



Zoning & Planning Committee

Report

City of Newton

In City Council

Monday, June 24, 2019

Present: Councilors Albright (Chair), Danberg (Vice Chair), Brousal-Glaser, Krintzman, Leary, Downs and Danberg

Absent: Councilors Kalis and Baker

Also Present: Councilors Gentile, Greenberg, Markiewicz, Schwartz, Laredo, Kelley, Crossley and Auchincloss

Planning & Development Board: Peter Doeringer (Chair), Sonia Parisca, Kevin McCormick, Christopher Steele, Rachel Powers (Staff)

City Staff Present: Barney Heath (Director, Planning Dept.), James Freas (Deputy Director, Planning Dept.), Amanda Berman (Director, Housing and Community Development), Jonah Temple (Assistant City Solicitor), Karyn Dean (Committee Clerk)

#140-19(3) Zoning amendments for Riverside Station
RIVERSIDE STATION/355 GROVE STREET AND 399 GROVE STREET requesting amendments to Chapter 30, Newton Zoning Ordinance, in Sections 4.2.3 and 4.2.4 relative to the Mixed Use 3 District.

Action: **Public hearing continued; Zoning & Planning Held 6-0**

Note: Report to follow for #140-19(3) and #187-19.

#187-19 Zoning amendment from Newton LFIA for Riverside Station
LOWER FALLS IMPROVEMENT ASSOCIATION RIVERSIDE COMMITTEE requesting to amend Chapter 30, City of Newton Zoning Ordinance, Sections 4.2 and 7.3.5 pertaining to the Mixed Use3/Transit-Oriented zoning district.

Action: **Public hearing continued; Zoning & Planning Held 6-0**

Note: Report to follow for #140-19(3) and #187-19.

#188-19 Zoning amendment for Inclusionary Zoning
DIRECTOR OF PLANNING requesting amendments to the Inclusionary Zoning provisions of Chapter 30, Newton Zoning Ordinance, to apply the requirements to any project including seven or more residential units; to increase the required percentage of affordable units for projects of a certain size; to require that some

affordable units be designated for middle-income households; to create a new formula for calculating payments in lieu of affordable units and fractional cash payments; to waive certain inclusionary zoning requirements for 100% deed-restricted affordable developments; to strengthen the Elder Housing with Services requirements; and to clarify and improve the ordinance with other changes as necessary.

Action: **Zoning & Planning Approved as amended 5-0-1 (Councilor Brousal-Glaser abstaining)**

Note: Amanda Berman, Director, Housing and Human Development, joined the Committee. The memo that was in the Friday Packet for the Committee provided responses to the questions and comments about the proposed Inclusionary Zoning Ordinance raised by Councilors, Planning & Development Board members, and the public during the Public Hearing held on June 10th. The memo may be found at <http://www.newtonma.gov/civicax/filebank/documents/97812>

Ms. Berman asked the Committee for any questions.

A Committee member asked about inclusionary zoning (IZ) requirements for smaller projects, such as 4-6 units. Ms. Berman said staff has tried to balance project financial feasibility against the IZ requirements. Smaller projects do not have the luxury of spreading subsidies out over multiple market rate units as large projects do. With the proposed 15% IZ requirement, 15% of a 6-unit project factors out to less than one unit. With a 7-unit project, 15% factors out to one whole unit so it made sense to trigger the IZ requirement at 7 units and more. There needs to be a cut off somewhere, so these factors were all taken into consideration to find that cut off point.

Mr. Heath explained that staff have had many discussions with developers of large and small projects. The smaller developers have emphasized how burdensome the IZ requirement would be if imposed. It could be the determining factor in whether or not a project is built. A Committee member wondered if a 6-unit project could support a monetary contribution. It was noted that Somerville has a requirement starting at 6 units. A Councilor suggested a sliding scale of some kind based on the number of units. Mr. Heath pointed out that Newton is on the more aggressive end of IZ requirements and many communities start much higher. RKG looked at this issue and agreed that 7 units was the right trigger point and problems started to occur below that point. A Committee member noted that many of the infill projects are 6 units and below and they should be encouraged. The Committee agreed that the proposal should not include any projects under 7 units. Mr. Heath noted there is a provision for a lookback in 3 years to see how the ordinance is working in the marketplace and if there are any unintended consequences.

A Committee member asked why public funds could be used for IZ projects. Ms. Berman said the public development funds provision states that public funds cannot be used for inclusionary zoning, except for the Extremely Low Income Alternative Compliance option. If the City wants to see units created at the extremely low-income level, then the public funds should be made available.

A Committee member stated that she does not feel comfortable with the density bonus as incentive for more IZ units. She would love to see more IZ units created but allowing more units than would normally be allowed on a lot does not sit well with her.

There was a concern about the equality of the market rate and IZ units and the marketing of each. There had been some concern about that equality at the Hancock Estates project. Ms. Berman said there are 2 provisions in the existing ordinance that test out the difference in size of affordable and market rate units. The first test includes two measurements: The average square footage of the affordable units must be at least 60% of the average square footage of the market rate units per bedroom type; and the second measurement is that the affordable units must have habitable space of not less than 650 sf for a one-bedroom; 950 sf for a two-bedroom; and 1250 sf for a three-bedroom. Whichever is greater of the two – either the 60% calculation or the square feet per bedroom calculation – is the number used as the compliance test. In addition, the total habitable space of the IZ units can be no less than 10% of the sum of the total habitable space of all market rates and IZ units in the development. As with every IZ project, the Hancock Estate projects was run through those tests and met the requirements even though some of the market rate units were larger and included dens. These tests are included in the proposed ordinance but the 60% has been increased to 80%. While this addresses the equality issue very well, statements are made in other sections relative to the comparability of the units. The Department of Housing and Community Development (DHCD) looks at this issue as well while they are reviewing these projects. There is allowance for some of the market rate units to be significantly larger as long as the averages on the whole meet the requirements as described.

Ms. Berman said the practice has been that when an affordable household starts making more than the income eligibility requirement (140% over the income limit for that unit) and they want to stay in the unit, they must start paying the market rate rent. In order to keep the number of IZ units in a development constant, the next market rate unit of that type that becomes available, is switched to an affordable unit. Because these changes can occur, developers do not like to create vast differences in the units. Over the lifetime of the project, there will be exchanges of units from affordable to market rate and vice versa. There is a misconception that the market rate units have major differences from the affordable units. There are some that do, but overall there are more similarities than what most people think.

The marketing for any unit in a development cannot commence until an Inclusionary Housing Plan has been reviewed and approved by the City's Law and Planning Departments and DHCD. The Plan includes the timeline for when, in relationship to overall project lease up, the lottery and resident selection process for the affordable units begins as compared to the market rate units. The affordable unit market and resident selection plan must take place before the marketing for the market rate units because that process takes longer. Secondly, there is a provision that the developer must agree that the IZ units must be completed and occupied no later than completion and occupation of the market rate units. If that provision is not met, the temporary and final occupancy permits would not be granted for the same number of market rate units as incomplete or unoccupied IZ units.

A Councilor asked for more information on “local preference.” Ms. Berman said local preference refers to setting aside a certain number of IZ units in a project for those qualified individuals who live and/or work in Newton or who have a child who goes to school in Newton. The proposed ordinance is asking that 70% of the IZ units in a project be set aside for local preference.

