

CITY OF NEWTON

IN CITY COUNCIL

ORDINANCE NO. B-34

July 8, 2019

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEWTON **That the Revised Ordinances of Newton, Massachusetts, 2017, as amended, be and are hereby further amended with respect to Chapter 30 ZONING as follows:**

DELETE the language of **Sec. 5.11. Inclusionary Zoning** in its entirety and insert in place thereof the following language:

**Sec. 5.11. Inclusionary Zoning**

**5.11.1. Purposes.**

The purposes of this Sec. 5.11 are to:

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

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

**5.11.2. Definitions.**

- A. "Area Median Income ('AMI')" means the median income for households within the designated statistical area that includes the City of Newton, as reported annually and adjusted for household size by the U.S. Department of Housing and Urban Development (HUD).
- B. "Deed-Restricted Affordable Unit(s)" means any Inclusionary Unit that meets the

provisions of 5.11.4 and holds a legal use restriction that runs with the land, is recorded at the Registry of Deeds, provides for affordability in perpetuity, identifies the Subsidizing Agency and monitoring agent, if applicable, and restricts occupancy to income eligible households, as defined by the provisions of Section 5.11.4.

- C. "Eligible Household" means a household whose gross annual income does not exceed the applicable household income limit for the Inclusionary Unit.
- D. "Extremely Low-Income (ELI) Unit(s)" means any dwelling unit affordable to households with annual gross incomes at or below 30% of AMI.
- E. "Household Income Limit" means at any given percentage of the area median income (AMI), the income limit adjusted by household size at that percentage as published by HUD for the designated statistical area that includes the City of Newton or, for percentage levels not published by HUD, as calculated by the City based on the HUD AMI calculation.
- F. "Inclusionary Housing Project" means any development project that meets the provisions of Section 5.11.3.A.
- G. "Inclusionary Unit(s)" means any dwelling unit that meets the provisions of Section 5.11.4.
  - 1. "Tier 1 Unit(s)" means any Inclusionary Unit affordable to households with annual gross incomes at or below 80% of AMI, and where applicable, affordable to households with annual gross incomes at or below 50% of AMI.
  - 2. "Tier 2 Unit(s)," also know as "Middle-Income Unit(s)," means any Inclusionary Unit affordable to households with annual gross incomes greater than 80% of AMI, but at or below 110% of AMI.
- H. "Local Action Unit(s) (LAUs)" means an affordable housing unit created as a result of an intentional action taken by a community, without a comprehensive permit, and which meets the requirements for inclusion on the Subsidized Housing Inventory (SHI). Local Action Units are a component of the Department of Housing and Community Development's (DHCD) Local Initiative Program (LIP).
- I. "Public development funds" means funds for housing construction or rehabilitation if provided through a program eligible to serve as a 'subsidy' under 760 CMR 56.00 Comprehensive Permit: Low or Moderate Income Housing, Community Preservation Act funds, and other federal and state funds available for housing allocated by the City of Newton.

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

### 5.11.3 Application of Inclusionary Zoning Requirements.

- A. These inclusionary zoning provisions apply to any proposed residential or mixed-

use development, including a conventional subdivision of land under M.G.L. Chapter 41, Section 81K-81GG, in any zoning district that includes the construction or substantial reconstruction of seven or more residential dwelling units on any parcel or contiguous parcels comprising a proposed development site. The inclusionary zoning requirements apply to the total number of residential units regardless of the existing residential units proposed to be demolished. The inclusionary zoning requirements also apply to any situation where rental residential dwelling units are converted to 7 or more residential ownership units.

