



**Setti D. Warren**  
Mayor

## City of Newton, Massachusetts

Department of Planning and Development

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**Barney S. Heath**  
Director

### MEMORANDUM

**DATE:** March 24, 2017

**TO:** Councilor Ted Hess-Mahan, Chairman  
Members of the Zoning and Planning Committee

**FROM:** Barney Heath, Director of Planning and Development  
James Freas, Deputy Director of Planning and Development  
Nathan Robinson, Housing Planner

**RE:** #109-15 - HIS HONOR THE MAYOR requesting consideration of changes to the inclusionary housing provisions of the Zoning Ordinance to increase the required percentage of affordable units to 20% with the additional 5% set aside for middle income households.

**CC:** City Council  
Planning and Development Board  
Donnalyn Kahn, City Solicitor  
John Lojek, Commissioner of ISD  
Dori Zaleznik, Chief Administrative Officer

**MEETING DATE:** March 27, 2017

Inclusionary zoning is a popular tool that is used by local governments across the country to leverage private development for the creation of affordable housing. While ordinances take many forms, a common structure is to require a percentage of units in a private development to be rented or sold at affordable levels to low- and moderate-income households. A 2015 report by the Lincoln Institute of Land Policy identified more than 500 local ordinances in more than 27 states and the District of Columbia. Inclusionary zoning is increasingly viewed as an important tool to create affordable housing in the face of declining federal funding and to support housing opportunities in communities with strong schools, safe neighborhoods, and quality amenities.

Mayor Warren identified revising Newton's current inclusionary zoning ordinance as a priority in the recent *Newton Leads 2040 Housing Strategy*. The Mayor docketed an item in 2015 which would increase the existing 15% minimum inclusionary housing provision to 20%. The additional 5% of units would be dedicated for middle income households earning between 80% and 120% of area median income (AMI).

The City of Newton has a long history of supporting affordable housing through its special permit process and through zoning. This memo provides a brief historical context of inclusionary zoning in Newton, the mechanics of the existing ordinance, and staff analysis of areas where the existing ordinance could be improved.

An analysis of how Newton's ordinance compares with neighboring communities is not detailed in this memo, but is included in an attachment for reference. The comparative analysis was prepared by the Zoning Redesign consultant. The analysis is comprised of two tables; Table 1 compares Newton's ordinance to ordinances in Brookline, Cambridge, and Somerville. Table 2 compares Newton's ordinance to ordinances in Wellesley, Needham, and Lexington.

## Overview

Newton was one of the first communities in the state and the nation to support affordable housing production through private development. In the late 1960s and early 1970s, the Board of Alderman required affordable units to be included as part of any project that required a special permit. In 1977, the City passed the "10% Ordinance," adopting its first form of inclusionary zoning, which has continued to evolve over the past 40 years. To date, the ordinance has resulted in the creation of approximately 250 affordable units, with an additional 82 units that were permitted but have not yet been constructed.

In 2003, amendments were made to the ordinance, which now serve as the basis for the ordinance today. The ordinance applies to residential development requiring a special permit and to business or mixed-use development that includes residential development beyond what is allowed as of right. The ordinance also applies to "development requiring a special permit where the development is proposed to include or may include new or additional dwelling units totaling more than two new households whether by new construction, rehabilitation, conversion of a building or structure; and open space preservation development requiring a special permit." The ordinance provides some flexibility to developers as it has provisions for on-site units, off-site units, and fee-in-lieu payments for smaller development projects. In practice, this means that the ordinance applies to residential development requiring a special permit with 5 or more units.

**Section 5.11.4** of the ordinance states, "For the purposes of calculating the number of on-site inclusionary units in a proposed development, any fractional unit of 1/2 or greater shall be deemed to constitute a whole unit." The table below details how the ordinance is applied to hypothetical projects ranging in size from 5-10 units.

# of Units in Development	Inclusionary Zoning Requirement	Inclusionary Unit Calculation	# of Inclusionary Units Required on Site
5	15%	0.75	1
6	15%	0.9	1
7	15%	1.05	1
8	15%	1.2	1
9	15%	1.35	1
10	15%	1.5	2

**Section 5.11.5** allows developments of no more than 6 dwelling units to provide a fee-in-lieu payment rather than providing the inclusionary units on site. Projects with more than 6 units can make fee-in-lieu payments if the City Council finds that the fee-in-lieu payment will provide a unique net benefit to the City. The fee payment schedule is calculated as follows: In ownership projects, the payment is equal 12% of the sales price of each unit, exclusive of the first two units sold in the development. In rental units, the payment is equal to 12% of the assessed value of each unit, exclusive of the first two units in the project. An example of the how the fee in lieu payment is calculated in an ownership project where each unit is sold for \$900,000 is detailed in the table below.

