



# Zoning & Planning Committee Agenda

## City of Newton In City Council

Monday, June 10, 2019

7:00PM

Room 205/Council Chamber

### Items Scheduled for Discussion:

**#140-19(3) Zoning amendments for Riverside Station**

RIVERSIDE STATION/355 GROVE STREET AND 399 GROVE STREET requesting amendments to Chapter 30, Newton Zoning Ordinance, in Sections 4.2.3 and 4.2.4 relative to the Mixed Use 3 District.

**#187-19 Zoning amendment from Newton LFIA for Riverside Station**

LOWER FALLS IMPROVEMENT ASSOCIATION RIVERSIDE COMMITTEE requesting to amend Chapter 30, City of Newton Zoning Ordinance, Sections 4.2 and 7.3.5 pertaining to the Mixed Use3/Transit-Oriented zoning district.

***A Public Hearing will be held on this item:***

**#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.

### 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.

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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](mailto: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.

***A Public Hearing will be held on this item:***

**#188-19      Zoning amendment for Inclusionary Zoning**

DIRECTOR OF PLANNING requesting amendments to the Inclusionary Zoning provisions of Chapter 30, Newton Zoning Ordinance, to apply the requirements to any project including seven or more residential units; to increase the required percentage of affordable units for projects of a certain size; 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 fractional cash payments; to waive certain inclusionary zoning requirements for 100% deed-restricted affordable developments; to strengthen the Elder Housing with Services requirements; and to clarify and improve the ordinance with other changes as necessary.

**#190-19      Conservation Restriction for 30 Wabasso Street**

HER HONOR THE MAYOR requesting approval to grant a conservation restriction at 30 Wabasso Street to the Newton Conservators. This 5,184 square foot parcel of land was acquired by the City in 2007 with Community Preservation Act funds and added to the Flowed Meadow Conservation Area. Any parcels purchased using such funds must be bound by a permanent conservation restriction.

**Respectfully Submitted,**

**Susan S. Albright, Chair**



Ruthanne Fuller  
Mayor

**City of Newton, Massachusetts**  
Department of Planning and Development  
1000 Commonwealth Avenue Newton, Massachusetts 02459

**#187-19, #140-19(3)**

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Barney S. Heath  
Director

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**M E M O R A N D U M**

**DATE:** June 7, 2019

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

**FROM:** Barney S. Heath, Director of Planning and Development  
James Freas, Deputy Director of Planning and Development  
Rachel B. Nadkarni, Long-Range Planner

**RE:** **#140-19(3) & 187-19 – Proposed Amendments to the Mixed-Use 3/Transit-Oriented Development District**

**MEETING DATE:** June 10, 2019

**CC:** Honorable Newton City Councilors  
Planning and Development Board  
Alissa O. Giuliani, City Solicitor  
Jonathan Yeo, Chief Operating Officer

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There are four separate actions relating to the Riverside site currently before the City Council. A special permit and rezoning request in front of the Land Use Committee and two different zoning amendment requests in front of the Zoning & Planning Committee. The developer has submitted a zoning amendment request that will allow consideration of their proposed project by the Land Use Committee. A community group has proposed a zoning amendment that would preclude consideration of that project.

The Planning Department recommends adoption of a zoning amendment that will allow the Land Use Committee, and the entire City Council, to consider the proposed project through the special permit review process. This approach allows the City Council the discretion and flexibility to consider the proposed project with the benefit of the array of studies and analyses that accompany the project. Further, the concerns raised and additional studies requested in the community group's proposed zoning amendment can, and should be, addressed through the special permit process. The special permit process is in fact designed and intended for exactly that purpose.

The recently completed Riverside Vision is a helpful guide in the City Council's assessment of both the appropriate zoning for the site and the proposed special permit. Public comment during the special permit deliberation process will offer more perspectives. A variety of technical reports, and the reviews and analyses of those, will offer still more data. In the unique context of the Mixed Use 3 District, which only applies to this site, the special permit process is best suited to resolving the questions of development at Riverside. Adoption of the zoning amendment that allows this special permit process to proceed should not be seen as endorsement of the currently proposed project by the City Council or the Planning Department, but instead as allowing the review process to proceed.

At the meeting on June 10<sup>th</sup> the Planning Department requests that the Zoning and Planning Committee provide their questions on the proposed zoning amendments so that the Planning Department may be prepared to provide answers at the June 24<sup>th</sup> meeting.



Ruthanne Fuller  
Mayor

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#128-19, #136-19

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Barney S. Heath  
Director

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**PUBLIC HEARING MEMORANDUM**

**DATE:** June 7, 2019

**TO:** Councilor Susan Albright, Chair, Zoning & Planning Committee  
Members of the Zoning & 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:** June 10, 2019

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

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A short-term rental is where an individual makes available a room or their entire unit/home for short duration stays to tourists or visitors. While the use has existed for many years, it has recently become much more common as online listing services have simplified the process of connecting people with rooms to rent to travelers looking for a place to stay. The growing popularity of short-term rentals has led to a range of concerns from quality of life impacts associated with a quasi-commercial use in primarily residential neighborhoods to the loss of units that might otherwise be available for full time residents, thus exacerbating the regional housing crisis. At the same time, short-term rental platforms have enabled greater individual entrepreneurial activity, creating entirely new job categories and supplemental income streams that in certain circumstances may provide the income necessary for a long-term resident to stay in their home. Attached and described below are ordinance amendments intended to address the issues associated with short-term rentals in Newton based in the state law passed this winter. The proposed set

of amendments also addresses the Bed & Breakfast use in Newton for the first time. Bed and Breakfasts offer similar but more intensive lodging in a residential setting.

The best estimate staff is able to produce at this time is that there are approximately 150 short term rentals in Newton across all of the major online platforms, representing 0.6% of the total housing units. Approximately half of these listings are for a room in a person's house. The more problematic listings have been for entire houses where there is no resident and the home is solely used as a short-term rental and often rented out for parties or events. While there have only been a few of these problem properties, they have had outsized negative effects on the neighborhoods where they exist.

### **New State Law**

The Short-Term Rental Law, MGL 23A, recently passed by the State provides an overall framework for local regulation while also enabling collection of lodging taxes from short-term rentals. The Massachusetts Short-Term Rental law requires that short-term rental operators register with the state and allows the State to collect lodging taxes from them. As Newton has already adopted a local lodging tax, the incorporation of short-term rentals is automatic and those local taxes, collected on the City's behalf by the State, will be remitted to Newton. Short-term rentals that operate for less than 15 days a year are exempt from the tax. The data generated through the State registration process will be available to the City.

### **Proposed Newton Ordinance**

Planning and Law Department staff are proposing two ordinances relating to short-term rentals, one in the City's general ordinances and one as part of the Zoning Ordinance.

### ***Proposed General City Ordinance Amendment***

The proposed Short-Term Rental section for the general City ordinances covers issues of registration, inspection, enforcement, and operating standards. This ordinance includes:

Section 20-160. Definitions, most important of which is the definition of a short-term rental. This definition also appears in the Zoning Ordinance.

Section 20-161. This section establishes the requirement that short-term rentals register with the City and provide annual certification of continued compliance with all requirements. This section also establishes the requirement that a short-term rental may not operate where there is any building or zoning enforcement issue.

Section 20-162. This section lists the submittal requirements in order to receive a City registration. These include:

- a. State certificate for the short-term rental – The State requires all short-term rentals to register and provides them with a certificate.
- b. Smoke and Carbon Monoxide Certificate of Compliance – requires inspection from the Fire Department to ensure compliance and receive this certificate.
- c. Filing fee of \$100.

- d. Local contact information for someone able to respond in person within 2 hours should an issue arise.
- e. Proof of residence.
- f. Permission of owner.
- g. Notice to abutters.

Section 20-164. This section establishes a broad standard protecting the neighborhood from general nuisances that might be created by a short-term rental.

Section 20-165. This section outlines the responsibilities and requirements placed on operators of short-term rentals. Some of the more significant requirements include:

- a. Prohibition of commercial events. The most problematic short-term rentals in Newton have been those that have hosted events, parties and similar gatherings. The intent of this rule is to restrict the use of short-term rentals to providing accommodation rather than being a venue for events or parties. As the venue is rented, all such activities are de facto commercial in nature with compensation provided to the venue owner.
- b. Occupant registries. Just as is required for hotels and similar facilities, short-term rentals would be required to maintain an occupant registry.
- c. House Rules. Operators are required to create a set of house rules intended to ensure occupants are aware of the requirements of the City ordinance and actions the occupant can take to ensure they are good neighbors within the community. The operator is required to ensure occupants are aware of these rules.

Section 20-166. This section details the process for enforcement of this ordinance including notice to remedy the violation and fines of \$300 a day that such violation persists.

### ***Proposed Zoning Ordinance Amendment***

The proposed Zoning Ordinance amendments address where and under what conditions the short-term rental use would be allowed in the City. In addition, staff is proposing to define and provide conditions for Bed & Breakfasts as this use is currently not described in the Zoning Ordinance and therefore not allowed. These Zoning Amendments are described below.

It is anticipated that many of the requirements placed on short-term rentals through the General Ordinances outlined above, or similar, would also be applied to Bed & Breakfasts through the special permit conditions. Examples of such conditions might include required annual Fire Department inspections, maintenance of an occupant registry, and limits on events.

ZO Section 6.4.32. Short-Term Rental. This proposed amendment includes the definition of short-term rentals and a set of requirements. The accessory short-term rental would be allowed in all districts where there is a residential use. The requirements for all short-term rentals are:

- a. Registration with the City;
- b. No signage allowed; and
- c. Burden of proof for compliance is placed on the operator.

For accessory short-term rentals, the requirements are:

- a. The resident of the dwelling unit must occupy the unit for a minimum of 275 days a year (75%);
- b. The unit may be occupied as a short-term rental a maximum of 45 days per year;
- c. At any time, the total number of occupants (guests and residents) may not exceed the maximum allowed in a dwelling unit – one family and up to four unrelated individuals; and
- d. No more than 2 bedrooms in the dwelling unit can be rented as short-term rentals at any given time.

ZO Section 6.4.3. Bed & Breakfasts. The proposed amendment restricts the Bed & Breakfast use to single-family homes where the owner or manager of the facility lives on site. The use is a traditional bed & breakfast with independently let rooms, no cooking facilities in the rooms, and a common gathering place. The proposed use would be allowed in all Single Residence and the Multi-Residence 1 and 2 Zoning Districts by special permit.

Note, the definition of a Bed & Breakfast use explicitly says that a facility would be considered a bed & breakfast whether the serve food or not. In other jurisdictions, not serving food has been a common mechanism by which to avoid compliance with requirements for the use.

### **Next Steps**

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As the taxation of short-term rentals under the State law is slated to begin July 1, staff is hopeful that these amendments can be adopted before that date.

### **Attachments**

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Attachment A – City of Newton General Ordinance Amendment for Short-Term Rentals

Attachment B – City of Newton Zoning Ordinance Amendments for Short-Term Rentals

Attachment C - City of Newton Zoning Ordinance Amendments 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 to one person or party, 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 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.

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 owned by operator;
  - 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) 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.
- (e) 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.

- (f) 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.
- (g) 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.
- (h) 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) The Inspectional Services Department, Health and Human Services Department, and Fire Department may conduct inspections of any Short Term Rental 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. 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. 20-166. 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 three hundred dollars (\$300.00) 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. 20-167. Effective Date.**

This Ordinance shall take effect on July 1, 2019.

**Sec. 20-168. 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. 20-169. Reserved.**

# Attachment B: Zoning Ordinance Amendment for Short-Term Rentals

- k. The City Council may grant a special permit for a home business involving any or all of the following:
  - 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. 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. 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 up to six months 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]

## 6.7.7. Food Trucks

- A. **Intent.** Food Trucks are intended to advance the following:

### 3.4.2. Accessory Uses Allowed

A. **By Right in All Residence Districts.** Such accessory purposes as are proper and usual with detached single-family dwellings or detached two-family dwellings, including but not limited to:

1. Housing of resident domestic employees;
2. Renting of rooms for not more than 3 lodgers;
3. Parking or storage of recreational trailers or vehicles, provided that if not parked or stored within a garage or other enclosed structure, such trailer or vehicle shall not be parked or stored within the area between any front line of the principal building and the street line, or stored within the side or rear setback, and further provided that such trailer or vehicle may be parked in the side or rear setback for a period not to exceed 7 days;
4. Parking or storing of not more than 1 commercial vehicle per lot, subject to Sec. 6.7.3;
5. Home businesses subject to Sec. 6.7.3; and
6. Accessory apartments, subject to Sec. 6.7.1.
7. Short-term rentals, subject to Sec. 6.7.5.

B. **By Special Permit in All Residence Districts.**

*The text of section 3.4.2.B.1 is in effect until December 31, 2019. After that date refer to section 3.4.4.*

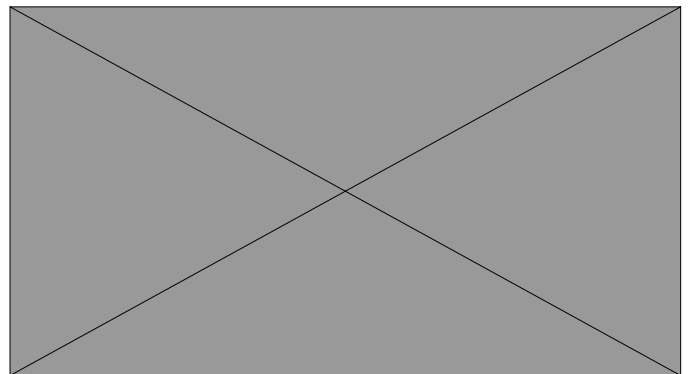
1. A private garage with provision for more than 3 automobiles, or a private garage of more than 700 square feet in area, or more than 1 private garage per single-family dwelling;
2. Internal and detached accessory apartments subject to provisions of Sec. 6.7.1;
3. Home businesses subject to the provisions of Sec. 6.7.3; and
4. Accessory purposes as are proper and usual with the preceding special permit uses and are not injurious to a neighborhood as a place for single-family residences.

(Ord. No. S-260, 08/03/87; Ord.No. S-322, 07/11/88; Ord. No. T-114, 11/19/90; Ord. No. V-274, 12/06/99; Ord. No. A-78, 06/20/16; Ord. No. A-95, 12/05/16; Ord. No. A-99, 01/17/17; Ord. Nol. A-105, 03/06/17)

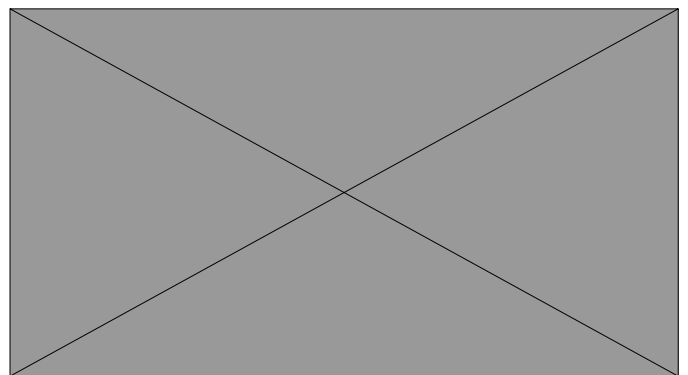
### 3.4.3. Accessory Buildings

A. Except as provided in Sec. 6.9, accessory buildings shall conform to the following requirements:

1. An accessory building shall be no nearer to any side or rear lot line than 5 feet, and no nearer to any front lot line than the distance prescribed for the principal building.



2. An accessory building with a sloping roof shall have a maximum height of 22 feet. An accessory building with a flat roof shall have a maximum height of 18 feet. An accessory building shall have no more than 1½ stories.



3. The ground floor area of an accessory building shall not exceed 700 square feet.

*The text of section 3.4.3.A.4 is in effect until December 31, 2019. After that date refer to section 3.4.4.*

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.**

## Sec. 3.4. Allowed Uses

### 3.4.1. Residential Districts Allowed Uses

Residential Districts									Definition/ Listed Standards
	SR1	SR2	SR3	MR1	MR2	MR3	MR4		
<b>Residential Uses</b>									
Single-family, detached	P	P	P	P	P	P	P		<a href="#">Sec. 6.2.1</a>
Two-family, detached	--	--	--	P	P	P	P		<a href="#">Sec. 6.2.2</a>
Single-family, attached	SP	SP	SP	SP	SP	SP	SP		<a href="#">Sec. 6.2.3</a>
Multi-family dwelling	--	--	--	--	SP	SP	SP		<a href="#">Sec. 6.2.4</a>
Association of persons in a common dwelling	SP	SP	SP	SP	SP	SP	SP		<a href="#">Sec. 6.2.6</a>
Lodging house	--	--	--	SP	SP	SP	SP		<a href="#">Sec. 6.2.7</a>
Congregate living facility	SP	SP	SP	SP	SP	SP	SP		<a href="#">Sec. 6.2.8</a>
Dormitory (5-20 persons)	SP	SP	SP	SP	SP	SP	SP		<a href="#">Sec. 6.2.9</a>
Dormitory (20+ persons)	L	L	L	L	L	L	L		<a href="#">Sec. 6.2.9</a>
Cluster development for open space preservation	SP	SP	SP	SP	SP	SP	SP		<a href="#">Sec. 6.2.12</a>
Residential care facility	--	--	--	--	--	SP	SP		<a href="#">Sec. 6.2.13</a>
<b>Civic/Institutional Uses</b>									
Cemetery, private	SP	SP	SP	SP	SP	SP	SP		<a href="#">Sec. 6.3.1</a>
Club, clubhouse	SP	SP	SP	SP	SP	SP	SP		<a href="#">Sec. 6.3.2</a>
Family child care home, large family child care home, day care center	L	L	L	L	L	L	L		<a href="#">Sec. 6.3.4</a>
Hospital	SP	SP	SP	SP	SP	SP	SP		<a href="#">Sec. 6.3.7</a>
Library, museum or similar institution	SP	SP	SP	SP	SP	SP	SP		<a href="#">Sec. 6.3.8</a>
Nonprofit institution	--	--	--	SP	SP	SP	SP		<a href="#">Sec. 6.3.9</a>
Public use	L	L	L	L	L	L	L		<a href="#">Sec. 6.2.10</a>
Religious institution	L	L	L	L	L	L	L		<a href="#">Sec. 6.3.12</a>
Sanitarium, convalescent or rest home, other like institution	SP	SP	SP	SP	SP	SP	SP		<a href="#">Sec. 6.3.13</a>
School or other educational purposes, non-profit	L	L	L	L	L	L	L		<a href="#">Sec. 6.3.14</a>
School or other educational purposes, for-profit	SP	SP	SP	SP	SP	SP	SP		<a href="#">Sec. 6.3.14</a>
Scientific research and development activities, accessory	SP	SP	SP	SP	SP	SP	SP		<a href="#">Sec. 6.7.4</a>
<b>Commercial Uses</b>									
<a href="#">Bed &amp; Breakfast</a>	<a href="#">SP</a>	<a href="#">SP</a>	<a href="#">SP</a>	<a href="#">SP</a>	<a href="#">SP</a>	<a href="#">--</a>	<a href="#">--</a>		<a href="#">Sec. 6.4.5</a>
Funeral home	--	--	--	--	SP	SP	--		<a href="#">Sec. 6.4.15</a>
Radio or television transmission station or structure	SP	SP	SP	SP	SP	SP	SP		<a href="#">Sec. 6.4.27</a>
<b>Industrial Uses</b>									
Wireless communication equipment	P/L/SP	P/L/SP	P/L/SP	P/L/SP	P/L/SP	P/L/SP	P/L/SP		<a href="#">Sec. 6.9</a>
<b>Open Space Uses</b>									
Agriculture on a parcel of 5 or more acres	P	P	P	P	P	P	P		<a href="#">Sec. 6.6.1</a>
Agriculture on a parcel under 5 acres	SP	SP	SP	SP	SP	SP	SP		<a href="#">Sec. 6.6.1</a>
Resource extraction	SP	SP	SP	SP	SP	SP	SP		<a href="#">Sec. 6.6.4</a>
Riding school, stock farm	SP	SP	SP	SP	SP	SP	SP		<a href="#">Sec. 6.6.5</a>

P = Allowed by Right    L = Allowed Subject to Listed Standards    SP = Special Permit by City Council Required    -- Not Allowed

(Ord. No. B-1, 02-20-18)



<b>Business, Mixed Use &amp; Manufacturing Districts</b>	BU1	BU2	BU3	BU4	BU5	MU1	MU2	MU3	MU4	M	LM	Definition/ Listed Standard
Bank, up to 5,000 square feet	P	P	P	P	--	SP	P	SP	P	--	P	<a href="#">Sec. 6.4.4</a>
Bank, over 5,000 square feet	P	P	P	P	--	SP	SP	SP	P	--	P	<a href="#">Sec. 6.4.4</a>
<b>Bed &amp; Breakfast</b>	<b>SP</b>	<b>SP</b>	<b>--</b>	<b>--</b>	<b>--</b>	<b>--</b>	<b>--</b>	<b>--</b>	<b>--</b>	<b>--</b>	<b>--</b>	<a href="#">Sec. 6.4.5</a>
Bowling alley	--	P	--	--	--	--	--	--	--	--	P	<a href="#">Sec. 6.4.5</a>
Business incubator	P	P	P	P	--	P	P	P	--	P	p	<a href="#">Sec. 6.4.6</a>
Business services	--	--	--	--	--	SP	P	--	--	--	--	<a href="#">Sec. 6.4.7</a>
Car-sharing service, car rental, bike rental, electric car-charging station	P	P	P	P	P	P	P	P	P	--	P	<a href="#">Sec. 6.4.8</a>
Car wash	--	--	--	--	--	--	--	--	--	SP	--	<a href="#">Sec. 6.4.9</a>
Drive-in business	SP	SP	SP	SP	--	--	--	--	--	--	SP	<a href="#">Sec. 6.4.11</a>
Dry cleaning or laundry, retail	P	P	P	P	--	SP	P	P	P	--	--	<a href="#">Sec. 6.4.12</a>
Fast food establishment	--	SP	--	--	--	--	--	--	--	--	SP	<a href="#">Sec. 6.4.13</a>
Fuel establishment	--	SP	--	--	--	SP	SP	--	--	SP	SP	<a href="#">Sec. 6.4.14</a>
Funeral home	SP	SP	SP	SP	--	--	SP	--	--	--	--	<a href="#">Sec. 6.4.15</a>
Health club, above or below ground floor	P	P	--	P	--	P	P	P	SP	P	P	<a href="#">Sec. 6.4.16</a>
Health club, ground floor	P	P	--	P	--	SP	SP	SP	SP	P	P	<a href="#">Sec. 6.4.16</a>
Hotel or lodging establishment	SP	SP	SP	SP	SP	--	SP	SP	SP	--	--	<a href="#">Sec. 6.4.17</a>
Job printing, up to 3,000 square feet (area used for work and storage)	P	P	P	P	--	--	P	--	--	P	--	<a href="#">Sec. 6.4.18</a>
Job printing, over 3,000 square feet (area used for work and storage)	SP	SP	SP	SP	--	--	SP	--	--	P	--	<a href="#">Sec. 6.4.18</a>
Kennel	--	--	--	--	--	--	--	--	--	P	P	<a href="#">Sec. 6.4.19</a>
Office	P	P	P	P	P	P	P	L	L/SP	P	P	<a href="#">Sec. 6.4.20</a>
Office of a contractor, builder, electrician or plumber or similar enterprises	--	L	--	--	--	--	--	--	--	--	L	<a href="#">Sec. 6.4.21</a>
Open-air business	SP	SP	SP	SP	--	--	--	--	SP	--	SP	<a href="#">Sec. 6.4.22</a>
Outdoor storage	--	SP	--	--	--	--	--	--	--	--	--	<a href="#">Sec. 6.4.23</a>
Parking facility, accessory, single level	P	P	P	P	--	P	P	--	P	P	P/SP	<a href="#">Sec. 6.4.24</a>
Parking facility, non-accessory, single level	SP	SP	SP	SP	--	SP	SP	--	SP	SP	SP	<a href="#">Sec. 6.4.24</a>
Parking facility, accessory, multi-level	SP	SP	SP	SP	--	SP	--	--	P	SP	SP	<a href="#">Sec. 6.4.24</a>
Parking facility, non-accessory, multi-level	SP	SP	SP	SP	--	SP	--	--	SP	SP	SP	<a href="#">Sec. 6.4.24</a>
Personal service, up to 5,000 square feet	P	P	P	P	--	--	P	P	P	--	P	<a href="#">Sec. 6.4.25</a>
Personal service, over 5,000 square feet	P	P	P	P	--	--	P	SP	SP	--	P	<a href="#">Sec. 6.4.25</a>

P = Allowed by Right L = Allowed Subject to Listed Standards SP = Special Permit by City Council Required -- Not Allowed



Ruthanne Fuller  
Mayor

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Barney S. Heath  
Director

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**MEMORANDUM**

**DATE:** June 7, 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:** **#188-19** DIRECTOR OF PLANNING requesting amendments to the Inclusionary Zoning provisions of Chapter 30, Newton Zoning Ordinance, to apply the requirements to any project including seven or more residential units; to increase the required percentage of affordable units for projects of a certain size; to require that some affordable units be designated for middle-income households for projects of a certain size; to create a new formula for calculating payments in lieu of affordable units and fractional cash payments; to waive certain inclusionary zoning requirements for 100% deed-restricted affordable developments; to add an alternative compliance option for projects that provide units and support services for extremely low-income households; to revise the Elder Housing with Services inclusionary requirements based on the type of proposed facility; and to clarify and improve the ordinance with other changes as necessary.

