

CITY OF NEWTON

BOARD OF ALDERMEN

PROGRAMS AND SERVICES COMMITTEE AGENDA

WEDNESDAY, NOVEMBER 19, 2008

7:45PM – ROOM 222

ITEMS SCHEDULED FOR DISCUSSION:

Appointment by His Honor the Mayor

#388-08 JANE YOFFE, 99 Littlefield Road, Newton Centre, appointed as a member of the NEWTON CULTURAL COUNCIL for a term to expire on November 1, 2011. (60 days: 1-16-09) [11-29-08 @ 4:31 PM]

#337-08(2) ALD. YATES AND PARKER requesting that the Newton Election Commission merge the Inactive voter list into the Active voter list as soon as possible so that Newton voters will not be inconvenienced during elections. [10-20-08 @ 11:10 AM]

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

#398-08 HIS HONOR THE MAYOR requesting to A) appropriate for expenditure a gift of forty thousand dollars (\$40,000) from individuals who have joined together as *the Friends of Newton Tennis*, and B) appropriate the matching sum of forty thousand dollars (\$40,000) from budget reserve to the Park and Recreation Department to repair the tennis courts at Newton South High School. [11-10-08 @ 4:33 PM]

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

#399-08 HIS HONOR THE MAYOR requesting an appropriate and expend one hundred thousand dollars (\$100,000) from Free Cash for the purpose of supplementing the snow and ice budget in the Parks and Recreation Department to be broken down as follows: Salaries \$10,000 and Expenses \$90,000. [11-10-08 @ 7:42 PM]

#389-08 ALD. HESS-MAHAN, BAKER AND JOHNSON requesting that the Board of Aldermen adopt a RESOLUTION asking the Mayor to create a Newton Fair Housing Committee as proposed in the 2008 Fair Housing Action Plan so as to support Newton's efforts consistent with that Plan to be a diverse, welcoming community free of discrimination. [11-10-08 @ 4:45 PM]

ITEMS NOT YET SCHEDULED FOR DISCUSSION:

REFERRED TO PS&T AND PROGRAMS & SERVICES COMMITTEES

- #391-08 HIS HONOR THE MAYOR requesting Board of Aldermen approval to petition the General Court for an amendment to the legislation that governs the appointment of a Police Chief in the City of Newton in order to add two members to the committee: an additional representative of the Newton Superior Officers Association and an additional citizen member. [11-4-08 @ 12:31 PM]

REFERRED TO PROG. & SERV., PUB. FAC., AND LAND USE COMMITTEES

- #329-08 ALD. JOHNSON, ALBRIGHT & LINSKY requesting amendment to §20-13, *Noise Ordinance*, of the City of Newton Ordinances to prohibit the City from exceeding the parameters of time and decibel restrictions unless it receives approval from the Land Use Committee of the Board of Aldermen. [09-02-08 @ 12:00 PM]
- #306-08 ALD. BAKER, DANBERG, MANSFIELD & PARKER requesting discussion of how swimming at Crystal Lake might be lawfully and safely extended beyond mid-August. [08-26-08 @ 5:03 PM]

REFERRED TO PROG. & SERV. AND PUBLIC FACILITIES COMMITTEES

- #294-08 SUPERINTENDENT YOUNG requesting a vote of the Board of Aldermen to complement the vote of the School Committee to instruct him to submit a statement to the Massachusetts School Building Authority confirming the City's top three priority elementary schools: Angier, Cabot and Zervas, with Angier being the first priority, by September 15, 2008. [07-24-08 @ 2:21 PM]
- #292-08(2) PROGRAMS AND SERVICES COMMITTEE requesting that His Honor the Mayor develop a written policy of standards and processes that could be uniformly followed by community groups for the use of the branch library buildings. [11-07-08 @ 11:11 AM]

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

- #274-08 ALD. JOHNSON AND SANGIOLO proposing a RESOLUTION to His Honor the Mayor requesting that he create a plan to move the Child Care Commission to a self-sustaining model for FY2010. [07-17-08 @ 9:53 AM]

**REFERRED TO PROG. & SERV., ZONING & PLANNING, PUB. FACIL.,
PUB. SAFETY AND FINANCE COMMITTEES**

- #273-08 ALD. JOHNSON proposing a RESOLUTION to His Honor the Mayor requesting that the Executive and Human Resources Departments develop a comprehensive human capital strategy for the city to include:

performance management, talent development, succession planning, and compensation. [07-17-08 @ 9:53 AM]

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

#272-08 ALD. JOHNSON proposing a RESOLUTION to His Honor the Mayor that he work with the Board of Aldermen, School Department, and School Committee in order to determine the most effective and efficient way to organize the Human Resources Departments. [07-17-08 @ 9:53 AM]

REFERRED TO PROG. & SERV. AND PUBLIC FACILITIES COMMITTEES

#271-08 ALD. JOHNSON proposing a RESOLUTION to His Honor the Mayor requesting that he work with the Board of Aldermen, the Parks and Recreation Department, and the Department of Public Works in order to determine the most effective and efficient way to organize the work of managing our public resources. [07-17-08 @ 9:53 AM]

