



Metropolitan Nashville and Davidson County, TN

Legislation Text

File #: BL2021-832, **Version:** 3

An ordinance to amend various sections of Title 17 of the Metropolitan Zoning Code to incentivize Inclusionary Housing with any residential development that seeks additional development entitlements beyond that permitted by the current base zoning district (Proposal No. 2021Z-013TX-001).

WHEREAS, the Metropolitan Government of Nashville and Davidson County undertook an Inclusionary Housing Feasibility and Market Study (the Study) in 2016; and

WHEREAS, the Study found that there has been cost appreciation and housing turnover in central areas of the city; and

WHEREAS, the Study found that 46% of renters in the city are cost-burdened; and

WHEREAS, cost appreciation in central areas can lead to the displacement of cost-burdened households and gentrification; and

WHEREAS, much of the housing affordable to 80% Average Medium Income (AMI) is outside of the central areas, with poor access to jobs, transit, and services; and

WHEREAS, affordable and workforce housing is a primary concern of the citizens of Nashville and Davidson County, as it continues to be a major barrier to economic progress for many in Nashville; and

WHEREAS, increasing the supply of affordable and workforce housing supports economic growth and is a vital tool in reducing poverty in Davidson County; and

WHEREAS, state law does not prohibit a local government from creating or implementing a purely voluntary incentive-based program designed to increase the construction or rehabilitation of workforce or affordable private residential or commercial rental units, which may include providing local tax incentives, subsidization, real property, or infrastructure assistance, or any other incentive that makes the construction of workforce or affordable housing more economical, so long as the program is not used to incentivize or leverage a person to develop, build, sell, or rent housing at below market value; and

WHEREAS, the program created by this ordinance will use a developer's voluntary election of workforce or affordable housing as one of several options available to them to create additional building entitlements through the Downtown Code's bonus height program, and the Metropolitan Government may use all or a portion of the estimated new tax revenue generated by the bonus height to subsidize the rental of workforce or affordable housing units within the new structure so that the units shall rent at market value, and

WHEREAS, the program created by this ordinance will alternatively use a developer's voluntary election to enter into a participation agreement with the Metropolitan Government, such that the Metropolitan Government agrees to pay for significant infrastructure improvements within a site plan, and the Metropolitan Government may use all or a portion of the estimated new tax revenue generated within the site plan to subsidize the rental of workforce or affordable housing units within new structures built within the site plan so that the units shall rent at market value; and

WHEREAS, the program created by this ordinance will alternatively use a developer's voluntary election to accept a parcel of real property from the Metropolitan Government, and the Metropolitan Government may use all or a portion of the estimated new tax revenue generated by the structure built on the parcel to subsidize the rental of workforce or affordable housing units within the new structure so that the units shall rent at market

value.

NOW, THEREFORE, BE IT ENACTED BY THE COUNTY OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That Section 17.40.780, 17.40.790, 17.40.800, 17.40.810, and 17.40.820 (Inclusionary Housing) of the Metropolitan Code are hereby amended by deleting those sections and substituting the following.

17.40.780 Purpose and Applicability of Inclusionary Housing Provisions

- A. Purpose. The purposes of this Section are to promote the public health, safety, and welfare by increasing the production of affordable and work force housing ("Inclusionary Housing") units to meet existing and anticipated housing and employment needs; mitigating the impacts of increasing housing cost and provide housing affordable to low and moderate income households; providing for a range of housing choices throughout the city to avoid the concentration of poverty; and to provide a mechanism by which residential development can contribute in a direct way to increasing the supply of Inclusionary Housing.
- B. Applicability.
 1. When a developer voluntarily elects Inclusionary Housing as one of several options available to them to create additional building entitlements for residential rental projects through the Downtown Code's bonus height program, the residential rental units shall be subject to the provisions of this Section as long as all of the subsidies described below from the Metropolitan Government of Nashville and Davidson County are available. The inclusion of affordable or workforce housing in a request for bonus height shall not however become a condition precedent to the acceptability of the other criteria currently available to obtain additional building entitlements in the DTC, as each of the options available to developers to create additional entitlements, including but not limited to bonus height, can independently, standing alone, support the additional entitlements.
 2. If the Metropolitan Government ceases to provide adequate funding for the subsidies, the residential rental units shall not be subject to the provisions of this Article until the subsidies are again funded.
 3. When a developer voluntarily elects Inclusionary Housing as one of several options available to them to create additional building entitlements through the Downtown Code's (DTC's) bonus height program, the Metropolitan Government may use all or a portion of the estimated new tax revenue generated by the bonus height to subsidize the rental of Inclusionary Housing units within the new structure, so that the units shall rent at market value.
 4. For residential uses, developments of fewer than five units are exempt.
 5. For the purposes of this subsection, the following definitions apply.
 - a. "Development" shall include any residential or mixed-use development at one or more adjoining sites with common ownership or under common control, within a period of five years from the first date of the issuance of a building permit for construction.
 - b. "Significant infrastructure improvements within a site plan" shall include the Metropolitan Government's agreement to pay for more than 10% of the new infrastructure that will be required by an approved site plan.
 - c. The "Estimated new tax revenue" is the tax revenue generated by the additional units constructed as a result of the bonus height associated with Inclusionary Housing. This tax revenue shall be determined by the Metro Department of Finance in consultation with the Davidson County Property Assessor's office. This revenue to be used to subsidize housing rentals, shall be determined by the Metropolitan Government prior to the Planning Department's

