

SUBJECT

First Reading of Ordinance No. 071, 2011, Approving the Waiver of City Fees for the Care Housing Affordable Housing Project in the Provincetowne Subdivision.

EXECUTIVE SUMMARY

Under Colorado statute and City of Fort Collins ordinance, the projects of housing authorities are exempt from taxes and fees. For many years, the City has waived fees for projects of the Fort Collins Housing Authority (FCHA), as required by the ordinance. For the most part, these have been relatively small projects. FCHA is currently partnering with the non-profit CARE Housing in a large, multi-family affordable housing project in the Provincetowne subdivision, which is under construction. Fee waivers for this project total \$557,378.

While the City has long been committed to affordable housing, and the need for financial support is clearly demonstrated in the increase in the number of applications for local and federal funds, the fiscal impact of this and future fee waivers for projects in which the FCHA is a partner rather than sole owner may warrant some thoughtful evaluation of the waiver situation, and possibly some changes to the City's Code. In addition to considering the current and projected fiscal impact on the City for fee waivers for large projects, clarification is also being sought from City Council on the definition of "ownership" as it pertains to the Housing Authority and its development partners. This issue will be addressed at a future work session. Pending that policy discussion, the City Manager is recommending that Council consider waiving the fees due for the CARE Housing project.

BACKGROUND / DISCUSSION

CARE Housing (a non-profit) bought a portion of the Provincetowne project site, located at Autumn Ridge Road and Trilby, from KB Homes to fulfill the affordable housing requirement for the entire residential project. The financing of affordable housing is rather complex, especially in today's economic climate. A fifteen year federal tax credit for private investors is a critical component of the financial package, and the private investor (J.P. Morgan Chase, in this case) must be a 99% owner. The Housing Authority is technically only a .001% participant in this project, but is further involved because it guarantees up to \$1.4 million of unanticipated costs. The affordability period for the Project is 40 years. Under certain circumstances, the Housing Authority could take over the project.

State law contemplates the type of tax credit financing structure that is being used to finance this Project (where the Housing Authority has only a partial ownership interest), by stating that a project is exempt from taxation if it is owned by "an entity in which an entity wholly owned by an authority has an ownership interest." It is not clear, however, whether the statutory intent is to also exempt such a project from fees. That is because, as to the exemption from both taxes and fees, the statute states that just "the authority" is exempt.

Another component of the financing picture for this project is the expectation by FCHA partners and its lenders that the fee exemption for which the Fort Collins Housing Authority is eligible under state law and the City Code passes to the other funding partners. This includes a waiver of taxes and development review and capital expansion fees as provided in Sec. 7.5-17(1) of the Fort Collins City Code. The degree of the FCHA's ownership of the project has been the subject of considerable discussion. Does (or should) the waiver of fees for the Housing Authority properly extend to majority partners, or should it be limited to projects wholly owned, developed and operated by the Fort Collins Housing Authority, or projects with some specified ownership interest?

A related concern in the extension of the fee waivers to FCHA partners is the criteria for approving projects and partners. Several local projects, either partially or wholly composed of affordable units, have sought support from the FCHA, and not all such requests have been approved by the FCHA board. The FCHA considers financial feasibility, benefit to low-income households, access to support services and other criteria, before agreeing to participate.

Affordable Housing Projects and Fees

Development and building permit fees for affordable housing projects are currently handled in two ways:

1. If the Housing Authority is involved, all fees and taxes, except for utility fees, are waived as described above, pursuant to both State law and City Code.
2. For affordable housing projects that do not involve the Housing Authority, the following occurs:
 - a. By City Code, development review fees are waived according to the percentage of the project that meets the criteria for and has been designated as affordable. If a project receives a 100% affordable housing designation, 100% of the development review fees are waived; if 10% of the housing units are designated affordable, 10% of the fees are waived.
 - b. Sales taxes are waived for any tax-exempt entities.
 - c. By City Code, plan check, building permit and certain utility fees are collected at the time of building permit issuance.
 - d. By City Code, all other fees are delayed until Certificate of Occupancy issuance, or December 1st of the year the building permit was issued, whichever first occurs.