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

#270-08 ALD. JOHNSON proposing a RESOLUTION to His Honor the Mayor requesting that he work with the Board of Aldermen, School Department, and School Committee in order to determine the most effective and efficient way to organize the Information Technology Departments. [07-17-08 @ 9:53 AM]

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

#261-08 ALD. SANGIOLO requesting discussion with the Executive Department regarding moving the Director of Arts in the Parks' salary to the Arts in the Parks revolving account. [07-08-08 @ 1:29 PM]

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

#259-08 ALD. SANGIOLO requesting discussion with the Executive Department regarding moving the salaries of the Parks & Recreation Commissioner and the Recreation Programs Director to the revolving accounts for various programs. [07-08-08 @ 1:28 PM]

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

#258-08 ALD. SANGIOLO requesting discussion with the Executive Department regarding reorganization of senior transportation services and establishment of intra-village transportation systems. [07-08-08 @ 1:29 PM]

#224-08 HIS HONOR THE MAYOR requesting to submit Home Rule Legislation to establish a permanent fund for the maintenance of artificial turf fields at Newton South High School. [06-10-08 @ 5:12 PM]

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

- #207-08 ALD. BRANDEL AND SANGIOLO proposing that the following question be put before the Newton voters:
“Shall the City of Newton be allowed to exempt from the provisions of Proposition 2 ½ the amounts required to pay for the bond issuance in order to fund Newton North High School?” [05-21-08 @ 12:58 PM]

REFERRED TO PROG& SERV, PUB.FAC. & FINANCE COMMITTEES

- #192-08 HIS HONOR THE MAYOR requesting authorization to appropriate and expend \$5,069,783 from the following sources for the purpose of installing new fields and track at Newton South High School:
Capital Stabilization Fund.....\$1,851,783
Bonded Indebtedness.....\$3,218,000
(C) and to establish an appropriate vehicle into which \$500,000 may be transferred from the Capital Stabilization Fund to support the annual maintenance of these fields. [05-13-08 @ 5:02 PM]
(A) BOARD APPROVED \$300,000 FOR DESIGN on 07-14-08
(B) BOARD HELD BALANCE @ \$1,551,783 FROM CAPITAL STABILIZATION FUND AND \$3,218,000 FROM BONDED INDEBTEDNESS on 07-14-08
(C) HELD ESTABLISHMENT OF FUND FOR ANNUAL MAINTENANCE
- #154-08 ALD. JOHNSON requesting to establish a definition and appropriate usage of the Committee of the Whole of the Board of Aldermen as are all committees of the Board. [4-10-08 @9:09 AM]
- #153-08 ALD. JOHNSON requesting to establish a definition and appropriate usage of the Long Range Planning Committee of the Board of Aldermen as are all committees of the Board. [4-10-08 @9:09AM]
- #130-08 ALD JOHNSON, SANGIOLO AND BRANDEL requesting establishment of a new Rule of Board of Aldermen requiring that referral of any and all new business, communications, petitions and orders docketed before the Board of Aldermen be restricted to one or more of the standing committees of the Board of Aldermen: Land Use, Programs and Services, Public Safety and Transportation, Zoning and Planning, Finance, Real Property Reuse, Post Audit and Oversight, Public Facilities and Committee on Community Preservation. [03-24-08 @ 9:11 AM]
- #129-08 ALD. JOHNSON, SANGIOLO AND BRANDEL requesting establishment of a new Rule of Board of Aldermen stating that any new item submitted but not yet approved or accepted by the Full Board of Aldermen is prohibited from any formal or informal discussion by any formal, informal or special committee of the Board. [03-24-08 @ 9:11 AM]

- #111-08(2) ALD. JOHNSON and PARKER requesting regularly scheduled updates and discussion each month in regard to the offering of a RESOLUTION to the Mayor, President of the Board of Aldermen, and Chair of the School Committee that they, during the budget development and review process, identify short term tactics to improve the City's operational efficiency and effectiveness. In addition, they establish a citizen advisory group to assist in planning for additional tactics and strategies to improve the City's operational efficiency and effectiveness in future fiscal years, and report progress to the Board of Aldermen, School Committee and the public before any vote is taken by the citizens of Newton for any operational override. [04-01-08 @ 11:22 AM]

REFERRED TO PROG. & SERV., PUB.FAC. AND FINANCE COMMITTEES

- #89-08 ALD. PARKER requesting the following:
- A) review of the maintenance practices for buildings, parks and other properties owned by the City (including School Department facilities and grounds)
 - B) development of a comprehensive maintenance plan that includes regular schedules for preventive maintenance for each specific site or facility
 - C) a RESOLUTION requesting that implementation of said maintenance plan be funded using operating budget funds.
- [02-13-08 @ 12:07 PM]