review of a proposed development or site plan subject to this Section.

d. "Residential floor area" is the net leasable residential floor area.

8. Inclusionary Housing shall not be provided, and no financial incentives shall be granted if the average rental rate is less than, or within 5% above 100% Area Median Income (AMI) rental rates for Nashville and Davidson County as determined by the US Department of Housing and Urban Development (HUD) and the Inclusionary Housing Plan demonstrates that the census tract average rental rates for comparable units are affordable to a household at 100% AMI.

17.40.790 Requirements for Inclusionary Housing

A. Construction. The set aside for Inclusionary Housing shall be at a minimum:

	Rental at 60% MHI AMI or less	Rental at Greater than 60% MHI AMI to 80% AMI	Rental at Greater than 80% MHI AMI to 100% MHI AMI (available in the UZO only)
Single-family and Two-family uses	12.5% of total residential units	15% of total residential units	17.5% of total residential units
Multi-family uses less than 3 stories	12.5% of total residential floor area	15% of total residential floor area	17.5% of total residential floor area
Multifamily Uses (3 to 6 stories)	10% of total residential floor area	12.5% of total residential floor area	15% of total residential floor area
Multifamily Uses (> 7 stories)	7.5% of total residential floor area	10% of total residential floor area	12.5% of total residential floor area

B. The maximum set aside shall be based on the estimated tax revenue available to provide rental subsidy.

C. The Mayor's Office of Housing or the Planning Director of Housing may approve a mix of AMI levels, provided the mix is equivalent to the set asides above. The mix of AMIs and how their equivalency was determined shall be included in the Inclusionary Housing Plan.

17.40.800 Standards for Construction and Occupancy of Inclusionary Housing.

A. With the building permit application, the Owner/Developer shall submit an Inclusionary Housing Plan, which documents the following:

1. Number of total residential units provided under the site plan.
2. Whether the development uses public resources or public property.
3. Number of Inclusionary Housing units provided.
4. Income levels of targeted families for Inclusionary Housing units.
5. The proposed market rental rate for each unit.
6. Location General location of Inclusionary Housing units.
7. Sizes of Inclusionary Housing units.
8. Bedroom counts of Inclusionary Housing units.

9. Market rental rates for comparable units within the census tract for the project site.
10. Proposed Master Lease Agreement with the Metropolitan Development and Housing Agency (MDHA), or another entity competitively selected by the Metropolitan Government to administer the provisions of this Article, (the "Administering Agency"). Such Master Lease Agreement shall be subject to the approval of the Mayor's Office Director of Housing Programs, or such other Metropolitan Government official responsible for overseeing and administering affordable housing programs.

B. Master lease agreements with the Administering Agency must:

1. Provide a minimum term of 15 years for Inclusionary Housing rental units.
2. Reassess the market rate for each unit every 5 years during the term of the lease.
3. Ensure the units are occupied by eligible households.

