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**Barney S. Heath**  
Director

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**MEMORANDUM**

**DATE:** November 9, 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  
Amanda Berman, Housing Development Planner  
Jennifer Caira, Chief Planner

**RE:** #109-15(2) 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 25% for larger projects; require that some affordable units be designated for middle income households; and to create a new formula for calculating payments in lieu of affordable units.

**MEETING DATE:** November 13, 2017

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Newton's Inclusionary Housing ordinance was last amended in 2003. In recent years, the strength of Newton's (and greater Boston's) housing market has diminished the supply of affordable housing and substantially widened the affordability gap for low- and moderate-income households seeking housing opportunities in Newton. A priority of the *Newton Leads 2040 Housing Strategy* was to update the Inclusionary Zoning ordinance to increase the affordable housing requirement beyond 15%.

Newton is not alone in considering an adjustment to its current ordinance. In the past few years, Boston (2015), Cambridge (2017) and Somerville (2017) have all amended their inclusionary housing ordinances to balance the need for affordable housing in a rapidly appreciating and high demand housing market.

In addition to proposing increases in the affordable housing requirement beyond 15%, the Planning & Development Department has taken this opportunity to provide greater clarity and consistency throughout the ordinance, working to reduce the potential for multiple interpretations of the ordinance language and provide users of the ordinance with a clearer roadmap for how the ordinance is to be applied in different circumstances. We have outlined the major proposed changes to our current ordinance in the table below.

### Inclusionary Zoning Comparison

Provision	Current	Proposed	Rationale for Proposed Change
When applied (see Required Inclusionary Units table below)	Net increase of 2 or more new dwelling units, less the number of units allowed by-right. However, due to current interpretation of ordinance, IZ requirement usually kicks in when there is a net increase of 6 new dwelling units. 6 new units minus 2 units allowed by-right = 4 units subject to IZ requirement; $4 \times 15\% = 0.6$ (therefore, round up to get 1 required IZ unit).	Net increase of 4 or more new dwelling units, regardless of what is allowed by-right. The IZ requirement is purely based on the net increase of new dwelling units, with no reductions based on the number of residential units that could be built on a parcel by-right.	<ul style="list-style-type: none"> <li>• To clarify confusion and multiple interpretations around current ordinance language.</li> <li>• 15% of 4 new dwelling units would result in 0.6 of a unit, which is more than half of a unit</li> </ul>
Cash Payment in lieu of providing Inclusionary Units	Through special permit application, developments containing 6 dwelling units or less; or City Council makes specific findings to unusual net benefit to allowing a fee rather than Inclusionary Units.	Where IZ requirement results in a fraction of a unit, a cash payment may be made to cover that fractional requirement; or through special permit application, City Council makes specific findings to unusual net benefits to allowing a cash payment for the entire IZ requirement.	To capture all fractional amounts, regardless of project size, to go the IZ Fund to support future affordable housing projects.

<p>Cash Payment Amount and Calculation (see examples of calculation below)</p>	<ul style="list-style-type: none"> <li>• First 2 units in a development are exempt from fee in lieu</li> <li>• For remaining units, fee equals 12% of sales price at closing of each unit or 12% of assessed value of each unit for rental projects</li> </ul>	<p>Based on a formula that utilizes the average of the Massachusetts DHCD Qualified Action Plan “Total Residential Development Cost Limits” Index for large and small unit projects at the time of first application to the City (currently = \$389,000).</p>	<ul style="list-style-type: none"> <li>• To simplify and clarify calculation.</li> <li>• To tie cash payments to the state’s DHCD annual published maximum subsidy amount per unit for affordable housing projects seeking Federal Low-Income Housing Tax Credits (LIHTC) throughout the state.</li> </ul>
<p>Inclusionary Unit Tiers: Household Income Targeting and Middle-Income Households (see FY17 Income Limits table below)</p>	<ul style="list-style-type: none"> <li>• ½ of the households at 50% AMI</li> <li>• ½ of the households at 80% AMI</li> <li>• Average 65% AMI, regardless of project size</li> <li>• No IZ units provided for households above 80% AMI</li> </ul>	<ul style="list-style-type: none"> <li>• Three Tiers of Eligible Households: Tier 1: Up to 50% AMI Tier 2: Up to 80% AMI Tier 3 (Middle-Income): Up to 110% AMI</li> <li>• Tiered structure linking affordability to project size and project type (ownership or rental)</li> </ul>	<ul style="list-style-type: none"> <li>• To more specifically apply IZ requirements across the spectrum of housing need in Newton: from low- to moderate- to middle-income households.</li> <li>• To apply IZ targets according to the size of a project and whether it is an ownership or rental project.</li> </ul>
<p>Employ Rising IZ percentage requirement to project size (15% to 25%)</p>	<p>15% for all Inclusionary Housing Projects, regardless of project size</p>	<ul style="list-style-type: none"> <li>• 6 Tiers of Project Size: 15%: 4-9 new units 20%: 10-20 new units 25%: 21+ new units</li> </ul>	<ul style="list-style-type: none"> <li>• Larger projects can absorb higher percentage requirements for low- to middle-income housing.</li> <li>• To balance the need for greater affordability with project financial feasibility.</li> </ul>