Peter Doeringer, Chair of the Planning & Development Board reported that the Board recommends adopting the proposed ordinance with the following amendments:

- The sliding scale funds for 7-9 unit developments should be set aside specifically for the creation of deed restricted units affordable to households at or below 80% AMI. The funds would be split between the City and the Newton Housing Authority.
- Replace the proposed formula used to calculate the average total development cost per unit based on the previous 5-year average of the costs of affordable housing developments in Newton and recalculated on a 5-year cycle, with 3-year average of the costs of affordable housing and a 3-year recalculation cycle, as recommended by the Newton Housing Partnership.

Ms. Berman noted that it takes a long time to build housing, and in the past 5 years there were only 3 projects that could be used to create the average. Shrinking the timeframe may result in only 1 project available for that calculation. Mr. Doeringer said there is much more development underway right now and if a sampling problem were to come up, the escalator could be used. Using a longer look back would produce lower numbers because costs go up over time – the average would then not be appropriate and as it would capture less and less of the rising costs with each look back year.

Planning staff and the Committee agreed with Planning Board’s recommendations and the ordinance will be amended to reflect the changes.

A Committee member asked that the density bonus provision be deleted (5.11.4.c Incentives for Additional Inclusionary Units”). She is uncomfortable with adding more units than otherwise would be allowed on a site. The Chair noted that no one has used the density bonus so far as it is already so difficult to produce the required amount of IZ units. Another Committee member agreed it might be good to retain the provision in case someone wants to offer more IZ units. In a straw vote, the Committee voted against deleting this provision.

It was suggested that “and other federal and state funds” be added to Section 5.11.2.1 under definitions of public development funds.

The updated draft ordinance is attached.

Councilor Danberg moved approval as amended and the Committee voted in favor 5-0-1 with Councilor Brousal-Glaser abstaining.

The Committee thanked Ms. Berman for her diligent and outstanding work on this ordinance.

#128-19 Zoning Amendment for short-term rentals

DIRECTOR OF PLANNING proposing to amend Chapter 30, City of Newton Zoning Ordinances, in order to create a short-term rental ordinance that defines the short-term rental and bed & breakfast uses, identifies what zoning districts they would be allowed in and under what criteria, conditions, limitations and permitting process.

Action: **Zoning & Planning Approved as amended 4-0-2 (Councilors Danberg and Brousal-Glaser abstaining)**

Note: See below.

Referred to Zoning & Planning, Public Safety, and Finance Committees

#136-19 Short-term rental ordinance with fees

DIRECTOR OF PLANNING proposing amendments to Chapter 20 and 17 of the Revised Ordinances of the City of Newton to create a short-term rental ordinance with fees that would require registration of short-term rentals with the City's Inspectional Services Department and fire inspections to protect public health and safety.

Public Safety Approved 4-0-1 (Cote abstaining; Grossman not voting) on 06/05/19

Finance Approved 4-0 (Grossman recused) on 06/10/19

Action: **Zoning & Planning Approved 4-0-2 (Councilors Danberg and Brousal-Glaser abstaining)**

Note: Items #128-19 and #136-19 will be discussed together. James Freas, Deputy Director of the Planning Department explained that the short-term rental ordinances were updated in response to the comments received at the June 10th public hearing. A PowerPoint was provided by Mr. Freas, which is attached to this report. Please refer to it for details.

The revised recommendations include:

- The home must be a primary residence and be lived in for a minimum of 9 months per year, which makes the short-term rental use accessory.
- A maximum of 3 bedrooms may be rented, with a maximum of 9 people.
- A maximum of 100 rental days per year are allowed.

Mr. Freas said staff also proposes that a home could also be rented to a group of affiliated individuals – a larger family, for instance. This was not included in the memo. He pointed out that the term “resident-occupied” is being used in the ordinance in place of “owner-occupied”. There could be instances where the owner allows the renter to utilize Airbnb. Staff did not want those renters excluded from the ordinance.

Committee Comments/Questions

The Chair noted that the current draft ordinance allows a maximum of three bedrooms in a home for short-term rental use instead of the previous recommendation of two. She asked how staff came to choose that number. Mr. Freas noted that state law deals with how an assessor determines the value of property being used as a bed and breakfast. It defines a property renting 3 or fewer bedrooms as a residential use, and 4 or more bedrooms

as a commercial use. Staff felt three was a logical dividing line. Under the current proposal, if someone wants to rent out more than 3 bedrooms, and/or rent for more than 100 days a year, they can go through the special permit process to become a bed and breakfast.

A Councilor said rather than trying to police how long an owner is living there, how many bedrooms are being rented, how many days they are being rented or how many people are going to be there, he would like to focus on enforcement. There seem to be only a few homes that are being disruptive and it makes sense to shut those problem sites down rather than limit all the others who are conducting short-term rentals appropriately. He suggested that the "House Rules" be filed along with the registration to the City. If it is determined that the House Rules have been violated, then the property can no longer be operated for short-term rental use.

Some other Committee members agreed and would like to have the least restrictive rules in place and focus on enforcing them. The impact on the neighbors must be substantially considered, but they did not want to make the ordinance so restrictive that people who rent out their rooms to pay their property taxes and other expenses, lose that opportunity and maybe lose their home. Number of days and bedrooms restrictions are unnecessary but could be revisited if experience shows limits are needed. Sometimes families are traveling and need more than 3 rooms. There was also strong support for an owner occupancy requirement. The key to success for these properties is providing oversight. This can lead to a more successful enterprises for the owners and better experiences for the neighbors.

A Councilor said that based on the letters she has read and the testimony she heard at the public hearing, limiting the number of days or number of bedrooms would be a hardship for owners. It seems the vast majority are doing a good job and as an affordable housing advocate, she did not see this type of housing displacing long-term renters. She did not think it was up to the City to tell people what they can do with their homes and the key is enforcement, as was mentioned earlier. Most of the residents that spoke at the public hearing noted that they live in the home and are renting out bedrooms. These are not the types of units that would be used for long-term rentals. There are about 250 short-term rentals in the City and approximately 5 of them have had complaints. The vast majority have had no complaints and some neighbors do not even know they are operating short-term rentals.

A Councilor said that while an owner-occupant requirement might be helpful, there was a case of someone owning the house next door and using it for short-term rental. Perhaps that might be allowed. Some felt that while renting out the rooms in a home while someone lives there would not take away from the long-term rental market, a house used for that primary use, could. A Councilor pointed out that a house purchased for the sole purpose of short-term rentals tears at the fabric of the neighborhoods. Those who live there permanently cannot create any bond with people who are coming and going.

A Committee member felt that 100 rental days a year, as proposed in the new draft, is a good limit. It allows homeowners to make a substantial amount of money to help with their expenses without disrupting the neighborhood. When people are constantly coming and going, it introduces a commercial enterprise into a residential neighborhood. A Councilor felt that if people want to have a business, they should open a business because there are always externalities no matter how considerate an operator might be. Those people could

register as a bed and breakfast business and be allowed more rental days and more rental rooms. Short-term rentals should have more restrictions.

It was pointed out that an abutter notification requirement is in the ordinance. It was suggested that the owner send notification every year to abutters. Because this is primarily going to be a complaint driven enforcement model, letting people know that these units exist will help with compliance and people will know how to lodge complaints which in turn helps with enforcement by the City.

The Commissioner of Inspectional Services, John Lojek, said it would be extremely difficult to enforce number of bedrooms, number of days, number of occupants and number of days an owner/resident lives in the home. People could sign affidavits, but he is not sure those would be completely trustworthy. He is not allowed right of entry into people's homes unless they give permission, and most do not. There will likely be problems here and there but if there is an actual ordinance to enforce, it will make dealing with some of the complaints easier. There is currently no ordinance covering short-term rentals so it makes enforcement virtually impossible.

