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Barney S. Heath
Director

MEMORANDUM

DATE: May 10, 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: **#187-18** DIRECTOR OF PLANNING requesting amendments to the Inclusionary Housing provisions of Chapter 30, Newton Zoning Ordinance, to increase the required percentage of affordable units; to require that some affordable units be designated for middle income households; to create a new formula for calculating payments in lieu of affordable units; and to clarify and improve the ordinance with other changes as necessary.

MEETING DATE: May 13, 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 offers a summary of the key differences between the existing and proposed Inclusionary Zoning ordinances. Attached to this memo are staff's responses to stakeholder questions and comments related to the Inclusionary Zoning ordinance update.

As discussed during our April meeting, the Newton Housing Partnership is currently assessing a number of areas related to the proposed ordinance. Staff has asked the Partnership for their input around specific areas of the proposed ordinance:

- Help staff determine an appropriate baseline IZ requirement (Required Units table)
- At what project size could an additional % requirement come into play (economies of scale)?
- Identify a new basis for a cash payment and fractional cash payment (rather than DHCD's QAP Index of \$389,000)
- Alternative Compliance Option (reduced overall IZ requirement for those projects that provide some IZ units at or below 30% AMI) – should we pursue this through IZ?

The Partnership formed a subcommittee to tackle these questions, and the full Partnership will meet and formalize their recommendation at their next meeting on Tuesday, May 14th. The Partnership will provide the Zoning & Planning Committee with a written recommendation prior to the proposed Public Hearing in June.

1.) Application of Inclusionary Zoning Requirements

Existing Ordinance:

- Residential, business or mixed-use developments requiring a special permit and including a net increase of 2 or more new dwelling units, less the number of units allowed by-right.
 - Due to current interpretation of ordinance, IZ requirement usually kicks in when there is a net increase of 6 new dwelling units.
Example: 6 new units minus 2 units allowed by-right = 4 units subject to IZ requirement
 $4 \times 15\% = 0.6$ (therefore, round up to get 1 required IZ unit)
 - Projects have also been offered a reduction in their requirement based on the number of dwelling units that currently exist on a site, even if those are proposed to be demolished.
Example: 20 new units minus 4 existing units to be demolished = 16 units subject to IZ requirement
 $16 \times 15\% = 2.4$ (round down to get 2 required IZ units)
- 100% Deed-Restricted Affordable Developments: Provision not included in existing ordinance.

Proposed Ordinance:

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

Example: A developer proposes to build a large multifamily development on two contiguous parcels. The project contains the construction of 20 new units, in four different buildings. There is

an existing four-family building on one of the parcels, which the developer plans to demolish. This proposed development would be subject to the Inclusionary Zoning ordinance, based off a total of 20 units.

- 100% Deed-Restricted Affordable Developments: Such projects are not required to comply with the prescribed percentage requirements per income level, as detailed in the proposed ordinance. However, projects that are 100% deed-restricted affordable are still subject to all other sections of the ordinance. For instance, such projects are required to submit an Inclusionary Housing Plan and an Affirmative Fair Housing Marketing and Resident Selection Plan for review and approval by the Director of Planning and Development, and are subject to a Regulatory Agreement and Use Restrictions.

Example:

24-unit rental project where all 24 units are set as Middle-Income units (81%-110% AMI). This project would not be required to provide any units at or below 80% AMI.

2.) Mandatory Provision of Inclusionary Units

Existing Ordinance:

Number of Inclusionary Units Required and IZ Unit Tiers:

- 15% IZ requirement, regardless of project size.
- Where the IZ requirement results in a fraction of a unit greater than or equal to 0.5, the developer must build one inclusionary unit to capture that fraction.
- Where the inclusionary zoning requirement results in a fraction of a unit less than 0.5, no IZ unit or payment required to capture that fraction.

Number of Inclusionary Units Required: Rental (Existing Ordinance)		
Tier Level	6-9 units	10+ units*
	Rental	Rental
Tier 1, 50% AMI	0.0%	7.5%
Tier 2, 80% AMI	15.0%	7.5%
Tier 3, 110% AMI	0.0%	0.0%
Total	15.0%	15.0%

* 2+ IZ rental units: AMI must average out at 65% AMI (1/2 of IZ units at 50% AMI and 1/2 at 80% AMI)

Number of Inclusionary Units Required: Ownership (Existing Ordinance)		
Tier Level	6-16 units	17+ units*
	Owner	Owner
Tier 1, 50% AMI	0.0%	0.0%
Tier 2, 80% AMI	15.0%	10.0%
Tier 3, 110% AMI	0.0%	5.0%
Total	15.0%	15.0%
* 3+ IZ ownership units: 2/3 of IZ units must not exceed 80% AMI (priced at 70% AMI), remaining 1/3 may be set up to 120% AMI		

Incentives for Additional IZ Units:

- If a project that is subject to the IZ provisions includes more than its required number of inclusionary units, a bonus of additional market-rate units will be offered to the project at a ratio of 1 to 1: for every additional inclusionary unit proposed, the project will be allowed to include 1 additional market-rate unit.
- Expedited application and review procedures given to projects where the percentage of IZ units to be provided exceeds 30% of the total units in the project.

