



## Legislation Text

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**File #:** 16-0735, **Version:** 0

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Introduced by: Councilmembers Henry and Clarke

### A Bill Entitled

An Ordinance concerning

#### **Inclusionary and Affordable Housing Requirements - Increasing Program Participation**

For the purpose of expanding the City's affordable and inclusionary housing programs; creating a Fair Housing Board to oversee the affordable and inclusionary housing programs; establishing the composition and duties of the Fair Housing Board; defining certain terms; expressing the intent of the City to fund the affordable housing program through the dedication of certain revenue; creating a Baltimore City Affordable Housing Fund; establishing the allowable uses of the Baltimore City Affordable Housing Fund; reducing the number and variety of affordable units that must be provided by developers receiving major public subsidies; eliminating the City's obligation to reimburse developers for the costs of compliance with inclusionary housing requirements; eliminating the Inclusionary Housing Board; changing the inclusionary housing requirements applicable to publically subsidized developments providing 30 or more residential units; establishing an offset fee that developers can pay in lieu of building affordable housing units under certain circumstances; repealing certain inclusionary housing requirements for developments that do not receive major public subsidies; eliminating a developer's option to substitute off-site inclusionary housing units for on-site units under certain circumstances; extending the period of time for which affordable housing units provided under the inclusionary housing law must remain affordable from 30 to 40 years; specifying that the requirements of this Ordinance apply to qualifying projects not yet approved by the Planning Department's Site Plan Review Committee on the date of its enactment; and generally relating to the City's affordable and inclusionary housing programs.

By repealing and reordaining, with amendments

Article 13 - Housing and Urban Renewal

Section(s) 2A-1, 2A-3 to 2A-5, 2B-1(b) and (g), 2B-4(d), 2B-6, 2B-7, 2B-21, 2B-22, 2B-51, 2B-52,  
2B-66, 2B-67, and 2B-71

Baltimore City Code  
(Edition 2000)

By repealing

Article 13 - Housing and Urban Renewal

Section(s) 2A-6, 2B-4(f), 2B-11 to 2B-17, 2B-23, and 2B-41 to 2B-45

Baltimore City Code  
(Edition 2000)

By adding

Article 13 - Housing and Urban Renewal

Section(s) 2A-7 to 2A-24, 2B-1(m-1)

Baltimore City Code  
(Edition 2000)

By repealing and reordaining, without amendment  
Article 13 - Housing and Urban Renewal  
Section(s) 2B-3  
Baltimore City Code  
(Edition 2000)

**Section 1. 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**

*Division I: General Administration*

Subtitle 2A . Affordable Housing Program

*Part I. Definitions; General Provisions*

**§ 2A-1. Definitions.**

(a) *In general.*

*In this subtitle, the following terms have the meanings indicated.*

(b) *Board.*

“Board” means the Fair Housing Board established by this subtitle.

(c) [(b)] *Commissioner.*

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

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

“Developer” means any person, firm, partnership, association, joint venture, corporation, or other for-profit or not-for-profit entity or combination of entities that develops or owns residential real estate.

(e) [(d)] *Eligible household.*

“Eligible household” means a household with an aggregate annual income of less than or equal to 150% of the median area income, adjusted for household size, as published and annually updated by the United States Department of Housing and Urban Development.

(f) [(e)] *Eligible property.*

“Eligible property” means any structure or lot in Baltimore City that meets or, on completion of renovation or construction, will meet the requirements for dwellings set forth in the City Zoning Code Article and the City Building, Fire, and Related Codes Article.

(g) [(f)] *Neighborhood.*

“Neighborhood” means an area delineated by a commonly accepted boundary, as determined by the Director of Planning.

(h) [(g)] *Program.*

“Program” means the Baltimore Affordable Housing Program established under this subtitle.

### § 2A-3. Program established.

(c) *Eligible activities.*

(1) Eligible activities authorized under this section must be conducted at a scale that, in the opinion of the Commissioner, is sufficient to address completely the blighting influences existing in the project area. [For this purpose, the “project area” may be no smaller than a single block face comprising both sides of a street or way.]

