

CITY COUNCIL AGENDA ITEM

ACTION REQUESTED:

Conduct the first reading on an ordinance amending Title 6 (Zoning Ordinance) of the Naperville Municipal Code to add a new Chapter 17 (Affordable Housing Incentive Program)

DEPARTMENT: Transportation, Engineering and Development

SUBMITTED BY: Allison Laff, AICP, Deputy Director

BOARD/COMMISSION REVIEW:

The Human Rights and Fair Housing Commission (HRFHC) reviewed the proposed AHIP at their April 4, 2022 and June 6, 2022 meetings. On May 18, 2022, the Planning and Zoning Commission (PZC) opened the public hearing regarding AHIP and continued it to the July 6, 2022 PZC meeting. Following two public speakers at the July 6, 2022 meeting and discussion by the PZC, the PZC made a motion to approve the proposed AHIP (motion failed, 8-0).

BACKGROUND:

Consultant SB Friedman was engaged by the City in fall 2019 to analyze the City's housing market and project short- and long-term housing needs. The final plan entitled "Addressing Unmet Housing Needs" was reviewed by the Human Rights and Fair Housing Commission and approved by the City Council in September 2020.

The findings included in the plan were used as the basis for developing a menu of policy options to address identified housing challenges and capitalize on opportunities to create diverse housing options at various price points. One of the key recommendations included in the plan was the development of an Inclusionary Zoning Ordinance (IZO) that would link the creation of affordable housing units to market-rate residential development.

In January 2021, the City Council directed staff to begin work on an IZO. On February 16, 2021, the City Council awarded Procurement 21-054, Inclusionary Zoning Ordinance Advisory Services, to SB Friedman and Duncan Associates (subconsultant).

June 2021 Workshop

On June 21, 2021, the City Council held a workshop to discuss a potential Inclusionary Zoning Ordinance (IZO) for Naperville. At the conclusion of the workshop, there was City Council consensus to focus affordable housing efforts on *voluntary measures* which result in increasing the number of affordable units and which may include the use of incentives, such as density bonuses.

November 2, 2021 City Council Meeting

At the November 2, 2021 City Council meeting, SB Friedman and Duncan Associates presented a proposed voluntary affordable housing program which was developed

based on feedback gained from the City Council in August/September 2021. At the conclusion of the City Council discussion on November 2nd, the City Council directed staff and SB Friedman/Duncan Associates to draft an ordinance for presentation to the HRFHC and PZC.

Work Following November 2, 2021 City Council Meeting

Following Council discussion on November 2, 2021, SB Friedman tested the financial impacts of the proposed voluntary affordable housing program to confirm its viability and refine the final menu of incentives to be offered through this program.

SB Friedman, Duncan Associates, and city staff additionally discussed the proposed program with representatives of the residential development (Pulte Development Corporation; Lincoln Properties) to gain their feedback on program components. Each representative was receptive to the proposed program and found its components to be beneficial.

April 4, 2022 HRFHC Meeting

SB Friedman and Duncan Associates provided a detailed overview of the proposed voluntary affordable housing incentive program (AHIP) at the April 4, 2022 HRFHC meeting. Following SB Friedman's presentation, two members of the public provided testimony and the Commissioners asked several questions. At the conclusion of their discussion, the HRFHC did not recommend any changes to the proposed program and did not request additional time to review the proposed program. The HRFHC did not vote on the proposed program; however, an HRFHC vote is not required on this matter.

June 6, 2022 HRFHC Meeting

Following the April 4, 2022 HRFHC meeting, Chairman Miller requested that the AHIP return to the HRFHC for further discussion and feedback regarding specific program components. The HRFHC again reviewed the AHIP on June 6, 2022 where 7 commissioners were in attendance. Two members of the public provided comments during public forum. In general, 3 of the 7 Commissioners consistently expressed concerns with the by-right approach and incentives being proposed through the AHIP; 1 of the 7 Commissioners consistently noted that a by-right approach is a necessary component of the incentive program; and two of the 7 Commissioners provided less input throughout the discussion but noted support for the program in their concluding remarks.

July 6, 2022 PZC Meeting

The PZC public hearing regarding the AHIP was held on July 6, 2022. Following a presentation by SB Friedman and Duncan Associates, two members of the public provided testimony. The PZC discussed rent rates, incentives being offered, success of other voluntary programs, mapping Naperville properties which could participate in the AHIP, IHDA affordability calculations, Section 8 vouchers, the need for public input on development projects, and the preferred focus on the sale of City-owned land for affordable housing. Following discussion, the PZC made a motion to approve the AHIP which failed (vote 0 in favor; 8 against).

October 4, 2022 City Council Meeting

On October 4, 2022, City Council reviewed the proposed AHIP. Following 6 public speakers and comments provided by Brad Wilson, Naperville Park District, City Council discussed the proposed program and noted that they are not comfortable with AHIP as proposed, but that they do not want to spend a significant amount of time completing additional analysis. Council continued discussion of AHIP to December 6, 2022 and directed staff to meet with Council representatives to work on the following amendments to the proposed AHIP:

- Prohibit the program from being applicable in single-family zoning districts; and
- Re-review the amount and degree of incentives being offered, including the proposed reduction to required park donations.