Maximum Monthly Housing Costs, Sale Prices and Rents:

- These provisions of existing ordinance mirror those of the proposed ordinance (see below).

Proposed Ordinance:

Number of Inclusionary Units Required and IZ Unit Tiers:

Please note: The Newton Housing Partnership is still reviewing this proposed provision, and may offer a different recommendation from the staff proposal described below. The Partnership is expected to deliberate this issue, and others, at their upcoming meeting on May 14th.

- 15% - 17.5 IZ requirement (based on the tables below). Increasing IZ percentage requirement as project size increases.
 - The IZ requirement is based on the total number of units proposed for a development and whether it is a rental or ownership project.
 - The percentage of required inclusionary units to be built on site is divided into two affordability tiers:
 - Tier 1 are units affordable to households with annual gross incomes at or below 50% of the area median income (AMI), as well units affordable to households with annual gross incomes greater than 50% AMI, but at or below 80% AMI.
 - Tier 2 are Middle-Income Units affordable to households with annual gross incomes greater than 80% AMI, but at or below 110% AMI.
- Where the IZ requirement results in a fraction of a unit greater than or equal to 0.5, the developer must build one inclusionary unit to capture that fraction.

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

Number of Inclusionary Units Required: Rental (April 2019 Staff Proposal)			
Tier Level	7-9 units*	10-20 units**	21+ units**
	Rental	Rental	Rental
Tier 1, 50% - 80% AMI	15.0%	15.0%	15.0%
Tier 2, 110% AMI	0.0%	0.0%	2.5%
Total	15.0%	15.0%	17.5%
* 1 IZ Rental Unit: at or below 80% AMI			
** 2+ IZ Rental Units: AMI of Tier 1 IZ units must average out at 65% AMI (1/2 of IZ units at 50% AMI and 1/2 at 80% AMI; or some IZ units at 65% AMI)			

Example:

- 31-unit rental development
The required number of Inclusionary Units that must be provided on-site would be as follows:
 - 15% at Tier 1 = 4.65; a total of 5 units at Tier 1, which must average out at 65% AMI
 - Option 1: 2 units at or below 50% AMI, 2 units at or below 80% AMI, and 1 unit at or below 65% AMI
 - Option 2: 3 units at or below 65% AMI, 1 unit at or below 50% AMI, and 1 unit at or below 80% AMI
 - Option 3: 5 units at or below 65% AMI
 - 2.5% at Tier 2 = 0.775; a total of 1 unit at Tier 2
 - Total IZ Units Required On-Site: 6 inclusionary units on-site, no fractional cash payment required

Number of Inclusionary Units Required: Ownership (April 2019 Staff Proposal)			
Tier Level	7-16 units*	17-20 units**	21+ units**
	Owner	Owner	Owner
Tier 1, 50% - 80% AMI	15.0%	10.0%	10.0%
Tier 2, 110% AMI	0.0%	5.0%	7.5%
Total	15.0%	15.0%	17.5%
* 1 or 2 IZ Ownership Units: at or below 80% AMI, priced at 70% AMI			
** 3+ IZ Ownership Units: Tier 1 units must not exceed 80% AMI (priced at 70% AMI), Tier 2 units may be set up to 110% AMI (priced at 100% AMI)			

Example:

- 18-unit ownership development
The required number of Inclusionary Units that must be provided on-site would be as follows:
 - 10% at Tier 1 = 1.8; a total of 2 units at Tier 1, set at or below 80% AMI (but priced to be affordable at 70% AMI)

- 5% at Tier 2 = 0.9; a total of 1 unit at Tier 2, set at or below 110% AMI (but priced to be affordable at 100% AMI)
- Total IZ Units Required On-Site: 3 inclusionary units on-site, no fractional cash payment required

Incentives for Additional IZ Units:

- If a project that is subject to the IZ provisions includes more than its required number of inclusionary units, a bonus of additional market-rate units will be offered to the project at a ratio of 2 to 1: for every additional inclusionary unit proposed, the project will be allowed to include 2 additional market-rate units.
 - The additional affordable units must be set at no more than 80% AMI (Tier 1 units), and the number of additional units shall not exceed 25% of the number of units otherwise allowed on the lot under lot area per dwelling unit requirements.
- In the event that an additional inclusionary unit is a family-sized unit (a 3-bedroom of greater than 1,100 square feet of size), the ratio shall be 3 to 1: for every additional 3-bedroom IZ unit proposed, the project will be allowed to include 3 additional market-rate units.