REFERRED TO PROGRAMS AND SERVICES AND FINANCE COMMITTEES

- #397-07 ALD. JOHNSON AND COLETTI requesting to increase the fee for dogs being off-leash except where dogs are legally able to be off-leash. [12-04-07 @ 12:22 AM]
HELD 1/23/08
- #287-07(2) ALD. PARKER requesting a discussion with Parks and Recreation Department in regards to an appropriate marker or plaque to honor and recognize Olympic figure skater and Newton resident Tenley Albright and her skating exhibition at the Crystal Lake upon her return from the 1956 Olympic Games where she won a gold medal. [09-20-07 @ 1:22 PM]
- #262-07 ALD. VANCE AND HESS-MAHAN seeking approval by the Board of Aldermen of a home rule petition to the General Court that would authorize an amendment to the charter of the City of Newton that would change the length of terms of the members of the Board of Aldermen to three years and would provide for electing one-third of the aldermen, one from each ward, every year. [08-22-07 @ 3:53 PM]

REFERRED TO PROGRAMS AND SERVICES AND FINANCE COMMITTEES

#83-07 ALD. YATES requesting that the City of Newton take all possible steps to persuade the General Court to adopt the proportion of Governors Municipal Partnership that would allow the City to reduce employee health insurance costs by joining the Group Insurance Commission. [02-27-07 @ 10:21 PM]

#82-07 ALD. YATES requesting that the City of Newton take all possible steps to persuade the General Court to allow the cities and towns to tax all telecommunications facilities in the City (which would yield at least \$1.6 million per year for Newton). [02-27-07 @ 10:21 PM]

#52-07 ALD. PARKER, SANGIOLO, MANSFIELD, HARNEY, DANBERG, VANCE, LINSKY, HESS-MAHAN, BURG, ALBRIGHT & JOHNSON requesting an ordinance amendment to create a health care advisory committee whose function would be to recommend measures to control the rate of increase of health insurance costs, as recommended by the Newton Finance & Management Working Group in 2005 and the Blue Ribbon Commission on the Municipal Budget in 2007. [02-09-07 @ 12:36 PM]

#422-06 ALD. HESS-MAHAN requesting creation of an ordinance prohibiting the use of portable gasoline-powered leaf blowers within the City limits. **PROGRAMS & SERVICES APPROVED AS AMENDED 4-2-2 (Brandel, Sangiolo opposed; Baker, Merrill abstaining) on 3/19/08 RECOMMITTED TO PROGRAMS & SERVICES ON 4-22-08 HELD 07-09-08**

#370-06 ALD. SANGIOLO, PARKER, MANSFIELD requesting home rule legislation to allow advisory questions to be asked in a Newton special election.

REFERRED TO PROGRAMS AND SERVICES AND FINANCE COMMITTEES

#267-06(3) ALD. PARKER, BURG, LINSKY, FISCHMAN, HESS-MAHAN, VANCE, HARNEY, JOHNSON, & DANBERG proposing Home Rule Legislation authorizing the City of Newton to apply the ordinance proposed in item #267-06(2) to assets held by the City's retirement system.

REFERRED TO FINANCE AND PROGRAMS AND SERVICES COMMITTEES

#245-06 ALD. JOHNSON AND HESS-MAHAN requesting an amendment to the City Charter to require the Mayor annually to prepare and submit to the Board of Aldermen a long-term financial forecast of anticipated revenue, expenditures and the general financial condition of the City, including, but not limited to identification of any factors which will affect the financial

condition of the City; projected revenue and expenditure trends; potential sources of new or expanded revenues; anticipated municipal needs likely to require major expenditures; and a strategic plan for meeting anticipated municipal needs, to include, but not be limited to, any long or short-term actions that may be taken to enhance the financial condition of the City.

HELD 5/7/08

- #329-05(2) ALD. PARKER & JOHNSON requesting further amendment to the noise ordinance to: improve enforceability and effectiveness of the ordinance; remove the source-based exemption for noise generated by birds, and; address the differential treatment of construction noise on weekends.
[08-26-08 @ 3:15 PM]

REFERRED TO PROGRAMS AND SERVICES AND FINANCE COMMITTEES

- #264-03(3) ALD. JOHNSON AND BAKER requesting update on the work of the Taxation Aid Committee established by the Board of Aldermen in March 2004 in administering aid to the elderly taxation fund.

**REFERRED TO PROGRAMS & SERVICES, PUBLIC FACILITIES
AND FINANCE COMMITTEES**

- #309-01 ALD. PARKER requesting increase in the income eligibility level of the 30% water/sewer discount for low-income senior citizens.
- #346-99 ALD. SANGIOLO requesting creation of an ordinance that would prohibit dogs (leashed or unleashed) from all elementary school playgrounds.

Respectfully Submitted,

Marcia Johnson, Chairman



David B. Cohen
Mayor

City of Newton, Massachusetts
Office of the Mayor

#398.08
Tel: (617) 796-1100

Telefax
(617) 796-1113

TDD
(617) 796-1089

E-mail
dcohen@newtonma.gov

November 10, 2008

08 NOV 10 PM 4:33
CITY CLERK
NEWTON, MA. 02159

Honorable Board of Aldermen
Newton City Hall
1000 Commonwealth Avenue
Newton, MA 02459

Ladies and Gentlemen:

I write to request that your Honorable Board docket for consideration a request to A) appropriate for expenditure a gift of forty thousand dollars (\$40,000) from a group of individuals who have joined together as *the Friends of Newton Tennis*. and B) appropriate the matching sum of forty thousand dollars (\$40,000) from budget reserve to the Parks and Recreation Department. This total sum of \$80,000 will be expended for the purpose of making much need repairs to the tennis courts at Newton South High School.

