

Legislation Text

File #: 170678-AAA, **Version:** 3

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 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 14-600. USE REGULATIONS

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§ 14-602. Use Tables.

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(4) Commercial Districts.

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(a) Notes for Table 14-602-2.

[1] When the proposed use is in an attached or semi-detached building, the household living use regulations of the residential district to which it is attached apply. Otherwise, the residential use regulations of the most restrictive adjacent residential district apply. If there is no adjacent residential district, single-family household living shall be permitted and two-family and multi-family household living shall be prohibited. *Notwithstanding*

any of the foregoing, two-family and multi-family household living shall be permitted in the CMX-1 district if the dwelling would otherwise qualify for a housing unit density bonus for mixed-income housing, pursuant to § 14-702(7). In such instances, the property shall be subject to the housing unit density provisions set forth in Table Note [2], below, as if the property were located in a CMX-2 district, plus any applicable housing density bonus pursuant to § 14-702(7).

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CHAPTER 14-700. DEVELOPMENT STANDARDS

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§ 14-702. [Floor Area and Height Bonuses.] *Floor Area, Height, and Housing Unit Density Bonuses.*

* * *

(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-2, RM-3, RM-4, RMX-1, RMX-2, RMX-3, IRMX, 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 *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) *Except for bonuses earned pursuant to § 14-702(7) (Mixed Income Housing), if the property is located in the CMX-3 district, it must be located in:*

* * *

(2.1) Eligibility for Height Bonuses.

In order to be eligible for any height bonuses pursuant to this section, the property must be located in *an RM-1, CMX-2, or CMX-2.5 zoning district; or in a CMX-1 zoning district and be subject to a base height limit of 38 feet or less; or in the /CDO overlay district and [must] be subject to the height restrictions of [§ 14-507(6)(b)] § 14-507(6)(b); or [the property must be located] in the /ECO overlay district and [must] be subject to the height restrictions of § 14-519 (4)(b).*

(2.2) Eligibility for Housing Unit Density Bonuses.

In order to be eligible for any housing unit density bonuses pursuant to this section, the property must be in an RM-1, CMX-1, CMX-2, or CMX-2.5 zoning district.

(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 Tables) and § 14-701(3) (Commercial Districts Dimensional Tables) for maximum allowed base floor area ratios for each district.)									
		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	CMX-4	CMX-5
									(within /TOD only)		
Public Art (§ 14-702(5))		N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	50%	100%
Public Space (§ 14-702(6))		N/A	N/A	N/A	N/A	N/A	N/A	N/A	Up to 50%	Up to 200%	Up to 400%
Mixed Income Housing (§ 14-702(7))	Moderate Income	25%	50%	100%	75%	150%	{N/A} 150%	150%	200%	150%	300%
	Low Income	50%	75%	175%	125%	250%	{N/A} 250%	250%	250%	250%	400%
Transit Improvements (§ 14-702(8))		N/A	N/A	N/A	N/A	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	N/A	N/A	N/A	N/A	100%	N/A	50%	200%	200%
Green Building (§ 14-702(10))		N/A	N/A	N/A	N/A	N/A	N/A	Up to 100%	Up to 100%	Up to 200%	Up to 400%

(3.1) Building Height Bonus Options Summary Table.

The following table summarizes the building height bonus options in this section. In the event of

conflict between the provisions of Table 14-702-2 and the text of this Zoning Code, the text shall govern.