A Councilor said most people want to follow the law and be in compliance and agrees that enforcement of number of bedrooms, etc would be difficult as explained by Commissioner Lojek. She thinks the requirements should not be restrictive in those areas but would like to see the resident-occupancy requirement retained. The ordinance should be evaluated in a year or two to see how it is working.

It was asked how carriage houses would fit into this scenario. Mr. Freas explained that if a carriage house has been approved for an accessory apartment use, under the accessory apartment ordinance, short-term rental is not allowed. If the carriage house is not an accessory apartment, it could be used for short term rental use because it is considered part of the main property. If there is a cooking facility in the carriage house, it is considered a separate dwelling unit and short-term rental would not be allowed. Mr. Freas noted that most of the legal accessory apartments in the city are being used for family members, so it is unlikely they are depleting the long-term rental stock.

A Committee member wondered if this was fair and if other businesses can be conducted out of a home. Councilors and staff responded there are many such as music teacher, computer programmer, therapist, etc. There are a number of other businesses that would be allowed.

It was asked if the maximum number of 9 persons supersedes the maximum allowed household size. Mr. Freas said that just for this category, it would. Also the "association of persons" category relates to people living together in a more permanent way so would not apply here.

A Committee member asked what the options would be for someone who wanted to rent more than 3 bedrooms. Mr. Freas explained that if the cap were removed from the short-term rental ordinance, the owner could rent more than 3 bedrooms, however, the assessing department might then tax it as a commercial use. The other option would be to go through the special permit process for a bed and breakfast use. It was noted that there is no requirement to provide a breakfast for a bed and breakfast use.

A Councilor asked about violations and fines. Mr. Freas noted that Somerville's newly adopted ordinance provides that if any short-term rental receives 3 or more violations of the short-term rental ordinance, any other municipal ordinance, state law or building code, the unit would be ineligible for the use for a period of 6 months. The Committee felt this would be reasonable to add to the proposed ordinance. Any violation of the suspension would be subject to a \$300 a day fine.

Committee members wanted to propose a number of amendments, so the Chair asked for straw votes on each, as follows:

- Eliminate resident-occupied requirement ("resident" means an owner or renter with permission from owner) : DENIED 1-5-0
(Krintzman in favor)
- Eliminate cap on allowed number of days: APPROVED 4-1-1
(Danberg opposed; Brousal-Glaser abstaining)
- Eliminate cap on allowed number of bedrooms and people: APPROVED 3-1-2
(Albright opposed; Danberg and Brousal-Glaser abstaining)
- Make notice to abutters an annual requirement: APPROVED 6-0
- House rules to be filed with City: APPROVED 6-0
- Change definition to be "occupant or guest" for consistency: APPROVED 6-0
- Lose license to operate for 6 months if 3 violations within 6 months: APPROVED 6-0
- \$300 a day fine for violations. Enforcement authority would be Inspectional services and the Police Department: APPROVED 6-0

Mr. Freas said the effective date was extended to September 1 in order to allow time for owners to get their fire inspections and to register with the state and city.

Councilor Krintzman moved approval as amended by the approved straw votes. The Committee voted in favor 4-0-2 (Councilors Danberg and Brousal-Glaser abstaining)

Clerk's Note: The following reappointments were approved unanimously, without discussion.

#212-19 Reappointment of Jack Leader to the Economic Development Commission
HER HONOR THE MAYOR reappointing JACK LEADER, 613 California Street, Newton as a member of the ECONOMIC DEVELOPMENT COMMISSION for a term to expire May 1, 2022. (60 days – 08/17/19)

Action: **Zoning & Planning Approved 6-0**

- #213-19 Reappointment of Robert Finkel to the Economic Development Commission**
HER HONOR THE MAYOR reappointing ROBERT FINKEL, 6 Stearns Street, Newton Centre, as a member of the ECONOMIC DEVELOPMENT COMMISSION for a term to expire May 1, 2022. (60 days – 08/17/19)
Action: **Zoning & Planning Approved 6-0**
- #214-19 Reappointment of Jane Brown to the Commission on Disability**
HER HONOR THE MAYOR reappointing JANE BROWN, 104 Atwood Avenue, Newtonville, as a member of the COMMISSION ON DISABILITY for a term to expire July 31, 2022. (60 days – 08/17/19)
Action: **Zoning & Planning Approved 6-0**
- #215-19 Reappointment of Rob Caruso to the Commission on Disability**
HER HONOR THE MAYOR reappointing ROB CARUSO, 237C Watertown Street, Newton, as a member of the COMMISSION ON DISABILITY for a term to expire July 31, 2022. (60 days – 08/17/19)
Action: **Zoning & Planning Approved 6-0**
- #216-19 Reappointment of Girard Plante to the Commission on Disability**
HER HONOR THE MAYOR reappointing GIRARD PLANTE, 58 Ash Street, Auburndale, as a member of the COMMISSION ON DISABILITY for a term to expire July 31, 2022. (60 days – 08/17/19)
Action: **Zoning & Planning Approved 6-0**
- #217-19 Reappointment of Nancy Grissom to the Auburndale Historic District Commission**
HER HONOR THE MAYOR reappointing NANCY GRISSOM, 7 Orris Street, Auburndale, as a member of the AUBURNDALE HISTORIC DISTRICT COMMISSION for a term to expire July 10, 2022. (60 days – 08/17/19)
Action: **Zoning & Planning Approved 6-0**
- #218-19 Reappointment of Italo Visco to the Auburndale Historic District Commission**
HER HONOR THE MAYOR reappointing ITALO VISCO, 66 Grove Street, Auburndale, as a member of the AUBURNDALE HISTORIC DISTRICT COMMISSION for a term to expire May 31, 2022. (60 days – 08/17/19)
Action: **Zoning & Planning Approved 6-0**

Respectfully Submitted,
Susan S. Albright, Chair



Ruthanne Fuller
Mayor

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

#128-19, #136-19

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

Barney S. Heath
Director

MEMORANDUM

DATE: June 21, 2019

TO: Councilor Susan Albright, Chair, Zoning & Planning Committee
Members of the Zoning & Planning Committee

FROM: Barney Heath, Director, Department of Planning and Development
James Freas, Deputy Director of Planning
Rachel Nadkarni, Long Range Planner

RE: **#128-19 Zoning Amendment for short-term rentals**

DIRECTOR OF PLANNING proposing to amend Chapter 30, City of Newton Zoning Ordinances, in order to create a short-term rental ordinance that defines the short-term rental and bed & breakfast uses, identifies what zoning districts they would be allowed in and under what criteria, conditions, limitations and permitting process

#136-19 Short-term rental ordinance with fees

DIRECTOR OF PLANNING proposing amendments to Chapter 20 and 17 of the Revised Ordinances of the City of Newton to create a short-term rental ordinance with fees that would require registration of short-term rentals with the City's Inspectional Services Department and fire inspections to protect public health and safety.

MEETING: June 24, 2019

CC: Planning and Development Board
John Lojek, Commissioner of Inspectional Services
Alissa O. Giuliani, City Solicitor
Marie Lawlor and Jonah Temple, Law Department
Jonathan Yeo, Chief Operating Officer

The Zoning and Planning Committee conducted a public hearing on the proposed ordinance amendments for short-term rentals on June 10, 2019. The attached draft ordinances and memo below present changes to the proposed zoning ordinance amendments in response to the comments received. There are no substantive proposed changes to the short-term rental general ordinances covering registration and enforcement requirements.

