



# Zoning & Planning Committee Agenda

## City of Newton In City Council

**Monday, June 24, 2019**

**7:00PM**

**Room 205/Council Chamber**

### **Items Scheduled for Discussion:**

- #140-19(3) Zoning amendments for Riverside Station**  
RIVERSIDE STATION/355 GROVE STREET AND 399 GROVE STREET requesting amendments to Chapter 30, Newton Zoning Ordinance, in Sections 4.2.3 and 4.2.4 relative to the Mixed Use 3 District.
- #187-19 Zoning amendment from Newton LFIA for Riverside Station**  
LOWER FALLS IMPROVEMENT ASSOCIATION RIVERSIDE COMMITTEE requesting to amend Chapter 30, City of Newton Zoning Ordinance, Sections 4.2 and 7.3.5 pertaining to the Mixed Use3/Transit-Oriented zoning district.
- #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.
- #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 &

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

breakfast uses, identifies what zoning districts they would be allowed in and under what criteria, conditions, limitations and permitting process.

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

- #136-19 Short-term rental ordinance with fees**  
DIRECTOR OF PLANNING proposing amendments to Chapter 20 and 17 of the Revised Ordinances of the City of Newton to create a short-term rental ordinance with fees that would require registration of short-term rentals with the City's Inspectional Services Department and fire inspections to protect public health and safety.  
**Public Safety Approved 4-0-1 (Cote abstaining; Grossman not voting) on 06/05/19**  
**Finance Approved 4-0 (Grossman recused) on 06/10/19**
- #212-19 Reappointment of Jack Leader to the Economic Development Commission**  
HER HONOR THE MAYOR reappointing JACK LEADER, 613 California Street, Newton as a member of the ECONOMIC DEVELOPMENT COMMISSION for a term to expire May 1, 2022. (60 days – 08/17/19)
- #213-19 Reappointment of Robert Finkel to the Economic Development Commission**  
HER HONOR THE MAYOR reappointing ROBERT FINKEL, 6 Stearns Street, Newton Centre, as a member of the ECONOMIC DEVELOPMENT COMMISSION for a term to expire May 1, 2022. (60 days – 08/17/19)
- #214-19 Reappointment of Jane Brown to the Commission on Disability**  
HER HONOR THE MAYOR reappointing JANE BROWN, 104 Atwood Avenue, Newtonville, as a member of the COMMISSION ON DISABILITY for a term to expire July 31, 2022. (60 days – 08/17/19)
- #215-19 Reappointment of Rob Caruso to the Commission on Disability**  
HER HONOR THE MAYOR reappointing ROB CARUSO, 237C Watertown Street, Newton, as a member of the COMMISSION ON DISABILITY for a term to expire July 31, 2022. (60 days – 08/17/19)
- #216-19 Reappointment of Girard Plante to the Commission on Disability**  
HER HONOR THE MAYOR reappointing GIRARD PLANTE, 58 Ash Street, Auburndale, as a member of the COMMISSION ON DISABILITY for a term to expire July 31, 2022. (60 days – 08/17/19)
- #217-19 Reappointment of Nancy Grissom to the Auburndale Historic District Commission**  
HER HONOR THE MAYOR reappointing NANCY GRISSOM, 7 Orris Street, Auburndale, as a member of the AUBURNDALE HISTORIC DISTRICT COMMISSION for a term to expire July 10, 2022. (60 days – 08/17/19)

**#218-19**

**Reappointment of Italo Visco to the Auburndale Historic District Commission**

HER HONOR THE MAYOR reappointing ITALO VISCO, 66 Grove Street, Auburndale, as a member of the AUBURNDALE HISTORIC DISTRICT COMMISSION for a term to expire May 31, 2022. (60 days – 08/17/19)

**Respectfully Submitted,**

**Susan S. Albright, Chair**



Ruthanne Fuller  
Mayor

City of Newton, Massachusetts  
Office of the Mayor

#212-19

Telephone  
(617) 796-1100

Fax

(617) 796-1113

TDD/TTY

(617) 796-1089

Email

rfuller@newtonma.gov

May 17, 2018

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

RECEIVED  
NEWTON CITY CLERK  
2018 JUN -5 AM 10:38  
DAVID A. GUZZO, CLERK  
NEWTON, MA 02459

To the Honorable City Councilors:

I am pleased to reappoint Jack Leader of 613 California Street, Newton as a member of the Economic Development Commission. His term of office shall expire on May 1, 2022 and his appointment is subject to your confirmation.

Thank you for your attention to this matter.

Warmly,

Ruthanne Fuller  
Mayor

**JACK M LEADER**

**OBJECTIVE** To be re-appointed to the Economic Development Commission of the City of Newton

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**PROFESSIONAL ACHIEVEMENTS** **[FIELD OR AREA OF ACCOMPLISHMENT]**  
[Achievement]  
[Achievement]  
[Achievement]  
**[FIELD OR AREA OF ACCOMPLISHMENT]**  
[Achievement]  
[Achievement]  
[Achievement]  
**[FIELD OR AREA OF ACCOMPLISHMENT]**  
[Achievement]  
[Achievement]  
[Achievement]

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**SKILLS** Over a 35 year period, of all the awards I have earned, the greatest is the 95% retention rate with my clients. I strive to find out what they need, and then find the right market for the products.

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**WORK HISTORY** **INSURANCE BROKER, PHOENIX MUTUAL**  
Jan 3 1978- Jan 1988  
**INSURANCE BROKER, WS GRIFFITH**  
Jan 1988 to Jan 2001  
**INSURANCE BROKER, BAY FINANCIAL ASSOCIATES LLC**  
Jan 2001 to Present

EDUCATION

**CABOT SCHOOL 1960-1967**

I had the honor of being the first class taught by Penny Smith, who went on to be the McDonalds Teacher of the Year

**FRANK ASHLEY DAY JUNIOR HIGH 1967-1970**

Ernest Van B Seasholes, Principal

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Ruthanne Fuller  
Mayor

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May 17, 2019

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

RECEIVED  
HONORABLE CITY CLERK  
2019 JUN -5 AM 10:40  
David A. Green, Clerk  
Newton, MA 02459

To the Honorable City Councilors:

I am pleased to reappoint Robert Finkel of 6 Stearns Street, Newton Centre as a member of the Economic Development Commission. His term of office shall expire on May 1, 2022 and his appointment is subject to your confirmation.

Thank you for your attention to this matter.

Warmly,

Ruthanne Fuller  
Mayor

**Robert A. Finkel**

Partner, Kerstein Coren & Lichtenstein LLP  
60 Walnut Street, Wellesley, MA 02481

**Education:** Newton South High School, 1987, Brandeis University, B.A., 1991 ,  
Cornell University Law School, J.D., 1994

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Robert Finkel has more than 20 years of experience in real estate law, general business and corporate matters, employment law and non-profit law.

Robert has assisted many clients with the acquisition, development, leasing, refinance and sale of real estate properties. He also has extensive experience in counseling private and institutional lenders and investors in connection with their real estate and business backed financings and transactions. His clients are based in Massachusetts, throughout the U.S. and worldwide.

Working with entrepreneurs, Robert has substantial experience assisting clients with the launch and growth of their businesses. He has represented many clients in connection with their incorporation, LLC formation, shareholder agreements, equity financings, bank financings, employment agreements, stock option plans, contracts, and asset and stock purchase agreements. Robert also works with non-profit foundations and public charities in incorporating and establishing their organizations and in providing ongoing corporate counsel.

Attorney Finkel is Chair of the firm's Emerging Company Finance and Non-Profit Practice Groups and is a founding partner of the firm.

**Community Involvement:**

- City of Newton's Economic Development Commission
- Board of Directors, Temple Emanuel of Newton, Massachusetts
- Past President, Temple Emanuel Brotherhood
- Board of Directors, The Wurtman Foundation
- Former Member of the Board of Trustees, the Solomon Schechter Day School of Greater Boston
- Former Chair, Strategic Facilities Committee, the Solomon Schechter Day School of Greater Boston

**ADMISSIONS:**

1995, Massachusetts Bar



**Application Form**

**Profile**

Robert

First Name

Finkel

Last Name

Middle Initial

Email Address

6 Stearns Street

Home Address

Suite or Apt

Newton Centre

City

MA

State

02459

Postal Code

**What Ward do you live in?**

Ward 6

Kerstein, Coren & Lichtenstein,  
LLP

Employer

Real Estate & Business Attorney

Job Title

**Which Boards would you like to apply for?**

Economic Development Commission: Submitted

**Interests & Experiences**

Please tell us about yourself and why you want to serve.

**Why are you interested in serving on a board or commission?**

I am writing to submit my letter of interest for re-appointment to another term as a member of Newton's Economic Development Commission (EDC). It has been an honor to serve on the EDC the last few years working together with our Chair Joyce Plotkin. I believe that the EDC can play an important role in city life by being a strong voice for pro-economic development policies and by making sure our business community feels valued and heard. As a lifelong resident of Newton, graduate of NSHS '87 and as a real estate and small business attorney in Wellesley, Massachusetts I feel I bring a good perspective to the commission. I work with small businesses every day and am particularly sensitive to their needs from leasing to permitting and so much more. Having grown up in Newton, I have a great appreciation for the history of our City, including the importance of its village centers. I also know the importance of supporting smart, thoughtful development, so that Newton can continue to be a vibrant community for its residents into the future. In terms of my involvement in the community, I am on the Board of Directors of Temple Emanuel in Newton. I serve as Treasurer of the David Kalis campaign. I have a daughter at the Brown Middle School. I respectfully submit this letter of interest for reappointment to the EDC so that I may continue to have the opportunity to serve our City. Thank you for your consideration.



Ruthanne Fuller  
Mayor

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Office of the Mayor

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Email  
rfuller@newtonma.gov

June 12, 2019

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

To the Honorable City Councilors:

I am pleased to reappoint Jane Brown of 104 Atwood Avenue, Newtonville as a member of the Commission on Disability. Her term of office shall expire on July 31, 2022 and her appointment is subject to your confirmation.

Thank you for your attention to this matter.

Warmly,

Ruthanne Fuller  
Mayor

RECEIVED  
NEWTON CITY HALL  
2019 JUN 12 AM 10:22  
Dennis A. G...  
Newton, MA 02459

Subj: Fwd: (no subject)  
Date: 3/28/2011 6:24:34 P.M. Eastern Daylight Time  
From: GBJONAH@aol.com

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From: GBJONAH@aol.com  
To: SEcker@NewtonMA.gov  
CC: lwalsh@newtonma.gov, gbjonah@aol.com  
Sent: 3/28/2011 2:33:42 P.M. Eastern Daylight Time  
Subj: (no subject)

My goal is to be reappointed as a Commissioner to the Newton Human Rights Commission.

Profession: Speech Language Pathologist. Certificate of Clinical Competence in Speech and Language Pathology.

Education: BS, MS, CAGS Boston University.

Employment: Revere Public Schools, 1972 through 2001.

Duties: Direct therapeutic services to children, Core evaluation team member, Diagnostics, Consultation and Collaboration with classroom teachers, Parental involvement, Building based support team, Supervision of Speech assistants, and University students.

Professional Associations: Massachusetts Teachers Association, National Education Association, Council for Exceptional Children, Federation for Children with special needs, American Speech and Hearing Association (State Education and Advocacy Leader), Massachusetts Speech and Hearing Association.

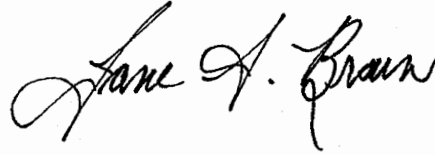
Memberships: Amnesty International, Native American Rights Fund, Southern Poverty Law Center, Ward 2 democratic committee, Newton democratic party, Greenpeace, Sierra Club, Women's International league for peace and freedom, Women's Commission, Newton Dialogues on Peace and War, Massachusetts Peace Action.

I have been a member of the Mayor's Committee for people with disabilities since November of 2005. My background in special education has made this a logical placement. This has been a rich experience for me. It gave me an opportunity to work to enable disabled people to achieve equal access to community life through our advocacy. There has been improved accessibility to public facilities, parks and recreation, commercial buildings and the streets of Newton. We have recommended \$150,000 in community block development grants to improve accessibility throughout the city. Mayor Warren has encouraged and assisted the Committee to achieve new status as a commission. This will allow the 35 year old group greater permanence with stronger opportunity to improve the lives of the disabled. My appointment to the Commission on Disabilities was confirmed by the Board of Aldermen at its March meeting on March 12, 2011.

In 1973, the Human Rights Commission was established to "ensure mutual understanding and respect among all persons in this city by promoting acceptance of diversity and combating discrimination". As a member of the advisory council and as a commissioner, I have worked to strengthen this statement. Newton continues to expand in the diversity of its population. It is essential that we protect the rights of all inhabitants, no matter what nationality, race, religion, chronological age, ability or sexual orientation. I have participated in the organization and presentation of a variety of programs: Israel Palestine, conversations for peace, Understanding immigration, reality of school desegregation, Race, the power of an illusion, Darfur awareness, civil liberties in a time of crisis and Highschool students speak out and honors and awards programs. I have a deep belief in justice, human rights and equal

opportunity, as well as access within our human community.

On December 10 the Human Rights Commission presented the annual awards to a unique couple. Dr. Arese Carrington and her husband Walter are currently residents of Newton. They have exemplified a respect and compassion for humanity. Dr. Carrington described the results of terrorism, prejudice and war and the ensuing destruction to human rights. Walter described the effects of prejudice within the suburban community. He said "It is easier to vote for a black man, than to have him living next door. Arese and Walter Carrington were inspirational. They have shown us the path. Now it is up to us to follow it.

