

<p style="text-align: center;">DEPARTMENT OF LICENSES AND INSPECTIONS</p> <p style="text-align: center;"><b>CODE BULLETIN</b></p> <p style="text-align: right;"><b>Z-1501-R2</b></p>	<p style="text-align: center;">CODE OF GENERAL ORDINANCES OF THE CITY OF PHILADELPHIA</p> <p style="text-align: center;">TITLE 14</p> <p style="text-align: center;">Zoning Code</p>
<p>SUBJECT OF INTERPRETATION:</p> <p style="text-align: center;"><b>MIXED INCOME HOUSING BONUS</b></p>	<p>REFERENCE CODE SECTION(S):</p> <p style="text-align: center;">14-702(7)(b)</p>
<p style="text-align: center;">ISSUED BY</p>	<p>ISSUE DATE:</p> <p style="text-align: center;">January 13, 2015</p>
<p>NAME:</p> <p style="text-align: center;">Michael Fink</p>	<p>REVISED DATE:</p> <p style="text-align: center;">February 12, 2019</p>
<p>TITLE:</p> <p style="text-align: center;">Chief Code Official</p>	<p style="text-align: center;">PAGE 1 of 5</p>

**BACKGROUND:**

The Zoning Code establishes a Mixed Income Housing Bonus that provides gross floor area, building height, and housing unit density bonuses for providing a certain number of affordable units in a development or making an in-lieu-of payment to the Philadelphia Housing Trust Fund. The Zoning Code includes measures to ensure applicants/owners meet and maintain Zoning Code requirements. Several provisions of the Mixed Income Housing Bonus require clarification by the Department of Licenses and Inspections (L&I). This Code Bulletin of Information clarifies these standards.

Bonus Eligibility and Bonus Amounts

Properties are eligible to earn the Mixed Income Housing Bonus under the standards of § 14-702(2) through § 14-702(4) of the Zoning Code.

Bonus Criteria

The Zoning Code establishes the criteria to earn the Mixed Income Housing Bonus in § 14-702(7)(b). The Zoning Code includes the criteria for a payment to the Philadelphia Housing Trust Fund in lieu of providing the affordable units in § 14-702(7)(b).

Affordability & Occupancy Standards

Affordable units provided to earn the bonus shall meet the affordability and occupancy standards of § 14-702(7)(a) of the Zoning Code. This subsection includes the maximum monthly costs for rental units, maximum sale and resale price for owner-occupied units, and maximum household income for households occupying the affordable units.

Bonus Earned

Mixed Income Housing Bonuses are earned in accordance with § 14-702(7)(c). This subsection also includes limits on the Mixed Income Housing Bonus a property may earn and when to calculate a housing unit density bonus.

Compliance and Remedies

The Zoning Code provides compliance requirements in § 14-702(7)(d). This subsection considers the issuance of Zoning Permits, Building Permits, and Certificates of Occupancy by L&I. This subsection also includes procedures for demonstrating compliance. The Zoning Code includes remedies for noncompliance and means to determine continued compliance in § 14-702(7)(e).

## **ISSUE:**

The following ambiguities require clarification to enforce the mixed-income bonus:

The Zoning Code does not address certain application requirements and documentation;

The Zoning Code contains certain unclear terms and requirements;

The Zoning Code does not include a clear procedure for considering the modifications to approved plans; and

The Zoning Code does not include a clear procedure for verifying continued compliance.

## **DISCUSSION:**

### Additional Application Requirements and Documentation

The Zoning Code references documentation that must be submitted to earn the Mixed Income Housing Bonus. Additional materials are needed to ensure Zoning Code compliance. This includes certain approvals and certifications from the Department of Planning and Development (DPD). L&I must determine, in collaboration with DPD, what constitutes evidence of such certifications and approvals.

The Zoning Code establishes in § 14-303(2) that L&I shall state on the City's website the application materials required to review an application for compliance. § A-301.5 of the Administrative Code authorizes L&I to establish permit application requirements. L&I must establish the documentation an applicant/owner shall submit to earn the mixed income housing bonus.