Thank you for your consideration of this matter.

Very truly yours,

David B. Cohen
Mayor

DBC: srb

1000 Commonwealth Avenue Newton, Massachusetts 02459

www.ci.newton.ma.us



DEDICATED TO COMMUNITY EXCELLENCE

398.08

November 14, 2008

Newton South Tennis Courts

Newton South Tennis Courts consist of twelve lit tennis courts located on Brandeis Road. The courts are configured in two rows of six courts each. The courts receive heavy use with recreational and school programs. Due to the reconstruction at Newton North High School, both varsity tennis teams will be using the courts at Newton South in the Spring of 2009. Over the years the courts have developed a number of cracks throughout the playing surface. The proposal that has been put forth is as follows:

12 Tennis Courts

- Clean total surface with compressed air
- Fill all hairline cracks with acrylic filler.
- Supply and install RiteWay Crack Repair System to all structural cracks, which is about 3000LF, this comes with a 3-year guarantee cracks will not reappear.
- Total area to receive one coat of acrylic resurfacer.
- Total area to receive two coats of colored Plexipave material (manufactured by California Products Corp. Cambridge MA 02139). Texture coat to contain the proper amount of sand to provide a tough wearing base. Topcoat to contain proper amount of pigment to provide a long lasting and attractive surface.
- Twelve complete sets of tennis court lines



David B. Cohen
Mayor

City of Newton, Massachusetts
Office of the Mayor

#399.08
Telephone (617) 796-1100
Telefax (617) 796-1113
TDD (617) 796-1089
E-mail dcohen@newtonma.gov

November 10, 2007

Honorable Board of Aldermen
Newton City Hall
1000 Commonwealth Avenue
Newton, MA 02459

Ladies and Gentlemen:

I write to request that your Honorable Board docket for consideration a request to appropriate and expend one hundred thousand dollars (\$100,000) from Free Cash for the purpose supplementing the snow and ice budget in the Parks and Recreation Department to be broken down as follows:

Salaries	\$10,000
Expenses	\$90,000

This sum brings the total snow and ice appropriation to approximately the median expenditure level of the past five years.

Thank you for your consideration of this matter.

Very truly yours,

David B. Cohen
Mayor

DBC: srb

08 NOV 10 PM 7:42
CITY CLERK
NEWTON, MA. 02159



389. 08

NEWTON HOUSING PARTNERSHIP

Newton Housing & Community Development Program
492 Waltham St., West Newton, MA 02465. Phone 617-796-1156. TDD/TTY 617-796-1088

08 NOV 12 PM 12:01
CITY CLERK
NEWTON, MA 02459

DRAFT REVISIONS TO INCLUSIONARY ZONING

November 6, 2008

The following eight revisions are being proposed for Newton's affordable housing inclusionary rules, Zoning Chapter 30-24f, formerly known as "the 10% Ordinance." The current Zoning requires developments of three or more housing units to include provisions for 15% of the housing units to be permanently affordable for households below specified income levels. Two of the eight proposed revisions to the Ordinance are designed to encourage housing developers to use our own Zoning provisions rather than the State's Chapter 40B Comprehensive Permit approach, and to encourage and facilitate their making a larger than required share of the total number of their units affordable. The other six revisions seek to clarify the Ordinance in a number of ways, helping developers to know just what the City is seeking, which could further encourage developers to choose to use the City's zoning rather than the State's Chapter 40B. The language of the proposals follows page 4.

ENCOURAGING USE OF NEWTON ZONING RATHER THAN CHAPTER 40B

1. CASH IN LIEU OF AFFORDABLE UNITS (Section 30-24(f)(4))

Newton zoning currently allows developers to provide cash in lieu of making some of their units affordable, but only in cases of developments of six or fewer housing units. Such funds are reserved for the sole purpose of creating affordable units elsewhere. While integrating affordable units within new developments is often best, sometimes the City's housing objectives could be better met through funding. Funds can potentially enable a larger number of units to be made affordable if located off-site. They can support "buying down" existing housing, achieving affordability without new construction. Limitation of that option to developments of six or fewer units was adopted in 2003 as part of a sweeping rewrite of the 10% Ordinance. Experience since then has made vivid the positive potentials precluded by that rule. The Housing Partnership without dissent supports giving the Aldermen the authority to approve cash-in-lieu for projects of any size in cases where it determines that doing so would provide a net benefit to achieving the City's housing objectives. By potentially increasing the affordable housing unit "yield" in relation to development size and also enabling "buy-downs" of existing housing stock, this change would strongly serve the housing objectives articulated in Chapter 5 "Housing" of the *Comprehensive Plan*.

