

# WHITEFISH STRATEGIC HOUSING PLAN STEERING COMMITTEE AGENDA



**Thursday, November 12, 2020 at 6:00 p.m.**  
**Remote via WebEx**

The City Council Approved Emergency Ordinance No. 20-14 to provide for remote meetings of the City Council, City Boards and Committees to protect the health and wellbeing of all attendees, practice social distancing and to continue to have public meetings to serve the community during the Covid-19 pandemic.

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Meeting Link: <https://cityofwhitefish.webex.com/cityofwhitefish/j.php?MTID=me1a634a842be52a139bc4a622de76d50>

**Meeting Number:** 146 866 7027

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Access code: 146 866 7027

We encourage individuals to provide written public comment. You may either send an email to City Manager Dana Smith at [dsmith@cityofwhitefish.org](mailto:dsmith@cityofwhitefish.org) or deliver a letter by 4:30 p.m. on November 12<sup>h</sup> in the Utility Drop Box or at the front desk of City Hall. Written comments should include name, address, details of comments including support or opposition, should be short and concise, courteous, and polite. All written comments received by 4:30 p.m. will be provided to the Committee and will be appended to the packet following the meeting. At the end of "live" comment, the City Manager will read the name and address of each individual providing written comments and state whether they support or oppose the proposal before the Committee.

## **1. CALL TO ORDER**

## **2. APPROVAL OF MINUTES FROM OCTOBER 8, 2020 AND OCTOBER 13, 2020 MEETINGS**

- 3. PUBLIC COMMENT**
- 4. SNOW LOT UPDATE AND DISCUSSION**
- 5. REVIEW UPDATES TO LEGACY HOMES PROGRAM ADMIN PROCEDURES**
- 6. CONSIDER WRITTEN RECOMMENDATION OF WR-4 ZONING TEXT AMENDMENT**
- 7. PUBLIC COMMENT**
- 8. NEXT COMMITTEE MEETING**
  - a. December 10, 2020 or Consider Cancellation of December Meeting
- 9. ADJOURN**

# WHITEFISH STRATEGIC HOUSING PLAN STEERING COMMITTEE

## MINUTES

October 8, 2020 at 6:00 p.m.

### 1. Call to order:

The meeting was called to order at 6:07 p.m.

Present: Wendy Compton-Ring, Ben Davis, Rhonda Fitzgerald, Bob Horne, Rebecca Norton, Dana Smith

Absent: Addie Brown-Testa, Kevin Gartland, John Muhlfeld

Others: Judah Gersh, Mayre Flowers

### 2. Approval of Minutes from the September 10, 2020 meeting:

Smith/Horne moved to approve the September 10, 2020 meeting minutes. Passed unanimously.

### 3. Public Comments:

Judah Gersh – Has comments regarding a specific agenda item and he will wait until then  
Mayre Flowers – Will wait to make specific comments

### 4. Snow Lot Update and Discussion:

No one from the Housing Authority Board attended the meeting. Staff understands the Board is working on finalizing their Request for Proposals.

#### **NEXT STEPS:**

No next steps for the Strategic Housing Committee.

### 5. Review and Recommendation of the 2020 Annual Housing Report:

Staff reviewed the draft Annual Housing Report and asked for feedback. The Committee asked staff to clarify/fix the following items:

1. The reference to Affordable Housing needs to be clear the numbers are only showing deed restricted units; where the Housing Needs Assessment did not differentiate – needs a footnote
2. Add the Alpenglow to the Affordable Units to affordable rental count
3. A typo in the Snow Lot story

4. Rename the report to the 'Annual Affordable Workforce Housing Report'  
Staff will fix these items and have the report ready for the City Council work session on October 19th.

Norton/Davis moved to forward on the Annual Report to the City Council at their next work session. Passed unanimously.

**NEXT STEPS:**

Staff will make corrections to the report and forward onto the City Council

**Public Comment:**

Mayre Flowers, CFBF, submitted comments to Dana Smith at 4:28 p.m. She reviewed her memo suggesting more detail is required in the annual affordable housing report and directed the Committee to review the City of Kalispell Planning & Building Department Annual Report for her recommended level of detail.

**6. Review and Recommendation of the Legacy Home Program Updates:**

Staff reviewed the draft memo of issues that have arisen over the first 12 months of the Legacy Homes Program.

1. **Timing of Payment for Fee in Lieu** – After much discussion, the Committee agreed (Davis/Fitzgerald motion; 5-1, Horne voting in opposition) to clarify that the payment of fee in lieu would be due 'prior to the issuance of a building permit along with the other impact fees or at the time of final plat. The idea of accepting a Letter of Credit or some other sort of financial guarantee was discussed but determined it needed additional research. This item will be further evaluated and brought back to the Council if it has merit.

2. **Deviation to the Minimum Square Footage** – The Committee agreed (Fitzgerald/Compton-Ring; unanimous) to add: The bedroom mix and square footages will match the market rate units or then go on to reference the square footage chart in the Administrative Procedures. The Committee agreed to review the square footages of the units at a future date recognizing this will require additional research. Once their research is complete, if there are recommendations to the Council for amendments, they will be brought forward.

**Public Comment:**

Judah Gersh, pointed out the reason for the minimum square footage chart is to make sure the units aren't out of character with the project. He suggested 'the bedroom mix and square footage will match the market rate units or' comply with the square

footage chart. He offered additional reasoning for his suggestion including reduced utility costs and other trends for multi-family units.

3. **Level of Detail for HMP** – The Committee agreed the level of detail at the time of land use application may be too much, but that it would be adequate at the time of deed restriction, but wanted to make sure the City and Housing Authority would have a chance to review and adjust pricing if necessary.
4. **Adding a Multi-Family Unit to an Existing Multi-Family Building** The Committee wanted staff to clarify with the city attorney on the clarifying language for additions.

**NEXT STEPS:** Due to the lateness of the meeting, the remaining items were not addressed. The Committee agreed to have an additional meeting on Tuesday afternoon. Ben would also like to add a discussion about reducing the required number of units in the WR-4 from eight to four when the Legacy Home Program would kick in.

7. **Funding Updates:** This item wasn't discussed, as time ran out.
8. **Public comment:** none
9. **Next Committee Meeting:** A motion was unanimously approved to continue this meeting Tuesday, 13th at 1:00 PM to only discuss Item #6 in order to get information to the Council for their next meeting on the 19th.
10. **Adjourn:** The meeting adjourned at 8:22 p.m.

# WHITEFISH STRATEGIC HOUSING PLAN STEERING COMMITTEE MINUTES

October 13, 2020 at 1:00 p.m.

1. **Call to order:** The meeting was called to order at 1:10 p.m.

Present: Addie Brown-Testa, Wendy Compton-Ring, Ben Davis, Rhonda Fitzgerald, Bob Horne, Rebecca Norton

Absent: Kevin Gartland, John Muhlfeld, Dana Smith

Others: none

2. **Approval of Minutes from the October 8, 2020 meeting:** Postponed until the next meeting.

3. **Public Comments:** none

4. **Review and Recommendation of the Legacy Home Program Updates:**

Staff reviewed the remaining issues from the meeting the previous week (below Items 5-7) and will send these to the Council for their work session on October 19th. Memo to Council provides more detail on the following items:

5. **Priority Given to City Limits, 59937 and then Others for Ownership** – The Committee was fine with this clarification.

6. **Prices and Fees in Lieu for Phased Projects** – The Committee agreed the fees and housing pricing/rental pricing will be calculated either at the time of building permit/final plat for fees or at time of deed restriction for unit pricing not at the time of land use permitting.

7. **Reduce the Threshold for Legacy Homes Program in the WR-4 Zoning District** – The Committee agreed to put forward an amendment to reduce the number of units requiring an ACUP from eight (8) to four (4), but making no other changes.

8. **Next Committee Meeting:** November 12, 2020

9. **Adjourn:** The meeting adjourned at 2:22 p.m.

