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Barney S. Heath
Director

MEMORANDUM

DATE: June 21, 2019

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: **#188-19** DIRECTOR OF PLANNING requesting amendments to the Inclusionary Zoning provisions of Chapter 30, Newton Zoning Ordinance, to apply the requirements to any project including seven or more residential units; to increase the required percentage of affordable units for projects of a certain size; to require that some affordable units be designated for middle-income households for projects of a certain size; to create a new formula for calculating payments in lieu of affordable units and fractional cash payments; to waive certain inclusionary zoning requirements for 100% deed-restricted affordable developments; to add an alternative compliance option for projects that provide units and support services for extremely low-income households; to revise the Elder Housing with Services inclusionary requirements based on the type of proposed facility; and to clarify and improve the ordinance with other changes as necessary.

MEETING DATE: June 24, 2019

CC: Jonathan Yeo, Chief Operating Officer
Jonah Temple, Assistant City Solicitor
Andrew Lee, Assistant City Solicitor
Planning & Development Board
Newton Housing Partnership
City Council

This memo provides staff's responses to the questions and comments (in bold below) raised by Councilors, Planning & Development Board members, and the public during the Public Hearing held on June 10th.

1.) The proposal is using the terms affordable housing and is also using Tiers. The different levels of affordability should be defined as middle-income (80%-110% AMI), low-income (50%-80% AMI) and extremely low-income housing (30% AMI).

The Planning Department believes that the proposed ordinance strongly defines and differentiates between the different levels of affordability included in the ordinance and their related "Tiers." Section 5.11.2. "Definitions" provides specific definitions for the many terms used throughout the ordinance, including:

- Deed-Restricted Affordable Unit(s)
- Extremely Low-Income (ELI) Unit(s)
- Inclusionary Unit(s)
- Tier 1 Unit(s)
- Tier 2 Unit(s) – for which the definition states that Tier 2 Units are also known as "Middle-Income Units"

Given that the terms "extremely low-income," "low-income," and "middle-income" are interpreted in different ways depending on the program and use of the terms, staff does not recommend changing the way the proposed ordinance reads in terms of its definitions and identification of affordability levels and associated Tiers. We believe the proposal represents the cleanest and most effective way of identifying the different requirements associated with the ordinance.

2.) 40% AMI has been left out and there is no definition, but Newton could create one to clarify this for developers.

The ordinance does not attempt to provide a scenario for every level of affordability below 110% AMI. Rather, we created a Tier system and an ELI Alternative Compliance Option specifically to provide for a greater range of deed-restricted affordable units. The proposed ordinance, however, does state in Section 5.11.4.E. that an "Inclusionary Housing Project may set the sale price or rental rate for Inclusionary Units lower than what is required herein." There is nothing precluding a project from utilizing the 40% AMI limit for its Inclusionary Units.

3.) Section 5.11.3.D. "100% Deed-Restricted Affordable Developments" states that projects that consist of 100% deed-restricted affordable units up to 110% AMI are not subject to the Number of Inclusionary Units Required tables included in Section 5.11.4.B, but are subject to all other applicable provisions of the Inclusionary Zoning ordinance. If the City is going to tell developers they do not have to adhere to some rules, that should only be for the units up to 80% AMI. The City needs to do all that can be done to get developers to go to 50% AMI.

While not included in the proposed ordinance provided to the committee on June 7th, staff recommends that for projects of this type (100% affordable units at or below 110% AMI), all units in the project must average no more than 95% of AMI. While there is clearly a need for affordable housing in Newton at the lowest income levels, this provision, we believe, may help to encourage the development community to consider projects that serve Newton's shrinking middle-income population, helping to diversify the array of housing options present throughout the city. Staff agrees that the City should continue to do all it can to create units at or below 50% of AMI.

The proposed provision is designed to encourage the creation of 100% deed-restricted affordable projects across low, moderate, and middle-income tiers. This provision could be particularly beneficial to Newton's senior population, many of whom fall into this middle-income category. Housing options for this group are particularly constrained, as their annual income is too high to qualify for the majority of subsidized housing (reserved for households at or below 80% AMI), but too low to afford the limited supply of senior-friendly apartments and condominiums throughout Newton that are priced at market-rate and above. Additionally, the introduction of greater middle-income units throughout the city could also help to slow the rapid pace of escalating rents at all income levels.

This provision does not simply favor 100% middle-income projects. Any project that includes 100% deed-restricted affordable units at any level of affordability, regardless of their tier, would not be required to comply with the prescribed percentage requirements of the proposed IZ ordinance. Staff believes that such a provision provides additional incentive for developers to propose and build housing in Newton at a diversity of income levels, a need that exists across the city.

4.) Section 5.11.6 refers to the off-site affordable units. More specificity is needed in the conditions under which the City Council would allow off-site units. The offsite requirements should not apply for projects already in process. There should be some exemptions if a developer can partner with a non-profit.

Staff believes Section 5.11.6. "Off-Site Development" provides ample specificity in terms of the conditions under which the City Council would allow off-site units. The proposed ordinance states that 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." The ordinance goes on to state that 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;
- An increase in the number of Inclusionary Units or an increase in the percentage of Tier 1 units from the amount otherwise required; and
- Consideration for the purposes of the IZ ordinance.

The proposed ordinance specifies that any Inclusionary Housing Project that includes off-site units must enter into a development agreement with a non-profit housing developer for the development of the off-site units.

5.) There is language that says the development has to show that the tenants have the opportunity to advance economically. Not sure what that means, and more guidance is needed.

Staff believes this question is referring to Section 5.11.1.D., under the “Purposes” section. This particular purpose states, “The purpose of this Section 5.11 is to 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.” This statement does not require that a particular development provide a tenant with the opportunity to advance economically, but rather that one of the many purposes of this ordinance is to provide the potential for low- to moderate-income individuals and households to succeed by providing housing at a permanently affordable percentage of their household income.

6.) Section 5.11.3.F. language might contradict DHCH rules. It says that the 80%-100% units could be local action units – should these units be defined in that way?

The proposed ordinance states that Tier 2 Units (81% - 110% AMI / Middle-Income Units) must be **consistent**, where applicable, with DHCD’s requirements for Local Action Units; whereas the ordinance states that Tier 1 Units (at or below 80% AMI) must be **qualified** as Local Action Units.

Per DHCD, only those deed-restricted units at or below 80% of AMI are eligible to be Local Action Units; therefore, Tier 2 Units cannot be qualified as Local Action Units. The intention of this section in the proposed ordinance is to impose similar regulations, where applicable, on the Middle-Income Units as those required of the Tier 1 Units (e.g. the requirement for an Affirmative Fair Housing Marketing & Resident Selection Plan, an Affordable Housing Deed Restriction, etc.).

7.) For the ELI Alternative Compliance Option, will tenants be required to participate in the support services that the developers provide, and if they do not will there be any kind of penalty to them? HUD encourages supportive services, but they do not require participation.

This question will be answered on a case-by-case basis, given the specifics of the proposed project and corresponding Resident Selection and Supportive Services Plan for the ELI Units, which must be reviewed by the Director of Planning and Development prior to submission for review and approval by the City Council as part of the special permit process.

8.) Section 5.11.9. Public Funding Limitation. The public development funds subsidy definition under 760 CMR 56 includes only state and federal funds and not any local funds such as CPA and city allocated HOME and CDBG funds. These local resources should also be included as public development funds. This seems like a minor cautionary thing to add.

Staff has made this change in the proposed ordinance.

9.) Why was the 4-6 unit development IZ requirement dropped?

The addition of an affordable unit or required payment-in-lieu can have an outsized impact on the overall financial return of a project and can quickly render a project financially infeasible. The inability for these projects to realize full value from an affordable unit, which has a similar cost to build and maintain to that of a market-rate unit, results in a financial loss if the IZ requirement is too great. 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 across several market-rate units.

Additionally, while the current IZ ordinance states that the inclusionary requirements kick in when there is a net increase of two or more new dwelling units. However, current interpretation of the ordinance has been that projects are given credit for the number of units that are allowed by right on their property; therefore, the current interpretation of this provision has led to the IZ requirement only kicking in when there is a net increase of six new dwelling units. For example: 6 new units, minus 2 units allowed by right = 4 units subject to an IZ requirement. $4 \times 15\% = 0.6$, round up to get 1 required IZ unit. The proposed ordinance does away with this credit.

Also, projects under current zoning have been offered a reduction in their requirement based on the number of dwelling units that currently exist on site, even if those units are proposed to be demolished. For example: 20 new units proposed, minus 4 existing units set to be demolished = 16 units subject to the IZ requirement ($16 \times 15\% = 2.4$ units), rather than 20 units subject to the IZ requirement ($20 \times 15\% = 3$ units). The proposed ordinance does away with this reduction.

Lastly, staff made the decision to proposed that the new ordinance kick in at seven or more dwelling units, rather than six, because 15% of 6 is less than a whole unit, while 15% of seven equals 1.05, or a full IZ unit.

10.) Why are ownership units set at 80% AMI priced at 70% AMI?

This is an affordable housing best practice for setting the maximum sale price for affordable ownership units. If the maximum sale price is set right at the 80% limit, the window of people who could qualify would be quite narrow. Bumping down ten percentage points allows for a greater number of households eligible to purchase these units. This is referred to as expanding the “window of opportunity.”

11.) Clarification is needed as to how the “Incentives for Additional Inclusionary Units” provision works.

As stated in the proposed ordinance, the total number of additional units allowed under this provision must not exceed 25% of the number of units otherwise allowed on the lot under lot area per dwelling unit requirements.

Here is an example of how the 2:1 incentive ratio would work: A developer proposes a 31-unit project because that is the maximum number of units allowed by lot area. The IZ requirement for this project would be 6 IZ units. Under the Incentives provision, the developer could then choose to provide 2 additional affordable Tier 1 units, which would provide the project with 4 additional market-rate units, for a total of 6 additional units. The project would now include 37 total units.

Again, assuming that 31 units is the maximum number of units allowed on this lot under the City's lot area per dwelling unit requirements, the maximum number of additional units that could be granted as an incentive for this project would be 7, for a total of no more than 38 units:

- $25\% \times 31 = 7.75$
- $8 / 31 = 25.8\%$, which is greater than the allowable increase of 25%
- Therefore, the max number of additional units to be granted as an incentive for this project would be 7

- 12.) The idea of escalating the construction costs by the cost of living index is not the right index. That index is what people pay for things, of which housing is a small fraction. There is a corresponding producer price index for the construction industry that includes labor costs and materials costs. This is a better index since housing costs are likely to rise more rapidly than general inflation. The escalator won't make a big difference, but it should be based on costs rather than consumption.**

Staff believes we should stay with the recommendation of the Newton Housing Partnership, which included utilizing the Consumer Price Index (CPI) as the basis for the annual escalation of the Total Development Costs / Unit number, until the Housing Partnership recalculates that base number during the 5-year IZ reevaluation process.

- 13.) The escalation of the care and service costs for Elder Housing with Services projects should be looked at over time as well. A 10 year look back should be the inflator factor for the next 10 years.**

As stated in the proposed ordinance, the total cash payment for Elder Housing with Services projects is based on the average cost of providing long-term care for an elderly individual over a 10-year period), as well as the average total development costs (TDC) per unit in Newton. This average long-term care cost is based on the Boston Area average hourly rate of a Home Health Aide providing three hours per day of care per year as determined by the annual Genworth Cost of Care Survey. Planning Staff will review the Cost of Care Survey annually to modify the average cost, if necessary.

