MEMORANDUM

TO: City Council
FROM: Eva Henson, Housing Innovation Manager
DATE: May 16, 2023 Study Session
RE: Affordable Housing Fee Offset Policy

INTRODUCTION

The City of Durango (City), to make residential construction less costly and therefore more affordable, has identified cost offsets only for Fair Share developers, as codified in the Land Use Development Code (LUDC) Section 5-4-4-7 Cost Offsets for Fair Share Developers. The resulting housing price discounts should equal or exceed City-funded offsets. Typically, the developer would request fee offsets in a letter to the City Manager, who has the authority to administratively approve certain cost offsets for development fees on qualified affordable housing projects, including planning review fees; building permit fees and use tax; and water taps, if applicable.

Any justification for these administrative waivers or reimbursements must show how the project provides a public benefit. Historically, the City has granted building permit fee waivers for projects that received a Low Income Housing Tax Credit (LIHTC) allocation or if all of the units are affordable often in partnership with a non-profit (e.g. HomesFund, Housing Solutions for the Southwest, and Volunteers of America). In 2023, the Best Western motel conversion, Residences at Durango, will become the first 4% LIHTC motel conversion project in the state and will be developed by a private developer (TWG) pointing to a need to update the City’s policy. The applicant requested fee waivers for the project, but due to funding sources that include State grant funds, the Department of Local Affairs (DOLA) has requested the developer pay the fees in whole with City reimbursement to TWG, with DOLA then directly reimbursing the City with the grant funds.

Staff has expanded the current cost offset policy so that policy updates not only reflect the Residences at Durango, but for other new applications as well. This new policy exploration will set expectations, reduce cost barriers to development, and support the production of a variety of housing types. Support of housing production can be through incentives, partnerships, efficient review processes, and other mechanisms with a particular emphasis on middle-income housing. This policy is just of one of several initiatives being developed by the City to create more affordable housing in Durango.
In 2022, Council allocated $500,000 to the City’s new Housing Innovation Division to fund incentives and cost offsets for affordable housing development. The Housing Incentive Program was developed in 2022 to direct investment for the Division. In 2023, the Housing Division will pursue even more ambitious housing goals. In March 2023, Council approved a budget amendment for additional fund appropriations of $5.2 million, with $3.2 million from the General Fund Reserve, $1 million from American Rescue Plan Act (ARPA), and $1 million from DOLA IHOI grant funds for Residences at Durango to the Housing Innovation Fund.

In new development, the Housing Incentive Program allows staff to secure public benefits such as long-term deed restrictions, reduced rental rates, efficient production of attainable housing types, and leverage private investment to create workforce housing units. Overall, YTD public investment for the 2022 allocation was $431,654 resulting in the creation of 34 units dedicated to local workers. These funds also led to a direct discount in home prices for four (4) units of $125,000 each. On average, that is a $14,706 ($500,000 divided by 34 units) investment per unit. The 2022 Housing Program accomplishments include:

- $250,000 to support the Animas City Park Overlook mixed-income housing agreement resulting in 10 deed-restricted units and 12 market rate units.
- $75,000 towards partnerships with Three Springs to re-evaluate the Development Agreement terms and identify ways to stimulate new housing production.
- $26,654 towards building permit fee reduction for affordable rental units at the Gauge Apartments development that will have 14 rent restricted units and 75 market rate units.
- $80,000 allocated for the launch of the ADUs for Locals Rebate Program to stimulate the creation of 10 ADUs on existing residential properties. The program has reinvigorated interest in ADUs in the community, with multiple Limited Use Permit applications (LUPs) under review. Qualifying units must be rented to local workers for at least two years and properties must be owner-occupied. The investment of $8,000/unit encourages the creation of new units, helps residents offset mortgage costs with ADU rental income, and provides housing for local workers.

The 2023 Housing Incentive Program allocation includes $800,000 to fund a three-pronged approach which includes partnerships, incentives, and programs to increase affordable and workforce housing in the community. Additionally, the allocation will fund the ADUs for Locals Rebate program and will enhance policy initiatives utilizing funds to improve locals access to existing residential units (e.g. continue support of HomesFund’s downpayment assistance program to promote homeownership in the City). New initiatives for 2023 will further Strategic Plan goals and objectives, as categorized in the following program areas:

- New Housing Development, e.g., including public-private partnerships, ADU for Locals Rebate Program, assessing City owned parcels and URA support.
- Preservation of existing housing, e.g., incentivizing long-term units for locals and/or the workforce.
- Adaptive Re-use, e.g., hotel conversions, office-to-residence conversions.
- Housing Policy and Code, e.g., text amendments, inclusionary zoning updates and implementation.
- Land Acquisitions/Land Banking, e.g., pursuing opportunities to purchase vacant or underutilized property.
- Funding Sources, e.g., grants, partnerships, non-profits, and state funding programs including Colorado Proposition 123.
PROPOSAL