Planning & Building Department (406) 863-2410 Fax (406) 863-2409  
418 E 2<sup>nd</sup> Street  
PO Box 158  
Whitefish, MT 59937



Date: November 5, 2020  
To: Housing Steering Committee  
From: Wendy Compton-Ring, AICP, Senior Planner  
Subject: draft Admin Procedures

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Attached please find a draft of the Admin Procedures. Below is a list of changes proposed. This matter will be scheduled before the City Council on December 7<sup>th</sup> along with the proposed WR-4 zoning text amendment:

Overall Changes for Clarity:

- Provided section numbering to identify sections of the document more easily
- Overall clarified language where it was overly cumbersome
- Changed Legacy Homes Program to LHP and Housing Mitigation Plan to HMP throughout the document
- Changed all references to the In Lieu Fee/ILF to Fee In-Lieu or FIL
- Added most recent Area Median Incomes as an Appendix B
- Created a Chapter 5 for Rentals and a Chapter 6 for Ownership – they were previously in one chapter
- Removed references to pricing within the document and direct reader to Appendix A, as this will be easier for us to update

Specific Changes:

- Moved the details of the Housing Mitigation Plan (Page 3) to the deed restrictions section for Rental (5.3, Page 12) and Ownership (6.3, Page 17)
- Added language that the fee in-lieu of Legacy Homes are paid at the time of building permit along with other impact fees or at the time of final plat for subdivision
- Clarified the name of the account these funds are being held, the City's 'Affordable Housing Fund'. Also clarified the City Council appropriates these funds at their discretion.
- Removed the reference to 30% affordable housing if not provided on-site for the FIL, as this section was causing confusion. There might be a better way to say it but saying it but calling it 30% did not clarify.
- Removed reference to the utility calculator (Section 5.2, Page 11) as this is not in the Appendix A. Propose directing developers to the WHA for assistance.

- Added the reference to all units match the market rate units (Rentals - 5.5.1, Page 12; Ownership 6.4, Page 15).
- Added the priority list for ownership units to match the rental units and the WHA program documents.
- Added attending a pre-submission conference to the duties of both the Housing Coordinator and the Planning Department (Chapter 7, page 18)

Questions:

- Page 6, section 4.4 – highlighted a sentence that needs some clarification
- Page 14, Section 6.4, last sentence of the 1<sup>st</sup> paragraph – clarification, is this accurate enough
- Page 15, Section 6.4, 2<sup>nd</sup> paragraph – highlighted sentence needs some clarification



2020

# Whitefish Legacy Homes Program Administration

Adopted by Resolution No. 19-11 on June 17, 2019; Updated Prices and Fees Resolution No. 20-35

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## 1.0 Whitefish Legacy Homes: Program Administration

The purpose of this program administration document is to:

- Provide the technical procedures to deliver the affordable housing required by the Whitefish Legacy Homes Program ([LHP](#)); and
- Establish procedures for the City of Whitefish, staff, boards, or committees, the Legacy Homes Coordinator, and any agent of the City (Whitefish Housing Authority) to implement and administer the requirements of the Whitefish [Legacy Homes Program LHP](#).

Appendix A contains all relevant tables, which may be updated on an annual basis [and Appendix B contains the most current year's Area Median Income for Flathead County](#).

DRAFT

## 2.0 HOUSING MITIGATION PLAN: SUBMITTAL REQUIREMENTS

Housing Mitigation Plans (HMP) are required by the City for all residential developments described in §11-1A, Whitefish ~~Legacy Homes Program LHP~~ regulations. ~~Housing Mitigation Plans~~ MP will be prepared and submitted by the developer concurrent with the application request for the development permit (subdivision, conditional use permit [CUP] or planned unit development [PUD]). Once projects are approved by City Council, the details described in the ~~Housing Mitigation Plan~~ HMP become conditions of the development permit approval. ~~Housing Mitigation Plans~~ HMP for projects approved by staff using an ~~administrative~~ Administrative CUP process will also become a condition of the permit.

### 2.1 Housing Mitigation Plan Contents

- Total number of market rate and Legacy units
- Square footage of total development and each unit
- Details regarding how the requirements of the ~~Legacy Homes Program LHP~~ will be met, including unit types, sizes, number of bedrooms, ~~amenities, heating systems and estimated utility costs, target income category, initial sales prices or rental prices, homeowner's association (HOA) structure and fees, if applicable~~
- Site plan, ~~unit designs,~~ and amenities
- Incentives utilized by the project
- Average lot size and square footage of market rate and Legacy units ~~– the final details of exact square footages will be reviewed prior to recording the deed restriction~~
- Location of Legacy units within the project by type and size; justification for clustering of Legacy units, if proposed
- ~~Exemption within a development's Covenants, Conditions and Restrictions (CC&Rs) for Legacy Homes providing an exemption from the minimum square footage~~
- Proposed production schedule of market rate and Legacy units, including issuance of building permits
- If applicable, any proposed alternative methods of compliance with these Policies and Procedures, demonstrating how the alternative meets or exceeds the ~~Legacy Homes Program LHP~~ requirements and helps the City achieve its housing goals as established in the Strategic Housing Plan and the current Housing Needs Assessment
- ~~Standardized deed restriction provided by the City~~
- Any other information deemed relevant by the Legacy Homes Coordinator

A ~~Housing Mitigation Plan~~ HMP template is available for use or applicants may generate their own document provided all the required information is included.

### 3.0 REVIEW PROCESS:

#### *3.1 Pre-Submission Conference*

Prior to submitting any development request ~~to which the requiring Legacy Homes Program LHP applies compliance~~ or Site Review Meeting, the applicant must schedule a pre-submission conference with Planning and Building Department staff and the Legacy Homes Coordinator. At this meeting, applicants must provide the number and type of units proposed and how they intend to comply with the ~~Legacy Homes Program LHP~~. The City and the Legacy Homes Coordinator will describe the requirements of the program, the needs of the City and go over the ~~Housing Mitigation Plan HMP~~ template.

#### *3.2 Review of Housing Mitigation Plan*

After submittal of a land use permit, the ~~Housing Mitigation Plan HMP~~ will be reviewed by ~~staff of the~~ Planning and Building Department ~~staff~~, in coordination with the Legacy Homes Coordinator. Following review, staff will either:

- a) accept the ~~Housing Mitigation Plan HMP~~ if it meets the ~~Legacy Homes Program LHP~~ requirements and make a recommendation to City Council for approval of the Plan,
- b) approve the Housing Mitigation Plan for administrative land use permits, or
- c) not accept the ~~Housing Mitigation Plan HMP~~ if it does not meet the ~~Legacy Homes Program LHP~~ requirements and refer it back to the applicant with written comments regarding the Plan's deficiencies. If the identified deficiencies are not adequately addressed by the applicant, Planning staff will only approve or recommend approval by ~~the~~ Council with conditions added to address the deficiencies.

#### *3.3 Resubmittal of Housing Mitigation Plans*

If a ~~Housing Mitigation Plan HMP~~ has been disapproved, an applicant may resubmit a ~~development permit application with a~~ revised Plan addressing and correcting the deficiencies identified by staff.

#### *3.4 Revisions to Housing Mitigation Plans After Approval*

If the applicant wishes to modify or amend an approved ~~Housing Mitigation Plan HMP~~ due to changes in the development proposal as it proceeds through the development review process or for other reasons, the developer must submit a new or amended ~~Housing Mitigation Plan HMP~~ for approval by City Council. A substantive change requiring Council approval may include but is not limited to reduction in the size of the affordable units, change in the timing or phasing of construction or a change in the method of complying with the requirements of the regulations. If the changes are minor and not substantive, Planning staff may approve the modification administratively. Minor changes include modifications to the specific location of Legacy units within a development. For projects using the administrative CUP process, the amended ~~Housing Mitigation Plan HMP~~ will be approved by Planning staff in consultation with the Legacy Homes Coordinator.

### 3.5 Noncompliance with Conditions of Housing Mitigation Plan

Failure to comply with the approved ~~Housing Mitigation Plan~~ HMP is a failure to comply with the conditions of the development approval and may result in the revocation of the development approval.

## 4.0 LEGACY HOMES PROGRAM REQUIREMENTS

### 4.1 Number of Legacy Homes in a Development

If a developer proposes to subdivide residential lots or construct residential housing, twenty percent (20%) of the gross number of residential lots or housing units in a development must be Legacy Homes. Exemptions are listed in the Regulations (§11-1A(2)(E)). The applicant for a development permit is required to produce the Legacy Homes on-site. The type of units to be constructed must be proposed in the ~~Housing Mitigation Plan~~ HMP and will become a condition of approval. In developments where both Legacy and market rate residential units will be constructed, the balance of ownership versus rental units, the type of units (single family attached, detached, or multi-family), and the number of bedrooms offered per unit will be proportional between the Legacy and market rate units.

