



BALTIMORE CITY COUNCIL COMMITTEE OF THE WHOLE

Mission Statement

On behalf of the Citizens of Baltimore City, the mission of the Committee of the Whole is to meet, discuss and study matters that have particular interest to the city as a whole and its citizens.

**Nick Mosby
President**

PUBLIC HEARING

**THURSDAY, NOVEMBER 17, 2022
5:00 P.M.
CLARENCE "DU" BURNS COUNCIL CHAMBERS**

**CC22-0195
Inclusionary Housing for Baltimore City**

Televised live on CHARMTV25

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BILL SYNOPSIS

Committee: Committee of the Whole

Bill CC22-0195

Inclusionary Housing For Baltimore City

Sponsor: Councilmember Ramos, et al

Introduced: February 7, 2022

Purpose:

FOR the purpose of defining certain terms; repealing certain findings and policy statements; repealing rules of statutory interpretation that have been superseded by the enactment of Code-wide revisions; requiring the Commissioner of the Department of Housing and Community Development to adopt an inclusionary housing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.

Effective: Takes effect (180) days after the date of enactment.

Agency Reports

Department of Law	Unfavorable/Comments
Department of Finance	
Department of Housing and Community Development	
Housing Authority of Baltimore City	
Planning Commission	

Department of Planning	Defers to DHCD
Department of Real Estate	
City Administrator	

Analysis

City Council Bill CC22-0195 would alter the current inclusionary housing program for Baltimore City by removing a majority of the statues regarding the concepts of significant public subsidies, extremely important land use authorization and principal rezoning. The objective of the legislation is to implement inclusionary housing requirements without the City's land use permissions or financial assistance.

However, according to a report, to eliminate governmental subsidies from the inclusionary housing program would present a legal challenge to the City as being unconstitutional.

Additional Information

Fiscal Note: Not Available

Information Source(s): Agency Report

Analysis by: Larry E. Greene
 Analysis Date: October 27, 2022

Direct Inquiries to: 410-396-7215

Public (P)

CITY OF BALTIMORE
COUNCIL BILL 22-0195
(First Reader)

Introduced by: Councilmember Ramos, President Mosby, Concilmembers Dorsey, Glover,
Conway, Bullock, Torrence

Introduced and read first time: February 7, 2022

Assigned to: Committee of the Whole

REFERRED TO THE FOLLOWING AGENCIES: City Solicitor, Department of Finance, Department of
Housing and Community Development, Housing Authority of Baltimore City,
City Administrator, Planning Commission, Department of Planning

A BILL ENTITLED

1 AN ORDINANCE concerning

2 **Inclusionary Housing for Baltimore City**

3 FOR the purpose of defining certain terms; repealing certain findings and policy statements;
4 repealing rules of statutory interpretation that have been superseded by the enactment of
5 Code-wide revisions; requiring the Commissioner of the Department of Housing and
6 Community Development to adopt an inclusionary housing manual; requiring annual
7 reporting by the Commissioner of the Department of Housing and Community Development;
8 amending the duties of the Inclusionary Housing Board; amending certain affordability
9 requirements; clarifying a certain City policy regarding mixed income communities;
10 repealing off-site substitutions; repealing the Inclusionary Housing Offset Fund; repealing
11 density bonuses; requiring residential projects to submit inclusionary housing plans;
12 amending requirements for continued affordability; clarifying the applicability of certain fair
13 housing laws and regulations; establishing certain penalties; and generally relating to
14 inclusionary housing.

15 BY repealing and reordaining, with amendments

16 Article 13 - Housing and Urban Development

17 Sections 2B-1, 2B-3, 2B-7, 2B-16, 2B-17, 2B-21, 2B-25, 2B-31 through 2B-33, 2B-51,
18 2B-71, and 2B-72

19 Baltimore City Code

20 (Edition 2000)

21 BY repealing

22 Article 13 - Housing and Urban Development

23 Sections 2B-2, 2B-4, 2B-6, 2B-6, 2B-22, 2B-24, 2B-34, 2B-36, 2B-37, the subtitle “Part V.
24 Off-Site Substitution”, 2B-41 through 2B-45, inclusive, 2B-52, the subtitle “Part VII.
25 Inclusionary Housing Offset Fund”, and 2B-61 through 2B-67, inclusive

26 Baltimore City Code

27 (Edition 2000)

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.

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BY adding

Article 13 - Housing and Urban Development
Sections 2B-5, 2B-32, 2B-35, and 2B-63
Baltimore City Code
(Edition 2000)

BY renumbering

Article 13 - Housing and Urban Development
Sections 2B-5, 2B-11 through 2B-15, inclusive, 2B-35, 2B-36, 2B-37, and the subtitle
“Part VI. Continued Affordability”, respectively to be Sections 2B-3, 2B-21 through
2B-25, inclusive, 2B-44, 2B-45, 2B-46, and the subtitle “Part V. Continued
Affordability”, respectively
Baltimore City Code
(Edition 2000)

SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE, That
Section(s) 2B-5, 2B-11, 2B-13 through 2B-15, inclusive, 2B-35, 2B-36, 2B-37, and the subtitle
“Part VI. Continued Affordability”, respectively, of Article 13 - Housing and Urban
Development of the Baltimore City Code are renumbered to be Section(s) 2B-3, 2B-21, 2B-23
through 2B-25, inclusive, 2B-44, 2B-46, 2B-47, and the subtitle “Part V. Continued
Affordability”, respectively.

SECTION 2. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE, That the
Laws of Baltimore City read as follows:

Baltimore City Code

Article 13. Housing and Urban Renewal

Subtitle 2B. Inclusionary Housing Requirements

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.

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(D) *Department.*

“Department” means the Department of Housing and Community Development.

(E) *DWELLING UNIT.*

“DWELLING UNIT” OR “UNIT” HAS THE MEANING STATED IN § 202.2 OF THE BALTIMORE CITY PROPERTY MAINTENANCE CODE.

(F) [(d)] [*Housing*] *Commissioner.*

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

(G) [(e)] *Housing funds.*

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

(H) [(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.]

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1 [(3) *Exclusions.*]

2 ["Major public subsidy" does not include:]

3 [(i) infrastructure repairs or improvements undertaken as part of a regularly planned
4 program; or]

5 [(ii) housing funds.]

6 (I) [(h)] *Neighborhood.*

7 "Neighborhood" means an area delineated by commonly accepted boundary, as
8 determined by the Planning Director.

9 (J) [(i)] *Planning Director.*

10 "Planning Director" means the Director of the Department of Planning or the Director's
11 designee.

12 (K) [(j)] *Residential project.*

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

15 [(k) *Significant land use authorization.*]

16 ["Significant land use authorization" means the adoption of a Planned Unit Development
17 or a legislatively approved amendment to a Planned Unit Development, either of which
18 increases the permissible number of residential units by 30 or more units above the
19 number permitted before adoption of the Planned Unit Development or amendment.]

20 [(l) *Significant rezoning.*]

21 ["Significant rezoning" means any rezoning that permits residential units where none
22 were permitted previously.]

23 [(l-1) *Source of income.*]

24 [(1) *In general.*]

25 ["Source of income" means any lawful source of money paid directly or indirectly to,
26 or on behalf of, a renter or buyer of housing.]

27 [(2) *Inclusions.*]

28 ["Source of income" includes income from:]

29 [(i) a lawful profession, occupation, or job;]

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1 [(ii) any government or private assistance, grant, loan, or rental assistance
2 program, including low-income housing assistance certificates and vouchers
3 issued under the United States Housing Act of 1937; or]

4 [(iii) a gift, an inheritance, a pension, an annuity, alimony, child support, or other
5 consideration or benefit.]

6 [(n) *Vacant dwelling.*]

7 [“Vacant dwelling” means residential real property that:]

8 [(1) has been vacant or abandoned for 1 year, as cited on a violation notice issued
9 under the City Building, Fire, and Related Codes Article; or]

10 [(2) has been owned by the Mayor and City Council of Baltimore City for 1 year and
11 is in need of substantial renovation.]

12 [§ 2B-2. Definitions – Mandatory, prohibitory, and permissive terms.]

13 [(a) *Mandatory terms.*]

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

16 [(b) *Prohibitory terms.*]

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

19 [(c) *Permissive terms.*]

20 [“May” is permissive.]

21 § 2B-2. [2B-3.] Definitions – Affordability standards.

22 (a) *In general.*

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

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

26 [(1) An “extremely low” housing cost equals an amount not more than 1/12 of 30% of
27 30% of the AMI, adjusted for household size.]

28 [(2) A “very low” housing cost equals an amount greater than 1/12 of 30% of 30% of the
29 AMI, but not more than 1/12 of 30% of 60% of the AMI, adjusted for household
30 size.]

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1 [(3) A “low” housing cost equals an amount greater than 1/12 of 30% of 60% of the
2 AMI, but not more than 1/12 of 30% of 80% of the AMI, adjusted for household
3 size.]

4 [(4) A “moderate” housing cost equals an amount greater than 1/12 of 30% of 80% of
5 the AMI, but not more than 1/12 of 30% of 120% of the AMI, adjusted for
6 household size.]

7 (B) [(c)] *Affordable unit.*

8 “Affordable unit” means a [residential] DWELLING unit that is required by this subtitle to
9 be provided [at an extremely low, very low, low, or moderate affordable housing cost.]
10 TO A FAMILY EARNING AN INCOME THAT IS EITHER:

11 (1) LOW INCOME; OR

12 (2) MODERATE INCOME.

13 (C) [(d)] *AMI.*

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

17 (D) [(e)] *Eligible household.*

18 “Eligible household” means[:] A LOW INCOME OR A MODERATE INCOME HOUSEHOLD.

19 [(1) for a unit provided at an extremely low housing cost, a household having an
20 income at or below 30% AMI;]

21 [(2) for a unit provided at a very low housing cost, a household having an income
22 greater than 30% but not more than 60% AMI;]

23 [(3) for a unit provided at a low housing cost, a household having an income greater
24 than 60% but not more than 80% AMI; and]

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

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(E) [(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.

(F) *LOW INCOME.*

“LOW INCOME” MEANS A HOUSEHOLD INCOME BETWEEN 51% AND 80% AMI.

(g) *Market rate.*

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

(H) *MODERATE INCOME.*

“MODERATE INCOME” MEANS A HOUSEHOLD INCOME BETWEEN 81% AND 120% AMI.

[§ 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.]

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1 [(2) These benefits include:]

2 [(i) the disposition of publicly owned land;]

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

5 [(iii) tax relief; and]

6 [(iv) the adoption of land use standards that promote the inclusion of affordable
7 homes.]

8 [(e) *City policy.*]

9 [It is the policy of Baltimore City to encourage economic diversity and balanced
10 neighborhoods by promoting the inclusion of housing opportunities for residents with a
11 broad range of incomes in all residential projects that contain [30] 20 or more residential
12 units.]

13 [(f) *No additional financial burdens.*]

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

18 [§ 2B-6. Scope and applicability.]

19 [(a) *Incentives not made available.*]

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

23 [(b) *City's obligations.*]

24 [(1) Whenever a residential project is granted a waiver or is otherwise exempt from this
25 subtitle, the City is not required to provide resources to the project or to the
26 Inclusionary Housing Offset Fund.]

27 [(2) This subtitle does not obligate the City to expend or commit any funds beyond that
28 which may be appropriated through the annual Ordinance of Estimates.]

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1 [(c) *Incentives insufficient to offset financial impact.*]

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

6 [(1) the Housing Commissioner shall either:]

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

8 [(ii) modify the number of affordable units required so that the cost offsets or
9 other incentives available are sufficient to offset the financial impact; and]

10 [(2) neither the developer nor the Housing Commissioner need obtain the approval of
11 the Board of Estimates for a modification or waiver under this subtitle.]

12 [(d) *Subsidized project.*]

13 [A residential project is exempt from this subtitle if:]

14 [(1) it is subsidized by a public program; and]

15 [(2) it satisfies the affordability requirements of § 2B-21(b) of this subtitle.]

16 **§ 2B-4. [2B-7.] Rules and regulations.**

17 (a) *In general.*

18 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
21 out the provisions of this subtitle.

22 (b) *Scope – General.*

23 These rules and regulations may include provisions for:

24 (1) defining, clarifying, or construing terms used in this subtitle;

25 [(2) setting or refining standards for modifications or waivers;]

26 (2) [(3)] determining eligibility to purchase or rent affordable units; and

27 (3) [(4)] setting standards for sale or rental prices for affordable units.

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(c) *Scope – Requiring timely response.*

[(1)] The rules and regulations must:

(1) [(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

(2) [(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.]

§ 2B-5. INCLUSIONARY HOUSING MANUAL.

(A) *IN GENERAL.*

THE COMMISSIONER MUST ADOPT, AND MAY AMEND FROM TIME TO TIME, AN INCLUSIONARY HOUSING MANUAL.

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(B) *CONTENTS GENERALLY.*

THE INCLUSIONARY HOUSING MANUAL MUST INCLUDE, BUT IS NOT LIMITED TO:

- (1) RULES AND REGULATIONS ON THE CREATION AND MANAGEMENT OF RESIDENTIAL PROJECTS AND AFFORDABLE UNITS;
- (2) RULES AND REGULATIONS FOR RESIDENTIAL PROJECT CONSTRUCTION AGREEMENTS;
- (3) RULES AND REGULATIONS GOVERNING ANNUAL REPORTING BY RESIDENTIAL PROJECTS CREATED UNDER THIS SUBTITLE, AS REQUIRED UNDER § 2B-35 OF THIS SUBTITLE; AND
- (4) RULES AND REGULATIONS FOR THE IMPLEMENTATION OF THIS SUBTITLE.

§§ 2B-6 to 2B-20. *{Reserved}*

Part II. Inclusionary Housing Board

§ 2B-26. [2B-16.] **Annual Report.**

(a) *Required.*

On or before [October] DECEMBER 31 of each year, the [Board] COMMISSIONER must:

- (1) submit a report to the Mayor and the City Council, THE BOARD, and to the Planning Commission that assesses efforts during the preceding fiscal year to create and sustain inclusionary housing in the City;
- (2) POST THE REPORT ON THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT'S WEBSITE; AND
- (3) FILE THE REPORT WITH THE DEPARTMENT OF LEGISLATIVE REFERENCE.

(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] OF NEW AFFORDABLE UNITS CREATED UNDER THIS SUBTITLE FOR THAT YEAR AND CUMULATIVELY SINCE 2007;
- (2) [the number and proportion generated under each of the various provisions of this subtitle (e.g., major public subsidy or significant rezoning)] FOR THAT YEAR, THE PERCENT OF NEW DWELLING UNITS CREATED IN THE CITY THAT ARE AFFORDABLE UNITS;

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(3) the TOTAL number [generated at various affordable costs] OF LOW INCOME AFFORDABLE UNITS AND MODERATE INCOME AFFORDABLE UNITS DEVELOPED UNDER THIS SUBTITLE FOR THAT YEAR AND CUMULATIVELY SINCE 2007;

(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] FOR THAT YEAR, THE PERCENT OF NEW DWELLING UNITS CREATED IN THE CITY THAT ARE LOW INCOME AFFORDABLE UNITS AND THAT ARE MODERATE INCOME AFFORDABLE UNITS; AND

[(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;]

(5) [(9)] the number of units for which the City or eligible housing providers had a right of first refusal under [§ 2B-34] § 2B-44 {“Right of first refusal”} or [§ 2B-52(c)] § 2B-52(a) {“[Resales during affordability period – First refusal] City’s right of 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”}.]

§ 2B-27. [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.

§§ 2B-28 to 2B-30. {Reserved}

Part III. Inclusionary Requirements

§ 2B-31. [2B-21.] [Project receiving major public subsidy] INCLUSIONARY REQUIREMENTS.

(a) Applicability of section.

This section applies to any residential project [that]:

(1) THAT provides [30] 20 or more [residential] DWELLING units; [and]

(2) [receives a major public subsidy.] THAT IS NEWLY CONSTRUCTED, WHOLLY RENOVATED, OR CONVERTED FROM A NON-RESIDENTIAL BUILDING; AND

(3) WHERE THE COST TO CONSTRUCT, RENOVATE, OR CONVERT IS GREATER THAN OR EQUAL TO \$60,000 PER DWELLING UNIT.

(b) Affordable units required.

(1) In every residential project subject to this section, at least [20%] 10% of all [residential] DWELLING 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.]

(2) OF THE TOTAL NUMBER OF AFFORDABLE UNITS REQUIRED FOR EACH RESIDENTIAL PROJECT SUBJECT TO THIS SECTION 50% MUST BE FOR LOW INCOME HOUSEHOLDS.

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(3) OF THE TOTAL NUMBER OF AFFORDABLE UNITS REQUIRED FOR EACH RESIDENTIAL PROJECT SUBJECT TO THIS SECTION 50% MUST BE FOR MODERATE INCOME HOUSEHOLDS.

[(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;]

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1 [(iii) more effective use of public programs or sources of subsidy will better
2 address mixed-income housing in Baltimore City; or]

3 [(iv) the modification or waiver will promote the creation of units that are more
4 expensive to construct than typical units because they are specially designed
5 and designated for people with disabilities or built to be substantially more
6 energy efficient than customary units.]

7 [(4) The Housing Commissioner must:]

8 [(i) issue a written decision on the application within 45 days of its receipt; and]

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

10 [(f) *Investment Threshold.*]

11 [(1) "Additional cost" means the difference in the amount of major public subsidy for an
12 entire development between what would be required to make the development
13 feasible with the affordable units required by this subsection compared to the
14 amount of major public subsidy that would be required to make the development
15 feasible if it did not include the affordable units required by this subsection.]

16 [(2) In this subsection, "investment threshold" per unit means the additional cost per
17 affordable unit of creating inclusionary units at a given income tier as detailed
18 below:]

19 [(i) for Rental Development:]

20 [Units at or Below Extremely Low Cost \$125,000]

21 [Units at or Below Very Low Cost \$100,000]

22 [Units at or Below Low Cost \$50,000]

23 [Units at or Below Moderate Cost \$25,000]

24 [(ii) for Ownership Development:]

25 [Units at or Below Very Low Cost or]
26 [Extremely Low Cost \$125,000]

27 [Units at or Below Low Cost \$100,000]

28 [Units at or Below Moderate Cost \$50,000]

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

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1 [(i) exempt the residential project from the requirement to provide affordable
2 units; and]

3 [(ii) require the developer to deposit into the Inclusionary Housing Offset Fund
4 an amount equal to the lesser of the following amounts, but only if the major
5 public subsidy has been increased to fully offset the cost to the developer of
6 making the deposit:]

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

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

11 **[§ 2B-22. Project benefitting from significant land use authorization or rezoning.]**

12 [(a) *Applicability of section.*]

13 [This section applies to any residential project that:]

14 [(1) provides 20 or more residential units; and]

15 [(2) is wholly or partially on property for which there has been:]

16 [(i) a significant land use authorization; or]

17 [(ii) a significant rezoning.]

18 [(b) *Affordable units required.*]

19 [(1) In every residential project subject to this section, at least 10% of all residential
20 units must be affordable units.]

21 [(2) Of these affordable units:]

22 [(i) at least half must be provided to eligible households at or below a low
23 affordable cost for ownership units or at or below a very low affordable cost
24 for rental units; and]

25 [(ii) the others may be provided to eligible households at a moderate affordable
26 ownership cost or moderate affordable rent.]

27 [(c) *Density Bonuses.*]

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

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1 [(1) would not be economically feasible if it provided the number of inclusionary
2 units required by this subtitle, but]

3 [(2) would be economically feasible if it provided the number of inclusionary units
4 required by this subtitle and received the density bonus described in this
5 subsection.]

6 [(d) *Exemption.*]

7
8 [(1) A residential project is exempt from the requirements of this subtitle if:]

9 [(i) the Board of Municipal and Zoning Appeals denies the density bonus
10 described in subsection (c) of this section; or]

11 [(ii) the Housing Commissioner determines that the project would not be
12 economically feasible if it provided the number of inclusionary units required
13 by this subtitle, even if the project received the density bonus described in
14 subsection (c) of this section.]

15 [(2) Neither the developer nor the Housing Commissioner need obtain the approval of
16 the Board of Estimates for an exemption under this subsection.]
17

18 [(e) *Modifications or waivers.*]

19 [(1) In addition to the exemption provided for in subsection (d) of this section, the
20 Housing Commissioner, with approval from the Board of Estimates, may grant a
21 modification of or a waiver from the requirements of subsection (b) of this section if
22 the Housing Commissioner finds that:]

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

25 [(ii) the development would not be economically feasible given existing market
26 conditions with the number of inclusionary units required under this section,
27 additional density bonuses are not available, and granting a modification or
28 waiver would create more affordable units in mixed-income housing over a
29 2-year period than would be created if the modification or waiver were not
30 granted; or]

31 [(iii) the modification or waiver will promote the creation of units that are more
32 expensive to construct than typical units because they are specially designed
33 and designated for people with disabilities or built to be substantially more
34 energy efficient than customary units.]

35 [(2) The Housing Commissioner must:]

36 [(i) issue a written recommendation to the Board of Estimates within 45 days of
37 the application's receipt; and]

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1 [(ii) provide a copy of that recommendation to:]

2 [(A) the Inclusionary Housing Board;]

3 [(B) the Planning Director; and]

4 [(C) the City Council.]

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

6 [(i) provide a copy of that decision to:]

7 [(A) the Inclusionary Housing Board;]

8 [(B) the Planning Director; and]

9 [(C) the City Council; and]

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

11 **[§ 2B-23. Other projects – 30 or more units.]**

12 [(a) *Applicability of section.*]

13 [This section applies to any residential project that:]

14 [(1) provides 30 or more residential units; and]

15 [(2) is not otherwise subject to § 2B-21 {"Project receiving major public subsidy or
16 § 2B-22 {" Project benefitting from significant land use authorization or
17 rezoning"}."}]

18 [(b) *Affordable units required.*]

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

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

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

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

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1 [(c) *Cost offsets.*]

2 [(1) If all of the affordable units provided under this section are at or below a low
3 affordable housing cost, the residential project may apply to the Board of Municipal
4 and Zoning Appeals for bonus units equal to 20% of the units otherwise allowed in
5 the residential project, computed as set forth in Zoning Code Table 9-401. In that
6 case, the number of affordable units required is 10% of all units, including bonus
7 units.]

