

Boston Zoning Code and Affirmatively Furthering Fair Housing Review Procedures and Submittal Requirements (December 2020)

This document outlines the requirements for documentation and measures to be undertaken by a Proposed Project and/or Planned Development Area (Proposed Project) of residential projects or mixed-use projects with residential components to affirmatively further fair housing as well as the role of the Boston Interagency Fair Housing Development Committee (BIFDC).

BIFDC review occurs in multiple phases which coincide with the Boston Planning & Development Agency's (BPDA) Article 80 review processes and the Department of Neighborhood Development (DND) Affirmative Fair Housing Marketing Plan: the (1) Initial filings, (2) Cooperation and Affordable Housing Agreements, (3) Affirmative Fair Housing Marketing Plan and (4) Commitments. The following describes each review phase, required documentation, and corresponding review and regulatory actions. All documents must include the project name, address, date, and page numbers. All filings are to be digital with a limited number of hard copies made available.

1. Initial Filing

The following documentation is to be submitted with the first formal submission or a substantive project change including a Project Notification Form (PNF), draft Planned Development Area (PDA) Development Plan, PDA Master Plan or similar project filing.

Documentation

Proponents must include an Affirmatively Furthering Fair Housing (AFFH) component within the initial filing. The following must be a part of this section; all elements are understood to be preliminary: (1) AFFH Component: This section should outline the project's strategies for furthering the goals of overcoming segregation, fostering inclusive communities, addressing significant disparities in housing needs and access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, and transforming racially and ethnically concentrated areas of poverty into areas of opportunity and (2) Assessment Tool: The Assessment Tool is to be completed online with a copy of the Assessment Tool included in the filing. *The BIFDC will not begin its review until a submission is complete.*

BPDA Scoping Session

All relevant key practice areas of the Proponent team should be represented at the Scoping Session. The Proponent should describe its approach to affirmatively furthering fair housing and planned outcomes for the Proposed Project.

BIFDC Review

The BIFDC will review the submitted documents to determine whether the Proposed Project will be consistent with the goals outlined herein. The BIFDC will provide comments and may request additional information during the review process. Written comments and requests for additional information will be provided to the Proponent through the BPDA Project Manager. A final

Proposal shall be submitted to the BIFDC prior to and included in BPDA Board approvals. Commitments made in the Proposal shall be included in BPDA Board memos and memorialized in at least one of the following Article 80 documents: Cooperation Agreement and/or in any relevant affordable housing agreement, including, but not limited to an Affordable Housing Agreement, an Affordable Rental Housing Agreement and Restriction, an Affordable Housing Contribution Agreement, or an Off-Site Affordable Housing Agreement.

2. Cooperation and Affordable Housing Agreements

BPDA Board memos and project agreements, including Cooperation and Affordable Housing Agreements shall be made available to the BPDA Project Manager, the BIFDC, DND, the Affirmative Fair Housing Marketing Program (the “Marketing Program”) housed at DND, the BPDA Housing Compliance Division, which is responsible for monitoring and enforcing housing agreements and Cooperation Agreements.

3. Affirmative Fair Housing Marketing Plan

The following documents should be submitted to the BPDA Project Manager and the Department of Neighborhood Development (DND) representative on the BIFDC: Affordable Housing Agreement or an Affordable Rental Housing Agreement and Restriction, acknowledging that income restricted units will have to be marketed in accordance with the policies and procedures established by the City of Boston’s Affirmative Fair Housing Marketing Program, and outlined in an Affirmative Fair Marketing Plan. The Affirmative Fair Housing Marketing Plan (AFHM) should be completed approximately six months prior to lease or sale of any units in the project. Upon the first anniversary of the full building permit, if the developer has not begun the AFHM Plan process, it shall be the responsibility of the BPDA Project Manager to notify the developer and the Marketing Program. The developer and/or their agent completes the AFHM plan in conjunction with the Marketing Program. This plan is signed by both the Marketing Program and the BPDA.

BIFDC Review

BIFDC staff will review the AFHM before it is signed by the BPDA to determine whether the Proposed Project is consistent with the requirements outlined in the Cooperation Agreement. Any written comments and requests for additional information will be provided to the Proponent through the BPDA Project Manager and/or DND.

4. Commitments

The Proponent shall provide the BIFDC regular updates on the ongoing commitments relative to the AFFH Assessment Component and Proposal (which are to be memorialized in the appropriate Article 80 Agreement).

The components in this section are to be reviewed 2 (two) years after adoption.

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Boston Interagency Fair Housing Development Committee

The Boston Interagency Fair Housing Development Committee (“BIFDC”) is comprised of representatives from the Office of Fair Housing and Equity (“OFHE”), the Department of Neighborhood Development (“DND”), the Mayor’s Commission for Persons with Disabilities, the Boston Planning & Development Agency (“BPDA”) and the Boston Housing Authority (“BHA”) for a total of five. The BIFDC shall meet regularly to review the Assessment and Proposal and develop a plan for ongoing monitoring of commitments and reporting requirements for the Proponent and/or successors to be memorialized in Cooperation Agreements and/or PDAs.