According to the current Genworth Cost of Care Survey, the average hourly rate for a Home Health Aide in the Boston area is \$28/hour:

<https://www.genworth.com/aging-and-you/finances/cost-of-care.html>

**Illustration: Elder Housing with Services Cash Payment
Calculation Methodology**

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

sample care cost = \$306,600

\$28 per hour x 3 hrs/day x 365 days/year x 10 years

(2019 avg. Home Health Aide hourly rate, Genworth Cost of Care Survey)

EXAMPLE: 115-bed Assisted Living Facility

STEP 1: $\$550,000 + 306,600 = \$856,600/\text{bed}$

*STEP 2: $115 \text{ beds} \times 0.05 = 5.8 \text{ inclusionary beds}$
*required**

*STEP 3: $\$856,600 \times 5.8 \text{ beds} = \$4,968,280$
*Total Payment**

Printed Attachments:

- Proposed Inclusionary Zoning Ordinance text (clean version), June 21, 2019
- Proposed Inclusionary Zoning Ordinance text (red-lined version), June 7, 2019

Digital Attachments / Additional Documents:

- June 7, 2019 Inclusionary Zoning Memo from Planning Staff to ZAP Committee:
<http://www.newtonma.gov/civicax/filebank/documents/97571>
- 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

Sec. 5.9. Tree Protection

Tree protection is not a part of this Chapter, and is regulated in Revised Ordinances Chapter 21, Article III, Div. 3, Tree Preservation.

Sec. 5.10. Floodplain, Watershed Protection

Floodplain and watershed protection is not a part of this Chapter, and is regulated in Revised Ordinances Chapter 22, Article II, Sec. 22-22 et. seq.

Sec. 5.11. Inclusionary Zoning

5.11.1. Purposes

The purposes of this Sec. 5.11 are to:

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

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

5.11.2. Definitions

- A. "Area Median Income ('AMI') means the median income for households within the designated statistical area that includes the City of Newton, as reported annually and adjusted for household size by the U.S. Department of Housing and Urban Development (HUD).
- B. "Deed-Restricted Affordable Unit(s)" means any Inclusionary Unit that meets the provisions of 5.11.4 and holds a legal use restriction that runs with the land, is recorded at the Registry of Deeds, provides for affordability in perpetuity, identifies

the Subsidizing Agency and monitoring agent, if applicable, and restricts occupancy to income eligible households, as defined by the provisions of Section 5.11.4.

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

- I. “Public development funds” means funds for housing construction or rehabilitation if provided through a program eligible to serve as a ‘subsidy’ under 760 CMR 56.00 Comprehensive Permit: Low or Moderate Income Housing, Community Preservation Act funds, and other federal funds available for housing allocated by the City of Newton.

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

5.11.3. Application of Inclusionary Zoning Requirements.

- A. These inclusionary zoning provisions apply to any proposed residential or mixed-use development, including a conventional subdivision of land under M.G.L. Chapter 41, Section 81K-81GG, in any zoning district that includes the construction or substantial reconstruction of seven or more residential dwelling units on any parcel or contiguous parcels comprising a proposed development site. The inclusionary zoning requirements apply to the total number of residential units regardless of the existing residential units proposed to be demolished. The inclusionary zoning requirements also apply to any situation where rental residential dwelling units are converted to 7 or more residential ownership units.
- B. This Sec. 5.11 does not apply to accessory units.
- C. **No Segmentation.** The inclusionary zoning provisions of this section apply to projects at one site or two or more adjoining sites in common ownership or under common control within a period of five years from the first date of application for any special or building permit for construction on the lot or lots, or for the 12 months immediately preceding the date of application for any special permit or building permit. An applicant for development may not segment or divide or subdivide or establish surrogate or subsidiary entities to avoid the requirements of Section 5.11.11. Where the City Council determines that this provision has been violated, a special permit or building permit will be denied. However, nothing in Section 5.11 prohibits the phased development of a property.

- D. **100% Deed-Restricted Affordable Developments.** Any proposed residential or mixed-use development that consists of 100% deed-restricted affordable units up to 110% of AMI is not subject to the Number of Inclusionary Units Required, Section 5.11.4.B; however, projects of this type are subject to all other applicable provisions of this section 5.11. The percentage of AMI used for establishing monthly housing costs and the applicable household limit for all units in the project must average no more than 95% of AMI.

- E. **Qualification of Tier 1 Units as Local Action Units.** All Inclusionary Units affordable to households at or below 80% of AMI must be qualified as ‘Local Action Units’ pursuant to the requirements of the Comprehensive Permit Guidelines of the Massachusetts Department of Housing and Community Development (DHCD), Section VI.C “Local Action Units,” as in effect December 2014 as the same may be amended from time to time, unless the unit is exempted from this requirement by another provision of this Section 5.11.
- F. **Tier 2 Units as Consistent with Local Action Units.** All Inclusionary Units affordable to households earning greater than 80% but less than or equal to 110% of AMI must be consistent, where applicable, with the requirements of ‘Local Action Units’ pursuant to the requirements of the Comprehensive Permit Guidelines of the DHCD, Section VI.C “Local Action Units,” as in effect December 2014 as the same may be amended from time to time, unless the unit is exempted from this requirement by another provision of this Section 5.11.

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

5.11.4. Mandatory Provision of Inclusionary Units.

- A. **Inclusionary Unit Tiers.** Inclusionary Units are divided into two tiers based on their level of affordability. Tier 1 represents units affordable to households with annual gross incomes at or below 50% of AMI and units affordable to households with annual

gross incomes at or below 80% of AMI; and Tier 2 represents Middle-Income units affordable to households with annual gross incomes greater than 80% of AMI, but at or below 110% of AMI.

B. Number of Inclusionary Units Required. The percentage of required Inclusionary Units in a proposed development is based on the total number of new units proposed on any parcel or contiguous parcels comprising a proposed development site, and whether the units are rental or ownership.

1. Where the inclusionary zoning requirement results in a fraction of a unit greater than or equal to 0.5, the development must provide one Inclusionary Unit to capture that fraction.
2. Where the inclusionary zoning requirement results in a fraction of a unit less than 0.5, the development may choose to provide one Inclusionary Unit to capture that fraction or contribute a fractional cash payment to the City to cover the fraction of that Inclusionary Unit requirement. Fractional cash payment amounts are calculated based on the provisions of Section 5.11.5.
3. All fractions are rounded to the nearest tenth.
4. Rental Project Requirements. The percentage requirements for applicable rental developments are based on the following table and provisions:
 - a. For rental Inclusionary Housing Projects with seven to nine residential dwelling units, where only one rental inclusionary unit is required at Tier 1, the inclusionary unit shall be priced for a household income limit at not more than 80% of AMI.
 - b. For rental Inclusionary Housing Projects with ten or more residential dwelling units, where two or more rental Inclusionary Units are required at Tier 1, the AMI used for establishing rent and income limits for these Inclusionary Units must average no more than 65% of AMI. Alternatively, at least 50% of such units may be priced for households having incomes at 50% of AMI and the remaining Inclusionary Units may be priced for households at 80% of AMI.

Illustration: Tier 1 Average 65% AMI Methodology

Example Project: 17-unit rental development

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

Average affordability level across units must be 65% AMI

EXAMPLE APPROACH #1: 1 unit at 50% AMI

1 unit at 65% AMI

1 unit at 80% AMI

EXAMPLE APPROACH #2: 3 units at 65% AMI

Rental Projects: Number of Inclusionary Units Required

Tier Level	7-20 UNITS	21+ UNITS
Tier 1: 50%-80% AMI	15%	15%
Tier 2: 110% AMI	0%	2.5%
Total	15%	17.5%

**Rental Projects: Number of Inclusionary Units Required
EFFECTIVE January 1, 2021**

Tier Level	7-20 UNITS	21-99 UNITS	100+ UNITS
Tier 1: 50%-80% AMI	15%	15%	15%
Tier 2: 110% AMI	0%	2.5%	5%
Total	15%	17.5%	20%

Illustration: Rental Projects Calculation Methodology

Example Project: 31-unit rental development

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

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

TOTAL UNITS = 6 deed-restricted affordable units

- c. Effective January 1, 2021, rental Inclusionary Housing Projects with 100 or more residential dwelling units must provide 15% of residential dwelling units at Tier 1 and 5% of residential dwelling units at Tier 2.

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

- a. For ownership Inclusionary Housing Projects with seven to 16 residential dwelling units, where one or two ownership inclusionary units are required at Tier 1, the household income limit for those units shall be 80% of AMI and the inclusionary units must be priced for affordability to households having annual gross incomes of not more than 70% of AMI at the time of marketing.
- b. For ownership Inclusionary Housing Projects with 17 or more residential dwelling units, where three or more ownership inclusionary units are required, the household income limit for Tier 1 units must be 80% of AMI and those inclusionary units must be priced for affordability to households having annual gross incomes of not more than 70% of AMI at the time of marketing. The household income limit for Tier 2 Middle-Income units must be 110% of AMI and those inclusionary units must be priced for affordability to households having annual gross incomes of not more than 100% of AMI at the time of Marketing.

Ownership Projects: Number of Inclusionary Units Required			
Tier Level	7-16 UNITS	17-20 UNITS	21+ UNITS
Tier 1: 50%-80% AMI	15%	10%	10%
Tier 2: 110% AMI	0%	5%	7.5%
Total	15%	15%	17.5%

Ownership Projects: Number of Inclusionary Units Required EFFECTIVE January 1, 2021				
Tier Level	7-16 UNITS	17-20 UNITS	21-99 UNITS	100+ UNITS
Tier 1: 50%-80% AMI	15%	10%	10%	10%
Tier 2: 110% AMI	0%	5%	7.5%	10%
Total	15%	15%	17.5%	20%

Illustration: Ownership Projects Calculation Methodology	
<i>Example Project: 52-unit ownership development</i>	
$10\% \text{ at Tier 1} = 0.10 \times 52 \text{ units} = 5.2 \text{ units}$ <i>Total: 5 units at Tier 1 (round down)</i> <i>plus fraction/ cash payment</i>	
$7.5\% \text{ at Tier 2} = 0.075 \times 52 \text{ units} = 3.9 \text{ units}$ <i>Total: 4 units at Tier 2 (round up)</i>	
TOTAL UNITS: 9 deed-restricted affordable units	

- c. Effective January 1, 2021, ownership Inclusionary Housing Projects with 100 or more residential dwelling units must provide 10% of residential dwelling units at Tier 1 and 10% of residential dwelling units at Tier 2.

- C. Incentives for Additional Inclusionary Units.** An Inclusionary Housing Project that includes more than the required number of Inclusionary Units will be awarded bonus market-rate units at a ratio of 2 to 1. For every additional Inclusionary Unit the applicant agrees to provide, the development will be awarded 2 additional market-rate units. In the event that the additional Inclusionary Unit provided by the applicant is a family-sized unit (a 3-bedroom unit greater than 1,100 square feet), the ratio is 3 to 1. For every additional 3-bedroom Inclusionary Unit proposed, the development will be awarded 3 additional market-rate units. The additional Inclusionary Units must be Tier 1 units and the total number of additional units of any type must not exceed 25% of the number of units otherwise permissible on the lot under lot area per dwelling unit requirements.

Illustration: Incentive Units Calculation Methodology

Example Project: 31-unit rental development

PRE-INCENTIVE CALCULATION

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

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

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

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

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

D. Maximum Monthly Housing Costs, Sale Prices and Rents. Maximum sale price or rent for Inclusionary Units is calculated as affordable to a household with a number of household members equal to the number of bedrooms in a unit plus one, regardless of the actual number of persons occupying the unit.

