



Zoning & Planning Committee Report

City of Newton In City Council

Monday, June 10, 2019

Present: Councilors Albright (Chair), Danberg, Brousal-Glaser, Krintzman, Leary, Baker and Kalis

Absent: Councilor Downs

Also Present: Councilors Gentile, Crossley, Laredo, Greenberg, Noel, Lipof, Lappin, Kelley and Markiewicz

Planning & Development Board: Peter Doeringer (Chair), Sonia Parisca, Kevin McCormack, Jennifer Molinsky, Jim Robertson and Kelley Brown

City Staff Present: Barney Heath (Director, Planning Dept.), James Freas (Deputy Director, Planning Dept.), Rachel Nadkarni (Long Range Planner), Amanda Berman (Director, Housing and Community Development), John Lojek (Commissioner, Inspectional Services), Jonathan Yeo (Chief Operating Officer), Jonah Temple (Assistant City Solicitor), Karyn Dean (Committee Clerk)

#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.

Action: Public Hearing continued; Zoning & Planning Held 6-0 (Councilor Kalis not voting)

Note: Chair of the Committee, Susan Albright, explained that the public hearing on this item was being continued from the June 4th opening date at which more than 70 residents expressed their opinions about the Riverside project and both zoning proposals. She would not be taking additional public comment at this time in order to provide Committee members and other Councilors an opportunity to pose any outstanding questions to the Planning Department. She would like to have responses to these questions in advance of the June 24th Zoning & Planning Committee meeting at which time the discussion on this item, as well as the Lower Falls Improvement Association zoning amendments, will continue.

Questions

- To what extent does the zoning ordinance and the Zoning & Planning Committee, as opposed to the special permit process and the Land Use Committee, deal with traffic, the shadow effect and the views related to the Riverside project? Several Councilors explained that Land Use Committee deals with these issues in the special permit process. It was noted

that the Zoning & Planning Committee needs to provide some guidance to the Land Use Committee through the zoning. If the zoning that is adopted matches the developers plan or not, the guidance is needed. In terms of heights of buildings and setbacks, it would good to know an appropriate amount of height and setback considering the topography along Grove Street and the zoning should set those broad rules. The specifics would then come into play in the special permit process.

- How explicit can the special permit criteria be in the zoning ordinance in order to take care of traffic and other concerns and is it possible to add some of the zoning issues proposed in the Lower Falls amendments into the special permit envelope?
- Can the zoning allow for different heights along different stretches of Grove Street?
- What kind of discussions are ongoing with the MBTA to improve reliability and service? What are the details on the new train cars?
- Special permits and zoning are adopted using a number of points of information including best practices. It is not too early to be having conversations with the MBTA and the Commonwealth as both need to get involved in order to get people out of their cars.
- Have there been any more conversations about the Purple Line? It is important not to close off any opportunities.
- The Northland project has a robust transit managing plan including a plan to divert residents to other modes of transportation. Could Riverside implement something similar to encourage less single-occupant vehicle use?
- Could the Planning Department provide the data that went into developing the traffic report, which was requested from a Councilor three or four weeks ago?
- The developer's presentation included quotes from the Comprehensive Plan about the use and vision of the Riverside site, however, When the zone change was adopted for Riverside several years ago, the Comprehensive Plan was amended to make it consistent. Is that a correct assumption?
- The zoning proposal from the Lower Falls Improvement Association includes standards for the special permit process. Can those issues be legitimately considered under the proposal put forth by the developer?
- There are elements of the zone change to MU3 that are not part of the special permit but go to the question of the available relief. If the Committee were to adopt those elements does it make the special permit application as submitted, moot, because it is built around

the developer's proposal and not any amendments? How does that affect any deadlines on the current or a newly submitted special permit application?

- Should the Committee be choosing one of the zoning proposals in its entirety or might there be a hybrid solution? It was suggested that there be some proposals taken from both.
- It was requested that the Zoning & Planning Committee make a visit to the Riverside site. Since the proposal from the developers is suggesting heights of up to 20 stories, it would be important for the members to experience the site to get a sense of possible impacts.
- Could the zoning also include some guidelines on the noise levels?
- On which criteria should the City Council base its zoning recommendations? Is the Council free to decide what is appropriate and would those be the same criteria that would encompass the granting of a special permit? Or would those criteria change in the role as special permit granting authority?
- It is unusual in the Newton zoning ordinance to specify square footage by use. Could the Planning Department provide other examples of zoning ordinances that use square footage in this way and in what context?

The Planning Department will work on these questions and requests. The Committee voted to hold this item 6-0.

#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.

Action: Public Hearing continued; Zoning & Planning Held 6-0 (Councilor Kalis not voting)

Note: See note above.

#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.

Action: Public Hearing closed; Zoning & Planning Held 5-0 (Councilors Kalis and Leary not voting)

Note: James Freas, Deputy Director of the Planning Department joined the Committee. He noted that both the zoning ordinance and the general ordinance amendments relative to the proposed short-term rental ordinance would be discussed together. The general ordinance establishes

registration and enforcement rules and the zoning ordinance allows short term rentals as an accessory use and allows bed and breakfast uses by special permit. He explained that the state is requiring all operators of short-term rentals to register with the state starting on July 1. The state law subjects short-term rentals to that registration process and makes certain short-term rentals subject to the state hotel tax. Newton would get 6% revenue from the transaction because the City adopted that statute. The first requirement of a Newton operator would be to present their state registration.

Mr. Freas provided a presentation which is attached to this report. Please refer to it for more details of the proposed ordinance. A draft of the ordinance was provided with the Planning Memo and may be found at <http://www.newtonma.gov/civicax/filebank/documents/97578>

The Chair opened the public hearing and invited comment on the zoning proposal for short-term rentals. The Planning & Development Board opened their public hearing as well.

Public Comment

Molly Gasnick, 21 Newtonville Ave said she has lived in Newton her whole life and based on this proposal she would have to sell her home. Her parents bought three homes in Newton and she now lives in one they bought 35 years ago. She has bought 2 homes here and opened 2 businesses. She shares her home through Airbnb with families who have kids graduating from Boston College, families with runners to cheer on in the Boston Marathon, families from Turkey and China with kids at Brimmer and May. She learned how to make Chinese food and Turkish coffee. She has also rented to neighbors whose homes had mold, had weddings, bat mitzvahs and events and needed a place for extra family members. These are all people out in the community using local businesses and are warm and welcoming. Imposing the 45-day maximum and a 2-bedroom limit will cause her to sell her home. This income allows her to pay her taxes and live in the community in which she grew up. She is passionate and enjoys sharing her home. She has never had a complaint from neighbors. She asked the Committee to reconsider so she does not have to sell her home. She lives in the home while she rents to people. It is a large Victorian, taxes, heating and repair bills are large.

Debbie Mapp, 40 Highland Avenue said her husband had a massive stroke several years ago and can no longer work. They depleted their savings in two years for his care and she was not able to make ends meet. A neighbor told her about Airbnb and realized this could help solve their problem. She also has her 96-year old mother in her home which is a 2-family. She has not been using it for the last 18 months because her husband needs more care, but the period of time she needed it, it helped her meet her financial obligations. She had a book of notes from guests she had from all over the world who were grateful to have an affordable, safe place to stay. She has made friends of all these people. It made her life more livable in so many ways. She noted that the fine for violation of the proposed ordinance would be \$300 a day. Imposing these regulations because some people have taken advantage of the situation is not fair. In fact, she said she does not know the stories of the people that were discussed, but because a few people are referred to

as bad actors, these restrictions should not be placed on everyone. She said January and February were slow months, but otherwise she was very busy and enabled her family to stay in their home.

Rose Sbebro, 140 Carleton Road – written comments attached. She also provided a letter from a neighbor, also attached.

Demet (last name and address unintelligible) said she came into this country with several international scholarships and graduated at the top of her class. She works internationally. She is a single mom and a breast cancer survivor. The City is trying to reach into someone's pocket for money and she would like to expose her son to different cultures. She is not running a hotel. If someone comes into her home, they are coming from MIT or Harvard or Boston College. No one has time to party. She is providing taxes to the City through her property taxes and this is limiting her livelihood. She does not see any benefit to anyone on imposing these rules. She did not know anyone who has been troubled. This is something necessary to cultivate the city and its people.

Bill Overholt, 96 Monadnock Road said he grew up near Newton North High School, works at Harvard and has been in his current home for 11 years. The rentals are important to him. Of the groups who come, they are usually 7-10 people attending a graduation or the Boston Marathon, groups from Europe or China who have kids attending a program at Wellesley College to see if they can adapt to college in this country. The number of these groups is enormous, and they want to be together for these events and do not want to be in a hotel. Also, hotels are too expensive. Marriott has absorbed 27 hotel chains and when they consolidate the last deal, prices went up. The very ordinary Marriott at MIT is going for \$800 a night at low season. They are not going to stay in three separate hotel rooms or three separate Airbnb's. Local restaurants and businesses depend on these patrons as well. These are prosperous, conservative families who make an enormous financial contribution to the community. There has been a lot of talk online about businesses leaving the City. Do not force these people out. The standard ought to be that if there is a nuisance, noise, too many cars, etc. it should be prohibited. 45 days is an unacceptable limit and arbitrary. He rents about 60-80 days per year and he said he lives in the house. It has 6 bedrooms and he was told by inspectors that 5 bedrooms is ok to rent and 6 would require a hotel license and he is rigid about that. If he is away, he hires his housekeeper to be in the house to be sure things are going well. His nightly rental is \$950 and he pays \$37,000 in property taxes each year.