Proposed Zoning Ordinance Amendment

The proposed Zoning Ordinance amendments address where and under what conditions the short-term rental use would be allowed in the City. In addition, staff is proposing to define and provide conditions for Bed & Breakfasts as this use is currently not described in the Zoning Ordinance and

therefore not allowed. These Zoning Amendments are described below. New or changed provisions or requirements are underlined.

It is anticipated that many of the requirements placed on short-term rentals through the General Ordinances would also be applied to Bed & Breakfasts through the special permit conditions as appropriate to that individual application. Examples of such conditions might include required annual Fire Department inspections, maintenance of an occupant registry, and limits on events.

ZO Section 6.4.32. Short-Term Rental. This proposed amendment includes the definition of short-term rentals and a set of requirements. The short-term rental use would only be allowed as an accessory use allowed in all districts as an accessory to a single or multi-family residential use. The requirements for all short-term rentals are:

- a. Registration with the City.
- b. No signage allowed.
- c. Burden of proof for compliance is placed on the operator.
- d. The resident of the dwelling unit must occupy the unit for a minimum of 9 out of 12 months during each calendar year.
- e. The unit may be occupied as a short-term rental a maximum of 100 days per year.
- f. No more than 3 bedrooms in the dwelling unit can be rented as short-term rentals at any given time with a maximum of 9 guests.

In the attached draft ordinance, sections 2, 5, 6, 7, and 9 are new or modified.

ZO Section 6.4.3. Bed & Breakfasts. The proposed amendment restricts the Bed & Breakfast use to single-family homes where the owner or manager of the facility lives on site. The use is a traditional bed & breakfast with independently let rooms, no cooking facilities in the rooms, and a common gathering place. The proposed use would be allowed in all Single Residence and the Multi-Residence 1 and 2 Zoning Districts by special permit.

Note, the definition of a Bed & Breakfast use explicitly says that a facility would be considered a bed & breakfast whether the serve food or not. In other jurisdictions, not serving food has been a common mechanism by which to avoid compliance with requirements for the use.

Attachments

Attachment A – City of Newton General Ordinance Amendment for Short-Term Rentals

Attachment B – City of Newton Zoning Ordinance Amendments for Short-Term Rentals

Attachment C - City of Newton Zoning Ordinance Amendments for Bed & Breakfasts

[CHAPTER 20]
Article IX
SHORT TERM RENTALS

Sec. 20-160. Definitions.

The meaning of the terms used in this article shall be as follows:

- (a) *Commissioner*: The commissioner of inspectional services.
- (b) *Operator*: A person operating a short-term rental in the City including, but not limited to, the owner or proprietor of such premises, the lessee, sublessee, mortgagee in possession, licensee or any other person otherwise operating such short-term rental.
- (c) *Occupancy*: The use or possession or the right to the use or possession of a room in a Short Term Rental normally used for sleeping and living purposes for a period of not more than 31 consecutive calendar days to one person or party, regardless of whether such use and possession is as a lessee, tenant, guest or licensee.
- (d) *Occupant*: A person who uses, possesses or has a right to use or possess a room in a Short Term Rental for rent under a lease, concession, permit, right of access, license or agreement.
- ~~(e) *Professionally Managed Unit*: 1 of 2 or more short term rental units that are located in the City, operated by the same operator and are not located within a single family, two family or three family dwelling that includes the operator's primary residence.~~
- ~~(f)~~(e) *Short Term Rental*: The rental of one or more bedrooms (along with any associated living areas) within a dwelling unit on an overnight or short-term basis of less than 30 days to guests. The use is accessory to the primary residential use of the dwelling unit.

Any terms not expressly defined in this article shall have the meaning prescribed by Massachusetts General Laws Chapter 64G, Section 1.

Sec. 20-161. Requirements for Short Term Rentals

- (a) Compliance. No Residential Unit shall be offered as a Short Term Rental except in compliance with the provisions of this section of the Newton Ordinances.
- (b) Registration. Operators of any Short Term Rental located in the City of Newton must register with the City in accordance with Sec. 20-162 of this ordinance.
- (c) No Outstanding Code Enforcement or Building Permits. Operators are prohibited from renting any Short Term Rental if the property is subject to an outstanding building, electrical, plumbing, mechanical, fire, health, housing or zoning code enforcement, including notices of violation, notices to cure, orders of abatement, cease and desist orders or correction notices, or if there are any outstanding building permits for the property.

- (d) Annual Certification. All Operators must file with the Inspectional Services Department a sworn certification attesting to continued compliance with the requirements of this article and all applicable public safety codes. Such certification shall be filed annually on the first business day of January.

Sec. 20-162. Registration Requirements.

Operators must register with the Inspectional Services Department prior to the occupancy of any Short Term Rental that commences after July 1, 2019 by submitting the following:

- (a) State Certificate. A copy of the State certificate of registration issued in accordance with Massachusetts General Laws Chapter 62C, Section 67.
- (b) Local Operator Affidavit. A completed Local Operator Affidavit, in a form established by the Inspectional Services Department, that at minimum contains the following information:
- 1) Contact information of Operator and agent/point of contact;
 - 2) Location of all Short Term Rentals in City owned by operator;
 - 3) Description of operation and number of rooms/units that will be rented;
 - 4) Confirmation that there are no outstanding code enforcement or outstanding building permits;
 - 5) Signature of Operator certifying that Short Term Rental conforms to this ordinance and no outstanding code violations.
- (c) Smoke and Carbon Monoxide Certificate of Compliance. All Short Term Rentals must comply with the applicable smoke detector and carbon monoxide requirements for residential units set forth in Sec. 10-11 of these Ordinances and Massachusetts General Laws Chapter 148, Section 26E. Operators must schedule an inspection with the Fire Department and receive a Certificate of Compliance indicating that the property meets the smoke detector and carbon monoxide requirements prior to the first occupancy commencing after July 1, 2019. Operators shall be responsible for the smoke detector inspection/permit fee to be paid directly to the Fire Department as set forth in Sec. 17-10 of these Ordinances.
- (d) Registration Filing Fee. At the time of registration, Operators must pay a filing fee of \$100, an amount established by the City Council. All applicable inspection fees shall be paid directly to the inspecting department at the time of inspection.
- (e) Local Contact. When registering, an Operator must provide his or her name and contact information, and, in the event that the Operator is not present during the Short Term Rental, the name and contact information of an individual who is able to respond in person to any issues or emergencies that arise during the Short Term Rental within two (2) hours of being notified. Contact information must include a telephone number that is active 24 hours per day to short term rental occupants and public safety agencies. This phone number shall be included in the registration of the Short Term Rental unit at the time of registration. Failure of the local contact to respond within the stated period shall constitute a violation of this ordinance.

- (f) Proof of Residence. When registering an Accessory Short Term Rental, an Operator must provide evidence that he or she resides in the dwelling unit a minimum of 275 days during each calendar year, as demonstrated by at least two of the following: utility bill, voter registration, motor vehicle registration, deed, lease, driver's license or state-issued identification.
- (g) Permission of Owner. An Operator must certify at the time of registration that he or she is the owner of the Short Term Rental or has permission from the owner to operate the Short Term Rental.
- (h) Notice to Abutters. The Operator shall, within thirty (30) after registration of a Short Term Rental, provide notice of such registration to all residential dwellings located within 300 feet of the Short Term Rental. Such notification shall include the contact information of the Operator and the local contact, and a reference this ordinance. Failure to provide such notice shall constitute a violation of this ordinance.

