SECTION VI.  
Fair Share Policy Recommendations

Root’s in-depth review of the City’s Fair Share program yields recommendations discussed below, organized around program components (applicability, affordability requirements, compliance options, and incentives). The recommendations are informed by Root’s expertise in inclusionary policy design and are responsive to state legislative changes, market realities, best practices, and stakeholder and City staff engagement.

Key objectives of the proposed changes are to:

- Extend the program to include rental developments;
- Incentivize developers to construct Fair Share units (FSUs) rather than paying the fee in lieu—accomplished by reducing the set-aside requirement, simplifying AMI targets, and raising the fee in lieu per FSU;
- Simplify the program to improve transparency for developers and reduce administrative burden on staff; and
- Ensure the program does not create barriers to the production of naturally occurring attainable housing prices.

It is important to note that the City’s Fair Share program alone is an insufficient tool to fully address housing needs. The program (with potential modifications to the fee-in-lieu structure) is sufficient to help the City “keep up” with new development (ensuring a proportion of new units are affordable) but does not help the City “catch up” with the current deficit of affordable housing. “Catch up” affordable production is most likely to occur through partnerships with the Housing Authority and non-profit developers, the LIHTC program, and leveraging state and local resources for additional affordable development above and beyond Fair Share units.

Applicability

The City’s current program applies to all new residential development in Durango excluding rental developments and projects with fewer than 4 dwelling units. Now that state legislation allows for inclusionary application to rental developments and given the inequity of the current system (in applying only to for-sale), Root recommends the City expand the Fair Share program to apply to rental developments in addition to for-sale developments.
The adjustments described above are recommended to address stakeholder concern about inequity in the current Fair Share Ordinance and spread the impact and responsibility of housing affordability across all residential development uses. The recommendations are also supported by state legislative changes that allow for application of inclusionary policies to rental development.

**Affordability Requirements**

The City's program currently requires a 16% set-aside of units at various price tiers averaging about 100% AMI on for-sale units. Root recommends the following adjustments:

- **Reduce the set-aside from 16% to 12%** to encourage production of on-site affordable units and to align with the feasibility analysis, which shows 16% set-asides burden development economics.

- Simplify the for-sale requirement by **eliminating the price tiers and setting the default Fair Share affordability target at 100% AMI**. This adjustment provides more clarity and simplicity but remains within the spirit of the original fair share ordinance. This AMI target is in line with identified housing needs (see Section II) and supports the City's Prop 123 goals (which target for-sale units at 100% AMI).

- **Apply the same (reduced) set-aside of 12% to rental units but maintain a lower AMI target of 80% AMI.** Though 80% AMI is slightly above identified rental needs (Section II) and other program subsidies (e.g., LIHTC, Prop 123, etc.), it fills a gap between current subsidy programs and market production, and it maintains financial feasibility for developers at a 12% set-aside. Alternative compliance options to help reach deeper AMIs are discussed below. Root recommends the affordability term on Fair Share rental units be 30 years.

Root understands that the original intent of the Fair Share Ordinance was to deliver affordable homes at a range of price-points (thus the tiers). As such, Root recommends the City pair the simplified approach discussed above with flexibility for developers to help achieve price variation and allow developers to choose AMI targets and set-asides that work best for their proformas:

- **Offer flexibility to developers wishing to provide a mix of AMIs** as long as the average affordability of FSUs is 100% AMI on for-sale products and 80% AMI on rental products. The maximum allowed AMI target on any individual unit should be capped at 120% AMI on for-sale and 100% AMI on rental.

- **Offer flexibility to developers wishing to provide deeper AMIs** such that the set-aside requirement drops to 10% of units if the FSUs are restricted to 80% AMI on for-sale developments and/or 60% AMI on rental units.
Offer flexibility to developers providing attainable ownership housing:

- If the market-rate prices of all units (100%) in a single family for-sale development are affordable to households with an income of 150% AMI\(^1\) or less, and if the developer requires an owner occupancy for purchase of those units (i.e., no rental and no investor purchase), then the developer is exempt from the Fair Share requirement.

- If the market-rate prices of all of units (100%) in a townhome or condo for-sale development are affordable to households with an income of 120% AMI\(^2\) or less, and if the developer requires an owner occupancy for purchase of those units (i.e., no rental and no investor purchase), then the developer is exempt from the Fair Share requirement.

Compliance Options

The City’s current Fair Share program allows developers to pay a fee in lieu of constructing the Fair Share homes or provide a donation of land of equivalent value and suitable for the construction of affordable housing. To date, only one development has built the Fair Share units; all others have opted to pay the fee in lieu. State legislation (HB21-1117) requires that communities imposing inclusionary requirements offer at least one compliance alternative to on-site construction of the required affordable units.

Root offers the following recommendations to the City regarding alternative compliance options to building the Fair Share units on-site. Recommendations are based on Root’s experience with other inclusionary programs, best practices, stakeholder feedback, and staff discussions.

Fee in lieu. Root recommends the City raise the fee in lieu per FSU using the development cost methodology (rather than the affordability gap methodology). This approach will ensure the City can construct affordable units with the fee revenue when developers opt out of constructing the units themselves. The higher fee in lieu per FSU combined with the reduced set-aside requirement actually means the project-level financial impacts on for-sale projects are similar to the affordability gap calculations used for the current Fair Share program (see Figure V-9). If the City moves forward with adding rental requirements to Fair Share, then a fee in lieu for rental requirements should also be calculated using the development cost methodology.

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\(^1\) Market-rate prices on for-sale single family are over 200% AMI so this exemption ensures meaningful discounts from prevailing market rate prices and ensures owner occupancy of the attainable units.

