

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

### **Interim Regulations: Inclusionary Housing**

Authority: These regulations are issued pursuant to the mandate and authority of Baltimore City Code, Article 13, Subtitle 2B, "Inclusionary Housing Requirements". These regulations are effective upon publication. The date of publication is August 20, 2008.

Application of these regulations will be augmented by certain documents and forms, which the Commissioner will release separately and will post on the Baltimore Housing.org web-site.

Pursuant to Ordinance 07-474, enacted June 19, 2007, public comment on proposed regulations was requested on two separate occasions. Based on comments received the proposed regulations were modified resulting in these interim regulations which represent more completely the processes and procedures necessary to implement the intent and requirements of Ordinance 07-474. The Commissioner of Housing and Director of Planning thank all who contributed their comments and suggestions to the development of these regulations.

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Additional information can be obtained on the Baltimore Housing website

*[baltimorehousing.org](http://baltimorehousing.org)*.

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### **Interim Regulations: Inclusionary Housing**

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

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## INTERIM REGULATIONS FOR INCLUSIONARY HOUSING

### 2.1 Definitions.

**Affordable unit:** a residential dwelling unit provided, pursuant to Inclusionary Housing requirements, to an eligible household at an affordable housing cost. “Dwelling unit” has the meaning provided in the Baltimore City Zoning Code (see Zoning Code subsection 1-137).

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, but greater than  $1/12^{\text{th}}$  of 30% of 30% of the AMI, 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, but greater than  $1/12^{\text{th}}$  of 30% of 60% of the AMI, adjusted for household size.

Moderate housing cost means an amount not exceeding  $1/12^{\text{th}}$  of **30% of 120%** of the Area Median Income, but greater than  $1/12^{\text{th}}$  of 30% of 80% of the AMI, adjusted for household size.

**Affordable Ownership unit:** an Affordable unit provided and offered for sale to an eligible household at an Affordable housing cost.

**Affordable Rental unit:** an Affordable unit provided and offered for rent or lease to an eligible household at an Affordable housing cost.

**Area Median Income (AMI):** the area median household income for the metropolitan region, which encompasses and includes 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.

**Cost offsets:** the amount of cash subsidies and/or other good or valuable compensation necessary to offset fully, whenever major public subsidy or significant land use authorization has been determined by the Commissioner to be insufficient for this purpose, the financial impact on the developer or project of providing Affordable units pursuant to Inclusionary Housing requirements, and necessary to avoid imposing additional financial burdens on a developer or

project related to providing Affordable units on the same site as the project. For rental housing, cost offsets will include the Inclusionary Housing Property Tax Exemption if it is made applicable to the project by the developer and the City of Baltimore pursuant to an agreement approved by the Board of Estimates.

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

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

Density Bonus: additional residential units, in an amount not exceeding 20% of the residential units otherwise allowed in the project, permitted pursuant to a decision of the Board of Municipal and Zoning Appeals, and required as a complete or partial cost offset.

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.

Displaced household: an eligible household which moves from real property, or removes its personal property from real property, permanently as a direct result of acquisition, demolition, or rehabilitation of that real property for the residential project which is or will be created pursuant to Inclusionary Housing requirements.

Documented improvements: improvements made to an Affordable 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.

Economically feasible or feasible: a finding by the Commissioner, based upon information provided by the developer, that the developer will be able to complete the project or that the project will be able to proceed to completion with the modification or waiver requested by the developer or with a lesser modification or waiver as determined by the Commissioner, and that cost offsets or other incentives available to the project are sufficient to offset fully the financial impact on the developer of providing Affordable units.

Eligible household: a household which has been certified by the developer of a residential development or project or by the Commissioner as eligible to purchase or rent an affordable housing unit in that development or project, as provided in these regulations. Eligible households are determined as follows:

- A household having an income at or below 30% of AMI will be eligible to reside in an Affordable Housing unit with extremely low housing cost;
- A household having an income greater than 30% but not more than 60% of AMI will be eligible to reside in an Affordable Housing unit with very low housing cost;
- A household having an income greater than 60% but not more than 80% of AMI will be eligible to reside in an Affordable Housing unit with low housing cost;

- A household having an income greater than 80% but not more than 120% of AMI will be eligible to reside in an Affordable Housing unit with moderate housing cost.

Fund: the Inclusionary Housing Offset Fund established pursuant to the Inclusionary Housing requirements of the Baltimore City Code.

Housing cost includes one or both of the following:

**1.** 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.

If the Commissioner or a designated housing provider writes down the sale price of an Affordable Ownership unit to its owner-occupant through exercise of the right of first refusal followed by resale to the owner-occupant, the Commissioner will establish the sales price for the unit which would be considered comparable to a sales price resulting from an arm's length transaction.

**2.** Rental housing cost means a monthly payment by the tenant of an Affordable Rental unit for lease, let, sublet, or other rights to occupy the unit, as defined in a written lease agreement or other document executed by the owner or owner's agent and by the tenant of the unit.

Inclusionary Housing requirements: the requirements, terms and conditions contained in the Baltimore City Code, Article 13, Subtitle 2B, Sections 2B-1 through 2B-72, as provided in Ordinance 07-474.

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 that are being received by adults in the household:

- 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, or payment for service in the National Guard
- Public subsidies or benefits which in the context of the household may provide support but are not considered income, including tenant-based Section 8 or Rental Assistance Program housing assistance payments, or emergency utility payments to utility providers on behalf of the household, or Temporary Cash Assistance grants
- Lump-sum additions to assets (e.g., legacies, settlements of legal claims, or retroactive lump-sum payment of benefits)
- Any other income excluded from consideration by operation of Federal or State law.

Investment threshold: the additional cost per Affordable unit of creating Affordable units at given income tiers in a project receiving or benefiting from major public subsidy, as detailed below:

	<u>Investment Threshold</u>
1. For rental developments:	
• Units at or below extremely low cost:	\$125,000
• Units at or below very low cost:	100,000
• Units at or below low cost:	50,000
• Units at or below moderate cost:	25,000
2. For ownership developments:	
• Units at or below very low cost:	\$125,000
• Units at or below low cost:	100,000
• Units at or below moderate cost:	50,000

As used above, the phrase “additional cost” means the difference in the amount of major public subsidy for an entire development between what would be required to make the development feasible with the Affordable units required by Inclusionary Housing requirements, compared to the amount of major public subsidy required to make the development feasible if it did not include the Affordable units required by Inclusionary Housing requirements. As used above, the phrase “additional cost” does not include housing funds (see “major public subsidy”, below).

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

Major public subsidy: provision by the City or any of its agents or contractors of funds, resources or financial assistance for a residential project that needs these funds, resources, or assistance to proceed. Major public subsidy includes:

- Sale or transfer of land substantially below its appraised value;
- Payment In Lieu Of Taxes (PILOT);
- Tax Increment Financing (TIF);
- Grants or loans that equal or exceed 15% of total projected project costs; or

- Installation or repair of physical infrastructure directly related to the residential project and with value equal to or exceeding 5% of total projected project costs.

Major public subsidy excludes:

- Infrastructure repairs or improvements undertaken as part of a regularly planned program; or
- Housing funds, meaning Federal, State, or City funds designated explicitly for the purpose of providing affordable housing.

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.

Phase: a portion of a project being built, or planned to be built, within a certain period of time which is separate and distinct from the period of time any other portion of a project has been or will be built.

Public program: an appropriation, tax credits, or other governmentally-controlled fiscal source legislatively authorized for the primary purpose of supporting provision of affordable housing through Federal, State, regional, or local government assistance to or facilitation of provision of newly-created housing units, whether in a residential project or in a mixed-use development project containing dwelling units. “Public program” includes housing funds such as HOME funds or Maryland Affordable Housing Trust funds, and tax credits such as Federal Low Income Housing Tax Credits, but excludes major public subsidy.

