreement may provide that the home price of a for-sale unit would be
13 affordable at or below 60.0 percent of the area median income.

14 b. For rental housing, the agreement may provide that the monthly rental price
15 would be affordable at or below 40.0 percent of the area median income.

16 c. Under subparagraphs (a)-(b) above, the obligations otherwise applicable
17 under this section may be reduced up to 25 percent.

18 d. Subparagraphs (a)-(c) above may apply to on-site and off-site affordable
19 housing as well as land donations.

20 7. Combination. A developer or builder may pursue any combination of the
21 allowable options in this subsection.

22 F. Middle-tier housing. Prior to issuance of building permits, a developer or
23 builder may enter an agreement with the city, acting by and through its

1 community services director, where the form of such agreement is approved by
2 the community services director, providing that the development may include less
3 affordable housing than this section would otherwise require, due to the
4 developer's commitment to provide middle-tier housing. The agreement shall
5 provide as follows:

6 1. No obligation shall arise under this section to satisfy any affordable housing
7 requirement for any unit sold for occupancy at a price affordable between 80.1
8 percent and 100.0 percent of the area median income.

9 2. The requirements for any units sold for occupancy at a price affordable
10 between 100.1 percent and 110.0 percent of the area median income shall be
11 reduced to forty percent of the otherwise applicable requirement.

12 3. The requirements for any units sold for occupancy at a price affordable
13 between 110.1 percent and 120.0 percent of the area median income shall be
14 reduced to eighty percent of the otherwise applicable requirement.

15 4. The developer or builder shall state the price tiers for which the homes will
16 qualify.

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

20 6. In order to receive building permits for such middle-tier homes, the
21 developer or builder shall confirm in writing to the community services director, in
22 the form provided by the community services director, that each home will sell for
23 a price within the applicable range described in the agreement. In order to receive

1 a certificate of occupancy for such a middle-tier home, the developer or builder
2 shall produce proof, to the satisfaction of the community services director, that the
3 home will actually sell for a price within that applicable range. Promptly upon sale
4 of the home, the developer or builder shall provide proof, to the satisfaction of the
5 community services director, that the home did actually sell for a price within the
6 applicable range.

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

12 G. Deed restrictions. All required affordable housing shall carry deed
13 restrictions and covenants in the form set by the community services director.

14 1. When required.

15 a. Ownership covenant. Deed restrictions shall be required for each affordable
16 for-sale unit at the time the unit passes to a qualifying owner.

17 b. Rental covenant. Deed restrictions for affordable rental units shall be
18 required prior to issuance of the first certificate of occupancy for any rental unit in
19 the development.

20 2. Content. The deed restrictions shall contain all terms determined by the
21 community services director to be appropriate to ensure the affordability of the unit
22 and compliance with this section.

1 3. Deed of trust. The deed restrictions shall be secured by a deed of trust on
2 the property, which may be subrogated to other deeds of trust on the property.

3 4. Term. All ownership and rental covenants shall be perpetual or virtually
4 so; they shall require affordability of the affected unit for the greatest duration
5 allowed by law.

6 5. Sale.

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

1 between the initial sale price and the estimated market price of the unit at the time
2 of initial sale.

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

14 H. Income qualification and local live/work preference. Affordable units may
15 be sold or rented only to a person selected by the community services director who
16 meets the city's qualifications. Such qualifications shall be based on the person's
17 income and assets, and shall be intended to ensure that only those who require
18 affordable housing shall be eligible. In selecting particular qualified applicants for
19 particular affordable units, the community services director shall consider
20 applicants' household size compared to the size of available affordable units. If
21 more qualified applicants of the appropriate household size request housing in an
22 affordable unit than there are affordable units available, the community services
23 director shall give priority to applicants who prove their residency or employment

1 within Longmont to the satisfaction of the community services director. If
2 applicants are equally so prioritized, the community services director may select
3 among the applicants by lottery.

4 I. Restriction on rental of for-sale units. No owner of a for-sale affordable
5 unit may fail to continuously occupy the unit as a primary residence, or lease or
6 rent out the unit to any person. The community services director may grant an
7 exception to this restriction if the owner proves to the satisfaction of the community
8 services director that the lease or rental is directly necessitated by a bona fide
9 hardship, the property has no outstanding down payment assistance loan from the
10 city, and the lessee or renter will be a person approved by the community services
11 director as meeting the qualifications of a purchaser of an affordable unit under
12 subsection H, above. The owner must notify the community services director at
13 least 90 days prior to leasing or renting out the unit, to give the community services
14 director adequate time to consider the proposed exception.

15 J. All revenues accruing to the city under this section shall be placed in the
16 affordable housing fund established in chapter 4.99.