(2) The Commissioner, [in his or her discretion] with the approval of the Board,

shall use Program funds for the purposes of:

- (i) the acquisition, structural stabilization, and demolition of real property by the City {City Code Article 13, Subtitle 2}, when directly associated with the construction or rehabilitation of affordable housing;
  - (ii) the relocation of households, when that relocation is associated with the acquisition, structural stabilization, and demolition of real property by the City {City Code Article 13, Subtitle 2}; and
  - (iii) the administration and marketing of the eligible activities described in this subsection.
- (3) The Commissioner, [in his or her discretion] with the approval of the Board, shall use Program funds to provide appropriate financial incentives, including grants and loans, to developers, non-profit organizations, and eligible households for the purposes of:
- (i) the orderly and sustainable planning, preservation, rehabilitation, and development of economically diverse housing in City neighborhoods;
  - (ii) rental payment or home purchase assistance on behalf of eligible households for primary residency in eligible properties; and
  - (iii) the provision of buyer and tenant education and housing counseling services to eligible households in connection with housing opportunities in City neighborhoods and to maximize home ownership and rental sustainability.

#### § 2A-4. Rules and regulations.

(a) [Commissioner] Board to adopt.

The [Commissioner] Board shall adopt rules and regulations to carry out this

subtitle.

*(b) Approval by Board of Estimates.*

All rules and regulations adopted under this section must be approved by the Board of Estimates before they may take effect.

*(c) Filing with Legislative Reference.*

A copy of all rules and regulations adopted under this section must be filed with the Department of Legislative Reference before they take effect.

**§ 2A-5. Program capitalization.**

(1) It is the intent of the Mayor and City Council of Baltimore that the Program be capitalized annually by appropriations of the Mayor and City Council of Baltimore.

(2) It is the intent of the Mayor and City Council of Baltimore that the annual appropriations for the Program include a deposit into the Affordable Housing Fund established by § 2A-17 {"Fund established"} of this subtitle of a percentage of revenue received from:

(i) the recordation tax imposed in accordance with City Code Article 28, § 16-1 {"Tax imposed"}, and

(ii) the transfer tax imposed in accordance with City Code Article 28 § 17-2 {"Tax imposed - In general"}.

**[§ 2A-6. Annual report.**

The Commissioner shall issue to the Mayor and City Council of Baltimore an annual report that describes the Program's performance in the preceding year.]

**Part II. Fair Housing Board**

**§ 2A-7. Board established.**

There is a Fair Housing Board.

**§ 2A-8. Composition.**

*(a) in general.*

The Board comprises the following 9 members:

- (1) 4 members appointed by the Mayor and confirmed by the City Council in accordance with City Charter Article IV, § 6;
- (2) 2 members nominated by the Council President, appointed by the Mayor, and confirmed by the City Council in accordance with City Charter Article IV, § 6;
- (3) a member of the City Council, chosen by the Council President;
- (4) the Housing Commissioner, or the Commissioner's designee; and
- (5) the Planning Director, or the Director's designee.

*(b) Qualifications - general.*

Of the 4 members appointed by the Mayor:

- (1) 1 must be a current resident of subsidized housing;
- (2) 1 must be a lender experienced in lending practices for residential projects;
- (3) 1 must be a builder or developer in the City of residential projects; and
- (4) 1 must be a representative of a nonprofit entity that advocates for affordable housing in the City.

*(c) Qualifications - residency.*

- (1) all of the members must be residents of the City.
- (2) at least 1 member must be a member of an extremely low or very low income household, as defined in § 2B-3 of this Division I.

**§ 2A-9. Board officers; expenses.**

*(a) Chair.*

- (1) The Mayor designates 1 of the appointed members to be the Chair of the Board.
- (2) The Board may appoint a Vice-Chair and other officers as necessary or appropriate.

*(b) Compensation.*

The members of the Board:

- (1) receive no compensation for services rendered as members of the Board; but
- (2) are entitled to reimbursement for necessary and proper expenses incurred in performing their duties as a member.

**§ 2A-10. Meetings; quorum; voting.**

(a) *Meetings.*

The Board meets on the call of the Chair as frequently as required to perform its duties.

(b) *Quorum.*

A majority of the members constitutes a quorum for the transaction of business.

(c) *Voting.*

An affirmative vote of at least a majority of a quorum is needed for any official action.

**§ 2A-11. Staff.**

The Department of Housing and Community Development must provide staff for the Board.

