



Zoning & Planning Committee Agenda

City of Newton In City Council

Monday, May 13, 2019

7:00PM
Room 205

Items Scheduled for Discussion:

Referred to Zoning & Planning and Finance Committees

#149-19 **Appropriation of \$100,000 for consulting services for the Planning Department**
HER HONOR THE MAYOR requesting authorization to appropriate and expend one hundred thousand dollars (\$100,000) from Free Cash for the purpose of funding consulting services for the Planning Department to enable the department to hire subject matter expert for projects.

Chair's Note: Public comment will be taken on this item:

#91-19 **Adoption of Hazard Mitigation Plan**
DIRECTOR OF PLANNING requesting discussion and adoption of the Hazard Mitigation Plan.

#187-18 **Zoning Amendment for Inclusionary Zoning**
DIRECTOR OF PLANNING requesting amendments to the Inclusionary Housing provisions of Chapter 30, Newton Zoning Ordinance, to increase the required percentage of affordable units; to require that some affordable units be designated for middle income households; to create a new formula for calculating payments in lieu of affordable units; and to clarify and improve the ordinance with other changes as necessary.

#128-19 **Zoning Amendment for short-term rentals**
DIRECTOR OF PLANNING proposing to amend Chapter 30, City of Newton Zoning Ordinances, in order to create a short-term rental ordinance that defines the short-term rental and bed & breakfast uses, identifies what zoning districts they would be allowed in and under what criteria, conditions, limitations and permitting process.

The location of this meeting is accessible and reasonable accommodations will be provided to persons with disabilities who require assistance. If you need a reasonable accommodation, please contact the city of Newton's ADA Coordinator, Jini Fairley, at least two business days in advance of the meeting: jfairley@newtonma.gov or (617) 796-1253. The city's TTY/TDD direct line is: 617-796-1089. For the Telecommunications Relay Service (TRS), please dial 711.

Referred to Zoning & Planning, Public Safety, and Finance Committees

#136-19 Short-term rental ordinance with fees

DIRECTOR OF PLANNING proposing amendments to Chapter 20 and 17 of the Revised Ordinances of the City of Newton to create a short-term rental ordinance with fees that would require registration of short-term rentals with the City's Inspectional Services Department and fire inspections to protect public health and safety.

Respectfully Submitted,

Susan S. Albright, Chair



RUTHANNE FULLER
MAYOR

City of Newton, Massachusetts
Office of the Mayor

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April 8, 2019

Honorable City Council
Newton City Hall
1000 Commonwealth Avenue
Newton Centre, MA 02459

Councilors:

I respectfully submit a docket item to your Honorable Council requesting authorization to appropriate and expend the sum of \$100,000 from June 30, 2018 Certified Free Cash to Acct # 0111401-5301 for the purpose of funding Consulting Services for the Planning Department to enable the department to hire subject matter experts to provide the best information possible for the City Council as you deliberate the many important projects that will be before you over the next several months.

Thank you for your consideration of this matter.

Sincerely,

Ruthanne Fuller
Mayor

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NEWTON CITY CLERK
2019 APR - 8 PM 4: 15
DAVID A. CLEON, CHIEF
NEWTON, MA 02459



Ruthanne Fuller
Mayor

City of Newton, Massachusetts

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Barney S. Heath
Director

MEMORANDUM

DATE: May 10, 2018

TO: Councilor Albright, Zoning and Planning Chair
Councilor Gentle, Finance Chair
Members of the Zoning and Planning & Finance Committees

FROM: Barney Heath, Director of Planning and Development

RE:# # #####149-19 Request for \$100,000 in Consulting Services Funding

MEETING DATE: May 13, 2018

CC: Jonathan Yeo, Chief Operating Officer

The Planning Department is requesting \$100,000 in funding to have the capacity and flexibility to contract for “as needed” consulting services. The Department is in the midst of a number of efforts currently and anticipates a very active FY20 – all of which could benefit from the ability to contract for certain strategic consulting services.

- **Affordable Housing** – Updating our housing needs assessment as part of our Five-Year Housing Strategy due to HUD in early 2020.
- **Conservation** – Updating the City’s Open Space and Recreation Plan (required).
- **Transportation** – Undertaking conceptual design relating to traffic calming or bike lane feasibility.
- **Zoning** – Continuing outside review, graphic production, and build-out analysis of the draft Zoning Ordinance.



Ruthanne Fuller
Mayor

City of Newton, Massachusetts

Department of Planning and Development

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Barney S. Heath
Director

MEMORANDUM

DATE: May 6, 2018

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

FROM: Barney Heath, Director of Planning and Development
Jennifer Steel, Chief Environmental Planner

RE: **#91-19 Adoption of Hazard Mitigation Plan. DIRECTOR OF PLANNING**
requesting discussion and adoption of the Hazard Mitigation Plan.

MEETING DATE: May 13, 2018

CC: Jonathan Yeo, Chief Operating Officer

Anne Herbst of MAPC will present to the Committee the City’s draft Hazard Mitigation Plan (HMP).

The Federal Disaster Mitigation Act of 2000 requires all municipalities that wish to be eligible to receive Federal Emergency Management Agency (FEMA) funding for hazard mitigation grants, to adopt a local multi-hazard mitigation plan and update this plan in five-year intervals.

Two opportunities for public input are required as part of the process of updating the plan. An early draft was presented before the Conservation Commission in February, 2019. This presentation before the Zoning and Planning Committee meets the requirement to present the plan when a full draft has been completed. Following the presentation, and a two-week open comment period, the draft plan will be forwarded to MEMA and to FEMA for their review and approval. Once approved by FEMA, it will be sent to the Mayor for her signature.

Hazard Mitigation planning is a proactive effort to identify actions that can be taken to reduce the dangers to life and property from natural hazard events. In this area, hazard mitigation planning tends to focus on flooding, the most likely natural hazard. Hazard mitigation plans analyze the potential risk of natural hazards including flood, brushfire, drought, extreme temperatures, wind, winter storms, earthquakes and landslides.

Working with the Metropolitan Area Planning Council, an **interdepartmental Hazard Mitigation Planning Team** of City staff completed the update of Newton's Hazard Mitigation Plan. The attached HMP represents a consensus document of the Hazard Mitigation Planning Team:

Jonathan Yeo, Mayor's Office
Barney Heath, Planning
Jennifer Steel, Planning
Claire Rundelli, Planning
Bruce Proia, Fire Chief
Erick Fricke, Fire

Deb Youngblood, Health & Human Services
Jim McGonagle, Public Works
Amy Hamel, Public Works
Maria Rose, Public Works
Lou Taverna, Engineer
Josh Morse, Facilities
Doug Greenfield, GIS

This team met on September 12, 2018, January 17, 2019, and March 5, 2019 and discussed where the impacts of natural hazards most affect the City, goals for addressing these impacts, updates to the City's existing mitigation measures, and new or revised hazard mitigation measures that would benefit the City.

This update to the Hazard Mitigation Plan was informed by the **Climate Vulnerability Assessment and Action Plan (2018)**, the **Community Resilience Building Workshop** (conducted through the Municipal Vulnerability Preparedness program) and the draft **Climate Action Plan**.

The Team analyzed **natural hazards/risks** (e.g., flood, brushfire, drought, winter storm, earthquake, landslide, multi-hazard, and climate) in relation to **land uses, critical facilities, and development trends**. A vulnerability assessment was then conducted using FEMA's HAZUS-MH (multiple-hazards), a computer program to estimate losses due natural hazards.

Hazard mitigation goals were reviewed and revised.

- Goal 1: Prevent and reduce the loss of life, injury, public health impacts and property damages resulting from all major natural hazards.
- Goal 2: Identify and seek funding for measures to mitigate or eliminate each known significant flood hazard area.
- Goal 3: Integrate hazard mitigation planning as an integral factor in all relevant municipal departments, committees and boards.
- Goal 4: Prevent and reduce the damage to public infrastructure resulting from all hazards.
- Goal 5: Encourage the business community, major institutions and non-profits to work with the Town to develop, review and implement the hazard mitigation plan.
- Goal 6: Work with surrounding communities, state, regional and federal agencies to ensure regional cooperation and solutions for hazards affecting multiple communities.
- Goal 7: Ensure that future development meets federal, state and local standards for preventing and reducing the impacts of natural hazards.
- Goal 8: Take maximum advantage of resources from FEMA and MEMA to educate Town staff and the public about hazard mitigation.
- Goal 9: Consider the potential impacts of future climate change and incorporate climate sustainability and resiliency in hazard mitigation planning.

Existing mitigation measures (a combination of zoning, land use, and environmental regulations, infrastructure maintenance, and drainage infrastructure improvement projects)

were reviewed. Newton made significant progress implementing mitigation measures identified in the last plan. For Newton, flooding is the hazard of greatest concern. Some highlights include:

- Development of the Stormwater Infrastructure Improvement Plan (SIIP) and prioritization of future projects.
- Purchase of water rescue equipment.
- Purchase of open space parcels at the Kessler Woods Conservation Area.

The list was revised into a final list of **hazard mitigation recommendations** for each of the identified risks. Projects identified in the current draft include:

- Implementation of over a dozen projects prioritized in the SIIP.
- Emergency communications upgrades.
- Including heat and flood resilient strategies in the Zoning Redesign.
- Outreach regarding flood areas outside of FEMA flood zones.



Ruthanne Fuller
Mayor

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Barney S. Heath
Director

MEMORANDUM

DATE: May 10, 2019

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

FROM: Barney S. Heath, Director of Planning and Development
James Freas, Deputy Director of Planning and Development
Amanda Berman, Director of Housing & Community Development
Jennifer Caira, Chief Planner

RE: **#187-18** DIRECTOR OF PLANNING requesting amendments to the Inclusionary Housing provisions of Chapter 30, Newton Zoning Ordinance, to increase the required percentage of affordable units; to require that some affordable units be designated for middle income households; to create a new formula for calculating payments in lieu of affordable units; and to clarify and improve the ordinance with other changes as necessary.

