

## **STAFF REPORT**

Subject: Housing Ordinance and Fee Update Workshop

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### **RECOMMENDATION:**

Staff recommends the following to the Town Council: Provide staff direction regarding the housing ordinance and fee update.

### **CONSIDERATION OF THE TOWN'S VISION, TOWN COUNCIL PRIORITIES, AND MANDATES:**

- *The proposed action is not legally mandated.*

The State requires the Town to demonstrate how it can meet the State's Regional Housing Need Allocation (RHNA)<sup>1</sup> for Mammoth Lakes. The Town has demonstrated this satisfactorily through the 2014-2019 Housing Element. The Housing Element identifies that the Town will update its housing ordinance. Although housing ordinances and housing fees are not mandated by the State, they are considered as tools to not only meet the RHNA, but also to provide adequate and appropriate housing for the local workforce.
- *The proposed action relates to the following Town Council priorities.*

Updating the housing ordinance and fee supports the Council priority of diversifying economic development. Updated housing requirements would provide clear understanding of expectations and obligations for developers and builders, thereby encouraging new development.
- *The proposed action meets the following aspect(s) of the Town's Vision:*

An updated ordinance and fee furthers the vision of "adequate and appropriate housing that residents and workers can afford."

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<sup>1</sup> The Town's 2014-2019 RHNA is 74 units: 17 very-low income units (23%), 12 low income units (16%), 14 moderate income units (19%), and 31 above moderate income units (42%). The Town must plan for these 74 units and report progress annually to the State; however, the Town is not penalized if these units are not realized.

## **ANALYSIS/DISCUSSION:**

The housing ordinance is almost nine years old, and the current housing mitigation requirements have been in place for over five years. The Town's program has gone through a few major changes starting in 2000, modified in 2006, and is now in an "interim status" since 2009. This historic background is discussed in more detail below. During this time the Town has continued to adopt the State required housing element. The 2014-2019 Housing Element references the interim policy and anticipates it being implemented through a housing ordinance update. Prior to staff proceeding to work with a consultant on the update, Council is being asked to provide direction on some of the key policy elements that will be reviewed and/or modified during this update.

Staff is prepared to proceed with the housing ordinance and fee update. Funding for this work is available from General Fund TOT housing (Measure A). Pending the level of public engagement, the goal would be to have the new ordinance and fee in place no later than July 1, 2015. As discussed below, the other unknown is the legal status of inclusionary housing, which is under review by the California Supreme Court. If decided during this work effort, staff can respond accordingly. The other option is to delay any work on the program until the legal issue of inclusionary housing is addressed.

### ***2012 Draft Housing Ordinance***

A draft housing ordinance update was prepared in 2012 (Attachment 1). This ordinance was reviewed by legal counsel, but was placed on hold until housing fees were established. At a minimum, the fee established by the 2009 Interim Housing Policy should be updated as it continues to be a point of discussion with the development community. The housing fee update will coincide with the development impact fees update.

Staff is requesting confirmation or other policy direction regarding a number of key elements of the draft ordinance, as this is likely the starting point for the update work.

Some of the requirements in draft ordinance are listed below:

### **Policy Item 1 – Application of the “Inclusionary Requirement”. As noted, this is also the subject of an active legal case pending before the California Supreme Court.**

- Inclusionary housing would only be required of residential projects of 10 or more units (17.136.020.A). This would apply to transient and non-transient residential projects. Inclusionary housing would not be required of lodging projects.

- Inclusionary units would not count towards total project density subject to certain conditions (17.136.020.C).

**Policy Item 2 – Should inclusionary units be limited to only Below Market Rate units, tied to Area Median Income (AMI) (e.g., below 80% AMI) or are there other thresholds to consider (e.g., 150% AMI)? For reference, the Interim Policy requires inclusionary units to be restricted to 120% AMI or less.**

- Inclusionary rate and affordability levels would be set by Council resolution and periodically reviewed and updated (17.136.020.A and B).

**Policy Item 3 – Should there be additional considerations for which projects are subject to a housing fee (e.g., higher unit count, application to only certain types of development, etc.).**

- Lodging projects, new commercial and industrial development, residential projects of nine or fewer units, additions, and use conversions would be required to pay a housing mitigation fee (17.136.030)<sup>2</sup>. Certain projects are exempt from housing mitigation entirely (17.136.050).
  - Housing fees would be established by Council resolution (17.136.040.A).