A handwritten signature in cursive script that reads "Lane A. Braun". The signature is written in dark ink and is centered on the page.



Ruthanne Fuller  
Mayor

City of Newton, Massachusetts  
Office of the Mayor

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rfuller@newtonma.gov

June 12, 2019

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

To the Honorable City Councilors:

I am pleased to reappoint Rob Caruso of 237C Watertown Street, Newton as a member of the Commission on Disability. His term of office shall expire on July 31, 2022 and his appointment is subject to your confirmation.

Thank you for your attention to this matter.

Warmly,

Ruthanne Fuller  
Mayor

RECEIVED  
NEWTON CITY CLERK  
2019 JUN 12 AM 10:22  
DAVID A. O'NEILL  
CLERK  
NEWTON, MA 02459

**Robert Caruso**  
 237C Watertown St.  
 Newton, MA 02458

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**PROFESSIONAL EXPERIENCE:**

- 1986 – Present** Massachusetts Real Estate Broker dba – “Caruso Unlimited”  
 *Real estate financial brokerage.* Newton, MA
- 1991 – 2001** Massachusetts Easter Seals Society  
 *Public relations researcher.* Waltham, MA
- 1984 – 1986** Horizon Real Estate  
 *Residential Salesperson.* Waltham, MA
- 1976 – 1984** American Lettering, Inc., Founded, Owned and Operated  
 *Retail and wholesale silk-screening and embroidery company.* Newton, MA
- 1974 – 1978** Auburndale Sports Shop, Owned and Operated  
 *Retail sporting goods company.*

**VOLUNTEER EXPERIENCE:**

- 2010 - Present** Newton Commission On Disability  
 *Co-Chair 2010-present* Newton, MA
- 2011** Austin Street Newton, Joint Advisory Development Task Force
- 1995-2010** Mayor’s Committee For People With Disabilities  
 *Co-Chair 2009 - 2010* Newton, MA
- 1997 – 2002** Understanding Our Differences Board of Directors  
 *Newton schools’ disability awareness program.* Newton, MA

**EDUCATION:**

- 1973** Boston College – Bachelor of Arts  
 *Political Science*  
 *Philosophy*  
 *English* Newton, Ma

Recipient of the Human Rights Award 2011



Ruthanne Fuller  
Mayor

City of Newton, Massachusetts  
Office of the Mayor

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TDD/TTY  
(617) 796-1089  
Email  
rfuller@newtonma.gov

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

RECEIVED  
OFFICE OF THE MAYOR  
CITY OF NEWTON  
2019 JUN 12 AM 10:22  
June 12, 2019  
Donald A. O'Brien, Clerk  
Newton, MA 02459

To the Honorable City Councilors:

I am pleased to reappoint Girard Plante of 58 Ash Street, Unit A, Auburndale as a member of the Commission on Disability. His term of office shall expire on July 31, 2022 and his appointment is subject to your confirmation.

Thank you for your attention to this matter.

Warmly,

Ruthanne Fuller  
Mayor

**Application Form**

**Profile**

Girard	A	Plante
<small>First Name</small>	<small>Middle Initial</small>	<small>Last Name</small>

Email Address \_\_\_\_\_

58 Ash Street
<small>Home Address</small>

Unit A
<small>Suite or Apt</small>

Auburndale
<small>City</small>

MA	02466
<small>State</small>	<small>Postal Code</small>

**What Ward do you live in?**

Ward 4

_____	Home:
<small>Primary Phone</small>	<small>Alternate Phone</small>

_____	_____
<small>Employer</small>	<small>Job Title</small>

**Which Boards would you like to apply for?**

Commission on Disability: Submitted

**Interests & Experiences**

Please tell us about yourself and why you want to serve.

**Why are you interested in serving on a board or commission?**

To ensure the civil rights of persons with disabilities. Accessibility of public buildings and exterior venues still retain barriers and/or require new construction. Genuine accessibility across Newton must occur and will occur someday to meet the demands of aging citizens as well as archaic infrastructure that dates to the 19th century. My 39-year active advocacy encompasses myriad situations whereby rightful results were required and attained. Such experiences and breadth of knowledge are paramount to achieving the latter.

Upload a Resume \_\_\_\_\_





Ruthanne Fuller  
Mayor

City of Newton, Massachusetts  
Office of the Mayor

#217-19  
Telephone  
(617) 796-1100  
Fax  
(617) 796-1113  
TDD/TTY  
(617) 796-1089  
Email  
rfuller@newtonma.gov

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

RECEIVED  
Newton City Clerk  
2019 JUN 3 PM 12: 21  
May 22, 2019  
David A. Johnson, Clerk  
Newton, MA 02459

To the Honorable City Councilors:

I am pleased to reappoint Nancy Grissom of 7 Orris Street, Auburndale as a full member of the Auburndale Historic District Commission. Her term of office shall expire July 10, 2022 and her appointment is subject to your confirmation.

Thank you for your attention to this matter.

Warmly,

Ruthanne Fuller  
Mayor

Nancy Grissom  
7 Orris St  
Auburndale, Ma 02466  
ngrissom@comcast.net

- Resident of Newton for over 40 years. Owner of a house built in 1886.
- Realtor/Salesperson with in Newton for over 22 years, currently associated with Hammond Residential in Chestnut Hill.
- GRI and CRS real estate designations.
- Active with the Greater Boston Association of Realtors, currently serving on Grievance and Professional Standards Committees
- Member of the Newton Historical Commission since 2000 with nearly perfect attendance.
- Member of the Auburndale and Newtonville Local Historic Districts as a representative of the Newton Historical Commission.
- President of the Friends of the Newton Free Library.
- Long term interest in Preservation as member and volunteer for Historic New England and Historic Newton for more than 35 years.
- Nearly 30 years experience in the high tech computer industry working for New England Life Ins Co, Digital Equipment, and Data General Corporation – first as a programmer, later in application software product development, and finally in federal sales and marketing.
- Mount Holyoke graduate, where I took courses in architecture.

### Application Form

#### Profile

Nancy

First Name

Grissom

Last Name

Middle Initial

Email Address

7 Orris St.

Home Address

Suite or Apt

Auburndale

City

MA

State

02466

Postal Code

#### What Ward do you live in?

Ward 4

Hammond Residential

Employer

Realtor/Salesperson

Job Title

#### Which Boards would you like to apply for?

Auburndale Historic District Commission: Appointed

Newton Historical Commission: Appointed

Newtonville Historic District Commission: Appointed

#### Interests & Experiences

Please tell us about yourself and why you want to serve.

#### Why are you interested in serving on a board or commission?

This is my letter of interest to be reappointed to the Auburndale and Newtonville Local Historic District Commissions as well as the Newton Historical Commission. I have been the representative of the Newton Historical Commission to the Local historic district commissions in recent years. I am currently chair of the Newton Historical Commission. I have attached my resume to this letter. Thank you for your consideration.

[Newton\\_historical\\_commission\\_Resume.pdf](#)

Upload a Resume



Ruthanne Fuller  
Mayor

City of Newton, Massachusetts  
Office of the Mayor

#218-19

Telephone  
(617) 796-1100  
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rfuller@newtonma.gov

May 17, 2019

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

To the Honorable City Councilors:

I am pleased to reappoint Italo Visco of 66 Grove Street, Auburndale as a full member of the Auburndale Historic District Commission. His term of office shall expire May 31, 2022 and his appointment is subject to your confirmation.

Thank you for your attention to this matter.

Warmly,

Ruthanne Fuller  
Mayor

RECEIVED  
Newton City Clerk  
2019 JUN -3 PM 12:21  
David A. O'Brien, Clerk  
Newton, MA 02459

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**ITALO S. VISCO**  
**66 Grove Street**  
**Newton, MA 02466**

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Accomplished executive with a proven ability to define and implement real estate strategies that support social and financial objectives. Experienced in property development, project management, construction oversight, real estate consulting, and design practice. Well tested analytical and communication skills, with a successful record of managing the people, resources, and processes necessary to achieve shared goals.

- Supervised the delivery of 196,000 SF of Mixed-Use space in ten separate buildings at a total hard cost of \$31M. Completed on schedule in 15 months at a projected savings under budget of \$850K.
- Managed a large multi-family residential project: 316 garden style apartments in 23 buildings, (with clubhouse), comprising 390,000 SF of building and a total development cost of \$61M.
- Directed the development of 700,000 SF of senior housing in nine custom-designed facilities in Rhode Island and Massachusetts at an aggregate investment of \$130M; on time and budget. Included historic rehabs and ground-up construction.
- Responsible for the architectural design, documentation, and construction oversight of institutional, residential, and commercial buildings totaling 200,000 SF in area. Fostered strong working relationships with varied constituencies: property users, local and state agencies, business clients, and communities.

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## **PROFESSIONAL EXPERIENCE**

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- 2018 – Now     **NV5; Senior Project Manager**     **Boston, MA**  
 A national provider of engineering and consulting services for public and private sector clients. Guidance supplied in Program Management, Design Review, and Construction Quality Assurance. Clients and projects include: The Town of Groton, MA, Groton Senior Center, The City of Chicopee, MA, Chicopee City Hall, The City of Newton, MA, Newton Center for Active Living.
- 2017 – 2018     **WAYPOINTKLA; Senior Project Manager**     **Newton, MA**  
 Comprehensive consulting services, representing the owner's interests in their real estate development and construction. Clients and projects include: The Boston Wax Museum, LLC, One Washington Mall; Beacon Communities LLC: Berkshire Peak, Palmer Green, Highland Glen; Caritas Communities LLC; 1202 Commonwealth Ave., 206 West Broadway.
- 2013 – 2017     **LCB SENIOR LIVING, LLC; Director of Development**     **Norwood, MA**  
 Managed multiple acquisitions and new development projects; including feasibility analysis, due-diligence, entitlement permitting, and consultant/contractor supervision for a quick-paced, growing company with properties throughout New England. Led the development of four new Assisted Living Residences totaling 323,000 GSF in area at \$67M in hard costs.
- 2012 – 2013     **MASSDEVELOPMENT FINANCE AGENCY**  
**Senior Vice President, Planning & Development, Real Estate**     **Boston, MA**  
 Supervised, and coached five project managers and other agency staff in the implementation of all real estate department development projects and planning services. Responsible for feasibility, scope definition, project planning, schedules, budgets, and resource allocation.
- 2009 - 2012     **VISCO REDEVELOPMENT ASSOCIATES, LLC; Owner**     **Newton, MA**  
 Property selection, acquisition, redesign, construction management, and resale of housing.

- 2007 - 2009 **SAMUELS & ASSOCIATES; Development/Construction Manager Boston, MA**  
Led the design and construction of *The Launch at Hingham Shipyard*, 'Lifestyle Retail Center'. Directly responsible for supervising consultants, managing multiple construction contracts, coordinating partnership relationships, and procuring building and occupancy permits.
- 2006 **ROSELAND PROPERTY CO; Short Hills, NJ; Development Manager Boston, MA**  
Responsible for design development, market positioning, proforma, and partner relations for *Waterscape on Hewitts Cove*, 150 townhouse condos with Lennar Urban.
- 2003 - 2005 **THE FINGER COMPANIES, Houston, TX**  
**Regional Development Manager; Braintree, MA**  
Local representative of a national housing developer; led final permitting, abutter relations, consultant coordination, construction administration, and owner/investor reporting for *The Village at Quarry Hills*. Engaged in ongoing financial, entitlement, and design feasibility analysis for multiple acquisition and development opportunities in the New England region.
- 1994 - 2003 **NEWTON SENIOR LIVING, LLC: Vice President of Development Needham, MA**  
Oversaw all aspects of the firm's development activities: site selection, feasibility analysis, public permitting, budgeting, contract negotiation, and design/construction administration for multiple simultaneous projects. Supported acquisition and repositioning strategy of twelve properties in New England and Mid-Atlantic states: led site and building evaluation effort, due diligence investigations, market identity materials, and capital improvement planning and implementation programs.
- 1979 - 1994 A progression of roles in architectural design, real estate, and management consulting, including Vice President, Project Architect, Design Consultant, and Teaching Fellow in Massachusetts and California.  
**PROJECTS INCLUDED:** *Marlborough Police Facility, Chevalier Theatre, Yarmouth Teen Mothers' Residence, Worcester Municipal Employees' Credit Union, Worcester Historical Museum, Grafton Senior and Family Housing, Acton Senior and Family Housing, Natick Office Park, Hardinge Brothers Tech Center, Leggat McCall Properties financial and information systems, Bose Corp facility location analysis.*

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## EDUCATION

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- 1992 - 1994 **BABSON COLLEGE, F.W. OLIN GRADUATE SCHOOL OF BUSINESS M.B.A., 1994**  
*Babson Fellow, Center for Real Estate:* accounting, finance, marketing and business operations.
- 1980 - 1983 **HARVARD UNIVERSITY, GRADUATE SCHOOL OF DESIGN M. Architecture, 1983**  
Real estate development and finance, office management, design law, building methods, and architectural theory and design.
- 1974 - 1978 **MASSACHUSETTS INSTITUTE OF TECHNOLOGY B.S. Art & Design, 1978**  
Building materials and construction, structural theory, site planning, energy conservation, and architectural design.