<p>Elder Housing with Services</p>	<ul style="list-style-type: none"> <li>• Contribution = 2.5% of annual gross revenue calculation to be contributed to City</li> <li>• The City Council determines whether the contribution shall be residential beds or units or a cash payment</li> </ul>	<ul style="list-style-type: none"> <li>• 5% of beds provided on-site shall be designated affordable for elderly households at or below 80% AMI.</li> <li>• Monthly housing plus service costs not to exceed 80% of eligible household's annual gross income.</li> <li>• Cash payment option through special permit process, where City Council finds a net benefit to allowing payment rather than providing affordable beds.</li> </ul>	<ul style="list-style-type: none"> <li>• To simplify and clarify ordinance language and reduce confusion around current requirements.</li> <li>• To provide clear guidance for determining Elder Housing with Services Inclusionary benefits.</li> </ul>
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Number of Inclusionary Units Required												
Tier Level	4-6 new units		7-9 new units		10-20 new units		21-50 new units		51-100 new units		101+ new units	
	Rental	Owner	Rental	Owner	Rental	Owner	Rental	Owner	Rental	Owner	Rental	Owner
<b>Tier 1, up to 50% AMI</b>	-	-	-	-	-	-	5.0%	-	7.5%	-	10.0%	-
<b>Tier 2, 51%-80% AMI</b>	15.0%	15.0%	15.0%	-	10.0%	10.0%	10.0%	10.0%	10.0%	15.0%	10.0%	15.0%
<b>Tier 3, 81%-110% AMI</b>	-	-	-	15.0%	10.0%	10.0%	10.0%	15.0%	7.5%	10.0%	5.0%	10.0%
<b>Total</b>	<b>15.0%</b>	<b>15.0%</b>	<b>15.0%</b>	<b>15.0%</b>	<b>20.0%</b>	<b>20.0%</b>	<b>25.0%</b>	<b>25.0%</b>	<b>25.0%</b>	<b>25.0%</b>	<b>25.0%</b>	<b>25.0%</b>

FY 2017 Income Limits Summary - Newton, MA						
Income Level	Household Size					
	1	2	3	4	5	6
<b>50% AMI</b>	\$36,200	\$41,400	\$46,550	\$51,700	\$55,850	\$60,000
<b>60% AMI</b>	\$49,680	\$55,860	\$62,040	\$67,020	\$72,000	\$76,980
<b>80% AMI</b>	\$54,750	\$62,550	\$70,350	\$78,150	\$84,450	\$90,700
<b>100% AMI</b>	\$72,400	\$82,800	\$93,100	\$103,400	\$111,700	\$120,000
<b>110% AMI</b>	\$79,640	\$91,080	\$102,410	\$113,740	\$122,870	\$132,000
<b>120% AMI</b>	\$86,880	\$99,360	\$111,720	\$124,080	\$134,040	\$144,000

<b>Inclusionary Housing Cash Payment Calculation:</b>	
A = # of new dwelling units X IZ % Requirement (per Required Units Table)	X
<i>Multiplied by</i>	
B = 2017 DHCD Total Residential Dev. Costs Index (avg. of large & small unit projects)	\$389,000
<b>Total Cash Payment Due for Project</b>	<b>Equals A X B</b>

The cash payment as an alternative to each required Inclusionary Unit, or fraction thereof, shall be based on a formula that utilizes the current Massachusetts Department of Housing and Community Development Index for “Total Residential Development Cost Limits” for Production Projects within Metro Boston. This index is updated annually through DHCD’s Qualified Action Plan (QAP) and serves as a maximum subsidy amount per unit for affordable housing projects seeking Federal Low-Income Housing Tax Credits (LIHTC) throughout the state. While the QAP distinguishes between Large and Small Unit projects and defines the Index for each (2017: large unit projects within Metro Boston, \$399,000, and small unit projects, \$379,000), B shall equal the average of the two numbers.

**Example #1:** The cash payment amount for a rental or ownership Inclusionary Housing Project that contains a net increase of 4 new dwelling units would be calculated as follows:

A: 4 X 15% IZ requirement = 0.6  
 Multiplied By  
 B: \$389,000  
*Total IZ / Cash Payment Requirement for Project = \$233,400*

**Example #2:** The cash payment amount for a rental Inclusionary Housing Project that contains a net increase of 73 new dwelling units would be calculated as follows:

A: Tier 1: 73 X 7.5% = 5.475, so the fractional requirement would be 0.475  
 Tier 2: 73 X 10% = 7.3, so the fractional requirement would be 0.3  
 Tier 3: 73 X 7.5% = 5.475, so the fractional requirement would be 0.475  
 Multiplied By  
 B: \$389,000  
*Total IZ / Cash Payment Requirement for Project =*  
 Tier 1: 5 Inclusionary Units *plus* a Cash Payment of \$184,775  
 Tier 2: 7 Inclusionary Units *plus* a Cash Payment of \$116,700  
 Tier 3: 5 Inclusionary Units *plus* a Cash Payment of \$184,775  
*Which equals a total of 17 Inclusionary Units plus a Cash Payment of \$486,250*

Attached, please find a redline version of the proposed ordinance for your review. We look forward to walking through this memo and the attached ordinance with you and we welcome your feedback as we work to create an ordinance that more effectively balances our City’s growing need for affordable housing units for populations at all income levels.

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## 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.

### 5.11.2. Definitions

- A. “Household Income Limit” shall mean 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.
- B. “Inclusionary Housing Project” shall mean any residential development project that meets the provisions of 5.11.3.
- C. “Inclusionary Unit(s)” shall mean any finished dwelling unit that meets the provisions of 5.11.4.
- D. “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.
- E. “Eligible Household” shall mean a household whose gross income does not exceed the amounts set forth in Section 5.11.4.

### 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, Sections 81K-81GG, in any zoning district that includes a net increase of four or more new residential dwelling units on any parcel or contiguous parcels comprising a proposed development site. For the purposes of this section, existing residential units that are proposed to be demolished as part of the development shall not be counted as existing units, regardless of whether new units are proposed to replace those existing units.

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- 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 or building permit.