- B. This Sec. 5.11 does not apply to accessory units.
- C. No Segmentation. The inclusionary zoning provisions of this section apply to projects at one site or two or more adjoining sites in common ownership or under common control within a period of five years from the first date of application for any special or building permit for construction on the lot or lots, or for the 12 months immediately preceding the date of application for any special permit or building permit. An applicant for development may not segment or divide or subdivide or establish surrogate or subsidiary entities to avoid the requirements of Section 5.11. Where the City Council determines that this provision has been violated, a special permit or building permit will be denied. However, nothing in Section 5.11 prohibits the phased development of a property.
- D. 100% Deed-Restricted Affordable Developments. Any proposed residential or mixed-use development that consists of 100% deed-restricted affordable units up to 110% of AMI is not subject to the Number of Inclusionary Units Required, Section 5.11.4.B; however, projects of this type are subject to all other applicable provisions of this Section 5.11. The percentage of AMI used for establishing monthly housing costs and the applicable household limit for all units in the project must average no more than 95% of AMI.
- E. Qualification of Tier 1 Units as Local Action Units. All Inclusionary Units affordable to households at or below 80% of AMI must be qualified as 'Local Action Units' pursuant to the requirements of the Comprehensive Permit Guidelines of the Massachusetts Department of Housing and Community Development (DHCD), Section VI.C "Local Action Units," as in effect December 2014 as the same may be amended from time to time, unless the unit is exempted from this requirement by another provision of this Section 5.11.
- F. Tier 2 Units as Consistent with Local Action Units. All Inclusionary Units affordable to households earning greater than 80% but less than or equal to 110% of AMI must be consistent, where applicable, with the requirements of 'Local Action Units' pursuant to the requirements of the Comprehensive Permit Guidelines of the DHCD, Section VI.C "Local Action Units," as in effect December 2014 as the same may be amended from time to time, unless the unit is exempted from this requirement by another provision of this Section 5.11.

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

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

- A. **Inclusionary Unit Tiers.** Inclusionary Units are divided into two tiers based on their level of affordability. Tier 1 represents units affordable to households with annual gross incomes at or below 50% of AMI and units affordable to households with annual gross incomes at or below 80% of AMI; and Tier 2 represents Middle-Income units affordable to households with annual gross incomes greater than 80% of AMI, but at or below 110% of AMI.
- B. **Number of Inclusionary Units Required.** The percentage of required Inclusionary Units in a proposed development is based on the total number of new units proposed on any parcel or contiguous parcels comprising a proposed development site, and whether the units are rental or ownership.
  1. Where the inclusionary zoning requirement results in a fraction of a unit greater than or equal to 0.5, the development must provide one Inclusionary Unit to capture that fraction.
  2. Where the inclusionary zoning requirement results in a fraction of a unit less than 0.5, the development may choose to provide one Inclusionary Unit to capture that fraction or contribute a fractional cash payment to the City to cover the fraction of that Inclusionary Unit requirement. Fractional cash payment amounts are calculated based on the provisions of Section 5.11.5.
  3. All fractions are rounded to the nearest tenth.
  4. **Rental Project Requirements.** The percentage requirements for applicable rental developments are based on the following table and provisions:
    - a. For rental Inclusionary Housing Projects with 7-9 residential dwelling units, where only one rental inclusionary unit is required at Tier 1, the inclusionary unit shall be priced for a household income limit at not more than 80% of AMI.
    - b. For rental Inclusionary Housing Projects with 10 or more residential dwelling units, where two or more rental Inclusionary Units are required at Tier 1, the AMI used for establishing rent and income limits for these Inclusionary Units must average no more than 65% of AMI. Alternatively, at least 50% of such units may be priced for households having incomes at 50% of AMI and the remaining Inclusionary Units may be priced for households at 80% of AMI.
    - c. Effective January 1, 2021, rental Inclusionary Housing Projects with 100 or more residential dwelling units must provide 15% of residential dwelling units at Tier 1 and 5% of residential dwelling units at Tier 2.

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

*Example Project: 17-unit rental development*

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

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

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

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

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

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

**Illustration: Rental Projects Calculation Methodology**

*Example Project: 31-unit rental development*

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

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

*TOTAL UNITS = 6 deed-restricted affordable units*

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

- a. For ownership Inclusionary Housing Projects with 7-16 residential dwelling units, where one or two ownership inclusionary units are required at Tier 1, the household income limit for those units shall be 80% of AMI and the

inclusionary units must be priced for affordability to households having annual gross incomes of not more than 70% of AMI at the time of marketing.