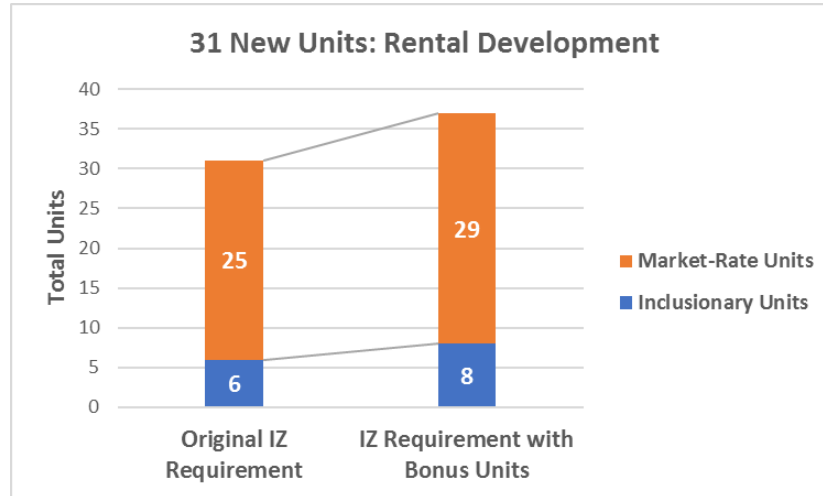
Example:

- A developer proposes to build a multifamily rental development, containing a total of 31 units; therefore, the total IZ requirement for the development would be 6 inclusionary units:
 - 25 market-rate units, and
 - 6 inclusionary units (5 units at Tier 1, and 1 unit at Tier 2 – see example above)

The developer then chooses to provide 2 additional affordable Tier 1 units, which provides the project with 4 additional market-rate units, for a total of 6 additional units. The project now includes 37 total units:

- 29 market-rate units, and
- 8 IZ units:
 - 7 units at Tier 1 (originally 5 units at Tier 1)
 - 1 unit at Tier 2
 - = 8 total inclusionary units (out of 37 total units; for a project that is now 21.6% affordable)

Note: the total number of additional units allowed for a project originally consisting of 31 new units is 8; $25\% \times 31 = 7.75$; for a total of no more than 39 total new units.



Maximum Monthly Housing Costs, Sale Prices and Rents:

- Rent and sale price limits are set based on the number of bedrooms in the applicable unit plus one, regardless of the actual number of persons that will occupy the unit.
- Rental: Total monthly housing costs for inclusionary rental units must not exceed 30% of the applicable household income limit for the inclusionary unit.
 - Total monthly housing costs for inclusionary rental units must include rent, utility costs for heat, water, hot water, and electricity, one parking space, and access to all amenities that are typically offered to a tenant in the development, such as access to an onsite fitness center, laundry facilities, etc.
- Ownership: Inclusionary ownership units must be priced to be affordable to a household having an income 10 percentage points lower than the household income limit for that unit.
 - The price is 'affordable' if the monthly housing payment, including mortgage principal and interest, private mortgage insurance, property taxes, condo and/or homeowner's association fees, hazard insurance, and one parking space do not exceed 30% of the monthly income of a household at the applicable household size (number of bedrooms in the applicable unit plus one).

FY 2019 Income Limits Summary - Newton, MA						
Income Level	Household Size					
	1	2	3	4	5	6
30% AMI	\$24,900	\$28,450	\$32,000	\$35,550	\$38,400	\$41,250
50% AMI	\$41,500	\$47,400	\$53,350	\$59,250	\$64,000	\$68,750
65% AMI	\$53,950	\$61,620	\$69,355	\$77,025	\$83,200	\$89,375
70% AMI	\$58,100	\$66,360	\$74,690	\$82,950	\$89,600	\$96,250
80% AMI	\$62,450	\$71,400	\$80,300	\$89,200	\$96,350	\$103,500
99% AMI	\$82,170	\$93,852	\$105,633	\$117,315	\$126,720	\$136,125
100% AMI	\$83,000	\$94,800	\$106,700	\$118,500	\$128,000	\$137,500
110% AMI	\$91,300	\$104,280	\$117,370	\$130,350	\$140,800	\$151,250
120% AMI	\$99,600	\$113,760	\$128,040	\$142,200	\$153,600	\$165,000

3.) Cash Payment Option

Existing Ordinance:

Eligibility and Amount:

- Developments containing no more than 6 units may request through their Special Permit application to meet their IZ requirements through a payment-in-lieu of providing the inclusionary units on-site.
- For projects with greater than 6 units, payments-in-lieu are only allowed through the Special Permit process where the City Council makes specific findings to an “unusual net benefit to allowing a fee rather than the inclusionary units.”
- Fee-in-lieu Amount: First two units in a development are exempt from the fee-in-lieu. For the remaining units, fee equals 12% of sales price at closing of each unit or 12% of assessed value of each unit for rental projects.

Fractional Cash Payments:

- This provision is not included in the City’s existing IZ ordinance.

Cash Payment Recipient:

- Funds are distributed equally between the Newton Housing Authority and the Planning & Development Department.
- IZ funds are to be used exclusively for construction, purchase, or rehabilitation of housing for eligible households consistent with the IZ ordinance.