**§ 2A-12. Annual Report.**

(a) *Required.*

On or before October 31 of each year, the Board must submit a report to the Mayor and the City Council and to the Planning Commission that:

- (1) *describes the Baltimore Affordable Housing Program's performance in the preceding fiscal year; and*
- (2) assesses efforts during the preceding fiscal year to create and sustain inclusionary housing in the City.

(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 Subtitle 2B of this Division I;
- (2) the number and proportion generated under each of the various provisions of Subtitle 2B of this Division I (e.g., major public subsidy or significant rezoning);
- (3) the number and proportion generated at various affordable costs;
- (4) a list and description of all modifications or variances requested, granted, and denied under Subtitle 2B of this Division I, 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;
- (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"}, 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"}.

(c) *Targets.*

For each of the measures listed in subsection (b) of this section, the Report may also specify targets that the City should seek to achieve in ensuing fiscal years.

§ 2A-13. **Duties.**

In addition to the other duties specified elsewhere in this Division I, the Board is responsible for:

- (1) approving requests under § 2B-21 {"Project receiving major public subsidy"} and advising the Housing Commissioner within 20 days of referral by the Commissioner, in a manner determined by the Board;
- (2) advising the Housing Commissioner and the Planning Director in the performance of their respective duties under Subtitle 2B of this Division I; and
- (3) approving any and all uses of the Inclusionary Housing Offset Fund and the Affordable Housing Fund.

§§ 2A-14 to 2A-16. *{Reserved}*

*Part III. Affordable Housing Fund*

§ 2A-17. **Fund established.**

(a) *In general.*

There is a Baltimore City Affordable Housing Fund.

(b) *Nature of Fund.*

The Baltimore City Affordable Housing Fund is a continuing, nonlapsing fund established by authority of City Charter Article I, § 10.



**§ 2A-18. Revenue sources.**

The Fund comprises:

- (1) money appropriated to the Fund in the annual Ordinances of Estimates, and
- (2) grants or donations made to the Fund.

**§ 2A-19. Use of Fund - General.**

Money deposited in the 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
- (2) to fund home buyer, down payment, and rental assistance programs;
- (3) to provide gap funding for affordable housing rehabilitation and new construction projects;
- (4) to fund community land trusts; and
- (5) 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.

**§ 2A-20. Use of Fund - Administration.**

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

**§ 2A-21. Use of Fund - Public assistance.**

(a) *Eligible Households.*

All households that receive assistance from the Fund must have earnings of not more than 80% of the area median income for the metropolitan region that encompasses Baltimore City.

(b) *Targeted households.*

- (1) At least 75% of the households that receive assistance from the Fund must have earnings of not more than 60% of the area median income for the metropolitan region that encompasses Baltimore City.
- (2) At least 33% of households that receive assistance from the Fund must have earnings of not more than 30% of the area median income for the metropolitan region that encompasses Baltimore City.

**§ 2A-22. Use of Fund - Production of units.**

At least 75% of the Fund's expenditures in any fiscal year must be for costs associated with individual affordable housing development projects.

**§ 2A-23. Administration.**

- (a) *Commissioner may propose procedures.*

The Commissioner may propose procedures for administering the Fund.

- (b) *Board to approve.*

On the request of the Commissioner, the Board must review, and approve or disapprove of, proposed policies on the activities and priorities for which Fund money is to be used to promote economically diverse housing in the City.

**§ 2A-24. Reporting to Board.**

- (a) *In general.*

The Housing Commissioner must provide the Board, on a regular basis, information on the uses and impact of the Fund.

- (b) *Inclusions.*

The information must include:

- (1) expenditures from the Fund;
- (2) a list of projects funded through the Fund;
- (3) the number and income levels of households assisted by the Fund;
- (4) funds leveraged by 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 Fund's impact.

**Subtitle 2B. Inclusionary Housing Requirements**

***Part I. Definitions; General Provisions***

**§ 2B-1. Definitions - General.**

- (b) *Board.*

“Board” means the [Inclusionary Housing Board established by this subtitle] Fair Housing Board established by § 2A-7 of this Division I.

(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] Definition.*

“Major public subsidy” [includes] means:

- (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.

(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; or
- (iii) any City funds used in a low income housing tax credit project.

(m-1) *Typology map.*

(1) *In general.*

“Typology map” means the map of Baltimore City’s housing market typology, approved by the City’s Planning Commission and published by the City’s Planning Department.