#### **NUMBER OF UNITS EXAMPLES:**

A proposal to build eight single-family attached townhomes would require  $8 \times 0.2 = 1.6$  Legacy townhomes for ownership.

A proposal to build five single-family attached townhomes and eight rental units would ~~be required to provide one Legacy ownership townhome and 1.6 Legacy rental units.~~ (ownership –  $5 \times 0.2 = 1$  & rental –  $8 \times 0.2 = 1.6$ )

### 4.2 Providing Fractions of Ownership or Rental Units

When the calculation to determine the number of units required by ~~Legacy Homes Program~~ LHP, as described above, results in a fraction of a home, a ~~fee in-lieu~~ fee in-lieu fee (ILF) may be paid for the fraction. To calculate the ~~number of units~~ number of units, multiply the number of proposed units by 20% ( $X \text{ units} \times 0.20 = \# \text{ Legacy Homes required}$ ) and the ~~resulting number~~ resulting number is the number of ~~fractional units~~ fractional units required. ~~The resulting number is multiplied by the associated ILF rate. The ILF calculator used to determine the fee is found in Appendix A.~~

If the calculation results in a whole number and a fraction (or just a fraction) of a whole number, the whole number ~~resulting from the formula is~~ the number of Legacy units required to be constructed and the remaining fraction of the whole number may be satisfied with the ILF. The fee will be the associated rate from Appendix A multiplied by the remaining fraction.

The ILFs are not and will not be used as an alternate means of compliance, except as outlined below in Section Alternatives 4.4 Alternatives That May Be Considered. The fees are calculated and must be paid prior to issuance of a building permit along with other impact fees or recording of a final ~~subdivision plat for subdivisions~~ plat for subdivisions. The proceeds of the fee-FIL for the LHP will be credited to the accounted for in the City's Whitefish Housing Authority (WHA) Affordable Housing Fund

#### **FRACTIONAL EXAMPLE:**

The 0.6 in the previous example would be eligible for an in-lieu fee in-lieu. A project with 4 units  $\times 20\% = 0.8$  units. This project would be eligible to pay the in-lieu fee in-lieu at 0.8 of the full rate.

which are appropriated for eligible affordable housing projects and needs at the discretion of the approved by the City Council.

#### 4.3 Timing of Compliance

##### 4.3.1 RENTAL UNITS

A proportion of the required number of Legacy Home rental units in a single project must be leased as each building or phase of the project is offered for rent. A phase is defined as a group of units which is completed and ready for occupancy within a period of one year. This requirement will be reflected in each ~~Housing Mitigation Plan~~HMP providing for on-site rental housing. In developments where Council has approved an ~~ILFFIL~~ as an alternative means of compliance, the ~~ILFFIL~~ is due ~~upon approval of the development request and~~ prior to the issuance of a building permit along with other impact fees.

##### 4.3.2 OWNERSHIP

For ownership units, the Legacy Homes must be made available for sale at the same time and in proportion to the market rate homes in the project which are made available for sale. This requirement will be reflected in the ~~Housing Mitigation Plan~~HMP providing ownership units. In developments where Council has approved an ~~ILFFIL~~ as an alternative means of compliance, the ~~ILFFIL~~ is due ~~upon approval of the development request and~~ prior to final plat for the subdivision.

#### 4.4 Alternatives that May Be Considered

The expectation is ~~that~~ 20% of the housing units produced in a development will be Legacy Homes and the Legacy Homes will be constructed on site and interspersed with the market rate residential units. Even if the intention is to subdivide only and sell individual vacant lots, the developer is expected to provide Legacy Homes ~~on-on-site~~. The developer of a subdivision with no market rate homes is required to provide a financial guarantee for each Legacy unit required ~~that and~~ will be released upon issuance of the certificate of occupancy for each unit. Alternatives may be considered as described below.

Additionally, there may be situations when the Legacy Home units are either not compatible with other uses on the proposed development site or the development site is not appropriate for Legacy Homes due to distance from services or characteristics of the property ~~that would make~~ Legacy ~~housing~~ Housing impractical. In these situations, the City may consider alternative means of compliance with the ~~Legacy Homes Program~~LHP. However, ~~any all~~ alternatives are approved at the discretion of the City Council and are not guaranteed. High levels of property tax, high homeowner's association dues, a predominance of short-term rental use, or a location far from schools, transit, or shopping are potential characteristics ~~that would support~~ ing a developer's proposal for alternative means of compliance with ~~Legacy Homes Program~~LHP requirements. ~~Alternatives Possible alternatives that may be considered~~ are described below, however, this is not an all-inclusive list and the developer also may, at his or

**Commented [WC1]:** ? what subdivider is not providing market rate homes?

her own risk, propose an alternative means of compliance ~~with the Legacy Homes Program~~ not listed below. A combination of alternatives may also be considered.

#### 4.4.1. *Off-Site Housing*

In situations where the provision of the Legacy Homes off-site is preferable to providing units on-site, an off-site location may be considered at the discretion of the City Council if the developer can demonstrate how the alternative option meets the City's housing goals established in the Strategic Housing Plan better than the on-site requirement. A developer may also propose to partner with another developer who already has an approved land use permit and could construct additional Legacy units as part of that project. When Legacy units are provided off-site from market rate units, unit size, quality, design, and construction ~~shall~~ must be ~~determined by~~ provided in the ~~Housing Mitigation Plan~~ HMP approved by the City as part of the development permit approval process. The ratio of Legacy units required relative to market rate units in a project remains 20:80 when the off-site option is used.

#### **OFF-SITE HOUSING EXAMPLE:**

A development proposing 10 housing units is required 2 Legacy Units (20:80 ratio achieved). If the developer is to build 10 on-site market rate units and 2 off-site Legacy Units (12 total), the developer will need to pay an ~~HFFIL~~ HFFIL for 0.4 Legacy Units as 12 units built requires 2.4 Legacy Units (20:80 ratio achieved).

#### 4.4.2. *In-Lieu Fees* ~~Fee In-Lieu~~

For other than fractional units, fees in ~~lieu~~ of providing Legacy units may be considered at the discretion of the City Council when the proposed development location and building off-site are both inappropriate for Legacy Homes. Fees for units are assessed at 1.5 times the ~~Legacy Homes Program~~ LHP rate ~~(the fee would be in lieu of providing 30% Legacy units rather than 20%)~~. ~~For example, in a 10-unit subdivision the developer would pay a fee equivalent to three units in lieu of providing two Legacy units.~~

Fees are calculated using the ~~HFFIL~~ HFFIL calculator for 'Whole Unit Fee' provided in Appendix A and are based upon publication of the Area Median Income (AMI) for Flathead County by the U.S. Department of Housing and Urban Development (HUD). An administrative charge of 10% is included to cover the costs associated with the furtherance of affordable housing initiatives.

#### **OFF-SITE HOUSING EXAMPLE:**

A development proposing 10 housing units is required 2 Legacy Units (20:80 ratio achieved). If the developer is to build 10 on-site market rate units and 2 off-site Legacy Units (12 total), the developer will need to pay an ~~HFFIL~~ HFFIL for 0.4 Legacy Units as 12 units built requires 2.4 Legacy Units (20:80 ratio achieved).

The ~~HFFIL~~ HFFIL is calculated and due ~~upon approval of the development request and~~ prior to the issuance of a building permit along with other impact fees or at the time of final plat for subdivisions. An applicant may propose an alternative to this timing requirement, subject to the Council's approval.



#### 4.4.3. Land in Lieu

A developer who is subdividing property and selling parcels but is not a builder of residential homes or apartments may propose to provide land in lieu of the required Legacy Homes. The appraised value of the property to be dedicated must be of equal or greater value than the ~~ILFFIL~~ that would otherwise be required. Additionally, the property to be dedicated must help further the goals of the ~~Legacy Homes Program LHP~~ and provide a greater overall public benefit than if the required Legacy Homes were constructed within the development. It is the responsibility of the developer to propose a means of compliance with the ~~Legacy Homes Program LHP~~ ~~that for~~ ~~the~~ City Council ~~will to~~ consider and approve at its discretion. Considerations may include but are not limited to whether the parcel is served by existing infrastructure, adjacent land uses, and proximity to services.