**Policy Item 4 – Should there be a modification to the findings for approval of Alternate Housing Mitigation Plans (AHMPs) (i.e., should AHMPs be encouraged, allow by right as an option to meet base requirements, allow on a case by case basis, or are current findings acceptable) (17.136.070)?**

- Alternate housing mitigation plans (AHMPs) may be proposed instead of providing the required inclusionary housing or fee with the following provisions:
  - Approval of an AHMP requires two findings: 1) on-site mitigation is less desirable for the community than the proposed alternative or is infeasible, and 2) there would be a substantial additional affordable housing benefit derived from the AHMP (17.136.070.D).
  - Off-site units would have to result in at least 10% more affordable units or at least 10% lower than the target AMI required (17.136.070.C.1.f). Currently, there are no specific

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<sup>2</sup> A lodging developer could build housing units on-site subject to the approval of an Alternate Housing Mitigation Plan (AHMP).

thresholds for the “greater housing benefit” required for approval of an AHMP.

**Policy Item 5 – Direction on preferences, if any, related to on-site vs. off-site housing as part of AHMPs. Preferences may be based on zoning districts and/or development type.**

- Construction of new off-site units would only be allowed in the Downtown, Old Mammoth Road, Mixed Lodging and Residential, RMF-2, Resort, and Specific Plan zones (these are generally zones focused more towards mixed use/commercial uses and visitors) (17.136.070.C.1.a).

**Policy Item 6 – Direction on the continued use of the in-lieu fee program (17.136.070.C.5). An in-lieu fee would be requested as part of an AHMP; it is a different fee from that established for projects automatically subject to a housing fee 17.136.030).**

- AHMP in-lieu fees would established by Council resolution (17.136.070.C.5). Currently, these are negotiated on a case-by-case basis.

**Policy Item 7 – Direction on Livability Standards, which are outlined in Section 17.136.090. These are almost identical to the Interim Policy Livability Standards.**

**Policy Item 8 – Direction on preference of the program’s focus for owner occupied vs. rental properties.**

**Policy Item 9 – Staff anticipates that the housing ordinance and fee update will be of interest to a broad spectrum of our community. A discussion of the Council’s expectation on the scope of public outreach is also requested.**

It is anticipated that the Town’s consultant would begin their work by working off of 2012 draft ordinance together with policy direction provided by Council. The above areas are identified as the larger policy matters to be discussed, but are not the only items that may arise during the update process. Direction in these areas will assist staff in preparing a scope of work and directing the consultant on the update.

**BACKGROUND/HISTORY:**

***2000 Housing Ordinance***

The housing ordinance is part of the Zoning Code that describes housing mitigation requirements for new development. The Town’s housing

ordinance was first adopted in 2000 with the goal of creating affordable housing in Mammoth Lakes sufficient to mitigate the increased affordable housing demands generated by new development. The required mitigation was calculated based on a set formula of employee generation by land use type. On-site housing was preferred. Off-site housing could only be approved if on-site housing was undesirable for the community or infeasible. Suitable zones for off-site housing were identified as Resort, RMF-2, and commercial zones (see Zoning Map, Attachment 2). An in-lieu fee could only be approved if off-site housing was undesirable for the community or infeasible.

### **2006 Housing Ordinance**

In 2006, the housing ordinance was amended to incorporate workforce housing. Workforce housing is defined as follows:

Workforce housing - housing that is restricted for rent or purchase by individuals and households working in the community of Mammoth Lakes. Employment criteria, rental rates, and sales prices for workforce housing shall be established administratively (17.48.020.H).

The housing ordinance required 2/3 of for-sale mitigation housing units to be affordable to households making up to 150% of the Area Median Income (AMI) and the remaining 1/3 to be affordable to households making up to 200% AMI. Attachment 3 identifies AMI levels.

Workforce housing is broader than “affordable housing” which has more restrictive income level thresholds:

Affordable housing – housing that is restricted as to rental rate or sales price based upon household income and size criteria as defined by the State of California or the Town of Mammoth Lakes (17.48.020.H)<sup>3</sup>.

“Affordable housing” is sometimes used to describe those projects funded by Federal and/or State grants, which typically limit funding to households with incomes up to 80% AMI. “Workforce housing” is sometimes used to refer to those in the local workforce who earn above 80% AMI, and are therefore, typically ineligible for housing programs funded through Federal and/or State grants. However, workforce

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<sup>3</sup> Housing and Urban Development (HUD) defines “affordable housing” as follows: In general, housing for which the occupant(s) is/are paying no more than 30% of his or her income for gross housing costs, including utilities. Please note that some jurisdictions may define affordable housing based on other, locally determined criteria, and that this definition is intended solely as an approximate guideline or general rule of thumb.

housing can be considered to encompass affordable housing since households in affordable housing are members of the Mammoth Lakes workforce.

The Town establishes workforce housing employment criteria, rental rates, and/or sales prices criteria during the permitting process for development that includes workforce housing, through the recording of deed restrictions, and through regulatory agreements.