Staff recommends expanding the scope of cost offsets to include not only projects that the Fair Share manual currently permits funding for, but to include new development, preservation, or rehabilitation. The Affordable Housing Fee Offset Policy would direct funding to new development, preservation, or rehabilitation that contains four (4) or more units, whether developed by non-profit or for-profit, and for multi-family rentals (in 2021, the Colorado General Assembly legalized requirements for rental affordability). Additionally, mixed-income partnerships are required to either provide at least sixteen percent (16%) or which voluntarily contribute a portion of units of a housing development. These units would be subject to Fair Share when the units are dedicated to the Housing Program for affordable and workforce housing when they have long-term commitments through recordation of restrictive covenants or other contractual agreements, such as:

- At a minimum, rental restrictions must commit to 25 years or longer
- Perpetual deed restrictions, land use restrictive agreements, or other contractual agreement
- Land leases (e.g. such as a 99-year land lease or other terms defining the long-term affordability)

Staff has drafted two opportunities for expanding Cost Offsets for Fair Share Developers to a broader scope that would offer fee waivers and cost offsets as reimbursables for housing developments that contain affordable or workforce units. There is a BASELINE incentive and a more ENHANCED incentive depending on whether it MEETS or EXCEEDS certain criteria. There is also a BONUS incentive to build quicker if pulling a building permit within 12 months of final project approvals.
**Baseline Affordable Housing Fee Offset Policy**

The following cost offsets and waivers will be used in consideration for construction of affordable and workforce units if the project **MEETS the requirement of 16% or voluntarily contributes a certain portion of units for the Housing Program at or below 16%**. The following options are available:

**OPTION #1: NON-PROFITS (FEE OFFSET/WAIVER/REIMBURSEMENT)**

Non-profits that voluntarily contribute a portion of their units to be affordable or for local and/or workforce at or below 16%, or if required to **MEET** at least 16% of their units to be affordable or for local and/or workforce, they would be eligible for fee offsets as a waiver since they are tax exempt at time payment is due. A letter must be submitted in writing to the City Manager outlining the request before project submittal to accommodate staff review and formal approval.

- **Fee Offset Waiver**
  - Development Review Fee
  - Building Permit Fees
  - Use Tax

- **Administration of Fee Waiver:**

  The Housing Incentive Funds would administratively cover these costs, proportionate to the number of units designated for affordable or for local and/or workforce for development review fee, building permit fees and use tax.

- **Fee Offset Rebate**

  - 16% Fair Share Fees (currently applies to for-sale/ownership only at this time)*
  - Depending on Fair Share Income Limits, Price Limits, and In-Lieu Amounts, other eligible improvements & eligible costs may be considered

- **Administration of Fee Offset/Rebate:**

  If Fair Share applies, a non-profit must pay all fees in whole. The City would use Housing Incentive Funds to reimburse these costs as a rebate, proportionate to the number of units designated for affordable or for local and/or workforce for development review fee, building permit fees and use tax.

**Bonus:** Incentivize to build quicker. If building permits are pulled within 12 months of final approval, an additional 1% bonus off the total of these fees will be reimbursed after these fees are paid.

**OPTION #2: FOR-PROFIT MULTIFAMILY (FEE OFFSET/REIMBURSEMENT)**

For-profit multifamily (apartment) developers that voluntarily contribute a portion of their units to be affordable or for local and/or workforce at or below the 16%, or if required to **MEET** at least 16% of their units to be affordable or for local and/or workforce, they would be eligible for fee offsets as a reimbursable and must pay all fees in whole at time payment is due. At a minimum, this requires a 25-year term for affordability. A letter must be submitted in writing to the City Manager outlining the request before the project submittal to accommodate staff review and formal approval.
a. Fee Offset/Rebate:
   - Development Review
   - Fee Building Permit Fees
   - Use Tax
   - Fair Share Fees (N/A at this time)*

b. Administration of Fee Offset/Rebate:

Developers must pay all fees in whole. The City would use Housing Incentive Funds to reimburse these costs as a rebate, proportionate to the number of units designated for affordable or for local and/or workforce for development review fee, building permit fees and use tax.

**Bonus:** Incentivize to build quicker. If building permits are pulled within 12 months of final approval, an additional 1% bonus off the total of these fees will be reimbursed after these fees are paid.

