

<p style="text-align: center;">DEPARTMENT OF LICENSES AND INSPECTIONS</p> <p style="text-align: center;">CODE BULLETIN</p> <p style="text-align: right;">Z-1501-R2</p>	<p style="text-align: center;">CODE OF GENERAL ORDINANCES OF THE CITY OF PHILADELPHIA</p> <p style="text-align: center;">TITLE 14</p> <p style="text-align: center;">Zoning Code</p>
<p>SUBJECT OF INTERPRETATION:</p> <p style="text-align: center;">MIXED INCOME HOUSING BONUS</p>	<p>REFERENCE CODE SECTION(S):</p> <p style="text-align: center;">14-702(7)(b)</p>
<p style="text-align: center;">ISSUED BY</p>	<p>ISSUE DATE:</p> <p style="text-align: center;">January 13, 2015</p>
<p>NAME:</p> <p style="text-align: center;">Michael Fink</p>	<p>REVISED DATE:</p> <p style="text-align: center;">February 12, 2019</p>
<p>TITLE:</p> <p style="text-align: center;">Chief Code Official</p>	<p style="text-align: center;">PAGE 1 of 5</p>

BACKGROUND:

The Zoning Code establishes a Mixed Income Housing Bonus that provides gross floor area, building height, and housing unit density bonuses for providing a certain number of affordable units in a development or making an in-lieu-of payment to the Philadelphia Housing Trust Fund. The Zoning Code includes measures to ensure applicants/owners meet and maintain Zoning Code requirements. Several provisions of the Mixed Income Housing Bonus require clarification by the Department of Licenses and Inspections (L&I). This Code Bulletin of Information clarifies these standards.

Bonus Eligibility and Bonus Amounts

Properties are eligible to earn the Mixed Income Housing Bonus under the standards of § 14-702(2) through § 14-702(4) of the Zoning Code.

Bonus Criteria

The Zoning Code establishes the criteria to earn the Mixed Income Housing Bonus in § 14-702(7)(b). The Zoning Code includes the criteria for a payment to the Philadelphia Housing Trust Fund in lieu of providing the affordable units in § 14-702(7)(b).

Affordability & Occupancy Standards

Affordable units provided to earn the bonus shall meet the affordability and occupancy standards of § 14-702(7)(a) of the Zoning Code. This subsection includes the maximum monthly costs for rental units, maximum sale and resale price for owner-occupied units, and maximum household income for households occupying the affordable units.

Bonus Earned

Mixed Income Housing Bonuses are earned in accordance with § 14-702(7)(c). This subsection also includes limits on the Mixed Income Housing Bonus a property may earn and when to calculate a housing unit density bonus.

Compliance and Remedies

The Zoning Code provides compliance requirements in § 14-702(7)(d). This subsection considers the issuance of Zoning Permits, Building Permits, and Certificates of Occupancy by L&I. This subsection also includes procedures for demonstrating compliance. The Zoning Code includes remedies for noncompliance and means to determine continued compliance in § 14-702(7)(e).

ISSUE:

The following ambiguities require clarification to enforce the mixed-income bonus:

The Zoning Code does not address certain application requirements and documentation;

The Zoning Code contains certain unclear terms and requirements;

The Zoning Code does not include a clear procedure for considering the modifications to approved plans; and

The Zoning Code does not include a clear procedure for verifying continued compliance.

DISCUSSION:

Additional Application Requirements and Documentation

The Zoning Code references documentation that must be submitted to earn the Mixed Income Housing Bonus. Additional materials are needed to ensure Zoning Code compliance. This includes certain approvals and certifications from the Department of Planning and Development (DPD). L&I must determine, in collaboration with DPD, what constitutes evidence of such certifications and approvals.

The Zoning Code establishes in § 14-303(2) that L&I shall state on the City's website the application materials required to review an application for compliance. § A-301.5 of the Administrative Code authorizes L&I to establish permit application requirements. L&I must establish the documentation an applicant/owner shall submit to earn the mixed income housing bonus.

Clarification of Requirements

The Zoning Code includes the requirements to earn the Mixed Income Housing Bonus when providing the affordable units. The means to verify and enforce certain requirements is unclear. L&I must then:

Clarify when the period of affordability begins;

Resolve issues concerning the timing and phasing of a development and the issuance of Certificates of Occupancy;

Define and verify the "reasonable dispersal" of affordable units;

Define and verify the "comparable quality" and "functional equivalency" of affordable units; and

Address the form of the recorded instrument and associated enforcement procedures.