- b. For ownership Inclusionary Housing Projects with 17 or more residential dwelling units, where three or more ownership inclusionary units are required, the household income limit for Tier 1 units must be 80% of AMI and those inclusionary units must be priced for affordability to households having annual gross incomes of not more than 70% of AMI at the time of marketing. The household income limit for Tier 2 Middle- Income units must be 110% of AMI and those inclusionary units must be priced for affordability to households having annual gross incomes of not more than 100% of AMI at the time of Marketing.
- c. Effective January 1, 2021, ownership Inclusionary Housing Projects with 100 or more residential dwelling units must provide 10% of residential dwelling units at Tier 1 and 10% of residential dwelling units at Tier 2.

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

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

**Illustration: Ownership Projects Calculation Methodology**

*Example Project: 52-unit ownership development*

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

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

*TOTAL UNITS: 9 deed-restricted affordable units*

- C. Incentives for Additional Inclusionary Units. An Inclusionary Housing Project that includes more than the required number of Inclusionary Units will be awarded bonus market-rate units at a ratio of 2 to 1. For every additional Inclusionary Unit the applicant agrees to provide, the development will be awarded 2 additional market-rate units. In the event that the additional Inclusionary Unit provided by the applicant is a family-sized unit (a 3-bedroom unit greater than 1,100 square feet), the ratio is 3 to 1. For every additional 3-bedroom Inclusionary Unit proposed, the development will be awarded 3 additional market-rate units. The additional Inclusionary Units must be Tier 1 units and the total number of additional units of any type must not exceed 25% of the number of units otherwise permissible on the lot under lot area per dwelling unit requirements.
- D. Maximum Monthly Housing Costs, Sale Prices and Rents. Maximum sale price or rent for Inclusionary Units is calculated as affordable to a household with a number of household members equal to the number of bedrooms in a unit plus one, regardless of the actual number of persons occupying the unit.

**Illustration: Incentive Units Calculation Methodology**

*Example Project: 31-unit rental development*

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

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

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

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

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

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

Newton Housing Authority. For a household with a Section 8 voucher, the rent and income are to be established by the Newton Housing Authority with the approval of HUD.

- a. Homeownership. Inclusionary units for sale are to be priced to be affordable to a household having a gross annual income 10 percentage points lower than the household income limit for that Inclusionary Unit, as specified in Section 5.11.4. The monthly housing costs, inclusive of mortgage principal and interest, private mortgage insurance, property taxes, condominium and/or homeowner's association fees, hazard insurance, and 1 parking space, must not exceed 30% of the applicable household income limit for the Inclusionary Unit. Additionally, the following requirements apply:
  - i. Down payment must be at least 3% of the purchase price;
  - ii. Mortgage loan must be a 30-year fully amortizing mortgage for not more than 97% of the purchase price with a fixed interest rate that is not more than 2 percentage points above the current MassHousing interest rate; and
  - iii. Buyers will be eligible so long as their total housing costs, including the services identified above, do not exceed 38% of their income.

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

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

#### 5.11.5. Cash Payment Option.

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

- A. Eligibility. There are 3 circumstances in which the Inclusionary Unit requirements of Section 5.11.4 may be met through a cash payment instead of providing Inclusionary Units:
  1. For Inclusionary Housing Projects that include the construction or substantial reconstruction of 7 to 9 dwelling units; or
  2. By special permit from the City Council, where the Council makes specific findings that there will be an unusual net benefit to achieving the City's housing objectives as a result of allowing a cash payment rather than requiring the development of Inclusionary Units. The findings must include consideration of the appropriateness of the development site location for income-eligible households, including proximity to and quality



of public transportation, schools, and other services; the current balance of the Inclusionary Housing Fund; and the purposes of this Section 5.11.

