



MEMORANDUM

To: The Honorable President and Members of the Baltimore City Council
c/o Natawna Austin, Executive Secretary

From: Alice Kennedy, Housing Commissioner

AK

Date: November 15, 2022

Re: **City Council Bill 22-0195 Inclusionary Housing for Baltimore City**

If enacted, City Council Bill 22-0195 would revise the City's inclusionary housing requirements by repealing rules of statutory interpretation that have been superseded by the enactment of Code-wide revisions; requiring the Commissioner of the Department of Housing and Community Development to adopt an inclusionary housing manual; requiring annual reporting by the Commissioner of the Department of Housing and Community Development; amending the duties of the inclusionary housing board; amending certain affordability requirements; clarifying a certain City policy regarding mixed income communities; repealing off-site substitutions; repealing the inclusionary housing offset fund; repealing density bonuses; requiring residential projects to submit inclusionary housing plans; amending requirements for continued affordability; clarifying the applicability of certain fair housing laws and regulations; establishing certain penalties; and generally relating to inclusionary housing.

Background

In 2007, the Mayor and City Council approved the Inclusionary Housing Ordinance [07-0474](#) requiring affordability in high market neighborhoods and communities targeted for development. The legislation was intended to encourage economic diversity across city neighborhoods by providing affordable rental and homeownership opportunities without imposing undue financial burdens on developers. Additionally, the ordinance's source of income requirements was meant to ensure voucher holders could have an opportunity to live in communities that would otherwise be inaccessible.

Since the Ordinance was enacted, approximately 34 inclusionary units have been created. City staff, advocates, and developers agree that the law is cumbersome and has not met its initial objectives. Since the Ordinance's enactment, flat maximum subsidy amounts, the lack of a dedicated subsidy source, the ability to develop without density bonuses and complicated regulatory and administrative requirements all worked against effectively meeting the intent of the requirements.

Ordinance [07-0474](#) has been amended twice to extend the sunset, which extended the program through June 30, 2022. The second extension enabled DHCD to engage Enterprise Community Partners to provide an assessment and evaluation of the City's now-former Inclusionary Housing

program, make recommendations to increase its effectiveness and draft revised legislation. The Inclusionary Housing Study was completed in three phases:

1. Phase One: Assessment of 2007 Ordinance. During phase one, the project team assessed the 2007 Ordinance.
2. Phase Two: Policy & Legislative Framework for Future Policy. Phase two involved a scan of market conditions to understand market activity, as well as a demand analysis based on the (then) current and projected pipeline of market-rate rental units to forecast total unit production and the potential number of inclusionary units that could be developed under various policy scenarios.
3. Phase Three: Final Recommendations & Report. During phase three, the Enterprise Project Team developed a set of final recommendations on a new Inclusionary Housing policy that would increase the number of affordable units, provide a simplified determination and review process and minimize projects that could be exempt from a new law.

The draft report was published in October 2021 for public comment. The final report is complete and available [here](#).

The *Baltimore Inclusionary Housing Requirements Study* recommended that a new Inclusionary Housing program be based on the following principles:

- Goal: create economic diversity by requiring affordable rental units in market rate developments without imposing financial burdens on developers.
- Eligibility: Required in projects with 30 or more units that receive a major public subsidy. 20% of units would be designated as Inclusionary Housing units. Half would be available to households earning 60% of the Area Median Income and half to households earning 80%. Units would have a required 30-year affordability period.
- Geography: Inclusionary housing would be most successful if targeted to the City's strongest market locations and are recommended in Core Neighborhoods defined as Downtown and around the waterfront.
- Incentives: The City would approve an additional 15% property tax abatement for projects making Inclusionary Units available.
- Streamlined Process: Developers would be required to submit an approved Inclusionary Housing report as a condition to receiving a Building Permit and to execute a Regulatory Agreement. Prior to receiving their Use and Occupancy permits, developers would be required to record a deed restriction for the Inclusionary Units. A program manual would provide details and all forms concerning the development, operation and management of Inclusionary Units.



- Unit Comparability: Inclusionary Units would be indistinguishable from market rate units and would be located throughout a project.
- Fees-in-lieu could be requested but would require approval by the Board of Estimates.

Bill summary - 22-0195 Inclusionary Housing for Baltimore City

The proposed legislation would apply to residential projects with 20 or more units that are newly constructed, renovated, or converted from a non-residential building and have a construction cost of \$60,000 or more per unit. 10% of units would be considered Inclusionary Units. 50% of these units would be made available to households defined as low income, earning between 51% and 80% of the Area Median Income (AMI). The remaining 50% would be made available to moderate income households defined as earning between 81% to 120% of the AMI. Property owners would be required to maintain inclusionary units for a 20-year period that would re-start whenever the property is transferred, sold, or refinanced. Inclusionary and market rate units would be required to be designed and managed according to the same standard as market rate units and would be integrated throughout a project.