On December 6, 2022, at the request of staff, City Council continued discussion of AHIP to the January 17, 2023 meeting.

January 17, 2023

The revised AHIP, which was modified based on discussions held between staff and representatives of the City Council following the October 2022 Council meeting, was presented to the City Council on January 17, 2023. At this meeting, there were 8 public speakers (7 in favor; 1 against); 41 position statements submitted in support; and 4 written comments submitted in support.

In the 1/17/23 agenda item, staff noted that if City Council concurred with the amended AHIP proposal, staff would then prepare a final ordinance for review by the City Council at a future meeting. This ordinance would additionally include provisions related to Affordable For-Sale and Rental Dwelling Unit Occupancy and Rental Restrictions; Affordable Housing Agreements; and Enforcement.

At the conclusion of discussion, a motion was made by Councilman White, seconded by Councilman Hinterlong, to support the AHIP as presented. The motion carried by a voice vote.

DISCUSSION:

The ordinance adopting the Affordable Housing Incentive Program (AHIP) is attached for Council review. The ordinance includes the modified AHIP provisions endorsed by City Council on January 17, 2023. A summary of the AHIP is included below.

What is the purpose of the AHIP?

The purpose of the AHIP is to encourage the voluntary production and availability of new affordable residential units in the City by providing *by-right* density bonuses and incentives to projects that set-aside a minimum number of affordable units for low- or moderate-income households for at least 30 years.

What are “by-right” bonuses and incentives?

Depending on the percentage of affordable units proposed in a Qualified Project (and the level of affordability proposed), the entire development will be eligible to receive a 100% density bonus and between 2 and 5 incentives (see Table 6-2 for further details). Provided that the proposed project requires no additional variances, no additional entitlements and all Municipal Code requirements have been met (i.e., Engineering Design Manual, Citywide Design Guidelines, Building Code, etc.), it can be administratively approved by City staff. In such instances, review by the Planning and Zoning Commission and/or City Council would not be required.

Any Qualified Project requiring annexation, rezoning, conditional use, additional variances/deviations beyond those that they are eligible for through AHIP, or PUD approval will be processed through the standard PZC and City Council review process; however, the automatic density bonus and incentives applicable to a Qualified Project will not be subject to review or approval in that process.

Why are the by-right incentives a critical part of the proposed AHIP?

In June 2021, City Council discussed the possibility of instituting a mandatory inclusionary zoning ordinance (IZO) which would require developers to include affordable housing components in their project or to pay a fee in lieu of. With a mandatory IZO, the City would not need to offer by-right incentives, such as increased densities or height, without going through a traditional public hearing and variance process.

At the conclusion of its June 2021 discussion, the City Council reached consensus to focus on voluntary measures to increase affordable units in Naperville instead of instituting a mandatory IZO. When an IZO is voluntary, incentives are critical in order to promote voluntary participation in the program. The by-right incentive approach offers a developer a level of certainty regarding the feasibility and design of the development and also decreases the project’s overall processing timeframe.

Absent the by-right approach, an affordable housing developer would be required to seek approval of a variance to increase density or height, for example, through the standard hearing process, thereby offering no incentive to encourage voluntary participation. Rather, the process would simply be the same as is required for any residential development. In this scenario, staff anticipates that developers would not elect to participate in the AHIP program. This result does not achieve the direction provided by City Council in June 2021 to create a program which increases affordable units in Naperville.

What properties will qualify to participate in the AHIP?

A property must be able to be improved with 5 or more new residential units in order to participate in the AHIP; any property with single-family residential zoning (i.e., R1A, R1B, R2, R1, E1, E2 and E3) is prohibited from participating in the AHIP. Owners of participating projects must agree to set-aside the minimum number of required affordable units for a 30-year period in order to receive the density bonuses and

incentives offered by the AHIP. Such projects are referred to as “Qualified Projects” in the proposed ordinance.

If a development project is proposed to have multiple phases, will each phase be required to have an affordable component?

No, the Owner can choose whether they will include the required affordable residential units in each of the phases of a development project, or only in a certain phase(s). However, the density bonuses and incentives provided in the AHIP will only be applied to those phases which include the required affordable components.

Will the AHIP allow new multi-family units to be built on a property zoned for single-family uses?

No. Any property zoned for single-family residential (R1A, R1B, R2, R1, E1, E2 or E3) is prohibited from participating in AHIP. If a petitioner seeks to rezone an existing parcel to a multi-family zoning district, that project would be required to proceed through the standard entitlement process (i.e., public hearing before the Planning and Zoning Commission with final review by the City Council).

What density bonuses are offered through the AHIP?

A Qualified Project, which provides at least 20% of its units as affordable, is automatically eligible to receive a density bonus of up to 100%. As noted above, a development may be comprised of several phases of which only one or more phases will be a Qualified Project.