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.

Rapid transit stop: a light rail station, Metro subway station, MARC commuter rail station, or bus rapid transit stop, but excluding a bus stop not at a rapid transit stop.

Residential development or residential project (“project”): any new construction, substantial renovation of an existing building, or combination of new construction and renovation which is designed, in whole or in part, to provide thirty (30) or more residential dwelling units pursuant to Inclusionary Housing requirements. If the project is being created or will be created in phases or sections, or both, or on adjoining parcels or lots having identity of ownership of interest, the cumulative number of residential dwelling units in all phases and/or sections or on all adjoining parcels or lots having identity of ownership of interest will determine the applicability of these regulations to the project. Consequently, if a project is being created or will be created in phases and/or sections, the developer may separately request modifications or waivers, or cost offsets or other financial incentives, to be applicable to one or more phases and/or sections separately.

**Section:** a portion of a project being built, or planned to be built, within a certain geographic area of a project site, development parcel or lot, or on a development parcel or lot which is separate from or identifiable as separate and distinct from one or more other development parcels or lots being used or planned to be used for a project.

**Significant land use authorization:** adoption of a Planned Unit Development or a legislatively approved amendment to a Planned Unit Development, either of which increases the permissible number of residential units by 30 or more units above the number permitted before adoption of the Planned Unit Development or amendment.

**Significant rezoning:** any rezoning that permits residential units where none were permitted previously.

**Site Plan Review Committee:** a committee under auspices of the Baltimore City Planning Department which includes representatives of City agencies responsible for review, evaluation, and approval of various aspects, components, and impacts of a project.

**Substantial renovation:** renovation of a vacant dwelling 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 Expression of interest in Affordable units.

Any person or persons interested in purchasing or renting Affordable housing to be developed, or already developed pursuant to Inclusionary Housing requirements, may obtain from the Commissioner information concerning Affordable units which are or are expected to become available. Requesting or obtaining this information does not obligate the person or persons to apply for any particular Affordable unit that may be or is expected to be available.

Persons expressing interest in Affordable units may provide the Commissioner a valid address at which information provided by developers may be made available upon receipt by the Commissioner. The Commissioner will make no warranty, express or implied, that any information so provided may be completely accurate at any particular moment.

The Commissioner will publish the address, physical and electronic, at which information concerning Affordable units will be available.

### 2.3.a. Eligibility to Purchase Affordable units.

A person or persons constituting the adult member or members of a household residing in Baltimore City or a household containing a person employed or expecting to be employed in Baltimore City and desiring to purchase an Affordable unit must apply, at a place and time specified by the developer, to be placed on a waiting list from which persons will be certified as eligible to purchase an Affordable unit. The Commissioner may impose additional or specific requirements for applications relating to Affordable units developed with major public subsidy or for Affordable units developed pursuant to court order, which may require a developer to obtain names of eligible applicants from the Commissioner.

When the developer or developer's agent knows that an Affordable unit is available or will become available, the developer 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 an Affordable unit at one of the three Affordable Ownership cost categories (refer to section 2.9.a of these regulations).

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

- 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 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 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

Should the developer determine that any document provided in support of an application to be determined eligible has been altered in any way, or is of questionable provenance, the developer may disqualify the applicant. Should a disqualification be determined by the developer, 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 developer has discretion to accept, or reject as insufficient, any such alternative documentation. Incomplete or insufficient documentation will result in a household not being eligible to purchase an Affordable unit.

All application information collected will be subject to the Privacy Act of 1974 and related laws governing collection, retention, and disposal of such information.

A household not determined eligible by reason of failure to comply with requirements for documentation of income or household composition, as described above, may re-apply to have its name placed anew on the waiting list.

A household that considers itself displaced by the project may declare itself displaced in its application and request special priority eligibility on that basis. If the available Affordable Ownership 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 developer. If the available Affordable unit is located in the same neighborhood as an applicant's current address, that applicant will be among the households first contacted by the developer.

For administrative efficiency, the developer may categorize the waiting list by number of bedrooms that an Affordable unit should contain in order to accommodate the household's needs and composition. At the time of initial application, and at any re-application thereafter, the household may be requested to declare its preference for a specific number of bedrooms in its anticipated housing. The developer may use Federal housing standards or guidelines in matching applicant households to prospectively available Affordable units, and will 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 Affordable unit size.

For administrative efficiency, the developer may also categorizes the waiting list according to the income level and corresponding Affordable Housing cost level for each applicant household. In accordance with Inclusionary Housing requirements these levels are:

- Very low, meaning greater than 30% of AMI but not more than 60% of AMI;
- Low, meaning greater than 60% of AMI but not more than 80% of AMI;
- Moderate, meaning greater than 80% of AMI but not more than 120% of AMI.

Households including a person who has owned residential property, or held an interest in residential real property, within two years prior to the date of their review for eligibility, cannot be determined eligible until two years has elapsed since such ownership or holding ended or ceased. The Commissioner may waive this restriction for good cause, such as foreclosure, job loss not due to fault of the owner or another formerly employed adult member of the household, or death or disability of a family member, 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 two years prior to the date of application.

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 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 executing a contract to purchase an Affordable unit. The developer may require the applicant to provide a copy of the counseling agency's certificate of completion of housing counseling before proceeding with any commitment to sell an Affordable Ownership unit to the applicant.

A determination of eligibility will be valid for a period of twelve (12) months. Prior to its expiration date, a determination of eligibility remains valid as long as the household's income does not exceed the income limits specified thereon, as evidenced when the eligible household submits its application for a mortgage loan.

Eligibility may be renewed by the developer prior to its expiration if the household re-applies for it and provides documentation satisfactory to the developer 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 or less following the original expiration date.

During the twelve months' period or any renewal thereof, a household may request a redetermination by the developer 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 developer may specify the revised income limit and/or new number of bedrooms appropriate to the Affordable Ownership unit needed by the household.

### 2.3.b. Eligibility to Rent Affordable units.

A person or persons constituting the adult member or members of a household residing in Baltimore City or a household containing a person employed or expecting to be employed in Baltimore City and desiring to rent an Affordable unit must apply, at a place and time specified by the developer, to be placed on a waiting list of persons eligible to rent an Affordable Rental unit. The Commissioner may impose additional or specific requirements for applications relating to Affordable units developed with major public subsidy or for Affordable units developed pursuant to court order, which may require a developer to obtain names of eligible applicants from the Commissioner.

When the developer or developer's agent knows that an Affordable unit is available or will become available, the developer will contact applicants whose names are at the top of the waiting list and ask that they provide proof of level of income so that they may be determined eligible to rent an Affordable unit at one of the four Affordable Rental cost categories (refer to section 2.9.b of these regulations).

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

- 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

Should the developer determine that any document provided in support of an application to be determined eligible has been altered in any way, or is of questionable provenance, the developer may disqualify the applicant. Should a disqualification be determined by the developer, 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 developer has discretion to accept, or reject as insufficient, any such alternative documentation. Incomplete or insufficient documentation will result in a household not being eligible to rent an Affordable unit.

All application information collected will be subject to the Privacy Act of 1974 and related laws governing collection, retention, and disposal of such information.

A household not determined eligible by reason of failure to comply with requirements for documentation of income or household composition, as described above, may re-apply to have its name placed anew on the waiting list.

A household, which considers itself displaced by the project, may declare itself displaced in its application and request special priority eligibility on that basis. If the available Affordable Rental 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 developer. If the available Affordable unit is located in the same neighborhood as an applicant's current address, that applicant will be among the households first contacted by the developer.

