

SUBTITLE 2B
INCLUSIONARY HOUSING REQUIREMENTS

INTRODUCTORY NOTE: Ordinance 07-474 enacted this subtitle with (i) a general effective date of July 19, 2007, and (ii) per Section 9 of that Ordinance, a “sunset” of 5 years from that effective date. Subsequently, Ordinance 11-466 deferred the sunset through June 30, 2020. (For the effective dates of various specific provisions, see Editor’s Note at the end of this subtitle.)

Part I. Definitions; General Provisions

§ 2B-1. Definitions – General.

(a) *In general.*

In this Subtitle, the following terms have the meanings indicated.

(b) *Board.*

“Board” means the Inclusionary Housing Board established by this subtitle.

(c) *Developer.*

“Developer” means any person, firm, partnership, association, joint venture, corporation, or other entity or combination of entities that undertakes a residential project.

(d) *Housing Commissioner.*

“Housing Commissioner” means the Commissioner of Housing and Community Development or the Commissioner’s designee.

(e) *Housing funds.*

“Housing funds” means Federal, State, or City funds designated explicitly for the purpose of providing affordable housing.

(f) *Includes; including.*

“Includes” or “including” means by way of illustration and not by way of limitation.

(g) *Major public subsidy.*

(1) *In general.*

“Major public subsidy” means the provision by the City or any of its agents or contractors of funds, resources, or financial assistance for a residential project that needs these funds, resources, or assistance to proceed.

(2) *Inclusions.*

“Major public subsidy” includes:

- (i) the sale or transfer of land substantially below its appraised value;
- (ii) payment in lieu of taxes;
- (iii) tax increment financing;
- (iv) grants or loans that equal or exceed 15% of total projected project costs; or
- (v) except as specified in paragraph (3) of this subsection, installation or repair of physical infrastructure directly related to the residential project and with value equal to or exceeding 5% of total projected project costs.

(3) *Exclusions.*

“Major public subsidy” does not include:

- (I) infrastructure repairs or improvements undertaken as part of a regularly planned program; or
- (ii) housing funds.

(h) *Neighborhood.*

“Neighborhood” means an area delineated by commonly accepted boundary, as determined by the Planning Director.

(i) *Planning Director.*

“Planning Director” means the Director of the Department of Planning or the Director’s designee.

(j) *Residential project.*

“Residential project” means any new construction or any substantial renovation of an existing building that is designed, in whole or in part, to provide residential units.

(k) *Significant land use authorization.*

“Significant land use authorization” means the adoption of a Planned Unit Development or a legislatively approved amendment to a Planned Unit Development, either of which increases the permissible number of residential units by 30 or more units above the number permitted before adoption of the Planned Unit Development or amendment.

(l) *Significant rezoning.*

“Significant rezoning” means any rezoning that permits residential units where none were permitted previously.

(l-1) *Source of income.*

(1) *In general.*

“Source of income” means any lawful source of money paid directly or indirectly to, or on behalf of, a renter or buyer of housing.

(2) *Inclusions.*

“Source of income” includes income from:

- (i) a lawful profession, occupation, or job;
- (ii) any government or private assistance, grant, loan, or rental assistance program, including low-income housing assistance certificates and vouchers issued under the United States Housing Act of 1937; or
- (iii) a gift, an inheritance, a pension, an annuity, alimony, child support, or other consideration or benefit.

(m) *Substantial renovation.*

“Substantial renovation” means a renovation to a vacant dwelling that is needed to bring the dwelling into compliance with applicable local laws and regulations.

(n) *Vacant dwelling.*

“Vacant dwelling” means residential real property that:

- (1) has been vacant or abandoned for 1 year, as cited on a violation notice issued under the City Building, Fire, and Related Codes Article; or
- (2) has been owned by the Mayor and City Council of Baltimore City for 1 year and is in need of substantial renovation.

(Ord. 07-474; Ord. 14-264; Ord. 15-427.)

§ 2B-2. Definitions – Mandatory, prohibitory, and permissive terms.

(a) *Mandatory terms.*

“Must” and “shall” are each mandatory terms used to express a requirement or to impose a duty.

(b) *Prohibitory terms.*

“Must not”, “may not”, and “no ... may” are each mandatory negative terms used to establish a prohibition.

(c) *Permissive terms.*

“May” is permissive.
(Ord. 07-474.)

§ 2B-3. Definitions – Affordability standards.

(a) *In general.*

In this Subtitle, the following terms relating to affordability standards have the meanings indicated.

(b) *Affordable housing cost: Extremely low, very low, low, and moderate.*

- (1) An “extremely low” housing cost equals an amount not more than 1/12 of 30% of 30% of the AMI, adjusted for household size.
- (2) A “very low” housing cost equals an amount greater than 1/12 of 30% of 30% of the AMI, but not more than 1/12 of 30% of 60% of the AMI, adjusted for household size.
- (3) A “low” housing cost equals an amount greater than 1/12 of 30% of 60% of the AMI, but not more than 1/12 of 30% of 80% of the AMI, adjusted for household size.
- (4) A “moderate” housing cost equals an amount greater than 1/12 of 30% of 80% of the AMI, but not more than 1/12 of 30% of 120% of the AMI, adjusted for household size.

(c) *Affordable unit.*

“Affordable unit” means a residential unit that is required by this subtitle to be provided at an extremely low, very low, low, or moderate affordable housing cost.

(d) *AMI.*

“AMI” means the area median income for the metropolitan region that encompasses Baltimore City, as published and annually updated by the United States Department of Housing and Urban Development.

