

Topic:	Affordable Housing
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Philadelphia includes in its housing code a provision for voluntary affordable housing. Moderate income units will be priced at levels affordable for 60% AMI, while low income units will be priced for 50% AMI. Where at least 50% of gross floor area will be designated for residential development, floor area, height, or dwelling density bonuses may apply. The bonuses are calculated depending on the zone and income designation. These affordable units must constitute at least 10% of all units, be affordable for 50 years, and be of comparable quality.

(7) Mixed Income Housing. 620

(a) Affordability.

A floor area, height, or dwelling unit density bonus, as applicable, may be earned by providing affordable housing at the levels of affordability set out in this § 14-702(7)(a). For the purposes of § 14-702(7), a household shall consist of every person who lives or intends to live in the unit, regardless of age, dependency status, or relationship. The imputed household size for determining unit affordability and occupancy requirements of § 14-702(7) shall be equal to 1.5 people per each bedroom in the unit, except for studios and efficiencies, for which the imputed household size is 1 person. 620.1

(.1) Moderate Income.

(a) Moderate Income rental units shall:

(i) Have total monthly costs (including rent and utility costs) that do not exceed thirty percent (30%) of gross monthly income for households earning up to sixty percent (60%) of the Area Median Income (AMI), adjusted for household size, as reported by the U.S. Department of Housing and Urban Development (HUD) for the Philadelphia Metropolitan Statistical Area;

(ii) Be occupied by households earning up to sixty percent (60%) of the Area Median Income (AMI), adjusted by household size, as reported by HUD for the Philadelphia Metropolitan Statistical Area at the time of the household's initial occupancy of the unit; and

(iii) At no time be occupied by households earning greater than one hundred twenty percent (120%) of the Area Median Income (AMI), adjusted by household size, as reported by HUD for the Philadelphia Metropolitan Statistical Area; provided that, in the event the income of a tenant is found by the Department of Planning and Development to exceed the maximum income provided for by this subsection (iii), a tenant shall nonetheless be deemed in compliance with this subsection (iii) until the first expiration of a lease occurring after the tenant's income first exceeded the maximum permitted by this subsection (iii). The Department of Planning and Development may waive this requirement upon a showing of exceptional circumstances.

(b) Moderate Income owner-occupied units shall:

(i) Have a maximum sale and resale price, during the term of affordability, calculated on the basis of a down payment of no more than five percent (5%) of the purchase price, a fixed rate 30 year mortgage, consistent with the average monthly rate published from time to time by Freddie Mac, and total monthly costs (including mortgage principal and interest, property taxes, property insurance, and condominium or homeowner association fees) that do not exceed thirty percent (30%) of gross monthly income for households earning up to eighty percent (80%) of the AMI, adjusted for household size, as reported by HUD for the Philadelphia Metropolitan Statistical Area;

(ii) Be sold to one or more members of a household with household earnings up to eighty percent (80%) of the AMI, adjusted for household size, as reported by HUD for the Philadelphia Metropolitan Statistical Area at the time of sale; and

(iii) Be the principal residence of at least one person who owned the unit during the period of affordability.

(.2) Low Income.

(a) Low Income rental units shall:

(i) Have total monthly costs (including rent and utility costs) that do not exceed thirty percent (30%) of gross monthly income for households earning up to fifty percent (50%) of the Area Median Income (AMI), adjusted for household size, as, as reported by HUD for the Philadelphia Metropolitan Statistical Area;

(ii) Be occupied by households earning up to fifty percent (50%) of the Area Median Income (AMI), adjusted by household size, as reported by HUD for the Philadelphia Metropolitan Statistical Area at the time of the household's initial occupancy of the unit; and

(iii) At no time be occupied by households earning greater than one hundred percent (100%) of the Area Median Income (AMI), adjusted by household size, as reported by HUD for the Philadelphia Metropolitan Statistical Area; provided that, in the event the income of a tenant is found by the Department of Planning and Development to first exceed the maximum income provided for by this subsection (iii), a tenant shall nonetheless be deemed in compliance with this subsection (iii) until the first expiration of a lease occurring after the tenant's income exceeded the maximum permitted by this subsection (iii). The Department of Planning and Development may waive this requirement upon a showing of exceptional circumstances.

(b) Low Income owner-occupied units shall:

(i) Have a maximum sale and resale price, during the term of affordability, calculated on the basis of a down payment of no more than five percent (5%) of the purchase price, a fixed rate 30 year mortgage, consistent with the average monthly rate published from time to time by Freddie Mac, and total monthly costs (including mortgage principal and interest, property taxes, property insurance, and condominium or homeowner association fees) that do not exceed thirty percent (30%) of gross monthly income for households earning up to seventy percent (70%) of the AMI, adjusted for household size, as reported by HUD for the Philadelphia Metropolitan Statistical Area.