1. **Rental.** Inclusionary rental units are to be priced to be affordable to a household having a gross annual income at the household income limit for that Inclusionary Unit, as specified in Section 5.11.4. Monthly housing costs, inclusive of rent, utility costs for heat, water, hot water, and electricity, 1 parking space, and including access to all amenities that are offered to tenants in the building, must not exceed 30% of the applicable household income limit for the Inclusionary Unit. If the utilities are separately metered, they may be paid by the tenant and the maximum allowable rent will be reduced to reflect the tenant's payment of utilities, based on the area's utility allowance for the specific unit size and type, to be secured from the Newton Housing Authority. For a household with a Section 8 voucher, the rent and income are to be established by the Newton Housing Authority with the approval of HUD.
2. **Homeownership.** Inclusionary units for sale are to be priced to be affordable to a household having a gross annual income 10 percentage points lower than the household income limit

for that Inclusionary Unit, as specified in Section 5.11.4. The monthly housing costs, inclusive of mortgage principal and interest, private mortgage insurance, property taxes, condominium and/or homeowner's association fees, hazard insurance, and 1 parking space, must not exceed 30% of the applicable household income limit for the Inclusionary Unit. Additionally, the following requirements apply:

- a. Down payment must be at least 3% of the purchase price;
- b. Mortgage loan must be a 30-year fully amortizing mortgage for not more than 97% of the purchase price with a fixed interest rate that is not more than 2 percentage points above the current MassHousing interest rate; and
- c. Buyers will be eligible so long as their total housing costs, including the services identified above, do not exceed 38% of their income.

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

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

5.11.5. Cash Payment Option.

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

- A. Eligibility.** There are 3 circumstances in which the Inclusionary Unit requirements of Section 5.11.4 may be met through a cash payment instead of providing Inclusionary Units:
1. For Inclusionary Housing Projects that include the construction or substantial reconstruction of 7 to 9 dwelling units; or
 2. By special permit from the City Council, where the Council makes specific findings that there will be an unusual net benefit to achieving the City's housing objectives as a result of

allowing a cash payment rather than requiring the development of Inclusionary Units. The findings must include consideration of the appropriateness of the development site location for income-eligible households, including proximity to and quality of public transportation, schools, and other services; the current balance of the Inclusionary Housing Fund; and the purposes of this Section 5.11.

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

B. Cash Payment Amount. The cash payment as an alternative to each required Inclusionary Unit, or fraction thereof, is based on a formula that utilizes the average total development costs (TDC) per unit in Newton, calculated by the Newton Housing Partnership and approved by the Director of Planning and Development utilizing final closing budgets and/or certified cost and income statements from new affordable housing developments built in Newton in the previous 5 years that were funded all or in part by public subsidies or approved through M.G.L. Chapter 40B. This basis for the cash payment standard (average TDC/unit in Newton) must be increased annually by the amount of the Consumer Price Index (CPI-U) and take effect on the anniversary date of the effective date in Section 5.11.14. No more than every 5 years, as part of the Inclusionary Housing Program Reevaluation Requirement of Section 5.11.13, the average TDC/unit in Newton must be recalculated by the Newton Housing Partnership and approved by the Director of Planning and Development based on available data from affordable housing developments as above, completed in Newton during the preceding 5 year period.

1. The average TDC per unit, as calculated in May 2019 by the Newton Housing Partnership and approved by the Director of Planning & Development, is \$550,000.
2. For Inclusionary Housing Projects containing 10 or more units that receive a Special Permit to make such a payment, the total cash payment is determined by utilizing the following calculation:

Inclusionary Zoning Cash Payment Calculation	
A = # of dwelling units in proposed project	FORMULA
B = Total Inclusionary Percentage Required for the project	STEP 1: $A \times B$ = total inclusionary units required (round to nearest 10th)
C = average total development costs (TDC) per unit in Newton	STEP 2: $(A \times B \text{ rounded}) \times C$ = Total cash payment

Illustration: Cash Payment Calculation Methodology

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

EXAMPLE 1: 18 Unit Rental Project

A = 18 units

B = 15% inclusionary required

C = \$550,000 TDC

STEP 1: $0.15 \times 18 \text{ units} = 2.7 \text{ units}$

STEP 2: $2.7 \text{ units} \times \$550,000 = \$1,485,000$
Total Payment

EXAMPLE 2: 36 Unit Ownership Project

A = 36 units

B = 17.5%

C = \$550,000

STEP 1: $0.175 \times 36 \text{ units} = 6.3 \text{ units}$

STEP 2: $6.3 \text{ units} \times \$550,000 = \$3,465,000$
Total Payment

SMALL PROJECT CALCULATION EXAMPLES

7 Unit Project: $0.7 \times \$550,000 = \$385,000$
Total Payment

8 Unit Project: $0.8 \times \$550,000 = \$440,000$
Total Payment

9 Unit Project: $0.9 \times \$550,000 = \$495,000$
Total Payment

3. For Inclusionary Housing Projects with 7-9 units, the total cash payment is determined by utilizing the average total development costs (TDC) per unit in Newton and reducing that number based on the number of units in the project as follows:
 - a. Total cash payment for a 7-unit project: 70% multiplied by the TDC per unit in Newton.

- b. Total cash payment for an 8-unit project: 80% multiplied by the TDC per unit in Newton.
- c. Total cash payment for a 9-unit project: 90% multiplied by the TDC per unit in Newton.

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

Illustration: Fractional Payment Calculation Methodology
<p><i>sample TDC: \$550,000 (May 2019 figure)</i></p> <p>EXAMPLE: 48 Unit Rental Project</p> <p><i>Tier 1: $0.15 \times 48 \text{ units} = 7.2 \text{ units}$</i> <i>TOTAL UNITS = 7 units</i> <i>FRACTIONAL PAYMENT = $0.2 \times \\$550,000$</i> <i>= \$110,000</i></p> <p><i>Tier 2: $0.025 \times 48 \text{ units} = 1.2 \text{ units}$</i> <i>TOTAL UNITS = 1 unit</i> <i>FRACTIONAL PAYMENT = $0.2 \times \\$550,000$</i> <i>= \$110,000</i></p> <p><i>Total Inclusionary Requirement = 8 deed-restricted units and \$220,000</i></p>

- 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 to the Newton Housing Authority and the City of Newton. These funds are to be used for the restoration, creation, preservation, associated support services, and monitoring of deed restricted units affordable to households with annual gross incomes at or below 80% of AMI, to the extent practical. Appropriation of these funds for use by the City or the Newton Housing Authority must first be approved by the Planning & Development Board and then by the Mayor. The Newton Housing Authority and the City must each maintain an ongoing record of payments to the fund on their behalf and the use of the proceeds for the purposes stated in this Sec. 5.11.

5.11.6. Off-Site Development

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

1. The appropriateness of the development site location for income-eligible households, including proximity to and quality of public transportation, schools, and other services;
2. Consideration relative to the concentration of affordable units in the City;
3. An increase in the number of Inclusionary Units or an increase in the percentage of Tier 1 units from the amount otherwise required; and
4. Consideration of the purposes of this section of the ordinance, Section 5.11.1.

B. Non-Profit Housing Developer Partnership. Any Inclusionary Housing Project that includes off-site Inclusionary Units must enter into a development agreement with a non-profit housing developer for the development of the off-site units.

1. The applicant must submit a development plan for off-site development for review and comment by the Planning and Development Department prior to submission to the City Council. The plan must include at a minimum, demonstration of site control, necessary financing in place to complete the off-site development or rehabilitation, an architect's conceptual site plan with unit designs and architectural elevations, and agreement that the off-site units will comply with Sec. 5.11.7.
- C.** The off-site development must provide either a greater number of affordable units or a deeper level of affordability, an equivalent unit mix and comparable sized units, and an equivalent level of accessibility as that which would have been provided if the required units were to remain on-site.

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

- D. All off-site inclusionary units allowed by special permit must be completed and occupied no later than completion and occupancy of the applicant's on-site market rate units. If the off-site inclusionary units are not completed as required within that time, temporary and final occupancy permits will not be granted for the number of on-site market rate units equal to the number of off-site inclusionary units which have not been completed. Where the City Council determines that completion of off-site inclusionary units has been delayed for extraordinary reasons beyond the reasonable control of the applicant and non-profit housing developer, the City Council may, upon the request of the applicant to amend the Special Permit, allow the applicant to post a monetary bond and release one or more on-site market rate units. The amount of the bond must be sufficient in the determination of the Planning and Development Department to assure completion of the off-site inclusionary units.

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

5.11.7. Design and Construction

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

- A. Inclusionary units provided on-site, and their associated parking spaces, must be proportionally distributed throughout the Inclusionary Housing Project and be sited in no less desirable locations than the market-rate units;
- B. The bedroom mix of Inclusionary Units must be equal to the bedroom mix of the market-rate units in the Inclusionary Housing Project;
- C. The Inclusionary Units must meet the following size specifications:
 - 1. Must be comparable in size to that of the market rate units;
 - 2. Whichever is greater of the two:

- a. Must meet the minimum square footage and bathroom requirements, as required by DHCD's most current Comprehensive Permit Guidelines.
 - b. Must have an average square footage of not less than 80% of the average square footage of the market-rate units with the same number of bedrooms; and
- 3. The total square footage of Inclusionary Units in a proposed development must not be less than 10% of the sum of the total square footage of all market-rate and all Inclusionary Units in the proposed development;

- D. Inclusionary Units must have exteriors that are indistinguishable in design and of equivalent materials to the exteriors of the market-rate units in the project;
- E. The materials used and the quality of construction for inclusionary units, including heating, ventilation, and air conditioning systems, must be equal to that of the market rate units in the Inclusionary Housing Project, as reviewed by the Planning and Development Department; provided that amenities such as designer or high end appliances and fixtures need not be provided for inclusionary units;
- F. At a minimum, the Inclusionary Units must have an equivalent level of accessibility as that of the market-rate units, and the Inclusionary Units must have an equivalent mix of disabled-accessible units as that of the market-rate units; and
- G. The Inclusionary Units must have equal access to all amenities that are offered to the market-rate units in a project, such as parking, on-site fitness centers, laundry facilities, and community rooms.

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

5.11.8. Inclusionary Housing Plans and Covenants

- A. The applicant must submit an inclusionary housing plan for review and approval by the Director of Planning and Development prior to the issuance of any building permit for the project. The plan must include the following provisions:

- B. A description of the proposed project and inclusionary units including at a minimum, a breakdown of the total number of residential units in the project, including the number of market-rate units, Inclusionary Units, and accessible and adaptable units; floor plans indicating the location of the inclusionary units and accessible and adaptable units; the number of bedrooms and bathrooms per unit for all units in the development; the square footage of each unit in the development; the amenities to be provided to all units; the projected sales prices or rent levels for all units in the development; and an outline of construction specifications certified by the applicant.
- C. An Affirmative Fair Housing Marketing and Resident Selection Plan (AFHMP) for all Inclusionary Units, including Tier 2 Middle-Income Units, which, at a minimum, meets the requirements set out in the Comprehensive Permit Guidelines of the DHCD, Section III, Affirmative Fair Housing Marketing and Resident Selection Plan, as in effect December 2014 as the same may be amended from time to time and:
 - 1. To the extent permitted by law, such plan must provide for a local preference for up to 70% of the Inclusionary Units in a project;
 - 2. Where a project results in the displacement of individuals who qualify for a unit in terms of household size and income, first preference must be given to those displaced applicants, unless such preference would be unallowable under the rules of any source of funding for the project;
 - 3. Where a project includes units that are fully accessible, or units that have adaptive features for occupancy by persons with mobility impairments or hearing, vision, or other sensory impairments, first preference (regardless of the applicant pool) for those units must be given to persons with disabilities who need such units, including single person households, in conformity with state and federal civil rights law, per DHCD's Comprehensive Permit Guidelines, Section III, Affirmative Fair Housing Marketing and Resident Selection Plan, as in effect December 2014 as the same may be amended from time to time; and
- 4. Prior to the marketing or otherwise making available for rental or sale any of the units in the development, the applicant must obtain the City's and DHCD's approval of the AFHMP for the Inclusionary Units.
- D. Agreement by the applicant that initial and ongoing resident selection must be conducted and implemented in accordance with the approved marketing and resident selection plan and Comprehensive Permit Guidelines of the DHCD, Section III, Affirmative Fair Housing Marketing and Resident Selection Plan.
- E. Agreement by the applicant that all Tier 1 units must be qualified as, and all Tier 2 units must be consistent, where applicable, with the requirements of 'Local Action Units' pursuant to the requirements of the Comprehensive Permit Guidelines of the DHCD, Section VI.C "Local Action Units," as in effect December 2014 as the same may be amended from time to time, unless the unit is exempted from this requirement by another provision of the Section 5.11.
- F. Agreement by the applicant that all inclusionary units, including those affordable to households earning greater than 80% but less than or equal to 110% of AMI must be subject to an Affordable Housing Deed Restriction with the City, and in most cases, a Regulatory Agreement between the City, DHCD (or relevant subsidizing agency) and the developer. The developer must execute and record these affordable housing covenants in the Registry of Deeds for the Southern District of Middlesex County as the senior interest in title for each Inclusionary Unit and which must endure for the life of the residential development, as follows:
 - 1. For ownership units, a covenant to be filed at the time of conveyance and running in favor of the City of Newton, in a form approved by the City Solicitor, which limits initial sale and subsequent re-sales of Inclusionary Units to eligible households in accordance with provisions reviewed and approved by the Director of Planning and Development, which incorporates the provisions of this Section; and
 - 2. For rental units, a covenant to be filed prior to the issuance of any occupancy permit and running in favor of the City of Newton, in a form

approved by the City Solicitor, which limits rental of Inclusionary Units to eligible households in accordance with provisions reviewed and approved by the Director of Planning and Development, which incorporates the provisions of this Section.

- G. Agreement by the applicant that the Inclusionary Units must be completed and occupied no later than completion and occupancy of the applicant's market rate units. If the Inclusionary Units are not completed as required within that time, temporary and final occupancy permits may not be granted for the number of market rate units equal to the number of Inclusionary Units that have not been completed.
- H. At the discretion of the applicant and with the agreement of the Newton Housing Authority, an agreement, in a form approved by the City Solicitor, to convey rental units to the Newton Housing Authority for sale or rental to eligible households.
- I. In the case of rental housing, an agreement by the applicant to submit an annual compliance report to the Director of Planning and Development, in a form approved by the City Solicitor, certifying compliance with the provisions of this Sec. 5.11.

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

5.11.9. Public Funding Limitation

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

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

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

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

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

A. ELI Alternative Compliance Option Project

Requirements. The percentage requirements for applicable rental developments are based on the following table and provisions:

1. Where 2 or more rental inclusionary units are required at Tier 1, the AMI used for establishing rent and income limits for these inclusionary units must average no more than 65% of AMI. Alternatively, at least 50% of such units may be priced for households have incomes at 50% of AMI, and the remaining inclusionary units may be priced for households at 80% of AMI.
2. "Effective January 1, 2021, applicable rental developments with 100 or more residential dwelling units must provide 5% of residential dwelling units at the ELI Tier, 5% of residential dwelling units at Tier 1, and 5% of residential dwelling units at Tier 2."

- B. **Support Services Provider Partnership.** Any inclusionary Housing Project that chooses the ELI Alternative Compliance Option must form a service agreement with a qualified agency that specializes in supportive housing and case management for extremely low-income individuals or families. Property owners must partner directly with the designated agency on all aspects of tenant selection and management related to the ELI units in all such projects.

1. The applicant must submit a Resident Selection and Supportive Services Plan for the ELI units for review and comment by the Director of Planning and Development prior to submission for approval from the City Council as part of the special permit process. The plan must include, at a minimum, the following:
 - a. Demonstration of a formal partnership with a qualified agency that specializes in supportive housing and case management for extremely low-income individuals or families;
 - b. A marketing and resident selection plan that details how the tenants of the ELI units will be selected;
 - c. A detailed plan that outlines the ongoing regular on-site support services and case

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

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

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

management to be provided to each household residing in the ELI units; and

- d. An operating pro forma highlighting the initial and ongoing funding for the support services and case management.
2. The designated qualified agency shall provide regular on-site support services for the tenants of the ELI units, including, but not limited to, assistance with daily living activities, healthcare referrals, community integration, job training, and employment opportunities.
- C. No Public Funding Limitation.** Inclusionary Housing Projects that choose the Alternative Compliance Option may seek and accept public development funds to construct and operate the ELI units, notwithstanding Section 5.11.10.
- D.** Inclusionary Housing Projects that choose the Alternative Compliance Option must comply with all other applicable requirements of Section 5.11.

5.11.11. Elder Housing with Services

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

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

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

- B. Definition of Inclusionary Beds.** For all such projects, an Inclusionary Bed is defined as any residential bed that meets the provisions of this section 5.11.11, Elder Housing with Services.
- C. Number of Inclusionary Beds Required.** For all Elder Housing with Services projects, 5% of beds provided on-site must be Inclusionary Beds designated affordable to eligible elderly households with annual gross incomes up to 80% of AMI, adjusted for household size. The applicable household income limit for all Inclusionary Beds subject to the provisions of Section 5.11.11 is 80% of the AMI at the time of marketing. Inclusionary Beds may be located in single-occupancy rooms or in shared rooms. The Inclusionary Beds must be proportionally distributed throughout the site and must be indistinguishable from the market-rate beds.
- D. Monthly Housing and Service Costs.** Total monthly housing costs, inclusive of entrance fees, rent or monthly occupancy fees, amenities, and base services may not exceed a fixed percentage of the applicable household annual income limit for the Inclusionary Bed based on the type of elder housing with services facility, as described below.
- 1. Independent Living Facilities.** Total monthly housing costs for an Inclusionary Bed in an Independent Living Facility may not exceed 15% of the applicable household income limit for the Inclusionary Bed.
 - 2. Assisted Living Residences.** Total Monthly housing costs for an Inclusionary Bed in an Assisted Living Residence may not exceed 30% of the applicable household income limit for the Inclusionary Bed.
 - 3. Continuing Care Retirement Communities (CCRCs).** Due to their unique structure in providing independent living, assisted living, and skilled nursing and related services to elderly households in one location, CCRCs may choose to satisfy their Inclusionary Zoning requirement through either the provisions related

to Independent Living Facilities of those related to Assisted Living Residences.

- E. 100% Deed-Restricted Affordable Facilities.** Any proposed Elder Housing with Services project that consists of 100% deed-restricted affordable units up to 150% of AMI is not subject to the number of inclusionary units required per Section 5.11.4.B and may seek and accept public development funds to construct the project. The percentage of AMI used for establishing monthly housing and service costs and the applicable household income limit for all units in the project must average no more than 110% of AMI. However, projects of this type are subject to all other applicable sections of this Section 5.11.
- F. Use Restrictions.** For all such projects, all Inclusionary Beds must be subject to an affordable covenant approved by the City Solicitor, executed by the City and the developer, and recorded at the Registry of Deeds for the Southern District of Middlesex County or the Land Court Registry of Deeds for the Southern District of Middlesex County.
- G. Tenant Selection.** For all such projects, all Inclusionary Beds must be subject to an Affirmative Fair Housing Marketing and Resident Selection Plan to be approved by the Director of Planning and Development. To the extent permitted by law, such plan must provide for a local preference for up to 70% of the Inclusionary Beds in the project.
- H. Fractional Units.** Where the inclusionary zoning requirement results in a fraction of a bed greater than or equal to 0.5, the development must provide one Inclusionary Bed to capture that fraction.

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

Illustration: Elder Housing with Services Cash Payment Calculation Methodology*sample TDC: \$550,000 (May 2019 figure)**sample care cost = \$306,600**\$28 per hour x 3 hrs/day x 365 days/year x 10 years**(2019 avg. Home Health Aide hourly rate, Genworth Cost of Care Survey)**EXAMPLE: 115-bed Assisted Living Facility**STEP 1: \$550,000 + 306,600 = \$856,600/bed**STEP 2: 115 beds x 0.05 = 5.8 inclusionary beds required**STEP 3: \$856,600 x 5.8 beds = \$4,968,280
Total Payment*

I. Alternative Compliance. The applicant may choose to comply with their inclusionary zoning requirement through a cash payment to the City. The total cash payment for projects of this type is based on the average cost of providing long-term care for an elderly individual over a 10-year period, as well as the average total development costs per unit in Newton, calculated by the Newton Housing Partnership and approved by the Director of Planning and Development. The average long-term care cost is based on the Boston area average hourly rate of a home health aide providing three hours per day of care per year as determined by the annual Genworth Cost of Care Survey. Planning staff will review the Cost of Care Survey annually to modify the average cost as necessary. The total cash payment is determined by utilizing the following calculation:

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

5.11.12. No Effect on Prior or Existing Obligations.

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

all resulting from a special permit under Sec. 5.11 applied for or granted prior to the effective date of this amendment.

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

5.11.13. Inclusionary Zoning Program Reevaluation Requirement.

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

5.11.14. Effective Date.

The effective date of the amended provisions of Section 5.11 is August 1, 2019. The requirements of Section 5.11 do not apply to any special permit (or in the event that a special permit is not required, any building permit) issued prior to the effective date of this amendment. Effective January 1, 2021, rental and ownership Inclusionary Housing Projects with 100 or more residential dwelling units will be subject to an increased inclusionary zoning requirement per Sections 5.11.4.B.4.c and 5.11.4.B.5.c.

Sec. 5.12. Environmental Standards in the Manufacturing District

All uses in a Manufacturing district shall not be injurious, noxious or offensive by reason of noise, smoke, odor, gas, dust or similar objectionable features, or dangerous on account of fire, or any other cause.

(Ord. No. S-260, 08/03/87; Ord. No. T-65, 12/18/89; Ord. No. T-185, 11/18/91)

Sec. 5.10. Floodplain, Watershed Protection

Floodplain and watershed protection is not a part of this Chapter, and is regulated in Revised Ordinances Chapter 22, Article II, Sec. 22-22 et. seq.