**MEETING DATE:** June 10, 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

Over the past two years, the Planning Department has greatly appreciated your committee's interest in working with us to craft an amended Inclusionary Zoning ordinance that more effectively meets the diverse housing needs of today's Newton. Your comments and questions, as well as those from the public, helped us focus in on specific areas in need of improvement and greater research. The productive back and forth during this time has led to a third iteration of our proposal for an updated Inclusionary Zoning ordinance, and we believe this current version is very strong ordinance that works to accomplish multiple goals and maximize public benefit.

As you know, staff has carefully examined every section of our proposal, testing our ideas with urban planners across the region, as well as economic development consultants and local developers. Throughout our process we have tweaked the many provisions of the ordinance based on feedback from City Councilors, stakeholders, housing development experts, affordable housing advocates, and for-profit developers working here in Newton and the surrounding region. Utilizing RKG's Financial Feasibility Model, developed specifically to test our inclusionary zoning proposal and assumptions, we have run hundreds of scenarios to identify percentage requirements that extract the greatest number of affordable units from a project while not rendering a project financially infeasible. We are very proud of the hard work, thought and communication that has gone into this important process.

This memo provides a snapshot of the past two years and previews the key provisions of staff's most current proposed ordinance (attached as clean and redlined versions). While there is an abundance of information included within, the following are the main sections detailed throughout the memo:

- 1) Guiding Objectives of the Updated Inclusionary Zoning Ordinance
- 2) What is Inclusionary Zoning?
- 3) A New Ordinance for Today's Newton
- 4) RKG Financial Feasibility Analysis, 2018
- 5) November 2018 Staff Proposal and Subsequent Next Steps
- 6) Summary of Key Provisions of Staff's Current Proposed Ordinance

We look forward to another productive discussion with your committee at the Public Hearing on Monday, June 10<sup>th</sup>.

### **Guiding Objectives of the Updated Inclusionary Zoning Ordinance**

While the housing needs in Newton and throughout the Boston metro region are vast, inclusionary zoning should not be seen as the sole solution to our housing affordability challenges. Inclusionary zoning has become an increasingly popular tool across the country for local governments to leverage private development for the creation of affordable housing<sup>1</sup>; however, inclusionary zoning is market-driven, and a successful policy must carefully consider the intricacies of housing development and finance in order to strike a careful balance between achieving a municipality's affordable housing

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<sup>1</sup> According to the Lincoln Institute of Land Policy's report "Inclusionary Housing: Creating and Maintaining Equitable Communities", "Inclusionary housing programs tend to serve low- and moderate-income households (those that earn between 60 and 120 percent of the local median income)." Page 25, <https://ihiusa.org/wp-content/uploads/Inclusionary-Housing-Report-2015-Rick-Jacobas.pdf>

goals, while not suppressing residential development altogether. Further, affordable housing is one of many community benefits and requirements placed on development.

Keeping in mind that inclusionary zoning is only one of the resources in the Newton's suite of affordable housing tools, staff developed a set of guiding objectives early on in the update process to help us focus the development of this important ordinance. Also critical to defining the objectives of the new ordinance were the key findings identified in the 2016 Housing Strategy's Needs Assessment, including Newton's shrinking middle-class, its declining population of younger adults and increasing population of seniors, and its lack of affordable housing options for smaller households and residents seeking to downsize.

As such, the guiding objectives that staff utilized to develop the updated Inclusionary Zoning ordinance include the following:

- To more effectively leverage private development for the creation of affordable housing throughout Newton.
- To increase the required percentage of inclusionary units from 15% up to 20%.<sup>2</sup>
- To put forth an ordinance that considers the financial feasibility of residential development in Newton and strikes a careful balance between the City's need for affordable housing and the nuanced economics of housing development.
- To clarify confusion and multiple interpretations around the current ordinance language.
- To introduce a tiered system of affordability requirements, including units designated for middle-income households earning between 81% - 110% AMI, to more specifically target and balance the need for affordable housing across the City's diverse spectrum of income levels (units for low, moderate, and middle-income households).

### **What is Inclusionary Zoning?**

One of the most important purposes of Zoning is to ensure that the development of a community happens in a way that is consistent with identified public benefits and values; thus, zoning ordinances include provisions related to such issues as parking, environmentally sustainable design, and other development rules. Like many communities in Massachusetts and across the country, Newton strongly values an economically diverse community; within the City's Zoning Ordinance, the Inclusionary Zoning provisions support this value and require that new residential development includes opportunities for a mix of household incomes.

Inclusionary Zoning is a popular tool that is used by local governments across the country to leverage private development for the creation of affordable housing. While ordinances take many forms, a common structure is to require a percentage of units in a private development be rented or sold at affordable levels to low- and moderate-income households (usually households at or below 80% of the Area Median Income, AMI). A 2015 report by the Lincoln Institute of Policy identified more than 500 local ordinances in more than 27 states and the District of Columbia. Inclusionary Zoning is increasingly viewed as a critical tool for creating affordable housing in the face of declining federal

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<sup>2</sup> Defined as a Priority Action in the City of Newton's 2016 Housing Strategy.

funding, and to support housing opportunities in communities with strong schools, safe neighborhoods, and quality amenities, such as Newton.

Newton has a long history of supporting affordable housing production through private development; it was one of the first communities in the state and the nation to adopt an Inclusionary Zoning-like policy. In the last 1960's and early 1970's, the Board of Alderman required affordable units to be included as part of any project that required a special permit. In 1977, the City passed the "10% Ordinance," adopting its first form of Inclusionary Zoning, which has continued to evolve over the past 40 years.

In 2003, Newton increased its Inclusionary Housing percentage from 10% to 15% with an average affordability requirement of 65%. As it stands today, the ordinance applies to residential development requiring a special permit, including business or mixed-use development that includes residential, where there will be a net increase of two or more new dwelling units. However, due to the current interpretation of the ordinance, the Inclusionary Zoning requirements tends to only kick in when there is a net increase of six new dwelling units.

### **A New Ordinance for Today's Newton**

The availability of a diverse array of affordable housing options is a critical issue for the City of Newton, affecting the City's long-standing value as a welcoming community for people of all backgrounds, preventing City employees from being able to live in the community they serve, and hindering the ability of businesses of all types in the City to compete for employees.

On top of declining federal funds, the strength of Newton's (and greater Boston's) housing market in recent years has continued to shrink the available supply of affordable housing throughout the City, substantially widening the affordability gap for low- and moderate-income households seeking to live in Newton. Newton's 2016 *Newton Leads 2040 Housing Strategy* highlighted this trend, revealing that the City's demographic profile is rapidly shifting towards higher-income households, due in large part to high-value residential development and a limited supply of existing and new affordable housing units.

One of the ten Priority Actions to come out of the Housing Strategy was a recommendation that the City strengthen its Inclusionary Zoning ordinance in order to realize the greatest public benefit from private development taking place throughout Newton. As such, the Housing Strategy recommends raising the Inclusionary Housing requirement to as much as 20%. In 2015, Mayor Warren docketed an item to increase the existing 15% minimum Inclusionary Housing provision and since that time staff has been working to amend and strengthen this ordinance to better meet the vast and diverse housing needs of Newton today.

Newton is not alone in considering an adjustment to its current Inclusionary Ordinance. In the past few years, Boston (2015), Cambridge (2017), and Somerville (2017) have all amended their Inclusionary Housing provisions to balance the growing need for affordable housing units in a rapidly appreciating and high-demand housing market. Cambridge increased its requirement from 11-13% to 20%; Somerville from 12.5-17.5% to 17.5% for smaller projects and 20% for larger projects; and

Boston increased its payment-in-lieu requirements, and its requirement for off-site units from 15% to 18%. Wellesley’s requirement has been at 20% since 2004.

2017 Staff IZ Proposal:

In December 2017, staff submitted its first proposal for an updated Inclusionary Zoning Ordinance. The table below represents the base IZ requirements of this proposal. A Public Hearing was held on December 10, 2017, where the Zoning & Planning Committee requested that staff work with a consultant to assess the feasibility of the proposal, as compared to the existing Inclusionary Zoning requirements. Greater detail on this process is provided on the following pages.

Number of Inclusionary Units Required												
Tier Level	4-6 new units		7-9 new units		10-20 new units		21-50 new units		51-100 new units		101+ new units	
	Rental	Owner	Rental	Owner	Rental	Owner	Rental	Owner	Rental	Owner	Rental	Owner
<b>Tier 1, up to 50% AMI</b>	-	-	-	-	-	-	5.0%	-	7.5%	-	10.0%	-
<b>Tier 2, 51%-80% AMI</b>	15.0%	15.0%	15.0%	-	10.0%	10.0%	10.0%	10.0%	10.0%	15.0%	10.0%	15.0%
<b>Tier 3, 81%-110% AMI</b>	-	-	-	15.0%	10.0%	10.0%	10.0%	15.0%	7.5%	10.0%	5.0%	10.0%
<b>Total</b>	<b>15.0%</b>	<b>15.0%</b>	<b>15.0%</b>	<b>15.0%</b>	<b>20.0%</b>	<b>20.0%</b>	<b>25.0%</b>	<b>25.0%</b>	<b>25.0%</b>	<b>25.0%</b>	<b>25.0%</b>	<b>25.0%</b>

**RKG Financial Feasibility Analysis, 2018**

At the recommendation of the ZAP Committee, and in an effort to design a new Inclusionary Zoning ordinance that would ensure that new housing development in Newton includes units for households of various income levels across the city, while not restraining development altogether, staff contracted with RKG Associates in early 2018 to determine the financial impact resulting from the proposed changes to the City’s existing Inclusionary Zoning ordinance. The Financial Feasibility Analysis developed by RKG details the approach the consultants used to test the City’s proposed ordinance changes, the results of their analysis, and their recommended modifications to the proposed ordinance to reduce the financial impacts of the ordinance on housing development so as to maintain financial feasibility.

To perform the analysis, RKG created a financial feasibility model based on traditional pro forma analysis standards for real estate development. The model focuses on Internal Rate of Return (IRR) calculations to determine financial feasibility. This measure is a standard approach to understanding the potential performance of a real estate investment. Boston area development industry minimum standards for a desired IRR are currently 20% for new construction ownership residential and 12% for rental residential projects. Generally, projects that do not achieve this IRR are not able to get financing.

Pro forma development modeling requires substantial market data to generate the model assumptions needed to calculate financial performance. The three primary data categories include: construction/development data; revenue/expenditure data; and finance/investment data. RKG used several tools to gather both local and regional data, including interviews with several for-profit and non-profit residential developers and commercial lending bank professionals, the City Assessors database, current rent rates and sales prices throughout Newton, and nationally recognized secondary data sources, such as Marshall & Swift Valuation Services.

RKG's modeling efforts compared the financial performance of seven distinct residential development scenarios under the City's existing Inclusionary Zoning ordinance against the financial performance of those same scenarios under the proposed IZ ordinance. The results were compared to understand the impact of the proposed ordinance on the financial feasibility of each scenario. The seven development scenarios reflected various small, medium and large-scale ownership and rental development projects that may occur in Newton. The financial model calculated the basic go/no-go decision a developer must make about a potential project, which usually comes down to overall financial return and risk exposure. If there is confidence that the desired returns will be reached, then the project will be pursued, otherwise the project will not be undertaken.

While the full report (<http://www.newtonma.gov/civicax/filebank/documents/91410>) provides greater detail around the results generated by each of the seven model scenarios, the following is a summary of the key findings from the financial analysis:

- **Project size (number of units in a project) matters.** The addition of an affordable unit or a required payment-in-lieu can have an outsized impact on the overall financial return of a project and can quickly render a project infeasible. Small-scale developers have greater sensitivity to changes in their development program due to their inability to spread the cost of an affordable unit or a payment-in-lieu of a unit across several market-rate units.
- **The proposed IZ percentage requirements for medium size projects (7-20 units) appear to be calibrated correctly.** For projects with 10-20 new units, the proposed percentage requirements result in more affordable units for the City, while returning an acceptable financial outcome to the developer. The increase in affordable unit requirements is offset by the introduction of Tier 3, middle-income units (81%-110% AMI). *(It is important to note, however, that RKG was only asked to test one scenario in the 10-20 new units category: a 20-unit rental project. While the financial return for this scenario under the proposed ordinance comes out positive, the majority of scenarios in this category do not. Staff tested multiple scenarios for this project size category and found that the proposed IZ requirements were too great for most of the projects to be financially acceptable. Had more scenarios been run in this project size category as part of the RKG analysis, it is likely that the consultants would not have come to the same conclusion about the proposed ordinance for this category of projects).*
- **The proposed IZ percentage requirements for large size projects (20+ units) have a negative impact on the overall financial return of a prototypical development and are financially infeasible for the developer.** The key issues for these large size projects are the 25% IZ requirement (10% higher than the existing IZ ordinance) and the introduction of Tier 1 units (at or below 50% AMI).
- **The proposed density bonus of 2 additional market-rate units for every 1 additional inclusionary unit is not sufficient enough to offset the requirement that each additional inclusionary unit be designated at Tier 1 (50% AMI), nor does it help to make these larger projects financially viable.** Even applying a hypothetical three-to-one ratio does not yield a positive result for these projects.

**November 2018 Staff Proposal and Subsequent Next Steps**

After thorough review and consideration of the Financial Feasibility Analysis developed by RKG, staff reworked its Inclusionary Zoning Ordinance proposal from 2017 to reflect findings from this report. We sought to create an updated ordinance that does not stifle residential development, but rather, strikes a careful balance between the City’s vast need for affordable housing and the nuanced economics of housing development. This updated proposal worked to realize the greatest public benefit from private residential development occurring throughout Newton.

Below is a table that represents the Staff’s 2018 proposed IZ requirement:

Number of Inclusionary Units Required (2018 Staff Proposal)												
Tier Level	7-9 units		10-20 units		21-34 units		35-64 units		65-100 units		101+ units	
	Rental	Owner	Rental	Owner	Rental	Owner	Rental	Owner	Rental	Owner	Rental	Owner
<b>Tier 1, up to 50% AMI</b>	0.0%	0.0%	0.0%	0.0%	5.0%	0.0%	0.0%	0.0%	2.5%	0.0%	2.5%	0.0%
<b>Tier 2, 51%-80% AMI</b>	15.0%	15.0%	17.5%	5.0%	7.5%	10.0%	2.5%	7.5%	10.0%	10.0%	12.5%	12.5%
<b>Tier 3, 81%-110% AMI</b>	0.0%	0.0%	0.0%	10.0%	5.0%	7.5%	15.0%	10.0%	5.0%	7.5%	2.5%	5.0%
<b>Total</b>	<b>15.0%</b>	<b>15.0%</b>	<b>17.5%</b>	<b>15.0%</b>	<b>17.5%</b>	<b>17.5%</b>	<b>17.5%</b>	<b>17.5%</b>	<b>17.5%</b>	<b>17.5%</b>	<b>17.5%</b>	<b>17.5%</b>

Throughout the Public Hearing process during the fall and winter of 2018, however, a number of housing advocates and committee members raised questions and concerns around the current proposal and some of these assumptions. In an effort to address these questions in a meaningful way, staff felt that a productive next step would be to re-engage RKG and bring the advocates around the table to talk through these individual issues in greater detail.

**February 2019 Roundtable with Affordable Housing Advocates:**

On February 19, 2019, staff from the Planning and Law Departments joined Kyle Talente and Jahangir Akbar of RKG Associates and twelve affordable housing advocates for a two-hour roundtable discussion about the proposed Inclusionary Zoning ordinance. As defined upfront, the purpose of the meeting was to explore the advocates’ questions and concerns relative to the current IZ proposal, specifically as they related to RKG’s Financial Feasibility Analysis and Model, and to identify points of agreement and disagreement.

The main takeaways from this roundtable discussion, as agreed upon by the housing advocates, include the following:

- **Don’t reduce the existing IZ requirement at the Tier 1 and Tier 2 levels**  
There was a strong desire on the part of the advocates to keep the current inclusionary zoning requirement at 15%, and to add on to that existing requirement a middle income requirement of up to 110% AMI so as not to decrease the IZ requirements of lower income levels at 50% and 80% AMI respectively. This current inclusionary zoning requirement mandates that rental projects with two or more IZ units requires an eligibility average of no more than 65% AMI, with half of the units provided at 50% AMI and the remaining half at 80% AMI. Where only one IZ rental unit is required in a project, it shall be made eligible at 80% AMI. The current requirement for ownership projects requires that projects with 3 or fewer IZ units be eligible to households at 80% AMI.



➤ **Let's push the market in an effort to increase the number of affordable units required per project**

A large portion of the discussion focused on inclusionary zoning's connection to land values, and why this is important. Kyle Talente from RKG stressed that a significant increase in the IZ requirement would likely decrease the value of land in Newton, at least for an unforeseeable amount of time, thereby potentially chilling residential development throughout the city. There was consensus amongst the housing advocate group, however, that pushing the market in this way would not be a bad thing, if it results in a greater number of affordable units for each project.

A more detailed discussion on the topic of land values and increased affordability requirements can be found in the attached memo from RKG Associates, which is in response to the questions and requests for clarification generated from the roundtable discussion.

➤ **DHCD's QAP Index of \$389,000 should not be used as the basis for the cash payment and fractional cash payment calculations**

The advocates felt strongly that this number was too low for Newton and did not result in a fair trade in terms of providing a cash payment in lieu of building an inclusionary unit on-site. There was agreement amongst the advocates that the cash payment should more closely resemble the cost of building an actual unit of housing in Newton, and that \$389,000 is not that number.

Staff agreed that it would continue to explore alternative options for calculating the payment-in-lieu and fractional cash payments to better address the concerns of the group.

*Additional Outreach and Research in 2019:*

Over the next few months, staff continued to consider and respond to the ideas and recommendations that came out of the roundtable discussion with the housing advocates, as well as the additional comments and questions that were raised throughout the fall and winter. We developed an updated comparison table that details the differences between our proposed ordinance and the IZ policies of neighboring communities such as Cambridge and Somerville. At the same time, we continued to explore the Elder Housing with Services provision based on detailed comments provided during the Public Hearing process, as well as an alternative compliance option for projects that include units and supportive services for households at or below 30% of AMI.

Key to our outreach and work over the past few months were the individual meetings and discussions with for-profit developers in Newton to better understand any questions and concerns they had about staff's 2018 proposal and the new ideas that came from the roundtable discussion with the housing advocates. Additionally, staff's collaboration with the Newton Housing Partnership subcommittee helped us fine tune the final changes included in our current proposal, including the baseline inclusionary zoning requirement and the calculation for payments-in-lieu and fractional cash payments. Our current proposed ordinance closely reflects the Newton Housing Partnership's recommendations, as described in the pages below.

*For-Profit Developer Conversations:*

Throughout February and March, staff met with a number of for-profit developers that are either actively working in Newton or have developed in Newton in the past, including Scott Oran, Dinosaur Capital (developer of 28 Austin Street); William McLaughlin, Avalon Bay (developer of Avalon Needham Street and Avalon Chestnut Hill); Damien Chaviano, Mark Development (developer of Washington Street and Riverside); and Ward Shifman and attorney Laurence Lee (developer of 956 Walnut Street and other smaller Newton developments).

In general, the purpose of these meetings and phone conversations was to not only provide the developers with an update on the ordinance, but to gauge their comfort level with an increased IZ requirement at the middle-income tier (2.5%) (as compared to the current IZ ordinance) and to understand their point of view on how an increased requirement may impact land values and residential development. While each developer had their own interpretation of how an increased IZ requirement could affect development, the developers of larger-scale multifamily project felt in general that a 2.5% additional requirement at the middle-income tier was a reasonable and manageable change. The developers of the smaller-scale projects, however, were much more concerned about an increased requirement, stating that they don't have the same financial cushion as the larger projects to absorb these additional costs. And with many of these smaller-scale projects now incorporating underground parking, an increase in the affordable requirements becomes too financially burdensome.

The following are some additional points that came out of our discussions with this group:

- **Predictability is key.**

Knowing the IZ requirements (and other mitigation costs) up front is critical to determining a project's financial feasibility. Projects are underwritten to include those known costs. Placing increased requirements on a project after the land has been purchased and the deal has been put together can adversely affect a project to the point of infeasibility.

On the other hand, if a developer knows what will be required of a project prior to purchasing the land, they can properly factor those requirements into the project pro forma – and reduce the costs that they pay for that land.

- **Inclusionary Zoning requirements should be applied consistently and equally.**

Similar to the point above, developers felt strongly that whatever the requirement turns out to be, it should be applied consistently and equally. The potential for negotiation during the Special Permit process creates a strong level of uncertainty for developers, and the inconsistency in how the ordinance has been applied in the past does not create a level or fair playing field.