Modification of Approved Plans

L&I must consider changes to approved plans using the Mixed Income Housing Bonus. The Administrative Code includes general provisions to address modifications to approved plans. However, these procedures must be clarified to address the prerequisite documentation and approvals of the Mixed Income Housing Bonus.

Continued Compliance Verification

L&I must establish how to confirm an owner's continued compliance with the Mixed Income Housing Bonus through the period of affordability. The Zoning Code provides DPD with the right to inspect documents as may be necessary to determine continued compliance. The Zoning Code does not

provide details on L&I's means to confirm and enforce such compliance.

DIRECTION:

Additional Application Requirements and Documentation

Zoning Permit Application Requirements for all Applicants:

Should an applicant choose to provide affordable units or make a payment in lieu of providing affordable units with the intent to receive a Mixed Income Housing Bonus, the applicant shall include the following with the **Zoning Permit application**:

- A certified acknowledgment statement as required by §14-702(d)(1) of the Zoning Code. The statement shall confirm the applicant's acknowledgment of the Mixed Income Housing Bonus requirements. The statement shall be signed by the applicant and certified by DPD. This certification shall be through the signature of the Director of DPD or the Director's designee. The statement shall be in a form satisfactory to DPD.

Building Permit Application Requirements for Building Affordable Units:

Should an applicant choose to provide affordable units with the intent to receive a Mixed Income Housing Bonus, the applicant shall include the following with the **Building Permit application**:

- An Affordable Building Plan in a form satisfactory to DPD, signed by both the applicant and the design professional, and approved by DPD. The Affordable Building Plan shall specify the quality, quantity, placement, design, and phasing of the development and of each affordable unit and acknowledge penalties for non-conformance as required by § 14-702(7)(d)(2) of the Zoning Code. The affordable building plan shall also demonstrate an applicant is capable and prepared to actively market the affordable units to eligible tenants, in accordance with § 14-702(7)(d)(1) of the Zoning Code.
- A copy of the recorded instrument(s) in favor of the City committing to satisfy all applicable requirements of the Mixed Income Housing Bonus. The instrument(s) shall be satisfactory in substance to DPD and in form to the Law Department, in accordance with § 14-702(7)(b)(2) of the Zoning Code.
- If applicable, a statement of compliance signed by DPD for any requirements DPD imposes to secure and monitor the applicant's satisfaction of all bonus obligations, under § 14-702(7)(d)(2)(c) of the Zoning Code.

Building Permit Application Requirements for Payment In Lieu of Affordable Units:

Should an owner make a payment to the Philadelphia Housing Trust Fund in lieu of building affordable units with the intent to Mixed Income Housing Bonus, the applicant shall include the following with a **Building Permit application**:

- A copy of the binding agreement between DPD and the owner, to which the owner has tendered to the City a payment in lieu of providing affordable housing, in accordance with § 14-702(7)(b)(6) of the Zoning Code.
- A copy of the deposited check tendered by the owner to the Philadelphia Housing Trust Fund in the amount stated in the binding agreement above.

Clarification of Requirements

Period of Affordability:

The Zoning Code requires under § 14-702(7) (b)(.2) that affordable units be affordable for a term of not less than 50 years. L&I will interpret this to be a period of not less than 50 years from the last Certificate of Occupancy issued by L&I for residential dwelling units within the property upon its initial construction. This shall be reflected in the required recorded instrument(s).

Timing and Phasing:

The Zoning Code requires under § 14-702(7)(d)(.3) that affordable units be constructed, completed, ready for occupancy, and marketed at the same time as market-rate units. The Zoning Code clarifies under § 14-702(7)(d)(.2)(.b) that any phasing of the development shall be specified in the Affordable Building Plan.

Therefore, no Certificate of Occupancy shall be issued for any dwelling units in a development, and no occupancy of such units shall be permitted, unless:

Certificates of Occupancy have been issued for all affordable units, provided L&I may issue temporary certificates of occupancy in accordance with a phasing plan included in a DPD approved Affordable Building Plan;

There is compliance with an agreement for payment-in-lieu of providing affordable as provided by § 14-702(7)(b)(.6) of the Zoning Code and this Code Bulletin; or

DPD issues a waiver in accordance with § 14-702(7)(d)(.3) of the Zoning Code. The waiver must be included with the DPD approved Affordable Building Plan.

