

**1. In the Boston Zoning Code, before Article 80, Development Review and Approval, insert the following new Article 79-Inclusionary Zoning:**

### **Article 79-Inclusionary Zoning**

#### **79-1 Purpose of this Article**

The purpose of this Article is to promote the public health, safety and welfare of the residents of Boston by helping to ensure a range of housing options with sizes, types, and levels of affordability to support a diverse populace. Since 2000, Boston has had an Inclusionary Development Policy requiring projects of 10 or more dwelling units needing zoning relief to provide a portion of those units as income restricted. In 2019, the Boston City Council passed a Home Rule petition. This resulted in the 2021 adoption by the Legislature of Chapter 365 of the Acts of 2020, which amended Chapter 665 of the Acts of 1956 and authorized the Boston Zoning Commission to incorporate Inclusionary Development requirements into the Boston Zoning Code. A supplemental Inclusionary Zoning Policy, developed and managed by the Boston Planning and Development Agency (BPDA) and the Mayor's Office of Housing (MOH), provides additional context related to the research, data, and process which resulted in this Article.

This Article sets out the requirements for all Proposed Projects of seven (7) or more Dwelling Units to include income-restricted Inclusionary Zoning (IZ) Units on- or off- site, and/or through contribution to the Inclusionary Development Fund, which supports the creation of income-restricted housing.

#### **79-2 Applicability**

A. This Article applies to any Proposed Project or series of projects which result in seven (7) or more residential dwelling units, whether such development occurs through one or more of the following: Construction of a new structure or structures, construction of an addition to an existing structure that results in an increase in the total number of units, alterations within an existing structure that result in an increase in the total number of units, or a change of use that results in an increase in the total number of units.

B. Exemption: Residential development projects are exempt from this Article when: 1) The proposed project is financed as one entity and exceeds the affordability requirements set out in this Article. 2) The proposed project is a Dormitory as the term is defined in Articles 2 and 2A. 3) Other uses not defined as Residential Uses.

#### **79-3 Inclusionary Zoning Zones**

A. In order to take into account the geographic variability and sales prices and rents, and therefore the variability in developer feasibility, Boston was divided into three, distinct zones. 1. Zone A: Neighborhood Districts of Audubon Circle, Back Bay, Bay Village, Charlestown, City Square, the Fenway, the North End, and the South End, as well as the Chinatown District, the Leather District, the Government Center/Markets District, the Bulfinch Triangle District, the Cambridge Street North District, the Stuart Street District, the Central Artery Special District, the Greenway Overlay District, the Midtown Cultural District, the North End Economic Development Area, the South Station Economic Development Area, the Huntington Avenue/Prudential Center District, the North End/Downtown Waterfront District, the Harborpark Districts of the Charlestown Waterfront, Charlestown Navy Yard, and Fort Point Waterfront, and those parcels in East Boston regulated by Massachusetts General Law Chapter 91.

2. Zone B: Neighborhood Districts of Allston-Brighton, Jamaica Plain, Mission Hill, and South Boston, as well as East Boston, excluding those parcels in East Boston regulated by

Massachusetts General Law Chapter 91.

3. Zone C: Neighborhood Districts of Dorchester, Hyde Park, Greater Mattapan, Roslindale, Roxbury, and West Roxbury, as well as the Dorchester Bay/Neponset River Waterfront District.

B. In the case where a project site is in one or more zones, the requirements of the less restrictive zone will apply.

**79-4 Required Inclusionary Zoning Unit Contributions**

Rental – IDP/IZ Only Projects; Small Projects pursuant to Article 80-E		
	Zone A Zone B	Zone C
On Site	17% of total units  Units shall be set aside for households with an average of 60% of AMI. (Max 70% of AMI)	
Off Site	Not allowed	

Rental – Large Projects pursuant to Article 80-B; PDAs pursuant to Article 80-C		
	Zone A Zone B	Zone C
On Site Option A	18% of total units, provided, however, that a project may include fewer than 18% of units so long as the aggregate square footage of all Inclusionary Zoning Units is equal to or greater than 18% of the total usable residential square footage of the building.  This 18% is composed of: 15% of units* set aside for households with an average of 50% of AMI (Max 70% of AMI) and 3% of units (minimum of two units*) set aside for voucher holders.	
On Site Option B	20% of total units, provided, however, that a project may include fewer than 20% of units so long as the aggregate square footage of all Inclusionary Zoning Units is equal to or greater than 20% of the total usable residential square footage of the building.  This 20% is composed of: 17% of units* set aside for households with an average of 60% of AMI (Max 70% of AMI) and 3% of units set aside for voucher holders	

