

Cities Tap Hot Real Estate Markets to Expand Economic Opportunity

September 25, 2019

As the U.S. economy enters its tenth year of continuous growth, cities are responding with ways to harness development pressure for affordable housing and for job creation and training. Boston's elected officials are advancing several proposals that mirror steps taken by the State of New York and Washington, D.C. governments.

Walsh Home Rule Petition

The City of Boston has been eager to increase resources for affordable housing and job training in the current strong economic climate. In January 2019, Boston Mayor Martin J. Walsh submitted a home rule petition to the City Council and the Massachusetts General Court requesting significant changes to Boston's linkage program and its Inclusionary Development Policy. On August 21st, the Boston City Council unanimously approved an amended version of the petition to include the following:

1. *Remove Restriction on Triennial Linkage Program Adjustment.* The Boston Zoning Code requires so-called linkage payments for most commercial and institutional uses above a 100,000 square foot threshold. The current rates are \$9.03/sf for affordable housing and \$1.78/sf for job training and creation, for a total of \$10.81/sf. By state law, these rates can only be adjusted every three years. Mayor Walsh's proposal would remove the three-year minimum, allowing annual CPI-based increases and further adjustments as determined by economic analyses conducted by the Zoning Commission. Additionally, the Zoning Commission may adjust the 100,000 square foot threshold at its discretion.
2. *Incorporate the Inclusionary Development Policy into the Zoning Code.* Boston's Inclusionary Development Policy, implemented through mayoral executive orders, requires developers of residential projects of 10 units or more that require zoning relief, are City-financed or are built on City-owned property to construct or rehabilitate on-site or off-site affordable housing units or to contribute to the IDP Fund. Mayor Walsh's proposal would authorize the incorporation of the IDP into the Boston Zoning Code and require developer participation for all projects of 10 units or more, regardless of zoning relief or other City involvement. The Zoning Commission may also adjust the IDP's 10-unit threshold and the percentage of units or the financial contribution devoted to income-restricted housing.

Mayor Walsh signed the amended petition on September 12th; it will now be considered for adoption by the legislature.

IDP Changes

Unlike changes to linkage, IDP changes can be made without legislative authorization. The Boston Planning and Development Agency has convened a study group and hired an economic consultant to address the effect of possible IDP changes on development feasibility, reflecting that the effort to update IDP requirements is well underway.

The Edwards Proposal

Concurrent with Mayor Walsh's proposal, Boston City Councilor Lydia Edwards submitted two home rule petitions to the Massachusetts General Court related to the Boston real estate market:

1. *Establishment of Transfer and Repeat Sales Fees.* The petition proposes enactment of a 6% transfer fee on the purchase price of any class of property (or a controlling interest in a property-owning entity) selling for \$2 million or more, with half payable by seller and half payable by buyer. The proposal also includes a fee of up to 25% of the purchase price, payable by the seller, for repeat transfers within a 24-month period, graduated by the brevity of time between transfers. Unlike the transfer fee, the repeat sales fee does not set a minimum purchase price threshold.
2. *Increase Linkage Program Payment to \$24.03/sf.* The second petition proposes to increase linkage fees from \$9.03/sf to \$21.39/sf for housing and from \$1.78/sf to \$64/sf for jobs. This represents a roughly 122% increase in the current linkage requirement.

It is unclear when the Edwards proposal will be taken up as the Walsh proposal occupies the attention of the General Court.

These proposals mirror responses to development pressure in other cities.

New York Rent Control

In June, New York's Governor Cuomo signed into law the Housing Stability and Tenant Protection Act of 2019. This act imposes a slew of new rules, including a 2% cap on rent increases for Major Capital Improvements, amortized over approximately 12 years, and a Maximum Collectible Rent cap for rent-controlled tenants determined by the average of the five most recent Rent Guidelines Board annual rent increases for one-year renewals. The Act is expected to directly impact about 40% of New York City's rental housing stock. Although it has gained less traction, momentum for rent control is building in Boston. Councilor Althea Garrison submitted a home rule petition in April, capping annual rent increases at 7%, and Councilors Edwards, Kim Janey and Andrea Campbell have expressed a willingness to push their own rent control measures.

Washington DC Measures

In May, the District of Columbia Council voted to increase recording and transfer taxes on the sale of commercial and mixed-use "Class 2 Property," or a controlling interest in such property, valued over \$2 million from 1.45% on each to 2.5%, for a combined 5%, effective October 2019. Subject to certain exemptions, non-purchase money loans over \$2 million for Class 2 Property will also be subject to a 2.5% recording tax on the increased principal. Fifteen percent of the generated revenues are earmarked for the Housing Production Trust Fund.

Mirroring Boston's Imagine Boston 2030 plan, issued in 2017 and emphasizing inclusive growth, the D.C. Office of Planning is overhauling its Comprehensive Plan for the first time since 2006. The

Comprehensive Plan provides a 20-year framework for growth and development in the District. The draft Framework Element, currently out for public comment, places a strong emphasis on affordable housing, displacement, and neighborhood stabilization.