MEETING DATE: May 13, 2019

CC: Jonathan Yeo, Chief Operating Officer
Jonah Temple, Assistant City Solicitor
Andrew Lee, Assistant City Solicitor
Planning & Development Board
Newton Housing Partnership
City Council

This memo offers a summary of the key differences between the existing and proposed Inclusionary Zoning ordinances. Attached to this memo are staff's responses to stakeholder questions and comments related to the Inclusionary Zoning ordinance update.

As discussed during our April meeting, the Newton Housing Partnership is currently assessing a number of areas related to the proposed ordinance. Staff has asked the Partnership for their input around specific areas of the proposed ordinance:

- Help staff determine an appropriate baseline IZ requirement (Required Units table)
- At what project size could an additional % requirement come into play (economies of scale)?
- Identify a new basis for a cash payment and fractional cash payment (rather than DHCD's QAP Index of \$389,000)
- Alternative Compliance Option (reduced overall IZ requirement for those projects that provide some IZ units at or below 30% AMI) – should we pursue this through IZ?

The Partnership formed a subcommittee to tackle these questions, and the full Partnership will meet and formalize their recommendation at their next meeting on Tuesday, May 14th. The Partnership will provide the Zoning & Planning Committee with a written recommendation prior to the proposed Public Hearing in June.

1.) Application of Inclusionary Zoning Requirements

Existing Ordinance:

- Residential, business or mixed-use developments requiring a special permit and including a net increase of 2 or more new dwelling units, less the number of units allowed by-right.
 - Due to current interpretation of ordinance, IZ requirement usually kicks in when there is a net increase of 6 new dwelling units.
Example: 6 new units minus 2 units allowed by-right = 4 units subject to IZ requirement
 $4 \times 15\% = 0.6$ (therefore, round up to get 1 required IZ unit)
 - Projects have also been offered a reduction in their requirement based on the number of dwelling units that currently exist on a site, even if those are proposed to be demolished.
Example: 20 new units minus 4 existing units to be demolished = 16 units subject to IZ requirement
 $16 \times 15\% = 2.4$ (round down to get 2 required IZ units)
- 100% Deed-Restricted Affordable Developments: Provision not included in existing ordinance.

Proposed Ordinance:

- All residential and mixed-use developments that contain the construction or substantial reconstruction of 7 or more residential units are subject to the City's IZ provisions, regardless of the necessary approval process for that project. Existing residential units that are proposed to be demolished as part of a development are not considered in the inclusionary zoning requirement calculation.

Example: A developer proposes to build a large multifamily development on two contiguous parcels. The project contains the construction of 20 new units, in four different buildings. There is

an existing four-family building on one of the parcels, which the developer plans to demolish. This proposed development would be subject to the Inclusionary Zoning ordinance, based off a total of 20 units.

- 100% Deed-Restricted Affordable Developments: Such projects are not required to comply with the prescribed percentage requirements per income level, as detailed in the proposed ordinance. However, projects that are 100% deed-restricted affordable are still subject to all other sections of the ordinance. For instance, such projects are required to submit an Inclusionary Housing Plan and an Affirmative Fair Housing Marketing and Resident Selection Plan for review and approval by the Director of Planning and Development, and are subject to a Regulatory Agreement and Use Restrictions.

Example:

24-unit rental project where all 24 units are set as Middle-Income units (81%-110% AMI). This project would not be required to provide any units at or below 80% AMI.

2.) Mandatory Provision of Inclusionary Units

Existing Ordinance:

Number of Inclusionary Units Required and IZ Unit Tiers:

- 15% IZ requirement, regardless of project size.
- Where the IZ requirement results in a fraction of a unit greater than or equal to 0.5, the developer must build one inclusionary unit to capture that fraction.
- Where the inclusionary zoning requirement results in a fraction of a unit less than 0.5, no IZ unit or payment required to capture that fraction.

Number of Inclusionary Units Required: Rental (Existing Ordinance)		
Tier Level	6-9 units	10+ units*
	Rental	Rental
Tier 1, 50% AMI	0.0%	7.5%
Tier 2, 80% AMI	15.0%	7.5%
Tier 3, 110% AMI	0.0%	0.0%
Total	15.0%	15.0%

* 2+ IZ rental units: AMI must average out at 65% AMI (1/2 of IZ units at 50% AMI and 1/2 at 80% AMI)

Number of Inclusionary Units Required: Ownership (Existing Ordinance)		
Tier Level	6-16 units	17+ units*
	Owner	Owner
Tier 1, 50% AMI	0.0%	0.0%
Tier 2, 80% AMI	15.0%	10.0%
Tier 3, 110% AMI	0.0%	5.0%
Total	15.0%	15.0%

* 3+ IZ ownership units: 2/3 of IZ units must not exceed 80% AMI (priced at 70% AMI), remaining 1/3 may be set up to 120% AMI

Incentives for Additional IZ Units:

- If a project that is subject to the IZ provisions includes more than its required number of inclusionary units, a bonus of additional market-rate units will be offered to the project at a ratio of 1 to 1: for every additional inclusionary unit proposed, the project will be allowed to include 1 additional market-rate unit.
- Expedited application and review procedures given to projects where the percentage of IZ units to be provided exceeds 30% of the total units in the project.

Maximum Monthly Housing Costs, Sale Prices and Rents:

- These provisions of existing ordinance mirror those of the proposed ordinance (see below).

Proposed Ordinance:

Number of Inclusionary Units Required and IZ Unit Tiers:

Please note: The Newton Housing Partnership is still reviewing this proposed provision, and may offer a different recommendation from the staff proposal described below. The Partnership is expected to deliberate this issue, and others, at their upcoming meeting on May 14th.

- 15% - 17.5 IZ requirement (based on the tables below). Increasing IZ percentage requirement as project size increases.
 - The IZ requirement is based on the total number of units proposed for a development and whether it is a rental or ownership project.
 - The percentage of required inclusionary units to be built on site is divided into two affordability tiers:
 - Tier 1 are units affordable to households with annual gross incomes at or below 50% of the area median income (AMI), as well units affordable to households with annual gross incomes greater than 50% AMI, but at or below 80% AMI.
 - Tier 2 are Middle-Income Units affordable to households with annual gross incomes greater than 80% AMI, but at or below 110% AMI.
- Where the IZ requirement results in a fraction of a unit greater than or equal to 0.5, the developer must build one inclusionary unit to capture that fraction.

- Where the inclusionary zoning requirement results in a fraction of a unit less than 0.5, the developer may choose to provide one inclusionary unit to capture that fraction. Alternatively, the developer may contribute a fractional cash payment to the City to cover the fraction of that inclusionary unit requirement.

Number of Inclusionary Units Required: Rental (April 2019 Staff Proposal)			
Tier Level	7-9 units*	10-20 units**	21+ units**
	Rental	Rental	Rental
Tier 1, 50% - 80% AMI	15.0%	15.0%	15.0%
Tier 2, 110% AMI	0.0%	0.0%	2.5%
Total	15.0%	15.0%	17.5%
* 1 IZ Rental Unit: at or below 80% AMI			
** 2+ IZ Rental Units: AMI of Tier 1 IZ units must average out at 65% AMI (1/2 of IZ units at 50% AMI and 1/2 at 80% AMI; or some IZ units at 65% AMI)			

Example:

- 31-unit rental development
The required number of Inclusionary Units that must be provided on-site would be as follows:
 - 15% at Tier 1 = 4.65; a total of 5 units at Tier 1, which must average out at 65% AMI
 - Option 1: 2 units at or below 50% AMI, 2 units at or below 80% AMI, and 1 unit at or below 65% AMI
 - Option 2: 3 units at or below 65% AMI, 1 unit at or below 50% AMI, and 1 unit at or below 80% AMI
 - Option 3: 5 units at or below 65% AMI
 - 2.5% at Tier 2 = 0.775; a total of 1 unit at Tier 2
 - Total IZ Units Required On-Site: 6 inclusionary units on-site, no fractional cash payment required

Number of Inclusionary Units Required: Ownership (April 2019 Staff Proposal)			
Tier Level	7-16 units*	17-20 units**	21+ units**
	Owner	Owner	Owner
Tier 1, 50% - 80% AMI	15.0%	10.0%	10.0%
Tier 2, 110% AMI	0.0%	5.0%	7.5%
Total	15.0%	15.0%	17.5%
* 1 or 2 IZ Ownership Units: at or below 80% AMI, priced at 70% AMI			
** 3+ IZ Ownership Units: Tier 1 units must not exceed 80% AMI (priced at 70% AMI), Tier 2 units may be set up to 110% AMI (priced at 100% AMI)			

Example:

- 18-unit ownership development
The required number of Inclusionary Units that must be provided on-site would be as follows:
 - 10% at Tier 1 = 1.8; a total of 2 units at Tier 1, set at or below 80% AMI (but priced to be affordable at 70% AMI)

- 5% at Tier 2 = 0.9; a total of 1 unit at Tier 2, set at or below 110% AMI (but priced to be affordable at 100% AMI)
- Total IZ Units Required On-Site: 3 inclusionary units on-site, no fractional cash payment required

Incentives for Additional IZ Units:

- If a project that is subject to the IZ provisions includes more than its required number of inclusionary units, a bonus of additional market-rate units will be offered to the project at a ratio of 2 to 1: for every additional inclusionary unit proposed, the project will be allowed to include 2 additional market-rate units.
 - The additional affordable units must be set at no more than 80% AMI (Tier 1 units), and the number of additional units shall not exceed 25% of the number of units otherwise allowed on the lot under lot area per dwelling unit requirements.
- In the event that an additional inclusionary unit is a family-sized unit (a 3-bedroom of greater than 1,100 square feet of size), the ratio shall be 3 to 1: for every additional 3-bedroom IZ unit proposed, the project will be allowed to include 3 additional market-rate units.