Unit Dispersal:

The Zoning Code requires under § 14-702(7)(b)(.3) that affordable units be “reasonably dispersed” on the same site as the development such that no building or floor therein will have a “disproportionate percentage” of affordable units. DPD may permit some or all affordable units to be provided and maintained off-site, upon a showing of exceptional circumstances and a substantial public benefit.

L&I shall consider an Affordable Building Plan approved by DPD under § 14-702(7)(d)(.2) of the Zoning Code as evidence of a reasonable dispersal of affordable units or approval of off-site affordable units.

Comparable Quality:

The Zoning Code requires under § 14-702(7)(b)(.4) that affordable units be of comparable quality or functionally equivalent to market rate units within the development in terms of size, design, exterior appearance, energy efficiency, and overall construction. L&I shall interpret this to include any maintenance or renovation to rental units during the period of affordability.

L&I shall consider an Affordable Building Plan approved by DPD under § 14-702(7)(d)(.2) of the Zoning Code as evidence that the affordable units are of comparable quality or functionally equivalent to market-rate units within the development. Any provisions ensuring continued maintenance or renovation to rental units during the period of affordability shall be part of the recorded instrument.

Recorded Instrument:

In accordance with § 14-702(7)(b)(.2) of the Zoning Code, an applicant/owner must record an instrument(s) in favor of the city to comply with the provisions of the Mixed Income Housing Bonus. To ensure adherence to the standards of the Zoning Code, the recorded instrument shall take the form of a

restrictive covenant. The recorded instrument must be approved in substance by DPD and in form by the Law Department. The document must be substantially similar to the form provided by DPD and further approved by DPD and the Law Department before recordation.

In the event an owner/applicant fails to record a legal instrument that complies with the provisions of the Zoning Code and this Code Bulletin, L&I will not issue the Building Permit. The Building Permit will only be issued once there is compliance or a payment in lieu of building affordable units is made to the Philadelphia Housing Trust Fund in conformity with the provisions of Zoning Code and this Code Bulletin.

Modifications to Approved Plans

The applicant/owner shall notify L&I if at any time they seek to divert from or change approved plans. In the event of any such change from the approved plans, or in the event L&I determines the applicant/owner has diverted from or changed such plans without prior notice, L&I may revoke the applicable building and/or Zoning Permit pursuant to § 14-306 and § 14-702(7)(e) of the Zoning Code and § A-302.9 of the Administrative Code.

Applicable Building and Zoning Permits will only be reinstated once there is compliance and either:

- DPD approves of any deviation from the Affordable Building Plan, in accordance with § 14-702(7)(d)(.2)(b) of the Zoning Code; or
- The owner makes a payment in lieu of building affordable units to the Philadelphia Housing Trust Fund in conformity with the provisions of the Zoning Code and this Code Bulletin.

Verification of Continued Unit Affordability

Should an applicant choose to provide affordable housing to earn a Mixed Income Housing Bonus, the property owner shall establish the continued affordability of a unit over the full period of affordability. Should an owner fail to comply, L&I may seek remedies pursuant to § 14-702(e) of the Zoning Code.

The property owner/manager must provide L&I with a compliance statement from DPD (or another designee chosen by DPD) before this issuance of a final Certificate of Occupancy for all affordable units. This compliance statement shall certify that the property complies with the provisions of the recorded instrument, Affordable Building Plan, and any other applicable provision of § 14-702(7) of the Zoning Code.

As provided in § 14-702(7)(e)(.2) of the Zoning Code, DPD 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. DPD shall refer non-compliant properties to L&I for enforcement action. Notwithstanding, L&I may pursue all remedies available by law to ensure compliance with § 14-702(7) independent of DPD.

CHANGES TO THE ZONING ADMINISTRATIVE ADJUSTMENT REVIEW PROCESS WERE EFFECTUATED WITH THE ENACTMENT OF BILL NO. 180498-AAA (OCTOBER 18, 2018). THIS GUIDE OUTLINES THE CONSIDERATIONS AND STEPS OF THE ZONING ADMINISTRATIVE ADJUSTMENT REVIEW PROCESS. PLEASE REFER TO SECTION 14-303(16) OF THE PHILADELPHIA ZONING CODE FOR COMPLETE REQUIREMENTS.

CONFIRM APPLICABILITY AND ELIGIBILITY

SCOPE

A Zoning Administrative Adjustment review may only be approved if the proposal affects a previous variance, special exception, or proviso and it meets the timing and impact criteria noted below.