(e) *Eligible household.*

“Eligible household” means:

- (1) for a unit provided at an extremely low housing cost, a household having an income at or below 30% AMI;
- (2) for a unit provided at a very low housing cost, a household having an income greater than 30% but not more than 60% AMI;
- (3) for a unit provided at a low housing cost, a household having an income greater than 60% but not more than 80% AMI; and

- (4) for a unit provided at a moderate housing cost, a household having an income greater than 80% but not more than 120% AMI.

(f) *Housing cost.*

“Housing cost” means:

- (1) for ownership units, a sales price that requires a monthly payment, including mortgage principal and interest, taxes, insurance, homeowner association fees, and other assessments; and
- (2) for rental units, a monthly payment for lease, sublet, let, or other rights to occupy a residential unit.

(g) *Market rate.*

“Market rate” means not restricted to an affordable rent or affordable ownership cost.

(Ord. 07-474.)

§ 2B-4. Findings and policy.

(a) *In general.*

The Mayor and City Council of Baltimore finds as follows.

(b) *Benefits of economic diversity.*

Economic diversity in our neighborhoods, anchored by a strong and stable middle class and including homes for the full range of the City’s workforce, as well as for seniors and others on fixed incomes, will stimulate economic investment, promote neighborhood stability, and increase public safety for all.

(c) *Limitations of private sector.*

The private sector, as the primary source of housing and economic development activity in Baltimore City, is not solely, through its individual development actions, able to create economically diverse neighborhoods or developments or to develop housing for the broad range of incomes that will lead to economic diversity.

(d) *Capabilities of City.*

- (1) Baltimore City can provide benefits to the private sector, to promote economic diversity and housing for a broad range of incomes in neighborhoods and residential developments, in a manner that recognizes the central role that private investment must play for the continued growth and well-being of the City, including the opportunity to earn reasonable and customary levels of profitability.

(2) These benefits include:

- (i) the disposition of publicly owned land;

(ii) the expenditure of public funds, including state and federal funds under the City's control;

(iii) tax relief; and

(iv) the adoption of land use standards that promote the inclusion of affordable homes.

(e) *City policy.*

It is the policy of Baltimore City to encourage economic diversity and balanced neighborhoods by promoting the inclusion of housing opportunities for residents with a broad range of incomes in all residential projects that contain 30 or more residential units.

(f) *No additional financial burdens.*

This subtitle is not intended to impose additional financial burdens on a developer or a residential project. Rather, the intent of this subtitle is that the cost offsets and other incentives authorized under it will fully offset any financial impact resulting from the inclusionary requirements imposed.

(Ord. 07-474.)

§ 2B-5. Rules of construction.

(a) *In general.*

In this subtitle, the following rules of construction apply.

(b) *More stringent provisions apply.*

For residential projects subject to federal, state, or other local affordable housing requirements imposing an affordability restriction, if the terms of this subtitle regarding the length of a restriction or the level of affordability are more stringent than the applicable federal, state, or other local requirements, the terms of this subtitle apply.

(c) *Applying percentages.*

In applying percentages referred to in this subtitle:

(1) any portion of a percent less than one-half is disregarded; and

(2) any portion of a percent one-half or greater is rounded up to the next whole number.

(Ord. 07-474.)

§ 2B-6. Scope and applicability.

(a) *Incentives not made available.*

If cost offsets and other incentives are not made available to a residential project in accordance with this subtitle, the residential project is not subject to the requirements of this subtitle.

(b) *City's obligations.*

- (1) Whenever a residential project is granted a waiver or is otherwise exempt from this subtitle, the City is not required to provide resources to the project or to the Inclusionary Housing Offset Fund.
- (2) This subtitle does not obligate the City to expend or commit any funds beyond that which may be appropriated through the annual Ordinance of Estimates.

(c) *Incentives insufficient to offset financial impact.*

Notwithstanding any other provision of this subtitle, if the Housing Commissioner determines that the cost offsets or other incentives available to a residential project are insufficient to offset the financial impact on the developer of providing the affordable units required by this subtitle:

- (1) the Housing Commissioner shall either:
 - (i) exempt the residential project from this subtitle; or
 - (ii) modify the number of affordable units required so that the cost offsets or other incentives available are sufficient to offset the financial impact; and
- (2) neither the developer nor the Housing Commissioner need obtain the approval of the Board of Estimates for a modification or waiver under this subtitle.

(d) *Subsidized project.*

A residential project is exempt from this subtitle if:

- (1) it is subsidized by a public program; and
- (2) it satisfies the affordability requirements of § 2B-21(b) of this subtitle.

(Ord. 07-474.)

§ 2B-7. Rules and regulations.(a) *In general.*

The Housing Commissioner, in consultation with the Inclusionary Housing Board and the Planning Commission, must adopt rules and regulations to carry out the provisions of this subtitle.

(b) *Scope – General.*

These rules and regulations may include provisions for:

- (1) defining, clarifying, or construing terms used in this subtitle;
- (2) setting or refining standards for modifications or waivers;

(3) determining eligibility to purchase or rent affordable units; and

(4) setting standards for sale or rental prices for affordable units.

(c) *Scope – Requiring timely response.*

(1) The rules and regulations must

(i) require the Inclusionary Housing Board, the Housing Commissioner, and the Planning Department to provide timely and definitive responses to all submissions required from a developer under this subtitle; and

(ii) assure to the greatest extent practicable that the completion of residential projects is not delayed by implementation of this subtitle.

(2) Determinations by the Housing Commissioner regarding the sufficiency of potential cost offsets and other incentives must be made within 45 days from submission by a developer, in accordance with this subtitle, of a residential project to the Housing Commissioner, Planning Department, or other body, as required.

(d) *Scope – Written commitments.*

The rules and regulations must assure that the City evidences in writing its decisions to provide cost offsets or other incentives to a developer or residential project under this subtitle.