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## PROFESSIONAL and COMMUNITY AFFILIATIONS

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- 1985 - Now *Registered Architect*, Commonwealth of Massachusetts License #6326
- 1985 - Now *Member*, American Institute of Architects
- 1985 - Now *Member*, Boston Society of Architects
- 2005 - Now *Chairman:* Auburndale Historic District Commission
- 1997 - 1999 *Business Mentor:* Babson College F.W. Olin Graduate School of Business
- 1996 - 2007 *Board of Directors, Age Group Coordinator, Coach:* Newton Youth Soccer
- 1997 - 2015 *Coach:* Newton Youth Hockey, Eastern Commonwealth, and Charles River Girls Hockey
- 2004 - 2010 *Coach:* Newton Girls Soccer

**Application Form**

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**Profile**

Italo                                    S                                    Visco  
First Name                                    Middle Initial                                    Last Name

\_\_\_\_\_  
Email Address

66 Grove St.                                    \_\_\_\_\_  
Home Address                                    Suite or Apt

Auburndale                                    MA                                    02466  
City                                    State                                    Postal Code

**What Ward do you live in?**

Ward 4

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NV5                                    Real Estate  
Employer                                    Job Title

**Which Boards would you like to apply for?**

Auburndale Historic District Commission: Submitted

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**Interests & Experiences**

Please tell us about yourself and why you want to serve.

**Why are you interested in serving on a board or commission?**

I have served as the Chairman of the Auburndale Historic District Commission since it's inception on 2005. Since that time I have thoroughly enjoyed serving my neighbor's needs and those of the residents and other institutions in general which are located within the district.

ISV\_Res\_010619.docx  
Upload a Resume



Ruthanne Fuller  
Mayor

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

**#140-19(3), #187-19**  
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Barney S. Heath  
Director

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

**DATE:** June 21, 2019

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

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

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

**MEETING DATE:** June 24, 2019

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

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The Zoning and Planning Committee is considering two proposed amendments to the Mixed Use 3/Transit Oriented Development District (MU3), the public hearings for which were opened on June 4, 2019. The first of these was submitted as part of a development application for the site, the second by a community group representing the local area. Both proposed amendments suggest increasing the amount of development allowed on the site, the differences are in the degree of development allowed and in the range of additional requirements and criteria. The Planning Department recommendation, based on the fact that the MU3 District applies only to the Riverside site, is that the amendments be adopted that allow flexibility for the Land Use Committee's review so that the greatest degree of discretion is available to the Council as they study the issues surrounding development of this site and decide the appropriate level of development. The following memo offers answers to the questions raised at the June 10, 2019 Zoning and Planning Committee meeting.

**Of the issues raised, what is zoning and what is special permit?**

One of the core questions asked was, of the issues raised through the community group proposal and in public hearing comments, what are most appropriately addressed through the zoning and what through the special permit development review process? There is not a simple answer to this question representing a clear line. The reality is that a special permit review process is part of the zoning and this particular instance is further complicated by the fact that the zoning district only applies to this site and was intended to support the development of this site.

Broadly, zoning is the regulation of the use and development of land. Zoning provides a body of rules that are intended to ensure the compatibility of adjacent land uses and address a range of public policy objectives from economic development and housing to environmental quality. Zoning is



intended to offer fair and uniform rules across established zoning districts. Where there is the potential for impacts particular to how those rules apply in certain situations, a development review procedure such as that offered by the special permit process allows an individualized decision to be made about a specific application. So zoning provides the general, broad frame of what is allowed and special permits deal with the specifics of an application.

Height and the general density of development are clearly within the broad frame of zoning. These standards in the MU3 represent maximums. Because the MU3 zoning district only applies to the Riverside site, and the full extent of Newton's policy with regard to this site is that it should be developed for a mix of housing, office, and commercial uses, as stated in the zoning, in the Comprehensive Plan, and in the Riverside Vision, the Planning Department recommends that the standards set for the property be flexible, so that the Land Use Committee has the opportunity, through the special permit process, to come to an understanding around the appropriate level of development density, required mitigation and public benefits, and neighborhood impacts. To set these maximum standards lower in the zoning would be to preclude the City Council from being able to make those decisions in the special permit process with the benefit of the full range of information that will be available in that process.

**Can the issues raised through the community group's requested zoning amendments be addressed in the special permit process?**

In short, yes.

1. The MU3 purpose clearly states the intent to protect the nearby neighborhoods (sec. 4.2.1.B), an idea that is more importantly stated in the special permit criteria, "The use as developed and operated will not adversely affect the neighborhood." (sec. 7.3.3.C.3)
2. Height and site design issues are all routinely part of the special permit process.
3. The beneficial open space requirement is a minimum and the special permit process could identify further required open spaces, including with the civic open space criteria identified in the proposed amendments.
4. A community center should really only be discussed as part of the special permit – there are legal issues raised in requiring publicly managed spaces generally, and a community center in particular, that are better addressed in the special permit process.
5. The highway interchange is both very expensive and complicated by the necessity of review by State and Federal transportation agencies. These issues make design of this interchange, and any associated development allowance, best handled through the special permit process.
6. The Council, through the Director of Planning, is empowered to request whatever additional information is deemed necessary to complete review of the project (see Article X, section 1 of the Council Rules). Special permit applicants are routinely required to provide traffic studies, shadow studies, fiscal impact reports, and other studies beyond the basics required by the Zoning Ordinance. The City also has the authority to specify aspects of these studies, such as the intersections to be studied or other factors. It is not necessary to amend the zoning

ordinance to request a noise or wind study or to specify components of a transportation study. A construction management plan can only be requested through the special permit process.

7. Similarly, the special permit criteria in the zoning ordinance tend to be somewhat flexibly defined so as to allow the City Council to get to an outcome that addresses the wide range of competing concerns and policy objectives they are typically faced with in every project. The criteria suggested by the community group can all be considered, but the Council should not tie themselves to specific measured outcomes that might conflict in such ways that there is no achievable development. Specific measured outcomes such as those suggested are generally not special permit criteria but are instead base requirements that apply to any project, not just those requiring a special permit, like height or open space standards, and they are, in turn, waivable by special permit or similar process so as to allow flexibility as they are applied to a specific property. Specifically, noise cannot be regulated in zoning as that topic is taken up in the general City ordinances.
8. Design and signage are most frequently taken up through the special permit process where the City Council can rely on recommendations from the Urban Design Commission and design mitigation measures can be flexibly used to address concerns.
9. Construction impacts can only be taken up in the special permit, not in zoning.

The Riverside Vision report also identified specific submissions that should be required as part of the special permit review, listed on page 125 of that report.

**Could the elements of the two proposed amendments be combined?**

Yes, the Zoning and Planning Committee could combine various elements of the two submitted amendment requests into one zoning amendment to the MU3.

**What is the MBTA's investment plan for the Green Line?**

The MBTA's plans for improving and expanding capacity on the Green Line are an important consideration for the City Council and the special permit review process should include a presentation on this topic.

**Would amendments to the Zoning, other than those submitted by the developer, require resubmission of the special permit application?**

Maybe. Most changes currently suggested would not but there might be some changes that would require resubmission if the proposed project no longer fit within the parameters defined by the zoning. Most of the proposed changes would require submittal of additional materials (which could also be required through the special permit process without amending the zoning).

**Does zoning typically include specific allowed square footages of development by use category such as is currently in the MU3? Are there examples?**

Generally no. Planning staff are unaware of any examples.

## KIRK & COMPANY

June 21, 2019

The LFIA Riverside Committee  
Randall Block, Chair  
45 Lafayette Road  
Newton, MA 02462

RE: Riverside MBTA Site; Newton, MA

Dear Mr. Block:

This memorandum has been prepared for your use and the use of the LFIA Riverside Committee in connection with the city of Newton's consideration of a discrete development proposal known as the Riverside Project. You have requested that we review, analyze, and comment on the Riverside Vision Plan – Appendix A, which is a Development Feasibility Analysis of the proposed development and various alternative scenarios, and conducted by UrbanFocus on or around May 2019. We understand that the city and community are currently entertaining a proposal for a mixed use project of approximately 1,500,000 square feet including: 611,437 square feet of office space, 702,202 square feet (per the special permit filing; 702,273 per the UrbanFocus report) of residential space (675 units), 64,655 square feet of retail space, a 194-room hotel of 105,284 square feet, and 2,922 (per the special permit filing; 2,924 according to UrbanFocus report) parking spaces including 958 parking spaces for MBTA commuter parking. The current proposed development plan includes the redevelopment of the Indigo Hotel parcel, which will be discussed further in this memorandum. The main parcel is currently subject to a ground lease from the MBTA, and according to the UrbanFocus report, the developer, a BH Normandy/Mark Development Partnership, commenced negotiations with the MBTA in 2017/2018. The developer is proposing several offsite infrastructure improvements including construction of a new access road/ramp, interior roadways, and a parking structure to replace the existing MBTA parking lot on site.

We have reviewed the UrbanFocus report, along with plans and submissions filed with the City of Newton by the developer and other publicly available documents, in preparation of our memorandum. A summary of our firm's background and our professional credentials are included in the appendix of this memorandum.

### **Summary**

Generally, there are five primary areas within the UrbanFocus report that should be considered further, each of which is discussed further in the body of this memorandum.

First, the UrbanFocus report indicates that a Return on Cost (ROC) of 7.0%-9.0% would be required in order to make a development program feasible. Our experience and knowledge of investor expectations indicates that the recent capital deployments and demand for deal flow has

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put downward pressure on yield expectations well positioned development projects can expect to achieve 5.0%-7.0% ROC. The UrbanFocus report concludes that each of its analyzed development scenarios resulted in a ROC estimates of between 5.0%-7.0%.

Second, the UrbanFocus report further states that Internal Rate of Return (IRR) measures should be considered with an ROC analysis in determining feasibility. We agree. However, according to UrbanFocus, no such IRR exercise has been undertaken by the developer. UrbanFocus has also not included an IRR exercise in its report. A project of this size and scope, with an estimated delivery over 5 years, would necessitate more robust analysis in the form of IRR modeling. Absent more robust IRR analysis, ROC methodologies are insufficient to adequately determine feasibility for a project of this size, scope, and timing.

Third, the UrbanFocus report includes (what is characterized as) the acquisition of the Hotel Indigo by Mark Development as a necessary component of land cost when developing the underlying assumptions within the feasibility analysis. The cost line item for the Hotel Indigo site is reported in the UrbanFocus report as based on what is described as the purchase of the Hotel Indigo in 2018 and at price of \$34,500,000. However, the transaction described does not appear to be an arm's length transaction because the transaction appears to have been between related parties. Further, it is unclear whether Mark Development's acquisition of the hotel property was, in part, an equity investment in the project partnership or the result of a joint venture (JV) arrangement with Normandy. If the arrangement represents an equity investment or JV of the project, it would be inappropriate to include the \$34,500,000 as a land cost to the project. Additionally, because the hotel was purchased as an existing operating hotel, it would appear that the reported purchase of the Hotel Indigo included components of business value as a going concern. If the purchase price indicated included business value components as a going concern, it would be inappropriate to include those value considerations in a land cost basis. Finally, according to the recorded deed, the consideration paid was \$27,068,794 (\$3,616,994.38 in cash plus the assumption of the \$23,451,800 outstanding principal amount of the mortgage note), not \$34,500,000, as was referenced in the UrbanFocus report. Additional research and analysis of the transaction should be conducted to confirm the referenced "purchase price" of \$34,500,000 indicated in the UrbanFocus report. Because of the complex nature of the legal, financial, and business relationships associated with the Hotel Indigo, it's inclusion as a pure land cost does not appear to be appropriate.

Fourth, UrbanFocus has assumed that the proposed \$19,625,000 infrastructure improvement program serves the development of the site, no matter the scale of the project scenario considered. The plan approved by the City of Newton in 2013 did not include the proposed infrastructure improvement program, which is a significant project cost. It is reasonable to assume that a development program of lesser scale may not require the same infrastructure and access improvements, and therefore would not be burdened by that substantial cost. In addition, without access to and review of the infrastructure costs, it is impossible to opine on the reasonableness of the estimates or their appropriateness in serving a project of smaller scale. There does not appear to have been sufficient analysis or support for the underlying assumption that the development of the site, at any density, would require the proposed highway infrastructure access improvements.

Alternative access was considered in initial iterations of the site development plan and it is reasonable to assume that the infrastructure improvements and therefore the underlying costs associated with their construction may be reduced with a project of a smaller scale.

Fifth, the UrbanFocus report discusses the market demand and economic benefits of hotel and condominium uses to a hypothetical project at this site, however, these uses are excluded from their feasibility analysis exercise. As further discussed in this memorandum and the UrbanFocus report, hotel and condominium development at the site can contribute to the financial feasibility of a project scenario. Elimination of hotel and condominium uses under the scenario analysis within the UrbanFocus report limits the reliability and appropriateness of the conclusions.

### **Purpose & Methodology**

The purpose of this assignment is to review the UrbanFocus report and comment on the analysis and conclusions made. Particular attention has been paid to understanding the underlying assumptions within the report and their potential impact on the conclusions of the analysis and therefore the ultimate feasibility conclusions developed. We have not been provided, nor did we have access to UrbanFocus' or the developer's underlying assumptions or development pro-forma models referenced within the UrbanFocus report and we make no conclusions as to the reasonableness or the reliability of any undisclosed assumptions.

Our comparative analysis and conclusions have examined the existing inventory and planned additions with the proposed development based on schematic plans for the subject property. Our analysis considers recent and prospective trends in pricing by use in the local market and other similar developments outside of the local market. In preparing our analysis we have reviewed and have made comments on various plans, proposals, and materials that you have provided. Many of the assumptions and data sources referred to within the UrbanFocus report are not referenced or disclosed and because of that, it is difficult to confirm or test those assumptions without a more complete disclosure allowing a refined analysis. To the extent possible, these assumptions have been reviewed, analyzed, and compared to current market trends and activity, and our own expertise and are based on the proposed development scenario and current conditions.