#### 4.4.4. Clustering

There may be special circumstances when clustering the Legacy units on the development site will be considered if clustering will enhance a sense of neighborhood, the market units are used as short-term rentals, the housing provided would be close to trails, bus stops, or places of employment, or the clustered Legacy Homes will otherwise exceed the requirements of the ~~Legacy Homes Program LHP~~. If Legacy units are not compatible with the proposed future development site, it is the responsibility of the developer or property owner to propose alternatives acceptable to the City.

#### 4.5 Incentives for Developers Meeting and Exceeding the Legacy Requirements

As a partial offset to the cost of providing Legacy ~~housing~~ ~~Housing~~ as part of a market-rate development ~~requiring a CUP~~, the ~~Legacy Homes Program LHP~~ provides incentives ~~that~~ effectively ~~reduce~~ ~~reducing~~ certain development standards by-right (below).

A developer providing required Legacy units, a ~~ILFFIL~~, or other approved alternative method of compliance ~~as part of a CUP~~ receives the following incentives:

- Reduce Parking Requirements for 2+ Bedroom Units by 20%
- Increase Maximum Building Height by 5 feet limited to a maximum of three (3) floors<sup>1</sup>
- Increase Maximum Lot Coverage by 10%
- Increase Density by 20%

#### EXAMPLE:

In the WR-3 (low density multi-family residential) zoning district, the incentives would provide the following benefits for a one-acre site with an 8-plex and a 6-plex proposed (seven 2-bedroom, four 1-bedroom, and three studio):

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<sup>1</sup> Projects in the WB-3 Zoning District are not eligible for this incentive.

	District Development Standard	Reduced Standard
<b>Required # parking spaces</b>	26	23
<b>Max building height</b>	35 feet	40 feet with a maximum of three (3) floors
<b>Max lot coverage</b>	40% = 0.4 acres = 17,424 sf	44% = 0.44 acres = 19,166 sf
<b>Max density</b>	14 units/gross acre	16.8 units/gross acre (two more units could be added)

A land developer subdividing and providing Legacy units, an ~~FFIL~~, or other approved alternative method of compliance will receive the following incentives:

- Reduce Lot Size by 20%
- Increase Density by 20%
- Reduce Lot Width by 10%
- Increase Lot Coverage by 10%

**EXAMPLE:**

In the WR-1 (one-family residential) zoning district these incentives would provide the following benefits for a two-acre site with an eight-lot subdivision proposed:

	District Development Standard	Reduced Standard
<b>Minimum lot size</b>	10,000 sf	8,000 sf
<b>Max density</b>	4 units/gross acre = 8 lots	4.8 units/gross acre = 9 lots
<b>Minimum lot width</b>	60 feet	54 feet
<b>Max lot coverage</b>	35% = 3500 sf/10,000 sf lot	38.5% = 3080 sf/8,000 sf lot or 3850 sf/10,000 sf lot

The number of units used to determine density cannot be rounded up. If the subdivision application was for four lots per acre, the extra density allowed would be 4.8 units/gross acre, but an additional lot would not be permitted because it would increase density by greater than 20% to 5 units/acre.

A developer using the PUD process may use by-right either set of incentives based on the project needs but may not use both. Should the developer need or want additional reductions in these

standards ~~beyond what is offered by right~~, or ~~in~~ other development standards, the request needs to be made through the PUD process and therefore require City Council approval. The density bonus provided for in the PUD chapter (§11-2S-3) may be used if the project meets the community benefit criteria (§11-2S-6). Note: ~~the provision of Providing~~ affordable housing in a ~~PUD project with a PUD~~ required by the ~~Legacy Homes Program LHP~~ is not considered a community benefit for the purposes of meeting the criteria ~~(§11-2S-6)~~.

DRAFT

## 5.0 TYPE OF HOUSING - Rental:

Legacy Home Program (LHP) rental units must be marketed, leased, and occupied according to these criteria:

### 5.1 Eligible Renters

WHA will screen rental applicants for income and residency eligibility and maintain a list of eligible renters for LHP units. In general, households earning incomes ~~of~~ between 60% and 80% AMI will be eligible to rent Legacy Homes; however, the range of incomes allowed for eligible households will be somewhat broader to ensure there are enough renters for the Legacy Homes produced. The range of eligible household incomes will be established by the WHA but will be capped at 100% AMI. Priority will be given to households with at least one household member who is employed in the City of Whitefish, then to those with members employed within the 59937-zip code area, and finally to those with employment outside the 59937-zip code area. Further program eligibility criteria may be established or modified by WHA.

### 5.2 Rental Rates

The monthly rent of an LHP unit being rented pursuant to a ~~Housing Mitigation Plan~~HMP is provided in ~~the calculator available in~~ Appendix A under the rental price distribution table. There must be no side agreement obligating the Legacy tenant to pay the property owner for any add-on features or services. Security deposits may not exceed the sum of two months' rent at the Legacy Home rental rate for a unit and in no case can the security deposit be a larger percentage of rent than what is required for market rate units.

Legacy Home rental rates are based on AMIs for Flathead County as established by HUD using Montana Board of Housing (MBOH) methodology. Rental housing is affordable when housing expenses (including rent and utilities) are no more than 30% of a households' income. Since AMI varies by household size, the following assumptions about the number of people in a household are made for LHP rental units with different numbers of bedrooms:

# Bedrooms	# People in Household
0	1
1	1.5
2	3
3	4.5

The prices provided in ~~the table below~~ Appendix A assumes the landlord pays all utilities. If heat, electric, or water utilities are not included in the rental price, the monthly rate will be reduced accordingly. ~~Contact the WHA for details on this calculation (Appendix A for calculator).~~ Prices will be updated annually following HUD's updates to AMI for Flathead County.

*5.3 Recording of Deed Restrictions*

Prior to recording the deed restriction, using the standardized deed restriction provided by the City, the following details must be provided:

- Details regarding how the requirements of the LHP will be met, including unit types, sizes, number of bedrooms, amenities, heating systems and estimated utility costs, target income category, and initial rental prices.

The developer will ~~cause to be recorded,~~ at Flathead County Clerk and Recorder, a deed restriction ~~that to~~ fulfills the requirements of this section regarding controls placed on the occupancy and rental of the LHP unit. The effect of recording said deed restriction is to create, in accordance with state law, an obligation that runs with the property. The Legacy Homes Coordinator/City Attorney will provide a template deed restriction to be used.

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*5.4 Adjustment of LHP Rental Rates*

The Legacy Homes Coordinator will review and adjust the rent in each income range and for each unit size based on annual updates to AMI and using the MBOH methodology. The Legacy Homes Coordinator will publish the new rents immediately upon adoption of a Resolution approved by the City Council.

*5.5 Minimum Requirements for Legacy Home Rental Units*

LHP rental units will be built to conform to local, state and federal laws according to the following guidelines concerning design, equipment, and physical features.

*5.5.1 Floor size*

Legacy Home rental units must be constructed according to the minimum and average requirements for square footage of habitable residential space shown in the table below. The size of each unit type may vary within a development, but no unit may be smaller than the minimum size, and the size of all units by type must meet the average size shown below. However, as an alternative to the standards set forth below, the developer has the option of offering Legacy units similar in floor area to the market rate units in the same project. Should the developer choose this option, the justification for doing so must be addressed in the HMP.

<b>Unit Type</b>	<b>Minimum Square Feet</b>	<b>Average Square Feet of all units/type in development</b>
0 Bedroom (Studio)	350	450
1 Bedroom	550	650
2 Bedroom	725	825
3 Bedroom	900	1000

Minimum floor areas of habitable residential space include partitions, closets, heated utility rooms, halls and stairways but exclude attics, porches, unfinished basements, garages and unheated storage space.

### 5.5.2 Equipment and hookups

Each LHP rental unit must include a new ENERGY STAR® kitchen range and ~~refrigerator;refrigerator~~, hookups for a clothes washer, dryer, or laundry on site.

### 5.5.3 Design and location

The proposed design and location of the Legacy Home rental units within the development will be reviewed by Planning staff, in consultation with the Legacy Homes Coordinator, and approved by City Council or Planning staff in order to achieve spatial integration, dispersion throughout and compatible exterior architectural and landscaping appearance with the market units in the development.

### 5.6 Mix of Unit Types

The mix of LHP rental units must match the mix of market rate rental units but may be modified annually by the City to meet the needs identified in the Workforce Housing Needs Assessment, Strategic Housing Plan, or any housing needs identified subsequent to adoption of those documents.