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

B. Cash Payment Amount. The cash payment as an alternative to each required Inclusionary Unit, or fraction thereof, is based on a formula that utilizes the average total development costs (TDC) per unit in Newton, calculated by the Newton Housing Partnership and approved by the Director of Planning and Development utilizing final closing budgets and/or certified cost and income statements from new affordable housing developments built in Newton in the previous 3 years that were funded all of in part by public subsidies or approved through M.G.L. Chapter 40B. This basis for the cash payment standard (average TDC/unit in Newton) must be increased annually by the amount of the Consumer Price Index (CPI-U) and take effect on the anniversary date of the effective date in Section 5.11.14. No more than every 3 years, the average TDC/unit in Newton must be recalculated by the Newton Housing Partnership and approved by the Director of Planning and Development based on available data from affordable housing developments as above, completed in Newton during the preceding 3 year period.

1. The average TDC per unit, as calculated in May 2019 by the Newton Housing Partnership and approved by the Director of Planning & Development, is \$550,000.
2. For Inclusionary Housing Projects containing 10 or more units that receive a Special Permit to make such a payment, the total cash payment is determined by utilizing the following calculation:
3. For Inclusionary Housing Projects with 7-9 units, the total cash payment is determined by utilizing the average total development costs (TDC) per unit in Newton and reducing that number based on the number of units in the project as follows:
  - a. Total cash payment for a 7-unit project: 70% multiplied by the TDC per unit in Newton.
  - b. Total cash payment for an 8-unit project: 80% multiplied by the TDC per unit in Newton.
  - c. Total cash payment for a 9-unit project: 90% multiplied by the TDC per unit in Newton.

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

Illustration: Cash Payment Calculation Methodology	
<i>sample TDC: \$550,000 (May 2019 figure)</i>	
<b>EXAMPLE 1: 18 Unit Rental Project</b>	
<i>A = 18 units</i>	
<i>B = 15% inclusionary required</i>	
<i>C = \$550,000 TDC</i>	
 <i>STEP 1: 0.15 x 18 units = 2.7 units</i>	
<i>STEP 2: 2.7 units x \$550,000 = \$1,485,000</i>	
<i>Total Payment</i>	
 <b>EXAMPLE 2: 36 Unit Ownership Project</b>	
<i>A = 36 units</i>	
<i>B = 17.5%</i>	
<i>C = \$550,000</i>	
 <i>STEP 1: 0.175 x 36 units = 6.3 units</i>	
<i>STEP 2: 6.3 units x \$550,000 = \$3,465,000</i>	
<i>Total Payment</i>	
 <b>SMALL PROJECT CALCULATION EXAMPLES</b>	
 <i>7 Unit Project: 0.7 x \$550,000 = \$385,000</i>	
<i>Total Payment</i>	
 <i>8 Unit Project: 0.8 x \$550,000 = \$440,000</i>	
<i>Total Payment</i>	
 <i>9 Unit Project: 0.9 x \$550,000 = \$495,000</i>	
<i>Total Payment</i>	

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

per unit in Newton.

