



Ruthanne Fuller
Mayor

City of Newton, Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459

Telephone
(617) 796-1120
Telefax
(617) 796-1142
TDD/TTY
(617) 796-1089
www.newtonma.gov

Barney S. Heath
Director

MEMORANDUM

DATE: November 9, 2018

TO: Councilor Albright, Chair
Members of the Zoning and Planning Committee

FROM: Barney S. Heath, Director of Planning and Development
James Freas, Deputy Director of Planning and Development
Amanda Berman, Director of Housing & Community Development
Jennifer Caira, Chief Planner

RE: **#187-18** DIRECTOR OF PLANNING requesting amendments to the Inclusionary Housing provisions of Chapter 30, Newton Zoning Ordinance, to increase the required percentage of affordable units; to require that some affordable units be designated for middle income households; to create a new formula for calculating payments in lieu of affordable units; and to clarify and improve the ordinance with other changes as necessary.

MEETING DATE: November 14, 2018

CC: Jonathan Yeo, Chief Operating Officer
Ouida Young, Acting City Solicitor
Planning & Development Board
City Council

The purpose of this memo is to detail the major changes between the City's current Inclusionary Zoning ordinance and staff's most recent proposal. We ask that you take special notice of these new and amended provisions as you review the proposed updated ordinance language (attached). Additionally, the memo provides a summary of the Inclusionary Zoning ordinance update process over the last two-plus years, in which many of you have been involved from day one.

Attachments / Additional Documents:

- Attachment A: Proposed Inclusionary Zoning Ordinance text (clean version)
- Attachment B: Inclusionary Zoning Ordinance Guidebook
- City of Newton Inclusionary Zoning: Financial Feasibility Analysis, prepared by RKG Associates, Inc., March 2018 (not attached, but can be found on the City's IZ website: <http://www.newtonma.gov/civicax/filebank/documents/91410>)
- Further detail and additional memos and supporting documents can be found on the City's Inclusionary Zoning website: http://www.newtonma.gov/gov/planning/lrplan/inclusionary_zoning.asp

**Newton's Inclusionary Zoning Ordinance:
Current vs. Proposed Comparison Table**

Provision	Current	Proposed	Rationale for Proposed Change
#1: Application of IZ Requirements (see Required Inclusionary Units table below)	<ul style="list-style-type: none">• Net increase of 2 or more new dwelling units, less the number of units allowed by-right• Due to current interpretation of ordinance, IZ requirement usually kicks in when there is a net increase of 6 new dwelling units. Example: 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)• Projects have also been offered a reduction in their requirement based on the number of dwelling units that currently exist on a site, even if those are proposed to be demolished. Example: 20 new units minus 4 existing units to be demolished = 16 units	<ul style="list-style-type: none">• Construction of 7 or more dwelling units, with no reductions provided for the number of residential units that could be built on a parcel by-right or for the residential units proposed to be demolished• The IZ requirement is purely based on the number of units proposed to be constructed	<ul style="list-style-type: none">• To clarify confusion and multiple interpretations around current ordinance language• To better balance the financial feasibility of a project with the desired public benefit• The addition of an affordable unit to a small-scale project can quickly render a project financially infeasible• 15% of 7 dwelling units would result in 1.05 IZ units

	subject to IZ requirement; 16 X 15% =2.4 (round down to get 2 required IZ units)		
#2: Inclusionary Unit Tiers	<ul style="list-style-type: none"> • ½ of the households at 50% AMI • ½ of the households at 80% AMI • Average 65% AMI, regardless of project size <p>No IZ units provided for households above 80% AMI</p>	<p>Three Tiers of Eligible Households:</p> <ul style="list-style-type: none"> • Tier 1: Up to 50% AMI • Tier 2: Up to 80% AMI • Tier 3 (Middle-Income): Up to 110% AMI <p>Tiered structure linking affordability to project size and project type (rental or ownership)</p>	<ul style="list-style-type: none"> • To more specifically apply IZ requirements across the spectrum of housing need in Newton: from low- to moderate- to middle-income households • To apply IZ targets according to project size and type to account for the differing costs and financials associated with these projects
#3: Employ Rising IZ percentage requirement to project size	<ul style="list-style-type: none"> • 15% for all Inclusionary Housing Projects, regardless of project size or type 	<p>6 Tiers of Project Size:</p> <ul style="list-style-type: none"> • 7-9 units • 10-20 units • 21-34 units • 35-64 units • 65-100 units • 101+ units <p>Increasing IZ percentage requirement as project size increases</p>	<ul style="list-style-type: none"> • To balance the need for greater affordability with project financial feasibility • Larger projects can absorb higher percentage requirements due to their ability to spread the cost of affordable units across several market-rate units
#4: Round Up and Build and Fractional Cash Payments	<ul style="list-style-type: none"> • Where IZ requirement results in a fraction of a unit greater than or equal to 0.5, one IZ unit must be provided • Where IZ requirement results in a fraction of a unit less than 0.5, no IZ unit required to capture that fraction 	<ul style="list-style-type: none"> • Where IZ requirement results in a fraction of a unit greater than or equal to 0.5, one IZ unit must be provided • Where IZ requirement results in a fraction of a unit less than 0.5, projects may choose to provide one IZ unit to cover that fraction OR contribute a fractional cash payment to the City 	<ul style="list-style-type: none"> • To favor the building of Inclusionary Units • To capture some value from all fractional amounts less than 0.5 to support future affordable housing development through the City's Inclusionary Zoning Fund