# of Units in Development	Sale Price of Market Rate Unit	# of Units Subject to Fee-In-Lieu Calculation	Fee-In-Lieu Payment
5	\$900,000	3	\$324,000
6	\$900,000	4	\$432,000

**Section 5.11.6** of the ordinance allows a developer to meet their inclusionary zoning requirements by providing the units off-site, provided that they partner with a nonprofit developer and the plan is approved by the City Council.

**Section 5.11.15** of the ordinance details incentives that are available to projects. A density bonus of 1 additional unit is allowed for each additional inclusionary unit that is provided above the number required by the ordinance up to a limit where lot area minimums are decreased by no more than 25%. **Section 5.11.15.B** provides for expedited review of projects where the number of inclusionary units exceeds 30% of the units in the project.

### Opportunities to Strengthen the Inclusionary Zoning Ordinance

The goals of this process are to improve the ease of interpreting the ordinance for the public, staff, Councilors, members of the development community, and other interested parties; and

to improve the effectiveness of the ordinance in supporting affordable housing production. The *Newton Leads 2040 Housing Strategy* recommended evaluating the existing ordinance in order to improve its effectiveness.

City staff has highlighted areas where the existing ordinance could be strengthened to further advance the purpose of the ordinance. The specific sections that have been identified for consideration are included below.

**5.11.2 Definitions**

**Section 5.11.2** of the ordinance defines “Household Income Limit,” “Inclusionary Units,” and “Area Median Income,” but does not explicitly state a maximum income limit for inclusionary units. City staff recognizes that this leads to confusion in the interpretation of the ordinance.

***Potential Areas for Consideration***

City staff believes that is section of the ordinance could be clarified by explicitly defining the maximum income limit for inclusionary units.

**5.11.3 Scope**

**Section 5.11.3** establishes the scope of development covered under the ordinance. **Section 5.11.3(A)** establishes that “Business or mixed-use development requiring a special permit that includes residential development beyond that allowable as of right.” City staff recognizes the possibility of a scenario whereby a mixed-use development not requiring a special permit would not be subject to the inclusionary zoning provisions.

***Potential Areas for Consideration***

City staff believes that consideration should be given to creating a threshold by which as of right residential development in business and mixed-use zoning districts would be subject to the provisions of the ordinance.

**Section 5.11.4 Inclusionary Units - 15% Minimum Requirement**

**Section 5.11.4.A** establishes the minimum percentage of inclusionary units required by the ordinance at 15% of the units in the development. The inclusionary units typically serve households earning up to 50% of area median income (AMI) and households earning up to 80% AMI (see income limits below).

HH Size	1-Person	2-Person	3-Person	4-Person	5-Person	6-Person
<b>50% AMI</b>	\$34,350	\$39,250	\$44,150	\$49,050	\$53,000	\$56,900
<b>80% AMI</b>	\$51,150	\$58,450	\$65,750	\$73,050	\$78,900	\$84,750

City staff recognizes that in addition to the need for housing for households earning less than 80% (AMI) there is growing need across the greater Boston region and in Newton to create “Middle Income” housing. Middle-income households are those earning between 80% - 120% AMI, which traditional housing programs do not serve (see income limits below).

HH Size	1-Person	2-Person	3-Person	4-Person	5-Person	6-Person
<b>100% AMI</b>	\$68,700	\$78,500	\$88,300	\$98,100	\$106,000	\$113,800
<b>120% AMI</b>	\$82,440	\$94,200	\$105,960	\$117,720	\$127,200	\$136,560

While the recent housing strategy indicated that there is a significant shortage in housing for households below 80% AMI, Middle Income housing units would contribute to economic diversity in Newton. Based on data from the Housing Strategy, nearly 40% of renters earn more than 120% AMI and approximately 21% earn less than 30% AMI, while approximately 18.2% of renters are defined as middle-income. The comparatively small share of middle-income households is consistent with the broader trends across the Boston metro area. Income levels are polarizing across the metro area, from Boston out to I-495, but inner core communities like Newton are experiencing a faster loss of middle-income families, suggesting that they are moving out and commuting long distances.

Recognizing this challenge, MassHousing recently launched its Workforce Housing Fund, which is a program dedicated to households earning between 60%-120% AMI. There is growing consensus at local and state levels of the need to attract and retain middle-income households in order to maintain a competitive workforce.