**Illustration: Fractional Payment Calculation Methodology**

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

*EXAMPLE: 48 Unit Rental Project*

*Tier 1: 0.15 x 48 units = 7.2 units*

*TOTAL UNITS = 7 units*

*FRACTIONAL PAYMENT = 0.2 X \$550,000  
= \$110,000*

*Tier 2: 0.025 x 48 units = 1.2 units*

*TOTAL UNITS = 1 unit*

*FRACTIONAL PAYMENT = 0.2 x \$550,000  
= \$110,000*

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

- D. Payment Deadline. Any Inclusionary Unit cash payment must be paid in full to the City prior to the granting of any Certificate of Occupancy.
- E. Cash Payment Recipient.
1. The cash payment is made to the City's Inclusionary Zoning Fund, to be distributed equally to the Newton Housing Authority and the City of Newton.
  2. These funds are to be used for the restoration, creation, preservation, associated support services, and monitoring of deed-restricted units affordable to households with annual gross incomes at or below 80% of AMI, to the extent practical.
  3. Notwithstanding Section 2 above, funds received from Inclusionary Housing Projects with 7-9 units, as described in Section 5.11.5.B.3, must be used for the creation of deed-restricted units affordable to households at or below 80% of AMI.
  4. Appropriation of these funds for use by the City or the Newton Housing Authority must first be approved by the Planning & Development Board and then by the Mayor.
  5. The Newton Housing Authority and the City must each maintain an ongoing record of payments to the fund on their behalf and the use of the proceeds for the purposes stated in this Sec. 5.11.

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

**5.11.6. Off-Site Development.**

- A. Eligibility. Off-site Inclusionary Units are generally discouraged. The Inclusionary

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

1. The appropriateness of the development site location for income-eligible households, including proximity to and quality of public transportation, schools, and other services;
  2. Consideration relative to the concentration of affordable units in the City;
  3. An increase in the number of Inclusionary Units or an increase in the percentage of Tier 1 units from the amount otherwise required; and
  4. Consideration of the purposes of this section of the ordinance, Section 5.11.1.
- B. Non-Profit Housing Developer Partnership. Any Inclusionary Housing Project that includes off-site Inclusionary Units must enter into a development agreement with a non-profit housing developer for the development of the off-site units.
1. The applicant must submit a development plan for off-site development for review and comment by the Planning and Development Department prior to submission to the City Council. The plan must include at a minimum, demonstration of site control, necessary financing in place to complete the off-site development or rehabilitation, an architect's conceptual site plan with unit designs and architectural elevations, and agreement that the off-site units will comply with Sec. 5.11.7.
- C. The off-site development must provide either a greater number of affordable units or a deeper level of affordability, an equivalent unit mix and comparable sized units, and an equivalent level of accessibility as that which would have been provided if the required units were to remain on-site.
- D. All off-site inclusionary units allowed by special permit must be completed and occupied no later than completion and occupancy of the applicant's on-site market rate units. If the off-site inclusionary units are not completed as required within that time, temporary and final occupancy permits will not be granted for the number of on-site market rate units equal to the number of off-site inclusionary units which have not been completed. Where the City Council determines that completion of off-site inclusionary units has been delayed for extraordinary reasons beyond the reasonable control of the applicant and non-profit housing developer, the City Council may, upon the request of the applicant to amend the Special Permit, allow the applicant to post a monetary bond and release one or more on-site market rate units. The amount of the bond must be sufficient in the determination of the Planning and Development Department to assure completion

of the off-site inclusionary units.

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

#### 5.11.7. Design and Construction.

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

- A. Inclusionary units provided on-site, and their associated parking spaces, must be proportionally distributed throughout the Inclusionary Housing Project and be sited in no less desirable locations than the market-rate units;
- B. The bedroom mix of Inclusionary Units must be equal to the bedroom mix of the market-rate units in the Inclusionary Housing Project;
- C. The Inclusionary Units must meet the following size specifications:
  1. Must be comparable in size to that of the market rate units;
  2. Whichever is greater of the two:
    - a. Must meet the minimum square footage and bathroom requirements, as required by  
DHCD's most current Comprehensive Permit Guidelines.
    - b. Must have an average square footage of not less than 80% of the average square footage of the market-rate units with the same number of bedrooms; and
  3. The total square footage of Inclusionary Units in a proposed development must not be less than 10% of the sum of the total square footage of all market-rate and all Inclusionary Units in the proposed development;
- D. Inclusionary Units must have exteriors that are indistinguishable in design and of equivalent materials to the exteriors of the market-rate units in the project;
- E. The materials used and the quality of construction for inclusionary units, including heating, ventilation, and air conditioning systems, must be equal to that of the market rate units in the Inclusionary Housing Project, as reviewed by the Planning and Development Department; provided that amenities such as designer or high end appliances and fixtures need not be provided for inclusionary units;
- F. At a minimum, the Inclusionary Units must have an equivalent level of accessibility as that of the market- rate units, and the Inclusionary Units must have an equivalent mix of disabled-accessible units as that of the market-rate

units; and

- G. The Inclusionary Units must have equal access to all amenities that are offered to the market-rate units in a project, such as parking, on-site fitness centers, laundry facilities, and community rooms.