Phil Steffen, 9 Jackson Terrace said he did not know about the 45-day limit and he can't believe the Council is trying to legislate what he can do with his home. He and his wife have lived in Newton in 1988 and in 1986 they bought the condo they now live in. His parents left him a farm and they sold that to update the condo and add a third floor for their daughter. Then his granddaughter used that third floor and now his house is worth more than the farm. After two bouts of cancer and other misfortunes, their savings were depleted. They thought they would have to sell and move until a neighbor told them about Airbnb so they cleaned up the beautiful space upstairs. He has paid taxes on businesses in Newton. His wife is a writer and he is in the music business and that industries have gone downhill. In the last 4 months, they booked 90% of every month and have a

5-star rating. The room overlooks the Jackson homestead. They can only stay in Newton if they have that income. If someone legislated uber drivers to 45 days they could not make living. Do not deny people their homes that they worked so hard for for so many years.

Matt Volpi, 44 Oakmont Road said he and his family have lived in their home since 2001 and he is a member of the Commission on Disability. They recently finished a major renovation and expansion of their home. The 1100 square feet and 1.5 bathrooms was not enough and one of his daughters is disabled and needed more space. The expansion was major and cost more than what they purchased the home for in 2001. They specifically carved out a living area in the basement for short term rental use. That revenue was part of their financial calculation when they took on the large mortgage for the upgrades. Five weeks into renting the space it might now be in jeopardy. He works from home and when he is not there, he does not rent it out. He worries more about his family disturbing the guests than the other way around. He is supportive of registration, inspections and having things safe and legal but the sweeping rules are going to limit the ability of homeowners to generate income in a responsible way. It deprives people a legitimate way to support their families and remain in the city as the cost of living increases. People make significant investments in their homes. If he had known this was coming, he would not have spent the money on that additional space. Perhaps people should be grandfathered in. The city will deprive itself of the taxes by limiting the rental days and that money can be used for roads and schools and other improvements in the community. The state registry does not open until July 1 so there is no way for people to register with the state, the city, get the fire inspection and more all on July 1.

Karen Kita, 38 Warwick Road – written comments attached.

Elizabeth Gray, 20 Beaconwood Road said she is a retired school librarian and has been renting on Airbnb for 5 years. She averages 100 nights a year and it supplements her income. She has never had any issues and echoes those who say there have never been any abuse in her situation. She understands that not everyone is following the rules but the people who are following the rules should not be penalized. She strongly disagreed with the 45-day limit and thinks it is absurd.

Judy Ellovitz Greenberg, 20 Donna Road said she is in a difficult spot because she understands how making money off one's home would be awesome and she understands how hard it can be to make ends meet these days. She has lived in Newton her whole life and her street is similar to a cul de sac and very residential. When she was raising her family, she wanted that kind of privacy and cultivating that type of neighborhood. She lives off of Dudley Road which is deemed a "country road" and as a result there are no sidewalks. She loves walking there with her dogs but because of the airbnb there she has almost gotten hit by cars on two occasions and has cut her feet on glass from broken bottles from parties. There are cigarette butts on the street that her dogs try to eat. The garbage is piled really high and she thinks there was a dead animal there. This is happening weekend after weekend and the noise keeps her up at night. The safe and quiet environment is being invaded. There are people carrying in kegs of beer and partying and it is frightening having all these strangers around her and her grandchildren. While this may help those renting out their homes, that does not happen in a bubble and it does affect their neighbors. It hurts the people

who have counted on their investment of quiet enjoyment of their homes. Sometimes at night she's afraid to leave her house.

Norman Greenberg, 20 Donna Road said he has been a resident for 45 years and has had a law office here for 15 years. He is in favor of the general concept of regulating AirBnB in neighborhoods. He's not quite sure these proposed ordinances are ready. There are some problems with wording and definitions. There needs to be a distinction between owner/occupiers renting out a bedroom or two or three and those who are primarily using their house for short term rentals only and are not there. These party houses should be prohibited. More thought needs to go into the ordinance to protect neighborhoods from commercial uses. The Chair asked Mr. Greenberg to submit his ideas on wording. That submission is attached.

Kathy Shay, 61 Donna Road said it is a big conundrum and she knows that some people use this correctly but the people in her neighborhood are experiencing noise and garbage and hundreds of cars and wedding and other events. It is the total antithesis of what many people are doing in a proper way. It is very emotional. She can't walk her dog because of the garbage and racoons. Lobster shells were left everywhere after a lobster bake. She calls the police and they knock on the door and the people lied and said they were having a party with their cousins. Something needs to be done. The Chair noted that the Ward Councilor has been trying to get some resolution to the specific problems on Dudley Road for a month and the Committee has become more and more aware of the bad situation there.

Paul Sweeney, 15 Algonquin Road said he and his husband bought their home 10 years ago. About 3 years ago their neighbor put her house on the market and took it off after several months. She spent half the year in Algeria, and she was considering selling it to Boston College or rent it to BC students. They were very fearful of that so he and his husband ran the numbers and determined they could make it work and pay the mortgage if they rented it on Airbnb. The house is almost attached to their home and that is how close it is, though technically they would not be considered as occupying it. Airbnb works on a rating system so hosts rate guests and vice versa. The rating will dictate whether you get to rent another house or not or if someone will rent from you. The incentives are built up so people will be responsible in order to succeed. There are certainly some hosts and guests that are not responsible, and they should be shut down through some mechanism. He said the restriction on owner occupied would restrict them even though they are literally next door and asked for language regarding contiguous properties. Regulating the days to a 45-day cap would kill this market and no one would rent through Airbnb because it takes so much time to build up your reputation as a host. People will lose their houses. They will have to sell to Boston College or rent to students and they will not be as good to the community as their current short-term renters.

Candy Haydock, 59 Reservoir Avenue said she feels like she needs to sell her house because of what is going on next door. She hears the other side so clearly and understands the financial needs, but she lives next to a horrible situation. The owner is not there and if there is a

requirement for owner occupancy it would make a huge difference and solve many problems. She provided a written statement as well which is attached.

Committee Comments/Questions

The Chair explained that the Planning Department reached out to Airbnb because the Committee wanted this kind of input from those using the platform. It seems like that worked and people have come to share their experiences. She thanked all those who commented.

Some Councilors wondered if the 2-bedroom rule was reasonable. If someone has a 3-bedroom house and wants to rent to a family, that would seem logical. This is something to consider further.

Several Councilors wondered if the 45-day cap should be raised if all other requirements are met, to perhaps 100 days a year.

The situation of the people who own the next door property could perhaps be handled through special permit. The Chair noted there are also situations with Carriage Houses that need to be addressed. The Cambridge ordinance allows a next door operation.

It was asked how an accessory apartment might factor into this ordinance. Mr. Freas explained that the accessory apartment ordinance passed in 2017 specifically prohibits the short-term rental use. It was asked if a living space that is not an official "accessory apartment" could that be used for this use. Mr. Freas said if it does not meet the definition of a dwelling unit, then it is not an accessory apartment. If the separate space does not have a kitchen, it could be used for short-term rental use.

There is an issue in Ward 8 with two homes that advertise accommodations for 14-16 guests on AirBnB. It was asked if that 14-16 guest home can be put to the test and enforce that the owner has to live there for the majority of the time, which is currently not the case. Mr. Freas said the proposal provides that the owner must live at the residence for at least 275 days and the rental situation must be accessory as opposed to a residence in which the owner never resides there, and the primary use is for short-term rental. The ordinance does not allow that primary use scenario and proposes a 45-day per year cap on rentals. He explained that once any rental exceeds 30 days consecutively, this ordinance does not apply as that is not considered a short-term rental. The 45-days over the course of the year can be spread out in any other manner.

It was noted that the houses that seem to be a problem in Ward 8 would quickly hit the 45-day cap under this proposed ordinance. They would also be limited to renting 2 bedrooms in a house, and commercial events would be strictly prohibited. For these particular problem properties, the owners would have to demonstrate their residency in the houses for the required minimum of 275 days, which would like prove to be difficult as the house is currently being used.

A Councilor noted that one of these large houses hosted an opera and sold tickets. He assumed that is not a legal use of a single-family home in the City. Mr. Freas said there is a prohibition in the

proposed ordinance on commercial uses of short-term rentals. Any payment to the operator for a party or charging guests to attend or so forth, would be prohibited. The only money allowed to exchange hands is for the rental itself.

It was noted that while some of the proposed regulations would help with the few bad actors in the short-term rental business, they might be too cumbersome for those who are following rules and being courteous to their neighbors. A balance needs to be struck.

It was asked how enforcement would work. Mr. Freas said a butter notification would make neighbors aware of the short-term rental use in the area. The neighbors can then report an issue - enforcement would primarily be complaint driven.

A Councilor asked about the "pop-up" hotel concept. Mr. Freas explained that would apply to the lease-up period of a large residential development of more than 20 units. Those units could be made available for up to 6 months as short-term rentals. This would not include affordable units and would only apply in mixed use and commercial districts. It is meant to be an economic boost to the village centers directly after the construction of a large-scale project before all the units are fully rented or sold.

It was asked if there is any data showing the effects that short-term rentals have on available stock of rental units and how they could impact rental prices. Mr. Freas said staff believe there are about 150 active short-term rentals in the City. When those units are in use for short-term use, they are not available for regular rental. This is one of the reasons this ordinance is being proposed.

