

Inclusionary Housing Legislative Outline

Definitions

Definitions – General

- [“Board” means the Inclusionary Housing Advisory Board established by this subtitle.]
- “Commissioner” or “Housing Commissioner” means the Commissioner of the Department of Housing and Community Development or the Commissioner’s designee.
- “Core market area” represents locations where new market-rate development is being concentrated and rents are highest .
- “Developer” means any person, firm, partnership, association, joint venture, corporation, or other entity or combination of entities that undertakes a residential project.
- “Dwelling unit” or “unit” has the meaning stated in § 202.2 of the Baltimore City Property Maintenance Code.
- “Fee-in-lieu agreement” means a written document signed by the developer agreeing to pay an agreed upon fee in-lieu of dedicating inclusionary unit.
- “Housing funds” means Federal, State, or City funds designated explicitly for the purpose of providing affordable housing.
- “Includes” or “including” means by way of illustration and not by way of limitation.
- Major public subsidy.
 - “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 .
 - “Major public subsidy” means economic development incentives, including:
 - Tax credits
 - Payment in lieu of taxes
 - Tax increment financing
 - “Major public subsidy” does not include housing funds as defined in this section.
- “Neighborhood” means an area delineated by commonly accepted boundary, as determined by the Director of the Department of Planning or the Director of the Department of Planning’s designee.
- “Planning Director” means the Director of the Department of Planning or the Director’s designee
- “Prior approved development” means a residential project that otherwise meets the criteria described in (reference to Scope and affordability section) for which 1) an application was submitted to the Site Plan Review Committee, Design Review Plan, Urban Design & Architecture Advisory Panel, 2) a building permit application was submitted to the Department of Housing and Community Development or 3) a developer has had a pre-development meeting with the Department of Housing and Community Development prior to MONTH DATE, YEAR
- “Regulatory agreement” means a written document signed by the developer agreeing to the provisions of this subtitle and related rules and regulations.

- “Residential project” means (1) any new construction, (2) any substantial renovation of an existing building, and (3) any rental development converted from a non-residential use that is designed, in whole or in part, to provide residential units.
- “Senior independent living facilities” means age-restricted housing where residents pay a monthly fee for housing and related services
- “Student housing” means a type of residential units that is owned or leased by a school or university, serves as housing exclusively for its students and select staff, and is not made available to the general public. Student housing is leased by room or bed rather than entire dwelling unit and may be on- or off-campus.

Definitions – Mandatory, prohibitory, and permissive terms.

- **Mandatory terms.** “Must” and “shall” are each mandatory terms used to express a requirement or to impose a duty.
- **Prohibitory terms.** “Must not”, “may not”, and “no ... may” are each mandatory negative terms used to establish a prohibition.
- **Permissive terms.** “May” is permissive.

Definitions – Affordability standards.

- **In general.** In this subtitle, the following terms relating to affordability standards have the meanings indicated.
- “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.
- “Eligible household” means a household that meets the income requirements associated with an inclusionary unit.
- “Inclusionary unit” means a residential unit that is required by this subtitle to be provided at a rental rate that complies with the affordability requirements.
- “Low Income household” means a household whose annual income does not exceed 60% of the Area Median Income
- “Market rate” means not restricted to an affordable rent.
- “Moderate Income household” means a household whose annual income does not exceed 80% of the Area Median Income.

Scope and applicability.

Inclusions.

After 90 days of the adoption of this ordinance, the inclusionary housing requirements of this subtitle shall apply to all residential projects that:

- Contain at least 30 residential rental units; and
- Receive a major public subsidy; and
- Is newly constructed, wholly renovated or converted from a non-residential dwelling
- Are located within core market areas as defined by the Department of Housing and Community Development in the program manual .
- Core market areas are those locations where the majority of new development is anticipated .

Exemptions.

The following residential projects are not subject to the requirements of this ordinance:

- Any residential project receiving housing funds that dictate affordability requirements
- Any residential project that proposes student housing, a dormitory, or rooming, boarding, or lodging housing
- Any development project which is a prior submitted development effective as of MONTH DATE, YEAR.
- Housing owned and operated by or on behalf of a college or university.
- Senior independent living facilities

Inclusionary housing requirements.

Affordability requirements.

In every residential project subject to this subtitle, at least 10% of all residential units must be dedicated inclusionary units, including, at minimum:

- 5% of total residential rental units priced for households with incomes that do not exceed 60% of the AMI as defined by the United States Department of Housing and Urban Development
- 5% of total residential rental units priced for households with incomes that do not exceed 80% of the AMI as defined by the United States Department of Housing and Urban Development

Affordability period.

- Every inclusionary unit subject to this subtitle must remain as an inclusionary unit, as provided in this section, for a period of not less than 30 years from the date of the issuance of the Certificate of Occupancy.
- During the affordability period, the owner of the rental property may not rent or lease any inclusionary unit except to an eligible household at a rent that does not exceed an affordable rent applicable to that unit.
- During the affordability period, a tenant may not sub-rent or sublease any inclusionary unit except to an eligible household at a rent that does not exceed an affordable rent applicable to that unit.