## 5.11.4. Inclusionary Units

- A. Inclusionary Unit Tiers. Inclusionary Units are divided into three tiers based on their level of affordability. The first tier represents units affordable to households at or below 50% of AMI; the second tier represents units affordable to households greater than 50% of AMI, but at or below 80% of AMI; and the third tier represents units affordable to households 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 shall be based on whether the units are rental or ownership, and the net increase of new residential units on any parcel or contiguous parcels comprising a proposed development site, according to the following table:

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

- C. Fractional Inclusionary Units. Whenever the percentage calculation for the required number of Inclusionary Units within each affordability tier described in Sec. 5.11.4.B results in a fraction of an Inclusionary Unit, there shall be provided 1 Inclusionary Unit to cover the fraction of that Inclusionary Unit. Alternatively, a cash payment may be made to cover that fractional requirement, consistent with the formula in Sec. 5.11.5.
- D. Incentives for Additional Inclusionary Units. An Inclusionary Housing Project that includes more than the required number of Inclusionary Units in the Tier 1 category shall be awarded bonus market-rate units. For every market-rate unit that the applicant agrees to convert to an Inclusionary Tier 1 unit, the project shall be awarded a bonus of two additional market-rate units. The number of required Inclusionary Units for a project shall be based on an applicant's original project proposal, and shall not include any additional proposed Inclusionary Units or bonus units. The number of bonus units shall not exceed 20% of the number of units otherwise permissible on the lot under lot area per dwelling unit requirements.

For example:

For an Inclusionary Housing Project that contains a net increase of 8 new dwelling units, the number of required Inclusionary Units for this project would be 1.2 Tier 2 units.

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Therefore, the applicant would be required to provide 1 Inclusionary Tier 2 unit, provide a cash payment to cover the 0.2 fractional unit, and provide 7 market-rate units.

If the applicant chooses to convert 1 of its 7 market-rate units to a Tier 1 Inclusionary Unit, increasing the total number of Inclusionary Units to 2 and decreasing the total number of market-rate units to 6, then the project would be awarded a bonus of 2 additional market-rate units, increasing the total number of units in the project to 10 (1 Tier 1 Inclusionary Unit, 1 Tier 2 Inclusionary Unit, 8 market-rate units, and a cash payment to cover the 0.2 fractional unit).

As an additional example:

For an Inclusionary Housing Project that contains a net increase of 40 new dwelling units, the number of required Inclusionary Units for this project would be as follows: 2 Tier 1 units, 4 Tier 2 units, and 4 Tier 3 units. Therefore, the applicant would be required to provide a total of 10 Inclusionary units and 30 market-rate units.

If the applicant chooses to convert 1 of its 30 market-rate units to a Tier 1 Inclusionary Unit, increasing the total number of Inclusionary Units to 11 and decreasing the total number of market-rate units to 29, then the project would be awarded a bonus of 2 additional market-rate units, increasing the total number of units in the project to 42 (3 Tier 1 Inclusionary Units, 4 Tier 2 Inclusionary Unit, 4 Tier 3 Inclusionary Units, and 31 market-rate units).

E. Maximum Monthly Housing Costs, Sale Prices and Rents. Maximum sale price or rent for Inclusionary Units shall be 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. 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 typically offered to a tenant in the building, such as access to an onsite gymnasium, and other such amenities, shall not exceed 30% of the monthly income for the applicable eligible household, adjusted for household size. If the utilities are separately metered, they may be paid by the tenant and the maximum allowable rent will be reduced to reflect the tenants' 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 as established by the Newton Housing Authority with the approval of HUD.

2. Homeownership. 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, shall not exceed 30% of the monthly income for the applicable eligible household, adjusted for household size.

a. Maximum Sales Prices. Maximum sale prices of Inclusionary Units shall be set so that a household earning 10 percentage points lower than the household income limit for that unit would not expend more than 30% of income for the cost of purchasing the housing.



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b. Homeownership Association / Condominium Association Fees. The Department of Planning and Development will review condominium fee estimates as submitted by the applicant and establish a maximum initial condominium fee for the Inclusionary Units as part of the calculation of the maximum sale price.

i. The percentage interest assigned to the Inclusionary Units must conform to the approved condominium fees, which may require a lower percentage interest being assigned to those units as compared with market-rate units. The Department of Planning and Development will review the Schedule of Beneficial Interests in the Master Deed to confirm that the Inclusionary Units have been assigned percentage interests in the condominium that correspond to the approved condominium fees.

ii. Condominium projects with extraordinary on-going costs (such as the cost of on-site wastewater treatment plants, elevators, parking garages, etc.) must reflect the cost of operating and maintaining such facilities in their condominium budgets (including replacement reserves).

c. Down Payment. Down payment must be at least 3% of the purchase price.

d. Mortgage Loan. 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.

e. Buyers will be eligible so long as their total housing cost including the services identified above do not exceed 38% of their income.

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

## 5.11.5. Cash Payment.

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

A. Eligibility. There are 2 circumstances in which the Inclusionary Unit requirements of Sec. 5.11.4 may be met through a cash payment instead of providing Inclusionary Units:

1. Where the Inclusionary Unit requirement within each affordability tier results in a fraction of a unit, a cash payment may be made to cover that fractional requirement:

a. Where the Inclusionary Housing Project contains no more than a net increase of 6 new dwelling units, per Sec. 5.11.4.B., the applicant may provide one Inclusionary Unit, or may choose to make a cash payment to cover that fractional requirement.

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b. For Inclusionary Housing Projects containing a net increase of 7 or more new dwelling units, per Sec. 5.11.4.B., where the Inclusionary Unit requirement results in a fraction of a unit, the applicant may provide an additional Inclusionary Unit to cover that fractional requirement, or may choose to make a cash payment to cover that fractional requirement.

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 any Inclusionary Units. The findings 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; the level of uncommitted funds in the receipts reserved for appropriation fund; and the purposes identified for this section of the Ordinance found in Section 5.11.1.