### **Market Activity and Return on Cost (ROC)**

Economic conditions in commercial real estate markets in the metropolitan Boston area fundamentally very strong and capital inflows from domestic and international investment has put substantial pressure on yields and cap rates for all property types. The suburban Boston markets have demonstrated extraordinary strength and residential and office markets have improved based on occupancy and average rents, as an alternative to the downtown Boston and Cambridge markets. The residential market, including development activity, construction starts, stabilized sales, condominium sales, and financing activity has been sustained even with increasing supply. The Boston property markets (including key suburban markets such as Newton) continue to attract capital for all positions, from debt and mezzanine to equity, in the capital stack. Recent financings and property offerings have been heavily and competitively bid. Rate spreads have compressed, and capitalization rates have only moved marginally with recent trends. Several significant

transactions within the suburban markets have occurred recently to confirm the viability of the proposed development, the vitality of the local markets, and the value of the property.

Conversations with active market participants involved in large-scale mixed-use suburban development programs similar to the Newton Riverside proposal have indicated that investor expectations have evolved within the last year as a result of current economic conditions, investor demand, and return expectations of aggressive foreign capital sources. Boston has emerged from the Great Recession as one of the strongest markets for investor demand in commercial real estate in the country. On April 2, 2019, AFIRE, the association for global investors focused on institutional real estate in the United States, announced the findings from their annual real estate investor survey, capturing insight and leading indicators among institutional investors from across asset classes in sixteen global markets. AFIRE reported that Boston was tied for fourth place as a leading global city for the most stable and secure commercial real estate investment markets with opportunity for capital appreciation. 10-year U.S. treasury yields are hovering around 2.00%-2.10% in recent weeks, while yields on German government bonds are negative, which is driving additional demand for foreign investment in U.S. market alternatives. With additional sources of capital flooding the Boston market, competition is heavy and has the effect of pushing down rates and keeping spreads low.

Recent multifamily transactions within the Boston metro offer initial returns in the low 4.0% range and commercial office returns averaging within the high 3.0% to low 5.0% range. Contacts within the market reported unlevered yield expectations of 5.0% to 7.0%, depending on property type and asset quality with levered yields between 9.0% and 12.0% based on a 5-7-year hold period assumption. The commercial real estate markets in and surrounding Boston are increasingly competitive, and this activity has served to compress yield expectations and capital market pressures have increased the investor demand for development deals to deploy capital. Additionally, the rental strength in, both residential and commercial office, and the appeal of the city of Newton as a premier market with exceptional access to public transportation, support a conclusion of market strength and sustainability. Based on the analysis of current economic and market activity, investor expectations, and current capital markets pressures, there does not appear to be a reasonable prohibition to the development of a comparable mixed-use development with a return on cost of 5.0%-7.0%.

The UrbanFocus report indicates that a Return on Cost (ROC) of 7.0%-9.0% would be required in order to make a development program feasible. Our experience and knowledge of investor expectations indicates that the recent capital deployments and demand for deal flow has put downward pressure on yield expectations well positioned development projects can expect to achieve 5.0%-7.0% ROC. The UrbanFocus report concludes that each of its analyzed development scenarios resulted in a ROC estimates of between 5.0%-7.0%.

### **Internal Rate of Return (IRR)**

The UrbanFocus report further states that Internal Rate of Return (IRR) measures should be considered with an ROC analysis in determining development feasibility. We agree. The IRR is the primary established measure of real estate investment performance. Discounted cash flow (DCF) modeling to determine IRR is an analytical tool for projecting irregular cash outflows

(expenditures) and cash inflows (revenues) over a period of time. The virtue of IRR analysis is that the issue of timing can be considered in the analysis through projections of irregular and variable cash flows, which are largely ignored in typical ROC models. ROC models consider only a snapshot in time, rather than a likely multi-year development, delivery, and investment period, similar to the propped development.

According to UrbanFocus, no such IRR exercise has been undertaken by the developer. UrbanFocus has also not included an IRR exercise in its report. A project of this size and scope, with an estimated delivery over 5 years would necessitate more robust analysis in the form of IRR modeling. Absent more robust IRR analysis, ROC methodologies are insufficient to adequately determine feasibility for a project of this size, scope, and timing.

### **The Hotel Indigo Land Cost Analysis**

Previous plans for the project included consideration of the Hotel Indigo, variously, and at one time the proposal included a proposal for the Hotel Indigo to remain on the site with access arrangements for the larger parcel redevelopment. The “purchase” of the Hotel Indigo by Mark Development is referenced throughout the report. According to the UrbanFocus report:

*In 2016/17, Mark Development began discussions with BH Normandy to partner on the redevelopment of the Riverside site and Mark Development began to investigate the site access to/from the highway. Ultimately the two developers agreed to terms to develop the site that includes BH Normandy’s continued participation in the development. In 2017/18, the BH Normandy/ Mark Development Partnership commenced negotiations with the MBTA.*

Additionally, the report indicates that:

*In 2018, Mark Development purchased the Indigo Hotel Site from BH Normandy. In January of 2019, the BH Normandy/ Mark Development team (the developer) submitted their zoning application for the newly proposed project...The proposed development of the site includes the redevelopment of the Indigo Hotel site.*

The supposed purchase of the Hotel Indigo was reported in the UrbanFocus report as occurring in 2018 and with a line item land cost of \$34,500,000 is indicated on page 16. It is known that in May 2018, the Hotel Indigo was recapitalized, and it was reported at that time that the hotel would continue brand affiliation and operation as a 191-unit hotel. The transaction characterized as Mark Development’s purchase of the Hotel Indigo appears to be that reflected in the deed recorded on October 16, 2018 in the Middlesex South registry of deeds in book 71753, page 448. The total consideration reflected in the recorded deed is \$27,068,794 (\$3,616,994.38 in cash plus the assumption of the \$23,451,800 outstanding principal amount of the mortgage note). The deed recites that a 66.36% interest in the property is granted by MD 399 Owner, LLC (formerly known as BH Normandy Owner LLC) to itself and that a 33.64% interest in the property is granted to Ramirez Concord, LLC, which appears to be an entity controlled by Robert Korff, a principal of

Mark Development. The transfer of the property appears to have been between related parties and therefore not an arm's length transaction.

Additionally, the property sold as an operating hotel and was not sold as a vacant site. According to the UrbanFocus report:

*It is important to note that the sale of the Indigo Hotel garnered much interest from buyers in 2018. The value of a smaller branded development site was attractive to hotel buyers because it didn't include requirements and additional franchise terms typically required from the larger hotel flags. Mark Development was able to purchase the site and secure its position in the development project because this site is critical to providing highway access as part of the proposed Riverside MBTA redevelopment.*

References to securing a position in the development project because of the quality and access of the Hotel Indigo site fail to acknowledge that the Hotel Indigo site was controlled by BH Normandy, and before the 2018 transaction, and the "purchase" by Mark Development and thus does not appear to increase or enhance the quality or accessibility of the MBTA site, which was always present.

In addition, throughout the report, the purchase of the Hotel Indigo is considered and included as a contribution to the land cost and no additional qualification or analysis is made. It would appear from the UrbanFocus and market activity at the time, the purchase of the Hotel Indigo included components of a business value with the going concern hotel operations, and it is unclear whether Mark Development's purchase of the property for the reported \$34,500,000 was, in part, an equity investment in the project or included some other business value in addition to the land value attributable to the site. Additionally, according to the UrbanFocus report, estimates of land cost were provided by the developer and not independently confirmed. Page 16 includes the following (emphasis added):

*The developer provided the following information regarding the cost of the land. Several components are assumptions based on their cost estimates. **These costs should be tracked and confirmed.** These costs are considered the overall land investment costs necessary to build the project as required by the MBTA and the City of Newton.*

The Hotel Indigo is an existing, cash-flowing asset that is further complicated by the partnership or joint venture arrangement between Normandy and Mark. Because of the complex nature of the legal, financial, and business relationships associated with the Hotel Indigo, it's inclusion as a pure land cost does not appear to be a reasonable assumption, based on the information provided and public information regarding the asset and transaction. Additional diligence and confirmation of actual land costs are necessary in order to develop a reliable development model and feasibility analysis. As indicated by the report:



*The land price for the Indigo Hotel has been established by the sale of the property to Mark Development in 2018. This property was on the open market and Mark Development purchased the parcel, securing their position as partner in the Riverside redevelopment. It is a vital parcel for access to the highway.*

It is unclear if the purchase of the Hotel Indigo is appropriately viewed as a land cost attributable to the site, partly a going concern business value, an equity investment in the project and a joint venture business arrangement, or some combination of each. Additional clarity and confirmation would be required in order to rely on these assumptions and conclusions within the analysis.

### **Infrastructure Cost Analysis**

The project is, reportedly, subject to an incremental density fee that is included in the full buildout analysis, in addition to major infrastructure improvements that include a \$19,625,000 project line item for the Newton I-95/RT 128 Ramp/ Infrastructure improvements. The proposed project contemplates substantial infrastructure costs in the form of additional highway access, which had not previously been included in the prior approved development scenario. There does not appear to have been sufficient analysis or support for the underlying assumption that the development of the site, at any scale, would require the proposed highway infrastructure access improvements. Alternative access was considered in initial iterations of the site development plan and it is reasonable to assume that the infrastructure improvements and therefore the underlying costs associated with their construction may be reduced with a project of smaller size or density. The report variously references the interest of the city of Newton in the access improvements, however, it is unclear if there is a project size that would be adequately accommodated by existing infrastructure or an alternative access and movement plan. It is difficult to know whether the infrastructure improvements proposed would be necessary in a project of smaller scale or if they are necessary for site access and movement and further consideration to those points should be made.

In addition, without access to and review of the infrastructure costs, it is impossible to opine on the reasonableness of the infrastructure estimates referenced in the UrbanFocus report. As UrbanFocus noted, these costs should be verified (emphasis added):

*The additional infrastructure costs include the cost of the highway access as well as the internal site road development. As highway access is seen as crucial by the City of Newton to the redevelopment of the site, this cost is justifiably part of the overall land development cost. **The cost of the highway access should be verified as an expense separate from the internal road development.** In general, for this analysis, the infrastructure costs are assumed to be reasonable and appropriate. **Urban Focus recommends that the cost of the highway infrastructure be verified by MassDOT and a third party reviewer to confirm that it is specific to the offsite work required for the highway access.***

Additional diligence and analysis may be required to determine existing and proposed infrastructure capacity.

### Use Assumptions

The analysis within the UrbanFocus report considers the current market for a project scope similar to the proposed development plan but significantly deviates from the proposed project with its analysis. For instance, the report considers only commercial office, retail, and multifamily rental units in their development scenarios and sensitivity analysis, omitting any condominium or hotel uses that might be supported by the market. Further, the UrbanFocus report discusses the market demand and economic benefits of hotel and condominium uses to a hypothetical project at this site. There is little discussion or disclosure of the development scenarios used for sensitivity analysis and it is unclear how the division of uses were developed or what basis exists for the variance between residential unit sizes within each scenario. Average residential unit sizes range from 750 square feet (scenarios 3, 4, 5, and 7) to 850 square feet (scenarios 1, 2, 8, 9, and 10) with no description of the detailed development plan.

Additionally, the report indicates that the proposed development plan is not the basis for consideration of the market development scenarios, however, the analysis opines on some of the assumptions in the proposed plan and includes a land cost that assumes the MBTA ground lease, the acquisition cost of the Indigo Hotel site, and the infrastructure cost for highway access outlined in the developer assumptions. It is unclear, to what extent the feasibility analysis in Part 1 of the document considers the proposed plan and additional clarity and refinement of scope should be considered. The report indicates that (emphasis added):

*This analysis does not directly evaluate the development program proposed by the current developer team. We do identify the scenario that most closely correlates with the square footage proposed but **these scenarios do not include hotel or condominium uses, a minimal proportion of the overall development.***

*Scenario 8 is the closest to the current scenario proposed by the developer, however, as noted above, **this analysis is high level and it does not include the condominium or hotel as part of the development.***

*In the market review portion of this analysis, Urban Focus has reviewed the demand for condominium and hotels. Based on the industry expectations, **a hotel can reasonably be expected to improve the project returns and for-sale residential** with the provided caveat that it should be low scale and closer to the remaining residential **should provide a positive net return, but this was not contemplated as part of the Feasibility Assessment.***

The report concludes that hotel and condominium development at the site can contribute to the financial feasibility of a project scenario, however it was not considered in determining the financial feasibility of any of the project scenarios. Conversations with active market participants involved in large-scale mixed-use suburban development programs similar to the Newton Riverside proposal have indicated that limited service hotels<sup>1</sup> located within amenities mixed-use

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<sup>1</sup> A limited service hotel (LSH) provides limited services and amenities to guests and typically does not have a full-service food and beverage facility, extensive conference facilities, concierge services, and a limited housekeeping service. An LSH may have small conference facilities, but typically does not have a restaurant. LSHs located within

developments can contribute significantly to overall project feasibility and net operating income. The subject site is a logical fit for a limited service or full-service hotel, which could both increase the marketability and attractiveness of the mixed-use project, but also contribute to project feasibility and revenue potential. The UrbanFocus report indicates that *“This analysis takes into account what a developer would require in order to make a development project successful as well as attractive enough to gain financial investment in the project”* however, appears to ignore two proposed uses at the site, which UrbanFocus itself concludes would provide additional improvements to project returns. Without a fully formed feasibility model that contemplates all the proposed uses at the site and their individual and collective impact on the project’s feasibility, it is difficult to reliably analyze and recommend return requirements that rely on an incomplete analysis.

