



Ruthanne Fuller
Mayor

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

#528-20
Telephone
(617) 796-1120
Telefax
(617) 796-1142
TDD/TTY
(617) 796-1089
www.newtonma.gov

Barney S. Heath
Director

MEMORANDUM

DATE: September 24, 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

On July 26th, Planning staff met with ZAP to provide a summary of the work and analysis conducted over the past year related to Newton's Local Preference Policy. As you know, this assessment was spurred in part by the Newton Housing Partnership's vote in July 2020 to recommend that the existing Local Preference policy be changed from 70% to zero, followed by a City Council Docket Item related to the matter in late 2020, as referenced above.

The impetus behind the past year of analysis around local preference was centered on the question of whether a 70% local preference policy in a majority White community like Newton created a disparate impact on people of color. Understanding the possible negative implications of this policy is

critical given the City’s obligation to abide by the Federal Fair Housing Act and its duty to affirmatively further fair and equal housing opportunity for all.

In January 2021, the Planning Department contracted with Judi Barrett of Barrett Planning Group to assess the effects of exercising Newton’s current local preference policy in three recent affordable rental housing development lotteries: TRIO, 28 Austin Street, and Hancock Estates. While the Barrett study and report were limited in scope, it did highlight that White, non-Hispanic “local preference” applicants were selected at higher rates than minority groups overall. Additionally, it showed that the non-local preference pools were overwhelmingly made up of minorities, which helped to offset the high selection rates of the local-preference White applicant group.

One straight forward conclusion that can be drawn from this analysis is that a reduction in the set-aside for local preference units would result in a higher number of units being afforded to persons of color. The identified correlation between Newton’s 70% local preference policy and the percentage of minorities, particularly Black and African American applicants, that are able gain access to these rare affordable units, as compared to the percentage that their White, local-preference counterparts consistently enjoy, suggests that, absent a change, lottery results will continue to perpetuate the current race advantage.

At its July 2021 meeting, the Newton Housing Partnership considered a motion to recommend lowering the percentage to 35%; however, the motion did not pass, as some members wanted more time to hold this important discussion and others expressed an interest in recommending an even lower percentage. On August 17th, the Newton Housing Partnership continued its debate of this matter, ultimately voting to recommend a reduction in the City’s local preference policy from 70% to 25% to “mitigate the discriminatory effect of the policy and to affirmatively further fair housing outcomes.”

The Partnership acknowledged that this reduction in the local preference policy is an important first step. The group has committed to continued analysis of other impediments that affect greater diversity outcomes across Newton’s housing landscape. As referenced in their recommendation letter, they plan to look into other policies that “prevent project sponsors from discriminating during the tenant selection process, for example by more closely monitoring owner screening processes... that some people of color face after winning the lottery,” including the review of applicant credit, rental history, or other factors that may prevent a selected applicant from being able to sign a lease for an affordable unit.

Additionally, both staff and the Partnership recognize the incredible need for greater affordable housing opportunities for individuals and households with disabilities. As part of the Barrett Planning Group’s study, the consultant team did attempt to analyze available data related to the accessible affordable units in these three developments. While collectively nine accessible affordable units were included in these projects, only four of those units were initially leased to tenants with disabilities. The Barrett report concludes that outside factors beyond local preference affect the leasing outcomes of these units, including that the pricing of these affordable units may be too high for people with disabilities. Further study will be conducted on this matter; however, with the proposed reduction of the local preference requirement, staff recommends that new language be added to the

policy to ensure that at least one of the local preference units in the project be a fully accessible affordable unit. This change is reflected in the attached red-line DRAFT of the local preference policy language in the City's Inclusionary Zoning Ordinance.

Lastly, a handful of questions were raised during your July 26th ZAP meeting. Below are some of the questions (and answers) that staff was unable to answer at the time.

Answers to Questions Raised at July 26, 2021 ZAP Meeting:

- 1.) What about disabled individuals who aren't necessarily physically disabled and don't require the features of a fully-accessible unit, but have an intellectual disability – those that live at home with their parents? Where does this group fall in terms of local preference?

Answer:

Staff consulted with a DHCD-certified local lottery agent on this question. The lottery agent explained that in order to qualify for a disabled-accessible unit, applicants must provide a note from a medical professional who treats the disability, stating that they need the special features in the unit. Additionally, the lottery agent provided that according to *Mass Access: The Accessible Housing Registry*, "units that are barrier-free are accessible to people with disabilities that are wheelchair users but could also be used by people of different types of disabilities. For example, a person of very short stature, a person with a brain injury or stroke, severe cardiac or respiratory problems, or a person with limited standing, walking, or reaching ability, may use the design features of a wheelchair accessible unit." Verification from a doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may be requested. But documentation submitted must specify that the household needs the features of an accessible or hearing-impaired unit.