<p>#5: Cash Payment Option in lieu of providing Inclusionary Units</p>	<ul style="list-style-type: none"> Through Special Permit application, projects containing 6 dwelling units or less <p>OR</p> <ul style="list-style-type: none"> Through a Special Permit where City Council makes specific findings to unusual net benefit to allowing a fee rather than Inclusionary Units 	<ul style="list-style-type: none"> Projects containing 7-9 dwelling units <p>OR</p> <ul style="list-style-type: none"> Through Special Permit where City Council makes specific findings to unusual net benefit to allowing a fee rather than Inclusionary Units 	<ul style="list-style-type: none"> To account for the fact that smaller-scale projects are more sensitive to the inclusion of affordable units, and therefore, may benefit from the ability to pay a fee-in-lieu, rather than build the affordable units on site To capture some value from all fractional amounts less than 0.5 to support future affordable housing development through the City's Inclusionary Zoning Fund
<p>#6: Cash Payment and Fractional Cash Payment Amount and Calculations</p>	<ul style="list-style-type: none"> First two units in a development are exempt from fee-in-lieu 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 	<ul style="list-style-type: none"> Based on a formula that utilizes the average of the Massachusetts DHCD Qualified Action Plan "Total Residential Development Cost Limits" Index for Production Projects within Metro Boston for large and small unit projects at the time of first application to the City (currently = \$389,000) For projects with 7-9 units, payment is adjusted at a decreasing percentage 	<ul style="list-style-type: none"> To simplify and clarify calculation To tie cash payments to the DHCD's annually published maximum subsidy amount per unit for affordable housing projects seeking Federal Low-Income Housing Tax Credits (LIHTC) – a defensible number that is grounded in industry-wide research by a respected third party, the Massachusetts Housing Partnership (MHP)
<p>#7: 100% Deed-Restricted Affordable Developments</p>	<ul style="list-style-type: none"> Provision not included in current ordinance 	<ul style="list-style-type: none"> Projects that consist of 100% deed-restricted affordable units up to 110% AMI are not required to 	<ul style="list-style-type: none"> To encourage projects that serve Newton's shrinking middle-income population, helping to diversify the array of

		comply with the prescribed percentage requirements per income level, as detailed in the Number of Inclusionary Units Required section of the proposed ordinance	<p>housing options present throughout the City</p> <ul style="list-style-type: none"> • Could be particularly beneficial to Newton's senior population, many of whom fall in this middle-income category • Housing options for this group are particularly constrained
#8: Incentives for Additional IZ Units	<ul style="list-style-type: none"> • Density bonus equal to 1 market-rate unit for each additional IZ unit provided above the number originally required by the IZ provisions • Expedited application and review procedures given to projects where the percentage of IZ units to be provided exceeds 30% of the total units in the project 	<ul style="list-style-type: none"> • Density bonus of 2:1 • For every additional IZ unit provided above the original number of required IZ units, the project will be awarded 2 additional market-rate units • Additional IZ units to be affordable to households at or below 80% AMI 	<ul style="list-style-type: none"> • To incentivize the building of additional IZ units • Current incentives provision is vastly underutilized
#9: Off-Site Development in lieu of constructing required IZ units on-site	<ul style="list-style-type: none"> • Allowed through a Special Permit when applicant enters into development agreement with non-profit housing developer • Off-site units must be completed no later than the market-rate units 	<ul style="list-style-type: none"> • Generally discouraged • But allowed through a Special Permit where City Council makes specific findings to unusual net benefit to allowing required IZ units to be built off-site • Applicant must enter into development agreement with non-profit housing developer • Off-site units must be completed and occupied no later than the market-rate units • Off-site units must provide an equivalent level of accessibility as 	<ul style="list-style-type: none"> • To favor the building of Inclusionary Units on-site • To provide for equivalent accessibility

		what would have been required if IZ units were to remain on-site	
#10: Elder Housing with Services	<ul style="list-style-type: none"> • Contribution = 2.5% of annual gross revenue calculation to be contributed to City • The City Council determines whether the contribution shall be residential beds or units or a cash payment 	<ul style="list-style-type: none"> • 5% of beds provided on-site must be designated affordable for elderly households at or below 80% AMI • Monthly housing plus base service costs not to exceed 80% of eligible household's annual gross income • Project may choose to make a cash payment to City in lieu of providing affordable beds on-site, without receiving a Special Permit from City Council to do so • Cash payment based on a formula that utilizes DHCD's current Qualified Action Plan Index for "Single Room Occupancy/Group Homes/Assisted Living/Small Unit Supportive Housing" within Metro Boston at the time of first application to the City (currently = \$259,000) 	<ul style="list-style-type: none"> • To simplify and clarify ordinance language and reduce confusion around current requirements • To provide clear guidance for determining Elder Housing with Services Inclusionary benefits • To provide an additional compliance methodology for projects of this type
#11: Effective Date	<ul style="list-style-type: none"> • N/A 	<ul style="list-style-type: none"> • The effective date of the new IZ ordinance will be a specified date after the amended ordinance is adopted by the City Council and signed by 	<ul style="list-style-type: none"> • To clarify which projects are subject to the requirements of the amended Inclusionary Zoning ordinance

		<p>the Mayor</p> <ul style="list-style-type: none"> The provisions of the amended ordinance will only apply to projects that receive a special permit (or a building permit in the case where a special permit is not required) after this effective date 	
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Required Inclusionary Units Table (Sec. 5.11.4.B.)

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%

Exploring an Additional Provision to Serve Extremely Low-Income Households

While not included in the proposed updated ordinance, staff is in the process of exploring an alternative compliance option for those rental projects that set aside a percentage of their total units for households with annual incomes at or below 30% AMI (extremely low-income individuals and households).

The concept, only in its nascent stage of research, would allow a project to reduce its overall inclusionary zoning requirement by five percentage points if at least 2.5% of its total units are designated for extremely low-income households. Additionally, the developer would be required to partner with a City-approved agency that specializes in providing supportive services for individuals and families in this income bracket. Tenant selection and on-site case management would be provided by this agency.

As we all know, it is extremely challenging to create housing for those households that fall in this extremely low-income tier, as such projects require a deep level of continued subsidy. However, the availability of a diverse array of affordable housing options for individuals at *all* ends of the income spectrum is a critical issue for the City of Newton, affecting the City's long-standing value as a welcoming community for people of all backgrounds. The introduction of such a provision in the City's Inclusionary Zoning ordinance could help to provide much needed housing for our City's most vulnerable individuals and families, whose housing options are incredibly constrained.

What is Inclusionary Zoning?

One of the most important purposes of Zoning is to ensure that the development of a community happens in a way that is consistent with identified public benefits and values; thus, zoning ordinances include provisions related to such issues as parking, environmentally sustainable design, and other development rules. Like many communities in Massachusetts and across the country, Newton strongly values an economically diverse community; within the City's Zoning Ordinance, the Inclusionary Zoning provisions support this value and require that new residential development includes opportunities for a mix of household incomes.

Inclusionary Zoning is a popular tool that is used by local governments across the country to leverage private development for the creation of affordable housing. While ordinances take many forms, a common structure is to require a percentage of units in a private development be rented or sold at affordable levels to low- and moderate-income households (usually households at or below 80% of the Area Median Income, AMI). A 2015 report by the Lincoln Institute of Policy identified more than 500 local ordinances in more than 27 states and the District of Columbia. Inclusionary Zoning is increasingly viewed as a critical tool for creating affordable housing in the face of declining federal funding, and to support housing opportunities in communities with strong schools, safe neighborhoods, and quality amenities, such as Newton.