- B. Cash Payment Amount. The cash payment as an alternative to each required Inclusionary Unit, or fraction thereof, shall be based on a formula that utilizes the current Massachusetts Department of Housing and Community Development Index for "Total Residential Development Cost Limits" for Production Projects within Metro Boston. This index is updated annually through DHCD's Qualified Action Plan (QAP) and serves as a maximum subsidy amount per unit for affordable housing projects seeking Federal Low-Income Housing Tax Credits (LIHTC) throughout the state.

The cash payment shall be calculated based on the following formula:

$A \times B$

Where A equals the number of units in the housing development subject to the Inclusionary Zoning requirement, multiplied by the Inclusionary Zoning requirement for that size project; and

Where B equals DHCD's QAP Index for "Total Residential Development Cost Limits," in effect at the date of the earliest application to the City. While the QAP distinguishes between Large and Small Unit projects and defines the Index for each, B shall equal the average of the two numbers.

For example, the cash payment amount for a rental or ownership Inclusionary Housing Project that contains a net increase of 4 new dwelling units would be calculated as follows:

A:  $4 \times 15\% \text{ IZ requirement} = 0.6$

Multiplied By

B: \$389,000 (average of 2017 QAP Index for large unit projects within Metro Boston, \$399,000, and small unit projects, \$379,000)

Total Cash Payment Due for Project = \$233,400

For example, the cash payment amount for a rental Inclusionary Housing Project that contains a net increase of 73 new dwelling units would be calculated as follows:

A: Tier 1:  $73 \times 7.5\% = 5.475$ , so the fractional requirement would be 0.475

Tier 2:  $73 \times 10\% = 7.3$ , so the fractional requirement would be 0.3

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Tier 3:  $73 \times 7.5\% = 5.475$ , so the fractional requirement would be 0.475  
Multiplied By  
B: \$389,000  
Total IZ Requirement for Project =  
Tier 1: 5 Inclusionary Units *plus* a Cash Payment of \$184,775  
Tier 2: 7 Inclusionary Units *plus* a Cash Payment of \$116,700  
Tier 3: 5 Inclusionary Units *plus* a Cash Payment of \$184,775  
Which equals a total of 17 Inclusionary Units *plus* a Cash Payment of \$486,250

- C. Payment Deadline. Any Inclusionary Unit cash payment shall be paid in full to the City prior to the granting of any Certificate of Occupancy.
- D. Cash Payment Recipient. The cash payment shall be made 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 Planning and Development Department 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. The Newton Housing Authority and the Department of Planning and Development 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.

## 5.11.6. Off-Site Development

- A. Eligibility. Off-site inclusionary units are generally discouraged. The Inclusionary Unit requirements of Sec. 5.11.4 may be met through the off-site development of the required Inclusionary Units by special permit from the City Council where the Board 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 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; consideration relative to the concentration of affordable units in the City; and consideration of the purposes of this section of the Ordinance, found in Section 5.11.1.
- B. Non-Profit Housing Developer Partnership. Any Inclusionary Housing Project that includes off-site inclusionary units must form a development agreement with a non-profit housing developer for the development of the off-site units.
- C. 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.
- D. As a condition of granting a special permit for the Applicant's development, the City Council shall require that off-site inclusionary units shall be completed no later than completion of the applicant's market rate units. If the off-site inclusionary units are not completed as required within that time, temporary and final occupancy permits shall not be granted for the number of market rate units equal to the number of off-site inclusionary units which have not been completed. Where the

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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 the applicant to post a monetary bond and release one or more market rate units. The amount of the bond shall be sufficient in the determination of the Planning and Development Department to assure completion of the off-site inclusionary units.

## 5.11.7. Design and Construction

In all cases, Inclusionary Units shall be fully built out and finished dwelling units and shall comply with the requirements set out in in the Comprehensive Permit Guidelines of the DHCD, Sec. VI.B.4. "Design and Construction Standards," as in effect June 1, 2009 as the same may be amended from time to time. Additionally, the following guidelines must apply to all Inclusionary Units:

- A. Inclusionary Units provided on site must be dispersed throughout the Inclusionary Housing Project and must be sited in no less desirable locations than the market-rate units.
- B. Inclusionary Units shall have exteriors that are indistinguishable in design and of equivalent materials to the exteriors of the market-rate units in the project.
- C. The bedroom mix of Inclusionary Units shall be equal to the bedroom mix of the market-rate units in the Inclusionary Housing Project.
- D. The materials used and the quality of construction for inclusionary units, including heating, ventilation, and air conditioning systems, shall 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 so called designer or high end appliances and fixtures need not be provided for Inclusionary Units.
- E. At a minimum, the Inclusionary Units must have an equivalent level of accessibility as that of the market-rate units.

## 5.11.8. Inclusionary Housing Plans and Covenants

The applicant shall submit an Inclusionary Housing Plan that shall be reviewed by the Planning and Development Department and shall be approved by the Director of Planning and Development and the Department of Housing and Community Development prior to the issuance of any building permit for the project. The plan shall include the following provisions:

- A. A description of the proposed project and inclusionary units including, at a minimum, floor plans indicating the location of the Inclusionary units, number of bedrooms per unit for all units in the development, square footage of each unit in the development, amenities to be provided, 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 that, at a minimum, meets the requirements set out in in the Comprehensive Permit Guidelines of the DHCD, Sec. III., Affirmative

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Fair Housing Marketing and Resident Selection Plan, as in effect June 1, 2009 as the same may be amended from time to time and:

1. To the extent permitted by law, such plan shall 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 shall 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 applicant pool) for those units shall 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, Sec. III., Affirmative Fair Housing Marketing and Resident Selection Plan, as in effect June 1, 2009 as the same may be amended from time to time.
- C. Agreement by the applicant that resident selection shall be conducted and implemented in accordance with the approved marketing and resident selection plan and Comprehensive Permit Guidelines of the DHCD, Sec. III., Affirmative Fair Housing Marketing and Resident Selection Plan.
- D. 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, shall comply with all 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 unit is exempted from this requirement by another provision of this Sec. 5.11; or
  2. 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.
- 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, shall comply with the Use Restrictions requirements set out in in the Comprehensive Permit Guidelines of the DHCD, Sec. II.A.1.e. "Use Restriction," and Sec. VI.B.9. "Regulatory Agreement and Use Restrictions," and that the applicant shall execute and record an affordable 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 which shall endure for the life of the residential development, as follows:
- 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 Director of the Planning and Development Department which incorporate the provisions of this Section; and

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For rental units, a covenant to be filed prior to the issuance 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 Director of the Planning and Development Department which incorporate the provisions of this Section.