Proposed Ordinance:

Eligibility and Amount:

- Developments with 7-9 units may choose to make a cash payment to the City in lieu of building the inclusionary units on site, without receiving permission from the City Council through the Special Permit process.
- For projects that fall outside of the 7-9 units category, payments-in-lieu are only allowed through the Special Permit process where the City Council makes specific findings to an “unusual net benefit to allowing a fee rather than the inclusionary units.”
- Fee-in-lieu Amount: Staff’s original proposal utilized the most current Massachusetts Department of Housing and Community Development’s (DHCD) Qualified Allocation Plan’s (QAP) “Total Residential Development Cost Limits” Index¹ as the basis for determining these payments. However, based on feedback from Councilors and stakeholders, staff has explored alternative models, including 1.) utilizing an average Total Development Costs / Unit for Newton-funded affordable housing project, or 2.) utilizing the value gap approach (the average differential between the value of a market-rate unit and an affordable unit in Newton).
 - The Newton Housing Partnership is still reviewing this provision and is expected to deliberate this issue, and others, at their upcoming meeting on May 14th. Staff will likely utilize the Partnership’s recommendation to update this section of the proposed ordinance.

Fractional Cash Payments:

- For projects where the inclusionary zoning requirement results in a fraction of a unit less than 0.5, the developer may contribute a fractional cash payment to the City to cover the fraction of that inclusionary unit requirement, without receiving permission from the City Council through the Special Permit process.
- Fractional Cash Payment Amount: Again, staff’s original proposal utilized the most current Massachusetts Department of Housing and Community Development’s (DHCD) Qualified Allocation Plan’s (QAP) “Total Residential Development Cost Limits” Index² as the basis for determining these fractional cash payments.
 - The Newton Housing Partnership is still reviewing this provision and is expected to deliberate this issue, and others, at their upcoming meeting on May 14th. Staff will likely utilize the Partnership’s recommendation to update this section of the proposed ordinance.

Cash Payment Recipient:

- These cash payments are deposited into the City’s Inclusionary Zoning Fund, which is distributed equally between the Newton Housing Authority (NHA) and the City of Newton.

¹ From the Commonwealth of Massachusetts Department of Housing and Community Development’s Low Income Housing Tax Credit Program 2018-2019 Qualified Allocation Plan, Appendix C, <https://www.mass.gov/files/documents/2018/04/26/20182019QAP.pdf>

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

- These funds are to be targeted for the restoration, creation, preservation, and associated supportive services, of deed-restricted units affordable to households with annual gross incomes at or below 80% AMI, as well as costs incurred by the City that are related to the monitoring of these units.
- Appropriation of the funds for use by the City or the Newton Housing Authority must first be approved by the Planning & Development Board, and then the Mayor.

4.) Off-Site Development

Existing Ordinance:

- Allowed through a Special Permit when applicant enters into a development agreement with a non-profit housing developer.
- Off-site units must be completed and occupied no later than the project's market-rate units.

Proposed Ordinance:

- Off-site inclusionary units are generally discouraged by this ordinance, and are only allowed through the Special Permit process where the City Council makes specific findings to an "unusual net benefit to achieving the City's housing objectives as a result of allowing the required units to be built off-site."
- Projects that receive such permission from the Council must form a development agreement with a non-profit housing developer for the development of the off-site affordable units.
 - Off-site units must be completed and occupied no later than the project's market-rate units;
 - Must provide a greater number of affordable units at a deeper level of affordability than what would have been provided if the required IZ units were to remain on-site;
 - Must provide a unit mix that is equivalent to what would have been provided on-site, as well as comparable sized units; and
 - Must provide an equivalent level of accessibility as what would have been provided if the required IZ units were to remain on-site.

5.) Design & Construction

Existing Ordinance:

- The key difference between the provisions of the existing ordinance and the proposed ordinance are as follows:
 - The existing ordinance uses the following minimums for habitable space, while the proposed ordinance utilizes DHCD's minimum square footage and bathroom requirements, per the most current Comprehensive Permit Guidelines:
 - 1 bedroom – 650 square feet
 - 2 bedrooms – 950 square feet
 - 3 bedrooms – 1250 square feet

- 4 bedrooms – 1550 square feet

Proposed Ordinance:

- The inclusionary units in a development must be indistinguishable from the market-rate units as viewed from the exterior, and the inclusionary units must contain complete living facilities, including a stove, kitchen cabinets, plumbing fixtures, a refrigerator, a microwave, and access to laundry facilities.
- The materials used and the quality of construction for the inclusionary units, including heating, ventilation, and air conditioning systems, must be equal to that of the market-rate units, provided that amenities such as a so-called designer or high end appliances and fixtures need not be provided for inclusionary units.
- The bedroom mix of the inclusionary units must be equal to that of the market-rate units.
- The inclusionary units must meet the following size specifications:
 - Must be comparable in size to that of the market-rate units;
 - Whichever is greater of the two:
 1. Must meet the minimum square footage and bathroom requirements, as required by DHCD's most current Comprehensive Permit Guidelines.
 2. Must have habitable space of not less than 60% of the average square footage of the market-rate units with the same number of bedrooms; and
 - The total habitable space of inclusionary units in a proposed development shall not be less than 10% of the sum of the total habitable space of all market-rate and all inclusionary units in the proposed development.
- The inclusionary units, and their associated parking spaces, must be proportionately distributed throughout a project and must not be located in less desirable locations than the market-rate units.
- At a minimum, the inclusionary units must have an equivalent level of accessibility to that of the market-rate units.
- The inclusionary units must have equal access to all amenities that are offered to the market-rate units in a project, such as parking, onsite fitness center, laundry facilities, and community rooms.

