

Inclusionary Housing Regulations and Manual

August 15, 2024 – September 15, 2024

Overview.

The Department of Housing and Community Development, with support from Department of Legislative Reference, posted the regulations for Inclusionary Housing and an accompanying manual for public comment. This document will review public comments for both the regulations and the manual.

For more information about the Inclusionary Housing Program please use this link: <https://dhcd.baltimorecity.gov/nd/inclusionary-housing-overview>

This document contains content related comments and is not exhaustive. This document does not include grammatical corrections, technical corrections, or supportive comments reflecting or repeating other submissions comments.

All comments were submitted by email.

Rules and Regulations

The Inclusionary Housing Rules and Regulations were posted in the August Code of Baltimore Regulations Annotated (COBRA) Register for public comment from August 15th to September 15th. The Department received comments from 2 unique individuals or organizations, supported or repeated by 5 unique individuals or organizations.

#	Section of Regulations	Summary of Comment
1	.05 Additional Inclusionary Units	<p>The language in the section is too arbitrary. “The clear intent of the law is to require developers to make units affordable if they are offered and awarded additional subsidies. Making this provision conditional on whether the developer “accepts” the offer, renders the entire section superfluous.”</p> <p>If a developer is offered or is offered to apply for an additional subsidy then the Department should compel the developer to make an additional 5% of units available for very low or extremely low- income tenants.</p>
2	.16 Tenant Approval -	“Throughout the draft regulations and IH Guidance Manual, it is assumed that a decentralized process will be used to administer the application, eligibility, marketing and lease-up processes”

	Review and Wait List	A centralized application process - similar to project-based vouchers - should be used because it will streamline the process, create less administrative work for developers, and provide eligible tenants with needed information.
3	.16 Tenant Approval - Review and Wait List	<p>Tenant Selection safeguards are not enough and DHCD should establish stronger tenant selection criteria and income verification that is similar to the state.</p> <p>The regulations should require – compliance standards for Affirmative Fair Housing Marketing Plan, mandates fair housing laws and IH Law, require standard AFHMP, AFHMP plan starts 180 days prior to expected leasing, require AFHMP guidance for owners, the Department should instruct owners to use HUD guidelines, requirement of civil rights record keeping, and requirement of owners to complete AFHMP training with certification upon completion.</p>
4	.03 Applicable Projects	“The draft regulations say that the IH law applies to units that are "wholly renovated" which is not a defined term in either the law or the regulations. Section 2B-21 of the statute applies the law to projects involving \$60,000 or more in costs of construction or conversion. The regulation should clarify that this threshold of \$60,000 in construction costs applies to rehabilitation projects as well as ground up new construction.”
5	.08 Inclusionary Unit Requirements.	Regulations should limit approval of a size variation to 2% to be considered comparable. A 10% variation is too large and may allow too much leeway for developers to make smaller Inclusionary Units. Inclusionary Unit variation should be approved by the department in advance and should be monitored for compliance. The Department should provide a walkthrough of the unit.
6	.09 Inclusionary Housing Plan	<ul style="list-style-type: none"> - In reviewing the draft IH Guidance Manual, we were pleased to see that the Planning Department and DHCD will be discussing the IH Plan at the pre-development conference and uploading a draft IH Plan to the Neighborly system. This should also be required by the regulations to ensure that architectural plans and financial pro formas are properly designed with the IH law from the beginning of predevelopment, and that projects are not delayed by last minute submissions to the Inclusionary Housing Board and/or necessary changes. - Require Basic Unit Information to be displayed in Affirmative Marketing. - Clarify who will review the Housing Plan.
7	.09 Inclusionary Housing Plan	The timeline in subsection (E) for review of IH Plans by the Inclusionary Housing Board states that a Board member may provide comments to the Department if the Board can not meet within 5 days of receipt. What is the purpose of this provision? Is there a five-day deadline for IH review? If so, this seems unusually short.