17 K. Approval process.

18 1. Administrative approval.

19 a. For-sale on-site. For-sale developments which opt to satisfy this section by
20 producing all required affordable for-sale units on-site under subsection E(1) may
21 memorialize their commitments on the plat or site plan without requiring council
22 approval.

1 b. Fee in lieu. Developments which opt to satisfy this section by paying the
2 fee in lieu, as described in subsection E(2), may do so without requiring council
3 approval.

4 2. Other options – approval by city council. Developments seeking to use
5 other options in subsection E must seek approval of their proposed use of such
6 options from the city council. The council’s decision on such proposals is
7 discretionary and legislative. The council will consider whether the proposal will
8 result in more affordable housing, providing more of a benefit to the city, than
9 would the provision of the affordable units on-site under subsection E(1), whether
10 practical difficulties prevent the inclusion of the affordable units on-site under
11 subsection E(1), whether the proposal would better benefit the inhabitants of the
12 city than requiring the provision of affordable housing on-site, or any other factors
13 that may be relevant to these considerations. Any such decision of the council shall
14 supersede any limitation on development of affordable housing found in section
15 15.04.030(A)(2)(b)(ii), (c), or (d).

16 3. Exception to restrictions on placement of affordable housing in low to
17 moderate income areas. The council may, in its discretion and as a legislative act,
18 grant an exception to the restrictions of subsections E(3) and E(4) on provision of
19 off-site affordable housing and land dedication within low to moderate income
20 areas. The council will generally consider whether the placement of the required
21 affordable housing in such areas would result in clustering of low-income housing
22 in a way that would negatively impact the inhabitants of the area, the surrounding

1 community, or the city as a whole, and whether positive elements of redevelopment
2 or investment in the area outweigh any potential negative impacts.

3 4. The community services director shall recommend approval or denial of
4 each proposal before the council.

5 L. Credits for excess affordable housing.

6 1. Award of credit.

7 a. By agreement. At the time of plat or site plan, a developer may enter into
8 an agreement with the city, acting by and through the community services director,
9 and in a form acceptable to the community services director, to memorialize that
10 the developer shall develop more affordable housing than would otherwise be
11 required under this section.

12 b. Certificate of credit. Provided that such housing is actually developed and
13 a certificate of occupancy issued, the city shall award the developer a credit for the
14 excess number of units provided.

15 c. Exceptions. No credit shall be available for any affordable housing built on
16 land donated or sold at a significant discount, for the purpose of developing
17 affordable housing, in satisfaction of this section or any prior affordable housing
18 requirements of the city; or for any affordable housing receiving any city-funded or
19 city-administered assistance whether financial subsidy, tax relief or other credits or
20 incentives from the city under chapter 4.79 of this code. However, a development's
21 use of a loan from the U.S. Department of Housing and Urban Development shall
22 not disqualify its affordable housing from generating a credit.

1 d. Applicable regardless of nonmonetary development code incentives.
2 Affordable housing receiving land use incentives under this development code shall
3 not thereby be rendered ineligible for a credit. As an exception to any otherwise
4 applicable provision of this development code, such excess affordable housing shall
5 not be excluded from such land use incentives by virtue of a developer's
6 determination to seek a credit rather than to enter an agreement with the city for
7 monetary incentives under chapter 4.79.

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

18 M. Marketing and sale of units. Rules and regulations under subsection O,
19 below, may address marketing and sale of units to ensure that the community has
20 sufficient notice of available affordable housing.

21 N. It shall be unlawful and a violation of this development code for any person
22 to violate any provision of this section, any rule or regulation adopted by the
23 community services director under this section, any agreement executed as

1 described in this section, or any deed restriction recorded as described in this
2 section.

3 O. Rules and regulations. The community services director may propose such
4 reasonable rules and regulations as may be necessary for the purpose of
5 administering, interpreting, or enforcing the provisions of this section. The rules
6 and regulations shall be reviewed by the city attorney's office and then adopted by
7 the city manager. Notice of adopted rules shall be published in a newspaper of
8 general circulation in the city.

9 P. Appeal. The general appeal provisions of section 15.02.040(K) shall not
10 apply to this section, except as noted below, and no variances, modifications, or
11 other deviations from the requirements of this section shall proceed under this
12 development code. Appeals shall instead be permitted as follows:

13 1. Appeal of decisions of the community services director.

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

20 b. To the city council. A developer or builder who receives an unfavorable
21 written decision from the city manager on appeal may then appeal the matter to the
22 city council by filing a notice of appeal as described in 15.02.040(K)(6) within
23 seven days from the date of the city manager's decision. The council shall hear and

1 decide on the appeal generally under the procedures detailed in section
2 15.02.040(K)(10), (11)(a)-(c), and (12). The council shall reverse the decision of
3 the city manager upon finding that the decision misapplied or misinterpreted this
4 section.