A Councilor noted that as of July 1, if the general ordinance is passed, the City can start to collect the tax and the registration can begin as well as some enforcement authority, which can really help with the problem houses. Neighbors of the problem houses on Dudley Road have called the Police and Inspectional Services departments. The Inspectional Services department has sent the owner a letter saying they are in violation and the owners appealed that. There is nothing more the City can do without having an ordinance in place. In addition to align with the state, the July 1 date was in mind so that these problems can be dealt with.

A Committee member said this was the first time the Committee received public comment and she would like more time to consider the impact it can have for all those involved and keep the hearing open. People might want to weigh in after revisions are made.

A Councilor said the problem houses on Dudley Road and Reservoir Road will continue to persist and there is no remedy at all if an action is not taken. If additional comments are not going to add to the Committee's understanding of the problem, then keeping the hearing open is not necessary. Other Committee members felt they heard excellent representative testimony to determine that the most egregious problems are coming from the operators who are not in residence while their homes are being rented.

A Councilor noted that public hearings are held for a reason – the Council really needs to hear how residents feel and what their experiences are. It is clear that the bad actors are really destroying the quiet enjoyment of people’s homes in that area. There should be something in the ordinance to pinpoint the absentee owner.

A Councilor felt that ordinance should be kept simple and not limit this to 45-days and pinpoint the issues that seem to be problematic.

A Councilor pointed out that the general ordinance item, #136-19 which deals with registrations and fees, etc. was approved this evening in both Public Safety and Finance Committees. He thinks the Committee could pass this ordinance without the zoning ordinance and he asked the Law Department for advice. Noah Temple from the Law Department said the Council could adopt the general ordinance and pass the zoning later, however, he did not suggest that course of action. Allowing people to register for a use that is unclear could lead to problems. For example, they would have no guidance on how many days would be allowed. He felt more comfortable holding both now and moving them along together. He further explained that ISD issued a zoning violation notice to two residences on Dudley Road for running a commercial enterprise in a residential district. They appealed to the ZBA and admitted they rent out each of the homes for 120-140 days a year and the ZBA determined that was not an accessory use to a residential property and as in fact a commercial use. They did not draw a line to say what would be accessory as to number of days. The rules are the zoning ordinance and short term rentals are currently not an allowed use.

In the zoning ordinance, there is reference to an “operator” or “resident”. He thinks that it would be wise to clarify that those who can operate short-term rentals should be an “owner/occupant” using their own property, much like the accessory apartment ordinance. The Chair noted that a renter, with permission by the owner, is allowed to rent per this proposal. It is dangerous to view all the provisions through the worse case scenarios of the Dudley Road situation.

A Committee member thought that the Committee had already decided on the owner/occupied scenario and people who are in residence while renting, should be allowed to do so. She also felt that more than 2 bedrooms should be allowed, and the number of days should be expanded.

The City should have the authority to shut down inappropriate uses and that should be the way to control the issues that bother neighbors, disallow the bad actors from operating, and allow those who are doing a good job to continue.

A Councilor asked staff to look at other communities to see how they are handling number of days, number of bedrooms and number of guests.

Councilor Baker moved to close the public hearing. The Committee voted in favor with Councilor Leary opposed. Councilor Brousal-Glaser moved hold and the Committee voted in favor. The

Chair noted that these items will be discussed at the June 24th Zoning & Planning Committee meeting.

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.

Action: **Zoning & Planning Held 5-0 (Councilor Kalis and Leary not voting)**

Note: See note above.

#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.

Action: **Public Hearing closed; Zoning & Planning Held 6-0 (Councilor Kalis not voting)**

Note: Amanda Berman, Director of Housing and Community Development joined the Committee. She provided an overview of the most recent version of the Inclusionary Zoning ordinance. Her presentation and her comments are attached. A draft of the ordinance was provided with the Planning Memo and may be found at

<http://www.newtonma.gov/civicax/filebank/documents/97554>

The Chair opened the public hearing and invited comment on the zoning proposal for short-term rentals. The Planning & Development Board opened their public hearing as well.

Public Comment

Lizbeth Heyer, 25 Freeman Street, said she is speaking on behalf of the Newton Housing Partnership as Acting Chair. She submitted a letter from the Newton Housing Partnership which she read and it is attached. The Chair thanked her and the Partnership for all the work they did with Amanda Berman on sorting out provisions of the proposed ordinance.

Josephine McNeill, 53B Taft Avenue said there is a problem with definitions. The proposal is using the terms affordable housing and also using Tiers. She thinks the different levels of affordability

should be defined as middle-income housing (80%-110% AMI), low-income housing (50%-18%) and extremely-low income housing (30%). She noted that 40% has been left out and there is no HUD definition, but Newton could create one to clarify this for developers.

Paragraph 5.11.3.d speaks of deed restrictions not subject to 110% AMI. If the developer does 100% affordable units, they do not have to adhere to some of the other provisions. She thinks that if the City is going to tell developers they do not have to adhere to some rules, that should only be for the units up to 80% AMI. The City needs to do all that can be done to get developers to go to 50% AMI.

Paragraph 5.11.6 refers to the off-site affordable units. She thinks this needs more specificity in the conditions under which the City Council would allow off-site units. She also suggested that the off-site requirements should not apply for projects already in process. There should be some exemptions if a developer can partner with a non-profit.

There is language that says the development has to show that the tenants have the opportunity to advance economically. She is not sure what that means and more guidance is needed.

Paragraph 5.11.3.f. language might contradict DHCH rules. It says that the 80%-100% units could be local action units and she is curious to know if those should be defined in that way.

She wondered if tenants will be required to participate in services that the developers provide and if they do not will there be any kind of penalty to them. HUD encourages supportive services, but they do not require participation.

Doris Ann Sweet, 281 Lexington Street said she has nothing but praise for this very thoughtful ordinance which should move the city forward with affordable housing. There was an email she saw from Bart Lloyd that says "Section 5.11.2 Public Development Funds. This is the definition that activates the provision that precludes double-dipping of using public subsidies to fund units the developer is already obligated to build under the IZ ordinance....the public development funds subsidy definition under 760CMR 56 includes only state and federal funds and not any local funds such as CPA and city allocated HOME and CDBG funds. These local resources should also be included as public development funds. This seems like a minor cautionary thing to add.

Reverend Mark Caggiano, 14 Norfolk Road, member of the Newton Housing Partnership and a member of the Newton Interfaith Clergy Association, said that the Mayor had a gathering of 40 clergy in Newton. Each brought a concern about affordable housing and many members cannot live in Newton. As considerations are made about making living in Newton more affordable, more is better. These percentages are workable for middle and much lower incomes and the outcomes would be beneficial for the city.

Councilor Kalis moved to close the public hearing and the Committee voted in favor. The Planning & Development Board closed their public hearing as well.

Committee Comments/Questions

Why was the 4-6 unit development IZ requirement dropped? Ms. Berman said it is very challenging for smaller projects to take on the subsidy. Some projects will come in just under the requirement, but there will be plenty that will be larger and be subject to the IZ requirement.

Ms. Berman was asked to clarify the 95% AMI requirement for 100% affordable projects. She explained that for 100% affordable projects, the proposal is for all units to be at or below 110% AMI. For instance, a 22-unit project with 110% AMI would not be subject to provide any units at Tier 1. The proposal, however, is to have the average of those units be no more than 95% AMI. They would not want to see all units at 110% - it's a way to get some deeper affordability on projects even when they are 100% affordable.

It was asked if there were other ways to add a range of affordability through the special permit process, aside from this IZ ordinance. Ms. Heath said this ordinance is providing the opportunity to do 110% with an average of 95% so someone could come forward and be exempt from the IZ requirement. There was a project of this nature done in the North End of Boston. A Councilor felt that the City should be looking for much deeper subsidies than 110%. Ms. Berman said that it takes a great deal of subsidy to provide a 100% affordable project even at 110% AMI, so pushing the average down to 95% might not produce many, but it is a way to incentivize developers. Going deeper would probably not work.

A Councilor asked why units at 80% AMI are suggested to be priced at 70% AMI. Ms. Berman said it is a best practice for setting the maximum sale price for ownership units. If the maximum sale price is based right up to the 80% limit, the window of people who could qualify would be quite narrow. Bumping down 10% allows for a greater number of households to purchase those units.

It was asked how the density bonus would work. Ms. Berman explained that, for example, if a project is coming in at 31-units because that is the maximum allowed by lot area, it could provide two additional Tier 1 units and then be allowed to add four additional market rate units. This would bring the project from 31 units to 37 units.

A Councilor pointed out that the current ordinance is not requiring a contribution for smaller projects, but instead allows a contribution in return for a density bonus. This proposal is a change from an option to a requirement.

The Chair asked the Committee how they felt about Ms. McNeill's suggestion to change the Tiers to middle, low and extremely low income. The Planning Board said they like it. Some Councilors felt the terms could mean something different to different people. The Tiers are more prescriptive, and the suggested terms are not clear. When people hear the incomes, they do not think its low income. Mr. Heath said the definitions in the ordinance define each of the Tiers very specifically. The Committee is not in favor of adopting those changes.

It was asked if there was any financial viability analysis on what types of developments might be created. The Chair reminded the Committee that City moved away from the RKG model based on conversations with affordable housing advocates. The larger projects are aware that the Council is considering adding the additional 2.5%. Mr. Heath said staff has been having ongoing conversations with developers and none of this a surprise to developers and there has been no real outcry.