### ***2009 Interim Affordable Housing Mitigation Policy***

In 2009, an Interim Housing Policy was adopted based on input from a subcommittee of the Mammoth Lakes Housing, Inc. (MLH) Board. The subcommittee, comprised of Bill Taylor, Jim Smith, and both MLH and Town staff, found that inclusionary housing policies were more prevalent in other resort communities than the employee generation formula used by the Town. According to the Interim Policy staff report, the employee generation formula used by the Town was found to be equivalent to a 19% inclusionary requirement.

A 10% inclusionary requirement was recommended and approved by Council (Attachment 4). The inclusionary requirement applies to development of 10 or more units and lodging of 20 or more rooms<sup>4</sup>. Projects below these thresholds pay an in-lieu fee. The mitigation housing is required to be restricted to an income of 120% AMI or less. This income level was agreed upon because grant programs provide funding for lower income households, typically up to 80% AMI, and market rate pricing was anticipated to be affordable to those in the 120% to 200% of AMI range<sup>5</sup>.

Projects that are subject to inclusionary housing may propose an Alternate Housing Mitigation Plan (AHMP) subject to MLH Board review and Planning and Economic Development Commission approval. An AHMP may be approved only if on-site housing is undesirable for the community or infeasible and if there would be a substantial additional affordable housing benefit derived from the AHMP.

Smaller projects are not subject to inclusionary housing, and instead are required to pay housing in-lieu fees. The initial fee established by the Interim Policy was \$23,222 per market rate unit (\$11,611 per market rate lodging room)<sup>6</sup>. This fee was recommended by the MLH Board and based on the average affordability gap for households with incomes of

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<sup>4</sup> For example, the 10% inclusionary policy requires a 10 unit residential project to have nine market rate units and one deed restricted unit.

<sup>5</sup> According to the 2014 Housing Element, Table 2-31, Median Home and Rental Code “Gap” Summary 2013, there is no cost gap for households earning above 80% AMI (Attachment 5).

<sup>6</sup> For example, a 6 unit residential development would pay \$139,322 for housing in-lieu fees (6 x \$23,222).

80% to 100% of AMI. This fee was about 34% less than the Town's housing fee in place at that time (i.e., prior to the adoption of the 2009 Interim Policy). Since the 2009 Policy has not been updated, \$23,222 remains as the current fee.

Certain projects are exempt from housing mitigation requirements, including new single family homes under 2,500 square feet and new retail and restaurants.

The Interim Policy also established Workforce Housing Livability Requirements to ensure workforce units meet minimum standards for size and amenities (e.g., adequate storage, dining space, etc.) for households living and working in Mammoth Lakes. Additionally, the livability requirements assure that the workforce units provided are functionally equivalent to the market rate units that are being mitigated.

The 2009 Policy provides interim project evaluation policies and findings pending the adoption of an updated housing ordinance. In 2009, the housing ordinance was anticipated to be updated to reflect this Interim Policy. However, concerns with the Interim Policy have been raised recently with the economy recovering and new potential developers entering Mammoth Lakes. Potential areas of concern with the Interim Policy are discussed in the Analysis/Discussion section below.

### ***2014-2019 Housing Element***

The 2014-2019 Housing Element was adopted by Council in June 2014. It includes the following policy and action regarding the housing ordinance update:

*Policy: H.2.B: Update the Town's workforce housing mitigation requirements to ensure that they meet the following objectives:*

- *Respond to a technically sound Workforce Housing Needs Assessment that reflects the existing housing resources, seasonality, commuting patterns, and affordability categories.*
- *Meet current legal mandates and can be successfully implemented by the Town.*
- *Ensure that new development mitigates an appropriate portion of workforce housing demand that it generates, through requirements and standards that can be reasonably achieved by the development community.*

- *Meet documented community housing needs and gaps in terms of unit affordability levels, type, tenure, size, amenities, and configuration.*
- *Achieve quality, livable housing units that are successfully integrated into neighborhoods and the broader community.*

*Action H.2.B.1: Amend and adopt a revised Housing Ordinance that reflects the 2009 Interim Housing Policy, incorporates refinements to meet legal mandates, addresses aspects not fully articulated in the Interim Housing Policy; and provides needed clarification. The amended Housing Ordinance shall meet the objectives outlined in Policy H.2.B, and should include the following components:*

- *An inclusionary housing provision that requires most new residential and lodging projects to provide, on-site, a fixed proportion of total units as below market-rate deed-restricted affordable or workforce housing units. The specific requirement shall be based on documented community housing needs and reviewed and updated on a regular basis.*
- *A workforce housing mitigation requirement such as a fee to contribute to affordable housing production.*
- *A list of project types exempted from housing mitigation requirements.*
- *A list of project types for which providing on-site units would be undesirable or infeasible, and which may pay in-lieu fees rather than providing units on-site. This may include small multi-family residential and lodging projects, industrial and some commercial projects.*
- *Provisions defining Alternate Housing Mitigation Plans for projects that wish to propose alternative mitigation to construction of on-site units, and findings for approval of such proposals.*
- *Specification of the means and method by which in-lieu fees, affordability levels, unit types, tenure (if legally permissible), livability criteria, and other pertinent criteria not otherwise dictated by the Housing Ordinance shall be established, maintained and updated.*
- *Density bonus provisions pursuant to State Housing Density Bonus law and to Town General Plan policies and related Housing Element policies.*



- *A definition of and provisions for ensuring the "livability" of workforce housing units.*

This policy and action should be included in the scope of work for the housing ordinance and fee update.