Newton has a long history of supporting affordable housing production through private development; it was one of the first communities in the state and the nation to adopt an Inclusionary Zoning-like policy. In the last 1960's and early 1970's, the Board of Alderman required affordable units to be included as part of any project that required a special permit. In 1977, the City passed the "10% Ordinance," adopting its first form of Inclusionary Zoning, which has continued to evolve over the past 40 years.

In 2003, Newton increased its Inclusionary Housing percentage from 10% to 15% with an average affordability requirement of 65%. As it stands today, the ordinance applies to residential development requiring a special permit, including business or mixed-use development that includes residential, where there will be a net increase of two or more new dwelling units. However, due to the current interpretation of the ordinance, the Inclusionary Zoning requirements tends to only kick in when there is a net increase of six new dwelling units.

Affordable Housing Units Created Under Newton's Current Inclusionary Zoning Ordinance

The current version of the Inclusionary Zoning ordinance took effect on April 22, 2003. Since that time, building permits have been issued for approximately 117 affordable units restricted to households earning at or below 80% of the Area Median Income (AMI). Of those 117 units, 14 units were required as a result of the Inclusionary Zoning Ordinance, and the remaining 103 affordable units were approved through the 40B Comprehensive Permit process. Additionally, four projects received Special Permit approval to pay a fee-in-lieu of providing the units on site.

While only 14 affordable units have been constructed as a result of the Inclusionary Zoning ordinance since 2003, **240 more affordable units** are either under construction, permitted, or are in the process of receiving approval from the City Council.

Currently, there are a **total of 90 deed-restricted affordable units** under construction in Newton, connected to projects that received a Special Permit and were subject to the City's Inclusionary Zoning ordinance (57 units at or below 80% AMI, Tier 1 and Tier 2 units; and 33 middle-income units, Tier 3 units). It is important to note, however, that the 33 middle-income units were not required per the Inclusionary Zoning ordinance, as our current ordinance does not require those units.

There are an additional **25 deed-restricted affordable units** (at or below 80% AMI) connected to projects that have received a Special Permit, but have yet to begin construction; and another **125 deed-restricted affordable units** (at or below 89% AMI) connected to projects that have submitted a formal application to the City, but have yet to receive a Special Permit.

While it is not fully understood why there was such limited multifamily construction through the Special Permit process over the last fifteen years, staff hypothesizes that the City's development review process, coupled with an aggressive jump from a 10% to 15% IZ requirement created an environment where developers saw the Chapter 40B Comprehensive Permit process as a less expensive and more predictable path towards project approval. Additionally, there is no doubt that the housing recession played a major role in stifling multifamily development in Newton. Staff believes that post-recession, the market may have finally adjusted to the City's 15% IZ requirement, which may be one reason we are now seeing much greater Special Permit / multifamily activity throughout Newton.

A New Ordinance for Today's Newton

The availability of a diverse array of affordable housing options is a critical issue for the City of Newton, affecting the City's long-standing value as a welcoming community for people of all backgrounds, preventing City employees from being able to live in the community they serve, and hindering the ability of businesses of all types in the City to compete for employees.

On top of declining federal funds, the strength of Newton's (and greater Boston's) housing market in recent years has continued to shrink the available supply of affordable housing throughout the City, substantially widening the affordability gap for low- and moderate-income households seeking to live in Newton. Newton's 2016 *Newton Leads 2040 Housing Strategy* highlighted this trend, revealing that the City's demographic profile is rapidly shifting towards higher-income households, due in large part to high-value residential development and a limited supply of existing and new affordable housing units.

One of the ten Priority Actions to come out of the Housing Strategy was a recommendation that the City strengthen its Inclusionary Zoning ordinance in order to realize the greatest public benefit from private development taking place throughout Newton. As such, the Housing Strategy recommends raising the Inclusionary Housing requirement to as much as 20%. In 2015,

Mayor Warren docketed an item to increase the existing 15% minimum Inclusionary Housing provision and since that time staff has been working to amend and strengthen this ordinance to better meet the vast and diverse housing needs of Newton today.

Newton is not alone in considering an adjustment to its current Inclusionary Ordinance. In the past few years, Boston (2015), Cambridge (2017), and Somerville (2017) have all amended their Inclusionary Housing provisions to balance the growing need for affordable housing units in a rapidly appreciating and high-demand housing market. Cambridge increased its requirement from 11-13% to 20%; Somerville from 12.5-17.5% to 17.5% for smaller projects and 20% for larger projects; and Boston increased its payment-in-lieu requirements, and its requirement for off-site units from 15% to 18%. Wellesley's requirement has been at 20% since 2004.

In addition to proposing increases in the affordable housing requirement beyond 15%, Newton's 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 and more predictable roadmap for how the ordinance is to be applied in different circumstances.

Financial Feasibility Analysis

In an effort to design a new Inclusionary Zoning ordinance that would ensure that new housing development in Newton includes units for households of various income levels across the city, while not restraining development altogether, staff contracted with RKG Associates in early 2018 to determine the financial impact resulting from the proposed changes to the City's existing Inclusionary Zoning ordinance. The Financial Feasibility Analysis developed by RKG (found here: <http://www.newtonma.gov/civicax/filebank/documents/91410>) details the approach the consultants used to test the City's proposed ordinance changes, the results of their analysis, and their recommended modifications to the proposed ordinance to reduce the financial impacts of the ordinance on housing development so as to maintain financial feasibility.

To perform the analysis, RKG created a financial feasibility model based on traditional pro forma analysis standards for real estate development. The model focuses on Internal Rate of Return (IRR) calculations to determine financial feasibility. This measure is a standard approach to understanding the potential performance of a real estate investment. ***Boston area development industry minimum standards for a desired IRR are currently 20% for new construction ownership residential and 12% for rental residential projects.*** Generally, projects that do not achieve this IRR are not able to get financing.

Pro forma development modeling requires substantial market data to generate the model assumptions needed to calculate financial performance. The three primary data categories include: construction/development data; revenue/expenditure data; and finance/investment data. RKG used several tools to gather both local and regional data, including interviews with several for-profit and non-profit residential developers and commercial lending bank professionals, the City Assessors database, current rent rates and sales prices throughout

Newton, and nationally recognized secondary data sources, such as Marshall & Swift Valuation Services.