Development review fees cover services rendered; if the fees are waived, and the services are still provided, then the General Fund presumably backfills the gap of expenses incurred. Likewise, impact fees (parkland, fire, street oversizing, police, etc.) cover capital costs associated with new development. If the fees are waived and the capital improvements still provided, then City, Poudre Fire Authority (PFA) and School District funds presumably backfill the gap. Utility connection fees are not waived.

The City has routinely waived fees for FCHA projects in the past. Most of those waivers dealt with relatively small projects. The last significant new FCHA construction project was the Via Lopez project in 1998 and 1999. The FCHA was 100% owner of the development, which included 22 single family detached homes; fee waivers totaled approximately \$107,476.

Over \$1.5 million of City administered competitive funds, including CDBG and HOME, have already been expended on the Provincetowne project, including payment of water tap fees, electric capacity fees, PFA fees, and building permit fees. Building permits have been issued for all eleven buildings and construction is underway, with the first units expected to be ready for occupancy by June 11.

Because of concerns about significant financial and policy impacts on the City, management staff and the City Attorney's Office have explored several facets of this issue. Staff also worked with the FCHA and CARE Housing on some proposed alternatives to a full waiver of fees for projects involving FCHA partnerships, including deferring those fees rather than waiving them or limiting the waiver to situations where the FCHA is the majority owner of the project. However, each of the alternatives examined was problematic in this situation, primarily because the projections for the Project were developed, and financing structured, based on the assumption that the fees would be waived as they have been for previous FCHA projects. The City Manager is recommending that the Council waive the fees for the CARE Housing project and then deal with the policy question of continuing to waive fees for these kinds of projects at a later time. That question will be presented to Council at a work session on July 5.

Attached is a memo from Julie Brewen, FCHA Director (Attachment 3), that gives FCHA's perspective on the proposed fee waiver, as well as an explanation of how the FCHA determines, on a case-by-case basis, whether to enter into these kinds of partnerships.

FINANCIAL / ECONOMIC IMPACTS

For the Provincetowne project (eleven multifamily buildings; a total of 85 low income rental units), the potential financial impact of a fee waiver on City funds is \$557,378.

Approximately \$4,762 of the fee revenue lost is Utility development review fees. Building permit and plan check fees lost total \$42,720. The remaining \$509,896 is comprised of Capital Expansion fees (Fire, Police, General Government, Parkland, Street Oversizing, and School fees). These figures reflect recent changes in the capital expansion and utility development review fees. Some fees were collected at the inception of this project because of the unresolved issues; and approximately \$17,177 will need to be refunded if the fees are waived.

ENVIRONMENTAL IMPACTS

Staff has identified no adverse environmental impacts as a result of granting this fee waiver.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