Sec. 5.11. Inclusionary Zoning

5.11.1. Purposes

The purposes of this Sec. 5.11 are to:

- A. Promote the public health, safety, and welfare by encouraging a diversity of housing opportunities for people of different income levels in the City;
 - B. Provide for a full range of housing choices throughout the City for households of all incomes, ages, and sizes ~~in order to meet the City's goal of preserving its character and diversity;~~
 - C. ~~Mitigate the impact of residential development on the availability and cost of housing, especially housing affordable to low and moderate income households;~~
 - D. Increase the production of affordable housing units to meet existing and anticipated housing needs within the City; and
 - E. ~~Provide a mechanism by which residential development can contribute directly to increasing the supply of affordable housing in exchange for a greater density of development than that which is permitted as a matter of right; and~~
 - F. ~~Establish requirements, standards, and guidelines for the use of such contributions generated from the application of inclusionary housing provisions.~~
 - G. 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.
- B. "Deed-Restricted Affordable Unit(s)" means any Inclusionary Unit that meets the provisions of 5.11.4 and holds a legal use restriction that runs with the land, is recorded at the Registry of Deeds, provides for affordability in perpetuity, identifies the Subsidizing Agency and monitoring agent, if applicable, and restricts occupancy to income eligible households, as defined by the provisions of Section 5.11.4.
 - C. "Eligible Household" means a household whose gross annual income does not exceed the applicable household income limit for the Inclusionary Unit.
 - D. "Extremely Low-Income (ELI) Unit(s)" means any dwelling unit affordable to households with annual gross incomes at or below 30% of AMI.
 - E. "Household Income Limit" ~~shall~~ means at any given percentage of the area median income (AMI), shall be defined as being the income limit adjusted by household size at that percentage as published by ~~the U.S. Department of Housing and Urban Development (HUD)~~ for the designated statistical area that includes the City of Newton or, for percentage levels not published by HUD, as calculated by the City based on the HUD AMI calculation.
 - F. "Inclusionary Housing Project" means any development project that meets the provisions of Section 5.11.3.A.
 - G. "Inclusionary Unit(s)" ~~shall~~ means any finished dwelling unit that meets the provisions of Section 5.11.4.
 - 1. "Tier 1 Unit(s)" means any Inclusionary Unit affordable to households with annual gross incomes at or below 80% of AMI, and where applicable, affordable to households with annual gross incomes at or below 50% of AMI.
 - 2. "Tier 2 Unit(s)," also known as "Middle-Income Unit(s)," means any Inclusionary Unit affordable to households with annual gross incomes greater than 80% of AMI, but at or below 110% of AMI.
 - H. "Local Action Unit(s) (LAUs)" means an affordable housing unit created as a result of an

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

5.11.2. Definitions

- A. "Area Median Income (AMI)" means the median income for households within the designated statistical area that includes the City of Newton, as reported annually and adjusted for household
- H. "Local Action Unit(s) (LAUs)" means an

intentional action taken by a community, without a comprehensive permit, and which meets the requirements for inclusion on the Subsidized Housing Inventory (SHI). Local Action Units are a component of the Department of Housing and Community Development's (DHCD) Local Initiative Program (LIP).

- I. "Public development funds" means funds for housing construction or rehabilitation if provided through a program eligible to serve as a 'subsidy' under 760 CMR 56.00 Comprehensive Permit: Low or Moderate Income Housing.
- J. "Area Median Income ('AMI')" shall mean the median income for households within the designated statistical area that includes the City of Newton, as reported annually and adjusted for household size by the HUD.

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

5.11.3. Scope Application of Inclusionary Zoning Requirements.

- A. These inclusionary zoning provisions apply to any proposed residential or mixed-use development, including a conventional subdivision of land under M.G.L. Chapter 41, Section 81K-81GG, in any zoning district that includes the construction or substantial reconstruction of seven or more residential dwelling units on any parcel or contiguous parcels comprising a proposed development site. The inclusionary zoning requirements apply to the total number of residential units regardless of the existing residential units proposed to be demolished. The inclusionary zoning requirements also apply to any situation where rental residential dwelling units are converted to 7 or more residential ownership units. as follows:
 - 1. Residential development requiring a special permit;
 - 2. Business or mixed-use development requiring a special permit that includes residential development beyond that allowable as of right;
 - 3. Development requiring a special permit where the development is proposed to include or may include new or additional dwelling units totaling more than two households whether by new construction, rehabilitation, conversion of a building or structure; and

- 4. Open space preservation development requiring a special permit.

- B. This Sec. 5.11 does not apply to accessory units or to a conventional subdivision of land under M.G.L. Chapter 41, Sections 81K et. seq. other than a cluster development for open space preservation development.
- C. **No Segmentation.** The inclusionary zoning provisions of this section apply to projects at one site or two or more adjoining sites in common ownership or under common control within a period of five years from the first date of application for any special or building permit for construction on the lot or lots, or for the 12 months immediately preceding the date of application for any special permit or building permit. An applicant for development may not segment or divide or subdivide or establish surrogate or subsidiary entities to avoid the requirements of Section 5.11.11. Where the City Council determines that this provision has been violated, a special permit or building permit will be denied. However, nothing in Section 5.11 prohibits the phased development of a property.
- D. **100% Deed-Restricted Affordable Developments.** Any proposed residential or mixed-use development that consists of 100% deed-restricted affordable units up to 110% of AMI is not subject to the Number of Inclusionary Units Required, Section 5.11.4.B; however, projects of this type are subject to all other applicable provisions of this section 5.11.
- E. **Qualification of Tier 1 Units as Local Action Units.** All Inclusionary Units affordable to households at or below 80% of AMI must be qualified as 'Local Action Units' pursuant to the requirements of the Comprehensive Permit Guidelines of the Massachusetts Department of Housing and Community Development (DHCD), Section VI.C "Local Action Units," as in effect December 2014 as the same may be amended from time to time, unless the unit is exempted from this requirement by another provision of this Section 5.11.
- F. **Tier 2 Units as Consistent with Local Action Units.** All Inclusionary Units affordable to households earning greater than 80% but less than or equal to 110% of AMI must be consistent, where applicable, with the requirements of 'Local Action Units' pursuant to the requirements of the Comprehensive Permit

Guidelines of the DHCD, Section VI.C “Local Action Units,” as in effect December 2014 as the same may be amended from time to time, unless the unit is exempted from this requirement by another provision of this Section 5.11.

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

5.11.4. **Mandatory Provision of Inclusionary Units.**

- A. Inclusionary Unit Tiers.** Inclusionary Units are divided into two tiers based on their level of affordability. Tier 1 represents units affordable to households with annual gross incomes at or below 50% of AMI and units affordable to households with annual gross incomes at or below 80% of AMI; and Tier 2 represents Middle-Income units affordable to households with annual gross incomes greater than 80% of AMI, but at or below 110% of AMI.
- B. Number of Inclusionary Units Required.** The percentage of required Inclusionary Units in a proposed development is based on the total number of new units proposed on any parcel or contiguous parcels comprising a proposed development site, and whether the units are rental or ownership. Where a special permit is required for development as described in Sec. 5.11.3, inclusionary units shall be provided equaling no fewer than 15 percent of the number of dwelling units proposed to be added by the development, exclusive of existing dwelling units to be required. For purposes of calculating the number of inclusionary units required in a proposed development, any fractional unit of ½ or greater shall be deemed to constitute a whole unit. Inclusionary units shall comprise at least 15 percent of the units to have been offered for sale or rental at each point in the marketing of the development.
- 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.
 - 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.

- All fractions are rounded to the nearest tenth.
- Rental Project Requirements.** The percentage requirements for applicable rental developments are based on the following table and provisions:
 - For rental Inclusionary Housing Projects with seven to nine residential dwelling units, where only one rental inclusionary unit is required at Tier 1, the inclusionary unit shall be priced for a household income limit at not more than 80% of AMI.
 - For rental Inclusionary Housing Projects with ten or more residential dwelling units, where two or more rental Inclusionary Units are required at Tier 1, the AMI used for establishing rent and income limits for these Inclusionary Units must average no more than 65% of AMI. Alternatively, at least 50% of such units may be priced for households having incomes at 50% of AMI and the remaining Inclusionary Units may be priced for households at 80% of AMI.
 - Effective January 1, 2021, rental Inclusionary Housing Projects with 100 or more residential dwelling units must provide 15% of residential dwelling units at Tier 1.

Illustration: Tier 1 Average 65% AMI Methodology

Example Project: 17-unit rental development

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

Average affordability level across units must be 65% AMI

EXAMPLE APPROACH #1: 1 unit at 50% AMI

1 unit at 65% AMI

1 unit at 80% AMI

EXAMPLE APPROACH #2: 3 units at 65% AMI

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

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

Illustration: Rental Projects Calculation Methodology

Example Project: 31-unit rental development

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

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

TOTAL UNITS = 6 deed-restricted affordable units

and 5% of residential dwelling units at Tier 2.

5. Ownership Project Requirements. The percentage requirements for applicable ownership developments are based on the following table and provisions.
 - a. For ownership Inclusionary Housing Projects with seven to 16 residential dwelling units, where one or two ownership inclusionary units are required at Tier 1, the household income limit for those units shall be 80% of AMI and the inclusionary units must be priced for affordability to households having annual gross incomes of not more than 70% of AMI at the time of marketing.
 - b. For ownership Inclusionary Housing Projects with 17 or more residential dwelling units, where three or more ownership inclusionary units are required, the household income limit for Tier 1 units must be 80% of AMI and those inclusionary units must be priced

for affordability to households having annual gross incomes of not more than 70% of AMI at the time of marketing. The household income limit for Tier 2 Middle-Income units must be 110% of AMI and those inclusionary units must be priced for affordability to households having annual gross incomes of not more than 100% of AMI at the time of Marketing.

- c. Effective January 1, 2021, ownership Inclusionary Housing Projects with 100 or more residential dwelling units must provide 10% of residential dwelling units at Tier 1 and 10% of residential dwelling units at Tier 2.

Ownership Projects: Number of Inclusionary Units Required			
Tier Level	7-16 UNITS	17-20 UNITS	21+ UNITS
Tier 1: 50%-80% AMI	15%	10%	10%
Tier 2: 110% AMI	0%	5%	7.5%
Total	15%	15%	17.5%

Ownership Projects: Number of Inclusionary Units Required EFFECTIVE January 1, 2021				
Tier Level	7-16 UNITS	17-20 UNITS	21-99 UNITS	100+ UNITS
Tier 1: 50%-80% AMI	15%	10%	10%	10%
Tier 2: 110% AMI	0%	5%	7.5%	10%
Total	15%	15%	17.5%	20%

Illustration: Ownership Projects Calculation Methodology

Example Project: 52-unit ownership development

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

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

TOTAL UNITS: 9 deed-restricted affordable units

- C. Incentives for Additional Inclusionary Units. An Inclusionary Housing Project that includes more than the required number of Inclusionary Units will be awarded bonus market-rate units at a ratio of 2 to 1. For every additional Inclusionary Unit the applicant agrees to provide, the development will be awarded 2 additional market-rate units. In the event that the additional Inclusionary Unit provided

Illustration: Incentive Units Calculation Methodology

Example Project: 31-unit rental development

PRE-INCENTIVE CALCULATION

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

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

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

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

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

by the applicant is a family-sized unit (a 3-bedroom unit greater than 1,100 square feet), the ratio is 3 to 1. For every additional 3-bedroom Inclusionary Unit proposed, the development will be awarded 3 additional market-rate units. The additional Inclusionary Units must be Tier 1 units and the total number of additional units of any type must not exceed 25% of the number of units otherwise permissible on the lot under lot area per dwelling unit requirements.

- D. Maximum Monthly Housing Costs, Sale Prices and Rents ~~Rent and Sale Price Limits~~. Maximum sale price or rent for Inclusionary Units is calculated as affordable to a household with a number of household members equal to the number of bedrooms in a unit plus one, ~~Rent and sale price limits for inclusionary units shall be set based on the assumption that household size equals the number of bedrooms plus~~, regardless of the actual number of persons occupying the units, ~~as may be further specified in guidelines provided by the City in its then-current affordable rent or sales guidelines or, if not specified there, as specified by Massachusetts Department of Housing and Community Development (DHCD) in its Local Initiative Guidelines for 'Maximum Sales and Rents,' as most recently revised at the time of marketing.~~

1. Rental. Inclusionary rental units are to be priced to be affordable to a household having a gross annual income at the household income limit for that Inclusionary Unit, as specified in Section 5.11.4. Monthly housing costs, inclusive of rent, utility costs for heat, water, hot water, and

electricity, 1 parking space, and including access to all amenities that are offered to tenants in the building, must not exceed 30% of the applicable household income limit for the Inclusionary Unit. If the utilities are separately metered, they may be paid by the tenant and the maximum allowable rent will be reduced to reflect the tenant's payment of utilities, based on the area's utility allowance for the specific unit size and type, to be secured from the Newton Housing Authority. For a household with a Section 8 voucher, the rent and income are to be established by the Newton Housing Authority with the approval of HUD.

