

## Legislation Text

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**File #:** 170678-AAA, **Version:** 1

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Amending Title 7 of The Philadelphia Code, entitled “Housing Code,” by adding a new Chapter 7-200, entitled “Mixed Income Housing Program,” to provide for affordable housing standards; amending Section 14-702 of The Philadelphia Code, entitled “Mixed Income Housing,” to make related changes; amending Chapters 14-600 and 14-700 of The Philadelphia Code, entitled, respectively, “Use Regulations” and “Development Standards,” to amend certain zoning standards relating to residential development; and making related amendments; all under certain terms and conditions.

*THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:*

SECTION 1. Title 7 of The Philadelphia Code is hereby amended to read as follows:

### TITLE 7. HOUSING CODE.

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#### *CHAPTER 7-200. MIXED INCOME HOUSING PROGRAM*

§ 7-201. *Definitions. As used in this Chapter, the following terms shall have the meanings set forth below. Words not defined here shall have the meaning set forth in the Zoning Code, where provided, unless the context clearly suggests otherwise.*

*(1) Affordable Unit.*

*(a) If a rental unit: A dwelling unit rented to and occupied by an Eligible Tenant at a rental cost, including rent and utilities, that is affordable to an Eligible Tenant.*

*(b) If an owner-occupied unit: A dwelling unit owned and occupied by an Eligible Purchaser, at an ownership cost that is affordable to an Eligible Purchaser. The ownership cost shall be determined by the Department based upon the cost of a down payment and a fixed rate 30 year mortgage consistent with the average monthly rate published from time to time by Freddie Mac, in addition to total monthly costs, including but not limited to property taxes, insurance, utilities, and condominium or homeowner association fees.*

*(c) A rental or ownership cost of an Affordable Unit shall be affordable to an Eligible Tenant or an Eligible Purchaser if that cost does not exceed 30 percent of the maximum income level permitted for an Eligible Tenant or Eligible Purchaser, as set forth in the Eligibility Table found at subsection (5), below.*

*(d) An Affordable Unit shall be categorized as a Moderate Income Affordable Unit if the rental or ownership cost is affordable to, and the Unit is occupied by, a Moderate Income Eligible Tenant or Purchaser; and shall be categorized as a Low Income Affordable Unit if the rental or ownership cost is affordable to, and the Unit is occupied by, a Low Income Eligible Tenant or Purchaser.*

(2) *AMI. Area median income, meaning the median household income for the Philadelphia Primary Metropolitan Statistical Area as calculated and adjusted for household size on an annual basis by the United States Department of Housing and Urban Development.*

(3) *Residential Housing Project.*

(a) *Any project which itself, or in combination with any closely related projects, involves the construction of ten or more dwelling units located in whole or in part within zoning districts RM-4, RMX-3, CMX-3, CMX-4 or CMX-5, but not including:*

*(.1) Any project that is receiving government financial assistance conditioned upon the provision of 51% or more units meeting affordability standards of a government program.*

*(.2) Any dwelling units developed by or for an educational institution for the exclusive use and occupancy of such institution's students or other institution-affiliated persons such as resident advisors or house masters.*

*(.3) Any dwelling units constructed fully within a pre-existing structure.*

*(b) In determining whether a development constitutes a Residential Housing Project, the Department shall consider, among other things, whether the development is marketed as a single or unified project, shares common elements, or is a phase of a larger development. This definition shall be interpreted broadly so as to achieve the purposes of this Chapter and to prevent evasion of its terms.*

(4) *Department. The Department of Planning and Development.*

(5) *Eligible Tenant or Eligible Purchaser. A tenant or purchaser of a dwelling unit certified by the Department as having:*

*(a) At the time of initial occupancy: income, adjusted for household size, of less than or equal to the percentage of AMI provided in the following Eligibility Table:*

	<i>Low Income</i>	<i>Moderate Income</i>
<i>Eligible Tenant</i>	<i>50%</i>	<i>60%</i>
<i>Eligible Purchaser</i>	<i>70%</i>	<i>80%</i>

*(b) At the time of initial occupancy: satisfied any educational, counseling or other qualifying requirements deemed appropriate by the Department or its designee.*

*(c) At all times after the initial occupancy of rental units: income, adjusted for household size, of less than or equal to two times the maximum income set forth pursuant to subsection (a), above; provided that, in the event the income of a tenant is found by the Department to exceed the maximum income provided for by this subsection (c), a tenant shall nonetheless be deemed an Eligible Tenant until the first expiration of a lease occurring after the tenant's income exceeded the maximum permitted by this subsection (c). The Department may waive this requirement upon a showing of exceptional circumstances.*

