

Boston Adds Updated Inclusionary Development Policy to the Zoning Code—What Questions Remain?

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In November 2023, the Boston Zoning Commission adopted Article 79 of the Boston Zoning Code, codifying for the first time long-studied changes to Boston's Inclusionary Development Policy (IDP) to lower IDP thresholds and increase IDP requirements. The changes take effect on October 1, 2024.

The IDP was created by a mayoral executive order in 2000. Five subsequent updates culminated in the current 2015 version. This version requires developers of market-rate housing projects with at least 10 units that need zoning relief or benefit from City land or funding to include 13% of the total number of units as income-restricted housing units on-site, create off-site units in the vicinity, or make a payment-in-lieu to an IDP fund as determined based on the location of the project in a high, medium or low property value zone. In practice, the City has a strong preference for on-site units, and large projects routinely exceed baseline IDP requirements.

The newly codified IDP applies to all projects of at least 7 units, including as-of-right projects. For **large rental projects** (i.e., subject to Large Project Review or within a Planned Development Area), the on-site requirement is increased from 13% to either 18% targeting an average of 50% AMI (up to 60% AMI); or 20% targeting an average of 60% AMI (up to 70% AMI). In either case, required units are calculated based on total units or total project square footage, and include a 3% set aside for voucher holders.

For **large homeownership projects**, the on-site requirement is increased from 13% to 20%, half targeting up to 80% AMI and half targeting up to 100% AMI. For **small rental and homeownership projects**, the on-site requirement is increased to 17%, with no off-site option. The large project off-site options are updated generally, and the large and small project payment-in-lieu options are updated based on zone designations, in all instances requiring Mayor's Office of Housing (MOH) approval.

The timing to satisfy any payment-in-lieu is accelerating. Currently, rental projects contribute either 7 annual installments or the present value of those installments upfront; and homeownership projects contribute 3 installments at building permit issuance, certificate of occupancy issuance, and 1 to 2 years afterward. The newly codified IDP contemplates contributing half the total amount at building

permit issuance and the other half at certificate of occupancy issuance.

As Article 79's effective date approaches, additional questions will need to be answered to understand project compliance. These include:

- Covered uses: Will the IDP apply to elderly housing, assisted living, and non-institutional student housing?
- Off-site option: What process and timing will be associated with MOH approval of any payments-in-lieu or off-site units?
- Vouchers: Will voucher units be administered separately, and can they be converted to income-restricted units if vacant?
- Transition rule: Can the Boston Zoning Commission or Zoning Board of Appeal require changes to a project's IDP program after the project has received Boston Planning & Development Agency Board approval?

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