

## ORDINANCE NO. 2187

### AN ORDINANCE REPEALING AND REENACTING CHAPTER 17- 76 INCLUSIONARY HOUSING OF THE BROOMFIELD MUNICIPAL CODE

WHEREAS, the City Council identified affordable housing as a priority in 2016 and has identified the need to expand housing opportunities within the community as a priority every year thereafter; and

WHEREAS, on April 17, 2018, the City Council held a study session where the Broomfield Housing Advisory Committee (“HAC”) presented the findings of a Housing Needs Assessment completed by BBC Research and Consulting and recommended that Broomfield review its planning processes and zoning code to streamline affordable housing development and encourage housing diversity; set a goal to mitigate increases to the rental gap; and consider implementing policies/programs to improve product diversity and homeownership affordability; and

WHEREAS, the Housing Needs Assessment indicated that Broomfield has a shortage of housing that is affordable for low, moderate, and middle income residents. This shortage impacts the City and County’s working people, retired seniors, and residents with disabilities; and

WHEREAS, the 2019 Housing Needs Assessment identified the highest needs in Broomfield as: additional affordable rental homes; starter homes and family homes priced near or below \$300,000; and housing options attractive to aging seniors, particularly single-level homes with low maintenance yards; and

WHEREAS, on June 12, 2018, City Council approved Resolution Nos. 2018-107 and 2018-99-HA which adopted the Housing Needs Assessment Action Plan and incorporated it as an amendment to the 2016 Comprehensive Plan; and

WHEREAS, on October 8, 2019, City Council adopted Ordinance No. 2097 establishing regulations to allow accessory dwelling units to be located on the same lot as a single-family residence. Accessory Dwelling Units have the potential to increase housing affordability for both homeowners and tenants, while also creating a wider range of housing options within the community; and

WHEREAS, on March 10, 2020, City Council adopted Ordinance No. 2100 which adopted Chapter 17-76 of the Broomfield Municipal Code relating to Inclusionary Housing; and

WHEREAS, the Inclusionary Housing Ordinance adopted in 2020 imposes on all new residential construction within the city an Inclusionary Housing Fee unless the development contains less than twenty-five (25) “for sale” dwelling units, three (3) or fewer “rental” dwelling units, or the developer has elected to provide an acceptable

alternative to the Inclusionary Housing Fee. This fee based inclusionary housing requirement conformed with the law in Colorado in 2020; and

WHEREAS, the State of Colorado passed HB21-1117 in 2021 that authorized local governments to plan for and regulate the use of land by regulating development or redevelopment in order to promote the construction of new affordable housing units within the community; and

WHEREAS, on September 8, 2020, City Council approved Resolution No. 2020-202 acknowledging the waiver of specific development fees and taxes for permanently affordable housing developments; and

WHEREAS, since the enactment of the Inclusionary Housing Ordinance in 2020 residential development in Broomfield has remained strong and the cost of housing within the community has continued to set record prices thus exacerbating the need for affordable housing opportunities within the community; and

WHEREAS, the trend toward increasing housing prices will, without intervention, contribute to the shortage of affordable housing in the City and County of Broomfield. This trend has a negative effect on the ability of local employers to attract and maintain an adequate workforce, thus adversely impacting the economy of the City and County of Broomfield; and

WHEREAS, the rapid increase in housing prices experienced within the community since the adoption of the Inclusionary Housing Ordinance in 2020 has resulted in a need for City Council to revisit the Inclusionary Housing Fee established by Ordinance No. 2100 as current fees have failed to keep up with the escalating costs of housing; and

WHEREAS, the passage of HB 21-1117 in 2021 enables City Council to restructure the Inclusionary Housing Ordinance from a fee first model to a model that requires the provision of on-site affordable units. This change will more closely align the Inclusionary Housing Ordinance with City Council's goal of expanding the number and type of affordable housing units within Broomfield; and

WHEREAS, the City Council desires to maintain a balanced community and to promote housing that is affordable to all of its residents, supports the community's workforce and retains opportunities for people that work in the city to also live in the city; and

WHEREAS, the City and County of Broomfield is authorized pursuant to C.R.S. § 31-23-301 *et seq.*, to adopt and enforce zoning regulations; and

