

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 Statement of Purpose

This Article is written 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. ~~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.~~ **The purpose of inclusionary zoning is to generate affordable housing through conventional market-rate housing development.**

### 79-2 Applicability

A. This Article applies to any Proposed Project or **series of Proposed Project phases or components** put forward by the same Applicant or ~~affiliated~~ Applicant **affiliates** at the same time which result in seven (7) or more ~~residential~~ Dwelling Units, ~~whether if~~ 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 **to 7 or more Dwelling Units**, alterations within an existing structure that result in an increase in the total number of units **to 7 or more Dwelling Units**, or a change of use that results in an increase in the total number of units **to 7 or more Dwelling Units** (each such Proposed Project ~~and~~ **or series of Proposed Project phases or components** are referred to in the Article 79 as "Covered Projects").

B. Exemption: ~~Residential development projects are exempt from this Article when the~~ **Notwithstanding the foregoing, the term** Covered Project **does not include any Proposed Project or component thereof that is:**

- 1) Financed as one entity ~~and that~~ exceeds the affordability requirements set out in this Article;
- 2) A Dormitory as the term is defined in Articles 2 **or 8; or and 2A.**
- 3) Other uses not defined as Residential Uses **in Articles 2 or 8.**

### 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~~ **is** divided into **the three, distinct zones listed below, as shown in the map entitled "Inclusionary Development Policy Zone Designations" attached as Appendix A to this Article.**

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 Covered Project site is in more than one zone, the requirements of the less restrictive zone will apply.

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

**Table A: Required Percentages**

Rental – <del>IDP/IZ Only Projects; Small Projects pursuant to Article 80-E</del> <b>Covered Projects with 7 or More Dwelling Units, including Small Projects (Article 80-E) but not Large Project (Article 80-B) and not Planned Development Areas (Article 80-C)</b>			
	Zone A	Zone B	Zone C
On Site	17% of total Dwelling Units <b>or 17% of the Usable Square Footage of the Covered Project</b>  <b>Such IZ</b> 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 <del>pursuant to</del> (Article 80-B); <del>PDA's pursuant to</del> <b>and Planned Development Areas (Article 80-C)</b>			
	Zone A	Zone B	Zone C
On Site Option A	18% of total Dwelling Units <b>or 18% of the Usable Square Footage of the Covered Project</b> , <del>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</del>  This 18% is composed of: 15% of Dwelling Units <b>or of the Usable Square Footage</b> set aside for households with an average of 50% of AMI (Max 60% of AMI) and 3% of units <b>or of the Usable Square Footage</b> (for a minimum of two units) set aside for Voucher holders.		
On Site Option B	20% of total units <b>or 20% of the Usable Square Footage of the Covered Project</b> , <del>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</del>		

	<p><del>greater than 18% of the total usable residential square footage of the building</del></p> <p>This 20% is composed of: 17% of units <b>or of the Usable Square Footage</b> set aside for households with an average of 60% of AMI (Max 70% of AMI) and 3% of units <b>or of the Usable Square Footage (for a minimum of 2 units)</b> set aside for Voucher holders.</p>
Off Site	<p><del>Developers can meet their Off-site obligation through the creation of rental units with approval from MOH. Additional requirements shall be met</del> <b>units allowed subject to Mayor’s Office of Housing approval and the provisions of 79-4.C, and as follows:</b></p> <p><del>Off Site Rentals: 20% of total units</del> <b>or of the Usable Square Footage</b> of the original Covered Project., <del>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.</del></p> <p><b>Such IZ</b> Units shall be set aside for households with an average of <del>of</del> 60% of AMI (Max 70% of AMI)</p>

Homeownership – <del>IDP/IZ Only Projects; Small Projects pursuant to Article 80-E</del> <b>Covered Projects with 7 or More Dwelling Units, including Small Projects (Article 80-E) but not Large Project (Article 80-B) and not Planned Development Areas (Article 80-C)</b>			
	Zone A	Zone B	Zone C
On Site	<p>17% of total units <b>or 17% of Usable Square Footage of the Covered Project</b> <del>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</del></p> <p><b>Such IZ</b> Units shall be set aside for households where not more than half of households are up to 80% AMI and not more than half are up to 100% of AMI.</p>		
Off Site	Not allowed		

Homeownership – Large Projects <del>pursuant to</del> (Article 80-B; <del>PDA</del> s <del>pursuant to</del> <b>and Planned Development Areas (Article 80-C)</b>			
	Zone A	Zone B	Zone C

On Site	<p>20% of total units <b>or 20% of Usable Square Footage of the Covered Project.</b> <del>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 17% of the total usable residential square footage of the building.</del></p> <p><b>Such IZ</b> Units shall be set aside for households where not more than half of households are up to 80% AMI and not more than half are up to 100% of AMI.</p>
Off-Site	<p><del>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.</del> <b>allowed subject to Mayor’s Office of Housing approval and the provisions of 79-4.C, and as follows:</b></p> <p><b>Off Site Condos- Homeownership:</b> 20% of total units <b>or 20% of Usable Square Footage of the original Covered Project.</b> <del>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.</del> <b>Such IZ</b> Units shall be set aside for households where not more than half of households are up to 80% of AMI and not more than half are up to 100% of AMI.</p> <p>Off Site Rentals: 20% of total units <b>or 20% of Usable Square Footage of the original Covered Project.</b> <del>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.</del></p> <p>Units shall be set aside for households with an average of <del>of</del> 60% of AMI (Max 70% of AMI)</p>

