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Barney Heath
Director

PUBLIC HEARING MEMORANDUM

DATE: July 12, 2017

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

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

RE: **#204-17 Zoning ordinance technical amendment**
DIRECTOR OF PLANNING & DEVELOPMENT requesting a technical amendment to the Newton Zoning Ordinance, Chapter 30, Section 5.11.15 Incentives, to restore the reference to Sections 4.1 and Section 4.2 for density bonus incentives related to an increase in inclusionary units for residential use in Business and Mixed Use districts which was inadvertently omitted from the ordinance. [06/19/17 @ 5:19 PM]

MEETING DATE: July 17, 2017

CC: City Council
Planning and Development Board
Donnalyn Kahn, City Solicitor

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A petitioner before the Land Use Committee, Terrence P. Morris, Esq., identified a missing reference from the transition to the reformatted Zoning Ordinance that changes the application of Section 5.11.15 of the ordinance, pertaining to incentives in the Inclusionary Zoning provision.

Since the adoption of the reformatted Zoning Ordinance in 2015, the City has undertaken annual reviews for minor corrections and edits like the proposed each January. Mr. Morris' pending application is affected by this particular topic and has asked the Planning Department and Council to

address it separately from the annual review. The Planning Department concurred that this is a correction to address promptly.

Section 5.11.15.A lays out the density bonus granted to projects that provide more than the required 15% inclusionary units. It carries forward Section 30-24(f)(16)(a) of the *Revised Ordinances 2012, Chapter 30: Zoning Ordinances (Ed. April 30, 2015 – Ordinance A-57)* with one small difference. In both ordinances, the density bonus allows for one additional market rate unit for every one additional inclusionary unit with a limit of no more than a 25% change to the density controls specified for each zone. The section in the 2012 Ordinance pointed to a single table where the density controls for all zones, residential and commercial, were listed; whereas the current ordinance points to the density controls for just the residential districts.

The intent of the reference in the 2012 Ordinance was for the inclusionary incentives to apply in all zones, but due to incorrect referencing, the current ordinance only applies it to the residential zones and not residential projects in business and mixed use zones.

The proposed amendment would correct the current ordinance to reflect the intent of the 2012 Ordinance by adding the correct references.

Attachment A: Copy of Section 30-24(f)(16)(a) and referenced Table A in Section 30-15. (*Revised Ordinances 2012*)

Attachment B: Copy of Section 15.11.15.A (*Chapter 30: Zoning Ordinance, adopted Nov 1, 2015*)

Attachment C: Red Line Copy of the Proposed Language

- d) 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 planning and development. The Applicant or manager shall certify its compliance with this section 30-24(f)(9) 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.
- e) Residential Cash Balances. If, after calculation of the number of units or beds to be contributed under this section 30-24(f), there remains an annual cash balance to be contributed, that amount shall be contributed as set out in subparagraph b) above. Any such contribution shall not reduce the contribution required in future years.
- (11) Hotels. Whenever an application for a special permit seeks to increase the density of residential development for a hotel, the board of aldermen shall require a cash payment as a condition of any such grant. The amount of the payment shall be determined as 10 per cent of the number of rooms in excess of that which existed on January 1, 1989 multiplied by the estimated per room valuation following construction, as determined by the assessing department. Payment shall be made in accordance with section 30-24(f)(4).
- (12) 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 this section 30-24(f). Where the board of aldermen determines that this provision has been violated, a special permit will be denied. However, nothing herein prohibits phased development of a property.
- (13) No Effect on Prior or Existing Obligations. This amendment to section 30-24(f) shall have no effect on any prior or 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 section 30-24(f) applied for or granted prior to the effective date of this amendment.
- (14) No Effect on Accessory Apartments. This section 30-24(f) shall not apply to accessory apartments regulated under sections 30-8(d) and 30-9(h).
- (15) Severability, effect on other laws. The provisions of section 30-24(f) are severable. If any subsection, provision, or portion of this section is determined to be invalid by a court of competent jurisdiction, then the remaining provisions of this section shall continue to be valid.
- (16) Incentives.
- a) Density. A density bonus may be granted equal to one unit for each additional inclusionary unit provided above the number required by section 30-24(f)(3), Inclusionary Units, up to a limit where lot area per dwelling unit is decreased by up to 25% as set forth in

section 30-15 table 1, the “Lot area per unit” column, provided that the proposed project, including bonus units, is consistent with the special permit requirements provided in section 30-24(d). To the extent determined by the director of planning and development to be necessary for accommodating the bonus units, increases by up to 25% in maximum building lot coverage and, where applicable floor area ratio, and decreases by up to 25% in minimum amount of open space may be allowed per the requirements of section 30-15 Table 1.

b) *Expedited Review.* Developments in which the percentage of inclusionary units to be provided exceeds 30% 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 priority and arranging for concurrent rather than sequential agency reviews.”