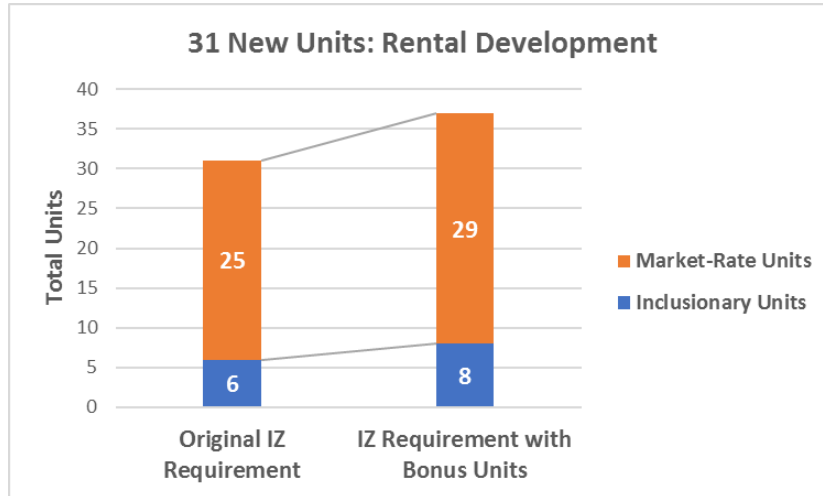
Example:

- A developer proposes to build a multifamily rental development, containing a total of 31 units; therefore, the total IZ requirement for the development would be 6 inclusionary units:
 - 25 market-rate units, and
 - 6 inclusionary units (5 units at Tier 1, and 1 unit at Tier 2 – see example above)

The developer then chooses to provide 2 additional affordable Tier 1 units, which provides the project with 4 additional market-rate units, for a total of 6 additional units. The project now includes 37 total units:

- 29 market-rate units, and
- 8 IZ units:
 - 7 units at Tier 1 (originally 5 units at Tier 1)
 - 1 unit at Tier 2
 - = 8 total inclusionary units (out of 37 total units; for a project that is now 21.6% affordable)

Note: the total number of additional units allowed for a project originally consisting of 31 new units is 8; $25\% \times 31 = 7.75$; for a total of no more than 39 total new units.



Maximum Monthly Housing Costs, Sale Prices and Rents:

- Rent and sale price limits are set based on the number of bedrooms in the applicable unit plus one, regardless of the actual number of persons that will occupy the unit.
- Rental: Total monthly housing costs for inclusionary rental units must not exceed 30% of the applicable household income limit for the inclusionary unit.
 - Total monthly housing costs for inclusionary rental units must include rent, utility costs for heat, water, hot water, and electricity, one parking space, and access to all amenities that are typically offered to a tenant in the development, such as access to an onsite fitness center, laundry facilities, etc.
- Ownership: Inclusionary ownership units must be priced to be affordable to a household having an income 10 percentage points lower than the household income limit for that unit.
 - The price is ‘affordable’ if the monthly housing payment, including mortgage principal and interest, private mortgage insurance, property taxes, condo and/or homeowner’s association fees, hazard insurance, and one parking space do not exceed 30% of the monthly income of a household at the applicable household size (number of bedrooms in the applicable unit plus one).

FY 2019 Income Limits Summary - Newton, MA						
Income Level	Household Size					
	1	2	3	4	5	6
30% AMI	\$24,900	\$28,450	\$32,000	\$35,550	\$38,400	\$41,250
50% AMI	\$41,500	\$47,400	\$53,350	\$59,250	\$64,000	\$68,750
65% AMI	\$53,950	\$61,620	\$69,355	\$77,025	\$83,200	\$89,375
70% AMI	\$58,100	\$66,360	\$74,690	\$82,950	\$89,600	\$96,250
80% AMI	\$62,450	\$71,400	\$80,300	\$89,200	\$96,350	\$103,500
99% AMI	\$82,170	\$93,852	\$105,633	\$117,315	\$126,720	\$136,125
100% AMI	\$83,000	\$94,800	\$106,700	\$118,500	\$128,000	\$137,500
110% AMI	\$91,300	\$104,280	\$117,370	\$130,350	\$140,800	\$151,250
120% AMI	\$99,600	\$113,760	\$128,040	\$142,200	\$153,600	\$165,000

3.) Cash Payment Option

Existing Ordinance:

Eligibility and Amount:

- Developments containing no more than 6 units may request through their Special Permit application to meet their IZ requirements through a payment-in-lieu of providing the inclusionary units on-site.
- For projects with greater than 6 units, payments-in-lieu are only allowed through the Special Permit process where the City Council makes specific findings to an “unusual net benefit to allowing a fee rather than the inclusionary units.”
- Fee-in-lieu Amount: First two units in a development are exempt from the fee-in-lieu. For the remaining units, fee equals 12% of sales price at closing of each unit or 12% of assessed value of each unit for rental projects.

Fractional Cash Payments:

- This provision is not included in the City’s existing IZ ordinance.

Cash Payment Recipient:

- Funds are distributed equally between the Newton Housing Authority and the Planning & Development Department.
- IZ funds are to be used exclusively for construction, purchase, or rehabilitation of housing for eligible households consistent with the IZ ordinance.

Proposed Ordinance:**Eligibility and Amount:**

- Developments with 7-9 units may choose to make a cash payment to the City in lieu of building the inclusionary units on site, without receiving permission from the City Council through the Special Permit process.
- For projects that fall outside of the 7-9 units category, payments-in-lieu are only allowed through the Special Permit process where the City Council makes specific findings to an “unusual net benefit to allowing a fee rather than the inclusionary units.”
- Fee-in-lieu Amount: Staff’s original proposal utilized the most current Massachusetts Department of Housing and Community Development’s (DHCD) Qualified Allocation Plan’s (QAP) “Total Residential Development Cost Limits” Index¹ as the basis for determining these payments. However, based on feedback from Councilors and stakeholders, staff has explored alternative models, including 1.) utilizing an average Total Development Costs / Unit for Newton-funded affordable housing project, or 2.) utilizing the value gap approach (the average differential between the value of a market-rate unit and an affordable unit in Newton).
 - The Newton Housing Partnership is still reviewing this provision and is expected to deliberate this issue, and others, at their upcoming meeting on May 14th. Staff will likely utilize the Partnership’s recommendation to update this section of the proposed ordinance.

Fractional Cash Payments:

- For projects where the inclusionary zoning requirement results in a fraction of a unit less than 0.5, the developer may contribute a fractional cash payment to the City to cover the fraction of that inclusionary unit requirement, without receiving permission from the City Council through the Special Permit process.
- Fractional Cash Payment Amount: Again, staff’s original proposal utilized the most current Massachusetts Department of Housing and Community Development’s (DHCD) Qualified Allocation Plan’s (QAP) “Total Residential Development Cost Limits” Index² as the basis for determining these fractional cash payments.
 - The Newton Housing Partnership is still reviewing this provision and is expected to deliberate this issue, and others, at their upcoming meeting on May 14th. Staff will likely utilize the Partnership’s recommendation to update this section of the proposed ordinance.

Cash Payment Recipient:

- These cash payments are deposited into the City’s Inclusionary Zoning Fund, which is distributed equally between the Newton Housing Authority (NHA) and the City of Newton.

¹ From the Commonwealth of Massachusetts Department of Housing and Community Development’s Low Income Housing Tax Credit Program 2018-2019 Qualified Allocation Plan, Appendix C, <https://www.mass.gov/files/documents/2018/04/26/20182019QAP.pdf>

² From the Commonwealth of Massachusetts Department of Housing and Community Development’s Low Income Housing Tax Credit Program 2018-2019 Qualified Allocation Plan, Appendix C, <https://www.mass.gov/files/documents/2018/04/26/20182019QAP.pdf>

- These funds are to be targeted for the restoration, creation, preservation, and associated supportive services, of deed-restricted units affordable to households with annual gross incomes at or below 80% AMI, as well as costs incurred by the City that are related to the monitoring of these units.
- Appropriation of the funds for use by the City or the Newton Housing Authority must first be approved by the Planning & Development Board, and then the Mayor.

4.) **Off-Site Development**

Existing Ordinance:

- Allowed through a Special Permit when applicant enters into a development agreement with a non-profit housing developer.
- Off-site units must be completed and occupied no later than the project's market-rate units.

Proposed Ordinance:

- Off-site inclusionary units are generally discouraged by this ordinance, and are only allowed through the Special Permit process where the City Council makes specific findings to an "unusual net benefit to achieving the City's housing objectives as a result of allowing the required units to be built off-site."
- Projects that receive such permission from the Council must form a development agreement with a non-profit housing developer for the development of the off-site affordable units.
 - Off-site units must be completed and occupied no later than the project's market-rate units;
 - Must provide a greater number of affordable units at a deeper level of affordability than what would have been provided if the required IZ units were to remain on-site;
 - Must provide a unit mix that is equivalent to what would have been provided on-site, as well as comparable sized units; and
 - Must provide an equivalent level of accessibility as what would have been provided if the required IZ units were to remain on-site.