Sec. 20-163. Inspections.

- (a) The Inspectional Services Department, Health and Human Services Department, and Fire Department may conduct inspections of any Short Term Rental as may be required to ensure safety and compliance with all applicable ordinances and local, state, and federal codes. All inspecting departments shall keep records of inspections and visits to the property throughout each year.

Sec. 20-164. Compliance with City Ordinances and State and Local Codes.

- (a) All Short Term Rentals shall comply with all applicable ordinances and local, state, and federal codes applying generally to residential properties in the City, including but not limited to the City's Zoning Ordinance, Chapter 30 of the Revised Ordinances of the City.
- (b) Short Terms Rentals shall not produce noise, vibration, glare, fumes, odors, traffic or parking congestion beyond that which normally occurs in the immediate residential area, nor shall any Short Term Rental result in the repeated disruption of the peace, tranquility, or safety of the immediate residential neighborhood.

Sec. 20-165. Responsibilities of Operators.

- (a) General Responsibility. The Operator shall be responsible for the proper supervision, operation, and maintenance of the Short Term Rental in accordance with the requirements of this article and all other pertinent laws, regulations, and codes. The appointment of an agent shall in no way relieve the Operator from responsibility for full compliance with the law.
- (b) Commercial Events Prohibited. A Short Term Rental property shall not be used for a commercial event during its occupancy as a Short Term Rental. Commercial events include luncheons, banquets, parties, weddings, meetings, charitable fundraising, commercial or advertising activities, or other gatherings for direct or indirect compensation.

- (c) Agreements with Occupants. Operators may not enter into any rental agreements that are inconsistent with the terms of this article.
- (d) Minors. No Short Term Rental shall be rented to any unemancipated person who is younger than eighteen (18) years of age.
- (e) Occupant Registries. The Operator of every Short Term Rental must maintain, in permanent form, a registry log of occupants. It must include the names and home addresses of occupants, occupant's license plate numbers if traveling by car, dates of stay, and the room assigned to each occupant. The registry log must be available for inspection by any City official upon request.
- (f) Fire Prevention Notice. Operators shall post in a visible place inside the short-term rental unit information regarding the location of any fire extinguishers, gas shut off valves, fire exits and fire alarms in the unit and building.
- (g) House Rules. Operators shall institute house rules as necessary to prevent the Short Term Rental from being a cause of complaint to the Police Department or a cause of nuisance or annoyance to the neighbors or neighborhood.
 - 1) House rules should make occupants aware of the City's ordinances and the Operator's policies, which shall be in writing. At a minimum, house rules shall adequately address the following:
 - i. Noise control, including use of audio equipment that may disturb the peace
 - ii. Adherence to laws regarding disorderly behavior
 - iii. Proper garbage disposal
 - iv. Location of parking stalls on the property
 - v. Neighborhood parking regulations and restrictions
 - vi. Occupancy limits according to the City's Zoning Ordinance
 - vii. Any other provisions as may be required by City Officials.
 - 2) Operators shall ensure all occupants are aware of the house rules by distributing them prior to the date of occupancy and posting them in a visible place.
- (h) Egress and Access. Operators shall be responsible for ensuring that adequate egress is provided in accordance with the Massachusetts State Building Code, 780 CMR.
- (i) Maintenance. The building and all parts thereof shall be kept in good general repair and properly maintained.
- (j) Burden of Proof. The burden of proof is placed on the Operator to demonstrate that they are operating within the limits of this article.
- (k) False Information. Submission of false information shall be cause for the Commissioner to suspend or terminate an Operator's right to operate an accommodation.

Sec. 20-166. Enforcement, Violations and Penalties.

- (a) Enforcement. The Inspectional Services Department and the Newton Police Department or their designees shall be responsible for enforcement of this ordinance, including any rule or regulation promulgated hereunder, and shall institute all necessary administrative or legal action to assure compliance.
- (b) Notice of violation. The Commissioner or designee shall issue a written notice of any violation of this article to the Operator. Said notice shall describe the prohibited condition and order that it be remedied within thirty (30) days of receipt of the notice. If such condition is not remedied within that time, the Commissioner may take action to impose the fines described in these Ordinances at sec. 5-22 (g).
- (c) Penalties. Any Operator who violates any provision of this ordinance shall be subject to suspension or termination of the certificate to operate a Short Term Rental and a fine of not more than three hundred dollars (\$300.00) for each violation. Each day a violation occurs shall be a separate offense. The Commissioner shall notify the Massachusetts Commissioner of the Department of Revenue of all such suspensions or terminations. Where non-criminal disposition of this section by civil fine has been provided for in sections 17-22 and 17-23 of these revised ordinances, as amended, pursuant to the authority granted by G.L. c. 40, section 21D, said violation may be enforced in the manner provided in such statute. The civil penalty for each such violation is set forth in section 17-23(c).
- (d) Violations of building, health, or fire code. Any action by the Commissioner to suspend, terminate or issue fines under this section shall not bar any other separate action by any other City Department for health, fire safety, building code or any other violations.
- (e) Failure to Register. Any person who offers or operates a Short Term Rental without first registering with the City shall be fined three hundred dollars (\$300.00) per violation per day. Each day's failure to comply with a notice of violation or any other order shall constitute a separate violation.

Sec. 20-167. Effective Date.

This Ordinance shall take effect on ~~September~~July 1, 2019.

Sec. 20-168. Severability.

The provisions of this article are severable. If any provision, paragraph, sentence, or clause, of this article or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this article.

Sec. 20-169. Reserved.

- k. The City Council may grant a special permit for a home business involving any or all of the following:
 - i. A number of nonresident employees greater than that permitted under Sec. 6.7.5.B;
 - ii. The utilization for the purpose of the home business of more than 30 percent of the ground floor area of the dwelling unit;
 - iii. The presence of more than 3 customers, pupils, or patients for business or instruction at any one time, subject to the provision of a number of parking spaces sufficient to accommodate the associated activity;
 - iv. The use of a detached accessory building, exterior structure, or land outside the residence for the primary purpose of, or accessory to the home business; provided, however, that no home business shall be permitted in any detached accessory building which is used as an accessory apartment pursuant to the provisions of Sec. 6.7.1.C. or Sec. 6.7.1.D.; and
 - v. The waiver of the off-street parking requirement.

- 2. In Multi-Residence Districts. The City Council may grant a special permit for a home business in accordance with standards listed in Sec. 6.7.3

(Ord. No. 191, 01/17/77; Ord. No. S-260, 08/03/87; Ord. No. T-264, 03/01/93; Ord. No. B-2, 02-20-18)

6.7.4. Scientific Research and Development Activities

- A. **Defined.** Activities necessary in connection with scientific research or scientific development or related production, accessory to activities permitted as a matter of right, so long as it is found that the proposed accessory use does not substantially derogate from the public good.
- B. **Standards.** Notwithstanding anything in this Sec. 6.7.4, no recombinant DNA research shall be permitted as an accessory use.