- **Developers of smaller-scale multifamily projects are concerned about an additional requirement.**

As mentioned above, these developers did not feel that their projects had the ability to withstand an additional affordability requirement, unlike the larger projects that tend to have more financial capital behind them.

- **Allowing for significant increase in density is a sure way to see greater affordability, a la Cambridge.**

There was consensus amongst the group that the best way to see additional affordability in a project is to allow for greater density. Appropriate density is essential to enabling a certain level of affordability, and for supporting other amenities and mitigation items often required of multifamily projects. Newton's incentive bonus is not as meaningful as it needs for projects to provide the level of affordability that Cambridge and Somerville are used to seeing.

- **There should be a transition period – giving developers time to reevaluate how to make their projects work under the new requirements.**

Some of the developers felt that there should be a transition period between the passage of an increased requirement and its implementation. The concern was that land was purchased under the assumption of a 15% requirement, and project financing came together under those assumptions. To retroactively increase the requirement can be extremely challenging for projects that already have their financing in place.

#### A New Required Units Table:

As discussed at the February 2019 Roundtable, there was a strong desire on the part of the housing advocates to keep the current inclusionary zoning requirement at 15%, and to add on to that existing requirement a middle-income requirement. The advocates were clear that they did not want the updated ordinance to decrease the requirements at the 50% and 80% AMI levels.

Staff considered this desire and attempted to balance it against our learnings and findings from the RKG Financial Feasibility Analysis and Model, as well as our discussions with for-profit developers in Newton. In April, staff presented the following Required Units tables, which we felt represented this balance in a fair and appropriate way. We adjusted the affordability requirements to match our current IZ requirements and added an additional requirement at the middle-income tier for projects over 20 units. These updated table honored our current ordinance requirements by not decreasing the number of required units at the 50% and 80% AMI levels and provided for an increase in requirement at a middle-income tier as project size increases.

<b>Number of Inclusionary Units Required: Rental</b>		
<b>Tier Level</b>	<b>7-20 units</b>	<b>21+ units</b>
	<b>Rental</b>	<b>Rental</b>
<b>Tier 1, 50% - 80% AMI</b>	15.0%	15.0%
<b>Tier 2, 110% AMI</b>	0.0%	2.5%
<b>Total</b>	<b>15.0%</b>	<b>17.5%</b>
<b>Footnotes:</b>		
* 1 Required IZ Rental Unit: must be set at or below 80% AMI		
** 2+ Required 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); Tier 2 IZ unit must be set at or below 110% AMI		

<b>Number of Inclusionary Units Required: Ownership</b>			
<b>Tier Level</b>	<b>7-16 units</b>	<b>17-20 units</b>	<b>21+ units</b>
	<b>Owner</b>	<b>Owner</b>	<b>Owner</b>
<b>Tier 1, 80% AMI</b>	15.0%	10.0%	10.0%
<b>Tier 2, 110% AMI</b>	0.0%	5.0%	7.5%
<b>Total</b>	<b>15.0%</b>	<b>15.0%</b>	<b>17.5%</b>
<b>Footnotes:</b>			
* 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)			

**Newton Housing Partnership Engagement:**

On April 16<sup>th</sup>, the nine newly-appointment members of the Newton Housing Partnership met for their second meeting, where they focused their time on the update to our inclusionary zoning ordinance. At their first meeting in March, staff presented an overview of the process and 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 met and formalized their recommendation at their May 14<sup>th</sup> meeting. While the Partnership will provide the Mayor and Zoning & Planning Committee with their full recommendation, the following is a summary of the subcommittee’s recommendations:

1. **The subcommittee recommends increasing the IZ requirement from 17.5% to 20% for projects of 100 units or more.** The additional 2.5% requirement would be included in the Tier 2/110% category, as follows:

Tier Level	100+ Units	
	Rental	Ownership
Tier 1, 50-80% AMI	15%	10%
Tier 2, 110% AMI	5%	10%
Total	<b>20%</b>	<b>20%</b>

2. **The subcommittee recommended utilizing a Total Development Costs (TDC) per unit of \$550,000 as the basis for the cash payment and fractional cash payment calculation.** The group looked at data from new affordable housing developments built in Newton in the last five years using City-controlled funds (CPA, CDBG, HOME), and those approved through Comprehensive Permits. The average total development costs (TDC) per unit for these projects was calculated at \$550,000/unit.
3. **The subcommittee recommended including an Alternative Compliance Option with changes to the draft language previously provided by Planning and Development staff.** The changes include a new table (below) and replacement of all references to ‘Homeless Housing Set-Aside (HHSa)’ with ‘Extremely Low Income (ELI) Set-Aside’.

Tier Level	21-99 units	100+ units
ELI Tier, up to 30% AMI	2.5%	5%
Tier 1, 50-80% AMI	7.5%	5%
Tier 2, 110% AMI	2.5%	5%
Total	<b>12.5%</b>	<b>15%</b>

**Summary of Key Provisions of Proposed Ordinance:**

**1.) Application of Inclusionary Zoning Requirements**

- 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**

### **Number of Inclusionary Units Required and IZ Unit Tiers:**

- 15% - 17.5% and 20% 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.
- Rental Project Requirements:
  - For rental projects with 7 or to 9 residential units, where only 1 rental inclusionary unit is required at Tier 1, the IZ unit must be priced for a household income limit at not more than 80% AMI.

- For rental projects with 10 or more residential units, where 2 or more rental inclusionary units are required at Tier 1, the AMI used for establishing the rent and income limits for these IZ units must average no more than 65% AMI (or ½ of units at 50% AMI and ½ of units at 80% AMI).
- Effective January 1, 2021, rental inclusionary housing projects with 100 or more residential dwelling units must provide 15% of units at Tier 1 and 5% of units at Tier 2.

Rental Projects: Number of Inclusionary Units Required		
Tier Level	7-20 UNITS	21+ UNITS
Tier 1: 50%-80% AMI	15%	15%
Tier 2: 110% AMI	0%	2.5%
<b>Total</b>	<b>15%</b>	<b>17.5%</b>

Rental Projects: Number of Inclusionary Units Required EFFECTIVE January 1, 2021			
Tier Level	7-20 UNITS	21-99 UNITS	100+ UNITS
Tier 1: 50%-80% AMI	15%	15%	15%
Tier 2: 110% AMI	0%	2.5%	5%
<b>Total</b>	<b>15%</b>	<b>17.5%</b>	<b>20%</b>

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

➤ Ownership Project Requirements:

- For ownership projects with 7 or to 16 residential units, where 1 or 2 ownership inclusionary unit are required at Tier 1, the household income limit for those units must be 80% of AMI and the units must be priced for affordability to households having annual gross incomes of not more than 70% of AMI at the time of marketing.
- For ownership projects with 17 or more residential units, where 3 or more ownership inclusionary units are required, the household income limit for Tier 1 units must be 80% of AMI and the units must be priced for affordability to households having annual gross incomes

of not more than 70% of AMI at the time of marketing. The household income limit for Tier 2 Middle-Income units must be 110% of AMI and those units must be priced for affordability to households having annual gross incomes of not more than 100% of AMI at the time of marketing.

- Effective January 1, 2021, ownership inclusionary housing projects with 100 or more residential dwelling units must provide 10% of units at Tier 1 and 10% of units at Tier 2.

Ownership Projects: Number of Inclusionary Units Required			
Tier Level	7-16 UNITS	17-20 UNITS	21+ UNITS
Tier 1: 50%-80% AMI	15%	10%	10%
Tier 2: 110% AMI	0%	5%	7.5%
<b>Total</b>	<b>15%</b>	<b>15%</b>	<b>17.5%</b>

Ownership Projects: Number of Inclusionary Units Required EFFECTIVE January 1, 2021				
Tier Level	7-16 UNITS	17-20 UNITS	21-99 UNITS	100+ UNITS
Tier 1: 50%-80% AMI	15%	10%	10%	10%
Tier 2: 110% AMI	0%	5%	7.5%	10%
<b>Total</b>	<b>15%</b>	<b>15%</b>	<b>17.5%</b>	<b>20%</b>

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:

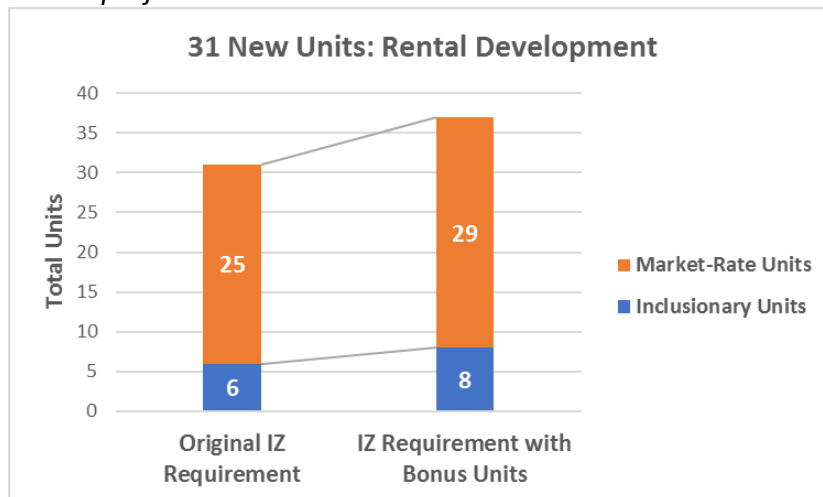
- A developer proposes to build a multifamily rental development, containing a total of 31 units; therefore, the total IZ requirement for the development would be 6 inclusionary units:
  - 25 market-rate units, and
  - 6 inclusionary units (5 units at Tier 1, and 1 unit at Tier 2)

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: Assuming that 31 units is the maximum number of units allowed on this lot under the City’s lot area per dwelling unit requirements, the total number of additional units to be granted as an incentive for this project would 7, for a total of no more than 38 units.*

- $25\% \times 31 = 7.75$
- $8 / 31 = 25.8\%$ , which is greater than the allowable increase of 25%
- Therefore, the max number of additional units to be granted as an incentive for this project would be 7



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.
  - Total monthly housing costs, inclusive of mortgage principal and interest, private mortgage insurance, property taxes, condo and/or homeowner's association fees, hazard insurance, and one parking space must not exceed 30% of the applicable household income limit for the inclusionary unit.

### 3.) Cash Payment Option

#### 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.”
- Cash Payment Amount: Based on a calculation (see below) that utilizes the average total development costs (TDC) per unit in Newton, calculated by the Newton Housing Partnership and approved by the Director of Planning and Development utilizing final closing budgets and/or certified cost and income statements from new affordable housing developments built in Newton in the previous five years that were funded all or in part by public subsidies or approved through Chapter 40B.
  - The average TDC/unit in Newton, as calculated in May 2019 by the Newton Housing Partnership and approved by the Director of Planning and Development, is \$550,000. The following three affordable housing projects were analyzed to determine this number: 77 Court Street, 10-12 Cambria Road, and 54 Taft Avenue.
  - The average TDC/unit in Newton will be increased annually by the most recently published Consumer Price Index (CPI-U)<sup>3</sup> for the Boston-Cambridge-Newton area over the previous 12 months and will take effect on the anniversary date of the Effective Date of this ordinance.
  - No more than every 5 years, as part of the Inclusionary Housing Program Reevaluation Requirement, the average TDC/unit in Newton will be recalculated by the Newton Housing

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<sup>3</sup> The Consumer Price Index for All Urban Consumers (CPI-U) is a measure of the average change overtime in the prices paid by urban consumers for a market basket of consumer goods and services. The Consumer Price Index for the Boston-Cambridge-Newton area is published bi-monthly. [https://www.bls.gov/regions/new-england/news-release/consumerpriceindex\\_boston.htm](https://www.bls.gov/regions/new-england/news-release/consumerpriceindex_boston.htm)

Partnership and approved by the Director of Planning and Development based on available data from new affordable housing developments completed in Newton during the preceding 5 year period.

Inclusionary Zoning Cash Payment Calculation	
A = # of dwelling units in proposed project	FORMULA
B = Total Inclusionary Percentage Required for the project	<b>STEP 1:</b> A X B = total inclusionary units required (round to nearest 10th)
C = average total development costs (TDC) per unit in Newton	<b>STEP 2:</b> (A x B rounded) x C = Total cash payment

Example:

- 18-unit rental development
  - A = 18
  - B = 15% Total IZ percentage requirement for the project
  - C = \$550,000
  - Step 1:  $A \times B = 18 \times 0.15 = 2.7$
  - Step 2:  $2.7 \times \$550,000$
  - = *\$1,485,000 total cash payment*
  
- 36-unit ownership project
  - A = 36
  - B = 17.5% Total IZ percentage requirement for the project
  - C = \$550,000
  - Step 1:  $A \times B = 36 \times 0.175 = 6.3$
  - Step 2:  $6.3 \times \$550,000$
  - = *\$3,465,000 total cash payment*
  
- For projects with 7-9 units, the total cash payment is determined by utilizing the average TDC/unit in Newton and reducing that number based on the number of units in the project.
  - 7-unit project: 70% X TDC/unit in Newton
  - 8-unit project: 80% X TDC/unit in Newton
  - 9-unit project: 90% X TDC/unit in Newton

*SMALL PROJECT CALCULATION EXAMPLES*

*7 Unit Project:  $0.7 \times \$550,000 = \$385,000$   
Total Payment*

*8 Unit Project:  $0.8 \times \$550,000 = \$440,000$   
Total Payment*

*9 Unit Project:  $0.9 \times \$550,000 = \$495,000$   
Total Payment*

*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: Based on the resulting fraction (rounded to the nearest tenth) multiplied by the average TDC/unit in Newton.

*Example:*

- 48-unit rental development

The Total Inclusionary Zoning / Fractional Cash Payment requirement would be calculated as follows:

- Tier 1:  $48 \times 15\% = 7.2$ , so the fractional cash payment requirement would be  $0.2 \times \$550,000 = \$110,000$
- Tier 2:  $48 \times 2.5\% = 1.2$ , so the fractional cash payment requirement would be  $0.2 \times \$550,000 = \$110,000$

*Total IZ / Fractional Cash Payment Requirement for Project =*

- Tier 1: 7 Inclusionary Units (average of 65% AMI) *plus* a Cash Payment of \$110,000
  - Tier 2: 1 Inclusionary Unit (at or below 110% AMI) *plus* a Cash Payment of \$110,000
- = A total of 8 Inclusionary Units required on-site plus a total Fractional Cash Payment of \$220,000*

*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.
- These funds are to be targeted for the restoration, creation, preservation, and associated supportive services, and monitoring of deed-restricted units affordable to households with annual gross incomes at or below 80% AMI.
- 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**

- 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**

- 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 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:
      - a. 1 bedroom: 700 s.f. / 1 bath
      - b. 2 bedrooms: 900 s.f. / 1 bath
      - c. 3 bedrooms: 1200 s.f. / 1.5 baths
      - d. 4 bedrooms: 1400 s.f. / 2 baths
    2. Must have an average square footage of not less than 80% of the average square footage of the market-rate units with the same number of bedrooms; and

- The total square footage of inclusionary units in a proposed development must not be less than 10% of the sum of the total square footage 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

- 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**

- 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, and not receiving additional market-rate units as an incentive;
  - 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.

### **8.) Extremely Low-Income (ELI) Alternative Compliance Option**

- An Inclusionary Rental Housing Project that includes the construction of 21 or more new residential units and provides a required percentage of the total number of new units in the proposed development as Extremely Low-Income (ELI) Units may seek a special permit from the City Council to reduce its total percentage of required Inclusionary Units.
  - Such projects must provide, and cover all costs associated with providing, ongoing regular on-site support services for the households residing in the ELI units, in partnership with a qualified agency.
- ELI Units represent units affordable to households with annual gross incomes at or below 30% of AMI.
- The percentage requirements for applicable rental developments are based on the following tables:

Extremely Low Income (ELI) Alternative Compliance Option: Number of Inclusionary Units Required	
Tier Level	21+ UNITS
ELI Tier: 30% AMI	2.5%
Tier 1: 50% - 80% AMI	7.5%
Tier 2: 110% AMI	2.5%
<b>Total</b>	<b>12.5%</b>

Extremely Low Income (ELI) Alternative Compliance Option: Number of Inclusionary Units Required EFFECTIVE January 1, 2021		
Tier Level	21-99 UNITS	100+ UNITS
ELI Tier: 30% AMI	2.5%	5%
Tier 1: 50% - 80% AMI	7.5%	5%
Tier 2: 110% AMI	2.5%	5%
<b>Total</b>	<b>12.5%</b>	<b>15%</b>

Example:

➤ 74-unit rental development

The required number of Inclusionary Units that must be provided on-site through the ELI Alternative Compliance Option would be as follows:

- ELI Tier: 2.5% = 0.025 X 74 = 1.9; a total of 2 units at the ELI Tier (at or below 30% AMI)
- Tier 1: 7.5% = 0.075 X 74 = 5.6; a total of 6 units at Tier 1 (must average out at 65% AMI)
- Tier 2: 2.5% = 0.025 X 74 = 1.9; a total of 2 units at Tier 2 (at or below 110% AMI)

= Total IZ Units Required On-Site: 10 inclusionary units on-site

- Any Inclusionary Housing Project that chooses the ELI Alternative Compliance Option must form a service agreement with a qualified agency that specializes in supportive housing and case management for extremely low-income individuals.
  - Property owners must partner directly with the designated agency on all aspects of tenant selection and management related to the ELI Units in all such projects.
  - The applicant must submit a Resident Selection and Supportive Services Plan for the ELI units for review and comment by the Director of Planning and Development prior to submission for approval from the City Council, as part of the special permit process. The plan must include, at a minimum, the following
  - The designated social service agency shall provide regular on-site support services for the tenants of the ELI Units, including, but not limited to, assistance with daily living activities, healthcare referrals, community integration, job training, and employment opportunities.



- Inclusionary Housing Projects that choose the Alternative Compliance Option may seek and accept public development funds to construct and operate the ELI units.

### **9.) Elder Housing with Services**

- 5% of the total number of beds provided as part of an Elder Housing with Services project must be affordable to seniors age 62 or older with annual gross incomes up to 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.
  - The applicable household income limit for all Inclusionary Beds is 80% AMI.
- Monthly housing and service costs, inclusive of entrance fees, rent or monthly occupancy fees, amenities, and base services 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.
  - Assisted Living: Monthly housing and service costs must not exceed 30% of the applicable household income limit for that inclusionary bed.
  - Continuing Care Retirement Communities (CCRC's): Due to their unique structure in providing independent living, assisted living, and skilled nursing housing and related services to elderly households in one location, CCRCs may choose to satisfy their Inclusionary Zoning requirement through either the provisions related to Independent Living Facilities or those related to Assisted Living Residences.
- 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 (units must average no more than 110% 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 cash payment to the City, without receiving a Special Permit granting permission to do so. for that inclusionary bed, based upon the type of elder housing with services facility.
  - The total cash payment for projects of this type is based on the average cost of providing long-term care for an elderly individual over a 10-year period), as well as the average total development costs (TDC) per unit in Newton.
  - This average long-term care cost is be based on the Boston Area average hourly rate of a Home Health Aide providing three hours per day of care per year as determined by the annual Genworth Cost of Care Survey. Planning Staff will review the Cost of Care Survey annually to modify the average cost, if necessary.

Elder Housing with Services: Inclusionary Zoning Cash Payment Calculation	
A = average total development costs (TDC) per unit in Newton	FORMULA
B = average cost of providing long-term care for an elderly individual at 3-hours per day over a 10-year period	<b>STEP 1:</b> $A + B = \text{Total cost per bed}$
	<b>STEP 2:</b> $C \times 0.05 = \# \text{ of inclusionary beds required (rounded to nearest 10th)}$
C = # of beds in proposed project	<b>STEP 3:</b> $(A+B) \times (C \times 0.05 \text{ rounded}) = \text{Total Cash Payment}$

Illustration: Elder Housing with Services Cash Payment Calculation Methodology
<i>sample TDC: \$550,000 (May 2019 figure)</i>
<i>sample care cost = \$306,600</i> <i>\$28 per hour x 3 hrs/day x 365 days/year x 10 years</i> <i>(2019 avg. Home Health Aide hourly rate, Genworth Cost of Care Survey)</i>
<i>EXAMPLE: 115-bed Assisted Living Facility</i>
<i>STEP 1: \$550,000 + 306,600 = \$856,600/bed</i>
<i>STEP 2: 115 beds x 0.05 = 5.8 inclusionary beds required</i>
<i>STEP 3: \$856,600 x 5.8 beds = \$4,968,280</i> <i>Total Payment</i>

**10.) Inclusionary Housing Program Reevaluation Requirement**

- 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**

- The effective date of the new IZ ordinance will be August 1, 2019.
- 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.
- Effective January 1, 2021, rental and ownership Inclusionary Housing Projects with 100 or more residential dwelling units will be subject to an increased inclusionary zoning requirement, as detailed above.

#### **Printed Attachments:**

- Proposed Inclusionary Zoning Ordinance text (clean version), June 7, 2019
- Proposed Inclusionary Zoning Ordinance text (red-lined version), June 7, 2019

#### **Digital Attachments / Additional Documents:**

- 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](http://www.newtonma.gov/gov/planning/lrplan/inclusionary_zoning.asp)

## Sec. 5.9. Tree Protection

Tree protection is not a part of this Chapter, and is regulated in Revised Ordinances Chapter 21, Article III, Div. 3, Tree Preservation.

## Sec. 5.10. Floodplain, Watershed Protection

Floodplain and watershed protection is not a part of this Chapter, and is regulated in Revised Ordinances Chapter 22, Article II, Sec. 22-22 et. seq.

## Sec. 5.11. Inclusionary Zoning

### 5.11.1. Purposes

The purposes of this Sec. 5.11 are to:

- A. Promote the public health, safety, and welfare by encouraging a diversity of housing opportunities for people of different income levels in the City;
- B. Provide for a full range of housing choices throughout the City for households of all incomes, ages, and sizes;
- C. Increase the production of affordable housing units to meet existing and anticipated housing needs within the City; and
- D. Work to overcome economic segregation regionally as well as within Newton, allowing the City to be a community of opportunity in which low and moderate-income households have the opportunity to advance economically.

(Ord. No. X-48, 04/22/03; Ord. No. Z-50, 07/13/09; A-33, 11/18/13)

### 5.11.2. Definitions

- A. "Area Median Income ('AMI')” means the median income for households within the designated statistical area that includes the City of Newton, as reported annually and adjusted for household size by the U.S. Department of Housing and Urban Development (HUD).
- B. "Deed-Restricted Affordable Unit(s)” means any Inclusionary Unit that meets the provisions of 5.11.4 and holds a legal use restriction that runs with the land, is recorded at the Registry of Deeds, provides for affordability in perpetuity, identifies

the Subsidizing Agency and monitoring agent, if applicable, and restricts occupancy to income eligible households, as defined by the provisions of Section 5.11.4.