For administrative efficiency, the developer may categorize the waiting list by number of bedrooms that an Affordable unit should contain in order to accommodate the household's needs and composition. At the time of initial application, and at each re-application which may occur thereafter, the household will be requested to declare its preference for a specific number of bedrooms in its housing. The developer may use Federal housing standards or guidelines in matching applicant households to prospectively available Affordable units, and will 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.

For administrative efficiency, the developer may also categorize the waiting list according to the income level and corresponding Affordable Housing cost level for each applicant household. In accordance with Inclusionary Housing requirements these levels are:

- Extremely low, meaning at or below 30% of AMI;
- Very low, meaning greater than 30% of AMI but not more than 60% of AMI;
- Low, meaning greater than 60% of AMI but not more than 80% of AMI;
- Moderate, meaning greater than 80% of AMI but not more than 120% of AMI.

Households including a person who has owned residential property, or held an interest in residential real property, within two years prior to the date of review for eligibility, cannot rent an Affordable unit until two years has elapsed since such ownership or holding ended or ceased. The Commissioner may waive this restriction for good cause, such as foreclosure, job loss not due to fault of the owner or another formerly employed adult member of the household, or death or disability of a family member, 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 two years prior to the date of application for an Affordable Rental unit.

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 renting an Affordable Housing rental unit 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. If there is not a housing counseling agency in the City of Baltimore that provides these services relating to tenants or persons intending to rent housing, the Commissioner may waive this requirement as it would otherwise apply to a particular project. The applicant household must complete to the counseling agency's satisfaction a course of housing counseling before renting an Affordable unit unless this requirement has been waived by the Commissioner. The developer may require the applicant to provide a copy of the counseling agency's certificate of completion of housing counseling for tenants or persons intending to rent before proceeding with executing a lease or rental agreement for an Affordable Rental unit.

Prior to its expiration date, a determination of eligibility remains valid as long as the household's income does not exceed the income limits specified for its Affordable Housing cost category, as evidenced when the household submits its application to lease.

A determination of eligibility may be renewed by the developer prior to its expiration if the household re-applies for it and provides documentation satisfactory to the developer 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 or less following the original expiration date.

A household having a determination of eligibility which has not expired may, if the household's income or composition changes, request a redetermination by the developer 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 developer may issue a revised determination of eligibility specifying the revised

income limit and/or new number of bedrooms appropriate to the Affordable unit needed by the household.

#### 2.4.a. Occupancy requirements for Affordable Ownership units.

An eligible household must occupy and reside in the Affordable unit as its primary residence. As evidence of fulfilling this requirement, the household must provide, at least annually 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 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 unit.

The Commissioner may grant a temporary waiver of the requirement that the eligible household continuously occupy the Affordable unit upon written request of the head of household or a properly designated representative of the head of household and upon receipt of documentation establishing to the Commissioner's satisfaction that a medical or other emergency necessitated or will necessitate an interruption of continuous occupancy for a period exceeding four consecutive weeks. For the duration of any such temporary waiver granted by the Commissioner the eligible household remains and will remain responsible for compliance with the terms of any agreements pertaining to its occupancy of the Affordable unit, including payment of all charges and costs which are due or will become due during the period that the temporary waiver is in effect. A copy of the Commissioner's temporary waiver, as it relates to occupancy of an Affordable Ownership unit, may be provided to the mortgagee, if any.

This requirement will continue until the eligible household vacates the Affordable Ownership unit or until the completion of the eligible household's tenth 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 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 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 unit.

If the household has purchased an Affordable 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.

In an Affordable Ownership unit financed by a mortgage, if the replacement head of household cannot, or will not, execute the assurances required by the mortgagee, the mortgagee may take legal action against the household, as mortgagor, as provided by law. If the Affordable Ownership unit is part of or subject to a homeowners or condominium association, the association may take legal action against the household, as owner and member, as provided by law and the covenants or declarations to which the premises is subject.

If an eligible household fails to move in to or occupy the Affordable Ownership unit which it has purchased, the developer will revoke or cancel the household's eligibility, and may proceed to offer the unit to another and eligible applicant.

Once sale of an Affordable Ownership unit has been completed by legal settlement and transfer of title, responsibility for compliance with Inclusionary Housing requirements and these regulations with respect to the Affordable unit is that of the eligible household which purchases the unit.

If during the first ten years of initial occupancy of an Affordable Ownership unit an eligible household which has purchased the Affordable 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 unit. The Affordable Ownership unit owner must certify that he/she will re-occupy and resume residence in the Affordable 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 Ownership unit within 30 days of the expiration of the waiver, the Commissioner may proceed to sell the Affordable 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 Ownership unit.

When granting a waiver to an Affordable Ownership unit owner, the Commissioner will establish the allowable rent that 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 Ownership unit and which does not request and receive from the Commissioner a waiver as described here above will forfeit its right to occupy the unit, and become subject to ejection from the unit in accordance with Maryland law and the terms of the covenants running with title to the real property where the unit is located.

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

Whenever an eligible household that has purchased an Affordable Ownership unit desires to sell its residential unit, the head of household must notify the Commissioner of the impending sale and offer the Affordable Ownership unit then owned by the household to the City of Baltimore before offering the unit to any other prospective purchaser. Procedures for Purchase of Affordable units by the Commissioner (section 2.12 of these regulations) will then be followed.

#### 2.4.b. Occupancy requirements for Affordable Rental units.

An eligible household must occupy and reside in the Affordable unit as its primary residence. As evidence of fulfilling this requirement, the household must provide, at least annually or at such shorter interval as may be required by the Commissioner or developer in response to information suggesting that the eligible household is not continuously occupying the Affordable 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 unit.

The Commissioner may grant a temporary waiver of the requirement that the eligible household continuously occupy the Affordable unit upon written request of the head of household or a properly designated representative of the head of household and upon receipt of documentation establishing to the Commissioner's satisfaction that a medical or other emergency necessitated or will necessitate an interruption of continuous occupancy for a period exceeding four consecutive weeks. For the duration of any such temporary waiver granted by the Commissioner the eligible household remains and will remain responsible for compliance with the terms of any agreements pertaining to its occupancy of the Affordable unit, including payment of all charges and costs which are due or will become due during the period that the temporary waiver is in effect. A copy of the Commissioner's temporary waiver, when it relates to occupancy of an Affordable Rental unit, will be provided to the developer or owner's agent.

This requirement will continue until the eligible household vacates the Affordable Rental unit. If the head of the eligible household dies, or is removed from the Affordable 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 unit, any other adult then a member of the eligible household and authorized to occupy or reside in the unit pursuant to the lease 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 unit.

In an Affordable 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, or any rights of the lessor provided by law.

If the eligible household fails to move in to or occupy the Affordable Rental unit which it has leased, the developer will revoke or cancel the household's eligibility, and may proceed to offer the unit to another and eligible applicant.

An eligible household that is a tenant of an Affordable 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 annually, in a form and manner prescribed by the Commissioner, that it has resided and will continue to reside only in the Affordable Rental unit. A declaration by an eligible household of a change of household income or composition, which may be acceptable 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 or the right to require that the eligible household transfer to another Affordable Rental unit in the same project or in another project controlled by the lessor.

An eligible household renting an Affordable Rental unit and determined to have violated or not complied with these requirements will forfeit its right to occupy the unit, and become subject to ejection from the unit in accordance with Maryland landlord-tenant relations law.

## 2.5 Requirements to Provide Affordable 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, and which is subject to Inclusionary Housing requirements, must apply to the Commissioner for approval of the project and comply with the requirements of these regulations.

