



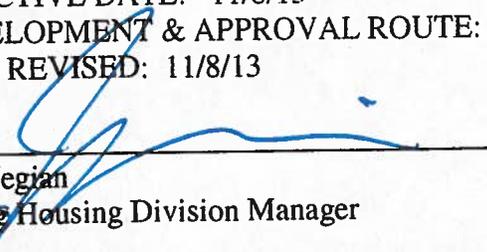
City of Boulder Policies

Item XX: Financial Guarantees

EFFECTIVE DATE: 11/8/13

DEVELOPMENT & APPROVAL ROUTE: Internal, staff level

LAST REVISED: 11/8/13



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Acting Housing Division Manager

PURPOSE

For-profit housing providers are a valued partner in the production of affordable housing. This policy offers options to remove possible financing barriers to the production of off-site affordable units while mitigating the risk of non-performance.

In order to secure the Inclusionary Housing (“IH”) requirements found in Chapter 9-13, B.R.C. 1981, the City of Boulder may require a financial guarantee if a residential developer has chosen to meet the Inclusionary Housing requirements through the provision of units.

POLICY

If a development meets the requirements of IH by providing permanently affordable units (“PA units”) and the off-site PA units will not be completed prior to building permit issuance for the sending site or in the case of on-site units, the PA units will not be completed prior to issuance of any certificate of occupancy for the market units, a financial guarantee is required. The financial guarantee will be released or retained by the city as per this policy.

The financial guarantee amount is equal to the cash-in-lieu contribution for the site that generated the IH requirement such that the financial guarantee could be retained by the City in the event of default or breach of an Inclusionary Housing Agreement. If the financial guarantee is retained it would be considered a cash-in-lieu (“CIL”) contribution which has been paid late. CIL is due at building permit issuance. Per the IH Administrative Regulations, deferred (late) payment of cash-in-lieu is subject to an 8% annual adjustment. Consequently, the first year’s adjustment will be included in the financial guarantee amount due. The guarantee may be in the form of a letter of credit (“LC”), with language and conditions acceptable to the City, or as funds (“funds”) to be held by the City. The city will accept a promissory note from the sending site developer for the 8% adjustment portion of the financial guarantee.

In the event that the financial guarantee is retained and used as a CIL contribution to meet the IH requirements for a rental development, the owner must execute an Agreement for Costs Due on Sale of Affordable Housing Restrictive Covenant and Deed Restriction (the “Conversion Agreement”), which states that if the sending site is converted to for-sale units with-in five years of receipt of a certificate of occupancy (CO), the CIL amount due for a for-sale development would be owed. This would result in an additional amount owed at the time of conversion.



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PA units must be completed within 12 months from the date the site that generated the requirement receives a temporary or final CO for any unit. If the PA units are not completed within this time frame the City may elect to retain the financial guarantee and any applicable adjustments as the sending site's cash-in-lieu contribution.

Permanent Affordability Documents. To meet the city's permanent affordability requirements the residential units must be deed restricted by a permanently affordable covenant (the "Covenant") acceptable to the city. The Covenant must have priority over any debt on the real estate. In addition, a promissory note for a nominal amount (typically \$100) and deed of trust are required. The deed of trust will be subordinate to construction financing and the initial permanent financing. This deed of trust facilitates notice to the city in the event of sale, refinance or foreclosure and provides the city with rights in a foreclosure.

1. Security for Newly Constructed Off-site Units.

The IH requirements for a residential development may be met by providing newly constructed off-site PA's. A financial guarantee acceptable to the city must be provided prior to building permit issuance for the development that generated the IH requirement (the "sending site") if the off-site affordable units will be completed after the sending site receives a residential building permit.

The financial guarantee for newly constructed off-site units shall be equivalent to the amount of CIL that would have been provided by the sending site at the time of issuance of the first residential building permit plus the first installment of an 8% annual adjustment for deferred payment, minus a discount for purchased land if applicable.