### ***Potential Areas for Consideration***

City staff recognizes that the percentage of inclusionary units required in a project needs to balance the desired public benefit against the financial viability of the development. City staff believes the existing 15% requirement should be analyzed and consideration should be given to creating units for middle income households in addition to the existing 15% minimum requirement.

City staff also recognizes that applying the same inclusionary requirement to all projects, regardless of their size, may not be the most efficient means to support housing production. For example, applying a higher inclusionary requirement, beyond the existing 15%, to large development projects could support additional housing production without compromising the financial viability of the project.

### **Section 5.11.4 Inclusionary Units – Fractional Unit Calculation**

**Section 5.11.4.A** also establishes the minimum percentage of inclusionary units required by the ordinance and establishes the methodology for calculating the number of units whereby “any fractional unit of  $\frac{1}{2}$  or greater shall be deemed to constitute a whole unit.” As the ordinance is currently written, the City does not receive a public benefit for any fractional units less than  $\frac{1}{2}$  of a unit.

For example, the inclusionary calculation for a nine-unit apartment building is 1.35 units, while inclusionary unit calculation for a ten-unit apartment building is 1.5 units. In practice, the 9 unit development is required to provide 1 inclusionary unit, while the 10 unit development is required to provide 2 inclusionary units. City staff recognizes that fractional unit calculations that result in less than  $\frac{1}{2}$  of a unit do not result in contributions towards affordable housing in

the city and may provide an incentive for projects to come in under the ½ fractional unit threshold. This has the potential to limit new housing creation with respect to both market rate and affordable units and contribute to inefficient land use.

***Potential Areas for Consideration***

City staff believes this section of the ordinance should be evaluated to better understand how the fractional unit calculation impacts both market rate and affordable housing production.

**Section 5.11.6 Off-Site Development**

**Section 5.11.6** of the ordinance allows for the provision of inclusionary units off-site provided that the developer partners with a nonprofit organization and the plan is approved by the City Council. While City staff recognizes the potential benefit of added flexibility provided by the off-site provision, City staff believes the creation of off-site inclusionary units should provide additional public benefit in the form of additional inclusionary units beyond the 15% requirement.

***Potential Areas of Consideration***

City staff believes the effectiveness of the off-site provision should be evaluated to better understand how it supports affordable housing production in Newton.

**Section 5.11.11 Elder Housing with Services**

Section 5.11.11 establishes provisions for elder housing and supportive services. This section of the ordinance lacks clarity and should be amended to ease its interpretation.

***Potential Areas of Consideration***

City staff believes Section 5.11.11 should be amended to provide clear guidance to developers and owners regarding the Maximum Contribution required of projects.

**Section 5.11.15 Incentives**

Section 5.11.15 establishes certain incentives related to density bonuses and expedited review of projects. To date, none of these incentives have been utilized on a project permitted through inclusionary zoning.

***Potential Areas of Consideration***

City staff believes the effectiveness of the incentives should be evaluated to determine the degree to which they have been utilized to support housing production.

## **Next Steps**

Planning Department staff is seeking question and comments from the Committee regarding the ordinance and opportunities for strengthening the ordinance through this process. Over the coming weeks, staff will reach out to other local communities with inclusionary zoning, particularly those that have recently amended their ordinances. Staff will also reach out to various interest groups, including housing advocates and the development community to inform the process. Our intent is to have a draft ordinance prepared for the Committee by the second meeting in May.