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

15 [(d) *Modifications or waivers – Housing Commissioner.*]

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

19 [(1) the Housing Commissioner shall either:]

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

21 [(ii) modify the number of affordable units required so that the density bonus
22 or cash subsidies available are sufficient to offset the financial impact;
23 and]

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

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

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

31 [(i) even if with available cost offsets, the economic return to the developer
32 for the entire development would be less than it would be absent a
33 requirement for affordable units;]

34 [(ii) exceptionally high ongoing occupancy costs make it infeasible to include
35 affordable units on the site; or]

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1 [(iii) in a neighborhood that comprises primarily low- and moderate-cost
2 housing and for which a development plan for mixed-income (including
3 affordable) housing has been adopted by the Planning Commission, the
4 developer's project fulfills that part of the plan that calls for market-rate
5 housing.]

6 [(2) The Housing Commissioner must:]

7 [(i) issue a written decision on the application within 45 days of its receipt;]

8 [(ii) provide a copy of that decision to:]

9 [(A) the Inclusionary Housing Board;]

10 [(B) the Planning Director; and]

11 [(C) the City Council; and]

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

13 [(f) *Investment threshold.*]

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

17 [(2) Investment Threshold for Rental Development:]

18 [Units at or Below Very Low Cost \$115,000]

19 [Units at or Below Moderate Cost \$ 40,000]

20 [(3) Investment Threshold for Ownership Development:]

21 [Units at or Below Low Cost \$110,000]

22 [Units at or Below Moderate Cost \$ 50,000]

23 [§ 2B-24. Other projects – Less than 30 units.]

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

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§ 2B-32. INCLUSIONARY HOUSING PLAN.

(A) INCLUSIONARY HOUSING PLAN REQUIRED.

RESIDENTIAL PROJECTS SUBJECT TO THE AFFORDABILITY UNIT REQUIREMENTS OF THIS SUBTITLE:

(1) MUST SUBMIT AN INCLUSIONARY HOUSING PLAN TO THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT AND THE DEPARTMENT OF PLANNING WHEN SUBMITTING A PRE-DEVELOPMENT APPLICATION TO THE SITE PLAN REVIEW COMMITTEE; AND

(2) MUST SUBMIT AN INCLUSIONARY HOUSING PLAN TO THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT WHEN APPLYING FOR A BUILDING PERMIT.

(B) INCLUSIONARY HOUSING PLAN REQUIREMENTS.

RESIDENTIAL PROJECTS REQUIRED TO SUBMIT AN INCLUSIONARY HOUSING PLAN UNDER SUBSECTION (A) MUST SUBMIT A PLAN IN THE FORM ESTABLISHED BY THE COMMISSIONER.

(C) COMMISSIONER AUTHORITY TO CREATE FORM INCLUSIONARY HOUSING PLAN.

THE COMMISSIONER HAS THE AUTHORITY AND THE DISCRETION TO CREATE, AND AMEND AS NECESSARY, A FORM INCLUSIONARY HOUSING PLAN.

§ 2B-33. [2B-25.] [Source of income discrimination] FAIR HOUSING LAWS AND REGULATIONS.

[(a) Projects subject to affordable housing requirements.]

[For any unit in any residential project that meets the requirements of § 2B-21(a) 2B-31(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, SALE, or rental when the dwelling is available; or

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[(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.]

ALL RESIDENTIAL PROJECTS CREATED UNDER THIS SUBTITLE ARE SUBJECT TO APPLICABLE FEDERAL, STATE, AND LOCAL HOUSING LAWS AND REGULATIONS AS DETAILED IN THE INCLUSIONARY HOUSING MANUAL, INCLUDING, BUT NOT LIMITED TO:

(1) 42 U.S.C. 3601 ET SEQ. {"FAIR HOUSING ACT OF 1968"};

(2) 24 C.F.R. PART 100 {"DISCRIMINATORY CONDUCT UNDER THE FAIR HOUSING ACT"};

(3) EXECUTIVE ORDER 11063, NOVEMBER 20, 1962 {"EQUAL HOUSING OPPORTUNITY IN HOUSING"};

(4) 24 C.F.R. PART 107 {"NONDISCRIMINATION AND EQUAL OPPORTUNITY IN HOUSING UNDER EXECUTIVE ORDER 11063"};

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(5) TITLE VI, 42 U.S.C. 2000D {“PROHIBITION AGAINST EXCLUSION FROM PARTICIPATION IN, DENIAL OF BENEFITS OF, AND DISCRIMINATION UNDER FEDERALLY ASSISTED PROGRAMS ON GROUND OF RACE, COLOR, OR NATIONAL ORIGIN”};

(6) 28 C.F.R. § 42.101 ET SEQ. {“SUBPART C—NONDISCRIMINATION IN FEDERALLY PROGRAMS—IMPLEMENTATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964”};

(7) 24 C.F.R. PART 1 ET SEQ. {“NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT - EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT 1964”};

(8) STATE GOVERNMENT ARTICLE, §§ 20-702, 20-704, AND 20-705, ANNOTATED CODE OF MARYLAND;

(9) HOUSING OPPORTUNITIES MADE EQUAL ACT, CH. 116, 2020 LAWS OF MARYLAND; AND

(10) ARTICLE 4, SUBTITLE 3, § 3-5 {“UNLAWFUL PRACTICES . . . HOUSING”.}

§ 2B-35. ANNUAL REPORT – RESIDENTIAL PROJECT .

(A) RESIDENTIAL PROJECTS SUBJECT TO THE AFFORDABILITY REQUIREMENTS OF THIS SUBTITLE MUST SUBMIT AN ANNUAL REPORT TO THE DEPARTMENT AND THE INCLUSIONARY HOUSING BOARD.

(B) THE CONTENTS OF ANNUAL REPORT REQUIRED UNDER SUBSECTION (A) OF THIS SECTION MUST BE ESTABLISHED BY THE COMMISSIONER.

(C) THE COMMISSIONER WILL PROMINENTLY POST ALL ANNUAL REPORTS REQUIRED UNDER SUBSECTION (A) OF THIS SECTION ON THE CITY’S WEBSITE.

§§ 2B-36 to 2B-40. {Reserved}

Part IV. Standards for Affordable Units

§ 2B-41. [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

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(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 it is determined 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.]

§ 2B-42. [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.]

§ 2B-43. [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.

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1 [(b) *Variance.*]

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

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

5 [(i) the Commissioner determines, in her or his sole discretion, that the
6 provision of affordable units will not be adversely affected or delayed by the
7 variance; or]

8 [(ii) affordable units are to be provided off-site under Part V of this subtitle.]

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

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

13 [§ 2B-34. Right of first refusal.]

14 [(a) *In general.*]

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

18 [(b) *Designated housing providers.*]

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

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

24 [(c) *Time for exercise.*]

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

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

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

31 (1) were displaced by the project; or

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

1 **§ 2B-45. [2B-36.] Owner-occupancy of ownership units.**

2 An affordable unit that is sold under this subtitle to an eligible household must be owner-
3 occupied.

4 **§ 2B-46. [2B-37.] Management of rental units.**

5 An affordable rental unit provided under this subtitle must be managed under the same
6 management standards as all market-rate rental units in the development.

7 **§§ 2B-47 to 2B-50. {Reserved}**

8 **[Part V. Off-Site Substitution]**

9 **[§ 2B-41. “Off-site” defined.]**

10 [In this Part V, “off-site” means outside the metes and bounds of the property on which a
11 residential project is located.]

12 **[§ 2B-42. In general.]**

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

17 **[§ 2B-43. Application.]**

18 [(a) *In general.*]

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

20 [(b) *Accompanying report.*]

21 [The application must be accompanied by a report that includes:]

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

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[§ 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.]

[§ 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.]

Part V [VT]. Continued Affordability

§ 2B-51. Rental units.

(a) *Affordability period.*

(1) 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] 20 years from the date of its initial occupancy.

(2) THE AFFORDABILITY PERIOD FOR EACH AFFORDABLE UNIT STARTS EACH TIME OWNERSHIP OF THE AFFORDABLE UNIT IS TRANSFERRED.

(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]

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1 [(ii) a greater amount to the extent:]

2 [(A) necessitated by documented hardship or other exceptional
3 circumstances; and]

4 [(B) approved in writing by the Housing Commissioner.]

5 (C) [(d)] *Owner's maintenance.*

6 The owner of an affordable rental unit:

7 (1) at all times must comply with all building, fire, safety, and other codes applicable
8 to rental units; and

9 (2) in providing maintenance and other services to rental units in the residential
10 project, may not discriminate in any way against affordable units.

11 [(e) *Reports to Commissioner.*]

12 [(1) Owners of affordable rental units subject to this subtitle must periodically report to
13 the Housing Commissioner on their compliance with the requirements of this
14 section.]

15 [(2) These reports must be made in the form and with the frequency that the Housing
16 Commissioner requires.]

17 **[§ 2B-52. Ownership units.]**

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

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

21 [(b) *Identifying public investment.*]

22 [(1) At the time of initial sale, the Housing Commissioner shall identify the amount of
23 public investment in the unit.]

24 [(2) For units benefitting from significant rezoning or bonus units, the public investment
25 is deemed to be an amount equal to the owner's initial purchase price.]

26 [(c) *Allocation of proceeds.*]

27 [At the time of any subsequent sale, the proceeds of the sale shall be allocated as
28 follows:]

29 [(1) The owner receives the initial purchase price paid by the owner plus the value of
30 documented improvements.]

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[(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.]

§§ 2B-52 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.]

[§ 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.]

[§ 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:]

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1 [(i) providing assistance, by loan, grant, or otherwise, for the planning,
2 production, maintenance, or expansion of affordable housing in the City;]

3 [(ii) providing assistance, by loan, grant, or otherwise, to persons unable to
4 obtain affordable housing; and]

5 [(iii) otherwise increasing housing opportunities for working families and other
6 persons of low and moderate income.]

7 **[§ 2B-64. Use of Fund – Administration.]**

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

10 **[§ 2B-65. Use of Fund – Public assistance.]**

11 [At least half of the households that receive assistance from the Offset Fund must have
12 earnings of not more than 60% of the AML.]

13 **[§ 2B-66. Administration.]**

14 [(a) *Commissioner may prescribe procedures.*]

15 [The Housing Commissioner may prescribe procedures for administering the Offset
16 Fund.]

17 [(b) *Board to advise.*]

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

21 **[§ 2B-67. Reporting to Board.]**

22 [(a) *In general.*]

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

25 [(b) *Inclusions.*]

26 [The information must include:]

27 [(1) expenditures from the Offset Fund;]

28 [(2) a list of projects funded through the Offset Fund;]

29 [(3) the number and income levels of households assisted by the Offset Fund;]

30 [(4) funds leveraged by Offset Fund funds;]

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1 [(5) number of affordable units produced or preserved;]

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

4 [(7) other information that the Board requests about the Offset Fund's impact.]

5 ***Part VI [VIII]. Administrative Review, [and] Judicial Review, AND PENALTIES***

6 **§ 2B-61. [2B-71.] Administrative appeals.**

7 (a) *Right of appeal.*

8 Any person aggrieved by a decision or ruling of the [Housing] Commissioner under this
9 subtitle may appeal that decision or ruling to the Board of [Estimates] MUNICIPAL AND
10 ZONING APPEALS.

11 (b) *How and when taken.*

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

14 (c) *Hearing and decision.*

15 The Board:

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

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

18 **§ 2B-62. [2B-72.] Judicial and appellate review.**

19 (a) *Judicial review.*

20 A party aggrieved by a final decision of the Board of [Estimates] MUNICIPAL AND
21 ZONING APPEALS under § 2B-[71]61 {"Administrative appeals"} of this subtitle may seek
22 judicial review of that decision by petition to the Circuit Court for Baltimore City in
23 accordance with the Maryland Rules of Procedure.

24 (b) *Appellate review.*

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

Council Bill 22-0195

§ 2B-63. PENALTIES.

(A) IN GENERAL.

ANY PERSON WHO VIOLATES A PROVISION OF THIS SUBTITLE OR OF A RULE, REGULATION, OR ORDER ADOPTED OR ISSUED UNDER THIS SUBTITLE IS GUILTY OF A MISDEMEANOR AND, ON CONVICTION, IS SUBJECT TO A FINE OF NOT MORE THAN \$1,000 FOR EACH OFFENSE.

(B) EACH DAY A SEPARATE OFFENSE.

EACH DAY THAT A VIOLATION CONTINUES IS A SEPARATE OFFENSE.

(C) PENALTIES DOUBLE.

FINES FOR EACH OFFENCE THAT CONTINUES UNABATED FOR A PERIOD OF 30 DAYS OR MORE WILL DOUBLE.

SECTION 3. AND BE IT FURTHER ORDAINED, That this Ordinance takes effect on the 180th day after the date it is enacted.

COMMITTEE OF THE WHOLE

**AGENCY
REPORTS**

CC Bill #22-0195

CITY OF BALTIMORE

BRANDON M. SCOTT
Mayor



DEPARTMENT OF LAW
JAMES L. SHEA, CITY SOLICITOR
100 N. HOLLIDAY STREET
SUITE 101, CITY HALL
BALTIMORE, MD 21202

April 11, 2022

The Honorable President and Members
of the Baltimore City Council
Attn: Executive Secretary
Room 409, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202

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

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 22-0195 for form and legal sufficiency. The bill would modify the current inclusionary housing program for Baltimore City by removing most of the Sections concerning the concepts of Major Public Subsidies, Significant Land Use Authorization and Significant Rezoning. The bill aims to impose inclusionary housing requirements without the need to show that the project has received any benefit from the City in money or land use permissions.

To eliminate the governmental benefit from inclusionary housing would subject the program to challenge as an unconstitutional taking. “The Fifth Amendment’s guarantee that private property shall not be taken for a public use without just compensation was designed to bar Governments from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.” *Armstrong v. United States*, 364 U.S. 40, 49 (1960); *see also Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 536 (2006); *Monogahela Nav. Co. v. United States*, 148 U.S. 312, 325 (1893). An inclusionary housing law that puts all the burden for this social problem on landowners, instead of all citizens through traditional means like taxes, increases the likelihood that a court would find that the program is unconstitutional. Rather, governmental exactions on private land must be related to the land at issue and roughly proportional to the remedy sought. *See, e.g., DaRosa, Michelle, When Are Affordable Housing Regulations a Unconstitutional Taking?*, 43 Willamette L. Rev. 453 (2007). In short, this bill removes cost offsets and incentives to developers, increasing the likelihood that it will be viewed as an unconstitutional regulatory taking.

When the City’s affordable housing program was just beginning, the Law Department explained that:

An important reason to provide density bonuses or other concessions to the developers is to preclude unconstitutional “regulatory takings” of the developers’ property. Requiring a developer to provide affordable housing would constitute a regulatory taking if the requirement deprived the property owner of all economically viable use of his or her land. *See City of Annapolis v. Waterman*, 745 A.2d 1000, 1013 [357 Md. 484, 509] (2000) (explaining that “the Fifth Amendment is violated when [a] land-use regulation ‘does not substantially advance legitimate state interests [essential nexus] or denies an owner economically viable use of his land’”) (citation

omitted). Note that a regulatory taking would not occur simply because a developer has been deprived of the most profitable use of his or her land; the critical issue is that the developer must retain some reasonable economic use of the property. *See Steele v. Cape Corp.*, 677 A.2d 634, 649, [111 Md. App. 1, 31] (1996) (explaining that the owner must retain “reasonable economic use” of the land); *Maryland Aggregates Ass’n v. State*, 655 A.2d 886, 899[, 337 Md. 658, 683-84] (1995) (“[I]t is only where ‘the owner of real property has been called upon to sacrifice all economically beneficial uses in the name of the common good, that is, to leave his property economically idle, [that] he has suffered a taking.’”) (citation omitted).

To minimize the likelihood of regulatory takings, the City should provide the developer with density bonuses or other concessions designed to enable the developer to recover his or her costs. *See, e.g., Jennifer M. Morgan, Zoning for All: Using Inclusionary Zoning Techniques to Promote Affordable Housing*, 44 Emory L.J. 359, 380 (1995) (“In order to ensure that economically viable use of the affected property is not prevented, a mandatory set-aside ordinance may offer the developer concessions in the form of relaxed zoning requirements.”).

Even if the developer would retain reasonable economic use of the property, the set-aside requirement still might result in an unconstitutional “taking” if the developer already had obtained a “vested right” in the pre-existing zoning scheme. This would occur if, prior to enactment of the set-aside requirement, the developer had obtained a permit and undertaken development pursuant to the permit. *See Waterman*, 745 A.2d at 1016-17 (“In Maryland it is established that in order to obtain a “vested right” in the existing zoning use which will be constitutionally protected against a subsequent change in the zoning ordinance prohibiting or limiting that use, the owner must (1) obtain a permit or occupancy certificate where required by the applicable ordinance and (2) must proceed under that permit or certificate to exercise it on the land involved so that the neighborhood may be advised that the land is being devoted to that use.”) (citation omitted).

In addition to these concerns, the bill must be amended to remove lines 8-10 on page 32 that attempts to double the maximum allowable fine as that would exceed the state-imposed limit for City fines. City Charter, Art. II, § (48).

For these reasons, without amendments to address these concerns, the Law Department cannot approve the bill for form and legal sufficiency. However, the Law Department has already begun working with agencies and councilmembers on appropriate changes.

Very truly yours,




Hilary Ruley
Chief Solicitor

cc: James L. Shea, City Solicitor
Nina Themelis, Mayor’s Office of Government Relations
Elena DiPietro, Chief Solicitor, General Counsel Division
Ashlea Brown, Chief Solicitor
Victor Tervalá, Chief Solicitor

AMENDMENTS TO COUNCIL BILL 22-0195
(1st Reader Copy)

Proposed by: Law Dep't

On page 32, delete lines 8-10.

FROM	NAME & TITLE	CHRIS RYER, DIRECTOR	CITY of BALTIMORE MEMO	
	AGENCY NAME & ADDRESS	DEPARTMENT OF PLANNING 8 TH FLOOR, 417 EAST FAYETTE STREET		
	SUBJECT	CITY COUNCIL BILL #22-0195/ INCLUSIONARY HOUSING FOR BALTIMORE CITY		

TO

The Honorable President and
Members of the City Council
City Hall, Room 400
100 North Holliday Street

DATE: November 10, 2022

The Department of Planning is in receipt of City Council Bill #22-0195, which is for the purpose of defining certain terms; repealing certain findings and policy statements; 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.

The Department of Planning defers to the Department of Housing and Community Development on City Council Bill #22-0195, with one amendment.

On page 21, lines 7 and 8 refer to "... submitting a pre-development application to the Site Plan Review Committee; ...". This appears to conflate two things. The Department of Planning offers predevelopment meetings, which is a free service to provide early advice to an applicant on potentially applicable review processes and our best advice on how to proceed. This is normally the first contact with an applicant, and is typically scheduled well before a potential project is fully detailed. As part of the Site Plan Review process, some projects are referred to the Site Plan Review Committee (SPRC), normally in the concept phase, where more details are available, but most often before the formal permit process is started. The goal of Site Plan Review is to provide applicants advice from several agencies that will review the eventual permit, to coordinate our advice, and to prevent potential project delays. We recommend the following amendment on page 21, in lines 5 through 8:

(1) MUST SUBMIT AN INCLUSIONARY HOUSING PLAN TO THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT AND THE DEPARTMENT OF PLANNING WHEN SUBMITTING AN PRE-DEVELOPMENT APPLICATION TO THE FOR SITE PLAN REVIEW COMMITTEE; AND

If you have any questions, please contact Mr. Eric Tiso, Division Chief, Land Use and Urban Design Division at 410-396-8358.

CR/ewt

cc: Ms. Natasha Mehu, Mayor's Office
Ms. Nina Themelis, Mayor's Office
Mr. Ethan Cohen, Mayor's Office
The Honorable Eric Costello, Council Rep. to Planning Commission
Mr. Matthew Stegman, City Council President's Office
Ms. Nikki Thompson, City Council President's Office
Mr. Colin Tarbert, BDC
Ms. Rebecca Witt, BMZA
Mr. Geoffrey Veale, Zoning Administration
Ms. Stephanie Murdock, DHCD
Ms. Elena DiPietro, Law Dept.
Mr. Francis Burnszynski, PABC
Mr. Liam Davis, DOT
Ms. Natawna Austin, Council Services



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.

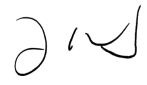
We respectfully submit a **favorable** Bill report with amendments that are consistent with the Consultant's report. DHCD does not support the bill as drafted but does support the intent of the Bill and remains committed to working with the Administration and Bill Sponsor to achieve objectives that are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

AK/sm

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

Memorandum

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

From: Janet Abrahams, Chief Executive Officer 

Date: November 17, 2022

Subject: City Council Bill 22-0195 Inclusionary Housing for Baltimore City

The Housing Authority of Baltimore City (HABC) has reviewed City Council Bill 22-0195, Inclusionary Housing in Baltimore City. This bill defines specific terms; by repealing certain findings and policy statements, repealing rules of statutory interpretation that the enactment of Code-wide revisions has superseded; 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 particular 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; and establishing specific penalties.

HABC is Baltimore's largest provider of affordable housing opportunities, serving over 19,500 households (nearly 42,000 individuals) through our Public Housing and Housing Choice Voucher programs. HABC's serves low- to extremely low- income families and individuals that consist of some of the city's most vulnerable populations including those at risk of homelessness, the elderly, persons with disabilities, veterans and children. In addition, HABC has been able to preserve nearly 4,200 public housing units through the Rental Assistance Demonstration (RAD), and we are working to build mixed-income communities through initiatives such as the Perkins Somerset Oldtown (PSO) Transformation Plan and other redevelopment efforts. However, with nearly 24,023 people on our public housing and Section 8 waiting lists combined, the need for affordable housing in the city far exceeds that which HABC is able to provide on its own.