(Ord. No. R-238, 03/15/82)

6.7.5. Short-Term Rental

- A. **Defined.** The rental of one or more bedrooms (along with any associated living areas) within a dwelling unit on an overnight or short-term basis of less than 30 days to guests. The use is accessory to the primary residential use of the dwelling unit.
- B. **Standards.**
 - 1. A resident seeking to operate a Short-Term Rental must register with the City in accordance with Sec. 20-162 of the Revised Ordinances of the City of Newton.
 - 2. The short-term rental accessory use is permitted in any residential use, excluding congregate living, elderly housing, lodging house, dorms, and similar.
 - 3. There may be no signage associated with a Short-Term Rental.
 - 4. The burden of proof is placed on the resident registered with the City as the operator of the Short-Term Rental to demonstrate that they are operating within the limits of this section.
 - 5. The resident of the dwelling unit must occupy the dwelling unit for a minimum of 9 out of 12 months during each calendar year.
 - 6. The short-term rental use is limited to no more than 100 days per year.
 - 7. The maximum number of bedrooms on the site that can be rented to overnight or short-term guests is 3 and the maximum number of guests is 9.
 - 8. Temporary During Leasing. Short-Term Rentals in multi-unit buildings with a minimum of 10 units in a business or mixed-use district may occupy residential units with short-term rentals for up to six months while units marketed as for rent are vacant by special permit. Units designated as affordable may not be used as short-term rentals. Temporary Short-Term Rentals must register with the City as per Sec. B.1 above.
 - 9. The effective date for this section 6.7.5 is September 1, 2019.

6.7.6. Watchman or Caretaker

- A. **Defined.** [reserved]

3.4.2. Accessory Uses Allowed

- A. By Right in All Residence Districts.** Such accessory purposes as are proper and usual with detached single-family dwellings or detached two-family dwellings, including but not limited to:
1. Housing of resident domestic employees;
 2. Renting of rooms for not more than 3 lodgers;
 3. Parking or storage of recreational trailers or vehicles, provided that if not parked or stored within a garage or other enclosed structure, such trailer or vehicle shall not be parked or stored within the area between any front line of the principal building and the street line, or stored within the side or rear setback, and further provided that such trailer or vehicle may be parked in the side or rear setback for a period not to exceed 7 days;
 4. Parking or storing of not more than 1 commercial vehicle per lot, subject to Sec. 6.7.3;
 5. Home businesses subject to Sec. 6.7.3; and
 6. Accessory apartments, subject to Sec. 6.7.1.
 7. Short-term rentals, subject to Sec. 6.7.5.

B. By Special Permit in All Residence Districts.

The text of section 3.4.2.B.1 is in effect until December 31, 2019. After that date refer to section 3.4.4.

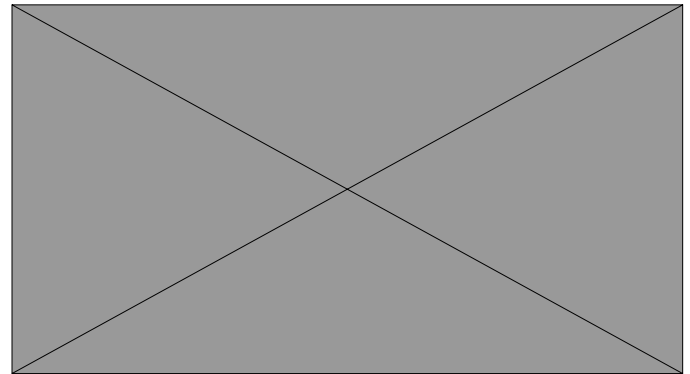
1. A private garage with provision for more than 3 automobiles, or a private garage of more than 700 square feet in area, or more than 1 private garage per single-family dwelling;
2. Internal and detached accessory apartments subject to provisions of Sec. 6.7.1;
3. Home businesses subject to the provisions of Sec. 6.7.3; and
4. Accessory purposes as are proper and usual with the preceding special permit uses and are not injurious to a neighborhood as a place for single-family residences.

(Ord. No. S-260, 08/03/87; Ord.No. S-322, 07/11/88; Ord. No. T-114, 11/19/90; Ord. No. V-274, 12/06/99; Ord. No. A-78, 06/20/16; Ord. No. A-95, 12/05/16; Ord. No. A-99, 01/17/17; Ord. Nol. A-105, 03/06/17)

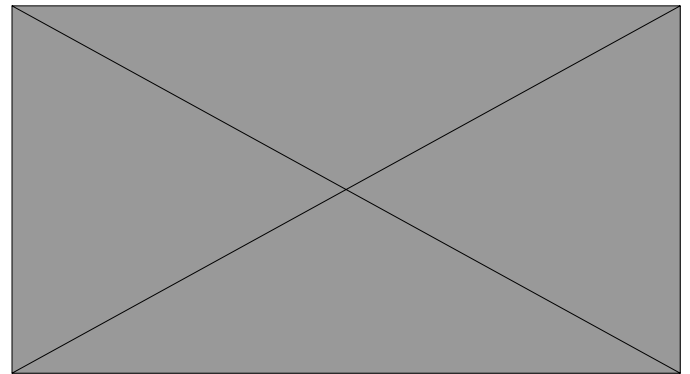
3.4.3. Accessory Buildings

- A.** Except as provided in Sec. 6.9, accessory buildings shall conform to the following requirements:

1. An accessory building shall be no nearer to any side or rear lot line than 5 feet, and no nearer to any front lot line than the distance prescribed for the principal building.



2. An accessory building with a sloping roof shall have a maximum height of 22 feet. An accessory building with a flat roof shall have a maximum height of 18 feet. An accessory building shall have no more than 1½ stories.



3. The ground floor area of an accessory building shall not exceed 700 square feet.

The text of section 3.4.3.A.4 is in effect until December 31, 2019. After that date refer to section 3.4.4.

of the institutional use and for those exceeding 10 acres of land, the vegetative buffer shall be a minimum of 100 feet, and for those exceeding 20 acres of land, the vegetative buffer shall be a minimum of 150 feet.

(Rev. Ords. 1973 §24-1; Ord. No. S-260, 08/03/87; Ord. No. S-287, 12/07/87)

6.3.15. Theatre, Hall

A. **Defined.** [reserved]

Sec. 6.4. Commercial Uses

6.4.1. Animal Service

A. **Defined.** Animal Services, including but not limited to sales and grooming and veterinary services; excluding overnight boarding.

(Ord. No. A-4, 10/01/12)

6.4.2. ATM, Standalone

A. **Defined.** A standalone automated teller machine (ATM) not located on the same lot as a bank, trust company or other banking institution.

6.4.3. Bakery, Retail

A. **Defined.** A bakery selling products at retail and only on premise.

6.4.4. Bank

A. **Defined.** Bank, trust company or other banking institution.

B. **Standards.**

1. Drive-in facilities are prohibited in the Business 1 through 4, Mixed Use 1 and 2, and Limited Manufacturing districts.

(Ord. No. S-260, 08/03/87; Ord. No. T-12, 03/20/89; Ord. No. T-75, 03/05/90)

6.4.5. Bed & Breakfast

A. **Defined.** A single unit residential building providing rooms for temporary, overnight lodging, with or without meals, for paying guests. Rooms may be independently let to unrelated or unaffiliated guests.

B. **Required Standards.**

1. A bed & breakfast use must be owner occupied.
2. A common gathering space, such as a parlor, dining room, or living room, must be maintained for guest use.
3. Cooking facilities are not permitted in guest rooms.