### 5.7 Marketing to and Certifying Tenants for Legacy Rental Units

The WHA will certify tenants who are income eligible to rent LHP units and will maintain a list of eligible tenants. Marketing of the LHP units is the responsibility of the developer or property manager. The WHA may assist with marketing but will not be responsible for a unit being vacant because of insufficient marketing or any other reason. Reviews, background checks, decision to rent or not rent, execution of rental leases, and the day to day management of the rental units will be the responsibility of the developer/property manager or their designee or successor.

The WHA will establish and maintain an equitable process for allocating rights to lease the rental units, including waiting lists when demand exceeds supply.

### 5.8 Certification of income after occupancy

The income of tenants will be recertified by the WHA upon lease renewal, or no more often than once per year. Based on its findings, the WHA will determine whether the lease will be renewed.

### 5.9 Terms of compliance

Rental housing developments subject to the ~~Legacy Homes Program~~LHP requirements must maintain required occupancy rules and rental rates in LHP units for a period of 90 years after the date of issuance of a certificate of occupancy for the entire development or portions thereof. Subsequent 90-year deed restrictions must be renewed any time the property changes hands. This requirement is applicable to successors in title by means of a deed restriction. A City-approved deed restriction template must be used.

## ~~6.0 TYPE~~ 6.0 TYPE OF HOUSING - Ownership:

This section covers all requirements specific to Legacy Homes ownership.

### 6.1 Eligible Buyers

Following are general eligibility criteria for purchasers of Ownership Housing, although further program eligibility criteria may be established or modified by WHA. Ownership Legacy Homes created through the ~~Legacy Homes Program~~ LHP will be sold to and occupied by an eligible owner-occupant household. An eligible owner-occupant household will be certified by the WHA no more than 90 days prior to a purchase contract being executed for a Legacy Home. Such certification is valid for 12 months following the execution of the purchase contract. If the 12 months elapses before closing of the unit for which the Legacy Home buyer is under contract, the household's eligibility will be re-certified and valid for an additional 90-day period. Priority will be given to households with at least one household member who is employed in the City of Whitefish, then to those with members employed within the 59937-zip code area, and finally to those with employment outside the 59937-zip code area.

### 6.2 Income

Legacy Homes will be targeted for households earning 80.1% AMI to 120% AMI. However, the range of incomes allowed for eligible households will be somewhat broader to ensure there are enough buyers for the Legacy Homes produced. The range of eligible household incomes will be established by the WHA but will capped at 150% AMI. The AMI is updated annually by HUD and is provided in Appendix ~~A-B~~ for the current year.

### 6.3 Liquid Assets

Eligible purchasers must not have more than two times their annual income in liquid assets, excluding retirement funds, college savings funds, and funds in Health Savings Accounts.

### 6.4 Characteristics of Legacy Ownership Units

The type of housing unit (single-family detached or attached, duplex, triplex, townhome, etc.) and the number of bedrooms offered (not necessarily the square footage) must match the market units offered in a development. If the development provides a mix of unit types, the Legacy units must proportionately match the mix among market units acknowledging ~~that~~ rounding may be required (round down for 0.4 units or less, round up for 0.5 units or more). For example, a development of market rate townhomes must provide townhomes for the Legacy units. Exceptions may be allowed if all market units are single-family detached homes, in which case up to half of the required Legacy units may be attached single family homes (triplexes, townhomes). If the project is a subdivision only in which the developer plans to sell lots but not build market rate units, the Legacy unit types and numbers of bedrooms required will be based on the needs identified at time of the City's annual update to the program by the WHA and the most current Housing Needs Assessment.

The mix of the number of bedrooms offered in Legacy units will mirror the mix of bedrooms offered in the market rate units, provided the mix is responsive to the needs and demographics

of Whitefish residents as established in an up to date market study and the performance of previous housing developments. The City reserves the right to adjust the mix once some Legacy Homes have been built in the community and the performance of various bedroom mixes established. Three-bedroom units satisfy the Legacy Homes requirement for market units with four or more bedrooms. The sizes of the Legacy units may vary in a development, but no unit may be smaller than the minimum square footage (SF), and the size of all units must at a minimum average the SF, listed below. However, as an alternative to the standards set forth below, the developer has the option of offering Legacy units similar in floor area to the market rate units in the same project. Should the developer choose this option, the justification for doing so must be addressed in the HMP.

**Commented [WC2]:** What is this? Is this something the City is doing or something an applicant is doing?

# Bedrooms	Minimum SF	Minimum Average SF
Studio	400	500
1 Bedroom	700	1,000
2 Bedrooms	800	1,150
3 Bedrooms	1,100	1,300

When a Homeowner's Association's CC&Rs define a minimum square footage for homes in the development, an exemption for Legacy Homes and their smaller square footages must be made.

When phased construction is planned for a development, the proportion of Legacy units must be constructed in proportion to the market rate units constructed during each phase of development. In a 10-unit development in which five units will be constructed in each of two phases, one Legacy unit must be constructed in each phase. If the development will be constructed in one phase, a financial assurance or some other guarantee that the Legacy units be completed concurrently with market units is required.

Legacy Homes must meet the requirements of the City of Whitefish land development regulations and building codes. Legacy units must be architecturally compatible with surrounding development. Exterior finishes must be substantially compatible and consistent with the materials and finishes used on the market rate units. A minimum of 20 square feet of storage space must be provided.

Legacy units must meet mandatory minimum building codes for insulation and air sealing. Electric resistance or wood heat is not allowed except when all market rate units are using the same heating system. The design must address livability, maintenance, health, safety, climate, lifestyle, and the needs of the types of households the units are intended to serve. Balconies, decks and private yards similar to the market rate units are required to enhance livability of the Legacy units.

#### 6.5 Pricing of New Housing for Ownership

The initial sales price of the Legacy ownership homes is the lesser of either 80% of the appraised market value of the home, or the price shown in the price distribution table below in Appendix A.



The Legacy Homes must be priced in a spectrum consistent with unit size, location, and market demand, with the average price of Legacy Homes affordable to households earning 100% of AMI (~~\$219,503 for a 2-bedroom home~~). The following assumptions about the number of people in a household are made for Legacy ownership units with different numbers of bedrooms:

# Bedrooms	# People in Household
0	1
1	1.5
2	2.5
3	3.5

Variables ~~that~~ affecting the initial target sales price of a Legacy ownership unit include the mortgage interest rate, the amount of the down payment, the term of the mortgage, and the portion of the monthly mortgage payment ~~that goes going~~ towards principal and interest. These variables will be updated annually as needed. The distribution of target prices is shown in ~~the table below and the calculator for determining the prices is provided in~~ Appendix A.

<b>2020 Legacy Ownership Units Initial Sales Price Distribution</b> <b>(if lower than 80% of appraised value)</b>				
<b>AMI</b>	<b>0BR</b>	<b>1BR</b>	<b>2BR</b>	<b>3BR</b>
<b>80%</b>	<del>\$153,356</del>	<del>\$164,331</del>	<del>\$186,281</del>	<del>\$208,083</del>
<b>90%</b>	<del>\$172,525</del>	<del>\$184,872</del>	<del>\$209,566</del>	<del>\$234,094</del>
<b>100%</b>	<del>\$191,695</del>	<del>\$205,414</del>	<del>\$232,852</del>	<del>\$260,104</del>
<b>110%</b>	<del>\$210,864</del>	<del>\$225,955</del>	<del>\$256,137</del>	<del>\$286,114</del>
<b>120%</b>	<del>\$230,034</del>	<del>\$246,496</del>	<del>\$279,422</del>	<del>\$312,125</del>

~~The maximum price for units restricted at 120% of AMI would be \$279,422 for a 2-bedroom home or \$312,125 for a 3-bedroom home.~~ The actual sale price will include the following costs to the buyer as described on the settlement sheet for the sale:

- The sale price of the home
- Any sales commission which is payable by the buyer
- Any monthly fee such as a homeowner's association fee or common area fee
- Any other settlement cost charged to the buyer which in Whitefish is normally charged to the seller

#### 6.6 Adjustment of New Legacy Home Prices

The Legacy home prices approved by Council by Resolution annually will remain in effect until the updated AMIs are published by HUD, after which time the prices may be adjusted as set forth in these administrative procedures unless otherwise amended by Council.

Beginning in 2020 and annually thereafter, the Legacy Homes Coordinator will review and adjust the Legacy Home price for each income range and for each unit size based on annual updates to AMI. The Legacy Homes Coordinator will publish new Legacy Home prices immediately upon adoption of a Resolution approved by the City Council.

