



Ruthanne Fuller
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Barney S. Heath
Director

MEMORANDUM

DATE: February 4, 2022

TO: Councilor Lipof, Chair, Land Use
Members of the Land Use Committee

FROM: Barney Heath, Director, Department of Planning and Development
Jennifer Caira, Deputy Director of Planning and Development
Amanda Berman, Director of Housing and Community Development
Neil Cronin, Chief Planner
Eamon Bencivengo, Housing Development Planner
Jonah Temple, Assistant City Solicitor

RE: **Requesting amendment to Local Preference Requirement for Northland Housing Project**

CC: Jonathan Yeo, Chief Operating Officer

On Monday, November 1, 2021, the City Council voted unanimously to amend the City's Inclusionary Zoning Ordinance to reduce the percentage of units subject to Local Preference criteria from 70% to 25%. This decision came after fifteen months of discussion, research, and analysis of the City's Local Preference Policy and its potential impact on people of color who are not already residents of Newton.

The Northland project will provide 140 units of affordable housing – the largest number of Inclusionary Units to be provided by any one project in the City's history. While the Special Permit Board Order was approved in 2019, the project's local preference plan must be approved by DHCD prior to the commencement of any marketing of the units. City staff tend to work with the project sponsor on the review of the marketing and tenant selection plan prior to submitting it to DHCD, which will likely take place approximately 4-6 months prior to marketing any of the units in the project. With the City's amended Local Preference Policy now in place, it makes sense that a project, particularly of this size, would utilize the new percentage requirement of 25%, rather than 70%.

Planning staff has spoken to the principals at Northland about this consistency request and they have no objection to this change.

Request for a Consistency Ruling

On December 29, 2021, Planning Director Barney Heath requested a consistency ruling from Commissioner John Lojek that such a change in the percentage of the local preference requirement for the Northland project represents a non-material change that can be granted administratively.

On January 5, 2022, Commissioner Lojek responded to this request and deferred the question to the Land Use Committee.

Given the City Council's clear support for reducing the local preference percentage for Inclusionary Zoning projects combined with the fact that the Northland project has yet to apply for a building permit or submit an Affordable Fair Housing Marketing and Resident Selection Plan (AFHMP) to the City or the Department of Housing & Community Development (DHCD) for review and approval, Planning staff believes it is appropriate for Northland to utilize the lower local preference requirement. The 140 affordable units at the Northland project represent a significant increase in Newton's affordable housing stock, and the reduced local preference requirement offers a substantial opportunity to provide greater housing choice to a diverse population throughout Newton and the surrounding region.

The following attachments provide greater detail on the City's Local Preference policy and the newly adopted change to the percentage requirement.

ATTACHMENTS:

- Newton Housing Partnership 9/21/21 recommendation letter re: 25% Local Preference Policy
- Amendment to 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](#)



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Planning & Development

Members:

Lizbeth Heyer, Chair
Mark Caggiano
Eliza Datta
Chuck Eisenberg
Josephine McNeil
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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

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:



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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.



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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.

Sincerely,

Lizbeth Heyer
Chair, Newton Housing Partnership

CC:
Newton City Council President Susan Albright
Newton City Council

City of Newton Inclusionary Zoning Ordinance Updated Local Preference Policy - 2021

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:

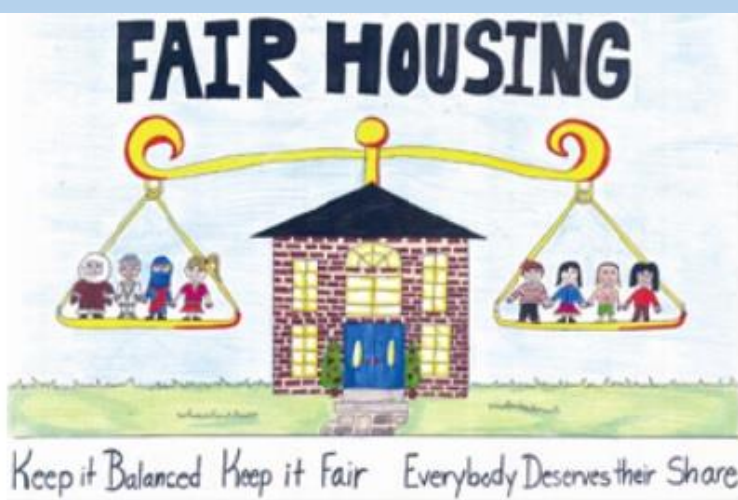
- B. A description of the proposed project and inclusionary units including at a minimum, a breakdown of the total number of residential units in the project, including the number of market-rate units, Inclusionary Units, and accessible and adaptable units; floor plans indicating the location of the 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 25% 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**

