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**Commissioner of Housing and Community Development for Baltimore City**

## **Proposed Regulations: Inclusionary Housing**

Authority: These proposed regulations are issued pursuant to the mandate and authority of Baltimore City Code, Article 13, Subtitle 2B, "Inclusionary Housing Requirements".

**Comment Period: Pursuant to Ordinance 07-474, enacted June 19, 2007, public comment on these proposed regulations is being requested. All comments must be received in the Office of the Commissioner of Housing and Community Development for Baltimore City, no later than close of business on December 3, 2007, in order to receive consideration. Following the comment period, final interim regulations will be issued in December 2007.**

Please send comments to Steve Janes at: [steve.janes@baltimorecity.gov](mailto:steve.janes@baltimorecity.gov). Or by post to:  
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## **Commissioner of Housing and Community Development for Baltimore City**

### **Proposed Regulations: Inclusionary Housing**

Authority: Baltimore City Code, Article 13, Subtitle 2B, “Inclusionary Housing Requirements”, adopted June 19, 2007.

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## 2.1 Definitions.

Affordable Housing unit: a residential dwelling unit or rooming unit which is provided to an eligible household at an affordable housing cost.

Affordable Housing cost includes the following:

Extremely low housing cost means an amount not exceeding  $1/12^{\text{th}}$  of 30% of 30% of the Area Median Income, adjusted for household size.

Very low housing cost means an amount not exceeding  $1/12^{\text{th}}$  of 30% of 60% of the Area Median Income, adjusted for household size.

Low housing cost means an amount not exceeding  $1/12^{\text{th}}$  of 30% of 80% of the Area Median Income, adjusted for household size.

Moderate housing cost means an amount not exceeding  $1/12^{\text{th}}$  of 120% of the Area Median Income, adjusted for household size.

Area Median Income (AMI): the area median household income for the metropolitan region which encompasses Baltimore City, as published and annually up-dated by the United States Department of Housing and Urban Development in the Federal Register.

Board: the Inclusionary Housing Board constituted by Ordinance 07-474, as amended from time to time.

Commissioner: the Commissioner of Housing and Community Development for Baltimore City, or the Commissioner's designee.

Date of original sale: the date of settlement for purchase of an Affordable Housing Ownership unit.

Date of original rental: the date that the first lease agreement or other contract for the rental occupancy of an Affordable Housing Rental unit takes effect.

Developer: a person, firm, partnership, association, joint venture, corporation, or other entity or combination of entities which undertakes or proposes to undertake a residential development project or a mixed-use development project containing residential dwelling units or rooming units.

Documented improvements: improvements made to an Affordable Housing Ownership unit by or under the direction of the eligible household, and paid for in full by that same eligible household, as evidenced by receipts or other documentation provided by or on behalf of that eligible household. Improvements do not include ordinary maintenance and repairs or remediation of deferred maintenance.

Eligible household: a household which has been certified by the Commissioner as eligible to purchase or rent an affordable housing unit, as provided in these regulations, and which possesses a Certificate of Eligibility to purchase or rent an Affordable Housing unit.

Financially infeasible: a finding by the Commissioner, based upon information provided by the developer, used to evaluate a request for a modification to or waiver of requirements of Article 13, Subtitle 2B of the Baltimore City Code, that the developer will be unable to complete the residential development project or mixed-use development project unless the requested modification or waiver, or a lesser modification or waiver as determined by the Commissioner, is granted.

Fund: the Inclusionary Housing Offset Fund established pursuant to Article 13, Subtitle 2B of the Baltimore City Code.

Housing cost includes one or both of the following:

Ownership housing cost means a sales price resulting from an arm's-length transaction which requires a monthly payment which includes mortgage principal and interest, taxes, insurance, homeowner association fees or condominium association fees, and other assessments.

Rental housing cost means a monthly payment for lease, let, sublet, or other rights to occupy a residential dwelling unit, as defined in a lease agreement or other document executed by the owner or owner's agent and by the tenant or occupant of the rented housing unit.

Income: the gross or pre-tax income received annually from all sources by all employed and unemployed adults in an eligible household, including valuable in-kind contributions to the household or any member of the household. Sources of income include any of the following:

- Wages, salaries, tips, overtime pay, commissions, or other earnings
- Child support, in cash or in kind
- Alimony
- Interest from savings, checking, or other financial accounts, or from mortgages held
- Dividends from stocks, bonds, or similar financial instruments
- Social Security benefits
- Supplemental Security benefits
- Veterans benefits
- Unemployment insurance benefits
- Temporary Assistance to Needy Families (TANF) or Temporary Cash Assistance (TCA)
- Bonus payments if received on a regular basis each year
- Pension or retirement payments or benefits
- Long-term disability benefits
- Any other stipends or annuities

Sources of income exclude basic service and hostile fire pay received by a member of the household temporarily absent from the household while in military service, payment for service

in the National Guard, and any other income excluded from consideration by operation of Federal or State law.

Market rate: not restricted to an affordable housing ownership cost or affordable rent.

Neighborhood: an area delineated by a commonly accepted boundary, as determined by the Director of the Baltimore City Department of Planning or his designee.

Off-site or Off site: outside the metes and bounds of the real property on which a residential development or project is located.

Priority marketing period: a period of no more than 90 days from the date the Commissioner gives the developer or developer's agent an approved list of eligible households to whom the Affordable Housing units must be marketed, during which time the developer's Affordable Housing units must be exclusively available to persons possessing a Certificate of Eligibility.

Purchaser's or Renter's Certification form: a document signed by the head of an eligible household, and by all other members of the household who are 18 years old or older, stating that they/ he/ she have/ has occupied and will continue to occupy the Affordable Housing unit in accordance with the Occupancy Requirements of these regulations.

Residential development or residential project ("project"): any new construction, substantial renovation, or combination of new construction and renovation which is designed, in whole or in part, to provide thirty (30) or more residential dwelling units. If the project is being created or will be created in phases or sections, or both, the cumulative number of residential dwelling units in all phases and/or sections will determine the applicability of these regulations to the project.

Substantial renovation: renovation of a vacant dwelling unit needed to bring the dwelling into compliance with applicable local laws and regulations, including the Housing Code, Fire Code, Health Code, and Zoning Code of Baltimore City.

Vacant dwelling: a residential real property which has been vacant or abandoned for at least one (1) year, as cited on a violation notice issued under the Building, Fire, and Related Codes of Baltimore City, or which has been owned by the Mayor and City Council of Baltimore for one (1) year or more and is in need of substantial renovation.

## 2.2 Eligibility to Purchase or rent Affordable Housing units.

### (a) Application.

A person or persons constituting the adult member or members of a household residing in Baltimore City and desiring to purchase or rent an Affordable Housing unit must apply, at a place and time specified by the Commissioner, to be placed on a waiting list from which persons will be certified as eligible to purchase or rent an Affordable Housing unit.

When the Commissioner is informed by a developer or developer's agent that an Affordable Housing unit is available or will become available within sixty days, the Commissioner will contact applicants whose names are at the top of the waiting list and ask that they provide proof and level of income so that they may be certified as eligible to purchase or rent an Affordable Housing unit at one of the four affordable housing cost categories.

To establish proof and level of income each such applicant and co-applicant must provide at a minimum the following documentation, as may be appropriate to the household's source(s) of income and/or composition:

- Copies of the two most recently filed Federal income tax returns
- Copies of the two most recently issued Federal W-2 forms
- Copy of divorce decree or separation agreement, if the most recently filed Federal income tax return showed the person as "Married" and the applicant or co-applicant declares a status of divorced or separated
- Copies of two most recent employment pay stubs from each employer
- Copy of award letter from the Social Security Administration covering year of application
- Copy of award letter from the Department of Veterans Affairs covering year of application
- Copy of pension award letter or statement of benefits for current year
- Copy of award letter for Temporary Assistance to Needy Families (TANF) or Temporary Cash Assistance (TCA)
- Copies of birth certificates for each applicant
- Copies of birth certificates for every member expected to reside in the household following its purchase or renting of an Affordable Housing unit
- Copy of current lease, and copies of two most recent bills for electricity service at applicant's current address
- A signed, notarized declaration of child support in cash or in kind for each minor member expected to reside in the household following its purchase or renting of an Affordable Housing unit, made by the provider of support if such support is being given directly to an adult member of the household or to the minor child.
- A signed, notarized declaration of alimony received by an adult member of the household, if not detailed in a Federal income tax return or other document

- Copy of a monthly statement or other statement of interest income or dividends received within the preceding twelve months

The Commissioner reserves the right to require certified copies of a household member's IRS tax return forms, and to require additional documentation not listed above.