(e) *Advertising for comment.*

(1) A notice of the proposed adoption of all rules and regulations under this subtitle must be advertised in a newspaper of general circulation at least 45 days before their proposed adoption.

(2) The advertisement must include:

(i) a summary of the proposed rules and regulations; and

(ii) information on how a person can:

(A) obtain a copy of the proposed rules and regulations; and

(B) submit comments on them before their adoption.

(f) *Filing with Legislative Reference.*

A copy of all rules and regulations adopted under this section must be filed with the Department of Legislative Reference before they become effective.
(Ord. 07-474.)

§§ 2B-8 to 2B-10. *{Reserved}*

Part II. Inclusionary Housing Board**§ 2B-11. Board Established.**

There is an Inclusionary Housing Board.
(Ord. 07-474.)

§ 2B-12. Composition.**(a) *In general.***

The board comprises the following 15 members:

- (1) 9 members appointed by the Mayor and confirmed by the City Council in accordance with City Charter article IV, § 6;
- (2) 4 members nominated by the Council President, appointed by the Mayor, and confirmed by the City Council in accordance with City Charter article IV, § 6;
- (3) the Housing Commissioner; and
- (4) the Planning Director.

(b) *Qualifications – General.*

Of the 13 members appointed by the Mayor:

- (1) 1 must be a representative of a nonprofit entity that provides housing services in the City.
- (2) 1 must be a neighborhood association leader.
- (3) 1 must be a civil engineer practicing in the City.
- (4) 1 must be an architect practicing in the City.
- (5) 1 must be a lender experienced in lending practices for residential projects.
- (6) 1 must be a builder or developer in the City of single-family detached or attached dwellings.
- (7) 1 must be a builder or developer in the City of multiple-family dwellings.
- (8) 1 must be a representative of a nonprofit entity that advocates for affordable housing in the City.
- (9) 1 must be a representative of a labor union that represents municipal or other workers in the City.

(c) *Qualifications – Residency.*

- (1) All of the members must be residents of the City.
- (2) At least 1 member must be a member of an extremely low or very low income household.
- (3) Each of the 4 members nominated by the Council President must reside in a different City Council district.

(Ord. 07-474; Ord. 13-126.)

§ 2B-13. Board officers; expenses.

(a) *Chair.*

- (1) The Mayor designates 1 of the appointed members to be the Chair of the Board.
- (2) The Board may appoint a Vice-Chair and other officers as necessary or appropriate.

(b) *Compensation; expenses.*

The members of the Board:

- (1) serve without compensation; but
- (2) are entitled to reimbursement for reasonable expenses incurred in the performance of their duties, as provided in the Ordinance of Estimates.

(Ord. 07-474; Ord. 16-503.)

§ 2B-14. Meetings; quorum; voting.

(a) *Meetings.*

The Board meets on the call of the Chair as frequently as required to perform its duties.

(b) *Quorum.*

A majority of the members constitutes a quorum for the transaction of business.

(c) *Voting.*

An affirmative vote of at least a majority of a quorum is needed for any official action.

(Ord. 07-474.)

§ 2B-15. Staff.

The Department of Housing and Community Development must provide staff for the Board.
(Ord. 07-474.)

§ 2B-16. Annual Report.**(a) Required.**

On or before October 31 of each year, the Board must submit a report to the Mayor and the City Council and to the Planning Commission that assesses efforts during the preceding fiscal year to create and sustain inclusionary housing in the City.

(b) Contents generally.

The report must include:

- (1) the total number and proportion (as to the total of all housing units developed) of affordable housing units generated under this subtitle;
- (2) the number and proportion generated under each of the various provisions of this subtitle (e.g., major public subsidy or significant rezoning);
- (3) the number and proportion generated at various affordable costs;
- (4) a list and description of all waivers, modifications, or variances requested, granted, and denied under this subtitle, with a summary of the reasons for granting or denying each request;
- (5) an estimate of the percent of units in the City that are occupied;
- (6) the amount and percent of residential property tax-base increase;
- (7) the percent of households that the City has retained;
- (8) an estimate of the growth in City households;
- (9) the number of units for which the City or eligible housing providers had a right of first refusal under § 2B-34 {"Right of first refusal"} or § 2B-52(c) {"Resales during affordability period – First refusal"}, and the number of those units on which that right was exercised;
- (10) recommendations made by the Board under § 2B-66B {"Administration: Board to advise"} on priorities for which Inclusionary Housing Offset Fund money is best used; and
- (11) a summary of all information for the fiscal year that the Inclusionary Housing Offset Fund submits to the Board under § 2B-67 {"Reporting to Board"}.

(c) Targets.

For each of the measures listed in subsection (b) of this section, the Report may also specify targets that the City should seek to achieve in ensuing fiscal years.
(Ord. 07-474.)

§ 2B-17. Duties.

In addition to the other duties specified elsewhere in this subtitle, the Board is responsible for:

- (1) reviewing requests for modifications or waivers under § 2B-21 {"Project receiving major public subsidy"}, § 2B-22 {"Project benefitting from significant land use authorization or rezoning"}, and § 2B-23 {"Other projects – 30 or more units"} and advising the Housing Commissioner within 20 days of referral by the Commissioner, in a manner determined by the Board; and
 - (2) advising the Housing Commissioner and the Planning Director in the performance of their respective duties under this subtitle.
- (Ord. 07-474.)

§§ 2B-18 to 2B-20. {Reserved}**Part III. Inclusionary Requirements****§ 2B-21. Project receiving major public subsidy.****(a) Applicability of section.**

This section applies to any residential project that:

- (1) provides 30 or more residential units; and
- (2) receives a major public subsidy.

(b) Affordable units required.

(1) In every residential project subject to this section, at least 20% of all residential units must be affordable units.