Nothing herein prevents the City Council from amending the ~~Legacy Homes Program~~LHP ordinance without such recommendations from the Legacy Homes Coordinator.

#### *6.7 Deed Restrictions for Ownership Housing*

Prior to recording the deed restriction using the standardized deed restriction provided by the City, the following details must be provided:

- Details regarding how the requirements of the LHP will be met, including unit types, sizes, number of bedrooms, amenities, heating systems and estimated utility costs, target income category, initial sales prices or rental prices, homeowner's association (HOA) structure and fees, if applicable
- Exemption within a development's Covenants, Conditions and Restrictions (CC&Rs) for Legacy Homes providing an exemption from the minimum square footage

All deed restrictions applicable to Legacy ownership homes must include resale restrictions binding future buyers and sellers to the applicable conditions set forth in this Program Administration as updated annually and will be in a form approved by the Legacy Homes Coordinator and the Whitefish City Attorney.

The Legacy Homes will be deed restricted for a term of 90 years subject to renewal of the 90-year term anytime the property changes ownership.

#### *6.8 Recording of Deed Restrictions*

The developer or any owner selling a Legacy Home must cause to be recorded with the Flathead Clerk and Recorder's Office, simultaneous with the recording of the deed of sale, deed restriction ~~that~~ fulfill~~ing~~s the requirements of this section regarding controls placed on the occupancy and resale of Legacy Homes. The effect of recording said deed restriction is to create, in accordance with state law, an obligation that runs with the property. The Legacy Homes Coordinator/City Attorney will provide a template deed restriction to be used for the transaction. Initial affordability will be achieved by including in the ~~Housing Mitigation Plan~~HMP the terms of an escrow instruction requiring certification of ~~Legacy Homes Program~~LHP compliance by an escrow agent.

#### *6.9 Rental Prohibition*

Legacy Homes may not be rented to a second party, except at the discretion of and as approved in writing by the Legacy Homes Coordinator for instances in which the owner is under duress by reason of unemployment, family medical emergencies, inability to sell the home for an amount equal to or greater than the original sale price, or other unique circumstances of family hardship such as military deployment. In providing written permission, the Legacy Homes Coordinator will specify a limit on the rental not to exceed 24 months.

## 7.0 RESPONSIBILITY FOR ADMINISTRATION

### *7.1 Legacy Homes Coordinator/Whitefish Housing Authority*

The Legacy Homes Coordinator and the WHA are responsible for the following functions regarding administration of the Whitefish ~~Legacy Homes Program~~LHP:

7.1.1 ~~Attend a pre-submission conference with City Planning Staff and the applicant of a development request to review Legacy Homes requirements.~~

~~7.1.17.1.2~~ Facilitate flow of information and communication among City staff, WHA, and applicants for development.

~~7.1.27.1.3~~ Set, review, adjust and publish Legacy Home rental rates, ~~and~~ housing prices, and fee in-lieu rates based on available AMI and other variables for Flathead County.

~~7.1.37.1.4~~ Review the individual ~~Housing Mitigation Plan~~HMPs in coordination with City staff to determine if each plan can be approved by staff or recommended for approval by the City Council. If Plans are found to be deficient, the Legacy Homes Coordinator and City staff will work with the developer to resolve deficiencies.

~~7.1.47.1.5~~ Track "available" and "in progress" Legacy Homes.

~~7.1.57.1.6~~ Manage all prior affordable housing agreements and the prior affordable housing program.

~~7.1.67.1.7~~ Act as the primary resource to prospective and active Legacy Home buyers and renters in the Legacy Housing Program by:

- Developing and implementing public education and information activities including workshops, newsletters and public presentations.
- Providing technical assistance.
- Screening and qualifying households eligible to purchase or rent Legacy Home units.
- Maintaining lists of pre-qualified households and matching qualified households with available housing units.
- Assisting with marketing of Legacy rental and ownership homes.
- Monitoring compliance of renters with Legacy Homes eligibility criteria.
- Providing information to home purchasers and owners regarding allowed appreciation of deed restricted units and determining resale values of Legacy Homes.
- Determining allowable annual increases in rent for Legacy Homes based on MBOH methodology.

### *7.2 Planning and Building Department*

This City department or its designees will be responsible for the following functions regarding administration of the ~~Legacy Homes Program~~LHP:

7.2.1 Attend a pre-submission conference with the Legacy Homes Coordinator/Whitefish Housing Authority and the applicant of a development request to review Legacy Homes requirements.

7.2.17.2.2 Require applicants to prepare a Housing Mitigation PlanHMP concurrently and as part of the development review process.

7.2.27.2.3 Work with applicants to ensure the Legacy Homes proposed in the Housing Mitigation PlanHMPs follows the Legacy Homes ProgramLHP Administration and helps the City meet its goals for housing as outlined in the 2017 Strategic Housing Plan.

7.2.37.2.4 Recommend to City Council approval or disapproval of Housing Mitigation PlanHMPs, including proposals for ILF contributions, clustered units, and off site housing unitsalternatives.

7.2.47.2.5 For administrative CUPs, review and approve Housing Mitigation PlanHMPs as part of development approval process.

7.2.57.2.6 Monitor developer compliance with Legacy Homes ProgramLHPs regulations through completion of construction, and in the event of noncompliance, request~~ing that~~ the City Manager direct action by appropriate departments regarding the department's responsibility for administrating the Legacy Homes ProgramLHP.

### *7.3 City Council*

The City Council will be responsible for approving Housing Mitigation PlanHMPs as part of the standard development permitting process. Council is also responsible for adopting any updates to this Program Administration document including changes to AMI or affordable rates and evaluating whether the housing goals are being met.

APPENDIX A: 2020 Home Prices, Rental Prices and ~~In-Lieu-Fee~~ In Lieu

2020 Home Price Distribution:

AMI%	0BR	1BR	2BR	3BR
80%	\$153,356	\$164,331	\$186,281	\$208,083
90%	\$172,525	\$184,872	\$209,566	\$234,094
100%	\$191,695	\$205,414	\$232,852	\$260,104
110%	\$210,864	\$225,955	\$256,137	\$286,114
120%	\$230,034	\$246,496	\$279,422	\$312,125

2020 Rental Price Distribution<sup>2</sup>:

AMI %	0BR	1BR	2BR	3BR
60%	\$776	\$831	\$998	\$1,152
70%	\$905	\$970	\$1,164	\$1,344
80%	\$1,034	\$1,108	\$1,330	\$1,536

2020 Fee in Lieu of Providing Units:

FRACTIONAL UNIT FEE:	WHOLE UNIT FEE:
\$82,618.00	\$123,927.00

<sup>2</sup> Can be adjusted if utilities are *not* included in the rental price.

|  
| APPENDIX B: 2020 Area Median Income for Flathead County, HUD

DRAFT

**WR-4 ZONING DISTRICT  
STAFF REPORT  
ZONING TEXT AMENDMENT; WZTA 20-05  
NOVEMBER 12, 2020**

A report to the Whitefish Planning Board and the Whitefish City Council regarding an amendment to the WR-4 zoning district (High Density Multi-Family Residential District). A public hearing is scheduled before the Whitefish Planning Board on November 19, 2020 and a subsequent hearing is set before the City Council on December 7, 2020.

**PROJECT SCOPE**

The Strategic Housing Plan Steering Committee, as part of its annual review, is recommending to the Council to reduce the threshold for an Administrative Conditional Use Permit (ACUP) in the WR-4 (High Density Multi-Family Residential District) zoning district from eight (8) units to four (4) and leave all other standards the same. The current zoning regulations require an ACUP for projects with eight (8) to eighteen (18) multi-family units. The Committee is concerned projects are building right at the threshold of seven (7) units in order to avoid the Legacy Homes Program (LHP) while they still have an impact on the affordable housing problem in town and ought to be a part of the LHP.

**BACKGROUND**

At the Affordable Housing update meeting with the City Council on October 19<sup>th</sup>, the Strategic Housing Steering Committee made several suggested changes to the LHP Administrative Procedures and the WR-4. At the meeting, the Council was supportive of the changes to the Administrative Procedures but voiced some concerns with the proposed zoning text amendment. However, they directed staff to bring the text amendment forward through the public hearing process to discuss it further and get public input.