6.) Inclusionary Housing Plans & Covenants

Existing Ordinance:

- These provisions of proposed ordinance mirror those of the existing ordinance (see below); however, the proposed ordinance removes the following:
 - The stated requirement that the Newton Housing Authority review the applicants' Inclusionary Housing Plans;

- Mention of the Newton Housing Authority in Section 5.11.9.E, which states that the Housing Authority is responsible for maintaining a waiting list of eligible households for applicable inclusionary housing projects.

Proposed Ordinance:

- Prior to receiving a Building Permit from the City, the developer must submit a draft Inclusionary Housing Plan for review and final approval by the Director of Planning and Development. The plan must include, among other elements, a description of the proposed project, the total number of market-rate and inclusionary units, floor plans indicating the location, size and number of bedrooms and bathrooms per unit for all the units in the project, and the projected rent levels and sale prices for all the units.
- The developer must also submit a draft Affirmative Fair Housing Marketing and Resident Selection Plan for review and final approval by the Director of Planning and Development. At a minimum, this plan must meet the requirements set out in the Comprehensive Permit Guidelines of the DHCD, and provide for a Newton local preference for up to 70% of the inclusionary units in a project.
- The inclusionary units must be marketed and occupied consistent with the City and DHCD (or the relevant Subsidizing Agency) approved Affirmative Fair Housing Marketing and Resident Selection Plan. Marketing may not take place for **any** units in the project until the City and DHCD have approved this plan.
 - The developer is responsible for carrying out this plan, and must contract with an entity that has substantial and successful prior experience in each component of the Affirmative Fair Housing Marketing and Resident Selection Plan.
 - The inclusionary units and market-rate units of a project must be occupied at the same time.
- Tier 1 Inclusionary Units must be qualified as ‘Local Action Units’ pursuant to the requirements of the Comprehensive Permit Guidelines of the DHCD and, therefore, must be SHI-eligible units. All projects subject to the Inclusionary Zoning requirements must enter in an affordable housing deed restriction with the City, and in most cases, a Regulatory Agreement between the City, DHCD (or relevant Subsidizing Agency) and the developer. These affordable housing covenants must be recorded in the Registry of Deeds and will endure for the life of the residential development.

7.) Public Funding Limitation

Existing Ordinance:

- Projects subject to the inclusionary housing provisions are prohibited from using public development funds to construct inclusionary units required through the IZ ordinance.
- However, such projects may use public funds to construct those inclusionary units that are found by the Director of Planning & Development to be consistent with the following:

- Represent a greater number of affordable units than are otherwise required;
- Those that are at a deeper level of affordability than what is required by the IZ ordinance (by at least 10 percentage points); and
- Those that exceed regulatory requirements in providing for persons with disabilities.

Proposed Ordinance:

- The proposed provision mirrors the existing ordinance language.

8.) Elder Housing with Services

Existing Ordinance:

- The City Council determines whether the contribution shall be residential beds or units or a cash payment.
- Contribution = 2.5% of annual gross revenue calculation; the amount of the contribution amount shall be determined by the Director of Planning & Development, based on analysis of verified financial statements and associated and relevant data.

Proposed Ordinance:

- 5% of the total number of beds provided as part of an Elder Housing with Services project must be affordable for seniors age 62 or older whose annual gross incomes are at or below 80% AMI.
 - Where the IZ requirement results in a fraction of a unit greater than or equal to 0.5, the developer must provide one inclusionary bed to capture that fraction.
- Housing and base services provided to households occupying the affordable inclusionary beds must be comparable to those offered to the market-rate residents.
- Monthly housing and service costs, inclusive of entrance fees, rent or monthly occupancy fees, amenities, and base services offered to all residents regardless of income status, must not exceed a fixed percentage of the applicable household income limit for that inclusionary bed, based upon the type of elder housing with services facility.
- Independent Living: Monthly housing and service costs must not exceed 15% of the applicable household income limit for that inclusionary bed (which is 80% AMI).
- Assisted Living: Monthly housing and service costs must not exceed 30% of the applicable household income limit for that inclusionary bed (which is 80% AMI). The services provided to these households must be comparable to the base services offered to all residents, regardless of income status, including long-term health care, nursing care, home health care, personal care, meals, transportation, convenience services, social, cultural, and educational programming, and the like.

- Continuing Care Retirement Communities (CCRC's): The on-site requirement for Elder Housing facilities of this type shall be negotiated with the City Council on a case-by-case basis. The City may consult with an expert consultant to determine an appropriate and fair requirement based on the specifics of the proposed project.
- 100% Deed-Restricted Affordable Facilities: Elder Housing with Services projects that provide 100% of their units as deed-restricted affordable for seniors whose annual gross incomes are at or below 150% AMI are not required to comply with the prescribed percentage requirements per income level, as detailed in the proposed ordinance. However, projects that are 100% deed-restricted affordable are still subject to all other applicable sections of the ordinance.
- Payment-in-lieu: Alternatively, Elder Housing with Services projects may choose to meet their Inclusionary Zoning requirement through a payment-in-lieu, without receiving permission from the City Council through the Special Permit process. Staff's original proposal utilized DHCD's Qualified Allocation Plan Index for "Single Room Occupancy / Group Homes / Assisted Living / Small Unit Supportive Housing" of \$259,000, coupled with the calculation of 5% of the total number of beds provided in the project.
 - As discussed above, the Newton Housing Partnership is still reviewing this provision and is expected to deliberate this issue, and others, at their upcoming meeting on May 14th. Staff will likely utilize the Partnership's recommendation to update this section of the proposed ordinance.