A project subsidized by a public program and satisfying fully the Affordable Housing requirement for developments receiving major public subsidy, as provided in Inclusionary Housing requirements and shown in the column “Development receiving major public subsidy” of the tables under section 2.7 of these regulations, is exempt from Inclusionary Housing requirements and these regulations.

A project subsidized by a public program may be considered to satisfy Inclusionary Housing requirements if the developer demonstrates to the Commissioner compliance with requirements shown in the column titled “Development receiving major public subsidy” in section 2.7 of these regulations and the standards listed at 2.5.a.1 – 4 below.

For residential projects subject to Federal, State, or other local affordable housing requirements imposing an affordability restriction, if the terms of Inclusionary Housing requirements regarding the length of a restriction or the level of affordability are more stringent than the applicable Federal, State, or other local requirements, the terms of the Inclusionary Housing requirements and these regulations apply to such projects.

A project developed or issued a Certificate of Occupancy prior to the effective date of these regulations is not subject to Inclusionary Housing requirements and these regulations. (See also regulations 2.5.e (1) and 2.5.e (2) below.)

Affordable units provided pursuant to Inclusionary Housing requirements must be dispersed throughout the project. A developer may request a variance from this requirement by submitting to the Commissioner a written request to cluster Affordable Housing units within the project. The developer may combine or include this request with any other request which is made pursuant to regulations 2.5(a), (b), or (c) below. Within 45 days of receipt of the request, the Commissioner will provide a written determination as to whether the proposal to cluster Affordable Housing units adequately demonstrates that the proposed design meets the goals of Inclusionary Housing requirements, and whether that variance should be allowed.

Pursuant to Inclusionary Housing requirements, a developer or project may seek partial relief from, or must otherwise fully comply with, the ordinance’s requirements to provide Affordable Housing, in accordance with the ordinance’s three categories of projects:

- (a) projects receiving major public subsidy,
- (b) projects benefiting from significant land use authorization or rezoning, and
- (c) other projects of 30 or more units.

If the Commissioner, responding to a request for relief from these requirements, determines that cost offsets or other incentives available to a project are insufficient to offset fully the financial impact on the developer or project of providing the Affordable units required by the ordinance, the Commissioner will either exempt the project from these requirements, or modify the number of Affordable units required so that cost offsets and/or other incentives available to the project are sufficient to offset fully the financial impact, and so notify the developer, in accordance with the following provisions.

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, Section 2B-21, 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 units.
2. All of the required Affordable units will be complementary in exterior appearance to the market rate residential units in the same project.
3. All of the required Affordable 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 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 (2.5.a.1 – 4) by submitting a written request to the Commissioner. The request should be submitted 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 demonstrate to the Commissioner's satisfaction the project's economic feasibility if the requested variation would be approved. The information and documentation should establish the total amount of major public subsidy being and/or to be provided to the project, and describe how the major public subsidy is insufficient to offset fully the financial impact on the developer of providing Affordable units pursuant to Inclusionary Housing requirements. The developer may provide a *pro forma* for the project detailing all project costs and specifying the additional cost, in total and per unit, of providing the Affordable units required, as part of the documentation.

Upon receiving and reviewing such information and documentation, the Commissioner will make a preliminary determination whether the development would be economically feasible without the requested variation(s) if cash subsidies pursuant to Inclusionary Housing requirements or other incentives were granted in order to offset the financial impact on the developer of providing the Affordable units pursuant to Inclusionary Housing requirements. The amount of cash subsidies that may be offered by the Commissioner will be limited to an amount representing the sum of per-unit cost offsets not exceeding the per-unit investment threshold specified by Inclusionary Housing requirements. 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 units. The Commissioner will also determine if any public program could provide a complete or partial alternative to any or all of the variation(s) requested by the developer.

The Commissioner will consider all aspects of the project and will issue a written decision indicating:

- The total amount of public subsidy or other incentives being provided to the project and in what forms (e.g. reduced land price, TIF, PILOT, cash, etc.)
- The funding available to offset the financial impact on the developer of providing Affordable units
- The additional total cost to the project of providing the required affordable units, and the additional cost per unit, as estimated by the Commissioner based on his analysis of all information submitted and otherwise made available to the Commissioner
- Whether the subsidy is insufficient to offset fully the financial impact on the developer of providing the required Affordable units
- What modification, if any, in the number of required units is being granted by the Commissioner in order to make the public subsidy that is available sufficient to offset fully the financial impact of providing Affordable units
- Any allowable variation(s) of the requirement that Affordable units be complementary in exterior appearance to the market rate units in the same project
- Any allowable variation(s) of the requirement that Affordable units be comparable to the market rate units in number of bedrooms per unit
- Any allowable variation(s) of the requirement that Affordable units be comparable to market rate units in overall quality of construction.

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. If the developer does not notify the Commissioner within ten days that the offer of cost offsets is not accepted, the developer will be deemed to have accepted the offer of cost offsets.

If the developer has declined the offer of cost offsets, the Commissioner will review the developer's response and may consult with the Planning Department and other Baltimore City agencies concerning the developer's original request, and may review other information as the Commissioner may deem appropriate. 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 by the Commissioner 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 that may be concerned with the request.

At its meeting, following presentation to the Board of information 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 date of the developer's original request, notification of the determination. In the determination, the Commissioner may find that the development would be economically feasible with approval of all or part of the developer's request.

In the determination, the Commissioner will either:

- (i) exempt the project 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 benefiting from significant land use authorization or rezoning.

A development project made possible by, or benefiting from, a significant land use authorization or rezoning in accordance with the provisions of Article 13, Subtitle 2B, Section 2B-22, 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 units.
2. All of the required Affordable units will be complementary in exterior appearance to the market rate residential units in the same project.
3. All of the required Affordable 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 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.
5. All Affordable units will be constructed and completed in the same time frame as the market rate units in the project.

A developer may request a variance from any of the above requirements (2.5.b.1 – 5) by submitting a written request to the Commissioner. The request should be submitted 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 demonstrate to the Commissioner's satisfaction the development's economic feasibility if the requested variation(s) would be approved. The Commissioner will review the request and may consult with the Planning Department and other Baltimore City agencies concerning the request, and may review other information as the Commissioner deems appropriate.

Upon receiving and reviewing such information and documentation, the Commissioner will make a preliminary determination whether the project would be 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 fully the financial impact on the developer of providing the Affordable units pursuant to Inclusionary Housing requirements. The Commissioner will also state in the written decision:

- Any allowable variation(s) of the requirement that Affordable units be complementary in exterior appearance to the market rate units in the same project
- Any allowable variation(s) of the requirement that Affordable units be comparable to the market rate units in number of bedrooms per unit
- Any allowable variation(s) of the requirement that Affordable units be comparable to market rate units in overall quality of construction
- Any allowable variation(s) of the requirement that Affordable units be constructed and completed in the same time frame as the market rate units in the project.

If the Commissioner determines that the project would not be economically feasible if it provided the number of Affordable units required, even if the project received a density bonus, the Commissioner will notify the developer that the project is exempt from the requirement to provide Affordable units. A copy of the Commissioner's notification will be provided simultaneously to the Baltimore City Planning Department.

The Commissioner will notify the developer of a preliminary determination that the project would be feasible within 45 days of receipt of the developer's request. If the Commissioner determines that the project would be economically feasible after 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 Inclusionary Housing requirements.

In the determination, the Commissioner will either:

- (i) exempt the project 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 units.

- c. Other projects of 30 or more units not covered by (a) or (b) above.

{ Reserved. }

- d.(1) Modification for lower affordability levels than required

A developer may request a modification in the number of Affordable units required if homes will be provided for families in a mixed-income setting at lower affordability levels than those required under this section. This recognizes that there is an additional expense to make a home affordable at lower cost levels and that the City may have an interest in achieving deeper levels of affordability to respond to the full range of housing needs in the city.