**OPTION #3: FOR-PROFIT MIXED INCOME (FEE OFFSET/REIMBURSEMENT)**

For-profit developers who partner with the City for mixed-income development, who voluntarily contribute a portion of their units to be affordable or for local and/or workforce at or below the 16%, or if required to **MEET** at least 16% of their units to be affordable or for local and/or workforce, then they would be eligible for fee offsets as a reimbursable and must pay all fees in whole at time payment is due. A letter must be submitted in writing to the City Manager outlining the request before project submittal to accommodate staff review and formal approval.

a. Fee Offset/Rebate:
   - Development Review Fee
   - Building Permit Fees
   - Use Tax
   - 16% Fair Share Fees (currently applies to for-sale/ownership only at this time)*
   - Depending on Fair Share Income Limits, Price Limits, and In-Lieu Amounts, other eligible improvements & eligible costs may be considered

b. Administration of Fee Offset/Rebate:

The Developer must pay all fees in whole. The Housing Incentive Funds would be a rebate through an administrative reimbursement, proportionate to the number of units designated for affordable or local and/or workforce for development review fee, building permit fees and use tax.

**Bonus:** Incentivize to build quicker. If building permits are pulled within 12 months of final approval, an additional 1% bonus off the total of these fees will be reimbursed after these fees are paid.

**OPTION #4 FAIR SHARE DEVELOPER (FEE OFFSET/REFUND PER FAIR SHARE PROGRAM)**

The City offers the following cost offsets to Fair Share Developers in consideration of their construction and sale of Fair Share homes, and to the extent that price discounts on such homes are equal to or exceed such cost offsets. There are alternatives if not building to Fair Share, such as pay Fee-in-Lieu or Land Donation.
Fee Offset/Refund:

Such refunds will be made **only for fees** paid in connection with the construction of Fair Share homes in price **Tier 1 (80% AMI)** and **Tier 2 (100% AMI)**, with such refund payable only after a sale to a qualified buyer has been certified.

The fees paid or allocable on a per-dwelling-unit basis that qualify for such refunds are as follows:

- Building permit fees
- Use Tax
- Water Plant Investment Fees
- Sewer Plant Investment Fees
- Water Taps, if applicable

With regard to sewer plant investment fees, the City will, via a refund, subsidize a portion of the fee paid for connection to the South Durango Sewer District (SDSD) system. Such portion shall be equal to the sewer plan investment fee charged by the City of Durango Sewer District when the fee was paid to SDSD. Not withstanding the foregoing, the total amount of fees refunded for construction and sale of Fair Share home shall not exceed the price discount for that home, as defined in Section 14.

*Land use application fees will be refunded for projects involving which are entirely residential and in which all of the residential units have price and income restrictions equivalent to or lower than those for Fair Share homes.* At the City’s sole discretion, such fees may be waived in advance rather than refunded.

**Enhanced Affordable Housing Fee Offset Policy**

The following cost offsets and waivers in consideration for their construction of affordable and workforce units if project **EXCEEDS the requirement and provides more than 16%**, or **voluntarily contributes a certain portion of units for the Housing Program that is more than 16%**, then the following options are available:

**OPTION #1: NON-PROFITS (FEE OFFSET/WAIVER)**

Non-Profits that voluntarily contribute a portion of their units to be affordable or for local and/or workforce that is more than 16%, or if **EXCEEDS** requirement and contributes more than 16% of their units to be affordable or for local and/or workforce, they would be eligible for fee offsets as a waiver since they are tax exempt at time payment is due proportionate to the number of units committed. A letter must be submitted in writing to the City Manager outlining the request before project submittal to accommodate staff review and formal approval.

a. **Fee Offset Waiver**

   - Development Review Fee
   - Building Permit Fees
   - Use Tax
   - Water Taps, if applicable

b. **Administration of Fee Waiver:**
The Housing Incentive Funds would administratively cover these costs, proportionate to the number of units designated for affordable or for local and/or workforce for development review fee, building permit fees, use tax and water taps, if applicable.

c. **Fee Offset Rebate**
- 16% Fair Share Fees (currently applies to for-sale/ownership only at this time)*
- Depending on Fair Share Income Limits, Price Limits, and In-Lieu Amounts, other eligible improvements & eligible costs may be considered

d. **Administration of Fee Offset/Rebate:**

If Fair Share applies, a non-profit must pay all fees in whole. The City would use Housing Incentive Funds to reimburse these costs as a rebate, proportionate to the number of units designated for affordable or for local and/or workforce for development review fee, building permit fees, use tax, and water taps, if applicable.