The proposal also would revise the formula for determining the required fee amount. The formula adopted in 2003 resulted in a substantially lowered fee per unit, recognizing the difficulty that such fees impose on developments of six or fewer units. The formula now proposed reflects the same concern by lowering the fee charged relative to the first six units in a development, but restoring a more substantial fee per unit for those units in excess of that number. To a small extent, that encourages smaller-scale developments, which is incidental to the real purpose but also beneficial to Newton's housing objectives.

2. INCENTIVES FOR EXCEEDING THE INCLUSIONARY MANDATE (Section 30-24(f)(16))

Under inclusionary zoning provisions in other communities, those developments which propose more than the minimum required percentage of affordable units are sometimes given some benefit or incentive for doing so in recognition of the costs involved and the public benefits which result. That not only encourages developments to do more than the minimum but also increases the feasibility of their doing so. The *Comprehensive Plan* (page 5-18) indicates an intention for Newton to adopt such provisions.

A new Section 30-24(f)(16) is suggested as the locus for the provisions. Under those provisions the allowable units provided between the 15% required share and a 25% share would be excluded from the calculations for required lot area. Construction fee waivers and expedited review are also offered in such cases.

CLARIFYING THE ORDINANCE

3. AN AFFORDABILITY WINDOW (Section 30-24(f)(1)b(ii))

The Zoning Ordinance currently specifies that the price of for-sale inclusionary units should be determined based on household income at 70% of the Boston area median (AMI), intending to leave a “window” between maximum income for qualifying as affordable and the minimum income necessary to get a mortgage. The 70% was specified with a maximum qualifying income of 80% of AMI income in mind, but a variety of other income levels may apply or even be required (elsewhere the Ordinance contemplates maximum income eligibility up to 120% of AMI).

The proposal simply restates the rule as requiring an income “window” so that at least 10% of AMI separates the income that sets the maximum allowable price and the buyer’s maximum allowable income: if the buyer income limit is set at 120% of AMI then the maximum unit price would have to be affordable to a household at 110% of AMI, not the presently required 70%.

4. SALES PRICE FLEXIBILITY (Section 30-24(f)(1)b(iv))

The current zoning provisions for sales prices apparently intend that the price limit for a third of the inclusionary units being sold must be set for affordability at 120% of AMI, and the limit for the remaining two-thirds of the units must be set for affordability at 80% of AMI. Such a rigid prescription would preclude many other arrangements which could otherwise achieve an on-site mix of levels of affordability better suited to project or City circumstances. The proposal would simply assure that two-thirds of the inclusionary units are priced no higher than is affordable at 80% of AMI and that the limit for the remainder of the units is set no higher than 120% of AMI, leaving open any variations within those constraints.

5. ASSURING THAT UNITS WILL “COUNT” UNDER CHAPTER 40B (Section 30-24(f)(3))

There are a number of Massachusetts Department of Housing and Community Development (DHCD) requirements that housing development must meet in order to be included in the

Subsidized Housing Inventory, which is the “score card” for whether or not municipalities have met the 10% 40B threshold. This amendment would oblige that those requirements be met for all inclusionary units unless their income eligibility restriction exceeds 80% of the Area Median Income (which would categorically preclude them from meeting the DHCD rules) or unless they are specifically exempted by a provision of the Zoning Ordinance or of the special permit.

No such blanket obligation to meet the DHCD Subsidized Housing Inventory rules currently exists in the Zoning Ordinance, but guidance provided by the Newton Housing Program indicates that such consistency is expected of applicants. This proposed language provides a firm basis for that guidance.

It is easily imaginable that there could be cases where the procedures mandated for compliance with DHCD criteria would be inappropriate or would preclude developments of a kind that the City would want. For example, some other communities (e.g. Westwood) have found that the DHCD limitations on applicant eligibility based on their assets would be excessively limiting on efforts to accommodate housing for local seniors who are house-rich but cash poor, so have crafted their own limits for such cases. To address that possibility, the proposed language provides an exemption for cases that may later be specified in the Ordinance or for individual projects where special circumstances are found to merit exclusion by the Board of Aldermen in acting on a special permit.

6. CLARIFYING APPLICABILITY OF THE 15% RULE (Section 30-24(f)(3))

Rehabilitation of existing dwelling units generally is not subject to a requirement for a special permit and therefore is not obliged to make 15% of the involved units affordable. That makes sense. Units which add to the City’s housing stock add to the burden of meeting the Chapter 40B 10% objective, so such development should help to meet that objective. Housing rehabilitation doesn’t add to the City’s stock nor add to the number of affordable units needed to satisfy Chapter 40B, so it shouldn’t be burdened with meeting a need it didn’t create.

Under its current language, the inclusionary ordinance apparently does not apply to most rehabilitation efforts, but the ordinance is unclear regarding rehabbed units which are part of a development proposal which also includes new dwelling units, with the narrow exception of units subject to demolition delay provisions under Section 22-44, which are excluded. The suggested revision makes clear that retained dwelling units will not affect the required number of inclusionary ones, and also shortens the paragraph by omitting redundant language.