### Clarification of Requirements

The Zoning Code includes the requirements to earn the Mixed Income Housing Bonus when providing the affordable units. The means to verify and enforce certain requirements is unclear. L&I must then:

Clarify when the period of affordability begins;

Resolve issues concerning the timing and phasing of a development and the issuance of Certificates of Occupancy;

Define and verify the "reasonable dispersal" of affordable units;

Define and verify the "comparable quality" and "functional equivalency" of affordable units; and

Address the form of the recorded instrument and associated enforcement procedures.

### Modification of Approved Plans

L&I must consider changes to approved plans using the Mixed Income Housing Bonus. The Administrative Code includes general provisions to address modifications to approved plans. However, these procedures must be clarified to address the prerequisite documentation and approvals of the Mixed Income Housing Bonus.

### Continued Compliance Verification

L&I must establish how to confirm an owner's continued compliance with the Mixed Income Housing Bonus through the period of affordability. The Zoning Code provides DPD with the right to inspect documents as may be necessary to determine continued compliance. The Zoning Code does not

provide details on L&I's means to confirm and enforce such compliance.

## **DIRECTION:**

### Additional Application Requirements and Documentation

#### *Zoning Permit Application Requirements for all Applicants:*

Should an applicant choose to provide affordable units or make a payment in lieu of providing affordable units with the intent to receive a Mixed Income Housing Bonus, the applicant shall include the following with the **Zoning Permit application**:

- A certified acknowledgment statement as required by §14-702(d)(1) of the Zoning Code. The statement shall confirm the applicant's acknowledgment of the Mixed Income Housing Bonus requirements. The statement shall be signed by the applicant and certified by DPD. This certification shall be through the signature of the Director of DPD or the Director's designee. The statement shall be in a form satisfactory to DPD.

#### *Building Permit Application Requirements for Building Affordable Units:*

Should an applicant choose to provide affordable units with the intent to receive a Mixed Income Housing Bonus, the applicant shall include the following with the **Building Permit application**:

- An Affordable Building Plan in a form satisfactory to DPD, signed by both the applicant and the design professional, and approved by DPD. The Affordable Building Plan shall specify the quality, quantity, placement, design, and phasing of the development and of each affordable unit and acknowledge penalties for non-conformance as required by § 14-702(7)(d)(2) of the Zoning Code. The affordable building plan shall also demonstrate an applicant is capable and prepared to actively market the affordable units to eligible tenants, in accordance with § 14-702(7)(d)(1) of the Zoning Code.
- A copy of the recorded instrument(s) in favor of the City committing to satisfy all applicable requirements of the Mixed Income Housing Bonus. The instrument(s) shall be satisfactory in substance to DPD and in form to the Law Department, in accordance with § 14-702(7)(b)(2) of the Zoning Code.
- If applicable, a statement of compliance signed by DPD for any requirements DPD imposes to secure and monitor the applicant's satisfaction of all bonus obligations, under § 14-702(7)(d)(2)(c) of the Zoning Code.

#### *Building Permit Application Requirements for Payment In Lieu of Affordable Units:*

Should an owner make a payment to the Philadelphia Housing Trust Fund in lieu of building affordable units with the intent to Mixed Income Housing Bonus, the applicant shall include the following with a **Building Permit application**:

- A copy of the binding agreement between DPD and the owner, to which the owner has tendered to the City a payment in lieu of providing affordable housing, in accordance with § 14-702(7)(b)(6) of the Zoning Code.
- A copy of the deposited check tendered by the owner to the Philadelphia Housing Trust Fund in the amount stated in the binding agreement above.

### Clarification of Requirements

#### *Period of Affordability:*

The Zoning Code requires under § 14-702(7) (b)(.2) that affordable units be affordable for a term of not less than 50 years. L&I will interpret this to be a period of not less than 50 years from the last Certificate of Occupancy issued by L&I for residential dwelling units within the property upon its initial construction. This shall be reflected in the required recorded instrument(s).

#### *Timing and Phasing:*

The Zoning Code requires under § 14-702(7)(d)(.3) that affordable units be constructed, completed, ready for occupancy, and marketed at the same time as market-rate units. The Zoning Code clarifies under § 14-702(7)(d)(.2)(.b) that any phasing of the development shall be specified in the Affordable Building Plan.