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

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

1. Sales unit price limit. Inclusionary units for sale shall be priced to be affordable to a household having an income 10 percentage points lower than household income limit for that unit as provided in subparagraphs below and the assumed household size based in paragraph

~~B. above. The price is 'affordable' if the monthly housing payment, including mortgage principal and interest, private mortgage insurance, property taxes, condominium and/or homeowner's association fees, hazard insurance, and 1 parking space do not exceed 30 percent of the monthly income of a household at the assumed household size. Buyers will be eligible so long as their total housing cost including the services identified above does not exceed 38 percent of their income.~~

- ~~2. Purchase income eligibility limit: fewer than 3 for-sale units. Where fewer than 3 inclusionary units are provided in a development under Sec. 5.11.3, the household income limit for those units shall be 80 percent of the AMI and the inclusionary units shall be priced for affordability to households having incomes of not more than 70 percent of AMI at the time of marketing of the inclusionary units in questions.~~
- ~~3. Purchase income eligibility limit: 3 or more for-sale units. Where 3 or more inclusionary units are provided in a development under sec. 5.11.3 the eligible household income limit for at least two-thirds of the inclusionary units offered for sale (rounded to the nearest whole number) shall be not more than 80 percent of the area median income at the time of the marketing. The eligible household income limit for the remaining inclusionary units may be set at any level(s) up to 120 percent of the area median income at the time of marketing.~~
- ~~4. Rental unit price limit. Inclusionary rental units are to be priced to be affordable to a household having an income at the household income limit for that unit as provided in subparagraphs 4 and 5. For inclusionary units, the monthly rent payment, including 1 parking space and including heat, hot water, and electricity shall not exceed 30 percent of the applicable household income limit for the inclusionary unit, adjusted downward for any of those services not included. For a household with a Section 8 voucher, the rent and income are to be as established by the Newton Housing Authority with the approval of HUD.~~
- ~~5. Renter income eligible limit: 2 or more rental units. Where 2 or more inclusionary units are provided for rental in a development under Sec. 5.11.3, the percentage of AMI used for establishing rent and income limits for all~~

~~inclusionary units in the development shall average no more than 65 percent of the AMI. Alternatively, where 2 or more inclusionary units are provided for rental in a development under Sec. 5.11.3, they may be provided such that at least 50 percent of such units are priced for households having incomes at 50 percent of the AMI, and all other remaining inclusionary units are priced for households having incomes at 80 percent of the AMI.~~

- ~~6. Renter income eligibility limit: 1 rental unit. Where only 1 inclusionary unit is provided in a development under Sec. 5.11.3, the inclusionary unit shall be priced for a household income limit and rental affordability at not more than 80 percent of the AMI.~~

~~F. Qualification as Local Action Units. Inclusionary units must be qualified as 'Local Action Units' pursuant to the requirements of the Comprehensive Permit Guidelines of the DHCD, Sec. VI.C Local Action Units, as in effect June 1, 2009 as the same may be amended from time to time, unless:~~

- ~~1. The Household income limit for the unit exceeds 80 percent of the AMI; or~~
- ~~2. The unit is exempted from this requirement by another provision of this Sec. 5.11; or~~
- ~~3. The unit is exempted from this requirement by a provision included in the special permit authorizing the development, based on special circumstances applicable to that development, or based on changes in the DHCD regulations or guidelines.~~

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

5.11.5. Cash Payment Option.

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

A. Eligibility. There are 3 circumstances in which the Inclusionary Unit requirements of Section 5.11.4 may be met through a cash payment instead of providing Inclusionary Units:

1. For Inclusionary Housing Projects that include the construction or substantial reconstruction of 7 to 9 dwelling units; or

2. By special permit from the City Council, where the Council The inclusionary unit requirements of Sec. 5.11.4 may, if proposed by the applicant in a special permit application, alternatively be met through payment of a fee in lieu of providing those inclusionary units. Such request shall be approved only if the development (a) contains no more than 6 dwelling units or (b) the City Council, in acting upon the special permit for the development, 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 fee rather than requiring the development of Inclusionary Units. The findings must shall include consideration of the appropriateness of the development site location for income-eligible households, including proximity to and quality of public transportation, schools, and other services; and the current balance of the Inclusionary Housing Fund level of uncommitted funds in the receipts reserved for appropriation 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 Fee Amount. The cash payment as an alternative to each required Inclusionary Unit, or fraction thereof, is based on a formula that utilizes the average total development costs (TDC) per unit in Newton, calculated by the Newton Housing Partnership and approved by the Director of Planning and Development utilizing final closing budgets and/or certified cost and income statements from new affordable housing developments built in Newton in the previous 5 years that were funded all of in part by public subsidies or approved through M.G.L. Chapter 40B. This basis for the cash payment standard (average TDC/unit in Newton) must be increased annually by the amount of the Consumer Price Index (CPI-U) and take effect on the anniversary date of the effective date in Section 5.11.14. No more than every 5 years, as part of the Inclusionary Housing Program Reevaluation Requirement of Section 5.11.13, the average TDC/unit in Newton must be recalculated by the Newton Housing Partnership and approved by the Director of

Planning and Development based on available data from affordable housing developments as above, completed in Newton during the preceding 5 year period. The first 2 units in a development granted a certificate of occupancy shall require no fee in lieu. For each remaining unit in the development the fee in lieu shall be equal to 12 percent of the sales price at closing of each unit as verified by the Planning and Development Department or if rental housing the cash payment shall be equal to 12 percent of the estimated assessed value of each unit as determined by the City Assessor.

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

Illustration: Cash Payment Calculation Methodology

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

EXAMPLE 1: 18 Unit Rental Project

A = 18 units

B = 15% inclusionary required

C = \$550,000 TDC

STEP 1: 0.15 x 18 units = 2.7 units

*STEP 2: 2.7 units x \$550,000 = \$1,485,000
Total Payment*

EXAMPLE 2: 36 Unit Ownership Project

A = 36 units

B = 17.5%

C = \$550,000

STEP 1: 0.175 x 36 units = 6.3 units

*STEP 2: 6.3 units x \$550,000 = \$3,465,000
Total Payment*

SMALL PROJECT CALCULATION EXAMPLES

*7 Unit Project: 0.7 x \$550,000 = \$385,000
Total Payment*

*8 Unit Project: 0.8 x \$550,000 = \$440,000
Total Payment*

*9 Unit Project: 0.9 x \$550,000 = \$495,000
Total Payment*

1. The average TDC per unit, as calculated in May 2019 by the Newton Housing Partnership and approved by the Director of Planning & Development, is \$550,000.
 2. For Inclusionary Housing Projects containing 10 or more units that receive a Special Permit to make such a payment, the total cash payment is determined by utilizing the following calculation:
 3. For Inclusionary Housing Projects with 7-9 units, the total cash payment is determined by utilizing the average total development costs (TDC) per unit in Newton and reducing that number based on the number of units in the project as follows:
 - a. Total cash payment for a 7-unit project: 70% multiplied by the TDC per unit in Newton.
 - b. Total cash payment for an 8-unit project: 80% multiplied by the TDC per unit in Newton.
 - c. Total cash payment for a 9-unit project: 90% multiplied by the TDC per unit in Newton.
- C. Fractional Cash Payment Amount.** Where the inclusionary zoning requirement results in a fraction of a unit less than 0.5, the development may choose to contribute a fractional cash payment to the City to cover the fraction of that Inclusionary Unit requirement. The fractional cash payment is based on the resulting fraction (rounded to the nearest tenth) multiplied by the average TDC per unit in Newton.

- 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 Fee Recipient.** The cash fee payment is shall be made to the City's Inclusionary Zoning Fund, to a receipts reserved for appropriation fund established by the City Council. Proceeds from the fund shall be distributed equally to the Newton Housing Authority and the City of Newton. Planning and Development Department. These funds are to be used for the restoration, creation, preservation, associated support services, and monitoring of deed restricted units affordable to households with annual gross incomes at or below 80% of AMI, to the extent practical. and shall be used exclusively for construction, purchase, or rehabilitation of housing for eligible households consistent with the purposes of this Sec. 5.11 and without undue concentration of units. Appropriation of these funds for use by the City or the Newton Housing Authority must first be approved by the Planning & Development Board and then by the Mayor. The Newton Housing Authority and the City Department of Planning and Development must shall each maintain an ongoing record of payments to the fund on their behalf and shall report annually to the City Council on the use of the proceeds for the purposes stated in this Sec. 5.11.

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

5.11.6. Off-Site Development

- A. Eligibility.** Off-site Inclusionary Units are generally discouraged. The Inclusionary Unit requirements of Section 5.11.4 may be met through the off-site development of the required Inclusionary Units only by special permit from the City Council where the Council makes specific findings that there will be an unusual net benefit to achieving the City's housing objectives as a result of allowing the units to be built off-site. The findings must include consideration of:
1. The appropriateness of the development site location for income-eligible households, including proximity to and quality of public transportation, schools, and other services;
 2. Consideration relative to the concentration of affordable units in the City;

Illustration: Fractional Payment Calculation Methodology

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

EXAMPLE: 48 Unit Rental Project

Tier 1: $0.15 \times 48 \text{ units} = 7.2 \text{ units}$

TOTAL UNITS = 7 units

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

Tier 2: $0.025 \times 48 \text{ units} = 1.2 \text{ units}$

TOTAL UNITS = 1 unit

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

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

3. An increase in the number of Inclusionary Units and an increase in the percentage of Tier 1 units from the amount otherwise required; and
4. Consideration of the purposes of this section of the ordinance, Section 5.11.1. ~~Where an applicant has entered into a development agreement with a non-profit housing development organization, inclusionary units otherwise required to be constructed on-site and within the development may be constructed or rehabilitated off-site.~~

- B. Non-Profit Housing Developer Partnership. Any Inclusionary Housing Project that includes off-site Inclusionary Units must enter into a development agreement with a non-profit housing developer for the development of the off-site units.**
1. The applicant ~~and the non-profit housing development organization~~ must submit a development plan for off-site development for review and comment by the Planning and Development Department prior to submission to the City Council. The plan must include at a minimum, demonstration of site control, necessary financing in place to complete the off-site development or rehabilitation, an architect's conceptual site plan with unit designs and architectural elevations, and agreement that the off-site units will comply with Sec. 5.11.7.
- C. The off-site development must provide a greater number of affordable units at a deeper level of affordability, an equivalent unit mix and comparable sized units, and an equivalent level of accessibility as that which would have been provided if the required units were to remain on-site.**
- D. As a condition of granting a special permit for the applicant's development, the City Council shall require that All off-site inclusionary units allowed by special permit must ~~shall~~ be completed and occupied no later than completion and occupancy of the applicant's on-site market rate units. If the off-site inclusionary units are not completed as required within that time, temporary and final occupancy permits ~~shall will~~ not be granted for the number of on-site market rate units equal to the number of off-site inclusionary units which have not been completed. Where the City Council determines that completion of off-site inclusionary units has been delayed for extraordinary reasons beyond**

the reasonable control of the applicant and non-profit housing developer, the City Council may, ~~in its discretion, permit upon the request of the applicant to amend the Special Permit, allow~~ the applicant to post a monetary bond and release one or more on-site market rate units. The amount of the bond ~~shall must~~ be sufficient in the determination of the Planning and Development Department to assure completion of the off-site inclusionary units.