5.) **Design & Construction**

Existing Ordinance:

- The key difference between the provisions of the existing ordinance and the proposed ordinance are as follows:
 - The existing ordinance uses the following minimums for habitable space, while the proposed ordinance utilizes DHCD's minimum square footage and bathroom requirements, per the most current Comprehensive Permit Guidelines:
 - 1 bedroom – 650 square feet
 - 2 bedrooms – 950 square feet
 - 3 bedrooms – 1250 square feet

- 4 bedrooms – 1550 square feet

Proposed Ordinance:

- The inclusionary units in a development must be indistinguishable from the market-rate units as viewed from the exterior, and the inclusionary units must contain complete living facilities, including a stove, kitchen cabinets, plumbing fixtures, a refrigerator, a microwave, and access to laundry facilities.
- The materials used and the quality of construction for the inclusionary units, including heating, ventilation, and air conditioning systems, must be equal to that of the market-rate units, provided that amenities such as a so-called designer or high end appliances and fixtures need not be provided for inclusionary units.
- The bedroom mix of the inclusionary units must be equal to that of the market-rate units.
- The inclusionary units must meet the following size specifications:
 - Must be comparable in size to that of the market-rate units;
 - Whichever is greater of the two:
 1. Must meet the minimum square footage and bathroom requirements, as required by DHCD's most current Comprehensive Permit Guidelines.
 2. Must have habitable space of not less than 60% of the average square footage of the market-rate units with the same number of bedrooms; and
 - The total habitable space of inclusionary units in a proposed development shall not be less than 10% of the sum of the total habitable space of all market-rate and all inclusionary units in the proposed development.
- The inclusionary units, and their associated parking spaces, must be proportionately distributed throughout a project and must not be located in less desirable locations than the market-rate units.
- At a minimum, the inclusionary units must have an equivalent level of accessibility to that of the market-rate units.
- The inclusionary units must have equal access to all amenities that are offered to the market-rate units in a project, such as parking, onsite fitness center, laundry facilities, and community rooms.

6.) Inclusionary Housing Plans & Covenants

Existing Ordinance:

- These provisions of proposed ordinance mirror those of the existing ordinance (see below); however, the proposed ordinance removes the following:
 - The stated requirement that the Newton Housing Authority review the applicants' Inclusionary Housing Plans;

- Mention of the Newton Housing Authority in Section 5.11.9.E, which states that the Housing Authority is responsible for maintaining a waiting list of eligible households for applicable inclusionary housing projects.

Proposed Ordinance:

- Prior to receiving a Building Permit from the City, the developer must submit a draft Inclusionary Housing Plan for review and final approval by the Director of Planning and Development. The plan must include, among other elements, a description of the proposed project, the total number of market-rate and inclusionary units, floor plans indicating the location, size and number of bedrooms and bathrooms per unit for all the units in the project, and the projected rent levels and sale prices for all the units.
- The developer must also submit a draft Affirmative Fair Housing Marketing and Resident Selection Plan for review and final approval by the Director of Planning and Development. At a minimum, this plan must meet the requirements set out in the Comprehensive Permit Guidelines of the DHCD, and provide for a Newton local preference for up to 70% of the inclusionary units in a project.
- The inclusionary units must be marketed and occupied consistent with the City and DHCD (or the relevant Subsidizing Agency) approved Affirmative Fair Housing Marketing and Resident Selection Plan. Marketing may not take place for **any** units in the project until the City and DHCD have approved this plan.
 - The developer is responsible for carrying out this plan, and must contract with an entity that has substantial and successful prior experience in each component of the Affirmative Fair Housing Marketing and Resident Selection Plan.
 - The inclusionary units and market-rate units of a project must be occupied at the same time.
- Tier 1 Inclusionary Units must be qualified as ‘Local Action Units’ pursuant to the requirements of the Comprehensive Permit Guidelines of the DHCD and, therefore, must be SHI-eligible units. All projects subject to the Inclusionary Zoning requirements must enter in an affordable housing deed restriction with the City, and in most cases, a Regulatory Agreement between the City, DHCD (or relevant Subsidizing Agency) and the developer. These affordable housing covenants must be recorded in the Registry of Deeds and will endure for the life of the residential development.

7.) Public Funding Limitation

Existing Ordinance:

- Projects subject to the inclusionary housing provisions are prohibited from using public development funds to construct inclusionary units required through the IZ ordinance.
- However, such projects may use public funds to construct those inclusionary units that are found by the Director of Planning & Development to be consistent with the following:

- Represent a greater number of affordable units than are otherwise required;
- Those that are at a deeper level of affordability than what is required by the IZ ordinance (by at least 10 percentage points); and
- Those that exceed regulatory requirements in providing for persons with disabilities.

Proposed Ordinance:

- The proposed provision mirrors the existing ordinance language.

8.) Elder Housing with Services

Existing Ordinance:

- The City Council determines whether the contribution shall be residential beds or units or a cash payment.
- Contribution = 2.5% of annual gross revenue calculation; the amount of the contribution amount shall be determined by the Director of Planning & Development, based on analysis of verified financial statements and associated and relevant data.

Proposed Ordinance:

- 5% of the total number of beds provided as part of an Elder Housing with Services project must be affordable for seniors age 62 or older whose annual gross incomes are at or below 80% AMI.
 - Where the IZ requirement results in a fraction of a unit greater than or equal to 0.5, the developer must provide one inclusionary bed to capture that fraction.
- Housing and base services provided to households occupying the affordable inclusionary beds must be comparable to those offered to the market-rate residents.
- Monthly housing and service costs, inclusive of entrance fees, rent or monthly occupancy fees, amenities, and base services offered to all residents regardless of income status, must not exceed a fixed percentage of the applicable household income limit for that inclusionary bed, based upon the type of elder housing with services facility.
- Independent Living: Monthly housing and service costs must not exceed 15% of the applicable household income limit for that inclusionary bed (which is 80% AMI).
- Assisted Living: Monthly housing and service costs must not exceed 30% of the applicable household income limit for that inclusionary bed (which is 80% AMI). The services provided to these households must be comparable to the base services offered to all residents, regardless of income status, including long-term health care, nursing care, home health care, personal care, meals, transportation, convenience services, social, cultural, and educational programming, and the like.

- Continuing Care Retirement Communities (CCRC's): The on-site requirement for Elder Housing facilities of this type shall be negotiated with the City Council on a case-by-case basis. The City may consult with an expert consultant to determine an appropriate and fair requirement based on the specifics of the proposed project.
- 100% Deed-Restricted Affordable Facilities: Elder Housing with Services projects that provide 100% of their units as deed-restricted affordable for seniors whose annual gross incomes are at or below 150% AMI are not required to comply with the prescribed percentage requirements per income level, as detailed in the proposed ordinance. However, projects that are 100% deed-restricted affordable are still subject to all other applicable sections of the ordinance.
- Payment-in-lieu: Alternatively, Elder Housing with Services projects may choose to meet their Inclusionary Zoning requirement through a payment-in-lieu, without receiving permission from the City Council through the Special Permit process. Staff's original proposal utilized DHCD's Qualified Allocation Plan Index for "Single Room Occupancy / Group Homes / Assisted Living / Small Unit Supportive Housing" of \$259,000, coupled with the calculation of 5% of the total number of beds provided in the project.
 - As discussed above, the Newton Housing Partnership is still reviewing this provision and is expected to deliberate this issue, and others, at their upcoming meeting on May 14th. Staff will likely utilize the Partnership's recommendation to update this section of the proposed ordinance.

9.) No Effect on Prior or Existing Obligations

- No change proposed with proposed ordinance.

10.) Inclusionary Housing Program Reevaluation Requirement

Existing Ordinance:

- This provision is not included in the City's existing IZ ordinance.

Proposed Ordinance:

- The City shall initiate a reevaluation of the Inclusionary Housing Requirements every 5 years.
- This reevaluation will include a report provided to the City Council, reviewing factors such as changes in demographic characteristics and residential development activity, housing trends measured in terms of, but not limited to, vacancy rates, production statistics, prices for dwelling units, and affordability, and the relationship between Inclusionary Housing Projects and all housing in Newton.
- The Department of Planning and Development will also conduct an annual review and report on the Inclusionary Housing Program.

11.) Effective Date**Existing Ordinance:**

- This provision is not included in the City's existing IZ ordinance.

Proposed Ordinance:

- The effective date of the new IZ ordinance will be a specified date after the amended ordinance is adopted by the City Council and signed by the Mayor.
- The provisions of the amended ordinance will only apply to projects that receive a Special Permit (or building permit in the case where a special permit is not required) after this effective date.

Printed Attachments:

- Staff's responses to stakeholder questions / comments

Digital Attachments / Additional Documents:

- Proposed Inclusionary Zoning Ordinance text (clean version), November 9, 2018:
<http://www.newtonma.gov/civicax/filebank/documents/92905>
- Proposed Inclusionary Zoning Ordinance Guidebook (November 9, 2018):
<http://www.newtonma.gov/civicax/filebank/documents/93001>
- City of Newton Inclusionary Zoning: Financial Feasibility Analysis, prepared by RKG Associates, Inc., March 2018 (not attached, but can be found on the City's IZ website:
<http://www.newtonma.gov/civicax/filebank/documents/91410>)
- Further detail and additional memos and supporting documents can be found on the City's Inclusionary Zoning website:
http://www.newtonma.gov/gov/planning/lrplan/inclusionary_zoning.asp



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Inclusionary Zoning Ordinance Update Responses to Stakeholder Questions / Comments (updated 5.10.19)

The following is a list of archived questions and comments from stakeholders during the Public Hearing process for the Inclusionary Zoning ordinance update. The Planning Department has provided answers and/or responses to each of these statements.

1.) I would suggest that the middle-income tier go up to 120% AMI (not 110%) consistent with other state and federal programs.

The Planning Department chose to cap the Tier 3 Middle-Income limit at 110% AMI rather than 120% AMI for a few reasons. First, rent levels at 120% AMI are close to approaching market-rate rents in Newton for many non-new construction units; therefore, the opportunity to find housing is slightly less constrained as one approaches the 120% AMI level.

Secondly, by setting the limit at 110% AMI, versus 120% AMI, we are hoping to expand the window of opportunity to a greater number of income-eligible households. If the limit for Tier 3 units is set at 120% AMI, developers will likely set the rents and sale prices for these units as high as they are allowed (right at that 120% AMI level), making these units affordable only to households closer to that 120% AMI level. The likelihood that a household with an annual income between 81% AMI and 100% AMI would be able to afford rents set at 120% AMI is low.

For example, the maximum affordable monthly rent for a 2-bedroom unit set at 120% AMI is \$2,913, whereas the maximum affordable rent for a 2-bedroom unit set at 85% AMI and 100% AMI is \$2,063 and \$2,427, respectively. That is a monthly difference of \$485 and \$849 – a large amount of additional money for a family of three to spend on housing each month

2.) It is not realistic to obtain units at the extremely low-income level (30% AMI) via inclusionary zoning. It is a commonly held understanding in affordable housing that rental assistance (federal Section 8 or state MRVP) is needed to serve extremely low-income households.