HABC recognizes the importance of addressing Inclusionary Housing in Baltimore City and submits a favorable bill report with amendments as suggested by the Department of Housing and Community Development (DHCD). We also support the Consultant's report submitted by Enterprise Community Partners, which recommended increasing Inclusionary Housing effectiveness. HABC will continue undertaking development activities to support the revitalization of Baltimore neighborhoods and provide affordable housing and related services to low-income households throughout the city.



MEMORANDUM

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

From: Andy Frank, Real Estate Officer, Department of Real Estate

Date: November 14, 2022

Re: CCB 22-0195 Inclusionary Housing for Baltimore City

Position: Without Recommendation

The Department of Real Estate is responding to the request for a report on City Council bill 22-0195 Inclusionary Housing for Baltimore City. The purpose of this legislation is to define certain terms; repealing certain findings and policy statements; 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.

The Department of Real Estate has reviewed the proposal and foresees no fiscal or operational impact from CCB 22-0195 and **is not taking a position on the bill**. A representative from the office will be present at any hearings.

CC:

Celeste Amato, Chief of Staff, Comptroller's Office
KC Kelleher, Comptroller's Office
Nina Themelis, Mayor's Office

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 15, 2022

Position: Support with Sponsor Amendments

Dear Members of the Baltimore City Council,

My name is Sharonda Huffman, and I am the Director of Housing for Maryland Inclusive Housing Corporation (MIH). MIH was established to help people with intellectual and other developmental disabilities (IDD) successfully access and maintain inclusive, affordable, and accessible housing of their choice. To this end, MIH set up Housing Committees around the state, including one in Baltimore City to address these issues.

Moreover, the MIH approved legislative priorities for local governments:

- Encourage local governments to set aside rental units for people with disabilities when government funding is used.
- Prioritize local funding for projects that include partnerships with or support by MIH and other disability organizations.
- Create incentives for more Uniform Federal Accessibility Standards (UFAS) accessible units than required by HUD.
- Encourage local governments to enact legislation requiring affordable housing to be included in all new construction and substantial rehabilitation rental and homeownership developments (Inclusionary Zoning) and incorporate incentives for units affordable to people with disabilities in these projects. Collaborate with the Maryland Department of Disabilities on advocacy for this priority.
- For affordable units financed or created under local inclusionary zoning programs, local governments should require and/or encourage Universal Design features in rental units and incentivize such features in homeownership units. Collaborate with people with physical disabilities, advocates, and experts to define the universal design features to be required and/or incentivized.

MIH urges the City Council to support the City of Baltimore Council Bill 22-0195. With amendments proposed by Councilwoman Ramos, we believe it is a start to inclusion and accessibility. To that end, we also support the re-establishment of an Inclusionary Housing Board to make determinations on fee-in-lieu requests if needed and maintain strong oversight and accountability. However, it is preferred that developers do not opt out of the law, by paying into a fund. We support collaboration with the Baltimore Housing Authority to explore project-based vouchers, including those for Non-Elderly Disabled recipients.

If a developer is receiving a major public subsidy or significant zoning change, they should make at least 10% of those units affordable to households earning no more than 60% of Area Median Income (AMI), plus an added 5% of units affordable at even lower incomes if the city offers the developer additional subsidy to do so. Further, we support sponsoring amendments that will ensure developers affirmatively market to groups including those of new development.

Personally, I am a mother of an adult with IDD and have worked in both the Office of Equity and Civil Rights and the Department of Housing and Community Development and would welcome future collaborations with this Council on being more inclusive to persons with disabilities. Inclusionary Housing provides ALL Baltimore residents the opportunity to take part in Baltimore's redevelopment as the integrated, equitable City we deserve.

Sincerely,



Sharonda L. Huffman
Housing Director
Maryland Inclusive Housing



Building Caring and Compassionate Communities

GEDCO Programs

Ascension Homes
CARES
CARES Career Connection
Epiphany House
Gallagher Mansion
Micah House
Senior Network of North Baltimore
Stadium Place

Rev. John "Jack" Sharp
(1938-2015)
Founder

GEDCO Board of Directors

Chris McCullough
President
Michael Maxwell
Treasurer
Lynn Reed Selby
Secretary
Jay Weiner
President Stadium Place Inc
Robert P. Blankfeld
VP of Programs
Zinnaeah Ambrose
VP of Properties

Nicholas Alexopoulos
Mike Best
Rev. Jennifer DiFrancesco
Dr. Melinda Fitting
Candace Griffin
Mark Hewick
Mira King
Larry Moscow
Erin O'Keefe
Rev. Rodney Parker
Jeff Seibert
Stephanie Shack
Ruth Silverstone
Ken Stewart

President Emeritus

P. Edward Kenny, Jr.
Father Joe Muth
Perry P. Savoy
Thomas V. Monahan, Jr

Nichole Battle
CEO

Nichole Battle, CEO
Govans Ecumenical Development Corporation

RE: Support for 22-0195- Inclusionary Housing for Baltimore City

Please accept this written testimony in support of the proposed inclusionary housing bill for Baltimore City. As a Baltimore City resident and affordable housing developer for over 25 years, I have seen development/construction in Baltimore at its most active state and at its lowest. There was a period when mixed income housing and community development was seen as a problem and was being addressed by for profit and non-profit partnerships as well as public and private partnerships.

As a believer that everyone deserves safe, decent, and housing that is affordable, having an inclusionary housing bill is imperative for the success of our city. When one among us is in need, we will all suffer. Providing housing that is affordable to all is not just one business sector's responsibility, it is every business sector's responsibility. Housing should be treated as a right and not a privilege. And today, inadequate housing supply is a major driver of inflation, with rents contributing significantly to recent inflation. In a recent article read, "the pain of rising housing costs is most acutely felt by those with the lowest incomes". I am hopeful that others who live and work in the city feel the same and that this bill will pass.

Baltimore Inclusionary Housing Requirements Study

Final Report | November 2022

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Executive Summary

Inclusionary housing ties the creation of affordable homes to the construction of market-rate units. Successful inclusionary housing policies align with housing needs, provide public incentives needed to support inclusionary housing units, and are targeted in neighborhoods where most market-rate development is occurring. Inclusionary housing programs are designed to address systemic and contemporary racism in housing and zoning policies which often exclude households of color - particularly Black households - from accessing homes in certain neighborhoods. While it can provide affordable housing in neighborhoods with access to services, educational, and employment opportunities, inclusionary housing alone cannot address the long-standing disparities in the U.S. housing system. Inclusionary housing policies must be part of broader concerted and sustained efforts to increase housing stability and invest in communities that have been historically marginalized through public- and private-sector decisions.

2007 Inclusionary Housing Ordinance

In 2007, the Mayor and City Council enacted Ordinance 07-474, Inclusionary Housing, (“2007 Ordinance”), to encourage economic diversity across Baltimore neighborhoods by providing affordable rental and homeownership opportunities in communities experiencing an increase in market-rate housing without imposing financial burdens on developers. Originally scheduled to sunset in June 2020, the City Council approved Ordinance 20-367, which extended the Inclusionary Housing Program through June 30, 2022.

Under the 2007 Ordinance, the City was responsible for providing developers with resources to offset the cost of creating inclusionary housing units in one of two ways: direct funding or a density bonus. The 2007 Ordinance also established an Investment Threshold, the maximum amount of subsidy the City could provide to create inclusionary housing units. If the subsidy needed to make a unit affordable exceeded the Investment Threshold, the developer could be exempted from providing the inclusionary housing units. The City estimates that 34 inclusionary housing units were created under the 2007 Ordinance.

Study Objectives

In May 2020, the Department of Housing & Community Development (DHCD) issued a Professional Services Request for Proposals to seek qualified consultants to assist the Department with updating the City’s Inclusionary Housing Ordinance and providing recommendations that would increase the number of inclusionary housing units. DHCD awarded the project to the Enterprise Project Team, which consisted of Enterprise Advisors, Enterprise Community Partner’s Mid-Atlantic Market Office, and HR&A Advisors. The study included three phases.

- Phase One: Assessment of the 2007 Ordinance
- Phase Two: Development of a Policy & Legislative Framework for Future Policy
- Phase Three: Delivery of Final Recommendations & Report



Alignment with City Equity Assessment

This study is part of the City of Baltimore's commitment to advancing equity in all aspects of its operations and policymaking. According to Ordinance 18-160, which established the City of Baltimore's Equity Assessment Program, equity means "closing the gaps in policy, practice, and allocation of City resources so that race, gender, religion, sexual orientations, and income do not predict one's success, while also improving outcomes for all." The DHCD is committed to equitable community development that benefits all Baltimoreans.

Community Engagement

This inclusionary housing study included robust community engagement that involved detailed stakeholder interviews, meetings with a steering committee that provided policy feedback, and publicly posting the interim report for public comment.

DHCD received a total of approximately 39 comments from individuals and organizations. Comments generally fit in one of four categories: affordability, subsidy, market typologies, and maximizing inclusionary housing requirements under the 2007 Ordinance (which was in place during the public comment period). Several of the comments recommended changes to inclusionary housing requirements established under Ordinance 07-474, which sunset in June 2022, and are not applicable to the recommended inclusionary housing policy.

Key Findings

The consultant team's analysis found that the 2007 Ordinance did not meet its objectives for two primary reasons:

1. The financial burden of generating new affordable housing units was placed on the City.
2. There was a lack of alignment between the 2007 Ordinance and market dynamics.

The study also included a financial feasibility analysis that examined the cost to create inclusionary housing units under the 2007 Ordinance thresholds. The analysis found that full implementation under the 2007 Ordinance requirements would only minimally increase the number of units created to 10-20 per year with an annual minimum cost of between \$1-\$3 million. The analysis also found that full implementation of the 2007 Ordinance would require a significant increase in - or complete elimination of - the development threshold.

The Enterprise Project Team also studied the feasibility of a more traditional inclusionary housing approach that relies on incentives rather than subsidies. They modeled the feasibility of a traditional policy across the City's 2017 Housing Market typologies (core, strong, and transitional) and determined that an inclusionary housing policy would be most feasible in core submarkets. Developments in core submarkets would still require an additional incentive, a 15 percent tax abatement, to make inclusionary housing units feasible. The analysis concluded that a five-to-ten percent inclusionary housing set aside requirement put in place under a traditional policy structure could have yielded 270-540 affordable units between 2016 and 2021 based on the market-rate development that was built during that time, significantly exceeding the number of units produced in the lifespan of the 2007 Ordinance.



Policy Recommendations

In order to effectively meet its policy goal of increasing the number of inclusionary housing units, the Enterprise Project Team recommends that the City consider the following policy framework when replacing the 2007 Ordinance:

- Goal: economic diversity by requiring affordable rental units in market-rate developments without imposing financial burdens on developers
- Size: mandatory for all residential development with 30+ units seeking major public subsidy (excluding affordable housing funding)
- Geography: inclusionary housing units would only be mandatory in core submarkets
- Set aside: at least 10 percent of all residential units must be dedicated inclusionary units, including, at minimum:
 - Five percent of total residential rental units priced for households with incomes that do not exceed 60 percent of the area median income as defined by HUD
 - Five percent of total residential rental units priced for households with incomes that do not exceed 80 percent of the area median income as defined by HUD
- Affordability period: units would have a required 30-year affordability period
- Incentive: the City would approve an additional 10-year 15 percent tax abatement alongside High Performance Market-Rate Tax Credits or comparable major public subsidy
- Streamlined process:
 - Developers would be required to submit an approved Inclusionary Housing Plan prior to being issued a building permit and execute a regulatory agreement
 - A deed restriction must be recorded with Baltimore City before a certificate of occupancy is issued
- Rules, regulations, and protocol: DHCD will adopt a program manual that includes clear details on the administration, operation, and enforcement of the policy
- Unit comparability: no differences between the design, marketing, management, and leasing between market-rate and inclusionary housing units
- Reports:
 - Developers would be required to submit annual reports to DHCD
 - DHCD would public an annual report of the program's effectiveness
- Fees-in-lieu could be requested, but would require approval by the Board of Estimates



Introduction

Importance of Inclusionary Housing Policies

Though a variety of policies and incentives support the creation of affordable units, supporting the broader equitable neighborhood development goal of creating economically diverse and inclusive communities by increasing housing opportunities for families who have been historically excluded from higher market communities and the opportunities these neighborhoods provide is critical. Inclusionary housing programs are designed to address systemic and contemporary racism in housing & zoning policies. Many housing and zoning policies often exclude households of color, particularly Black households, from living in certain neighborhoods.¹ Inclusionary housing can provide affordable homes in neighborhoods with access to services, educational, and/or employment opportunities by tying the creation of affordable homes for low- and moderate-income households to the construction of market-rate housing.

At the same time, inclusionary housing alone cannot address the long-standing disparities in the U.S. housing system. Inclusionary housing policies must be part of broader concerted and sustained efforts to increase housing stability and invest in communities that have been historically marginalized through public- and private-sector decisions.

Study Development Overview

In May 2020, the Department of Housing & Community Development (DHCD) issued a Professional Services Request for Proposals to seek qualified consultants to assist the department with updating Ordinance 07-474, Inclusionary Housing, (“2007 Ordinance”)² and awarded the project to the Enterprise Project Team, which consisted of Enterprise Advisors, Enterprise Community Partner’s Mid-Atlantic Market Office, and HR&A Advisors. The study was developed over three phases.

Phase One: Assessment of 2007 Ordinance

During phase one, the project team assessed the 2007 Ordinance, as well as complementary tools and processes, to understand how effective the 2007 Ordinance was in advancing the City’s housing affordability & equity goals. This phase also included the review of past projects, plans, and studies regarding the inclusionary housing program, as well as best practices of inclusionary housing policies in other markets. The Enterprise Project Team completed this assessment by working closely with City of Baltimore staff and other key stakeholders.

Phase Two: Policy & Legislative Framework for Future Policy

Phase two included a scan of market conditions to understand development activity in Baltimore, including evaluation of rents & sales prices, development conditions (i.e., construction costs, land prices), recent development trends (e.g., total units built, locations), and projected development activity based on a pipeline of under construction and planned developments. Using these inputs, the Enterprise Project Team calculated the

¹ For a more detailed discussion of disparities affecting Black households in Baltimore, see the region’s [2020 Analysis of Impediments](#).

² The 2007 Ordinance sunset on June 30, 2022.



total unit production and the potential number of inclusionary units that could have been developed between 2016-2021 under various policy scenarios.

Phase Three: Final Recommendations & Report

During phase three, the Enterprise Project Team developed a set of final recommendations to provide guidance to City of Baltimore staff and officials on a new inclusionary housing policy that increases the number of affordable units created through inclusionary housing while utilizing a more efficient review & approval process. This final report summarizes these recommendations.

Alignment with City Equity Assessment

This study is part of the City of Baltimore's commitment to advancing equity in all aspects of its operations and policymaking. According to Ordinance 18-160, which established the City of Baltimore's Equity Assessment Program, equity means "closing the gaps in policy, practice, and allocation of City resources so that race, gender, religion, sexual orientations, and income do not predict one's success, while also improving outcomes for all." The DHCD is committed to equitable community development that benefits all Baltimoreans.³

Community Engagement

Community engagement with stakeholders is essential to creating a successful inclusionary housing ordinance. The Enterprise Project Team, in collaboration with DHCD staff, engaged key stakeholders for the initial assessment of the 2007 Ordinance and formed a steering committee to provide feedback on the Baltimore Inclusionary Housing Requirements Study. Stakeholder engagement activities included:

- Conducted 27 stakeholder interviews to gain numerous perspectives, including those that administer the policy, developers, and local leadership (i.e., former deputy mayor and various City Councilmembers)⁴
- Multiple project updates to the project steering committee
- Project update to the Inclusionary Housing Advisory Board in July 2021

Subsequently, the interim draft report was posted for public comment in August 2021. DHCD received a total of approximately 39 comments from seven individuals and organizations that related to four overarching themes:

1. Affordability
2. Subsidy
3. Market typologies
4. Maximizing inclusionary housing requirements under the 2007 Ordinance (which was in place during the public comment period)

DHCD and the Enterprise Project Team evaluated all comments received as a part of developing the final report. Several of the comments recommended changes to inclusionary housing requirements established under Ordinance 07-474, which sunset in

³ Click [here](#) for DHCD's full Equity Statement.

⁴ For a full list of stakeholders, see Appendix 3: Stakeholder Interview List.



June 2022, and are not applicable to the recommended inclusionary housing policy model. For all public comments, see Appendix 4: Public Comments.

Key Findings

Phase One

The 2007 Ordinance applied to projects with more than 30 units that either received a major public subsidy or significant rezoning (affordability requirements illustrated in Figures 1 and 2).

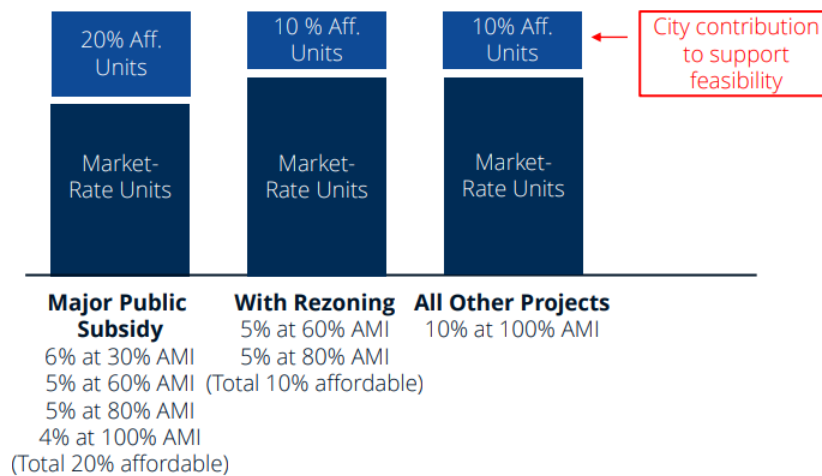


Figure 1: Affordability Requirements for Rental Developments

Affordability Level	Minimum Set Asides		
	Major Public Subsidy	With Rezoning	All Other City Benefits
60% AMI	5%		
80% AMI	10%	5%	
120% AMI			10%
Total inclusionary housing units	20%	10%	10%

Figure 2: Affordability Requirements for For-Sale Developments

While the 2007 Ordinance was in effect, most new market-rate multifamily projects in the city received the High Performance Market-Rate Rental Housing Tax Credit (“High Performance Tax Credit”) and were rental developments. As such, they were typically subject to making 20 percent affordable⁵ as inclusionary housing units and were required to be affordable for a 30-year period.

⁵ Affordable housing costs, whether rent or mortgage payments, were calculated relative to defined household income levels. In line with standards established by the United States Department of Housing and Urban Development (HUD), housing costs equal to/less than 30 percent of a household’s income are considered to be affordable. For example, the rental rate for a unit set aside



Under the 2007 Ordinance, the City was responsible for providing developers with resources to offset the cost of creating inclusionary housing units in one of two ways: direct funding or a density bonus. The 2007 Ordinance also established an Investment Threshold, the maximum amount of subsidy the City could provide to create inclusionary housing units. If the subsidy needed to make a unit affordable exceeded the Investment Threshold, the developer could be exempted from providing the inclusionary housing units. The City estimates that a total of 34 inclusionary housing units were created under the 2007 Ordinance.

In its first phase of work, the Enterprise Project Team found that the 2007 Ordinance did not meet its objectives for two primary reasons. First, the financial burden of generating new affordable housing units was placed on the City. Second, there was a lack of alignment between the 2007 Ordinance and market dynamics. Furthermore, in reviewing the 2007 Ordinance and conducting interviews with key stakeholders, the Enterprise Project Team found the following:

- Program and policy administration was complex and placed a significant burden on key users, specifically DHCD staff and developers. For example, DHCD staff were responsible for conducting financial analyses of developments to determine if a project was subject to the 2007 Ordinance requirements and, if so, what levels of affordability it needed to require. The complex process required to do this was legislated in detail via the 2007 Ordinance which limited the Department's ability to simplify the process. For those developments that were subject to the 2007 Ordinance, individual funding agreements, rather than a standard covenant, created different compliance terms that were administratively burdensome for both DHCD staff and property owners/management staff.
- DHCD took steps to improve communication and clarity by updating the project information sheet, as well as reinstating and incorporating inclusionary housing requirements as part of the Planning Department's pre-development and Site Plan Review Committee meetings.
- DHCD has an opportunity to re-define the inclusionary housing policy goals to reflect the City's commitment to equity.

Phase Two

In the second phase of the study, the Enterprise Project Team conducted financial feasibility analyses of the 2007 Ordinance and more traditional inclusionary housing policy models.⁶

for a household with an income of 60 percent of the area median income ("AMI") is equal to 30 percent of the monthly income of a household at that income level.

⁶ Note: for-sale multifamily development is not currently occurring in Baltimore due to market infeasibility. Therefore, the Enterprise Project Team did not test it for feasibility to determine supportability of an inclusionary housing policy. Still, the City can pursue other means to support affordable homeownership options as part of an inclusionary housing policy, such as in-lieu fees (detailed on page 10).



Analysis of the 2007 Ordinance

The Enterprise Project Team conducted a financial analysis to develop an understanding of the cost to the City to fund units under the 2007 Ordinance's structure. As previously noted, under this structure, the City of Baltimore provided direct monetary subsidies to support inclusionary housing units and set a threshold on the amount of funding the City of Baltimore could provide for an affordable unit. The thresholds limits were fixed and did not adjust over time in response to inflation or increased development costs. As a result, the ability to fund units within the threshold became increasingly difficult over time.

This analysis estimates the total cost to the City associated with subsidizing units based on four scenarios:

- Threshold established by the 2007 Ordinance
- Double the 2007 threshold
- Without any threshold
- Adjusted affordability levels

The analysis found that full implementation of the 2007 Ordinance affordability requirements would require a significant increase in, or elimination of, the thresholds outlined in the 2007 Ordinance. However, an increase or elimination to the threshold would require significantly more funding to support the resulting increased cost.

The analysis used a sample project with 100 units. This analysis examined rents at mid-rise buildings in core submarket locations and assumed a cost of \$2.35 per square foot per month.

2007 Ordinance Threshold

At the 2007 Ordinance threshold levels, only three of the 20 required units would be funded by the City, for a total cost of \$99,417. Figure 3 provides additional detail on units that meet affordability requirements in this scenario.

