

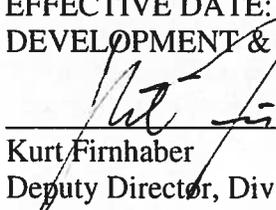


City of Boulder Policies

Item XX: Financial Guarantees

EFFECTIVE DATE: 9/15/16

DEVELOPMENT & APPROVAL ROUTE: Internal, staff level



Kurt Firnhaber
Deputy Director, Division of Housing

PURPOSE

For-profit housing providers are a valued partner in the production of affordable housing. This policy offers options for the provision of financial guarantees to mitigate 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 on or off-site through the provision of land or units.

POLICY

If a development meets the requirements of IH by providing either land or permanently affordable units (“PA units”) off-site and the 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 (CO) 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 any standard annual adjustments and an additional 8% annual adjustment for late payment. Consequently, the first year’s 8% 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.

Off-site 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 included adjustments rather than accept the PA units and to pursue collection of any adjustments not included but which may apply as the sending site’s cash-in-lieu contribution.



City of Boulder Policies

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. If the off-site affordable units will be completed after the development that generated the IH requirement (the "sending site") receives any residential building permit a financial guarantee as outlined in this policy must be provided.

As the off-site development progresses the City has increased assurance of performance. Therefore, if 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 covenants, agreements and other required documents required to secure affordability 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 covenants, agreements and other required documents required to secure affordability that are acceptable to the city are executed.

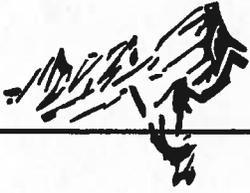
- A. If the financial guarantee due is less than one million dollars, the City will release 50% of the financial guarantee plus any retained adjustments (or 50% of the remainder if one third was released upon purchase of land) when construction is 50% complete.
- B. If the financial guarantee due is one million dollars or greater the City will release the financial guarantee based on percent completion of the receiving site development as 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 CO for all units 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 as outlined in this policy must be provided prior to building permit issuance for the sending site if the off-site affordable units will receive a letter of completion after the sending site receives a residential building permit.

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



City of Boulder Policies

including any adjustments 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, have received a letter of completion from the planning department and permanent affordability documents acceptable to the City have been executed.

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

4.

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 such that as final COs are issued for the market rate units a proportional number of affordable units receive them.

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.

5. Security for Land Dedication

If a development meets the requirements of IH by dedicating land the transaction is required to be completed before building permit issuance for the sending site. The City Manager may consider a developer’s request to deviate from this requirement. If the land dedication is not completed prior to building permit issuance for the sending site a financial guarantee as outlined in this policy is required.

6. Deferment of the 8% Adjustment

An applicant can request the City Manager allow a deferment of the 8% adjustment for cash-in-lieu (CIL) payment, but not the standard annual adjustment, after issuance of permits if all of the following apply:

- Proposal includes significant additional community benefit to be determined by the city manager;
- Proposal includes an executed agreement for site control with the housing authority or a similar agency; and
- The dedication of land cannot be completed prior to sending site building permit issuance due to a time conflict created because the land is involved in a City review process.

The deferral may extend a maximum of 60 days after completion of the City review process at the end of which the inclusionary requirement must be met through dedication of the land or the CIL



City of Boulder Policies

plus any standard annual adjustments (not including the 8% adjustment for late payment). The City retains the right to put a hold on the issuance of any permits, inspections, COs or similar approvals for the sending site pending payment. Any further deferral after 60 days would be at the City's discretion and would include any standard annual adjustments plus any applicable 8% adjustments.

7. Release of Funds

Letters of Credit (LCs) 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.

8. Letter of Credit (LC)

Any LC used for a financial guarantee must be provided in a form 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.

9. Annual Adjustments

Two annual adjustments apply to late payment of cash-in-lieu on which the financial guarantee amount is based. The first is the standard mid-year annual adjustment that applies equally to any outstanding CIL balance. An additional annual adjustment of eight percent (8%) for late payment of CIL shall accrue upon each anniversary of the request for sending site building permit and will be due either as contractually agreed upon or should the developer choose to pay CIL or default on the provision of affordable units. The first annual installment of the 8% adjustment 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. All other adjustments will be contractually required and due to the city should the IH requirement be met with CIL. For both adjustments the amount will not be prorated for a partial year in the event the financial security is used to satisfy the 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.