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Section 5.11. Inclusionary Zoning

5.11.1. Purposes

The purposes of this Section 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. "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 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 amounts set forth in Section 5.11.4.
- D. "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 annually 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 annually by the City based on the HUD AMI calculation.
- E. "Inclusionary Housing Project" means any residential development project that meets the provisions of 5.11.3.A.
- F. "Inclusionary Unit(s)" means any finished dwelling unit that meets the provisions of 5.11.4.
 - 1. "Tier 1 Unit(s)" means any Inclusionary Unit that is affordable to a household whose gross annual income is less than or equal to 50% of AMI.

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2. "Tier 2 Unit(s)" means any Inclusionary Unit that is affordable to a household whose gross annual income is greater than 50% of AMI, but at or below 80% of AMI.
3. "Tier 3 Unit(s)," also known as "Middle-Income Unit(s)," means any Inclusionary Unit that is affordable to a household whose gross annual income is greater than 80% of AMI, but at or below 110% of AMI.

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 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 such residential units regardless of the existing residential units proposed to be demolished.
- B. This Section 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 residential development shall not segment or divide or subdivide or establish surrogate or subsidiary entities to avoid the requirements of Section 5.11.11. Where the City Council determines that this provision has been violated, a special permit will be denied. However, nothing in Section 5.11 prohibits 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 Section 5.11.4.B; however, projects of this type are subject to all other applicable sections of this ordinance.
- E. Qualification of Tier 1 and Tier 2 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 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 Section 5.11; or
 2. The unit is exempted from this requirement by a provision included in a special permit authorizing the development, based on special circumstances applicable to that development, or based on changes in the DHCD regulations or guidelines.
- F. Tier 3 Units as Consistent with Local Action Units requirements. All Inclusionary Units affordable to households earning greater than 80% but less than or equal to 110% of AMI must be consistent with the requirements of 'Local Action Units' pursuant to the requirements of the Comprehensive Permit

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Guidelines of DHCD, Section 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 Section 5.11; or
2. The unit is exempted from this requirement by a provision included in a special permit authorizing the development, based on special circumstances applicable to that development, or based on changes in the DHCD regulations or guidelines.

5.11.4. Mandatory Provision of Inclusionary Units

- A. Inclusionary Unit Tiers. Inclusionary Units are divided into three tiers based on their level of affordability. Tier 1 represents units affordable to households at or below 50% of AMI; Tier 2 represents units affordable to households greater than 50% of AMI, but at or below 80% of AMI; and Tier 3 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 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.

The percentage requirement for applicable developments is based on the following table:

Tier Level	7-9 units		10-20 units		21-34 units		35-64 units		65-100 units		101+ units	
	Rental	Owner	Rental	Owner	Rental	Owner	Rental	Owner	Rental	Owner	Rental	Owner
Tier 1, up to 50% AMI	0.0%	0.0%	0.0%	0.0%	5.0%	0.0%	0.0%	0.0%	2.5%	0.0%	2.5%	0.0%
Tier 2, 51%-80% AMI	15.0%	15.0%	17.5%	5.0%	7.5%	10.0%	2.5%	7.5%	10.0%	10.0%	12.5%	12.5%
Tier 3, 81%-110% AMI	0.0%	0.0%	0.0%	10.0%	5.0%	7.5%	15.0%	10.0%	5.0%	7.5%	2.5%	5.0%

Illustrations:

➤ **31-unit rental development**

The required number of Inclusionary Units that must be provided on-site would be as follows:

- 5% at Tier 1 = 1.55; a total of 2 units at Tier 1

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- 7.5% at Tier 2 = 2.325; a total of 2 units at Tier 2 (plus a fractional cash payment – see Section 5.11.5.C.)
- 5% at Tier 3 = 1.55; a total of 2 units at Tier 3
- Total IZ Units Required On-Site: 6 inclusionary units on-site

➤ 16-unit ownership development

The required number of Inclusionary Units that must be provided on-site would be as follows:

- 0% at Tier 1 = 0; a total of 0 units at Tier 1
- 5% at Tier 2 = 0.8; a total of 1 unit at Tier 2
- 10% at Tier 3 = 1.6; a total of 2 units at Tier 3
- Total IZ Units Required On-Site: 3 inclusionary units on-site

- C. For phased developments, each phase of the project must include a proportional number of the required Inclusionary Units.
- D. Incentives for Additional Inclusionary Units. An Inclusionary Housing Project that includes more than the required number of Inclusionary Units shall 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. The additional Inclusionary Units must be affordable to households at or below 80% AMI (Tier 2 units), and the total number of additional units proposed by an applicant must not exceed 20% of the number of units otherwise permissible on the lot under lot area per dwelling unit requirements.

Illustration:

➤ 31-unit rental development

Total IZ Units required to be built on-site: 6 inclusionary units (25 market-rate units and 6 inclusionary units):

- 5% at Tier 1 = 1.55; a total of 2 units at Tier 1
- 7.5% at Tier 2 = 2.325; a total of 2 units at Tier 2 (plus a fractional cash payment)
- 5% at Tier 3 = 1.55; a total of 2 units at Tier 3

The developer then chooses to provide 2 additional Inclusionary Tier 2 units, which provides the project with 4 additional market-rate units, for a total of 6 additional units.