(2) (i) For rental units:

1. at least 30% must be provided to eligible households at an extremely low rental cost;
2. at least 25% must be provided to eligible households at or below a very low rental cost;
3. at least 25% must be provided to eligible households at or below a low rental cost; and
4. the remainder must be provided to eligible households at a rental cost that does not exceed 1/12 of 30% of 100% of the AMI.

(ii) For ownership units:

1. at least 25% must be provided to eligible households at a very low ownership cost;
2. at least 50% must be provided to eligible households at a low ownership cost; and
3. the remainder must be provided to eligible households at a moderate ownership cost.

(c) *Cash subsidies.*

If the Housing Commissioner determines that the major public subsidy is insufficient to offset the financial impact on the developer of providing the affordable units required by this subtitle, the City may grant a cash subsidy to the developer from the Inclusionary Housing Offset Fund or other available sources in an amount sufficient to offset the financial impact.

(d) *Modifications or waivers – Housing Commissioner.*

If the Housing Commissioner determines that the major public subsidy or cash subsidies available to a residential project are insufficient to offset the financial impact on the developer of providing the affordable units required by this subtitle:

(1) the Housing Commissioner shall either:

(i) exempt the residential project from this subtitle; or

(ii) modify the number of affordable units required so that the major public subsidy or cash subsidies available are sufficient to offset the financial impact; and

(2) neither the developer nor the Housing Commissioner need obtain the approval of the Board of Estimates for a modification or waiver under this subsection.

(e) *Modifications or waivers – Board of Estimates.*

(1) In addition to the modifications and waivers provided for in subsection (d) of this section, the Housing Commissioner, with approval from the Board of Estimates, may grant a modification of or a waiver from the requirements of subsection (b) of this section if the findings required by paragraph (3) of this subsection are made.

(2) The Housing Commissioner must state the reasons that he or she believes that granting the modification or waiver would further the goal of increasing inclusionary housing in Baltimore City.

(3) The Housing Commissioner and the Board of Estimates may grant the modification or waiver if they find that:

(i) homes will be provided for families in a mixed-income setting at lower affordability levels than those required under this section;

- (ii) because of limited City resources, more affordable units in mixed-income housing will be created over a 2-year period than would be created if the modification or waiver were not granted;
- (iii) more effective use of public programs or sources of subsidy will better address mixed-income housing in Baltimore City; or
- (iv) the modification or waiver will promote the creation of units that are more expensive to construct than typical units because they are specially designed and designated for people with disabilities or built to be substantially more energy efficient than customary units.

(4) The Housing Commissioner must:

- (i) issue a written decision on the application within 45 days of its receipt; and
- (ii) post a copy of the decision on the City’s website.

(f) *Investment Threshold.*

- (1) “Additional cost” means the difference in the amount of major public subsidy for an entire development between what would be required to make the development feasible with the affordable units required by this subsection compared to the amount of major public subsidy that would be required to make the development feasible if it did not include the affordable units required by this subsection.
- (2) In this subsection, “investment threshold” per unit means the additional cost per affordable unit of creating inclusionary units at a given income tier as detailed below:

(i) for Rental Development:

Units at or Below Extremely Low Cost	\$125,000
Units at or Below Very Low Cost	\$100,000
Units at or Below Low Cost	\$ 50,000
Units at or Below Moderate Cost	\$ 25,000

(ii) for Ownership Development:

Units at or Below Very Low Cost or Extremely Low Cost	\$125,000
Units at or Below Low Cost	\$100,000
Units at or Below Moderate Cost	\$ 50,000

(3) If the Housing Commissioner determines that the additional cost per affordable unit exceeds the basic investment threshold, the Housing Commissioner shall, except by mutual agreement of the City and the developer:

- (i) exempt the residential project from the requirement to provide affordable units; and
- (ii) require the developer to deposit into the Inclusionary Housing Offset Fund an amount equal to the lesser of the following amounts, but only if the major public subsidy has been increased to fully offset the cost to the developer of making the deposit:

(A) the basic per unit investment threshold as indicated in this subsection; or

(B) 20% of the additional cost that would have been required to achieve the affordability targets specified in § 2B-21(b)(2) of this subtitle.

(Ord. 07-474.)

§ 2B-22. Project benefitting from significant land use authorization or rezoning.

(a) *Applicability of section.*

This section applies to any residential project that:

- (1) provides 30 or more residential units; and
- (2) is wholly or partially on property for which there has been:
 - (i) a significant land use authorization; or
 - (ii) a significant rezoning.

(b) *Affordable units required.*

- (1) In every residential project subject to this section, at least 10% of all residential units must be affordable units.
- (2) Of these affordable units:
 - (i) at least half must be provided to eligible households at or below a low affordable cost for ownership units or at or below a very low affordable cost for rental units; and
 - (ii) the others may be provided to eligible households at a moderate affordable ownership cost or moderate affordable rent.

(c) *Density Bonuses.*

The residential project may apply to the Board of Municipal and Zoning Appeals to receive bonus units up to 20% of the units otherwise allowed in the residential project, computed as set forth in Zoning Code Table 9-401, but only if the Housing Commissioner first determines that the residential project:

- (1) would not be economically feasible if it provided the number of inclusionary units required by this subtitle, but
 - (2) would be economically feasible if it provided the number of inclusionary units required by this subtitle and received the density bonus described in this subsection.
- (d) *Exemption.*
- (1) A residential project is exempt from the requirements of this subtitle if:
 - (i) the Board of Municipal and Zoning Appeals denies the density bonus described in subsection (c) of this section; or
 - (ii) the Housing Commissioner determines that the project would not be economically feasible if it provided the number of inclusionary units required by this subtitle, even if the project received the density bonus described in subsection (c) of this section.
 - (2) Neither the developer nor the Housing Commissioner need obtain the approval of the Board of Estimates for an exemption under this subsection.
- (e) *Modifications or waivers.*
- (1) In addition to the exemption provided for in subsection (d) of this section, the Housing Commissioner, with approval from the Board of Estimates, may grant a modification of or a waiver from the requirements of subsection (b) of this section if the Housing Commissioner finds that:
 - (i) homes will be provided for families at lower affordability levels in a mixed-income setting than those required under this section;
 - (ii) the development would not be economically feasible given existing market conditions with the number of inclusionary units required under this section, additional density bonuses are not available, and granting a modification or waiver would create more affordable units in mixed-income housing over a 2-year period than would be created if the modification or waiver were not granted; or
 - (iii) the modification or waiver will promote the creation of units that are more expensive to construct than typical units because they are specially designed and designated for people with disabilities or built to be substantially more energy efficient than customary units.
 - (2) The Housing Commissioner must:
 - (i) issue a written recommendation to the Board of Estimates within 45 days of the application's receipt; and
 - (ii) provide a copy of that recommendation to:
 - (A) the Inclusionary Housing Board;

(B) the Planning Director; and

(C) the City Council.

(3) When the Board of Estimates issues its decision, the Housing Commissioner must:

(i) provide a copy of that decision to:

(A) the Inclusionary Housing Board;

(B) the Planning Director; and

(C) the City Council; and

(ii) post a copy of the decision on the City's website.

(Ord. 07-474; Ord. 16-581.)

§ 2B-23. Other projects – 30 or more units.

(a) *Applicability of section.*

This section applies to any residential project that:

(1) provides 30 or more residential units; and

(2) is not otherwise subject to § 2B-21 {"Project receiving major public subsidy"} or § 2B-22 {"Project benefitting from significant land use authorization or rezoning"}.

(b) *Affordable units required.*

(1) In every residential project subject to this section, 10% of all residential units must be provided to eligible households at or below a moderate affordable cost.

(2) The residential project is entitled to a certain cost-offsets, as provided in this section, subject to the availability of City funds to provide these cost offsets.

(3) (i) The extent to which funds are available shall be determined by the Housing Commissioner.

(ii) The developer of a project subject to this section shall be informed no later than the time of a **Pre-Development Meeting with the Planning Department whether the City** has the funds available in the Inclusionary Housing Offset Fund to provide cash subsidies under this section.

(c) *Cost offsets.*

(1) If all of the affordable units provided under this section are at or below a low affordable housing cost, the residential project may apply to the Board of Municipal and Zoning Appeals for bonus units equal to 20% of the units otherwise allowed in the residential

project, computed as set forth in Zoning Code Table 9-401. In that case, the number of affordable units required is 10% of all units, including bonus units.

- (2) If the Board of Municipal and Zoning Appeals denies the density bonus described in paragraph (1) of this subsection or the Housing Commissioner determines that the bonus units provided under paragraph (1) of this subsection are insufficient to offset the financial impact on the developer of providing the affordable units required by this subtitle, the City may provide cash subsidies to the developer from the Inclusionary Housing Offset Fund or other available sources in an amount sufficient to offset the financial impact.

(d) Modifications or waivers – Housing Commissioner.

If the Housing Commissioner determines that the density bonus and cash subsidies available to a residential project are insufficient to offset the financial impact on the developer of providing the affordable units required by this subtitle:

- (1) the Housing Commissioner shall either:

- (i) exempt the residential project from this subtitle; or
- (ii) modify the number of affordable units required so that the density bonus or cash subsidies available are sufficient to offset the financial impact; and

- (2) neither the developer nor the Housing Commissioner need obtain the approval of the Board of Estimates for a modification or waiver under this subsection.

(e) Modifications or waivers – Board of Estimates.

- (1) In addition to the exemption provided for in subsection (d) of this section, on application by a developer to the Housing Commissioner, the Commissioner with approval from the Board of Estimates may grant a modification of or a waiver from the requirements of subsection (b) of this section if they find that:

- (i) even if with available cost offsets, the economic return to the developer for the entire development would be less than it would be absent a requirement for affordable units;
- (ii) exceptionally high ongoing occupancy costs make it infeasible to include affordable units on the site; or
- (iii) in a neighborhood that comprises primarily low- and moderate-cost housing and for which a development plan for mixed-income (including affordable) housing has been adopted by the Planning Commission, the developer's project fulfills that part of the plan that calls for market-rate housing.

- (2) The Housing Commissioner must:

- (i) issue a written decision on the application within 45 days of its receipt;
- (ii) provide a copy of that decision to:

(A) the Inclusionary Housing Board;

(B) the Planning Director; and

(C) the City Council; and

(iii) post a copy of the decision on the City's website.

(f) *Investment threshold.*

(1) If the cost offsets that would need to be provided under this section exceed the per unit investment threshold amounts specified below, the Housing Commissioner, in his or her discretion, may opt not to require affordable units in the development.

(2) Investment Threshold for Rental Development:

Units at or Below Very Low Cost	\$115,000
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Units at or Below Moderate Cost	\$ 40,000
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(3) Investment Threshold for Ownership Development:

Units at or Below Low Cost	\$110,000
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Units at or Below Moderate Cost	\$ 50,000
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(Ord. 07-474; Ord. 16-581.)

§ 2B-24. Other projects – Less than 30 units.

A developer of a project with less than 30 residential units may request the Housing Commissioner to provide cost offsets under § 2B-23 {"Other projects – 30 or more units"} if the developer voluntarily includes affordable housing in the project in accordance with subsection (b) of that section.

(Ord. 07-474.)

§ 2B-25. Source of income discrimination.