**ATTACHMENT 1: Inclusionary Zoning Comparative Analysis**

<b>TABLE 1</b>	<b>Newton</b> <i>[Sec. 5.11]</i> <i>Population: 85,945</i> <i>Density: 4,762 / sq. mile</i>	<b>Brookline</b> <i>[Sect. 4.08]</i> <i>Population: 59,132</i> <i>Density: 8,709 / sq. mile</i>	<b>Cambridge</b> <i>[Sec. 11.200]</i> <i>Population: 106,038</i> <i>Density: 16,491 / sq. mile</i>	<b>Somerville</b> <i>[Art. 13]</i> <i>Population: 76,519</i> <i>Density: 18,618 / sq. mile</i>
<b>Project threshold</b>	(a) Any project with 4+ new units that otherwise requires a special permit (SP). (b) Does not apply to accessory apartments	(a) Any project with 6+ new units; all such projects require a SP.	(a) Any project w/ 10+ new units; or (b) development w/ fewer than 10 units, but containing 10,000 g.s.f.	(a) Any project with 6+ new units that otherwise requires SP w/ site plan review. (b) Does not apply to accessory apartments
<b>% of affordable units</b>	15% of new units (shall apply to each phase); counts fractional units over 0.5.	15% of new units (shall apply to each phase); counts fractional units over 0.5.	15% of new units (shall apply to each phase); counts fractional units over 0.5.	For 6 – 7 unit projects, 1 unit. For 8 – 17 unit projects, 17.5%. For 18+ unit projects, 20%. Counts all fractional units, for payment into fund.
<b>Density bonus (if any)</b>	SP can allow bonus for each affordable unit in excess of requirement (capped if lot area / unit decreased by 25%).	No provisions for density bonus.	(a) Residential FAR increased by 30%, provided that 50% of the additional s.f. is devoted to affordable units. (b) Lot area / unit decreased to permit at least 2 market-rate units / each affordable unit.	In all districts except 1-3 family, for projects w/ 18+ units, lot area / unit decreased by 17.5% to permit additional units.
<b>Process for project review and approval</b>	Special permit (SP). If affordable units exceed 30%, shall get expedited review.	SP; no provisions for expedited review.	Applies to as-of-right projects, as well as those requiring SP and PUD.	SP w/ site plan review. Many projects that exceed minimum affordability levels shall get expedited review.

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<b>Design of on-site units</b>	Must be dispersed w/in project, w/ no difference in appearance, quality, BR mix, etc.	Similar to Newton.	Similar to Newton. Provide 1 parking space / affordable unit, or if entire project has lower ratio, same parking for all units.	Similar to Newton.
<b>Off-site units</b>	Allowed if developer has agreement with nonprofit. Off-site units must be completed, before CO issued for on-site market units.	May be allowed by SPGA, preferably in the same neighborhood, if the result will be advantageous and not result in undue concentration of affordable units.	Not specifically allowed.	Strongly discouraged, but may be allowed by SPGA, preferably in the same neighborhood.
<b>Payments in lieu</b>	Cash payment into designated fund permitted, for projects w/ 4-6 units, or if approved by SP if there will be an “unusual net benefit.” Payment = 12% of all unit sales price (for rentals, 12% of assessed value), excluding 1 <sup>st</sup> 2 units.	(a) Cash payment into designated fund permitted, for projects w/ 6-15 units, or if approved by SP. (b) Complex formula to calculate payment.	Only if permitted by PB in exceptional circumstances, upon proof of “significant hardship” and recommendation by AHT. Must pay sum = value of on-site unit, into AHT.	(a) For all fractional units, payment allowed. (b) For whole units, in lieu payment must be permitted by SPGA (but strongly discouraged). (c) Complex formula to calculate payment.
<b>Housing contribution for non-residential projects</b>	None	None	Applies to any new project or change in use w/ 30,000 g.s.f., for uses including: hotel, college / university, health care, office, lab, retail, and industry. Must pay \$12 / g.s.f. into AHT.	None

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<p><b><u>TABLE 1</u></b></p>	<p><b>Newton</b> [Sec. 5.11] Population: 85,945 Density: 4,762 / sq. mile</p>	<p><b>Brookline</b> [Sect. 4.08] Population: 59,132 Density: 8,709 / sq. mile</p>	<p><b>Cambridge</b> [Sec. 11.200] Population: 106,038 Density: 16,491 / sq. mile</p>	<p><b>Somerville</b> [Art. 13] Population: 76,519 Density: 18,618 / sq. mile</p>
<p><b>Definition of “affordable”</b></p>	<p>Varies between 50% and 80% of AMI.</p>	<p>If Brookline does not satisfy the town-wide 10% level under c.40B, then 2/3 of the affordable units (10% of project) must meet 80% AMI. All other units must meet 100% AMI.</p>	<p>For all units, 65% of AMI.</p>	<p>For rental units, three tiers: 50%, 80%, and 110% of AMI. For sale units, three tiers: 80%, 110%, and 140% of AMI. Formula for distribution of tiers, weighted to lower two tiers.</p>
<p><b>Other issues</b></p>	<p>(a) Permanent deed restriction. (b) Marketing and resident selection plan; up to 70% units for local residents. (c) Public funding can only be used for units in excess of 15%. (d) Units must qualify as “Local Action Units” under c.40B.</p>	<p>(a) Permanent deed restriction; city may choose to hold right of first refusal upon sale. (b) Marketing and resident selection plan; preference to local residents.</p>	<p>(a) Permanent deed restriction. (b) Marketing and resident selection plan; preference to local residents. (c) Public funding can only be used for units in excess of 15%.</p>	<p>(a) Permanent deed restriction; city holds right of first refusal upon sale. (b) Marketing and resident selection plan; preference to local residents.</p>