	30% AMI	60% AMI	80% AMI	100% AMI	Units Within Threshold
Studio	\$162,004	\$53,149	\$0	\$0	1
1 Bedroom	\$289,989	\$172,918	\$94,871	\$23,134	2
2 Bedroom	\$347,781	\$207,604	\$114,153	\$27,761	0
3 Bedroom	\$434,764	\$272,509	\$164,167	\$56,660	0
Threshold Limit	\$125,000	\$100,000	\$50,000	\$25,000	3

Greater than threshold limit and ineligible for funding
 Less than threshold limit and eligible for funding

Total Affordable Units Funded: 3
Total City Funding Required: \$99,417

Figure 3: Threshold Limits for City Contribution per Affordable Unit by Affordability Level

Doubled Threshold

If the threshold was doubled, it would cost the City more than \$1 million to fund 11 affordable units. Figure 4 provides additional detail on units that meet affordability requirements in this scenario.



	30% AMI	60% AMI	80% AMI	100% AMI	Units Within Threshold
Studio	\$162,004	\$53,149	\$0	\$0	2
1 Bedroom	\$289,989	\$172,918	\$94,871	\$23,134	8
2 Bedroom	\$347,781	\$207,604	\$114,153	\$27,761	1
3 Bedroom	\$434,764	\$272,509	\$164,167	\$56,660	0
Threshold Limit	\$250,000	\$200,000	\$100,000	\$50,000	11



Greater than threshold limit and ineligible for funding



Less than threshold limit and eligible for funding

Total Affordable Units Funded: 11

Total City Funding Required: \$1,092,549

Doubling the current threshold levels would require over \$1 million in City funding in the example project, a level of funding that is not sustainable for the City.

Figure 4: Example Project – Lifetime Subsidy Required Per Affordable Unit, Doubled Thresholds

No Threshold

If the threshold was removed, it would cost the City more than \$2.9 million to fund all 20 affordable units. Figure 5 provides additional detail on units that meet affordability requirements in this scenario.

	30% AMI	60% AMI	80% AMI	100% AMI	Units Within Threshold
Studio	\$162,004	\$53,149	\$0	\$0	4
1 Bedroom	\$289,989	\$172,918	\$94,871	\$23,134	11
2 Bedroom	\$347,781	\$207,604	\$114,153	\$27,761	5
3 Bedroom	\$434,764	\$272,509	\$164,167	\$56,660	0
Threshold Limit	None	None	None	None	20



Greater than threshold limit and ineligible for funding



Less than threshold limit and eligible for funding

Total Affordable Units Funded: 20

Total City Funding Required: \$2,979,834

Removing all thresholds would require the City to provide nearly \$3 million in funding to support the 20 affordable units.

Figure 5: Example Project – Lifetime Subsidy Required Per Affordable Unit, No Thresholds

Adjusted Affordability Requirements

An alternative to adjusting the threshold for funding affordable units was to adjust the affordability level of affordable units provided. To understand the impact of this approach, the Enterprise Project Team modeled the impact of providing all affordable units at (1) 60 percent of the AMI and (2) 100 percent of the AMI under the threshold levels for the same

sample 100-unit development.⁷ A set aside of 20 percent of units priced for households with incomes of 60 percent of the AMI would qualify four affordable units at a total cost to the City of \$213,000. The same set aside at 100 percent of the AMI would qualify 10 affordable units at a total cost to the City of \$231,000. Figure 6 provides additional detail on units that meet affordability requirements in these scenarios.

20% of Units at 60% AMI			20% of Units at 100% AMI		
	60% AMI Threshold	Units Within Threshold		100% AMI Threshold	Units Within Threshold
Studio	\$53,149	4	Studio	\$0	0
1 Bedroom	\$172,918	0	1 Bedroom	\$23,134	10
2 Bedroom	\$207,604	0	2 Bedroom	\$27,761	0
3 Bedroom	\$272,509	0	3 Bedroom	\$56,660	0
Threshold Limit	\$100,000	Total Units: 4	Threshold Limit	\$25,000	Total Units: 10
Total Affordable Units Funded: 4			Total Affordable Units Funded: 10		
Total City Funding Required: \$212,596			Total City Funding Required: \$231,340		

Figure 6: Example Project - Lifetime Subsidy Required Per Affordable Unit, Adjustments to AMI Requirements

Assessment of Traditional Inclusionary Policy Model Implementation

The Enterprise Project Team also conducted a feasibility analysis of a more traditional inclusionary housing policy model to assess if a different policy approach could better meet the City's objectives. It structured this analysis to consider hypothetical development scenarios utilizing building typologies and market conditions seen in Baltimore.

In contrast to Baltimore's 2007 Ordinance, a more traditional policy structure requires developers of market-rate developments subject to the policy to provide inclusionary housing units without exemptions. Some policies use land use or financial incentives such as a density bonuses, parking requirement reductions, or tax abatements to offset the costs associated with creating affordable units. In a general sense, a traditional policy is designed to leverage economic gains from increased real estate activity and provides offsetting incentives rather than direct financial subsidy in exchange for affordable units, although some policies do not provide any offsetting incentives.

Policy Components

Set Asides

The analysis modeled several different affordability requirements, including:

- Five percent of units affordable to households with incomes of 60 percent of the AMI
- Five percent of units affordable to households with incomes of 80 percent AMI

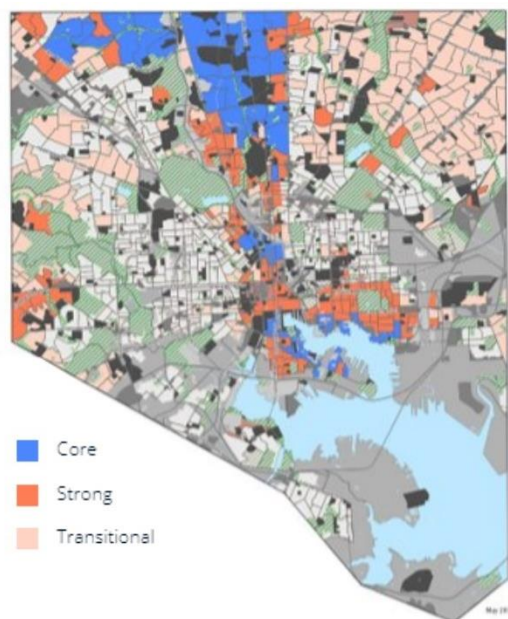
⁷ While this analysis was conducted in 2021, the Enterprise Project Team does not believe that there would be significant differences if the numbers were analyzed using updated market conditions as of the release of this report.

- Ten percent of units affordable to households with incomes of 80 percent AMI, and
- Five percent of units affordable to households with incomes of 60 percent AMI AND five percent of units affordable to households with incomes of at 80 percent AMI (for a total 10 percent set aside)

Geography

Because inclusionary housing leverages market-rate development to provide affordable homes, it is important to understand where market-rate development is occurring and how market conditions vary across the city of Baltimore. The Enterprise Project Team evaluated the potential for market-rate development in three submarket areas (defined for this study and informed by Baltimore's Housing 2017 Market Typology):

- Core submarket areas – Areas where the majority of new market-rate development is occurring and prices are highest. This includes areas along the harbor and adjacent to Downtown.
- Strong submarket areas – Remaining markets in Baltimore that have potential to support new market-rate development today. This includes areas such as Cross Keys or Hampden.
- Transitional submarket areas – Locations that are maturing and could possibly support market-rate development in the future.



Source: Baltimore Housing Market Typology

Figure 7: Market Typologies Based on Baltimore's Housing Market

Incentives

For the various set asides and geographies considered in this analysis, the Enterprise Project Team tested the financial viability of development and the potential need for incentives to support certain set asides or depths of affordability. The purpose of an incentive is to offset the reduction in rents for the affordable units created under an inclusionary housing policy (see Figure 8). Cities across the country, including New Haven,



Connecticut and Yonkers, New York, provide incentives (e.g., direct funding, land use incentives) to developers creating inclusionary housing units.

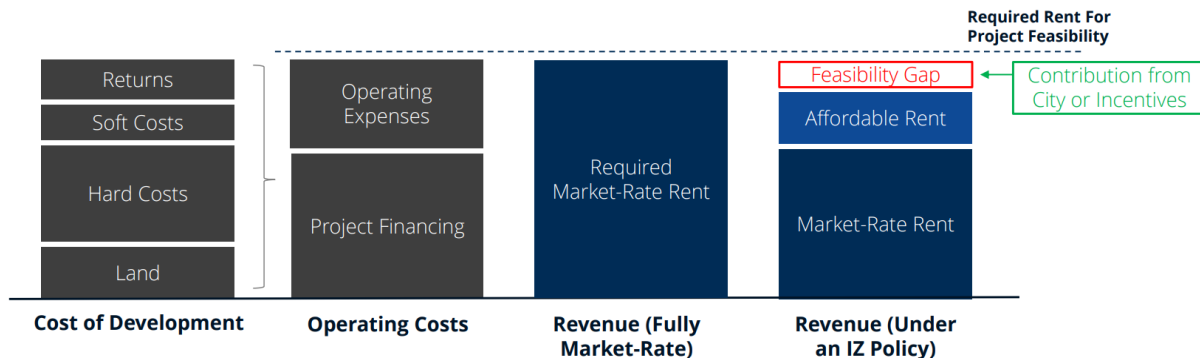


Figure 8: Financial Feasibility Framework

This analysis included scenarios that allowed for up to a 15 percent tax abatement (in addition to the existing High Performance Tax Credit). The abatement would be provided for 10 years to align with the term provided to the High Performance Tax Credit. The analysis did not consider land use incentives (e.g., density bonuses) as they were not found to provide any additional project value based on existing zoning and market conditions.

Feasibility Analysis Results

The feasibility analysis suggested that market-rate development, which would be the driver of new units under a future inclusionary housing policy, was only feasible in the city's core submarket areas. Given the wide variation in market conditions throughout Baltimore, this finding suggests that an inclusionary housing policy will be most successful when targeted geographically to core submarket areas. The phase two analysis found that market-rate development is not feasible in strong or transitional submarket areas - even with incentives (see Figure 9).

	Core		Strong		Transitional	
Building Typology	Mid-rise New Construction	High-rise New Construction	Mid-rise New Construction	Mid-rise Rehab	Mid-rise New Construction	Mid-rise Rehab
Feasibility Threshold - Target Yield on Cost	6.00%	6.00%	6.50%	6.50%	7.00%	7.00%
Actual Yield on Cost	6.10%	6.09%	5.14%	5.71%	4.58%	5.02%
Δ Target Yield on Cost	0.10%	0.09%	-1.36%	-0.79%	-2.42%	-1.98%
Feasibility	Feasible	Feasible	Infeasible	Infeasible	Infeasible	Infeasible

Multi-family rental development within core markets are feasible

Multi-family developments outside of core markets are currently infeasible based on market conditions in these locations.

Note: The Yield on Cost feasibility threshold is determined based on the capitalization rate (cap rate) in each location plus a spread of 125 basis points. Additional detail on inputs and assumptions is provided in the Appendix section.

Note: Baseline analysis assumes inclusion of High-Performance Tax Credit, since the incentive is available to most new development occurring in Baltimore.

Figure 9 | Feasibility of Market-Rate Development Across Housing Market Typologies

Set aside requirements greater than 10 percent, such as the City's previous 20 percent requirement in the 2007 Ordinance, were found not to be financially feasible, with or without incentives. The analysis found that additional incentives are required in order to support new developments that include an inclusionary set aside of 10 percent. Without additional incentives, the costs associated with providing affordable units reduce the financial viability of new development and impact the ability to produce new housing supply. Without additional incentives, it will not be feasible for developers to meet inclusionary housing affordability requirements in core submarkets, even for developments using the High Performance Tax Credit (see Figures 10 and 11).

Core Market Locations – Feasibility of IZ Requirement Without Incentives						
	Baseline Feasibility: 0 Affordable Units	Scenario 1: 5% at 60% AMI	Scenario 2: 5% at 80% AMI	Scenario 3: 10% at 80% AMI	Scenario 4: 5% at 60% AMI 5% at 80% AMI (10% total)	Scenario 5: 6% at 30% AMI 5% at 60% AMI 5% at 80% AMI 4% at 100% AMI (20% Total)
Mid-Rise New Construction	Feasible	Infeasible	Feasible	Infeasible	Infeasible	Infeasible
High-Rise New Construction	Feasible	Infeasible	Infeasible	Infeasible	Infeasible	Infeasible

Figure 10: Feasibility of Inclusionary Housing Requirements without Incentives in Core Submarket Locations

Core Market – Feasibility of IZ Requirement With Incentives						
	Baseline Feasibility: 0 Affordable Units	Scenario 1: 5% at 60% AMI	Scenario 2: 5% at 80% AMI	Scenario 3: 10% at 80% AMI	Scenario 4: 5% at 60% AMI 5% at 80% AMI (10% total)	Scenario 5: 6% at 30% AMI 5% at 60% AMI 5% at 80% AMI 4% at 100% AMI (20% Total)
Mid-Rise New Construction	Feasible	Feasible	Feasible	Feasible	Feasible	Infeasible
High-Rise New Construction	Feasible	Feasible	Feasible	Feasible	Feasible	Infeasible

This tax abatement is in **addition to the High-Performance Tax Credit**, which provides an effective abatement of 65% per year during its ten-year term. An additional 15% abatement would equate to a total effective incremental abatement of **80% for ten years**.

Figure 11: Feasibility of Inclusionary Housing Requirements with Incentives in Core Submarket Locations

However, with an additional 15 percent tax abatement, it is feasible for developments in core submarket locations to set aside five percent of units for households at 60 percent of the AMI and five percent of units for households at 80 percent of the AMI (10 percent total set aside). A five-to-ten percent inclusionary housing set aside requirement put in place under a traditional policy structure would have yielded 270-540 affordable units between 2016 and 2021 based on the market-rate development that was built during that time, significantly exceeding the number of units produced in the lifespan of the 2007 Ordinance.

Policy Recommendations

In order to effectively meet its policy goal of increasing the number of inclusionary housing units while learning from the findings from phases one and two, the Enterprise Project Team recommends that the City consider the following policy framework when replacing the 2007 Ordinance:

Policy goal	Economic diversity by requiring affordable rental units in market-rate developments without imposing financial burdens on developers
Policy structure	Mandatory for all rental developments with 30 or more units seeking major public subsidy (excluding affordable housing funding) Note: does not include for-sale units in multifamily properties
Geography	Mandatory in core submarkets ⁸ only
Affordability requirements	At least 10 percent of all residential units must be dedicated inclusionary units, including, at minimum: <ul style="list-style-type: none"> · Five percent of total residential rental units priced for households with incomes that do not exceed 60 percent of the AMI as defined by HUD · Five percent of total residential rental units priced for households with incomes that do not exceed 80 percent of the AMI as defined by HUD <p>Note: these affordability requirements (blend) provide the greatest number of affordable units considered to be financially feasible while also supporting the development of units affordable to low-income households with incomes of 60 percent of the AMI.</p>
Affordability period	No less than 30 years
Offsetting incentives	10-year 15 percent tax abatement
Administration	To streamline the intake process, <ul style="list-style-type: none"> · Developers must receive approved regulatory agreement OR fee-in-lieu agreement before having building permit(s) approved · Deed restriction must be recorded with Baltimore County before a certificate of occupancy is issued <p>DHCD must adopt a program manual that includes clear details on the administration, operation, and enforcement of the policy</p>

⁸ Submarket geographies to be revised every three years based on updates to the City's housing typologies map



Unit comparability	<p>The developer must ensure there are no differences between market-rate and inclusionary housing units, including as it relates to:</p> <ul style="list-style-type: none">· Design and construction standards· Placement· Construction/leasing timeline· Management· Leasing requirements· Maintenance
Inclusionary Housing Plan	<p>Developers developing inclusionary housing units will have to submit an inclusionary housing plan to DHCD for approval prior to receiving a certificate of occupancy; the plan must describe how the units will be marketed, as well as how tenants will be selected</p>
Reporting	<p>DHCD must submit an annual report that assesses the impact of the policy during the previous fiscal year</p> <p>Participating property owners must report annually on inclusionary housing unit occupancy and compliance</p>
Fees-in-lieu	<p>If subject to the inclusionary housing policy, developers may choose to pay a fee-in-lieu of developing required inclusionary housing units prior to issuance of building permit(s)</p> <p>Note: a fee-in-lieu option allows a developer to pay a fee to the City in place of providing inclusionary units in a new project. The funds can then be used by the City to support housing initiatives. Without a fee-in-lieu option, the production of affordable units through an inclusionary housing policy is limited to where market-rate development is occurring in the city and the types of buildings being built.</p>

Please see Appendix 6 for a recommended policy framework provided for further review and discussion.

Additional Considerations

In addition to the policies recommended above, the City should also consider the following:

- Installing a multi-stakeholder advisory body to provide recommendations on policy and administration
- Revisiting the policy every three years to ensure it is responding to market conditions (housing market typologies, feasibility of affordability requirements, etc.)
- Implications of ongoing property tax reform efforts at the city level



Conclusion

This proposed policy framework is designed to leverage the City's housing affordability tools while leveraging market forces to create more inclusive and accessible neighborhoods. By considering lessons learned from the 2007 Ordinance and adopting national best practices to meet present-day Baltimore's market realities, the City has an opportunity to create a new inclusionary housing policy that will allow it to meet its goal of increasing the number of safe, quality affordable rental homes in areas with greater access to transit, jobs, educational institutions, and other critical resources.

Appendices

- Appendix 1: Phase One Report
- Appendix 2: Market Scan
- Appendix 3: Stakeholder Interview List
- Appendix 4: Public Comments
- Appendix 5: Financial Feasibility Analysis
- Appendix 6: Recommended Policy Framework



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November 14, 2022

Nick Mosby, Council President
Baltimore City Council

RE: Support for 22-0195 – Inclusion Housing for Baltimore City

Dear President Mosby and Councilmembers.

Please accept this written testimony in support of the proposed Inclusionary Housing bill. On behalf of the Homeless Persons Representation Project, I am writing to urge the City Council to support Council Bill 22-0195. We believe that the amendments proposed by Councilwoman Ramos promote and encourage necessary accessibility and inclusion within the City's Inclusionary Housing policy through the implementation of these rules and regulations and will create a meaningful amount of affordable housing for Baltimore City residents.

CB 22-0195 will prove beneficial to Baltimore City by removing past barriers within the City's preceding Inclusionary Housing policy. It will remove those barriers by:

- Removing loopholes and waivers that made the prior Inclusionary Housing policy ineffective.
- Marketing Inclusionary Housing to residents who have been historically excluded from new development.
- Increasing the amount of available affordable housing by applying Inclusionary Housing requirements to smaller projects.
- Shifting costs to the projects developers who seeks to develop in the City.

Each of these amendments will directly impact homelessness in Baltimore City.

The Homeless Persons Representation Project has been representing persons experiencing homelessness and housing instability for decades and for decades we have seen the impact of homelessness on the residents of Baltimore City. We believe that Housing is a right that everyone is deserving of no matter the circumstances. The impact of homelessness not only permeates throughout a person's life, but it also permeates throughout the city. The reality is that Baltimore City has a problem with homelessness and this bill would directly impact that reality. The amendments in this bill will ensure that Baltimore City's Inclusionary Housing policy will not go another 14 years creating only 37 affordable housing units for residents in need.



COMMUNITY DEVELOPMENT NETWORK OF MARYLAND

Council Bill 22-0195 – Inclusionary Housing for Baltimore City

Committee of the Whole, November 16, 2022

Position: Support with Sponsor Amendments

Thank you for the opportunity to provide testimony for this hearing on updating our Inclusionary Housing policy. The Community Development Network of Maryland (CDN) urges the Council to pass CB 22-1095, *Inclusionary Housing for Baltimore City*, with amendments offered by Councilmember Ramos.

CDN is a statewide member association of community-based nonprofits, affordable housing developers, and community development professionals. Our Baltimore City network includes over 40 member organizations that have worked with city residents and agencies for decades to build safe, quality, affordable housing. We are part of the Baltimore City Inclusionary Housing coalition of advocates and residents that support CB 22-1095.

Our member organizations work tirelessly to strengthen Baltimore's neighborhoods, particularly those in what Dr. Lawrence Brown has named "the Black Butterfly"--the neighborhoods where the majority of the city's Black families live. We understand that increasing the city's overall inventory of housing available and affordable to the city's working families--particularly those at 60% AMI (\$55,740 for a family of two)--will healthier, more financially sustainable futures.

We would urge you to see the connection between inclusionary housing and the city's top challenges: public safety, and economic development. Not only is there an overall shortage of affordable rental homes, but they are rarely located in "high-opportunity" neighborhoods that have quality schools, parks, reliable transit, and proximity to jobs, retail, and services. Instead, they are concentrated in disinvested neighborhoods that lack these "opportunity structures" and are often replete with harms ranging from polluted air to decrepit infrastructure to excessive surveillance and violence. Decades of research underscore that living in a neighborhood lacking critical opportunity structures negatively affects health, access to educational and economic opportunities, and life outcomes.

With a strong Inclusionary Housing bill, essential workers—including Baltimore City employees, nursing assistants, and custodial staff--will be able to live in affordable homes in high opportunity neighborhoods, allowing them to build and sustain the financial stability needed to provide for their children and extended family. This also translates into less stress and better mental health for our frontline neighbors, leading to a healthier city overall. Also, with a larger inventory of newly constructed affordable apartments, we can reduce the likelihood that our neighbors will

have to contend with poor environmental concerns such as pests, mold, and lead paint exposure for the sake of their budget.