Someone with an intellectual or developmental disability doesn't necessarily require the features of a disabled-accessible or hearing-impaired unit and, therefore, would not be given top priority for these units or any of the other affordable units in a project, even if they qualify as a local preference applicant.

- 2.) Of the 1,157 total applicants across the three projects analyzed in the Barrett study, how many of these applicants were deemed to be "eligible" for inclusion in the lotteries?

Answer:

1,157 was the total number of households entered into these three lotteries. The lottery agent determines initial eligibility for inclusion in the lottery based on households' own self-reported income/assets, which they include in their lottery application. A deeper vetting of income, assets, tax documentation, etc. is only conducted for those households that are invited to apply for a lease, based on their ranking on the lottery wait lists. This second level of eligibility certification is required to ensure that the household truly meets the income requirements of the program before signing a lease for an affordable unit.

- 3.) How is it decided which units across all income levels are designated as the Local Preference units?

Answer:

Staff works with the Lottery Agent to assign which units are local preference units, based on the overall unit and affordability mix of the project and the identified housing needs of the community. Staff also works to ensure that the appropriate number of accessible affordable units are designated as local preference units.

- 4.) For those minority applicants that qualify as local preference, is there a way to enhance the probability that they are chosen for a unit?

Answer:

No. There are four local preference “allowable categories,” per DHCD, and each category carries the same weight; therefore, a local preference applicant that identifies as a minority and is a current resident of Newton is given the same priority as a White local preference applicant that is an employee of a local Newton business but is not a current Newton resident. 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.

ATTACHMENTS:

- Newton Housing Partnership 9/21/21 recommendation letter re: 25% Local Preference Policy
- Red-line DRAFT of Local Preference Policy language in Inclusionary Zoning Ordinance
- Staff presentation from 7/26/21 ZAP Mtg.
- “Local Preference in Affordable Housing: Analysis of Data from Recent Rental Developments, June 2021” – Barrett Planning Group report to the City of Newton Department of Planning & Development: [click here to download report](#)



CITY OF NEWTON, MASSACHUSETTS

Newton Housing Partnership

September 21, 2021

Honorable Mayor Ruthanne Fuller
Newton City Hall
1000 Commonwealth Ave
Newton, MA 02459

Chairwoman Deborah Crossly
Newton City Council

Ruthanne Fuller,
Mayor

Barney Heath,
Director
Planning & Development

Members:

- Lizbeth Heyer, Chair
- Mark Caggiano
- Eliza Datta
- Chuck Eisenberg
- Josephine McNeil
- Marva Serotkin
- Albert Simmons
- Stephen Tise

Dear Honorable Mayor Fuller and Chairwoman Crossley,

On behalf of the Newton Housing Partnership, I thank you for your continued leadership in calling for an end to racism in Newton and challenging each of us to take anti-racist action to eliminate barriers that prevent Newton from being a city that is welcoming and accessible to all. I also want to thank you for continuing to evaluate how to address the impact of Newton’s local housing preference on our efforts to ensure that Newton is truly an inclusive and accessible community to people of all racial, ethnic and cultural backgrounds and to consider changes to advance this important goal.

In July 2020 the Partnership identified the “up to” 70% local preference in our Inclusionary Zoning Law as a significant racist barrier with a discriminatory effect that must be changed. At that time, we wrote that while the intent of this provision to house local residents is on the surface a compelling policy, because of Newton’s predominantly white population (approx. 82%), imposing a high local preference perpetuates a racist housing system that gives significant preferential access to white households, while drastically limiting opportunities for people of color to move to Newton. As such, we suggested that the local preference be eliminated.