Off Site	<p>Developers can meet their off-site obligation through the creation of rental units with approval from MOH. Additional requirements shall be met pursuant to Section 79-4B.</p> <p>Off Site Rentals: 20% of total units of the original Proposed Project, provided, however, that a project may include fewer than 20% of units so long as the</p>
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	<p>aggregate square footage of all Inclusionary Zoning Units is comparably equal to or greater than 20% of the total usable residential square footage.</p> <p>Units shall be set aside for households with an average of of 60% of AMI (Max 70% of AMI)</p>
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\*or equivalent total usable square footage in development projects where this method of calculation is utilized in lieu of total units.

Homeownership – IDP/IZ Only Projects; Small Projects pursuant to Article 80-E		
	Zone A Zone B	Zone C
On Site	<p>17% of total units, provided, however, that a project may include fewer than 17% of units so long as the aggregate square footage of all Inclusionary Zoning Units is equal to or greater than 17% of the total usable residential square footage of the building.</p> <p>Units shall be set aside for households with an average of 90% of AMI, where not more than half of households are at 80% of AMI and not more than half are at 100% of AMI.</p>	
Off Site	Not allowed	

Homeownership – Large Projects pursuant to Article 80-B; PDAs pursuant to Article 80-C		
	Zone A Zone B	Zone C

On Site	<p>20% of total units, provided, however, that a project may include fewer than 20% of units so long as the aggregate square footage of all Inclusionary Zoning Units is equal to or greater than 20% of the total usable residential square footage of the building.</p> <p>Units shall be set aside for households with an average of 90% of AMI, where not more than half of households are at 80% of AMI and not more than half are at 100% of AMI.</p>
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Off Site Developers can meet their off-site obligation through the creation of rental or homeownership units with approval from MOH. Additional requirements shall be met pursuant to Section 79-4B.

Off Site Condos: 20% of total units of the original Proposed Project, provided, however, that a project may include fewer than 20% of units so long as the aggregate square footage of all Inclusionary Zoning Units is comparably equal to or greater than 20% of the total usable residential square footage.

Units shall be set aside for households with an average of 90% of AMI, where not more than half of households are at 80% of AMI and not more than half are at 100% of AMI.

	<p>Off Site Rentals: 20% of total units of the original Proposed Project, provided, however, that a project may include fewer than 20% of units so long as the aggregate square footage of all Inclusionary Zoning Units is comparably equal to or greater than 20% of the total usable residential square footage.</p> <p>Units shall be set aside for households with an average of of 60% of AMI (Max 70% of AMI)</p>
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**A. Partial Units**

Where the total number of units required to meet the on-site and/or off-site unit contributions of this Article is calculated to a fraction below .5, the proponent shall pay the fractional amount into the Inclusionary Development Fund as set forth in Section 79-7. Where the calculation is at or above .5, the proponent shall either:

1. Round up to allocate an additional Inclusionary Zoning Unit; or
2. Pay a fee equal to the Full Unit Contribution into the Inclusionary Development Fund as set forth in Section 79-7.
3. Provide additional square footage to proposed Inclusionary Zoning Units in the form of two-or three-bedroom units so as to provide, at minimum, the required percentage of usable square footage.

**B. Off Site Unit Requirements**

1. Location: Off site units must be located within a half mile radius of the Proposed Project making the off site contribution
2. Timing: The location of the off site unit contribution must be identified when the Proposed Project files for BPDA approval. BPDA cooperation agreements shall cross reference the off site location, number of units to be developed, and intended household AMIs .
3. Conversions: Proponents may convert existing off site market rate units to satisfy Inclusionary Zoning requirements, except that rental to condo conversions shall not be permitted to satisfy requirements related to off-site homeownership development.
4. A mix of on-site and off-site units may be allowed, subject to BPDA approval.

**79-5 Inclusionary Zoning Unit Characteristics**

Notwithstanding the provisions of the Inclusionary Development Policy Document:

1. At minimum, units shall be distributed in proportion to size and type (number of bedrooms) as the Proposed Project as a whole. Pursuant to section 79-4 above, the City of Boston may require a developer to use some of the required square footage to create larger units.
2. Units must be dispersed throughout the development and may not be clustered or stacked in any one area.
3. Units shall be indistinguishable in finishes and construction internally and externally. 4. Off-site units shall be reviewed and deemed substantially similar to the Proposed Project.

**79-6 Length of Restriction**

A deed restriction and/or affordability covenant will be placed on each Inclusionary Zoning Unit, whether developed on- or off- site, for a period of at least 50 years.