5 2. Appeal of adoption of rules and regulations. Any rule or regulation
6 promulgated under subsection O may be appealed to the city council within 28 days
7 of publication of adoption, by filing a notice of appeal as described in
8 15.02.040(K)(6). The council shall hear and decide on the appeal generally under
9 the procedures detailed in section 15.02.040(K)(10), (11)(a)-(c), and (12). The
10 council shall reverse any rule or any part of any rule upon finding that the decision
11 misapplied or misinterpreted this section, and may then remand any matters to the
12 city staff for further rulemaking. Any rules or parts of rules not specifically
13 reversed shall be final.

14 Section 3

15 The Council amends section 4.79.020 of the Longmont Municipal Code, by adding
16 italicized material and deleting stricken material, to read as follows:

17 4.79.020. - Fees eligible for reduction or subsidy.

18 A. The following fees shall be eligible for reduction or subsidy under this chapter:

19 ...

20 15. ~~Public-Recreation~~ buildings ~~community investment impact~~ fees;

21 16. Transportation ~~community investment impact~~ fees ~~for arterial streets~~;

22 ...

23 18. Water meter installation fee; ~~and~~

1 Affordable housing

2 Affordable owner housing and affordable rental housing, as defined below:

3 Affordable master lease. A lease between the owner of a rental housing project and
4 a non-profit entity for one or a number of affordable rental units which provides
5 that the master lessee may sublease the unit or units as affordable rental housing.

6 Affordable owner housing. A dwelling unit sold for occupancy to a homeowner
7 whose income is 80.0 percent or less of the ~~current median family area median~~
8 ~~income by family size for the Boulder Longmont area, as determined and set by the~~
9 ~~U.S. Department of Housing and Urban Development, as updated annually, and~~
10 ~~sold for a specific sales price. The sales price shall be determined by a formula and~~
11 ~~sold that shall be approved by the city council so as to be affordable at or below~~
12 ~~80.0 percent of the area median income., and shall be updated annually by the~~
13 ~~Longmont Community Development Block Grants (CDBG) Coordinator based on~~
14 ~~HUD median income updates. The income limits and sales prices shall be updated~~
15 ~~annually as soon as HUD releases the median income updates and shall be made~~
16 ~~available to the public immediately thereafter by inclusion in the city's affordable~~
17 ~~housing program guidelines and information and through the city's CDBG office,~~
18 ~~planning division and building inspection division.~~

19 Affordable rental housing. A dwelling unit for occupancy by a tenant whose income
20 is 560.0 percent or less of the ~~current median family area median~~ income ~~by family~~
21 ~~size for the Boulder Longmont area, as determined and set by the U.S. Department~~
22 ~~of Housing and Urban Development, as updated annually,~~ where monthly rental
23 prices ~~, including utilities paid by the tenant, do not exceed those determined and~~

1 ~~set by the Colorado Housing and Finance Authority, as updated annually, and that~~
2 ~~are affordable at or below 560.0 percent of the area median income by number of~~
3 ~~bedrooms in the rental unit. The income limits and applicable rents shall be~~
4 ~~reviewed and updated annually as soon as HUD releases the median income~~
5 ~~updates and shall be made available to the public immediately thereafter by~~
6 ~~inclusion in the city's affordable housing program guidelines and information and~~
7 ~~through the city's CDBG office, planning division and building inspection division.~~

8 ...

9 *Area median income*

10 *The area median income by household size for the Boulder-Longmont area based on U.S.*
11 *Department of Housing and Urban Development (HUD) median income updates, as*
12 *updated annually by the community services director and as made available to the public*
13 *by the community services department or planning and development services department.*
14 *For rental units, affordability by area median income shall reference monthly rental*
15 *prices, including utilities paid by the tenant, as updated annually by the Colorado*
16 *Housing and Finance Authority (CHFA), as related to number of bedrooms in the unit.*
17 *Formulas for prices and income limits based on area median income shall account for*
18 *difference in unit type and be updated annually by the community services director.*

19 ...

20 *Community services director*

21 *The community services director of the City of Longmont, or his or her designee.*

22 ...

23 *Developer*

1 APPROVED AS TO FORM:

2

3

4

5 _____
ASSISTANT CITY ATTORNEY

_____ DATE

6

7

8

9 _____
PROOFREAD

_____ DATE

10

11

12 APPROVED AS TO FORM AND SUBSTANCE:

13

14

15

16 _____
ORIGINATING DEPARTMENT

_____ DATE

17

18 CA File: 18-000037