### **Data Analyses and Data Fidelity**

Throughout the UrbanFocus report, data is provided and assumptions relating to the market are made without clear reference of source material for confirmation or reliance. The conclusions made in the UrbanFocus report relative to rent levels assumed in the model appear to contradict between Page 7, which appears to assume a Gross rent level for office space, and Page 18, which appears to assume a Triple Net (NNN) basis for commercial and retail rents. Clarification with regard to the underlying assumptions used for commercial office and retail rents is necessary.

Additionally, the ranges for market terms of rent levels, tenant improvements (TI), and condominium pricing assumed in the analysis, are broad and it is unclear what exact numbers were used in the analysis and modeling exercise. Variance, estimates, and ranges of data create a sensitivity issue that cannot be resolved with the information provided by UrbanFocus. For instance, the “Project Use Assumptions” on Page 18 summarize the projections and assumptions used in the analysis and include a rent range of \$50-\$54 per square foot for commercial office rents with TI assumptions of \$60-\$80 per square foot, residential rents of between \$3.75 and \$4.25 per square foot, condominium pricing of between \$600 and \$800 per square foot, and retail rents between \$40 and \$60 per square foot with TI of \$75 per square foot. Additionally, Page 20 outlines other assumptions made, including a \$280 per square foot development cost, \$30,000 to \$40,000 per space structured garage cost, developer fees of between 3% and 5% and very specific market capitalization rates of 5.62% for office, 4.88% for residential, and 5.86% for retail, which are not discussed further within the report.

Further, it is assumed that this project will be completed and delivered in phases over the course of five years. It is unclear from the analysis provided, what the constraints of the model are and how that might impact the variability of the model.

The ranges assumed, and assumptions made regarding cap rates could significantly impact, positive or negative, the feasibility conclusions developed in the conclusions on Page 14 if there

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large scale mixed-use developments can benefit from the services and amenities within the development such as restaurants, coffee shops, bars, and public spaces, reducing the need to operate a costlier full-service hotel with restaurant and conference facilities. The risk of LSHs tends to be lower and the net income potential. LSHs can positively contribute to the profitability of a mixed-use development.

were any variation in the assumptions. Without further detailed understanding of the underlying model, it is difficult to understand the impacts of variances on the feasibility conclusions made. The actual return on cost conclusions discussed on Page 14 range between approximately 5% and 7% under the ten various development scenarios. It is reasonable to assume that sensitivity analysis of the model and assumptions would impact those conclusions and could put upward or downward pressure on each of the scenario's return on cost conclusions. The specific return on cost assumptions within the analysis appear to require additional analysis and diligence in order to refine the feasibility analysis conclusions for reliability and decision making.

As discussed in the UrbanFocus report, reductions in costs and relief assumptions on the development program could significantly impact the feasibility conclusions, however, no attempt to substantially quantify or qualify these variables was made. According to the report:

*No shared parking is assumed. All parking is assumed to be in structured garages above grade. While a development may have some on-street parking, it will be a minimal proportion of the overall.*

If shared parking is a reasonable assumption or arrangement to make, both the benefits to the project in terms of feasibility and cost reduction should be considered in the analysis in order to determine feasibility. The report further indicates that:

*The most direct concession would be to consider shared parking. Significant shared parking should be considered and will improve the needed development scale as well as the financial feasibility of the development project. The built area and related cost required for structured parking is significant in each of these development scenarios. Each structured parking space adds approximately 550 square feet to the site (accounting for the actual space as well as drive aisle); therefore, every 1,000 parking spaces requires 550,000 square feet of structure.*

It is unclear from the analysis in the report if the concession of shared parking would enhance the project's financial feasibility or make the scale of the development more economical to develop, which would decrease cost and increase return to the project. Structured parking is an expensive way to deliver parking, with structures costing between \$20,000 and \$40,000 per space within the Boston and suburban markets. In the event the project was designed with a shared parking model, it is necessary to understand how a reduction in a substantial project cost impacts feasibility. No effort to quantify this variable or other variables related to parking were made. The report further states (emphasis added):

*Finally, while considerations are made for shared parking across all uses, **the MBTA commuter parking should also be considered as an opportunity for savings.** If the MBTA is concerned about the availability of parking at surge times such as game days, the developer should organize a mechanism to ensure parking availability as needed and allow for overflow into the other site parking for special events in downtown Boston.*

**Conclusion**

Overall, the UrbanFocus report provides a high-level analysis of the proposed development program and an independently developed set of scenarios that are then tested for reasonableness and financial feasibility based on a return on cost methodology. The conclusions developed throughout the report are generally specific and granular with regard to return on cost conclusions and the project scale that would be required to make the project economically feasible. However, further analysis is warranted with regard to cost inputs, most notably the assumed land costs and highway infrastructure costs. Additionally, the report ignores the proposed hotel and condominium components of the proposed development, while concluding that those two uses were viewed positively by the market and was reasonably expected to improve project returns and provide a positive net return to the development, respectively. These two uses, which would likely improve the economic feasibility of the project were not contemplated as part of its feasibility assessment. Because of the reliance on high-level data inputs with substantial variance and range and the omission of any analysis on the hotel and condominium development's contribution to value or feasibility, further granular analysis and a refined feasibility model should be developed in order to reliably and reasonably analyze and discuss the project's financial feasibility.

Furthermore, the UrbanFocus report concludes that each of its analyzed development scenarios resulted in a ROC estimates of between 5.0%-7.0%, which is consistent with our experience and knowledge of current investor expectations. Based on the analysis of current economic and market activity, investor expectations, and current capital markets pressures, there does not appear to be a reasonable prohibition to the development of a comparable mixed-use development with a return on cost of 5.0%-7.0%.

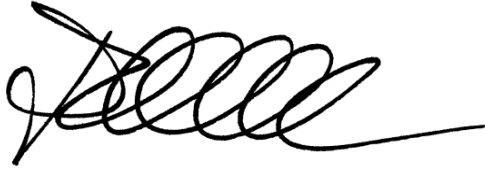
Finally, UrbanFocus notes that IRR measures should be considered in determining project feasibility. No such IRR exercise has been undertaken by the developer and further, UrbanFocus has not included an IRR exercise in its report. Absent more robust IRR analysis, ROC methodologies are insufficient to adequately determine feasibility for a project of this size, scope, and timing.

All of our conclusions are based on hypothetical development scenarios and information related to the existing and proposed improvements at the property. Changes to the physical asset, development plan or scope, feasibility analysis and conclusions, and market may require a re-evaluation of our conclusions. We are delighted to be of service to you. If you have any questions regarding the content of this memorandum, please feel free to contact us.

Randall Block  
The LFIA Riverside Committee

June 21, 2019  
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Sincerely,



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**| FIRM BACKGROUND**

Kirk & Company is a real estate consulting firm that has been providing appraisal and valuation, market analysis, and counseling services to sophisticated market participants since 1993. Kirk & Company provides clients with real estate valuation and counseling services for all types of commercial property on a national basis with a concentration on income-producing property within New England. Our clients include non-profit, community, and private developers, non-profit organizations, institutional investors, lenders, municipalities, public housing authorities, and government agencies.

Our specialized valuation services include development and operating feasibility, marketability, appraisal, and due diligence services for development, redevelopment, historic rehabilitation, adaptive reuse, financing, investment, disposition, and litigation support. Kirk & Company has expertise with all types of market-rate and subsidized housing, mixed-use development, fractional interests, air rights, and ground leases. We appraise commercial property of all types and have specialized expertise in affordable housing analysis. We were an approved provider of real estate counseling services to the former Massachusetts Turnpike Authority. We are an approved provider of housing market studies for Massachusetts DCHD, New Hampshire Housing Finance (NHHFA), have provided appraisals and market studies for submission to the Connecticut Housing Finance Authority, and are an approved provider of real estate appraisal and advisory services for Rhode Island Housing (RI Housing), the Massachusetts Housing Finance Agency (MassHousing), Massachusetts Housing Investment Corporation (MHIC), and Massachusetts Housing Partnership (MHP).

We provide counseling services to financial institutions, non-profits, developers and public agencies to assist with their complex real estate opportunities and problems. Our work includes counseling on marketability and feasibility, highest and best use analysis, due diligence assistance, portfolio strategy, asset repositioning, alternative financing methods, and adaptive reuse of historic properties. Our expertise is available for litigation support, expert testimony and consulting on an as needed basis. We perform market studies for existing, planned, and repositioned properties. Our assignments are completed for lenders, investors, developers and non-profit sponsors and are used for planning, underwriting, financing, investment and acquisition/disposition. Within the last five years, we have completed more than 55 market studies in over 45 communities in Massachusetts, Rhode Island, Maine and Connecticut.

Our counseling assignments provide advice and direction to our clients throughout the various stages of the development process and establish lasting relationships that allow clients to rely on us through the many phases of real estate transactions; from start to finish. On the basis of our analytical results, we take counseling one step further by recommending practical development and investment strategies that provide value added services to our clients. We identify local programs or regulations that may benefit or burden the project; we advise recommendations on design, amenities, floor plans, marketing methods, and alternative financing to maximize the market positioning of the project.

**QUALIFICATIONS****David S. Kirk, CRE, MAI, FRICS*****Principal and Founder***

For over 45 years, David Kirk has served institutional clients and high net worth individuals as a property and investment counselor. In 1993, he established Kirk & Company as a continuation and expansion of his real estate counseling and investment activities during his 22-year tenure as a principal at the Boston Financial Group. Kirk & Company provides clients with real estate valuation and counseling services for all types of commercial property on a national basis with a concentration on income-producing property within New England. Clients include non-profit, community, and private developers, non-profit organizations, institutional investors, lenders, municipalities, public housing authorities, and government agencies.

Prior to founding Kirk & Company in 1993, he was a Senior Vice-President and Principal of The Boston Financial Group, and the Director of the Boston Financial Consulting Group, a division within the company that offered real estate consulting services. Prior to 1971, Mr. Kirk was an account executive with Landauer Associates (New York City), real estate consultants, where he was an appraiser of commercial, industrial and residential properties for purposes of financing, joint venture, disposition and corporate merger/acquisition.

Mr. Kirk is a member of the Counselors of Real Estate (CRE) and Appraisal Institute (MAI). He was 2001 President of the Counselors of Real Estate and 2001 President of the Massachusetts Chapter of The Appraisal Institute. He is a member of Lambda Alpha International; an honorary land economics society and a member of the board of directors of the Boston Chapter. He is a member of the Greater Boston Real Estate Board, Citizens' Housing and Planning Association. Mr. Kirk is a Certified General Real Estate Appraiser in Massachusetts and a licensed real estate broker in the Commonwealth of Massachusetts.

Mr. Kirk is a graduate of the University of Pennsylvania where he majored in Architecture and the Wharton Graduate School of Business where he majored in Finance. He has been a speaker and a panelist at conferences of, among others, the Urban Land Institute, the National Trust for Historic Preservation, the Mortgage Bankers Association of America, the Society of Real Estate Appraisers, and the Massachusetts Bar Association. He was chairman of an advisory working group on Troubled Properties for the United States Department of Housing and Urban Development.

Mr. Kirk has analyzed and opined on the fairness of a variety of related party real estate transactions for public and privately held entities. From 1993 to 1999, he served as a fiduciary and as a real estate investment advisor to the Prudential Retirement System, and he has similarly served the Virginia Retirement System. He has served as an arbitrator for the American Arbitration Association and the National Association Securities Dealers (NASD). He has been trained as an arbitrator by the NASD and as a mediator by the National Association of Realtors and NASD. He has qualified as a real estate valuation expert in federal district, bankruptcy and appellate tax courts.



Mr. Kirk was a member of the Board of Editors of *Banker & Tradesman* and is a contributing writer to the New England Real Estate Journal, and a co-author of *Real Estate: A Hidden Corporate Asset* (American Society of Real Estate Counselors, 1986). He has written articles which have appeared in national real estate periodicals including *The Appraisal Journal* and *Real Estate Review*. His article "Using the Reversion/Shelter Approach to Appraise Subsidized Housing," co-authored with David A. Smith, was honored as the best *Appraisal Journal* article written in 1983, recipient of the Robert H. Armstrong Award.

### **Brett N. Pelletier, CRE, MRA**

#### *Chief Operating Officer*

Mr. Pelletier joined Kirk & Company in 2005 and currently leads the appraisal and consulting process, which includes narrative appraisal reports, feasibility studies, acquisition analysis and customized market research. He leads a team who focuses on affordable housing strategies and policy, adaptive reuse strategies, and complex real estate problem solving. Kirk & Company provides clients with real estate valuation and counseling services for all types of commercial property on a national basis with a concentration on income-producing property within New England and throughout the United States. Clients include non-profit, community, and private developers, non-profit organizations, institutional investors, lenders, municipalities, public housing authorities, and government agencies.

Mr. Pelletier is a recognized expert in affordable housing finance and analysis and has specialized experience advising municipalities, non-profit developers, and private entities on adaptive reuse of historic buildings, affordable housing planning and analysis, and strategic decision-making functions. Mr. Pelletier specializes in the valuation and analysis of market-rate, mixed-income, and affordable housing properties; including senior housing, SRO housing, assisted and independent living facilities with supportive services, and other types of rental and for-sale housing.

Prior to joining Kirk & Company, Mr. Pelletier served as campaign intern with John Kerry for President and was a legislative intern in the Boston office of the late Senator Edward M. Kennedy. Mr. Pelletier received a Bachelor of Science in finance with minors in English and government from Bentley College where he focused on corporate finance and real estate with coursework in real estate law, real estate financing and urban planning & development. He is a Master of Liberal Arts (ALM) candidate in finance at the Harvard University Extension School and a Master of Business Administration (MBA) candidate at Bryant University with expected graduation in 2019. Mr. Pelletier has successfully completed extensive primary and continuing education courses with the Appraisal Institute, Massachusetts Board of Real Estate Appraisers, and other national and regional professional and educational organizations.