### ***Housing Data and Information***

As part of previous housing efforts, including the 2014-2019 Housing Element, the following information was gathered and/or prepared:

1. A bilingual housing survey was conducted in 2014 for the Housing Element Update. This survey was designed to gain a deeper understanding of resident housing needs. A total of 145 surveys were submitted. Prevalent housing issues identified were affordability of housing, homes or apartments in need of repair, and availability of housing. Major themes from comments provided included rent costs are too high, lack of properties targeted towards the middle class, and not enough small or medium-sized single family homes available.
2. The 2014-2019 Housing Element Update was adopted in 2014 and reflects the housing survey described in a, above. The Housing Element includes a housing needs assessment, identifies housing constraints and resources, and includes housing goals, policies, and actions.
3. The Housing Strategy will serve as an implementation toolkit reflecting the local context and needs, and a draft will be presented to both the Planning and Economic Development Commission and Town Council in February 2015. It is expected that the Housing Strategy will be adopted by Council soon thereafter.
4. A comprehensive housing needs assessment was completed in 2011. This assessment evaluated the housing needs of residents, employees, and businesses and considered economic and housing conditions. It also identified where housing programs and policies can be most effective in meeting those needs. The recommendations included housing rehabilitation for both ownership and rental properties, increasing the number of rental units, and allowing the long-term rental of ownership deed restricted units in an effort to prevent loss of these deed restrictions through potential foreclosure.

Council may provide direction now or during the process if additional information is desired to assist in the development of the Town's updated housing ordinance and fee program.

**California Building Industry Association (CBIA) v. City of San Jose**

The Town was targeting completion of the housing ordinance update in December 2014. However, the Town delayed the update because of the *CBIA v. City of San Jose* case regarding inclusionary housing, which is being reviewed by the California Supreme Court. It is unknown when the California Supreme Court will issue its decision on this case; however, the Town’s housing ordinance and fee update will address potential legal issues since this update will be conducted with an expert housing consultant, anticipated to be AECOM, and through review with the Town Attorney. A nexus study will be prepared to establish nexus and rough proportionality of the housing fee.

**Housing Strategy**

A draft Housing Strategy has been prepared and recommended for Town approval by the MLH Board. The Housing Strategy will serve as an implementation toolkit reflecting the local context and needs. The Housing Strategy is intended to be flexible and responsive to the changing local conditions. The draft Housing Strategy will be presented to the Planning and Economic Development Commission and Council in February 2015. The final approved Housing Strategy may inform certain aspects of the housing ordinance and fee update.

**OPTIONS ANALYSIS**

- Option 1. Provide staff policy direction and to proceed with the housing ordinance and fee update at this time.
  
- Option 2. Continue to operate under the Interim Housing Policy and address a comprehensive update at a future time (i.e., after the *CBIA v. City of San Jose* case is settled or as part of the next housing element update).

**STAFFING CONSIDERATION:**

The housing ordinance and fee update is included in the Community and Economic Development Department’s FY 14-15 work program.

**FINANCIAL CONSIDERATIONS:**

The contract for the consultant, AECOM, will be presented to Council for authorization. The consulting contract may be proposed to be funded by housing in-lieu funds. Staff time for this effort will be funded through the General Fund TOT housing revenues (Measure A).

**ENVIRONMENTAL CONSIDERATIONS:**

The required California Environmental Quality Act (CEQA) review for the housing ordinance and fee update will be determined as this effort proceeds. The update may be exempt from CEQA.

**LEGAL CONSIDERATIONS:**

The housing ordinance and fee update will comply with legal mandates.

**Attachments:**

1. 2012 Draft Housing Ordinance
2. Zoning Map
3. Area Median Income (AMI) levels 2014
4. 2009 Interim Housing Policy (Council Resolution 09-76)
5. 2014 Housing Element, Table 2-31, Median Home and Rental Code “Gap” Summary 2013
6. Housing Element 2014-2019 (available online: <http://www.townofmammothlakes.ca.gov/DocumentCenter/View/4646>)
7. 2011 Housing Needs Assessment (available online: [http://mammothlakeshousing.com/wp-content/uploads/2013/11/mammoth\\_lakes\\_housing\\_needs\\_assessment\\_2011.pdf](http://mammothlakeshousing.com/wp-content/uploads/2013/11/mammoth_lakes_housing_needs_assessment_2011.pdf))