9.) No Effect on Prior or Existing Obligations

- No change proposed with proposed ordinance.

10.) Inclusionary Housing Program Reevaluation Requirement

Existing Ordinance:

- This provision is not included in the City's existing IZ ordinance.

Proposed Ordinance:

- The City shall initiate a reevaluation of the Inclusionary Housing Requirements every 5 years.
- This reevaluation will include a report provided to the City Council, reviewing factors such as changes in demographic characteristics and residential development activity, housing trends measured in terms of, but not limited to, vacancy rates, production statistics, prices for dwelling units, and affordability, and the relationship between Inclusionary Housing Projects and all housing in Newton.
- The Department of Planning and Development will also conduct an annual review and report on the Inclusionary Housing Program.

11.) **Effective Date**

Existing Ordinance:

- This provision is not included in the City's existing IZ ordinance.

Proposed Ordinance:

- The effective date of the new IZ ordinance will be a specified date after the amended ordinance is adopted by the City Council and signed by the Mayor.
- The provisions of the amended ordinance will only apply to projects that receive a Special Permit (or building permit in the case where a special permit is not required) after this effective date.

Printed Attachments:

- Staff's responses to stakeholder questions / comments

Digital Attachments / Additional Documents:

- Proposed Inclusionary Zoning Ordinance text (clean version), November 9, 2018:
<http://www.newtonma.gov/civicax/filebank/documents/92905>
- Proposed Inclusionary Zoning Ordinance Guidebook (November 9, 2018):
<http://www.newtonma.gov/civicax/filebank/documents/93001>
- 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



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Barney S. Heath
Director

Inclusionary Zoning Ordinance Update Responses to Stakeholder Questions / Comments (updated 5.10.19)

The following is a list of archived questions and comments from stakeholders during the Public Hearing process for the Inclusionary Zoning ordinance update. The Planning Department has provided answers and/or responses to each of these statements.

1.) I would suggest that the middle-income tier go up to 120% AMI (not 110%) consistent with other state and federal programs.

The Planning Department chose to cap the Tier 3 Middle-Income limit at 110% AMI rather than 120% AMI for a few reasons. First, rent levels at 120% AMI are close to approaching market-rate rents in Newton for many non-new construction units; therefore, the opportunity to find housing is slightly less constrained as one approaches the 120% AMI level.

Secondly, by setting the limit at 110% AMI, versus 120% AMI, we are hoping to expand the window of opportunity to a greater number of income-eligible households. If the limit for Tier 3 units is set at 120% AMI, developers will likely set the rents and sale prices for these units as high as they are allowed (right at that 120% AMI level), making these units affordable only to households closer to that 120% AMI level. The likelihood that a household with an annual income between 81% AMI and 100% AMI would be able to afford rents set at 120% AMI is low.

For example, the maximum affordable monthly rent for a 2-bedroom unit set at 120% AMI is \$2,913, whereas the maximum affordable rent for a 2-bedroom unit set at 85% AMI and 100% AMI is \$2,063 and \$2,427, respectively. That is a monthly difference of \$485 and \$849 – a large amount of additional money for a family of three to spend on housing each month

2.) It is not realistic to obtain units at the extremely low-income level (30% AMI) via inclusionary zoning. It is a commonly held understanding in affordable housing that rental assistance (federal Section 8 or state MRVP) is needed to serve extremely low-income households.

Staff believes that while obtaining units at the extremely low-income level through inclusionary zoning is very challenging, it should not be seen as impossible. As discussed in previous memos to the Zoning & Planning Committee, staff has begun to explore an alternative compliance option for those

rental projects that provide on-site a percentage of their total units for households with annual incomes at or below 30% AMI. This option would allow a project to reduce its overall inclusionary zoning requirement by at least five percentage points if at least 2.5% of its total units are designated for extremely low-income households.

We understand that projects that choose this option would require project-based subsidies, as well as ongoing funding to pay for the necessary supportive services for these extremely low-income households. As such, the developer would be required to partner with a City-approved agency that specializes in this type of housing, and in providing supportive services for individuals and families in this income bracket. The agency would be engaged early on in the development process to work in partnership with the developer to identify and secure the necessary funding to bring these units online, and to ensure the successful tenancy of the households residing in these units.

While this alternative compliance option will not be appropriate for every project subject to the inclusionary zoning requirements, certain projects may be suitable for providing these units and services for our City's most vulnerable individuals and families, whose housing options are incredibly constrained. Staff has held a number of conversations with developers and service providers who specialize in servicing this population. These experts have been supportive of our proposed concept and see this alternative compliance option as a viable way to create much-needed units for a vastly underserved population. In addition, we have begun to share this concept with for-profit developers in Newton who have experience with inclusionary zoning requirements. To date, developers have expressed an openness to learning more about this compliance option and exploring whether such a requirement might be a fit for future projects.