Our coalition urges you to reject weakening amendments:

1. **Do not reduce the very limited affordability required – no rental units above 60% AMI.** 60% AMI (\$55,740 for a family of two) is already based on a *regional* assessment of income – average incomes in Baltimore City are already much lower than the region. 60% AMI allows frontline workers and neighbors who use vouchers to access the affordable units. Raising this threshold to 80% AMI would place those units beyond the reach of voucher holders and many frontline workers.
2. **Maintain strong oversight and accountability.** The inclusionary housing board should remain in the bill. The prior inclusionary law suffered from weak oversight and implementation. A robust board is needed to maintain transparency and accountability.
3. **No Fee-In-Lieu.** CB 22-0195 creates affordable housing opportunities that are integrated into communities of opportunity. Allowing developers to opt out of the law by paying into a fund would facilitate the creation of affordable units that are not well integrated into communities – thereby repeating the mistakes of our City's long history of subsidizing segregated affordable housing.
4. **Maintain Strong Affirmative Marketing.** Sponsor amendments will ensure that developers market the affordable units to marginalized residents—often Black and Brown—that are often excluded from the benefits of new development and then hold the developers accountable for doing so.

Please issue a FAVORABLE REPORT on Council Bill 22-0195 with sponsor amendments.

If you have any questions, please contact me at claudia@communitydevelopmentmd.org.

Sincerely,
Claudia Wilson Randall
Executive Director, CDN of Maryland



Building Caring and Compassionate Communities

GEDCO Programs

Ascension Homes
CARES
CARES Career Connection
Epiphany House
Gallagher Mansion
Micah House
Senior Network of North Baltimore
Stadium Place

Rev. John "Jack" Sharp
(1938-2015)
Founder

GEDCO Board of Directors

Chris McCullough
President
Michael Maxwell
Treasurer
Lynn Reed Selby
Secretary
Jay Weiner
President Stadium Place Inc
Robert P. Blankfeld
VP of Programs
Zinnaeah Ambrose
VP of Properties

Nicholas Alexopoulos
Mike Best
Rev. Jennifer DiFrancesco
Dr. Melinda Fitting
Candace Griffin
Mark Hewick
Mira King
Larry Moscow
Erin O'Keefe
Rev. Rodney Parker
Jeff Seibert
Stephanie Shack
Ruth Silverstone
Ken Stewart

President Emeritus

P. Edward Kenny, Jr.
Father Joe Muth
Perry P. Savoy
Thomas V. Monahan, Jr

Nichole Battle
CEO

Nichole Battle, CEO

Govans Ecumenical Development Corporation

RE: Support for 22-0195- Inclusionary Housing for Baltimore City

Please accept this written testimony in support of the proposed inclusionary housing bill for Baltimore City. As a Baltimore City resident and affordable housing developer for over 25 years, I have seen development/construction in Baltimore at its most active state and at its lowest. There was a period when mixed income housing and community development was seen as a problem and was being addressed by for profit and non-profit partnerships as well as public and private partnerships.

As a believer that everyone deserves safe, decent, and housing that is affordable, having an inclusionary housing bill is imperative for the success of our city. When one among us is in need, we will all suffer. Providing housing that is affordable to all is not just one business sector's responsibility, it is every business sector's responsibility. Housing should be treated as a right and not a privilege. And today, inadequate housing supply is a major driver of inflation, with rents contributing significantly to recent inflation. In a recent article read, "the pain of rising housing costs is most acutely felt by those with the lowest incomes". I am hopeful that others who live and work in the city feel the same and that this bill will pass.

November 11, 2022

To Whom It May Concern,

With affordable homeownership and housing affordability in mind, Habitat Chesapeake urges support of City Council Bill 22-0195 Inclusionary Housing Policy with amendments. Since the prior Inclusionary Housing Policy timed out, it gives opportunity to rethink the policy so that it offers a more effective outcome than the total of 37 units of affordable housing developed through the 15 years of the prior policy. We can, and need to, create a pathway for developers to offer housing affordability when using public funds, and the Inclusionary Housing Policy (22-0195) provides a solid foundation for this.

Bill 22-0195 ensures that developers who receive benefits from the city are required to set 10% of their units to be affordable to 30-60% area median income. This low to moderate income bracket includes essential healthcare workers, food service workers, landscapers, teachers, construction workers and more. We are worried about the increasing cost of housing while wages remain relatively stagnant.

The new bill removes loopholes and waivers that made the last policy ineffective and applies to all developers who are awarded tax credits or benefits from the city. According to the city's own Finance department report on the City's tax credit programs, tax credits have been distributed inefficiently and inequitably disadvantaging predominantly Black neighborhoods and low-income residents in the city.

Our work as an affordable homeownership developer lands us in partnership with multiple stakeholders, including the City, who are actively working to create equitable development in previously disinvested neighborhoods. We support development of all types in the City, and would like to see that avenues for inclusionary housing are created and flourish in their number and type. This may include partnering with organizations like Habitat Chesapeake in order to fulfill the inclusionary housing requirements which prioritize the AMI range that we uniquely serve through our affordable homeownership program.

We believe that housing for all requires multiple items in the toolbox, including to ensure a successful passage of a more effective inclusionary housing policy. Please ensure successful passage of a more effective inclusionary housing policy by voting in favor of 22-0195 with Councilwoman Odette Ramos' amendments for a more equitable Baltimore.

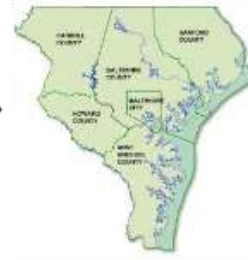
Thank you,



Mike Posko, Chief Executive Officer



Beyond the Boundaries



Council Bill 22-0195 – Inclusionary Housing for Baltimore City

Committee of the Whole Hearing, November 17, 2022

Position: Support with Sponsor Amendments

Beyond the Boundaries requests that the City Council pass CB 22-1095, Inclusionary Housing for Baltimore City, with amendments offered by Council Member Odette Ramos. *Beyond the Boundaries is a member of the Inclusionary Housing Coalition, a wide array of local groups, individuals and organizations dedicated to affordable housing in Baltimore City.*

Beyond the Boundaries is an Archdiocese of Baltimore program with members from churches throughout Maryland, advocating and raising awareness of the need for justice and equity in housing. We recognize the need for Catholic organizations to advocate for social justice, especially as it relates to stable and permanent housing—be it rental housing or owner-occupied housing.

The United States Conference of Catholic Bishops has repeatedly stated that to effectively love our neighbor, we must care for the conditions in which they live, and we must acknowledge decent housing as a human right.¹ “Since decent housing is a human right, its provision involves a public responsibility.”²

Inclusionary Housing is an essential tool to building more affordable, integrated neighborhoods in Baltimore City. If a developer is receiving a major public subsidy or significant zoning change, they should make at least 10% of those units affordable to households earning no more than 60% of Area Median Income (AMI), plus an additional 5% of units affordable at even lower incomes if the city offers the developer additional subsidy to do so.

There are no waivers or exceptions that plagued the city’s prior inclusionary law and made it ineffective. Our coalition estimates that CB 22-1095 with sponsor amendments would create over 1,000 new affordable units over the next decade. With CB 22-1095, Baltimore has a chance to break with development policies that subsidized segregation and separate-and-unequal development and create a more equitable, integrated future.

¹ <https://www.usccb.org/resources/right-decent-home-pastoral-response-crisis-housing>

² See above footnote 1.

The coalition supporting CB 22-0195 urges you to reject weakening amendments:

1. **Do not reduce the very limited affordability required – no rental units above 60% AMI.** 60% AMI (\$55,740 for a family of two) is already based on a *regional* assessment of income – average incomes in Baltimore City are already much lower than the region. 60% AMI allows frontline workers and persons who use vouchers to access the affordable units. Raising this threshold to 80% AMI would place those units beyond the reach of voucher holders and many frontline workers.
2. **Maintain strong oversight and accountability.** The inclusionary housing board should remain in the bill. The prior inclusionary law suffered from weak oversight and implementation.
3. **No Fee-In-Lieu.** CB 22-0195 creates affordable housing opportunities that are integrated into communities. Allowing developers to opt out of the law by paying into a fund would facilitate the creation of affordable units that are not well integrated into communities – thereby repeating the mistakes of our City’s long history of subsidizing segregated affordable housing.
4. **Maintain Strong Affirmative Marketing.** Sponsor amendments will ensure that developers affirmatively market the affordable units to groups that have historically been excluded from the benefits of new development and then hold the developers accountable for doing so.

Baltimore City spent \$38 million in tax subsidies for market rate development in Fiscal Year 2022 and got zero affordable units in return. Baltimore will have given \$73 million from one special tax break alone to multi-family housing developers from Fiscal Year 2014 through Fiscal Year 2023. Almost all 6,621 units created with this subsidy are luxury, non-affordable units located in predominantly white, high income neighborhoods. **Virtually none of the units are affordable.**

How is this equitable?

Maintaining all inclusionary units at **60% AMI or lower is critical to advancing the goals of inclusionary housing:**

- 1) Only 60% AMI (\$62,700 for a family of three) affordability allows voucher holders to access those units. Rent for a 60% AMI unit may not exceed \$1,567. The voucher for a 2-bedroom only pays up to \$1,857, while a unit affordable to individuals at 80% AMI allows for rent to be set at \$2,090.
- 2) Families with income at 80% AMI, or \$83,600 already have sufficient means to access properties in most neighborhoods in Baltimore and do not need additional assistance.
- 3) Bill must also maintain additional 5% affordable at 50% AMI or lower if developer is offered additional housing subsidy.

There is no evidence that reasonable inclusionary housing laws reduce development and CB 22-0195 with sponsor amendments is modeled on best practices from around the country.

Inclusionary housing laws in the United States have created 110,000 housing units in 258 programs, mostly since 2000.

CB 22-0195 with sponsor amendments is more reasonable and less restrictive on development than successful ordinances in Pittsburgh, Philadelphia, Chicago, Washington D.C. and Montgomery County.

Please issue a FAVORABLE COMMITTEE REPORT on Council Bill 22-0195 with sponsor amendments. If you have any questions, please contact:

Charles Michaels, Esq.

Program Manager

Beyond the Boundaries

Beyond.the.boundaries@gmail.com

Cwmichaels@igc.org

Inclusionary Housing Bill

City Council is considering a new Inclusionary Housing law, CC 22-0195. Additional affordable housing is desperately needed in our city, where thousands experience homelessness each night and are turned away from emergency shelter, and tens of thousands are in danger of eviction each year.

According to the most recent available Baltimore City homelessness report – the Consolidated Action Plan [<https://dhcd.baltimorecity.gov/sites/default/files/Public%20Comment%202020-2025%20Consolidated%20Plan%20-%20Annual%20Action%20Plan.pdf>] -

100,181 low-income households in Baltimore spend more than 50% of monthly income on housing. In other words, more than 100,000 vulnerable low-income households annually are at risk of eviction and homelessness! Among renters, 40,490 of the lowest income households (below 30% of AMI) have severe housing problems.

In 2007, Baltimore City adopted an Inclusionary Housing law, as have hundreds of jurisdictions throughout the U.S. Our law, however, is literally the least effective in the country, having produced only 37 units of housing in 15 years, not one of which is available to a truly low-income family.

City Council is now considering a bill, CC 22-0195, which might increase the supply of housing affordable to some of our neighbors; however, as written, the bill is terribly flawed, especially as it does not target those most in need, i.e., the tens of thousands of families who are unable to rent ANY units on the marketplace. The bill proposes to produce housing for households with incomes up to 80% of the Area Median - \$92,880 for a family of four. Some advocates propose to target families with 60% of the Area Median incomes - \$69,660 for a family of four. These are NOT the families with the greatest need, i.e., the 40,000 families with incomes below 30% of the Area Median (\$34,830 for a family of four).

To be most effective, the Inclusionary Housing law should address the housing needs of our most impoverished neighbors, those who are not served by the market and who are most at risk of homelessness. The bill should facilitate housing for families with incomes below 30% of the area median, those families who cannot access the very limited supply of publicly subsidized housing such as public housing and Housing Choice Vouchers. If we limit our assistance, let's focus on those most in need, whose income is only \$34,830 or less. This will reduce the unceasing demand for emergency shelter and create stability for our most impoverished neighbors.

November 8, 2022

Dear City Council Members,

I am writing in support of Inclusionary Housing Bill 22-0195 which I believe is an important mechanism to improve both housing and health.

By way of background, I am an endowed Professor in the Department of Health Policy Management at the Johns Hopkins Bloomberg School of Public Health, the Johns Hopkins School of Medicine, and the Johns Hopkins School of Nursing. I provide this testimony in my own individual capacity. I am not representing the view or position of the Johns Hopkins University or Bloomberg School of Public Health, government agencies, or others.

I am a practicing primary care physician and health researcher who, for over 10 years, has studied the connection between housing and health. Through my clinical experience and research, I have observed the importance of affordable housing in health-promoting environments on health and well-being.

Through my clinical practice, I have seen the trade-offs that my patients and their families make between paying for rent and paying for medicines. I have witnessed the extreme stress of living in unstable housing, frequently described as symptoms of anxiety or depression. And I have listened to my patients describe the impact of living in unsafe neighborhoods, without access to healthy foods and places to exercise. I prescribe additional medicines for their high blood pressure and diabetes and often feel powerless to address these underlying, root causes of health inequities.

Research in the area of housing and health supports my clinical experience on the critical connection between housing affordability, its neighborhood context, and health. My research team published a study in *JAMA* (attached) that examined the long-term impact of receiving a voucher on health care use. The study made use of the Moving To Opportunity experiment and followed families for up to 21 years.

Our key finding is that children who were exposure to lower levels of neighborhood poverty had lower levels of hospitalizations and hospital spending over the long-term follow-up. For every 10 percentage point reduction in neighborhood poverty that children were exposed to, they had on average, \$152 less per year in the hospital spending. Changes were particularly pronounced for asthma- and mental health-related hospitalizations. These reductions in hospital admissions and spending accrue over the long-term may lead to sizable health and financial benefits.

With funding from the National Institutes of Health, I am currently working on another study in Baltimore. We recruited 123 children with asthma whose families were participating in a housing mobility program in Baltimore that helps families move from

neighborhoods of concentrated poverty into lower poverty neighborhoods. Initial results show significant reductions in asthma exacerbations and symptoms after their households move. Importantly, a key driver of these findings was that their households experienced lower levels of stress and a stronger sense of neighborhood safety.

Finally, with funding from the MacArthur Foundation, I have previously studied the health impact of the inclusionary zoning program in Montgomery county. We found that living in housing created through the inclusionary zoning program led to changes in one's social network—the web of people we are connected to. These social network characteristics can be a powerful predictor of health behaviors and outcomes for parents and their children.

In summary, both my clinical experience working as a primary care physician and my research support the importance of measures that provide quality, affordable housing in safe and healthy neighborhoods. Inclusion housing laws, Like CC 22-0195, are an important tool that Baltimore needs to promote better health as well as better housing.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Craig Pollack', with a stylized, flowing script.

Craig Pollack, MD, MHS
cepollack@gmail.com

SUPPORT INCLUSIONARY HOUSING BILL 22-0195: INTEGRATED COMMUNITIES BUILD A STRONGER BALTIMORE

WHAT IS INCLUSIONARY HOUSING?



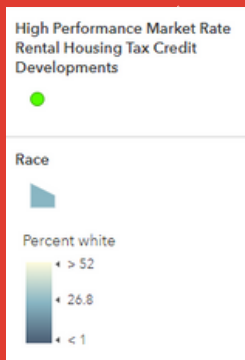
Inclusionary housing laws require developers of certain residential projects to set aside a percentage of new units **to be more affordable** and help create more socio-economically integrated communities.

Baltimore's now-expired law was **ineffective**, producing only

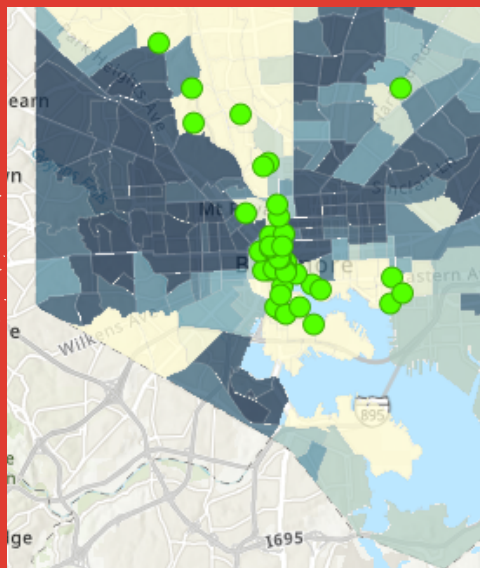
37

affordable housing units in 15 years. Baltimore has no current inclusionary housing law. **Inclusionary Housing Bill 22-0195** is a **balanced approach** that would require every residential project over 20 units that receives a major subsidy or rezoning **to set aside 10% of units as affordable, plus an additional 5% for even lower incomes if the project receives more subsidy.**

High Performance Market Rate
Rental Housing Tax Credit
Developments
2014-2022



Our City Subsidizes Segregation



Baltimore will have given **\$75 million** from one special tax break alone to multi-family housing developers from FY 2014 through FY 2023. Almost all 6,621 units created with this subsidy are luxury, non-affordable units located in predominantly white, high income neighborhoods.

Virtually none of the units are affordable.

WHAT DOES INCLUSIONARY HOUSING BILL 22-0195 DO?

- **Eliminate the loopholes** and waivers in the prior inclusionary housing law that made it a failure.
- Require every residential project over 20 units that receives major city subsidy or rezoning **to set aside 10% of units as affordable**. "Affordable" means that a household earning less than 60% of Area Median Income (AMI) (about \$55,740 for a family of two) would pay rent that is no more than 30% of their income.
- If the developer receives more subsidy, they must **make units affordable to even lower incomes**.
- Every inclusionary development **must market affordable units to residents who have historically been excluded from new developments**, including Black families, persons who use vouchers and other residents who have experienced discrimination.
- Enhances accountability and enforcement mechanisms

WHAT IF CB 22-0195 HAD BEEN IN PLACE SINCE 2014?

Inclusionary housing is one way to deliver more affordable housing for seniors, families with children, veterans, and other residents who need a little help to stabilize their lives.

If the Inclusionary Housing bill had been in placed since 2014, Baltimor would have....

up to



new inclusionary, affordable homes including



units affordable to persons at or below 60% of the area median income (\$55,740 for a family of 2)

up to



units affordable to families at even lower incomes (about \$27,900 for a family of 2)

WILL THE LEGISLATION BE EFFECTIVE?

- Yes! It would bring Baltimore City into line with national best practices on inclusionary housing.
- Inclusionary housing laws around the country have created 110,000 housing units in 258 programs, mostly since 2000.

WILL THIS STOP NEW DEVELOPMENT IN BALTIMORE CITY?

- There is **no evidence** that reasonable inclusionary housing requirements reduce development.
- Council Member Ramos's bill is reasonable: It only applies to larger developments that receive public subsidy or rezoning, and it reduces the current 20% affordable requirement to 10% affordable -- but also removes special waiver and exception provisions.
- CB 22-0195 provides that if the development receives special benefits (\$75 million in tax breaks or special rezoning) then they must contribute **integrated, affordable units** to help **break the cycle of exclusion and segregation** that have produced what Dr. Lawrence Brown has called **the Black Butterfly and white L.**

The Inclusionary Housing Bill is supported by Baltimore Renters United, Beyond the Boundaries, BRIDGE Maryland, Citizens Planning Housing Association, the Public Justice Center, Baltimore Regional Housing Partnership, GEDCO, Community Development Network, Baltimore City NAACP, and many others.

AMENDMENTS TO COUNCIL BILL 22-0195
(1st Reader Copy)

By: Councilmember Ramos
{To be offered to the Committee of the Whole}

Amendment No. 1

On page 1, in line 23, strike the first “2B-6” and substitute “2B-5”; and, on page 2, in line 3, after “2B-35,” insert “2B-47, 2B-52,”; on that same page, in line 8, strike “2B-5” and substitute “2B-3”; and, on that same page, in line 9, strike “2B-3” and substitute “2B-2”; and, on that same page, in lines 15 and 17, in each instance, strike “Section(s)” and substitute “Sections”; and, on that same page, in line 15, strike “2B-5” and substitute “2B-3”; and, on that same page, in line 17, strike “2B-3” and substitute “2B-2”.

Amendment No. 2

On page 2, after line 30, insert:

“(C) COMMISSIONER.”

“COMMISSIONER” MEANS THE COMMISSIONER OF THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT, OR THE COMMISSIONER’S DESIGNEE.”;

and, on that same page, in line 31, strike “(c)” and substitute “(D) [(c)]”; and, on page 3, in lines 1, and 3, strike “(D)” and “(E)”, respectively, and substitute “(E)” and “(F)”, respectively; and, on that same page, strike lines 6 through 8 in their entirety and substitute:

“[(d) Housing] Commissioner.”

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

and, on that same page, strike lines 12 and 13 in their entirety and substitute:

“[(f) Includes; including.]

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

Amendment No. 3

On page 3, in line 14, strike the brackets; and on that same page, in that same line, strike “(g)” and substitute “(H) [(g)]”; and, on that same page, in line 17, after “project” insert a bracket; and, on that same page, in lines 15, 16, 19, 20, 21, 22, and 23, in each instance, strike the bracket; and, on that same page, strike line 24 in its entirety and substitute:

“(iv) grants or loans that equal or exceed [15%] 5% of total projected project costs; [or]”;

and, on that same page, after line 27, insert:

“(v) TAX CREDITS; OR

(vi) ANY OTHER FUNDS, RESOURCES, OR FINANCIAL ASSISTANCE PROVIDED BY THE CITY AS DETERMINED BY ANY RULE OR REGULATION PROMULGATED UNDER THIS SUBTITLE.”.

Amendment No. 4

On page 5, after line 11, insert:

“(L) SIGNIFICANT LAND USE AUTHORIZATION.

“SIGNIFICANT LAND USE AUTHORIZATION” MEANS ANY ACTION OF THE MAYOR, CITY COUNCIL, PLANNING COMMISSION, BOARD OF MUNICIPAL AND ZONING APPEALS, OR THE ZONING ADMINISTRATOR THAT INCREASES THE PERMISSIBLE NUMBER OF DWELLING UNITS IN A LAND AREA BY 20 OR MORE DWELLING UNITS ABOVE THE NUMBER OF DWELLING UNITS PERMITTED BEFORE THE ACTION.”.