Staff believes that while obtaining units at the extremely low-income level through inclusionary zoning is very challenging, it should not be seen as impossible. As discussed in previous memos to the Zoning & Planning Committee, staff has begun to explore an alternative compliance option for those

rental projects that provide on-site a percentage of their total units for households with annual incomes at or below 30% AMI. This option would allow a project to reduce its overall inclusionary zoning requirement by at least five percentage points if at least 2.5% of its total units are designated for extremely low-income households.

We understand that projects that choose this option would require project-based subsidies, as well as ongoing funding to pay for the necessary supportive services for these extremely low-income households. As such, the developer would be required to partner with a City-approved agency that specializes in this type of housing, and in providing supportive services for individuals and families in this income bracket. The agency would be engaged early on in the development process to work in partnership with the developer to identify and secure the necessary funding to bring these units online, and to ensure the successful tenancy of the households residing in these units.

While this alternative compliance option will not be appropriate for every project subject to the inclusionary zoning requirements, certain projects may be suitable for providing these units and services for our City's most vulnerable individuals and families, whose housing options are incredibly constrained. Staff has held a number of conversations with developers and service providers who specialize in servicing this population. These experts have been supportive of our proposed concept and see this alternative compliance option as a viable way to create much-needed units for a vastly underserved population. In addition, we have begun to share this concept with for-profit developers in Newton who have experience with inclusionary zoning requirements. To date, developers have expressed an openness to learning more about this compliance option and exploring whether such a requirement might be a fit for future projects.

3.) The draft contains incorrect references. For example, the definition of “Deed-Restricted Affordable Unit(s)” references the “Subsidizing Agency,” which is a concept relevant to MGL Chapter 40B. There is no “Subsidizing Agency” in a Special Permit project. The draft references DHCD Guidelines dated June 1, 2009, which is a very outdated reference. The applicable guidelines are dated December 2014.

Staff disagrees with the first statement made in this comment. The definition provided in our current proposal for a “Deed-Restricted Affordable Unit(s)” properly references the “Subsidizing Agency and monitoring agent, *if applicable*....” Later in the proposed ordinance, Section 5.11.3.E. states that “All Inclusionary Units affordable to households at or below 80% of AMI must be qualified as ‘Local Action Units’ pursuant to DHCD Guidelines.” For the inclusionary units that must qualify as Local Action Units, DHCD does act as the Subsidizing Agency through its Local Initiative / Local Action Units Program. Further, it is likely that some of the projects subject to our updated inclusionary zoning ordinance will seek a public subsidy from MassHousing through its Workforce Housing Program (for Tier 2 units). In this case, MassHousing would be the Subsidizing Agency.

With regard to the second statement made in this comment, staff acknowledges the clerical error in the draft ordinance, which references DHCD Guidelines dated June 1, 2009, and will update the proposed text accordingly.

- 4.) The provision for calculating the maximum allowable rent is unworkable. Proposed Section 5.11.4.E.1 calls for the rents to “not exceed 30% of the monthly income for the applicable eligible household.” This will render the development incapable of obtaining financing as no lender will lend on a project where rents increase or decrease as tenant incomes change. The current ordinance correctly references tying rents to income *limits* (see existing Section 5.11.4.B.3).**

Staff acknowledges this clerical error and agrees that the rents for inclusionary units “must not exceed 30% of the applicable household income limit for the inclusionary unit.” This text will be updated accordingly.

- 5.) State cost limits for funding should not be used to calculate cash payment amounts. DHCD’s cost limits are utilized for funding purposes in a scarce subsidy environment. They are guidelines and exceptions are frequently allowed. In addition, other mechanisms like ground leases are frequently used to take costs off-budget. The RKG report identified other more appropriate ways to determine the appropriate cash payment amount and those should be explored further.**

As discussed in great detail at the February 19th Inclusionary Zoning Roundtable with the housing advocates, staff will continue to explore alternative options for calculating the cash payment amounts related to the inclusionary zoning requirements. This is one of the items the Newton Housing Partnership is currently assessing, and will provide staff and ZAP with their recommendation prior to the June Public Hearing.

- 6.) Cash payments to the City of Newton should go to the Community Preservation Committee. The Newton Housing Authority has made good use of their share of inclusionary zoning payments but there has been a complete lack of transparency regarding the 50% provided to the City of Newton. How much money is available and how does an affordable housing developer apply for it? The City’s 50% should be provided to the CPC which has a fair and transparent process for allocating funds.**

Currently, to appropriate funding from the City’s IZ account, a recommendation for use of the funds must first be made by the Mayor and then voted on by the City Council. The same process applies for accessing the Newton Housing Authority’s half of the fund.

At this time, there is no formal process for how a developer would apply for the City’s IZ funds. However, if changes made to the inclusionary ordinance result in the potential for the generation of a larger amount of IZ funds on a more regular basis, the Planning Department will work with the Mayor to develop a written process for the use and approval of the City’s Inclusionary Zoning Funds.

As of October 2018, there was a balance of \$265,672 in the City’s half of the Inclusionary Zoning Fund. The last appropriation from the City’s IZ account was for \$41,080 in November 2017, to assist the Newton Housing Authority in the repayment of HOME funds for the sale of 83-85 West Street.

- 7.) Existing language regarding proportional rent-up should not be eliminated. The language in existing Section 5.11.4 requiring inclusionary units “at each point” in the marketing of the development should be retained in the ordinance.**

Staff has no issue with retaining this language in the new ordinance and will update the proposed text accordingly.

- 8.) The City should charge a monitoring fee. Oversight of inclusionary developments is critical and developers ought to pay a reasonable monitoring fee so that the City has resources for this important function (could be outsourced to an entity with experience in this area).**

Staff is exploring this concept and will report back to the Zoning & Planning Committee with our findings in terms of a reasonable amount to charge as a monitoring fee and how this requirement would be included in the updated ordinance.

- 9.) Section 5.11.4.D. – Why not density bonus of up to 30% (that’s the # Cambridge uses).**

As discussed with the Zoning & Planning Committee over the past year, in its current form, the “Incentives” section of the existing IZ ordinance (1 unit granted for each additional inclusionary unit provided above the number required per the ordinance) is vastly underutilized. While the current incentive bonus may be beneficial to a project’s financial feasibility, the request for increased density often presents more issues than solutions for a proposed project in the development review process with Council.

- 10.) 5.11.4.E. - I’m torn on parking – because I think it’s passe and to be discouraged. Do we want to leave flexibility for allowing purchased parking – rather than required parking? Cambridge provides that parking spaces be available at a pro-rata (affordable rent/market rent) reduced cost.**

Staff believes that the cost of a parking space should be included in the monthly housing costs for the inclusionary units, which should not exceed 30% of the applicable household income limit for the inclusionary unit. While the market-rate units may be offered parking at an additional cost to the tenant, the cost of parking should not be an additional financial burden for the households residing in the affordable units. If these households do not require the use of the space, the developer could offer the space to a market-rate tenant willing to pay for the amenity.

- 11.) 5.11.5.A.2. - Increase to 20% if cash only? This would help address my concern in 5.11.5.**

Staff will consider this idea as we continue to explore alternative options for calculating the cash payment amounts related to the inclusionary zoning requirements.

- 12.) 5.11.5.B. - Shouldn’t the alternative of cash payments for 7-9 units be increased be as follows:**

$$7\text{-unit project: } 7 \times 15\% \times \$389,000 = \$408,450$$

**8-unit project: 8 x 15% x \$389,000 = \$466,800 etc.
As drafted – the effective IZ rate is 10%**

Staff utilized this decreasing percentage calculation for projects with 7-9 units to account for the fact that smaller-scale projects are more sensitive to inclusionary zoning requirements, given their inability to spread these costs across a substantial number of market-rate units. Rather than require these smaller projects to pay a large fee-in-lieu to meet their IZ requirement, staff felt the decreasing percentage methodology was a fair balance between capturing value from these projects and not pushing them towards financial infeasibility. However, staff will consider this idea as we continue to explore alternative options for calculating the cash payment (and fractional cash payment) amounts related to the inclusionary zoning requirements.

13.) 5.11.5.E. - I personally like the idea of having the City's share of IZ funds being under mayoral/planning department control – leading to more flexible usage than requiring to go through the political gauntlet of City Council.

Staff will take this comment under consideration as we continue to look at this provision.

14.) 5.11.6.A. Off-site. - We should explicitly add “more and deeper affordability” to the list of factors being considered. Boston requires a significant affordable unit count increase (13% to 18%) for off-site developments, and also has a vicinity requirement. On the “deeper affordability” aspect of this – this is where I would hope we can get more Tier 1 units.

Staff is open to exploring this idea and will look at updating this provision accordingly.

15.) 5.11.9. Public funding limitation – This is a good and important provision – however, should we add a provision that the Director determine that the public funds are, at a minimum, commensurate with the additional affordability provided? Otherwise a little affordability could be used to justify a lot of other public funds.

Staff is open to exploring this idea and will look at updating this provision accordingly.

16.) Cambridge requires larger projects (>30,000 sq ft) to provide an increased # of family affordable units (i.e. 3 bed, >1,100 sq ft) – even if that skews the other #'s. It's a complicated formula – but the idea is that modern rental projects often have very few 2+ bedroom units, and this is a way to get some affordable family ones as part of the mix.

Staff is open to exploring this idea and will look at updating this provision accordingly.

17.) Could hotels be required to make a cash payment into the IZ fund? Office buildings? Cambridge (admittedly a very different community on this aspect) has an “Incentive Projects” provision which requires cash payments into the fund based on a per sq. ft charge for hotels, offices, etc.

Staff recommends not including this idea of Linkage Fees in the updated Inclusionary Zoning ordinance. This concept could be an appropriate one for the new Newton Housing Partnership to explore, along with other potential sources of funds for supporting affordable housing.