§ 7-202. *Affordability Requirements.*

*(1) No zoning permit shall be issued pursuant to § 14-303(6) for any Residential Housing Project, or any portion thereof, unless the Department certifies to the Department of Licenses and Inspections that the applicant has acknowledged, in form satisfactory to the Department, an understanding of the requirements of this Chapter 7-200.*

*(2) No building permit shall be issued pursuant to Section A-301 of Title 4 for any Residential Housing Project, or any portion thereof, unless the Department certifies to the Department of Licenses and Inspections that the applicant has demonstrated, in form satisfactory to the Department, compliance with the requirements of either subsection (a) or (b), below; and with any additional requirements that the Department shall impose in order to secure and monitor the applicant's satisfaction of all obligations imposed by this Chapter.*

*(a) Construction option.*

*(.1) The applicant has recorded an instrument or instruments in favor of the City, in substance satisfactory to the Department and in form satisfactory to the Law Department, committing that:*

*(A) At least ten percent of all dwelling units (rounded up, if fractional, to the next highest whole number) will be provided and maintained as Affordable Units for at least fifty years on the same site as the Residential Housing Project; provided, that, the Department 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;*

*(B) The Affordable Units will be reasonably dispersed throughout the Residential Housing Project such that no single building or floor therein will have a disproportionate percentage of Affordable Units;*

*(C) The Affordable Units will be constructed and maintained in compliance with the requirements of this Chapter, including § 7-203 ("Construction, Maintenance and Marketing Requirements");*

*(D) The Affordable Units will have access to the same on-site amenities available to market-rate units, including but not limited to common areas and parking facilities;*

*(E) For owner-occupied units, the owner and all subsequent owners during the affordability period provided for in subparagraph (A), above, shall give the Department a right of first refusal to purchase each Affordable Unit, with 90 days' notice of any sale; and shall give the Department notice of any foreclosure of an Affordable Unit within seven days of receipt of a foreclosure notice.*

*(.2) The applicant has filed and the Department has approved an Affordable Building Plan, signed by both the applicant and the design professional responsible for the Residential Housing Project, which specifies the quality, quantity, placement, design, and phasing of the Residential Housing Project and of each Affordable Unit, and which acknowledges that the applicant is subject to penalties in the event that the Residential Housing Project 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.*

*(3) The applicant has demonstrated to the satisfaction of the Department that the applicant is capable of and prepared to actively market the Affordable Units to Eligible Tenants or Eligible Purchasers.*

*(b) Payment in lieu option. The Applicant and the Department have entered into a binding agreement pursuant to which the Applicant has tendered to the City a payment in lieu of providing Affordable Units, in the amount set forth in Table 7-202, below; and the Department has agreed to use such money to cover costs related to the administration of this Chapter or for the purposes set forth in Chapter 21-1600 (“Housing Trust Fund”).*

*Table 7-202: Payment in Lieu, per Dwelling Unit in Residential Housing Project*

<i>Unit Size</i>	<i>Moderate Income Bonus under § 14-702(7)</i>	<i>Low Income Bonus under § 14-702(7)</i>
<i>Studio</i>	<i>\$11,250</i>	<i>\$14,900</i>
<i>1 Bedroom</i>	<i>\$15,000</i>	<i>\$18,900</i>
<i>2 Bedroom</i>	<i>\$20,000</i>	<i>\$24,700</i>
<i>3+ Bedroom</i>	<i>\$25,000</i>	<i>\$30,400</i>

*(2) No certificate of occupancy shall be issued pursuant to Section A-701 of Title 4 for any dwelling units included in a Residential Housing Project, and no occupancy of such units shall be permitted, unless certificates of occupancy have also been issued for all Affordable Units required by subsection (1), above; provided that the Department may waive this requirement upon a showing of exceptional circumstances with respect to permitted off-site Affordable Units and upon agreement by the applicant to further conditions and penalties for non-compliance, all as provided for in regulations of the Department.*

**§ 7-203. Construction, Maintenance and Marketing Requirements.**

*(1) All Affordable Units required by § 7-202 (“Affordability Requirements”) shall be constructed, completed, ready for occupancy, and marketed at the same time as market-rate units within the Residential Housing Project, or, in the case of Residential Housing Projects which are constructed over time, at the same rate.*