7. RESIDENT PREFERENCES (Section 30-24(f)(8)b))

Marketing and tenant selection practices for inclusionary units should comply with civil rights laws, including the City’s human rights legislation (Section 14-34 of the City Ordinances). Selection preferences for local residents should be clear, they should be consistent with procedures required for non-City housing programs such as the Local Initiatives Program (LIP), and they should be the same as are generally applied under other City programs, to the extent possible. The present language meets none of those considerations.

The proposed language would meet all of them. Perhaps the largest change is in the set of households for which preference is to be given. At present first preference goes to City of Newton employees, which is contrary to DHCD guidance, and then is simply given to all

residents of or workers in the City of Newton. The proposal would give equal preference to individuals or families who live in Newton, households with a member who works in Newton or has been hired or given an offer to do so, and households with a member who attends a public school in Newton (e.g. METCO). Priorities for units designed or modified for people with disabilities would start with the above preferences and then add further prioritizing criteria.

8. RESTORE OMISSIONS (Section 30-24(f)(8))

Two paragraphs within Section 30-24(f) (8) Inclusionary Housing Plan and Covenants were inadvertently omitted by the most recent past amendment to Section 30-24(f). One of the omitted paragraphs calls for inclusion of an agreement for conveyance of rental units in the Plan, if involved. The other calls for an annual compliance report. The proposal would restore them with the only revisions being to change responsibility for the annual compliance report from the Housing Authority to the Director of Planning and Development, simply for consistency with the handling of other administrative actions related to this ordinance, and omission of related words regarding assignment of enforcement costs to the Housing Authority.

1. CASH IN LIEU OF INCLUSIONARY UNITS (Section 30-24(f) (4))

This revision would allow the Board of Aldermen to authorize use of a fee in lieu in developments of more than six dwelling units (for which authority to do so already exists) on a case-by-case basis upon the Board finding a net benefit to housing affordability as a result.

The fee determinants would be the prior year's median dwelling unit sales price in Newton, shown as \$645,000, from which would be subtracted the \$195,000 allowable sales price for a unit affordable at 80% of the Area Median Income, resulting in a basic fee of \$450,000 (\$645,000 minus \$195,000). To mitigate the impact on small projects, that fee would be reduced to 60% of the basic \$450,000 fee per unit or to \$270,000 for the first six market-rate units in a project to be offset by fees. For the first six market rate dwelling units the resulting fee per market-rate unit would be just over \$40,000, rising with the size of the project to as much as \$68,000 per unit for developments having more than 200 housing units.

Inclusionary fee for the first six market-rate units:

$$\# \text{ of market rate units} \times (\text{market median price} - \text{allowable affordable price}) \times 15\% \times 60\%.$$

Inclusionary fee for market rate units in excess of six units:

$$(\# \text{ of market rate units} - 6) \times (\text{market median price} - \text{allowable affordable price}) \times 15\%.$$

Total inclusionary fee = total of the fees for the first six market units plus those for units above 6.

The table below illustrates outcomes of the existing and proposed fee structure for two projects that differ in size and market price levels.

INCLUSIONARY FEE 2007 ILLUSTRATIONS

Consideration	Case "A"	Case "B"
Total number of housing units	4	62
Average market unit sales price	\$718,725	\$875,000
Required inclusionary units	0.6	9.3
Total fee-in-lieu of inclusionary units		
Current formula	\$86,247	\$1,627,500
Proposed formula	\$162,000	\$4,050,000
Fee per inclusionary unit not built		
Current formula	\$144,045	\$175,000
Proposed formula	\$270,000	\$434,484
Fee per market unit sold		
Current formula	\$21,562	\$26,250
Proposed formula	\$40,500	\$65,323

CURRENT PROVISION

(f)(4) Cash Payment. Where the total number of dwelling units proposed in the development will not exceed six units, the Applicant may make a cash payment equal to 3 percent of the sales price at closing of each unit as verified by the planning and development department or if rental housing, the cash payment shall be equal to 3 percent of the estimated, assessed value of each unit as determined by the city assessor, in lieu of Inclusionary Units as provided in section 30-24(f)(3). Certificates of Occupancy for the property shall not be issued until the cash payment has been made as verified by the planning and development department. This payment shall be made to an inclusionary housing development fund established by the board of aldermen. Proceeds from the fund shall be distributed equally to the Newton Housing Authority and the planning and development department and shall be used exclusively for construction, purchase, or rehabilitation of housing for Eligible Households. The comptroller shall annually review payments to the fund and use of the proceeds and shall certify to the board of aldermen that proceeds have been used for the purposes stated herein.

PROPOSED REVISION

(f)(4) Cash Payment.