RKG's modeling efforts compared the financial performance of seven distinct residential development scenarios under the City's existing Inclusionary Zoning ordinance against the financial performance of those same scenarios under the proposed IZ ordinance. The results were compared to understand the impact of the proposed ordinance on the financial feasibility of each scenario. The seven development scenarios reflected various small, medium and large-scale ownership and rental development projects that may occur in Newton. The financial model calculated the basic go/no-go decision a developer must make about a potential project, which usually comes down to overall financial return and risk exposure. If there is confidence that the desired returns will be reached, then the project will be pursued, otherwise the project will not be undertaken.

While the full report provides greater detail around the results generated by each of the seven model scenarios, the following is a summary of the key findings from the financial analysis:

- **Project size (number of units in a project) matters.** The addition of an affordable unit or a required payment-in-lieu can have an outsized impact on the overall financial return of a project and can quickly render a project infeasible. Small-scale developers have greater sensitivity to changes in their development program due to their inability to spread the cost of an affordable unit or a payment-in-lieu of a unit across several market-rate units.
- **The proposed IZ percentage requirements for medium size projects (7-20 units) appear to be calibrated correctly.** For projects with 10-20 new units, the proposed percentage requirements result in more affordable units for the City, while returning an acceptable financial outcome to the developer. The increase in affordable unit requirements is offset by the introduction of Tier 3, middle-income units (81%-110% AMI). *(It is important to note, however, that RKG was only asked to test one scenario in the 10-20 new units category: a 20-unit rental project. While the financial return for this scenario under the proposed ordinance comes out positive, the majority of scenarios in this category do not. Staff tested multiple scenarios for this project size category and found that the proposed IZ requirements were too great for most of the projects to be financially acceptable. Had more scenarios been run in this project size category as part of the RKG analysis, it is likely that the consultants would not have come to the same conclusion about the proposed ordinance for this category of projects).*
- **The proposed IZ percentage requirements for large size projects (20+ units) have a negative impact on the overall financial return of a prototypical development and are financially infeasible for the developer.** The key issues for these large size projects are the 25% IZ requirement (10% higher than the existing IZ ordinance) and the introduction of Tier 1 units (at or below 50% AMI).

- **The proposed density bonus of 2 additional market-rate units for every 1 additional inclusionary unit is not sufficient enough to offset the requirement that each additional inclusionary unit be designated at Tier 1 (50% AMI), nor does it help to make these larger projects financially viable.** Even applying a hypothetical three-to-one ratio does not yield a positive result for these projects.

After thorough review and consideration of the Financial Feasibility Analysis developed by RKG, staff reworked its Inclusionary Zoning Ordinance proposal from 2017 to reflect findings from this report. We sought to create an updated ordinance that does not stifle residential development, but rather, strikes a careful balance between the City's vast need for affordable housing and the nuanced economics of housing development. This updated proposal, as outlined in this memo, works to realize the greatest public benefit from private residential development occurring throughout Newton.

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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
Multiplied by	
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: $0.175 \times 18 \text{ units} = 3.15$
- $3.15 \times \$389,000$
- = **\$1,225,350 total cash payment**

➤ **36-unit ownership project**

- 17.5% Total IZ percentage requirement: $0.175 \times 36 \text{ units} = 6.3$
- $6.3 \times \$389,000 =$ **\$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:
 - $4.25 \times \$259,000 = \underline{\$1,100,750 \text{ total cash payment}}$

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)*].



Ruthanne Fuller
Mayor

City of Newton, Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459

Telephone
(617) 796-1120
Telefax
(617) 796-1142
TDD/TTY
(617) 796-1089
www.newtonma.gov

Barney S. Heath
Director

City of Newton

Inclusionary Zoning Ordinance Guidebook

(as of staff's most current updated proposal – 11/9/18)

1) What is Inclusionary Zoning?

Inclusionary Zoning is a popular tool used by local governments across the country to leverage private development for the creation of affordable housing. While ordinances take many forms, a common structure is to require a percentage of units in a private development be rented or sold at affordable levels to low- and moderate-income households (usually households at or below 80% of the Area Median Income, AMI).

2) When is a project subject to the Inclusionary Zoning ordinance provisions?

All residential and mixed-use developments that contain the construction or substantial reconstruction of 7 or more residential units are subject to the City's IZ provisions, regardless of the necessary approval process for that project. Existing residential units that are proposed to be demolished as part of a development are not considered in the inclusionary zoning requirement calculation.

Examples:

- A developer proposes to build a large multifamily development on two contiguous parcels. The project contains the construction of 20 new units, in four different buildings. There is an existing four-family building on one of the parcels, which the developer plans to demolish. This proposed development would be subject to the Inclusionary Zoning ordinance, based off a total of 20 units.
- A developer proposes to build a small multifamily development, containing the construction of 7 units in two different buildings. There is an existing two-family building on site, which the developer plans to demolish. This proposed development would be subject to the Inclusionary Zoning ordinance, based off a total of 7 units.

3) What is the Inclusionary Zoning requirement for projects subject to this ordinance?

The Inclusionary Zoning requirement is based on the total number of units proposed for a development and whether it is a rental or ownership project. The percentage of required inclusionary units to be built on site is divided into three affordability tiers: Tier 1 are units affordable to

households with annual gross incomes at or below 50% of the area median income (AMI); Tier 2 are units affordable to households with annual gross incomes greater than 50% AMI, but at or below 80% AMI; and Tier 3 are units affordable to households with annual gross incomes greater than 80% AMI, but at or below 110% AMI (middle-income units).

Where the IZ requirement results in a fraction of a unit greater than or equal to 0.5, the developer must build one inclusionary unit to capture that fraction.

Where the inclusionary zoning requirement results in a fraction of a unit less than 0.5, the developer may choose to provide one inclusionary unit to capture that fraction. Alternatively, the developer may contribute a fractional cash payment to the City to cover the fraction of that inclusionary unit requirement.

Tier 1 and Tier 2 inclusionary units must be qualified as ‘Local Action Units’ pursuant to the requirements of the Comprehensive Permit Guidelines of the DHCD and, therefore, must be SHI-eligible units. All projects subject to the Inclusionary Zoning requirements must enter in 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. These affordable housing covenants must be recorded in the Registry of Deeds and will endure for the life of the residential development.