Developers requesting a modification of Affordable units required in a project to compensate for or offset (a) provision of Affordable units at lower income levels than those specified in the table at section 2.7 of these regulations should refer to section 2.7.

d.(2) Modification to allow more affordable units in mixed-income housing

A developer may request a modification in the number of Affordable units required if, because of limited City resources, more Affordable units in mixed income housing will be created over a 2-year period than would be created if the modification or waiver were not granted. This recognizes that there may be circumstances where market conditions in the City are such that development projects in the City will not go forward at all if the requirements are strictly enforced, but could go forward with a different number of Affordable units.

Developers requesting a modification of Affordable units in a project due to limited City resources should refer to section 2.7 of these regulations.

e.(1) Because Section 5 and Section 6 of Ordinance 07-474 provide that Inclusionary Housing requirements do not apply to certain residential development projects, the following special regulation applies to projects for a limited time, as stated in each paragraph which follows.

For projects receiving major public subsidy, or a phase or section of a project receiving major public subsidy, which is either:

1. a transfer of land for which the request for proposals, invitation to bid, or similar document was issued before the adoption of these regulations; or
2. a payment in lieu of taxes (PILOT) agreement or tax increment financing (TIF) for which authorizing legislation was introduced before the adoption of these regulations; or
3. a grant or loan for which the notice of funding availability (NOFA) or similar notice was published before the adoption of these regulations,

these Inclusionary Housing regulations are not applicable, except upon written agreement by and between the developer and the Commissioner.

For projects benefiting from a significant land use authorization or rezoning, or a phase or section of a project benefiting from a significant land use authorization or rezoning, for which:

1. the significant land use authorization or rezoning was approved within 18 months after the effective date of Ordinance 07-474, or on or before January 19, 2009; or
2. the development has been the subject of a Pre-Development Meeting with the Planning Department before the adoption of these regulations,

these regulations are not applicable, except upon written agreement by and between the developer and the Commissioner.

e.(2) Because Section 7 of Ordinance 07-474 provides that Inclusionary Housing requirements do not apply to certain residential development projects until certain criteria are met, the following special regulation is applicable to projects not receiving major public subsidy

and to projects not benefiting from a significant land use authorization or rezoning, as provided below.

Upon receipt of data and information which conclusively establish that in the previous year \_ (three-quarters) of arms-length home sales in Baltimore City (excluding homes sold for minimal sales price or \$50,000, whichever is greater) has a sales price greater than the level affordable to a household at 80% of AMI, the Commissioner will publish a certification of this data and information on-line and by report to the City Council and the Board. One hundred and twenty (120) days after publication of the certification by the Commissioner, the provisions and requirements of these Inclusionary Housing regulations will become applicable to projects not receiving major public subsidy and/or not benefiting from a significant land use authorization or rezoning.

Additionally, regardless of the date of the Commissioner's certification, these regulations will not apply to a development project which has had a Pre-Development Meeting with the Planning Department before the taking effect of these regulations pursuant to the certification and 120-day notice described immediately above, except upon written agreement by and between the developer and the Commissioner.

## 2.6 Providing Affordable units Off Site.

A developer may apply to the Commissioner to approve provision of off-site Affordable units in whole or partial substitution for the Affordable units required in projects benefiting from significant land use authorization or rezoning.

If the developer will be unable to comply with the requirement to construct and complete Affordable units in the same time frame as the market rate units in the project, the developer may apply for a separate variance from that requirement and offer to provide off-site Affordable units. Projects benefiting from major public subsidy are ineligible to provide off-site Affordable units. 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 Inclusionary Housing requirements 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 units on site is not financially feasible, or that requiring construction and completion of Affordable Housing units in the same time frame as market rate units in the project is not feasible; and
- Contains an analysis of how off-site substitution of Affordable 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 units, unless off-site Affordable units are necessitated by the project's inability, without imposition of additional financial burdens on the developer or project, to provide required Affordable units in the same time frame as the market rate units in the project.

If a developer applies for approval of off-site Affordable 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 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 units as requested by the developer, the Commissioner must find that:

1. Off-site Affordable 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 Planning Department, 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 units provided on-site at the residential project are no fewer than the number of Affordable units required according to Inclusionary Housing requirements.

The Commissioner may additionally find that public benefits of the proposed off-site location outweigh the value of locating the Affordable units on site, or that providing the Affordable 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 units would be provided;
- whether the Affordable 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 Ownership units at market rate in order to return them to Affordable Housing cost.

The decision of the Board of Estimates concerning off-site substitution of Affordable units will be final, subject to judicial review of that decision following appeal by an aggrieved party to the Circuit Court for Baltimore City in accordance with Maryland Rules of Procedure.

If the developer's application to provide Affordable 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.

2.7 Modification of Affordability Levels in Affordable units required.

A developer may apply to the Commissioner to provide a mix of Affordable units that varies from the specifications of Inclusionary Housing requirements. The developer’s request should be submitted prior to the developer’s first scheduled Site Plan Review Committee meeting.

As specified in Inclusionary Housing requirements, the following standards have been established for the affordability levels of Affordable Ownership units 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>1</sup>
MODERATE: 120% OF A.M.I	Maximum of 25% of Affordable Ownership units	Maximum of 50% of Affordable Ownership units	All Affordable Ownership units
LOW: 80% OF A.M.I.	Minimum of 50% of Affordable Ownership units	Minimum of 50% of Affordable Ownership units	No requirement
VERY LOW: 60% OF A.M.I.	Minimum of 25% of Affordable Ownership units	No requirement	No requirement
EXTREMELY LOW: 30% OF A.M.I.	No requirement	No requirement	No requirement

<sup>1</sup> The requirements in this column are currently inactive, per Section 7 of Ordinance 07-474.

As specified in Inclusionary Housing requirements, the following standards have been established for the affordability levels of Affordable Rental units 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: At or below 120% of A.M.I	See requirement below (at or below 100% of A.M.I.) <sup>3</sup>	Maximum of 50% of Affordable Rental units	All Affordable Rental units
MODERATE: At or below 100% of A.M.I	Maximum of 20% of Affordable Rental units <sup>4</sup>	See requirement above (at or below 120% of A.M.I.)	No requirement
LOW: At or below 80% of A.M.I.	Minimum of 25% of Affordable Rental units	No requirement	No requirement
VERY LOW: At or below 60% of A.M.I.	Minimum of 25% of Affordable Rental units	Minimum of 50% of Affordable Rental units	No requirement
EXTREMELY LOW: 30% OF A.M.I.	Minimum of 30% of Affordable Rental units	No requirement	No requirement

<sup>2</sup> The requirements in this column are currently inactive, per Section 7 of Ordinance 07-474.

<sup>3</sup> Per Section 2B-21(b)(2)(i) of Ordinance 07-474, cost limit for Moderate Income Affordable Housing Rental units receiving major public subsidy is 100% of AMI, not 120% of AMI.

<sup>4</sup> Per Section 2B-21(b)(2)(i) of Ordinance 07-474, cost limit for Moderate Income Affordable Housing Rental units receiving major public subsidy is 100% of AMI, not 120% of AMI.

Because the intent of Inclusionary Housing 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 units in the development from the proportions of income levels specified by Inclusionary Housing requirements.