8	.12 Tenant Eligibility	The regulations improperly refer to a 'minimum income limit' and confuse eligibility with suitability. The statute has no minimum income requirement for eligibility and DHCD should not impose one via the regulations or Guidebook. The IH law provides for a maximum income ceiling on eligibility for Inclusionary units but explicitly declines to impose a floor, i.e. either 50% or 60% of AMI or below. An applicant's ability to pay rent is relevant to an assessment of suitability under tenant selection criteria not eligibility.
9	.12 Tenant Eligibility	The regulations should define "income" and how it is to be calculated in accordance with existing standards for affordable housing. This is not as clear cut as it sounds and could quickly become problematic without further guidance. In fact, it is an area with quite detailed rules not likely to be known to property managers who only have market-rate experience but well known to affordable housing providers, with software developed specifically for this use. This is one reason for our recommendation that DHCD adopt a centralized administrative process for marketing, taking applications, determining eligibility, maintaining waiting lists, etc. Rather than reinvent the wheel, DHCD should adopt rules and procedures that already exist.
10	.12 Tenant Eligibility	The regulations and Guidance Manual should provide that full-time students are not eligible unless they are from low-income families or are custodial care givers. We recommend dealing with this issue as Washington DC does in Section 2209.6 of its Inclusionary Housing rules: "A Full-Time Student shall not be eligible for the registration list unless the dependents of parents or guardians whose Household would otherwise meet the eligibility requirements for the Inclusionary Zoning Program." This is consistent with the intent of Baltimore's IH law which deals with student housing by providing an exemption from Inclusionary Housing requirements for purpose-built student housing.
11	.12 Tenant Eligibility	What is the "certificate of eligibility" referred to in Section .07.02.01.12(B)(C) of the regulations? The regulations say that applicants are required to present this certificate to the owner when at initial lease up and annually when income is recertified. Who performs the income calculation and provides this document?
12	<i>.12 Tenant Eligibility</i>	Annual recertification of eligibility, as required by 07.02.01.12(C) of the regulations, is unduly burdensome for all involved. Due to this burden and expense, HABC and BRHP have both moved away from annual recertification to an every two or three year schedule. DHCD follows that practice for Inclusionary Housing.
13	.12 Tenant Eligibility	07.02.01.12(D) Increase in Household Income is confusing and requires clarity. The meaning of subsection (1) referring to the "same ratio" as when the tenant was leased is unclear. For tenants whose income increases to 100% of AMI, the regulation should be more specific. The regulation should specify the tenant's right to stay in their unit and pay market rent "without any pressure to move, direct or indirect." And it should specify that the owner must make the "next available" comparable unit available as an Inclusionary

		Unit and promptly lease the substitute units in accordance with the waiting list and tenant selection policy. If the original unit was granted a variance and is smaller than other units, the owner must make another unit of the same bedroom size available so that there is not a delay in providing housing or a loss of rent revenue.
14	.15 Subletting	The regulations should require each member of the household to occupy the IH unit as their principal residence and should not allow subleasing.
		Yet the draft regulations and Guidance Manual are silent on tenant selection, except for a single sentence cautioning that Fair Housing laws apply, without further guidance. Section .07.02.16 of the regulation introduces the term "qualified tenant" without any definition or reference to tenant selection criteria.
15	General Comments	The regulations should require the head of household to complete an Inclusionary Housing orientation session in person or online.
16	.19 Annual Residential Project Report	DHCD requires an accounting that compares the monthly rent "collected" for each Inclusionary unit to the "market rent." This information is used to calculate and verify the Inclusionary Housing Tax Credit. However, it does not specify how "market rent" is to be determined, which could lead to the City providing excessive tax credits. To assure that the City is comparing apples to apples, the regulations and Guidance Manual should compare the actual "collected" for market rate units as well as Inclusionary units.
17	.19 Annual Residential Project Report	DHCD introduces the term "efficacy of the Inclusionary Housing Tax Credit "and uses it- throughout the reporting and evaluation requirements of the draft regulations and Guidance Manual without definition in the statute, regulations or Guidance Manual. The City should adopt a clear definition of "efficacy" that reflects the purpose of the Inclusionary housing law and prioritizes Fair Housing, the production of affordable units, equitable access and the overall impact on low-income residents, as well production targets set by the Commissioner. It should be drafted after meaningful consultation with affordable housing providers and advocates, and engagement with eligible renters in the community.
18	.08 Inclusionary Unit Requirements.	Do we want specific units designated as inclusionary units prior to leasing?
19	.08 Inclusionary Unit Requirements.	What if amenities have additional costs associated?
20	.09 Inclusionary Housing Plan	Can you define "least likely to become tenants" located at 07.02.01.09(B)(1)(b)?