(ii) Be sold to one or more members of a household with household earnings up to seventy percent (70%) of the AMI, adjusted for household size, as reported by HUD for the Philadelphia Metropolitan Statistical Area at the time of sale; and

(iii) Be the principal residence of at least one person who owned the unit during the period of affordability.

(b) **Criteria.**

A floor area, height, or dwelling unit density bonus, as applicable, may be earned for developments where at least fifty percent (50%) of the gross floor area will be in residential use (i) by providing affordable housing, provided that the project meets the standards set forth in subsections (.1) through (.5), below; or (ii) if the owner of the property enters into a payment-in-lieu agreement that meets the standards set forth in subsection (.6), below, except that a development on a lot within both an RM-1 zoning district and the 19146 zip code may not earn a bonus via payment-in-lieu agreement. For developments where less than fifty percent (50%) of gross floor area will be in residential use, these bonuses may be earned, as applicable, if the owner of the property enters into a payment-in-lieu agreement that meets the standards set forth in subsection (.6), below. This bonus provided for in this subsection (7) ("Mixed Income Housing") is not available for developments of subsidized housing where fifty-one percent (51%) or more of the dwelling units will be affordable under any of the definitions set forth in subsection (a) ("Affordability"), above. 621

- (.1) At least ten percent (10%) of residential dwelling units (rounded up, if fractional) shall be provided and maintained as affordable, as defined in § 14-702(7)(a)(.1) or § 14-702(7)(a)(.2), above. 621.1
- (.2) Affordable units shall be affordable, as defined in § 14-702(7)(a)(.1) or § 14-702(7)(a)(.2), for a term of not less than 50 years with future sales, affordability, compliance, and certain legal remedies within such period governed by a recorded instrument or instruments in favor of the City, in substance satisfactory to the Department of Planning and Development and in form satisfactory to the Law Department, committing to satisfy all requirements of this subsection (b).
- (.3) Affordable units shall be constructed, completed, ready for occupancy, and marketed at the same time as market-rate units and reasonably dispersed on the same site as the development such that no single building or floor therein will have a disproportionate percentage of affordable units; provided, that, the Department of Planning and Development may permit some or all of such affordable units to be provided and maintained off-site, upon a showing of exceptional circumstances and a substantial public benefit deriving from the proposed off-site development and such other requirements and penalties for non-compliance as provided for by regulations of the Department of Planning and Development.
- (.4) Affordable units shall be of comparable quality, in terms of the size, design, exterior appearance, energy efficiency, and overall construction, as the market-rate units within the development, except that the Department of Planning and Development may authorize, on a case by case basis, variation in lot size, number of stories, or whether units are attached or detached, upon good cause shown. For rental units, this requirement shall apply to any maintenance or renovations performed during the life of the affordability commitment. Where the quality of market rate units, in terms of the size, design, exterior appearance, energy efficiency, and overall construction varies from unit to unit, the quality of affordable units shall vary substantially to the same degree. Affordable units may have interior finishes and features that are functionally equivalent to those of any market-rate unit within the development, so long as those finishes and features are durable, of good and new quality, and consistent with any further standards which the Department of Planning and Development may establish.
- (.5) For owner-occupied units, the owner and all subsequent owners during the affordability period provided for in subsection (.3), above, shall give the Department of Planning and Development a right of first refusal to purchase each affordable unit, with 90 days' notice of any sale; and shall give the Department of Planning and Development notice of any foreclosure of an affordable unit within seven days of receipt of a foreclosure notice.
- (.6) The applicable bonus shall be available to a property if the owner enters into a binding agreement with the Department of Planning and Development pursuant to which the owner has tendered to the City, prior to the issuance of a building permit, a payment in lieu of providing affordable housing; and the Department of Planning and Development has agreed, for any development where at least fifty percent (50%) of the gross floor area will be in residential use, to use such money for the purposes set forth in Section 21-1605 ("Trust Fund Assets Held in the Non-Recording Fee Sub-Fund"), and, for any development where less than fifty percent (50%) of the gross floor area will be in residential use, for the purposes set forth in Section 21-1603 ("Creation, Distribution and Use of the Trust Fund's Assets"). The payment shall be calculated as follows: 622
 - (a) For properties located in an RM-2, RM-3, RM-4, RMX-1, RMX-2, RMX-3, IRMX, CMX-3, CMX-4, or CMX-5 zoning district earning a floor area bonus: by multiplying the maximum additional gross floor area that would be earned through this bonus, measured in square feet, by twenty-five dollars (\$25), if the owner is seeking the moderate-income bonus, and by thirty dollars (\$30), if the owner is seeking the low-income bonus.
 - (b) For properties located in the /CDO, Central Delaware River Overlay District or the /ECO, East Callowhill Overlay District earning a height bonus:
 - (i) For each building, if the owner is seeking the moderate-income bonus, the gross floor area (measured in sq. ft.) of the median story (by gross floor area), multiplied by the additional height that would be earned through the bonus (measured in ft.), multiplied by two dollars (\$2.00); for each building, if the owner is seeking the low-income bonus, the gross floor area (measured in sq. ft.) of the median story (by gross floor area), multiplied by the additional height that would be earned through the bonus, multiplied by two dollars and fifty cents (\$2.50).
 - (ii) Any addition or expansion that would increase the gross floor area of the median story (by gross floor area) subsequent to the receipt of payment shall require a recalculation based on the new gross floor area of the median story; if the recalculated payment is greater than the sum of the payments already tendered, the owner shall make an additional payment prior to the issuance of a building permit in the amount of the recalculated payment less the sum of the payments already tendered.
 - (iii) For the purposes of this § 14-702(7)(b)(.6)(b), if there is an even number of stories, the median story shall be calculated by taking the mean of the two stories that are closest to the middle (by gross floor area).
 - (c) For properties located in an RM-1, CMX-1, CMX-2, or CMX-2.5 zoning district, the greater of the following:
 - (i) The lot area of the property, measured in square feet, multiplied by twenty dollars (\$20), if the owner is seeking the moderate-income bonus, and by twenty-four dollars (\$24), if the owner is seeking the low-income bonus;