Conditions

- As a condition for the approval of building permits, a developer must provide the following to the Department of Housing and Community Development:
 - an approved Inclusionary Housing Plan as described in Section _____ of this subtitle
 - a regulatory agreement as approved by the Housing Commissioner
- OR
- a fee-in-lieu agreement
- The Inclusionary Housing Plan shall be submitted to the Housing Department no later than the time a project is scheduled for Site Plan Review
- A final plan shall be submitted as part of a project's building permit application

- As a condition of the issuance of a Certificate of Occupancy for residential projects that include inclusionary units, a developer must provide the following to the Department of Housing and Community Development:
 - Deed restriction that has been recorded by Baltimore City

Compliance

Developers must comply with all annual reporting and recertification requirements detailed in the rules and regulations.

Incentives

10-year 15 percent tax abatement

Provisions Applicable to Affordable Housing Units

The inclusionary units required by this subtitle must be the same as the market rate units in the same residential project.

Design and construction standards.

The affordable housing units required by this section shall be compatible in design, appearance, construction, and quality of materials with market rate units. Mechanical systems and interior features of inclusionary units shall conform to the same specifications applied to market rate units.

Placement.

The inclusionary units required by this subtitle must be dispersed throughout the residential project. The affordable housing units required by this section shall be located within the residential project so as not to be in less desirable locations than the market rate units. On average, the units shall be no less accessible to public amenities as the market rate units.

Simultaneous offering.

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

Management.

The affordable housing units required by this section must be managed under the same management standards as all market rate units in the development.

Leasing.

Leasing requirements for inclusionary units shall not be more onerous than those required for market rates units.

Maintenance.

The owner of an affordable rental unit must comply with all building, fire, safety, and other codes applicable to rental units.

Eligibility to rent.

The rules and regulations adopted by the Department of Housing and Community Development under this subtitle must include provisions for determining eligibility to rent inclusionary units.

Reporting.

On or before December 31 of each year, the Department of Housing and Community Development must submit an annual report that assesses the impact of this subtitle during the preceding fiscal year to:

- Mayor
- City Council
- [Oversight body, if applicable]

The report must be published on the Department of Housing and Community Development's website.

Contents

The report must include:

- The total number and proportion of inclusionary units generated under this subtitle by development (annual and cumulative)
- The number and proportion of inclusionary units generated under this subtitle by level of affordability (annual and cumulative)
- Data regarding the geographic distribution of the affordable housing units (annual and cumulative)
- The dollar amount of in lieu fees collected and expended
- An estimate of the percent of rental units in the city that are occupied
- [Recommendations by the oversight body, if applicable]

Fair Housing Requirements

All residential projects created under this subtitle are subject to applicable Federal, State, and Local Housing Laws and Regulations.

Fees-in-Lieu

- For residential projects that meet the requirements described in (reference to scope and applicability section), a developer may pay a fee-in-lieu of developing the required inclusionary units prior to issuance of a building permit.
- The Board of Estimates must approve all requests to pay a fee-in-lieu of dedicating inclusionary units.
- Fees will be deposited to (FUND).
- The fee schedule shall be defined in the Manual that is on file with the Department of Housing and Community Development .
- The fee structure shall be reassessed every three (3) years upon the adoption of the Rules and Regulations.

[Inclusionary Housing Advisory Board (Reserved)]

Inclusionary Housing Manual.

- The Department shall prepare a program manual that includes detail on the administration, operation, and enforcement of this subtitle. Topics may include:
 - Development approval processes
 - Allowable pricing of inclusionary units

- In-lieu fee structure
- Map of core market areas
- Management and operations of inclusionary units required by this subtitle, including leasing protocol
- Monitoring and enforcement
- The Commissioner shall adopt and may amend the Program Manual as necessary.
- The draft Inclusionary Housing Program Manual shall be posted on the Department’s website for public comment prior to its adoption
- The manual must be published within ## days of the effective date of this ordinance and made available to the public.

Rules and regulations.

- Subject to Title 4 {“Administrative Procedure Act – Regulations”} of the City General 19 Provisions Article, the [Housing] Commissioner, in consultation with the [Inclusionary 20 Housing Board and the] Planning Commission, must adopt rules and regulations to carry out the provisions of this subtitle
- The Housing Commissioner [, in consultation with the Inclusionary Housing Advisory Board,] must adopt rules and regulations to carry out the provisions of this subtitle.
- These rules and regulations may include provisions for:
 - Defining, clarifying, or construing terms used in this subtitle;
 - Determining eligibility to rent inclusionary units; and
 - Setting standards for rental prices for inclusionary units.
 - The rules and regulations must include provisions for the execution and filing in the land records of affordable housing agreements that embody the requirements of this section.
 - The rules and regulations must be published within ## days of the adoption of this ordinance.
 - The rules and regulations shall require that the Commissioner provide timely and definitive responses to all submissions required from a developer under this subtitle

Administrative Appeals

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

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

Hearing and Decision

The Board must (1) hold a hearing on the appeal as soon as practicable and (2) affirm, modify, or reverse the action from which the appeal was taken.

Judicial and Appellate Review

A party aggrieved by the final decision of the Board of Municipal and Zoning Appeals under Administrative Appeals of this subtitle may seek judicial review of that decision by petition to the Circuit Court of Baltimore City in accordance with the Maryland Rules of Procedure.