TIMING

The application must meet the following criteria:

- 1) Filed prior to April 16, 2019; or
- 2) Filed within 180 days of final decision date; or
- 3) Change required by another City Department/ Agency

IMPACT

Changes affecting a variance, special exception, or proviso must meet the following criteria:

- 1) Minor changes to reduce the footprint, GFA, or height of an approved structure; or
- 2) Lessens the degree of impact related to dimensional variances; or
- 3) Lessens the number of approved dwelling units; or
- 4) Lessens the number or size of approved signs; or
- 5) Makes comparable changes that reduce the intensity of the proposed use.

CONTACT THE REGISTERED COMMUNITY ORGANIZATIONS

The applicant shall notify the following parties of the Zoning Administrative Adjustment request in advance of application:

- 1) Registered Community Organizations (RCOs) whose registered boundaries include the subject property at the time of Administrative Adjustment Application.
- 2) District Councilperson for subject property
- 3) All interested parties that entered an appearance in subject matter before the Zoning Board.

For a list of RCOs / Councilperson, please contact the Planning Commission at RCO.Notification@phila.gov or (215)-683-4646.

For a list of parties that entered an appearance at the Zoning Board hearing, please contact Zoning Boards Administration at (215)-686-2429.

NOTICE MUST BE SERVED PRIOR TO APPLICATION. THE APPLICANT MUST CERTIFY THAT ALL PARTIES WERE NOTIFIED ON THE ZONING ADMINISTRATIVE ADJUSTMENT APPLICATION AND PROVIDE A CONTACT LIST / COPY OF NOTIFICATION.

REVIEW PROCESS

The applicant shall submit the following completed documentation for review:

- 1) Zoning / Use Registration Application
- 2) Zoning Administrative Adjustment Application
- 3) A copy of previously approved Zoning permit and any supplemental Administrative reviews.
- 4) Six (6) copies of site plan and elevation plan. All plans shall be drawn to scale.
- 5) A copy of the notification to the applicable RCO, District Councilperson and all interested parties, including full contact list of each.

Standard review times apply: 20 business days (Zoning Administrative Adjustment applications are not eligible for accelerated review).

Filing fee: \$200

The changes will be reviewed in accordance with the Code in effect at the time of Zoning Administrative Adjustment Application.

APPROVAL

The approval process includes two steps to ensure that all interested parties had an opportunity to review request and file any objections:

- 1) L&I may not render a decision of 'Approved' until at least 10 days after application is filed.
- 2) Upon approval, the Department and/or Zoning Boards Administration must notify all parties on the contact list of approval. Any party may request a hearing before the Zoning Board of Adjustment within 14 days of such notice.

A final permit may not be issued until:

- a) At least 14 days have lapsed and there has been no hearing request; or
- b) The conclusion of a requested hearing

POSTING: Permits for administrative adjustment must be posted on-site and may be appealed by affected parties.

DENIAL

If a request for a Zoning Administrative Adjustment is denied by the Department, the applicant may take the following action:

- If the applicant believes that the decision was rendered improperly, the decision may be appealed to the Zoning Board of Adjustment following standard appeal procedures.

DEPARTMENT OF LICENSES AND INSPECTIONS CODE BULLETIN OF INFORMATION B-1801		CODE OF GENERAL ORDINANCES OF THE CITY OF PHILADELPHIA <hr/> TITLE 4 — BUILDING CONSTRUCTION AND OCCUPANCY CODE
SUBJECT OF BULLETIN: <p style="text-align: center;">IMPLEMENTATION OF THE 2018 INTERNATIONAL CODES FOR PHILADELPHIA</p>		REFERENCE CODE SECTION(S): <p style="text-align: center;">PA UCC Act and Regulations</p>
ISSUED BY		
NAME: Michael Fink	ISSUE DATE: June 7, 2018	
TITLE: Building Code Official	PAGE 1 OF 3	

ISSUE #1

The Pennsylvania Uniform Construction Code (PA UCC) was amended by Act 36 of 2017 to allow the City of Philadelphia to adopt provisions of the 2018 International Codes, developed by the International Code Council, for the purpose of regulating the construction, alteration, repair and use of buildings in Philadelphia that do not meet the definition of "residential building" under section 103 of the UCC.

Residential buildings are defined by the UCC as, "Detached one-family and two-family dwellings and multiple single-family dwellings which are not more than three stories in height with a separate means of egress which includes accessory structures."