(ii) The maximum additional number of residential dwelling units earned through this bonus, after applying all other bonuses earned, multiplied by twenty-five thousand dollars (\$25,000), if the owner is seeking the moderate-income bonus, and by thirty thousand dollars (\$30,000), if the owner is seeking the low-income bonus.

(c) **Bonus Floor Area, Building Height, and Dwelling Unit Density.** 622.1

(.1) The additional gross floor area or building height earned for compliance with subsection (a), above, is as set forth in the tables, below. A property may take advantage of a height bonus, a gross floor area bonus, and a dwelling unit density bonus, either alone or in combination, if so provided by the tables in subsection (.3), below. A property may not take advantage of any one of these bonuses multiple times and may not earn bonuses under both the low-income and moderate-income standards.

(.2) Dwelling Unit Density Bonuses in this § 14-702 shall be calculated and applied after any other bonuses are applied and rounded as indicated in the applicable sections. Whenever the calculation of permitted number of dwelling units, following the application of a bonus described in this § 14-702, results in a fraction of a dwelling unit, then the number of permitted dwelling units shall be rounded down to the nearest whole number.

(.3) Mixed Income Housing Bonus Tables.

		Additional Gross Floor Area, as Percent of Lot Area									
		RM-2	RM-3, RMX-1	RM-4	RMX-2	IRMX	RMX-3	CMX-3 as provided in § 14-702(2)(c) (except in /TOD)	CMX-3 (within /TOD only)	CMX-4	CMX-5
Mixed Income Housing (§ 14-702(7))	Moderate Income	25%	50%	100%	75%	150%	150%	150%	200%	150%	300%
	Low Income	50%	75%	175%	125%	250%	250%	250%	300%	250%	400%

		Additional Building Height		
		/CDO	/ECO	RM-1, CMX-1, CMX-2, CMX-2.5
Mixed Income Housing (§ 14-702(7))	Moderate Income	48 ft.	48 ft.	7 ft.
	Low Income	60 ft.	60 ft.	7 ft.

		Housing Unit Density Bonuses (RM-1, CMX-1, CMX-2, or CMX-2.5 only)
Mixed Income Housing (§ 14-702(7))	Moderate Income	25% increase in units permitted
	Low Income	50% increase in units permitted

(d) **Compliance Check.**

(.1) No zoning permit shall be issued pursuant to section § 14-303(6) for any project, or any portion thereof, that has been awarded bonus floor area, building height, or dwelling units pursuant to this § 14-702(7) unless the Department of Planning and Development certifies to the Department of Licenses and Inspections that the applicant has acknowledged, in form satisfactory to the Department of Planning and Development, an understanding of the requirements of this § 14-702(7). 622.2