The project now includes 37 total new units (29 market-rate units and 8 inclusionary units):

- 2 units at Tier 1
- 4 units at Tier 2
- 2 units at Tier 3
- = 8 total Inclusionary Units (out of 37 total units)

Note: the total number of additional units allowed for a project originally consisting of 31 units is 6; $20\% \times 31 = 6.2$; for a total of no more than 37 total new units, as the example demonstrates.

- E. 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

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

a. Maximum Sale 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 their monthly income for the cost of purchasing the housing.

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

c. 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.

d. 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 Section 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 Option

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

A. Eligibility. There are three 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

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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 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 Allocation 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.

1. For Inclusionary Housing Projects containing 10 or more units that receive a Special Permit to make such a payment, the total cash payment is determined by utilizing the following calculation:

Inclusionary Zoning Cash Payment Calculation:	
A = # of dwelling units in proposed project X Total IZ Percentage Requirement for project (Section 5.11.4.B.)	A
<i>Multiplied by</i>	
B = average of "Small Units" QAP index and "Large Units" QAP index for Production Projects in Newton	B
Total Cash Payment Due for Project	Equals A X B
<i>note: QAP = DHCD's Qualified Allocation Plan, as updated annually by DHCD</i>	

Illustrations:

Note: \$389,000 = the average of the “Small Units” index (\$379,000) and “Large Units” index (\$399,000) for Production Projects in Newton for 2018-2019, which falls within the Urban Area of Metro Boston category of the QAP

➤ **18-unit rental development**

- 17.5% Total IZ percentage requirement: 0.175 X 18 units = 3.15
- 3.15 X \$389,000
- = \$1,225,350 total cash payment

➤ **36-unit ownership project**

- 17.5% Total IZ percentage requirement: 0.175 X 36 units = 6.3
- 6.3 X \$389,000 = \$2,450,700 total cash payment

2. For Inclusionary Housing Projects with 7-9 units, the total cash payment is determined by utilizing the average of the “Small Units” index and “Large Units” index for Production

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Projects in Newton, as updated annually by DHCD, as the basis for the calculation (defined as B in the calculation presented in Section 5.11.5.B.1.); and the payment is then adjusted for the number of new units in the project, at a decreasing percentage.

- a. Total cash payment for a 7-unit project: 70% multiplied by the average of the “Small Units” index and “Large Units” index for Production Projects in Newton, as updated annually by DHCD (defined as B in the calculation presented in Section 5.11.5.B.1.)
- b. Total cash payment for an 8-unit project: 80% multiplied by B
- c. Total cash payment for a 9-unit project: 90% multiplied by B

Illustrations:

- **7-unit project:** 70% of \$389,000
= \$272,300 total cash payment
- **8-unit project:** 80% of \$389,000 = \$311,200 total cash payment
- **9-unit project:** 90% of \$389,000 = \$350,100 total cash payment

- C. Fractional Cash Payment Amount. For Inclusionary Housing Projects that choose to make a fractional cash payment per Section 5.11.4.B.2., the fractional cash payment is equal to 5% of the average of the “Small Units” index and “Large Units” index for Production Projects in Newton, as updated annually by DHCD’s Qualified Allocation Plan, per decimal point of the resulting fraction (rounded to the nearest tenth), per Inclusionary Unit Tier, up to a maximum fractional cash payment per project of \$160,000.

Illustrations:

Note: $5\% \times \$389,000 = \$19,450$

- **48-unit rental development**
The Total Inclusionary Zoning / Fractional Cash Payment requirement would be calculated as follows:

Tier 1: $48 \times 0\% = 0$
Tier 2: $48 \times 2.5\% = 1.2$, so the fractional requirement would be 0.2 ($2 \times \$19,450 = \$38,900$)
Tier 3: $48 \times 15\% = 7.2$, so the fractional requirement would be 0.2 ($2 \times \$19,450 = \$38,900$)

= Total IZ / Fractional Cash Payment Requirement for Project =

- Tier 1: 0 Inclusionary Units
- Tier 2: 1 Inclusionary Unit *plus* a Cash Payment of \$38,900
- Tier 3: 7 Inclusionary Units *plus* a Cash Payment of \$38,900

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Which equals a total of 8 Inclusionary Units required on-site plus a total Fractional Cash Payment of \$77,800

- D. Payment Deadline. Any Inclusionary Unit cash payment must be paid in full to the City prior to the granting of any Certificate of Occupancy.
- E. Cash Payment Recipient. The cash payment is made to the City's Inclusionary Zoning Fund, to be distributed equally between the Newton Housing Authority and the City of Newton. These funds are to be targeted for the restoration, creation, and preservation of deed-restricted units affordable to households with annual gross income at or below 80% of AMI, to the extent practical. Appropriation of these funds for use by the City or the Newton Housing Authority shall first be approved by the Mayor and then the City Council. 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 Section 5.11.

