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Barney S. Heath  
Director

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**MEMORANDUM**

**DATE:** April 9, 2021

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

**FROM:** Barney S. Heath, Director of Planning and Development  
Amanda Berman, Director of Housing & Community Development  
Eamon Bencivengo, Housing Development Planner

**RE:** **Docket Item #528-20: Requesting review and possible amendment to Local Preference in Chapter 30**  
COUNCILORS ALBRIGHT, NORTON, CROSSLEY, BOWMAN, NOEL, HUMPHREY, WRIGHT, LAREDO, KALIS, RYAN, LIPOF AND DANBERG requesting a review and possible amendment to the Local Preference Ordinance in Chapter 30 sections 5.11.8. This section requires an Affirmative Fair Housing Marketing and Resident Selection Plan (AFHMP) for all Inclusionary Units which provides for a local preference for up to 70% of the Inclusionary Units. Various groups including The Fair Housing Committee and the Newton Housing Partnership have questioned whether the percent of local preference to current Newton residents should be lowered with the goal of increasing racial diversity in Newton.

**CC:** Jonathan Yeo, Chief Operating Officer

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This memo provides an introduction to Newton's Local Preference Policy, which can be found in Section 5.11 8 c. of Newton's Inclusionary Zoning ordinance. The Local Preference (LP) section outlines Newton's policy with respect to establishing a resident selection plan for "affordable" housing units which would be made available as part of the affordable housing lottery held prior to tenant lease-up. Newton's current policy, which has been in effect since at least 2014, sets-aside 70% of the available affordable units to be filled by income eligible local preference households. The current 70% percentage is the maximum set-aside permitted by the Massachusetts Department of Housing and Community Development.

## What is Local Preference?

Local Preference is a concept that is defined within Massachusetts' state statute Chapter 40B. Per the Massachusetts Department of Housing and Community Development's [Chapter 40B Guidelines](#), the Local Preference "allowable categories" include:

- 1.) Current residents: A household in which one or more members is living in the city or town at the time of application. Documentation of residency should be provided, such as rent receipts, utility bills, street listing or voter registration listing.
- 2.) Municipal Employees: Employees of the municipality, such as teachers, janitors, firefighters, police officers, librarians, or town hall employees.
- 3.) Employees of Local Businesses: Employees of businesses located in the municipality.
- 4.) Households with children attending the locality's schools, such as METCO students.

As described below, a local preference may not exceed 70% of the affordable units in a project and the municipality seeking to implement local preference for a particular project must demonstrate / justify the following to the project Subsidizing Agency (DHCD, MassHousing, MassDevelopment, MHP) to receive permission to exercise the preference:

- The need for local preference, as demonstrated in the Affirmative Fair Housing Marketing and Resident Selection Plan (AFHMP)
- The extent of the local preference (the percentage of units proposed to be set aside for local preference applicants)
  - That is, how does the documented local need, in the context of the size of the community, the size of the project and the regional need, justify the proposed size of the local preference for a given project?
- That the proposed local preference will not have a disparate impact on protected classes (see the "Avoiding Potential Discriminatory Effects" section below)

Regarding to potential discriminatory effects of a local preference policy, DHCD's 40B Guidelines state the following:

### Avoiding Potential Discriminatory Effects

*The local selection preferences must not disproportionately delay or otherwise deny admission of non-local residents that are protected under state and federal civil rights laws. The AFHMP should demonstrate what efforts will be taken to prevent a disparate impact or discriminatory effect. For example, the community may move minority applicants into the local selection pool to ensure it reflects the racial/ethnic balance of the HUD defined Metropolitan Statistical Area ("MSA") as described below.\* However, such a protective measure may not be sufficient as it is race/ethnicity specific; the AFHMP must address other classes of persons protected under fair housing laws who may be negatively affected by the local preference. For instance, a preference solely based on employment in the municipality may have a disparate impact on the elderly or some persons with disabilities. In such instance, an applicant residing in the*

*community who is age 62 or older or is a person with a disability must be given the benefit of the employment preference.*

*\* This protective measure may not be dispositive with respect to discriminatory effects. For example, the non-local applicant pool may contain a disproportionately large percentage of minorities, and therefore adjusting the local preference pool to reflect demographics of the regional area may not sufficiently address the discriminatory effect that the local preference has on minority applicants. Therefore, characteristics of the non-local applicant pool should continually be evaluated.*

Currently, the percentage of minorities in the Boston-Cambridge-Quincy, MA-NH HUD Metro FMR Area is 27%. Therefore, if any affordable housing lottery held in Newton does not have a Local Preference Pool comprised of at least 27% minority applicants, a preliminary lottery will be held to move minority applicants into the Local Preference Pool so that it reflects that racial/ethnic balance of 27%.

### **Assessment of Newton's Affordable Housing Local Preference Policy**

In January 2021, the Planning Department contracted with Judi Barrett of Barrett Consultant Group to perform the following scope of work:

- Evaluate the effectiveness of and need for the City's existing "local preference" policy, i.e., the policy that gives priority to Newton residents for access to affordable housing units
- Assess the potential barriers created by the policy
- Review available Affirmative Fair Housing Marketing and Resident Selection Plans (AFHMP), where available
- Review lottery data for selected developments, for size and makeup of local preference and general pools
- Review lease-up data for the same developments and compare with lottery results
- Consult with developers, lottery agents to understand differences (if any) in makeup of lottery v. lease-up groups
- Consider available data in light of City's established local preference policy
- Deliver a technical memorandum outlining project approach, methodology, findings, and recommendations

Judi and her team recently met with the Newton Housing Partnership and the Fair Housing Committee to share their initial findings and takeaways and to solicit feedback from these advisory committees. After the discussion with the Zoning & Planning Committee on Monday, April 12<sup>th</sup>, Judi will finalize her written report for the Planning Department.