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

5.11.7. Design and Construction

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

- A. Inclusionary units provided on-site, and their associated parking spaces, must be proportionally distributed dispersed throughout the Inclusionary Housing Project development and must be sited in no less desirable locations than the market-rate units; ~~and have exteriors that are indistinguishable in design and of equivalent materials to the exteriors of market rate units in the development, and satisfy the following conditions:~~
- B. The bedroom mix of Inclusionary Units must be equal to the bedroom mix of the market-rate units in the Inclusionary Housing Project;
- C. Inclusionary units shall have habitable space of not less than 650 square feet for a 1-bedroom unit and an additional 300 square feet for each additional bedroom or 60 percent of the average square footage of the market rate units with the same number of bedrooms, whichever is greater; provided that inclusionary units shall not exceed 2,000 square feet of habitable space; The Inclusionary Units must meet the following size specifications:
 1. Must be comparable in size to that of the market rate units;
 2. Whichever is greater of the two:
 - a. Must meet the minimum square footage and bathroom requirements, as required

by DHCD's most current Comprehensive Permit Guidelines.

- b. Must have an average square footage of not less than 80% of the average square footage of the market-rate units with the same number of bedrooms; and
- 3. The total square footage of Inclusionary Units in a proposed development must not be less than 10% of the sum of the total square footage of all market-rate and all Inclusionary Units in the proposed development;
- D. Inclusionary Units must have exteriors that are indistinguishable in design and of equivalent materials to the exteriors of the market-rate units in the project; The bedroom mix of inclusionary units shall be equal to the bedroom mix of the market rate units in the development. In the event that market-rate units are not finished with defined bedrooms, all inclusionary units shall have 3 bedrooms; and
- E. The materials used and the quality of construction for inclusionary units, including heating, ventilation, and air conditioning systems, ~~shall~~ must be equal to that of the market rate units in the ~~development~~ Inclusionary Housing Project, as reviewed by the Planning and Development Department; provided that amenities such as ~~so-called~~ designer or high end appliances and fixtures need not be provided for inclusionary units;
- F. At a minimum, the Inclusionary Units must have an equivalent level of accessibility as that of the market-rate units, and the Inclusionary Units must have an equivalent mix of disabled-accessible units as that of the market-rate units; and
- G. The Inclusionary Units must have equal access to all amenities that are offered to the market-rate units in a project, such as parking, on-site fitness centers, laundry facilities, and community rooms.

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

5.11.8. Habitable Space Requirements

The total habitable space of inclusionary units in a proposed development shall not be less than 10 percent of the sum of the total habitable space of all market-rate units and all inclusionary units in the proposed

development. As part of the application for a special permit under this Sec. 5.11, the applicant shall submit a proposal including the calculation of habitable space for all market rate and inclusionary units to the Planning and Development Department for its review and certification of compliance with this Sec. 5.11 as a condition to the grant of a special permit.

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

5.11.9. Inclusionary Housing Plans and Covenants

As part of the application for a special permit under this Sec. 5.11, The applicant ~~must~~ 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, that shall be reviewed by the Newton Housing Authority and the Planning and Development Department and certified as compliant by the Planning and Development Department. The plan ~~must~~ shall 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) for all Inclusionary Units, including Tier 2 Middle-Income Units, which, at a minimum, meets the requirements set out in the Comprehensive Permit Guidelines of the DHCD, Section III, Affirmative Fair Housing Marketing and Resident Selection Plan, as in effect December 2014 as the same may be amended from time to time and; which shall:
 - 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; ~~Assure that there is no delay, denial, or exclusion from the development based upon a characteristic protected by the City's Human Rights Ordinance in Revised Ordinances, Chapter 12, Article V and applicable fair housing and civil rights laws. Those laws forbid housing discrimination based on race, color, religion, national origin, gender, age, disability, ancestry, marital status, family status, veteran or military status, sexual orientation, genetic characteristics, or status as a person who is a recipient of federal, state, or local public assistance programs, or the requirements of such programs;~~
2. 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; Include an affirmative fair housing marketing and tenant selection plan for the inclusionary units based upon the procedures established by the DHCD for marketing, local preferences, and lotteries under Comprehensive Permit Guidelines, Section III, in effect June 1, 2009;
 3. Where a project includes units that are fully accessible, or units that have adaptive features for occupancy by persons with mobility impairments or hearing, vision, or other sensory impairments, first preference (regardless of the applicant pool) for those units must be given to persons with disabilities who need such units, including single person households, in conformity with state and federal civil rights law, per DHCD's Comprehensive Permit Guidelines, Section III, Affirmative Fair Housing Marketing and Resident Selection Plan, as in effect December 2014 as the same may be amended from time to time; Use fair methods for accepting applications and assigning units, such as accepting applications over a period of weeks, accepting applications by mail, and using lotteries to distribute units and establish waiting lists; and
 4. 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. Provide for local selection preferences for up to 70 percent of the inclusionary units, or such lower share as may be required by other applicable authorities.
- C. Agreement by the applicant that initial and ongoing resident selection must be conducted and implmented in accordance with the approved marketing and resident selection plan and Comprehensive Permit Guideliones of the DHCD, Section III, Affirmative Fair Housing Marketing and Resident Selection Plan. Preference shall be given for qualified applicants in the following order:-
 1. ~~Where a development results in the displacement of individuals who qualify for a unit in terms of household size and income, first preference shall be given to those displaced applicants, unless such preference would be unallowable under the rules of any source of funding for the project.~~
 2. ~~Following that, preference shall be given to any other qualified applicants who fall within any of the following equally weighted categories:~~
 - a. ~~Individuals or families who live in the City;~~
 - b. ~~Households with a family member who works in the City, has been hired to work in the City, or has a bona fide offer of employment in the City; and~~
 - c. ~~Households with a family member who attends public school in the City.~~
 - D. Agreement by the applicant that all Tier 1 units must be qualified as, and all Tier 2 units must be consistent, where applicable, with the requirements of 'Local Action Units' pursuant to the requirements of the Comprehensive Permit Guidelines of the DHCD, Section VI.C "Local Action Units," as in effect December 2014 as the same may be amended from time to time, unless the unit is exempted from this requirement by another provision of the Section 5.11. Preferences for dwelling units having features that are designed, constructed, or modified to be usable and accessible to people with visual, hearing, or mobility disabilities shall be given to qualified applicants in the following order:-

1. ~~First preference for initial occupancy shall be given to applicants who are displaced as a result of the project and who need the features of the unit;~~
 2. ~~To households that include a family member needing the features of the unit and having preference under one or more of the three categories listed in Sec. 5.11.9.C.2.;~~
 3. ~~To households that include a family member needing the features of the unit but that do not have a preference under one of the three categories listed in Sec. 5.11.9.C.2.; and~~
 4. ~~To households having preference under one or more of the three categories listed in Sec. 5.11.9.C.2.~~
- 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 be subject to an Affordable Housing Deed Restriction with the City, and in most cases, a Regulatory Agreement between the City, DHCD (or relevant subsidizing agency) and the developer. The developer must execute and record these affordable housing covenants in the Registry of Deeds for the Southern District of Middlesex County as the senior interest in title for each Inclusionary Unit and which must endure for the life of the residential development, as follows:
- ~~Agreement by the applicant that residents shall be selected at both initial sale and rental and all subsequent sales and rentals from listings of eligible households in accordance with the approved marketing and resident selection plan; provided that the listing of eligible households for inclusionary rental units shall be developed, advertised, and maintained by the Newton Housing Authority while the listing of eligible households for inclusionary units to be sold shall be developed, advertised, and maintained by the Planning and Development Department; and provided further that the applicant shall pay the reasonable cost to develop, advertise, and maintain the listings of eligible households:~~
1. For ownership units, a covenant to be filed at the time of conveyance and running in favor of the City of Newton, in a form approved by the City Solicitor, which limits initial sale and subsequent re-sales of Inclusionary Units to eligible households in accordance with provisions reviewed and approved by the Director of Planning and Development, which incorporates the provisions of this Section; and
 2. For rental units, a covenant to be filed prior to the issuance of any occupancy permit and running in favor of the City of Newton, in a form approved by the City Solicitor, which limits rental of Inclusionary Units to eligible households in accordance with provisions reviewed and approved by the Director of Planning and Development, which incorporates the provisions of this Section.
- F. Agreement by the applicant that the Inclusionary Units must be completed and occupied no later than completion and occupancy of the applicant's market rate units. If the Inclusionary Units are not completed as required within that time, temporary and final occupancy permits may not be granted for the number of market rate units equal to the number of Inclusionary Units that have not been completed, to develop, advertise, and provide a supplemental listing of eligible households to be used to the extent that inclusionary units are not fully subscribed from the Newton Housing Authority or the Planning and Development Department listings of eligible households.
- G. Agreement that any special permit issued under this Sec. 5.11. shall require the applicant to execute and record a 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 enduring for the life of the residential development, as follows:
1. ~~For purchase units, a covenant to be filed at the time of conveyance and running in favor of the City of Newton, in a form approved by the City Solicitor, which shall limit initial sale and subsequent re-sales of inclusionary units to eligible households in accordance with provisions reviewed and approved by the Planning and Development Department which incorporate the provisions of this Section; and~~
 2. ~~For rental units, a covenant to be filed prior to grant of an occupancy permit and running in favor of the City of Newton, in a form approved by the City Solicitor, which shall limit rental of inclusionary units to eligible households in accordance with provisions reviewed and approved by the Newton Housing Authority which incorporate the provisions of this Section.~~
- H. At the discretion of the applicant and with the agreement of the Newton Housing Authority, an agreement, in a form approved by the City Solicitor,

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

- I. In the case of rental housing, an agreement by the applicant to submit an annual compliance report to the Director of Planning and Development, in a form approved by the City Solicitor, certifying compliance with the provisions of this Sec. 5.11; ~~provided that in the event of a dispute over compliance, the costs of enforcement will not be borne by the Newton Housing Authority.~~

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

5.11.10. Public Funding Limitation

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

- A. Those that represent a greater number of affordable units than are otherwise required by this subsection, and not receiving additional market rate units according to Section 5.11.4.C;
- B. Those that are lower than the maximum eligible income limit for some or all inclusionary units by at least 10 percentage points below that stipulated in Sec. 5.11.42; and
- C. Those that exceed regulatory requirements in providing for persons having disabilities.

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

5.11.11. Extremely Low-Income (ELI) Alternative Compliance Option

An Inclusionary Housing Project that includes the construction of 21 or more new residential rental units and provides a required percentage of the total number of new units in the proposed development as Extremely Low-Income (ELI) units may seek a special permit from the City Council to reduce its total percentage of required Inclusionary Units. Such projects must provide, and cover all costs associated with providing, ongoing regular on-site

support services for the households residing in the ELI units, in partnership with a qualified agency. ELI units represent units affordable to households with annual gross incomes at or below 30% of AMI.

- A. ELI Alternative Compliance Option Project Requirements. The percentage requirements for applicable rental developments are based on the following table and provisions:

1. Where 2 or more rental inclusionary units are required at Tier 1, the AMI used for establishing rent and income limits for these inclusionary units must average no more than 65% of AMI. Alternatively, at least 50% of such units may be priced for households have incomes at 50% of AMI, and the remaining inclusionary units may be priced for households at 80% of AMI.
2. "Effective January 1, 2021, applicable rental developments with 100 or more residential

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

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

Illustration: ELI Inclusionary Units Calculation Methodology

EXAMPLE: 74 Unit Rental Development

ELI Tier: $0.025 \times 74 \text{ units} = 1.9 \text{ units}$
Total: 2 units at ELI Tier (round up)

Tier 1: $0.075 \times 74 \text{ units} = 5.6 \text{ units}$
Total: 6 units at Tier 1 (round up)

Tier 2: $0.025 \times 74 \text{ units} = 1.9 \text{ units}$
Total: 2 units at Tier 2

TOTAL UNITS = 10 deed-restricted affordable units

dwelling units must provide 5% of residential dwelling units at the ELI Tier, 5% of residential dwelling units at Tier 1, and 5% of residential dwelling units at Tier 2.”