Should the Commissioner determine that any document provided in support of an application to be certified as eligible has been altered in any way, or is of questionable provenance, the Commissioner will disqualify the applicant. Should a disqualification be determined by the Commissioner, the applicant will be notified at the address given on the application, and will be given ten days to respond, at a place specified in the notification, with documentation which would negate the disqualification. The Commissioner has final administrative discretion to accept, or reject as insufficient, any such alternative documentation. Incomplete or insufficient documentation will result in a household not receiving a Certificate of Eligibility.

A household who does not receive a Certificate of Eligibility by reason of failure to comply with requirements for documentation of income or household composition, as described hereabove, may re-apply to have its name placed anew on the waiting list.

If the available Affordable Housing unit is located in a development that was constructed following displacement of residents who were not eligible for benefits under the Uniform Relocation Act, such displaced former residents who have applied to the waiting list will be among the households first contacted by the Commissioner to be reviewed to qualify for a Certificate of Eligibility. If the available Affordable Housing unit is located in the same neighborhood as an applicant's current address, that applicant will be among the households first contacted by the Commissioner.

For administrative efficiency, the Commissioner may categorize the waiting list by the number of bedrooms that a housing unit would need to contain in order to accommodate the household's needs and composition. At the time of its initial application to the waiting list the household will be requested to declare its preference for a specific number of bedrooms in its anticipated housing. The Commissioner reserves the right to use Federal housing standards or guidelines to match referrals of applicant households to prospectively available housing units, and shall ensure that any applicable requirements of Baltimore City Housing, Fire, Health, and Zoning Codes will be met at the time that the household composition is matched to one or more categories of housing unit size.

Households including a person who has owned residential property, or held an interest in residential real property, within three years prior to the date of review for a Certificate of Eligibility, cannot receive said certificate until three years has elapsed since such ownership or holding ended or ceased. The Commissioner may waive this restriction for good cause upon request of the household. This restriction does not apply to persons whose residential property has been acquired by the Mayor and City Council of Baltimore within three years prior to the date of application for a Certificate of Eligibility.

Any household containing an adult who owes a debt to the City of Baltimore or to the Housing Authority of Baltimore City will be disqualified from receiving a Certificate of Eligibility until such debt has been repaid or discharged.

At the time of initial application to the waiting list, the applicant household will be given a list of United States Department of Housing and Urban Development certified housing counseling agencies. The applicant household must complete to the counseling agency's satisfaction a course of housing counseling before receiving a Certificate of Eligibility. The Commissioner may require the applicant to provide a copy of the counseling agency's certificate of completion of housing Counseling before proceeding with issuance of a Certificate of Eligibility.

A household determined to be eligible will then be issued a non-transferrable Certificate of Eligibility. Certificates of Eligibility will be valid for a period of twelve (12) months from date of issue stated thereon, and signed by the Commissioner and by each adult member of the eligible household as evidence of validity.

Prior to its expiration date, a Certificate of Eligibility remains valid as long as the household's income does not exceed the income limits specified thereon, as evidenced when the Certificate-holder submits its application for a mortgage loan or its application to lease.

A Certificate of Eligibility may be renewed by the Commissioner prior to its expiration if the household re-applies for it and provides documentation satisfactory to the Commissioner that the household continues to qualify as an eligible household. The renewal term will be evidenced by a revised expiration date that will be twelve months following the original expiration date.

A household possessing a Certificate of Eligibility which has not expired may, if the household's income or composition changes, request a redetermination by the Commissioner of the household's eligibility. Following documentation of any changes of income or household composition which would change the household's Affordable Housing Cost, the Commissioner may issue a replacement Certificate of Eligibility specifying the revised income limit and/or new number of bedrooms required in the Affordable Housing unit needed by the household, in exchange for the original Certificate of Eligibility.

The household may use its Certificate of Eligibility to apply for and, if approved by the seller, to purchase, or, if approved by the lessor, to rent, either an Affordable Housing Ownership unit or an Affordable Housing Rental unit.

(b) Recertification for Affordable Housing Rental Units

For households which are tenants in Affordable Housing Rental units, a biannual recertification of eligibility must be completed on or before the anniversary date of the lease for the Affordable Housing Rental unit.

If the household is receiving tenant-based rental assistance, the annual recertification for such tenant-based rental assistance will serve to comply with this requirement.

If the household is not receiving tenant-based rental assistance, the lessor, owner or owner's agent may use one of the following methods to recertify the household as eligible for Affordable Housing Rental units for any additional year:

- i. Examine source documents evidencing annual income, as provided in (a) above;
- ii. Obtain from the household a written statement of the amount of the household's annual income and family size and composition, along with a certification that the information provided by the household is complete and accurate. The certification must state that the family will provide source documents upon request within thirty days of such request.

A lessor, owner or owner's agent using this method of recertifying a household must re-examine the household's annual income and composition in accordance with (i) above every sixth year of the household's tenancy during the affordability period for the Affordable Housing Rental unit. Otherwise, a lessor, owner or owner's agent who accepts a household's written statement and certification is not required to examine source documents unless there is information indicating that the household's written statement failed to state accurately and completely the household's annual income and family size and composition.

- iii. Obtain a written statement from the administrator of a government program under which the household receives benefits and which examines at least biannually the income and composition of the household. The statement must indicate the household size and composition and state the household's annual income; or alternatively, the statement must indicate the current dollar limit for extremely low, very low, or low income families of the same family or household size as the tenant, and state that the household's annual income does not exceed the limit applicable to the household.

A household which has been requested to provide documentation according to (i), (ii), or (iii) above and which does not comply with such request in the time and manner specified in the written request to the household will be notified by the lessor, owner or owner's agent that effective on the anniversary date of the lease, or another date thereafter consistent with applicable landlord-tenant relations law, the household's rent for the Affordable Housing Rental unit will be increased to the same level as a comparable market rate rental unit in the same development. A household whose eligibility for an Affordable Housing Rental unit has lapsed or ceased as a result of non-compliance with the request of the lessor, owner or owner's agent and which does not proffer payment of

the market rate rent for its housing unit will become a tenant by sufferance subject to ejection from the unit in accordance with Maryland landlord-tenant relations law.

### 2.3 Occupancy requirements.

Except for the City of Baltimore in its exercise of its right of first refusal to purchase Affordable Housing Ownership units, the eligible household must occupy and reside in the Affordable Housing unit as its primary residence. As evidence of fulfilling this requirement, the household shall provide, at least biannually or at such shorter interval as may be required by the Commissioner in response to information suggesting that the eligible household is not continuously occupying the Affordable Housing unit, a certification, on a Purchaser's or Renter's Certification form prescribed by the Commissioner, which certifies that the household has continued, does, and will continue to occupy and reside in the Affordable Housing unit.

This requirement will continue until the eligible household vacates the Affordable Housing unit, or in the case of Affordable Housing Ownership units until the eligible household vacates the Affordable Housing unit or until the completion of the eligible household's eleventh year of continuous and uninterrupted occupancy and residence in the unit, whichever is first.

If the head of the eligible household dies, or is removed from the Affordable Housing unit for causes or reasons beyond his/ her control, including for medical reasons, with no reasonable prospect of becoming able to return to live in the Affordable Housing unit, any other adult then a member of the eligible household may declare himself/ herself the replacement head of household, and assume the rights, duties and responsibilities of the head of household for purposes of recertification of occupancy and residence in the Affordable Housing unit.

If the household is leasing an Affordable Housing Rental unit, the assumption of head of household status pursuant to Inclusionary Housing requirements does not supersede any rights of the lessor under the lease then in force, nor any rights of the lessor provided by law. If the household has purchased an Affordable Housing Ownership unit financed by a mortgage, the mortgagee may require the replacement head of household to execute such assurances as are customary in order to secure uninterrupted ownership, financing and occupancy of the unit. If the owner is also a member of a homeowners association or condominium association, the association may require the replacement head of household to execute such assurances as are customary in order to secure uninterrupted membership in the association.

If the eligible household fails to occupy the Affordable Housing Ownership unit which it has purchased, or the Affordable Housing Rental unit which it has leased, the Commissioner will revoke or cancel the household's Certificate of Eligibility.

If an eligible household which has purchased an Affordable Housing Ownership unit purchases another residential unit, the head of household must notify the Commissioner of the purchase and offer the Affordable Housing Ownership unit then owned by the household to the City of Baltimore before offering the unit to any other prospective purchaser.

If during the first ten years of initial occupancy of an Affordable Housing Ownership unit an eligible household which has purchased the Affordable Housing Ownership unit is required to move out of the Baltimore metropolitan area for employment (including military redeployment or reassignment) or health reasons, for a period not to exceed 24 months continuous duration, the

Commissioner may upon request of the eligible household grant a temporary waiver of the requirement to continuously occupy and reside in the Affordable Housing unit. The Affordable Housing Ownership unit owner must certify that he/she will re-occupy and resume residence in the Affordable Housing unit within the term of the waiver granted by the Commissioner. The Commissioner may extend this time limit for good cause upon request of the household. If the household fails to re-occupy and resume residence in the Affordable Housing Ownership unit within 30 days of the expiration of the waiver, the Commissioner must proceed to sell the Affordable Housing unit on behalf of the household in accordance with the terms of these regulations and the covenants binding upon the deed or title to the Affordable Housing Ownership unit.