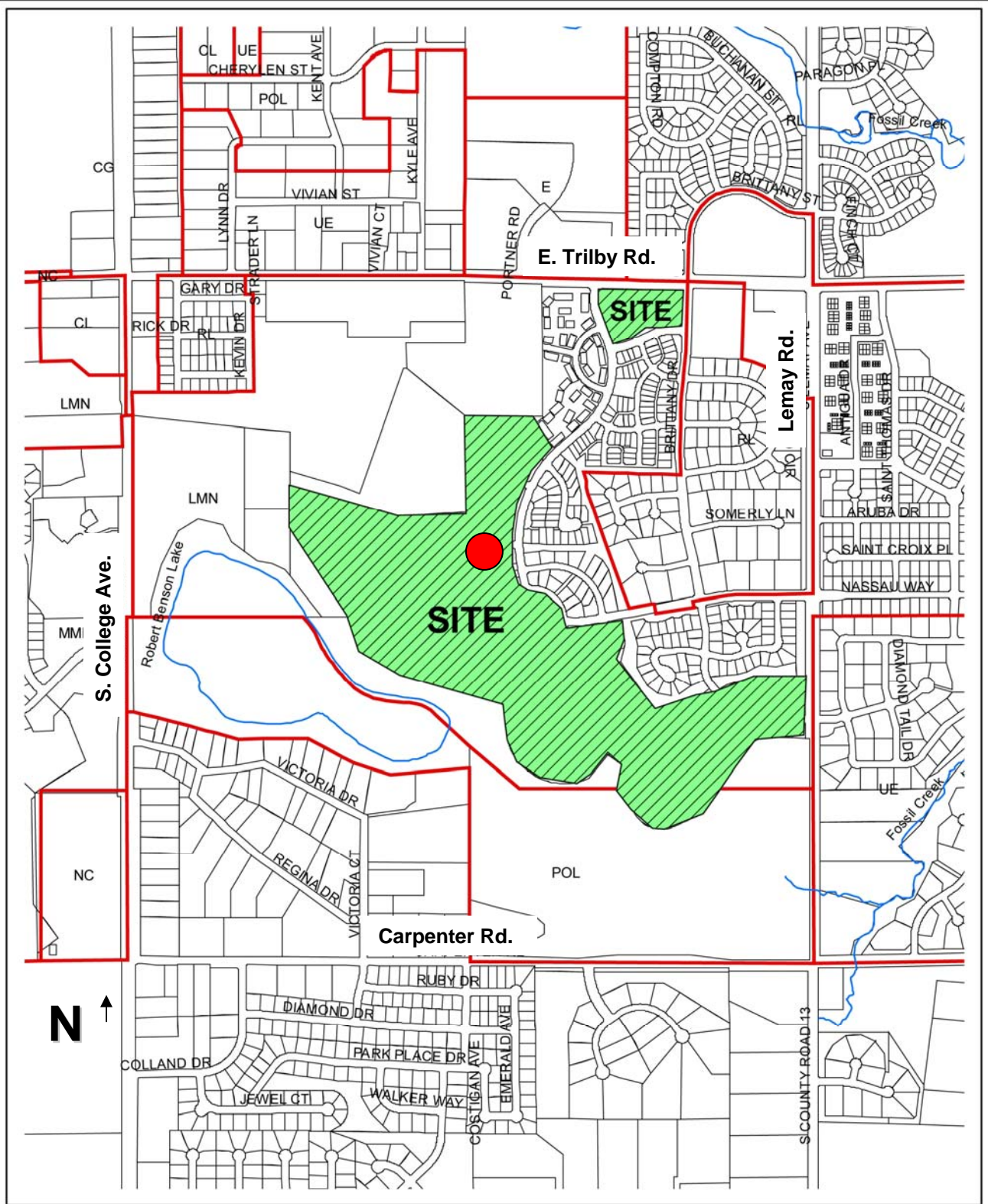
BOARD / COMMISSION RECOMMENDATION

These issues will be addressed with the Affordable Housing Board on June 16 so that its input can be considered by Council at the work session on the policy issues on July 5.

ATTACHMENTS

1. Location map for Provincetowne Townhomes
2. Ordinance No. 065, 1999
3. FCHA Director Brewen's memo
4. Powerpoint presentation

Attachment 1



#73-82X Provincetowne PDP, 3rd Filing
Type I

1 inch = 1,000 feet

ORDINANCE NO. 65, 1999
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING RESOLUTION 96-73 AND AMENDING CHAPTER 7.5, ARTICLE III OF
THE CITY CODE, SO AS TO EXEMPT ANY HOUSING AUTHORITY ESTABLISHED
PURSUANT TO STATE STATUTE FROM THE CITY'S REQUIREMENT TO DEDICATE
LAND FOR SCHOOL SITE PURPOSES OR PAY A FEE IN LIEU OF SUCH DEDICATION