P&D Board Comments

A Planning Board member said he would like to make sure that the escalation arrangements in the cash payment calculations work more closely to the advantage of the City by keeping up with construction costs. The Newton Housing Partnership proposal suggests having a 3-year lookback for recalculating and re-benchmarking the unit development costs. That brings the most recent housing costs into the formula and costs the lower unit costs. The idea of escalating the construction costs by the cost of living index is not the right index. That index is what people pay for things, of which housing is a small fraction. There is a corresponding producer price index for the construction industry that includes labor costs and materials costs. This is a better index since housing costs are likely to rise more rapidly than general inflation. The escalator won't make a big difference, but it should be based on costs rather than consumption. A Councilor felt the QAP might be reset based on a percentage or some factor to increase for Newton's market.

The escalation of the care and service costs for assisted living should be looked at over time as well. A 10 year look back should be the inflator factor for the next 10 years.

A big part of the desire to change the IZ ordinance is to be sure it is not inhibiting housing development generally and affordable housing as a portion of that. The RKG model was used and it seems over time, many ideas have been offered. It was asked how all this is working with the RKG model. Ms. Berman said the future is hard to predict and the City does not want to have too burdensome of a requirement and slow development. They are seeing projects coming online and see the potential for affordable units. Having input from the Newton Housing Partnership and having their stamp of approval makes staff confident with this proposal. She was hesitant to see an increase above 17.5% but she understands where that is coming from for larger developments. The developers need that predictability in order to know what they need to comply with. The Chair said it will be the task of the Zoning & Planning Committee members to reign in their colleagues in the special permit process so that predictability remains.

The Committee voted to hold this item.

#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.

Action: Zoning & Planning Approved 6-0 (Councilor Kalis not voting)

Note: The Chair explained that a memo was provided by the Planning Department. Catherine Farrell from the Newton Law Department joined the Committee. She explained that this property is next to Purgatory Road and not far from the Charles River. It is made up of mostly trails and signs are posted there by the Conservation Commission. Ms. Farrell said that conservation restrictions are required for properties such as this purchased with Community Preservation Act funds, and the City is catching up on filing them. There are two additional properties that will be needing conservation restriction filings as well and will be before the City Council in the near future. She apologized for the delay.

The Committee thanked Ms. Farrell and approved the item 6-0.

Respectfully Submitted,

Susan S. Albright, Chair

Short Term Rentals Proposed Ordinances



**PUBLIC HEARING
ZONING & PLANNING COMMITTEE
JUNE 10, 2019**

Short Term Rental Proposed Ordinances

06.10.2019

Three parts:

- General Ordinance Amendment to establish registration and enforcement rules
- Zoning Amendment to allow Short-Term Rentals as an accessory use
- Zoning Amendment to allow Bed & Breakfasts by Special Permit

Definitions



Short-Term Rentals

- Rental of one or more rooms to guests.
- Less than 30-days
- Accessory to the primary residential use of the property
- Applicable standards and requirements

Bed & Breakfast

- Rooms for one or more temporary, paying guests.
- Is the primary use
- Special permit required.

General Ordinance

Requirements:

- All short-term rentals must register with the City.
- Annual certification of compliance.
- Fire Department inspection
- \$100 filing fee
- Notice to abutters
- Broad set of safety and enforcement provisions

Zoning Ordinance - STR

Requirements:

- No signs.
- Resident occupancy minimum of 275 days a year.
- Short-Term Rental use – max of 45 days a year
- Limited to max household occupancy
- No more than 2 rooms
- Temporary short-term rentals allowed during leasing of large residential developments.

Zoning Ordinance – B&B

Requirements:

- Owner occupied
- Include a common gathering space for guests.
- No cooking facilities in rooms
- Special permit required

I bought my home in Waban in 1993. I was a full-time working mother of two running a business out of my home and the primary caregiver of two ailing parents simultaneously. I moved to Newton for all it had to offer and the opportunities it provided for my children. It was a far cry from my own roots growing up in Roxbury in the 50s as a child of Holocaust survivors.

I've worked very hard to be able to live in this community and provide something to my children that my parents weren't able to provide for me. I was a product of the Boston public Schools which intensified my desire to raise my kids in the community with good schools. Growing up, living in Newton was unimaginable.

Until I retired a couple years ago I did not have the time or luxury to enjoy much of what Newton offers. Now for first time in my life that I can actually do that.

Airbnb is now my primary source of income. It has literally allowed me to live and stay in my home. I book approximately 200 nights of Airbnb a year. Without it, I would not be standing here today. Let's face it Newton is not an inexpensive city to live in.

My Airbnb guests have never posed any issues to me or my neighbors. Many of my neighbors were unaware of my situation until I requested they write something on my behalf, which I have brought here today. This should not be a surprise to anyone, as the memorandum written to counselor Albright and members of the zoning and planning committee on May 10 stated, that the problem properties have only been those where short term rentals is the primary issue, not accessory rentals like mine. I have always been very careful to vet everyone I allow in my home. I would imagine that any Airbnb host that brings a stranger to sleep in their home does the same.

If you limit the amount of days for hosting Airbnb guests it will put me in a position to have to sell my house. My Airbnb income would be only \$4500 a year, so between that and my roommate it would be impossible. The city should be doing everything it can to make it possible for seniors like myself to stay in their homes, not be forced out. Why should the city have control over what I do in my own home, if it has no effect on my neighbors or the community at large. I have worked very hard to be in this Community and want to remain here to enjoy it at this time in my life.

I agree with components of the ordinance and believe that many of the requirements by operators are very responsible. I will happily comply with these regulations and actually already follow many of them. I also understand the desire to limit full-time rentals as they can take available housing off the market, raising cost of housing, and as was mentioned in the memo have also caused nuisance problems.

However I do not understand the push to limit the number of days for short term rentals, as this actually makes living in Newton more affordable for many people like myself. And it seems contradictory to Newton's values. Please reconsider the 45 day Accessory short term rental limit so that people like myself can afford just to live in this great city.

June 2 2019

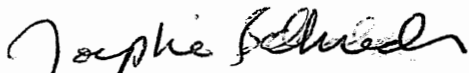
To the City of Newton:

We have lived at 54 Ridge Road for over 46 years.

Rose Srebro has been an excellent neighbor.

We have no objection to her participating in the Air BnB Program

Our only condition is that she resides in the house at the same time as she has paying guests


Josephine Schneider

From: [Karen Kita](#)
To: [Karyn Dean](#)
Subject: Input on short term rental requirements
Date: Wednesday, June 12, 2019 10:38:21 PM

Hi Karyn,

I attended Monday's meeting on this and decided to send my thoughts along as well. As I mentioned at the meeting, Warwick Road has almost an equal number of 2 family properties to single families (60%ish to 40%ish). Our concerns:

- that some of the 2 families are absentee owned and some units are being rented out on a short-term basis only
- that some renters (a young couple in particular, both of whom are teachers, with 2 small children) did not have their lease renewed because the owner told them he only wanted to do short term rentals
- that more and more 2 family properties could be purchased by investors who are purchasing strictly to maximize the revenue stream through short term rentals, using the property as a commercial enterprise rather than residential. If left unchecked, this could significantly impact our neighborhood

Warwick Road is a great neighborhood. We have a mix of generations; lots of children live on the street; we hold an annual block party; we have a neighborhood group email where residents will post coyote sightings, or a free item, or someone needs a ladder. We have owner occupied units/houses and lots of units with long term renters. I live in a single family and have lived here for 36 years. There is a two family on one side and a three family on the other side. We have great relationships with the renters who live in these two buildings, most of whom have rented here for 8-10 years or so. They contribute to the neighborhood and are part of its fabric. Both of these abutting properties have absentee owners who used to live in them - I got to know the owners when they lived here. Both owners live locally and are invested in the neighborhood. Both owners are elderly. My fear is that the heirs will decide to sell when that time comes & without resident occupancy requirements with regards to short term rentals, this scenario could drastically change. One two-unit condo building on the street is experiencing this situation. Their condo building is flanked on both sides by absentee owners who recently purchased the two buildings and are renting the units out short term. You can't build a relationship or a village with individuals who are here today and gone tomorrow.

It seemed that most everyone's complaints/issues centered on absentee owners, rather than owner residents using AirB&B to supplement their income. I hope the Planning Committee can formulate an amenable solution that will satisfy/assuage most of everyone's concerns.

Regards,
Karen Kita

Karen A. Kita
Real Estate Broker/Owner, MA Certified Real Estate Appraiser
Check visit my [website](#) and [facebook page](#)!

From: [Norman Greenberg](#)
To: [Karyn Dean](#)
Subject: Proposed Short Term Rental Ordinances --MEMO to Zoning and Planning Committee, Law Department, City Council and other Interested City Officials
Date: Wednesday, June 12, 2019 5:36:46 PM

To follow-up on my testimony at last night's hearing before the Zoning and Planning Committee, I respectfully submit the following memo with comments and questions that are technical in nature, followed by two substantive changes to the Ordinance, to address the major objections raised by the public speakers at the 6/10 hearing as owners who rent space in their home while they continue to occupy their home. I have separated the General Ordinance from the Amendments to the Zoning Ordinance, but first a general observation.

