



City of Baltimore

City Council
City Hall, Room 408
100 North Holliday Street
Baltimore, Maryland 21202

Legislation Text

File #: 22-0195, Version: 0

Explanation: Capitals indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.

* **Warning:** This is an unofficial, introductory copy of the bill.
The official copy considered by the City Council is the first reader copy.

Introductory*

City of Baltimore Council Bill

Introduced by: Councilmember Ramos, President Mosby

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terms; repealing certain findings and policy statements; repealing rules of statutory interpretation that have been superseded by the enactment of Code-wide revisions; requiring the Commissioner of the Department of Housing and Community Development to adopt an inclusionary housing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

Section(s) 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 Development

Section(s) 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)

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

Section(s) 2B-5, 2B-11 through 2B-15, inclusive, 2B-35, 2B-36, 2B-37, and the subtitle

“Part VI. Continued Affordability”, respectively

to be Section(s) 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.

(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.]

[(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.]

[§ 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% 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.]

(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.

(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.

[(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.]

(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.]

[(2) These benefits include:]

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

the [(ii) the expenditure of public funds, including state and federal funds under 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-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-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.
- [(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 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;

(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.

- (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;]

[(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.]

[§ 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]

approval of [(2) neither the developer nor the Housing Commissioner need obtain the
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:]

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

include [(ii) exceptionally high ongoing occupancy costs make it infeasible to
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:]

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

[(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]

[§ 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 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]
- [(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-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
- (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-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[VI]. 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]

[(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 AMI.]

[§ 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.