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## MEMORANDUM

DATE: October 4, 2023  
TO: Mayor and City Council  
THRU: Tyler Marr, Deputy City Manager  
Jacob Castillo, Chief Sustainability Officer  
Beth Yonce, Social Sustainability Director

FROM: Meaghan Overton, Housing Manager  
Susan Beck-Ferkiss, Social Policy and Housing Programs Manager

RE: Proposed Land Use Code – Fee in Lieu Information

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**Purpose:** The purpose of this memo is to provide more information regarding "fee in lieu" for affordable housing in response to a request from first reading of the Land Use Code on October 3, 2023

**Bottom Line:** This memo provides information about the possibility of implementing a fee in lieu for smaller affordable housing developments as discussed at First Reading of the proposed Land Use Code on October 3, 2023. It is common to provide a fee in lieu option to satisfy mandatory affordable housing requirements; however, this fee is typically established as part of designing a mandatory Inclusionary Housing Ordinance (IHO) policy. The approach in the proposed LUC is a voluntary, incentive-based approach to encouraging affordable housing. As such, a fee in lieu is not currently applicable.

### **Background: Inclusionary Housing Ordinances (IHO)**

As outlined in a Council memo on July 17, 2023, Staff proposes a phased approach to designing a mandatory IHO policy, beginning with the voluntary affordable housing incentives and other housing-related Land Use Code (LUC) changes currently in progress. IHO policy must be paired with incentives based on market conditions to ensure development feasibility. Coordinating policy development for a mandatory IHO policy to follow the pending LUC changes will help staff more accurately assess the impact of a mandatory IHO policy, evaluate potential tradeoffs, and ensure that these complementary efforts are designed carefully to reinforce and support the City's adopted housing goals.

Implementing a mandatory IHO policy would require City Council to adopt an Ordinance that outlines the key elements of the policy. There are several critical choices that will need to be considered and evaluated:

- What amount (%) of affordable housing will be required for new developments?
- What income levels (% AMI) should the required affordable units serve?
- Should developments under a certain size or number of units be exempt?
- Alternatively, should smaller developments and/or nonresidential developments be required to pay an affordable housing linkage fee or similar?
- What options does the City wish to provide in lieu of building the required affordable units on site? (Examples: land in lieu, fee in lieu or building offsite units)

It is important to note that state legislation (HB21-1117) requires local governments to provide a choice of options or alternatives for developments of all sizes (land in lieu, fee in lieu, building off-site, etc.) if they implement a mandatory IHO policy.

**Applicability of Fee in Lieu:**

When a developer is required to build affordable units onsite but is allowed to pay a fee as an alternative, the fee is called an “in lieu” fee. These fees typically accrue in a City-administered affordable housing fund and can be used by the City or its designated development partners to construct affordable units in another location.

Fee in Lieu is an important strategy as part of a mandatory inclusionary housing policy; however, even under an incentive program it may be possible to structure a fee in lieu program that would allow a property owner to essentially “purchase” additional density for a project by paying into a fund in order to obtain affordable housing incentives. There are two reasons why staff has not recommended a fee in lieu be included in the current iteration of the Land Use Code.

- First, fee-in-lieu is a complex program that must be based on detailed market analysis and calibrated to fit within a larger IHO policy. This structure does not yet exist in Fort Collins. At this time, staff would be unable to guarantee that the fee being collected is right-sized to providing affordable housing and lacks the mechanism to ensure the housing is provided.
- Second, a common theme in the public feedback on affordable housing is that many residents feel that additional density in neighborhoods should be deed-restricted affordable housing. If a developer were able to purchase additional density for their project without those specific units being affordable, it would be contrary to this public sentiment.

**Previous Council Direction:**

In August 2020, Economic & Planning Systems, Inc. (EPS) conducted a [Feasibility Study](#) that analyzed the economic viability of implementing mandatory IHO and established a rational nexus for adoption of an Affordable Housing Linkage Fee for residential and nonresidential development. This study was partially updated in 2022 and was previously shared with Council via memorandum on July 17, 2023.

At a work session in April 2021, City Council reviewed the study findings and recommendations from the Feasibility Study. Council supported staff’s recommendation to pursue a linkage fee alongside capital expansion fee updates, and to monitor conditions and periodically evaluate policy appropriateness of IHO.

**Next Steps for Fort Collins:**

The passage of HB21-1117 means that the legal conditions from the August 2020 Feasibility Study have changed, and that another evaluation of an IHO policy is appropriate. Staff proposes a phased approach to exploration and design of a mandatory IHO policy, beginning with the housing-related Land Use Code (LUC) changes currently in progress. Affordable housing incentives are a key topic of the LUC updates project and will set the foundation for future policy decisions about appropriate set-asides, applicability of an IHO policy, fees in lieu and alternative compliance options, impact fees, program administration, etc.