WHEREAS, under such authority, the City Council previously adopted land use and zoning regulations, codified as Chapter 17 of the Broomfield Municipal Code; and

WHEREAS, the City Council finds that a severe housing problem continues to exist within Broomfield with respect to the supply of housing relative to the need for affordable housing. Specifically, the City Council finds that:

- (a) Demographics and analyses of new housing indicate that a large majority of private development is geared toward high-priced housing development and does not serve households earning less than one hundred percent (100%) of area median income;
- (b) Development trends produce high-priced housing which does not serve a large segment of the population and limits housing available to low, moderate and middle income households, thus failing to implement the housing goals of the Housing Needs Assessment Action Plan as it was adopted in the 2016 Comprehensive Plan;
- (c) Market forces, including continued population growth and unmet demand for new housing, result in highly priced housing, and a lack of economic and market incentive for developers to offer a more diversified price range of housing, and therefore such housing is not being created at a level that meets current demand;
- (d) Rapid regional growth and a strong housing demand have combined to make land and construction costs higher, limiting the areas where affordable housing is located;
- (e) Incomes of Broomfield's residents and workforce has not kept pace with the increase in the cost of housing in the community;
- (f) Ensuring a mix of incomes and access to homeownership and rental housing opportunities for low, moderate, and middle income households are high priorities for the community;
- (g) The City and County of Broomfield has deployed multiple funding strategies and programs which are successful in creating new affordable housing, but not at a pace sufficient to meet the growing demand of the community; and

WHEREAS, the City Council hereby finds that it is in the best interest of the general health, safety and welfare of its residents to adopt this ordinance concerning inclusionary housing.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY AND COUNTY OF BROOMFIELD, COLORADO:

Section 1. Chapter 17-76, Inclusionary Housing, of the Broomfield Municipal Code is hereby repealed and reenacted to read as follows:

**17-76 Inclusionary Housing****17-76-010 Purpose and objectives.**

- (A) Maintain a balanced community that provides housing for people of all income levels; and**
- (B) Ensure that housing options continue to be available for low income, moderate income, and middle income residents, for retired seniors and special needs populations and for a significant proportion of those who work or live in the city; and**
- (C) Retain opportunities for people that work in the city to also live in the city; and**
- (D) To promote the development and access of housing that is affordable and accessible to the community's residents and workforce.**

**17-76-020 Mandatory Affordable Housing for Residential Developments.**

- (A) There is hereby imposed on all new residential construction within the city a requirement to provide for On-site Affordable Units in accordance with section (B) herein.**
- (B) On-Site Compliance. An applicant seeking a permit for new residential construction may satisfy its requirement to provide On-Site Affordable Units by providing the number of affordable dwelling units at the income-restricted levels in accordance with the options set forth below:**

	<b>Single Family/Duplex (1-2 units per foundation)</b>	<b>Townhome/ Rowhome (3-9 units per foundation)</b>	<b>Multifamily (10+ units per foundation)</b>
<b>Rental</b>	<b>20% at 80% AMI</b>	<b>20% at 70% AMI</b>	<b>20% at 60% AMI</b>
<b>For-Sale</b>	<b>12% at 100% AMI</b>	<b>12% at 90% AMI</b>	<b>12% at 90% AMI</b>

- (C) Proportional Application. Any development proposing a mixture of “for sale” dwelling units and “rental” dwelling units shall have an obligation to satisfy the requirements of subsection (B) above based on the proportion of each use type to the overall development.**
- (D) Rounding. In calculating the number of On-Site Affordable Units required pursuant to subsection (B) above, rounding shall be used such that five-tenths (0.5) or greater shall result in requiring that a whole unit shall be produced; provided, however, that at least one (1) units shall be provided if the calculation results in less than five-tenths (0.5). By way of example, if a requirement is for 8.3 affordable units, the number of required affordable units would be eight (8). Alternatively, if a requirement**

is for 8.7 affordable units, the number of required affordable units would be nine (9).

- (E) An “On-Site Affordable Unit” or “Affordable Unit” shall be a residential dwelling unit that is attainable by an end user whose income level is equal to or less than the percentage set forth in (B) above of the Broomfield County Area Median Income (AMI) or lower. Maximum income levels will be based on the Colorado Housing & Finance Authority (CHFA) Rent and Income table for each calendar year, as defined by unit type and income level per family size.