(a) *Projects subject to affordable housing requirements.*

For any unit in any residential project that meets the requirements of § 2B-21(a), § 2B-22(a), or, when effective, § 2B-23(a) of this subtitle, a person may not:

- (1) refuse to sell or rent, refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of that person's source of income;
- (2) discriminate against any person in the terms, conditions, or privileges of the sale or rental of a dwelling, or rental of a dwelling, or in the provision of services or facilities in connection with the sale or rental of a dwelling, because of that person's source of income;

- (3) make, print, or publish, or cause to be made, printed, or published, any notice, statement, or advertisement with respect to the rental of a dwelling that indicates any preference, limitation, or discrimination based on the source of income that may be used to pay rent;
- (4) represent to any person, because of that person's source of income, that any dwelling is not available for inspection or rental when the dwelling is available; or
- (5) for profit, induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person using a particular source of income.

(b) *Projects receiving cost offsets for affordable housing.*

For any unit in any residential project that receives a cost offset from the Housing Commissioner under § 2B-24 of this subtitle, a person may not:

- (1) refuse to sell or rent, refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of that person's source of income;
- (2) discriminate against any person in the terms, conditions, or privileges of the sale or rental of a dwelling, or rental of a dwelling, or in the provision of services or facilities in connection with the sale or rental of a dwelling, because of that person's source of income;
- (3) make, print, or publish, or cause to be made, printed, or published, any notice, statement, or advertisement with respect to the rental of a dwelling that indicates any preference, limitation, or discrimination based on the source of income that may be used to pay rent;
- (4) represent to any person, because of that person's source of income, that any dwelling is not available for inspection or rental when the dwelling is available; or
- (5) for profit, induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person using a particular source of income.

(c) *Requirements may not be waived.*

The requirements of this section may not be waived or modified under any other provision of this subtitle, and no residential project may be exempted from the requirements of this section under any other provision of this subtitle.

(Ord. 14-264.)

§§ 2B-26 to 2B-30. *{Reserved}*

Part IV. Standards for Affordable Units**§ 2B-31. Comparable design.****(a) In general.**

The affordable units required by this subtitle:

- (1) must be complementary to the market rate units in the same project as to their exterior appearance;
- (2) must be comparable to the market rate units in the same project as to:
 - (i) number of bedrooms; and
 - (ii) overall quality of construction; and
- (3) may vary in size and finish, consistent with standards set forth in the Housing Commissioner's rules and regulations.

(b) Variance.

- (1) The developer may request a variance from the requirements of subsection (a) of this section by submitting a written request to the Housing Commissioner.
- (2) The Housing Commissioner may approve a request if the Commissioner determines, in her or his sole discretion, that the affordable units are of good quality and consistent with contemporary standards for new housing.
- (3) The Housing Commissioner must issue a written decision on the request within 45 days of its receipt.
- (4) The Housing Commissioner must periodically report to the Inclusionary Housing Board on all applications made under this subsection and their disposition.

(Ord. 07-474.)

§ 2B-32. Placement.**(a) In general.**

The affordable units required by this subtitle must be dispersed throughout the residential project.

(b) Variance.

- (1) The developer may request a variance from the requirements of subsection (a) of this section by submitting a written request to the Housing Commissioner to cluster affordable units within the project.

(2) Within 45 days of the request, the Housing Commissioner must, in his or her sole discretion, provide a written determination as to whether the proposal adequately demonstrates that:

- (i) the proposed design meets the goals of this subtitle; and
- (ii) a variance should be allowed.

(3) The Housing Commissioner must periodically report to the Inclusionary Housing Board on all applications made under this subsection and their disposition.

(Ord. 07-474.)

§ 2B-33. Simultaneous offering.

(a) *In general.*

The affordable units required by this subtitle must be constructed and completed in the same time frame as the market rate units in the project.

(b) *Variance.*

(1) The developer may request a variance from the requirements of subsection (a) of this section by submitting a written request to the Housing Commissioner.

(2) The Housing Commissioner may approve a request if:

- (i) the Commissioner determines, in her or his sole discretion, that the provision of affordable units will not be adversely affected or delayed by the variance; or
- (ii) affordable units are to be provided off-site under Part V of this subtitle.

(3) The Housing Commissioner must issue a written decision on the request within 45 days of its receipt.

(4) The Housing Commissioner must periodically report to the Inclusionary Housing Board on all applications made under this subsection and their disposition.

(Ord. 07-474.)

§ 2B-34. Right of first refusal.

(a) *In general.*

The City and designated housing providers have a right of first refusal to purchase or rent up to one-third of affordable units provided in a residential project under this subtitle.

(b) *Designated housing providers.*

(1) From time to time, the Housing Commissioner may designate housing providers authorized to purchase or rent affordable units under this section, according to regulation and procedures adopted by the Commissioner.

(2) The City or designated housing providers may rent or resell units acquired under this section to eligible households.

(c) *Time for exercise.*

The City or designated housing provider must decide whether to exercise its right of first refusal within 45 days of submission by a developer, pursuant to the rules and regulations adopted under this subtitle, of an offer to sell the affordable units.

(Ord. 07-474.)

§ 2B-35. Eligibility to purchase or rent.

(a) *In general.*

The rules and regulations adopted by the Housing Commissioner under this subtitle must include provisions for determining eligibility to purchase or rent affordable units.

(b) *Counseling.*

These provisions must require appropriate housing counseling from a HUD qualified counseling agency in a manner determined by the Housing Commissioner.

(c) *First preference for neighbors, etc.*

These provisions shall attempt, consistent with other governing requirements, to provide special priority for otherwise-qualified individuals who:

(1) were displaced by the project; or

(2) reside within the same neighborhood in which the residential project is located.

(Ord. 07-474.)

§ 2B-36. Owner-occupancy of ownership units.

An affordable unit that is sold under this subtitle to an eligible household must be owner-occupied.
(Ord. 07-474.)