Table 14-702-2: Building Height Bonus Summary

Bonus Category		Additional Building Height		
		/CDO	/ECO	<i>RM-1, CMX-1, CMX-2, CMX-2.5</i>
Public Art (§ 14-702(5))		Up to 12 ft.	Up to 12 ft.	<i>N/A</i>
Public Space (§ 14-702(6))		Up to 24 ft.	Up to 24 ft.	<i>N/A</i>
Mixed Income Housing (§ 14-702(7))	Moderate Income	Up to 48 ft.	Up to 48 ft.	<i>7 ft.</i>
	Low Income	Up to 60 ft.	Up to 60 ft.	<i>7 ft.</i>
Transit Improvements (§ 14-702(8))		Up to 72 ft.	<i>N/A</i>	<i>N/A</i>
Green Building (§ 14-702(10))		Up to 36 ft.	Up to 36 ft.	<i>N/A</i>
Trail (§ 14-702(11))		Up to 72 ft.	<i>N/A</i>	<i>N/A</i>
Street Extension (§ 14-702(12))		Up to 72 ft.	<i>N/A</i>	<i>N/A</i>
Retail Space (§ 14-702(13))		Up to 48 ft.	Up to 48 ft.	<i>N/A</i>
Stormwater Management (§ 14-702(14))		<i>N/A</i>	Up to 72 ft.	<i>N/A</i>
Through-Block Connection (§ 14-702(15))		<i>N/A</i>	Up to 48 ft.	<i>N/A</i>

* * *

(7) Mixed Income Housing.

(a) Affordability.

A floor [area or height] *area, height, or housing unit density* 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%] 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 [Fair Market Rent] *Statistical Area*; [and]

(ii) [Be] *At the time of initial occupancy, be* occupied by households earning up to [80%] 60% of the Area Median Income (AMI), adjusted by household size, as reported by HUD for the Philadelphia Metropolitan [Fair Market Rent Area.] *Statistical Area*; and

(iii) *At all times after initial occupancy, be occupied by households earning up to 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 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 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 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%] 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] *with household earnings* up to [100%] 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.

(.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%] 50% of the Area Median Income (AMI), adjusted for household size, as, as reported by HUD for the Philadelphia Metropolitan [Fair Market Rent] *Statistical Area*; [and]

(ii) [Be] *At the time of initial occupancy, be occupied by households earning up to [60%] 50% of the Area Median Income (AMI), adjusted by household size, as reported by HUD for the Philadelphia Metropolitan [Fair Market Rent Area.] Statistical Area; and*

(iii) *At all times after initial occupancy, be occupied by households earning up to 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 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 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 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%] 70% 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] *with household earnings* up to [80%] 70% 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] *area, height, or housing unit density* bonus, as applicable, may be earned (i) by providing affordable housing, provided that [it] *the project* meets the [following standards:] *standards set forth in subparagraphs (.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 subparagraph (.6), below. This bonus is not available for developments of subsidized housing where 51% or more of the dwelling units will be affordable under any of the definitions set forth in subsection (a) ("Affordability"), above, and is not available for developments where less than 50% of gross floor area will be in residential use.*

(.1) At least 10% of [a minimum of five] residential dwelling units (*rounded up, if fractional*) constructed using base floor area ratio shall be *provided and maintained as* 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)] (.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 [15]50 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.] *recorded instrument or instruments in favor of the City, in substance satisfactory to the Department and in form satisfactory to the Law Department, committing to satisfy all requirements of this subsection (b).*

[(.4)] (.3) Affordable units shall be [constructed and available] *constructed, completed, ready for occupancy, and marketed* 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.] *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 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.*

[(.5)] (.4) [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.] *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 subparagraph (.3), 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.

[(.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.]

(.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 has agreed to use such money for the purposes set forth in § 21-1605 ("Trust Fund Assets Held in the Non-Recording Fee Sub-Fund"). The payment shall be calculated by multiplying the gross floor area, as defined in § 14-202(4) but without excluding the areas identified in § 14-202(4)(b), 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. Taxes imposed pursuant to Chapter 19-4300 (relating to tax on the privilege of engaging in certain construction) shall not count towards the satisfaction of this requirement.

(c) Bonus Floor [Area or] Area, Building [Height.] Height, and Housing Unit Density.

(.1) 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 tables, below. A property may take advantage of a height bonus, a gross floor area bonus, and a housing unit density bonus, if so provided by the tables in subparagraph (.3), below.

(.2) Housing 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.

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

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

(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 or building height 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).*
- (.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 or building height 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:*
- (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 section § 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 \$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.*
- (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).

SECTION 2. Effective date. This Ordinance shall be effective immediately.