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

#### 5.11.8. Inclusionary Housing Plans and Covenants.

- A. The applicant must submit an inclusionary housing plan for review and approval by the Director of Planning and Development prior to the issuance of any building permit for the project. The plan must include the following provisions:
  - B. A description of the proposed project and inclusionary units including at a minimum, a breakdown of the total number of residential units in the project, including the number of market-rate units, Inclusionary Units, and accessible and adaptable units; floor plans indicating the location of the inclusionary units and accessible and adaptable units; the number of bedrooms and bathrooms per unit for all units in the development; the square footage of each unit in the development; the amenities to be provided to all units; the projected sales prices or rent levels for all units in the development; and an outline of construction specifications certified by the applicant.
  - C. An Affirmative Fair Housing Marketing and Resident Selection Plan (AFHMP) for all Inclusionary Units, including Tier 2 Middle-Income Units, which, at a minimum, meets the requirements set out in the Comprehensive Permit Guidelines of the DHCD, Section III, Affirmative Fair Housing Marketing and Resident Selection Plan, as in effect December 2014 as the same may be amended from time to time and:
    - 1. To the extent permitted by law, such plan must provide for a local preference for up to 70% of the Inclusionary Units in a project;
    - 2. Where a project results in the displacement of individuals who qualify for a unit in terms of household size and income, first preference must be given to those displaced applicants,  
  
unless such preference would be unallowable under the rules of any source of funding for the project;
    - 3. Where a project includes units that are fully accessible, or units that have adaptive features for occupancy by persons with mobility impairments or hearing, vision, or other sensory impairments, first preference (regardless of the applicant pool) for those units must be given to persons with disabilities who need such units, including single person households, in conformity with state and federal civil rights law, per DHCD's Comprehensive Permit Guidelines, Section III, Affirmative Fair Housing Marketing and Resident Selection Plan, as in effect December 2014 as the same may be amended from time to time; and

4. Prior to the marketing or otherwise making available for rental or sale any of the units in the development, the applicant must obtain the City's and DHCD's approval of the AFHMP for the Inclusionary Units.
- D. Agreement by the applicant that initial and ongoing resident selection must be conducted and implemented in accordance with the approved marketing and resident selection plan and Comprehensive Permit Guidelines of the DHCD, Section III, Affirmative Fair Housing Marketing and Resident Selection Plan.
  - E. Agreement by the applicant that all Tier 1 units must be qualified as, and all Tier 2 units must be consistent, where applicable, with the requirements of 'Local Action Units' pursuant to the requirements of the Comprehensive Permit Guidelines of the DHCD, Section VI.C "Local Action Units," as in effect December 2014 as the same may be amended from time to time, unless the unit is exempted from this requirement by another provision of this Section 5.11.
  - F. Agreement by the applicant that all inclusionary units, including those affordable to households earning greater than 80% but less than or equal to 110% of AMI must be subject to an Affordable Housing Deed Restriction with the City, and in most cases, a Regulatory Agreement between the City, DHCD (or relevant subsidizing agency) and the developer. The developer must execute and record these affordable housing covenants in the Registry of Deeds for the Southern District of Middlesex County as the senior interest in title for each Inclusionary Unit and which must endure for the life of the residential development, as follows:
    1. For ownership units, a covenant to be filed at the time of conveyance and running in favor of the City of Newton, in a form approved by the City Solicitor, which limits initial sale and subsequent re-sales of Inclusionary Units to eligible households in accordance with provisions reviewed and approved by the Director of Planning and Development, which incorporates the provisions of this Section; and
    2. For rental units, a covenant to be filed prior to the issuance of any occupancy permit and running in favor of the City of Newton, in a form approved by the City Solicitor, which limits rental of Inclusionary Units to eligible households in accordance with provisions reviewed and approved by the Director of Planning and Development, which incorporates the provisions of this Section.
  - G. Agreement by the applicant that the Inclusionary Units must be completed and occupied no later than completion and occupancy of the applicant's market rate units. If the Inclusionary Units are not completed as required within that time, temporary and final occupancy permits may not be granted for the number of market rate units equal to the number of Inclusionary Units that have not been completed.
  - H. At the discretion of the applicant and with the agreement of the Newton Housing Authority, an agreement, in a form approved by the City Solicitor, to convey