- B. Support Services Provider Partnership.** Any inclusionary Housing Project that chooses the ELI Alternative Compliance Option must form a service agreement with a qualified agency that specializes in supportive housing and case management for extremely low-income individuals or families. Property owners must partner directly with the designated agency on all aspects of tenant selection and management related to the ELI units in all such projects.
1. The applicant must submit a Resident Selection and Supportive Services Plan for the ELI units for review and comment by the Director of Planning and Development prior to submission for approval from the City Council as part of the special permit process. The plan must include, at a minimum, the following:
 - a. Demonstration of a formal partnership with a qualified agency that specializes in supportive housing and case management for extremely low-income individuals or families;
 - b. A marketing and resident selection plan that details how the tenants of the ELI units will be selected;
 - c. A detailed plan that outlines the ongoing regular on-site support services and case management to be provided to each household residing in the ELI units; and
 - d. An operating pro forma highlighting the initial and ongoing funding for the support services and case management.
 2. The designated qualified agency shall provide regular on-site support services for the tenants of the ELI units, including, but not limited to, assistance with daily living activities, healthcare referrals, community integration, job training, and employment opportunities.
- C. No Public Funding Limitation.** Inclusionary Housing Projects that choose the Alternative Compliance Option may seek and accept public development funds to construct and operate the ELI units, notwithstanding Section 5.11.10.

- D. Inclusionary Housing Projects that choose the Alternative Compliance Option must comply with all other applicable requirements of Section 5.11.**

5.11.12. Elder Housing with Services

In order to provide affordable elder housing with affordable and sustainable services on-site, this section applies to all the following requirements shall apply exclusively when an applicant seeks a special permit for housing with amenities and services designed primarily for elders, such as residential care, continuing care retirement communities (CCRCs), assisted living, independent living, and congregate care. The base amenities and services to be provided must shall be included in the annual housing costs and must be comparable to the base amenities and services offered to all residents regardless of income status. Such amenities and services may an integral part of the annual rent or occupancy related fee, shall be offered to all residents and may include in substantial measure long term health care and may include nursing care, home health care, personal care, meals, transportation, convenience services, and social, cultural, and educational programmings, and the like. This Sec. 5.11.11 shall does not apply to a nursing or dementia care facility subject to certificate of need programs regulated by the Commonwealth of Massachusetts Department of Public Health or to developments funded under a state or federal program which requires a greater number of elder units or nursing beds than required here.

- A. Definition of Elderly Households.** For all such projects, an elderly household is defined as a single person who is 62 years of age or older at the time of initial occupancy; or 2 persons living together, where at least one of whom is 62 years of age or more at the time of initial occupancy.
- B. Definition of Inclusionary Beds.** For all such projects, an Inclusionary Bed is defined as any residential bed that meets the provisions of this section 5.11.12, Elder Housing with Services.
- C. Number of Inclusionary Beds Required.** For all Elder Housing with Services projects, 5% of beds provided on-site must be Inclusionary Beds designated affordable to eligible elderly households with annual gross incomes up to 80% of AMI, adjusted for household size. The applicable household income limit for all Inclusionary Beds subject to the provisions of Section 5.11.10 is 80% of the AMI at the time of marketing. Inclusionary Beds may be located in single-occupancy rooms or in shared rooms. The Inclusionary Beds must be proportionally

distributed throughout the site and must be indistinguishable from the market-rate beds.

- D. Monthly Housing and Service Costs.** Total monthly housing costs, inclusive of entrance fees, rent or monthly occupancy fees, amenities, and base services may not exceed a fixed percentage of the applicable household annual income limit for the Inclusionary Bed based on the type of elder housing with services facility, as described below.
1. **Independent Living Facilities.** Total monthly housing costs for an Inclusionary Bed in an Independent Living Facility may not exceed 15% of the applicable household income limit for the Inclusionary Bed.
 2. **Assisted Living Residences.** Total Monthly housing costs for an Inclusionary Bed in an Assisted Living Residence may not exceed 30% of the applicable household income limit for the Inclusionary Bed.
 3. **Continuing Care Retirement Communities (CCRCs).** Due to their unique structure in providing independent living, assisted living, and skilled nursing and related services to elderly households in one location, CCRCs may choose to satisfy their Inclusionary Zoning requirement through either the provisions related to Independent Living Facilities of those related to Assisted Living Residences.
- E. 100% Deed-Restricted Affordable Facilities.** Any proposed Elder Housing with Services project that consists of 100% deed-restricted affordable units up to 150% of AMI is not subject to the number of inclusionary units required per Section 5.11.4.B and may seek and accept public development funds to construct the project. The percentage of AMI used for establishing monthly housing and service costs and the applicable household income limit for all units in the project must average no more than 110% of AMI. However, projects of this type are subject to all other applicable sections of this Section 5.11.
- F. Use Restrictions.** For all such projects, all Inclusionary Beds must be subject to an affordable covenant approved by the City Solicitor, executed by the City and the developer, and recorded at the Registry of Deeds for the Southern District of Middlesex County or the Land Court Registry of Deeds for the Southern District of Middlesex County.
- G. Tenant Selection.** For all such projects, all Inclusionary Beds must be subject to an Affirmative Fair Housing Marketing and Resident Selection Plan to be approved by the Director of Planning and

Development. To the extent permitted by law, such plan must provide for a local preference for up to 70% of the Inclusionary Beds in the project.

- H. Fractional Units.** Where the inclusionary zoning requirement results in a fraction of a bed greater than or equal to 0.5, the development must provide one Inclusionary Bed to capture that fraction.
- I. Alternative Compliance.** The applicant may choose to comply with their inclusionary zoning requirement through a cash payment to the City. The total cash payment for projects of this type is based on the average cost of providing long-term care for an elderly individual over a 10-year period, as well as the average total development costs per unit in Newton, calculated by the Newton Housing Partnership and approved by the Director of Planning and Development. The average long-term care cost is based on the Boston area average hourly rate of a home health aide providing three hours per day of care per year as determined by the annual Genworth Cost of Care Survey. Planning

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

Illustration: Elder Housing with Services Cash Payment Calculation Methodology

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

sample care cost = \$306,600

\$28 per hour x 3 hrs/day x 365 days/year x 10 years

(2019 avg. Home Health Aide hourly rate, Genworth Cost of Care Survey)

EXAMPLE: 115-bed Assisted Living Facility

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

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

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

staff will review the Cost of Care Survey annually to modify the average cost as necessary. The total cash payment is determined by utilizing the following calculation:

- J. **Maximum Contribution.** ~~The applicant shall contribute 2½ percent of annual gross revenue from fees or charges for housing and all services, if it is a rental development or an equivalent economic value in the case of a non rental development. The amount of the contribution shall be determined by the Director of Planning and Development, based on analysis of verified financial statements and associated data provided by the applicant as well as other data the Director of Planning and Development may deem relevant.~~
- K. **Determination.** ~~The City Council shall determine, in its discretion, whether the contribution shall be residential units or beds or a cash payment after review of the recommendation of the Director of Planning and Development. In considering the number of units or beds, the Director of Planning and Development may consider the level of services, government and private funding or support for housing and services, and the ability of low and moderate income individuals to contribute fees. The applicant shall provide financial information requested by the Director of Planning and Development if the applicant is making a cash contribution, the contribution shall be deposited in accordance with Sec. 5.11.5~~
- L. **Contributed Units or Beds.** ~~Contributed units or beds shall be made available to individuals and households whose incomes do not exceed 80 percent of the applicable median income for elders in the Boston Municipal Statistical Area, adjusted for household size.~~
- M. **Selection.** ~~The applicant or manager shall select residents from a listing of eligible persons and households developed, advertised, and maintained by the Newton Housing Authority; provided that the applicant shall pay the reasonable costs of the Newton Housing Authority to develop, advertise, and maintain the listing of eligible persons and households. Should the applicant or manager be unable to fully subscribe the elder housing with services development from the Newton Housing Authority listing, the applicant or manager shall recruit eligible persons and households through an outreach program approved by the Director of Planning and Development. The applicant or manager shall certify its compliance with this~~

~~Sec. 5.11.10 annually in a form and with such information as is required by the Director of Planning and Development. To the extent permitted by law, Newton residents shall have first opportunity to participate in the elder housing with services program set out here.~~

- N. **Residential Cash Balances.** ~~If, after calculation of the number of units or beds to be contributed under this Sec. 5.11.11, there remains an annual cash balance to be contributed, that amount shall be contributed as set out in paragraph B. above. Any such contribution shall not reduce the contribution required in future years.~~

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

5.11.13. No Segmentation—

~~An applicant for residential development shall not segment or divide or subdivide or establish surrogate or subsidiary entities to avoid the requirements of Sec. 5.11.11. Where the City Council determines that this provision has been violated, a special permit will be denied. However, nothing in Sec. 5.11 prohibits phased development of a property.~~

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

5.11.14. No Effect on Prior or Existing Obligations.

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

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

5.11.15. Inclusionary Zoning Program Reevaluation Requirement.

The City will conduct a reevaluation of the inclusionary zoning program at an interval of no more than 5 years from the time the inclusionary zoning ordinance was last amended and every 5 years thereafter. Such reevaluation must include a report provided to the City Council reviewing factors

such as changes in demographic characteristics and residential development activity, housing trends and affordability, and the relationship between Inclusionary Housing Projects and all housing in Newton. The Director of Planning and Development must also conduct an annual review and report on the inclusionary zoning program.

5.11.16. **Effective Date.**

The effective date of the amended provisions of Section 5.11 is August 1, 2019. The requirements of Section 5.11 do not apply to any special permit (or in the event that a special permit is not required, any building permit) issued prior to the effective date of this amendment. Effective January 1, 2021, rental and ownership Inclusionary Housing Projects with 100 or more residential dwelling units will be subject to an increased inclusionary zoning requirement per Sections 5.11.4.B.4.c and 5.11.4.B.5.c.

5.11.17. **~~No Effect on Accessory Apartments.~~**

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

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

5.11.18. **Incentives**

- A. **Density.** ~~A density bonus may be granted equal to 1 unit for each additional inclusionary unit provided above the number required by Sec. 5.11.4, up to a limit where lot area per dwelling unit is decreased by up to 25 percent as set forth in Sec. 3.1, Sec. 3.2, Sec. 4.1 or Sec. 4.2 the "Lot area per unit" column, provided that the proposed project, including bonus units, is consistent with the special permit requirements. To the extent determined by the Director of Planning and Development to be necessary for accommodating the bonus units, increases by up to 25 percent in maximum building lot coverage and, where applicable floor area ratio, and decreases by up to 25 percent in minimum amount of open space may be allowed per the requirements of Sec. 3.1, Sec. 3.2, Sec. 4.1 or Sec. 4.2.~~
- B. **Expedited Review.** ~~Developments in which the percentage of inclusionary units to be provided exceeds 30 percent of the development total shall be given expedited application and review procedures to the extent possible and to the extent consistent with assuring well-considered outcomes, through measures such as giving them scheduling~~

~~priority and arranging for concurrent rather than sequential agency reviews.~~

(Ord. No. X-48, 04/22/03; Ord. No. Z-50, 07/13/09; Ord. No. A-114, 08/14/17)

Sec. 5.12. Environmental Standards in the Manufacturing District

All uses in a Manufacturing district shall not be injurious, noxious or offensive by reason of noise, smoke, odor, gas, dust or similar objectionable features, or dangerous on account of fire, or any other cause.

(Ord. No. S-260, 08/03/87; Ord. No. T-65, 12/18/89; Ord. No. T-185, 11/18/91)