21	.09 Inclusionary Housing Plan	What is the remedy if the department doesn't provide an initial review of the plan within 10 days of receipt.
22	.09 Inclusionary Housing Plan	When will the Department submit the Inclusionary Housing Plan to the Board?
23	.09 Inclusionary Housing Plan	In the circumstance where the Board is unable to meet to review a IH plan, should written comment be required? And is that an adequate substitute to a board meeting?
24	.11 Inclusionary Housing Plan - Modifications	What state code applies to modifying an inclusionary housing plan?
25	.14 Leasing Requirements	What is there is additional costs for amenities?
26	.14 Leasing Requirements	There is compliance issues related to Section C. Lease Terms. Why is it in the regulations? The statement reads - A developer shall ensure a lease executed for an inclusionary unit tenant provide an exact copy to each member of the household that is 18 years old or older and will occupy the unite as a household member's primary residence.
27	.15 Subletting	Who is subleasing? The inclusionary tenant or another party?
28	.15 Subletting	Is subleasing an option or requirement? Developers cannot be required to allow a sublease.
29	.16 Tenant Approval – Review and Wait List	If a qualified tenant turns down an inclusionary unit from the waitlist, does the qualified tenant remain or the waitlist?
30	.21 Annual Reports – Assessment of Efficacy of High-Performance Inclusionary Housing Tax Credit	How will compliance be measured for developers?

31	.21 Annual Reports - “	How and in what format will developers be required to submit their experience complying with inclusionary laws and rules?
32	.1 Definitions	Adding the cost of additional outside accounting was not part of the legislative intent. Just needs to be a CPA - could be outside management company, internal to
33	.7 Building Requirements	There should be an option for a mix. The project should have multiple price points for its non-inclusionary units.
34	.8 Inclusionary Unit Requirements	Parking spaces? Assume that amenities that require a charge can be charged to all tenants, including the IH units?
35	.9 Inclusionary Plan Submission	Can the 45 day review be quicker? If there are changes to the layout or design of the building, this time frame could hold up the project.
36	.9 Inclusionary Plan Submission	What is the criteria for the approving or denying? Is there an appeal if it is denied? The board and the department could be unreasonable and hold up a project.
37	.10 Building Approval Plans	Should there be a time limit after the board approves for the notice? 5 business days?
38	.11 Inclusionary Housing Plan - Modifications	Should address rounding. Unlikely the unit count will be a whole number.
39	.14 Leasing Requirements	This is hard because “specials” can change week to week. How is this determined?
40	.14 Leasing Requirements	Who drafts this lease rider? Can DHCD come up with a standard form?
41	.14 Leasing Requirements	Is a signatory to the lease. The only adults allow to live in the unit is a signatory to the lease.
42	.15 Subletting	Why? We do not typically sublet, we just tear up the old lease and do a new one. What is the purpose of this?

43	.15 Subletting	We don't notify for each lease, so why notify for a sublease?
44	.19 Annual Residential Project Report	Does tenants mean people?
45	.19 Annual Residential Project Report	You mean the way they found out about the unit?
46	.19 Annual Residential Project Report	What does efficacy of the High-Performance Inclusionary Housing Tax Credit mean?
47	.19 Annual Resident Project Report	For each project or the aggregation? The project specific information should be confidential.
48	.21 Annual Reports	Developer Requirements are too much of a burden - DHCD can call and interview the owner, but this is a whole new requirement the not standard.
49	General Comment	Adding Baltimore resident prioritization to the regulations.
50	General Comment	Going under 50% of AMI for rentals
52	.03	Changing construct cost to exceeding \$40,000 per unit.

Inclusionary Housing Manual Comments

Generally, comments 1 –17 above, cover changes requested in the manual and regulations. Please refer above for responses to those questions.