*ATTACHMENT 1: Inclusionary Zoning Comparative Analysis*

<b>TABLE 2</b>	<b>Newton</b> <i>[Sec. 5.11]</i> <i>Population: 85,945</i> <i>Density: 4,762 / sq. mile</i>	<b>Wellesley</b> <i>[Sect. XVIB]</i> <i>Population: 28,152</i> <i>Density: 2,765 / sq. mile</i>	<b>Needham</b> <i>[Sec. 3.8.6, etc.]</i> <i>Population: 29,083</i> <i>Density: 2,306 / sq. mile</i>	<b>Lexington</b> <i>[Sect. 6.9]</i> <i>Population: 31,718</i> <i>Density: 1,934 / sq. mile</i>
<b>Project threshold</b>	(a) Any project with 4+ new units that otherwise requires a special permit (SP). (b) Does not apply to accessory apartments	(a) Any residential or mixed-use project qualifying as a Project of Significant Impact (PSI = 10,000 new s.f. or 15,000 renovated s.f.); and (b) all 1-family residential subdivisions with 5+ lots. All PSI projects require a SP.	Any mixed-use project w/ 6+ new units w/in Needham Center and several other districts. All such projects require a SP.	Any project that applies for a SP as a Public Benefit Development (so the choice seems to be made by developer).
<b>% of affordable units</b>	15% of new units (shall apply to each phase); counts fractional units over 0.5.	20% of new residential units (shall apply to each phase). Counts all fractional units, either for construction of a full unit (on-site or off-site), or for fractional payment into fund.	For 6 – 10 unit projects, 1 unit. For 11+ unit projects, 10% (shall apply to each phase); counts fractional units over 0.5.	10% of new units (nothing specific about phases or fractional units).
<b>Density bonus (if any)</b>	SPGA can allow bonus for each affordable unit in excess of requirement (capped if lot area / unit decreased by 25%).	No provisions for density bonus.	Floor area of affordable units is excluded from FAR limits.	SPGA has broad discretion to increase density, w/ no explicit caps, if it finds “sufficient benefits to the adjacent neighborhood and the Town generally.”
<b>Process for project review and approval</b>	Special permit (SP). If affordable units exceed 30%, shall get expedited review.	SP; no provisions for expedited review.	SP; no provisions for expedited review.	SP; no provisions for expedited review.

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<b>Design of on-site units</b>	Must be dispersed w/in project, w/ no difference in appearance, quality, BR mix, etc.	Similar to Newton.	Similar to Newton. For 1 BR units, parking reduced to 1 space.	Similar to Newton.
<b>Off-site units</b>	Allowed if developer has agreement with nonprofit. Off-site units must be completed, before CO issued for on-site market units.	May be allowed by SPGA.	Not specifically allowed.	Not specifically allowed.
<b>Payments in lieu</b>	Cash payment into designated fund permitted, for projects w/ 4-6 units, or if approved by SP if there will be an "unusual net benefit." Payment = 12% of all unit sales price (for rentals, 12% of assessed value), excluding 1 <sup>st</sup> 2 units.	May be allowed by SPGA, with payment into trust fund. Payment = difference in sales price between affordable and market-rate unit.	Not specifically allowed.	Not specifically allowed.
<b>Housing contribution for non-residential projects</b>	None	Project must provide 1 affordable unit / 50,000 s.f. of non-residential space, for any business, industrial, or commercial project qualifying as a PSI (see thresholds above)	None	None

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<b>Definition of “affordable”</b>	Varies between 50% and 80% of AMI.	Any unit that qualifies under MGL c.40B.	80% of AMI and qualifies under MGL c.40B.  However, if half of the affordable units are sold or rented at 50% AMI, the rest may be sold or rented at 100% AMI.	80% of AMI.
<b>Other issues</b>	(a) Permanent deed restriction. (b) Marketing and resident selection plan; up to 70% units for local residents. (c) Public funding can only be used for units in excess of 15%. (d) Units must qualify as “Local Action Units” under c.40B.	(a) Permanent deed restriction. (b) Marketing and resident selection plan; preference to local residents.	(a) Permanent deed restriction. (b) Marketing and resident selection plan.	(a) Permanent deed restriction.