3.) The draft contains incorrect references. For example, the definition of “Deed-Restricted Affordable Unit(s)” references the “Subsidizing Agency,” which is a concept relevant to MGL Chapter 40B. There is no “Subsidizing Agency” in a Special Permit project. The draft references DHCD Guidelines dated June 1, 2009, which is a very outdated reference. The applicable guidelines are dated December 2014.

Staff disagrees with the first statement made in this comment. The definition provided in our current proposal for a “Deed-Restricted Affordable Unit(s)” properly references the “Subsidizing Agency and monitoring agent, *if applicable*....” Later in the proposed ordinance, Section 5.11.3.E. states that “All Inclusionary Units affordable to households at or below 80% of AMI must be qualified as ‘Local Action Units’ pursuant to DHCD Guidelines.” For the inclusionary units that must qualify as Local Action Units, DHCD does act as the Subsidizing Agency through its Local Initiative / Local Action Units Program. Further, it is likely that some of the projects subject to our updated inclusionary zoning ordinance will seek a public subsidy from MassHousing through its Workforce Housing Program (for Tier 2 units). In this case, MassHousing would be the Subsidizing Agency.

With regard to the second statement made in this comment, staff acknowledges the clerical error in the draft ordinance, which references DHCD Guidelines dated June 1, 2009, and will update the proposed text accordingly.

- 4.) The provision for calculating the maximum allowable rent is unworkable. Proposed Section 5.11.4.E.1 calls for the rents to “not exceed 30% of the monthly income for the applicable eligible household.” This will render the development incapable of obtaining financing as no lender will lend on a project where rents increase or decrease as tenant incomes change. The current ordinance correctly references tying rents to income *limits* (see existing Section 5.11.4.B.3).**

Staff acknowledges this clerical error and agrees that the rents for inclusionary units “must not exceed 30% of the applicable household income limit for the inclusionary unit.” This text will be updated accordingly.

- 5.) State cost limits for funding should not be used to calculate cash payment amounts. DHCD’s cost limits are utilized for funding purposes in a scarce subsidy environment. They are guidelines and exceptions are frequently allowed. In addition, other mechanisms like ground leases are frequently used to take costs off-budget. The RKG report identified other more appropriate ways to determine the appropriate cash payment amount and those should be explored further.**

As discussed in great detail at the February 19th Inclusionary Zoning Roundtable with the housing advocates, staff will continue to explore alternative options for calculating the cash payment amounts related to the inclusionary zoning requirements. This is one of the items the Newton Housing Partnership is currently assessing, and will provide staff and ZAP with their recommendation prior to the June Public Hearing.

- 6.) Cash payments to the City of Newton should go to the Community Preservation Committee. The Newton Housing Authority has made good use of their share of inclusionary zoning payments but there has been a complete lack of transparency regarding the 50% provided to the City of Newton. How much money is available and how does an affordable housing developer apply for it? The City’s 50% should be provided to the CPC which has a fair and transparent process for allocating funds.**

Currently, to appropriate funding from the City’s IZ account, a recommendation for use of the funds must first be made by the Mayor and then voted on by the City Council. The same process applies for accessing the Newton Housing Authority’s half of the fund.

At this time, there is no formal process for how a developer would apply for the City’s IZ funds. However, if changes made to the inclusionary ordinance result in the potential for the generation of a larger amount of IZ funds on a more regular basis, the Planning Department will work with the Mayor to develop a written process for the use and approval of the City’s Inclusionary Zoning Funds.

As of October 2018, there was a balance of \$265,672 in the City’s half of the Inclusionary Zoning Fund. The last appropriation from the City’s IZ account was for \$41,080 in November 2017, to assist the Newton Housing Authority in the repayment of HOME funds for the sale of 83-85 West Street.

7.) Existing language regarding proportional rent-up should not be eliminated. The language in existing Section 5.11.4 requiring inclusionary units “at each point” in the marketing of the development should be retained in the ordinance.

Staff has no issue with retaining this language in the new ordinance and will update the proposed text accordingly.

8.) The City should charge a monitoring fee. Oversight of inclusionary developments is critical and developers ought to pay a reasonable monitoring fee so that the City has resources for this important function (could be outsourced to an entity with experience in this area).

Staff is exploring this concept and will report back to the Zoning & Planning Committee with our findings in terms of a reasonable amount to charge as a monitoring fee and how this requirement would be included in the updated ordinance.

9.) Section 5.11.4.D. – Why not density bonus of up to 30% (that’s the # Cambridge uses).

As discussed with the Zoning & Planning Committee over the past year, in its current form, the “Incentives” section of the existing IZ ordinance (1 unit granted for each additional inclusionary unit provided above the number required per the ordinance) is vastly underutilized. While the current incentive bonus may be beneficial to a project’s financial feasibility, the request for increased density often presents more issues than solutions for a proposed project in the development review process with Council.