**18.) Do we want to get into the weeds of what to do when tenants become over-income?
Cambridge has a very explicit process that in essence seems to create a ‘next available unit’ rule.**

As stated in the proposed ordinance, Tier 1 and Tier 2 Units must be qualified as ‘Local Action Units’ pursuant to DHCD’s Chapter 40B Guidelines, and Tier 3 Units must be consistent with the Local Action Units requirements. Per DHCD’s Guidelines:

“Tenants Who Become Over-Income: If, after initial occupancy, the income of a tenant of an affordable unit increases and exceeds the maximum allowable income at the time of annual income determination, such an Update in income shall not affect the treatment of the Project or the unit with respect to the SHI provided that the Owner is in compliance with the related Revised December 2014 SHI II - 5 provisions of the affordability restriction. If the affordability restriction does not address the matter of over-income tenants, then such a change in income shall not affect the treatment of the Project or the unit with respect to the SHI provided that either (i) the tenant’s income does not exceed 140% of the maximum allowable income, or (ii) the owner rents the next available unit as an affordable unit to an eligible tenant pursuant to the terms. If, after initial occupancy, the income of a tenant of an affordable unit increases and exceeds 140% of the maximum allowable income at the time of annual income determination, then at the expiration of the tenant’s lease term, the rent restrictions will no longer apply to the tenant.

19.) One additional new item that was not in those previous comments and discussions are proposed changes creating authority to use a portion (up to 15%) of available IZ funds for supportive services for Tier 1 tenants in units created by the ordinance.

Staff is open to exploring this idea and will look at updating this provision accordingly.



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Barney S. Heath
Director

MEMORANDUM

DATE: May 10, 2019

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

FROM: Barney Heath, Director, Department of Planning and Development
James Freas, Deputy Director of Planning
Rachel Nadkarni, Long Range Planner

RE: **#128-19 Zoning Amendment for short-term rentals**
DIRECTOR OF PLANNING proposing to amend Chapter 30, City of Newton Zoning Ordinances, in order to create a short-term rental ordinance that defines the short-term rental and bed & breakfast uses, identifies what zoning districts they would be allowed in and under what criteria, conditions, limitations and permitting process.

#136-19 Short-term rental ordinance with fees
DIRECTOR OF PLANNING proposing amendments to Chapter 20 and 17 of the Revised Ordinances of the City of Newton to create a short-term rental ordinance with fees that would require registration of short-term rentals with the City's Inspectional Services Department and fire inspections to protect public health and safety.

MEETING: May 13, 2019

CC: Planning and Development Board
John Lojek, Commissioner of Inspectional Services
Alissa O. Giuliani, City Solicitor
Marie Lawlor and Jonah Temple, Law Department
Jonathan Yeo, Chief Operating Officer

The Zoning and Planning Committee discussed the proposed Short-Term Rental Ordinances on April 8, 2019. The memo below and attached ordinance language reflects changes based on comments from Councilors and continuing study by members of the Planning and Law Departments. There are a number of policy decisions that must be made, outlined below. Staff are requesting that this item be scheduled for a public hearing on June 10th. The State law governing short-term rentals will go into effect July 1.

Summary of Changes

General Ordinance – The changes in the general ordinance overall are intended to reinforce the enforceability of the ordinance, ensuring there are multiple avenues of accountability and clear liabilities

for not meeting the requirements of the ordinance. The key changes to the proposed ordinance can be found in Sec. 20-162. All changes from the previous April 8th draft are highlighted.

Zoning Ordinance – The attached draft zoning ordinance sections present options for the Committee to discuss, which address the central policy question of what level of short-term rental activity will be allowed in Newton.

The key question is whether to allow short-term rentals as a primary use, meaning there is no permanent resident and the only use of the property is as a short-term rental. The April 8th draft presented this use as allowed only by special permit. Staff based this initial proposal on a recognition that the problem properties have only been those where the short-term rental is the primary use (thus the special permit requirement) balanced against the idea of not completely denying residents of this option.

Should the Committee wish to remove or limit short-term rentals as a primary use, there are several options:

1. Short-term rentals as a primary use not allowed anywhere;
2. Short-term rentals allowed as a primary use in one unit of a two or three family building where the owner of the property lives in one of the other units;
3. Short-term rentals allowed as a temporary use by special permit. Some companies are exploring working with rental developments to temporarily lease units as short-term rentals during the initial lease-up of a building or otherwise during vacancies, as a combination early revenue source and marketing tool (like trying a unit on for size).

If option one is selected, there is no consideration necessary of the Community Impact Fee as that is only applicable to professionally managed units (primary use) or units such as described in option 2. The fee would apply to units under option 3.

Many questions were raised in the April 8th meeting regarding the enforceability of the proposed time limits on the number of days the accessory short-term rental use would be allowed. Overall, there would be three checks against violation of these time limits; the fine for violating the zoning ordinance, neighbor complaints, and the State short-term rental registry. While the ordinance places the burden of proof that the ordinance has not been violated on the operator of the short-term rental, the state registry will likely be the most important tool available for confirming the number of days a unit has been rented. The most challenging time limit will be the differentiation on the number of days a unit has been rented where the resident of the unit is present or not, which may not be tracked by the state registry.

Staff recommends that the maximum number of rental days for an accessory short-term rental be made 45 days recognizing both the enforcement challenge noted above and the fact that the purpose of ensuring that the short-term rental is the operator's primary residence and far less likely to become a neighborhood nuisance is met by the 45 day limit whether or not the operator is physically present at the time of the rental or not, especially when coupled with the rules in the proposed general ordinance.

The proposed bed & breakfast provisions have been changed to restrict the use to owner-occupied properties and remove references to the use in accessory buildings. Bed & Breakfasts are proposed to require a special permit, which will be reflected in the land use tables. Staff is not recommending that short-term rentals be restricted only to property owners so that renters can also take advantage of the

opportunity for extra income presented by short-term rentals. The ordinance does require that a renter present evidence of the owner's permission for registration.

Overall, staff recommends that this set of zoning and general ordinance rules will accomplish the overall goal of reasonably regulating short-term rentals in Newton while allowing some opportunity for the personal and economic benefits they present.

Attachments

Attachment A – City of Newton General Ordinance Amendment for Short-Term Rentals (May 6, 2019).

Attachment B – City of Newton Zoning Ordinance Amendment for Short-Term Rentals (May 7, 2019).
Alternatives 1 – As presented April 8th and Alternative 2 – Only as an accessory use.

Attachment C - City of Newton Zoning Ordinance Amendment for Bed & Breakfasts.

[CHAPTER 20]
Article IX
SHORT TERM RENTALS

Sec. 20-160. Definitions.

The meaning of the terms used in this article shall be as follows:

- (a) *Commissioner*: The commissioner of inspectional services.
- (b) *Operator*: A person operating a short-term rental in the City including, but not limited to, the owner or proprietor of such premises, the lessee, sublessee, mortgagee in possession, licensee or any other person otherwise operating such short-term rental.
- (c) *Occupancy*: The use or possession or the right to the use or possession of a room in a Short Term Rental normally used for sleeping and living purposes for a period of not more than 31 consecutive calendar days, regardless of whether such use and possession is as a lessee, tenant, guest or licensee.
- (d) *Occupant*: A person who uses, possesses or has a right to use or possess a room in a Short Term Rental for rent under a lease, concession, permit, right of access, license or agreement.
- (e) *Professionally-Managed Unit*: 1 of 2 or more short-term rental units that are located in the City, operated by the same operator and are not located within a single-family, two-family or three-family dwelling that includes the operator's primary residence.
- (f) *Short Term Rental*: The rental of one or more bedrooms (along with any associated living areas) within a dwelling unit, or the rental of an entire dwelling unit, on an overnight or short-term basis of less than 30 days to guests. There are two types of Short Term Rental, an Accessory Short Term Rental and a Full-Time Short Term Rental.
 - a. Accessory Short Term Rental. The rental of one or more bedrooms within a dwelling unit as a short term rental where the use is accessory to the primary residential use of the dwelling unit.
 - b. Full-Time Short Term Rental. The rental of an entire dwelling unit as a short term rental where that use is the primary use of the dwelling unit and/or does not meet the requirements of an accessory short term rental.

Any terms not expressly defined in this article shall have the meaning prescribed by Massachusetts General Laws Chapter 64G, Section 1.

Sec. 20-161. Requirements for Short Term Rentals

- (a) **Compliance**. No Residential Unit shall be offered as a Short Term Rental except in compliance with the provisions of this section of the Newton Ordinances.

- (b) Registration. Operators of any Short Term Rental located in the City of Newton must register with the City in accordance with Sec. 20-162 of this ordinance.
- (c) No Outstanding Code Enforcement or Building Permits. Operators are prohibited from renting any Short Term Rental if the property is subject to an outstanding building, electrical, plumbing, mechanical, fire, health, housing or zoning code enforcement, including notices of violation, notices to cure, orders of abatement, cease and desist orders or correction notices, or if there are any outstanding building permits for the property.
- (d) Annual Certification. All Operators must file with the Inspectional Services Department a sworn certification attesting to continued compliance with the requirements of this article and all applicable public safety codes. Such certification shall be filed annually on the first business day of January.

Sec. 20-162. Registration Requirements.