*Legacy Homes Program –*

The adopted Strategic Housing Plan called for new subdivisions to be subject to the mandatory affordable housing requirements. As part of developing the inclusionary zoning program, the Steering Committee recommended broadening the inclusionary program to incorporate multi-family. As part of the inclusionary development process, it was determined a discretionary permit such as a Conditional Use Permit or a Planned Unit Development would be necessary to require inclusionary housing. The solution, ultimately approved by the Council, was to reduce the threshold for a CUP in both the WR-3 and WR-4 zoning districts, but to also maintain some use 'by-right' projects and allow smaller projects be reviewed through an ACUP with more rigorous standards than were required at the time versus the full CUP process with a lengthy public hearing process.

Before the LHP, a property zoned WR-4 could build an unlimited number of units as a use 'by-right', provided all development standards could be met. Currently, seven (7) or fewer units are permitted 'by-right', an ACUP is required for projects between eight (8) and eighteen (18) units, and a full CUP is required for more than eighteen (18) units.

The WR-4 zoning district was established as the preferred location for the highest density multi-family housing with an intent defined as follows:

*The WR-4 District is intended for higher density residential purposes and for limited nonresidential uses that are compatible with such a residential setting connected to Municipal utilities and services.*

Prior to the adoption of the Legacy Homes Program, the WR-3 Low Density Multi-family zoning district allowed one (1) to four (4) units as a use by right, and any number of units over four required a conditional use permit. That was changed to permit one (1) to three (3) units by right, while four (4) to eight (8) units became an administrative CUP and nine (9) units and over remains a full CUP. The intent of the WR-3 zoning district is as follows:

*The WR-3 District is intended for residential purposes to provide for one-family, duplex, triplex, fourplex and attached single-family residential uses in an urban setting connected to all Municipal utilities and services.*

### **PUBLIC COMMENT**

The Planning Board draft was placed on the City's webpage for public review on November 12, 2020. A notice was mailed to advisory agencies and departments on October 30, 2020 and a notice was published in the Whitefish Pilot on November 4, 2020. As of the date of this report, we have received no comments.

### **PROPOSED AMENDMENT**

#### **11-2I-3: CONDITIONAL USES:**

- Bed and breakfast establishments (see special provisions in section 11-3-4 of this title).
- Boarding houses.
- Catering services.
- Churches or similar places of worship, including parish houses and parsonages.
- Daycare centers (more than 12 individuals).
- Hostels.
- Mixed use professional office/residential with professional office only permitted on the street level between Railway Street and Second Street.
- Music and dance schools and studios. (Limited to Spokane Avenue, Central Avenue south of Fourth Street, Baker Avenue between Fourth Street and Fifth Street, Wisconsin Avenue south of Glenwood, and East Seventh Street east of Park Avenue. See special provisions in section 11-3-31 of this title.)
- Nursing or retirement homes.
- Personal services. (Limited to Spokane Avenue, Central Avenue south of Fourth Street, Baker Avenue between Fourth Street and Fifth Street, and Wisconsin Avenue south of Glenwood. See special provisions in section 11-3-30 of this title.)
- Private recreational facilities.
- Professional artist studio/gallery. (Limited to Spokane Avenue, Central Avenue south of Fourth Street, Second Street West, Baker Avenue between Fourth Street



and Fifth Street, and Wisconsin Avenue south of Glenwood. See special provisions in section 11-3-15 of this title.)

- Professional offices. (Limited to Spokane Avenue, Central Avenue south of Fourth Street, Baker Avenue between Fourth Street and Fifth Street, and Wisconsin Avenue south of Glenwood. See special provisions in section 11-3-16 of this title.)
- Residential:
  - Accessory apartments.
  - Dwelling groups or clusters.
  - Guesthouses, only on lots over ten thousand (10,000) square feet.
  - Multi-family dwellings, ~~eight (8)~~ four (4) to eighteen (18) dwelling units - administrative conditional use permit (subsection 11-7-8M of this title) (see special provisions in section 11-3-42 or 11-3-43 of this title).
  - Multi-family dwellings, nineteen (19) or more dwelling units (see special provisions in section 11-3-42 or 11-3-43 of this title).
- Schools (K - 12).
- Type I and type II community residential facilities.

There could be some positives to reducing the requirement for an ACUP from eight (8) to four (4):

- *It could capture more projects.* Since the adoption of the LHP there have been three projects approved in the WR-4 zoning district – each with seven units. As such each project would have provided 1.4 units to the LHP; three rentals plus a fee in lieu for the remaining 0.4 x three projects.
- *The change could be low enough that all projects in the WR-4 will simply design the best project for the property because the LHP will be a requirement regardless. It would not make financial sense to build a very small project in the highest density zoning district to avoid the LHP.* The Committee did not think reducing the threshold would automatically cause developers to build to an even lower density but would push the densities higher to off-set the LHP. Projects previously built at seven units might find it makes more sense to build to nine or ten units.
- *Neighbors would have an opportunity to weigh-in and be aware of more projects.* There would be a public process for projects built at a lower density.
- *If someone were to build a project 'by right' it would be very small with less impact to the current neighborhood.* Presumably, a smaller project with less units would be less impactful to an existing neighborhood especially those neighborhoods with adjacent single-family homes.

However, Staff has the following concerns about further reducing the number of units that can be built by right in the WR-4 zoning district:

- *Before the LHP, the WR-4 had an unlimited number of units permitted 'by-right'.* As the Planning Board and Council recalls, the WR-4 simply had a density calculation

and permitted all types and densities of housing, provided all development standards could be met. While this proposed amendment does not change any density standards, it certainly changes the perception as to what will be permitted, the extra time involved in getting a decision, and the level of confusion from neighbors. During review of the project proposed off E 7th and E 8th Streets, there was a perception the developer was asking for an exception to the rules to build the apartment project – almost a variance to the use. This was not the case.

- *Maintaining a certain number of units 'by-right' was a concession during development of the LHP because of the new requirement for a Conditional Use Permit. The recommendation from the Strategic Housing Committee recognized this change from an unlimited number of units to requiring a land use permit was a significant change to the zoning. It was determined since the zoning has the highest density in the City that some level of 'by-right' units should still be allowed in the WR-4.*
- *Providing an ACUP option was another concession of the LHP, along with the Multi-Family Design Standards, when the new requirement for a Conditional Use Permit was added. Suddenly requiring a Conditional Use Permit for projects that previously just needed to obtain a building permit was a significant change. To off-set this requirement, but still obtain inclusionary housing, the use of the Administrative Conditional Use Permit was expanded to include smaller projects that previously had no review.*
- *Because of the change to the WR-4 zoning, we have seen developers intentionally design projects below the standard to avoid the LHP. The result is projects with a lesser density. By dropping the standard even more, staff is concerned we will see even less dense projects in our highest density zoning district. Once the Council denied the two projects on E 7th and E 8th Streets, the developer simply reduced the density to seven units per building. If we do not see the high-density projects proposed for the areas zoned high density near our schools, shopping and highway corridors, where will high density projects be located? If we do not provide a location for well-designed high-density housing, a larger portion of our workforce will be forced to drive from neighboring communities where affordable rentals are located.*
- *The 2019 change to the WR-4 has become a defacto 'down zone' of our town and could result in sprawl instead of a compact walkable/bikeable community. An important part of a walkable and bikeable community is the provision of density. Designed properly, a high-density project can be well-integrated into a community and existing neighborhoods. It is an efficient use of land, space, utilities and can reduce vehicle trips through a more walkable neighborhood. The lower the densities, the increased pressure on expanding our urban boundaries, extending utilities and services further out and forcing people to drive vehicles. Both the 2007 Growth Policy and the Climate Action Plan advocate for limiting sprawl.*
- *Changing the standard to the same as the WR-3 zoning district for an ACUP does not offer a difference between the two zoning districts. Currently, the WR-3 (Low-Density*

Multi-Family District) also requires an ACUP for four (4) units. The full CUP in the WR-3 is for projects with nine (9) or more units.

- *The Legacy Homes Program is barely a year old, and we have had very few multi-family projects submitted since its adoption. It is too soon to make judgements about whether the current zoning is adequate to capture projects in the program or additional changes need to be made.*

## **REVIEW AND FINDINGS OF FACT**

The proposed changes shall be evaluated based on the criteria for consideration for amendments to the provisions of the Zoning Regulations per §11-7-12E, WCC.