Therefore, no Certificate of Occupancy shall be issued for any dwelling units in a development, and no occupancy of such units shall be permitted, unless:

Certificates of Occupancy have been issued for all affordable units, provided L&I may issue temporary certificates of occupancy in accordance with a phasing plan included in a DPD approved Affordable Building Plan;

There is compliance with an agreement for payment-in-lieu of providing affordable as provided by § 14-702(7)(b)(.6) of the Zoning Code and this Code Bulletin; or

DPD issues a waiver in accordance with § 14-702(7)(d)(.3) of the Zoning Code. The waiver must be included with the DPD approved Affordable Building Plan.

#### *Unit Dispersal:*

The Zoning Code requires under § 14-702(7)(b)(.3) that affordable units be “reasonably dispersed” on the same site as the development such that no building or floor therein will have a “disproportionate percentage” of affordable units. DPD may permit some or all affordable units to be provided and maintained off-site, upon a showing of exceptional circumstances and a substantial public benefit.

L&I shall consider an Affordable Building Plan approved by DPD under § 14-702(7)(d)(.2) of the Zoning Code as evidence of a reasonable dispersal of affordable units or approval of off-site affordable units.

#### *Comparable Quality:*

The Zoning Code requires under § 14-702(7)(b)(.4) that affordable units be of comparable quality or functionally equivalent to market rate units within the development in terms of size, design, exterior appearance, energy efficiency, and overall construction. L&I shall interpret this to include any maintenance or renovation to rental units during the period of affordability.

L&I shall consider an Affordable Building Plan approved by DPD under § 14-702(7)(d)(.2) of the Zoning Code as evidence that the affordable units are of comparable quality or functionally equivalent to market-rate units within the development. Any provisions ensuring continued maintenance or renovation to rental units during the period of affordability shall be part of the recorded instrument.

#### *Recorded Instrument:*

In accordance with § 14-702(7)(b)(.2) of the Zoning Code, an applicant/owner must record an instrument(s) in favor of the city to comply with the provisions of the Mixed Income Housing Bonus. To ensure adherence to the standards of the Zoning Code, the recorded instrument shall take the form of a

restrictive covenant. The recorded instrument must be approved in substance by DPD and in form by the Law Department. The document must be substantially similar to the form provided by DPD and further approved by DPD and the Law Department before recordation.

In the event an owner/applicant fails to record a legal instrument that complies with the provisions of the Zoning Code and this Code Bulletin, L&I will not issue the Building Permit. The Building Permit will only be issued once there is compliance or a payment in lieu of building affordable units is made to the Philadelphia Housing Trust Fund in conformity with the provisions of Zoning Code and this Code Bulletin.

#### Modifications to Approved Plans

The applicant/owner shall notify L&I if at any time they seek to divert from or change approved plans. In the event of any such change from the approved plans, or in the event L&I determines the applicant/owner has diverted from or changed such plans without prior notice, L&I may revoke the applicable building and/or Zoning Permit pursuant to § 14-306 and § 14-702(7)(e) of the Zoning Code and § A-302.9 of the Administrative Code.

Applicable Building and Zoning Permits will only be reinstated once there is compliance and either:

- DPD approves of any deviation from the Affordable Building Plan, in accordance with § 14-702(7)(d)(.2)(b) of the Zoning Code; or
- The owner makes a payment in lieu of building affordable units to the Philadelphia Housing Trust Fund in conformity with the provisions of the Zoning Code and this Code Bulletin.

#### Verification of Continued Unit Affordability

Should an applicant choose to provide affordable housing to earn a Mixed Income Housing Bonus, the property owner shall establish the continued affordability of a unit over the full period of affordability. Should an owner fail to comply, L&I may seek remedies pursuant to § 14-702(e) of the Zoning Code.

The property owner/manager must provide L&I with a compliance statement from DPD (or another designee chosen by DPD) before this issuance of a final Certificate of Occupancy for all affordable units. This compliance statement shall certify that the property complies with the provisions of the recorded instrument, Affordable Building Plan, and any other applicable provision of § 14-702(7) of the Zoning Code.

As provided in § 14-702(7)(e)(.2) of the Zoning Code, DPD shall have the right to inspect such documents as may be necessary to determine continued compliance, including but not limited to financial records of any tenants or owners, to confirm that they are eligible tenants or eligible purchasers. DPD shall refer non-compliant properties to L&I for enforcement action. Notwithstanding, L&I may pursue all remedies available by law to ensure compliance with § 14-702(7) independent of DPD.