#	Section of Manual	Summary of Comment
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1	Overview and Key Points	Define “major public subsidy” or refer to Appendix A on Page 23. <i>Is a major public subsidy from any source—federal, state, or local? Will the \$60,000 per unit costs that trigger inclusionary zoning increase over time, perhaps by the federal inflation rate?</i>
2	Overview and Key Points	<i>Will the \$60,000 per unit costs that trigger inclusionary zoning increase over time, perhaps by the federal inflation rate?</i>
3	Plan Components	table showing . . . monthly rent for both the inclusionary and market rate units. <i>Add “Rents may be increased annually as AMI increases annually.” What happens if AMI decreases?</i>
4	Page 9	Planning Dept provides fact sheet: will link to “Neighborly” be added?
5	Initial Threshold Review	<i>add that extensions to provide additional information may be granted by DHCD (changes in architectural plans could take more than 5 days)</i>
6	Presentation to Inclusionary Housing Board	<i>What is the goal of the Inclusionary Housing Board providing comments? Improvements to the general plan or approval of individual proposals? If approval of individual plans, that’s a lot of control for a voluntary housing board.</i>
7	Modifying an Inclusionary Housing Plan	substantive modifications should be for change in the proposed project schedule <i>of more than 3 months.</i>
8	Maximum Income Requirements	good provision that a tenant’s income can increase to 80% of median income and 80% of AMI rent; <i>do rents increase proportionately based on actual income? 75%? 79%? How is rent calculated between 80% of AMI and 100% of AMI?</i>
9	Changes in Eligibility	good provision that a tenant’s income can increase to 80% of median income and 80% of AMI rent; <i>do rents increase proportionately based on actual income? 75%? 79%? How is rent calculated between 80% of AMI and 100% of AMI?</i>
10	Eviction	Owner must notify DHCD within 24 hours of an Eviction Notice being served <u>and</u> if the tenant is formally evicted and removed. <i>How does DHCD help the tenant with eviction prevention services if the tenant is already evicted?</i>
11	Property Owner Annual Report	extremely low income (for properties that accept additional subsidy). <i>Might move this explanation earlier in the program manual to Page 14 where extremely low income is first mentioned. What constitutes “proof of certification that the property is in compliance with its Inclusionary Housing Plan”?</i>
12	Fines and Violations	\$1000 per violation . . . <i>is that per violating unit per day?</i>
13	Exhibit A	“Subsidies that the undersigned is receiving or contemplating receiving”. <i>Does “contemplating receiving” mean the owner has applied for subsidies but been not awarded yet? Qualifies but has not applied yet?</i>

14	Pre-Development Meeting	What changes would permit a DHCD retraction?
15	Unit Mix and Floor Plans	What about phased occupancy projects under one building permit. This gets complicated because each floor plan may have different unit type mixes that don't match the ratio to the final unit matrix?
16	Unit Mix and Floor Plans	What happens if there is an odd number of applicable units? Round up or down?
17	Unit Mix and Floor Plans	If units must be dispersed throughout the building, typically lower rent units are on lower floors. If the inclusionary units are to be selected for the lowest rent - this could group them together on lower floors?
18	Inclusionary Housing Plan – Plan Components	What if the amenities are not know at the start of change?
19	Inclusionary Housing Plan – Plan Components	These rents could change from Building Permit to Occupancy
20	Inclusionary Housing Plan – Plan Components	Property Management Company may not be selected by Building Permit
21	Submission of Inclusionary Housing Plan – Review and Approval – Flow Chart	This process should not be linked to building permit, and instead - linked to occupancy. Management company, establishment of rents, identifying units, etc really happens 9-12 months prior to occupancy. This will inevitably add to the already lengthy time period of starting construction. - NCU
22	Initial Threshold Review	What happens when these times are elapsed?
23	Staff Recommendation	Again - this should take place for occupancy - not building permit. Not sure if this is dictated by the law or not.

	and Presentation to IH Board – notification	
24	Building Permit Approval and Release	If a large project is phased (but under a single building permit, seeking Temp Occupancies) - assuming that the units are identified on a plan - the inclusionary units would be released within each appropriate phase?
25	Marketing	A lot of jurisdictions have a system where residents apply for a lease, show proof of income, and those applications are then sent to the city. The city verifies the applicant information and approves their status. This seems to be a major risk on the property owner and management company, as well as an additional operating cost.
26	Lease Requirements	<p>It seems that identifying which specific units will be inclusionary on a plan should be part of this process at the occupancy permit stage. Most jurisdictions do this. Tenants income levels that change should be required to relocate at the end of their lease so that the specific inclusionary unit is not changed. Having to identify a new unit could be problematic if the building is leased up. For instance - if the property needs to add a new inclusionary 2 bedroom - but none are available...what happens? The property could also be forced to select a unit with much higher rents.</p> <p>Does the tenant immediately start to pay the higher rate or at the end of their lease? Property managers will want to ensure there is language in their lease regarding a change in income status and a requirement for re-verifying income yearly. Failure for the tenant to reverify income should result in eviction -</p>
27	Lease Requirements	We should not be required to offer rent based concessions to inclusionary units. For instance - they should not receive 1 month free, or 1/2 off first few months, etc.
28	Lease Term Requirements	And therefore the same amenity fees?
29	Subletting	Is subletting a requirement?
30	Inability to Find Qualified Applicants	Does ineligibility include credit and background check failures?
31	Property Owners Annual Report	What if a unit initially designated as inclusionary needs to be changed to another unit?
32	Property Owners Annual Report	What kind of proof is acceptable for compliance with Inclusionary Housing Plan?