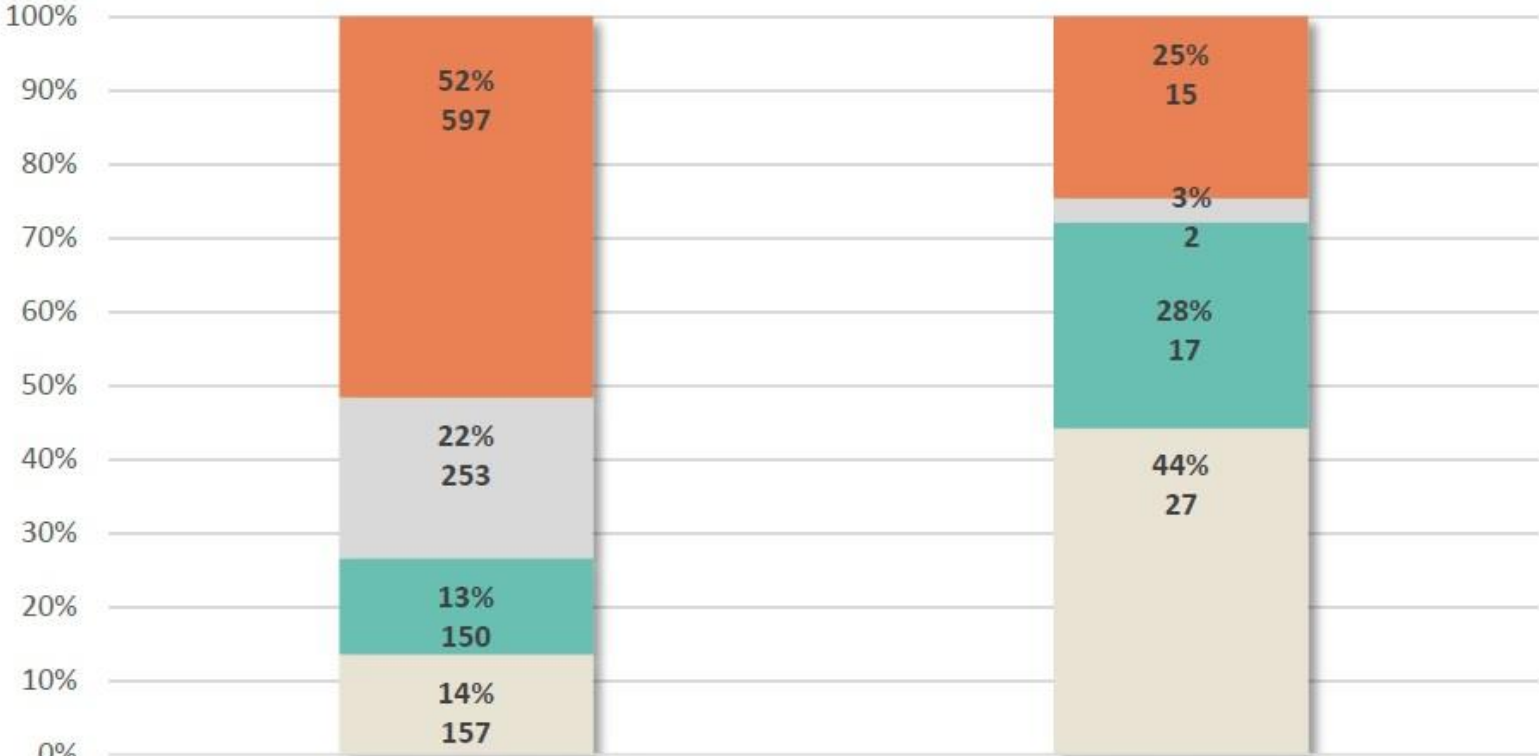
Applicants	Initial Lease-Ups
27% Local Preference	72% Local Preference
73% Non-local Preference	28% Non-local Preference

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



TOTAL APPLICANTS (1,157)

INITIAL LEASE UPS (61)

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!