WHEREAS, the City has entered into intergovernmental agreements (the "Agreements") on or about April 21, 1998 with the Poudre School District and the Thompson R2-J School District; and

WHEREAS, the Agreements, and Ordinance No. 74, 1998 (the "Ordinance"), which was enacted by the Council of the City of Fort Collins pursuant to the Agreements, provide for the regulation of all new residential development in the City of Fort Collins by requiring the dedication of land for future school sites or the payment of fees in lieu of such dedication; and

WHEREAS, a certain amount of new development in the City is undertaken by the Fort Collins Housing Authority for the purpose of providing affordable housing to the low income residents of the City and the provision of such housing serves an important public purpose; and

WHEREAS, pursuant to §§29-4-213 and 29-4-226, C.R.S., respectively, housing authorities in Colorado are subject to the planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality in which their projects are situated, but such housing authorities are exempt from the payment of any taxes or fees to the state or any subdivision thereof; and

WHEREAS, for the foregoing reasons, the parties hereto believe that it would be in the best interests of the City and the School District to exempt projects of the Fort Collins Housing Authority from provisions of the Agreement and the Ordinance; and

WHEREAS, by Resolution 96-73, the City Council has exempted the Fort Collins Housing Authority from the payment of certain capital improvement expansion fees enumerated therein; and

WHEREAS, said Resolution should be amended so as to add an exemption pertaining to the above-referenced fee in lieu of dedication.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section I. That the definition of "Building Permit" as contained in Section 7.5-17, of the Code of the City of Fort Collins as follows:

Building permit shall mean the permit required for new construction and additions pursuant to §2.13.2(A) of the Land Use Code. The term *building permit*, as used herein, shall not be deemed to include permits required for Land Development Projects (or portions thereof) of any housing authority organized pursuant to the

provisions of §29-4-101, et seq., C.R.S., also known as "The City Housing Law," nor shall it include permits required for remodeling, rehabilitation or other improvements to an existing structure or rebuilding a damaged or destroyed structure unless: (1) in the case of residential use, such remodeling, expansion or improvements results in the creation of one (1) or more new dwelling units, or (2) in the case of a commercial or industrial use, such remodeling, expansion or improvement increases the gross square footage of the existing structure(s).

Section 2. That Resolution 96-73 of the Council of the City of Fort Collins is hereby amended so that any housing authority organized pursuant to the provisions of §29-4-101, et seq., C.R.S., shall be exempt from the payment of any of the following fees to the City of Fort Collins:

- A. Appeal fees;
- B. Building permit fees;
- C. Development review fees;
- D. Parkland fees;
- E. Plan check fees;
- F. Street oversizing fees;
- G. Vested property right fees;
- H. Zoning variance fees;
- I. Community Parkland Capital Improvement Expansion Fee;
- J. Library Capital Improvement Expansion Fee;
- K. Police Capital Improvement Expansion Fee;
- L. Fire Protection Capital Expansion Fee;
- M. General Government Capital Improvement Expansion Fee; and
- N. Fee in Lieu of School Site Dedication.

Section 3. That the foregoing exemption for Land Development Projects of housing authorities provided for above shall apply to all housing authority projects, whenever constructed.

Introduced, considered favorably on first reading, and ordered published this 20th day of April, A.D. 1999, and to be presented for final passage on the 4th day of May, A.D. 1999.



Mayor

ATTEST:



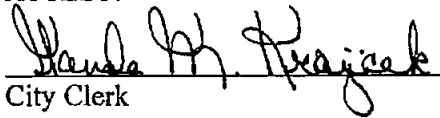
City Clerk

Passed and adopted on final reading this 4th day of May, A.D. 1999.