- C. "Eligible Household” means a household whose gross annual income does not exceed the applicable household income limit for the Inclusionary Unit.
- D. "Extremely Low-Income (ELI) Unit(s)” means any dwelling unit affordable to households with annual gross incomes at or below 30% of AMI.
- E. "Household Income Limit” means at any given percentage of the area median income (AMI), the income limit adjusted by household size at that percentage as published by HUD for the designated statistical area that includes the City of Newton or, for percentage levels not published by HUD, as calculated by the City based on the HUD AMI calculation.
- F. "Inclusionary Housing Project” means any development project that meets the provisions of Section 5.11.3.A.
- G. "Inclusionary Unit(s)” means any dwelling unit that meets the provisions of Section 5.11.4.
  1. "Tier 1 Unit(s)” means any Inclusionary Unit affordable to households with annual gross incomes at or below 80% of AMI, and where applicable, affordable to households with annual gross incomes at or below 50% of AMI.
  2. "Tier 2 Unit(s),” also know as "Middle-Income Unit(s),” means any Inclusionary Unit affordable to households with annual gross incomes greater than 80% of AMI, but at or below 110% of AMI.
- H. "Local Action Unit(s) (LAUs)” means an affordable housing unit created as a result of an intentional action taken by a community, without a comprehensive permit, and which meets the requirements for inclusion on the Subsidized Housing Inventory (SHI). Local Action Units are a component of the Department of Housing and Community Development's (DHCD) Local Initiative Program (LIP).

- I. “Public development funds” means funds for housing construction or rehabilitation if provided through a program eligible to serve as a ‘subsidy’ under 760 CMR 56.00 Comprehensive Permit: Low or Moderate Income Housing.

(Ord. No. X-48, 04/22/03; Ord. No. Z-50, 07/13/09; Ord. No. A-37, 03/17/14)

### 5.11.3. Application of Inclusionary Zoning Requirements.

- A. These inclusionary zoning provisions apply to any proposed residential or mixed-use development, including a conventional subdivision of land under M.G.L. Chapter 41, Section 81K-81GG, in any zoning district that includes the construction or substantial reconstruction of seven or more residential dwelling units on any parcel or contiguous parcels comprising a proposed development site. The inclusionary zoning requirements apply to the total number of residential units regardless of the existing residential units proposed to be demolished. The inclusionary zoning requirements also apply to any situation where rental residential dwelling units are converted to 7 or more residential ownership units.
- B. This Sec. 5.11 does not apply to accessory units.
- C. **No Segmentation.** The inclusionary zoning provisions of this section apply to projects at one site or two or more adjoining sites in common ownership or under common control within a period of five years from the first date of application for any special or building permit for construction on the lot or lots, or for the 12 months immediately preceding the date of application for any special permit or building permit. An applicant for development may not segment or divide or subdivide or establish surrogate or subsidiary entities to avoid the requirements of Section 5.11.11. Where the City Council determines that this provision has been violated, a special permit or building permit will be denied. However, nothing in Section 5.11 prohibits the phased development of a property.
- D. **100% Deed-Restricted Affordable Developments.** Any proposed residential or mixed-use development that

consists of 100% deed-restricted affordable units up to 110% of AMI is not subject to the Number of Inclusionary Units Required, Section 5.11.4.B; however, projects of this type are subject to all other applicable provisions of this section 5.11.

- E. **Qualification of Tier 1 Units as Local Action Units.** All Inclusionary Units affordable to households at or below 80% of AMI must be qualified as ‘Local Action Units’ pursuant to the requirements of the Comprehensive Permit Guidelines of the Massachusetts Department of Housing and Community Development (DHCD), Section VI.C “Local Action Units,” as in effect December 2014 as the same may be amended from time to time, unless the unit is exempted from this requirement by another provision of this Section 5.11.
- F. **Tier 2 Units as Consistent with Local Action Units.** All Inclusionary Units affordable to households earning greater than 80% but less than or equal to 110% of AMI must be consistent, where applicable, with the requirements of ‘Local Action Units’ pursuant to the requirements of the Comprehensive Permit Guidelines of the DHCD, Section VI.C “Local Action Units,” as in effect December 2014 as the same may be amended from time to time, unless the unit is exempted from this requirement by another provision of this Section 5.11.

(Ord. No. X-48, 04/22/03; Ord. No. Z-50, 07/13/09)

### 5.11.4. Mandatory Provision of Inclusionary Units.

- A. **Inclusionary Unit Tiers.** Inclusionary Units are divided into two tiers based on their level of affordability. Tier 1 represents units affordable to households with annual gross incomes at or below 50% of AMI and units affordable to households with annual gross incomes at or below 80% of AMI; and Tier 2 represents Middle-Income units affordable to households with annual gross incomes greater than 80% of AMI, but at or below 110% of AMI.

**B. Number of Inclusionary Units Required.** The percentage of required Inclusionary Units in a proposed development is based on the total number of new units proposed on any parcel or contiguous parcels comprising a proposed development site, and whether the units are rental or ownership.

1. Where the inclusionary zoning requirement results in a fraction of a unit greater than or equal to 0.5, the development must provide one Inclusionary Unit to capture that fraction.
2. Where the inclusionary zoning requirement results in a fraction of a unit less than 0.5, the development may choose to provide one Inclusionary Unit to capture that fraction or contribute a fractional cash payment to the City to cover the fraction of that Inclusionary Unit requirement. Fractional cash payment amounts are calculated based on the provisions of Section 5.11.5.
3. All fractions are rounded to the nearest tenth.
4. Rental Project Requirements. The percentage requirements for applicable rental developments are based on the following table and provisions:
  - a. For rental Inclusionary Housing Projects with seven to nine residential dwelling units, where only one rental inclusionary unit is required at Tier 1, the inclusionary unit shall be priced for a household income limit at not more than 80% of AMI.
  - b. For rental Inclusionary Housing Projects with ten or more residential dwelling units, where two or more rental Inclusionary Units are required at Tier 1, the AMI used for establishing rent and income limits for these Inclusionary Units must average no more than 65% of AMI. Alternatively, at least 50% of such units may be priced for households having incomes at 50% of AMI and the remaining Inclusionary Units may be priced for households at 80% of AMI.
  - c. Effective January 1, 2021, rental Inclusionary Housing Projects with 100 or more residential dwelling units must provide 15% of residential dwelling units at Tier 1

**Illustration: Tier 1 Average 65% AMI Methodology**

*Example Project: 17-unit rental development*

*15% at Tier 1 =  $0.15 \times 17 \text{ units} = 2.55 \text{ units}$*   
*Total: 3 units at Tier 1 (round up)*

*Average affordability level across units must be 65% AMI*

*EXAMPLE APPROACH #1: 1 unit at 50% AMI*  
*1 unit at 65% AMI*  
*1 unit at 80% AMI*

*EXAMPLE APPROACH #2: 3 units at 65% AMI*

Rental Projects: Number of Inclusionary Units Required		
Tier Level	7-20 UNITS	21+ UNITS
Tier 1: 50%-80% AMI	15%	15%
Tier 2: 110% AMI	0%	2.5%
<b>Total</b>	<b>15%</b>	<b>17.5%</b>

Rental Projects: Number of Inclusionary Units Required EFFECTIVE January 1, 2021			
Tier Level	7-20 UNITS	21-99 UNITS	100+ UNITS
Tier 1: 50%-80% AMI	15%	15%	15%
Tier 2: 110% AMI	0%	2.5%	5%
<b>Total</b>	<b>15%</b>	<b>17.5%</b>	<b>20%</b>

**Illustration: Rental Projects Calculation Methodology**

*Example Project: 31-unit rental development*

*15% at Tier 1 =  $0.15 \times 31 \text{ units} = 4.7 \text{ units}$*   
*Total: 5 units at Tier 1 (round up)*

*2.5% at Tier 2 =  $0.025 \times 31 \text{ units} = 0.8 \text{ units}$*   
*Total: 1 unit at Tier 2 (round up)*

*TOTAL UNITS = 6 deed-restricted affordable units*

and 5% of residential dwelling units at Tier 2.

5. **Ownership Project Requirements.** The percentage requirements for applicable ownership developments are based on the following table and provisions.
- a. For ownership Inclusionary Housing Projects with seven to 16 residential dwelling units, where one or two ownership inclusionary units are required at Tier 1, the household income limit for those units shall be 80% of AMI and the inclusionary units must be priced for affordability to households having annual gross incomes of not more than 70% of AMI at the time of marketing.
  - b. For ownership Inclusionary Housing Projects with 17 or more residential dwelling units, where three or more ownership inclusionary units are required, the household income limit for Tier 1 units must be 80% of AMI and those inclusionary units must be priced for affordability to households having annual gross incomes of not more than 70% of AMI at the time of marketing. The household income limit for Tier 2 Middle-Income units must be 110% of AMI and those inclusionary units must be priced for affordability to households having annual gross incomes of not more than 100% of AMI at the time of Marketing.
  - c. Effective January 1, 2021, ownership Inclusionary Housing Projects with 100 or more residential dwelling units must provide 10% of residential dwelling units at Tier 1 and 10% of residential dwelling units at Tier 2.

Ownership Projects: Number of Inclusionary Units Required EFFECTIVE January 1, 2021				
Tier Level	7-16 UNITS	17-20 UNITS	21-99 UNITS	100+ UNITS
Tier 1: 50%-80% AMI	15%	10%	10%	10%
Tier 2: 110% AMI	0%	5%	7.5%	10%
<b>Total</b>	<b>15%</b>	<b>15%</b>	<b>17.5%</b>	<b>20%</b>

**Illustration: Ownership Projects Calculation Methodology**

*Example Project: 52-unit ownership development*

10% at Tier 1 =  $0.10 \times 52 \text{ units} = 5.2 \text{ units}$   
 Total: 5 units at Tier 1 (round down)  
 plus fractional cash payment

7.5% at Tier 2 =  $0.075 \times 52 \text{ units} = 3.9 \text{ units}$   
 Total: 4 units at Tier 2 (round up)

**TOTAL UNITS: 9 deed-restricted affordable units**

Ownership Projects: Number of Inclusionary Units Required			
Tier Level	7-16 UNITS	17-20 UNITS	21+ UNITS
Tier 1: 50%-80% AMI	15%	10%	10%
Tier 2: 110% AMI	0%	5%	7.5%
<b>Total</b>	<b>15%</b>	<b>15%</b>	<b>17.5%</b>

- C. **Incentives for Additional Inclusionary Units.** An Inclusionary Housing Project that includes more than the required number of Inclusionary Units will be awarded bonus market-rate units at a ratio of 2 to 1. For every additional Inclusionary Unit the applicant agrees to provide, the development will be awarded 2 additional market-rate units. In the event that the additional Inclusionary Unit provided by the applicant is a family-sized unit (a 3-bedroom unit greater than 1,100 square feet), the ratio is 3 to 1. For every additional 3-bedroom Inclusionary Unit proposed, the development will be awarded 3 additional market-rate units. The additional Inclusionary Units must be Tier 1 units and the total number of additional units of any type must not exceed 25% of the number of units otherwise permissible on the lot under lot area per dwelling unit requirements.

**Illustration: Incentive Units Calculation Methodology**

*Example Project: 31-unit rental development*

**PRE-INCENTIVE CALCULATION**

15% at Tier 1 =  $0.15 \times 31 \text{ units} = 4.7 \text{ units}$   
Total: 5 units at Tier 1 (round up)

2.5% at Tier 2 =  $0.025 \times 31 \text{ units} = 0.8 \text{ units}$   
Total: 1 unit at Tier 2 (round up)

**INCENTIVE:** Additional 2 Tier 1 Units >> 4 additional Market Rate Units

**POST-INCENTIVE PROJECT:** 37 units  
7 Tier 1 Units + 1 Tier 2 Unit  
TOTAL: 8 deed-restricted units (21.6%)

**NOTE:** The post incentive project may not exceed 25% more units than otherwise permissible ( $1.025 \times 31 = 37.8 \text{ max units}$ )

**D. Maximum Monthly Housing Costs, Sale Prices and Rents.** Maximum sale price or rent for Inclusionary Units is calculated as affordable to a household with a number of household members equal to the number of bedrooms in a unit plus one, regardless of the actual number of persons occupying the unit.

1. **Rental.** Inclusionary rental units are to be priced to be affordable to a household having a gross annual income at the household income limit for that Inclusionary Unit, as specified in Section 5.11.4. Monthly housing costs, inclusive of rent, utility costs for heat, water, hot water, and electricity, 1 parking space, and including access to all amenities that are offered to tenants in the building, must not exceed 30% of the applicable household income limit for the Inclusionary Unit. If the utilities are separately metered, they may be paid by the tenant and the maximum allowable rent will be reduced to reflect the tenant's payment of utilities, based on the area's utility allowance for the specific unit size and type, to be secured from the Newton Housing Authority. For a household with a Section 8 voucher, the rent and income are to be established by the Newton Housing Authority with the approval of HUD.

2. **Homeownership.** Inclusionary units for sale are to be priced to be affordable to a household having a gross annual income 10 percentage points lower than the household income limit

for that Inclusionary Unit, as specified in Section 5.11.4. The monthly housing costs, inclusive of mortgage principal and interest, private mortgage insurance, property taxes, condominium and/or homeowner's association fees, hazard insurance, and 1 parking space, must not exceed 30% of the applicable household income limit for the Inclusionary Unit. Additionally, the following requirements apply:

- a. Down payment must be at least 3% of the purchase price;
- b. Mortgage loan must be a 30-year fully amortizing mortgage for not more than 97% of the purchase price with a fixed interest rate that is not more than 2 percentage points above the current MassHousing interest rate; and
- c. Buyers will be eligible so long as their total housing costs, including the services identified above, do not exceed 38% of their income.

**E.** Notwithstanding the requirements of this Section 5.11.4, an Inclusionary Housing Project may set the sale price or rental rate for Inclusionary Units lower than what is required herein.

(Ord. No. X-48, 04/22/03; Ord. No. Z-50, 07/13/09; Ord. No. A-37, 03/17/14)

**5.11.5. Cash Payment Option.**

As an alternative to the requirements of Section 5.11.4, an applicant may contribute a cash payment to the City's Inclusionary Housing Fund, in lieu of providing Inclusionary Units.

**A. Eligibility.** There are 3 circumstances in which the Inclusionary Unit requirements of Section 5.11.4 may be met through a cash payment instead of providing Inclusionary Units:

- 1. For Inclusionary Housing Projects that include the construction or substantial reconstruction of 7 to 9 dwelling units; or
- 2. By special permit from the City Council, where the Council makes specific findings that there will be an unusual net benefit to achieving the City's housing objectives as a result of



allowing a cash payment rather than requiring the development of Inclusionary Units. The findings must include consideration of the appropriateness of the development site location for income-eligible households, including proximity to and quality of public transportation, schools, and other services; the current balance of the Inclusionary Housing Fund; and the purposes of this Section 5.11.

3. For Inclusionary Housing Projects where the inclusionary zoning requirement results in a fraction of a unit less than 0.5, the applicant may contribute a fractional cash payment to the City to cover the fraction of that Inclusionary Unit requirement.

**B. Cash Payment Amount.** The cash payment as an alternative to each required Inclusionary Unit, or fraction thereof, is based on a formula that utilizes the average total development costs (TDC) per unit in Newton, calculated by the Newton Housing Partnership and approved by the Director of Planning and Development utilizing final closing budgets and/or certified cost and income statements from new affordable housing developments built in Newton in the previous 5 years that were funded all of in part by public subsidies or approved through M.G.L. Chapter 40B. This basis for the cash payment standard (average TDC/unit in Newton) must be increased annually by the amount of the Consumer Price Index (CPI-U) and take effect on the anniversary date of the effective date in Section 5.11.14. No more than every 5 years, as part of the Inclusionary Housing Program Reevaluation Requirement of Section 5.11.13, the average TDC/unit in Newton must be recalculated by the Newton Housing Partnership and approved by the Director of Planning and Development based on available data from affordable housing developments as above, completed in Newton during the preceding 5 year period.

1. The average TDC per unit, as calculated in May 2019 by the Newton Housing Partnership and approved by the Director of Planning & Development, is \$550,000.
2. For Inclusionary Housing Projects containing 10 or more units that receive a Special Permit to make such a payment, the total cash payment is determined by utilizing the following calculation:

Inclusionary Zoning Cash Payment Calculation	
A = # of dwelling units in proposed project	FORMULA
B = Total Inclusionary Percentage Required for the project	<b>STEP 1:</b> A X B = total inclusionary units required (round to nearest 10th)
C = average total development costs (TDC) per unit in Newton	<b>STEP 2:</b> (A x B rounded) x C = Total cash payment

**Illustration: Cash Payment Calculation Methodology**

*sample TDC: \$550,000 (May 2019 figure)*

**EXAMPLE 1: 18 Unit Rental Project**  
*A = 18 units*  
*B = 15% inclusionary required*  
*C = \$550,000 TDC*

*STEP 1: 0.15 x 18 units = 2.7 units*  
*STEP 2: 2.7 units x \$550,000 = \$1,485,000*  
*Total Payment*

**EXAMPLE 2: 36 Unit Ownership Project**  
*A = 36 units*  
*B = 17.5%*  
*C = \$550,000*

*STEP 1: 0.175 x 36 units = 6.3 units*  
*STEP 2: 6.3 units x \$550,000 = \$3,465,000*  
*Total Payment*

**SMALL PROJECT CALCULATION EXAMPLES**

*7 Unit Project: 0.7 x \$550,000 = \$385,000*  
*Total Payment*

*8 Unit Project: 0.8 x \$550,000 = \$440,000*  
*Total Payment*

*9 Unit Project: 0.9 x \$550,000 = \$495,000*  
*Total Payment*

3. For Inclusionary Housing Projects with 7-9 units, the total cash payment is determined by utilizing the average total development costs (TDC) per unit in Newton and reducing that number based on the number of units in the project as follows:
  - a. Total cash payment for a 7-unit project: 70% multiplied by the TDC per unit in Newton.

- b. Total cash payment for an 8-unit project: 80% multiplied by the TDC per unit in Newton.
- c. Total cash payment for a 9-unit project: 90% multiplied by the TDC per unit in Newton.

**C. Fractional Cash Payment Amount.** Where the inclusionary zoning requirement results in a fraction of a unit less than 0.5, the development may choose to contribute a fractional cash payment to the City to cover the fraction of that Inclusionary Unit requirement. The fractional cash payment is based on the resulting fraction (rounded to the nearest tenth) multiplied by the average TDC per unit in Newton.

**Illustration: Fractional Payment Calculation Methodology**

*sample TDC: \$550,000 (May 2019 figure)*

**EXAMPLE: 48 Unit Rental Project**

*Tier 1: 0.15 x 48 units = 7.2 units  
TOTAL UNITS = 7 units  
FRACTIONAL PAYMENT = 0.2 X \$550,000  
= \$110,000*

*Tier 2: 0.025 x 48 units = 1.2 units  
TOTAL UNITS = 1 unit  
FRACTIONAL PAYMENT = 0.2 x \$550,000  
= \$110,000*

*Total Inclusionary Requirement = 8 deed-restricted units and \$220,000*

- D. Payment Deadline.** Any Inclusionary Unit cash payment must be paid in full to the City prior to the granting of any Certificate of Occupancy.
- E. Cash Payment Recipient.** The cash payment is made to the City's Inclusionary Zoning Fund, to be distributed equally to the Newton Housing Authority and the City of Newton. These funds are to be used for the restoration, creation, preservation, associated support services, and monitoring of deed restricted units affordable to households with annual gross incomes at or below 80% of AMI, to the extent practical. Appropriation of these funds for use by the City or the Newton Housing Authority must first be approved by the Planning & Development Board and then by the Mayor. The Newton Housing Authority and the City must each maintain an ongoing record of payments to the fund on their behalf and the use of the proceeds for the purposes stated in this Sec. 5.11.

(Ord. No. X-48, 04/22/03; Ord. No. Z-50, 07/13/09)

### 5.11.6. Off-Site Development

- A. Eligibility.** Off-site Inclusionary Units are generally discouraged. The Inclusionary Unit requirements of Section 5.11.4 may be met through the off-site development of the required Inclusionary Units only by special permit from the City Council where the Council makes specific findings that there will be an unusual net benefit to achieving the City's housing objectives as a result of allowing the units to be built off-site. The findings must include consideration of:
  1. The appropriateness of the development site location for income-eligible households, including proximity to and quality of public transportation, schools, and other services;
  2. Consideration relative to the concentration of affordable units in the City;
  3. An increase in the number of Inclusionary Units and an increase in the percentage of Tier 1 units from the amount otherwise required; and
  4. Consideration of the purposes of this section of the ordinance, Section 5.11.1.
- B. Non-Profit Housing Developer Partnership.** Any Inclusionary Housing Project that includes off-site Inclusionary Units must enter into a development agreement with a non-profit housing developer for the development of the off-site units.
  1. The applicant must submit a development plan for off-site development for review and comment by the Planning and Development Department prior to submission to the City Council. The plan must include at a minimum, demonstration of site control, necessary financing in place to complete the off-site development or rehabilitation, an architect's conceptual site plan with unit designs and architectural elevations, and agreement that the off-site units will comply with Sec. 5.11.7.
- C.** The off-site development must provide a greater number of affordable units at a deeper level of affordability, an equivalent unit mix and comparable sized units, and an equivalent level of accessibility as that which would have been provided if the required units were to remain on-site.

D. All off-site inclusionary units allowed by special permit must be completed and occupied no later than completion and occupancy of the applicant's on-site market rate units. If the off-site inclusionary units are not completed as required within that time, temporary and final occupancy permits will not be granted for the number of on-site market rate units equal to the number of off-site inclusionary units which have not been completed. Where the City Council determines that completion of off-site inclusionary units has been delayed for extraordinary reasons beyond the reasonable control of the applicant and non-profit housing developer, the City Council may, upon the request of the applicant to amend the Special Permit, allow the applicant to post a monetary bond and release one or more on-site market rate units. The amount of the bond must be sufficient in the determination of the Planning and Development Department to assure completion of the off-site inclusionary units.

(Ord. No. X-48, 04/22/03; Ord. No. Z-50, 07/13/09)

### 5.11.7. Design and Construction

In all cases, inclusionary units shall be fully built out and finished dwelling units and comply with the requirements set out in the Comprehensive Permit Guidelines of DHCD, Section VI.B.4 "Design and Construction Standards," as in effect December 2014 as the same may be amended from time to time. Additionally, the following requirements apply to all Inclusionary Units:

- A. Inclusionary units provided on-site, and their associated parking spaces, must be proportionally distributed throughout the Inclusionary Housing Project and be sited in no less desirable locations than the market-rate units;
- B. The bedroom mix of Inclusionary Units must be equal to the bedroom mix of the market-rate units in the Inclusionary Housing Project;
- C. The Inclusionary Units must meet the following size specifications:
  1. Must be comparable in size to that of the market rate units;
  2. Whichever is greater of the two:

- a. Must meet the minimum square footage and bathroom requirements, as required by DHCD's most current Comprehensive Permit Guidelines.
  - b. Must have an average square footage of not less than 80% of the average square footage of the market-rate units with the same number of bedrooms; and
3. The total square footage of Inclusionary Units in a proposed development must not be less than 10% of the sum of the total square footage of all market-rate and all Inclusionary Units in the proposed development;

- D. Inclusionary Units must have exteriors that are indistinguishable in design and of equivalent materials to the exteriors of the market-rate units in the project;
- E. The materials used and the quality of construction for inclusionary units, including heating, ventilation, and air conditioning systems, must be equal to that of the market rate units in the Inclusionary Housing Project, as reviewed by the Planning and Development Department; provided that amenities such as designer or high end appliances and fixtures need not be provided for inclusionary units;
- F. At a minimum, the Inclusionary Units must have an equivalent level of accessibility as that of the market-rate units, and the Inclusionary Units must have an equivalent mix of disabled-accessible units as that of the market-rate units; and
- G. The Inclusionary Units must have equal access to all amenities that are offered to the market-rate units in a project, such as parking, on-site fitness centers, laundry facilities, and community rooms.