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

- I. In the case of rental housing, an agreement by the applicant to submit an annual compliance report to the Director of Planning and Development, in a form approved by the City Solicitor, certifying compliance with the provisions of this Sec. 5.11.

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

#### 5.11.9. Public Funding Limitation.

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

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

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

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

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

- A. ELI Alternative Compliance Option Project Requirements. The percentage requirements for applicable rental developments are based on the following table and provisions:
  1. Where 2 or more rental inclusionary units are required at Tier 1, the AMI used for establishing rent and income limits for these inclusionary units must average no more than 65% of AMI. Alternatively, at least 50% of such units may be priced for households have incomes at 50% of AMI, and the remaining inclusionary units may be priced for households at 80% of AMI.



2. Effective January 1, 2021, applicable rental developments with 100 or more residential dwelling units must provide 5% of residential dwelling units at the ELI Tier, 5% of residential dwelling units at Tier 1, and 5% of residential dwelling units at Tier 2.

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

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

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

- B. Support Services Provider Partnership. Any inclusionary Housing Project that chooses the ELI Alternative Compliance Option must form a service agreement with a qualified agency that specializes in supportive housing and case management for extremely low-income individuals or families. Property owners must partner directly with the designated agency on all aspects of tenant selection and management related to the ELI units in all such projects.
  1. The applicant must submit a Resident Selection and Supportive Services Plan for the ELI units for review and comment by the Director of Planning and Development prior to submission for approval from the City Council as part of

the special permit process. The plan must include, at a minimum, the following:

- a. Demonstration of a formal partnership with a qualified agency that specializes in  
supportive housing and case management for extremely low-income individuals or families;
  - b. A marketing and resident selection plan that details how the tenants of the ELI units will be selected;
  - c. A detailed plan that outlines the ongoing regular on-site support services and case management to be provided to each household residing in the ELI units; and
  - d. An operating pro forma highlighting the initial and ongoing funding for the support services and case management.
2. The designated qualified agency must provide regular on-site support services for the tenants of the ELI units, including, but not limited to, assistance with daily living activities, healthcare referrals, community integration, job training, and employment opportunities.
- C. **No Public Funding Limitation.** Inclusionary Housing Projects that choose the Alternative Compliance Option may seek and accept public development funds to construct and operate the ELI units, notwithstanding Section 5.11.9.
- D. Inclusionary Housing Projects that choose the Alternative Compliance Option must comply with all other applicable requirements of Section 5.11.