- F. 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.
- G. 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.

### 5.11.10. Public Funding Limitation

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

- A. Those that represent a greater number of affordable units than are otherwise required by this subsection, and not receiving bonus market rate units according to Sec. 5.11.4.D;
- 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. 5.11.2; and
- C. Those that exceed regulatory requirements in providing for persons having disabilities.

### 5.11.11. Elder Housing with Services

In order to provide affordable elder housing with services on-site, the following requirements shall apply exclusively when an applicant seeks a special permit for housing with services designed primarily for elders, such as residential care, continuing care retirement communities, assisted living, independent living, and congregate care. The services to be provided shall be an integral part of the annual housing costs, rent or occupancy related fee, shall be comparable to the services offered to all residents regardless of income status, and may include in substantial measure long-term health care, as well as nursing, home health care, personal care, meals, transportation, convenience services, and social, cultural, and education programs. This Sec. 5.11.11 shall not apply to a nursing 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. Number of Inclusionary Beds Required. For all such projects, 5 percent of beds provided on-site must be Inclusionary Beds designated affordable to elderly households with annual gross incomes

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up to 80% of AMI. Inclusionary Beds may be located in single-occupancy rooms, or in shared rooms. The Inclusionary Beds shall be proportionately distributed throughout the site and shall be indistinguishable from the market-rate beds.

- B. Definition of Elderly Households. For all such projects, an elderly household shall be defined as a single person who is 62 years of age or older at the time of initial occupancy; or two persons living together, where at least one of whom is 62 years of age or more at the time of initial occupancy.
- C. Monthly Housing and Service Costs. Total monthly housing and service costs, including rent or a monthly occupancy fees, health care, personal care, meals, transportation, convenience services, social, cultural, and educational programming, and the like, shall not exceed 80% of the eligible households annual gross income.
- D. Use Restrictions. For all such projects, all Inclusionary Beds shall 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.
- E. Selection. For all such projects, all Inclusionary Beds shall be subject to an Affirmative Fair Housing Marketing and Resident Selection Plan to be approved by the Director of the Planning Department. To the extent permitted by law, Newton residents shall have first opportunity to participate in the elder housing with services program set out here.
- F. Fractional Units. For the purposes of calculating the number of Inclusionary Beds required per Section 5.11.11 A., any fractional unit of 0.5 or greater shall be deemed to constitute a whole bed.
- G. Alternative Compliance. The applicant may request a Special Permit to propose an alternative method of compliance to providing the Inclusionary Beds required under Section 5.11.11.A, which includes a cash payment representing the cost of providing and maintaining the required Inclusionary Beds. City Council may approve such requests by finding that there is a net benefit to achieving the City's housing objectives as a result of the proposed alternative compliance.

### 5.11.12. 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 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.

### 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.

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## 5.11.14. Inclusionary Housing Program Reevaluation Requirement

The City shall initiate a reevaluation of the Inclusionary Housing Requirement at an interval of no more than 5 years from the time the Inclusionary Housing Requirement was last amended and every 5 years thereafter. Such reevaluation shall include a report provided to the City Council reviewing factors such as changes in demographic characteristics and residential development activity, housing trends measured in terms of, but not limited to, vacancy rates, production statistics, prices for dwelling units, and affordability, and the relationship between Inclusionary Housing Projects and all housing in Newton. The Department of Planning and Development shall also conduct an annual review and report on the Inclusionary Housing Program.



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## 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;~~

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.

~~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.~~

### 5.11.2. Definitions

A. "Household Income Limit" shall mean 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.

B. "Inclusionary Housing Project" shall mean any residential development project that meets the provisions of 5.11.3.

CB. "Inclusionary Unit(s)" shall mean any finished dwelling unit that meets the provisions of 5.11.4.

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~~D.C.~~ “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.

~~E. “Eligible Household” shall mean a household whose gross income does not exceed the amounts set forth in Section 5.11.4.~~

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

~~A. These inclusionary zoning provisions apply to development as follows: any proposed residential or mixed use development, including a conventional subdivision of land under M.G.L. Chapter 41, Sections 81K-81GG, in any zoning district that includes a net increase of four or more new residential dwelling units on any parcel or contiguous parcels comprising a proposed development site. For the purposes of this section, existing residential units that are proposed to be demolished as part of the development shall not be counted as existing units, regardless of whether new units are proposed to replace those existing units.~~

- ~~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 or building permit.~~

## 5.11.4. Inclusionary Units

~~A. Inclusionary Unit Tiers. Inclusionary Units are divided into three tiers based on their level of affordability. The first tier represents units affordable to households at or below 50% of AMI; the second tier represents units affordable to households greater than 50% of AMI, but at or below 80% of AMI; and the third tier represents units affordable to households 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 shall be based on whether the units are rental or ownership, and the net increase of new residential units on any parcel or contiguous parcels comprising a proposed development site, according to the following table:~~

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

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 ½ 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.