General Observation

It is not clear to me why these new provisions are being divided into separate ordinances unless there is something in the new state law that requires a new general ordinance to validate the short term rental local regulations. Having the material split into two different ordinances is a trap for the unwary who are trying to comply with the new ordinances and those who need to be familiar with it for other reasons. It also overly complicates the subject matter and makes it inconvenient, especially since there are terms used in the Zoning Ordinance in Sec. 6.7.5 that are defined only in the General Ordinance, including the key term, "Short Term Rental" and there is different terminology used in both of the Ordinances that mean the same thing, e.g., "Operator" v. "resident". At the very least, the proposed new sec. 6.7.5 (Short Term Rentals) of the Zoning Ordinance should contain a reference to the proposed new General Ordinance (Short Term Rentals) and vice versa.

New General Ordinance

-
Sec. 20-160 Definitions:

-

(b) Operator: The word "person" (which is critical to the definition of Operator) is not defined except for the fact that there is another catch-all provisions that all the terms not defined in this Ordinance have the meaning prescribed in M.G.L. 64G, Sec. 1, which, aside from meaning an individual, has a long list of common entities. However, because the statute has not been updated it does not list the relatively new statutory creatures, LLC and LLP, the former of which is commonly used for real estate ownership. There may be a saving grace in the general term, "organization" listed in 64G/1, but I would not rely on that and would define "Person" separately in this Section 20-160. Also, it should be added that if the Operator is not the owner, all the provisions of this Ordinance that refer to the Operator should apply to the owner, to the same extent as the Operator, where the context permits.

Occupancy: This refers to the use of a room in a Short Term Rental for a period of not more than 31 consecutive calendar days. Compare this to the definition of "Short Term Rentals" which is a rental on an overnight short-term basis of less than 30 days. Aren't these two definitions conflicting and consider whether or not it is a good idea to use the word, "consecutive" in the first definition because an Operator could exceed this term limit by skipping one day every 30 days, although that may not be practical for the Occupant in many cases.

In the last paragraph of this section incorporating the definitions in M.G.L. Ch. 64G, sec. 1, I suggest you add at the end, "and in [refer to the definition section of the Zoning Ordinance]"

Sec. 20-162. Registration Requirements:

-
- In the first paragraph, the word, “occupancy” should have a capital O.
- (b) I would add to the Local Operator Affidavit, the name, address of the owner if not the Operator
- (c) At the end of the sixth line the word “occupancy” again should have a capital “O”.
- (d) At the end of the first line, do you mean \$100 per Short Term Rental unit?
-
- (f) Why do you use the word “Accessory” here. Note, it is not defined in this Ordinance but is in the Zoning Ordinance. Also, the evidence that the Operator resides in the dwelling unit you refer to items that would only prove that they own the dwelling but not necessarily reside in it.

Sec. 20-164. Compliance with City Ordinances...:

-
- (b) In the first line, after traffic add, “garbage and trash disposal”
- (g)(iv) Proper garbage disposal in city standard containers and the day of pick-up at curbside if Occupant responsible for this duty.

Zoning Ordinance Amendment

-
Sec. 6.7.5.B. Standards.

-
- 1, 2, 3, 5 & 8. “Short-Term Rental”, as I stated in my general observation near the beginning of this memo, this term is not defined in this section and when defined and used in the General Ordinance, it is not hyphenated. Further, in #5 and #8 it should contain initial caps.
- 7. I believe it should read, “...or Short Term Rental guests...”. I added the word Rental and used initial caps for “Short Term Rental”.
-
- 8. Please note there is a typo in the 5th line, the word “months” is misspelled. This may be nitpicking but I think the long first sentence would be easier to understand by moving the last 3 words, “by special permit” to the third line after the word occupy so it reads “...may occupy, by special permit, residential units with Short Term Rentals...”

Substantive Changes

- 4. This and the next paragraph are substantive changes relating to the major objection raised at the 6/10 hearing by owners who rent space in their home while they continue to occupy their home and understandably would like to eliminate or greatly increase the 45 day per year Short Term Rental limit contained in this paragraph. My suggested language to alleviate this restriction is to change this paragraph (and see #5 below) to read in its entirety: **“The resident [should use the term, “Operator” to be consistent with General Ordinance] of the dwelling unit, or of any other dwelling unit in a 2-family or a 3-family residential building housing the Short Term Rental, [alternative: further add, “or the resident [Operator] of an abutting dwelling unit on the same side of the street as the Short Term Rental unit, in any case] must occupy their dwelling unit as their primary residence for a minimum of 275 days during each calendar year.”**
- 5. To go along with the change to #4 above, this paragraph should be changed to read in its entirety: **“The Short Term Rental use is limited to no more than 45 days per calendar year;”**

provided, however, this limitation shall not be applicable [~~alternative: this limitation shall be 180 days per year (or you name it, if you still want some limit but not 180)] if the resident [Operator] of the Short Term Rental unit satisfies the provisions of paragraph #4 above.”~~

Thank you for considering this Memo.

Norman Greenberg, Esq. | 233 Needham St. - Suite #500 | Newton, MA. 02464-1573
NGreenberg@NGreenberglaw.com | TEL: 617-244-8810 | FAX: 617-969-1965 | CELL: 617-939-7444

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Hello

My name is Candy Haydock ~~and~~ I live at 59 Reservoir Ave in Newton and have been living in my home for 35 years. Last year I discovered that my neighbor was operating an AirBNB. I have had at least several late night noise problems. I guess I should say early morning as the music etc sometimes lasts til 2:00 a.m. Many cars park at the house with out of state license plates and I often wonder how many people are staying in the house. I do know that on one Boston Marathon weekend, there were nine guests in the home.

The noise, the weekend long parties, the number of guests in the

home, and number of cars parked outside the home, the exposure of this home and therefore the neighborhood online, all change the complexion of what has been up until now a family neighborhood.

There is a more serious issue presented by the growth of AirBNB than noise and that concerns the character of the single family neighborhoods in Newton. What is a neighborhood? Obviously it has a geographic definition, but it also has demographic and social aspects.

My neighborhood is not only legally a single family district, but demographically and socially it is a

family neighborhood. It is upsetting to see family homes being used as commercial enterprises. It drastically changes the complexion of my neighborhood. The absentee ownership and transient residents resulting from AirBNBs further dilute any true sense of belonging to and committing to a neighborhood.

Zoning and Planning Committee
June 10, 2019

1

**SECTION 5.11
INCLUSIONARY ZONING ORDINANCE**

***MAKING IT WORK FOR
TODAY'S NEWTON***

6/10/19

Overview and History of Inclusionary Zoning

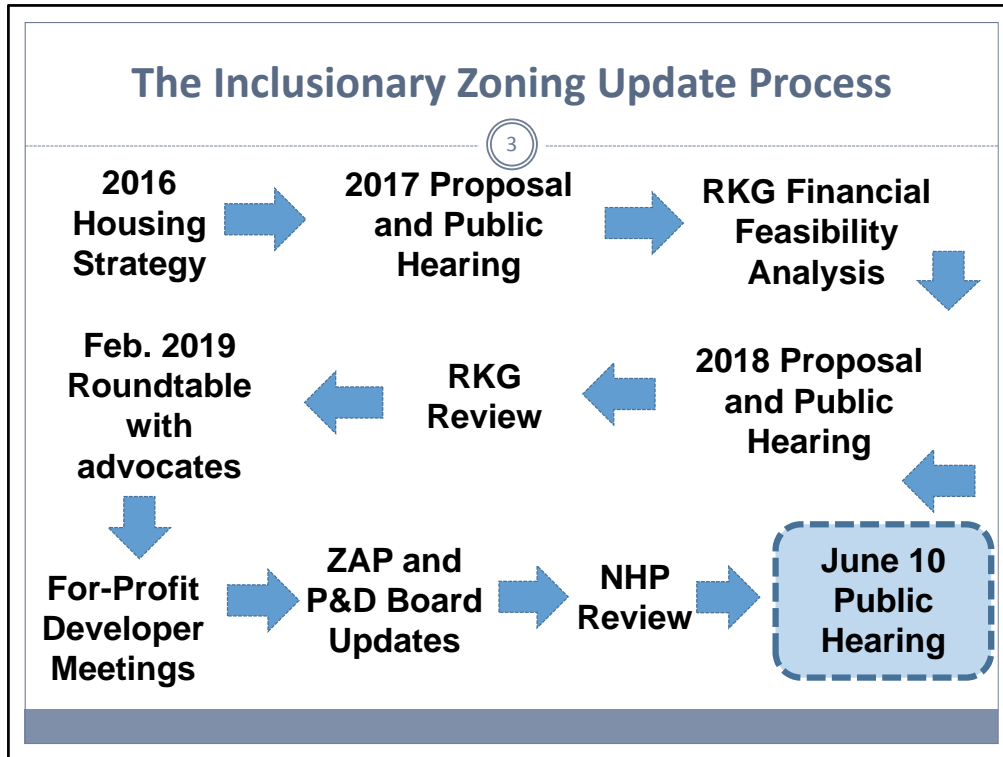
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What is Inclusionary Zoning?