§ 2B-37. Management of rental units.

An affordable rental unit provided under this subtitle must be managed under the same management standards as all market-rate rental units in the development.
(Ord. 07-474.)

§§ 2B-38 to 2B-40. {Reserved}

Part V. Off-Site Substitution**§ 2B-41. “Off-site” defined.**

In this Part V, “off-site” means outside the metes and bounds of the property on which a residential project is located.
(Ord. 07-474.)

§ 2B-42. In general.

The developer of a residential project may apply to provide off-site affordable residential units in whole or partial substitution for the units required by § 2B-22 {“Project benefitting from significant land-use authorization or rezoning”} or § 2B-23 {“Other projects – 30 or more units}, as the case may be.
(Ord. 07-474.)

§ 2B-43. Application.**(a) In general.**

The application for off-site units must be made to the Housing Commissioner.

(b) Accompanying report.

The application must be accompanied by a report that includes:

- (1) conditions affecting the project that prevent the developer from meeting the requirements of § 2B-22 {“ Project benefitting from significant land use authorization or rezoning”} or § 2B-23 {“Other projects – 30 or more units}, as the case may be;
- (2) independent data, including appropriate financial information, that support the developer’s position that constructing the required affordable units on site is not feasible; and
- (3) an analysis of how the off-site substitution will further mixed-income housing opportunities in the neighborhood in which the residential project is located.

(Ord. 07-474.)

§ 2B-44. Minimum criteria.

Off-site units may be allowed under this Part V only if:

- (1) they will be provided at another location in the same neighborhood or comparable contiguous geographic area as the residential project to which they are being credited, as determined by the Planning Director, or in a residential project approved by the Housing Commissioner within 2,000 feet of a rapid transit stop; and
- (2) in the aggregate, the off-site units and any affordable units provided on-site at the residential project are no fewer than the number of affordable units required by § 2B-22 {“Project

benefitting from significant land use authorization or rezoning”} or § 2B-23 {“Other projects – 30 or more units}, as the case may be.
(Ord. 07-474.)

§ 2B-45. Review.

The Housing Commissioner, with approval by the Board of Estimates, may approve a request if the requested variance will promote mixed-income housing opportunities in Baltimore City to an extent equal to or greater than compliance with this subtitle.
(Ord. 07-474.)

§§ 2B-46 to 2B-50. {Reserved}

Part VI. Continued Affordability

§ 2B-51. Rental units.

(a) *Affordability period.*

Every affordable rental unit subject to this subtitle must remain at an affordable rent, as provided in this section, for a period of not less than 30 years from the date of its initial occupancy.

(b) *Lease and sublease restrictions.*

During the affordability period, the owner of the rental property may not rent or lease any affordable unit and a tenant may not sub-rent or sublease the unit except to an eligible household at a rent that does not exceed an affordable rent applicable to that unit.

(c) *Rent increases.*

(1) During the affordability period, rent increases may be imposed only as provided in this section.

(2) The percentage increase in annual rent may not exceed:

(i) the percentage increase in the cost of living, based on an appropriate inflator index as determined by the Housing Commissioner; or

(ii) a greater amount to the extent:

(A) necessitated by documented hardship or other exceptional circumstances;
and

(B) approved in writing by the Housing Commissioner.

(d) *Owner's maintenance.*

The owner of an affordable rental unit:

- (1) at all times must comply with all building, fire, safety, and other codes applicable to rental units; and
- (2) in providing maintenance and other services to rental units in the residential project, may not discriminate in any way against affordable units.

(e) *Reports to Commissioner.*

- (1) Owners of affordable rental units subject to this subtitle must periodically report to the Housing Commissioner on their compliance with the requirements of this section.
- (2) These reports must be made in the form and with the frequency that the Housing Commissioner requires.

(Ord. 07-474.)

§ 2B-52. Ownership units.

(a) *City's right of first refusal.*

The City has the right of first refusal to purchase at market rate any affordable unit initially provided under this subtitle.

(b) *Identifying public investment.*

- (1) At the time of initial sale, the Housing Commissioner shall identify the amount of public investment in the unit.
- (2) For units benefitting from significant rezoning or bonus units, the public investment is deemed to be an amount equal to the owner's initial purchase price.

(c) *Allocation of proceeds.*

At the time of any subsequent sale, the proceeds of the sale shall be allocated as follows:

- (1) The owner receives the initial purchase price paid by the owner plus the value of documented improvements.
- (2) The City receives an amount equal to its public investment in the affordable unit, but only to the extent that the proceeds of the sale exceed the initial purchase price and the values of documented improvements.
- (3) Any proceeds of sale beyond the purchase price and the initial City investment shall be allocated to the owner and the City in the same proportion as the owner's initial purchase price compared to the initial public investment. However, if the sale occurs within 10 years of the owner's purchase, the owner's share of these proceeds is limited to 10% of the owner's proportional share for each full year of the owner's ownership.

(d) Affordable Housing Agreement.

The Housing Commissioner's rules and regulations must include provisions for the execution and filing in the land records of affordability housing agreements that embody the requirements of this section.

(Ord. 07-474.)

§§ 2B-53 to 2B-60. {Reserved}**Part VII. Inclusionary Housing Offset Fund****§ 2B-61. Fund established.****(a) In general.**

There is a Baltimore City Inclusionary Housing Offset Fund.

(b) Nature of Fund.

The Baltimore City Inclusionary Housing Offset Fund is a continuing, nonlapsing fund established by authority of City Charter Article I, § 10.

(Ord. 07-474.)

§ 2B-62. Revenue sources.

The Offset Fund comprises:

- (1) money appropriated to the Offset Fund in the annual Ordinances of Estimates, and
- (2) grants or donations made to the Offset Fund.