C. Fractional Inclusionary Units. Whenever the percentage calculation for the required number of Inclusionary Units within each affordability tier described in Sec. 5.11.4.B results in a fraction of an Inclusionary Unit, there shall be provided 1 Inclusionary Unit to cover the fraction of that Inclusionary Unit. Alternatively, a cash payment may be made to cover that fractional requirement, consistent with the formula in Sec. 5.11.5.

D. Incentives for Additional Inclusionary Units. An Inclusionary Housing Project that includes more than the required number of Inclusionary Units in the Tier 1 category shall be awarded bonus market-rate units. For every market-rate unit that the applicant agrees to convert to an Inclusionary Tier 1 unit, the project shall be awarded a bonus of two additional market-rate units. The number of required Inclusionary Units for a project shall be based on an applicant’s original project proposal, and shall not include any additional proposed Inclusionary Units or bonus units. The number of bonus units shall not exceed 20% of the number of units otherwise permissible on the lot under lot area per dwelling unit requirements.

For example:

For an Inclusionary Housing Project that contains a net increase of 8 new dwelling units, the number of required Inclusionary Units for this project would be 1.2 Tier 2 units. Therefore, the applicant would be required to provide 1 Inclusionary Tier 2 unit, provide a cash payment to cover the 0.2 fractional unit, and provide 7 market-rate units.

If the applicant chooses to convert 1 of its 7 market-rate units to a Tier 1 Inclusionary Unit, increasing the total number of Inclusionary Units to 2 and decreasing the total number of market-rate units to 6, then the project would be awarded a bonus of 2 additional market-rate units, increasing the total number of units in the project to 10 (1 Tier 1 Inclusionary Unit, 1 Tier 2 Inclusionary Unit, 8 market-rate units, and a cash payment to cover the 0.2 fractional unit).

As an additional example:

For an Inclusionary Housing Project that contains a net increase of 40 new dwelling units, the number of required Inclusionary Units for this project would be as follows: 2 Tier 1 units, 4 Tier 2 units, and 4 Tier 3 units. Therefore, the applicant would be required to provide a total of 10 Inclusionary units and 30 market-rate units.

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If the applicant chooses to convert 1 of its 30 market-rate units to a Tier 1 Inclusionary Unit, increasing the total number of Inclusionary Units to 11 and decreasing the total number of market-rate units to 29, then the project would be awarded a bonus of 2 additional market-rate units, increasing the total number of units in the project to 42 (3 Tier 1 Inclusionary Units, 4 Tier 2 Inclusionary Unit, 4 Tier 3 Inclusionary Units, and 31 market-rate units).

EB. Maximum Monthly Housing Costs, Sale Prices and Rents. Maximum sale price or rent for Inclusionary Units shall be 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. 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 typically offered to a tenant in the building, such as access to an onsite gymnasium, and other such amenities, shall not exceed 30% of the monthly income for the applicable eligible household, adjusted for household size. If the utilities are separately metered, they may be paid by the tenant and the maximum allowable rent will be reduced to reflect the tenants' 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 as established by the Newton Housing Authority with the approval of HUD.

2. Homeownership. 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, shall not exceed 30% of the monthly income for the applicable eligible household, adjusted for household size.

a. Maximum Sales Prices. Maximum sale prices of Inclusionary Units shall be set so that a household earning 10 percentage points lower than the household income limit for that unit would not expend more than 30% of income for the cost of purchasing the housing.

b. Homeownership Association / Condominium Association Fees. The Department of Planning and Development will review condominium fee estimates as submitted by the applicant and establish a maximum initial condominium fee for the Inclusionary Units as part of the calculation of the maximum sale price.

i. The percentage interest assigned to the Inclusionary Units must conform to the approved condominium fees, which may require a lower percentage interest being assigned to those units as compared with market-rate units. The Department of Planning and Development will review the Schedule of Beneficial Interests in the Master Deed to confirm that the Inclusionary Units have been assigned percentage interests in the condominium that correspond to the approved condominium fees.

ii. Condominium projects with extraordinary on-going costs (such as the cost of on-site wastewater treatment plants, elevators, parking garages, etc.) must reflect the cost of operating and maintaining such facilities in their condominium budgets (including replacement reserves).

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c. Down Payment. Down payment must be at least 3% of the purchase price.

d. Mortgage Loan. 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.

~~Rent and Sale Price Limits. 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.—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.~~

e. Buyers will be eligible so long as their total housing cost including the services identified above do 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.—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.~~

~~4.—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.~~

~~5.—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.~~

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~~C. 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.~~

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

~~5.11.5. Cash Payment. As an alternative to the requirements of Sec. 5.11.4., an applicant may contribute a cash payment to the City's Inclusionary Housing Fund, in lieu of constructing an Inclusionary Unit.~~

~~A. Eligibility. There are 2 circumstances in which tThe inclusionary Uunit requirements of Sec. 5.11.4 may, if proposed by the applicant in a special permit application, alternatively be met through a cash payment of a fee instead in lieu of providing those inclusionary Uunits. Such request shall be approved only if the development (a) contains no more than 6 dwelling units or (b) the Board of Aldermen, in acting upon the special permit for the development,~~

~~1. Where the Inclusionary Unit requirement within each affordability tier results in a fraction of a unit, a cash payment may be made to cover that fractional requirement:~~

~~a. Where the Inclusionary Housing Project contains no more than a net increase of 6 new dwelling units, per Sec. 5.11.4.B., the applicant may provide one Inclusionary Unit, or may choose to make a cash payment to cover that fractional requirement.~~

~~b. For Inclusionary Housing Projects containing a net increase of 7 or more new dwelling units, per Sec. 5.11.4.B., where the Inclusionary Unit requirement results in a fraction of a unit, the applicant may provide an additional Inclusionary Unit to cover that fractional requirement, or may choose to make a cash payment to cover that fractional requirement.~~

~~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 fee cash payment rather than requiring the development of any inclusionary Uunits. The findings 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 level of uncommitted funds in the receipts reserved for appropriation fund; and the purposes identified for this section of the Ordinance found in Section 5.11.1.~~

~~B. Cash Payment Fee Amount.~~

~~The cash payment as an alternative to each required Inclusionary Unit, or fraction thereof, shall be based on a formula that utilizes the current Massachusetts Department of Housing and Community~~

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Development Index for “Total Residential Development Cost Limits” for Production Projects within Metro Boston. This index is updated annually through DHCD’s Qualified Action Plan (QAP) and serves as a maximum subsidy amount per unit for affordable housing projects seeking Federal Low-Income Housing Tax Credits (LIHTC) throughout the state.