*(2) All Affordable Units required by § 7-202 (“Affordability Requirements”) 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 Residential Housing Project, except that the Department 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.*

*(a) Affordable Units required by § 7-202 (“Affordability Requirements”) may have interior finishes and features that are functionally equivalent to those of any market-rate unit within the Residential Housing Project, so long as those finishes and features are durable, of good and new quality, and consistent*

*with any further standards which the Department may establish.*

*(3) The applicant (or, with respect to owner-occupied units, the owner) shall actively market, and select Eligible Tenants and Eligible Purchasers to occupy, all Affordable Units that are required by § 7-202 to be constructed and maintained. If the Department determines that the applicant has not satisfied the requirements of this subsection (3), the Department may establish additional requirements of the applicant or owner relating to the marketing of Units and the selection of Eligible Tenants and Eligible Purchasers.*

*§ 7-204. Remedies.*

*(1) Failure to comply with any provision of a recorded instrument required by § 7-202 ("Affordability Requirements") or any other requirement of this Chapter 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 \$500 per day of noncompliance.*

*(2) The Department 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.*

*§ 7-205. Reporting.*

*(1) The Department 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.*

*§ 7-206. Regulations.*

*(1) The Department shall have the authority to promulgate regulations to clarify, implement or administer any provision of this Chapter.*

SECTION 2. Title 14 of The Philadelphia Code is hereby amended to read as follows:

Key:

1. In Tables that contain bracketed table notes, and in the table notes, deletions are indicated by { } rather than [ ].

TITLE 14. ZONING AND PLANNING

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CHAPTER 14-700. DEVELOPMENT STANDARDS

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## § 14-702. Floor Area and Height Bonuses.

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## (2) Eligibility for Floor Area Bonuses.

In order to be eligible for any floor area bonuses pursuant to this section:

- (a) The property must be located in the *RM-4*, *RMX-3*, *CMX-3*, *CMX-4*, or *CMX-5* districts, and property located in those districts shall only be eligible for the bonuses indicated for that district in this § 14-702.
- (b) If the property is located in the *RM-4*, *RMX-3*, *CMX-4*, or *CMX-5* districts, the property must have frontage on two streets at least 50 ft. wide or three streets at least 20 ft. wide, *except for bonuses earned pursuant to § 14-702(7) (Mixed Income Housing), for which these street width requirements shall not apply.*
- (c) If the property is located in the *CMX-3* district, *the property must either be included within a Residential Housing Project (as defined in Chapter 7-200 ("Mixed Income Housing Program")) or [it must] be located in:*

\* \* \*

## (3) Floor Area Bonus Options Summary Table

The following table summarizes the floor area bonus options in this section. In the event of conflict between the provisions of Table 14-702-1 and the text of this Zoning Code, the text shall govern.

Table 14-702-1: Floor Area Bonus Summary

Bonus Category	Additional Gross Floor Area, as Percent of Lot Area (see § 14-701(2) (Residential District Dimensional Table) for the maximum allowed base floor area ratios for each district)					
	<i>RM-4</i>	<i>RMX-3</i>	<i>CMX-3</i> as provided in § 14-702(2)(c) (except in /TOD)	<i>CMX-3</i> (within /TOD only)	<i>CMX-4</i>	<i>CMX-5</i>
Public Art (§ 14-702(5))	N/A	N/A	N/A	N/A	50%	100%
Public Space (§ 14-702(6))	N/A	N/A	N/A	Up to 50%	Up to 200%	Up to 400%

Mixed Income Housing (§ 14-702(7))	Moderate Income	150%	[N/A] 150%	150%	200%	150%	300%
	Low Income	250%	[N/A] 250%	250%	250%	250%	400%
Transit Improvements (§ 14-702(8))		N/A	N/A	N/A	Up to 100%	Up to 200%	Up to 400%
Underground Accessory Parking and Loading (§ 14-702(9))		N/A	100%	N/A	50%	200%	200%
Green Building (§ 14-702(10))		N/A	N/A	Up to 100%	Up to 100%	Up to 200%	Up to 400%

\* \* \*

## (7) Mixed Income Housing.

## [(a) Affordability.

A floor area or height bonus, as applicable, may be earned by providing affordable housing at the following levels of affordability.

## (.1) Moderate Income.

## (.a) Moderate Income rental units shall:

- (i) Have total monthly costs (including rent and utility costs) that do not exceed 30% of gross monthly income for households earning up to 80% 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 Fair Market Rent Area; and
- (ii) Be occupied by households earning up to 80% of the Area Median Income (AMI), adjusted by household size, as reported by HUD for the Philadelphia Metropolitan Fair Market Rent Area.