When granting a waiver to an Affordable Housing Ownership unit owner, the Commissioner will establish the allowable rent which the household may charge during the temporary period of the owner's absence. This rent will not exceed the total of principal and interest payments on the owner's current mortgage or on a mortgage amount which does not exceed the owner's original purchase price, whichever is less, plus real estate taxes, homeowner's insurance premiums, reasonable management fees, homeowners association or condominium association fees, and reasonable expenses associated with maintenance of the unit. If the owner retains responsibility for payment of certain public utilities, these expenses as estimated by the Commissioner will be added to the allowable rent. The owner will furnish the Commissioner with true copies of any application for lease and any lease executed by the owner covering the term of the Commissioner's waiver or any part thereof. The term of any lease shall not exceed or extend beyond the expiration of the waiver.

An eligible household which does not continuously occupy its Affordable Housing unit and which does not request and receive from the Commissioner a waiver as described hereabove will forfeit its right to occupy the unit, and become a tenant by sufferance subject to ejection from the unit in accordance with Maryland landlord-tenant relations law and the terms of the covenants running with title to the real property where the unit is located.

These requirements expire on the eleventh anniversary of the date of settlement at which the eligible household took title to the Affordable Housing Ownership unit.

An eligible household which is a tenant of an Affordable Housing Rental unit must occupy the unit as its residence and is prohibited from re-renting or subletting the unit or any portion thereof. A tenant must provide certification at least biannually, in a form and manner prescribed by the Commissioner, that it has resided and will continue to reside only in the Affordable Housing Rental unit. A declaration by an eligible household of a change of household income or composition, which may be acceptable to the Commissioner upon verification, does not override or obviate any rights of the lessor under the terms of the lease then in force, including the right to terminate the lease in accordance with provisions of law. An eligible household renting an Affordable Housing Rental unit and determined to have violated or not complied with these requirements will forfeit its right to occupy the unit, and become a tenant by sufferance subject to ejection from the unit in accordance with Maryland landlord-tenant relations law.

2.4 Requirements to Provide Affordable Housing units.

A developer undertaking or proposing a residential development project or a mixed-use development project containing residential units, which will provide thirty (30) or more residential units upon completion of the project, must apply to the Commissioner for approval of the project and comply with the requirements of these regulations.

(a) Projects receiving major public subsidy.

A development project receiving, or expected to receive, a major public subsidy in accordance with the provisions of Article 13, Subtitle 2B, must request and receive approval from the Commissioner for any variation from the following requirements.

1. At least 20% of all residential units will be Affordable Housing units.
2. All of the required Affordable Housing units will be complementary in exterior appearance to the market rate residential units in the same project.
3. All of the required Affordable Housing units will be comparable to the market rate residential units in number of bedrooms per unit, including a comparable distribution of bedroom counts per unit in residential developments containing residential units with varying numbers of bedrooms unless this bedroom requirement is exempted by the Commissioner.
4. All of the required Affordable Housing units will be comparable to the market rate residential units in overall quality of construction, as evidenced by equal compliance with applicable provisions of the Housing, Fire, Health, and Zoning Codes of Baltimore City.

A developer may request a variance from any of the above requirements by submitting a written request to the Commissioner. The request should be submitted following a Pre-Development Meeting with the Planning Department and prior to the developer's first scheduled Site Plan Review Committee meeting.

A developer requesting a variance from any of the above requirements must submit to the Commissioner information and documentation which could establish to the Commissioner's satisfaction the development's financial infeasibility if the requested variation would not be approved. Upon receiving and reviewing such information and documentation, the Commissioner will make a preliminary determination whether the development would be financially feasible without the requested variation if cash subsidies pursuant to Article 13, Subtitle 2B were granted in order to offset the financial impact on the developer of providing the Affordable Housing units required by Article 13, Subtitle 2B.

The Commissioner will then ascertain if there is adequate funding in the Fund to provide the developer a cash subsidy as a cost offset to the impact of providing Affordable Housing units. If there is adequate funding in the Fund, the Commissioner will reserve funding sufficient to offset the financial impact on the developer, and notify the

developer within twenty (20) days that such funding has been reserved for the development. Within ten days of the Commissioner's notification, the developer must accept in writing the offer of cost offsets or notify the Commissioner that the developer does not accept the offer of cost offsets and prefers to maintain the request in order to seek a determination by the Commissioner with recommendation by the Board.

The Commissioner will review the request and may consult with the Planning Department and other Baltimore City agencies concerning the request. The Commissioner will inform the Chair of the Board of the request, and the Chair will schedule a meeting of the Board to occur within twenty days of the date of referral to the Board. If a regularly scheduled or previously scheduled meeting of the Board will occur within twenty days of the date of referral, the Chair will include the request in the Board's meeting agenda. The Board will meet to consider the request, and may request appearance by the developer and any other persons or representatives of neighborhood or community associations which may be concerned with the request.

At its meeting, following presentation to the Board of all information deemed by the Chair to be appropriate and necessary for purposes of reviewing the developer's request, the Board will vote to recommend approval, disapproval, or modification of the request. The Board's recommendation will be provided in writing to the Commissioner.

Following receipt of the Board's recommendation, the Commissioner will determine whether to approve, disapprove, or modify the developer's request, and will provide the developer, within 45 days of the developer's request, notification of the determination. In the determination, the Commissioner may find that the development would be financially infeasible without approval of all or part of the developer's request.

In the determination, the Commissioner will either:

- (i) exempt the development from the requirements with which the developer's request was concerned; or
- (ii) modify the requirements with which the developer's request was concerned; or
- (iii) affirm the requirements with which the developer's request was concerned.

(b) Projects benefitting from significant land use authorization or rezoning.

A development project made possible by, or benefitting from, a significant land use authorization or rezoning in accordance with the provisions of Article 13, Subtitle 2B, must request and receive approval from the Commissioner for any variation from the following requirements.

1. At least 10% of all residential units will be Affordable Housing units.
2. All of the required Affordable Housing units will be complementary in exterior appearance to the market rate residential units in the same project.

3. All of the required Affordable Housing units will be comparable to the market rate residential units in number of bedrooms per unit, including a comparable distribution of bedroom counts per unit in residential developments containing residential units with varying numbers of bedrooms unless this bedroom requirement is exempted by the Commissioner.
4. All of the required Affordable Housing units will be comparable to the market rate residential units in overall quality of construction, as evidenced by equal compliance with applicable provisions of the Housing, Fire, Health, and Zoning Codes of Baltimore City.

A developer may request a variance from any of the above requirements by submitting a written request to the Commissioner. The request should be submitted following a Pre-Development Meeting with the Planning Department and prior to the developer's first scheduled Site Plan Review Committee meeting. The Commissioner will review the request and may consult with the Planning Department and other Baltimore City agencies concerning the request.

A developer requesting a variance from any of the above requirements must submit to the Commissioner information and documentation which could establish to the Commissioner's satisfaction the development's financial infeasibility if the requested variation would not be approved. Upon receiving and reviewing such information and documentation, the Commissioner will make a preliminary determination whether the development would be financially feasible without the requested variation if a density bonus of up to 20% of the residential units otherwise allowed in the project, computed as set forth in the Zoning Code, were granted in order to offset the financial impact on the developer of providing the Affordable Housing units required by Article 13, Subtitle 2B.

The Commissioner will notify the developer of the preliminary determination within 45 days of receipt of the developer's request. If the Commissioner determines that the development would be financially infeasible without first receiving a density bonus, a copy of the Commissioner's notification will be provided simultaneously to the Board of Municipal and Zoning Appeals.

The developer is solely responsible for appealing to the Board of Municipal and Zoning Appeals for a density bonus in accordance with requirements of the Zoning Code and rules of procedure established by the Board of Municipal and Zoning Appeals. The developer may use the Commissioner's notification of the preliminary determination as evidence of the development's need for a density bonus.

The Board of Municipal and Zoning Appeals will approve or deny, or modify, the requested density bonus. A copy of the Board of Municipal and Zoning Appeals' decision will be provided in writing to the Commissioner.

Following receipt of the Board of Municipal and Zoning Appeals' decision, the Commissioner will determine if the project is exempt from the requirements of Article 13, Subtitle 2B.

In the determination, the Commissioner will either:

- (i) exempt the development from the requirements with which the developer's request was concerned; or
- (ii) modify the requirements with which the developer's request was concerned; or
- (iii) affirm the requirements with which the developer's request was concerned.

