The Honorable Nick J. Mosby and Councilmembers of the Baltimore City Council Baltimore City Hall
100 N. Holliday Street
Baltimore, Maryland 21202

Re: CITY OF BALTIMORE COUNCIL BILL 22-0195 – Inclusionary Housing for Baltimore City

Committee of the Whole Hearing, November 17, 2022

Position: Support with Sponsor Amendments

My name is Barbara Samuels and I am a resident of Baltimore City. By way of background, I am an attorney with more than 40 years working in the field of affordable housing, including 27 years directing the Fair Housing Project of the ACLU of Maryland, and ten years as a housing attorney in the Baltimore City office of the Maryland Legal Aid Bureau. Based on my experience and knowledge of the Baltimore housing market, a strong and effective Inclusionary Housing bill is essential to both remedy the lasting legacy of racist housing policies and to achieve a more equitable and prosperous future for Baltimore City.

Inclusionary Housing is a recognized tool and best practice for achieving two co-equal racial equity goals that are especially resonant in Baltimore:

- As new development occurs, producing housing that is affordable to essential workers and legacy residents; and
- Expanding housing opportunities in high opportunity areas from which people of color have been systematically excluded.

Baltimore is one of 1,029 jurisdictions in 31 states and the District of Columbia with Inclusionary Housing laws. When our 2007 Inclusionary Housing law was allowed to expire, nearly 6 months ago, we became an unfortunate outlier among our peer cities.

- Inclusionary Housing is a best practice nationally, not just in hot market cities and high growth suburbs.
- Comparable cities like Chicago, Detroit and Pittsburgh, that have areas of both market strength and weakness, have Inclusionary Housing policies tailored to the conditions in their cities.

With the expiration of our Inclusionary Housing law, Baltimore City has defaulted on its legal obligation to Affirmatively Further Fair Housing.

- The City's federally required Fair Housing Action Plan commits to renew and improve its 2007 Inclusionary Housing law prior to the June 30,2022 sunset date. https://dhcd.baltimorecity.gov/sites/default/files/2020 Regional Fair Housing Analysis.pdf. The fact that Baltimore failed to pass a new law and allowed the existing law to expire puts Baltimore's federal funding at jeopardy.
- During the period following the sunset, the City continues to subsidize segregation free of Inclusionary Housing obligations through tax credits and other subsidies that it acknowledges are

inequitable and inefficient, i.e. the construction of 100% luxury housing in the areas of the City with the highest incomes and lowest share of Black population.

CC 22-0195 is a modest, balanced compromise bill. Specifically, in return for eliminating the waiver and exemption loopholes that rendered the 2007 law ineffective, the bill as amended makes difficult concessions to satisfy objections raised by developers and/or DHCD:

- It is *limited solely to developments that receive the benefit of "major public subsidy"* and/or the by public action such as rezoning. Most cities apply their IH law to *all* developments of a certain size.
- It *reduces* the percentage of Inclusionary units from 20% required by the 2007 law to just 10%. Nationally, the average is 16%, putting us at the low end of IH policies. https://multifamily.fanniemae.com/media/14236/display
- It *allows* rents levels for Inclusionary units roughly equal to market rents in Baltimore City i.e. rents affordable to households at or below 60% of AMI ($62,700 for a family of two). It is tailored to the needs of Baltimore residents, unlike DHCD's proposal to target half of rental units to households with incomes as high as 80% of AMI ($83,600).
- It *eliminates* the mandate of the 2007 law that targeted a substantial portion (almost 1/3) of Inclusionary units to households at or below 30% of Area Median Income, where the needs are most severe. The bill provides that developers need provide these deeply affordable units only if they are offered *additional* subsidy (such as project-based vouchers).

Despite the modest nature of this compromise bill, there are still some developers using unsupported claims and scare tactics to oppose the bill.

- There is no credible evidence Inclusionary Housing would halt or reduce development: A comprehensive review of the economics of Inclusionary Housing policies found no credible evidence of decreased production of market rate housing as a result of Inclusionary Housing policies. Developers adapt by bargaining over land prices and adjusting their profits in the short term.https://groundedsolutions.org/tools-for-success/resource-library/economics-inclusionary-housing
- National developers are accustomed to dealing with Inclusionary Housing policies in other cities. Local developers can not simply go to neighboring counties. Construction of multifamily housing in neighboring jurisdictions is extremely constrained by restrictive zoning, regulatory requirements, most have impact fees and some have their own Inclusionary policies.
- Inclusionary Housing does not increase rents for market rate units: The same review found that the costs of IH compliance are generally *not* passed on to consumers. Developers already use dynamic pricing to charge maximum rent. As a result any increases are minimal (less than 3%). Ibid.

Avoiding all cost to developers is *not* a necessary, valid or realistic public policy goal.

- The idea that a city should "make the developer whole" for the costs of complying with an Inclusionary Housing law is unique to Baltimore, as is the idea that this requires a "lifetime subsidy." Moreover, neither is found in the language of the 2007 law.