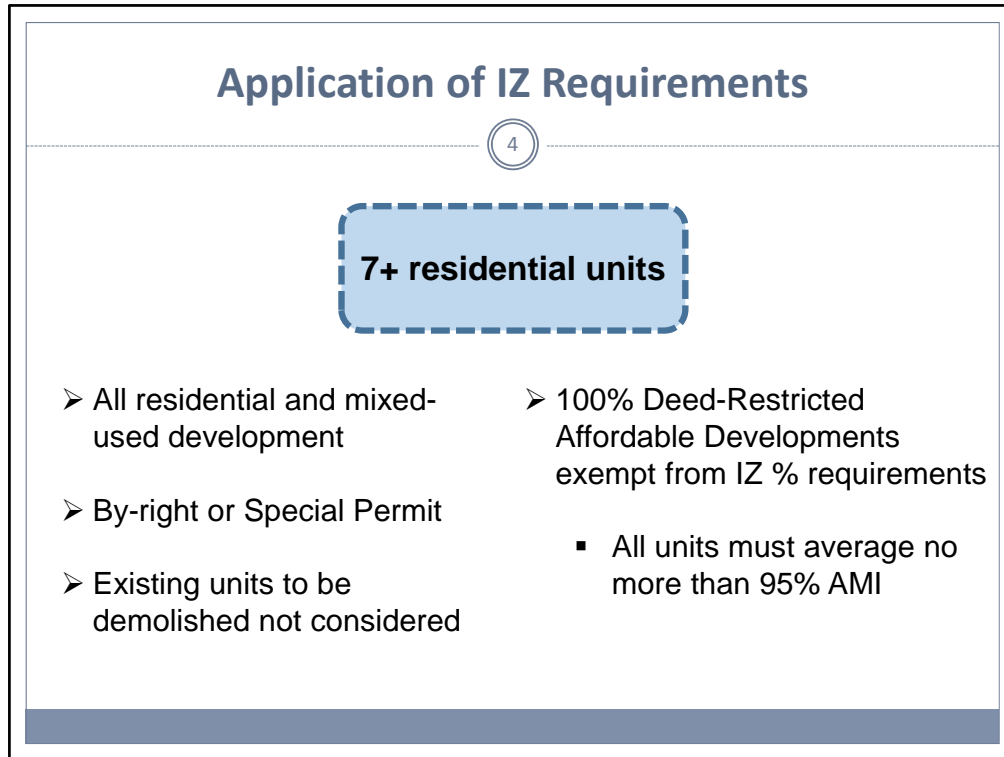
- Leverages private development to create affordable housing
 - On-Site Units
 - Off-Site Units
 - Payments In-Lieu (cash payments)
- Increasingly popular across the United States
 - More than 500+ municipalities have adopted some type of ordinance
 - Ordinances / policies vary widely by municipality

- In general, the purpose of inclusionary zoning is to leverage private development to create affordable housing through the creation of on-site units, off-site units, or a payment to the City in-lieu of constructing an actual unit.
- This tool has continued to gain in popularity across the country; however, every ordinance is unique to the needs and desired outcomes of its municipality.
- Newton was an early adopter of inclusionary policies, dating back to the 1960's.
- The informal policy was codified in 1977 as the "10% Ordinance", targeting low and moderate income households. The intent was to provide a public benefit as part of the Special Permit process.

- The City's current ordinance was adopted in 2003, and it:
 - Increased the required percentage of units from 10% to 15%
 - Provides the option for a fee-in-lieu payment for projects with 6 units or less
 - And allows for off-site units when the developer partners with a nonprofit developer



- Last month, when I last presented to the committee on the Inclusionary Zoning update process, we discussed the outcomes of the February 19th roundtable discussion with the affordable housing advocates and RKG
- And we identified areas that the committee felt needed further clarification and/or explanation.
- Since that time, staff has been meeting with for-profit developers in Newton to discuss the proposed ordinance and the question around the policy’s effect on land values and development in Newton.



- 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.
- 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.
- While not included in our memo or proposal, staff recommends that for projects of this type, all units in the project must average no more than 95% of AMI.
- 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, as long as all the units average to no more 95% AMI.

Required Units Tables

Rental

5

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%
Total	15%	17.5%

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%
Total	15%	17.5%	20%

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.

Required Units Tables		Rental
6	<p>Example: 31-unit rental development</p> <ul style="list-style-type: none"> ❖ 15% at Tier 1 (50% - 80% AMI) = 4.65 <ul style="list-style-type: none"> ○ 5 units at Tier 1, which must average out at 65% AMI ❖ 2.5% at Tier 2 (110% AMI) = 0.775 <ul style="list-style-type: none"> ○ 1 unit at Tier 2 <p>Total IZ Units Required On-Site: <u>6 inclusionary units</u>, no fractional cash payment required</p>	<p>➤ IZ requirement: 17.5%</p> <ul style="list-style-type: none"> ○ 15% at Tier 1 ○ 2.5% at Tier 2

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

Required Units Tables

Ownership

7

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%
Total	15%	15%	17.5%

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%
Total	15%	15%	17.5%	20%

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

8

Example: 18-unit ownership development

- ❖ 10% at Tier 1 (80% AMI) = 1.8
 - 2 units at Tier 1, set at 80% AMI, priced at 70% AMI
- ❖ 5% at Tier 2 (110% AMI) = 0.9
 - 1 unit at Tier 2, set at 110% AMI, priced at 100% AMI

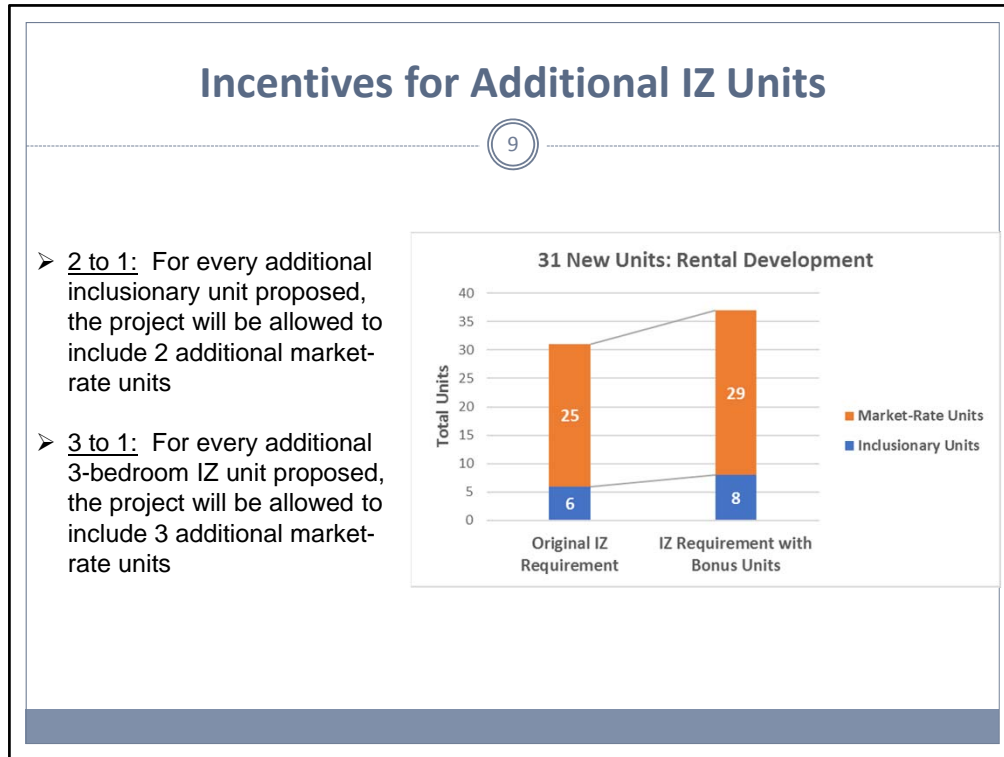
Total IZ Units Required On-Site: 3 inclusionary units, no fractional cash payment required

➤ **IZ requirement: 15%**

- 10% at Tier 1
- 5% at Tier 2

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



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

Example:

A developer proposes to build a multifamily rental development, containing a total of 31 units; therefore, the total IZ requirement for the development would be 6 inclusionary units:

- 25 market-rate units, and
- 6 inclusionary units (5 units at Tier 1, and 1 unit at Tier 2 – see example above)

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

29 market-rate units, and

8 IZ units:

7 units at Tier 1 (originally 5 units at Tier 1)

1 unit at Tier 2

= 8 total inclusionary units (out of 37 total units; for a project that is now 21.6% affordable)

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

Housing Costs: Max Rents and Sale Prices

10

- **Total monthly housing costs must not exceed 30% of the applicable household income limit for the IZ unit**
- **Ownership units must be priced 10 percentage points lower than HH income limit for that unit**

Rental:

- Monthly Rent
- Utility costs for:
 - Heat
 - Hot water
 - Water
 - Electricity
 - 1 parking space
 - Access to all on-site amenities

Ownership:

- Mortgage principle & interest
- Private mortgage insurance
- Property taxes
- Condo / HOA fees
- Hazard insurance
- 1 parking space

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.

Cash Payment Option

11

Eligibility:

3 circumstances:

- ❖ Projects with 7-9 units
- ❖ Projects with 10+ units: by Special Permit
- ❖ Fractional Cash Payments: Where IZ requirement = fraction of a unit less than 0.5

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 with 10+ unit, 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.”
 - Thirdly, 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.
- **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) 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 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.