The Commissioner will notify the developer of the determination. If the Board of Municipal and Zoning Appeals denied the developer's request for a density bonus, the Commissioner will exempt the development from the requirement to include Affordable Housing units.

(c) Other projects of 30 or more units not covered by (a) or (b) above.<sup>1</sup>

A development project qualifying under the provisions of Article 13, Subtitle 2B, Section 2B-23, must request and receive approval from the Commissioner for any variation from the following requirements.

1. At least 10% of all residential units will be Affordable Housing units.
2. All of the required Affordable Housing units will be complementary in exterior appearance to the market rate residential units in the same project.
3. All of the required Affordable Housing units will be comparable to the market rate residential units in number of bedrooms per unit, including a comparable distribution of bedroom counts per unit in residential developments containing residential units with varying numbers of bedrooms unless this bedroom requirement is exempted by the Commissioner..
4. All of the required Affordable Housing units will be comparable to the market rate residential units in overall quality of construction, as evidenced by equal compliance with applicable provisions of the Housing, Fire, Health, and Zoning Codes of Baltimore City.

A developer may request a variance from any of the above requirements by submitting a written request to the Commissioner. The request should be submitted following a Pre-Development Meeting with the Planning Department and prior to the developer's first scheduled Site Plan Review Committee meeting.

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<sup>1</sup> These provisions are not currently in effect, per Section 7(b) of Ordinance 07-474.

A developer requesting a variance from any of the above requirements must submit to the Commissioner information and documentation which could establish to the Commissioner's satisfaction the development's financial infeasibility if the requested variation would not be approved. Upon receiving and reviewing such information and documentation, the Commissioner will make a preliminary determination whether the development would be financially feasible without the requested variation if cash subsidies pursuant to Article 13, Subtitle 2B were granted in order to offset the financial impact on the developer of providing the Affordable Housing units required by Article 13, Subtitle 2B, or whether the development would be financially feasible without the requested variation if a density bonus of up to 20% of the residential units otherwise allowed in the project, computed as set forth in the Zoning Code, were granted in order to offset the financial impact on the developer of providing the Affordable Housing units required by Article 13, Subtitle 2B, or whether the development would be financially feasible if cash subsidies and a density bonus were granted in order to offset the financial impact on the developer of providing the Affordable Housing units required.

The Commissioner will then ascertain if there is adequate funding in the Fund to provide the developer a cash subsidy as a cost offset to the impact of providing Affordable Housing units. If there is adequate funding in the Fund, the Commissioner will reserve funding sufficient to offset the financial impact on the developer, and notify the developer within twenty (20) days that such funding has been reserved for the development. Within ten days of the Commissioner's notification, the developer must accept in writing the offer of cost offsets or notify the Commissioner that the developer does not accept the offer of cost offsets and prefers to maintain the request in order to seek a determination by the Commissioner with recommendation by the Board. The developer may offer to accept the cost offsets contingent upon receiving approval of the density bonus requested from the Board of Municipal and Zoning Appeals.

If the developer has maintained the request by not accepting the cost offsets offered, the Commissioner will review the request and may consult with the Planning Department and other Baltimore City agencies concerning the request. The Commissioner will inform the Chair of the Board of the request, and the Chair will schedule a meeting of the Board to occur within twenty days of the date of referral to the Board. If a regularly scheduled or previously scheduled meeting of the Board will occur within twenty days of the date of referral, the Chair will include the request in the Board's meeting agenda. The Board will meet to consider the request, and may request appearance by the developer and any other persons or representatives of neighborhood or community associations which may be concerned with the request.

At its meeting, following presentation to the Board of all information deemed by the Chair to be appropriate and necessary for purposes of reviewing the developer's request, the Board will vote to recommend approval, disapproval, or modification of the request. The Board's recommendation will be provided in writing to the Commissioner.

Following receipt of the Board's recommendation, the Commissioner will determine whether to approve, disapprove, or modify the developer's request, and will provide the

developer, within 45 days of the developer's request, notification of the determination. In the determination, the Commissioner may find that the development would be financially infeasible without approval of all or part of the developer's request.

In the determination, the Commissioner will either:

- (i) exempt the development from the requirements with which the developer's request was concerned; or
- (ii) modify the requirements with which the developer's request was concerned; or
- (iii) affirm the requirements with which the developer's request was concerned.

The Commissioner may make the determination contingent upon action of the Board of Municipal and Zoning Appeals if the developer has requested both cost offsets and density bonus.

The Commissioner will also notify the developer whether the funding reserved in the Fund for purposes of providing cost offsets remains available.

When the developer requests a density bonus in addition to or instead of cost offsets, the Commissioner will notify the developer of the preliminary determination concerning bonus units within 45 days of receipt of the developer's request. If the Commissioner determines that the development would be financially infeasible without first receiving a density bonus, a copy of the Commissioner's notification will be provided simultaneously to the Board of Municipal and Zoning Appeals.

The developer is solely responsible for appealing to the Board of Municipal and Zoning Appeals for a density bonus in accordance with requirements of the Zoning Code and rules of procedure established by the Board of Municipal and Zoning Appeals. The developer may use the Commissioner's notification of the preliminary determination as evidence of the development's need for a density bonus.

The Board of Municipal and Zoning Appeals will approve or deny, or modify, the requested density bonus. A copy of the Board of Municipal and Zoning Appeals' decision will be provided in writing to the Commissioner.

Following receipt of the Board of Municipal and Zoning Appeals' decision, the Commissioner will determine if the project is exempt from the requirements of Article 13, Subtitle 2B.

In the determination, the Commissioner will either:

- (i) exempt the development from the requirements with which the developer's request was concerned; or
- (ii) modify the requirements with which the developer's request was concerned; or
- (iii) affirm the requirements with which the developer's request was concerned.

The Commissioner will notify the developer of the determination. If the Board of Municipal and Zoning Appeals denied the developer's request for a density bonus, the Commissioner will exempt the development from the requirement to include Affordable Housing units.

## 2.5 Providing Less than Required Number of Affordable Housing units on Site.

A developer may apply to the Commissioner to approve provision of off-site Affordable Housing units in whole or partial substitution for the Affordable Housing units required in projects benefiting from significant land use authorization or rezoning, or in other projects of 30 or more units not receiving major public subsidy or benefiting from significant land use authorization or rezoning.

The developer's application must be accompanied by a report which:

- Includes a description of conditions affecting the project which prevent the developer from meeting the requirements of Article 13, Subtitle 2B without undertaking additional financial burdens for which no cost offsets are available;
- Provides independent data, including appropriate financial information sufficient to inform the Commissioner of the basis of the request, which support the developer's position that constructing or providing the required Affordable Housing units on site is not financially feasible; and
- Contains an analysis of how off-site substitution of Affordable Housing units will further mixed-income housing opportunities in the neighborhood in which the residential project is located.

A developer who has received approval from the Board of Municipal and Zoning Appeals for bonus units as a density bonus for Affordable Housing is not eligible to apply for provision of off-site Affordable Housing units. If a developer applies for approval of off-site Affordable Housing units and also requests a density bonus from the Board of Municipal and Zoning Appeals, the developer must state in the application that a density bonus has been requested.

The application should be submitted following a Pre-Development Meeting with the Planning Department and prior to the developer's first scheduled Site Plan Review Committee meeting. The Commissioner will review the request and may consult with the Planning Department and other Baltimore City agencies concerning the request.

In order to recommend approval of off-site Affordable Housing units as requested by the developer, the Commissioner must find that:

1. Off-site Affordable Housing units will be provided at another location in the same neighborhood or comparable contiguous geographic area, as determined by the Director of the Baltimore City Department of Planning, or in a residential project approved by the Commissioner within 2,000 feet of a rapid transit stop; and
2. in the aggregate, the off-site units and any Affordable Housing units provided on-site at the residential project are no fewer than the number of Affordable Housing units required by Article 13, Subtitle 2B.

The Commissioner may additionally find that public benefits of the proposed off-site location outweigh the value of locating the Affordable Housing units on site, or that providing the Affordable Housing units at the proposed off-site location would further the City's policy of encouraging economic diversity in neighborhoods.

The Commissioner will provide the developer a preliminary determination, constituting a recommendation to the Board of Estimates, within 45 days of the developer's application. The Commissioner's recommendation will be presented to the Board of Estimates for consideration.

The Board of Estimates, in considering the recommendation, may request the developer provide additional information in support of the application. The developer should be prepared to inform the Board of Estimates concerning:

- specific locations where the off-site Affordable Housing units would be provided;
- whether the Affordable Housing units off site would be created by new construction or by substantial renovation or conversion of existing buildings;
- whether the developer would purchase any existing Affordable Housing Ownership units at market rate in order to return them to Affordable Housing cost;
- whether the developer would make any grants or donations to the Fund.