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

Number of Inclusionary Units Required												
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%

Number of Inclusionary Units Required: Project Examples												
Tier Level	7 units		16 units		24 units		47 units		78 units		225 units	
	Rental	Owner	Rental	Owner	Rental	Owner	Rental	Owner	Rental	Owner	Rental	Owner
Tier 1, up to 50% AMI	0	0	0	0	1	0	0	0	2	0	6	0
Tier 2, 51%-80% AMI	1	1	3	1	2	2	1	4	8	8	28	28
Tier 3, 81%-110% AMI	0	0	0	2	1	2	7	5	4	6	6	11
Total	1	1	3	3	4	4	8	9	14	14	40	39

Examples:

➤ **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
- 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
- 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

4) What is the “Area Median Income” in Newton and what does 50% AMI, 80% AMI, and 110% AMI mean?

Area Median Income, or “**AMI**” as it is referred to regularly, is the median family income, adjusted for household size, within a given metropolitan or non-metropolitan area, updated annually by the U.S. Department of Housing and Urban Development (HUD) and used to determine eligibility for most housing assistance programs.

For Newton, the HUD Area Median Family Income (HAMFI) is based on the Boston-Cambridge-Quincy, MA-NH HUD Metro FMR (Fair Market Rent) Area Median income:

- **\$107,800**, or 100% AMI for a family or household of 4 persons, as detailed below in the FY 2018 Income Limits Summary Table for Newton, MA¹

50% AMI refers to a Low-Income Household whose annual gross income is at or below 50% of the area median income. In Newton, a household with 3 persons with an annual gross income at or below \$48,550 would be eligible for a housing unit designated at 50% AMI, as detailed in the table below.

80% AMI refers to a Moderate-Income Household whose annual gross income is greater than 50% AMI, but at or below 80% of the area median income (also referred to as 51%-80% AMI). In Newton, a household with 5 persons with an annual gross income at or below \$87,600 would be eligible for a housing unit designated at 80% AMI.

110% AMI refers to a Middle-Income Household whose annual gross income is greater than 80% AMI, but at or below 110% of the area median income (also referred to as 81%-110% AMI). In Newton, a household with 4 persons with an annual gross income at or below \$118,580 would be eligible for a housing unit designated at 110% AMI.

At times, these middle-income units are also referred to as Workforce Housing. HUD defines Workforce Housing as housing affordable to households earning between 80% and 120% AMI. The Massachusetts Housing Finance Agency (MassHousing), however, defines Workforce Housing as units affordable to households with incomes greater than 60% AMI and up to 120% AMI.

¹ FY 2018 Income Limits Documentation System, Newton City FY 2018 Income Limits Summary:
<https://www.huduser.gov/portal/datasets/il/il2018/2018summary.odn>

FY 2018 Income Limits Summary - Newton, MA						
Income Level	Household Size					
	1	2	3	4	5	6
50% AMI	\$37,750	\$43,150	\$48,550	\$53,900	\$58,250	\$62,550
80% AMI	\$56,800	\$64,900	\$73,000	\$81,100	\$87,600	\$94,100
100% AMI	\$75,500	\$86,300	\$97,100	\$107,800	\$116,500	\$125,100
110% AMI	\$83,050	\$94,930	\$106,810	\$118,580	\$128,150	\$137,610

5) When is a project that is subject to the Inclusionary Zoning ordinance allowed to make a cash payment to the City in lieu of building inclusionary units on site?

Developments with 7-9 units may choose to make a cash payment to the City in lieu of building the inclusionary units on site, without receiving permission from the City Council through the Special Permit process.

For projects that fall outside of the 7-9 units category, payments-in-lieu are only allowed through the Special Permit process where the City Council makes specific findings to an “unusual net benefit to allowing a fee rather than the inclusionary units.”

For projects where the inclusionary zoning requirement results in a fraction of a unit less than 0.5, the developer may contribute a fractional cash payment to the City to cover the fraction of that inclusionary unit requirement, without receiving permission from the City Council through the Special Permit process.

6) How are cash payments determined for projects that are allowed or receive permission to make such payments to the City?

The total cash payment is determined by utilizing the most current Massachusetts Department of Housing and Community Development’s (DHCD) Qualified Allocation Plan’s (QAP) “Total Residential Development Cost Limits” Index:²

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

These Total Residential Development Cost Limits are published annually through the Commonwealth of Massachusetts Department of Housing and Community Development’s Low Income Housing Tax Credit Program Qualified Allocation Plan.³ The cost limits reflect project type and location and are based on the Massachusetts Housing Partnership’s (MHP) extensive research on behalf of DHCD.⁴

² From the Commonwealth of Massachusetts Department of Housing and Community Development’s Low Income Housing Tax Credit Program 2018-2019 Qualified Allocation Plan, Appendix C, <https://www.mass.gov/files/documents/2018/04/26/20182019QAP.pdf>

³ DHCD is the Massachusetts allocating agency for the Low Income Housing Tax Credit (LIHTC) program, which has helped support the production or preservation of over 67,000 affordable multifamily rental units since the program’s beginnings

For projects with 7-9 new units, the total cash payment is determined by utilizing \$389,000 as the basis for the calculation. The payment is then adjusted for the number of new units in the project, at a decreasing percentage.

Examples:

- 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

For projects with 10 or more new units, which have received permission from the City Council to make a cash payment to the City in lieu of building the inclusionary units requirement on site, the total cash payment is determined by utilizing \$389,000 per unit as the basis for the calculation. The payment is then adjusted based on the total percentage requirement for a project of that size and type (rental versus ownership), as detailed in 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
Multiplied by	
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
note: QAP = DHCD's Qualified Allocation Plan, as updated annually by DHCD	

Examples:

- 18-unit rental project
 - 17.5% total IZ percentage requirement: $0.175 \times 18 \text{ units} = 3.15$
 - $3.15 \times \$389,000 = \underline{\$1,225,350 \text{ total cash payment}}$
- 36-unit ownership project
 - 17.5% total IZ percentage requirement: $0.175 \times 36 \text{ units} = 6.3$
 - $6.3 \times \$389,000 = \underline{\$2,450,700 \text{ total cash payment}}$
- 88-unit rental project
 - 17.5% IZ requirement: $0.175 \times 88 \text{ units} = 15.4$
 - $15.4 \times \$389,000 = \underline{\$5,990,600 \text{ total cash payment}}$

For projects that choose to make a fractional cash payment, the fractional cash payment is equal to 5% of \$389,000, 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.

in 1987. Each year, the state allocating agency for the Low Income Housing Tax Credit is required to publish a plan describing how it intends to award the credit, including selection criteria for projects receiving tax credit allocations.