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

Fractional Cash Payments:

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 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

Cash Payment Option

➤ **TDC / unit in Newton:**
○ **\$550,000**

Cash Payment Calculation:

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

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 with 10+ unit, 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.”
 - Thirdly, 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.
-
- **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.
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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

Fractional Cash Payments:

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

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48-unit rental development

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Cash Payment Option

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Example: 18-unit rental:

- 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

Example: 36-unit ownership:

- 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

➤ **TDC / unit in Newton:**

- **\$550,000**

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 with 10+ unit, 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.”
- Thirdly, 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.
- 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.
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Example:

18-unit rental development

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C = \$550,000

Step 1: $A \times B = 18 \times 0.15 = 2.7$

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= *\$1,485,000 total cash payment*

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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

Fractional Cash Payments:

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 $0.2 \times \$550,000 = \$110,000$

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Total IZ / Fractional Cash Payment Requirement for Project =

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= A total of 8 Inclusionary Units required on-site plus a

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Cash Payment Option: 7-9 Units

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- **TDC/unit is reduced per
of units in project:**

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*

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 with 10+ unit, 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.”
- Thirdly, 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.
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Example:

18-unit rental development

A = 18

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Step 1: $A \times B = 18 \times 0.15 = 2.7$

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A = 36

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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: $70\% \times \text{TDC/unit in Newton}$

8-unit project: $80\% \times \text{TDC/unit in Newton}$

9-unit project: $90\% \times \text{TDC/unit in Newton}$

Fractional Cash Payments:

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:

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Total IZ / Fractional Cash Payment Requirement for Project =

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Fractional Cash Payments

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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

Fractional Cash Payments:

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 $0.2 \times \$550,000 = \$110,000$

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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

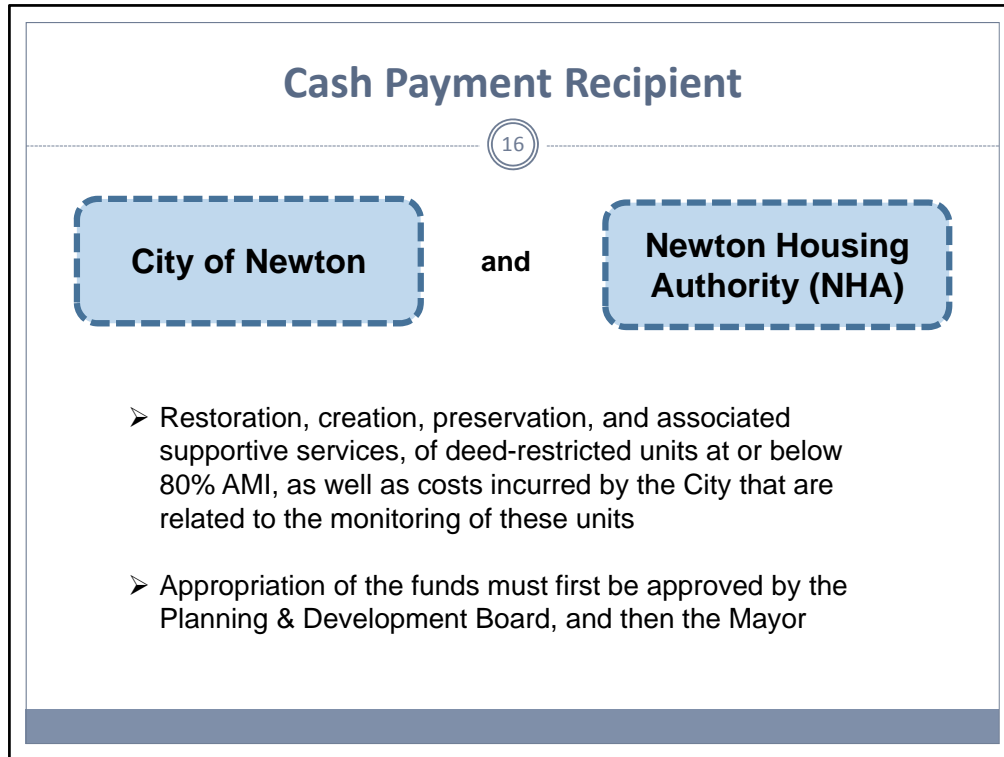
= A total of 8 Inclusionary Units required on-site plus a

total Fractional Cash Payment of \$220,000

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- 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.

Off-Site Development

17

- Generally discouraged
- Special Permit: “unusual net benefit...”
- Development Agreement with Non-profit housing developer:
 - Off-site units must be completed and occupied no later than the project's on-site market-rate units
 - Must provide a greater number of affordable units at a deeper level of affordability
 - Must provide an equivalent unit mix and comparable sized units
 - Must provide an equivalent level of accessibility

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.

Public Funding Limitation

18

- Inclusionary Housing Projects cannot use public development funds, except for projects that are found by the Director of Planning & Development to:
 - Represent a greater number of affordable units than otherwise required;
 - Those that are at a deeper level of affordability than what is required (by at least 10 percentage points); and
 - Those that exceed regulatory requirements in providing for persons with disabilities

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.

Extremely Low Income (ELI) Option

19

By Special Permit for rental projects with 21+ units

- Required % of units affordable to HH at or below 30% AMI
 - 5% reduced total IZ requirement
 - May accept public development funds
- Must provide and pay for on-going regular support services
 - Partnership with qualified agency

- 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 ELI units.

- 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.
- Case management may include assistance with daily living activities, healthcare referrals, community integration, job training, and employment opportunities, to name a few.

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

Extremely Low Income (ELI) Option

20

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%
Total	12.5%

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%
Total	12.5%	15%

- The ELI Option offers developers with the option to reduce their total IZ requirement by 5%
- The percentage requirements for applicable rental developments are based on the following tables:

Extremely Low Income (ELI) Option

21

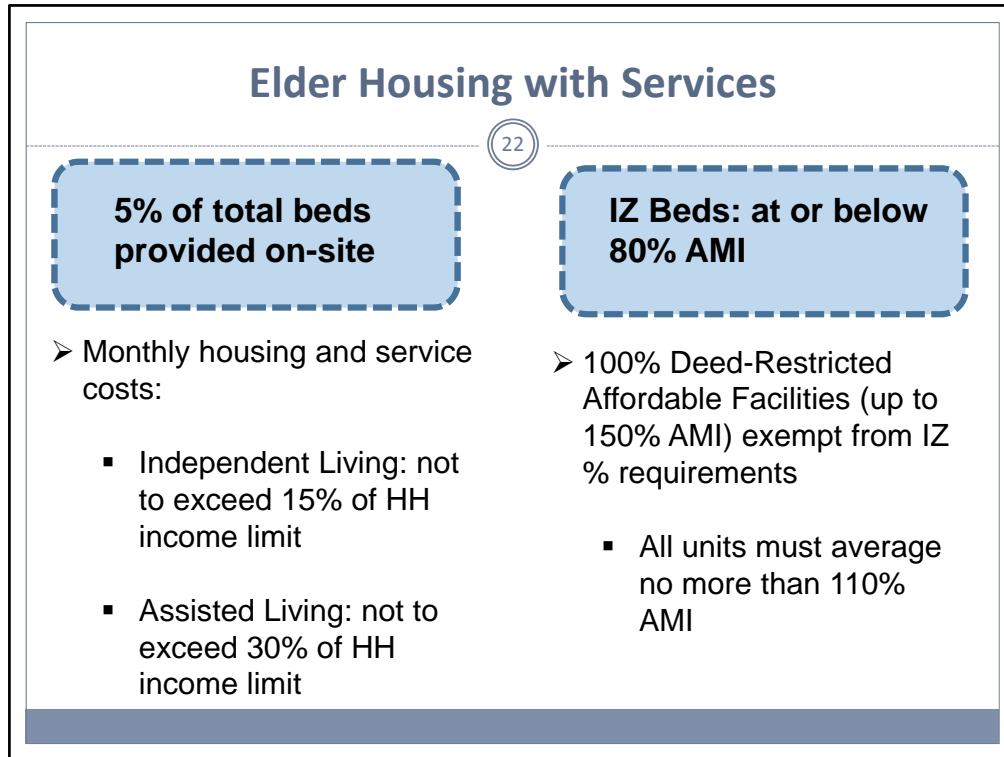
Example: 74-unit rental development

- 2.5% at ELI Tier: $0.025 \times 74 = 1.9$
 - 2 units at the ELI Tier (at or below 30% AMI) with support services
- 7.5% at Tier 1: $0.075 \times 74 = 5.6$
 - 6 units at Tier 1 (must average out at 65% AMI)
- 2.5% at Tier 2: $0.025 \times 74 = 1.9$
 - 2 units at Tier 2 (at or below 110% AMI)

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

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% = $0.025 \times 74 = 1.9$; a total of 2 units at the ELI Tier (at or below 30% AMI)
 - Tier 1: 7.5% = $0.075 \times 74 = 5.6$; a total of 6 units at Tier 1 (must average out at 65% AMI)
 - Tier 2: 2.5% = $0.025 \times 74 = 1.9$; a total of 2 units at Tier 2 (at or below 110% AMI)
- = Total IZ Units Required On-Site: 10 inclusionary units on-site



- 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

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Cash Payment Calculation:

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	STEP 1: $A + B = \text{Total cost per bed}$
C = # of beds in proposed project	STEP 2: $C \times 0.05 = \text{\# of inclusionary beds required (rounded to nearest 10th)}$
	STEP 3: $(A+B) \times (C \times 0.05 \text{ rounded}) = \text{Total Cash Payment}$

- **TDC / unit in Newton:**
 - **\$550,000**

- **2019 Care Cost:**
 - **\$306,600**
 - \$28 per hour X 3 hrs. per day X 365 days per year X 10 yrs.