**Bonus:** Incentivize to build quicker. If building permits are pulled within 12 months of final approval, an additional 2% bonus off the total of these fees will be reimbursed after these fees are paid.

**OPTION #2: FOR-PROFIT MULTI-FAMILY (APARTMENTS)**

For-profit developers that voluntarily contribute more than 16% of their units to be affordable or for local and/or workforce, or if **EXCEEDS** requirement and contributes more than 16% of their units to be affordable or for local and/or workforce, they would be eligible for fee offsets as a reimbursable and must pay all fees in whole at time payment is due. Affordability terms are more than 25 years. The applicant must submit a written request to the City Manager before project submittal to accommodate staff review and formal approval.

a. **Fee Offset/Rebate:**
- Development Review Fee
- Building permit fees
- Use Tax
- Water Taps, if applicable
- Fair Share Fees (N/A at this time)*

b. **Administration of Fee Offset/Rebate:**

Developer must pay all fees in whole. The Housing Incentive Funds would administratively reimburse these costs as a rebate, proportionate to the number of units designated for affordable or for local and/or workforce for development review fee, building permit fees, use tax, and water taps, if applicable.

**Bonus:** Incentivize to build quicker. If building permits are pulled within 12 months of final approval, an additional 2% bonus off the total of these fees will be reimbursed after these fees are paid.

**OPTION #3: FOR-PROFIT MIXED INCOME (FEE OFFSET/REIMBURSEMENT)**

For-profit developers, who partner with the City for mixed-income development, who voluntarily contribute a portion of their units to be affordable or for local and/or workforce that is more than 16%, or if the contribution **EXCEEDS** the requirement with more than 16% of the units to be affordable or for local and/or workforce, they
would be eligible for fee offsets as a reimbursable and must pay all fees in whole at time payment is due. The applicant must submit a written request to the City Manager before project submittal to accommodate staff review and formal approval.

a. **Fee Offset/Rebate:**

- Development Review Fee
- Building Permit Fees
- Use Tax
- Water Taps, if applicable
- **16% Fair Share Fees** (currently applies to for-sale/ownership only at this time)*
- Depending on Fair Share Income Limits, Price Limits, and In-Lieu Amounts, other eligible improvements & eligible costs may be considered

b. **Administration of Fee Offset/Rebate:**

Developer must pay all fees in whole. The Housing Incentive Funds would administratively reimburse these costs as a rebate, proportionate to the number of units designated for affordable or for local and/or workforce for development review fee, building permit fees, use tax, and water taps, if applicable.

**Bonus:** Incentivize to build quicker. If building permits are pulled within 12 months of final approval, an additional 2% bonus off the total of these fees will be reimbursed after these fees are paid.

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**OPTION #4 FAIR SHARE DEVELOPER (FEE OFFSET/REFUND PER FAIR SHARE PROGRAM)**

The City offers cost offsets to Fair Share Developers in consideration of their construction and sale of Fair Share homes, and to the extent that price discounts on such homes are equal to or exceed such cost offsets. Fee offsets must align with the current manual as described above. There are alternatives if not building to Fair Share, such as pay Fee-in-Lieu or Land Donation.

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**STRATEGIC PLAN ALIGNMENT**

The City’s Strategic Plan goal of **Affordability & Economic Opportunity and Financial Excellence and High Performing Government** in the Strategic Plan is applicable in this matter. More specifically, to the following:

**Affordability and Economic Opportunity**

1.1 Identify and commit resources and revenue towards implementing a long-term plan that encourages housing opportunities for mixed-income demographics with an emphasis on workforce housing.
1.1.1 Ensure there is adequate City staff to focus on ways to increase affordable and workforce housing inventory through a variety of mechanisms that include land and or infrastructure acquisition (or bank), changes to code, and public-private incentives.
1.2 Support the production of a variety of housing types through incentives, partnerships, efficient review processes, and other mechanisms with a particular emphasis on middle-income housing.
1.2.1 Establish policies to allow use of Housing Funds to facilitate unit construction.

**Financial Excellence and High Performing Government**
1.1 Identify partnership opportunities to leverage dollars, capacities, and efficiencies including grants and volunteers to offset City expenditures.

**PROCESS AND NEXT STEPS**

Staff proposes the following process and next steps:

- City Council Study Session – May 16, 2023 today
- Housing and Urban Development Office will be releasing new 2023 income limits, price limits, and maximum rent tables in May.
- Fair Share program is currently being evaluated and the City has hired Root Policy who is administering the manual updates and feasibility study. This work began March 2023 and is anticipated to take seven (7) months to complete.
- This fee policy may need to be amended to reflect the new Fair Share Administrative updates once adopted.