As residential buildings are regulated by the International Residential Code (IRC), Act 36 allows Philadelphia to adopt the 2018 edition of all other International Codes, without the amendments established by the UCC Review and Advisory Council in its review of the 2015 International Codes. This authorizes Philadelphia to enforce a single set of construction codes without State interference. including the accessibility provisions of the 2018 Codes as adopted by the State on January 1, 2019.

The 2018 International Codes become effective in Philadelphia on October 1, 2018 for all construction except that which is regulated under the IRC.

The 2015 International Codes, with amendments as determined by the UCC Review and Advisory Council become effective throughout Pennsylvania on October 1, 2018. This only includes the 2015 IRC in Philadelphia.

ISSUE #2

The PA UCC previously established that construction shall comply with the codes and standards in effect at the time that the design or construction contract was executed. Act 36 of 2017 amended this provision to read as follows:

"Where a design or construction contract was signed before the effective date of regulations for a subsequent Uniform Construction Code or International Fuel Gas Code issued under this act, the permit may be issued under the Uniform Construction Code or International Fuel Gas Code in effect at the time the design or construction contract was signed if the permit is applied for within six months of the effective date of the regulation or the period specified by a municipal ordinance, whichever is less."

BACKGROUND

Act 36 creates a confusing transition between the PA Uniform Construction Code that applies to all of Pennsylvania to a hybrid version where Philadelphia enforces the 2018 International Codes for all non-residential construction and the 2015 International Residential Code with UCC amendments, all effective October 1, 2018.

The 2016 PA Uniform Construction Code included the following:

2009 International Codes (with state legislative amendments)

2015 International Building Code (accessibility requirements)

- Chapter 11 was adopted and required that buildings and facilities also comply with the accessibility requirements found in other chapters of the International Building Code 2012 and in the *ICC/ANSI A117.1-2009 Accessible and Usable Buildings and Facilities* standard.
- Appendix E (Supplementary Accessibility Requirements) was adopted.

Additional individual provisions of the 2015 International Codes

- There were 16 code revisions adopted from the 2015 International Codes. These 16 code revisions amounted to a number of new and modified code sections (see Appendix A of Code Bulletin B-1601).

The 2018 Uniform Construction Code for Philadelphia includes the following:

- 2018 International Building Code
- 2018 International Existing Building Code
- 2018 International Mechanical Code
- 2018 International Energy Conservation Code
- The code revisions to the 2015 International Residential Code (as determined by the UCC Review and Advisory Council)
- 2018 International Fuel Gas Code
- 2018 ICC Performance Code
- 2017 National Electrical Code
- 2015 International Residential Code

The Philadelphia Administrative and Plumbing Codes continue as local construction codes and part of the 2018 Uniform Construction Code for Philadelphia.

POLICY

Beginning October 1, 2018, the Department will allow a grace period wherein a designer may choose to have his or her project reviewed under the new code provisions or the previous one. The Department will, therefore, allow permit application reviews under either the 2016 Uniform Construction Code or the 2018 Uniform Construction Code until Monday April 1, 2019.

Beginning Monday, April 1, 2019, all permit applications submitted for new buildings or renovations to existing buildings shall be reviewed under the 2018 Uniform Construction Code for Philadelphia.

If a building permit application for construction of a structure or alteration within a space was submitted prior to April 1, 2019 as designed to the 2016 PA Uniform Construction Code, and such permit was issued to begin the construction project, additional permit applications associated with that structure may continue to be reviewed under that code. The initial building permit application would include a permit application for foundations, but not demolition. A structure may include a single group of townhouses, but the construction of multiple buildings or multiple spaces within a structure as part of a larger, multi-phased project will not be subject to this grace period.

DIRECTION

Based on the Department's policy, plans examiners shall conduct permit application reviews under the code standards of the applicant's choice (among the two listed above) for all applications received up to and including Friday, March 29, 2019.

A construction permit applicant will be allowed to select one of the two versions for the review and indicate that on the application or plans. If no selection is made, the plans examiner will perform the review based on the 2018 Uniform Construction Code.

Building permits must contain reference to the selected code in "Description of Work" in order to ensure continuity of code provisions during inspections.

Applications submitted on and after Monday, April 1, 2019 for new buildings or projects may not request a review under the 2016 Uniform Construction Code provisions.

END OF CODE BULLETIN