**17-76-030 Exceptions.** Compliance with Section 17-76-020 B.M.C. shall not be required for a residential development under any of the following circumstances:

- (A) Any residential developments containing less than twenty-five (25) “for sale” dwelling units or containing five (5) or fewer “rental” dwelling units.
- (1) In determining whether a residential development contains the applicable total number of dwelling units for the purpose of applying the exception is subsection (A) above, all real property at one location within the city under common ownership or control of the applicant, including real property owned or controlled by separate entities in which any person or family of an applicant owns ten percent (10%) or more of the ownership interest shall be included.
  - (2) An applicant shall not avoid the mandatory On-Site Affordable Units by submitting piecemeal applications or approval requests for subdivision plats, site development plans, zone lot amendments, or building permits.
  - (3) Any applicant may submit a development proposal that intends construction of dwelling units, including applications for subdivision plats, site development plans, zone lot amendments, or building permits, for less than the applicable number of dwelling units at any time; but the applicant shall agree in writing that upon the next such application or request the applicant will comply with Section 17-76-020 B.M.C. when the total number of dwelling units at one location has reached the applicable number of dwelling units.
- (B) Any residential developments that have elected to provide an acceptable alternative pursuant to Section 17-76-070 B.M.C.
- (C) Any residential developments to which either the City and County of Broomfield or the Broomfield Housing Authority is a party or partner.
- (D) Any residential developments that are built by any charitable, religious, or other nonprofit entity and deed restricted to ensure the affordability of the dwelling units to low, moderate, and middle income households.

- (E) Any residential developments that are the recipient of tax incentives or other governmentally backed funding sources which are awarded to qualified affordable housing projects.**

**17-76-040 Incentives for On-Site Compliance.**

- (A) To promote the construction of On-Site Affordable Units, any applicant that provides the required number of On-Site Affordable Units pursuant to Section 17-17-020 B.M.C. is eligible for the following incentives for the applicable residential development:**

- (1) A reduction of fifty percent (50%) from the collection of any applicable building permit fees and plan review fees owed for each On-Site Affordable Unit required pursuant to Section 17-76-020 B.M.C.**
  - (2) A reduction of fifty percent (50%) from the collection of any applicable use tax owed for each On-Site Affordable Unit required pursuant to Section 17-76-020 B.M.C. For purposes of calculating the fifty percent (50%) waiver, any portion of the use tax that is dedicated to parks and open space (currently 0.25% of the total 4.15%) is hereby exempt and shall not be included in calculating the incentive.**
  - (3) A reduction of fifty percent (50%) from the collection of any applicable service expansion fee (SEF) owed for each On-Site Affordable Unit required pursuant to Section 17-76-020 B.M.C. For purposes of calculating the fifty percent (50%) waiver, any portion of the service expansion fee (SEF) that is reserved for joint-use opportunities with the school districts (currently 50% of the overall SEF fee collected) is hereby exempt and shall not be included in calculating the incentive.**
- (B) Persons providing on-site affordable units pursuant to Section 17-76-020 B.M.C. which meets some but not all of their On-Site Affordable Unit obligation may be eligible upon request to receive all or a portion of the incentives available in subsection (A) above. Requests will be reviewed by the city on a case by case basis and any incentive awarded shall be approved by the city council.**
- (C) Persons who have entered into an Alternative Agreement with the city pursuant to Section 17-76-020 B.M.C. may be eligible upon request to receive all or a portion of the incentives available in subsection (A) above. Requests will be reviewed by the city on a case by case basis and any incentive awarded shall be approved by the city council.**
- (D) Additional incentives that may be considered by the city include a partial waiver of the public land dedication requirements. Any award of these additional incentives shall be a prerogative of the city and shall be approved by the city council.**

**17-76-050 Required Agreements for On-Site Affordable Units.**

**(A) Covenant Restriction.** Residential developments which provide On-Site Affordable Units pursuant to Section 17-76-020 B.M.C. shall carry deed restrictions, restrictive covenants, or other forms of affordability restrictions, each in a form acceptable to the Housing Division. All deed restrictions, restrictive covenants, or other forms of affordability restrictions shall be recorded in the real property records of the City and County of Broomfield.