(.2) No building permit shall be issued pursuant to Section A-301 of Title 4 for any project, or any portion thereof, that has been awarded bonus floor area, building height, or dwelling units pursuant to this § 14-702(7) unless the Department of Planning and Development has certified to the Department of Licenses and Inspections that the applicant has made all required payments pursuant to an agreement provided for by subsection (b)(.6) or is in compliance with all of the following: 622.3

(a) The applicant has demonstrated that the applicant is capable of and prepared to actively market the affordable units to eligible tenants and eligible purchasers;

(b) The applicant has filed an Affordable Building Plan, signed by both the applicant and the design professional responsible for the development, which specifies, to the satisfaction of the Department of Planning and Development, the quality, quantity, placement, design, and phasing of the development and of each affordable unit, and which acknowledges that the applicant is subject to penalties in the event that the development fails to conform with such Plan or any approved modifications of such Plan. Any deviation from an approved Affordable Building Plan must comply with the requirements of this Chapter and must be approved by the Department of Planning and

Development; and

(c) The property is in compliance with all requirements of this § 14-702(7), including but not limited to the recordation of an instrument pursuant to subsection (b), as well as any additional requirements that the Department of Planning and Development shall impose in order to secure and monitor the applicant's satisfaction of all obligations imposed by this Chapter.

(.3) No certificate of occupancy shall be issued pursuant to Section A-701 of Title 4 for any dwelling units included in a development, and no occupancy of such units shall be permitted, unless certificates of occupancy have also been issued for all affordable units required by this § 14-702(7) or there has been compliance with any agreement provided for by § 14-702(7)(b)(.6); provided that the Department of Planning and Development may waive this requirement upon a showing of exceptional circumstances with respect to permitted off-site affordable units only and only upon agreement by the applicant to further conditions and penalties for non-compliance, all as provided for in regulations of the Department of Planning and Development.

(e) Remedies.

(.1) Failure to comply with any provision of a recorded instrument required by this § 14-702(7) shall, in addition to any other remedies available by law, be grounds for:

(a) Revocation of any building permit, certificate of occupancy or rental license and the prohibition of renewal of any such permits, certificates, or licenses.

(b) A fine of five hundred dollars (\$500) per day of noncompliance.

(.2) The Department of Planning and Development 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.

(f) Reporting.

The Department of Planning and Development shall publish annually a Mixed Income Housing Program Report, which shall include: quantity, size, and location of affordable units; tendered payments in lieu of providing affordable units and how such payments were spent; and household size and income of eligible tenants and eligible purchasers who have either applied for or have occupied affordable units.

(g) Regulations.

The Department of Planning and Development shall have the authority to promulgate regulations to clarify, implement or administer any provision of this § 14-702(7).

(h) Applicability of /TSO, 30th Street Overlay District (/MIN). 622.1

The terms and conditions of this section § 14-702 (Mixed Income Housing) shall not apply to Residential Housing Projects within the /TSO, 30th Street Overlay District, as defined in § 14-528(2), except as otherwise provided by section § 14-528 (30th Street Overlay District).

Notes

620 Amended, Bill No. [120774-A](#) (approved January 14, 2013); amended, Bill No. [130274](#) (approved June 25, 2013); amended, Bill No. [140519-AAA](#) (approved October 27, 2015); amended, Bill No. [150505](#) (approved December 1, 2015); amended, Bill No. [161003-A](#) (approved May 8, 2017); amended, Bill No. [170162](#) (approved July 11, 2017); amended, Bill No. [170498](#) (approved August 1, 2017); amended, Bill No. [170678-AAA](#) (approved October 17, 2018).

620.1 Amended, Bill No. [200628](#) (approved March 29, 2021).

621 Amended, Bill No. [190443](#) (approved July 24, 2019). See note 297 for sunset provision. Amended, Bill No. [190859](#) (approved December 31, 2019); amended, Bill No. [200628](#) (approved March 29, 2021); amended, Bill No. [210075](#) (approved March 29, 2021).

621.1 Amended, Bill No. [200628](#) (approved March 29, 2021).

622 Amended, Bill No. [190859](#) (approved December 31, 2019); amended, Bill No. [200628](#) (approved March 29, 2021).

622.1 Amended, Bill No. [210075](#) (approved March 29, 2021).

622.2 Amended, Bill No. [210075](#) (approved March 29, 2021).

622.3 Amended, Bill No. [210075](#) (approved March 29, 2021).

622.1 Added, Bill No. [200602](#) (approved January 27, 2021). Enrolled bill numbered this as (g); renumbered by Code editor.