6.4.6. Bowling Alley

A. **Defined.** [reserved]

6.4.7. Business Incubator

A. **Defined.** [reserved]

6.4.8. Business Services

A. **Defined.** [reserved]

6.4.9. Car-Sharing Service, Car Rental, Bike Rental, Electric Car-Charging Station

A. **Defined.** [reserved]

6.4.10. Car Wash

A. **Defined.** An establishment for washing automobiles where 3 or more vehicles may be washed simultaneously.

(Rev. Ords. 1973 §24-1)

6.4.11. Country Club Facilities

A. **Defined.** Dining rooms, conference or meeting facilities and clubhouses associated with a country club or golf course.

6.4.12. Drive-In Business

A. **Defined.** A retail or consumer use of land or a building in which all or part of the business transacted is conducted by a customer from within a motor vehicle. Includes drive-in food establishments.

(Ord. No. 312, 02/05/79)

6.4.13. Dry Cleaning or Laundry, Retail

A. **Defined.** [reserved]

6.4.14. Fast Food Establishment

A. **Defined.**

Sec. 3.4. Allowed Uses

3.4.1. Residential Districts Allowed Uses

Residential Districts	SR1	SR2	SR3	MR1	MR2	MR3	MR4	Definition/ Listed Standards
Residential Uses								
Single-family, detached	P	P	P	P	P	P	P	Sec. 6.2.1
Two-family, detached	--	--	--	P	P	P	P	Sec. 6.2.2
Single-family, attached	SP	SP	SP	SP	SP	SP	SP	Sec. 6.2.3
Multi-family dwelling	--	--	--	--	SP	SP	SP	Sec. 6.2.4
Association of persons in a common dwelling	SP	SP	SP	SP	SP	SP	SP	Sec. 6.2.6
Lodging house	--	--	--	SP	SP	SP	SP	Sec. 6.2.7
Congregate living facility	SP	SP	SP	SP	SP	SP	SP	Sec. 6.2.8
Dormitory (5-20 persons)	SP	SP	SP	SP	SP	SP	SP	Sec. 6.2.9
Dormitory (20+ persons)	L	L	L	L	L	L	L	Sec. 6.2.9
Cluster development for open space preservation	SP	SP	SP	SP	SP	SP	SP	Sec. 6.2.12
Residential care facility	--	--	--	--	--	SP	SP	Sec. 6.2.13
Civic/Institutional Uses								
Cemetery, private	SP	SP	SP	SP	SP	SP	SP	Sec. 6.3.1
Club, clubhouse	SP	SP	SP	SP	SP	SP	SP	Sec. 6.3.2
Family child care home, large family child care home, day care center	L	L	L	L	L	L	L	Sec. 6.3.4
Hospital	SP	SP	SP	SP	SP	SP	SP	Sec. 6.3.7
Library, museum or similar institution	SP	SP	SP	SP	SP	SP	SP	Sec. 6.3.8
Nonprofit institution	--	--	--	SP	SP	SP	SP	Sec. 6.3.9
Public use	L	L	L	L	L	L	L	Sec. 6.2.10
Religious institution	L	L	L	L	L	L	L	Sec. 6.3.12
Sanitarium, convalescent or rest home, other like institution	SP	SP	SP	SP	SP	SP	SP	Sec. 6.3.13
School or other educational purposes, non-profit	L	L	L	L	L	L	L	Sec. 6.3.14
School or other educational purposes, for-profit	SP	SP	SP	SP	SP	SP	SP	Sec. 6.3.14
Scientific research and development activities, accessory	SP	SP	SP	SP	SP	SP	SP	Sec. 6.7.4
Commercial Uses								
Bed & Breakfast	SP	SP	SP	SP	SP	--	--	Sec. 6.4.5
Funeral home	--	--	--	--	SP	SP	--	Sec. 6.4.15
Radio or television transmission station or structure	SP	SP	SP	SP	SP	SP	SP	Sec. 6.4.27
Industrial Uses								
Wireless communication equipment	P/L/SP	P/L/SP	P/L/SP	P/L/SP	P/L/SP	P/L/SP	P/L/SP	Sec. 6.9
Open Space Uses								
Agriculture on a parcel of 5 or more acres	P	P	P	P	P	P	P	Sec. 6.6.1
Agriculture on a parcel under 5 acres	SP	SP	SP	SP	SP	SP	SP	Sec. 6.6.1
Resource extraction	SP	SP	SP	SP	SP	SP	SP	Sec. 6.6.4
Riding school, stock farm	SP	SP	SP	SP	SP	SP	SP	Sec. 6.6.5

P = Allowed by Right L = Allowed Subject to Listed Standards SP = Special Permit by City Council Required -- Not Allowed

(Ord. No. B-1, 02-20-18)

Business, Mixed Use & Manufacturing Districts	BU1	BU2	BU3	BU4	BU5	MU1	MU2	MU3	MU4	M	LM	Definition/ Listed Standard
Bank, up to 5,000 square feet	P	P	P	P	--	SP	P	SP	P	--	P	Sec. 6.4.4
Bank, over 5,000 square feet	P	P	P	P	--	SP	SP	SP	P	--	P	Sec. 6.4.4
<u>Bed & Breakfast</u>	<u>SP</u>	<u>SP</u>	<u>--</u>	<u>--</u>	<u>--</u>	<u>--</u>	<u>--</u>	<u>--</u>	<u>--</u>	<u>--</u>	<u>--</u>	Sec. 6.4.5
Bowling alley	--	P	--	--	--	--	--	--	--	--	P	Sec. 6.4.5
Business incubator	P	P	P	P	--	P	P	P	--	P	p	Sec. 6.4.6
Business services	--	--	--	--	--	SP	P	--	--	--	--	Sec. 6.4.7
Car-sharing service, car rental, bike rental, electric car-charging station	P	P	P	P	P	P	P	P	P	--	P	Sec. 6.4.8
Car wash	--	--	--	--	--	--	--	--	--	SP	--	Sec. 6.4.9
Drive-in business	SP	SP	SP	SP	--	--	--	--	--	--	SP	Sec. 6.4.11
Dry cleaning or laundry, retail	P	P	P	P	--	SP	P	P	P	--	--	Sec. 6.4.12
Fast food establishment	--	SP	--	--	--	--	--	--	--	--	SP	Sec. 6.4.13
Fuel establishment	--	SP	--	--	--	SP	SP	--	--	SP	SP	Sec. 6.4.14
Funeral home	SP	SP	SP	SP	--	--	SP	--	--	--	--	Sec. 6.4.15
Health club, above or below ground floor	P	P	--	P	--	P	P	P	SP	P	P	Sec. 6.4.16
Health club, ground floor	P	P	--	P	--	SP	SP	SP	SP	P	P	Sec. 6.4.16
Hotel or lodging establishment	SP	SP	SP	SP	SP	--	SP	SP	SP	--	--	Sec. 6.4.17
Job printing, up to 3,000 square feet (area used for work and storage)	P	P	P	P	--	--	P	--	--	P	--	Sec. 6.4.18
Job printing, over 3,000 square feet (area used for work and storage)	SP	SP	SP	SP	--	--	SP	--	--	P	--	Sec. 6.4.18
Kennel	--	--	--	--	--	--	--	--	--	P	P	Sec. 6.4.19
Office	P	P	P	P	P	P	P	L	L/SP	P	P	Sec. 6.4.20
Office of a contractor, builder, electrician or plumber or similar enterprises	--	L	--	--	--	--	--	--	--	--	L	Sec. 6.4.21
Open-air business	SP	SP	SP	SP	--	--	--	--	SP	--	SP	Sec. 6.4.22
Outdoor storage	--	SP	--	--	--	--	--	--	--	--	--	Sec. 6.4.23
Parking facility, accessory, single level	P	P	P	P	--	P	P	--	P	P	P/SP	Sec. 6.4.24
Parking facility, non-accessory, single level	SP	SP	SP	SP	--	SP	SP	--	SP	SP	SP	Sec. 6.4.24
Parking facility, accessory, multi-level	SP	SP	SP	SP	--	SP	--	--	P	SP	SP	Sec. 6.4.24
Parking facility, non-accessory, multi-level	SP	SP	SP	SP	--	SP	--	--	SP	SP	SP	Sec. 6.4.24
Personal service, up to 5,000 square feet	P	P	P	P	--	--	P	P	P	--	P	Sec. 6.4.25
Personal service, over 5,000 square feet	P	P	P	P	--	--	P	SP	SP	--	P	Sec. 6.4.25
P = Allowed by Right L = Allowed Subject to Listed Standards SP = Special Permit by City Council Required -- Not Allowed												