Mr. Pelletier is a member of the Counselors of Real Estate (CRE) and a designated member of the MBREA (MRA). Mr. Pelletier holds Certified General Real Estate Appraiser licenses in Massachusetts, New Hampshire, Connecticut, and Rhode Island; and temporary certifications in other states on an assignment-by-assignment basis. He is a licensed real estate salesperson in

Massachusetts, a Candidate for MAI Designation of the Appraisal Institute, an Emerging Leader Member of the Real Estate Finance Association (REFA) and a member of the National Council of Housing Market Analysts (NCHMA, an affiliated council of National Housing and Rehabilitation Association). He is a designated member of Lambda Alpha International; an honorary land economics society, a contributing writer to the New England Real Estate Journal and has spoken at numerous conferences relating to affordable housing finance, analysis, and policy.

From 2010-2016, Mr. Pelletier served as an elected member of the Town Council of Tiverton, RI. In that capacity, he served as liaison to the Economic Development Commission, Planning Board, Harbor & Coastal Waters Management Commission, Historic Preservation Advisory Committee, Library Construction Coordination Committee, and the Real Estate Property Tax Exemption Review Committee. He served on the Tiverton Planning Board from 2016-2017 and the Tiverton Wastewater District from 2017-2018. He served on the Municipal Buildings Feasibility Advisory Committee that analyzed town-owned assets and proposed redevelopment and disposition strategies for historic former municipal buildings. He served as a member of the Land Use Procedural Improvements Committee that improved land use planning through strategic initiatives. He recently served on the Grinnell's Beach Improvement Committee and chaired the Stone Bridge Abutment Committee; two related committees that provided oversight, project management, and administration of grants for the restoration of an historic bridge abutment and the redevelopment of an historic park, beach, and municipal dock facility in the seaside town.

Mr. Pelletier is a member of the Preservation Society of Newport County and the Fall River Historical Society, non-profit organizations that preserve and protect the architectural heritage of the region. Additionally, Mr. Pelletier serves as the president of the board of directors of the Striving Artists Theatre Company of Beverly, Massachusetts; a non-profit performing arts organization dedicated to enriching the community with innovative theatre arts.



Ruthanne Fuller  
Mayor

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Barney S. Heath  
Director

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**MEMORANDUM**

**DATE:** June 21, 2019

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

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

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

**MEETING DATE:** June 24, 2019

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

This memo provides staff's responses to the questions and comments (in bold below) raised by Councilors, Planning & Development Board members, and the public during the Public Hearing held on June 10<sup>th</sup>.

**1.) The proposal is using the terms affordable housing and is also using Tiers. The different levels of affordability should be defined as middle-income (80%-110% AMI), low-income (50%-80% AMI) and extremely low-income housing (30% AMI).**

The Planning Department believes that the proposed ordinance strongly defines and differentiates between the different levels of affordability included in the ordinance and their related "Tiers." Section 5.11.2. "Definitions" provides specific definitions for the many terms used throughout the ordinance, including:

- Deed-Restricted Affordable Unit(s)
- Extremely Low-Income (ELI) Unit(s)
- Inclusionary Unit(s)
- Tier 1 Unit(s)
- Tier 2 Unit(s) – for which the definition states that Tier 2 Units are also known as "Middle-Income Units"

Given that the terms "extremely low-income," "low-income," and "middle-income" are interpreted in different ways depending on the program and use of the terms, staff does not recommend changing the way the proposed ordinance reads in terms of its definitions and identification of affordability levels and associated Tiers. We believe the proposal represents the cleanest and most effective way of identifying the different requirements associated with the ordinance.

**2.) 40% AMI has been left out and there is no definition, but Newton could create one to clarify this for developers.**

The ordinance does not attempt to provide a scenario for every level of affordability below 110% AMI. Rather, we created a Tier system and an ELI Alternative Compliance Option specifically to provide for a greater range of deed-restricted affordable units. The proposed ordinance, however, does state in Section 5.11.4.E. that an "Inclusionary Housing Project may set the sale price or rental rate for Inclusionary Units lower than what is required herein." There is nothing precluding a project from utilizing the 40% AMI limit for its Inclusionary Units.

**3.) Section 5.11.3.D. "100% Deed-Restricted Affordable Developments" states that projects that consist of 100% deed-restricted affordable units up to 110% AMI are not subject to the Number of Inclusionary Units Required tables included in Section 5.11.4.B, but are subject to all other applicable provisions of the Inclusionary Zoning ordinance. 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.**

While not included in the proposed ordinance provided to the committee on June 7<sup>th</sup>, staff recommends that for projects of this type (100% affordable units at or below 110% AMI), all units in the project must average no more than 95% of AMI. While there is clearly a need for affordable housing in Newton at the lowest income levels, this provision, we believe, may help to encourage the development community to consider projects that serve Newton's shrinking middle-income population, helping to diversify the array of housing options present throughout the city. Staff agrees that the City should continue to do all it can to create units at or below 50% of AMI.

The proposed provision is designed to encourage the creation of 100% deed-restricted affordable projects across low, moderate, and middle-income tiers. This provision could be particularly beneficial to Newton's senior population, many of whom fall into this middle-income category. Housing options for this group are particularly constrained, as their annual income is too high to qualify for the majority of subsidized housing (reserved for households at or below 80% AMI), but too low to afford the limited supply of senior-friendly apartments and condominiums throughout Newton that are priced at market-rate and above. Additionally, the introduction of greater middle-income units throughout the city could also help to slow the rapid pace of escalating rents at all income levels.

This provision does not simply favor 100% middle-income projects. Any project that includes 100% deed-restricted affordable units at any level of affordability, regardless of their tier, would not be required to comply with the prescribed percentage requirements of the proposed IZ ordinance. Staff believes that such a provision provides additional incentive for developers to propose and build housing in Newton at a diversity of income levels, a need that exists across the city.

**4.) Section 5.11.6 refers to the off-site affordable units. More specificity is needed in the conditions under which the City Council would allow off-site units. The offsite requirements should not apply for projects already in process. There should be some exemptions if a developer can partner with a non-profit.**

Staff believes Section 5.11.6. "Off-Site Development" provides ample specificity in terms of the conditions under which the City Council would allow off-site units. The proposed ordinance states that 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." The ordinance goes on to state that the findings must include consideration of:

- The appropriateness of the development site location for income-eligible households, including proximity to and quality of public transportation, schools, and other services;
- Consideration relative to the concentration of affordable units in the City;
- An increase in the number of Inclusionary Units or an increase in the percentage of Tier 1 units from the amount otherwise required; and
- Consideration for the purposes of the IZ ordinance.

The proposed ordinance specifies that any Inclusionary Housing Project that includes off-site units must enter into a development agreement with a non-profit housing developer for the development of the off-site units.

**5.) There is language that says the development has to show that the tenants have the opportunity to advance economically. Not sure what that means, and more guidance is needed.**

Staff believes this question is referring to Section 5.11.1.D., under the “Purposes” section. This particular purpose states, “The purpose of this Section 5.11 is to work to overcome economic segregation regionally as well as within Newton, allowing the City to be a community of opportunity in which low and moderate-income households have the opportunity to advance economically.” This statement does not require that a particular development provide a tenant with the opportunity to advance economically, but rather that one of the many purposes of this ordinance is to provide the potential for low- to moderate-income individuals and households to succeed by providing housing at a permanently affordable percentage of their household income.

**6.) Section 5.11.3.F. language might contradict DHCH rules. It says that the 80%-100% units could be local action units – should these units be defined in that way?**

The proposed ordinance states that Tier 2 Units (81% - 110% AMI / Middle-Income Units) must be **consistent**, where applicable, with DHCD’s requirements for Local Action Units; whereas the ordinance states that Tier 1 Units (at or below 80% AMI) must be **qualified** as Local Action Units.

Per DHCD, only those deed-restricted units at or below 80% of AMI are eligible to be Local Action Units; therefore, Tier 2 Units cannot be qualified as Local Action Units. The intention of this section in the proposed ordinance is to impose similar regulations, where applicable, on the Middle-Income Units as those required of the Tier 1 Units (e.g. the requirement for an Affirmative Fair Housing Marketing & Resident Selection Plan, an Affordable Housing Deed Restriction, etc.).

**7.) For the ELI Alternative Compliance Option, will tenants be required to participate in the support 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.**

This question will be answered on a case-by-case basis, given the specifics of the proposed project and corresponding Resident Selection and Supportive Services Plan for the ELI Units, which must be reviewed by the Director of Planning and Development prior to submission for review and approval by the City Council as part of the special permit process.

**8.) Section 5.11.9. Public Funding Limitation. The public development funds subsidy definition under 760 CMR 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.**

Staff has made this change in the proposed ordinance.

**9.) Why was the 4-6 unit development IZ requirement dropped?**

The addition of an affordable unit or required payment-in-lieu can have an outsized impact on the overall financial return of a project and can quickly render a project financially infeasible. The inability for these projects to realize full value from an affordable unit, which has a similar cost to build and maintain to that of a market-rate unit, results in a financial loss if the IZ requirement is too great. Small-scale developers have greater sensitivity to changes in their development program due to their inability to spread the cost of an affordable unit or a payment-in-lieu across several market-rate units.

Additionally, while the current IZ ordinance states that the inclusionary requirements kick in when there is a net increase of two or more new dwelling units. However, current interpretation of the ordinance has been that projects are given credit for the number of units that are allowed by right on their property; therefore, the current interpretation of this provision has led to the IZ requirement only kicking in when there is a net increase of six new dwelling units. For example: 6 new units, minus 2 units allowed by right = 4 units subject to an IZ requirement.  $4 \times 15\% = 0.6$ , round up to get 1 required IZ unit. The proposed ordinance does away with this credit.

Also, projects under current zoning have been offered a reduction in their requirement based on the number of dwelling units that currently exist on site, even if those units are proposed to be demolished. For example: 20 new units proposed, minus 4 existing units set to be demolished = 16 units subject to the IZ requirement ( $16 \times 15\% = 2.4$  units), rather than 20 units subject to the IZ requirement ( $20 \times 15\% = 3$  units). The proposed ordinance does away with this reduction.

Lastly, staff made the decision to proposed that the new ordinance kick in at seven or more dwelling units, rather than six, because 15% of 6 is less than a whole unit, while 15% of seven equals 1.05, or a full IZ unit.

**10.) Why are ownership units set at 80% AMI priced at 70% AMI?**

This is an affordable housing best practice for setting the maximum sale price for affordable ownership units. If the maximum sale price is set right at the 80% limit, the window of people who could qualify would be quite narrow. Bumping down ten percentage points allows for a greater number of households eligible to purchase these units. This is referred to as expanding the “window of opportunity.”

**11.) Clarification is needed as to how the “Incentives for Additional Inclusionary Units” provision works.**

As stated in the proposed ordinance, the total number of additional units allowed under this provision must not exceed 25% of the number of units otherwise allowed on the lot under lot area per dwelling unit requirements.

Here is an example of how the 2:1 incentive ratio would work: A developer proposes a 31-unit project because that is the maximum number of units allowed by lot area. The IZ requirement for this project would be 6 IZ units. Under the Incentives provision, the developer could then choose to provide 2 additional affordable Tier 1 units, which would provide the project with 4 additional market-rate units, for a total of 6 additional units. The project would now include 37 total units.

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

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

**12.) 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.**

Staff believes we should stay with the recommendation of the Newton Housing Partnership, which included utilizing the Consumer Price Index (CPI) as the basis for the annual escalation of the Total Development Costs / Unit number, until the Housing Partnership recalculates that base number during the 5-year IZ reevaluation process.

**13.) The escalation of the care and service costs for Elder Housing with Services projects should be looked at over time as well. A 10 year look back should be the inflator factor for the next 10 years.**

As stated in the proposed ordinance, the total cash payment for Elder Housing with Services projects 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 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.

According to the current Genworth Cost of Care Survey, the average hourly rate for a Home Health Aide in the Boston area is \$28/hour:

<https://www.genworth.com/aging-and-you/finances/cost-of-care.html>



**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*

**Printed Attachments:**

- Proposed Inclusionary Zoning Ordinance text (clean version), June 21, 2019
- Proposed Inclusionary Zoning Ordinance text (red-lined version), June 7, 2019

**Digital Attachments / Additional Documents:**

- June 7, 2019 Inclusionary Zoning Memo from Planning Staff to ZAP Committee:  
<http://www.newtonma.gov/civicax/filebank/documents/97571>
- City of Newton Inclusionary Zoning: Financial Feasibility Analysis, prepared by RKG Associates, Inc., March 2018 (not attached, but can be found on the City's IZ website:  
<http://www.newtonma.gov/civicax/filebank/documents/91410> )
- Further detail and additional memos and supporting documents can be found on the City's Inclusionary Zoning website:  
[http://www.newtonma.gov/gov/planning/lrplan/inclusionary\\_zoning.asp](http://www.newtonma.gov/gov/planning/lrplan/inclusionary_zoning.asp)

## Sec. 5.9. Tree Protection

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

## Sec. 5.10. Floodplain, Watershed Protection

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

## Sec. 5.11. Inclusionary Zoning

### 5.11.1. Purposes

The purposes of this Sec. 5.11 are to:

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

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

### 5.11.2. Definitions

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

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

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

- I. “Public development funds” means funds for housing construction or rehabilitation if provided through a program eligible to serve as a ‘subsidy’ under 760 CMR 56.00 Comprehensive Permit: Low or Moderate Income Housing, Community Preservation Act funds, and other federal funds available for housing allocated by the City of Newton.