**79-7 Payment in Lieu of Units**

A payment may be made in lieu of the provision of a partial unit according to the below schedule. In addition, full unit requirements may be satisfied by payment in lieu of units (PILU) into the City of Boston Inclusionary Development Fund as follows:

<b>Rental Units</b>			
	Zone A	Zone B	Zone C
Full Unit Contribution	May be allowed subject to MOH approval		
Partial Unit Contribution	remainder of the on-site usable square footage requirement	\$460/sf of the remainder of the on-site usable square footage requirement	\$365/sf of the remainder of the on-site usable square footage requirement

<b>Homeownership Units</b>			
	Zone A	Zone B	Zone C

Full Unit Contribution	20% of usable square footage paid at 75% of differential between market rate unit price/sf and Inclusionary Zoning Unit price/sf		
Partial Unit Contribution	remainder of the on-site or off-site percentage obligation	\$500/sf paid on the remainder of the on-site or off-site percentage obligation	\$300/sf paid on the remainder of the on-site or off-site percentage obligation

**79-8 Payments into the Inclusionary Development Fund**

Payment into the Inclusionary Development Fund must be paid to the City of Boston Treasury. Payment of 50% of the amount is due at the issuance of a building permit, the other 50% due at the issuance of a Certificate of Occupancy or Temporary Certificate of Occupancy.

**79-9 Effective Date & Applicability of this Article to Developments having submitted an Application for Conditional Use and/or Application for Review Under Article 80**

This Article shall become effective January 1, 2024 or 6 months after City Council approval, whichever is later; provided, however, that the required on-site inclusionary zoning unit contributions specifically for voucher holders shall go into effect January 1, 2025 or 12 months after the effective date of the Article, whichever is later. Notwithstanding the foregoing, any residential real estate development for which an application for a conditional use permit, exception, zoning map or text amendment or variance, Project Notification Form or other Article 80 application (including, without limitation, an application for a Planned Development Area) has been filed with the appropriate governmental authority prior to the effective date of such increase shall not be subject to this Article 79; and provided further, however, that the zoning commission may require adherence to Article 79 for any residential development project which, after the effective date of such increase, seeks additional relief through the filing of a Notice of Project Change, amendment of a planned development area, or other such zoning relief as specified by the zoning commission.

**79-10 Enforcement**

For all developments subject to this Article, the Commissioner of Inspectional Services shall not issue any building permit or use permit for a Proposed Project that is subject to the provisions of this article unless:

An Affordable Housing Agreement and/or Affordable Housing Creation Agreement and/or Affordable Housing Contribution and/or Affordable Rental Housing Agreement and Restriction shall be executed between the City of Boston Mayor’s Office of Housing (MOH) or its successors or assigns and the Proponent.

**Section 79-11 Severability**

The provisions of this article are severable and if any such provision or provisions shall be held invalid by any decision of any court of competent jurisdiction, such decision shall not impair or otherwise affect any other provision of this article.

**Additions to**

**Article 2: Definitions**

“Area Median Income (AMI)”: The midpoint of a specific area’s income distribution. The AMI applicable to Boston is calculated on an annual basis by the BRA using data from the Department of Housing and Urban Development (HUD). AMI, or a percentage thereof, is used to determine the maximum income that a given household size may receive before becoming ineligible for an Inclusionary Development Unit.

"Dwelling Unit": The room or group of rooms within a dwelling used or intended for use by one family or household for living, sleeping, cooking and eating.

“Inclusionary Development Fund”: The fund-held and managed by the City of Boston Mayor’s Office of Housing (“MOH”)-that serves as the recipient of monetary contributions received from residential real estate developments as a result of this Article.

“Inclusionary Zoning (IZ) Only Project”: A development project subject to Article 79 of the Zoning Code but not subject to Article 80 of the Zoning Code due to falling below Article 80E Small Project Review Requirements.

“Inclusionary Zoning (IZ) Unit”: Any dwelling unit that is income-restricted in compliance with the Inclusionary Development Policy (Article 79).

“Income-Restricted Unit”: Any dwelling unit that is subject to an income-restriction which limits occupancy to households not exceeding a specific AMI. Includes, but is not limited to Inclusionary Development Units.

“Required square footage”: A percentage of a development's total usable square footage equal to the percentage of units required in a proposed project.

“Usable Square Footage”: The actual space a tenant or owner occupies from wall to wall. Usable square footage does not include mechanical spaces or common areas of a building such as lobbies, restrooms, stairwells, storage rooms, and shared hallways.