C. Exteriors and interiors of Inclusionary Housing units shall not differ materially from the other units in a project.

17.40.810 Enforcement.

- A. Prior to the certification of bonus height by the Planning Commission, MDHA (or the Administering Agency) shall provide the Planning Department with written confirmation that the proposal has been preliminarily reviewed and that MDHA (or the Administering Agency) anticipates being able to enter into a Master Lease Agreement as outlined in this Article.
- B. Prior to the issuance of the first building permit, all Standards for Construction and Occupancy provided in Section 17.40.800 shall be documented on the building permit plans.
- C. Prior to the issuance of the Use & Occupancy permit, all Standards for Construction and Occupancy provided in Section 17.40.800 shall be satisfied and documentation provided to the Codes Department.
- D. During the subsidized rental period, the Administering Agency shall provide a compliance report to the Mayor's Office Director of Housing Programs or such other Metropolitan Government official responsible for overseeing and administering affordable housing programs in the form and manner determined by such official with assistance from the Finance Department.
- E. If the compliance report indicates non-compliance with the set aside percentages, the report shall be provided to the council.

17.40.820. Severability.

If any provision of this section or any application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end, the provisions of this code are declared to be severable.

17.40.830 - Limitation on Annual Subsidies.

The Metropolitan Government shall have the authority to provide up to \$2,500,000 each fiscal year to fund new subsidies authorized pursuant to this chapter.

17.40.840 - Sunset Provision.

The provisions of this chapter shall expire and be null and void on June 30, 2025 ("sunset date") unless extended by resolution of the metropolitan council. This provision, commonly known as a "sunset provision," is included to ensure that the effectiveness and necessity of this chapter is reviewed by the

metropolitan council after its adoption. If the provisions of this chapter are not extended by resolution of the metropolitan council before the sunset date, no new subsidies shall be awarded after the sunset date. This sunset provision shall not operate to terminate any existing subsidies in effect on the sunset date, except for a lack of funding for the subsidies in accordance with Section 17.40.780.

Section 2. That any appropriately filed application that complies with all existing filing requirements and that is filed prior to the effective date of this ordinance shall not be affected by the provisions of this ordinance unless the applicant requests participation.

Section 3. Be it further enacted, that this ordinance shall take effect immediately upon its passage and such change be published in a newspaper of general circulation, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

Analysis

This ordinance, as substituted, amends Title 17 of the Metro Code to create a voluntary program for inclusionary housing to promote affordable and workforce housing. Under this program, a developer could voluntarily elect to create inclusionary housing as an option for receiving bonus height under the Downtown Code's bonus height program. Metro would provide subsidies to developers for the voluntary provision of inclusionary housing in accordance with the regulations set forth in this ordinance.

Metro would use the estimated new tax revenue generated by the bonus height to subsidize the inclusionary housing units within the development, making it so that the units would then rent at market rate.

Developments of fewer than five units would not be eligible for this program. No benefit would be provided if the average unit sale price or rental rate is less than, or within 5% above, 100% of the Area Median Income rental rate for Nashville and Davidson County, as determined by the U.S. Department of Housing and Urban Development.

The inclusionary housing requirement is included in a chart in the text of the legislation.

The developer would be required to submit an Inclusionary Housing Plan ("the Plan"), which includes the total residential units provided under the site plan, whether the development uses public resources or public property, the number of inclusionary housing units provided, the income levels of families eligible for the inclusionary housing units, the proposed market rates for the units, the location, sizes, and bedroom counts of the inclusionary housing units, and the market rate for comparable units within the same census tract.

The Plan would also be required to include a Proposed Master Lease with MDHA, or another entity competitively selected to administer this ordinance. The master lease would require approval from the Mayor's Office Director of Housing Programs, or another Metro official responsible for overseeing and administering affordable housing programs. The master lease agreements must provide a minimum term of 15 years for Inclusionary Housing rental units, reassess the market rate for each unit every five years during the lease term, and ensure that the units are occupied by eligible households.

Further, exterior and interiors of Inclusionary Housing units could not differ materially from other units in the development.

Before the issuance of a building permit, compliance with the requirements of this ordinance must be documented on the permit plans. Before a use & occupancy permit could be issued, the above requirements must be satisfied, and documentation provided to the Codes Department.

During the subsidized rental period, the administering agency would be required to submit a compliance report to the Mayor's Office Director of Housing programs, or another such official responsible for overseeing and administering affordable housing programs, in the form and manner determined by such official with assistance from the Finance Department.

Additional regulations related to the implementation of this program are found in the companion bill, Ordinance No. BL2021-912.

This has been approved by the Planning Commission.