The financial guarantee is due before issuance of any residential building permit for the sending site. If the land for the off-site affordable units is purchased before the financial guarantee is due one third of the required financial guarantee amount will be discounted from the total CIL amount due. If the land is purchased after the financial guarantee is due one third of the required financial guarantee amount will be released upon proof of purchase. In either case the permanent affordability documents must be executed to receive the discount or release of funds.

Alternatively, upon request by the developer and determination by the Housing Division Manager that the request is consistent with the City goal to mitigate the risk of non-performance, the City will release payments held by the City under the following conditions. No funds may be released until permanent affordability documents acceptable to the city are executed.

- A. If the financial guarantee due is less than one million dollars, the City will release 50% of the financial guarantee (or 50% of the remainder if one third was released upon purchase of land) when construction is 50% complete.
- B. If the financial guarantee due is one million dollars or greater the City will release the financial guarantee based on percent completion of the receiving site development as



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follows: 25% (or 25% of the remainder if one third was released upon purchase of land) shall be released for each period when construction is at 25%, 50%, 75% and 100% complete.

Completion of the off-site units means the off-site development (the "receiving site") has received a final Certificate of Occupancy ("CO") and permanent affordability documents acceptable to the city have been executed for all of the affordable units required for both the sending and receiving sites by the required due date.

2. Security for Deed Restricted Existing Off-site Units.

The IH requirements may also be met for a sending site development by making existing off-site units permanently affordable. A financial guarantee must be provided prior to building permit issuance for the sending site if the off-site affordable units will be completed after the sending site receives a residential building permit.

The financial guarantee for deed restricting existing units off-site shall equal the total amount of CIL that would have been provided by the sending site at the time of issuance of the first residential building permit plus the first installment of an 8% annual adjustment for deferred payment.

If all required off-site affordable units are purchased and permanent affordability documents acceptable to the City are executed before the financial guarantee is due, the financial guarantee amount will be discounted 50%. If the above requirements are met after the financial guarantee is due 50% of the financial guarantee will be released once the units are purchased and permanent affordability documents are complete.

The affordable units will be considered "completed" when the units have been rehabilitated per the standards and specifications required by the City and permanent affordability documents acceptable to the City have been executed.

3. Security for On-site Units that Do Not Meet Concurrency Requirements

The IH requirements may also be met through the provision of on-site affordable units. Construction of market rate units and affordable units are required to be concurrent so that as COs are issued to market rate units a proportional number of affordable units receive COs.

The City Manager may consider a developer's request to deviate from the concurrency requirement. In such instances, the developer shall provide a financial guarantee to secure the IH requirements prior to issuance of a temporary or final CO for the market units. Affordable units will be deemed "completed" when final COs have been issued and permanent affordability documents acceptable to the City have been executed for all of the affordable units required. All of the affordable units must be completed within twelve months from the date the sending site receives a final CO for any unit.



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4. Release of Funds

Any Letters of Credit the city is holding in escrow will be reduced first, once these are exhausted, any Funds provided will be released. The percent of construction completed must be certified by the project architect and confirmed by the city housing inspector or city staff. A reduction in the LC will be requested by the city or funds will be paid out within 14 working days after any such request has been verified and deemed adequate and complete by the city.

5. Letter of Credit (LC)

Any LC used for a financial guarantee must be acceptable to the city. If an applicant chooses an option whereby funds will be released before the development is completed, the LC may be structured such that it can be reduced upon issuance of an approval letter from the city to the bank.

6. Annual Adjustments

An additional annual adjustment to the financial guarantee of eight percent (8%) shall accrue upon each anniversary of the request for sending site building permit and will be due should the developer choose to pay CIL or default on the Off-site Agreement. The first annual installment will be added to the initial financial guarantee amount and may be in the form of an unsecured promissory note from the sending site developer. Any applicable annual adjustment for deferred payment will not be prorated for a partial year in the event the financial security is used to satisfy the sending site's IH requirement.

INTERPRETATION AND APPLICATION

This policy supersedes all prior policies covering the same or similar topics. The City Manager may review and change this policy at any time.