Operators must register with the Inspectional Services Department prior to the occupancy of any Short Term Rental that commences after July 1, 2019 by submitting the following:

- (a) State Certificate. A copy of the State certificate of registration issued in accordance with Massachusetts General Laws Chapter 62C, Section 67.
- (b) Local Operator Affidavit. A completed Local Operator Affidavit, in a form established by the Inspectional Services Department, that at minimum contains the following information:
 - 1) Contact information of Operator and agent/point of contact;
 - 2) Location of all Short Term Rentals in City;
 - 3) Description of operation and number of rooms/units that will be rented;
 - 4) Confirmation that there are no outstanding code enforcement or outstanding building permits;
 - 5) Signature of Operator certifying that Short Term Rental conforms to this ordinance and no outstanding code violations.
- (c) Smoke and Carbon Monoxide Certificate of Compliance. All Short Term Rentals must comply with the applicable smoke detector and carbon monoxide requirements for residential units set forth in Sec. 10-11 of these Ordinances and Massachusetts General Laws Chapter 148, Section 26E. Operators must schedule an inspection with the Fire Department and receive a Certificate of Compliance indicating that the property meets the smoke detector and carbon monoxide requirements prior to the first occupancy commencing after July 1, 2019. Operators shall be responsible for the smoke detector inspection/permit fee to be paid directly to the Fire Department as set forth in Sec. 17-10 of these Ordinances.
- (d) Additional Fire Detection Requirements for Full Time Short Term Rentals. Full Time Short Term Rentals that are occupied for more than 150 days in a calendar year shall be required to install and/or upgrade to a hard-wired fire detection system to current standards in accordance with Massachusetts General Laws Chapter 148 and the Massachusetts Comprehensive Fire Safety Code, 527 CMR 1.00, et seq..

- (e) Registration Filing Fee. At the time of registration, Operators must pay a filing fee of \$100, an amount established by the City Council. All applicable inspection fees shall be paid directly to the inspecting department at the time of inspection.
- (f) Local Contact. When registering, an Operator must provide his or her name and contact information, and, in the event that the Operator is not present during the Short Term Rental, the name and contact information of an individual who is able to respond in person to any issues or emergencies that arise during the Short Term Rental within two (2) hours of being notified. Contact information must include a telephone number that is active 24 hours per day to short term rental occupants and public safety agencies. This phone number shall be included in the registration of the Short Term Rental unit at the time of registration. Failure of the local contact to respond within the stated period shall constitute a violation of this ordinance.
- (g) Proof of Residence. When registering an Accessory Short Term Rental, an Operator must provide evidence that he or she resides in the dwelling unit a minimum of 275 days during each calendar year, as demonstrated by at least two of the following: utility bill, voter registration, motor vehicle registration, deed, lease, driver's license or state-issued identification.
- (h) Permission of Owner. An Operator must certify at the time of registration that he or she is the owner of the Short Term Rental or has permission from the owner to operate the Short Term Rental.
- (i) Notice to Abutters. The Operator shall, within thirty (30) after registration of a Short Term Rental, provide notice of such registration to all residential dwellings located within 300 feet of the Short Term Rental. Such notification shall include the contact information of the Operator and the local contact, and a reference this ordinance. Failure to provide such notice shall constitute a violation of this ordinance.

Sec. 20-163. Inspections.

- (a) Annual inspections are required for Full Time Short Term Rentals only and shall be conducted by the Fire Department. It is the responsibility of the Operator to schedule annual inspections with the Fire Department and to pay the required on-site inspection fee set forth in Sec. 17-10 of these Ordinances.
- (b) In addition to annual inspections, the Inspectional Services Department, Health and Human Services Department, and Fire Department may conduct further inspections of any Short Term Rental type as may be required to ensure safety and compliance with all applicable ordinances and local, state, and federal codes. All inspecting departments shall keep records of inspections and visits to the property throughout each year.

Sec. 20-164. Compliance with City Ordinances and State and Local Codes.

- (a) All Short Term Rentals shall comply with all applicable ordinances and local, state, and federal codes applying generally to residential properties in the City, including but not limited to the City's Zoning Ordinance, Chapter 30 of the Revised Ordinances of the City.

- (b) Short Terms Rentals shall not produce noise, vibration, glare, fumes, odors, traffic or parking congestion beyond that which normally occurs in the immediate residential area, nor shall any Short Term Rental result in the repeated disruption of the peace, tranquility, or safety of the immediate residential neighborhood.

Sec. 20-165. Community Impact Fee.

- (a) All Operators shall pay the City a community impact fee of three (3) percent of the total amount of rent for each transfer of occupancy of a professionally managed unit that is located within the City.
- (b) All Operators shall pay the City a community impact fee of three (3) percent upon each transfer of occupancy of a Short Term Rental unit that is located within a two-family or three-family dwelling that includes the Operator's primary residence.
- (c) The community impact fee under this section shall be paid monthly by the Operator to the City.
- (d) The City shall dedicate thirty-five (35) percent of the community impact fee collected under this section to affordable housing projects.

Sec. 20-166. Responsibilities of Operators.

- (a) General Responsibility. The Operator shall be responsible for the proper supervision, operation, and maintenance of the Short Term Rental in accordance with the requirements of this article and all other pertinent laws, regulations, and codes. The appointment of an agent shall in no way relieve the Operator from responsibility for full compliance with the law.
- (b) Commercial Events Prohibited. A Short Term Rental property shall not be used for a commercial event during its occupancy as a Short Term Rental. Commercial events include luncheons, banquets, parties, weddings, meetings, charitable fundraising, commercial or advertising activities, or other gatherings for direct or indirect compensation.
- (c) Agreements with Occupants. Operators may not enter into any rental agreements that are inconsistent with the terms of this article.
- (d) Minors. No Short Term Rental shall be rented to any unemancipated person who is younger than eighteen (18) years of age.
- (e) Occupant Registries. The Operator of every Short Term Rental must maintain, in permanent form, a registry log of occupants. It must include the names and home addresses of occupants, occupant's license plate numbers if traveling by car, dates of stay, and the room assigned to each occupant. The registry log must be available for inspection by any City official upon request.

- (f) Fire Prevention Notice. Operators shall post in a visible place inside the short-term rental unit information regarding the location of any fire extinguishers, gas shut off valves, fire exits and fire alarms in the unit and building.
- (g) House Rules. Operators shall institute house rules as necessary to prevent the Short Term Rental from being a cause of complaint to the Police Department or a cause of nuisance or annoyance to the neighbors or neighborhood.
 - 1) House rules should make occupants aware of the City's ordinances and the Operator's policies, which shall be in writing. At a minimum, house rules shall adequately address the following:
 - i. Noise control, including use of audio equipment that may disturb the peace
 - ii. Adherence to laws regarding disorderly behavior
 - iii. Proper garbage disposal
 - iv. Location of parking stalls on the property
 - v. Neighborhood parking regulations and restrictions
 - vi. Occupancy limits according to the City's Zoning Ordinance
 - vii. Any other provisions as may be required by City Officials.
 - 2) Operators shall ensure all occupants are aware of the house rules by distributing them prior to the date of occupancy and posting them in a visible place.
- (h) Egress and Access. Operators shall be responsible for ensuring that adequate egress is provided in accordance with the Massachusetts State Building Code, 780 CMR.
- (i) Maintenance. The building and all parts thereof shall be kept in good general repair and properly maintained.
- (j) Burden of Proof. The burden of proof is placed on the Operator to demonstrate that they are operating within the limits of this article.
- (k) False Information. Submission of false information shall be cause for the Commissioner to suspend or terminate an Operator's right to operate an accommodation.

Sec. 20-167. Enforcement, Violations and Penalties.

- (a) Enforcement. The **Inspectional Services Department and the Newton Police Department or their designees shall be responsible for enforcement of this ordinance**, including any rule or regulation promulgated hereunder, and shall institute all necessary administrative or legal action to assure compliance.
- (b) Notice of violation. The Commissioner or designee shall issue a written notice of any violation of this article to the Operator. Said notice shall describe the prohibited condition and order that it be remedied within thirty (30) days of receipt of the notice. If such condition is not remedied within that time, the Commissioner may take action to impose the fines described in these Ordinances at sec. 5-22 (g).

- (c) Penalties. Any Operator who violates any provision of this ordinance shall be subject to suspension or termination of the certificate to operate a Short Term Rental and a fine of not more than three hundred dollars (\$300.00) for each violation. Each day a violation occurs shall be a separate offense. The Commissioner shall notify the Massachusetts Commissioner of the Department of Revenue of all such suspensions or terminations. Where non-criminal disposition of this section by civil fine has been provided for in sections 17-22 and 17-23 of these revised ordinances, as amended, pursuant to the authority granted by G.L. c. 40, section 21D, said violation may be enforced in the manner provided in such statute. The civil penalty for each such violation is set forth in section 17-23(c).
- (d) Violations of building, health, or fire code. Any action by the Commissioner to suspend, terminate or issue fines under this section shall not bar any other separate action by any other City Department for health, fire safety, building code or any other violations.
- (e) Failure to Register. Any person who offers or operates a Short Term Rental without first registering with the City shall be fined one hundred dollars (\$100.00) per violation per day. Each day's failure to comply with a notice of violation or any other order shall constitute a separate violation.

Sec. 20-168. Effective Date.

This Ordinance shall take effect on July 1, 2019.

Sec. 20-169. Severability.

The provisions of this article are severable. If any provision, paragraph, sentence, or clause, of this article or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this article.

Sec. 20-170. Reserved.

2. In a Limited Manufacturing district, restaurant, pastry shop, coffee shop, fast food establishment, drive-in food service establishment, or other such establishment when such establishment dispenses food products between 10:30 p.m. and 6:00 a.m., but not including in this paragraph any such business operated as part of a hotel or motel.
3. In a Mixed Use 1 district, restaurants and businesses which hold a Common Victualler-All Alcoholic, or Common Victualler-Wine/Malt Beverages license issued by the licensing authority of the City, provided that a free-standing restaurant or business shall contain a minimum of 5,000 square feet of gross floor area.
4. In a Mixed Use 2 district, restaurants over 50 seats, and such businesses which hold a Common Victualler – All Alcoholic or Common Victualler-Wine/Malt Beverages license issued by the licensing authority of the City.
5. In the Mixed Use 3 district, restaurants with more than 5,000 square feet of gross floor area.
6. In the Mixed Use 4 district, restaurants having more than 50 seats and extended hours of operation.
7. In all districts, outdoor sidewalk seats permitted under revised Ordinances Chapter 12, Section 12-70 shall be excluded from the total number of seats used to determine the review process.