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 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 Section 5.11.7.
- D. The off-site Inclusionary Units must have an equivalent level of accessibility as what would have been provided if the required units were to remain on-site.
- E. All off-site Inclusionary Units allowed by Special Permit must be completed and occupied no later than completion and occupancy 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 may 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 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

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post a monetary bond and release one or more 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.

5.11.7. Design and Construction

In all cases, Inclusionary Units must be fully built out and finished dwelling units and comply with the requirements set out in in the Comprehensive Permit Guidelines of DHCD, Section 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 requirements shall apply to all Inclusionary Units:

- A. Inclusionary Units provided on site must be dispersed throughout the Inclusionary Housing Project and be sited in no less desirable locations than the market-rate units.
- B. 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.
- C. The bedroom mix of Inclusionary Units must 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, 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.
- 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 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:

- A. A description of the proposed project and Inclusionary Units including, at a minimum, a breakdown of the total number of residential units in the project, including the number of market-rate units, Inclusionary Units, and accessible and adaptable units; floor plans indicating the location of the Inclusionary Units and accessible and adaptable units; the number of bedrooms and bathrooms per unit for all units in the development; the square footage of each unit in the development; the amenities to be provided to all units; the projected sales prices or rent levels for all units in the development; and an outline of construction specifications certified by the applicant.
- B. An Affirmative Fair Housing Marketing and Resident Selection Plan (AFHMP) that, at a minimum, meets the requirements set out in in the Comprehensive Permit Guidelines of the DHCD, Section 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:

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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 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 June 1, 2009 as the same may be amended from time to time.
 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.
- 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, Section III., Affirmative Fair Housing Marketing and Resident Selection Plan.
- D. Agreement by the applicant that all Tier 1 and Tier 2 Units must be qualified as and all Tier 3 Units must be consistent 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 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 Section 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, must comply with the Use Restrictions requirements set out in in the Comprehensive Permit Guidelines of the DHCD, Section II.A.1.e. "Use Restriction," and Section 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 limits initial sale and subsequent re-sales of Inclusionary Units to eligible households in accordance with provisions reviewed and

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approved by the Director of the Planning and Development Department which incorporate the provisions of this Section; and

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 limits 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 Section 5.11.

5.11.9. Public Funding Limitation

An applicant may not use public development funds to construct Inclusionary Units required under Section 5.11. 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. 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:

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

5.11.10. Elder Housing with Services

In order to provide affordable elder housing with services on-site, this section applies to all housing with services designed primarily for elders, such as residential care, continuing care retirement communities, assisted living, independent living, and congregate care. The base services to be provided must be an integral part of the annual housing costs, rent or occupancy related fee, must be comparable to the base 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 Section 5.11.11 does 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.

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- 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 two persons living together, where at least one of whom is 62 years of age or more at the time of initial occupancy.
- B. Number of Inclusionary Beds Required. For all such projects, 5% 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 must be proportionately distributed throughout the site and must be indistinguishable from the market-rate beds.
- C. Monthly Housing and Service Costs. Total monthly housing costs, inclusive of rent or monthly occupancy fees and base services, may not exceed 80% of the eligible household's annual gross income. The services provided to these households must be comparable to the base services offered to all residents, regardless of income status, and must include long-term health care, nursing care, home health care, personal care, meals, transportation, convenience services, social, cultural, and educational programming, and the like.
- D. 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.
- E. 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 the Planning Department. To the extent permitted by law, such plan must provide for a local preference for up to 70% of the Inclusionary Beds in a project.
- F. 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.
- G. Alternative Compliance. The applicant may choose to comply with their Inclusionary Zoning requirements through a cash payment to the City, without receiving a Special Permit granting permission to do so. The total cash payment for projects of this type is determined by utilizing DHCD's current Qualified Allocation Plan Index for "Single Room Occupancy / Group Homes / Assisted Living / Small Unit Supportive Housing", coupled with the calculation of 5% of the total number of beds provided in the project.

Illustrations:

➤ **115-bed assisted living project**

- 5% requirement X 115 = 5.75; therefore, 6 inclusionary beds are required on-site
- If this project were to choose to provide the City with a cash payment, rather than provide the beds on-site, the total cash payment would equal:
 - 5.75 X \$259,000 (DHCD's 2018 QAP Index for projects of this type)
= \$1,489,250 total cash payment

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➤ 85-bed continuing care retirement community

- 5% requirement X 85 = 4.25; therefore, 4 inclusionary beds are required on-site
- If this project were to choose to provide the City with a cash payment, rather than provide the beds on-site, the total cash payment would equal:
 - 4.25 X \$259,000 = \$1,100,750 total cash payment

5.11.11. No Effect on Prior or Existing Obligations

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

5.11.12. 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 must 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 must also conduct an annual review and report on the Inclusionary Housing Program.

5.11.13. Effective Date

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 [*insert date (which shall mean a specified date after the amended ordinance is adopted by the City Council and signed by the Mayor)*].