Mayor

ATTEST:



City Clerk



To: Karen Cumbo, PDT Director

From: Julie Brewen, Executive Director

Date: May 24, 2011

Re: FCHA Development Partnership Criteria and the Provincetowne Development

In 2004, the FCHA Board of Commissioners established formal criteria for considering private developer requests for FCHA participation. FCHA staff and the Board of Commissioners have been extremely sensitive to our relationship with the City of Fort Collins and our responsibilities related to public/private partnerships. In 2006, FCHA and CARE Housing began discussions regarding how FCHA could strengthen the Provincetowne development for low-income families in our community. The discussions were based on FCHA's Partnership Criteria and the following statutes, ordinance and precedent.

- Ordinance No. 65, 1999. City Ordinance specifically exempts all housing authority projects from the payment of enumerated fees based on an explicitly stated important public purpose. City Ordinance also references the consistent statutory exemption found at CRS 29-4-226.
- CRS 29-4-227. Statute provides that the Provincetowne project, in which the FCHA has an ownership interest, is exempt from the payment of taxes or fees to the state or any subdivision thereof. It is our position that a plain reading of this statute exempts the Provincetowne project in which FCHA has an ownership interest. It is also our position that the legislative history of this statutory provision supports full exemption based on conversations with an author of this statute.
- CRS 29-20-104.5. Statute specifically authorizes a local government to waive an impact fee or development charge on the development of low or moderate income housing as defined by the local government. City Ordinance No. 65 waives the fee. The City has waived fees for FCHA projects recently and consistently over the past 40 years. The requested fee waiver is supported directly by both Ordinance and statute.
- City Practice. The City has waived fees for FCHA projects. It is on this basis that FCHA and CARE structured ownership of the Provincetowne project based on reasonable reliance of City practice.

FCHA Partnership Criteria:

- Whether a proposed project includes households that earn 30-50% of Area Median Income (AMI) on rental projects, or 80% and below AMI for homeownership projects.
- How FCHA resources will increase benefit to low-income households, through increased number of affordable units, lower housing costs, or both, and/or access to support services.

- Market information as determined by FCHA which shows demand for the proposed project.
- Long-term affordability, with a preference for projects that achieve permanent affordability.
- Opportunity for ownership by the FCHA, and/or FCHA buy-out options after 20-30 year affordability period.
- Does the proposal demonstrate development capacity, experience and commitment to the targeted population?
- To what extent will FCHA share in the developer fee?
- What is the project proximity to employment, transportation, schools, retail, and recreation?
- Role of FCHA in the long-term management of the project, including the opportunity to earn a reasonable management fee.
- Degree and nature of risk for FCHA.
- Degree to which FCHA's ownership interest is commensurate with the financial benefits it brings to the project.
- Projects in which all or a portion of the units are designed to serve special needs population such as the elderly or persons with disabilities may receive special consideration.

In addition, we consider whether our involvement strengthens both entities and ultimately makes the project stronger.

Each year, FCHA reviews several formal and informal requests for participation in development projects. In 2010/2011, two formal requests were thoroughly vetted and subsequently denied. To date, Provincetowne is the first new construction development partnership that has been formally executed and warranted this level of FCHA participation. Not only does it rank high on our criteria, several factors related to the current economy and the soft market for investor purchase of Low Income Housing Tax Credits have necessitated our increased level of participation and loan guarantees.

We are currently working with a developer partner on one other project at this time. We will be the co-developer of Legacy senior apartments which will provide housing for 72 low-income seniors. Again, this project is extremely strong in terms of our criteria above. This particular developer partner has had a great of success with low-income housing tax credit properties in partnership with other housing authorities across our region. In this particular deal, our co-developer partner is taking the majority of the risk, while FCHA and our community will reap all of the benefit. It is likely that due to the current tax credit equity market, this deal will support the voluntary payment of some or all of the development fees. FCHA will become the full owner after the initial 15 year Low Income Housing Tax Credit program investor period. In this case, two strong entities with the same mission and vision will ultimately create an outstanding product and service for our community.

