




City of Boulder Policies

Item XX: Financial Guarantees

EFFECTIVE DATE: 7-21-2020

DEVELOPMENT & APPROVAL ROUTE: Internal, staff level



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PURPOSE

When there is delay in satisfying the inclusionary requirement there is inherent risk to the city once building permits have been submitted, issued or a certificate of occupancy has been issued. This policy outlines the use of financial guarantees to mitigate the risk of non-performance.

Definitions

Off-site units – affordable units provided on a site separate from the one that incurred the inclusionary requirement.

On-site units – affordable units provided on the same site as the one that incurred the inclusionary requirement.

Sending site – the development that is providing affordable units off-site.

Receiving site – the development where off-site units are being provided.

POLICY

The City of Boulder may require a financial guarantee to secure the Inclusionary Housing (“IH”) requirements found in Chapter 9-13, B.R.C. 1981.

A financial guarantee is required when a development with an IH requirement proposes to satisfy IH in the following ways:

1. When providing newly constructed units off-site that do not have a certificate of occupancy at the time of building permit submittal for the sending site.
2. When providing existing units off-site that, per the city, must be rehabbed that do not have a letter of completion for the rehab work at the time of building permit submittal for the sending site.
3. By providing on-site units that receive a certificate of occupancy after a certificate of occupancy is issued for the on-site market rate units.
4. When satisfying IH with a land donation when the land dedication is not completed prior to building permit issuance.

The financial guarantee may be retained by the City in the event of default or breach of an Inclusionary Housing Agreement.



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The initial required financial guarantee amount is equal to the entire cash-in-lieu contribution for the development in place at the time of permit submittal plus the first annual late fee adjustment of 8%.

If the city retains the financial guarantee it would be considered a cash-in-lieu (“CIL”) contribution which has been paid late. In addition to the initial CIL amount, the following adjustments will be due. The first is the standard mid-year annual adjustment that applies equally to any outstanding CIL balance. This adjustment is applied on the first and subsequent dates of July first after the financial guarantee is in place. The second is an annual adjustment of eight percent (8%) for late payment of CIL. The first year’s late payment adjustment shall be included in the financial guarantee, subsequent late payment adjustments shall be accrued annually on the date the financial guarantee was provided to the city.

For both the standard and late payment adjustments the amount will not be prorated for a partial year in the event the financial security is used to satisfy the IH requirement.

For example:

CIL amount is \$1M and is used to satisfy IH in two years

	CIL	annual adj*	Add'l CIL	Total CIL due	Late pymt Adj	Late payment	Total
Initial LC + 8% late paymt amt	\$1,000,000	N/A		\$1,000,000	8%	\$80,000	\$1,080,000
End of First yr	\$1,000,000	10%	\$100,000	\$1,100,000	8%	\$88,000	\$1,188,000
End of Second yr	\$1,100,000	10%	\$110,000	\$1,210,000	8%	\$96,800	\$1,306,800

*10% assumed for example

The guarantee shall be provided 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 financial guarantee is required to be provided to the city prior to building permit submittal.

Release of the financial guarantee.

1. Newly constructed, deed restricted off -site units – when the Receiving Site has received a final CO for the entire development.
2. Existing, deed restricted existing off-site units - 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.
3. On-site, deed restricted units - when a CO has been issued for the entire development.
4. Land dedication – When the land dedication is completed.

Upon request a partial release of the financial guarantee by the developer and determination by the Director of Housing and Human Services that the request is consistent with the City goals to mitigate the risk of non-performance, the City may elect release no more than 50% of the financial guarantee not including the late payment adjustment when construction of on or off-site units is confirmed by a licensed architect to be 50% complete. No funds may be released until covenants, agreements and



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other required documents required to secure affordability are executed. 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 appropriate by the City.

Deferment of the 8% Late Payment Adjustment

An applicant can request the City Manager allow a deferment of the 8% adjustment for a land dedication 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 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.

INTERPRETATION AND APPLICATION

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