(2) *Typology categories.*

The typology used on the map is a housing market classification scheme based on quantitative data and a statistical process called cluster analysis, dividing the city into regions described as:

- (i) regional choice,

- (ii) middle market choice,
- (iii) middle market,
- (iv) middle market stressed,
- (v) stressed, and
- (vi) unclassified, which includes industrial, institutional, commercial, and greenspace.

§ 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% 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% of the AMI, adjusted for household size.

(c) *Affordable unit.*

“Affordable unit” means a residential unit that is required by this subtitle to be provided at an extremely low, very low, low, or moderate affordable housing cost.

(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.

(e) *Eligible household.*

“Eligible household” means:

- (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) *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.

(g) *Market rate.*

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

## § 2B-4. Findings and policy.

(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.

[(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-6. [Scope and applicability. ] Limited exemption.

[(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-7. Rules and regulations .

(a) *In general.*

[The Housing Commissioner, in consultation with the Inclusionary Housing] The Board, in consultation with the Housing Commissioner 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];
- (3) determining eligibility to purchase or rent affordable units; and
- (4) setting standards for sale or rental prices for affordable units.

(c) *Scope - Requiring timely response.*

(1) The rules and regulations must

(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

(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.

(f) *Filing with Legislative Reference.*

A copy of all rules and regulations adopted under this section must be filed with the Department of Legislative Reference before they become effective.

***Part II. [ Inclusionary Housing Board ]***

**[§ 2B-11. Board Established. ]**

[There is an Inclusionary Housing Board.]

**[§ 2B-12. Composition. ]**

[(a) *In general.*]

[The board comprises the following 15 members:

- (1) 9 members appointed by the Mayor and confirmed by the City Council in accordance with City Charter article IV, § 6;
- (2) 4 members nominated by the Council President, appointed by the Mayor, and confirmed by the City Council in accordance with City Charter article IV, § 6;
- (3) the Housing Commissioner; and
- (4) the Planning Director.]

*[(b) Qualifications - General.]*

[Of the 13 members appointed by the Mayor:

- (1) 1 must be a representative of a nonprofit entity that provides housing services in the City.
- (2) 1 must be a neighborhood association leader.
- (3) 1 must be a civil engineer practicing in the City.
- (4) 1 must be an architect practicing in the City.
- (5) 1 must be a lender experienced in lending practices for residential projects.
- (6) 1 must be a builder or developer in the City of single-family detached or attached dwellings.
- (7) 1 must be a builder or developer in the City of multiple-family dwellings.
- (8) 1 must be a representative of a nonprofit entity that advocates for affordable housing in the City.
- (9) 1 must be a representative of a labor union that represents municipal or other workers in the City.]

*[(c) Qualifications - Residency.]*

- [(1) All of the members must be residents of the City.
- (2) At least 1 member must be a member of an extremely low or very low income household.
- (3) Each of the 4 members nominated by the Council President must reside in a different City Council district.]

**[§ 2B-13. Board officers; expenses. ]**

*[(a) Chair.]*

- [(1) The Mayor designates 1 of the appointed members to be the Chair of the Board.
- (2) The Board may appoint a Vice-Chair and other officers as necessary or appropriate.]

*[(b) Compensation.]*



[The members of the Board:

- (1) receive no compensation for services rendered as members of the Board; but
- (2) are entitled to reimbursement for necessary and proper expenses incurred in performing their duties as a member.]

**[§ 2B-14. Meetings; quorum; voting. ]**

[(a) *Meetings.*]

[The Board meets on the call of the Chair as frequently as required to perform its duties.]

[(b) *Quorum.*]

[A majority of the members constitutes a quorum for the transaction of business.]

[(c) *Voting.*]

[An affirmative vote of at least a majority of a quorum is needed for any official action.]

**[§ 2B-15. Staff. ]**

[The Department of Housing and Community Development must provide staff for the Board.]

**[§ 2B-16. Annual Report. ]**

[(a) *Required.*]

[On or before October 31 of each year, the Board must submit a report to the Mayor and the City Council and to the Planning Commission that assesses efforts during the preceding fiscal year to create and sustain inclusionary housing in the City.]

[(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;
- (2) the number and proportion generated under each of the various provisions of this subtitle (e.g., major public subsidy or significant rezoning);
- (3) the number and proportion generated at various affordable costs;
- (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;
- (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"}, 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"}.]