(Ord. No. X-48, 04/22/03; Ord. No. Z-50, 07/13/09)

### 5.11.8. Inclusionary Housing Plans and Covenants

- A. The applicant must submit an inclusionary housing plan for review and approval by the Director of Planning and Development prior to the issuance of any building permit for the project. The plan must include the following provisions:

- B. A description of the proposed project and inclusionary units including at a minimum, a breakdown of the total number of residential units in the project, including the number of market-rate units, Inclusionary Units, and accessible and adaptable units; floor plans indicating the location of the inclusionary units and accessible and adaptable units; the number of bedrooms and bathrooms per unit for all units in the development; the square footage of each unit in the development; the amenities to be provided to all units; the projected sales prices or rent levels for all units in the development; and an outline of construction specifications certified by the applicant.
- C. An Affirmative Fair Housing Marketing and Resident Selection Plan (AFHMP) for all Inclusionary Units, including Tier 2 Middle-Income Units, which, at a minimum, meets the requirements set out in the Comprehensive Permit Guidelines of the DHCD, Section III, Affirmative Fair Housing Marketing and Resident Selection Plan, as in effect December 2014 as the same may be amended from time to time and:
1. To the extent permitted by law, such plan must provide for a local preference for up to 70% of the Inclusionary Units in a project;
  2. Where a project results in the displacement of individuals who qualify for a unit in terms of household size and income, first preference must be given to those displaced applicants, unless such preference would be unallowable under the rules of any source of funding for the project;
  3. Where a project includes units that are fully accessible, or units that have adaptive features for occupancy by persons with mobility impairments or hearing, vision, or other sensory impairments, first preference (regardless of the applicant pool) for those units must be given to persons with disabilities who need such units, including single person households, in conformity with state and federal civil rights law, per DHCD's Comprehensive Permit Guidelines, Section III, Affirmative Fair Housing Marketing and Resident Selection Plan, as in effect December 2014 as the same may be amended from time to time; and
4. Prior to the marketing or otherwise making available for rental or sale any of the units in the development, the applicant must obtain the City's and DHCD's approval of the AFHMP for the Inclusionary Units.
- D. Agreement by the applicant that initial and ongoing resident selection must be conducted and implemented in accordance with the approved marketing and resident selection plan and Comprehensive Permit Guidelines of the DHCD, Section III, Affirmative Fair Housing Marketing and Resident Selection Plan.
- E. Agreement by the applicant that all Tier 1 units must be qualified as, and all Tier 2 units must be consistent, where applicable, with the requirements of 'Local Action Units' pursuant to the requirements of the Comprehensive Permit Guidelines of the DHCD, Section VI.C "Local Action Units," as in effect December 2014 as the same may be amended from time to time, unless the unit is exempted from this requirement by another provision of the Section 5.11.
- F. Agreement by the applicant that all inclusionary units, including those affordable to households earning greater than 80% but less than or equal to 110% of AMI must be subject to 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. The developer must execute and record these affordable housing covenants in the Registry of Deeds for the Southern District of Middlesex County as the senior interest in title for each Inclusionary Unit and which must endure for the life of the residential development, as follows:
1. For ownership units, a covenant to be filed at the time of conveyance and running in favor of the City of Newton, in a form approved by the City Solicitor, which limits initial sale and subsequent re-sales of Inclusionary Units to eligible households in accordance with provisions reviewed and approved by the Director of Planning and Development, which incorporates the provisions of this Section; and
  2. For rental units, a covenant to be filed prior to the issuance of any occupancy permit and running in favor of the City of Newton, in a form

approved by the City Solicitor, which limits rental of Inclusionary Units to eligible households in accordance with provisions reviewed and approved by the Director of Planning and Development, which incorporates the provisions of this Section.

- G. Agreement by the applicant that the Inclusionary Units must be completed and occupied no later than completion and occupancy of the applicant's market rate units. If the Inclusionary Units are not completed as required within that time, temporary and final occupancy permits may not be granted for the number of market rate units equal to the number of Inclusionary Units that have not been completed.
- H. At the discretion of the applicant and with the agreement of the Newton Housing Authority, an agreement, in a form approved by the City Solicitor, to convey rental units to the Newton Housing Authority for sale or rental to eligible households.
- I. In the case of rental housing, an agreement by the applicant to submit an annual compliance report to the Director of Planning and Development, in a form approved by the City Solicitor, certifying compliance with the provisions of this [Sec. 5.11.](#)

(Ord. No. X-48, 04/22/03; Ord. No. Z-50, 07/13/09; Ord. No. A-34, 11/18/13)

### 5.11.9. Public Funding Limitation

An applicant must not use public development funds to construct inclusionary units required under Sec. 5.11. However, the applicant may use public development funds to construct inclusionary units that are found by the Director of Planning and Development to be consistent with the following:

1. Those that represent a greater number of affordable units than are otherwise required by this subsection and not receiving additional market rate units according to Section 5.11.4.C;
2. Those that are lower than the maximum eligible income limit for some or all inclusionary units by at least 10 percentage points below that stipulated in Sec. 5.11.4; and
3. Those that exceed regulatory requirements in providing for persons having disabilities.

(Ord. No. X-48, 04/22/03; Ord. No. Z-50, 07/13/09; Ord. No. A-37, 23/17/14)

### 5.11.10. Extremely Low-Income (ELI) Alternative Compliance Option

An Inclusionary Housing Project that includes the construction of 21 or more new residential rental units and provides a required percentage of the total number of new units in the proposed development as Extremely Low-Income (ELI) units may seek a special permit from the City Council to reduce its total percentage of required Inclusionary Units. Such projects must provide, and cover all costs associated with providing, ongoing regular on-site support services for the households residing in the ELI units, in partnership with a qualified agency. ELI units represent units affordable to households with annual gross incomes at or below 30% of AMI.

#### A. ELI Alternative Compliance Option Project Requirements.

The percentage requirements for applicable rental developments are based on the following table and provisions:

1. Where 2 or more rental inclusionary units are required at Tier 1, the AMI used for establishing rent and income limits for these inclusionary units must average no more than 65% of AMI. Alternatively, at least 50% of such units may be priced for households have incomes at 50% of AMI, and the remaining inclusionary units may be priced for households at 80% of AMI.
2. "Effective January 1, 2021, applicable rental developments with 100 or more residential dwelling units must provide 5% of residential dwelling units at the ELI Tier, 5% of residential dwelling units at Tier 1, and 5% of residential dwelling units at Tier 2."

- B. **Support Services Provider Partnership.** Any inclusionary Housing Project that chooses the ELI Alternative Compliance Option must form a service agreement with a qualified agency that specializes in supportive housing and case management for extremely low-income individuals or families. Property owners must partner directly with the designated agency on all aspects of tenant selection and management related to the ELI units in all such projects.

1. The applicant must submit a Resident Selection and Supportive Services Plan for the ELI units for review and comment by the Director of Planning and Development prior to submission for approval from the City Council as part of the special permit process. The plan must include, at a minimum, the following:
  - a. Demonstration of a formal partnership with a qualified agency that specializes in supportive housing and case management for extremely low-income individuals or families;
  - b. A marketing and resident selection plan that details how the tenants of the ELI units will be selected;
  - c. A detailed plan that outlines the ongoing regular on-site support services and case

management to be provided to each household residing in the ELI units; and

- d. An operating pro forma highlighting the initial and ongoing funding for the support services and case management.

2. The designated qualified agency shall provide regular on-site support services for the tenants of the ELI units, including, but not limited to, assistance with daily living activities, healthcare referrals, community integration, job training, and employment opportunities.

- C. **No Public Funding Limitation.** Inclusionary Housing Projects that choose the Alternative Compliance Option may seek and accept public development funds to construct and operate the ELI units, notwithstanding Section 5.11.10.
- D. Inclusionary Housing Projects that choose the Alternative Compliance Option must comply with all other applicable requirements of Section 5.11.

Extremely Low Income (ELI) Alternative Compliance Option: Number of Inclusionary Units Required	
Tier Level	21+ UNITS
ELI Tier: 30% AMI	2.5%
Tier 1: 50% - 80% AMI	7.5%
Tier 2: 110% AMI	2.5%
<b>Total</b>	<b>12.5%</b>

Extremely Low Income (ELI) Alternative Compliance Option: Number of Inclusionary Units Required EFFECTIVE January 1, 2021		
Tier Level	21-99 UNITS	100+ UNITS
ELI Tier: 30% AMI	2.5%	5%
Tier 1: 50% - 80% AMI	7.5%	5%
Tier 2: 110% AMI	2.5%	5%
<b>Total</b>	<b>12.5%</b>	<b>15%</b>

Illustration: ELI Inclusionary Units Calculation Methodology
<i>EXAMPLE: 74 Unit Rental Development</i>
<i>ELI Tier: 0.025 x 74 units = 1.9 units Total: <u>2 units</u> at ELI Tier (round up)</i>
<i>Tier 1: 0.075 x 74 units = 5.6 units Total: <u>6 units</u> at Tier 1 (round up)</i>
<i>Tier 2: 0.025 x 74 units = 1.9 units Total: <u>2 units</u> at Tier 2</i>
<i>TOTAL UNITS = 10 deed-restricted affordable units</i>

### 5.11.11. Elder Housing with Services

In order to provide affordable elder housing with affordable and sustainable services on-site, this section applies to all housing with amenities and services designed primarily for elders, such as residential care, continuing care retirement communities (CCRCs), assisted living, independent living, and congregate care. The base amenities and services to be provided must be included in the annual housing costs and must be comparable to the base amenities and services offered to all residents regardless of income status. Such amenities and services may include long term health care, nursing care, home health care, personal care, meals, transportation, convenience services, social, cultural, educational programming, and the like. This Sec. 5.11.11 does not apply to a nursing or dementia care facility subject to certificate of need programs regulated by the Commonwealth of Massachusetts Department of Public Health or to developments funded under a state or federal program which requires a greater number of elder units or nursing beds than required here.

- A. **Definition of Elderly Households.** For all such projects, an elderly household is defined as a single person who is 62 years of age or older at the time of initial occupancy; or 2 persons living together, where

at least one of whom is 62 years of age or more at the time of initial occupancy.

- B. Definition of Inclusionary Beds.** For all such projects, an Inclusionary Bed is defined as any residential bed that meets the provisions of this section 5.11.11, Elder Housing with Services.
- C. Number of Inclusionary Beds Required.** For all Elder Housing with Services projects, 5% of beds provided on-site must be Inclusionary Beds designated affordable to eligible elderly households with annual gross incomes up to 80% of AMI, adjusted for household size. The applicable household income limit for all Inclusionary Beds subject to the provisions of Section 5.11.11 is 80% of the AMI at the time of marketing. Inclusionary Beds may be located in single-occupancy rooms or in shared rooms. The Inclusionary Beds must be proportionally distributed throughout the site and must be indistinguishable from the market-rate beds.
- D. Monthly Housing and Service Costs.** Total monthly housing costs, inclusive of entrance fees, rent or monthly occupancy fees, amenities, and base services may not exceed a fixed percentage of the applicable household annual income limit for the Inclusionary Bed based on the type of elder housing with services facility, as described below.
  - 1. Independent Living Facilities.** Total monthly housing costs for an Inclusionary Bed in an Independent Living Facility may not exceed 15% of the applicable household income limit for the Inclusionary Bed.
  - 2. Assisted Living Residences.** Total Monthly housing costs for an Inclusionary Bed in an Assisted Living Residence may not exceed 30% of the applicable household income limit for the Inclusionary Bed.
  - 3. Continuing Care Retirement Communities (CCRCs).** Due to their unique structure in providing independent living, assisted living, and skilled nursing and related services to elderly households in one location, CCRCs may choose to satisfy their Inclusionary Zoning requirement through either the provisions related to Independent Living Facilities of those related to Assisted Living Residences.

- E. 100% Deed-Restricted Affordable Facilities.** Any proposed Elder Housing with Services project that consists of 100% deed-restricted affordable units up to 150% of AMI is not subject to the number of inclusionary units required per Section 5.11.4.B and may seek and accept public development funds to construct the project. The percentage of AMI used for establishing monthly housing and service costs and the applicable household income limit for all units in the project must average no more than 110% of AMI. However, projects of this type are subject to all other applicable sections of this Section 5.11.
- F. Use Restrictions.** For all such projects, all Inclusionary Beds must be subject to an affordable covenant approved by the City Solicitor, executed by the City and the developer, and recorded at the Registry of Deeds for the Southern District of Middlesex County or the Land Court Registry of Deeds for the Southern District of Middlesex County.
- G. Tenant Selection.** For all such projects, all Inclusionary Beds must be subject to an Affirmative Fair Housing Marketing and Resident Selection Plan to be approved by the Director of Planning and Development. To the extent permitted by law, such plan must provide for a local preference for up to 70% of the Inclusionary Beds in the project.
- H. Fractional Units.** Where the inclusionary zoning requirement results in a fraction of a bed greater than or equal to 0.5, the development must provide one Inclusionary Bed to capture that fraction.
- I. Alternative Compliance.** The applicant may choose to comply with their inclusionary zoning requirement

Elder Housing with Services: Inclusionary Zoning Cash Payment Calculation	
A = average total development costs (TDC) per unit in Newton	FORMULA
B = average cost of providing long-term care for an elderly individual at 3-hours per day over a 10-year period	<b>STEP 1:</b> A + B = Total cost per bed
	<b>STEP 2:</b> C x 0.05 = # of inclusionary beds required (rounded to nearest 10th)
C = # of beds in proposed project	<b>STEP 3:</b> (A+B )x (C x 0.05 rounded) = Total Cash Payment

**Illustration: Elder Housing with Services Cash Payment Calculation Methodology**

*sample TDC: \$550,000 (May 2019 figure)*

*sample care cost = \$306,600*  
*\$28 per hour x 3 hrs/day x 365 days/year x 10 years*  
*(2019 avg. Home Health Aide hourly rate, Genworth Cost of Care Survey)*

**EXAMPLE: 115-bed Assisted Living Facility**

*STEP 1: \$550,000 + 306,600 = \$856,600/bed*

*STEP 2: 115 beds x 0.05 = 5.8 inclusionary beds required*

*STEP 3: \$856,600 x 5.8 beds = \$4,968,280 Total Payment*

through a cash payment to the City. The total cash payment for projects of this type is based on the average cost of providing long-term care for an elderly individual over a 10-year period, as well as the average total development costs per unit in Newton, calculated by the Newton Housing Partnership and approved by the Director of Planning and Development. The average long-term care cost is based on the Boston area average hourly rate of a home health aide providing three hours per day of care per year as determined by the annual Genworth Cost of Care Survey. Planning staff will review the Cost of Care Survey annually to modify the average cost as necessary. The total cash payment is determined by utilizing the following calculation:

(Ord. No. X-48, 04/22/03; Ord. No. Z-50, 07/13/09)

### 5.11.12. No Effect on Prior or Existing Obligations.

The requirements of Sec. 5.11 have no effect on any prior or previously granted special permit, obligation, contract, agreement, covenant or arrangement of any kind, executed or required to be executed, which provides for dwelling units to be made available for sale or rental to or by the City, the Newton Housing Authority, or other appropriate municipal agency, or any cash payment so required for affordable housing purposes, all resulting from a special permit under Sec. 5.11 applied for or granted prior to the effective date of this amendment.

(Ord. No. X-48, 04/22/03; Ord. No. Z-50, 07/13/09)

### 5.11.13. Inclusionary Zoning Program Reevaluation Requirement.

The City will conduct a reevaluation of the inclusionary zoning program at an interval of no more than 5 years from the time the inclusionary zoning ordinance was last amended and every 5 years thereafter. Such reevaluation must include a report provided to the City Council reviewing factors such as changes in demographic characteristics and residential development activity, housing trends and affordability, and the relationship between Inclusionary Housing Projects and all housing in Newton. The Director of Planning and Development must also conduct an annual review and report on the inclusionary zoning program.

### 5.11.14. Effective Date.

The effective date of the amended provisions of Section 5.11 is August 1, 2019. The requirements of Section 5.11 do not apply to any special permit (or in the event that a special permit is not required, any building permit) issued prior to the effective date of this amendment. Effective January 1, 2021, rental and ownership Inclusionary Housing Projects with 100 or more residential dwelling units will be subject to an increased inclusionary zoning requirement per Sections 5.11.4.B.4.c and 5.11.4.B.5.c.

## Sec. 5.12. Environmental Standards in the Manufacturing District

All uses in a Manufacturing district shall not be injurious, noxious or offensive by reason of noise, smoke, odor, gas, dust or similar objectionable features, or dangerous on account of fire, or any other cause.

(Ord. No. S-260, 08/03/87; Ord. No. T-65, 12/18/89; Ord. No. T-185, 11/18/91)



## Sec. 5.10. Floodplain, Watershed Protection

Floodplain and watershed protection is not a part of this Chapter, and is regulated in Revised Ordinances Chapter 22, Article II, Sec. 22-22 et. seq.

## Sec. 5.11. Inclusionary Zoning

### 5.11.1. Purposes

The purposes of this Sec. 5.11 are to:

- A. Promote the public health, safety, and welfare by encouraging a diversity of housing opportunities for people of different income levels in the City;
- B. Provide for a full range of housing choices throughout the City for households of all incomes, ages, and sizes ~~in order to meet the City's goal of preserving its character and diversity;~~
- C. ~~Mitigate the impact of residential development on the availability and cost of housing, especially housing affordable to low and moderate income households;~~
- D. Increase the production of affordable housing units to meet existing and anticipated housing needs within the City; and
- E. ~~Provide a mechanism by which residential development can contribute directly to increasing the supply of affordable housing in exchange for a greater density of development than that which is permitted as a matter of right; and~~
- F. ~~Establish requirements, standards, and guidelines for the use of such contributions generated from the application of inclusionary housing provisions.~~
- G. Work to overcome economic segregation regionally as well as within Newton, allowing the City to be a community of opportunity in which low and moderate-income households have the opportunity to advance economically.

(Ord. No. X-48, 04/22/03; Ord. No. Z-50, 07/13/09; A-33, 11/18/13)

### 5.11.2. Definitions

- A. "Area Median Income (AMI)" means the median income for households within the designated statistical area that includes the City of Newton, as reported annually and adjusted for household

size by the U.S. Department of Housing and Urban Development (HUD).

- B. "Deed-Restricted Affordable Unit(s)" means any Inclusionary Unit that meets the provisions of 5.11.4 and holds a legal use restriction that runs with the land, is recorded at the Registry of Deeds, provides for affordability in perpetuity, identifies the Subsidizing Agency and monitoring agent, if applicable, and restricts occupancy to income eligible households, as defined by the provisions of Section 5.11.4.
- C. "Eligible Household" means a household whose gross annual income does not exceed the applicable household income limit for the Inclusionary Unit.
- D. "Extremely Low-Income (ELI) Unit(s)" means any dwelling unit affordable to households with annual gross incomes at or below 30% of AMI.
- E. "Household Income Limit" ~~shall~~ means at any given percentage of the area median income (AMI), ~~shall be defined as being~~ the income limit adjusted by household size at that percentage as published by ~~the U.S. Department of Housing and Urban Development (HUD)~~ for the designated statistical area that includes the City of Newton or, for percentage levels not published by HUD, as calculated by the City based on the HUD AMI calculation.
- F. "Inclusionary Housing Project" means any development project that meets the provisions of Section 5.11.3.A.
- G. "Inclusionary Unit(s)" ~~shall~~ means any ~~finished~~ dwelling unit that meets the provisions of Section 5.11.4.
  - 1. "Tier 1 Unit(s)" means any Inclusionary Unit affordable to households with annual gross incomes at or below 80% of AMI, and where applicable, affordable to households with annual gross incomes at or below 50% of AMI.
  - 2. "Tier 2 Unit(s)," also know as "Middle-Income Unit(s)," means any Inclusionary Unit affordable to households with annual gross incomes greater than 80% of AMI, but at or below 110% of AMI.
- H. "Local Action Unit(s) (LAUs)" means an affordable housing unit created as a result of an

intentional action taken by a community, without a comprehensive permit, and which meets the requirements for inclusion on the Subsidized Housing Inventory (SHI). Local Action Units are a component of the Department of Housing and Community Development's (DHCD) Local Initiative Program (LIP).

- I. "Public development funds" means funds for housing construction or rehabilitation if provided through a program eligible to serve as a 'subsidy' under 760 CMR 56.00 Comprehensive Permit: Low or Moderate Income Housing.
- J. "Area Median Income ('AMI')" shall mean the median income for households within the designated statistical area that includes the City of Newton, as reported annually and adjusted for household size by the HUD.

(Ord. No. X-48, 04/22/03; Ord. No. Z-50, 07/13/09; Ord. No. A-37, 03/17/14)

### 5.11.3. Scope Application of Inclusionary Zoning Requirements.

- A. These inclusionary zoning provisions apply to any proposed residential or mixed-use development, including a conventional subdivision of land under M.G.L. Chapter 41, Section 81K-81GG, in any zoning district that includes the construction or substantial reconstruction of seven or more residential dwelling units on any parcel or contiguous parcels comprising a proposed development site. The inclusionary zoning requirements apply to the total number of residential units regardless of the existing residential units proposed to be demolished. The inclusionary zoning requirements also apply to any situation where rental residential dwelling units are converted to 7 or more residential ownership units. as follows:
  - 1. Residential development requiring a special permit;
  - 2. Business or mixed-use development requiring a special permit that includes residential development beyond that allowable as of right;
  - 3. Development requiring a special permit where the development is proposed to include or may include new or additional dwelling units totaling more than two households whether by new construction, rehabilitation, conversion of a building or structure; and

- 4. Open space preservation development requiring a special permit.
- B. This Sec. 5.11 does not apply to accessory units or to a conventional subdivision of land under M.G.L. Chapter 41, Sections 81K et. seq. other than a cluster development for open space preservation development.
- C. **No Segmentation.** The inclusionary zoning provisions of this section apply to projects at one site or two or more adjoining sites in common ownership or under common control within a period of five years from the first date of application for any special or building permit for construction on the lot or lots, or for the 12 months immediately preceding the date of application for any special permit or building permit. An applicant for development may not segment or divide or subdivide or establish surrogate or subsidiary entities to avoid the requirements of Section 5.11.11. Where the City Council determines that this provision has been violated, a special permit or building permit will be denied. However, nothing in Section 5.11 prohibits the phased development of a property.
- D. **100% Deed-Restricted Affordable Developments.** Any proposed residential or mixed-use development that consists of 100% deed-restricted affordable units up to 110% of AMI is not subject to the Number of Inclusionary Units Required, Section 5.11.4.B; however, projects of this type are subject to all other applicable provisions of this section 5.11.
- E. **Qualification of Tier 1 Units as Local Action Units.** All Inclusionary Units affordable to households at or below 80% of AMI must be qualified as 'Local Action Units' pursuant to the requirements of the Comprehensive Permit Guidelines of the Massachusetts Department of Housing and Community Development (DHCD), Section VI.C "Local Action Units," as in effect December 2014, as the same may be amended from time to time, unless the unit is exempted from this requirement by another provision of this Section 5.11.
- F. **Tier 2 Units as Consistent with Local Action Units.** All Inclusionary Units affordable to households earning greater than 80% but less than or equal to 110% of AMI must be consistent, where applicable, with the requirements of 'Local Action Units' pursuant to the requirements of the Comprehensive Permit

Guidelines of the DHCD, Section VI.C “Local Action Units,” as in effect December 2014 as the same may be amended from time to time, unless the unit is exempted from this requirement by another provision of this Section 5.11.