Amendment No. 5

On page 5, in lines 25, 26, 27, 28, and 30, in each instance, strike the bracket; and, on that same page, in line 29, strike “60%” and substitute “[60%] 50%”; and, on page 6, in lines 1, 3, 4, and 6, in each instance, strike the bracket; and, on page 6, in lines 1, 3, 4, 6, 7, 13, and 17, in each instance, strike the bracket; and, in lines 7, 13, and 17, strike “(B)”, “(C)”, and “(D)”, respectively and substitute “; and, on that same page, in line 2 strike “80%” and substitute “[80%] 60%”; and, in line 5, strike “120%” and substitute “[120%] 80%”.

Amendment No. 6

On page 6, in line 11, strike “OR”; and, on that same page, in line 12, strike the period and substitute a semicolon; and, on that same page, after line 12, insert:

“(3) VERY LOW INCOME; OR

(4) EXTREMELY LOW INCOME.”.

Amendment No. 7

On page 6, in line 18, strike “A LOW INCOME OR A MODERATE INCOME HOUSEHOLD” and substitute “A HOUSEHOLD WITH EXTREMELY LOW, VERY LOW, LOW, OR MODERATE INCOME”.

Amendment No. 8

On page 7, before line 1, insert:

“(F) EXTREMELY LOW INCOME.

“EXTREMELY LOW INCOME” MEANS A HOUSEHOLD INCOME BELOW 30% AMI.”;

and, on that same page, in lines 1, 8, and 12 strike “(E)”, “(F)”, and “(H)”, respectively, and substitute “(G)”, “(H)”, and “(I)”, respectively; and, on that same page, in line 10, strike “(g)” and substitute “(I) [(g)]”; and, on that same page, in line 9, strike “BETWEEN 51% AND 80%” and substitute “AT OR BELOW 60%”; and, on that same page, in line 13, strike “BETWEEN 81% AND 120%” and substitute “AT OR BELOW 80%”; and, on that same page, after line 13, insert:

“(K) VERY LOW INCOME.

“VERY LOW INCOME” MEANS A HOUSEHOLD INCOME AT OR BELOW 50% AMI.”.

Amendment No. 9

On page 8, after line 17, insert:

“[§ 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.]”.

Amendment No. 10

On page 9, after line 15, insert:

“§ 2B-3. *Reserved*”.

Amendment No. 11

On page 10, in line 3, strike the fourth and fifth brackets; and, on that same page, in that same line, insert brackets before and after the comma; and, on that same page, after line 11, insert:

“(3) THE DEPARTMENT SHALL COMPILE THE RULES AND REGULATIONS ADOPTED UNDER THIS SECTION IN A MANUAL AND MAKE THAT MANUAL AVAILABLE TO THE PUBLIC.”;

and, on that same page, strike lines 25 through 28 in their entirety; and, on page 11, strike lines 1 through 10 in their entirety; and, on that same page, in line 11, strike “**2B-6**” and substitute “**2B-5**”.

Amendment No. 12

On page 11, in line 24, before the first instance of “the” insert a bracket; and, on that same page, in that same line, before “and” strike the bracket; and, on that same page, in line 25 after the bracket insert “THE TOTAL NUMBER”; and, on that same page, in line 26, after “2007” insert “FOR MODERATE, LOW, VERY LOW, AND EXTREMELY LOW INCOME HOUSEHOLDS”; and, on that same page, in line 30, after “UNITS” insert “FOR MODERATE, LOW, VERY LOW, AND EXTREMELY LOW INCOME HOUSEHOLDS”; and, on that same page, in line 30, after the semicolon insert “AND”.

Amendment No. 13

On page 12, strike lines 1 through 8 in their entirety and substitute:

“[(3) the number generated at various affordable costs;]

(3) AGGREGATED ANNUAL DATA PROVIDED UNDER § 2B-35 {“ANNUAL REPORT - RESIDENTIAL PROJECT.”} OF THIS SUBTITLE.

[(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;]”;

and, on that same page, strike lines 13 through 17 in their entirety and substitute:

“[(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 City’s right of first refusal”}, and the number of those units on which that right was exercised;]”.

Amendment No. 14

On page 13, strike lines 6 and 7 in their entirety and substitute:

“(2) [receives a major public subsidy.] THAT RECEIVES:

(I) A MAJOR PUBLIC SUBSIDY; OR

(II) A SIGNIFICANT LAND USE AUTHORIZATION; AND”;

and, on that same page, strike beginning with “WHERE” in line 8 down through and including “UNIT” in line 9 and substitute:

“THAT IS NEWLY CONSTRUCTED, WHOLLY RENOVATED, OR CONVERTED FROM A NON-RESIDENTIAL BUILDING”.

Amendment No. 15

On page 13, in line 12, after the first instance of “units” insert “FOR RENT”; and, on that same page, in that same line, after the second instance of “units” insert “TO LOW INCOME HOUSEHOLDS”.

Amendment No. 16

On page 13, strike lines 29 and 30 in their entirety and substitute:

“(2) IN EVERY RESIDENTIAL PROJECT SUBJECT TO THIS SECTION, AT LEAST 10% OF ALL DWELLING UNITS FOR SALE MUST BE AFFORDABLE TO MODERATE OR LOW INCOME HOUSEHOLDS.”;

and, on page 14, strike lines 1 through 3 in their entirety and substitute:

“(3) IN EVERY RESIDENTIAL PROJECT WHERE THE DEVELOPER IS OFFERED AN ADDITIONAL SUBSIDY FOR AFFORDABLE UNITS FOR VERY LOW INCOME OR EXTREMELY LOW INCOME HOUSEHOLDS, UP TO AN ADDITIONAL 5% OF DWELLING UNITS FOR RENT MUST BE AFFORDABLE TO VERY LOW AND EXTREMELY LOW INCOME HOUSEHOLDS.”;

Amendment No. 17

On page 16, after line 10, insert:

“(C) *MINIMUM REQUIREMENTS.*

THE PROVISIONS OF THIS SUBTITLE ARE MINIMUM REQUIREMENTS AND DO NOT RESTRICT THE CITY OR ITS AGENTS FROM ESTABLISHING ADDITIONAL REQUIREMENTS AS CONDITIONS ON THE APPROVAL OR RENEWAL OF OF MAJOR PUBLIC SUBSIDIES OR OTHER SIGNIFICANT LAND USE AUTHORIZATIONS, INCLUDING REQUIRING ADDITIONAL AFFORDABLE INCLUSIONARY UNITS.”.

Amendment No. 18

On page 21, in line 6, strike the second “AND” and substitute a comma; and, on that same page, in that same line, after “PLANNING” insert “, AND THE INCLUSIONARY HOUSING BOARD”; and, on that same page, in line 10, after “DEVELOPMENT” insert “AND THE INCLUSIONARY HOUSING BOARD”; and, on that same page, after line 11, insert:

“(1) *IN GENERAL.*”;

and, on that same page, after line 13, insert:

“(2) *AFFIRMATIVE FAIR HOUSING MARKETING.*

(I) AN INCLUSIONARY HOUSING PLAN MUST INCLUDE A PLAN FOR AFFIRMATIVELY MARKETING THE AFFORDABLE UNITS TO LOW-INCOME INDIVIDUALS LEAST LIKELY TO APPLY TO BECOME TENANTS INCLUDING MEMBERS OF PROTECTED CLASSES.

(II) THE COMMISSIONER WILL PROVIDE DEMOGRAPHICS INFORMATION TO THE RESIDENTIAL PROJECT TO FACILITATE THE DEVELOPMENT OF THE AFFIRMATIVE MARKETING OF AFFORDABLE UNITS UNDER PARAGRAPH (2)(I) OF THIS SUBSECTION.

(III) THE PLAN FOR AFFIRMATIVE MARKETING MUST COMPLY WITH ANY GUIDANCE, RULES, AND REGULATIONS ISSUED BY THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FOR AFFIRMATIVE FAIR HOUSING MARKETING PLANS.

(IV) RESIDENTIAL PROJECTS MUST SUBMIT DATA TO THE COMMISSIONER AND BOARD ON A MONTHLY BASIS FOR THE FIRST 12 MONTHS AFTER THE BOARD'S APPROVAL AND ANNUALLY EACH YEAR THEREAFTER OF THE INCLUSIONARY HOUSING PLAN THAT COMPARES THE RESIDENTIAL PROJECT'S AFFIRMATIVE MARKETING OF AFFORDABLE UNITS AGAINST RENTER'S DEMOGRAPHIC DATA IN THE AFFORDABLE UNITS.

(C) APPROVAL OF INCLUSIONARY HOUSING PLAN.

- (1) BEFORE THE CITY ISSUES PERMITS FOR A RESIDENTIAL PROJECT THAT IS SUBJECT TO THE AFFORDABILITY UNIT REQUIREMENTS OF THIS SUBTITLE THE RESIDENTIAL PROJECT'S INCLUSIONARY HOUSING PLAN MUST FIRST BE APPROVED BY THE INCLUSIONARY HOUSING BOARD.
- (2) THE INCLUSIONARY HOUSING BOARD SHALL TIMELY ASSESS ALL INCLUSIONARY HOUSING PLANS SUBMITTED TO THE BOARD.
- (3) THE INCLUSIONARY HOUSING BOARD MUST APPROVE AN INCLUSIONARY HOUSING PLAN IF THE BOARD DETERMINES THAT THE INCLUSIONARY HOUSING PLAN COMPLIES WITH ALL REQUIREMENTS UNDER THIS SUBTITLE AND ALL RULES AND REGULATIONS ISSUED UNDER THIS SUBTITLE.”;

and, on that same page, in line 14, strike “(C)” and substitute “(D)”;

and, on that same page, in line 16, after “FORM” insert “FOR A”.

Amendment No. 19

On page 22, in line 30, strike the first comma and substitute a period; and, on that same page, strike beginning with “INCLUDING” in line 30 down through and including the semicolon in line 36; and, on page 23, strike lines 1 through 13 in their entireties; and, on that same page, after line 13, insert:

“§ 2B-34. {Reserved}”.

Amendment No. 20

On page 23, in line 18, after the first instance of “OF” insert “THE”; and, on that same page, in line 19, strike “BE ESTABLISHED BY THE COMMISSIONER.” and substitute “INCLUDE:”; and, on that same page, after line 19, insert:

“(1) THE NUMBER OF AFFORDABLE UNITS IN THE RESIDENTIAL PROJECT FOR EACH INCOME LEVEL APPLICABLE UNDER THIS SUBTITLE;

- (2) THE SQUARE FOOTAGE OF EACH BEDROOM IN EACH AFFORDABLE UNIT;
- (3) WHETHER AN AFFORDABLE UNIT IS LEASED AND OCCUPIED AT THE TIME OF THE REPORT AND TO WHICH INCOME LEVEL THE TENANT BELONGS;
- (4) COMPLIANCE WITH THE INCLUSIONARY HOUSING PLAN;
- (5) WHETHER OWNERSHIP OR CONTROL OF A MAJORITY STAKE IN THE OWNERSHIP ENTITY FOR THE RESIDENTIAL PROJECT HAS TRANSFERRED; AND
- (6) ANY ADDITIONAL INFORMATION RELATED TO COMPLIANCE WITH THIS SUBTITLE OR ANY RULES AND REGULATIONS ISSUED UNDER THIS SUBTITLE AS DETERMINED BY THE COMMISSIONER.”.

Amendment No. 21

On page 25, strike lines 28 through 32 in their entirety.

Amendment No. 22

On page 25, after line 32, insert:

“§ 2B-44 [2B-35]. *{Reserved}*”.

Amendment No. 23

On page 27, in line 19, before “affordable” and after “rent” insert a bracket in each instance; and, on that same page, in that same line, after “rent” insert “AFFORDABLE HOUSING COST”; and, on that same page, in line 20, strike the brackets; and, on that same page, in that same line, strike “20”.

Amendment No. 24

On page 27, in line 23, after “OWNERSHIP” insert “OR CONTROL”; and, on that same page, after line 23, insert:

- “(3) IF A RESIDENTIAL PROJECT ACCEPTS AN ADDITIONAL PUBLIC SUBSIDY WITHIN THE 24 MONTHS IMMEDIATELY PRECEDING THE TERMINATION OF THE 30 YEAR AFFORDABILITY PERIOD ESTABLISHED UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE RESIDENTIAL PROJECT MUST MAINTAIN THE SAME AFFORDABLE RENTS FOR EACH AFFORDABLE UNIT FOR AN ADDITIONAL 30 YEARS FROM THE DATE OF RECEIPT OF THE ADDITIONAL MAJOR PUBLIC SUBSIDY.”.

Amendment No. 25

On page 32, strike lines 8 through 10 in their entirety.



Odette Ramos

Baltimore City Councilwoman

District 14

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100 N. Holliday Street, Room 506

Baltimore MD 21202

November 16, 2022

Testimony

22-0195 Inclusionary Housing for Baltimore City

Position: Support with Amendments

Mr. President and Colleagues

Thank you for the opportunity to present 22-0195 Inclusionary Housing for Baltimore City. I am writing to urge your support for this legislation with Sponsor amendments.

Inclusionary Housing policies are designed to provide affordable housing options in areas that typically are out of reach for many residents. Inclusionary Housing policies help to remove the barriers to housing that were put in place by racist housing policies of the past.

As a note, the definition of affordable housing is that everyone should only be paying $\frac{1}{3}$ of their income on housing costs - including mortgage/rent, electricity, and other housing costs. 50% of Baltimore's renters pay more than 30% of their income on rent- these families are housing insecure. Affordable units are those that are designated for families with incomes below a certain Area Median Income because not all families can afford market rate rent. Often there are subsidies to fill the gap between the market rent and what the family can afford.

Enacted in 2007, the previous Inclusionary Housing law has only produced 37 affordable units, and expired on June 30, 2022. The law required the City to pay for most of the cost of the affordable units, and when we did not have the funds, waivers were given. The law was completely ineffective and did not accomplish the goals of inclusionary housing policy.

Council bill 22-0195 – Inclusionary Housing in Baltimore City was introduced in February and since then we have been working on amendments to allay the concerns of the Law Department, and to make sure we get the law right. The legislation, with amendments, does the following:

- Requires developments of 20 units or more to create 10% of those units as affordable for Low Income residents which is households earning 60% of Area Median Income.
- Requires these same developments to add at least 5% if a subsidy is given to them to do so for residents who are very low or extremely low income.
- Is applicable to only developments that are already getting major public subsidy
- Removes all waivers. Any development with subsidy will be required to comply.
- Requires an Inclusionary Housing plan prior to pulling any permits for the project. The Inclusionary Housing plan has to include an affirmative marketing plan, plan for developing units

that will be affordable according to the law, and more. The Inclusionary Housing Plan must be approved by the Inclusionary Housing Board prior to having permits pulled.

- Requires annual reporting by the owner of the property and reporting to the City Council by the Inclusionary Board.
- Affordability timeline is 30 years starts over when there is new ownership or new control of the property.
- Adds enforcement to the law.

Baltimore's Inclusionary Law has expired, and now we are out of compliance with our Affirmatively Furthering Fair Housing plan that was submitted to HUD. We must pass this legislation.

DHCD has provided the updated report from Enterprise Community Partners that was commissioned by the Council in 2020.

I am grateful to the Council President for the opportunity to work on this important legislation. Thank you to my colleagues for your support. I look forward to the hearing.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read 'Odette', is placed over a light blue rectangular background.

Odette Ramos
Baltimore City Councilwoman, District 14

22-0195 Inclusionary Housing for Baltimore City – Sponsor: Ramos Amendments Chart Dated 9/23/2022

Amendment Number	Current language in 22-0195	Amendment Language	Explanation
1	BY repealing Article 13 - Housing and Urban Development Sections 2B-2, 2B-4, 2B-6, 2B-6, 2B-22, 2B-24, 2B-34, 2B-36, 2B-37, the subtitle “Part V. Off-Site Substitution”, 2B-41 through 2B-45, inclusive, 2B-52, the subtitle “Part VII. Inclusionary Housing Offset Fund”, and 2B-61 through 2B-67, inclusive Baltimore City Code (Edition 2000)	On page 1, in line 23, strike the first “2B-6” and substitute “2B-5”; and, on page 2, in line 3, after “2B-35,” insert “2B-47, 2B-52,”; on that same page, in line 8, strike “2B-5” and substitute “2B-3”; and, on that same page, in line 9, strike “2B-3” and substitute “2B-2”; and, on that same page, in lines 15 and 17, in each instance, strike “Section(s)” and substitute “Sections”; and, on that same page, in line 15, strike “2B-5” and substitute “2B-3”; and, on that same page, in line 17, strike “2B-3” and substitute “2B-2”	This is remuneration based on the amendments.
2		On page 2, after line 30, insert: “(C) COMMISSIONER. “COMMISSIONER” MEANS THE COMMISSIONER OF THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT, OR THE COMMISSIONER’S DESIGNEE.”; Remunerations are the remaining parts of this amendment.	Technical Amendment clarifying the Commissioner of Housing and Community Development
3		On page 3, in line 14, strike the brackets; and on that same page, in that same line, strike “(g)” and substitute “(H) [(g)]”; and, on that same page, in line 17, after “project” insert a bracket; and, on that same page, in lines 15, 16, 19, 20, 21, 22, and 23, in each instance, strike the bracket; and, on that same page, strike line 24 in its entirety and substitute: “(iv) grants or loans that equal or exceed [15%] 5% of total projected project costs; [or]”;	This amendment puts back in original language in the definitions and adds language that defines a major public subsidy

		and, on that same page, after line 27, insert: “(V) TAX CREDITS; OR (VI) ANY OTHER FUNDS, RESOURCES, OR FINANCIAL ASSISTANCE PROVIDED BY THE CITY AS DETERMINED BY ANY RULE OR REGULATION PROMULGATED UNDER THIS SUBTITLE.”.	
4		On page 5, after line 11, insert: “(L) SIGNIFICANT LAND USE AUTHORIZATION. “SIGNIFICANT LAND USE AUTHORIZATION” MEANS ANY ACTION OF THE MAYOR, CITY COUNCIL, PLANNING COMMISSION, BOARD OF MUNICIPAL AND ZONING APPEALS, OR THE ZONING ADMINISTRATOR THAT INCREASES THE PERMISSIBLE NUMBER OF DWELLING UNITS IN A LAND AREA BY 20 OR MORE DWELLING UNITS ABOVE THE NUMBER OF DWELLING UNITS PERMITTED BEFORE THE ACTION.”.	This defines what a major land use authorization is.
5		On page 5, in lines 25, 26, 27, 28, and 30, in each instance, strike the bracket; and, on that same page, in line 29, strike “60%” and substitute “[60%] 50%”; and, on page 6, in lines 1, 3, 4, and 6, in each instance, strike the bracket; and, on page 6, in lines 1, 3, 4, 6, 7, 13, and 17, in each instance, strike the bracket; and, in lines 7, 13, and 17, strike “(B)”, “(C)”, and “(D)”, respectively and substitute “; and, on that same page, in line 2 strike “80%” and substitute “[80%] 60%”; and, in line 5, strike “120%” and substitute “[120%] 80%”.	This section puts original language back in, and also clarifies what puts language back in the bill from the 2007 law about the level of income this law applies to. This defines Moderate Income, Low Income, Very Low Income, Extremely Low Income.
6		On page 6, in line 11, strike “OR”; and, on that same page, in line 12, strike the period and substitute a semicolon; and, on that same page, after line 12, insert:	This amendment puts Very Low Income and Extremely Low

		“(3) VERY LOW INCOME; OR (4) EXTREMELY LOW INCOME.”	Income back in the bill - these were eliminated in the original bill.
7		On page 6, in line 18, strike “A LOW INCOME OR A MODERATE INCOME HOUSEHOLD” and substitute “A HOUSEHOLD WITH EXTREMELY LOW, VERY LOW, LOW, OR MODERATE INCOME”.	Adds back in the Moderate and Low Income categories
8		<p>On page 7, before line 1, insert:</p> <p>“(F) EXTREMELY LOW INCOME.</p> <p>“EXTREMELY LOW INCOME” MEANS A HOUSEHOLD INCOME BELOW 30% AMI.”;</p> <p>and, on that same page, in lines 1, 8, and 12 strike “(E)”, “(F)”, and “(H)”, respectively, and substitute “(G)”, “(H)”, and “(J)”, respectively; and, on that same page, in line 10, strike “(g)” and substitute “(l) [(g)]”; and, on that same page, in line 9, strike “BETWEEN 51% AND 80%” and substitute “AT OR BELOW 60%”; and, on that same page, in line 13, strike “BETWEEN 81% AND 120%” and substitute “AT OR BELOW 80%”; and, on that same page, after line 13, insert:</p> <p>“(K) VERY LOW INCOME.</p> <p>“VERY LOW INCOME” MEANS A HOUSEHOLD INCOME AT OR BELOW 50% AMI.”.</p>	Continues to make sure all of the levels of income are consistent throughout the bill.
9		<p>On page 8, after line 17, insert:</p> <p>“[§ 2B-5. Rules of construction.]</p> <p>[(a) In general.]</p> <p>[In this subtitle, the following rules of construction apply.]</p> <p>[(b) More stringent provisions apply.] [For residential projects subject to federal, state, or other local affordable housing requirements</p>	Removes more language that is not relevant to our bill.