- a) *Eligibility*. The inclusionary unit requirements of section 30-24(f)(3) may be met in part or whole through payment of a Fee In Lieu of providing one or more inclusionary units only if the development (a) contains no more than six dwelling units or (b) if the Board of Aldermen, in acting upon the special permit for the development, finds that there will be a net benefit to achieving the City's housing objectives as a result of allowing a fee rather than the inclusionary units for which the fee serves in lieu.
- b) *Fee amount*. The project total Fee In Lieu shall equal the number of inclusionary units required but not provided (not rounded) times an Inclusionary In-Lieu Fee per inclusionary unit, reduced by 40% for the first six market rate units in the project. The Inclusionary Fee In Lieu of an inclusionary unit shall be determined annually by the Director of Planning and Development, basing that on an index reflecting the difference between the median sales price per dwelling unit for all single-family and condominium dwelling units sold in Newton in the most recent calendar year for which sales price data is available and the maximum purchase price affordable to a three-person household at 80% of the Area Median Income at the time of marketing. A proportionate share of the project total fee (e.g. 1/6th of it for a six-unit development) must be paid prior to that unit being granted a Certificate of Occupancy.
- c) *Fee recipient*. The fee payment shall be made to an inclusionary housing development fund established by the board of aldermen. Proceeds from the fund shall be distributed equally to the Newton Housing Authority and the planning and development department and shall be used exclusively for construction, purchase, or rehabilitation of housing for Eligible Households. The Authority and the department shall each maintain an ongoing record of payments to the fund on their behalf and shall report annually to the board of aldermen on the use of the proceeds for the purposes stated herein.

2. INCENTIVES FOR EXCEEDING INCLUSIONARY MANDATES (new Section 30-24(f)(16))

(NEW) INCENTIVES (Section 30-24(f)(16))

(f)(16) Incentives.

- a) *Density.* Inclusionary units provided above the number required by Section 31-24(f)(3) Inclusionary Units but not exceeding 25% of the number otherwise allowable in the development shall not be included in the determination of lot area required pursuant to Section 31-15 Table 1 under the "Lot area per unit" column. To the extent determined by the Director of Planning and Development to be necessary for achieving that increased density, increases by up to the same percentage in floor area ratio and building lot coverage and decreases by up to the same percentage in open space may be allowed.
- b) *Construction Permit fees.* A waiver of construction permit fees shall be granted equaling the percentage of total housing units in the development which are Inclusionary units to be provided above the number required by Section 31-24(f)(3) Inclusionary Units.
- c) *Expedited Review.* Developments in which the percentage of Inclusionary units to be provided exceeds 30% of the development total shall be given expedited application and review procedures to the extent consistent with assuring well-considered outcomes, through measures such as giving them scheduling priority, arranging for staff assistance to applicants, and arranging for concurrent rather than sequential agency reviews.

3. AN AFFORDABILITY WINDOW (Section 30-24(f)(1)b)(ii))

CURRENT PROVISION

- (ii) For Inclusionary Units that are sold to Eligible Households, the sales price of an Inclusionary Unit shall be affordable to a household earning 70 per cent of the median income for households in the United States Department of Housing and Urban Development designated statistical area that includes the City of Newton at the time of marketing of the Inclusionary Unit and adjusted for household size.

PROPOSED REVISION

- (ii) The sales price of Inclusionary Units for sale shall be affordable to an Eligible Household having an income ten (10) percentage points lower than the maximum eligible income for that unit as provided in Section 30-24(f)(1)a). For example, if the maximum eligible income for the unit is based upon household incomes at 120% of the area median income then the maximum sales price must be affordable to households at 110% of the area median income.

4. SALES PRICE FLEXIBILITY (Section 30-24(f)(1)b)(iv))

CURRENT PROVISION

- (iv) Where three or more Inclusionary Units are provided in a development under section 30-24(f) (3), two-thirds of the Inclusionary Units required to be offered for sale shall be provided to Eligible Households with median incomes of not more than 80 per cent of the median income for households in the United States Department of Housing and Urban Development designated statistical area that includes the City of Newton at the time of marketing of Inclusionary Units and adjusted for household size. One-third of the Inclusionary Units required to be offered for sale shall be provided to Eligible Households with median incomes of not more than 120 per cent of the median income for households in the United States Department of Housing and Urban Development designated statistical area that includes the City of Newton at the time of marketing of Inclusionary Units and adjusted for household size.

PROPOSED REVISION

Amended Section 30-24(f) (1)b)(iv)

- (iv) Where three or more Inclusionary Units are provided in a development under section 30-24(f)(3), two-thirds of the Inclusionary Units required to be offered for sale (rounded to the nearest whole number) shall be provided to Eligible Households with incomes of not more than 80 per cent of the Area Median Income at the time of marketing. The limit for the remaining Inclusionary Units required to be offered for sale shall be set at more than 80 percent but not more than 120 per cent of the Area Median Income at the time of marketing.

New Definition to be added to Section 30-24(f)(1) (for brevity).

Area Median Income ("AMI"): the median income for households within the designated statistical area that includes the City of Newton, as reported annually and adjusted for household size by the United States Department of Housing and Urban Development.

5. ASSURING THAT UNITS WILL “COUNT” UNDER CHAPTER 40B (Section 30-24(f)(1)b)):

PROPOSED NEW PROVISION

- (f)(1)b) vi) Inclusionary units must be qualified as “Local Action Units” pursuant to the requirements of the *Comprehensive Permit Guidelines* of the Massachusetts Department of Housing and Community Development, Section VI.C Local Action Units, as in effect July 30, 2008 unless:
- the income eligibility for the unit exceeds 80% of the Area Median Income, or
 - the unit is exempted from this requirement by another provision of Section 30-24(f), or
 - the unit is exempted from this requirement by a provision included in the special permit authorizing the development, based on special circumstances applicable to that development, or based on changes in DHCD regulations or guidelines.