(Ord. No. X-48, 04/22/03; Ord. No. Z-50, 07/13/09)

### 5.11.4. **Mandatory Provision of Inclusionary Units.**

**A. Inclusionary Unit Tiers.** Inclusionary Units are divided into two tiers based on their level of affordability. Tier 1 represents units affordable to households with annual gross incomes at or below 50% of AMI and units affordable to households with annual gross incomes at or below 80% of AMI; and Tier 2 represents Middle-Income units affordable to households with annual gross incomes greater than 80% of AMI, but at or below 110% of AMI.

**B. Number of Inclusionary Units Required.** The percentage of required Inclusionary Units in a proposed development is based on the total number of new units proposed on any parcel or contiguous parcels comprising a proposed development site, and whether the units are rental or ownership. Where a special permit is required for development as described in Sec. 5.11.3, inclusionary units shall be provided equaling no fewer than 15 percent of the number of dwelling units proposed to be added by the development, exclusive of existing dwelling units to be required. For purposes of calculating the number of inclusionary units required in a proposed development, any fractional unit of 1/2 or greater shall be deemed to constitute a whole unit. Inclusionary units shall comprise at least 15 percent of the units to have been offered for sale or rental at each point in the marketing of the development.

1. Where the inclusionary zoning requirement results in a fraction of a unit greater than or equal to 0.5, the development must provide one Inclusionary Unit to capture that fraction.
2. Where the inclusionary zoning requirement results in a fraction of a unit less than 0.5, the development may choose to provide one Inclusionary Unit to capture that fraction or contribute a fractional cash payment to the City to cover the fraction of that Inclusionary Unit requirement. Fractional cash payment amounts are calculated based on the provisions of Section 5.11.5.

3. All fractions are rounded to the nearest tenth.
4. **Rental Project Requirements.** The percentage requirements for applicable rental developments are based on the following table and provisions:
  - a. For rental Inclusionary Housing Projects with seven to nine residential dwelling units, where only one rental inclusionary unit is required at Tier 1, the inclusionary unit shall be priced for a household income limit at not more than 80% of AMI.
  - b. For rental Inclusionary Housing Projects with ten or more residential dwelling units, where two or more rental Inclusionary Units are required at Tier 1, the AMI used for establishing rent and income limits for these Inclusionary Units must average no more than 65% of AMI. Alternatively, at least 50% of such units may be priced for households having incomes at 50% of AMI and the remaining Inclusionary Units may be priced for households at 80% of AMI.
  - c. Effective January 1, 2021, rental Inclusionary Housing Projects with 100 or more residential dwelling units must provide 15% of residential dwelling units at Tier 1.

#### Illustration: Tier 1 Average 65% AMI Methodology

*Example Project: 17-unit rental development*

$$15\% \text{ at Tier 1} = 0.15 \times 17 \text{ units} = 2.55 \text{ units}$$

$$\text{Total: } \underline{3 \text{ units at Tier 1 (round up)}}$$

*Average affordability level across units must be 65% AMI*

*EXAMPLE APPROACH #1: 1 unit at 50% AMI*  
*1 unit at 65% AMI*  
*1 unit at 80% AMI*

*EXAMPLE APPROACH #2: 3 units at 65% AMI*

Rental Projects: Number of Inclusionary Units Required		
Tier Level	7-20 UNITS	21+ UNITS
Tier 1: 50%-80% AMI	15%	15%
Tier 2: 110% AMI	0%	2.5%
<b>Total</b>	<b>15%</b>	<b>17.5%</b>

Rental Projects: Number of Inclusionary Units Required EFFECTIVE January 1, 2021			
Tier Level	7-20 UNITS	21-99 UNITS	100+ UNITS
Tier 1: 50%-80% AMI	15%	15%	15%
Tier 2: 110% AMI	0%	2.5%	5%
<b>Total</b>	<b>15%</b>	<b>17.5%</b>	<b>20%</b>

**Illustration: Rental Projects Calculation Methodology**

*Example Project: 31-unit rental development*

15% at Tier 1 =  $0.15 \times 31 \text{ units} = 4.7 \text{ units}$   
 Total: 5 units at Tier 1 (round up)

2.5% at Tier 2 =  $0.025 \times 31 \text{ units} = 0.8 \text{ units}$   
 Total: 1 unit at Tier 2 (round up)

TOTAL UNITS = 6 deed-restricted affordable units

and 5% of residential dwelling units at Tier 2.

5. Ownership Project Requirements. The percentage requirements for applicable ownership developments are based on the following table and provisions.
  - a. For ownership Inclusionary Housing Projects with seven to 16 residential dwelling units, where one or two ownership inclusionary units are required at Tier 1, the household income limit for those units shall be 80% of AMI and the inclusionary units must be priced for affordability to households having annual gross incomes of not more than 70% of AMI at the time of marketing.
  - b. For ownership Inclusionary Housing Projects with 17 or more residential dwelling units, where three or more ownership inclusionary units are required, the household income limit for Tier 1 units must be 80% of AMI and those inclusionary units must be priced

for affordability to households having annual gross incomes of not more than 70% of AMI at the time of marketing. The household income limit for Tier 2 Middle-Income units must be 110% of AMI and those inclusionary units must be priced for affordability to households having annual gross incomes of not more than 100% of AMI at the time of Marketing.

- c. Effective January 1, 2021, ownership Inclusionary Housing Projects with 100 or more residential dwelling units must provide 10% of residential dwelling units at Tier 1 and 10% of residential dwelling units at Tier 2.

Ownership Projects: Number of Inclusionary Units Required			
Tier Level	7-16 UNITS	17-20 UNITS	21+ UNITS
Tier 1: 50%-80% AMI	15%	10%	10%
Tier 2: 110% AMI	0%	5%	7.5%
<b>Total</b>	<b>15%</b>	<b>15%</b>	<b>17.5%</b>

Ownership Projects: Number of Inclusionary Units Required EFFECTIVE January 1, 2021				
Tier Level	7-16 UNITS	17-20 UNITS	21-99 UNITS	100+ UNITS
Tier 1: 50%-80% AMI	15%	10%	10%	10%
Tier 2: 110% AMI	0%	5%	7.5%	10%
<b>Total</b>	<b>15%</b>	<b>15%</b>	<b>17.5%</b>	<b>20%</b>

**Illustration: Ownership Projects Calculation Methodology**

*Example Project: 52-unit ownership development*

10% at Tier 1 =  $0.10 \times 52 \text{ units} = 5.2 \text{ units}$   
 Total: 5 units at Tier 1 (round down)  
 plus fractional cash payment

7.5% at Tier 2 =  $0.075 \times 52 \text{ units} = 3.9 \text{ units}$   
 Total: 4 units at Tier 2 (round up)

TOTAL UNITS: 9 deed-restricted affordable units

- C. Incentives for Additional Inclusionary Units. An Inclusionary Housing Project that includes more than the required number of Inclusionary Units will be awarded bonus market-rate units at a ratio of 2 to 1. For every additional Inclusionary Unit the applicant agrees to provide, the development will be awarded 2 additional market-rate units. In the event that the additional Inclusionary Unit provided

Illustration: Incentive Units Calculation Methodology

Example Project: 31-unit rental development

PRE-INCENTIVE CALCULATION

15% at Tier 1 = 0.15 x 31 units = 4.7 units  
Total: 5 units at Tier 1 (round up)

2.5% at Tier 2 = 0.025 x 31 units = 0.8 units  
Total: 1 unit at Tier 2 (round up)

INCENTIVE: Additional 2 Tier 1 Units >> 4 additional Market Rate Units

POST-INCENTIVE PROJECT: 37 units  
7 Tier 1 Units + 1 Tier 2 Unit  
TOTAL: 8 deed-restricted units (21.6%)

NOTE: The post incentive project may not exceed 25% more units than otherwise permissible (1.025 x 31 = 37.8 max units)

by the applicant is a family-sized unit (a 3-bedroom unit greater than 1,100 square feet), the ratio is 3 to 1. For every additional 3-bedroom Inclusionary Unit proposed, the development will be awarded 3 additional market-rate units. The additional Inclusionary Units must be Tier 1 units and the total number of additional units of any type must not exceed 25% of the number of units otherwise permissible on the lot under lot area per dwelling unit requirements.

D. Maximum Monthly Housing Costs, Sale Prices and Rents Rent and Sale Price Limits. Maximum sale price or rent for Inclusionary Units is calculated as affordable to a household with a number of household members equal to the number of bedrooms in a unit plus one, ~~Rent and sale price limits for inclusionary units shall be set based on the assumption that household size equals the number of bedrooms plus,~~ regardless of the actual number of persons occupying the units, ~~as may be further specified in guidelines provided by the City in its then-current affordable rent or sales guidelines or, if not specified there, as specified by Massachusetts Department of Housing and Community Development (DHCD) in its Local Initiative Guidelines for 'Maximum Sales and Rents,' as most recently revised at the time of marketing.~~

1. Rental. Inclusionary rental units are to be priced to be affordable to a household having a gross annual income at the household income limit for that Inclusionary Unit, as specified in Section 5.11.4. Monthly housing costs, inclusive of rent, utility costs for heat, water, hot water, and

electricity, 1 parking space, and including access to all amenities that are offered to tenants in the building, must not exceed 30% of the applicable household income limit for the Inclusionary Unit. If the utilities are separately metered, they may be paid by the tenant and the maximum allowable rent will be reduced to reflect the tenant's payment of utilities, based on the area's utility allowance for the specific unit size and type, to be secured from the Newton Housing Authority. For a household with a Section 8 voucher, the rent and income are to be established by the Newton Housing Authority with the approval of HUD.

2. Homeownership. Inclusionary units for sale are to be priced to be affordable to a household having a gross annual income 10 percentage points lower than the household income limit for that Inclusionary Unit, as specified in Section 5.11.4. The monthly housing costs, inclusive of mortgage principal and interest, private mortgage insurance, property taxes, condominium and/or homeowner's association fees, hazard insurance, and 1 parking space, must not exceed 30% of the applicable household income limit for the Inclusionary Unit. Additionally, the following requirements apply:

- a. Down payment must be at least 3% of the purchase price;
- b. Mortgage loan must be a 30-year fully amortizing mortgage for not more than 97% of the purchase price with a fixed interest rate that is not more than 2 percentage points above the current MassHousing interest rate; and
- c. Buyers will be eligible so long as their total housing costs, including the services identified above, do not exceed 38% of their income.

E. Notwithstanding the requirements of this Section 5.11.4, an Inclusionary Housing Project may set the sale price or rental rate for Inclusionary Units lower than what is required herein.

1. Sales unit price limit. Inclusionary units for sale shall be priced to be affordable to a household having an income 10 percentage points lower than household income limit for that unit as provided in subparagraphs below and the assumed household size based in paragraph

~~B. above. The price is 'affordable' if the monthly housing payment, including mortgage principal and interest, private mortgage insurance, property taxes, condominium and/or homeowner's association fees, hazard insurance, and 1 parking space do not exceed 30 percent of the monthly income of a household at the assumed household size. Buyers will be eligible so long as their total housing cost including the services identified above does not exceed 38 percent of their income.~~

- ~~2. Purchase income eligibility limit: fewer than 3 for-sale units. Where fewer than 3 inclusionary units are provided in a development under Sec. 5.11.3, the household income limit for those units shall be 80 percent of the AMI and the inclusionary units shall be priced for affordability to households having incomes of not more than 70 percent of AMI at the time of marketing of the inclusionary units in questions.~~
- ~~3. Purchase income eligibility limit: 3 or more for-sale units. Where 3 or more inclusionary units are provided in a development under sec. 5.11.3 the eligible household income limit for at least two-thirds of the inclusionary units offered for sale (rounded to the nearest whole number) shall be not more than 80 percent of the area median income at the time of the marketing. The eligible household income limit for the remaining inclusionary units may be set at any level(s) up to 120 percent of the area median income at the time of marketing.~~
- ~~4. Rental unit price limit. Inclusionary rental units are to be priced to be affordable to a household having an income at the household income limit for that unit as provided in subparagraphs 4 and 5. For inclusionary units, the monthly rent payment, including 1 parking space and including heat, hot water, and electricity shall not exceed 30 percent of the applicable household income limit for the inclusionary unit, adjusted downward for any of those services not included. For a household with a Section 8 voucher, the rent and income are to be as established by the Newton Housing Authority with the approval of HUD.~~
- ~~5. Renter income eligible limit: 2 or more rental units. Where 2 or more inclusionary units are provided for rental in a development under Sec. 5.11.3, the percentage of AMI used for establishing rent and income limits for all~~

~~inclusionary units in the development shall average no more than 65 percent of the AMI. Alternatively, where 2 or more inclusionary units are provided for rental in a development under Sec. 5.11.3, they may be provided such that at least 50 percent of such units are priced for households having incomes at 50 percent of the AMI, and all other remaining inclusionary units are priced for households having incomes at 80 percent of the AMI.~~

- ~~6. Renter income eligibility limit: 1 rental unit. Where only 1 inclusionary unit is provided in a development under Sec. 5.11.3, the inclusionary unit shall be priced for a household income limit and rental affordability at not more than 80 percent of the AMI.~~

~~F. Qualification as Local Action Units. Inclusionary units must be qualified as 'Local Action Units' pursuant to the requirements of the Comprehensive Permit Guidelines of the DHCD, Sec. VI.C Local Action Units, as in effect June 1, 2009 as the same may be amended from time to time, unless:~~

- ~~1. The Household income limit for the unit exceeds 80 percent of the AMI; or~~
- ~~2. The unit is exempted from this requirement by another provision of this Sec. 5.11; or~~
- ~~3. The unit is exempted from this requirement by a provision included in the special permit authorizing the development, based on special circumstances applicable to that development, or based on changes in the DHCD regulations or guidelines.~~

~~(Ord. No. X-48, 04/22/03; Ord. No. Z-50, 07/13/09; Ord. No. A-37, 03/17/14)~~

### 5.11.5. Cash Payment Option.

As an alternative to the requirements of Section 5.11.4, an applicant may contribute a cash payment to the City's Inclusionary Housing Fund, in lieu of providing Inclusionary Units.

A. Eligibility. There are 3 circumstances in which the Inclusionary Unit requirements of Section 5.11.4 may be met through a cash payment instead of providing Inclusionary Units:

1. For Inclusionary Housing Projects that include the construction or substantial reconstruction of 7 to 9 dwelling units; or

2. By special permit from the City Council, where the Council The inclusionary unit requirements of Sec. 5.11.4 may, if proposed by the applicant in a special permit application, alternatively be met through payment of a fee in lieu of providing those inclusionary units. Such request shall be approved only if the development (a) contains no more than 6 dwelling units or (b) the City Council, in acting upon the special permit for the development, makes specific findings that there will be an unusual net benefit to achieving the City's housing objectives as a result of allowing a cash payment fee rather than requiring the development of Inclusionary Units. The findings must shall include consideration of the appropriateness of the development site location for income-eligible households, including proximity to and quality of public transportation, schools, and other services; and the current balance of the Inclusionary Housing Fund level of uncommitted funds in the receipts reserved for appropriation fund; and the purposes of this Section 5.11.

Planning and Development based on available data from affordable housing developments as above, completed in Newton during the preceding 5 year period. The first 2 units in a development granted a certificate of occupancy shall require no fee in lieu. For each remaining unit in the development the fee in lieu shall be equal to 12 percent of the sales price at closing of each unit as verified by the Planning and Development Department or if rental housing the cash payment shall be equal to 12 percent of the estimated assessed value of each unit as determined by the City Assessor.

3. For Inclusionary Housing Projects where the inclusionary zoning requirement results in a fraction of a unit less than 0.5, the applicant may contribute a fractional cash payment to the City to cover the fraction of that Inclusionary Unit requirement.

B. **Cash Payment Fee Amount.** The cash payment as an alternative to each required Inclusionary Unit, or fraction thereof, is based on a formula that utilizes the average total development costs (TDC) per unit in Newton, calculated by the Newton Housing Partnership and approved by the Director of Planning and Development utilizing final closing budgets and/or certified cost and income statements from new affordable housing developments built in Newton in the previous 5 years that were funded all of in part by public subsidies or approved through M.G.L. Chapter 40B. This basis for the cash payment standard (average TDC/unit in Newton) must be increased annually by the amount of the Consumer Price Index (CPI-U) and take effect on the anniversary date of the effective date in Section 5.11.14. No more than every 5 years, as part of the Inclusionary Housing Program Reevaluation Requirement of Section 5.11.13, the average TDC/unit in Newton must be recalculated by the Newton Housing Partnership and approved by the Director of

Inclusionary Zoning Cash Payment Calculation	
A = # of dwelling units in proposed project	FORMULA
B = Total Inclusionary Percentage Required for the project	<b>STEP 1:</b> A X B = total inclusionary units required (round to nearest 10th)
C = average total development costs (TDC) per unit in Newton	<b>STEP 2:</b> (A x B rounded) x C = Total cash payment

**Illustration: Cash Payment Calculation Methodology**

*sample TDC: \$550,000 (May 2019 figure)*

*EXAMPLE 1: 18 Unit Rental Project*

- A = 18 units*
- B = 15% inclusionary required*
- C = \$550,000 TDC*

*STEP 1: 0.15 x 18 units = 2.7 units*  
*STEP 2: 2.7 units x \$550,000 = \$1,485,000*  
*Total Payment*

*EXAMPLE 2: 36 Unit Ownership Project*

- A = 36 units*
- B = 17.5%*
- C = \$550,000*

*STEP 1: 0.175 x 36 units = 6.3 units*  
*STEP 2: 6.3 units x \$550,000 = \$3,465,000*  
*Total Payment*

*SMALL PROJECT CALCULATION EXAMPLES*

*7 Unit Project: 0.7 x \$550,000 = \$385,000*  
*Total Payment*

*8 Unit Project: 0.8 x \$550,000 = \$440,000*  
*Total Payment*

*9 Unit Project: 0.9 x \$550,000 = \$495,000*  
*Total Payment*

1. The average TDC per unit, as calculated in May 2019 by the Newton Housing Partnership and approved by the Director of Planning & Development, is \$550,000.
  2. For Inclusionary Housing Projects containing 10 or more units that receive a Special Permit to make such a payment, the total cash payment is determined by utilizing the following calculation:
  3. For Inclusionary Housing Projects with 7-9 units, the total cash payment is determined by utilizing the average total development costs (TDC) per unit in Newton and reducing that number based on the number of units in the project as follows:
    - a. Total cash payment for a 7-unit project: 70% multiplied by the TDC per unit in Newton.
    - b. Total cash payment for an 8-unit project: 80% multiplied by the TDC per unit in Newton.
    - c. Total cash payment for a 9-unit project: 90% multiplied by the TDC per unit in Newton.
- C. Fractional Cash Payment Amount.** Where the inclusionary zoning requirement results in a fraction of a unit less than 0.5, the development may choose to contribute a fractional cash payment to the City to cover the fraction of that Inclusionary Unit requirement. The fractional cash payment is based on the resulting fraction (rounded to the nearest tenth) multiplied by the average TDC per unit in Newton.

- D. Payment Deadline.** Any Inclusionary Unit cash payment must be paid in full to the City prior to the granting of any Certificate of Occupancy.
- E. Cash Payment Fee Recipient.** The cash fee payment is shall be made to the City's Inclusionary Zoning Fund, to a receipts reserved for appropriation fund established by the City Council. Proceeds from the fund shall be distributed equally to the Newton Housing Authority and the City of Newton. Planning and Development Department. These funds are to be used for the restoration, creation, preservation, associated support services, and monitoring of deed restricted units affordable to households with annual gross incomes at or below 80% of AMI, to the extent practical. and shall be used exclusively for construction, purchase, or rehabilitation of housing for eligible households consistent with the purposes of this Sec. 5.11 and without undue concentration of units. Appropriation of these funds for use by the City or the Newton Housing Authority must first be approved by the Planning & Development Board and then by the Mayor. The Newton Housing Authority and the City Department of Planning and Development must shall each maintain an ongoing record of payments to the fund on their behalf and shall report annually to the City Council on the use of the proceeds for the purposes stated in this Sec. 5.11.

(Ord. No. X-48, 04/22/03; Ord. No. Z-50, 07/13/09)

### 5.11.6. Off-Site Development

- A. Eligibility.** Off-site Inclusionary Units are generally discouraged. The Inclusionary Unit requirements of Section 5.11.4 may be met through the off-site development of the required Inclusionary Units only by special permit from the City Council where the Council makes specific findings that there will be an unusual net benefit to achieving the City's housing objectives as a result of allowing the units to be built off-site. The findings must include consideration of:
1. The appropriateness of the development site location for income-eligible households, including proximity to and quality of public transportation, schools, and other services;
  2. Consideration relative to the concentration of affordable units in the City;

#### Illustration: Fractional Payment Calculation Methodology

*sample TDC: \$550,000 (May 2019 figure)*

*EXAMPLE: 48 Unit Rental Project*

*Tier 1: 0.15 x 48 units = 7.2 units*  
*TOTAL UNITS = 7 units*  
*FRACTIONAL PAYMENT = 0.2 X \$550,000 = \$110,000*

*Tier 2: 0.025 x 48 units = 1.2 units*  
*TOTAL UNITS = 1 unit*  
*FRACTIONAL PAYMENT = 0.2 x \$550,000 = \$110,000*

*Total Inclusionary Requirement = 8 deed-restricted units and \$220,000*



- 3. An increase in the number of Inclusionary Units and an increase in the percentage of Tier 1 units from the amount otherwise required; and
- 4. Consideration of the purposes of this section of the ordinance, Section 5.11.1. ~~Where an applicant has entered into a development agreement with a non-profit housing development organization, inclusionary units otherwise required to be constructed on-site and within the development may be constructed or rehabilitated off-site.~~

**B. Non-Profit Housing Developer Partnership. Any Inclusionary Housing Project that includes off-site Inclusionary Units must enter into a development agreement with a non-profit housing developer for the development of the off-site units.**

- 1. The applicant ~~and the non-profit housing development organization~~ must submit a development plan for off-site development for review and comment by the Planning and Development Department prior to submission to the City Council. The plan must include at a minimum, demonstration of site control, necessary financing in place to complete the off-site development or rehabilitation, an architect's conceptual site plan with unit designs and architectural elevations, and agreement that the off-site units will comply with Sec. 5.11.7.
- C. The off-site development must provide a greater number of affordable units at a deeper level of affordability, an equivalent unit mix and comparable sized units, and an equivalent level of accessibility as that which would have been provided if the required units were to remain on-site.
- D. As a condition of granting a special permit for the applicant's development, the City Council shall require that All off-site inclusionary units allowed by special permit must shall be completed and occupied no later than completion and occupancy of the applicant's on-site market rate units. If the off-site inclusionary units are not completed as required within that time, temporary and final occupancy permits shall will not be granted for the number of on-site market rate units equal to the number of off-site inclusionary units which have not been completed. Where the City Council determines that completion of off-site inclusionary units has been delayed for extraordinary reasons beyond

the reasonable control of the applicant and non-profit housing developer, the City Council may, ~~in its discretion, permit upon the request of the applicant to amend the Special Permit, allow~~ the applicant to post a monetary bond and release one or more on-site market rate units. The amount of the bond ~~shall~~ must be sufficient in the determination of the Planning and Development Department to assure completion of the off-site inclusionary units.