In order to implement the density bonus, the ordinance provides for automatic reductions from certain zoning district requirements, such as minimum lot size, minimum lot width, minimum lot area per unit, and the 90% rule, as applicable. Absent these waivers, the density bonus would not be achievable unless additional variances were requested.

It is important to note that it may not always be feasible or realistic for a Qualified Project to build as many units as would be permitted through the density bonus formula. In those cases, the percent of affordable units required to be set-aside will be based on the actual number of units proposed (not the maximum number of units allowed per the density bonus).

What other incentives are being offered through the AHIP?

In addition to the density bonus, a Qualified Project will be able to choose from a menu of by-right incentives. The number of incentives that each Qualified Project will be eligible to receive is directly related to the affordability levels of the proposed units as well as the percentage of units which will be set-aside as affordable. Owners who target lower-income households and set aside more affordable units will be offered more incentives as detailed in Table 6-2 in the proposed ordinance.

For example, if a Qualified Project proposes to set-aside 20% of its units as affordable for residents at 60% of the Local Median Household Income (i.e., Naperville household

income), it will be eligible to receive 2 by-right incentives. In contrast, a Qualified Project which proposes to set-aside 40% of its units as affordable for residents at 60% of the Regional Median Income (i.e., greater Chicago-area household income) will be eligible to receive 4 by-right incentives.

The incentives offered through the AHIP are detailed in Table 6-1 of the proposed ordinance. These incentives include items such as automatic decreases in setbacks, parking, or PUD open space requirements; automatic increases in lot coverage or building height; or an automatic waiver of the City's brick requirements or park impact fees*.

**note: the Naperville Park District previously submitted a letter indicating that they are not in support of the park donation reduction proposed in AHIP.*

How were the density bonuses and incentives determined?

SB Friedman reviewed multiple market-rate developments that have been approved in Naperville over the last several years to develop a market baseline. Many of those developments, particularly those including multi-family units, were granted significant variances to increase density and height, and reduce required parking.

Because the inclusion of affordable units has a direct impact on the financial feasibility of a proposed residential project, SB Friedman then determined what type and number of incentives would be needed to make a Qualified Project financially feasible. In addition, SB Friedman recommended that these incentives be provided by-right, in order to provide a level of certainty to the Owners of a Qualified Project. Because the proposed program is voluntary, financial feasibility and process certainty are critical to encourage owner participation.

The incentives proposed by SB Friedman were later modified based on City Council direction in October 2022. These modifications included reducing the by-right density bonus from 200% to 100%; reducing the by-right height increase from 50% to 30%; decreasing the park fee reduction from 50% to 25%; and adding a 50% city fee waiver option. In addition, the minimum affordable percentages found in Table 6-2 were modified (10% minimum increased to 20%; 20% minimum increased to 40%).

How will the AHIP ensure that the affordable units are built in a timely and quality manner?

The proposed AHIP includes provisions regarding the timing of construction of the market rate vs. affordable units; the location of the affordable units within the overall development; requirements regarding unit size; and requirements regarding features and amenities which are intended to ensure that the affordable units are built in a timely and quality manner.

Are there any additional development obligations?

Yes, the AHIP requires that the Owner enter into an Affordable Housing Agreement with the City. This agreement will stipulate all obligations required of the Owner in exchange

for the density bonus and incentives they are receiving. The Agreement will additionally be executed by the City Manager and recorded with the appropriate county prior to any construction commencing. The AHIP additionally includes enforcement provisions, such as revocation, injunctive relief, and payment of liquidated damages, in the event that any provisions of the AHP or Affordable Housing Agreement have been violated.

How did the City of Naperville reach compliance with IHDA's Affordable Housing Planning and Appeal Act (AHPAA)?

Per the Illinois Housing Development Authority's (IHDA) 2023 Statewide Report on Local Government Affordability, Naperville is now classified as an exempt community based upon the finding that 10.3% of its housing stock is classified as affordable. With this finding, Naperville is now in compliance with the AHPAA.

For a unit to be affordable, no more than 30% of a person's income can be spent on housing, including mortgage/rent, property taxes, utilities, etc. For purposes of income assumptions included in the AHPAA analysis, IHDA utilizes 80% of the Chicago Metropolitan Statistical Area (MSA) Area Median Income (AMI). From 2018 to 2023, the MSA AMI increased from \$63,327 to \$78,790, which then also led to an increase in what is considered affordable – for both ownership and rental units. Based on these updates, Naperville's total number of units that qualify as affordable increased from 3,778 in 2018 (7.5%) to 5,461 in 2023 (10.3%).

It should be noted that staff believes that the percentage of units that would qualify as affordable is actually greater than that reflected by AHPAA. This is due to flaws with the AHPAA calculation method, including (1) income is not adjusted based on household size, (2) affordable purchase/rental rates are not adjusted based on number of bedrooms, and (3) inflated property tax assumptions are included in the affordability calculation thus significantly reducing the purchase price that is considered affordable. Staff has shared these concerns with IHDA.

FISCAL IMPACT:

The City will retain a consultant to review a proposed AHIP development project for compliance with all aspects of this program.