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

### 5.11.3. Application of Inclusionary Zoning Requirements.

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

- D. **100% Deed-Restricted Affordable Developments.** Any proposed residential or mixed-use development that consists of 100% deed-restricted affordable units up to 110% of AMI is not subject to the Number of Inclusionary Units Required, Section 5.11.4.B; however, projects of this type are subject to all other applicable provisions of this section 5.11. The percentage of AMI used for establishing monthly housing costs and the applicable household limit for all units in the project must average no more than 95% of AMI.

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

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

### 5.11.4. Mandatory Provision of Inclusionary Units.

- A. **Inclusionary Unit Tiers.** Inclusionary Units are divided into two tiers based on their level of affordability. Tier 1 represents units affordable to households with annual gross incomes at or below 50% of AMI and units affordable to households with annual

gross incomes at or below 80% of AMI; and Tier 2 represents Middle-Income units affordable to households with annual gross incomes greater than 80% of AMI, but at or below 110% of AMI.

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

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

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

*Example Project: 17-unit rental development*

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

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

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

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

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

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

**Illustration: Rental Projects Calculation Methodology**

*Example Project: 31-unit rental development*

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

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

*TOTAL UNITS = 6 deed-restricted affordable units*

- c. Effective January 1, 2021, rental Inclusionary Housing Projects with 100 or more residential dwelling units must provide 15% of residential dwelling units at Tier 1 and 5% of residential dwelling units at Tier 2.

**5. Ownership Project Requirements.** The percentage requirements for applicable ownership developments are based on the following table and provisions.

- a. For ownership Inclusionary Housing Projects with seven to 16 residential dwelling units, where one or two ownership inclusionary units are required at Tier 1, the household income limit for those units shall be 80% of AMI and the inclusionary units must be priced for affordability to households having annual gross incomes of not more than 70% of AMI at the time of marketing.
- b. For ownership Inclusionary Housing Projects with 17 or more residential dwelling units, where three or more ownership inclusionary units are required, the household income limit for Tier 1 units must be 80% of AMI and those inclusionary units must be priced for affordability to households having annual gross incomes of not more than 70% of AMI at the time of marketing. The household income limit for Tier 2 Middle-Income units must be 110% of AMI and those inclusionary units must be priced for affordability to households having annual gross incomes of not more than 100% of AMI at the time of Marketing.

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

**Illustration: Ownership Projects Calculation Methodology**

*Example Project: 52-unit ownership development*

*10% at Tier 1 = 0.10 x 52 units = 5.2 units*  
*Total: 5 units at Tier 1 (round down)*  
*plus fractional cash payment*

*7.5% at Tier 2 = 0.075 x 52 units = 3.9 units*  
*Total: 4 units at Tier 2 (round up)*

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

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

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

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

**Illustration: Incentive Units Calculation Methodology**

*Example Project: 31-unit rental development*

**PRE-INCENTIVE CALCULATION**

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

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

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

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

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

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

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

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

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

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

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

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

**5.11.5. Cash Payment Option.**

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

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

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

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

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

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

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

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

**Illustration: Cash Payment Calculation Methodology**

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

**EXAMPLE 1: 18 Unit Rental Project**

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

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

**EXAMPLE 2: 36 Unit Ownership Project**

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

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

**SMALL PROJECT CALCULATION EXAMPLES**

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

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

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

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

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

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

**Illustration: Fractional Payment Calculation Methodology**

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

**EXAMPLE: 48 Unit Rental Project**

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

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

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

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

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

### 5.11.6. Off-Site Development

**A. Eligibility.** Off-site Inclusionary Units are generally discouraged. The Inclusionary Unit requirements of Section 5.11.4 may be met through the off-site development of the required Inclusionary Units only by special permit from the City Council where the Council makes specific findings that there will be an unusual net benefit to achieving the City's housing objectives as a result of allowing the units to be built off-site. The findings must include consideration of:

1. The appropriateness of the development site location for income-eligible households, including proximity to and quality of public transportation, schools, and other services;
2. Consideration relative to the concentration of affordable units in the City;
3. An increase in the number of Inclusionary Units or an increase in the percentage of Tier 1 units from the amount otherwise required; and
4. Consideration of the purposes of this section of the ordinance, Section 5.11.1.

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

1. The applicant must submit a development plan for off-site development for review and comment by the Planning and Development Department prior to submission to the City Council. The plan must include at a minimum, demonstration of site control, necessary financing in place to complete the off-site development or rehabilitation, an architect's conceptual site plan with unit designs and architectural elevations, and agreement that the off-site units will comply with Sec. 5.11.7.

**C.** The off-site development must provide either a greater number of affordable units or a deeper level of affordability, an equivalent unit mix and comparable sized units, and an equivalent level of accessibility as that which would have been provided if the required units were to remain on-site.



- D. All off-site inclusionary units allowed by special permit must be completed and occupied no later than completion and occupancy of the applicant's on-site market rate units. If the off-site inclusionary units are not completed as required within that time, temporary and final occupancy permits will not be granted for the number of on-site market rate units equal to the number of off-site inclusionary units which have not been completed. Where the City Council determines that completion of off-site inclusionary units has been delayed for extraordinary reasons beyond the reasonable control of the applicant and non-profit housing developer, the City Council may, upon the request of the applicant to amend the Special Permit, allow the applicant to post a monetary bond and release one or more on-site market rate units. The amount of the bond must be sufficient in the determination of the Planning and Development Department to assure completion of the off-site inclusionary units.
- a. Must meet the minimum square footage and bathroom requirements, as required by DHCD's most current Comprehensive Permit Guidelines.
  - b. Must have an average square footage of not less than 80% of the average square footage of the market-rate units with the same number of bedrooms; and
3. The total square footage of Inclusionary Units in a proposed development must not be less than 10% of the sum of the total square footage of all market-rate and all Inclusionary Units in the proposed development;
- D. Inclusionary Units must have exteriors that are indistinguishable in design and of equivalent materials to the exteriors of the market-rate units in the project;
- E. The materials used and the quality of construction for inclusionary units, including heating, ventilation, and air conditioning systems, must be equal to that of the market rate units in the Inclusionary Housing Project, as reviewed by the Planning and Development Department; provided that amenities such as designer or high end appliances and fixtures need not be provided for inclusionary units;
- F. At a minimum, the Inclusionary Units must have an equivalent level of accessibility as that of the market-rate units, and the Inclusionary Units must have an equivalent mix of disabled-accessible units as that of the market-rate units; and
- G. The Inclusionary Units must have equal access to all amenities that are offered to the market-rate units in a project, such as parking, on-site fitness centers, laundry facilities, and community rooms.

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

### 5.11.7. Design and Construction

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

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

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

### 5.11.8. Inclusionary Housing Plans and Covenants

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

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

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

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

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

### 5.11.9. Public Funding Limitation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### 5.11.11. Elder Housing with Services

In order to provide affordable elder housing with affordable and sustainable services on-site, this section applies to all housing with amenities and services designed primarily for elders, such as residential care, continuing care retirement communities (CCRCs), assisted living, independent living, and congregate care. This provision also applies to Congregate Living Facilities, as defined in Section 6.2.8., where these facilities are serving elderly households. The base amenities and services to be provided must be included in the annual housing costs and must be comparable to the base amenities and services offered to all residents regardless of income status. Such amenities and services may include long term health care, nursing care, home health care, personal care, meals, transportation, convenience services, social, cultural, educational programming, and the like. This Sec. 5.11.11 does not apply to a nursing or dementia care facility subject to certificate of need programs regulated by the Commonwealth of Massachusetts Department of Public Health or to developments funded under a state or federal program which requires a greater number of elder units or nursing beds than required here.

- A. **Definition of Elderly Households.** For all such projects, an elderly household is defined as a single

person who is 62 years of age or older at the time of initial occupancy; or 2 persons living together, where at least one of whom is 62 years of age or more at the time of initial occupancy.

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

to Independent Living Facilities of those related to Assisted Living Residences.

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

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

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

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

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

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

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

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

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

all resulting from a special permit under Sec. 5.11 applied for or granted prior to the effective date of this amendment.

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

### 5.11.13. Inclusionary Zoning Program Reevaluation Requirement.

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

### 5.11.14. Effective Date.

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

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

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

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

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

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

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

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

### Sec. 5.10. Floodplain, Watershed Protection

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

### Sec. 5.11. Inclusionary Zoning

#### 5.11.1. Purposes

The purposes of this Sec. 5.11 are to:

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

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

#### 5.11.2. Definitions

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

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

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

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

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

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

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

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

4. Open space preservation development requiring a special permit.

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



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

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

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

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

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

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

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

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

*Example Project: 17-unit rental development*

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

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

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

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

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

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

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

**Illustration: Rental Projects Calculation Methodology**

*Example Project: 31-unit rental development*

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

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

TOTAL UNITS = 6 deed-restricted affordable units

and 5% of residential dwelling units at Tier 2.

**5. Ownership Project Requirements. The percentage requirements for applicable ownership developments are based on the following table and provisions.**

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

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

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

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

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

**Illustration: Ownership Projects Calculation Methodology**

*Example Project: 52-unit ownership development*

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

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

TOTAL UNITS: 9 deed-restricted affordable units

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

Illustration: Incentive Units Calculation Methodology

Example Project: 31-unit rental development

PRE-INCENTIVE CALCULATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- ~~6. Renter income eligibility limit: 1 rental unit. Where only 1 inclusionary unit is provided in a development under Sec. 5.11.3, the inclusionary unit shall be priced for a household income limit and rental affordability at not more than 80 percent of the AMI.~~
- ~~F. Qualification as Local Action Units. Inclusionary units must be qualified as 'Local Action Units' pursuant to the requirements of the Comprehensive Permit Guidelines of the DHCD, Sec. VI.C Local Action Units, as in effect June 1, 2009 as the same may be amended from time to time, unless:~~
- ~~1. The Household income limit for the unit exceeds 80 percent of the AMI; or~~
  - ~~2. The unit is exempted from this requirement by another provision of this Sec. 5.11; or~~
  - ~~3. The unit is exempted from this requirement by a provision included in the special permit authorizing the development, based on special circumstances applicable to that development, or based on changes in the DHCD regulations or guidelines.~~

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

### 5.11.5. Cash Payment Option.

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

- ~~A. Eligibility. There are 3 circumstances in which the Inclusionary Unit requirements of Section 5.11.4 may be met through a cash payment instead of providing Inclusionary Units:~~
- ~~1. For Inclusionary Housing Projects that include the construction or substantial reconstruction of 7 to 9 dwelling units; or~~

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

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

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

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

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

**Illustration: Cash Payment Calculation Methodology**

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

*EXAMPLE 1: 18 Unit Rental Project*

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

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

*EXAMPLE 2: 36 Unit Ownership Project*

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

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

*SMALL PROJECT CALCULATION EXAMPLES*

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

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

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

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

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

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

### 5.11.6. Off-Site Development

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

#### Illustration: Fractional Payment Calculation Methodology

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

*EXAMPLE: 48 Unit Rental Project*

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

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

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

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

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

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

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

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

**5.11.7. Design and Construction**

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

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

by DHCD's most current Comprehensive Permit Guidelines.

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

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

### 5.11.8. Habitable Space Requirements

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

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

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

### 5.11.9. Inclusionary Housing Plans and Covenants

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

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



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

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

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

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

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

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

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

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

### 5.11.10. Public Funding Limitation

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

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

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

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

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

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

#### A. ELI Alternative Compliance Option Project

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

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

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

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

#### Illustration: ELI Inclusionary Units Calculation Methodology

*EXAMPLE: 74 Unit Rental Development*

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

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

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

*TOTAL UNITS = 10 deed-restricted affordable units*

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

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

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

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

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

### 5.11.12. Elder Housing with Services

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

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

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

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

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

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

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

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

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

*sample care cost = \$306,600*

*\$28 per hour x 3 hrs/day x 365 days/year x 10 years*

*(2019 avg. Home Health Aide hourly rate, Genworth Cost of Care Survey)*

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

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

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

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

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

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

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

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

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

### **5.11.13. No Segmentation**

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

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

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

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

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

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

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

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

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

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

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

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

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

### 5.11.16. Effective Date.

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

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

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

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

### 5.11.18. Incentives

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



Ruthanne Fuller  
Mayor

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Barney S. Heath  
Director

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## MEMORANDUM

**DATE:** June 21, 2019

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

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

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

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

**MEETING:** June 24, 2019

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

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The Zoning and Planning Committee conducted a public hearing on the proposed ordinance amendments for short-term rentals on June 10, 2019. The attached draft ordinances and memo below present changes to the proposed zoning ordinance amendments in response to the comments received. There are no substantive proposed changes to the short-term rental general ordinances covering registration and enforcement requirements.

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

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



therefore not allowed. These Zoning Amendments are described below. New or changed provisions or requirements are underlined.

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

ZO Section 6.4.32. Short-Term Rental. This proposed amendment includes the definition of short-term rentals and a set of requirements. The short-term rental use would only be allowed as an accessory use allowed in all districts as an accessory to a single or multi-family residential use. The requirements for all short-term rentals are:

- a. Registration with the City.
- b. No signage allowed.
- c. Burden of proof for compliance is placed on the operator.
- d. The resident of the dwelling unit must occupy the unit for a minimum of 9 out of 12 months during each calendar year.
- e. The unit may be occupied as a short-term rental a maximum of 100 days per year.
- f. No more than 3 bedrooms in the dwelling unit can be rented as short-term rentals at any given time with a maximum of 9 guests.

In the attached draft ordinance, sections 2, 5, 6, 7, and 9 are new or modified.

