




City of Boulder Policies

Financial Guarantees

EFFECTIVE DATE: JAN 1, 2024

DEVELOPMENT & APPROVAL ROUTE: Internal, staff level


Kurt Firnhaber
Director, Housing and Human Services

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.

Land donation – land may be donated on, adjacent to, or not adjacent to the development that incurred the inclusionary requirement.

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

Receiving site – the development where land or 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 will 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 are required to 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 where the land dedication is not completed prior to building permit issuance for the sending site.

City retention of the financial guarantee.

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The city may exercise its discretion in retaining the financial guarantee 1 year from when the sending ite has received a final CO for the entire development. The financial guarantee may be retained by the City in the event of default or breach of an Inclusionary Housing Agreement.

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:

1. A late fee annual adjustment of 8%.
2. All annual adjustments that occur while the financial guarantee is outstanding.

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%.

The first year’s late payment adjustment shall be included in the financial guarantee, subsequent late fee and annual adjustments shall be cumulative and will accrue annually on the date the financial guarantee was provided to the city and included in the final amount due.

In the event the financial security is used to satisfy the IH requirement neither the standard and late payment adjustments will be prorated for a partial year.

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 with language and conditions acceptable to the City, or as funds to be held by the City. The financial guarantee is required 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, and have been deemed acceptable to the city and secured through a deed restricting covenant.

3. On-site, deed restricted units - when a CO has been issued for the entire development including the on-site affordable units.
4. Land dedication – When the land dedication is conveyed to the city, a deed restricting covenant for the land is executed, and any cash-in-lieu owed has been paid into the affordable housing fund.

For on, or off-site affordable units, once the affordable units are 50% completed, the developer may request a partial release of the financial guarantee. The Director of Housing and Human Services will determine if the request is consistent with the City goals to mitigate the risk of non-performance. The City may elect to 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 to be 50% complete by a licensed architect. No funds may be released until covenants, agreements and other required documents required to secure affordability are executed. The percent of construction completed must be certified by the project architect and confirmed by City staff. The partial release may be completed by releasing the letter of credit for the full amount and replacing it with a letter of credit in the lower amount or, if funds were provided, by a paid out within 14 working days after any such request has been verified and deemed adequate and appropriate by the City.

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.