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Barney S. Heath
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MEMORANDUM

DATE: October 28, 2022

TO: Councilor Crossley, Chair, Zoning and Planning
Members of the Zoning and Planning Committee

FROM: Barney S. Heath, Director of Planning and Development
Jennifer Caira, Deputy Director
Zachary LeMel, Chief of Long Range Planning
Amanda Berman, Director of Housing & Community Development
Eamon Bencivengo, Housing Program Manager

RE: **Revisions to MBTA Communities Guidelines**

CC: Jonathan Yeo, Chief Operating Officer
Alissa O. Giuliani, City Solicitor

The attached memo from DHCD Undersecretary Jennifer Maddox details the limited revisions to the MBTA Zoning Guidelines that were announced last Friday, October 21, 2022.

Newton was one of a handful of communities that strongly lobbied for these important changes, which address the circumstances in which a municipality's inclusionary zoning requirements will be deemed in compliance with the law.

Specifically, the revisions will allow communities to set income limits for affordable units below 80% AMI. This is critical, as Newton's Inclusionary Zoning (IZ) ordinance requires rental projects to average out the affordability of units at 65% AMI, creating much-needed housing at deeper levels of affordability (at or below 50% AMI and 65% AMI).

Secondly, a community may require that more than 10% of units in a project, but not more than 20%, be affordable. Again, this is important for Newton, as 15% is our minimum affordability requirement, with larger projects required to provide 20% affordability. The revisions state that a community must demonstrate the "economic feasibility" of these requirements above the 10% threshold; however,

this term is not defined. Staff has been told that details are forthcoming on the specifics related to the demonstration of economic feasibility.

ATTACHMENT:

- DHCD Memo to Municipal Officials in MBTA Communities, October 21, 2022



Commonwealth of Massachusetts
DEPARTMENT OF HOUSING &
COMMUNITY DEVELOPMENT

Charles D. Baker, Governor ♦ Karyn E. Polito, Lt. Governor ♦ Jennifer D. Maddox, Undersecretary

TO: Municipal Officials in MBTA Communities
FROM: Undersecretary Jennifer Maddox
DATE: October 21, 2022
RE: Revisions to MBTA Zoning Guidelines

On August 10, 2022, DHCD released *Compliance Guidelines for Multi-family Zoning Districts Under Section 3A of the Zoning Act* (the “Guidelines”). The Guidelines include a section describing when an inclusionary zoning requirement would be consistent with the law’s requirement that there be a zoning district in which multi-family housing is allowed as of right. In response to feedback from municipal leaders in several MBTA communities, DHCD is today making limited revisions to the Guidelines to address the circumstances in which an inclusionary zoning requirement will be deemed in compliance with the law. Those revisions:

1. Modify the definition of “affordable unit” to eliminate the requirement that affordable units be eligible for listing on the Subsidized Housing Inventory. This modification gives communities the option to require a percentage of “workforce housing” units occupied by households earning more than 80% of area median income (AMI).
2. Allow communities to set income limits for affordable units below 80% AMI, provided that a community demonstrates that a reasonable variety of multi-family housing types can be feasibly developed at the proposed affordability levels.
3. Allow a community to require that more than 10% of the units in a project be affordable units (but not more than 20%), provided that the community demonstrates that a reasonable variety of multi-family housing types can be feasibly developed at the higher percentage. The demonstration of economic feasibility is now required for all inclusionary zoning requirements above the permitted 10% threshold, including those that pre-date the Guidelines.
4. Create an exception to the 20% cap on affordable units. The new exception applies only to previously approved and adopted 40R “smart growth” zoning districts. A community may amend an existing 40R district to comply with the Guidelines and retain an existing 25% affordable unit requirement.

These revisions to the Guidelines are intended to provide greater flexibility to MBTA communities committed to increasing multi-family housing production while meeting a local need for income-restricted units. DHCD does not anticipate making further revisions to the Guidelines.