\(^2\) Market-rate prices on attached for-sale products are just over 150% AMI so this exemption ensures meaningful discounts from prevailing market rate prices and ensures owner occupancy of the attainable units.
Simplified affordability requirements (targeting 100% AMI and 80% AMI for owner and rental products, respectively) also allow for simplified fee in lieu calculations, as they will be standardized without the need for calculation by tier. Fees should be adjusted for inflation annually and recalibrated to market conditions every three years (or when substantial market shifts occur).

Root does propose a modest change to the timing of in lieu fee calculation and collection for some developments. Presently, fees are calculated at the time of application but not collected until building permits are issued (or even later in some situations with negotiated deferments). For most developments, this timing works well; however, in some cases, these two points in time can be three or four years apart, in which case the fees reflect substantially outdated market conditions. Root recommends fees be recalculated to reflect current rates if more than 2 years pass between application approval and building permit issuance (unless such delays are created by the City).

**Land donation.** Ensure a clear path for land donation and clarify evaluation criteria for approval. When considering land donation approval, evaluate whether the number of required affordable units can feasibly be developed on site and evaluate the in-kind value of land (is it equivalent or greater than the fee-in-lieu?). The viability of a land donation option is also dependent on a clear path for developer donations (transparent process, legal requirements, and evaluation criteria) and strong partnerships with non-profit developers to create affordable housing on the donated land on the City’s behalf.

**Offsets and Incentives**

Under the current Fair Share program, developers that construct the Fair Share homes (as opposed to paying a fee in lieu or providing a land donation) are eligible for fee refunds/waivers including building permit fees, use tax, land use application fees, water plan investment fees, sewer plant investment fees, and water tap fees.

**Financial incentives.** Root recommends the City improve transparency for developers by standardizing the fee rebate amounts in the Administrative Procedures Manual. Root and City staff evaluated the typical, historical fee rebates offered and recommend the program set financial incentives at $13,000 per Fair Share unit constructed in rental developments and $16,000 per Fair Share unit constructed in for-sale developments. Note that this recommendation is specific to the Fair Share program; the City may decide to create different financial incentives for developments exceeding Fair share requirements (e.g., LIHTC, land trust projects, etc.).

**Zoning incentives.** In addition, Root recommends the City implement zoning incentives for projects that comply with Fair Share through on-site construction of affordable units. The following recommended incentives are based on best practices and discussions with City staff:
• **10% parking reduction for multifamily developments** (rental or ownership) that include Fair Share units on-site. Parking reductions apply to the entire development (not just FSUs) and allow for up to a 10% reduction in required spaces as long the development provides at least one parking space per unit.

• **Density bonus for developments allowing for an increased project density** up to 30% above the base density in single family districts and an additional 4 dwelling units per acre in multifamily or mixed use districts. Incentive only applies to developments including Fair Share units on-site and is measured as an increase to dwelling units per acre.

• **Prioritized development review** for any new development that includes Fair Share units on-site.

### Administrative Recommendations

In addition to the regulatory changes outlined above, Root recommends several administrative and enforcement changes to the Fair Share program:

• Improve reporting and transparency on the outcomes of the Fair Share program and how revenues from fee collections are deployed. If the City expands Fair Share to include rental, then fee-in-lieu revenue should support both rental and ownership opportunities.

• Funding priorities should be transparent and community-aligned, but also flexible enough to adapt to unique opportunities and market shifts.

• Regularly evaluate program administration to ensure efficient delivery of services.

• Allow for administrative approval of changes to the Fair Share Administrative Procedures Manual. This will allow the City to more easily adapt to procedural changes without revisiting the actual ordinance.

• Consider decoupling the Fair Share home price calculation from the resale price calculation as there are circumstances in which the two may need to fluctuate separately to account for market conditions and interest rates.

• Additional administrative recommendations may arise as the Administrative Procedures Manual is revised to account for potential Fair Share Ordinance changes adopted by the City.
Summary of Proposed Changes

The following figure summarizes the key changes recommended for the Fair Share program, as described above.

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<thead>
<tr>
<th>Current Fair Share Policy</th>
<th>Recommended Fair Share Policy</th>
<th>Objective of Proposed Changes:</th>
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<tbody>
<tr>
<td><strong>Applicability</strong></td>
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<tr>
<td>For-sale developments with &gt;4 units</td>
<td>For-sale and rental developments with &gt;4 units</td>
<td><strong>Extend program to rental</strong></td>
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<tr>
<td><strong>Affordability Requirements</strong></td>
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| 16% of for-sale units at specified tiers of affordability (averaging 100% AMI) | 12% of units at <100% AMI (for-sale)  
12% of units at <80% AMI (rental) | **Simplify AMI targets and reduce set-aside (to align with market and encourage on-site FSUs)** |
| **Requirement Flexibility** | 
| None | 1). Income averaging for a mix of units;  
2). Reduced set-asides for deeper AMIs;  
3). Exemptions for attainable ownership developments | **Offer more flexibility to developers and ensure the program does not impede attainable ownership production** |
| **Compliance Options** | 
| Build Fair Share Units (FSU); Land donation; or Fee in Lieu by tier and bedroom count | Build FSUs; Land donation; or Fee in Lieu (standardized and increased per FSU); alternative compliance/partnerships agreements as approved by City Council | **Raise fee in lieu per FSU (offsets reduced set-aside and encourages on-site FSUs) and simplify calculation/application** |
| **Offsets and Incentives** | 
| Financial incentives (fee rebates) | Standardized fee rebate per FSU and new development incentives (density bonus, parking reduction, and prioritized review) | **Standardize financial incentives and add development incentives** |