**(1) When required.**

**(a) Ownership Covenant.** Deed restrictions, restrictive covenants, or other forms of affordability restrictions shall be required for each “for sale” Affordable Unit at the time each unit passes to a qualified owner or at such time that a certificate of occupancy is issued for the Affordable Unit, whichever occurs first.

**(b) Rental Covenant.** Deed restrictions, restrictive covenants, or other forms of affordability restrictions for affordable rental units shall be required prior to issuance of the first certificate of occupancy for any rental unit in the development.

**(2) Content.** The deed restriction, restrictive covenant, or other form of affordability restriction shall contain all terms determined by the Housing Division to be appropriate to ensure the affordability of the unit and compliance with this section.

**(3) Deed of Trust or Lien.** The deed restrictions, restrictive covenants, or other forms of affordability restrictions shall be secured by a deed of trust or lien on the property, which may be subrogated to other deeds of trust on the property.

**(4) Term.** All deed restrictions, restrictive covenants, or other forms of affordability restrictions of “for sale” Affordable Units shall have a minimum term of thirty (30) years; All deed restrictions, restrictive covenants, or other forms of affordability restrictions for rental Affordable Units shall have a minimum term of forty (40) years.

**(B) Affordable Housing Plan.** Residential developments which provide On-Site Affordable Units shall enter into a memorandum of understanding with the city, approved by the city manager or designee, concerning affordable housing. The memorandum of understanding shall be recorded in the real property records of the City and County of Broomfield prior to the issuance of a building permit for the property. The memorandum of understanding should document how the development will meet the requirements of Section 17-76-020 BMC including:

- (1) Defining the total number of Affordable Units being provided and what percentage such units represent within the overall development.**
- (2) The type of Affordable Units being provided (ie. for-sale or rental).**
- (3) The type of residential product being provided and number of units per foundation (i.e. single family, townhome, multifamily)**
- (4) The approximate size of the units, number of bedrooms, and estimated market price or rent for each unit.**
- (5) A summary of the ownership covenants or rental covenants being placed on each affordable unit, including the length of the deed restriction.**
- (6) Identification of the specific units or lots being restricted as affordable; or in a phased development a summary of the process to be used for identifying the specific units or lots to be restricted as affordable prior to the issuance of the first building permit within any given phase of the development.**
- (7) The process for determining eligible home buyers or renters and an outline of how the affordable housing program will be administered.**
- (8) A requirement to submit to the Housing Division on an annual basis a summary of the number of Affordable Units sold in the preceding twelve (12) months and the sale price of each affordable unit sold.**

#### **17-76-060 Design Standards and Access.**

**All On-Site Affordable Units should be comparable to the other market rate units within the development in exterior finish and should be integrated throughout the overall project. The Affordable Units should have equal access as market rate units to all amenities within the development, including but not limited to common areas, indoor and outdoor facilities for convenience or recreation, and parking facilities.**

#### **17-76-070 Options for Alternative Compliance.**

**A person wanting to construct new residential housing within the city and who is otherwise required to provide On-Site Affordable Units may seek an alternative to providing the affordable units by voluntarily agreeing to any of the following:**

##### **(A) Cash-in-Lieu Fee.**

- (1) A developer may make a cash payment to the city in lieu of providing the required number of On-Site Affordable Units. The Cash-in-lieu fee shall be calculated pursuant to the table below by multiplying the number of required affordable units by the applicable prescribed fee:**



<b>Tenure Type</b>	<b>Effective Date</b>	<b>Single Family/Duplex (1-2 units per foundation)</b>	<b>Townhome/Rowhome (3-9 units per foundation)</b>	<b>Multifamily (10+ units per foundation)</b>
<b>For-Sale</b>	<b>January 1, 2023</b>	<b>\$88,556</b>		
	<b>January 1, 2024</b>	<b>\$127,112</b>		
	<b>January 1, 2025</b>	<b>\$165,669 + CPI-U adjustment</b>		
<b>Rental</b>	<b>January 1, 2023</b>	<b>\$55,295</b>		
	<b>January 1, 2024</b>	<b>\$80,965</b>		
	<b>January 1, 2025</b>	<b>\$106,635 + CPI-U adjustment</b>		