## (.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 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 30% of gross monthly income for households earning up to 100% of the AMI, adjusted for household size, as reported by HUD for the Philadelphia Primary Metropolitan Statistical Area;
- (ii) Be sold to one or more members of a household earning up to 100% of the AMI, adjusted for household size, as reported by HUD for the Philadelphia Primary 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 30% of gross monthly income for households earning up to 60% of the Area Median Income (AMI), adjusted for household size, as reported by HUD for the Philadelphia Metropolitan Fair Market Rent Area; and

(ii) Be occupied by households earning up to 60% of the Area Median Income (AMI), adjusted by household size, as reported by HUD for the Philadelphia Metropolitan Fair Market Rent Area.

(.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 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 30% of gross monthly income for households earning up to 80% of the AMI, adjusted for household size, as reported by HUD for the Philadelphia Primary Metropolitan Statistical Area.

(ii) Be sold to one or more members of a household earning up to 80% of the AMI, adjusted for household size, as reported by HUD for the Philadelphia Primary 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 bonus or height bonus, as applicable, may be earned by providing affordable housing, provided that it meets the following standards:

(.1) At least 10% of a minimum of five residential dwelling units constructed using base floor area ratio shall be affordable, as defined in § 14-702(7)(a)(.1) or § 14-702(7)(a)(.2), above.

(.2) This bonus is not available to developers of subsidized housing where 51% or more of the dwelling units will be affordable as defined by § 14-702(7)(a)(.1) or § 14-702(7)(a)(.2).

(.3) 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 15 years with future sales, affordability, compliance, and certain legal remedies within such period governed by a restrictive covenant or long-term ground lease approved by the Law Department before the issuance of a building permit.

(.4) Affordable units shall be constructed and available at the same time as market-rate



units and reasonably dispersed throughout the development or as provided by a restrictive covenant benefiting the City of Philadelphia.

(.5) Affordable units shall be comparable to market-rate units in exterior and interior building materials and finishes; overall construction quality; and energy efficiency, or as provided by the City of Philadelphia.

(.6) An owner or applicant of a building with a principal residential use may choose to make a payment in lieu of building affordable units. The City shall select the 10% of the units to be constructed to be considered as qualifying units and calculate the required payment amount. The owner or applicant shall provide the City with any requested documentation necessary to calculate the payment amount. The in lieu payment will be contributed to the Philadelphia Housing Trust Fund and shall, per qualifying unit, be calculated using the lesser of § 14-702(7)(b)(.6)(.a) or § 14-702(7)(b)(.6)(.b) for 10% of the development's total residential units or a minimum of five units, whichever is greater.

(.a) The amount that a household at either 60% or 80% of AMI, as determined by the bonus earned, adjusted for household size, as reported by HUD for the Philadelphia Primary Metropolitan Statistical Area, could afford to pay for the purchase of a qualifying unit; or

(.b) The average cost of constructing a qualifying unit.]

(a) *A Residential Housing Project, as defined in § 7-201, shall be entitled to a Mixed Income Housing Bonus in accordance with subsection (b), below, upon compliance with the requirements of Chapter 7-200. The limits on maximum additional floor area ratio set forth at § 14-702(4)(a) through (e) shall not apply to this Bonus.*

(b[c]) Bonus Floor Area or Building Height.

The additional gross floor area or building height earned for [providing mixed-income housing] *compliance with subsection (a), above, [is:] is as set forth in the table, below. A property may take advantage of both a height bonus and a gross floor area bonus, if so provided by the following table.*

Affordability Level	Additional Gross Floor Area, as Percentage of Lot Area						Additional Building Height	
	RM-4	RMX-3	CMX-3 as provided in § 14-702(2)(c) (except in /TOD)	CMX-3 (within /TOD only)	CMX-4	CMX-5	/CDO	/ECO
Moderate Income	150%	150%	150%	200%	150%	300%	48 ft.	48 ft.
Low Income	250%	250%	250%	250%	250%	400%	60 ft.	60 ft.

SECTION 3. Effective date. This Ordinance shall take effect on July 1, 2018. Construction pursuant to a valid

zoning permit application that was filed prior to the effective date shall not be counted for purposes of determining whether a project is a Residential Housing Project within the meaning of § 7-201 of The Philadelphia Code, as added by Section 1 of this Ordinance.