A developer requesting a modification of any of the above requirements must submit to the Commissioner information and documentation that could demonstrate to the Commissioner's satisfaction:

- the project's feasibility if the requested modification would be approved, or
- the developer's ability and resources to provide homes for families in a mixed-income setting at lower affordability levels than those established by Inclusionary Housing requirements, or
- the developer's ability and readiness to cooperate with the City of Baltimore to use limited City resources to create more Affordable 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 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, and any other information which the Commissioner may deem appropriate, the Commissioner will make a preliminary determination whether the project would be feasible without the requested modification if cash subsidies or other incentives pursuant to Inclusionary Housing requirements were granted in order to offset the financial impact on the developer of providing Affordable units pursuant to Inclusionary Housing requirements, or whether the project would be 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 Inclusionary Housing requirements in order to offset the financial impact on the developer of providing the Affordable units.

The Commissioner may consult with the Planning Department or other public agencies concerning the developer's request for a modification.

If the Commissioner preliminarily determines that cash subsidies or other incentives should be provided, the Commissioner will then ascertain if pursuant to Inclusionary Housing requirements there is adequate funding in the Fund to provide the developer a cash subsidy as a cost offset to the impact of providing Affordable units in a project receiving major public subsidy, or if other incentives should be provided to complete the cost offsets. The Commissioner will notify the developer within twenty days of any offer of cash subsidy or other incentives.

Within ten days of the Commissioner's notification, the developer must accept in writing the Commissioner's offer of cost offsets or other incentives or notify the Commissioner that the developer does not accept the offer of cost offsets or other incentives and prefers to seek a

determination of modification by the Commissioner with recommendation to the Board of Estimates. If the developer does not notify the Commissioner within ten days that the offer of cost offsets or other incentives is not accepted, the developer will be deemed to have accepted the offer of cost offsets or other incentives.

If the developer has notified the Commissioner that the cost offsets or other incentives 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 a preliminary determination whether the project would be feasible if the requested modification were granted. The Commissioner's preliminary determination will be presented to the Board of Estimates for consideration as a recommendation.

If the Commissioner preliminarily determines that cash subsidies or other incentives need not be provided to meet Inclusionary Housing requirements, the Commissioner will so notify the developer within twenty days following the modification request. Within ten days following the Commissioner's notification, the developer must accept the Commissioner's determination, or request a referral of the developer's original request for a modification to the Board of Estimates. If the developer does not notify the Commissioner within ten days that the preliminary determination is not accepted, the developer will be deemed to have accepted it.

If the developer has also requested a density bonus pursuant to Inclusionary Housing requirements for a residential project benefiting from significant land use authorization or rezoning, 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 established by Inclusionary Housing requirements; or
- Because of limited City resources, more Affordable units in mixed-income housing will be created over a 2-year period than would be created if the modification 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 project would not be economically feasible, given existing market conditions, with the number of Affordable units required by Inclusionary Housing requirements, additional density bonuses are not available, and granting a modification would create more Affordable 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, subject to judicial review of that decision following appeal by an aggrieved party to the Circuit Court for Baltimore City in accordance with Maryland Rules of Procedure.

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 Inclusionary Housing Board of the approval at the next regularly scheduled meeting of that Board.

If the Commissioner preliminarily determines that a density bonus need not be provided to make the project feasible, the Commissioner will notify the developer within 45 days. This determination may be appealed by the developer in writing within 15 days to the Board of Estimates. This developer's appeal does not constitute an appeal to the Board of Municipal and Zoning Appeals, which must be made separately and directly by the developer to the Board of Municipal and Zoning Appeals.

## 2.8 Standards for Size and Finish of Affordable units.

{ Reserved. }

*(Standards for size and finish of Affordable units will be developed by a working group which will be convened by the Commissioner, and will be adopted at a later date.)*

## 2.9 Establishing Sales Prices and Rents.

The Commissioner will set and disseminate maximum sales prices and rents associated with each Affordable Housing cost category. Schedules providing these sales pricing and rental standards will be maintained by the Commissioner and will indicate the residential unit size, designated as number of bedrooms per dwelling unit. The schedules will be revised following issuance of Area Median Income data each year.

### 2.9.a. Sales prices.

Sales pricing standards apply to all Affordable Ownership units offered for sale or sold on or after the effective date of their adoption by the Commissioner, as stated in a public notice made by the Commissioner. The following sales pricing standards are established for Affordable Ownership units:

Affordable Homeownership unit Size	Very Low Income (60% of AMI) Maximum Sale Price	Low Income (80% of AMI) Maximum Sale Price	Moderate Income (120% of AMI) Maximum Sale Price
Efficiency, Single-room Occupancy, or 0-Bedroom	\$98,460	\$129,150	\$196,920
1-Bedroom	112,680	147,600	225,360
2-Bedroom	140,760	184,500	281,520
3-Bedroom	163,260	214,050	326,520
4-Bedroom	185,760	243,600	371,520

*Effective April 2008*

Because affordability of Affordable Ownership units is statutorily related to income levels which are proportions of AMI, while particular financial market and real estate sub-market conditions, as well as terms and conditions of any major public subsidies, cost offsets or other incentives may determine or influence the relationship of a household's income to a particular housing unit offered for sale, the Commissioner may consider factors influencing for-sale housing affordability, including generally required

levels of down-payment, generally available interest rates and generally available terms of mortgages, generally acceptable ratios of loan to value, and anticipatable levels of property taxes and real property insurance which would relate to the Affordable Ownership units, in addition to special factors relating to the specific development, such as below-market interest rate financing which may be made available to first-time buyers of Affordable Ownership units, developer's discounts available to buyers, or third-party commitments to contribute to making housing units in the development affordable to households at certain income levels, in authorizing modifications to sales pricing standards.

Sales prices for Affordable Ownership units will be the developer's offering price or the sale price established in the preceding schedule, or the Commissioner's determination, issued in response to the developer's request, of a maximum price based upon the Affordable Housing cost category.

Allowable sales prices may be increased by the Commissioner to compensate for any or all of these closing costs if paid by the seller:

- A permanent loan origination fee which as a percentage of Affordable unit sale price is a percentage not exceeding the percentage of market-rate unit sale price charged for origination of a permanent loan for a market-rate unit in the same project
- City tax certificate, transfer charges, revenue stamps and recordation charges, and State real estate transfer taxes
- 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
- Termite inspection, and treatment if required, and inspection certification
- Flood insurance.

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;
- Energy-saving devices, equipment, or technologies and costs such as developer substitution of a gas-fired heating system for an electrical heating system, including an electrical heat pump, in an Affordable 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, or certified energy-saving devices or building components;
- Additional costs, agreed to in writing by the developer and the eligible household, which provide modifications to the Affordable unit to facilitate access or use by a

person with disabilities, subject to compliance with the Americans with Disabilities Act;

- Additional one-time costs which could not reasonably 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 non-recurring costs imposed by public utilities.

The Commissioner may restrict imposition of costs that would cause or create excessive mandatory homeowners or condominium association fees to be imposed upon an eligible household purchasing an Affordable Ownership unit. The Commissioner will not restrict fee bases which relate to exterior maintenance or repairs, maintenance or repair of common interior spaces or building systems, core services such as gardening or snow removal on common spaces, or funding of reserves for replacements. 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 Ownership units in the project.

Prior to obtaining necessary permits, a developer may request the Commissioner's determination of which costs or fees that the developer is considering imposing on Affordable Ownership unit buyers would not be allowed pursuant to these regulations.

## 2.9.b. Rents.

Rents (rental rates) for Affordable Rental units will be the lesser of the developer's asking or advertised rent or the Commissioner's determination of a maximum rent based upon the Affordable Housing cost category. The rent maxima apply to all Affordable Rental units offered for or available to lease or rent on or after the effective date of their adoption by the Commissioner, as stated in a public notice made by the Commissioner.

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

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 single-room occupancy unit and efficiency dwelling unit rents will be based upon occupancy by one person. Eligible households must qualify for occupancy of an Affordable 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 Rental unit.