**(2) Exception for Pending Projects.** Any developer wanting to construct new residential housing within the city who has completed a concept review hearing in accordance with Section 17-38-030 on or before January 1, 2023, has obtained a building permit on or before June 30, 2023, and begins vertical construction within 12 months of the permit date shall pay a Cash-in-lieu fee in accordance with the rates previously established by Ordinance 2100 or provide the applicable On-Site Affordable Units. In the event that a developer has remitted to the city a cash-in-lieu payment pursuant to Ordinance 2100 and fails to begin vertical construction within 12 months of the permit date, the developer shall be required to pay a supplemental fee payment to match the Cash-in-lieu fee set forth in Section (A)(1) above.

**(3) Remittance and Collection of Payment.** Cash-in-lieu fees shall be collected in conjunction with the administration of the city's system for issuing building permits. All cash-in-lieu fees shall be paid in full prior to the issuance of any building permit; in the event that a project is phased, the cash-in-lieu fees may be paid with each applicable phase.

**(4) Deposit and Use of Fees.** All Cash-in-lieu fees collected pursuant to this section shall be remitted to the Housing Development fund or a similar fund maintained by the city. These funds shall be used exclusively to support the preservation or development of affordable

housing that is at or below 100% of AMI and for the administration and compliance of housing programs.

- (5) **CPI-U Adjustment.** Beginning on January 1, 2025, and annually thereafter, the amounts set forth in subsection (A)(1) above shall be adjusted in an amount equal to the percentage change from the previous 3 calendar years' CPI-U or Consumer Price Index for All Urban Consumers, All Items, for the Denver-Aurora-Lakewood Colorado area. The adjustments will be reflected in a cash-in-lieu schedule issued by the Housing Division and be made publicly available a minimum of 30 days in advance of the fees becoming effective. The annual inflation adjustment shall apply to and be collected in conjunction with the issuance of any building permit on or after January 1st of the year in which the adjustment is made, regardless of when the application for the building permit was made. In the event the CPI-U is substantially changed, renamed, or abandoned by the United States Government, then in its place shall be substituted the index established by the United States Government that most closely resembles the CPI-U, as determined by the city manager or designee.
- (6) **Periodic Review.** The Cash-in-Lieu fee shall be reviewed by the Housing Division on or before the fourth anniversary of its adoption and, if necessary, a recommendation shall be made to City Council on whether an adjustment to the fee is warranted in order to meet the purpose and objectives set forth in Section 17-62-010 BMC. A similar review and recommendation shall be made every five years thereafter.

**(B) Negotiated Alternative Agreement.**

- (1) A developer may propose an alternative manner in which the development will either provide for some variation of affordable dwelling units or will otherwise achieve the purpose and objectives set forth in 17-76-010 BMC, provided the developer shall have first consulted with the Housing Division. Such alternatives may include the dedication of land to the city that is restricted for the development of affordable dwelling units or provides an equal number of affordable dwelling units in another building or location; however, the acceptance of any dedicated land or alternative units shall be the prerogative of the city and is not the right of a developer.
- (2) Alternative agreements are at the discretion of the city council and must be approved by the city council before relieving a developer of its obligation to provide the On-Site Affordable Units in accordance with 17-76-020 BMC.

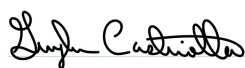
- (C) **Combination.** A developer may pursue any combination of the options allowed pursuant to this chapter.

Section 2. The provisions of this ordinance are severable and the invalidity of any section, clause, phrase, or portion of the ordinance as determined by a court of competent jurisdiction shall not affect the validity or effectiveness of the remainder of the ordinance.

INTRODUCED AND APPROVED after first reading on October 11, 2022, and ordered published in full.

INTRODUCED A SECOND TIME and approved on October 25, 2022, and further ordered published.

THE CITY AND COUNTY OF BROOMFIELD,  
COLORADO



\_\_\_\_\_  
Mayor

ATTEST:



\_\_\_\_\_  
City and County Clerk



APPROVED AS TO FORM:



*NCR*

\_\_\_\_\_  
City and County Attorney

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