(Ord. No. X-48, 04/22/03; Ord. No. Z-50, 07/13/09)

**5.11.7. Design and Construction**

In all cases, inclusionary units shall be fully built out and finished dwelling units and comply with the requirements set out in the Comprehensive Permit Guidelines of DHCD, Section VI.B.4 "Design and Construction Standards," as in effect December 2014 as the same may be amended from time to time. Additionally, the following requirements apply to all Inclusionary Units:

- A. Inclusionary units provided on-site, and their associated parking spaces, must be proportionally distributed dispersed throughout the Inclusionary Housing Project development and must be sited in no less desirable locations than the market-rate units; ~~and have exteriors that are indistinguishable in design and of equivalent materials to the exteriors of market rate units in the development, and satisfy the following conditions:~~
- B. The bedroom mix of Inclusionary Units must be equal to the bedroom mix of the market-rate units in the Inclusionary Housing Project;
- C. Inclusionary units shall have habitable space of not less than 650 square feet for a 1-bedroom unit and an additional 300 square feet for each additional bedroom or 60 percent of the average square footage of the market rate units with the same number of bedrooms, whichever is greater; provided that inclusionary units shall not exceed 2,000 square feet of habitable space; The Inclusionary Units must meet the following size specifications:
  - 1. Must be comparable in size to that of the market rate units;
  - 2. Whichever is greater of the two:
    - a. Must meet the minimum square footage and bathroom requirements, as required

by DHCD's most current Comprehensive Permit Guidelines.

- b. Must have an average square footage of not less than 80% of the average square footage of the market-rate units with the same number of bedrooms; and
  3. The total square footage of Inclusionary Units in a proposed development must not be less than 10% of the sum of the total square footage of all market-rate and all Inclusionary Units in the proposed development;
- D. Inclusionary Units must have exteriors that are indistinguishable in design and of equivalent materials to the exteriors of the market-rate units in the project; The bedroom mix of inclusionary units shall be equal to the bedroom mix of the market rate units in the development. In the event that market rate units are not finished with defined bedrooms, all inclusionary units shall have 3 bedrooms; and
- E. The materials used and the quality of construction for inclusionary units, including heating, ventilation, and air conditioning systems, ~~shall~~ must be equal to that of the market rate units in the ~~development~~ Inclusionary Housing Project, as reviewed by the Planning and Development Department; provided that amenities such as ~~so-called~~ designer or high end appliances and fixtures need not be provided for inclusionary units;
- F. At a minimum, the Inclusionary Units must have an equivalent level of accessibility as that of the market-rate units, and the Inclusionary Units must have an equivalent mix of disabled-accessible units as that of the market-rate units; and
- G. The Inclusionary Units must have equal access to all amenities that are offered to the market-rate units in a project, such as parking, on-site fitness centers, laundry facilities, and community rooms.

(Ord. No. X-48, 04/22/03; Ord. No. Z-50, 07/13/09)

### 5.11.8. Habitable Space Requirements

The total habitable space of inclusionary units in a proposed development shall not be less than 10 percent of the sum of the total habitable space of all market-rate units and all inclusionary units in the proposed

development. As part of the application for a special permit under this Sec. 5.11, the applicant shall submit a proposal including the calculation of habitable space for all market rate and inclusionary units to the Planning and Development Department for its review and certification of compliance with this Sec. 5.11 as a condition to the grant of a special permit.

(Ord. No. X-48, 04/22/03; Ord. No. Z-50, 07/13/09)

### 5.11.9. Inclusionary Housing Plans and Covenants

As part of the application for a special permit under this Sec. 5.11, The applicant ~~must shall~~ submit an inclusionary housing plan ~~for review and approval by the Director of Planning and Development prior to the issuance of any building permit for the project. that shall be reviewed by the Newton Housing Authority and the Planning and Development Department and certified as compliant by the Planning and Development Department.~~ The plan ~~must shall~~ include the following provisions:

- A. A description of the proposed project and inclusionary units including at a minimum, a breakdown of the total number of residential units in the project, including the number of market-rate units, Inclusionary Units, and accessible and adaptable units; floor plans indicating the location of the inclusionary units and accessible and adaptable units; the number of bedrooms and bathrooms per unit for all units in the development; the square footage of each unit in the development; the amenities to be provided to all units; the projected sales prices or rent levels for all units in the development; and an outline of construction specifications certified by the applicant.
- B. An Affirmative Fair Housing Marketing and Resident Selection Plan (AFHMP) for all Inclusionary Units, including Tier 2 Middle-Income Units, which, at a minimum, meets the requirements set out in the Comprehensive Permit Guidelines of the DHCD, Section III, Affirmative Fair Housing Marketing and Resident Selection Plan, as in effect December 2014 as the same may be amended from time to time and; which shall:
  1. To the extent permitted by law, such plan must provide for a local preference for up to 70%

~~of the Inclusionary Units in a project; Assure that there is no delay, denial, or exclusion from the development based upon a characteristic protected by the City's Human Rights Ordinance in Revised Ordinances, Chapter 12, Article V and applicable fair housing and civil rights laws. Those laws forbid housing discrimination based on race, color, religion, national origin, gender, age, disability, ancestry, marital status, family status, veteran or military status, sexual orientation, genetic characteristics, or status as a person who is a recipient of federal, state, or local public assistance programs, or the requirements of such programs;~~

2. ~~Where a project results in the displacement of individuals who qualify for a unit in terms of household size and income, first preference must be given to those displaced applicants, unless such preference would be unallowable under the rules of any source of funding for the project; Include an affirmative fair housing marketing and tenant selection plan for the inclusionary units based upon the procedures established by the DHCD for marketing, local preferences, and lotteries under Comprehensive Permit Guidelines, Section III, in effect June 1, 2009;~~
3. ~~Where a project includes units that are fully accessible, or units that have adaptive features for occupancy by persons with mobility impairments or hearing, vision, or other sensory impairments, first preference (regardless of the applicant pool) for those units must be given to persons with disabilities who need such units, including single person households, in conformity with state and federal civil rights law, per DHCD's Comprehensive Permit Guidelines, Section III, Affirmative Fair Housing Marketing and Resident Selection Plan, as in effect December 2014 as the same may be amended from time to time; Use fair methods for accepting applications and assigning units, such as accepting applications over a period of weeks, accepting applications by mail, and using lotteries to distribute units and establish waiting lists; and~~
4. ~~Prior to the marketing or otherwise making available for rental or sale any of the units in~~

~~the development, the applicant must obtain the City's and DHCD's approval of the AFHMP for the Inclusionary Units. Provide for local selection preferences for up to 70 percent of the inclusionary units, or such lower share as may be required by other applicable authorities.~~

- C. ~~Agreement by the applicant that initial and ongoing resident selection must be conducted and implmented in accordance with the approved marketing and resident selection plan and Comprehensive Permit Guideliones of the DHCD, Section III, Affirmative Fair Housing Marketing and Resident Selection Plan. Preference shall be given for qualified applicants in the following order:-~~
  1. ~~Where a development results in the displacement of individuals who qualify for a unit in terms of household size and income, first preference shall be given to those displaced applicants, unless such preference would be unallowable under the rules of any source of funding for the project.~~
  2. ~~Following that, preference shall be given to any other qualified applicants who fall within any of the following equally weighted categories:~~
    - a. ~~Individuals or families who live in the City;~~
    - b. ~~Households with a family member who works in the City, has been hired to work in the City, or has a bona fide offer of employment in the City; and~~
    - c. ~~Households with a family member who attends public school in the City.~~
- D. ~~Agreement by the applicant that all Tier 1 units must be qualified as, and all Tier 2 units must be consistent, where applicable, with the requirements of 'Local Action Units' pursuant to the requirements of the Comprehensive Permit Guidelines of the DHCD, Section VI.C "Local Action Units," as in effect December 2014 as the same may be amended from time to time, unless the unit is exempted from this requirement by another provision of the Section 5.11. Preferences for dwelling units having features that are designed, constructed, or modified to be usable and accessible to people with visual, hearing, or mobility disabilities shall be given to qualified applicants in the following order:-~~

1. ~~First preference for initial occupancy shall be given to applicants who are displaced as a result of the project and who need the features of the unit;~~
  2. ~~To households that include a family member needing the features of the unit and having preference under one or more of the three categories listed in Sec. 5.11.9.C.2.;~~
  3. ~~To households that include a family member needing the features of the unit but that do not have a preference under one of the three categories listed in Sec. 5.11.9.C.2.; and~~
  4. ~~To households having preference under one or more of the three categories listed in Sec. 5.11.9.C.2.~~
- E. Agreement by the applicant that all inclusionary units, including those affordable to households earning greater than 80% but less than or equal to 110% of AMI must be subject to 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. The developer must execute and record these affordable housing covenants in the Registry of Deeds for the Southern District of Middlesex County as the senior interest in title for each Inclusionary Unit and which must endure for the life of the residential development, as follows:
- ~~Agreement by the applicant that residents shall be selected at both initial sale and rental and all subsequent sales and rentals from listings of eligible households in accordance with the approved marketing and resident selection plan; provided that the listing of eligible households for inclusionary rental units shall be developed, advertised, and maintained by the Newton Housing Authority while the listing of eligible households for inclusionary units to be sold shall be developed, advertised, and maintained by the Planning and Development Department; and provided further that the applicant shall pay the reasonable cost to develop, advertise, and maintain the listings of eligible households.~~
1. For ownership units, a covenant to be filed at the time of conveyance and running in favor of the City of Newton, in a form approved by the City Solicitor, which limits initial sale and subsequent re-sales of Inclusionary Units to eligible households in accordance with provisions reviewed and approved by the Director of Planning and Development, which incorporates the provisions of this Section; and
2. For rental units, a covenant to be filed prior to the issuance of any occupancy permit and running in favor of the City of Newton, in a form approved by the City Solicitor, which limits rental of Inclusionary Units to eligible households in accordance with provisions reviewed and approved by the Director of Planning and Development, which incorporates the provisions of this Section.
- F. Agreement by the applicant that the Inclusionary Units must be completed and occupied no later than completion and occupancy of the applicant's market rate units. If the Inclusionary Units are not completed as required within that time, temporary and final occupancy permits may not be granted for the number of market rate units equal to the number of Inclusionary Units that have not been completed, to develop, advertise, and provide a supplemental listing of eligible households to be used to the extent that inclusionary units are not fully subscribed from the Newton Housing Authority or the Planning and Development Department listings of eligible households.
- G. Agreement that any special permit issued under this Sec. 5.11. shall require the applicant to execute and record a covenant in the Registry of Deeds for the Southern District of Middlesex County or the Land Court Registry of Deeds for the Southern District of Middlesex County as the senior interest in title for each inclusionary unit and enduring for the life of the residential development, as follows:
1. ~~For purchase units, a covenant to be filed at the time of conveyance and running in favor of the City of Newton, in a form approved by the City Solicitor, which shall limit initial sale and subsequent re-sales of inclusionary units to eligible households in accordance with provisions reviewed and approved by the Planning and Development Department which incorporate the provisions of this Section; and~~
  2. ~~For rental units, a covenant to be filed prior to grant of an occupancy permit and running in favor of the City of Newton, in a form approved by the City Solicitor, which shall limit rental of inclusionary units to eligible households in accordance with provisions reviewed and approved by the Newton Housing Authority which incorporate the provisions of this Section.~~
- H. At the discretion of the applicant and with the agreement of the Newton Housing Authority, an agreement, in a form approved by the City Solicitor,

to convey rental units to the Newton Housing Authority for sale or rental to eligible households.

- I. In the case of rental housing, an agreement by the applicant to submit an annual compliance report to the Director of Planning and Development, in a form approved by the City Solicitor, certifying compliance with the provisions of this Sec. 5.11; ~~provided that in the event of a dispute over compliance, the costs of enforcement will not be borne by the Newton Housing Authority.~~

(Ord. No. X-48, 04/22/03; Ord. No. Z-50, 07/13/09; Ord. No. A-34, 11/18/13)

### 5.11.10. Public Funding Limitation

An applicant ~~must shall~~ not use public development funds to construct inclusionary units required under Sec. 5.11. ~~Public development funds shall mean funds for housing construction or rehabilitation if provided through a program eligible to serve as a 'subsidy' under 760-CMR 56.00 Comprehensive Permit: Low or Moderate-Income Housing.~~ However, the applicant may use public development funds to construct ~~those~~ inclusionary units that are found by the Director of Planning and Development to be consistent with the following:

- A. Those that represent a greater number of affordable units than are otherwise required by this subsection, and not receiving additional market rate units according to Section 5.11.4.C;
- B. Those that are lower than the maximum eligible income limit for some or all inclusionary units by at least 10 percentage points below that stipulated in Sec. 5.11.42; and
- C. Those that exceed regulatory requirements in providing for persons having disabilities.

(Ord. No. X-48, 04/22/03; Ord. No. Z-50, 07/13/09; Ord. No. A-37, 23/17/14)

### 5.11.11. Extremely Low-Income (ELI) Alternative Compliance Option

An Inclusionary Housing Project that includes the construction of 21 or more new residential rental units and provides a required percentage of the total number of new units in the proposed development as Extremely Low-Income (ELI) units may seek a special permit from the City Council to reduce its total percentage of required Inclusionary Units. Such projects must provide, and cover all costs associated with providing, ongoing regular on-site

support services for the households residing in the ELI units, in partnership with a qualified agency. ELI units represent units affordable to households with annual gross incomes at or below 30% of AMI.

- A. ELI Alternative Compliance Option Project Requirements. The percentage requirements for applicable rental developments are based on the following table and provisions:

1. Where 2 or more rental inclusionary units are required at Tier 1, the AMI used for establishing rent and income limits for these inclusionary units must average no more than 65% of AMI. Alternatively, at least 50% of such units may be priced for households have incomes at 50% of AMI, and the remaining inclusionary units may be priced for households at 80% of AMI.
2. "Effective January 1, 2021, applicable rental developments with 100 or more residential

Extremely Low Income (ELI) Alternative Compliance Option: Number of Inclusionary Units Required	
Tier Level	21+ UNITS
ELI Tier: 30% AMI	2.5%
Tier 1: 50% - 80% AMI	7.5%
Tier 2: 110% AMI	2.5%
<b>Total</b>	<b>12.5%</b>

Extremely Low Income (ELI) Alternative Compliance Option: Number of Inclusionary Units Required EFFECTIVE January 1, 2021		
Tier Level	21-99 UNITS	100+ UNITS
ELI Tier: 30% AMI	2.5%	5%
Tier 1: 50% - 80% AMI	7.5%	5%
Tier 2: 110% AMI	2.5%	5%
<b>Total</b>	<b>12.5%</b>	<b>15%</b>

#### Illustration: ELI Inclusionary Units Calculation Methodology

*EXAMPLE: 74 Unit Rental Development*

*ELI Tier: 0.025 x 74 units = 1.9 units  
Total: 2 units at ELI Tier (round up)*

*Tier 1: 0.075 x 74 units = 5.6 units  
Total: 6 units at Tier 1 (round up)*

*Tier 2: 0.025 x 74 units = 1.9 units  
Total: 2 units at Tier 2*

*TOTAL UNITS = 10 deed-restricted affordable units*

dwelling units must provide 5% of residential dwelling units at the ELI Tier, 5% of residential dwelling units at Tier 1, and 5% of residential dwelling units at Tier 2.”

**B. Support Services Provider Partnership.** Any inclusionary Housing Project that chooses the ELI Alternative Compliance Option must form a service agreement with a qualified agency that specializes in supportive housing and case management for extremely low-income individuals or families. Property owners must partner directly with the designated agency on all aspects of tenant selection and management related to the ELI units in all such projects.

1. The applicant must submit a Resident Selection and Supportive Services Plan for the ELI units for review and comment by the Director of Planning and Development prior to submission for approval from the City Council as part of the special permit process. The plan must include, at a minimum, the following:
  - a. Demonstration of a formal partnership with a qualified agency that specializes in supportive housing and case management for extremely low-income individuals or families;
  - b. A marketing and resident selection plan that details how the tenants of the ELI units will be selected;
  - c. A detailed plan that outlines the ongoing regular on-site support services and case management to be provided to each household residing in the ELI units; and
  - d. An operating pro forma highlighting the initial and ongoing funding for the support services and case management.
2. The designated qualified agency shall provide regular on-site support services for the tenants of the ELI units, including, but not limited to, assistance with daily living activities, healthcare referrals, community integration, job training, and employment opportunities.

**C. No Public Funding Limitation.** Inclusionary Housing Projects that choose the Alternative Compliance Option may seek and accept public development funds to construct and operate the ELI units, notwithstanding Section 5.11.10.

**D. Inclusionary Housing Projects that choose the Alternative Compliance Option must comply with all other applicable requirements of Section 5.11.**

### 5.11.12. Elder Housing with Services

In order to provide affordable elder housing with affordable and sustainable services on-site, this section applies to all the following requirements shall apply exclusively when an applicant seeks a special permit for housing with amenities and services designed primarily for elders, such as residential care, continuing care retirement communities (CCRCs), assisted living, independent living, and congregate care. The base amenities and services to be provided must shall be included in the annual housing costs and must be comparable to the base amenities and services offered to all residents regardless of income status. Such amenities and services may an integral part of the annual rent or occupancy related fee, shall be offered to all residents and may include in substantial measure long term health care and may include nursing care, home health care, personal care, meals, transportation, convenience services, and social, cultural, and educational programmings, and the like. This Sec. 5.11.11 shall does not apply to a nursing or dementia care facility subject to certificate of need programs regulated by the Commonwealth of Massachusetts Department of Public Health or to developments funded under a state or federal program which requires a greater number of elder units or nursing beds than required here.

- A. Definition of Elderly Households.** For all such projects, an elderly household is defined as a single person who is 62 years of age or older at the time of initial occupancy; or 2 persons living together, where at least one of whom is 62 years of age or more at the time of initial occupancy.
- B. Definition of Inclusionary Beds.** For all such projects, an Inclusionary Bed is defined as any residential bed that meets the provisions of this section 5.11.12, Elder Housing with Services.
- C. Number of Inclusionary Beds Required.** For all Elder Housing with Services projects, 5% of beds provided on-site must be Inclusionary Beds designated affordable to eligible elderly households with annual gross incomes up to 80% of AMI, adjusted for household size. The applicable household income limit for all Inclusionary Beds subject to the provisions of Section 5.11.10 is 80% of the AMI at the time of marketing. Inclusionary Beds may be located in single-occupancy rooms or in shared rooms. The Inclusionary Beds must be proportionally

distributed throughout the site and must be indistinguishable from the market-rate beds.

- D. **Monthly Housing and Service Costs.** Total monthly housing costs, inclusive of entrance fees, rent or monthly occupancy fees, amenities, and base services may not exceed a fixed percentage of the applicable household annual income limit for the Inclusionary Bed based on the type of elder housing with services facility, as described below.
  - 1. **Independent Living Facilities.** Total monthly housing costs for an Inclusionary Bed in an Independent Living Facility may not exceed 15% of the applicable household income limit for the Inclusionary Bed.
  - 2. **Assisted Living Residences.** Total Monthly housing costs for an Inclusionary Bed in an Assisted Living Residence may not exceed 30% of the applicable household income limit for the Inclusionary Bed.
  - 3. **Continuing Care Retirement Communities (CCRCs).** Due to their unique structure in providing independent living, assisted living, and skilled nursing and related services to elderly households in one location, CCRCs may choose to satisfy their Inclusionary Zoning requirement through either the provisions related to Independent Living Facilities of those related to Assisted Living Residences.
- E. **100% Deed-Restricted Affordable Facilities.** Any proposed Elder Housing with Services project that consists of 100% deed-restricted affordable units up to 150% of AMI is not subject to the number of inclusionary units required per Section 5.11.4.B and may seek and accept public development funds to construct the project. The percentage of AMI used for establishing monthly housing and service costs and the applicable household income limit for all units in the project must average no more than 110% of AMI. However, projects of this type are subject to all other applicable sections of this Section 5.11.
- F. **Use Restrictions.** For all such projects, all Inclusionary Beds must be subject to an affordable covenant approved by the City Solicitor, executed by the City and the developer, and recorded at the Registry of Deeds for the Southern District of Middlesex County or the Land Court Registry of Deeds for the Southern District of Middlesex County.
- G. **Tenant Selection.** For all such projects, all Inclusionary Beds must be subject to an Affirmative Fair Housing Marketing and Resident Selection Plan to be approved by the Director of Planning and

Development. To the extent permitted by law, such plan must provide for a local preference for up to 70% of the Inclusionary Beds in the project.