For Affordable 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 rental housing cost (rent) for the Affordable 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. Utility allowances in no way limit a tenant's obligations to pay for utility consumption or services.

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 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, copies of the notification of approval must be provided to the tenants of the Affordable Rental units by the developer or owner, 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 Rental units, but may not make leasing or rental of off-street parking space a condition or qualification for occupying an Affordable Rental unit.

The following maximum rents for Affordable Rental units are for rental units with rents that include all utilities. For Affordable Rental units with rents that do not include all utilities, which therefore require the tenant to pay for some or all utilities, the following amounts will be reduced by the value of the utilities allowance calculated for the particular unit.

Affordable Rental Unit Size	Extremely Low Income (30% AMI) Housing Cost Rent/ month	Very Low Income (60% AMI) Housing Cost Rent/ month	Low Income (80% AMI) Housing Cost Rent/ month	Moderate Income (100/120% AMI) Housing Cost Rent/ month *
Efficiency, Single-room Occupancy, or 0-Bedroom	\$410	\$821	\$1,076	<u>Subsidy/ No subsidy</u> \$1,368/ 1,641
1-Bedroom	469	939	1,230	1,565/ 1,878
2-Bedroom	586	1,173	1,538	1,955/ 2,346
3-Bedroom	680	1,361	1,784	2,268/ 2,721
4-Bedroom	774	1,548	2,030	2,580/ 3,096

*Effective April 2008*

\* The first figure in this column reflects the 100% of A.M.I. cost limit imposed on Moderate Housing Cost Affordable Rental units receiving major public subsidy by Ordinance 07-474 (see Section 2B-21). The second figure in this column reflects the 120% of A.M.I. cost limit imposed on Moderate Housing Cost Affordable Rental units not receiving major public subsidy (see Sections 2B-22 and 2B-23 of Ordinance 07-474).

The maximum rents shown in the preceding table are subject to revision by the Commissioner.

## 2.10.a. Sales procedures.

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

- Location (including address) of the units
- For sale 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
- Anticipated date, or for phased units, dates, when units are expected to be available for occupancy
- An estimate of what homeowners or condominium association fees, if any, will be in the first twelve months of occupancy

The developer should inform the public at least 45 days prior to the anticipated date that Affordable units will initially become available for occupancy of the following:

- Location (including address) of the units
- For sale 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
- Anticipated date, or for phased units, dates, when units are expected to be available for occupancy
- An estimate of what homeowners or condominium association fees, if any, will be in the first twelve months of occupancy

In the marketing of Affordable Ownership units and qualification of prospective buyers, the developer must use all criteria normally and customarily used to determine if a prospective buyer qualifies to purchase a unit in the project, other than criteria relating to capability to afford to buy 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, or in its application for permanent financing) 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 unit to a household whose eligibility is invalidated by reason of the household’s income, as declared on its mortgage loan application, exceeding the income limit specified for Affordable units by the Inclusionary Housing requirements.

A developer or developer's agent may not require an eligible household to provide a deposit or earnest money for an Affordable Ownership unit in an amount exceeding the percentage of the sale price established for the unit pursuant to "Establishing Sales Prices", above, corresponding to the percentage of the sale price for market rate housing units which is required to be provided by the buyers of market rate units.

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

If during the marketing period the developer or developer's agent has sold, or contracted to sell, all available Affordable Ownership units in the project to eligible households, the developer may suspend receipt of applications for Affordable Ownership units.

If during the marketing period the developer or developer's agent has not been able to sell, or contract to sell, all available Affordable units to qualified eligible households, the developer must notify the Commissioner of this fact, and may request purchase or lease of any or all of the vacant Affordable units by the Commissioner or by housing providers designated by the Commissioner.

The Commissioner's determination concerning the developer's request for purchase or lease of Affordable units will be final, and the developer will be notified of the determination within twenty days.

The developer may request a modification of the Affordable unit percentage(s) which must be at a specific Affordable Housing cost as provided in "Modification of Affordability Levels in Affordable units" (section 2.7), above. When the developer requests such a modification, the Commissioner will notify the developer of a preliminary determination concerning modifying the percentages of Affordable 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.

Following each sale of an Affordable Ownership unit, the developer must furnish the Commissioner a copy of the buyer's income and family composition information used to establish eligibility pursuant to section 2.3.a. of these regulations, and a copy of the settlement sheet for the sale of the unit. This documentation will be reviewed by the Commissioner as part of routine review of compliance by the developer with Inclusionary Housing requirements and these regulations. Should the Commissioner's review determine that the developer is not fully complying with Inclusionary Housing

requirements and these regulations, the Commissioner will notify the developer that an on-site examination of the developer's records and related procedures will occur, and state the date and time for commencement of the on-site examination. The developer must fully cooperate with this on-site examination.

2.10.b. Rental procedures.

The developer must notify the Commissioner at least 120 days prior to the anticipated date that Affordable units will initially become available for occupancy of the following:

- Location (including address) of the units
- 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
- Anticipated date, or for phased units, dates, when units are expected to be available for occupancy
- What utilities, if any, will be included in the rent

The developer should inform the public at least 120 days prior to the anticipated date that Affordable units will initially become available for occupancy of the following:

- Location (including address) of the units
- 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
- Anticipated date, or for phased units, dates, when units are expected to be available for occupancy
- What utilities, if any, will be included in the rent

In the marketing of Affordable units and qualification of prospective tenants, the developer must use all criteria normally and customarily used to determine if a prospective tenant qualifies to rent a unit in the project, other than criteria relating to capability to afford to 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 lease or rent) all application fees, credit report fees, 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 rental property owner or owner’s rental agent is prohibited from leasing or renting an Affordable Rental unit to, or contracting to permit occupancy of an Affordable Rental unit by, a household whose income, as declared on its application to lease or rent, exceeds the income limit specified for Affordable units by Inclusionary Housing requirements.

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

If during the marketing period the developer or developer's agent has leased all available Affordable units in the project to eligible households, the developer may suspend receipt of applications for Affordable Rental units.

If during the marketing period the developer or developer's agent has not been able to lease all available Affordable units to qualified eligible households, the developer must notify the Commissioner of this fact, and may request leasing of any or all of the vacant Affordable units by the Commissioner or by housing providers designated by the Commissioner, or an extension of the marketing period.

The Commissioner's determination concerning the developer's request for leasing of Affordable units will be final, and the developer will be notified of the determination within twenty days.

The developer may request a modification of the Affordable unit percentage(s) which must be at a specific Affordable Housing cost as provided in "Modification of Affordability Levels in Affordable units" (section 2.7), above. When the developer requests such a modification, the Commissioner will notify the developer of a preliminary determination concerning modifying the percentages of Affordable 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.

## 2.11 Designation of Housing Providers.

The Commissioner may designate certain developers, housing development agencies or nonprofit corporations as eligible to purchase solely for the purpose of reselling to eligible households certain Affordable Ownership units, or as eligible to lease, solely for the purpose of sub-leasing or sub-letting to eligible households, certain Affordable Rental units. To be eligible for such a designation, the housing provider must demonstrate in writing to the Commissioner's satisfaction its abilities to acquire or provide, operate, manage and maintain satisfactorily on a long-term basis Affordable 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 unit, and the number of Affordable 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 in Baltimore City;
- Monthly rental rates or occupancy charges for each Affordable unit, and any other occupant-paid or tenant-paid charges for each such unit;
- The Affordable unit's occupant's or tenant's gross household income and household composition;
- Amount of rental 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 rental 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 that 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. Should the Commissioner revoke or cancel a designation, he may designate another housing provider to assume the rights, duties and responsibilities of the formerly designated provider with respect to Affordable Rental units leased by the formerly designated provider. The developer or owner may determine whether to contract with the replacement designated housing provider subject to provisions of law.