6. CLARIFYING APPLICABILITY OF THE 15% RULE (Section 30-24(f)(3))

CURRENT PROVISION

(f)(3) Inclusionary Units. Where a special permit is required for development as described in section 30-24(f)(2), 15 per cent of the units proposed for the development shall be Inclusionary Units and shall be reserved for sale or rental to Eligible Households. In the case of an existing residential property subject to determination by the Newton Historical Commission under section 22-44 or any successor ordinance, the inclusionary requirement shall be 15 per cent of the net new units to be created on the property. For purposes of calculating the number of Inclusionary Units required in a proposed development, any fractional unit of 0.5 or greater shall be deemed to constitute a whole unit. At the discretion of the Applicant, a development may include more than 15 per cent of its units as Inclusionary Units. Inclusionary Units shall be offered for sale or rental in the same proportion of the total units as the offer for sale or rental of Market Rate units in the development.

PROPOSED REVISION

(f)(3) Inclusionary Units. Where a special permit is required for development as described in section 30-24(f)(2), inclusionary units shall be provided equaling no fewer than 15 per cent of the number of dwelling units proposed to be added by the development, exclusive of existing dwelling units to be retained. For purposes of calculating the number of Inclusionary Units required in a proposed development, any fractional unit of 0.5 or greater shall be deemed to constitute a whole unit. Inclusionary Units shall be offered for sale or rental in the same proportion of the total units as the offer for sale or rental of Market Rate units in the development.

7. RESIDENT PREFERENCES (Section 30-24(f)(8)b))

CURRENT PROVISION

- b) A marketing and resident selection plan which includes an affirmative fair housing marketing program, including public notice and a disinterested resident selection process; provided that in the case of a marketing and selection for sale of Inclusionary Units to Eligible Households, the marketing and selection plan shall provide for “income blind” selection of Eligible Households and shall then provide for a preference order, to the extent permitted by law, first to City of Newton employees and then to residents of or workers in the City of Newton. In lieu of submitting a marketing and resident selection plan under this subsection, the Applicant may use a standard form marketing and resident selection plan developed by the planning and development department.

PROPOSED REVISION

- b) A marketing and resident selection plan which shall:
 - (i) Assure that there is no delay, denial, or exclusion from the development based upon a characteristic protected by Newton’s human rights ordinance (Section 14-34) and applicable fair housing and civil rights laws. Those laws forbid housing discrimination based on race, color, religion, national origin, gender, age, disability, ancestry, marital status, family status, veteran or military status, sexual orientation, genetic characteristics, or status as a person who is a recipient of federal, state, or local public assistance programs, or the requirements of such programs.
 - (ii) Include an affirmative fair housing marketing and tenant selection plan for the Inclusionary Units based upon the procedures established by the Massachusetts Department of Housing and Community Development for marketing, local preferences, and lotteries under Comprehensive Permit Guidelines Section III as in effect July 30, 2008.
 - (iii) Use fair methods for accepting applications and assigning units, such as accepting applications over a period of weeks, accepting applications by mail, and using lotteries to distribute units and establish waiting lists;
 - (iv) Provide for local selection preferences for up to 70% of the Inclusionary Units, or such lower share as may be required by other applicable authorities.

Preference shall be given for qualified applicants who fall within any of the following equally weighted categories: (1) individuals or families who live in Newton; (2) households with a household member who works in Newton, has been hired to work in Newton, or has a bona fide offer of employment in Newton; (3) and households with a household member who attends a public school in Newton.

Preferences for those dwelling units which are designed or modified to be accessible to people with disabilities shall be assigned (a) first to households that as well as having one or more of the four preferences above also include a member needing the features of the unit, then (b) to households having none of the above preferences but that include a member needing the features of the unit, then (c) to other households having one or more of the preferences above, and then (d) to other applicants.

8. RESTORE OMISSIONS (Section 30-24(f)(8))

PRIOR PARAGRAPHS THAT WERE OMITTED

- f) at the discretion of the Applicant and with the agreement of the Newton Housing Authority, an agreement, in a form approved by the city solicitor, to convey rental units to the Newton Housing Authority for sale or rental to Eligible Households; and
- g) in the case of rental housing, an agreement to submit an annual compliance report to the Newton Housing Authority, in a form approved by the city solicitor, certifying compliance with the provisions of section 30-24(f) of the zoning ordinances; provided that in the event of a dispute over compliance, the costs of enforcement will not be borne by the Newton Housing Authority.

PARAGRAPHS AS PROPOSED TO BE RESTORED

- f) at the discretion of the Applicant and with the agreement of the Newton Housing Authority, an agreement, in a form approved by the city solicitor, to convey rental units to the Newton Housing Authority for sale or rental to Eligible Households; and
- g) in the case of rental housing, an agreement to submit an annual compliance report to the Newton Director of Planning and Development, in a form approved by the city solicitor, certifying compliance with the provisions of section 30-24(f) of the zoning ordinances.

IZO Refined 8