There are at least two FCHA projects currently in the due diligence or conceptual phase. One project is a multi-family new construction project that may or may not replace existing public housing. Another project on the drawing board is a "Housing First" apartment property serving single people who have been homeless or near-homeless. Both of these projects will be developed solely by FCHA. At this time, we do not know if either of these project development budgets and financing structures will support the voluntary payment of the development fees, however FCHA will be happy to voluntarily pay some or all of the fees when such projects support doing so.

Waiver of Fees – Ordinance No. 071, 2011

Affordable Housing Project Provincetown, Filing III

June 7, 2011
Karen Cumbo, PDT Director

1



Fee Waiver for Affordable Housing:

Under Colorado statute and Fort Collins ordinance, projects of housing authorities are exempt from taxes and fees

Colorado Statute (CRS 29 - 4- 227)

- A Housing Authority is exempt from fees and taxes

2



Fort Collins Ordinance 65, 1999

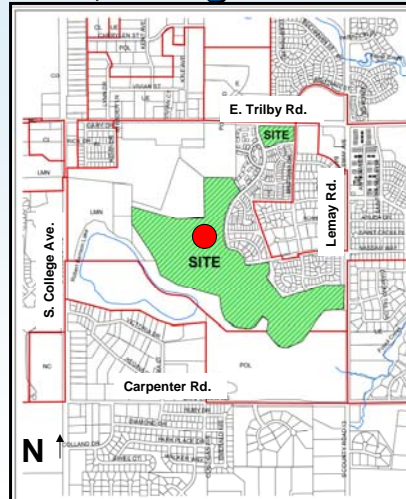
- **Housing Authority Projects Exempt From Certain Fees:**
 - Appeal Fees
 - Building Permit Fees
 - Development Review Fees, Plan Check Fees
 - Parkland Fees, Park Capital Improvement Fees
 - Street Oversizing Fees
 - Vested Property Right and Zoning Variance Fees
 - Library Capital Improvement Fee
 - Police and Fire Capital Expansion Fees
 - General Government Capital Expansion Fees
 - Fee-In-Lieu of School Site Dedication

3



Provincetown PDP, Filing 3

- 85 Unit Townhome Project
- CARE Housing (non-profit) partnering with Fort Collins Housing Authority (FCHA)
- Currently under construction
- First Units Ready June 10, 2011



4



Fees to Be Waived:

- Utility Development Review Fees \$ 4,762
 - Permit and Plan Check Fees \$ 42,720
 - Capital Expansion Fees* \$509,896
- TOTAL FEE WAIVER: \$557,378

*Capital Expansion Fees include:

Fire, Police, Street Oversizing, School District,
Community and Neighborhood Parkland,
Larimer County Road, and General Government

5



Policy Issues to Consider:

- **Financial Impact** of waiving \$557,378
- **Percent Ownership of Fort Collins Housing Authority:**
 - Technically only a .001 percent partner
 - Fee waiver passes to other funding partners
 - FCHA guarantees up to \$1.4M in unanticipated costs

6



Council Action Requested:

Staff recommends:

- Approval of Ordinance No. 071, 2011
 - Granting waiver of fees for CARE Housing/FCHA townhomes in Provincetown 3rd Filing
- Future Council policy discussion regarding waiver of fees and definition of “ownership”

ORDINANCE NO. 071, 2011
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROVING THE WAIVER OF CITY FEES FOR THE CARE HOUSING
AFFORDABLE HOUSING PROJECT IN THE PROVINCETOWNE SUBDIVISION

WHEREAS, the Fort Collins Housing Authority (the "Housing Authority") has been formed under the auspices of Section 29-4-101, et seq., C.R.S., for the purpose of providing affordable housing to residents of the City; and

WHEREAS, the provision of such housing serves an important public purpose; and

WHEREAS, in order to foster the provision of affordable housing, both state and local law exempt projects of the Housing Authority from the payment of certain fees and taxes; and