- To the contrary, Inclusionary Housing is a mechanism to recapture some of the private value that is created by public subsidies and public action to contribute to public purposes (i.e. affordable housing and inclusive development).
- Most cities do *not* provide *any* cash incentives or offsets as part of their Inclusionary Housing policies. while non-cash incentives are common (e.g. reduced parking, density bonuses or expedited permit processing), nearly 30% of cities provide no incentive at all (including 65% of New Jersey jurisdictions.) https://multifamily.fanniemae.com/media/14236/display
- Unlike the laws in many cities, CC22-0195 does not require purely private projects to meet Inclusionary Housing requirements**.** But it acknowledges that public responsibilities come with receipt of public subsidy.
- Enterprise was contracted to study how Inclusionary Housing works in other cities and recommend reforms that move Baltimore toward best practices and away from this "make whole" concept used to undercut the 2007 law. Yet, at the 11th hour, as a result of pressure from industry lobbyists, the Enterprise final report returns to the notion that the goal of economic diversity should be achieved "without imposing financial burdens on developers."
- The claims and demands for *additional* subsidy asserted by developers for the City to pay the "cost" of compliance with Inclusionary Housing requirements have been substantially inflated. They fail to account for all, or even part, of the value of the major public subsidy(ies) and/or rezoning the project receives. Factors that also inflate their numbers are: failure to failure to discount to present value; application of the unprecedented and unjustified idea and calculation of a "lifetime subsidy;" calculation of "lost rent" based on aspirational projections rather than actual data; failure to consider that many Inclusionary units will be rented with voucher subsidies and receive close to market rents; failure to account for the availability of non-cash subsidies such as reduced parking minimums; a blanket rejection of utility of density bonuses; and more.

The most common form of major public subsidy for multifamily projects, the High Performance Market Rate Rental Tax Credit, was created by City Council *after* the 2007 Inclusionary Housing law was passed.

- As such the multifamily projects receiving the tax credit are subject to making 20 percent of their units affordable as Inclusionary Housing.
- The tax credit formula provides a generous subsidy, offsetting operating costs for the project as a whole --- not soley for market rate units. Yet some have come to view the tax credit as an entitlement *exclusively* for the benefit of the market rate units in a project, requiring no showing of need or public benefit.
- Perversely, under the formula used for calculating the credit, the more affluent the location, the more luxurious the amenities and the higher the rent, the bigger the tax subsidy these projects receive. One project alone, 414 Light Street, got $3.1 million in FY 2020. https://bbmr.baltimorecity.gov/sites/default/files/BBMR Report_Comprehensive Review of City's Tax Credits.pdf

This (and other tax credits) are subsidizing segregation in precisely the areas where the City's Fair Housing Action Plan promised to enact a new and more effective Inclusionary Housing law to disrupt racial exclusion and encourage mixed income communities.

- Almost of all the projects receiving the High Performance tax credit are located in thriving neighborhoods of the "White L" where it is already easiest and most profitable to build.
- As a result of the virtually automatic waivers given by DHCD under the 2007 law, virtually all of the multifamily projects built to date are 100% market rate. Due to the expiration of the law and nearly six month delay, additional projects with zero Inclusionary units are moving through the pipeline.
- Research conducted by the City Department of Finance has correctly described these tax subsidies as "inequitable" because they primarily subsidize multifamily development in the already strong neighborhoods, and "inefficient" because the market would respond to areas with strong demand without subsidy or with less subsidy. https://bbmr.baltimorecity.gov/sites/default/files/BBMR Report_Comprehensive Review of City's Tax Credits.pdf
- Collectively, the cost to the City of this tax credit is more than $20 million per year and growing. The predominantly Black and Brown working people of Baltimore make up for the lost revenue in higher taxes, decreased services or both.

As a matter of racial equity, strong affirmative fair housing marketing and civil rights record keeping requirements are essential components of any Inclusionary Housing law.

- Affirmative fair housing marketing requirements are already routine in all projects subsidized with Federal, State and/or City affordable housing funds.
- Fair housing marketing plans are designed to ensure that knowledge of available housing opportunities reaches entire community, and especially demographic groups considered "least likely to apply" due to historic and on-going exclusion.
- Without intentional outreach, Black and Brown households living in other areas of the city are unlikely to learn about available Inclusionary units or to feel welcome to apply. For example, the marketing for rental projects subsidized by the High Performance Market Rate Rental Tax Credit promise a **"*life of luxury*" with "*resort amenities.*"** Some use even more explicitsend fairly explicit messages to signal who is, and is not, their desired demographic: ***"Luxury Living. Above it all. At the water's edge." "Where effortless living is the everyday."***
- Affirmative fair housing marketing is critical to ensure that the occupancy of both market rate and Inclusionary units built in the White L reflect the City as a whole, and not just the immediate neighborhood, thereby reinforcing racial exclusion and the existence of "Two Baltimores."

Geographic targeting of Inclusionary requirements can be useful to achieve primary purpose of creating affordable housing in the areas where it has been systematically excluded, but it must be broad enough to include the entire White L, including "Strong Market" and "Transitional Market" areas and formerly industrial or commercial areas.

- The extremely narrow geographic scope of the bill recommended by Enterprise is flawed and will significantly impair the effectiveness of the bill. It immunizes strong market areas in North Baltimore that have little or no affordable housing and benefited from racially exclusionary policies. It also excludes emerging market areas, like Poppleton, that could be subject to gentrification if new development is not accompanied by Inclusionary units.
- While the recent volume of development has been focused on a narrow band around the waterfront, neighborhoods like Hampden and Cross Keys are seeing high levels of new

residential development and redevelopment. As land in Core Areas becomes completely built out, it is essential to also capture public benefit from future development in Strong and Transitional areas, as well as formerly industrial and commercial areas where much of recent rezoning and reuse has occurred.

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