		<p>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.]</p> <p>[(c) Applying percentages.]</p> <p>[In applying percentages referred to in this subtitle:]</p> <p>[(1) any portion of a percent less than one-half is disregarded; and]</p> <p>[(2) any portion of a percent one-half or greater is rounded up to the next whole number.]"</p>	
10		On page 9, after line 15, insert: "§ 2B-3. {Reserved}"	Renumeration
11	<p>(1) [(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</p> <p>§ 2B-5. INCLUSIONARY HOUSING MANUAL. (A) IN GENERAL. THE COMMISSIONER MUST ADOPT, AND MAY AMEND FROM TIME TO TIME, AN INCLUSIONARY HOUSING MANUAL.</p> <p>(B) CONTENTS GENERALLY. THE INCLUSIONARY HOUSING MANUAL MUST INCLUDE, BUT IS NOT LIMITED TO:</p> <p>(1) RULES AND REGULATIONS ON THE CREATION AND MANAGEMENT OF RESIDENTIAL PROJECTS AND AFFORDABLE UNITS;</p>	<p>On page 10, in line 3, strike the fourth and fifth brackets; and, on that same page, in that same line, insert brackets before and after the comma; and, on that same page, after line 11, insert:</p> <p>"(3) THE DEPARTMENT SHALL COMPILE THE RULES AND REGULATIONS ADOPTED UNDER THIS SECTION IN A MANUAL AND MAKE THAT MANUAL AVAILABLE TO THE PUBLIC.";</p> <p>and, on that same page, strike lines 25 through 28 in their entireties; and, on page 11, strike lines 1 through 10 in their entireties; and, on that same page, in line 11, strike "2B-6" and substitute "2B-5".</p>	<p>The Law Dept did not want policy to be made in an Inclusionary Manual, so we took out the Inclusionary Manual in our amendments.</p>

	<p>(2) RULES AND REGULATIONS FOR RESIDENTIAL PROJECT CONSTRUCTION AGREEMENTS;</p> <p>(3) RULES AND REGULATIONS GOVERNING ANNUAL REPORTING BY RESIDENTIAL PROJECTS CREATED UNDER THIS SUBTITLE, AS REQUIRED UNDER § 2B-35 OF THIS SUBTITLE;</p> <p>AND</p> <p>(4) RULES AND REGULATIONS FOR THE IMPLEMENTATION OF THIS SUBTITLE.</p>		
12	<p>(1) the total number [and proportion (as to the total of all housing units developed) of affordable housing units generated under this subtitle] OF NEW AFFORDABLE UNITS CREATED UNDER THIS SUBTITLE FOR THAT YEAR AND CUMULATIVELY SINCE 2007; (2) [the number and proportion generated under each of the various provisions of this subtitle (e.g., major public subsidy or significant rezoning)] FOR THAT YEAR, THE PERCENT OF NEW DWELLING UNITS CREATED IN THE CITY THAT ARE AFFORDABLE UNITS;</p>	<p>On page 11, in line 24, before the first instance of “the” insert a bracket; and, on that same page, in that same line, before “and” strike the bracket; and, on that same page, in line 25 after the bracket insert “THE TOTAL NUMBER”; and, on that same page, in line 26, after “2007” insert “FOR MODERATE, LOW, VERY LOW, AND EXTREMELY LOW INCOME HOUSEHOLDS”; and, on that same page, in line 30, after “UNITS” insert “FOR MODERATE, LOW, VERY LOW, AND EXTREMELY LOW INCOME HOUSEHOLDS”; and, on that same page, in line 30, after the semicolon insert “AND”.</p>	<p>Clarifies the reporting requirements for the annual report to the Council</p>
13	<p>(3) the TOTAL number [generated at various affordable costs] OF LOW INCOME AFFORDABLE UNITS AND MODERATE INCOME AFFORDABLE UNITS DEVELOPED UNDER THIS SUBTITLE FOR THAT YEAR AND</p>	<p>On page 12, strike lines 1 through 8 in their entirety and substitute: “[(3) the number generated at various affordable costs;] (3) AGGREGATED ANNUAL DATA PROVIDED UNDER § 2B-35 {“ANNUAL REPORT - RESIDENTIAL PROJECT.”} OF THIS SUBTITLE.</p>	<p>More requirements for the Annual reporting</p>

	<p>CUMULATIVELY SINCE 2007; (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] FOR THAT YEAR, THE PERCENT OF NEW DWELLING UNITS CREATED IN THE CITY THAT ARE LOW INCOME AFFORDABLE UNITS AND THAT ARE MODERATE INCOME AFFORDABLE UNITS; AND</p> <p>(5) [(9)] the number of units for which the City or eligible housing providers had a 14 right of first refusal under [§ 2B-34] § 2B-44 {"Right of first refusal"} or 15 [§ 2B-52(c)] § 2B-52(a) {"[Resales during affordability period – First refusal] 16 City’s right of first refusal"}, and the number of those units on which that right 17 was exercised[;].</p>	<p>[(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;]";</p> <p>and, on that same page, strike lines 13 through 17 in their entirety and substitute:</p> <p>"[(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 City’s right of first refusal"}, and the number of those units on which that right was exercised;]"</p>	
14	<p>(2) [receives a major public subsidy.] THAT IS NEWLY CONSTRUCTED, WHOLLY RENOVATED, OR CONVERTED FROM A NON-RESIDENTIAL BUILDING; AND</p> <p>(3) WHERE THE COST TO CONSTRUCT, RENOVATE, OR CONVERT IS GREATER THAN OR</p>	<p>On page 13, strike lines 6 and 7 in their entirety and substitute:</p> <p>"(2) [receives a major public subsidy.] THAT RECEIVES: (I) A MAJOR PUBLIC SUBSIDY; OR (II) A SIGNIFICANT LAND USE AUTHORIZATION; AND";</p> <p>and, on that same page, strike beginning with "WHERE" in line 8 down through and including "UNIT" in line 9 and substitute:</p>	<p>Clearly explains the types of properties that are included in this law. Only properties with public subsidy and those with significant land use authorization are</p>

	EQUAL TO \$60,000 PER DWELLING UNIT.	“THAT IS NEWLY CONSTRUCTED, WHOLLY RENOVATED, OR CONVERTED FROM A NON-RESIDENTIAL BUILDING”.	included in this law. One or the other applies.
15	(1) In every residential project subject to this section, at least [20%] 10% of all [residential] DWELLING units must be affordable units.	On page 13, in line 12, after the first instance of “units” insert “FOR RENT”; and, on that same page, in that same line, after the second instance of “units” insert “TO LOW INCOME HOUSEHOLDS”	The development is supposed to allocate 10% of their units for Low and Moderate income Households only (percentage of AMI listed previously)
16	<p>(2) OF THE TOTAL NUMBER OF AFFORDABLE UNITS REQUIRED FOR EACH RESIDENTIAL PROJECT SUBJECT TO THIS SECTION 50% MUST BE FOR LOW INCOME HOUSEHOLDS</p> <p>(3) OF THE TOTAL NUMBER OF AFFORDABLE UNITS REQUIRED FOR EACH RESIDENTIAL PROJECT SUBJECT TO THIS SECTION 50% MUST BE FOR MODERATE INCOME HOUSEHOLDS.</p>	<p>On page 13, strike lines 29 and 30 in their entirety and substitute:</p> <p>“(2) IN EVERY RESIDENTIAL PROJECT SUBJECT TO THIS SECTION, AT LEAST 10% OF ALL DWELLING UNITS FOR SALE MUST BE AFFORDABLE TO MODERATE OR LOW INCOME HOUSEHOLDS.”;</p> <p>and, on page 14, strike lines 1 through 3 in their entirety and substitute:</p> <p>“(3) IN EVERY RESIDENTIAL PROJECT WHERE THE DEVELOPER IS OFFERED AN ADDITIONAL SUBSIDY FOR AFFORDABLE UNITS FOR VERY LOW INCOME OR EXTREMELY LOW INCOME HOUSEHOLDS, UP TO AN ADDITIONAL 5% OF DWELLING UNITS FOR RENT MUST BE AFFORDABLE TO VERY LOW AND EXTREMELY LOW INCOME HOUSEHOLDS.”;</p>	<p>This section says that the 10% of all units having to be affordable apply to all properties with major public subsidy.</p> <p>And that it is to moderate and low income households</p> <p>And that if DHCD or the City or HABC has additional subsidy, the developer is</p>

			required to do an additional 5% for extremely Low income households
17		On page 16, after line 10, insert: “(C) MINIMUM REQUIREMENTS. THE PROVISIONS OF THIS SUBTITLE ARE MINIMUM REQUIREMENTS AND DO NOT RESTRICT THE CITY OR ITS AGENTS FROM ESTABLISHING ADDITIONAL REQUIREMENTS AS CONDITIONS ON THE APPROVAL OR RENEWAL OF MAJOR PUBLIC SUBSIDIES OR OTHER SIGNIFICANT LAND USE AUTHORIZATIONS, INCLUDING REQUIRING ADDITIONAL AFFORDABLE INCLUSIONARY UNITS.”	This clause makes sure that if we approve TIFS or other subsidies that we can require more than 10% affordable units
18	(1) MUST SUBMIT AN INCLUSIONARY HOUSING PLAN TO THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT AND THE DEPARTMENT OF PLANNING WHEN SUBMITTING A PRE-DEVELOPMENT APPLICATION TO THE SITE PLAN REVIEW COMMITTEE; AND (2) MUST SUBMIT AN INCLUSIONARY HOUSING PLAN TO THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT WHEN APPLYING FOR A BUILDING PERMIT. (B) INCLUSIONARY HOUSING PLAN REQUIREMENTS. RESIDENTIAL PROJECTS REQUIRED TO SUBMIT AN INCLUSIONARY HOUSING PLAN UNDER SUBSECTION	On page 21, in line 6, strike the second “AND” and substitute a comma; and, on that same page, in that same line, after “PLANNING” insert “, AND THE INCLUSIONARY HOUSING BOARD”; and, on that same page, in line 10, after “DEVELOPMENT” insert “AND THE INCLUSIONARY HOUSING BOARD”; and, on that same page, after line 11, insert: “(1) IN GENERAL.”; and, on that same page, after line 13, insert: “(2) AFFIRMATIVE FAIR HOUSING MARKETING. I.AN INCLUSIONARY HOUSING PLAN MUST INCLUDE A PLAN FOR AFFIRMATIVELY MARKETING THE AFFORDABLE UNITS TO LOW-INCOME INDIVIDUALS LEAST LIKELY TO APPLY TO BECOME TENANTS INCLUDING MEMBERS OF PROTECTED CLASSES. I.THE COMMISSIONER WILL PROVIDE DEMOGRAPHICS INFORMATION TO THE RESIDENTIAL PROJECT TO FACILITATE THE DEVELOPMENT OF	The developer has to submit an Inclusionary Housing plan prior to pulling permits for the development. Included in that plan is a plan for affirmative marketing to the population we are trying to reach.

	(A) MUST SUBMIT A PLAN IN THE FORM ESTABLISHED BY THE COMMISSIONER.	<p>THE AFFIRMATIVE MARKETING OF AFFORDABLE UNITS UNDER PARAGRAPH (2)(I) OF THIS SUBSECTION.</p> <p>I. THE PLAN FOR AFFIRMATIVE MARKETING MUST COMPLY WITH ANY GUIDANCE, RULES, AND REGULATIONS ISSUED BY THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FOR AFFIRMATIVE FAIR HOUSING MARKETING PLANS.</p> <p>J. RESIDENTIAL PROJECTS MUST SUBMIT DATA TO THE COMMISSIONER AND BOARD ON A MONTHLY BASIS FOR THE FIRST 12 MONTHS AFTER THE BOARD'S APPROVAL AND ANNUALLY EACH YEAR THEREAFTER OF THE INCLUSIONARY HOUSING PLAN THAT COMPARES THE RESIDENTIAL PROJECT'S AFFIRMATIVE MARKETING OF AFFORDABLE UNITS AGAINST RENTER'S DEMOGRAPHIC DATA IN THE AFFORDABLE UNITS.</p> <p>(C) APPROVAL OF INCLUSIONARY HOUSING PLAN.</p> <p>(1) BEFORE THE CITY ISSUES PERMITS FOR A RESIDENTIAL PROJECT THAT IS SUBJECT TO THE AFFORDABILITY UNIT REQUIREMENTS OF THIS SUBTITLE THE RESIDENTIAL PROJECT'S INCLUSIONARY HOUSING PLAN MUST FIRST BE APPROVED BY THE INCLUSIONARY HOUSING BOARD.</p> <p>(2) THE INCLUSIONARY HOUSING BOARD SHALL TIMELY ASSESS ALL INCLUSIONARY HOUSING PLANS SUBMITTED TO THE BOARD.</p> <p>(3) THE INCLUSIONARY HOUSING BOARD MUST APPROVE AN INCLUSIONARY HOUSING PLAN IF THE BOARD DETERMINES THAT THE INCLUSIONARY HOUSING PLAN COMPLIES WITH ALL REQUIREMENTS UNDER THIS SUBTITLE AND ALL RULES AND REGULATIONS ISSUED UNDER THIS SUBTITLE.";</p> <p>and, on that same page, in line 14, strike "(C)" and substitute "(D)"; and, on that same page, in line 16, after "FORM" insert "FOR A"</p>	<p>Please note the Law Dept says we may not be able to do this because it is discriminatory.</p> <p>However, this is actually done in LITC and other tax credit properties, and is also done by HABC, and we have a memo to say that this is perfectly legal.</p>
19	ALL RESIDENTIAL PROJECTS CREATED UNDER THIS SUBTITLE ARE SUBJECT TO APPLICABLE 29 FEDERAL, STATE, AND LOCAL HOUSING LAWS AND	<p>On page 22, in line 30, strike the first comma and substitute a period; and, on that same page, strike beginning with "INCLUDING" in line 30 down through and including the semicolon in line 36; and, on page 23,</p>	<p>We removed reference to all the fair housing laws because they are</p>

	<p>REGULATIONS AS DETAILED IN THE 30 INCLUSIONARY HOUSING MANUAL, INCLUDING, BUT NOT LIMITED TO:</p> <p>(1) 42 U.S.C. 3601 ET SEQ. {"FAIR HOUSING ACT OF 1968"};</p> <p>(2) 24 C.F.R. PART 100 {"DISCRIMINATORY CONDUCT UNDER THE FAIR HOUSING ACT"};</p> <p>(3) EXECUTIVE ORDER 11063, NOVEMBER 20, 1962 {"EQUAL HOUSING OPPORTUNITY IN 34 HOUSING"}; 35 (4) 24 C.F.R. PART 107 {"NONDISCRIMINATION AND EQUAL OPPORTUNITY IN HOUSING 36 UNDER EXECUTIVE ORDER 11063"};</p> <p>(5) TITLE VI, 42 U.S.C. 2000D {"PROHIBITION AGAINST EXCLUSION FROM PARTICIPATION IN, DENIAL OF BENEFITS OF, AND DISCRIMINATION UNDER FEDERALLY ASSISTED PROGRAMS ON GROUND OF RACE, COLOR, OR NATIONAL ORIGIN"};</p> <p>(6) 28 C.F.R. § 42.101 ET SEQ. {"SUBPART C–NONDISCRIMINATION IN FEDERALLY 5 PROGRAMS–IMPLEMENTATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964"};</p> <p>(7) 24 C.F.R. PART 1 ET SEQ. {"NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT -</p>	<p>strike lines 1 through 13 in their entirety; and, on that same page, after line 13, insert:</p> <p>"§ 2B-34. {Reserved}".</p>	<p>already in the books and if one of them changes we don't want to have to go back and change this.</p>
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	<p>EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT 1964”};</p> <p>(8) STATE GOVERNMENT ARTICLE, §§ 20-702, 20-704, AND 20-705, ANNOTATED CODE 10 OF MARYLAND;</p> <p>(9) HOUSING OPPORTUNITIES MADE EQUAL ACT, CH. 116, 2020 LAWS OF MARYLAND; AND</p> <p>(10) ARTICLE 4, SUBTITLE 3, § 3-5 {“UNLAWFUL PRACTICES . . . HOUSING”.</p>		
20	<p>(B) THE CONTENTS OF ANNUAL REPORT REQUIRED UNDER SUBSECTION (A) OF THIS SECTION MUST BE ESTABLISHED BY THE COMMISSIONER.</p>	<p>On page 23, in line 18, after the first instance of “OF” insert “THE”;</p> <p>and, on that same page, in line 19, strike “BE ESTABLISHED BY THE COMMISSIONER.” and substitute “INCLUDE:”; and, on that same page, after line 19, insert:</p> <p>“(1) THE NUMBER OF AFFORDABLE UNITS IN THE RESIDENTIAL PROJECT FOR EACH INCOME LEVEL APPLICABLE UNDER THIS SUBTITLE;</p> <p>(2) THE SQUARE FOOTAGE OF EACH BEDROOM IN EACH AFFORDABLE UNIT;</p> <p>(3) WHETHER AN AFFORDABLE UNIT IS LEASED AND OCCUPIED AT THE TIME OF THE REPORT AND TO WHICH INCOME LEVEL THE TENANT BELONGS;</p> <p>(4) COMPLIANCE WITH THE INCLUSIONARY HOUSING PLAN;</p> <p>(5) WHETHER OWNERSHIP OR CONTROL OF A MAJORITY STAKE IN THE OWNERSHIP ENTITY FOR THE RESIDENTIAL PROJECT HAS TRANSFERRED; AND</p> <p>(6) ANY ADDITIONAL INFORMATION RELATED TO COMPLIANCE WITH THIS SUBTITLE OR ANY RULES AND REGULATIONS ISSUED UNDER THIS SUBTITLE AS DETERMINED BY THE COMMISSIONER.”.</p>	<p>This is about the reporting that is required of the developer each year to maintain compliance.</p>

21	(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.	On page 25, strike lines 28 through 32 in their entireties	Removed this language
22		On page 25, after line 32, insert: “§ 2B-44 [2B-35]. {Reserved}”.	renumeration
23	(1) 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] 20 years from the date of its initial occupancy.	On page 27, in line 19, before “affordable” and after “rent” insert a bracket in each instance; and, on that same page, in that same line, after “rent” insert “AFFORDABLE HOUSING COST”; and, on that same page, in line 20, strike the brackets; and, on that same page, in that same line, strike “20”.	Affordability requirement is for 30 years.
24	(2) THE AFFORDABILITY PERIOD FOR EACH AFFORDABLE UNIT STARTS EACH TIME OWNERSHIP OF THE AFFORDABLE UNIT IS TRANSFERRED.	On page 27, in line 23, after “OWNERSHIP” insert “OR CONTROL”; and, on that same page, after line 23, insert: “(3) IF A RESIDENTIAL PROJECT ACCEPTS AN ADDITIONAL PUBLIC SUBSIDY WITHIN THE 24 MONTHS IMMEDIATELY PRECEDING THE TERMINATION OF THE 30 YEAR AFFORDABILITY PERIOD ESTABLISHED UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE RESIDENTIAL PROJECT MUST MAINTAIN THE SAME AFFORDABLE RENTS FOR EACH AFFORDABLE UNIT FOR AN ADDITIONAL 30 YEARS FROM THE DATE OF RECEIPT OF THE ADDITIONAL MAJOR PUBLIC SUBSIDY.”	The affordability period starts over again when there is a transfer of ownership or control of the property. This clarifies that if the llc or corporation has new ownership, the click starts over as well.

25	(C) PENALTIES DOUBLE. FINES FOR EACH OFFENSE THAT CONTINUES UNABATED FOR A PERIOD OF 30 DAYS OR MORE WILL DOUBLE.	Strike lines 8 through 10 in their entireties.	Removed penalty but the removal of the subsidy remains in place if the developer does not comply.
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COUNCIL BILL 22-0195

**UNOFFICIAL REPRINT TO SHOW CONTEXT
OF AMENDMENTS PROPOSED BY COUNCILMEMBER RAMOS**

A BILL ENTITLED

AN ORDINANCE concerning

Inclusionary Housing for Baltimore City

FOR the purpose of defining certain terms; repealing certain findings and policy statements; 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.

BY repealing and reordaining, with amendments

Article 13 - Housing and Urban Renewal
Sections 2B-1, 2B-3, 2B-7, 2B-16, 2B-17, 2B-21, 2B-25, 2B-31 through 2B-33, 2B-51, 2B-71, and 2B-72
Baltimore City Code
(Edition 2000)

BY repealing

Article 13 - Housing and Urban Renewal
Sections 2B-2, 2B-4, ~~2B-6~~ 2B-5, 2B-6, 2B-22, 2B-24, 2B-34, 2B-36, 2B-37, the subtitle “Part V. Off-Site Substitution”, 2B-41 through 2B-45, inclusive, 2B-52, the subtitle “Part VII. Inclusionary Housing Offset Fund”, and 2B-61 through 2B-67, inclusive
Baltimore City Code
(Edition 2000)

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.
Underlining indicates matter added to the bill by amendment.
~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from existing law by amendment.

BY adding

Article 13 - Housing and Urban Renewal
Sections 2B-5, 2B-32, 2B-35, 2B-47, 2B-52, and 2B-63
Baltimore City Code
(Edition 2000)

BY renumbering

Article 13 - Housing and Urban Renewal
Sections ~~2B-5~~ 2B-3, 2B-11 through 2B-15, inclusive, 2B-35, 2B-36, 2B-37, and the subtitle
“Part VI. Continued Affordability”, respectively to be Sections ~~2B-3~~ 2B-2, 2B-21
through 2B-25, inclusive, 2B-44, 2B-45, 2B-46, and the subtitle “Part V. Continued
Affordability”, respectively
Baltimore City Code
(Edition 2000)

SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE, That
~~Section(s) Sections~~ Sections 2B-5 2B-3, 2B-11, 2B-13 through 2B-15, inclusive, 2B-35, 2B-36, 2B-37,
and the subtitle “Part VI. Continued Affordability”, respectively, of Article 13 - Housing and
Urban Renewal of the Baltimore City Code are renumbered to be ~~Section(s) Sections~~ 2B-3 2B-2,
2B-21, 2B-23 through 2B-25, inclusive, 2B-44, 2B-46, 2B-47, and the subtitle “Part V.
Continued Affordability”, respectively.

SECTION 2. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE, That the
Laws of Baltimore City read as follows:

Baltimore City Code

Article 13. Housing and Urban Renewal

Subtitle 2B. Inclusionary Housing Requirements

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) *COMMISSIONER.*

“COMMISSIONER” MEANS THE COMMISSIONER OF THE DEPARTMENT OF HOUSING AND
COMMUNITY DEVELOPMENT, OR THE COMMISSIONER’S DESIGNEE.

(D) [(c)] (c) *Developer.*

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

(E) ~~(D)~~ *Department.*

“Department” means the Department of Housing and Community Development.

(F) ~~(E)~~ *DWELLING UNIT.*

“DWELLING UNIT” OR “UNIT” HAS THE MEANING STATED IN § 202.2 OF THE BALTIMORE CITY PROPERTY MAINTENANCE CODE.

(F) ~~[(d)]~~ ~~[Housing] Commissioner.~~

~~["Housing Commissioner"] “COMMISSIONER” means the Commissioner of Housing and Community Development or the Commissioner’s designee.~~

[(d) *Housing* Commissioner.]