A developer may provide, by covenant, contract, lease agreement, or otherwise pursuant to law, requirements which a designated provider must adhere to as a condition of becoming the owner authorized and obligated to resell to an eligible household, or the tenant authorized and obligated

to sublet or sublease to an eligible household, the Affordable unit subject to the covenant, lease agreement, or other legal instrument appurtenant to the unit.

## 2.12 Procedures for Purchase of Affordable units by the Commissioner.

Upon receipt of notification from a developer, in accordance with “Sales Procedures” above, or from an owner of an Affordable 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 Inclusionary Housing requirements.

Within 21 days from delivery of the developer’s notification, 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 from delivery of the Commissioner’s notification to the provider 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. The owner and the designated housing provider are responsible for negotiating terms of the contract of sale for the unit offered.

A developer or owner of an Affordable 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.

### 2.13 Resale of Affordable Ownership units during Control Period.

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

If during this control period, or at a later time, the owner decides to sell the Affordable Ownership unit, the owner must notify the Commissioner prior to commencing marketing of the unit. This requirement is also applicable to Designated Housing Providers that have purchased Affordable Ownership units. The Commissioner will determine whether to purchase, or not purchase, the unit, and the “Procedures for Purchase of Affordable units by the Housing Commissioner” (section 2.11, 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 Inclusionary Housing requirements:

- 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 here above 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 here above 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 Director of Finance will receive, on behalf of the City of Baltimore, the City’s share of the proceeds of the sale.

The title to each Affordable Ownership unit will be subject to a covenant that 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 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 here above. The successor in interest to the original owner of the Affordable Ownership unit must notify the Commissioner within 30 days of ratification of the settlement of the property that the title has passed to the successor in interest.

#### 2.14 Procedures for Sale of Affordable 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 Ownership unit must notify the Commissioner in writing not less than 30 days prior to the date of the foreclosure sale or auction.

The mortgagee or other secured party must, to the extent permitted by law or operation of law, allow the Commissioner, including a housing provider designated by the Commissioner, a right of first refusal to purchase the Affordable Ownership unit.

Foreclosure action does not affect the running of the ten-year affordability terms imposed upon Affordable Ownership units by covenants or other agreements filed with the land records of Baltimore City.

## 2.15 Continued affordability for Affordable Rental units.

Every Affordable Rental unit must remain at an affordable rent, as established pursuant to determinations of the Commissioner (see regulation 2.9.b. above), 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 30<sup>th</sup> anniversary of the date of original rental.

During the affordability period, the developer or owner of the rental property may not rent or lease any Affordable Rental unit and a tenant may not sub-rent or sub-lease the unit except to an eligible household at a rent that does not exceed the affordable rent applicable to the unit. The affordable rent applicable to a unit may be adjusted to a higher or lower affordability level on the anniversary date of the lease then in effect for the unit if the revised affordable rent will comport with the new affordable income level declared by and verified for the tenant household. If this adjustment occurs, the developer or owner then must revise the rent for the next Affordable Rental unit to be vacated in the development so that its new rent level serves to make it replace the affordable rent level of the rental unit for which the affordable rent was most recently adjusted. The developer or owner must then lease that available rental unit to an eligible household pursuant to Inclusionary Housing requirements.

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 rents relevant to the Affordable Rental units in the project. The rent charged for an Affordable 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 Rental units in its residential project, showing:

- The Affordable 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.

If an Affordable Rental unit is leased to a designated housing provider, the current register must indicate for that unit:

- The Affordable Rental unit address;
- The number of bedrooms contained in the unit;
- The name of the designated housing provider to which the unit is leased or rented;
- The address of the business office of the designated housing provider; and
- The name of the agent or contact person for the designated housing provider.

The register of Affordable Rental units must be maintained in a place within the City of Baltimore where the Commissioner may conveniently review it during normal business hours. For administrative efficiency, the register may be comprised of information assembled from or provided by one or more data-tracking systems maintained by the owner or owner's agent in the course of normal business operations.

The Commissioner will notify the developer of the first review, and all subsequent reviews, of the developer's compliance with Inclusionary Housing requirements and these regulations. The timing of the first review will be based upon the initial leasing of Affordable Rental units in the development. Subsequent reviews will be scheduled based upon the level of compliance determined in the prior review.

A sample of any lease or rental agreement which the developer or owner proposes to use as a contract between the owner, as landlord, and eligible households, as tenants, must be submitted to the Commissioner for review within seven business days before the beginning of a 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 Inclusionary Housing requirements, 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 modified in accordance with Inclusionary Housing requirements. The landlord may with prior written approval of the Commissioner modify or replace a previously approved lease at any time during the affordability period, subject to applicable laws governing landlord-tenant relations.

Lease or rental agreements for Affordable Rental units, including those leased by Designated Housing Providers, 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 biennially 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 (b)(2) 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 based on the next higher level of affordability specified by Inclusionary Housing requirements. The next higher Affordable Housing cost rent will remain the rental rate for the unit as long as the household's income remains at the new level, or until the tenant vacates the unit.

- 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 Rental unit, including all verifications relating to initial occupancy of the unit by the current tenant (as provided in section 2.3.b. of these regulations), or to maintain records pertaining to Affordable 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 Rental units and any provisions of applicable Maryland landlord-tenant relations law, the provisions of the State law will be controlling.

Every Affordable 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 that 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 at least 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 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 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 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 that 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 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 Rental units.

If the Commissioner approves a project-specific substitute inflator index for Affordable 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 Rental units in the project.

The rent for an Affordable 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 Rental units.

## 2.16 Recertifications for Affordable Rental units.

For households that are tenants in Affordable Rental units, a biennial recertification of eligibility must be completed by the owner or owner's agent on or before the anniversary of the effective date of the lease for the Affordable Rental unit.

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

If the household is not receiving tenant-based rental assistance or is not benefiting from project-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 Rental units for any additional year:

- i. Examine source documents evidencing annual income, as provided in (1) 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 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 annually 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 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 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 subject to ejection from the unit in accordance with Maryland landlord-tenant relations law.

## 2.17 Reporting requirements for Affordable Rental units.

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

- The Affordable 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;
- 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.

A copy of an annual report to an agency providing or monitoring affordable housing financing, incentives or subsidies, which provides the information required above, may be furnished to the Commissioner to satisfy this reporting requirement. The report should be submitted by the August 15<sup>th</sup> date following the June 30<sup>th</sup> report due date.

## 2.18 Affordability Agreements for Housing and Enforcement.

Agreements providing for affordability of Affordable units developed or created pursuant to Inclusionary Housing requirements will be included in Affordable Housing Agreements running with the land which will be filed in the land records of Baltimore City.

A developer of Inclusionary Housing will execute, for himself, his successors and assigns, Affordable Housing Agreements assuring compliance with Inclusionary Housing requirements and these regulations for a term of not less than ten years for each separate Affordable Ownership unit, and for a term of not less than thirty years for a project or real property containing and providing Affordable Rental units.

Details and terms of Affordable Housing Agreements may be prescribed by the Commissioner, or must be acceptable to the Commissioner as evidenced by his acceptance of them in writing, and may not be modified in any way once established by such prescription or acceptance except following written approval by and from the Commissioner.

The Commissioner is responsible for enforcement of Inclusionary Housing requirements using all powers and authority conferred by law.

Compliance with Inclusionary Housing requirements in Affordable Housing Agreements is the responsibility of the developer.

Nothing in these regulations alters or restricts, or otherwise constrains, the Commissioner's discretion to condition, reserve, reduce, or withdraw major public subsidy, cost offsets or other incentives, consistent with provisions of law, nor creates any entitlement to major public subsidy, cost offsets or other incentives.