Since our July 2020 recommendation, the Partnership has continued to evaluate our recommendation, aided by Judy Barrett’s report which further underscored the importance of lowering or eliminating the preference. Barrett’s report found that *“While this study was limited in scope, the data and findings of this report indicate that Newton’s local preference policy is benefitting one racial/ethnic group over others (White, local preference applicants), creating a disparate impact on other groups, particularly Black/African Americans. When viewed through the lens of inclusion and the City’s obligation to affirmatively further fair housing for all protected classes, the policy does not appear to support those values. As noted above, however, continued assessment of the procedures for tenant selection for affordable housing units across the City may shed light on additional barriers to fair housing and equity.”*

Based on Barrett’s findings, the Partnership continues to strongly recommend that the City revise its local preference rules to address the City’s obligation to affirmatively further fair housing for all protected classes and address the additional barriers to tenant selection via the following actions:

1000 Commonwealth Ave.
Newton, MA 02459
T 617/796-1120
F 617/796-1142

www.newtonma.gov



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CITY OF NEWTON, MASSACHUSETTS

Newton Housing Partnership

1. Reduce the local preference from 70% to 25%. The Partnership came to this recommendation based on the following factors:
 - a. We evaluated local demographic data to identify a percentage that addressed local housing needs, while meaningfully reducing the local preference to mitigate the discriminatory effect and affirmatively further fair housing outcomes. HUD Comprehensive Housing Affordability Standard (CHAS) data indicates that 24% of all Newton households have incomes at or below 80% of AMI; 29% of all households are cost burdened (paying > 30% of their income for housing costs) and 24% of low-income households are cost burdened. A 25% local preference would help to ensure that this local need it met.
 - b. Racial rebalancing is an important tool that is preserved and arguably strengthened by setting Newton's local preference at 25%. Racial rebalancing allows for the addition of non-local applicants in a local preference pool if the pool of minority applicants is lower than the Metropolitan Statistical Area (MSA) % of minority households, which in the case of the Newton MSA is 27%. Setting the lower local preference pool below 27% would minimize the impact of racial rebalancing by decreasing the overall opportunity for minority applicants to be selected since more minorities would be in both the local and non-local pools. Note that we chose 25% rather than 27% because the percentage of minorities in the MSA will inevitably fluctuate.
 - c. We considered the impact of lowering the local preference on local households with disabilities and concluded that because only 2 of 9 affordable accessible units in Barrett's report went to qualified households, this suggests that income is the likely barrier, not local access. The average Social Security Disability Income (SSDI) annual payment is \$13,500 and the highest SSDI payment for disabled retirees is \$37,700, while a 1, 2 or 3-person household must earn approximately \$70,000, \$80,000 or \$90,000 respectively to afford an 80% AMI local preference unit to not be rent-burdened. This alarming income barrier suggests the need for other policies to support housing affordability for local residents with disabilities such as marketing accessible units to people with disabilities on the Newton Housing Authority's Section 8 wait list and making sure project sponsors are listing available units on the Mass Access Registry and new Housing Navigator system where people with rent subsidies seek housing opportunities.
2. Adopt policies that prohibit project sponsors from discriminating during the tenant selection process, for example by more closely monitoring owner screening processes. The City could also adopt policies or programs that would help to eliminate additional barriers that some people of color face after winning the lottery, such as bad credit or prior evictions, that can prevent a selected resident from being able to move in. The Partnership is considering such policies and programs and will provide recommendations soon.



CITY OF NEWTON, MASSACHUSETTS

Newton Housing Partnership

For these reasons, reducing Newton's local preference to 25% would both continue to serve local need and remove discriminatory barriers to affirmatively further fair housing. This bold action would ensure that people of color have greater access to housing in Newton by opening the doors of our affordable units more broadly and send a strong message that Newton will not perpetuate policies that keep non-white people out of our City.

Thank you for considering our recommendation and for inspiring each of us to take anti-racist action to make Newton truly accessible and welcoming to all.

Ruthanne Fuller,
Mayor

Barney Heath,
Director
Planning & Development

Sincerely,

Lizbeth Heyer
Chair, Newton Housing Partnership

Members:
Lizbeth Heyer, Chair
Mark Caggiano
Eliza Datta
Chuck Eisenberg
Josephine McNeil
Marva Serotkin
Albert Simmons
Stephen Tise