⁴ To develop these cost limits, MHP researched the costs of hundreds of rental projects over a four-year timeframe in DHCD's and MHP's portfolio, and assessed multiple variables, including the cost of production versus preservation; family housing versus senior housing or special needs housing; regional variations in cost; and variations based on construction type. The cost limits, first introduced into DHCD's 2017 tax credit QAP, apply to all rental housing funded by the Massachusetts public lenders. The cost limits are to be reviewed annually and will be part of the Massachusetts public lenders' ongoing efforts to manage costs.

Example:

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

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

7) Are projects that consist of 100% deed-restricted affordable units subject to the Inclusionary Zoning ordinance provisions?

The short answer is no. Such projects are not required to comply with the prescribed percentage requirements per income level, as detailed in Section 5.11.4.B. of the ordinance – “Number of Inclusionary Units Required.” However, projects that are 100% deed-restricted affordable are still subject to all other sections of the ordinance. For instance, such projects are required to submit an Inclusionary Housing Plan and an Affirmative Fair Housing Marketing and Resident Selection Plan for review and approval by the Director of Planning and Development, and are subject to a Regulatory Agreement and Use Restrictions, which shall endure for the life of the development, and shall be recorded at the Registry of Deeds.

Examples:

- 24-unit rental project at 100% Tier 3 (81%-110% AMI)
 - This project would not be required to provide any units at Tier 1 or Tier 2
- 78-unit rental project at 85% Tier 3 and 15% Tier 2
 - This project would not be required to provide any units at Tier 1

8) Are “Elder Housing with Services” projects subject to the Inclusionary Zoning ordinance provisions?

Yes. However, such projects fall slightly outside of the Inclusionary Zoning requirements associated with all other residential and mixed-used developments that are subject to the provisions of the IZ ordinance.

The Inclusionary Zoning ordinance defines this type of project as housing with services designed primarily for elders, such as residential care, continuing care retirement communities, assisted living,

independent living, and congregate care. The ordinance does not apply to nursing homes subject to regulations by the state of Massachusetts Department of Public Health. Nor does the ordinance apply to Elder Housing with Services projects that are 100% deed-restricted, affordable.

Under the Inclusionary Zoning ordinance, 5% of the total number of beds provided as part of an Elder Housing with Services project must be affordable for seniors age 62 or older whose annual gross incomes are at or below 80% AMI. Where the IZ requirement results in a fraction of a unit greater than or equal to 0.5, the developer must provide one inclusionary bed to capture that fraction.

Inclusionary beds may be located in single-occupancy rooms or in shared rooms; must be proportionately distributed throughout a project; and must be indistinguishable from the market-rate beds.

The total monthly housing costs, inclusive of base services, must not exceed 80% of the eligible senior's annual gross income. The services provided to these residents must be comparable to the base services offered to all residents, regardless of income status, and may include long-term health care, nursing care, home health care, personal care, meals, transportation, convenience services, and social, cultural and educational programs.

Alternatively, Elder Housing with Services projects may choose to meet their Inclusionary Zoning requirement through a payment-in-lieu, without receiving permission from the City Council through the Special Permit process. The total cash payment for projects of this type is determined by utilizing DHCD's Qualified Allocation Plan Index for "Single Room Occupancy / Group Homes / Assisted Living / Small Unit Supportive Housing" of \$259,000, coupled with the calculation of 5% of the total number of beds provided in the project.

Examples:

- 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:
 - $5.75 \times \$259,000 = \underline{\$1,489,250 \text{ total cash payment}}$
- 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:
 - $4.25 \times \$259,000 = \underline{\$1,100,750 \text{ total cash payment}}$

9) What happens to the cash payments made to the City's Inclusionary Zoning Fund? How are these funds used, and by whom?

These cash payments are deposited into the City's Inclusionary Zoning Fund, which is distributed equally between the Newton Housing Authority (NHA) 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 incomes at or below 80% AMI.

Appropriation of the funds for use by the City or the Newton Housing Authority must first be approved by the Mayor and then the City Council.

10) Does the City provide an incentive to developers that provide more affordable units than what is required by the Inclusionary Zoning ordinance?

Yes. If a project that is subject to the Inclusionary Zoning provisions includes more than its required number of inclusionary units, a bonus of additional market-rate units will be offered to the project at a ratio of 2 to 1: for every additional affordable unit proposed, the project will be allowed to include 2 additional market-rate units. The additional affordable units must be set at no more than 80% AMI (Tier 2 units), and the number of additional units shall not exceed 20% of the number of units otherwise allowed on the lot under lot area per dwelling unit requirements.

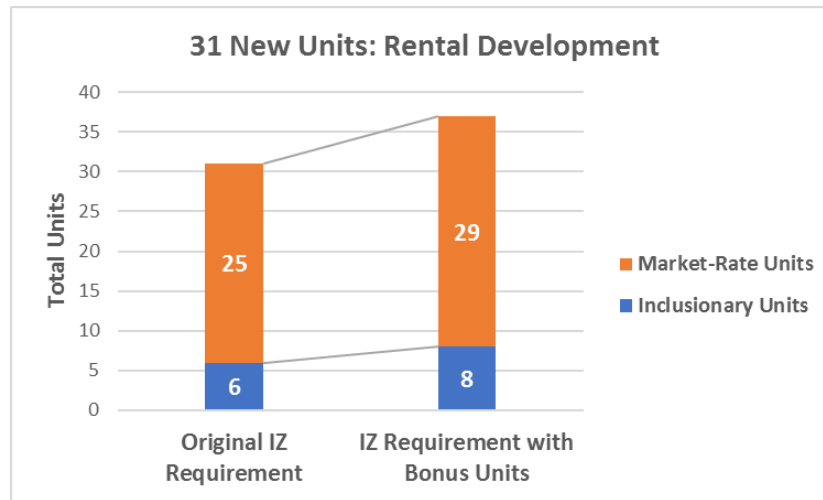
Examples:

- A developer proposes to build a multifamily rental development, containing a total of 31 units; therefore, the total IZ requirement for the development would be 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 affordable 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 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; for a project that is now 21.6% affordable)