**AB. 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 Applicant 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 Applicant shall ~~either~~ **elect any of:**

1. **Rounding** up to allocate an additional ~~Inclusionary Zoning IZ~~ **IZ** Unit; ~~or~~
2. **Paying** a fee equal to the Full Unit Contribution into the Inclusionary Development Fund as set forth in Section 79-7;-
3. **Providing** additional square footage to proposed ~~Inclusionary Zoning-IZ~~ **Units- with two or more bedrooms two+ bedroom units** so as to provide, at minimum, the required ~~percentage of usable square footage~~ **Usable Square Footage where this method of calculation is utilized in lieu of total units.**

**BC. Off-Site Unit Requirements**

1. Location: Off-site units must be located within a half mile radius of the Covered Project making the off-site contribution
2. Timing: The location of the off-site unit contribution must be identified when the Covered Project files for **BPDA Boston Redevelopment Authority** approval. **BPDA Article 80B** cooperation agreements shall cross reference the off-site location, number of units to be developed, and intended household AMIs.
3. Conversions: Applicants 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 **the approval of BPDA Mayor's Office of Housing or its successor agency approval.**

**79-5 Inclusionary Zoning Unit Characteristics**

~~Notwithstanding the provisions of the Inclusionary Development Policy Document:~~

1. ~~At minimum,~~ **The size and type (number of bedrooms) of the IZ Units** shall be ~~distributed in proportion~~ **proportional** to the size and type (number of bedrooms) ~~as of the units within~~ the Covered Project as a whole. **Notwithstanding the foregoing,** pursuant to Section 79-4A or **Section 79-4B.3** above, ~~the City of Boston may permit a developer to~~ **the Applicant may** use some of the required **Usable Square Footage** ~~square footage~~ to create larger IZ units.
2. IZ Units must be dispersed ~~throughout the development~~ and may not be clustered or stacked in any one area.
3. **On-site IZ** Units shall be indistinguishable in finishes and construction internally and externally.
4. Off-site IZ Units shall be reviewed **by the Mayor's Office of Housing** and deemed substantially similar to **other units within** the Covered 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 thirty (30) years, unless such restriction is recorded by deed restriction and affordability covenant shall continue for a further twenty (20) years from the date of recording such notice of restriction.

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

A payment may be made in lieu of the provision of a partial unit **pursuant to Section 79-4B** according to the below schedule. ~~In addition, full~~ **Full** unit requirements may be satisfied, **subject to Mayor's Office of Housing approval,** by payment in lieu of units (**PILU**) into the ~~City of Boston~~ **Inclusionary Development Fund of the City of Boston Treasury** as follows:

<b>Rental Units</b>			
	Zone A	Zone B	Zone C
<del>Full Unit Contribution</del>	<del>May be allowed subject to MOH approval, at rates below</del>		
<b>Full or Partial Unit Contribution</b>	<del>\$675/sf of the remainder of the on-site usable square</del>	<del>\$460/sf of the remainder of the on-site usable square</del>	<del>\$365/sf of the remainder of the on-site usable square</del>

	footage requirement	footage requirement	footage requirement
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<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 sales price/sf and Inclusionary Zoning IZ Unit sales price/sf		
Partial Unit Contribution	\$850/sf paid on the 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, and payment of the other 50% is 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~~ Transition Rule**

This Article shall become effective October 1, 2024. Notwithstanding the foregoing, any ~~Covered Project~~ for which an application for a conditional use permit, exception, zoning map amendment ~~or~~, zoning text amendment, ~~or~~ variance, Project Notification Form, or other Article 80 application (including, without limitation, the filing of a Development Plan for a Planned Development Area) has been filed with the appropriate governmental authority prior to the effective date of this Article 79 shall not be subject to this Article 79; and provided further, however, that the **Boston Redevelopment Authority, Boston Zoning Commission, or Board of Appeal** ~~zoning commission~~ may require adherence to Article 79 for a Covered Project ~~that project which~~, after the ~~said~~ effective date ~~of such increase~~, seeks additional **or amended** relief through the filing of a Notice of Project Change, amendment of a Development Plan for Planned Development Area, **an additional variance, an additional conditional use permit, or an additional zoning exemption.** ~~other such zoning relief as specified by the zoning commission.~~

**79-10 Enforcement**

For all Covered Projects subject to this Article, the Commissioner of Inspectional Services shall not issue any building permit or use permit **unless an affordable housing agreement memorializing the Applicant’s obligations under this Article has been** ~~for a Covered 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 assignees and the Applicant.

**Section 79-11 Severability**

The provisions of this ~~article~~ **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~~ **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 **Treasury Mayor's Office of Housing ("MOH")** that serves as the recipient of monetary contributions received from **Covered Projects as applicable.** ~~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** ~~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": **In a development with a residential component subject to the provisions of Article 79, the** ~~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.