The decision of the Board of Estimates concerning off-site substitution of Affordable Housing units will be final.

If the developer's application to provide Affordable Housing units off site is approved by the Board of Estimates, the developer is required to provide the off-site units in the same time frame as the market rate housing units in the residential project.

The developer may request a variance from the requirement to provide off-site units in the same time frame as the market rate units by submitting a written request to the Commissioner. The Commissioner will issue a written decision concerning the request within 45 days of its receipt. The decision may approve, modify, or deny the variance requested.

2.6 Modification of Affordable Housing units required.

A developer may apply to the Commissioner to provide a mix of Affordable Housing units which varies from the specifications of Article 13, Subtitle 2B. The developer’s request should be submitted following a Pre-Development Meeting with the Planning Department and prior to the developer’s first scheduled Site Plan Review Committee meeting.

As specified in Article 13, Subtitle 2B as enacted, the following requirements have been established for the affordability levels of Affordable Housing to be provided:

AFFORDABILITY LEVEL, AS % OF AREA MEDIAN INCOME (A.M.I.)	DEVELOPMENT RECEIVING MAJOR PUBLIC SUBSIDY	DEVELOPMENT BENEFITTING FROM REZONING/ LAND USE AUTHORIZATION	OTHER DEVELOPMENTS (w/o SUBSIDY or REZONING etc.) <sup>2</sup>
MODERATE: 120% OF A.M.I	20% of Affordable Rental units or 25% of Affordable Ownership units	50% of Affordable Rental units or 50% of Affordable Ownership units	All Affordable Rental units or All Affordable Ownership units
LOW: 80% OF A.M.I.	25% of Affordable Rental units or 50% of Affordable Ownership units	50% of Affordable Ownership units	No requirement
VERY LOW: 60% OF A.M.I.	25% of Affordable Rental units or 25% of Affordable Ownership units	50% of Affordable Rental units	No requirement
EXTREMELY LOW: 30% OF A.M.I.	30% of Affordable Rental units; no Affordable Ownership requirement	No requirement	No requirement

Because the intent of Article 13, Subtitle 2B is to promote creation of mixed-income housing with a broad range of income levels in residential developments, a developer must request any modification which would alter the proportions of income levels of households occupying Affordable Housing in the development from the proportions of income levels specified by Article 13, Subtitle 2B.

A developer requesting a modification of any of the above requirements must submit to the Commissioner information and documentation which could establish to the Commissioner’s satisfaction:

- the development’s financial infeasibility if the requested modification would not be approved, or

<sup>2</sup> These provisions are not currently in effect, per Section 7(b) of Ordinance 07-474.

- the developer’s ability and resources to provide homes for families in a mixed-income setting at lower affordability levels than those required by Article 13, Subtitle 2B, or
- the developer’s ability and readiness to cooperate with the City of Baltimore to use limited City resources to create more Affordable Housing units in mixed-income developments over a 2-year period than would otherwise be created if the modification was not approved, or
- the developer’s ability and readiness to create housing units which are more expensive to construct than typical Affordable Housing units because the units are specially designed and designated for people with disabilities, or built to be substantially more energy-efficient than customary housing units.

Upon receiving and reviewing such information and documentation, the Commissioner will make a preliminary determination whether the development would be financially feasible without the requested modification if cash subsidies pursuant to Article 13, Subtitle 2B were granted in order to offset the financial impact on the developer of providing the Affordable Housing units required by Article 13, Subtitle 2B, or whether the development would be financially feasible without the requested modification if a density bonus of up to 20% of the residential units otherwise allowed in the project, computed as set forth in the Zoning Code, were granted pursuant to Article 13, Subtitle 2B in order to offset the financial impact on the developer of providing the Affordable Housing units required by Article 13, Subtitle 2B or the Affordable Housing units authorized pursuant to Article 13, Section 2B-23 (c), or whether the development would be financially feasible if cash subsidies and a density bonus were granted pursuant to Article 13, Subtitle 2B in order to offset the financial impact on the developer of providing the Affordable Housing units required by Article 13, Subtitle 2B or the Affordable Housing units authorized pursuant to Article 13, Section 2B-23 (c).

The Commissioner may consult with the Planning Department and other Baltimore City agencies concerning the developer’s request for a modification.

The Commissioner will then ascertain if pursuant to Article 13, Subtitle 2B there is adequate funding in the Fund to provide the developer a cash subsidy as a cost offset to the impact of providing Affordable Housing units in a project receiving major public subsidy. If there is adequate funding in the Fund, the Commissioner will reserve funding sufficient to offset the financial impact on the developer, and notify the developer within twenty (20) days that such funding has been reserved for the development. Within ten days of the Commissioner’s notification, the developer must accept in writing the offer of cost offsets or notify the Commissioner that the developer does not accept the offer of cost offsets and prefers to maintain the request in order to seek a determination of modification by the Commissioner with recommendation to the Board of Estimates.

If the developer has notified the Commissioner that the cost offsets offered by the Commissioner are not accepted, the Commissioner will, within 45 days of the developer’s original request for a modification, notify the developer of the preliminary determination, constituting a recommendation to the Board of Estimates, whether the development would be financially feasible if the requested modification were granted. The Commissioner’s recommendation will be presented to the Board of Estimates for consideration.

If the developer has also requested a density bonus pursuant to Article 13, Subtitle 2B for a residential project benefitting from significant land use authorization or rezoning, or for an “Other project of 30 or more units” as provided in Article 13, Subtitle 2B, the Commissioner’s recommendation, or any part thereof, may be made contingent upon a decision of the Board of Municipal and Zoning Appeals concerning a density bonus requested by the developer. The developer is solely responsible for appealing to the Board of Municipal and Zoning Appeals for any density bonus in accordance with requirements of the Zoning Code and rules of procedure established by the Board of Municipal and Zoning Appeals. The Board of Estimates will not be requested to consider the Commissioner’s recommendation until the Board of Municipal and Zoning Appeals has issued its decision concerning the developer’s request for a density bonus.

The Board of Estimates may approve the modification upon finding that:

- Affordable Housing will be provided for families in a mixed-income setting at lower affordability levels (Affordable Housing cost levels) than those required otherwise by Article 13, Subtitle 2B; or
- Because of limited City resources, more Affordable Housing units in mixed-income housing will be created over a 2-year period than would be created if the modification were not granted; or
- More effective use of public programs or sources of subsidy will better address mixed-income housing in Baltimore City; or
- The development would not be economically feasible, given existing market conditions, with the number of inclusionary housing units required by Article 13, Subtitle 2B, additional density bonuses are not available, and granting a modification would create more Affordable Housing units in mixed-income housing over a 2-year period than would be created if the modification were not granted; or
- The modification will promote creation of housing 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.

The decision of the Board of Estimates concerning the requested modification of Affordable Housing cost proportions of Affordable Housing required to be created by the developer will be final.

If the Board of Estimates approves the modification requested by the developer, or an alternative or lesser modification in lieu of the developer’s request, the Commissioner will inform the Board of the approval at the next regularly scheduled meeting of the Board.

## 2.7 Establishing Sales Prices and Rents.

The Commissioner will set and disseminate sales pricing standards and rents associated with each Affordable Housing cost category. A schedule providing these sales pricing standards and rents will be maintained by the Commissioner to indicate the residential unit size, designated by number of bedrooms per dwelling unit. This schedule will be revised following issuance of the Area Median Income schedule each year.

The sales pricing standards apply to all Affordable Housing Ownership units offered for sale on or after the effective date of their adoption by the Commissioner, as stated in a public notice made by the Commissioner. The rents apply to all Affordable Housing Rental units offered for or available to lease or rent on or after the effective date of their adoption by the Commissioner.

The Commissioner will separately set the maximum allowable percentage increase in rents for Affordable Housing Rental units which are continuing to be occupied by eligible households, in accordance with the requirements of Article 13, Subtitle 2B.

### (a) Sales prices.

Sales prices for Affordable Housing Ownership units will be the lesser of the developer's offering price or a price based upon the Affordable Housing cost category.

Allowable sales prices will include any or all of these closing costs if paid by the seller:

- One-half of one percent for the permanent loan origination fee
- City tax certificate, transfer charges, revenue stamps and recordation charges
- Title examination, settlement, and attorney fees
- Notary fees and fees for preparation of a deed of conveyance, a deed of trust or mortgage, and the deed of trust or mortgage note
- Appraisal fee and credit report fee
- House location survey plat.