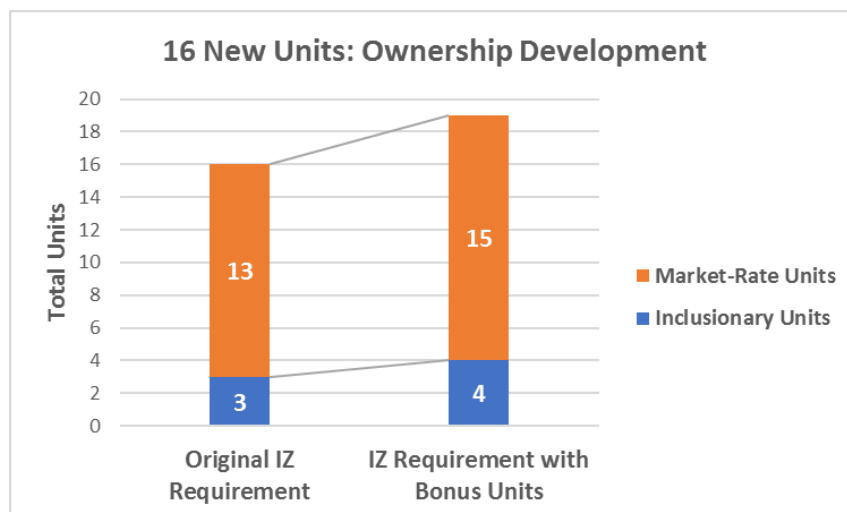
Note: the total number of additional units allowed for a project originally consisting of 31 new units is 6; $20\% \times 31 = 6.2$; for a total of no more than 37 total new units, as the example demonstrates.



- A developer proposes to build a multifamily ownership development, containing a total of 16 units; therefore, the total IZ requirement for the development would 3 inclusionary units: 13 market-rate units and 3 inclusionary units:
- 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

The developer then chooses to provide 1 additional affordable Tier 2 units, which provides the project with 2 additional market-rate units, for a total of 3 additional units. The project now includes 19 total units: 15 market-rate units and 4 inclusionary units:

- 0 units at Tier 1
- 2 units at Tier 2
- 2 units at Tier 3
- = 4 total inclusionary units (out of 19 total units; for a project that is now 21% affordable)



11) How do the inclusionary units in a development differ from the market-rate units in terms of design, construction, location, accessibility, and amenities?

The inclusionary units in a development must be indistinguishable from the market-rate units as viewed from the exterior, and the inclusionary units must contain complete living facilities, including a stove, kitchen cabinets, plumbing fixtures, a refrigerator, a microwave, and access to laundry facilities. The materials used and the quality of construction for the inclusionary units, including heating, ventilation, and air conditioning systems, must be equal to that of the market-rate units.

The bedroom mix of the inclusionary units must be equal to that of the market-rate units. The inclusionary units must be equivalent in size to that of the market-rate units, and the inclusionary units must meet the following minimum square footage and bathroom requirements, as required by DHCD's most current Comprehensive Permit Guidelines:

- 1 bedroom – 700 square feet / 1 bath
- 2 bedrooms – 900 square feet / 1 bath
- 3 bedrooms – 1200 square feet / 1 bath + 1 half bath
- 4 bedrooms – 1400 square feet / 2 baths

The inclusionary units, and their associated parking spaces, must be proportionately distributed throughout a project and must not be located in less desirable locations than the market-rate units.

At a minimum, the inclusionary units must have an equivalent level of accessibility to that of the market-rate units.

The inclusionary units must have equal access to all amenities that are offered to the market-rate units in a project, such as parking, onsite fitness center, laundry facilities, and community rooms.

12) How are the rents and sale prices for the inclusionary units in a project determined?

The total monthly housing costs associated with an inclusionary unit must not exceed 30% of the gross monthly income for the eligible household living in that unit.

Total monthly housing costs for rental units include rent, utility costs for heat, water, hot water, and electricity, one parking space, and access to all amenities that are typically offered to a tenant in the development, such as access to an onsite fitness center, laundry facilities, etc.

Total monthly housing costs for ownership units include the mortgage principal and interest, private mortgage insurance, property taxes, condo and/or homeowner's association fees, hazard insurance, and one parking space.

Step One:

The first step in calculating an inclusionary unit's maximum affordable rent or sale price is to identify the number of bedrooms in that unit. The rent or sale price is based on the number of household

members equal to the number of bedrooms in a unit plus one, regardless of the actual number of persons that end up occupying the unit.

Example:

- A 2-bedroom apartment's maximum affordable rent is based on a household size of 3 persons
 - 2 bedrooms + 1 = 3 person household

Step Two:

Secondly, the appropriate gross annual Income Limit for that unit, adjusted for the associated household size, must be identified. HUD publishes these limits on an annual basis, and the FY 2018 Income Limits Summary Table for Newton, MA⁵ is provided below.

FY 2018 Income Limits Summary - Newton, MA						
Income Level	Household Size					
	1	2	3	4	5	6
50% AMI	\$37,750	\$43,150	\$48,550	\$53,900	\$58,250	\$62,550
80% AMI	\$56,800	\$64,900	\$73,000	\$81,100	\$87,600	\$94,100
100% AMI	\$75,500	\$86,300	\$97,100	\$107,800	\$116,500	\$125,100
110% AMI	\$83,050	\$94,930	\$106,810	\$118,580	\$128,150	\$137,610

Examples:

- The income limit for a 2-bedroom apartment set at 50% AMI (3 person household size) is \$48,550.
 - This means that only those households with annual gross incomes at or below this limit would be eligible for this housing unit
- The income limit for a 3-bedroom apartment set at 110% AMI (4 person household size) is \$118,580.
 - This means that only those households with annual gross incomes at or below this limit would be eligible for this housing unit

Step Three – Rental Units:

Once the gross annual Income Limit associated with an inclusionary rental unit is determined, the maximum affordable annual rent can be easily determined by calculating 30% of that Income Limit and dividing by 12 to determine the maximum affordable monthly rent for an eligible household.

The table below demonstrates how the maximum gross rent for a 50% AMI unit is calculated.