1. *Zoning Regulations Must Be:*
  - a. *Made in Accordance with a Growth Policy*

**2007 Growth Policy:** The following goals support affordable housing.

**Future Land Use Goal 1.** Preserve and enhance the character, qualities, and small town feel and ambience of the Whitefish community through an innovative and comprehensive growth management system.

**Future Land Use Goal 5.** Protect and preserve the special character, scale, and qualities of existing neighborhoods while supporting and encouraging attractive, well-designed, neighborhood compatible infill development.

**Housing Element Goal 1.** Ensure an adequate supply and variety of housing product types and densities at affordable prices to meet the needs of Whitefish's existing and future workforce, and senior citizen.

**Housing Element Goal 2.** Maintain a social and economic diversity of Whitefish through affordable housing programs that keep citizens and members of the workforce from being displaced.

**Finding 1:** The Legacy Homes program continues to support affordable housing with or without the proposed text amendment.

- b. *Designed to:*
  - i. *Secure safety from fire and other dangers*

**Finding 2:** With or without the proposed code amendment will secure safety from fire and other dangers because all building code standards will continue to be met at the time of construction.

- ii. *Promote public health, public safety and general welfare*

**Finding 3:** The public health, public safety and general welfare is promoted whether or not this text amendment is approved through all the City's regulations.

- iii. *Facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements*

**Finding 4:** The proposed code amendment has no impact on the adequate provision of transportation, water, sewerage, schools, parks and other public requirements because these type of improvements are required at the time of development and are unrelated whether this text amendment is approved.

- 2. *In the adoption of zoning regulations, the City shall consider:*
  - a. *Reasonable provision of adequate light and air*

**Finding 5:** The proposed code amendment is unrelated to reasonable provisions of adequate light and air because these are permitting requirements. The evaluation of provision of adequate light and air will be reviewed at the time of development through zoning setbacks and the building code.

- b. *The effect on motorized and nonmotorized transportation systems*

**Finding 6:** The proposed code amendment may have a negative effect on motorized and nonmotorized transportation systems, as the resulting development patterns could cause the pressures of development to expand our urban limits and result in sprawl.

- c. *Promotion of compatible urban growth*

**Finding 7:** The proposed code amendment may have a negative effect on compatible urban growth because it may promote more low-density sprawl as the City develops and grows.

- d. *The character of the district and its particular suitability of the property for the particular uses*

**Finding 8:** The character of the district and its particular suitability of the property for the particular uses criterion is not applicable to this code amendment because it pertains to site development, not community wide development regulations.

- e. *Conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area; and*

**Finding 9:** Conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area criterion is not applicable to this code amendment because it does not affect the value of buildings but does encourage good design.

- f. *That historical uses and established uses patterns and recent change in use trends will be weighed equally and consideration not be given one to the exclusion of the other.*

**Finding 10:** That historical uses and established uses patterns and recent change in use trends will be weighed equally and consideration not be given one to the exclusion of the other criterion is not applicable to this code amendment because it pertains to site development not community wide development regulations.

### **ADDITIONAL FINDINGS**

**Finding 11:** Staff finds the considerations in Section 11-7-12(E) are either met or are not applicable with or without the text amendment.

**Finding 12:** Whereas, legal public notice according to the Whitefish City Code was published in the *Whitefish Pilot* on November 4, 2020.

**Finding 13:** Whereas, staff sent a notice on October 30, 2020 to twenty-three (23) reviewing agencies, departments and other service providers.

**Finding 14:** Staff did not find conditions changed after 16 months of the Legacy Homes Program to warrant a change to the WR-4 zoning district.

Therefore, we find it is in the best interest of the City of Whitefish and its inhabitants to not amend the WR-4 zoning district.

### **OVERALL RECOMMENDATION**

Staff does not believe this zoning amendment is timely because the Legacy Homes Program is so new, and we do not recommend approval of the amendment at this time. We simply have not had enough projects during the past 16 months to determine whether this aspect of the overall Legacy Homes Program is failing us. Staff recommends no major overhauls of the LHP until we have a better idea of how the program is working. We understand from other communities it can take 3 to 5 years to see the actual fruits of our collective labor on affordable housing. We recommend continue monitoring this and the entire program to see how it is working, how we are achieving our workforce housing needs, and if this text amendment or others are warranted.

Staff recommends the Planning Board **deny** the proposed text amendment to reduce the number of units for an Administrative Conditional Use Permit as set forth in staff report WZTA 20-05 and adopt the findings of fact and transmit same to the Whitefish City Council for further action.

#### *Alternative Recommendation:*

If the Planning Board and City Council agree a change is necessary, as an alternative, staff would suggest making at least four (4) units a permitted use 'by-right' in order to be

consistent with the remainder of the zoning – WR-2 permits two units, WR-3 permits three units, and the WR-4 could permit four units.

If the Planning Board and/or City Council wish to pursue either this text amendment or the staff proposed alternative text amendment, the above Findings of Fact will need to be amended to support a zoning text amendment.

DRAFT

**WHITEFISH STRATEGIC HOUSING PLAN STEERING COMMITTEE**  
418 E 2<sup>nd</sup> Street, PO Box 158 Whitefish, MT 59937



November 12, 2020

Whitefish Planning Board  
PO Box 158  
Whitefish, MT 59937

Re: WZTA 20-05; WR-4 District Zoning Text Amendment to Reduce the Number of Units from Eight (8) to Four (4) for an Administrative Conditional Use Permit

Dear Chair Qunell and Planning Board Members:

The Strategic Housing Plan Steering Committee was appointed by the City Council in December 2017 to work on the implementation of the 2017 Strategic Housing Plan. One of the first items the group worked on was to obtain affordable housing through the adoption of the Legacy Homes Program, an inclusionary zoning regulation – this was accomplished in July 2019. As you recall, the Legacy Homes Program requires residential projects to deed restrict 20% of their units for Whitefish's workforce earning moderate wages – rentals for those earning 60-80% Area Median Income (AMI) and ownership for those earning 80-120% AMI.

In September, the City Council updated the ownership and rental rates and the fee in-lieu of providing the housing on-site to keep pace with changing incomes and the real estate market. This update will occur annually. In addition, we expect to provide an annual update on the program to the Council along with possible amendments to ensure the program is achieving its goals of developing workforce housing. We have attached the fiscal year 2020 Annual Report to this public comment.

At your November Planning Board meeting, you have a proposed text amendment to the WR-4 (High-Density Multi-Family Residential District) to reduce the number of units when an Administrative Conditional Use Permit (ACUP) is required. The current standard requires an ACUP for projects between eight (8) and eighteen (18) and the full CUP for projects with nineteen or more projects.

The Strategic Housing Steering Committee believe this threshold ought to be reduced to four (4) units for an ACUP and would like the Planning Board to consider the following during your deliberation:

- **ADD THOUGHTS HERE**

We understand staff is recommending denial of this amendment due to it not being timely, concerns that this would blur the differences between the WR-3 and the WR-4 zoning districts and due to the concessions made during the original development of the Legacy Homes Program. However, we respectfully disagree with their assessment and

ask you recommend approval of the text amendment and recommend the same to the City Council. In support of this text amendment, we offer the following AMENDED Finding of Fact:

**Finding 1:** The Legacy Homes program ~~continues to~~ better supports affordable housing and implement the Growth Policy with ~~or without~~ the proposed text amendment because it will apply to a greater number of projects.

**Finding 6:** The proposed code amendment ~~may~~ will not have a negative effect on motorized and nonmotorized transportation systems, ~~as the resulting development patterns could cause the pressures of development to expand our urban limits resulting in sprawling development~~ because developers of land will build a quality project that fits the zoning rather than building a project to avoid the Legacy Homes Program. Motorized and nonmotorized transportation systems will be analyzed at the time of development.

**Finding 7:** The proposed code amendment ~~may~~ will not have a negative effect on compatible urban growth because it ~~may promote more low density sprawling development as the City develops and grows~~ because developers of land will build a quality project that fits the zoning rather than building a project to avoid the Legacy Homes Program..

**Finding 14:** ~~Staff did not find~~ The Whitefish Strategic Housing Steering Committee has found conditions have changed after 16 months of the Legacy Homes Program to warrant a change to the WR-4 zoning district.

Thank you for your consideration in this matter and your continued support of affordable housing for the Whitefish workforce.

Sincerely,

*/s/ Ben Davis*

Ben Davis  
Strategic Housing Plan Steering Committee Chair