WHEREAS, more specifically, Section 29-4-227, C.R.S. states that a housing authority is exempt from the payment of any fees to the state or any subdivision thereof, and that the property of an authority is exempt from all local and municipal taxes, as are bonds and other evidences of indebtedness of an authority, all property leased to an authority for the purposes of a project, and the income derived from the authority by the lessor under such lease; and

WHEREAS, Section 29-4-227, C.R.S. also provides that the portion of a residential project that is occupied by persons of low income and that is owned by or leased to an entity that is wholly owned by an authority, or an entity in which an authority has an ownership interest, or an entity in which an entity wholly owned by an authority has an ownership interest shall likewise be exempt from taxation, together with the income derived from the above entities by the lessor under a lease; and

WHEREAS, it is unclear under the foregoing state law whether an affordable housing project that is only partially owned by a housing authority is exempt from both fees and taxes; and

WHEREAS, Ordinance No. 065, 1999, of the City Council states, in Section 2 thereof, that any housing authority organized pursuant to the provisions of Section 29-4-101, et seq., C.R.S., shall be exempt from the payment of certain City fees specified therein; and

WHEREAS, similarly, Section 7.5-17 of the Code of the City, dealing with the City's capital improvement expansion fees, exempts from the payment of such fees any housing authority organized pursuant to the provisions of Section 29-4-101, et seq., C.R.S.; and

WHEREAS, the Housing Authority has entered into an agreement with CARE Housing, a local non-profit corporation, for the purpose of providing affordable housing in the City through a large, multi-family affordable housing project in the Provincetowne subdivision, which is currently under construction; and

WHEREAS, because of the tax credit financing arrangement through which the Project is being funded, the Housing Authority currently holds only a small ownership interest in the Project; and

WHEREAS, the Director and Board of the Housing Authority have nonetheless recommended that the City waive the Project's payment of the fees specified in Section 2 of Ordinance No. 065, 1996; and

WHEREAS, the City Council believes that the waiver of fees for the Project is in the best interests of the City; and

WHEREAS, the City Council also believes that, because the status of these kinds of affordable housing projects under state and local law is unclear with regard to the waiver of City fees, the Council should consider revising the provisions of Ordinance No. 065, 1999, and Section 7.5-17 of the City Code so as to more specifically address, as a matter of ongoing policy, the question of whether and under what circumstances the City fees specified in Section 2 of Ordinance No. 065, 1999, should be waived for affordable housing projects in which the Housing Authority has only a partial ownership interest.

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

Section 1. That the payment of those fees specified in Section 2 of Ordinance No. 065, 1999, is hereby waived for the Project.

Section 2. That, to the extent that the waiver of fees contained in Section 1 of this Ordinance may conflict with the provisions of Ordinance No. 065, 1999, Section 7.5-17 of the City Code, or with any other provision of the City Code, City Land Use Code, or with any other ordinance or resolution of the City Council, the provisions of this Ordinance shall supersede any such other conflicting provision.

Section 3. That the City Council hereby finds and determines that the provision of incentives by the City to affordable housing projects located in the City is a matter of local concern and that, to the extent that the waiver of fees contained in Section 1 above may be construed to be in conflict with the provisions of Section 29-4-101, et seq., C.R.S., or any other provision of State law, the provisions of this Ordinance shall prevail and shall supersede such other law.

Section 4. That the City Manager is hereby directed to prepare a report and recommendation for the City Council's consideration at an upcoming work session with regard to whether and under what circumstances the City fees specified in Section 2 of Ordinance No. 065, 1999, should be waived for affordable housing projects in which the Housing Authority has only a partial ownership interest.

Introduced, considered favorably on first reading, and ordered published this 7th day of June, A.D. 2011, and to be presented for final passage on the 5th day of July, A.D. 2011.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 5th day of July, A.D. 2011.

Mayor

ATTEST:

City Clerk