- Payment-in-lieu:
- 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.
- **Note:** *The current average hourly rate for a Home Health Aide in the Boston Area per the current Genworth Cost of Care Survey is \$28.00. \$28 X 3 hours a day X 365 days a year X 10 years = \$306,600*

Elder Housing with Services

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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

- Payment-in-lieu:
- 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.
- **Note:** *The current average hourly rate for a Home Health Aide in the Boston Area per the current Genworth Cost of Care Survey is \$28.00. \$28 X 3 hours a day X 365 days a year X 10 years = \$306,600*

Program Reevaluation & Effective Date

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<p style="text-align: center;">5-year IZ Program Reevaluation</p> <ul style="list-style-type: none">➤ Full reevaluation and report to City Council every 5 years➤ Annual review and report by Planning Dept.	<p style="text-align: center;">Effective Date: August 1, 2019</p> <ul style="list-style-type: none">➤ Only applies to projects that receive a Special or Building Permit after this date➤ Effective Jan. 1, 2021: projects with 100+ units subject to increased IZ requirement
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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.

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.



CITY OF NEWTON, MASSACHUSETTS

Newton Housing Partnership

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Mayor

Barney Heath,
Director
Planning & Development

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June 10, 2019

Honorable Mayor Ruthanne Fuller
Newton City Hall
1000 Commonwealth Ave
Newton, MA 02459

Dear Honorable Mayor Fuller,

Let me start by thanking you on behalf of the entire Newton Housing Partnership for naming us to this important position and entrusting us with the significant job of advising you and the City Council on efforts to expand affordable housing opportunities in Newton. During our first three meetings, we have made good progress on the outlines of an ambitious agenda to advance your commitment to be a city that is welcome to all. Among our priorities, we plan to give special focus to housing strategies for those who live here but find it difficult to remain because of escalating housing costs and for those who would like to live here but cannot afford our rents and home prices.

This letter addresses recommendations to strengthen the Inclusionary Zoning provisions under Chapter 30 of the Newton Zoning Ordinance. Your visionary leadership to offer amendments that strengthen Newton's inclusionary zoning requirements could not come at a more important time for our community. Housing prices continue to escalate, while the need for housing that is inclusive and affordable to all in Newton is unprecedented. Furthermore, numerous large housing development efforts are in the planning stage, with several others already in the permitting process, and these projects offer important and immediate opportunities to create new affordable housing for our community. Additionally, as we progress closer to meeting the City's 10% affordability requirement under Chapter 40B, we will likely see more housing projects seek approval via traditional zoning and special permit procedures which will need to adhere to the City's Inclusionary Zoning requirements.

For the past several months, the Partnership has studied the Inclusionary Zoning ordinance, researching similar laws in nearby communities and considering the benefits and market impacts of changes that would support additional affordability.

On behalf of the entire Partnership, I would like to thank the Planning Staff, especially Barney Heath and Amanda Berman, for their support of the Partnership's efforts which have been nothing short of amazing. They provided us with detailed background on the inclusionary zoning amendment process to date as well as useful information that helped to inform our recommendations. Let me also applaud their diligent work over the past several years to evaluate and recommend options for strengthening the Inclusionary Zoning provisions in the Zoning Ordinance, as evidenced in the thoughtful and comprehensive memo they prepared for the June 10th ZAP hearing.

Recent 2016 data on the Newton Housing Market underscores the urgency to strengthen our Inclusionary Zoning requirements. Newton's housing stock is 70% homeownership and based on the 2016 single-family median home price of \$1.1 M, assuming a \$220,000 down payment (a level of savings out of reach for many), the minimum income required to afford a home was \$200,000. At that same time, there were only four rental units available in Newton to a family earning \$55,000, with an estimated 4,000+ households considered "housing cost burdened". An alarming 92% of single and 2-3 family homes and 62% of condominiums were affordable only to households with incomes above \$100,000, with overall housing opportunities that are affordable to households earning less than \$61,000 (which is just below 60% of area median income for a family of four) in seriously short supply.

Given the rise in housing costs since 2016, the shortage of housing that is affordable can only have gotten worse. Such a significant and immediate need will only be met by government intervention, including requirements such as inclusionary zoning. For this reason, the Partnership supports the changes to the Inclusionary Zoning Ordinance that have been proposed by the Planning Department in their June 7th memo to the Zoning and Planning Board which incorporates several recommendations put forth by Partnership (described below) that we believe will further expand affordable housing opportunities in Newton.

When considering our recommendation, we focused on 3 key provisions in the proposed ordinance and established several important goals and principles to guide our work.

Provisions of the law we focused on:

1. The baseline Inclusionary Zoning requirement as spelled out in the required units table, including an analysis of the project size that could support additional affordable units;
2. The basis for a cash payment and the fractional payment calculation;
3. The opportunity for an Alternative Compliance Option to support housing that would be affordable to households earning at or below 30% of area median income.

The goals and principles that guided our work:

1. Based on strong local housing market trends, together with several recent projects that agreed to affordability levels well in excess of the current 15% required under the current Inclusionary Zoning Ordinance, we believe the opportunity exists to expand affordability;
2. Given Newton's strong and steadily rising housing market, land values, a key driver of development, will be able to absorb additional affordability requirements without weakening Newton's robust development activity;
3. Developing predictable requirements for expanded affordability will provide clear guidelines to developers, an important tool to encourage and support continued housing development in Newton;
4. Because of the substantial barriers to development of affordable housing in Newton, it is preferable to encourage the creation of on-site affordable units over cash payments that will be difficult to use, especially while achieving the same desired affordability.

Based on these goals and principles, the Newton Housing Partnership recommends the following:

Baseline IZ requirement and the opportunity to increase the % affordable:

- The April 2019 Table strikes a reasonable balance between creating more on-site affordability in larger developments (17.5% for projects with 21+ units) and limiting the potential dampening effects that the additional Inclusionary Zoning requirement may have on the market.
- Projects with 100+ units have sufficient operational and financing efficiencies to support a 20% Inclusionary Zoning requirement.
- For rental projects with 100+ units, the requirement should be 15% at Tier 1 (50-80% AMI) and 5% at Tier 2 (110% AMI). For ownership projects with 100+ units, the requirement would be 10% at Tier 1 and 10% at Tier 2.
- Recognizing that a 20% requirement is aggressive (only Cambridge and Somerville have Inclusionary Zoning requirements this high), the Partnership recommends implementing a program review in 3 years to understand the effect of the increased requirements and adjust if necessary.

Basis for cash payment and fractional cash payment calculation:

- Having discussed alternatives to using the DHCD QAP index of \$389K/unit as the basis for the cash payment standard, which is considerably lower than the actual costs

to construct a new housing unit in Newton, the Partnership recommends that a Newton-based standard be used instead. (Note: Cambridge also uses a standard based on local costs.)

- Having analyzed data from new affordable housing developments built in Newton using City funds (CPA, CDBGHOME, etc.) and/or approved through Chapter 40B in the last 5 years, the average TDC/unit for these projects was calculated at \$550,000/unit. The Partnership recommends that this be the standard for cash payment calculations to be included in the revised Inclusionary Zoning Law.
- The \$550,000/unit payment standard should be increased annually by the Consumer Price Index. The increase should take effect on the anniversary date of the new Inclusionary Zoning Ordinance.
- After the 3rd year of the new Inclusionary Zoning Ordinance, the average TDC/unit should be recalculated based on data from new affordable housing developments completed (final closing budget or cost cert) in Newton during the previous 3 years.

Voluntary Alternative Compliance Option

Given the substantial need for and significant barriers to providing housing that is affordable to households at or below 30% of the area median income, as well as housing with supports for individuals and families experiencing homelessness, the Partnership has decided that one of our group's priorities should be to identify strategies to expand extremely low income (ELI) housing in Newton. One such strategy may be to create a voluntary alternative compliance option that would allow developers who elect to provide ELI units to have a lower overall affordability requirement.

This lower affordability requirement is necessary because creating housing that is affordable to ELI households requires a larger subsidy (in the case of inclusionary housing via fewer affordable units) to cover both a capital deficit (typical for inclusionary housing) and an operating deficit. This additional deficit stems from the ELI rent (approx. \$400 for an individual and \$560 for a family of 3, assuming the resident pays their own utilities) which is insufficient to cover the basic costs to operate the housing (e.g. pay for taxes, utilities and maintenance), and is also insufficient to support long-term debt.

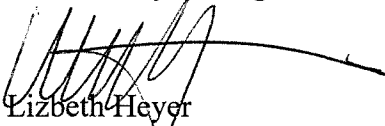
Therefore in order to support ELI housing via Inclusionary Zoning, the Partnership recommends reducing the total number of affordable units required in order to create a sufficient "market-rate subsidy" to off-set the larger capital and operating deficit. Our initial analysis of this approach indicates that in order to support 5% ELI units, the overall affordability requirement should be reduced by 5% (see required units table below).

While the partnership is inclined to support such a provision because of the desperate need for ELI units, we suggest that further analysis is necessary to confirm the feasibility of our preliminary recommendation, including the overall affordable unit count, the desired ratio among the income tiers and, consideration of the trade-off of the lower overall number of affordable units. The Partnership intends to continue our analysis of this provision, including discussing how to ensure that support services are available for formerly homeless households, and will share our conclusions with you and the Zoning and Planning Committee.

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	12.5%	15%

In addition to the provisions of the Inclusionary Zoning Ordinance referenced in this letter, the Partnership discussed the importance of on-going compliance monitoring, especially as the number of inclusionary units increase in the coming years. The Partnership has offered to work with the Planning Department on mechanisms to identify and develop effective compliance mechanisms, including securing the funding necessary to support implementation.

Thank you again for your leadership in recommending changes to strengthen the Inclusionary Zoning Ordinance and for considering our input in this important effort.



Elizabeth Heyer
Acting Chair, Newton Housing Partnership

CC: Planning and Development Board