(Rev. Ords. 1973 §24-1; Ord. No. S-260, 08/03/87; Ord. No. X-20, 05/06/02; Ord. No. A-13, 03/18/13)

6.4.31. Retail Sales

- A. **Defined.** Retail sales, including but not limited to specialty food store, convenience store, newsstand, bookstore, food coop, retail bakery, and general merchandise.
- B. **Standards.**
 1. In a Mixed Use 1 district, a free-standing retail structure shall contain a minimum of 5,000 square feet of gross floor area.

(Ord. No. Z-108, 04/17/12)

6.4.32. Service Establishment

- A. **Defined.** Business service establishments, including but not limited to copying and printing establishments and shipping services.

(Ord. No. Z-108, 04/17/12)

6.4.33. Short-Term Rentals

- A. **Defined.** The rental of one or more bedrooms (along with any associated living areas) within a dwelling unit, or the rental of an entire dwelling unit, on an overnight or short-term basis of less than 30 days to guests. There are two types of Short-Term Rental, an Accessory Short-Term Rental and a Primary Use Short-Term Rental.

1. Accessory Short-Term Rental. The rental of one or more bedrooms within a dwelling unit as a short-term rental where the use is accessory to the primary residential use of the dwelling unit.
2. Primary-Use Short-Term Rental. The rental of an entire dwelling unit as a short-term rental where that use is the primary use of the dwelling unit.

B. Required Standards for All Short-Term Rentals.

1. A resident seeking to operate a Short-Term Rental must register with the City in accordance with Sec. 20-162 of the Revised Ordinances of the City of Newton.
2. There may be no signage associated with a Short-Term Rental.
3. The burden of proof is placed on the resident registered with the City as the operator of the Short-Term Rental to demonstrate that they are operating within the limits of this section.

C. Required Standards for Accessory Short-Term Rentals.

1. The resident of the dwelling unit must occupy the dwelling unit for a minimum of 275 days during each calendar year.
2. The accessory short-term rental use is limited to no more than 30 days per year while the resident of the dwelling unit is in residence and no more than 15 days per year while the resident of the dwelling unit is not in residence.

3. The total number of residents and guests may not exceed the maximum household occupancy of a dwelling unit according to Sec. 3.4.2.

4. The maximum number of bedrooms on the site that can be rented to overnight or short-term guests is 2.

D. Required Standards for Primary-Use Short-Term Rentals.

1. The total number of residents and guests may not exceed the maximum household occupancy of a dwelling unit according to Sec. 3.4.2.

2. A Primary-Use Short-Term rental requires a special permit, according to Sec. 7.3.

6.4.34. Stable

A. Defined.

1. **Private.** A building or part of a building in which 1 or more horses are kept and used in connection with the business of the owner or tenant for other purposes than sale, rent or hire.

2. **Public.** A building or part of a building in which horses are kept for compensation.

(Rev. Ords. 1973 §24-1)

6.4.35. Taxidermist

A. Defined. [reserved]

6.4.36. Vehicle Repair Shop

A. Defined. A building or part of a building in which repairs are made to motor vehicles, or a repair shop in a garage or other building in which heavy machinery is used. An automobile school shall be regarded as a vehicle repair shop.

1. **Minor.** A part of a garage where minor structural repairs are made to motor vehicles for profit, by means of lathes, vises and other appliances, but not by means of heavy machinery.

2. **Major.** [reserved]

(Rev. Ords. 1973 §24-1)

6.4.37. Vehicle Sales and Service Facility

A. Defined. The display, sales, storage and service of motor vehicles and the repair of motor vehicles performed in connection with said sales.

B. Standards. In the Business 2 and Mixed Use 1 districts, no lighting shall be allowed except such as is necessary for the safety and protection of the public and prospective purchasers and such reasonable display lighting of the vehicles as the City Council shall approve.

(Ord. No. S-260, 08/03/87; Ord. No. V-44, 11/20/95)

6.4.38. Veterinary Hospital

A. Defined. [reserved]

B. Standards. In the Mixed Use 4 district, a veterinary hospital is allowed by special permit, but may not have overnight boarding not related to medical care.

(Ord. No. V-87, 07/06/96)

Attachment B: Zoning Ordinance Amendments for Short-Term Rentals, Alternative 2.

- i. A number of nonresident employees greater than that permitted under Sec. 6.7.5.B;
- ii. The utilization for the purpose of the home business of more than 30 percent of the ground floor area of the dwelling unit;
- iii. The presence of more than 3 customers, pupils, or patients for business or instruction at any one time, subject to the provision of a number of parking spaces sufficient to accommodate the associated activity;
- iv. The use of a detached accessory building, exterior structure, or land outside the residence for the primary purpose of, or accessory to the home business; provided, however, that no home business shall be permitted in any detached accessory building which is used as an accessory apartment pursuant to the provisions of Sec. 6.7.1.C. or Sec. 6.7.1.D.; and
- v. The waiver of the off-street parking requirement.

2. In Multi-Residence Districts. The City Council may grant a special permit for a home business in accordance with standards listed in Sec. 6.7.3

(Ord. No. 191, 01/17/77; Ord. No. S-260, 08/03/87; Ord. No. T-264, 03/01/93; Ord. No. B-2, 02-20-18)

6.7.4. Scientific Research and Development Activities

- A. **Defined.** Activities necessary in connection with scientific research or scientific development or related production, accessory to activities permitted as a matter of right, so long as it is found that the proposed accessory use does not substantially derogate from the public good.
- B. **Standards.** Notwithstanding anything in this Sec. 6.7.4, no recombinant DNA research shall be permitted as an accessory use.

(Ord. No. R-238, 03/15/82)

6.7.5. Short-Term Rental

- A. **Defined.** The rental of one or more bedrooms (along with any associated living areas) within a dwelling unit on an overnight or short-term basis of less than 30 days to guests. The use is accessory to the primary residential use of the dwelling unit.
- B. **Standards.**
 1. A resident seeking to operate a Short-Term Rental must register with the City in accordance with Sec. 20-162 of the Revised Ordinances of the City of Newton.
 2. There may be no signage associated with a Short-Term Rental.
 3. The burden of proof is placed on the resident registered with the City as the operator of the Short-Term Rental to demonstrate that they are operating within the limits of this section.
 4. The resident of the dwelling unit must occupy the dwelling unit for a minimum of 275 days during each calendar year.
 5. The short-term rental use is limited to no more than 45 days per year.
 6. The total number of residents and guests may not exceed the maximum household occupancy of a dwelling unit according to Sec. 3.4.2.
 7. The maximum number of bedrooms on the site that can be rented to overnight or short-term guests is 2.
 8. Two or Three-Unit Buildings. Where the owner of a two or three-unit building occupies a unit within that building, the owner may operate a Short-Term Rental in any one of the units in the building, subject to the standards listed above.
 9. Temporary During Leasing. Short-Term Rentals in multi-unit buildings with a minimum of 10 units in a business or mixed-use district may occupy residential units with short-term rentals for a limited time while units marketed as for rent are vacant by special permit. Units designated as affordable may not be used as short-term rentals. Temporary Short-Term Rentals must register with the City as per Sec. B.1 above.

6.7.6. Watchman or Caretaker

- A. **Defined.** [reserved]

of the institutional use and for those exceeding 10 acres of land, the vegetative buffer shall be a minimum of 100 feet, and for those exceeding 20 acres of land, the vegetative buffer shall be a minimum of 150 feet.

(Rev. Ords. 1973 §24-1; Ord. No. S-260, 08/03/87; Ord. No. S-287, 12/07/87)

6.3.15. Theatre, Hall

A. **Defined.** [reserved]

Sec. 6.4. Commercial Uses

6.4.1. Animal Service

A. **Defined.** Animal Services, including but not limited to sales and grooming and veterinary services; excluding overnight boarding.

(Ord. No. A-4, 10/01/12)

6.4.2. ATM, Standalone

A. **Defined.** A standalone automated teller machine (ATM) not located on the same lot as a bank, trust company or other banking institution.

6.4.3. Bakery, Retail

A. **Defined.** A bakery selling products at retail and only on premise.

6.4.4. Bank

A. **Defined.** Bank, trust company or other banking institution.

B. **Standards.**

1. Drive-in facilities are prohibited in the Business 1 through 4, Mixed Use 1 and 2, and Limited Manufacturing districts.

(Ord. No. S-260, 08/03/87; Ord. No. T-12, 03/20/89; Ord. No. T-75, 03/05/90)

6.4.5. Bed & Breakfast

A. **Defined.** A single unit residential building providing rooms for temporary, overnight lodging, with or without meals, for paying guests. Rooms may be independently let to unrelated or unaffiliated guests.

B. **Required Standards.**

1. A bed & breakfast use must be owner occupied.
2. A common gathering space, such as a parlor, dining room, or living room, must be maintained for guest use.
3. Cooking facilities are not permitted in guest rooms.

6.4.6. Bowling Alley

A. **Defined.** [reserved]

6.4.7. Business Incubator

A. **Defined.** [reserved]

6.4.8. Business Services

A. **Defined.** [reserved]

6.4.9. Car-Sharing Service, Car Rental, Bike Rental, Electric Car-Charging Station

A. **Defined.** [reserved]

6.4.10. Car Wash

A. **Defined.** An establishment for washing automobiles where 3 or more vehicles may be washed simultaneously.

(Rev. Ords. 1973 §24-1)

6.4.11. Country Club Facilities

A. **Defined.** Dining rooms, conference or meeting facilities and clubhouses associated with a country club or golf course.

6.4.12. Drive-In Business

A. **Defined.** A retail or consumer use of land or a building in which all or part of the business transacted is conducted by a customer from within a motor vehicle. Includes drive-in food establishments.

(Ord. No. 312, 02/05/79)

6.4.13. Dry Cleaning or Laundry, Retail

A. **Defined.** [reserved]

6.4.14. Fast Food Establishment

A. **Defined.**