*[(c) Targets.*

For each of the measures listed in subsection (b) of this section, the Report may also specify targets that the City should seek to achieve in ensuing fiscal years.]

**[§ 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.]

***Part III. Inclusionary Requirements***

**§ 2B-21. Project receiving major public subsidy.**

*(a) Applicability of section.*

This section applies to any residential project that:

- (1) provides 30 or more residential units; and
- (2) receives a major public subsidy.

*(b) Affordable units required.*

- (1) In every residential rental project subject to this section, at least [20%] 10% of all residential units must be [affordable units] provide to eligible households at or below a very low rental cost.
- (2) In every residential ownership project subject to this section, at least 10% of all residential units must be

provided to eligible households at or below a low ownership cost.

[(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.]

(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] Upon the recommendation of the Inclusionary Housing Board, the [City] Housing Commissioner 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.]

(d) [(e)] *Modifications [or waivers - Board of Estimates].*

(1) [In addition to the modifications and waivers provided for in subsection (d) of this section, the] 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.

(e) *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 § 3-206, 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.

[(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.]

**§ 2B-22. [Project benefitting from significant land use authorization or rezoning. ] Fee in lieu option.**

*(a) Offset threshold in general.*

If the average sales price, or average income approach valuation, for the units being developed exceeds the median sales price for middle market choice clusters in the typology map, the developer may choose to deposit into the affordable housing fund an offset fee, in lieu of developing inclusive affordable units, equal to the following amounts:

(1) \$75,000 for each unit of very low affordability being offset; and

(2) \$50,000 for each unit of low affordability being offset.

*(b) Typology multiplier.*

(1) If the units being developed are in the regional choice cluster, the offset fee payable under this section is:

(i) \$225,000 for each unit of very low affordability being offset; and

(ii) \$150,000 for each unit of low affordability being offset.

(2) If the units being developed are in an institutional, industrial, commercial, or greenspace cluster not otherwise classified as a particular market typology:

(i) the offset fee payable under subsection (a) of this section must be multiplied by 3; or

(ii) if the Board determines that the project will sufficiently stimulate economic investment, promote neighborhood stability, and increase public safety for adjacent neighborhoods that are not regional choice, the Board may reduce this multiplier to no less than 2.

(c) Time of payment.

A developer opting to make a payment under this section in lieu of developing inclusive affordable units must make the required payment before a use and occupancy permit for the project is received.

[(a) *Applicability of section.*]

[This section applies to any residential project that:

(1) provides 30 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%] 5% 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 § 3-206, 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 the City Zoning Code, § 3-206. 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
Units at or Below Moderate Cost	40,000]	\$

(3) Investment Threshold for Ownership Development:

Units at or Below Low Cost		\$110,000
Units at or Below Moderate Cost	50,000]	\$

*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 VI. Continued Affordability*

#### § 2B-51. Rental units.

##### (a) *Affordability period.*

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] 40 years from the date of its initial occupancy.

#### § 2B-52. Ownership units.

##### (d) *Affordable Housing Agreement.*

The [Housing Commissioner’s] Board’s rules and regulations must include provisions for the execution and filing in the land records of [affordability] affordable housing agreements that embody the requirements of this section.

### *Part VII. Inclusionary Housing Offset Fund*

#### § 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.]

##### (a) *Commissioner may propose procedures.*

The Housing Commissioner may propose procedures for administering the Offset Fund.

(b) *Board to approve.*

On the request of the Commissioner, the Board must review, and approve or disapprove of, proposed policies on the activities and priorities for which Offset Fund money is to be 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 VIII. Administrative and Judicial Review***

**§ 2B-71. Administrative appeals.**

(a) *Right of appeal.*

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

(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 of Estimates:

- (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.

**Section 2. And be it further ordained,** That the catchlines contained in this Ordinance are not law and may not be considered to have been enacted as a part of this or any prior Ordinance.

**Section 3. And be it further ordained,** That the provisions of this Ordinance are applicable to all qualifying projects that have not yet received approval from the Planning Department's Site Plan Review Committee at the time that this Ordinance takes effect.

**Section 4. And be it further ordained,** That this Ordinance takes effect on the 30<sup>th</sup> day after the date it is enacted.