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Affirmatively Furthering Fair Housing Policy and Standards for Recommendations for Approval (December 2020)

The goal of Affirmatively Furthering Fair Housing (“AFFH”) is to meet the City’s planning goals for vibrant, resilient neighborhoods by ensuring that development helps to create and preserve places for protected classes to live and thrive. AFFH is defined as taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, AFFH means taking meaningful actions that, taken together, further address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, where residents have reasonable access to amenities (e.g.: healthcare, transit, groceries, banking, greenspace), educational opportunities and economic opportunities.

To achieve this goal through the Boston Zoning Code (“Code”) and Article 80 Development Review process, project proponents (“Proponent”) of residential projects or mixed-use projects with residential components undergoing Large Project Review and /or Planned Development Area Review pursuant to Article 80 of the Code will be required to complete an AFFH Assessment Tool (“Assessment”) and submit and propose respects (“Proposal”) in which their Proposed Project will contribute to the goal of AFFH, based on the AFFH Interventions Options below.

Recommendations to the BPDA Board for approval shall be based on the following standards:

1. A determination that the Proposed Project and/or PDA meets the affirmatively furthering fair housing standard, with an analysis of how the goals will be met (see Intervention Options below); and/or
2. A determination that the advancement of the goal has been met; or
3. A determination that the Proposed Project and/or PDA will not likely result in the direct involuntary displacement of existing residents who are members of protected classes in the Proposed Project and/or PDA; or

4. A determination that if the Proposed Project and/or PDA does not meet the affirmatively furthering fair housing standards additional measures shall be required.

Intervention Options:

In order to achieve the AFFH goal stated above, the following is a list of AFFH Intervention Options that can be proposed by any Proposed Project and/or PDA.

Proponents must choose a minimum of one option from the Article 80 Process Options and one option from the Marketing Options:

Article 80 Process Options

- Voluntarily provide an additional percentage of IDP units than required
- Voluntarily deepen the affordability of IDP units
- Provide a higher number of accessible units than required
- Voluntarily provide a higher proportion of larger family-sized (2+ bedroom) IDP units
- Provide all IDP units on-site
- Match or exceed the percentage of family-sized units in the surrounding neighborhood
- Increase density in order to increase units available to protected classes
- Agree to host new Project-Based Vouchers (PBV) or Rental Assistance Demonstration (RAD) units or other deeply-affordable units on site, in addition to fulfilling IDP requirements
- Agree to partner with a non-profit developer, land trust, housing authority, or other entity to provide land or bear some capital costs to enable affordable housing construction, in addition to fulfilling IDP requirements
- Any other option(s) that meet the stated goal

Marketing Options

Preferences for income restricted units must be in accordance with BPDA policies. Any deviation may need to be approved by the Affirmative Fair Housing Marketing Program and/or the Massachusetts Department of Housing and Community Development.

- Provide a preference for an agreed upon percentage of units to rental voucher-holders for the first year or some other term
- Provide preference for an agreed percentage of units to families that are currently rent burdened, have experienced a no-fault eviction, or have experienced eviction but now display ability to pay
- In the case of homeownership units, provide a preference to first-time/generation homebuyer
- Allow last month's rent and security deposit to be paid in installments for an agreed upon percentage of units or by renters up to a certain income level
- Agree to follow best practices related to the use of CORI, eviction, and credit records in the tenant screening and selection process
- Agree to best practices in marketing the market-rate units that are inclusive of and welcoming to protected classes

- Agree to follow progressive practices related to the use of CORI, eviction, and credit records in the tenant screening and selection process, and in marketing of units, for example following Fair Chance Housing guidelines, and/or waiving eviction and credit checks for affordable units, especially housing voucher holders
- Any other option(s) that meet the stated goal.

For Proposed Projects in areas of high displacement risk or high historical exclusion, as determined by the BIFDC, and for PDAs, Proponents must choose a minimum of one option, as applicable:

Intervention Enhancements

- Areas of High Displacement Risk
 - Diversity preservation Preferences for applicable projects
 - Additional Article 80 Process Option
 - Supplemental Process Option
- Areas of High Historical Exclusion
 - All IDP units should be built on site
 - Additional Article 80 Process Option
 - Supplemental Process Option
- for Planned Development Areas
 - Additional Article 80 Process Option
 - Supplemental Process Option

Supplemental Process Options

- Establish a local housing stabilization fund
- Voluntarily deed tenants the right of first refusal to purchase property upon conversion
- Voluntary subsequent owner transfer fee agreement
- Establish or contribute to a neighborhood housing Acquisition Opportunity Program
- Restrict % of non-owner-occupied units
- Mixed use and local small business long term flexible lease options
- Agree to support cooperative housing units in accordance with DND policies
- Voluntary “Flipping fee” agreement
- Any other option(s) that meet the stated goal

The components in this section are to be reviewed 2 (two) years after adoption.

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