33	Fines and Violations	This is discretionary and should be defined better. Possibly related to the law but is this per instance? per day? per unit?
34	Appendix A	Having this submitted at building permit is difficult - we need the ability to modify this as we get closer to occupancy. There should be a simple easy process for re-identifying inclusionary units.
35	General Comments	Change Developer to Owner in all
36	Plan Components	Change Schedule to Estimated Schedule. Tenant Selection, Property Management Company may change as work is completed or building is open.
37	Submission of Inclusionary Housing Plan	Do we have to wait for the board? Don't want to hold up permit review for this.
38	Changes in Eligibility	Can you clarify tenant rent increase ratio?
39	Preliminary Plan Approval	There should be a process to obtain preliminary approval of an inclusionary housing plan prior to the application for a building permit. The building permit application comes near the end of the development process, and developers will need to know much earlier if their inclusionary housing plan is acceptable. By the building permit stage, it is likely to be too late to make material changes to the building program – to the extent that the inclusionary housing plan requires adjustments to the developer's plan, the developer needs to be able to make those adjustments much earlier in the process. While I understand that the ordinance requires submission of the inclusionary housing plan at the building permit stage, there is no reason DHCD could not offer a preliminary review and approval earlier in the process and, provided that everything was the same at the time of building permit application, DCHD would formally approve the plan at that time.
40	Submission of Inclusionary Housing Plan	Who has the final determination to say a IH plan is submitted?
41	Pre-Development Meeting	For projects that do not meet legal requirements, DHCD should issue a "Certificate of Non-Applicability" for Lenders.
42	Tenant Selection	The regulation and Guidance Manual should specify that for HCV renters and others receiving rental assistance, the security deposit may only be based on the tenant's portion of the rent, not the full IH rent.
43	Tenant Selection	The draft regulations and Guidance Manual should clarify that IH renters may not be charged for reasonable and customary use of the facilities and amenities, even if market rate tenants are charged or that they must be included within the maximum "housing cost" i.e. IH rent.

44	Centralized Application Process	The draft IH Manual allows owners to contract out some of the marketing, application processing and income certification to third parties. This will lead to further complications, duplication and cost. How would this work? Could we end up with different owners subcontracting with a variety of third parties? Who would determine that the subcontractors have the requisite experience and expertise? How would they be overseen? How would eligible renters (and the City) be sure who to deal with for different apartment complexes? We are unaware of a similar hybrid sort of system in other places. Does the City know of a place where it has been tried and tested successfully?
45	Centralized Application Process	We recommend DHCD require developers to use tenant selection standards and an income-verification system that prioritizes those most in need of inclusionary housing. DHCD should establish clear tenant selection criteria, including around voucher holders and individuals who may face barriers due to credit or criminal history.
46	Affirmative Marketing Plan	Among the minimal, very low hanging fruit that is "encouraged but not required by the Guidance Manual: Posting the availability of Inclusionary units on the property website; listing on "affordable housing databases" (presumably such as the state's MDHousingSearch.org); use of the Equal Housing Opportunity poster; providing information in languages other than English, use of the HUD Affirmative Fair Housing Marketing Plan form, communication to local housing agencies and standard civil rights record keeping. There is no legal basis for DHCD to disregard the mandatory nature of the IH law, much less Fair Housing laws. The regulations must state that all of these Fair Housing measures are mandatory, not optional, and are a floor, not a ceiling.
47	Affirmative Marketing Plan	Market rate owners and property managers (even some with affordable housing experience) are likely to be unfamiliar with affirmative marketing techniques and requirements. Yet in the decentralized system proposed in the draft IH Manual, each developer/owner will be left to carry out affirmative marketing for each apartment complex. Owners should be instructed to consult the most current version of HUD Handbook 4250 REV-1, Ch 2 Civil Rights and Non-discrimination Requirements for guidance of Affirmative Fair Housing Marketing Plans. DHCD staff that review AFHMPs should also be familiar with this guidance.
48	General: Financial Barriers	Owners are allowed to charge an application fee, with no limits or guidelines other than it must be the same as charged market rate tenants. Low income renters cannot afford to pay multiple application fees, severely limiting their opportunity to access IH units.
4949	General: Financial Barriers	Owners are authorized to charge applicants for IH units the same security deposit charged market rate tenants, even though the rent paid by IH renters will be less. Even a deposit equal to one month at the applicable IH rent, much less a higher amount, will be a barrier for many.