- H. **Fractional Units.** Where the inclusionary zoning requirement results in a fraction of a bed greater than or equal to 0.5, the development must provide one Inclusionary Bed to capture that fraction.
- I. **Alternative Compliance.** The applicant may choose to comply with their inclusionary zoning requirement through a cash payment to the City. The total cash payment for projects of this type is based on the average cost of providing long-term care for an elderly individual over a 10-year period, as well as the average total development costs per unit in Newton, calculated by the Newton Housing Partnership and approved by the Director of Planning and Development. The average long-term care cost is based on the Boston area average hourly rate of a home health aide providing three hours per day of care per year as determined by the annual Genworth Cost of Care Survey. Planning

Elder Housing with Services: Inclusionary Zoning Cash Payment Calculation	
A = average total development costs (TDC) per unit in Newton	FORMULA
B = average cost of providing long-term care for an elderly individual at 3-hours per day over a 10-year period	<b>STEP 1:</b> $A + B = \text{Total cost per bed}$  <b>STEP 2:</b> $C \times 0.05 = \# \text{ of inclusionary beds required (rounded to nearest 10th)}$
C = # of beds in proposed project	<b>STEP 3:</b> $(A+B) \times (C \times 0.05 \text{ rounded}) = \text{Total Cash Payment}$

**Illustration: Elder Housing with Services Cash Payment Calculation Methodology**

*sample TDC: \$550,000 (May 2019 figure)*

*sample care cost = \$306,600*  
*\$28 per hour x 3 hrs/day x 365 days/year x 10 years*  
*(2019 avg. Home Health Aide hourly rate, Genworth Cost of Care Survey)*

**EXAMPLE: 115-bed Assisted Living Facility**

*STEP 1: \$550,000 + 306,600 = \$856,600/bed*

*STEP 2: 115 beds x 0.05 = 5.8 inclusionary beds required*

*STEP 3: \$856,600 x 5.8 beds = \$4,968,280*  
*Total Payment*

staff will review the Cost of Care Survey annually to modify the average cost as necessary. The total cash payment is determined by utilizing the following calculation:

- J. ~~Maximum Contribution.~~** ~~The applicant shall contribute 2½ percent of annual gross revenue from fees or charges for housing and all services, if it is a rental development or an equivalent economic value in the case of a non rental development. The amount of the contribution shall be determined by the Director of Planning and Development, based on analysis of verified financial statements and associated data provided by the applicant as well as other data the Director of Planning and Development may deem relevant.~~
- K. ~~Determination.~~** ~~The City Council shall determine, in its discretion, whether the contribution shall be residential units or beds or a cash payment after review of the recommendation of the Director of Planning and Development. In considering the number of units or beds, the Director of Planning and Development may consider the level of services, government and private funding or support for housing and services, and the ability of low and moderate income individuals to contribute fees. The applicant shall provide financial information requested by the Director of Planning and Development if the applicant is making a cash contribution, the contribution shall be deposited in accordance with Sec. 5.11.5~~
- L. ~~Contributed Units or Beds.~~** ~~Contributed units or beds shall be made available to individuals and households whose incomes do not exceed 80 percent of the applicable median income for elders in the Boston Municipal Statistical Area, adjusted for household size.~~
- M. ~~Selection.~~** ~~The applicant or manager shall select residents from a listing of eligible persons and households developed, advertised, and maintained by the Newton Housing Authority; provided that the applicant shall pay the reasonable costs of the Newton Housing Authority to develop, advertise, and maintain the listing of eligible persons and households. Should the applicant or manager be unable to fully subscribe the elder housing with services development from the Newton Housing Authority listing, the applicant or manager shall recruit eligible persons and households through an outreach program approved by the Director of Planning and Development. The applicant or manager shall certify its compliance with this~~

~~Sec. 5.11.10 annually in a form and with such information as is required by the Director of Planning and Development. To the extent permitted by law, Newton residents shall have first opportunity to participate in the elder housing with services program set out here.~~

- N. ~~Residential Cash Balances.~~** ~~If, after calculation of the number of units or beds to be contributed under this Sec. 5.11.11, there remains an annual cash balance to be contributed, that amount shall be contributed as set out in paragraph B. above. Any such contribution shall not reduce the contribution required in future years.~~

(Ord. No. X-48, 04/22/03; Ord. No. Z-50, 07/13/09)

### **5.11.13. ~~No Segmentation~~**

~~An applicant for residential development shall not segment or divide or subdivide or establish surrogate or subsidiary entities to avoid the requirements of Sec. 5.11.11. Where the City Council determines that this provision has been violated, a special permit will be denied. However, nothing in Sec. 5.11 prohibits phased development of a property.~~

(Ord. No. X-48, 04/22/03; Ord. No. Z-50, 07/13/09)

### **5.11.14. No Effect on Prior or Existing Obligations.**

The requirements of Sec. 5.11 ~~shall~~ have no effect on any prior or previously granted currently effective special permit, obligation, contract, agreement, covenant or arrangement of any kind, executed or required to be executed, which provides for dwelling units to be made available for sale or rental to or by the City, the Newton Housing Authority, or other appropriate municipal agency, or any cash payment so required for affordable housing purposes, all resulting from a special permit under Sec. 5.11 applied for or granted prior to the effective date of this amendment.

(Ord. No. X-48, 04/22/03; Ord. No. Z-50, 07/13/09)

### **5.11.15. Inclusionary Zoning Program Reevaluation Requirement.**

The City will conduct a reevaluation of the inclusionary zoning program at an interval of no more than 5 years from the time the inclusionary zoning ordinance was last amended and every 5 years thereafter. Such reevaluation must include a report provided to the City Council reviewing factors



such as changes in demographic characteristics and residential development activity, housing trends and affordability, and the relationship between Inclusionary Housing Projects and all housing in Newton. The Director of Planning and Development must also conduct an annual review and report on the inclusionary zoning program.

~~priority and arranging for concurrent rather than sequential agency reviews.~~

(Ord. No. X-48, 04/22/03; Ord. No. Z-50, 07/13/09; Ord. No. A-114, 08/14/17)

## Sec. 5.12. Environmental Standards in the Manufacturing District

All uses in a Manufacturing district shall not be injurious, noxious or offensive by reason of noise, smoke, odor, gas, dust or similar objectionable features, or dangerous on account of fire, or any other cause.

(Ord. No. S-260, 08/03/87; Ord. No. T-65, 12/18/89; Ord. No. T-185, 11/18/91)

### 5.11.16. Effective Date.

The effective date of the amended provisions of Section 5.11 is August 1, 2019. The requirements of Section 5.11 do not apply to any special permit (or in the event that a special permit is not required, any building permit) issued prior to the effective date of this amendment. Effective January 1, 2021, rental and ownership Inclusionary Housing Projects with 100 or more residential dwelling units will be subject to an increased inclusionary zoning requirement per Sections 5.11.4.B.4.c and 5.11.4.B.5.c.

### 5.11.17. ~~No Effect on Accessory Apartments.~~

~~The requirements of Sec. 5.11 shall not apply to accessory apartments.~~

(Ord. No. X-48, 04/22/03; Ord. No. Z-50, 07/13/09)

### 5.11.18. Incentives

- A. ~~Density.~~ A density bonus may be granted equal to 1 unit for each additional inclusionary unit provided above the number required by Sec. 5.11.4, up to a limit where lot area per dwelling unit is decreased by up to 25 percent as set forth in Sec. 3.1, Sec. 3.2, Sec. 4.1 or Sec. 4.2 the "Lot area per unit" column, provided that the proposed project, including bonus units, is consistent with the special permit requirements. To the extent determined by the Director of Planning and Development to be necessary for accommodating the bonus units, increases by up to 25 percent in maximum building lot coverage and, where applicable floor area ratio, and decreases by up to 25 percent in minimum amount of open space may be allowed per the requirements of Sec. 3.1, Sec. 3.2, Sec. 4.1 or Sec. 4.2.
- B. ~~Expedited Review.~~ Developments in which the percentage of inclusionary units to be provided exceeds 30 percent of the development total shall be given expedited application and review procedures to the extent possible and to the extent consistent with assuring well-considered outcomes, through measures such as giving them scheduling

City of Newton



Ruthanne Fuller  
Mayor

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Barney S. Heath  
Director

## Community Preservation Committee

### MEMORANDUM

Date: 6 June 2018

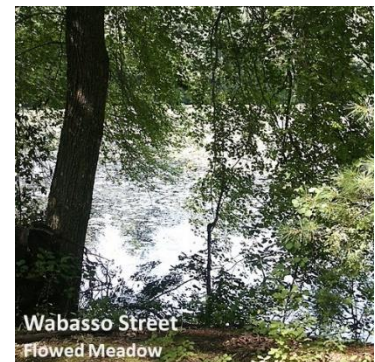
From: Alice Ingerson, Community Preservation Program Manager, and Catherine Farrell, Consulting Counsel to the Community Preservation Committee

To: The Honorable City Council, Zoning & Planning Committee

About: **#190-19 Conservation Restriction for 30 Wabasso Street – summary**

30 Wabasso Street is a small parcel of land located next to the Flowed Meadow Conservation Area and the Charles River in Newton. The parcel was acquired by the City of Newton in 2007 using \$355,000 in Community Preservation Act Funds.

The CR is a standard form developed by the Massachusetts Executive Office of Energy and Environment (EEA). The CR ensures that the parcel be permanently maintained in a natural and scenic condition. Permitted activities include outdoor passive recreational activities such as hiking, nature study and boating. Examples of prohibited activities are the construction of structures, cutting of vegetation, removal of soil and parking or storage of motorized vehicles.



The 30 Wabasso Street CR has been approved and signed by the Newton Conservation Commission. It was signed by the Newton Conservators in early May 2019. The next steps are to obtain the approval of the City Council, and the Mayor. Then the CR will be sent to EEA for the signature of the Secretary of the Executive Office of Environmental Affairs. And finally, the CR is recorded at the Middlesex South Registry of Deeds.

Per the CPC's recommendation (22 December 2018) and City Council order 26-19 (22 January 2019), the Newton Conservators will also receive a grant of \$7,500 from the Community Preservation Fund to cover their expenses in managing and enforcing the CR.

Additional details about this CPA-funded land acquisition are available from this project page on the Community Preservation Program website: [www.newtonma.gov/gov/planning/cpa/projects/flowedmeadow.asp#Wabasso](http://www.newtonma.gov/gov/planning/cpa/projects/flowedmeadow.asp#Wabasso)

contact Alice E. Ingerson, Community Preservation Program Manager | [aingerson@newtonma.gov](mailto:aingerson@newtonma.gov) | 617.796.1144  
website [www.newtonma.gov/cpa](http://www.newtonma.gov/cpa)

**For all CPA-related conservation restrictions:** The Community Preservation Act, M.G.L c. 44B, § 12a, requires that property acquired using CPA funds be bound by a permanent conservation restriction. Conservation Restrictions ("CR") for Newton's CPA acquisitions are granted to the Newton Conservators. Past examples include Angino Farm (2005) and Waban Hill Reservoir (2015). Approval procedures are the same for all of these CRs.



Ruthanne Fuller  
Mayor

City of Newton, Massachusetts  
Office of the Mayor

#190-19

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rfuller@newtonma.gov

May 13, 2019

RECEIVED  
Newton City Clerk  
2019 MAY 13 AM 11:26  
David A. Olson, Clerk  
Newton, MA 02459

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

Honorable City Councilors:

I write to request that this Honorable Council docket a request to approve a Conservation Restriction covering 30 Wabasso Street, a 5184 square foot addition to the Flowed Meadow Conservation Area in Auburndale acquired by the City in 2007 using Community Preservation funds.

The Community Preservation Act requires that parcels purchased using CPA funds be bound by a permanent conservation restriction. This restriction will be granted to the Newton Conservators, a nonprofit organization which promotes protection of natural areas. They will receive a \$7500 grant from the Community Preservation Committee to cover their expenses in managing and enforcing the CR in perpetuity. Other CPA-funded conservation restrictions have also been granted to the Conservators. After Council approval the CR will be sent to the state for final signature and then recorded at the Registry of Deeds.

Attached are the Community Preservation Committee docket form, a summary of the restriction and lot sketch plan, and the CR document itself.

Thank you for your consideration of this matter.

Sincerely,

Mayor Ruthanne Fuller

**I. 30 Wabasso Street Conservation Restriction--Summary**

30 Wabasso Street is a small parcel of land located next to the Flowed Meadow Conservation Area and the Charles River in Newton. The parcel was acquired by the City of Newton in 2007 using \$355,000 in Community Preservation Act Funds.



The CR is a standard form developed by the Massachusetts Executive Office of Energy and Environment (EEA). The CR insures that the parcel be permanently maintained in a natural and scenic condition. Permitted activities include outdoor passive recreational activities such as hiking, nature study and boating. Examples of prohibited activities are the construction of structures, cutting of vegetation, removal of soil and parking or storage of motorized vehicles.

The 30 Wabasso Street CR has been approved and signed by the Newton Conservation Commission. It will be signed by the Newton Conservators during the week of May 13, 2019. The next steps are to obtain the approval of the City Council, and the Mayor. Then the CR will be sent to EEA for the signature of the Secretary of the Executive Office of Environmental Affairs. And finally, the CR is recorded at the Middlesex South Registry of Deeds.

The Newton Conservators will also receive a grant of \$7,500 from the Community Preservation Fund to cover their expenses in managing and enforcing the CR.

**For all Conservation Restrictions:** The Community Preservation Act, M.G.L c. 44B, § 12a, requires that property acquired using CPA funds be bound by a permanent conservation restriction. Conservation Restrictions ("CRs") for Newton's CPA acquisitions are granted to the Newton Conservators. Past examples include Angino Farm (2005) and Waban Hill Reservoir (2015). Approval procedures are the same for all of these CRs.

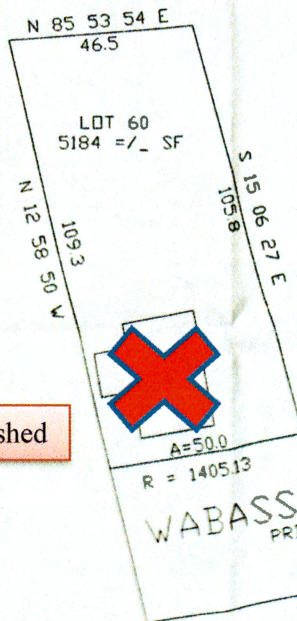
RECEIVED  
Newton City Clerk  
2019 MAY 13 AM 11:26  
David A. Olson, City  
Newton, MA 02450

SKETCH PLAN

#190-19

N84-38872

PARADISE COVE



N/F  
NORMAN AND  
KATHERINE V  
HOBICA

N/F  
LOT 59

OWNER OF RECORD  
THOMAS DONALD WIGHTMAN TRUST  
THOMAS DONALD WIGHTMAN TRUSTEE

DEED REFERENCE  
BOOK 7209 PAGE 443

PLAN REFERENCE  
PLAN BOOK 303 PLAN 15

House has been demolished

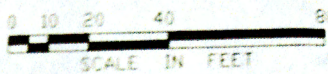
APPROVAL OF THIS PLAN UNDER  
THE SUBDIVISION CONTROL LAW  
IS NOT REQUIRED

CLERK [Signature]  
DATE 11/10/07

ENDORSEMENT OF THIS PLAN IS  
NOT A DETERMINATION AS TO  
CONFORMANCE WITH ZONING  
REGULATIONS

I CERTIFY THAT THIS PLAN HAS  
BEEN PREPARED IN ACCORDANCE  
WITH THE RULES AND REGULATIONS  
OF THE REGISTERS OF DEEDS OF THE  
COMMONWEALTH OF MASSACHUSETTS

[Signature]  
REGISTERED PROFESSIONAL LAND SURVEYOR  
DATE



WABASSO STREET  
PRIVATE

PLAN OF LAND  
30 WABASSO STREET  
NEWTON MASSACHUSETTS  
OCTOBER 10, 2007 SCALE 1"=20'  
CITY OF NEWTON DPW  
ENGINEERING DIVISION  
LOUIS TAVERNA CITY ENGINEER

N84-38872

**GRANTOR:** City of Newton

**GRANTEE:** Newton Conservators, Incorporated

**ADDRESS OF PREMISES:** 30 Wabasso Street,  
Newton, MA

**FOR GRANTOR'S TITLE SEE:**  
Middlesex South Registry of Deeds  
Book 50331, Page 144

RECEIVED  
Newton City Clerk  
2019 MAY 13 AM 11:26  
David A. Olson, Clerk  
Newton, MA 02459

**CONSERVATION RESTRICTION**

The City of Newton, acting by and through its Mayor, with a mailing address at 1000 Commonwealth Avenue, Newton Centre, Massachusetts 02459, being the sole owner, for its successors and assigns (hereinafter referenced to as the "Grantor"), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, hereby grants with QUITCLAIM COVENANTS to Newton Conservators, Incorporated, having an address of P.O. Box 590011, Newton Centre, Massachusetts 02459 and its permitted successors and assigns (hereinafter referred to as the "Grantee"), for nominal consideration, IN PERPETUITY AND EXCLUSIVELY FOR CONSERVATION PURPOSES, the following Conservation Restriction located on a parcel of land off Wabasso Street in Newton, Massachusetts constituting approximately five thousand one hundred eighty-four square feet (5,184), ("Premises") which Premises is more particularly described in Exhibit A and shown as Lot 60 on the attached plan, "Map of Forest Grove Situated in Newton, MA", prepared by Rowland H. Barnes & Henry F. Beal, civil engineers, Boston & Waltham, Massachusetts, dated June 1919, filed with Middlesex South Registry of Deeds, Book of Plans number 303, Plan 15, a reduced copy of which is attached hereto as Exhibit B, both of which are attached hereto and incorporated herein.

## I. PURPOSES:

This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the General Laws and otherwise by law. The purpose of this Conservation Restriction is to assure that the Premises will be maintained in perpetuity for conservation purposes, in a natural, scenic and undeveloped condition, and to prevent any use or change that would impair or interfere with its open space, conservation and preservation values ("conservation values").

The Premises were acquired using M.G.L. c. 44B Community Preservation Act funds, and a copy of the Newton Board of Aldermen Order #257-07 authorizing the use of such funds for such purpose is attached hereto as Exhibit C.

### **The conservation values include the following:**

Open Space Protection. The Premises contributes to the protection of the scenic and natural character of the Charles River and the protection of the Premises will enhance the open-space value of these and nearby lands. The Premises abuts land already conserved by the City of Newton, named Flowed Meadow Conservation Area, which has a total area of 28.80 acres. The Premises borders the Flowed Meadow Conservation Area by 105.8 feet to the east and 50.0 feet to the south. The Premises shares a border 46.5 feet to the north with a section of the Charles River known as Purgatory Cove.

### Consistency with Clearly Delineated Federal, State, or Local Governmental Conservation Policy.

Protecting open space is a goal in Newton, with specific points of importance outlined in the 2014 Open Space and Recreation Plan "OSRP" and also in the Newton Comprehensive Plan section for Open Space and Recreation.

Specifically, in this area close to the Charles River, Newton's OSRP states,

"Strategic additions to major blocks of conservation land and other large open spaces in conjunction with recognizing important corridors for wildlife movement are key in this undertaking. Parcels that are contiguous with existing conservation lands should be considered for elevated priority. The value of biodiversity and protection of native species is hereby again explicitly acknowledged as an important component of planning for open space preservation within our community. The principle of linkage is also useful in consideration of other open space assets, such as preservation of visual corridors and scenic roads."  
Sec. 6, p. 7.

Another main-focus for Newton, as described in the OSRP is connectivity of trail systems:

"An important concept receiving significant interest within Newton is for the establishment of various trail systems. These have the potential for facilitating integration and/or linking of various open space resources while also providing the benefits of walkable pathways and multiple points of access. Possibilities include consideration of an overall trail network, aqueduct loop trails,

interconnections with segments of the Charles River pathway, connections with potential future rail trails and also connections with regional trail systems. With the increased presence of trail bikes, it will be important to address ways to accommodate bike access to and use of suitable trails and appropriate open spaces while also preserving natural resources and respecting pedestrian use.”  
Sec. 6, p. 8.

Flood Plain Protection. A portion (~0.037 acres) of the Premises lies within the 100-year floodplain of the Charles River at Purgatory Cove. The protection of this floodplain will ensure the continued availability of this flood storage during major storm events. A capped municipal landfill is to the south of the site within 500 feet. The preservation of the Premises for stormwater infiltration is critical for keeping contaminants out of the Charles River. The permanent conservation of the Premises will prevent development on a riverfront property, will conserve an area of Prime Forest Land 3, and will contribute to the overall water quality maintenance provided by the forests of the Flowed Meadow Conservation Area through natural stormwater management.

Geology, Topography, Soils. The Premises falls within the Boston Basin Ecoregion and is currently comprised of two land uses, Forested and Forested Wetland, as categorized by the MassGIS online mapping tool, OLIVER. The Premises includes .119 acres of Hinckley loamy sand, categorized as Prime Forest Land 3 by the USDA. There is no Prime Farmland on the Premises.

Public access. Public access to the Premises will be allowed for passive recreation and nature study. The Premises will permanently conserve 70 feet of the Flowed Meadow Trail which allows almost continuous access to the Charles River through the Lakes District of Newton.

BioMap2. The Premises consists of 0.119 acres of Upland Buffer of Aquatic Core Critical Natural Landscape as defined by the Massachusetts Natural Heritage and Endangered Species Program. As an area upland of an Aquatic Core Landscape, this land can be critical in the health and function of the wetland area.

Water Quality Protection. Protection of the Premises will assist in meeting the requirements of TMDL (Total Maximum Daily Load) of phosphorus for the Charles River.

These and other conservation values of the Premises, as well as its current uses and state of improvement, are described in a Baseline Documentation Report (“Baseline Report”) prepared by Grantor, consisting of maps, photographs, and other documents and on file with the Grantee and referenced herein. The Baseline Report (i) is acknowledged by Grantor and Grantee to be a complete and accurate representation of the condition and values of the Premises as of the date of this Conservation Restriction, (ii) is intended to fully comply with applicable Treasury Regulations, and (iii) is intended to serve as an objective information baseline for subsequent monitoring of compliance with the terms of this Conservation Restriction as described herein. Notwithstanding the foregoing, the parties may utilize any evidence of the condition of the Premises at the time of this grant other than the Baseline Report, should the Baseline Report be unavailable or if it does not adequately address the issues presented.



Exhibit C – City Vote Authorizing the use of CPA Funds

IN BOARD OF ALDERMEN

EXHIBIT C

October 15, 2007

ORDERED:

That, in accordance with the recommendations of the Community Preservation Committee, through its Chairman Judy Jacobson; the Board of Aldermen Committee on Community Preservation, through its Chairman Alderman Stephen Linsky; and the Finance Committee through its Chairman Alderman Paul Coletti the sum of Three Hundred Fifty-Eight Thousand, Six Hundred Dollars (\$358,600) is hereby appropriated and transferred from the Community Preservation Open Space Reserve and the Community Preservation General Reserve, to be expended under the direction and control of the Director of Planning and Development for purposes of funding a grant to pay for the purchase and associated legal costs of acquiring and clearing 30 Wabasso St. (assessors' parcel id number 41031 0053), as an addition to the Flowed Meadow Conservation Area in Auburndale, as described in the Community Preservation Committee Recommendation (submitted 15 August 2007, revised 4 September 2007) and the proposal (submitted 18 July 2007, revised 1 August 2007).

FROM:	Fund Balance – Open Space Purposes (21-3321A).....	\$ 298,981.98
	Open Space Reserve (21R10498-5790A).....	\$ 59,618.02
TO:	Open Space Projects; 30 Wabasso Street Purchase (21A11408-5810).....	\$ 355,000.00
	For legal services (21A11408 -5309).....	\$3,600.00
	TOTAL .....	\$ 358,600.00

Under Suspension of Rules  
Readings Waived and Approved  
21 yeas, 0 nays, 3 absent (Ald. Johnson, Mansfield and Weisbuch)

(SGD) DAVID A. OLSON  
City Clerk

(SGD) DAVID B. COHEN  
Mayor

Date \_\_\_\_\_

(SGD) PAUL E. COLETTI  
Chairman, Finance Committee