CC:
Newton City Council President Susan Albright
Newton City Council

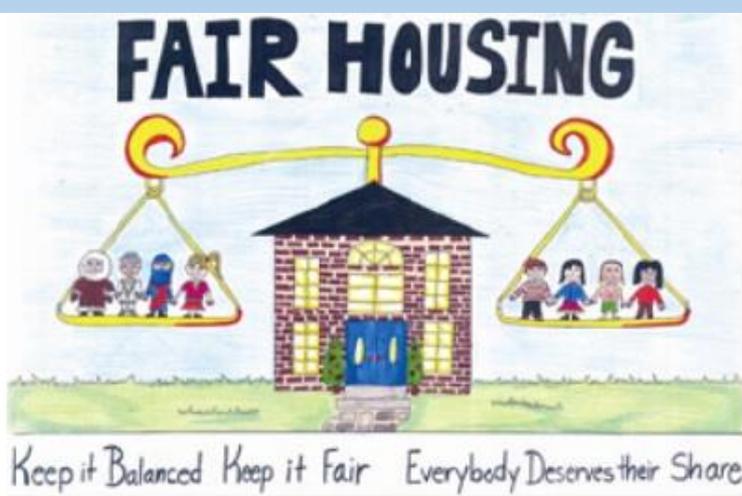
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City of Newton Inclusionary Zoning Ordinance
Recommended Zoning Amendments Re: Local Preference Policy

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 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 25%~~ **70%** of the Inclusionary Units in a project **and at least one of the local preference units must be a fully accessible unit;**
 - 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.



Newton's Local Preference Policy Analysis and Recommendations

ZAP Meeting
July 26, 2021

The City of Newton
Planning & Development Department

A Year of Discussion & Analysis

- **Newton Housing Partnership July 2020 Vote**
 - Voted to adopt 0% local preference policy for Riverside to “send a strong message that Newton will not perpetuate policies that keep non-white people out of our City.”
- **WestMetro HOME Consortium’s FY21-25 Analysis of Impediments to Fair Housing Report**
 - Obligation of each consortium community to take affirmative action to ensure that people of color, and other protected classes, have equal access to housing in that community
- **Fair Housing Committee Analysis of Lottery Results**
- **Barrett Planning Group’s Analysis and Report**

What is Local Preference?

- Authorized by the State through Chapter 40B
- Newton's policy lives in the Inclusionary Zoning ordinance
- Allows for up to 70% "local preference" in a project*
 - Current residents
 - Municipal employees
 - Employees of local businesses
 - Households with children attending Newton schools
- **Example: 20 affordable units in a project:**
 - 14 affordable units designated as "local preference units" (0.7 X 20):
 - Offered first to those who qualify as local preference applicants
 - 6 affordable units designated as "general pool" units:
 - Offered to all applicants, including local preference and non-local preference applicants

The Barrett Report

- **Newton's racial makeup, households (2019 ACS data)**
 - 83% White
 - 12.4% Asian
 - 2.4% Black or African American
 - 1.3% "Other"
 - 1% Two or more races
- **Lottery results from three recent rental developments**
 - TRIO / Washington Place
 - 28 Austin Street
 - Hancock Estates
- **71 affordable units (61 leased) - 1,157 total applications**