["Housing Commissioner" means the Commissioner of Housing and Community Development or the Commissioner’s designee.]

(G) ~~[(e)]~~ *Housing funds.*

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

(H) ~~[(f)]~~ ~~*Includes; including.*~~

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

[(f) *Includes; including.*]

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

(H) ~~[(g)]~~ ~~{(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}~~

(iv) grants or loans that equal or exceed [15%] 5% 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.]

(V) TAX CREDITS; OR

(VI) ANY OTHER FUNDS, RESOURCES, OR FINANCIAL ASSISTANCE PROVIDED BY THE CITY AS DETERMINED BY ANY RULE OR REGULATION PROMULGATED UNDER THIS SUBTITLE.

[(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.]

(I) [(h)] *Neighborhood.*

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

(J) [(i)] *Planning Director.*

"Planning Director" means the Director of the Department of Planning or the Director's designee.

(K) [(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.]

[(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.]

[(L) *SIGNIFICANT LAND USE AUTHORIZATION.*

"SIGNIFICANT LAND USE AUTHORIZATION" MEANS ANY ACTION OF THE MAYOR, CITY COUNCIL, PLANNING COMMISSION, BOARD OF MUNICIPAL AND ZONING APPEALS, OR THE ZONING ADMINISTRATOR THAT INCREASES THE PERMISSIBLE NUMBER OF DWELLING UNITS IN A LAND AREA BY 20 OR MORE DWELLING UNITS ABOVE THE NUMBER OF DWELLING UNITS PERMITTED BEFORE THE ACTION.

[§ 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.]

§ 2B-2. [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%~~ [80%] 60% 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%~~ [120%] 80% of the AMI, adjusted for household size.}

~~(B)~~ {(c)} *Affordable unit.*

“Affordable unit” means a [residential] DWELLING unit that is required by this subtitle to be provided [at an extremely low, very low, low, or moderate affordable housing cost.]
TO A FAMILY EARNING AN INCOME THAT IS EITHER:

(1) LOW INCOME; [OR]

(2) MODERATE INCOME[.];

(3) VERY LOW INCOME; OR

(4) EXTREMELY LOW INCOME.

~~(C)~~ {(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.

~~(D)~~ {(e)} *Eligible household.*

“Eligible household” means[:] ~~A LOW INCOME OR A MODERATE INCOME HOUSEHOLD~~ A HOUSEHOLD WITH EXTREMELY LOW, VERY LOW, LOW, OR MODERATE INCOME.

- [(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) EXTREMELY LOW INCOME.

“EXTREMELY LOW INCOME” MEANS A HOUSEHOLD INCOME BELOW 30% AMI.

(G) ~~(F)~~ [(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.

(H) ~~(F)~~ LOW INCOME.

“LOW INCOME” MEANS A HOUSEHOLD INCOME BETWEEN 51% AND 80% AT OR BELOW 60% AMI.

(I) [(g)] ~~(g)~~ Market rate.

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

(J) ~~(H)~~ MODERATE INCOME.

“MODERATE INCOME” MEANS A HOUSEHOLD INCOME BETWEEN 81% AND 120% AT OR BELOW 80% AMI.

(K) VERY LOW INCOME.

“VERY LOW INCOME” MEANS A HOUSEHOLD INCOME AT OR BELOW 50% AMI.

[§ 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] 20 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.]

[§ 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.]

[§ 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.]

§ 2B-3. {Reserved}

§ 2B-4. [2B-7.] Rules and regulations.

(a) *In general.*

Subject to Title 4 {“Administrative Procedure Act – Regulations”} of the City General Provisions Article, 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;]

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

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

(c) *Scope – Requiring timely response.*

[(1)] The rules and regulations must:

(1) [(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

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

(3) THE DEPARTMENT SHALL COMPILE THE RULES AND REGULATIONS ADOPTED
UNDER THIS SECTION IN A MANUAL AND MAKE THAT MANUAL AVAILABLE TO THE
PUBLIC.

[(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.]

~~§ 2B-5. INCLUSIONARY HOUSING MANUAL.~~

~~(A) IN GENERAL.~~

~~THE COMMISSIONER MUST ADOPT, AND MAY AMEND FROM TIME TO TIME, AN INCLUSIONARY HOUSING MANUAL.~~

~~(B) CONTENTS GENERALLY.~~

~~THE INCLUSIONARY HOUSING MANUAL MUST INCLUDE, BUT IS NOT LIMITED TO:~~

~~(1) RULES AND REGULATIONS ON THE CREATION AND MANAGEMENT OF RESIDENTIAL PROJECTS AND AFFORDABLE UNITS;~~

~~(2) RULES AND REGULATIONS FOR RESIDENTIAL PROJECT CONSTRUCTION AGREEMENTS;~~

~~(3) RULES AND REGULATIONS GOVERNING ANNUAL REPORTING BY RESIDENTIAL PROJECTS CREATED UNDER THIS SUBTITLE, AS REQUIRED UNDER § 2B-35 OF THIS SUBTITLE; AND~~

~~(4) RULES AND REGULATIONS FOR THE IMPLEMENTATION OF THIS SUBTITLE.~~

§§ ~~2B-6~~ 2B-5 to 2B-20. {Reserved}

Part II. Inclusionary Housing Board

§ 2B-26. [2B-16.] Annual Report.

(a) *Required.*

On or before [October] DECEMBER 31 of each year, the [Board] COMMISSIONER must:

- (1) submit a report to the Mayor and the City Council, THE BOARD, and to the Planning Commission that assesses efforts during the preceding fiscal year to create and sustain inclusionary housing in the City;
- (2) POST THE REPORT ON THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT'S WEBSITE; AND
- (3) FILE THE REPORT WITH THE DEPARTMENT OF LEGISLATIVE REFERENCE.

(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] THE TOTAL NUMBER OF NEW AFFORDABLE UNITS CREATED UNDER THIS SUBTITLE FOR THAT YEAR AND CUMULATIVELY SINCE 2007 FOR MODERATE, LOW, VERY LOW, AND EXTREMELY LOW INCOME HOUSEHOLDS;
- (2) [the number and proportion generated under each of the various provisions of this subtitle (e.g., major public subsidy or significant rezoning)] FOR THAT YEAR, THE PERCENT OF NEW DWELLING UNITS CREATED IN THE CITY THAT ARE AFFORDABLE UNITS FOR MODERATE, LOW, VERY LOW, AND EXTREMELY LOW INCOME HOUSEHOLDS;
- [(3) the TOTAL number generated at various affordable costs;]
- (3) AGGREGATED ANNUAL DATA PROVIDED UNDER § 2B-35 {"ANNUAL REPORT - RESIDENTIAL PROJECT."} OF THIS SUBTITLE.
- [(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;]

~~(5) [(9)] the number of units for which the City or eligible housing providers had a right of first refusal under [§ 2B-34] § 2B-44 {"Right of first refusal"} or [§ 2B-52(c)] § 2B-52(a) {"[Resales during affordability period – First refusal] City’s right of first refusal"}, and the number of those units on which that right was exercised[;].~~

[(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 City’s right of 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"}.]

§ 2B-27. [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.

§§ 2B-28 to 2B-30. {Reserved}

Part III. Inclusionary Requirements

§ 2B-31. [2B-21.] [Project receiving major public subsidy] INCLUSIONARY REQUIREMENTS.

(a) *Applicability of section.*

This section applies to any residential project [that]:

(1) THAT provides [30] 20 or more [residential] DWELLING units; [and]

~~(2) [receives a major public subsidy.] THAT IS NEWLY CONSTRUCTED, WHOLLY RENOVATED, OR CONVERTED FROM A NON-RESIDENTIAL BUILDING; AND~~

(2) [receives a major public subsidy.] THAT RECEIVES:

(i) A MAJOR PUBLIC SUBSIDY; OR

(II) A SIGNIFICANT LAND USE AUTHORIZATION; AND

- (3) ~~WHERE THE COST TO CONSTRUCT, RENOVATE, OR CONVERT IS GREATER THAN OR EQUAL TO \$60,000 PER DWELLING UNIT THAT IS NEWLY CONSTRUCTED, WHOLLY RENOVATED, OR CONVERTED FROM A NON-RESIDENTIAL BUILDING.~~

(b) *Affordable units required.*

- (1) In every residential project subject to this section, at least [20%] 10% of all [residential] DWELLING units FOR RENT must be affordable units TO LOW INCOME HOUSEHOLDS.

[(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.]

- ~~(2) OF THE TOTAL NUMBER OF AFFORDABLE UNITS REQUIRED FOR EACH RESIDENTIAL PROJECT SUBJECT TO THIS SECTION 50% MUST BE FOR LOW INCOME HOUSEHOLDS.~~

- ~~(3) OF THE TOTAL NUMBER OF AFFORDABLE UNITS REQUIRED FOR EACH RESIDENTIAL PROJECT SUBJECT TO THIS SECTION 50% MUST BE FOR MODERATE INCOME HOUSEHOLDS.~~

- (2) IN EVERY RESIDENTIAL PROJECT SUBJECT TO THIS SECTION, AT LEAST 10% OF ALL DWELLING UNITS FOR SALE MUST BE AFFORDABLE TO MODERATE OR LOW INCOME HOUSEHOLDS.

(3) IN EVERY RESIDENTIAL PROJECT WHERE THE DEVELOPER IS OFFERED AN ADDITIONAL SUBSIDY FOR AFFORDABLE UNITS FOR VERY LOW INCOME OR EXTREMELY LOW INCOME HOUSEHOLDS, UP TO AN ADDITIONAL 5% OF DWELLING UNITS FOR RENT MUST BE AFFORDABLE TO VERY LOW AND EXTREMELY LOW INCOME HOUSEHOLDS.

[(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.]

(C) MINIMUM REQUIREMENTS.

THE PROVISIONS OF THIS SUBTITLE ARE MINIMUM REQUIREMENTS AND DO NOT RESTRICT THE CITY OR ITS AGENTS FROM ESTABLISHING ADDITIONAL REQUIREMENTS AS CONDITIONS ON THE APPROVAL OR RENEWAL OF MAJOR PUBLIC SUBSIDIES OR OTHER SIGNIFICANT LAND USE AUTHORIZATIONS, INCLUDING REQUIRING ADDITIONAL AFFORDABLE INCLUSIONARY UNITS.

[§ 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 20 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.]

[§ 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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[§ 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.]

§ 2B-32. INCLUSIONARY HOUSING PLAN.

(A) *INCLUSIONARY HOUSING PLAN REQUIRED.*

RESIDENTIAL PROJECTS SUBJECT TO THE AFFORDABILITY UNIT REQUIREMENTS OF THIS SUBTITLE:

(1) MUST SUBMIT AN INCLUSIONARY HOUSING PLAN TO THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT ~~AND~~ THE DEPARTMENT OF PLANNING, AND THE INCLUSIONARY HOUSING BOARD WHEN SUBMITTING A PRE-DEVELOPMENT APPLICATION TO THE SITE PLAN REVIEW COMMITTEE; AND

(2) MUST SUBMIT AN INCLUSIONARY HOUSING PLAN TO THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT AND THE INCLUSIONARY HOUSING BOARD WHEN APPLYING FOR A BUILDING PERMIT.

(B) *INCLUSIONARY HOUSING PLAN REQUIREMENTS.*

(1) *IN GENERAL.*

RESIDENTIAL PROJECTS REQUIRED TO SUBMIT AN INCLUSIONARY HOUSING PLAN UNDER SUBSECTION (A) MUST SUBMIT A PLAN IN THE FORM ESTABLISHED BY THE COMMISSIONER.

(2) *AFFIRMATIVE FAIR HOUSING MARKETING.*

- (I) AN INCLUSIONARY HOUSING PLAN MUST INCLUDE A PLAN FOR AFFIRMATIVELY MARKETING THE AFFORDABLE UNITS TO LOW-INCOME INDIVIDUALS LEAST LIKELY TO APPLY TO BECOME TENANTS INCLUDING MEMBERS OF PROTECTED CLASSES.
- (II) THE COMMISSIONER WILL PROVIDE DEMOGRAPHICS INFORMATION TO THE RESIDENTIAL PROJECT TO FACILITATE THE DEVELOPMENT OF THE AFFIRMATIVE MARKETING OF AFFORDABLE UNITS UNDER PARAGRAPH (2)(I) OF THIS SUBSECTION.
- (III) THE PLAN FOR AFFIRMATIVE MARKETING MUST COMPLY WITH ANY GUIDANCE, RULES, AND REGULATIONS ISSUED BY THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FOR AFFIRMATIVE FAIR HOUSING MARKETING PLANS.
- (IV) RESIDENTIAL PROJECTS MUST SUBMIT DATA TO THE COMMISSIONER AND BOARD ON A MONTHLY BASIS FOR THE FIRST 12 MONTHS AFTER THE BOARD'S APPROVAL AND ANNUALLY EACH YEAR THEREAFTER OF THE INCLUSIONARY HOUSING PLAN THAT COMPARES THE RESIDENTIAL PROJECT'S AFFIRMATIVE MARKETING OF AFFORDABLE UNITS AGAINST RENTER'S DEMOGRAPHIC DATA IN THE AFFORDABLE UNITS.

(C) *APPROVAL OF INCLUSIONARY HOUSING PLAN.*

- (1) BEFORE THE CITY ISSUES PERMITS FOR A RESIDENTIAL PROJECT THAT IS SUBJECT TO THE AFFORDABILITY UNIT REQUIREMENTS OF THIS SUBTITLE THE RESIDENTIAL PROJECT'S INCLUSIONARY HOUSING PLAN MUST FIRST BE APPROVED BY THE INCLUSIONARY HOUSING BOARD.
- (2) THE INCLUSIONARY HOUSING BOARD SHALL TIMELY ASSESS ALL INCLUSIONARY HOUSING PLANS SUBMITTED TO THE BOARD.
- (3) THE INCLUSIONARY HOUSING BOARD MUST APPROVE AN INCLUSIONARY HOUSING PLAN IF THE BOARD DETERMINES THAT THE INCLUSIONARY HOUSING PLAN COMPLIES WITH ALL REQUIREMENTS UNDER THIS SUBTITLE AND ALL RULES AND REGULATIONS ISSUED UNDER THIS SUBTITLE.

(D) ~~(E)~~ *COMMISSIONER AUTHORITY TO CREATE FORM INCLUSIONARY HOUSING PLAN.*

THE COMMISSIONER HAS THE AUTHORITY AND THE DISCRETION TO CREATE, AND AMEND AS NECESSARY, A FORM FOR A INCLUSIONARY HOUSING PLAN.

§ 2B-33. [2B-25.] [Source of income discrimination] FAIR HOUSING LAWS AND REGULATIONS.

[(a) Projects subject to affordable housing requirements.]

[For any unit in any residential project that meets the requirements of § 2B-21(a) 2B-31(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, SALE, 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.]

ALL RESIDENTIAL PROJECTS CREATED UNDER THIS SUBTITLE ARE SUBJECT TO APPLICABLE FEDERAL, STATE, AND LOCAL HOUSING LAWS AND REGULATIONS AS DETAILED IN THE INCLUSIONARY HOUSING MANUAL, ~~INCLUDING, BUT NOT LIMITED TO:~~

- ~~(1) 42 U.S.C. 3601 ET SEQ. {"FAIR HOUSING ACT OF 1968"};~~
- ~~(2) 24 C.F.R. PART 100 {"DISCRIMINATORY CONDUCT UNDER THE FAIR HOUSING ACT"};~~
- ~~(3) EXECUTIVE ORDER 11063, NOVEMBER 20, 1962 {"EQUAL HOUSING OPPORTUNITY IN HOUSING"};~~
- ~~(4) 24 C.F.R. PART 107 {"NONDISCRIMINATION AND EQUAL OPPORTUNITY IN HOUSING UNDER EXECUTIVE ORDER 11063"};~~
- ~~(5) TITLE VI, 42 U.S.C. 2000D {"PROHIBITION AGAINST EXCLUSION FROM PARTICIPATION IN, DENIAL OF BENEFITS OF, AND DISCRIMINATION UNDER FEDERALLY ASSISTED PROGRAMS ON GROUND OF RACE, COLOR, OR NATIONAL ORIGIN"};~~
- ~~(6) 28 C.F.R. § 42.101 ET SEQ. {"SUBPART C NONDISCRIMINATION IN FEDERALLY PROGRAMS IMPLEMENTATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964"};~~
- ~~(7) 24 C.F.R. PART 1 ET SEQ. {"NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT 1964"};~~
- ~~(8) STATE GOVERNMENT ARTICLE, §§ 20-702, 20-704, AND 20-705, ANNOTATED CODE OF MARYLAND;~~
- ~~(9) HOUSING OPPORTUNITIES MADE EQUAL ACT, CH. 116, 2020 LAWS OF MARYLAND; AND~~
- ~~(10) ARTICLE 4, SUBTITLE 3, § 3-5 {"UNLAWFUL PRACTICES... HOUSING"}.~~

§ 2B-34. {Reserved}

§ 2B-35. ANNUAL REPORT – RESIDENTIAL PROJECT .

- (A) RESIDENTIAL PROJECTS SUBJECT TO THE AFFORDABILITY REQUIREMENTS OF THIS SUBTITLE MUST SUBMIT AN ANNUAL REPORT TO THE DEPARTMENT AND THE INCLUSIONARY HOUSING BOARD.
- (B) THE CONTENTS OF THE ANNUAL REPORT REQUIRED UNDER SUBSECTION (A) OF THIS SECTION ~~MUST BE ESTABLISHED BY THE COMMISSIONER.~~ INCLUDE:

- (1) THE NUMBER OF AFFORDABLE UNITS IN THE RESIDENTIAL PROJECT FOR EACH INCOME LEVEL APPLICABLE UNDER THIS SUBTITLE;
- (2) THE SQUARE FOOTAGE OF EACH BEDROOM IN EACH AFFORDABLE UNIT;
- (3) WHETHER AN AFFORDABLE UNIT IS LEASED AND OCCUPIED AT THE TIME OF THE REPORT AND TO WHICH INCOME LEVEL THE TENANT BELONGS;
- (4) COMPLIANCE WITH THE INCLUSIONARY HOUSING PLAN;
- (5) WHETHER OWNERSHIP OR CONTROL OF A MAJORITY STAKE IN THE OWNERSHIP ENTITY FOR THE RESIDENTIAL PROJECT HAS TRANSFERRED; AND
- (6) ANY ADDITIONAL INFORMATION RELATED TO COMPLIANCE WITH THIS SUBTITLE OR ANY RULES AND REGULATIONS ISSUED UNDER THIS SUBTITLE AS DETERMINED BY THE COMMISSIONER.

(C) THE COMMISSIONER WILL PROMINENTLY POST ALL ANNUAL REPORTS REQUIRED UNDER SUBSECTION (A) OF THIS SECTION ON THE CITY’S WEBSITE.

§§ 2B-36 to 2B-40. {Reserved}

Part IV. Standards for Affordable Units

§ 2B-41. [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 it is determined 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.]

§ 2B-42. [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.]

§ 2B-43. [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.]

[§ 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.]

~~[(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.~~

§ 2B-44 [2B-35]. {Reserved}

§ 2B-45. [2B-36.] Owner-occupancy of ownership units.

An affordable unit that is sold under this subtitle to an eligible household must be owner-occupied.

§ 2B-46. [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.

§§ 2B-47 to 2B-50. {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.]

[§ 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.]

[§ 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.]

[§ 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.]

[§ 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.]

Part V [VT]. Continued Affordability

§ 2B-51. Rental units.

(a) *Affordability period.*

- (1) Every affordable rental unit subject to this subtitle must remain at an [affordable rent] AFFORDABLE HOUSING COST, as provided in this section, for a period of not less than [30]20 years from the date of its initial occupancy.
- (2) THE AFFORDABILITY PERIOD FOR EACH AFFORDABLE UNIT STARTS EACH TIME OWNERSHIP OR CONTROL OF THE AFFORDABLE UNIT IS TRANSFERRED.
- (3) IF A RESIDENTIAL PROJECT ACCEPTS AN ADDITIONAL PUBLIC SUBSIDY WITHIN THE 24 MONTHS IMMEDIATELY PRECEDING THE TERMINATION OF THE 30 YEAR AFFORDABILITY PERIOD ESTABLISHED UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE RESIDENTIAL PROJECT MUST MAINTAIN THE SAME AFFORDABLE RENTS FOR EACH AFFORDABLE UNIT FOR AN ADDITIONAL 30 YEARS FROM THE DATE OF RECEIPT OF THE ADDITIONAL MAJOR PUBLIC SUBSIDY.

(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.]

(C) [(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.]

[§ 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.]

§§ 2B-52 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.]

[§ 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.]

[§ 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.]

[§ 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.]

[§ 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 AML.]

[§ 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.]

[§ 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.]

Part VI [VIII]. Administrative Review,[and] Judicial Review, AND PENALTIES

§ 2B-61. [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] MUNICIPAL AND ZONING APPEALS.

(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.

§ 2B-62. [2B-72.] Judicial and appellate review.

(a) Judicial review.

A party aggrieved by a final decision of the Board of [Estimates] MUNICIPAL AND ZONING APPEALS under § 2B-[71]61 {"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.

§ 2B-63. PENALTIES.

(A) IN GENERAL.

ANY PERSON WHO VIOLATES A PROVISION OF THIS SUBTITLE OR OF A RULE, REGULATION, OR ORDER ADOPTED OR ISSUED UNDER THIS SUBTITLE IS GUILTY OF A MISDEMEANOR AND, ON CONVICTION, IS SUBJECT TO A FINE OF NOT MORE THAN \$1,000 FOR EACH OFFENSE.

(B) EACH DAY A SEPARATE OFFENSE.

EACH DAY THAT A VIOLATION CONTINUES IS A SEPARATE OFFENSE.

~~*(C) PENALTIES DOUBLE.*~~

~~FINES FOR EACH OFFENCE THAT CONTINUES UNABATED FOR A PERIOD OF 30 DAYS OR MORE WILL DOUBLE.~~

SECTION 3. AND BE IT FURTHER ORDAINED, That this Ordinance takes effect on the 180th day after the date it is enacted.