

ORDINANCE NO. 137, 2020
OF THE COUNCIL OF THE CITY OF FORT COLLINS
MAKING CERTAIN AMENDMENTS TO THE CODES OF THE CITY OF FORT COLLINS
TO ELIMINATE AFFORDABLE HOUSING FEE WAIVERS AND INSTEAD
AUTHORIZE A DISCRETIONARY CREDIT FOR CERTAIN
AFFORDABLE HOUSING UNITS TO BE CONSTRUCTED IN THE CITY

WHEREAS, by adoption of Ordinance No. 065, 1999, the City Council exempted from the imposition of the City's capital improvement expansion fees the land development projects of housing authorities formed pursuant to the provisions of Section 29-4-101, et seq., and specified various other City fees from which such projects are also to be exempted; and

WHEREAS, on March 19, 2013, the City Council adopted Ordinance No. 037, 2013, which made amendments to the City Code and Land Use Code limiting the types of projects for which housing authorities could request fee waivers, and specifying that those waivers are to be granted at the discretion of City Council upon a determination that proposed waivers will not jeopardize the financial interests of the City or the timely construction of capital improvements to be funded by the fees; and

WHEREAS, on November 21, 2017, the City Council adopted Ordinance No. 148, 2017, to create an incentive for all developers to provide units affordable to those making less than 30% AMI by amending the City Code and Land Use Code to allow all developers of units targeting that income bracket, not just the housing authority, to request fee waivers for the affordable portion of their projects; and

WHEREAS, the City Code currently provides that the City Council can waive, by ordinance, fees that would otherwise be imposed for any affordable housing project only if the City Council determines that: (1) the proposed project is intended to house homeless or disabled persons, as such terms are defined by the Department of Housing and Urban Development (HUD), or households with an annual income that does not exceed 30% of the area median income (AMI) for the applicable household size in the Fort Collins-Loveland metropolitan statistical area, as published by HUD; and (2) the proposed waiver will not jeopardize the financial interests of the City or the timely construction of the capital improvements to be funded by the fees for which a waiver is sought; and

WHEREAS, the general categories of fees that the City Council can consider waiving include capital expansion fees, development review fees and building permit fees; and

WHEREAS, the fee waiver program is based on the recognition that households earning less than 30% AMI cannot afford market rate housing in Fort Collins, and that developers need public subsidies to produce housing that residents in this demographic can afford; and

WHEREAS, the process to determine the exact amount of fees eligible for waiver early in a development project is labor intensive and administratively difficult, so City staff used a LEAN program evaluation to develop a simplified process that would provide developers more certainty early in their projects about what amount of financial support they will receive; and

WHEREAS, the proposed new process would develop a flat, per-unit amount per qualifying affordable unit (a "Credit") that the City would fund and deposit in a trust account owned by the City, and the developer could then direct that amount to be spent on fee balances owed to the City during the development of the project; and

WHEREAS, a developer would be still be required to request a Credit prior to the City issuing any certificates of occupancy for a project; and

WHEREAS, whether to grant a Credit for a particular project would still be in the discretion of the City Council and subject to a finding that granting the request will not jeopardize the City's financial interests; and

WHEREAS, the amount of the Credit would be based on those fees that have historically been waived under the City's fee waiver program, and would be updated whenever the City Council approves updates to such fees; and

WHEREAS, the initial amount of the Credit would be \$14,000 per each new qualifying affordable unit, and \$5,500 per unit for adaptive reuse of existing units for which impact fees were already paid when the units were first constructed; and

WHEREAS, the City Council believes it is in the best interests of the City to amend the City Code and Land Use Code accordingly.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS AS FOLLOWS:

Section 1. That the City Council hereby makes and adopts the determinations and findings outlined in the recitals set forth above.

Section 2. That Section 7.5-19(b) of the Code of the City of Fort Collins is hereby repealed and the remaining subsections are renumbered accordingly.

Section 3. That Section 7.5-48(e) of the Code of the City of Fort Collins is hereby repealed and the remaining subsections are renumbered accordingly.

Section 4. That 7.5-71(c) of the Code of the City of Fort Collins is hereby repealed and the remaining subsections are renumbered accordingly.

Section 5. That Chapter 7.5 of the Code of the City of Fort Collins is hereby amended by the addition of a new Article VIII to read as follows:

ARTICLE VIII.
FEE CREDITS FOR AFFORDABLE HOUSING

Sec. 7.5-100. Declaration of purpose.

There is hereby established a program to provide funding that the City may use to pay all or a portion of City development and capital expansion fees on behalf of a developer when such developer is constructing affordable housing units for rent or for sale that meet the requirements of this Article.

Sec. 7.5-101. Definitions.

The following words, terms, and phrases, when used in this Article, shall have the meanings ascribed to them in this Section:

Affordable housing unit shall mean an affordable housing unit for rent or an affordable housing unit for sale, or both such units.

Affordable housing unit for rent and *affordable housing unit for sale* shall have the same meanings as set forth in § 26-631 of this Code.

Credit shall mean funds designated and appropriated by the City Council to be applied towards the payment of fees as described in this Article.

Sec. 7.5-101. Application for credit.

(a) A developer of affordable housing units wanting to apply for a credit must do so in accordance with City application requirements established by the City Manager prior to the City's issuance of any certificates of occupancy for the project that is the subject of the credit request.

(b) The City Council may, by ordinance, approve a credit if the City Council, in its sole discretion, determines that:

(1) the affordable housing units are intended to house homeless or disabled persons, as such terms are defined by the United States Department of Housing and Urban Development, or households with an annual income that does not exceed thirty (30) percent of the area median income for the applicable household size in the Fort Collins-Loveland metropolitan statistical area, as published by the United States Department of Housing and Urban Development;

(2) the proposed credit will not jeopardize the financial interests of the City.

Sec. 7.5-102. Amount of credit and payment process.

(a) The maximum credit shall be \$14,000 per eligible affordable housing unit for new construction projects and \$5,500 per eligible affordable housing unit for adaptive reuse projects. This amount is calculated based on the current amount of the development review fees and capital expansion fees the City has historically waived for affordable housing projects, and shall be updated annually with City fee updates that are approved by the City Council.

(b) If a credit is approved by the City Council for a project, the City shall deposit a lump sum equal to the total amount of the credit into a trust account held by the City for the benefit of the project developer, from which the developer may direct the City to pay balances due to the City for development review fees and capital expansion fees, except as otherwise expressly prohibited or provided in this Code or other applicable law.

(c) If any credit remains unused in the trust account one (1) year after the last certificate of occupancy for the project has been issued, or if construction of the project is not commenced within three (3) years of the effective date of the ordinance approving the credit, then the trust account shall terminate and the remaining credit shall be redeposited in the fund or funds from which the credit was originally paid.

Section 6. That Section 10-28(h) of the Code of the City of Fort Collins is hereby repealed.

Section 7. That Section 2.2.3(D)(3) of the Land Use Code of the City of Fort Collins is hereby repealed.

Section 8. That Section 2.13.3(E) of the Land Use Code of the City of Fort Collins is hereby repealed.

Introduced, considered favorably on first reading, and ordered published this 4th day of November, A.D. 2020 and to be presented for final passage on the 17th day of November, A.D. 2020.


Mayor

ATTEST:


City Clerk



Passed and adopted on final reading on this 17th day of November, A.D. 2020.


Mayor

ATTEST:


City Clerk