Allowable sales prices may be increased by the Commissioner to compensate for:

- Fees required to place permanent financing which are paid by the seller, including seller's permanent loan fees (points) in excess of one-half percent and any buy-down fees paid to a financial institution to reduce mortgage interest rates on the eligible household's loan below current market rates;
- Water and sewer dwelling unit connection fees which have not been deferred;
- Developer substitution of a gas-fired heating system for an electrical heating system, including an electrical heat pump, in an Affordable Housing unit, or developer substitution of a solar-powered hot water heating system for a fossil-fuel hot water heater or an electrical hot water heater;
- Additional costs, agreed to in writing by the developer and the eligible household, which provide modifications to the Affordable Housing unit to facilitate access or use by a person with disabilities, subject to compliance with the Americans with Disabilities Act;

- Additional costs which could not be determined before the developer received permits for construction or alteration, and which result from conditions or fees imposed by a government agency or as a condition for building or occupancy permit approval, conditions or fees imposed as a cost of obtaining government financing or loan guarantees, or additional costs imposed by public utilities.

The Commissioner may restrict imposition of costs which would cause or create excessive mandatory homeowners or condominium association fees to be imposed upon an eligible household purchasing the Affordable Housing Homeownership unit. Costs of swimming pool, recreation, or health spa or club membership and maintenance fees may be offered only as an option to eligible households if the Commissioner determines that obligatory participation or inclusion of these items in housing cost would significantly reduce affordability of Affordable Housing Ownership units in the project.

(b) Rents.

Rents (rental rates) for Affordable Housing Rental units will be the lesser of the developer's asking or advertised rent or a rent based upon the Affordable Housing cost category.

To maximize benefits of Affordable Housing to as many persons as possible, affordable rents will be based upon an occupancy level of two persons per bedroom, except that rooming unit and efficiency dwelling unit rents will be based upon occupancy by one person. Eligible households must qualify for occupancy of an Affordable Housing rental unit based upon criteria customarily and normally used by the developer or rental agency, including any occupancy limits of persons per bedroom or persons per unit.

Maximum rental rates will be based upon inclusion in the rent or monthly lease payment of all utilities (heating and cooling, water heating, electricity for general household use, water, and sewer service) furnished to the Affordable Housing Rental unit. For rental units occupied by eligible households for which it is provided in the lease or rental agreement that the tenant is responsible for furnishing or paying for specific utilities for which there is individual metering or individual unit-specific service provided upon request of the occupant, the Commissioner will establish allowances for each utility. The amount of each allowance for a utility, expressed as an even monthly amount necessary to pay for an estimated annual cost of the utility, will be deducted from the maximum rental rate for the unit in order to establish the net maximum rent for the Affordable Housing Rental unit.

All utilities allowances established by the Commissioner will represent estimates of annual costs for a prudent use or consumption of each utility. The Commissioner will make no representation that the actual cost of use or consumption of any utility will be equal to the amount of the allowance for that utility.

Utilities allowances, once established, will remain in force until the Commissioner is provided information and data which clearly and convincingly demonstrate that cost

increases in one or more utilities necessitate adjustment of one or more of the allowances. A developer with reason to believe that installation in its Affordable Housing Rental units of cost-saving or consumption-limiting devices would produce individual utility use or consumption substantially below an amount indicated by a utility allowance may request a variation of that utility allowance for a specific development or residential project. The Commissioner will review the developer's request and supporting information and data, and determine whether a different utility allowance for use only in the specific project should be approved. If the Commissioner approves a project-specific variation of a utility allowance, the notification of approval must be posted at the rental office or other location where applications to lease or rent are accepted, and the maximum rent will be adjusted correspondingly.

The developer may offer to lease or rent structured off-street parking or other enclosed or sheltered space for automobiles to eligible households leasing or renting Affordable Housing Rental units, but may not make leasing or rental of off-street parking space a condition or qualification for occupying an Affordable Housing Rental unit.

In the event that an Affordable Housing Rental unit is to be converted to an ownership housing unit as part of a conversion of an entire project from rental to ownership (including fee simple, condominium, or cooperative ownership) status, the Commissioner will determine the maximum sale price at which the developer, its heirs or assigns or successors in interest, may offer the rental unit to the eligible tenant household then in occupancy and residence. Should the tenant then residing in the Affordable Housing Rental unit decline to purchase the unit, or fail to meet the minimum standards or qualifications necessary for approval of permanent financing as a potential owner, the Commissioner, on behalf of the City of Baltimore, must be offered a reasonable opportunity, comparable to opportunity offered to other prospective buyers of Affordable Housing Rental units, to purchase the unit.

## 2.8 Sales and Rental procedures.

The developer must notify the Commissioner at least sixty days prior to the anticipated date that Affordable Housing units will initially become available for occupancy of the following:

- Location (including address) of the units
- For sale or for rent status of units
- Size of units, expressed in number of bedrooms per unit
- Units specifically designed and designated as “handicapped-accessible” or for persons with disabilities, including if appropriate to a unit what type of disability (e.g., mobility, vision, hearing) the unit was intended to accommodate
- Age restrictions, if any, on occupancy of the units
- Date, or for phased units, dates, when units are expected to be available for occupancy
- For a rental unit, what utilities, if any, will be included in the rent
- For a homeownership unit, what homeowners or condominium association fees, if any, will be in the first twelve months of occupancy

Upon receipt of this information, the Commissioner will proceed to issue Certificates of Eligibility, and renew any outstanding Certificates of Eligibility, for households consisting of the appropriate number and type of persons for the unit, or units, which will become available.

Upon issuance and/or renewal of Certificates of Eligibility, the Commissioner will provide the developer or developer’s agent an approved list of eligible households. The date of receipt of this list, or of the first of these lists if more than one list are provided to the developer or developer’s agent, will establish the beginning date for the priority marketing period for the Affordable Housing units.

In the marketing of Affordable Housing units and qualification of prospective buyers or tenants, the developer must use all criteria normally and customarily used to determine if a prospective buyer or tenant qualifies to purchase or rent a unit in the project, other than criteria relating to capability to afford to buy or rent a unit at market rate. The eligible household will provide from its own resources (which may include grants or loans which it must disclose in its application to purchase, its application for permanent financing, or its application to lease or rent) all application fees, credit report fees, earnest money deposits, down-payments, security deposits, utility deposits, pet or animal liability charges, and any other charges which the developer or developer’s agent normally and customarily charges market-rate applicants for housing in the project.

A developer is prohibited from selling an Affordable Housing unit to a household bearing a Certificate of Eligibility that is invalidated by reason of the household’s income, as declared on its mortgage loan application, exceeding the income limit specified on the Certificate of Eligibility.

A developer or developer’s agent may not require an eligible household to provide a deposit or earnest money for an Affordable Housing Ownership unit in an amount exceeding one percent

(1%) of the sale price established for the unit pursuant to “Establishing Sales Prices and Rents”, above.

A rental property owner or owner’s rental agent is prohibited from leasing or renting to, or contracting to permit occupancy by, a household bearing a Certificate of Eligibility which is invalidated by reason of the household’s income, as declared on its application to lease or rent, exceeding the income limit specified on the Certificate of Eligibility.

The priority marketing period for Affordable Housing units in a project which is completed in phases or sections will be determined separately for each phase or section of the project, so that each phase or section of the development will have its own priority marketing period.

If during the priority marketing period the developer or developer’s agent becomes aware of an applicant to purchase or rent an Affordable Housing unit who does not possess a Certificate of Eligibility but who may qualify as an eligible household, the applicant may be referred to the Commissioner for a determination of eligibility in accordance with these regulations. Referral does not constitute any commitment by the Commissioner to find that the household so referred is eligible for an Affordable Housing unit, nor any commitment by the developer or developer’s agent to sell or lease to that applicant for housing. If the Commissioner determines that the household referred is qualified, on the basis of household income and composition, to be an eligible household, the household’s name will be placed on the waiting list pursuant to (b) “Certification of Eligibility” above.

If during the priority marketing period the developer or developer’s agent has sold, contracted to sell, or leased, all available Affordable Housing units in the project to eligible households, the Commissioner may suspend issuance of Certificates of Eligibility unless or until there are no more valid Certificates of Eligibility outstanding.

If during the priority marketing period the developer or developer’s agent has not been able to sell, contract to sell, or lease, all available Affordable Housing units to qualified eligible households, the Commissioner will, upon being informed by the developer of the remaining available Affordable Housing units, issue additional Certificates of Eligibility to households which have qualified pursuant to (b) “Certificates of Eligibility” above.

If following such additional issuance of Certificates of Eligibility there are still Affordable Housing units available in the project for which no qualified buyers or tenants are known to the developer or developer’s agent, the developer must notify the Commissioner of this fact, and may request either:

- An extension of the priority marketing period; or
- A waiver to permit market-rate potential occupants to apply for the Affordable Housing units remaining vacant; or
- Purchase or lease of any or all of the vacant Affordable Housing units by the Commissioner or by housing providers designated by the Commissioner.

The Commissioner’s determination concerning the requested waiver will be final, and the developer will be notified of the determination within twenty days.