10.) 5.11.4.E. - I’m torn on parking – because I think it’s passe and to be discouraged. Do we want to leave flexibility for allowing purchased parking – rather than required parking? Cambridge provides that parking spaces be available at a pro-rata (affordable rent/market rent) reduced cost.

Staff believes that the cost of a parking space should be included in the monthly housing costs for the inclusionary units, which should not exceed 30% of the applicable household income limit for the inclusionary unit. While the market-rate units may be offered parking at an additional cost to the tenant, the cost of parking should not be an additional financial burden for the households residing in the affordable units. If these households do not require the use of the space, the developer could offer the space to a market-rate tenant willing to pay for the amenity.

11.) 5.11.5.A.2. - Increase to 20% if cash only? This would help address my concern in 5.11.5.

Staff will consider this idea as we continue to explore alternative options for calculating the cash payment amounts related to the inclusionary zoning requirements.

12.) 5.11.5.B. - Shouldn’t the alternative of cash payments for 7-9 units be increased be as follows:

7-unit project: 7 x 15% x \$389,000 = \$408,450

**8-unit project: 8 x 15% x \$389,000 = \$466,800 etc.
As drafted – the effective IZ rate is 10%**

Staff utilized this decreasing percentage calculation for projects with 7-9 units to account for the fact that smaller-scale projects are more sensitive to inclusionary zoning requirements, given their inability to spread these costs across a substantial number of market-rate units. Rather than require these smaller projects to pay a large fee-in-lieu to meet their IZ requirement, staff felt the decreasing percentage methodology was a fair balance between capturing value from these projects and not pushing them towards financial infeasibility. However, staff will consider this idea as we continue to explore alternative options for calculating the cash payment (and fractional cash payment) amounts related to the inclusionary zoning requirements.

13.) 5.11.5.E. - I personally like the idea of having the City's share of IZ funds being under mayoral/planning department control – leading to more flexible usage than requiring to go through the political gauntlet of City Council.

Staff will take this comment under consideration as we continue to look at this provision.

14.) 5.11.6.A. Off-site. - We should explicitly add “more and deeper affordability” to the list of factors being considered. Boston requires a significant affordable unit count increase (13% to 18%) for off-site developments, and also has a vicinity requirement. On the “deeper affordability” aspect of this – this is where I would hope we can get more Tier 1 units.

Staff is open to exploring this idea and will look at updating this provision accordingly.

15.) 5.11.9. Public funding limitation – This is a good and important provision – however, should we add a provision that the Director determine that the public funds are, at a minimum, commensurate with the additional affordability provided? Otherwise a little affordability could be used to justify a lot of other public funds.

Staff is open to exploring this idea and will look at updating this provision accordingly.

16.) Cambridge requires larger projects (>30,000 sq ft) to provide an increased # of family affordable units (i.e. 3 bed, >1,100 sq ft) – even if that skews the other #'s. It's a complicated formula – but the idea is that modern rental projects often have very few 2+ bedroom units, and this is a way to get some affordable family ones as part of the mix.

Staff is open to exploring this idea and will look at updating this provision accordingly.

17.) Could hotels be required to make a cash payment into the IZ fund? Office buildings? Cambridge (admittedly a very different community on this aspect) has an “Incentive Projects” provision which requires cash payments into the fund based on a per sq. ft charge for hotels, offices, etc.

Staff recommends not including this idea of Linkage Fees in the updated Inclusionary Zoning ordinance. This concept could be an appropriate one for the new Newton Housing Partnership to explore, along with other potential sources of funds for supporting affordable housing.

**18.) Do we want to get into the weeds of what to do when tenants become over-income?
Cambridge has a very explicit process that in essence seems to create a ‘next available unit’ rule.**

As stated in the proposed ordinance, Tier 1 and Tier 2 Units must be qualified as ‘Local Action Units’ pursuant to DHCD’s Chapter 40B Guidelines, and Tier 3 Units must be consistent with the Local Action Units requirements. Per DHCD’s Guidelines:

“Tenants Who Become Over-Income: If, after initial occupancy, the income of a tenant of an affordable unit increases and exceeds the maximum allowable income at the time of annual income determination, such an Update in income shall not affect the treatment of the Project or the unit with respect to the SHI provided that the Owner is in compliance with the related Revised December 2014 SHI II - 5 provisions of the affordability restriction. If the affordability restriction does not address the matter of over-income tenants, then such a change in income shall not affect the treatment of the Project or the unit with respect to the SHI provided that either (i) the tenant’s income does not exceed 140% of the maximum allowable income, or (ii) the owner rents the next available unit as an affordable unit to an eligible tenant pursuant to the terms. If, after initial occupancy, the income of a tenant of an affordable unit increases and exceeds 140% of the maximum allowable income at the time of annual income determination, then at the expiration of the tenant’s lease term, the rent restrictions will no longer apply to the tenant.

19.) One additional new item that was not in those previous comments and discussions are proposed changes creating authority to use a portion (up to 15%) of available IZ funds for supportive services for Tier 1 tenants in units created by the ordinance.

Staff is open to exploring this idea and will look at updating this provision accordingly.