~~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.~~

The cash payment shall be calculated based on the following formula:

A x B

Where A equals the number of units in the housing development subject to the Inclusionary Zoning requirement, multiplied by the Inclusionary Zoning requirement for that size project; and

Where B equals DHCD’s QAP Index for “Total Residential Development Cost Limits,” in effect at the date of the earliest application to the City. While the QAP distinguishes between Large and Small Unit projects and defines the Index for each, B shall equal the average of the two numbers.

For example, the cash payment amount for a rental or ownership Inclusionary Housing Project that contains a net increase of 4 new dwelling units would be calculated as follows:

A: 4 X 15% IZ requirement = 0.6

Multiplied By

B: \$389,000 (average of 2017 QAP Index for large unit projects within Metro Boston, \$399,000, and small unit projects, \$379,000)

Total Cash Payment Due for Project = \$233,400

For example, the cash payment amount for a rental Inclusionary Housing Project that contains a net increase of 73 new dwelling units would be calculated as follows:

A: Tier 1: 73 X 7.5% = 5.475, so the fractional requirement would be 0.475

Tier 2: 73 X 10% = 7.3, so the fractional requirement would be 0.3

Tier 3: 73 X 7.5% = 5.475, so the fractional requirement would be 0.475

Multiplied By

B: \$389,000

Total IZ Requirement for Project =

Tier 1: 5 Inclusionary Units plus a Cash Payment of \$184,775

Tier 2: 7 Inclusionary Units plus a Cash Payment of \$116,700

Tier 3: 5 Inclusionary Units plus a Cash Payment of \$184,775

Which equals a total of 17 Inclusionary Units plus a Cash Payment of \$486,250

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D. Payment Deadline. Any Inclusionary Unit cash payment shall be paid in full to the City prior to the granting of any Certificate of Occupancy.

EC. Fee Cash Payment Recipient. The ~~fee cash~~ payment shall be made to a receipts reserved for appropriation fund established by the City Council Board of Aldermen. Proceeds from the fund shall be distributed equally to the Newton Housing Authority and the Planning and Development Department 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. The Newton Housing Authority and the Department of Planning and Development shall each maintain an ongoing record of payments to the fund on their behalf and shall report annually to the ~~Board of Aldermen~~ City Council on the use of the proceeds for the purposes stated in this Sec. 5.11.

## 5.11.6. Off-Site Development

A. Eligibility. Off-site inclusionary units are generally discouraged. The Inclusionary Unit requirements of Sec. 5.11.4 may be met through the off-site development of the required Inclusionary Units by special permit from the City Council where the Board 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 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; consideration relative to the concentration of affordable units in the City; and consideration of the purposes of this section of the Ordinance, found in 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 form a development agreement with a non-profit housing developer for the development of the off-site units.

CB. 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 ~~Board of Aldermen~~ 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.

DC. As a condition of granting a special permit for the Applicant's development, the ~~Board of Aldermen~~ City Council shall require that off-site inclusionary units shall be completed no later than completion of the applicant's market rate units. If the off-site inclusionary units are not completed as required within that time, temporary and final occupancy permits shall not be granted for the number of market rate units equal to the number of off-site inclusionary units which have not been completed. Where the ~~Council Board of Aldermen~~ 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 ~~Board of Aldermen~~ City Council may, in its discretion, permit the applicant to post a monetary bond and release one or more market rate units. The amount of the bond shall be sufficient in the determination of the Planning and Development Department to assure completion of the off-site inclusionary units.



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## 5.11.7. Design and Construction

In all cases, inclusionary units shall be fully built out and finished dwelling units and shall comply with the requirements set out in in the Comprehensive Permit Guidelines of the DHCD, Sec. VI.B.4. "Design and Construction Standards," as in effect June 1, 2009 as the same may be amended from time to time. Additionally, the following guidelines must apply to all Inclusionary Units:

A. Inclusionary Units provided on site must be dispersed throughout the Inclusionary Housing Project development and must be sited in no less desirable locations than the market-rate units, and

B. Inclusionary Units shall have exteriors that are indistinguishable in design and of equivalent materials to the exteriors of the market-rate units in the project development, And satisfy the following conditions:

A. 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;

CB. The bedroom mix of Inclusionary Units shall be equal to the bedroom mix of the market-rate units in the Inclusionary Housing Project development. In the event that market rate units are not finished with defined bedrooms, all inclusionary units shall have 3 bedrooms; and

DE. The materials used and the quality of construction for inclusionary units, including heating, ventilation, and air conditioning systems, shall be equal to that of the market-rate units in the Inclusionary Housing Project development, 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.

E. At a minimum, the Inclusionary Units must have an equivalent level of accessibility as that of the market-rate units.

## 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.

## 5.11.89. Inclusionary Housing Plans and Covenants

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

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A. A description of the proposed project and inclusionary units including, at a minimum, floor plans indicating the location of the Inclusionary units, number of bedrooms per unit for all units in the development, square footage of each unit in the development, amenities to be provided, projected sales prices or rent levels for all units in the development, and an outline of construction specifications certified by the applicant.