#### 5.11.11. Elder Housing with Services.

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

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

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

- B. Definition of Inclusionary Beds. For all such projects, an Inclusionary Bed is defined as any residential bed that meets the provisions of this section 5.11.11, Elder Housing with Services.
- C. Number of Inclusionary Beds Required. For all Elder Housing with Services projects, 5% of beds provided on-site must be Inclusionary Beds designated affordable to eligible elderly households with annual gross incomes up to 80% of AMI, adjusted for household size. The applicable household income limit for all Inclusionary Beds subject to the provisions of Section 5.11.11 is 80% of the AMI at the time of marketing. Inclusionary Beds may be located in single-occupancy rooms or in shared rooms. The Inclusionary Beds must be proportionally distributed throughout the site and must be indistinguishable from the market-rate beds.
- D. Monthly Housing and Service Costs. Total monthly housing costs, inclusive of entrance fees, rent or monthly occupancy fees, amenities, and base services may not exceed a fixed percentage of the applicable household annual income limit for the Inclusionary Bed based on the type of elder housing with services facility, as described below.
  - 1. Independent Living Facilities. Total monthly housing costs for an Inclusionary Bed in an Independent Living Facility may not exceed 15% of the applicable household income limit for the Inclusionary Bed.
  - 2. Assisted Living Residences. Total Monthly housing costs for an Inclusionary Bed in an Assisted Living Residence may not exceed 30% of the applicable household income limit for the Inclusionary Bed.
  - 3. Continuing Care Retirement Communities (CCRCs). Due to their unique structure in providing independent living, assisted living, and skilled nursing and related services to elderly households in one location, CCRCs may choose to satisfy their Inclusionary Zoning requirement through either the provisions related to Independent Living Facilities of those related to Assisted Living Residences.
- E. 100% Deed-Restricted Affordable Facilities. Any proposed Elder Housing with Services project that consists of 100% deed-restricted affordable units up to 150% of AMI is not subject to the Number of Inclusionary Beds Required per Section 5.11.11.C and may seek and accept public development funds to construct the project. The percentage of AMI used for establishing monthly housing and service costs and the applicable household income limit for all units in the project must average no more than 110% of AMI. However, projects of this type are subject to all other applicable sections of this Section 5.11.

- F. Use Restrictions. For all such projects, all Inclusionary Beds must be subject to an affordable covenant approved by the City Solicitor, executed by the City and the developer, and recorded at the Registry of Deeds for the Southern District of Middlesex County or the Land Court Registry of Deeds for the Southern District of Middlesex County.
- G. Tenant Selection. For all such projects, all Inclusionary Beds must be subject to an Affirmative Fair Housing Marketing and Resident Selection Plan to be approved by the Director of Planning and Development. To the extent permitted by law, such plan must provide for a local preference for up to 70% of the Inclusionary Beds in the project.
- H. Fractional Units. Where the inclusionary zoning requirement results in a fraction of a bed greater than or equal to 0.5, the development must provide one Inclusionary Bed to capture that fraction.
- I. Alternative Compliance. The applicant may choose to comply with their inclusionary zoning requirement through a cash payment to the City. The total cash payment for projects of this type is based on the average cost of providing long-term care for an elderly individual over a 10-year period, as well as the average total development costs per unit in Newton, calculated by the Newton Housing Partnership and approved by the Director of Planning and Development. The average long-term care cost is based on the Boston area average hourly rate of a home health aide providing three hours per day of care per year as determined by the annual Genworth Cost of Care Survey. Planning staff will review the Cost of Care Survey annually to modify the average cost as necessary. The total cash payment is determined by utilizing the following calculation:

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

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

Illustration: Elder Housing with Services Cash Payment  
Calculation Methodology

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

*sample care cost = \$306,600*

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

*EXAMPLE: 115-bed Assisted Living Facility*

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

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

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

5.11.12. No Effect on Prior or Existing Obligations.

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

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

5.11.13. Inclusionary Zoning Program Reevaluation Requirement.

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

5.11.14. Effective Date.

The effective date of the amended provisions of Section 5.11 is August 1, 2019. The requirements of Section 5.11 do not apply to any special permit (or in the event that a special permit is not required, any building permit) issued prior to the effective date of this amendment. Effective January 1, 2021, rental and ownership Inclusionary Housing Projects with 100 or more residential dwelling

units will be subject to an increased inclusionary zoning requirement per Sections 5.11.4.B.4.c, 5.11.4.B.5.c, and 5.11.10.A.2.

Approved as to legal form and character:



ALISSA O. GIULIANI

City Solicitor

Under Suspension of Rules  
Readings Waived and Adopted



(SGD) DAVID A. OLSON

City Clerk

EXECUTIVE DEPARTMENT

Approved:



(SGD) RUTHANNE FULLER

Mayor