(g) *Natural resources and energy.* All applications for a special permit authorizing proposed building(s) and/or structure(s) or additions to existing building(s) and/or structure(s), if those proposed building(s), structure(s), or additions contain individually or in the aggregate 20,000 or more square feet in gross floor area, shall submit evidence that the site planning, building design, construction, maintenance, or long-term operation of the premises will contribute significantly to the efficient use and conservation of natural resources and energy.

(h) *Conditions of Approval.* The board of aldermen shall not approve any application for a special permit unless it finds that said application complies in all respects with the requirements of this ordinance. In approving a special permit, the board of aldermen may attach such conditions, limitations, and safeguards as it deems necessary to protect or benefit the neighborhood, the zoning district and the

City. Such conditions may include, but are not limited to, the following:

- (1) requirement of front, side or rear yards greater than the minimum required by this ordinance;
- (2) limitation of the number of occupants, size, method of time of operation, or extent of facilities;
- (3) requirement of off-street parking or other features beyond the minimum required by this, or any other applicable ordinance.

(i) *Additional special permit criteria for a Mixed-Use Development in the Mixed-Use 3/Transit-Oriented District.* In granting a special permit for a Mixed-Use Development under section 30-13(g), the Board of Aldermen shall not approve the special permit unless it also finds, in its judgment, that the proposal meets all of the following criteria in addition to those listed in section 30-24(d):

- (1) *Not inconsistent with the Comprehensive Plan.* The proposed Mixed-Use Development is not inconsistent with the City’s Comprehensive Plan in effect at the time of filing an application for a Mixed-Use Development and applicable general laws relating to zoning and land use.
- (2) *Housing, public transportation, parking, and utility infrastructure improvements.* The proposed Mixed-Use Development offers long-term public benefits to the city and nearby areas including:
 - a) Improved access and enhancements to public transportation;
 - b) Improvements to parking, traffic, and roadways;
 - c) On- and off-site improvements to pedestrian and bicycle facilities, particularly as they facilitate access to the site by foot or bicycle;
 - d) Public safety improvements;

SECTION 30-15

TABLE 1— DENSITY & DIMENSIONAL CONTROLS IN RESIDENCE DISTRICTS AND FOR RESIDENTIAL USE

ZONING DISTRICT	MINIMUM REQUIRED LOT AREA	LOT AREA PER UNIT ¹	FRONTAGE	SET BACKS			TOTAL FLOOR AREA RATIO ⁸	BUILDING HEIGHT ^{2,4,5,6, 7}	MAXIMUM NUMBER OF STORIES ³	MAXIMUM BUILDING LOT COVERAGE	MINIMUM AMOUNT OF OPEN SPACE
				FRONT	SIDE	REAR					
SINGLE RESIDENCE 1											
Single Dwelling Units	25,000	25,000	140	40	20	25		36	2.5	15%	70%
Lots created before 12/7/53	15,000	25,000	100	25	12.5	25		36	2.5	20%	65%
<i>Special Permits:</i>											
Single Att. Dwelling Units (30-8(b)(13))	3 acres	25,000	140	40	25	25	-	36	2.5	15%	70%
Single Family Detached (30-15(k))*	5 acres	15,000	50	15	7.5	15	-	36	2.5	20%	65%
SINGLE RESIDENCE 2											
Single Dwelling Units	15,000	15,000	100	30	15	15		36	2.5	20%	65%
Lots created before 12/7/53	10,000	15,000	80	25	7.5	15		36	2.5	30%	50%
<i>Special Permits:</i>											
Single Att. Dwelling Units (30-8(b)(13))	2 acres	15,000	100	30	25	25	-	36	2.5	20%	65%
Single Family Detached (30-15(k))*	5 acres	10,000	50	15	7.5	15	-	36	2.5	30%	50%
SINGLE RESIDENCE 3											
Single Dwelling Units	10,000	10,000	80	30	10	15		36	2.5	30%	50%
Lots created before 12/7/53	7,000	10,000	70	25	7.5	15		36	2.5	30%	50%
<i>Special Permits:</i>											
Single Att. Dwelling Units (30-8(b)(13))	1 acre	10,000	80	30	25	25	-	36	2.5	30%	50%
Single Family Detached (30-15(k))*	5 acres	7,000	50	15	7.5	15	-	36	2.5	30%	50%
MULTI-RESIDENCE 1											
Single & Two Family Dwellings	10,000	5,000	80	30	10	15		36	2.5	30%	50%
Lots created before 12/7/53	7,000	3,500	70	25	7.5	15		36	2.5	30%	50%
<i>Special Permits:</i>											
Attached Dwellings (30-9(b)(5))	15,000	4,000	80	25	25	25	-	36	2.5	25%	50%
Single & Two Family Detached (30-15(k))*	5 acres	7,000	50	15	7.5	15	-	36	2.5	30%	50%
MULTI-RESIDENCE 2											
Single & Two Family Dwellings	10,000	5,000	80	25	10	15		36	2.5	30%	50%
Lots created before 12/7/53	7,000	3,500	70	25	7.5	15		36	2.5	30%	50%
<i>Special Permits:</i>											
Attached Dwellings	15,000	4,000	80	25	25	25	-	36	2.5	25%	50%
Multi-Family Dwelling	10,000	3,000	80	25	7.5	15	-	36	3	30%	50%
Garden Apartments (30-9(d))	24,000	2,000	80	20	14	15	-	36	3	35%	35%
Single & Two Family Detached (30-15(k))*	5 acres	7,000	80	15	7.5	15	-	36	2.5	30%	50%