B. ~~A An Affirmative Fair Housing Marketing and Resident Selection Plan which shall: that, at a minimum, meets the requirements set out in in the Comprehensive Permit Guidelines of the DHCD, Sec. III., Affirmative Fair Housing Marketing and Resident Selection Plan, as in effect June 1, 2009 as the same may be amended from time to time and:~~

- ~~1. 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. 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. 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. 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.~~

~~1. To the extent permitted by law, such plan shall 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 shall 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 applicant pool) for those units shall 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, Sec. III., Affirmative Fair Housing Marketing and Resident Selection Plan, as in effect June 1, 2009 as the same may be amended from time to time.~~

~~C. Agreement by the applicant that resident selection shall be conducted and implemented in accordance with the approved marketing and resident selection plan and Comprehensive Permit Guidelines of the DHCD, Sec. III., Affirmative Fair Housing Marketing and Resident Selection Plan.~~

~~C. Preference shall be given for qualified applicants in the following order:~~

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- ~~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 fi de offer of employment in the City; and~~
  - ~~c.—Households with a family member who attends public school in the City.~~~~

~~D. 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.~~

~~D. 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, shall comply with all 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 unit is exempted from this requirement by another provision of this Sec. 5.11; or~~
- ~~2. 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.~~

~~E. 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.~~

~~F. Agreement by the applicant 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.~~

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~~EG.~~ Agreement ~~that any special permit issued under this Sec. 5.11. shall require by~~ the applicant ~~to that~~ all Inclusionary Units, including those affordable to households earning greater than 80% but less than or equal to 110% of AMI, shall comply with the Use Restrictions requirements set out in the Comprehensive Permit Guidelines of the DHCD, Sec. II.A.1.e. "Use Restriction," and Sec. VI.B.9. "Regulatory Agreement and Use Restrictions," and that the applicant shall execute and record an affordable 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 which shall endure ~~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 Director of 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 the issuance~~ 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 Director of the Planning and Development Department Newton Housing Authority which incorporate the provisions of this Section.

~~FH.~~ 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.

~~GI.~~ 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.~~

## 5.11.10. Public Funding Limitation

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

- A. Those that represent a greater number of affordable units than are otherwise required by this subsection, and not receiving bonus market rate units according to Sec. 5.11.4.D;
- 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. 5.11.2; and
- C. Those that exceed regulatory requirements in providing for persons having disabilities.

## 5.11.11. Elder Housing with Services

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In order to provide affordable elder housing with services on-site, the following requirements shall apply exclusively when an applicant seeks a special permit for housing with services designed primarily for elders, such as residential care, continuing care retirement communities, assisted living, independent living, and congregate care. The services to be provided shall be an integral part of the annual housing costs, rent or occupancy related fee, shall be comparable to the services offered to all residents regardless of income status, and may include in substantial measure long-term health care, as well as ~~and may include~~ nursing, home health care, personal care, meals, transportation, convenience services, and social, cultural, and education programs. This Sec. 5.11.11 shall not apply to a nursing 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. Number of Inclusionary Beds Required. For all such projects, 5 percent of beds provided on-site must be Inclusionary Beds designated affordable to elderly households with annual gross incomes up to 80% of AMI. Inclusionary Beds may be located in single-occupancy rooms, or in shared rooms. The Inclusionary Beds shall be proportionately distributed throughout the site and shall be indistinguishable from the market-rate beds.
- B. Definition of Elderly Households. For all such projects, an elderly household shall be defined as a single person who is 62 years of age or older at the time of initial occupancy; or two persons living together, where at least one of whom is 62 years of age or more at the time of initial occupancy.
- C. Monthly Housing and Service Costs. Total monthly housing and service costs, including rent or a monthly occupancy fees, health care, personal care, meals, transportation, convenience services, social, cultural, and educational programming, and the like, shall not exceed 80% of the eligible households annual gross income.
- D. Use Restrictions. For all such projects, all Inclusionary Beds shall 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.
- E. Selection. For all such projects, all Inclusionary Beds shall be subject to an Affirmative Fair Housing Marketing and Resident Selection Plan to be approved by the Director of the Planning Department. To the extent permitted by law, Newton residents shall have first opportunity to participate in the elder housing with services program set out here.
- F. Fractional Units. For the purposes of calculating the number of Inclusionary Beds required per Section 5.11.11 A., any fractional unit of 0.5 or greater shall be deemed to constitute a whole bed.

H. Alternative Compliance. The applicant may request a Special Permit to propose an alternative method of compliance to providing the Inclusionary Beds required under Section 5.11.11.A, which includes a cash payment representing the cost of providing and maintaining the required Inclusionary

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Beds. City Council may approve such requests by finding that there is a net benefit to achieving the City's housing objectives as a result of the proposed alternative compliance.

~~A. Maximum Contribution. The applicant shall contribute 2 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.~~

~~B. Determination. The Board of Aldermen 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~~

~~C. 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.~~

~~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 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.~~

~~E. 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.~~

## 5.11.12. 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 Sec. 5.11.11. Where the Board of Aldermen 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.

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

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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.

## ~~5.11.14. No Effect on Accessory Apartments.~~

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

## ~~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.~~

## 5.11.14. Inclusionary Housing Program Reevaluation Requirement

The City shall initiate a reevaluation of the Inclusionary Housing Requirement at an interval of no more than 5 years from the time the Inclusionary Housing Requirement was last amended and every 5 years thereafter. Such reevaluation shall include a report provided to the City Council reviewing factors such as changes in demographic characteristics and residential development activity, housing trends measured in terms of, but not limited to, vacancy rates, production statistics, prices for dwelling units, and affordability, and the relationship between Inclusionary Housing Projects and all housing in Newton. The Department of Planning and Development shall also conduct an annual review and report on the Inclusionary Housing Program.