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

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

## **Attachments**

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

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

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

**[CHAPTER 20]  
Article IX  
SHORT TERM RENTALS**

**Sec. 20-160. Definitions.**

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

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

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

**Sec. 20-161. Requirements for Short Term Rentals**

- (a) Compliance. No Residential Unit shall be offered as a Short Term Rental except in compliance with the provisions of this section of the Newton Ordinances.
- (b) Registration. Operators of any Short Term Rental located in the City of Newton must register with the City in accordance with Sec. 20-162 of this ordinance.
- (c) No Outstanding Code Enforcement or Building Permits. Operators are prohibited from renting any Short Term Rental if the property is subject to an outstanding building, electrical, plumbing, mechanical, fire, health, housing or zoning code enforcement, including notices of violation, notices to cure, orders of abatement, cease and desist orders or correction notices, or if there are any outstanding building permits for the property.

- (d) Annual Certification. All Operators must file with the Inspectional Services Department a sworn certification attesting to continued compliance with the requirements of this article and all applicable public safety codes. Such certification shall be filed annually on the first business day of January.

### **Sec. 20-162. Registration Requirements.**

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

- (a) State Certificate. A copy of the State certificate of registration issued in accordance with Massachusetts General Laws Chapter 62C, Section 67.
- (b) Local Operator Affidavit. A completed Local Operator Affidavit, in a form established by the Inspectional Services Department, that at minimum contains the following information:
- 1) Contact information of Operator and agent/point of contact;
  - 2) Location of all Short Term Rentals in City owned by operator;
  - 3) Description of operation and number of rooms/units that will be rented;
  - 4) Confirmation that there are no outstanding code enforcement or outstanding building permits;
  - 5) Signature of Operator certifying that Short Term Rental conforms to this ordinance and no outstanding code violations.
- (c) Smoke and Carbon Monoxide Certificate of Compliance. All Short Term Rentals must comply with the applicable smoke detector and carbon monoxide requirements for residential units set forth in Sec. 10-11 of these Ordinances and Massachusetts General Laws Chapter 148, Section 26E. Operators must schedule an inspection with the Fire Department and receive a Certificate of Compliance indicating that the property meets the smoke detector and carbon monoxide requirements prior to the first occupancy commencing after July 1, 2019. Operators shall be responsible for the smoke detector inspection/permit fee to be paid directly to the Fire Department as set forth in Sec. 17-10 of these Ordinances.
- (d) Registration Filing Fee. At the time of registration, Operators must pay a filing fee of \$100, an amount established by the City Council. All applicable inspection fees shall be paid directly to the inspecting department at the time of inspection.
- (e) Local Contact. When registering, an Operator must provide his or her name and contact information, and, in the event that the Operator is not present during the Short Term Rental, the name and contact information of an individual who is able to respond in person to any issues or emergencies that arise during the Short Term Rental within two (2) hours of being notified. Contact information must include a telephone number that is active 24 hours per day to short term rental occupants and public safety agencies. This phone number shall be included in the registration of the Short Term Rental unit at the time of registration. Failure of the local contact to respond within the stated period shall constitute a violation of this ordinance.

- (f) Proof of Residence. When registering an Accessory Short Term Rental, an Operator must provide evidence that he or she resides in the dwelling unit a minimum of 275 days during each calendar year, as demonstrated by at least two of the following: utility bill, voter registration, motor vehicle registration, deed, lease, driver's license or state-issued identification.
- (g) Permission of Owner. An Operator must certify at the time of registration that he or she is the owner of the Short Term Rental or has permission from the owner to operate the Short Term Rental.
- (h) Notice to Abutters. The Operator shall, within thirty (30) after registration of a Short Term Rental, provide notice of such registration to all residential dwellings located within 300 feet of the Short Term Rental. Such notification shall include the contact information of the Operator and the local contact, and a reference this ordinance. Failure to provide such notice shall constitute a violation of this ordinance.

**Sec. 20-163. Inspections.**

- (a) The Inspectional Services Department, Health and Human Services Department, and Fire Department may conduct inspections of any Short Term Rental as may be required to ensure safety and compliance with all applicable ordinances and local, state, and federal codes. All inspecting departments shall keep records of inspections and visits to the property throughout each year.

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

- (a) All Short Term Rentals shall comply with all applicable ordinances and local, state, and federal codes applying generally to residential properties in the City, including but not limited to the City's Zoning Ordinance, Chapter 30 of the Revised Ordinances of the City.
- (b) Short Terms Rentals shall not produce noise, vibration, glare, fumes, odors, traffic or parking congestion beyond that which normally occurs in the immediate residential area, nor shall any Short Term Rental result in the repeated disruption of the peace, tranquility, or safety of the immediate residential neighborhood.

**Sec. 20-165. Responsibilities of Operators.**

- (a) General Responsibility. The Operator shall be responsible for the proper supervision, operation, and maintenance of the Short Term Rental in accordance with the requirements of this article and all other pertinent laws, regulations, and codes. The appointment of an agent shall in no way relieve the Operator from responsibility for full compliance with the law.
- (b) Commercial Events Prohibited. A Short Term Rental property shall not be used for a commercial event during its occupancy as a Short Term Rental. Commercial events include luncheons, banquets, parties, weddings, meetings, charitable fundraising, commercial or advertising activities, or other gatherings for direct or indirect compensation.

- (c) Agreements with Occupants. Operators may not enter into any rental agreements that are inconsistent with the terms of this article.
- (d) Minors. No Short Term Rental shall be rented to any unemancipated person who is younger than eighteen (18) years of age.
- (e) Occupant Registries. The Operator of every Short Term Rental must maintain, in permanent form, a registry log of occupants. It must include the names and home addresses of occupants, occupant's license plate numbers if traveling by car, dates of stay, and the room assigned to each occupant. The registry log must be available for inspection by any City official upon request.
- (f) Fire Prevention Notice. Operators shall post in a visible place inside the short-term rental unit information regarding the location of any fire extinguishers, gas shut off valves, fire exits and fire alarms in the unit and building.
- (g) House Rules. Operators shall institute house rules as necessary to prevent the Short Term Rental from being a cause of complaint to the Police Department or a cause of nuisance or annoyance to the neighbors or neighborhood.
  - 1) House rules should make occupants aware of the City's ordinances and the Operator's policies, which shall be in writing. At a minimum, house rules shall adequately address the following:
    - i. Noise control, including use of audio equipment that may disturb the peace
    - ii. Adherence to laws regarding disorderly behavior
    - iii. Proper garbage disposal
    - iv. Location of parking stalls on the property
    - v. Neighborhood parking regulations and restrictions
    - vi. Occupancy limits according to the City's Zoning Ordinance
    - vii. Any other provisions as may be required by City Officials.
  - 2) Operators shall ensure all occupants are aware of the house rules by distributing them prior to the date of occupancy and posting them in a visible place.
- (h) Egress and Access. Operators shall be responsible for ensuring that adequate egress is provided in accordance with the Massachusetts State Building Code, 780 CMR.
- (i) Maintenance. The building and all parts thereof shall be kept in good general repair and properly maintained.
- (j) Burden of Proof. The burden of proof is placed on the Operator to demonstrate that they are operating within the limits of this article.
- (k) False Information. Submission of false information shall be cause for the Commissioner to suspend or terminate an Operator's right to operate an accommodation.

**Sec. 20-166. Enforcement, Violations and Penalties.**

- (a) Enforcement. The Inspectional Services Department and the Newton Police Department or their designees shall be responsible for enforcement of this ordinance, including any rule or regulation promulgated hereunder, and shall institute all necessary administrative or legal action to assure compliance.
- (b) Notice of violation. The Commissioner or designee shall issue a written notice of any violation of this article to the Operator. Said notice shall describe the prohibited condition and order that it be remedied within thirty (30) days of receipt of the notice. If such condition is not remedied within that time, the Commissioner may take action to impose the fines described in these Ordinances at sec. 5-22 (g).
- (c) Penalties. Any Operator who violates any provision of this ordinance shall be subject to suspension or termination of the certificate to operate a Short Term Rental and a fine of not more than three hundred dollars (\$300.00) for each violation. Each day a violation occurs shall be a separate offense. The Commissioner shall notify the Massachusetts Commissioner of the Department of Revenue of all such suspensions or terminations. Where non-criminal disposition of this section by civil fine has been provided for in sections 17-22 and 17-23 of these revised ordinances, as amended, pursuant to the authority granted by G.L. c. 40, section 21D, said violation may be enforced in the manner provided in such statute. The civil penalty for each such violation is set forth in section 17-23(c).
- (d) Violations of building, health, or fire code. Any action by the Commissioner to suspend, terminate or issue fines under this section shall not bar any other separate action by any other City Department for health, fire safety, building code or any other violations.
- (e) Failure to Register. Any person who offers or operates a Short Term Rental without first registering with the City shall be fined three hundred dollars (\$300.00) per violation per day. Each day's failure to comply with a notice of violation or any other order shall constitute a separate violation.

**Sec. 20-167. Effective Date.**

This Ordinance shall take effect on ~~September~~July 1, 2019.

**Sec. 20-168. Severability.**

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

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

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

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

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

### 6.7.4. Scientific Research and Development Activities

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

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

### 6.7.5. Short-Term Rental

- A. **Defined.** The rental of one or more bedrooms (along with any associated living areas) within a dwelling unit on an overnight or short-term basis of less than 30 days to guests. The use is accessory to the primary residential use of the dwelling unit.
- B. **Standards.**
  1. A resident seeking to operate a Short-Term Rental must register with the City in accordance with Sec. 20-162 of the Revised Ordinances of the City of Newton.
  2. The short-term rental accessory use is permitted in any residential use, excluding congregate living, elderly housing, lodging house, dorms, and similar.
  3. There may be no signage associated with a Short-Term Rental.
  4. The burden of proof is placed on the resident registered with the City as the operator of the Short-Term Rental to demonstrate that they are operating within the limits of this section.
  5. The resident of the dwelling unit must occupy the dwelling unit for a minimum of 9 out of 12 months during each calendar year.
  6. The short-term rental use is limited to no more than 100 days per year.
  7. The maximum number of bedrooms on the site that can be rented to overnight or short-term guests is 3 and the maximum number of guests is 9.
  8. Temporary During Leasing. Short-Term Rentals in multi-unit buildings with a minimum of 10 units in a business or mixed-use district may occupy residential units with short-term rentals for up to six months while units marketed as for rent are vacant by special permit. Units designated as affordable may not be used as short-term rentals. Temporary Short-Term Rentals must register with the City as per Sec. B.1 above.
  9. The effective date for this section 6.7.5 is September 1, 2019.

### 6.7.6. Watchman or Caretaker

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

### 3.4.2. Accessory Uses Allowed

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

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

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

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

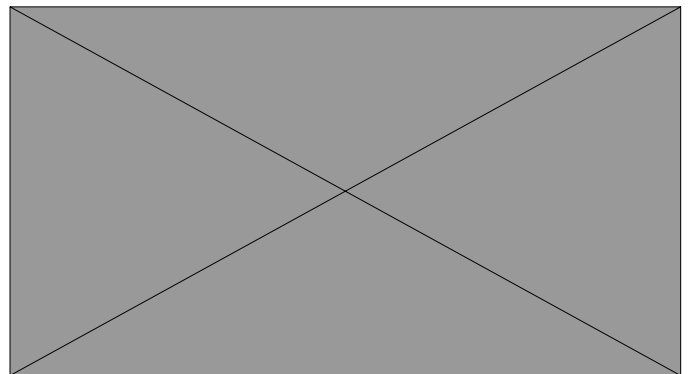
1. A private garage with provision for more than 3 automobiles, or a private garage of more than 700 square feet in area, or more than 1 private garage per single-family dwelling;
2. Internal and detached accessory apartments subject to provisions of Sec. 6.7.1;
3. Home businesses subject to the provisions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

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

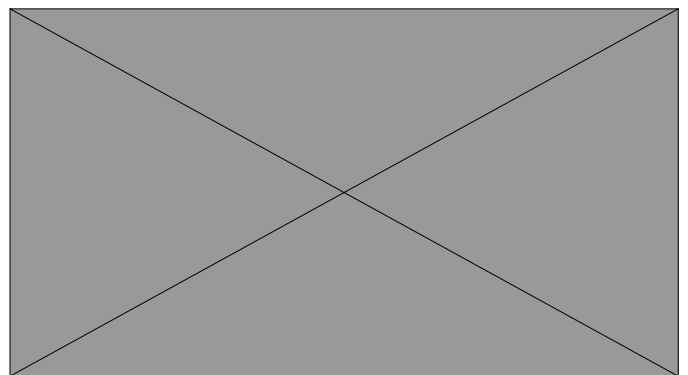
### 3.4.3. Accessory Buildings

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

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



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



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

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



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

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

### 6.3.15. Theatre, Hall

A. **Defined.** [reserved]

## Sec. 6.4. Commercial Uses

### 6.4.1. Animal Service

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

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

### 6.4.2. ATM, Standalone

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

### 6.4.3. Bakery, Retail

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

### 6.4.4. Bank

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

B. **Standards.**

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

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

### 6.4.5. Bed & Breakfast

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

B. **Required Standards.**

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

### 6.4.6. Bowling Alley

A. **Defined.** [reserved]

### 6.4.7. Business Incubator

A. **Defined.** [reserved]

### 6.4.8. Business Services

A. **Defined.** [reserved]

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

A. **Defined.** [reserved]

### 6.4.10. Car Wash

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

(Rev. Ords. 1973 §24-1)

### 6.4.11. Country Club Facilities

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

### 6.4.12. Drive-In Business

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

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

### 6.4.13. Dry Cleaning or Laundry, Retail

A. **Defined.** [reserved]

### 6.4.14. Fast Food Establishment

A. **Defined.**

## Sec. 3.4. Allowed Uses

### 3.4.1. Residential Districts Allowed Uses

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

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

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

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