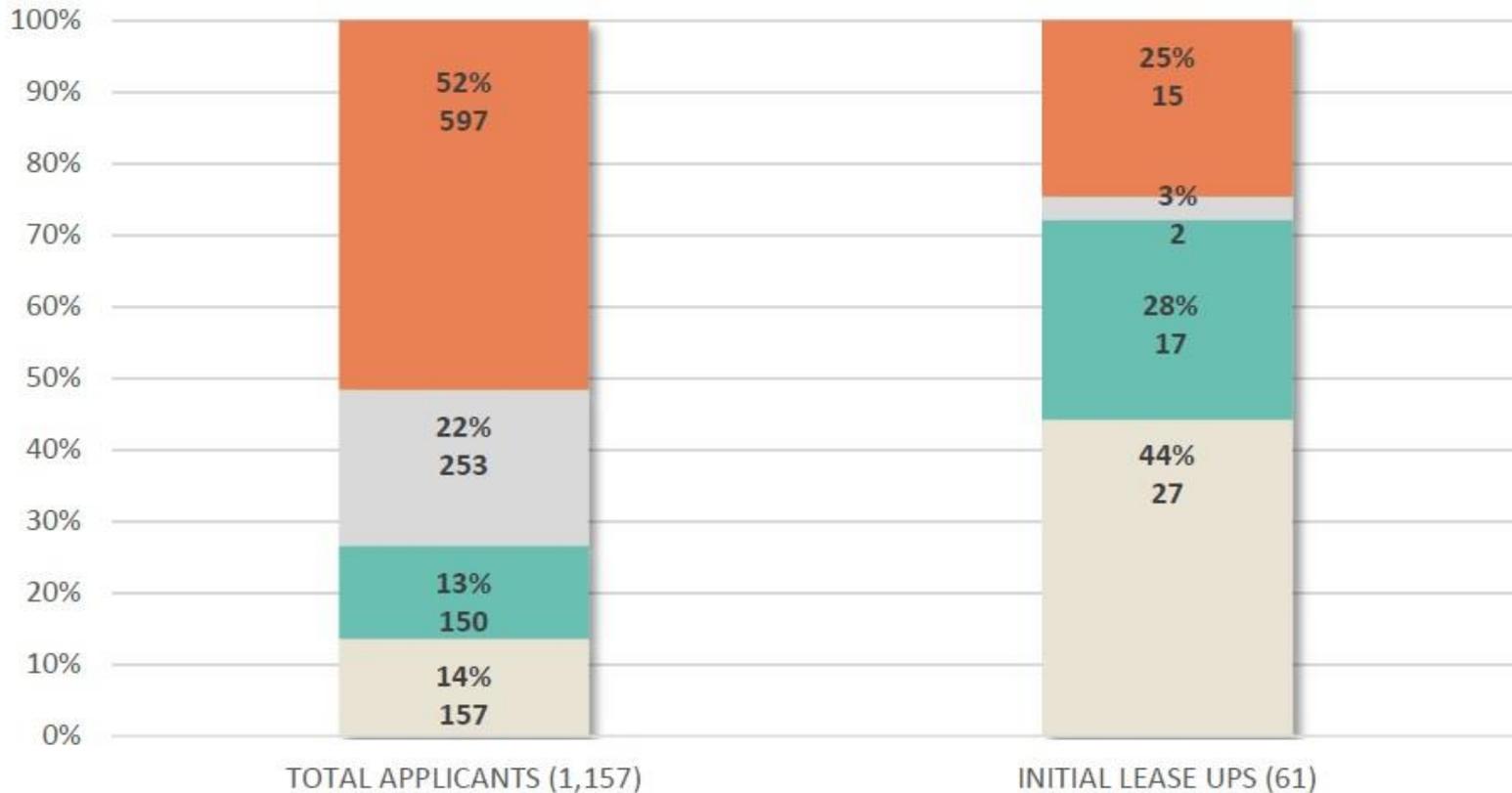
Applicants	Initial Lease-Ups
27% Local Preference	72% Local Preference
73% Non-local Preference	28% Non-local Preference

The Barrett Report

Local Preference Applicant Pool	LP Tenants (44/61)	Non-local Preference Applicant Pool	Non-LP Tenants (17/61)	General Applicant Pool	General Pool Tenants
51% White	61% White	30% White	12% White	35% White	47.5% White
49% Minority	39% Minority	70% Minority	88% Minority	65% Minority	52.5% Minority

The Barrett Report

Applicants and Initial Lease-Ups Across All Case Studies



LOCAL: White, Non-Hispanic

LOCAL: Racial/Ethnic Minority

NON-LOCAL: White, Non-Hispanic

NON-LOCAL: Racial/Ethnic Minority

The Barrett Report

❖ Accessible Affordable Units

- 9 accessible affordable units across 3 projects that were analyzed
- Only 4 were initially lease to tenants with disabilities
- Further study needed to understand these results
- Pricing of these units may still be too high for people with disabilities

The Barrett Report

➤ Key Findings

- The community that benefits the most from Newton's local preference policy is **White, non-Hispanic local households**
- Selection rates were higher for White applicants in each of the researched developments than for minority applicants overall
- When split into local preference and non-local preference households, selection rates among local preference households were higher for White applicants than minority applicants;
- ... and among non-local preference households, selection rates were higher for minority applicants (specifically highest for Asian households in each case)
- The effect of local preference on households requiring accessibility features in their units is unclear and requires further study

Recommendations for Reducing Local Preference Requirement

- The identified correlation between Newton's 70% local preference policy and the percentage of minorities, particularly Black and African American applicants, that sign leases for these affordable units, as compared to their White, local-preference counterparts, sheds light on the **need to enact a change to the long-standing requirement.**
- The Newton Housing Partnership agrees – a lower percentage requirement is necessary. The partnership will continue to discuss a recommendation to lower the percentage to 35% or lower.

70%  **35% or lower**

Recommendations for Reducing Local Preference Requirement

- The need for further study into the effects of local preference and the lottery system altogether on people with disabilities is also a critical next step
- A reduction in the local preference policy should still require that **at least one accessible affordable unit** be designated as a Local Preference Unit
- Local preference is **not the only tool** that should be explored / amended to reduce the discrepancy in racial outcomes of the lottery processes, i.e. credit history, landlord references, pricing of affordable units

July 26 ZAP Mtg.

Questions / Comments?

Thank you!