⁵ FY 2018 Income Limits Documentation System, Newton City FY 2018 Income Limits Summary:
<https://www.huduser.gov/portal/datasets/il/il2018/2018summary.odn>

2018 Calculation of Maximum Affordable Rent - 50% AMI (all utilities included in rent)				
Unit Type	Household Size (# of BR + 1)	50% of Adjusted Median Family Income*	Monthly Income	Maximum Gross Rent (30% of income)
Studio	1	\$ 37,750.00	\$ 3,145.83	\$ 943.75
1 BR Unit	2	\$ 43,150.00	\$ 3,595.83	\$ 1,078.75
2 BR Unit	3	\$ 48,550.00	\$ 4,045.83	\$ 1,213.75
3 BR Unit	4	\$ 53,900.00	\$ 4,491.67	\$ 1,347.50
4 BR Unit	5	\$ 58,250.00	\$ 4,854.17	\$ 1,456.25
5 BR Unit	6	\$ 62,550.00	\$ 5,212.50	\$ 1,563.75

The following table is a summary of the 2018 Maximum Affordable Rents for the City of Newton, broken out by Unit Type and AMI level.

2018 Maximum Affordable Rents, City of Newton (all utilities included in rent)				
Unit Type	Household Size (# of BR + 1)	50% AMI	80% AMI	110% AMI
Studio	1	\$ 943.75	\$ 1,420.00	\$ 2,076.25
1 BR Unit	2	\$ 1,078.75	\$ 1,622.50	\$ 2,373.25
2 BR Unit	3	\$ 1,213.75	\$ 1,825.00	\$ 2,670.25
3 BR Unit	4	\$ 1,347.50	\$ 2,027.50	\$ 2,964.50
4 BR Unit	5	\$ 1,456.25	\$ 2,190.00	\$ 3,203.75

Step Three – Ownership Units:

Once the gross annual Income Limit associated with an inclusionary ownership unit is determined, the maximum affordable sale price must be set so that a household earning 10 percentage points lower than the identified Income Limit for that unit would not spend more than 30% of its annual income on housing costs. For example, if an inclusionary unit is set at 80% AMI, the maximum sale price for that unit must be affordable for a household with an annual gross income of less than or equal to 70% AMI.

The down payment for the unit must be at least 3% of the purchase price. The 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.

Below is an example of a maximum affordable sale price calculation for a 2-bedroom condo unit set at 80% AMI (for a 3 person household). The max sale price for this inclusionary unit would be \$222,000.

2018 Max Affordable Sale Price Calculator					
Ex: 2-bedroom affordable condo set at 80% AMI					
		80% AMI Limit		70% AMI Limit	
Sales Price		\$253,000		\$222,000	
5% Down payment		\$12,650		\$11,100	
Mortgage		\$240,350		\$210,900	
Interest rate		4.83%		4.83%	
Amortization		30		30	
Monthly P&I Payments		\$1,265.40		\$1,110.35	
Tax Rate		\$10.82		\$10.82	
monthly property tax		\$228		\$200	
Hazard insurance		\$84		\$74	
PMI		\$156		\$137	
Condo/HOA fees (if applicable)		\$84		\$74	
Monthly Housing Cost		\$1,818		\$1,596	
Necessary Income:		\$72,736		\$63,824	
Household Income:					
# of Bedrooms		2		2	
Sample Household size		3		3	
110% AMI Limit		\$100,375		\$100,375	
Target Housing Cost (110% AMI)		\$2,509		\$2,509	
10% Window		\$91,250		\$91,250	
Target Housing Cost (100% AMI)		\$2,281		\$2,281	
80% AMI/"Low-Income" Limit		\$73,000		\$73,000	
Target Housing Cost (80%AMI)		\$1,825		\$1,825	
10% Window		\$63,875		\$63,875	
Target Housing Cost (70%AMI)		\$1,597		\$1,597	

The following table is a summary of the 2018 Maximum Affordable Sale Prices for the City of Newton, broken out by Unit Type and AMI level.

2018 Maximum Affordable Sales Prices, City of Newton					
Unit Type	Household Size (# of BR + 1)	70% AMI	80% AMI	100% AMI	110% AMI
Studio	1	\$ 172,000	\$ 197,000	\$ 247,000	\$ 271,000
1 BR Unit	2	\$ 197,000	\$ 225,000	\$ 282,000	\$ 310,000
2 BR Unit	3	\$ 222,000	\$ 253,000	\$ 315,000	\$ 349,000
3 BR Unit	4	\$ 246,000	\$ 282,000	\$ 352,000	\$ 387,000
4 BR Unit	5	\$ 266,000	\$ 304,000	\$ 374,000	\$ 418,000

13) When is a project that is subject to the Inclusionary Zoning ordinance allowed to provide its inclusionary units requirement off site, at an alternative project site?

Off-site inclusionary units are generally discouraged by this ordinance, and are only allowed through the Special Permit process where the City Council makes specific findings to an “unusual net benefit to achieving the City’s housing objectives as a result of allowing the required units to be built off-site.”

Projects that receive such permission from the Council must form a development agreement with a non-profit housing developer for the development of the off-site affordable units. Off-site units must be completed and occupied no later than the project’s market-rate units and must provide an equivalent level of accessibility as what would have been provided if the required IZ units were to remain on-site.

14) What happens after an Inclusionary Housing project receives approval to move forward?

Prior to receiving a Building Permit from the City, the developer must submit a draft Inclusionary Housing Plan for review and final approval by the Director of Planning and Development. The plan must include, among other elements, a description of the proposed project, the total number of market-rate and inclusionary units, floor plans indicating the location, size and number of bedrooms and bathrooms per unit for all the units in the project, and the projected rent levels and sale prices for all the units.

Additionally, the developer must also submit a draft Affirmative Fair Housing Marketing and Resident Selection Plan for review and final approval by the Director of Planning and Development. At a minimum, this plan must meet the requirements set out in the Comprehensive Permit Guidelines of the DHCD, and provide for a Newton local preference for up to 70% of the inclusionary units in a project.

15) How are inclusionary units marketed and occupied?

The inclusionary units must be marketed and occupied consistent with the City and DHCD (or the relevant Subsidizing Agency) approved Affirmative Fair Housing Marketing and Resident Selection Plan. Marketing may not take place for **any** units in the project until the City and DHCD have approved this plan.

The developer is responsible for carrying out this plan, and must contract with an entity that has substantial and successful prior experience in each component of the Affirmative Fair Housing Marketing and Resident Selection Plan.

To avoid discriminatory effects in violation of fair housing laws, resident selection for the inclusionary units must comply with DHCD’s approved lottery process for both the local preference and non-local preference units. The lottery process usually commences about six months prior to expected occupancy of the units.

The inclusionary units and market-rate units of a project must be occupied at the same time.