ZONING DISTRICT	MINIMUM REQUIRED LOT AREA	LOT AREA PER UNIT ¹	FRONTAGE	SET BACKS			TOTAL FLOOR AREA RATIO ⁸	BUILDING HEIGHT ^{2, 4, 5, 6, 7}	MAXIMUM NUMBER OF STORIES ³	MAXIMUM BUILDING LOT COVERAGE	MINIMUM AMOUNT OF OPEN SPACE
				FRONT	SIDE	REAR					
MULTI-RESIDENCE 3											
Single & Two Family Dwellings	10,000	5,000	80	15	7.5	15	-	36	2.5	30%	50%
Lots created before 12/7/53	7,000	3,500	70	15	7.5	15	-	36	2.5	30%	50%
<i>Special Permits:</i>											
Attached Dwellings	15,000	4,000	80	25	10	15	-	36	2.5	25%	50%
Multi-Family Dwelling	10,000	1,200	80	15	½ bldg. ht.	½ bldg.ht.	-	42	3	45%	30%
Single & Two Family Detached (30-15(k))*	5 acres	7,000	50	15	7.5	15	-	36	2.5	30%	50%
Residential Care Facility (30-9(f)) ⁷	10,000	1,200	80	15	½ bldg. ht.	½ bldg.ht.	1.0	42	3	45%	30%
MULTI-RESIDENCE 4											
Single & Two Family Dwellings	10,000	5,000	80	15	10	15	-	36	2.5	30%	50%
<i>Special Permits:</i>											
Multi-Family Dwelling	3 acres	1,000	-	50	50	50	-	-	3	20%	30%
Residential Care Facility ⁷	3 acres	1,200	-	15	½ bldg. ht	½ bldg.ht.	1.0	42	3	45%	30%
BUSINESS #1, #2, #3 & #4											
	10,000	1,200	80	SEE TABLE 3 AND 30-15(h)							
MIXED USE 1 AND 2											
	10,000	10,000	80	SEE TABLE 3 AND 30-15(h)							
MIXED USE 3/TOD											
	9 acres	1,200	80	SEE TABLES 3 for other dimensional controls							

¹ This column is used for purposes of determining residential density in cases where more than one dwelling unit is provided on a lot.

² Building height shall also regulate structures.

³ Allow three stories by special permit if the proposed structure is consistent with and not in derogation of the size, scale and design of other structures in the neighborhood.

⁴ No space above the maximum height established in Table 1 shall be habitable.

⁵ Allow by special permit in a Multi-Residence 3 District a multi-family dwelling structure to have a maximum building height of 48 feet and a maximum number of stories of 4, provided that there is a minimum lot size of 10 acres; the distance from any street(s) abutting the lot to such multi-family dwelling structure is no less than 150 feet and the distance between such structure and abutting properties is no less than 75 feet; and the front, side, and rear setbacks for the lot are 50 feet from the lot line.

⁶ A building with a sloped roof shall have a maximum height of thirty-six (36) feet. A building with a flat roof shall have a maximum height of thirty (30) feet.

⁷ A residential care facility in the Multi-Residence 3 District or Multi-Residence 4 District with a sloped roof or a multi-family structure in the Multi-Residence 3 District with a sloped roof shall have a maximum height of forty-two (42) feet. A building with a flat roof shall have a maximum height of thirty-six (36) feet.

⁸ See Sec. 30-15(u) Table A for determining Floor Area Ratio (FAR) for single and two-family dwellings.

* Editor's note—"Open Space Preservation Development" was formerly called "Cluster Development."

(Ord. No Z-44, 03-16-09; Ord. No. Z-91, 06-06-11; Ord. No. Z-77, 02-22-11; Ord. No. Z-108, 04-17-12)

5.11.13. No Effect on Prior or Existing Obligations.

The requirements of Sec. 5.11 shall have no effect on any prior or 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)

5.11.14. 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)

5.11.15. 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 or Sec. 3.2, 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 or Sec. 3.2.
- 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 priority and arranging for concurrent rather than sequential agency reviews.

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

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)

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