(Ord. 07-474.)

§ 2B-63. Use of Fund – General.

Money deposited in the Offset Fund, along with any interest earned on that money, may be used only for the following purposes:

- (1) to finance the implementation and administration of this subtitle, including the provision of cost offsets under this subtitle; and
- (2) otherwise to promote economically diverse housing in City neighborhoods, including:
 - (i) providing assistance, by loan, grant, or otherwise, for the planning, production, maintenance, or expansion of affordable housing in the City;
 - (ii) providing assistance, by loan, grant, or otherwise, to persons unable to obtain affordable housing; and

- (iii) otherwise increasing housing opportunities for working families and other persons of low and moderate income.

(Ord. 07-474.)

§ 2B-64. Use of Fund – Administration.

No more than 5% of the money in the Offset Fund may be used in any fiscal year for personnel or other costs of administering the Offset Fund.

(Ord. 07-474.)

§ 2B-65. Use of Fund – Public assistance.

At least half of the households that receive assistance from the Offset Fund must have earnings of not more than 60% of the AMI.

(Ord. 07-474.)

§ 2B-66. Administration.

- (a) *Commissioner may prescribe procedures.*

The Housing Commissioner may prescribe procedures for administering the Offset Fund.

- (b) *Board to advise.*

The Inclusionary Housing Board advises the Housing Commissioner through its annual report and as requested by the Commissioner on the activities and priorities for which Offset Fund money is best used to promote economically diverse housing in the City.

(Ord. 07-474.)

§ 2B-67. Reporting to Board.

- (a) *In general.*

The Housing Commissioner must provide the Inclusionary Housing Board, on a regular basis, information on the uses and impact of the Offset Fund.

- (b) *Inclusions.*

The information must include:

- (1) expenditures from the Offset Fund;
- (2) a list of projects funded through the Offset Fund;
- (3) the number and income levels of households assisted by the Offset Fund;
- (4) funds leveraged by Offset Fund funds;
- (5) number of affordable units produced or preserved;

(6) information as to how Fund money may be used for development efforts assisting the homeless; and

(7) other information that the Board requests about the Offset Fund's impact.
(Ord. 07-474.)

§§ 2B-68 to 2B-70. {Reserved}

Part VIII. Administrative and Judicial Review

§ 2B-71. Administrative appeals.

(a) *Right of appeal.*

Any person aggrieved by a decision or ruling of the Housing Commissioner under this subtitle may appeal that decision or ruling to the Board of Estimates.

(b) *How and when taken.*

The appeal must be taken in writing within 15 days from the date of notice of the decision or ruling.

(c) *Hearing and decision.*

The Board:

(1) must hold a hearing on the appeal as soon as practicable; and

(2) may affirm, modify, or reverse the action from which the appeal was taken.

(Ord. 07-474.)

§ 2B-72. Judicial and appellate review.

(a) *Judicial review.*

A party aggrieved by a final decision of the Board of Estimates under § 2B-71 {"Administrative appeals"} of this subtitle may seek judicial review of that decision by petition to the Circuit Court for Baltimore City in accordance with the Maryland Rules of Procedure.

(b) *Appellate review.*

A party to the judicial review may appeal the court's final judgment to the Court of Special Appeals in accordance with the Maryland Rules of Procedure.

(Ord. 07-474.)

EDITOR'S NOTE: Ordinance 07-474 contained the following special provisions dealing with the applicability / effectiveness of various provisions:

Section 2. That, within 120 days of the effective date of this Ordinance, the Commissioner of Housing and Community Development shall adopt rules and regulations to implement this Ordinance.

Section 5. That Article 13, § 2B-21 {"Projects receiving major public subsidy"} ... does not apply if the subsidy in question:

- (1) is a transfer of land for which the request for proposals, invitation to bid, or similar document was issued before the adoption of rules and regulations to implement this Ordinance;
- (2) is a payment in lieu of taxes or tax increment financing for which the authorizing legislation was introduced before the adoption of rules and regulations to implement this Ordinance; or
- (3) is a grant or loan for which the notice of funding availability or similar notice was published before the adoption of rules and regulations to implement this Ordinance.

Section 6. That Article 13, § 2B-22 {" Project benefitting from significant land use authorization or rezoning"} ... does not apply if:

- (1) the significant land use authorization or rezoning in question was approved within 18 months after the effective date of this Ordinance; or
- (2) the development has had a Pre-Development Meeting with the Department of Planning before the adoption of rules and regulations to implement this Ordinance.

Section 7. That:

- (a) (1) Article 13, § 2B-23 {"Other projects – 30 or more units"} and § 2B-24 {"Other projects – Less than 30 units"}, as enacted by this Ordinance, do not take effect until 120 days after the Housing Commissioner certifies that, in the previous year, $\frac{3}{4}$ of arms-length home sales (excluding homes sold for minimal sales price) had a sales price greater than the level affordable to a household at 80% AMI.
- (2) Within 60 days of the end of the calendar year, the Commissioner shall publish this certification online and by report to the City Council and the Inclusionary Housing Board.
- (3) For the first calendar year after the effective date of this Ordinance "minimal sales price" means \$50,000. The "minimal sales price" may be adjusted by the Commissioner in subsequent years to a larger amount that corresponds to the average sales price of homes requiring major rehabilitation to be habitable. This adjustment will be made according to methodology determined and published by the Commissioner.
- (b) Article 13, § 2B-23 {"Other projects – 30 or more units"} and § 2B-24 {"Other projects – Less than 30 units"}, as enacted by this Ordinance, do not apply to any development that has had a Pre-Development Meeting with the Department of Planning before:
 - (1) the taking effect of those sections; or
 - (2) the adoption of rules and regulations to implement this Ordinance.