If the developer requests an extension of the priority marketing period as described hereabove, the developer may also request a modification of the Affordable Housing unit percentage(s) which must be at a specific Affordable Housing cost as provided in “Requirements to Provide Affordable Housing units”, above. When the developer requests such a modification, the Commissioner will notify the developer of a preliminary determination concerning modifying the percentages of Affordable Housing units which must be provided at specific Affordable Housing costs, and simultaneously request of the Board of Estimates consideration of the modification requested. The Commissioner’s preliminary determination will constitute a recommendation to the Board of Estimates.

The Board of Estimates will approve or deny, or modify, the requested modification. The Commissioner will notify the developer of the determination made by the Board of Estimates. If the Board of Estimates denied the developer’s request for a modification, the Commissioner may issue a waiver to permit market-rate potential occupants to apply for the Affordable Housing units remaining vacant.

## 2.9 Designation of Housing Providers.

The Commissioner may designate certain developers, housing development agencies or nonprofit corporations as eligible to exercise certain responsibilities provided to the Commissioner by operation of Article 13, Subtitle 2B, or as eligible to lease, solely for the purpose of sub-leasing or sub-letting to eligible households, certain Affordable Housing Rental units. To be eligible for such a designation, the housing provider must demonstrate to the Commissioner's satisfaction its abilities to acquire or provide, operate, manage and maintain satisfactorily on a long-term basis Affordable Housing units or comparable housing occupied by persons or households who/ which would potentially or possibly qualify as eligible households.

The Commissioner may consider the relative needs and requirements of the housing providers and their clientele, the readiness and ability of the housing provider to purchase or rent, manage, and maintain an Affordable Housing unit, and the number of Affordable Housing units or comparable housing previously provided or obtained by the housing provider.

The Commissioner will designate housing providers by providing written notification to the designated housing provider and to the Board. Once designated, a housing provider must provide, at least annually, a report to the Commissioner and to the Board which provides information and data concerning:

- Number of housing units currently in the provider's program including, if applicable, number of units in Baltimore City and number elsewhere;
- Monthly rental rates or occupancy charges for each Affordable Housing unit, and any other occupant-paid or tenant-paid charges for each such unit;
- The Affordable Housing unit's occupant's or tenant's gross household income and household composition;
- Amount of unit operating expenses, and the extent to which the provider is assisting or subsidizing the occupant's or tenant's payment for such expenses, especially utilities;
- Revenue received by the provider from the unit, and any arrearages in payments to the provider by the occupant or tenant, and explanation of provider's intent or plan for resolving or ending any arrearages;
- Other information which the Commissioner may establish as required as a condition for continued designation as a housing provider.

The Commissioner may at any time, for cause, revoke or cancel the designation of a housing provider by providing written notice, with a copy to the Board, of the revocation or cancellation.

## 2.10 Procedures for Purchase of Affordable Housing units by the Housing Commissioner.

Upon receipt of notification from a developer, in accordance with “Sales and Rental Procedures” above, or from an owner of an Affordable Housing Ownership unit, in accordance with “Occupancy requirements” above, the Commissioner will determine whether to exercise the right of first refusal on behalf of the City, pursuant to Article 13, Subtitle 2B.

Within 21 days, the Commissioner will notify the developer or owner of the Commissioner’s determination to purchase, or not purchase, the unit offered. If the Commissioner determines not to purchase the unit offered, but determines that a designated housing provider should be provided an opportunity to purchase the unit offered, the Commissioner will so notify the developer or owner, with a copy of the notification simultaneously provided to the designated housing provider.

The designated housing provider so notified will have 21 days to notify the developer or owner of its determination to purchase, or not purchase, the unit offered, and must provide a copy of the notification simultaneously to the Commissioner. If the designated housing provider has not notified the developer or owner of its intention to purchase the unit offered within 21 days, the provider will be deemed to have determined not to purchase the unit.

A developer or owner of an Affordable Housing Ownership unit who has not been notified by the Commissioner or designated housing provider that the City or the provider intends to purchase the unit may then proceed to market and sell the unit, subject to any covenants or deed restrictions then in force.

## 2.11 Resale of Affordable Housing Ownership units during Control Period.

Affordable Housing Ownership units are subject to a control period of ten years which begins on the date of original sale of the unit, and ends on the eleventh anniversary of the date of original sale.

If during this control period, or at a later time, the owner decides to sell the Affordable Housing Ownership unit, the owner must notify the Commissioner prior to commencing marketing of the unit. The Commissioner will determine whether to purchase, or not purchase, the unit, and the “Procedures for Purchase of Affordable Housing units by the Housing Commissioner”, above, will then be followed.

If the sale transaction will be settled within this control period, the proceeds of the sale will be allocated as follows, as prescribed by Article 13, Subtitle 2B:

- The owner, as seller, will receive the initial purchase price paid by the owner, plus the value of any documented improvements;
- The City of Baltimore will receive any amount in excess of the owner’s share of the proceeds of sale as limited hereabove but only to the extent that the proceeds of sale exceed the initial purchase price and the value of documented improvements, up to a limit set by the Commissioner’s determination of the public investment in the unit;
- The remaining proceeds of the sale, if any, will be divided between the owner and the City of Baltimore in the same proportion as the proportion of the owner’s original purchase price to the public investment identified by the Commissioner; subject to a limit of 10% of the owner’s proportional share of these proceeds payable to the owner for each full year of the owner’s ownership, dated from the original sale of the unit.

If the sale transaction will be settled following expiration of this control period:

- The owner, as seller, will receive the initial purchase price paid by the owner, plus the value of any documented improvements;
- The City of Baltimore will receive any amount in excess of the owner’s share of the proceeds of sale as limited hereabove but only to the extent that the proceeds of sale exceed the initial purchase price and the value of documented improvements, up to a limit set by the Commissioner’s determination of the public investment in the unit;
- The remaining proceeds of the sale, if any, will be divided between the owner and the City of Baltimore in the same proportion as the proportion of the owner’s original purchase price to the public investment identified by the Commissioner.

The Commissioner will receive, on behalf of the City of Baltimore, the City’s share of the proceeds of the sale.

The title to each Affordable Housing Ownership unit will be subject to a covenant which provides these requirements as a condition of ownership of the unit.

If one eligible household member buys out another household member’s owner’s interest in an Affordable Housing Ownership unit as part of a divorce settlement or dissolution of a civil union, without selling or offering to sell the unit on the open market, this does not relieve the

remaining owner of the obligation to divide the proceeds of sale in accordance with the requirements stated hereabove.

2.12 Procedures for Sale of Affordable Housing Ownership units by Foreclosure.

A mortgagee or other secured party which has initiated foreclosure proceedings on a debt secured by a mortgage or deed of trust on an Affordable Housing Ownership unit must notify the Commissioner in writing not less than 30 days prior to the date of the foreclosure sale or auction.

## 2.13 Continued affordability for Affordable Housing Rental units.

Every Affordable Housing Rental unit must remain at an affordable rent, as established pursuant to determinations of the Commissioner, for a period of not less than 30 years from the date of its initial occupancy. The date of initial occupancy will be determined according to the date of original rental, and the affordability period will continue until the 31<sup>st</sup> anniversary of the date of original rental.

For rental housing projects completed in phases or sections for which differing dates of original rental may result, the date of original rental of the majority of units in the phase or section which are first to receive a Certificate of Occupancy from the Commissioner will be used to establish the affordability period for the entire phase or section.

During the affordability period, the developer or owner of the rental property may not rent or lease any Affordable Housing Rental unit and a tenant may not sub-rent or sub-lease the unit except to an eligible household at a rent which does not exceed the affordable rent applicable to the unit.

At the time that Certificates of Occupancy are issued for the entire residential project or its first phase or section, the Commissioner will provide the developer or developer's agent with a schedule of Affordable Housing costs relevant to the Affordable Housing Rental units in the project. The rent charged for an Affordable Housing Rental unit may not exceed the amount indicated on the schedule, except that pro-rated amounts chargeable on a per diem basis for leases or rental agreements which take effect on a date other than the first day of a month may be added to the next full month's affordable rent to establish the first rental payment amount due from the eligible household for that initial portion of the household's occupancy of the unit.

The developer or developer's agent must maintain a current register of all Affordable Housing Rental units in its residential project, showing:

- The Affordable Housing Rental unit address;
- The number of bedrooms contained in the unit;
- The name of the eligible household to whom the unit is leased or rented;
- The date that the lease or rental agreement became effective;
- The monthly rent due for the unit;
- The status (paid in full, partially paid, or unpaid) of the current month's rent due from the eligible household;
- The sum of any other charges due and payable by the eligible household in connection with occupancy of the unit;
- The cumulative arrearages of rent and/or other charges due from the eligible household;
- The number of times within the previous 12 months that the eligible household has been sued in District Court (Rent Court) for delinquent rent and/or other charges;
- The date that the previous eligible household vacated the unit, or that the developer regained possession of the unit pursuant to an ejectment, if the unit is currently vacant.