As drafted, developers would be required to submit an Inclusionary Housing Plan outlining how requirements will be met and how the required inclusionary units will be financed over the required 20-year affordability period. This plan must be submitted no later than their Site Plan Review meeting. A final plan would be submitted when building permits are filed. Forms and project information would be detailed as part of an Inclusionary Housing Manual developed by DHCD that would include rules and regulations requirements for developing, and operating units, forms, annual reporting requirements and other information required to meet the law's requirements.

This bill requires DHCD to submit an Annual Report detailing units created in a particular year and other information pertaining to new and affordable units created since 2007. Developers would also be required to submit an annual report describing the number and types of Inclusionary Units available, tenant household income and how units were marketed to non-traditional tenants. All projects would be required to comply with Federal, State, and local Fair Housing laws including Equal Housing Opportunity, Title VI of the Civil Rights Act prohibiting discrimination, and Housing Opportunities Made Equal Act. An Inclusionary Housing Advisory Board would be nominated and confirmed by the City Council.

DHCD Analysis

DHCD recognizes the value of and supports Inclusionary Housing as a tool to achieve the Administration's objectives around equitable neighborhood development by creating economically diverse neighborhoods, and providing access and opportunities to housing, schools, shopping, services, and jobs that might not otherwise be available. The proposed legislation presents some areas of concern.



- **Feasibility.** The proposed legislation would not support the balanced and financially feasible approach that is outlined in the Consultant's Report, and therefore would not achieve the Administration's goal of supporting equitable development.
 - To be feasible, Inclusionary Housing projects must have access to incentives and abatements that will support these units. As written, the proposed legislation does not include any references to available incentives, leaving the impression that developers are solely responsible for supporting the operating costs that would be required during the mandatory 20-year affordability period.
- **Affordability.** If enacted, developers would be required to make half of the affordable units available to low-income households, which according to HUD standards, have incomes at or below 60% of the AMI. The Consultant's Report noted that inclusionary units are most feasible when made available to households earning between at least 60% - 80% of the AMI and even then, abatements targeted to these incomes would be necessary for units to be viable.
- **Applicability.** The proposed legislation would apply to all residential projects – both rental and homeownership. DHCD is concerned that this broad application would stymie the effectiveness of an Inclusionary Housing program by requiring units where they are not feasible. DHCD supports the consultant's recommendation limiting Inclusionary Units to rental projects.
 - Requiring market rate for-sale projects to provide Inclusionary Units would require significant amounts of subsidy based on sales prices for proposed projects.
 - Imposing Inclusionary requirements in senior housing communities is also not likely to be financially feasible particularly for independent living facilities where residents pay a monthly inclusive fee that includes a variety of services.
 - Inclusionary units in student housing may also prove problematic as units with more than one-bedroom are sometimes leased on a per bed space, making it difficult to determine how the 10% set aside would be met.
- **Reporting.** The law would expand annual reporting requirements to include an analysis of affordable housing activities from 2007 through the current reporting year. Creating this baseline information would create a considerable staff burden and seems to be outside of the scope of why inclusionary units are created and how they promote economic diversity.
- **Advisory Board.** The proposed legislation sets vague requirements for a new Inclusionary Housing Advisory Board and is inconsistent with the consultant's recommendations to remove the Advisory Board. DHCD supports the removal of the Advisory Board.
- **Language.** Inclusionary and affordable units are used interchangeably throughout the proposed legislation. Affordable units have a specific definition associated with funding sources that are not part of market-rate projects. Inclusionary housing differs from other types of affordable housing in that it is market-driven and privately financed.

Conclusion

Inclusionary zoning ties the creation of affordable homes for low- and moderate-income households to the construction of market-rate homes. It is designed to address local exclusionary zoning policies and federal housing policies, such as redlining that resulted in social and economic segregation. The previous Inclusionary Housing law failed to achieve the objective of creating affordable housing opportunities and encouraging economic diversity across city neighborhoods.

DHCD is committed to using its resources to create economically diverse communities that supports the Mayor's commitment to equitable neighborhood development. We support the Consultant's recommendations to increase the number of Inclusionary Housing Units, create predictable and uniform standards for those units and ensure their financial feasibility.

The introduction of 22-0195 in January added an additional phase of analysis and review. DHCD has appreciated the opportunity to work collaboratively with the Sponsor on what constitutes a feasible approach and is recommending that legislation reflect the Enterprise Study's recommendations described above.

We respectfully submit a **favorable** Bill report with amendments that are consistent with the Consultant's report. DHCD does not support the bill as drafted but does support the intent of the Bill and remains committed to working with the Administration and Bill Sponsor to achieve objectives that are consistent with the spirit of Inclusionary Housing ordinances and the recommendations in the Consultant's report.

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cc: Ms. Nina Themelis, Mayor's Office of Government Relations