The register of Affordable Housing Rental units must be maintained in a place within the City of Baltimore where the Commissioner may conveniently review it during normal business hours.

Whenever an eligible household vacates an Affordable Housing Rental unit, the developer must immediately notify the Commissioner of this fact and request that additional eligible households be referred to the developer or developer's agent. The date that the previous eligible household vacated the unit, or that the developer regained possession of the unit pursuant to an ejectment, will be used to determine a new priority marketing period for the unit.

If the Affordable Housing Rental unit is not rented or leased to a qualified eligible household during the priority marketing period and the developer or developer's agent demonstrates to the Commissioner's satisfaction that a good faith effort was made to rent the unit to eligible households, the developer or developer's agent may then offer to rent the unit to qualified members of the general public at the Affordable Housing cost applicable to the unit, and may lease or rent the unit to an otherwise qualified household after receiving written approval from the Commissioner.

Any lease or rental agreement which the developer or owner proposes to use as a contract between the owner, as landlord, and the eligible household, as tenant, must be submitted to the Commissioner for review within seven business days of the beginning of a priority marketing period. If the Commissioner determines that any section, sentence, phrase or word in the proposed lease or rental agreement is inconsistent with the provisions of Article 13, Subtitle 2B, the Commissioner will so notify the developer or developer's agent, and the lease or rental agreement may be used only with the section, sentence, phrase or word having been deleted.

Lease or rental agreements for Affordable Housing Rental units must include these provisions:

- The tenant must occupy the unit as his or her primary place of residence and must not sublet or rent the unit or any portion of the unit, without prior approval from the Commissioner.
- The tenant must provide, at least biannually or at other intervals determined by the developer or owner, or landlord, lessor, or owner's agent, information and documentation concerning the eligible household's income and composition, to the same extent as was required of the household by the Commissioner in order to establish the household's eligibility for Affordable Housing, or consistent with 2.2 (c) above.
- The tenant must provide all recertification information within 30 days of receiving the recertification form from the developer or landlord, and if the tenant fails to provide the recertification information and documentation within the 30 day period specified by the developer or landlord, the tenant must vacate the unit within 60 days of receiving notification that the recertification form and required documentation has not been timely received.
- If, at the time of recertification, the tenant's household income exceeds by ten percent (10%) or more the maximum income corresponding to the Affordable Housing cost for the unit, the tenant may remain in the unit and the monthly rent will be 1/12<sup>th</sup> of 30% of household income.
- The tenant must sign and return to the developer or landlord, on or before the date of commencement of any extension or renewal of tenancy, any new or replacement lease or

rental agreements as may be required by the developer and landlord and as have been reviewed by the Commissioner.

The Commissioner may require a developer or landlord to provide copies of all records and papers pertinent to an eligible household's occupancy of an Affordable Housing Rental unit, or to maintain records pertaining to Affordable Housing Rental units at a place within the City of Baltimore where the Commissioner may conveniently review them during normal business hours.

In the event of any conflict between these regulations pertaining to Affordable Housing Rental units and any provisions of applicable Maryland landlord-tenant relations law, the provisions of the State law will be controlling.

Every Affordable Housing Rental unit, for a period of not less than 30 years from the date of its initial occupancy, may have its monthly rent increased in accordance with applicable law by a percentage which will be determined and published annually by the Commissioner. The Commissioner will determine an appropriate inflator index based upon information and data available to the Commissioner concerning residential rental market conditions in Baltimore City, general increases in management, maintenance, and operating costs of residential rental properties, and reasonable rates of return on residential investment properties in Baltimore City. The Commissioner reserves the right to establish indices relating to residential rental submarkets in Baltimore City if review of all available data indicates that substantial variations exist among certain residential neighborhoods or groups of neighborhoods, or indices relating to specific sizes of residential units if review of all available data indicates that substantial variations exist between rental rate trends for certain sizes of residential rental units.

The Commissioner will publish the inflator index or indices annually, and all renewals of leases or rental agreements which become effective on or after the first of the month following the date of publication must provide for a new rent not in excess of the amount calculated by multiplying the then-current rent for the Affordable Housing Rental unit by the applicable inflator index.

If a developer, owner or landlord considers the amount of the inflator index insufficient to support continued financial viability of owning, maintaining, and operating the Affordable Housing Rental unit, the developer or developer's agent may request of the Commissioner a waiver of the index and substitution of a greater index to be applicable only to the developer's Affordable Housing Rental units and only until the next annual determination by the Commissioner of the inflator index.

The Commissioner will review the request and all supporting information and data which document hardship or other exceptional circumstances, and determine whether to approve, disapprove, or modify the request. In the determination, the Commissioner will either:

- (i) approve the entire substitute inflator index proposed by the developer; or
- (ii) modify the proposed inflator index or its applicability to certain of the Affordable Housing Rental units to which it would be applicable, or both; or

(iii) deny the request and affirm the applicability of the previously published inflator index to the Affordable Housing Rental units.

If the Commissioner approves a project-specific substitute inflator index for Affordable Housing Rental units, the notification of approval must be posted in the rental office or other location where applications to lease or rent are accepted, and copies of the notification must be mailed by the developer, owner or landlord to all eligible households then leasing and occupying the Affordable Housing Rental units in the project.

The rent for an Affordable Housing Rental unit may not be increased if the unit is currently subject to a notice of violation of the Building, Fire, Safety, Health, or other Code of Baltimore City. The owner of the unit may request a waiver of this regulatory requirement if evidence satisfactory to the Commissioner is provided to demonstrate that the occupant of the unit has obstructed, delayed or damaged repairs or remediation required to return the unit to full compliance with the applicable Code. If the notice of violation was issued as a result of conditions created or maintained by the occupant, the owner must seek ejectment of the occupant before requesting such a waiver.

In providing maintenance and other services to rental units in the residential project, the owner may not discriminate in any way against Affordable Housing Rental units. If such discrimination is alleged, the Commissioner may refer the complaint to the Baltimore City Human Relations Commission.

## 2.14 Reporting requirements for Affordable Housing Rental units.

A developer, developer's agent, or landlord who is the owner of an Affordable Housing Rental unit is required to report to the Commissioner as of the 30<sup>th</sup> of June or the 31<sup>st</sup> of December of each year, and annually thereafter, the following information concerning the Affordable Housing Rental unit:

- The Affordable Housing Rental unit address;
- The number of bedrooms contained in the unit;
- The date of original rental of the unit;
- The name of the eligible household to whom the unit is leased or rented;
- The date that the current household's lease or rental agreement became effective;
- The Affordable Housing Cost for the unit, and the percentage of Area Median Income which the unit is intended to serve;
- The monthly rent due for the unit, if it is different from the Affordable Housing Cost for the unit;
- The number of times within the preceding twelve month period that the eligible household residing in the unit was delinquent in paying the monthly rent due;
- The cumulative arrearages of rent and other charges due and payable by the eligible household in connection with occupancy of the unit;
- If the unit is currently vacant at the time of reporting, the date that the vacancy began and the anticipated date of re-rental of the unit;
- If the unit was leased to a household other than an eligible household pursuant to a waiver granted by the Commissioner in accordance with "Sales and rental procedures", above, the household's income and composition as declared on the household's application to lease.

Failure to provide the information as required above within 30 days following the reporting period ending date will subject the developer to enforcement actions as provided in these regulations.

## 2.15 Enforcement.

The Commissioner is responsible for enforcement of the provisions of Article 13, Subtitle 2B.

Compliance with Article 13, Subtitle 2B and any and all assurances, contracts, covenants, or other obligations is the responsibility of the developer.

To avert or mitigate enforcement action, a developer must request revisions or amendments of any assurances, contracts, covenants, or other obligations as soon as the developer recognizes that meeting the terms of such may make the development project financially infeasible.

The Commissioner will deny, suspend, or revoke any building, occupancy, or other permit or license for a violation of Article 13, Subtitle 2B, upon finding that non-compliance with the requirements of Article 13, Subtitle 2B exists, as stated in notification to the developer or developer's agent. Occupancy permits will not be issued for any unit in a project when the project does not comply with Article 13, Subtitle 2B and these regulations.

The Commissioner will revoke, cancel, or refuse to renew any multi-family dwelling unit license upon finding that requirements and procedures relating to Affordable Housing Rental units, as specified in these regulations, have not been complied with by the developer, developer's agent, or landlord.

After issuance of building permits for a project has been halted or existing building, occupancy, or other permits or licenses have been suspended or revoked, the Commissioner will not release, reissue, or resume issuance of, such permits or licenses until both the Commissioner and the developer have reached an agreement, reduced to writing, which satisfies the condition that the developer and/or the project are or will thereafter be in compliance with Article 13, Subtitle 2B and these regulations.