Sec. 5.9. Tree Protection

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

Sec. 5.10. Floodplain, Watershed Protection

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

Sec. 5.11. Inclusionary Zoning

5.11.1. Purposes.

The purposes of this Sec. 5.11 are to:

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

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

5.11.2. Definitions.

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

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

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

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

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

5.11.3. Application of Inclusionary Zoning Requirements.

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

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

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

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

5.11.4. Mandatory Provision of Inclusionary Units.

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

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

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

1. Where the inclusionary zoning requirement results in a fraction of a unit greater than or equal to 0.5, the development must provide one Inclusionary Unit to capture that fraction.
2. Where the inclusionary zoning requirement results in a fraction of a unit less than 0.5, the development may choose to provide one Inclusionary Unit to capture that fraction or contribute a fractional cash payment to the City to cover the fraction of that Inclusionary Unit requirement. Fractional cash payment amounts are calculated based on the provisions of Section 5.11.5.
3. All fractions are rounded to the nearest tenth.
4. Rental Project Requirements. The percentage requirements for applicable rental developments are based on the following table and provisions:
 - a. For rental Inclusionary Housing Projects with 7-9 residential dwelling units, where only one rental inclusionary unit is required at Tier 1, the inclusionary unit shall be priced for a household income limit at not more than 80% of AMI.
 - b. For rental Inclusionary Housing Projects with 10 or more residential dwelling units, where two or more rental Inclusionary Units are required at Tier 1, the AMI used for establishing rent and income limits for these Inclusionary Units must average no more than 65% of AMI. Alternatively, at least 50% of such units may be priced for households having incomes at 50% of AMI and the remaining Inclusionary Units may be priced for households at 80% of AMI.

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

Illustration: Tier 1 Average 65% AMI Methodology

Example Project: 17-unit rental development

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

Average affordability level across units must be 65% AMI

EXAMPLE APPROACH #1: 1 unit at 50% AMI

1 unit at 65% AMI

1 unit at 80% AMI

EXAMPLE APPROACH #2: 3 units at 65% AMI

Rental Projects: Number of Inclusionary Units Required

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

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

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

Illustration: Rental Projects Calculation Methodology

Example Project: 31-unit rental development

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

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

TOTAL UNITS = 6 deed-restricted affordable units

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

- a. For ownership Inclusionary Housing Projects with 7-16 residential dwelling units, where one or two ownership inclusionary units are required at Tier 1, the household income limit for those units shall be 80% of AMI and the inclusionary units must be priced for affordability to households having annual gross incomes of not more than 70% of AMI at the time of marketing.
- b. For ownership Inclusionary Housing Projects with 17 or more residential dwelling units, where three or more ownership inclusionary units are required, the household income limit for Tier 1 units must be 80% of AMI and those inclusionary units must be priced for affordability to households having annual gross incomes of not more than 70% of AMI at the time of marketing. The household income limit for Tier 2 Middle-Income units must be 110% of AMI and those inclusionary units must be priced for affordability to households having annual gross incomes of not more than 100% of AMI at the time of Marketing.
- c. Effective January 1, 2021, ownership Inclusionary Housing Projects with 100 or more residential dwelling units must provide 10% of residential dwelling units at Tier 1 and 10% of residential dwelling units at Tier 2.

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

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

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

Illustration: Ownership Projects Calculation Methodology

Example Project: 52-unit ownership development

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

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

TOTAL UNITS: 9 deed-restricted affordable units

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

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

Illustration: Incentive Units Calculation Methodology*Example Project: 31-unit rental development***PRE-INCENTIVE CALCULATION**

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

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

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

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

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

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

must not exceed 30% of the applicable household income limit for the Inclusionary Unit. Additionally, the following requirements apply:

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

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

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

5.11.5. Cash Payment Option.

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

- A. **Eligibility.** There are 3 circumstances in which the Inclusionary Unit requirements of Section 5.11.4 may be met through a cash payment instead of providing Inclusionary Units:
 1. For Inclusionary Housing Projects that include the construction or substantial reconstruction of 7 to 9 dwelling units; or
 2. By special permit from the City Council, where the Council makes specific findings that there will be an unusual net benefit to achieving the City's housing objectives as a result of allowing a cash payment rather than requiring the development of Inclusionary Units. The findings must include consideration of the appropriateness of the development site location for income-eligible households, including proximity to and quality of public transportation,

schools, and other services; the current balance of the Inclusionary Housing Fund; and the purposes of this Section 5.11.

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

B. Cash Payment Amount. The cash payment as an alternative to each required Inclusionary Unit, or fraction thereof, is based on a formula that utilizes the average total development costs (TDC) per unit in Newton, calculated by the Newton Housing Partnership and approved by the Director of Planning and Development utilizing final closing budgets and/or certified cost and income statements from new affordable housing developments built in Newton in the previous 3 years that were funded all or in part by public subsidies or approved through M.G.L. Chapter 40B. This basis for the cash payment standard (average TDC/unit in Newton) must be increased annually by the amount of the Consumer Price Index (CPI-U) and take effect on the anniversary date of the effective date in Section 5.11.14. No more than every 3 years, the average TDC/unit in Newton must be recalculated by the Newton Housing Partnership and approved by the Director of Planning and Development based on available data from affordable housing developments as above, completed in Newton during the preceding 3 year period.

1. The average TDC per unit, as calculated in May 2019 by the Newton Housing Partnership and approved by the Director of Planning & Development, is \$550,000.
2. For Inclusionary Housing Projects containing 10 or more units that receive a Special Permit to make such a payment, the total cash payment is determined by utilizing the following calculation:
3. For Inclusionary Housing Projects with 7-9 units, the total cash payment is determined by utilizing the average total development costs (TDC) per

unit in Newton and reducing that number based on the number of units in the project as follows:

- a. Total cash payment for a 7-unit project: 70% multiplied by the TDC per unit in Newton.
- b. Total cash payment for an 8-unit project: 80% multiplied by the TDC per unit in Newton.
- c. Total cash payment for a 9-unit project: 90% multiplied by the TDC per unit in Newton.

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

Illustration: Cash Payment Calculation Methodology

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

EXAMPLE 1: 18 Unit Rental Project

A = 18 units

B = 15% inclusionary required

C = \$550,000 TDC

STEP 1: 0.15 x 18 units = 2.7 units

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

EXAMPLE 2: 36 Unit Ownership Project

A = 36 units

B = 17.5%

C = \$550,000

STEP 1: 0.175 x 36 units = 6.3 units

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

SMALL PROJECT CALCULATION EXAMPLES

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

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

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

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

Illustration: Fractional Payment Calculation Methodology

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

EXAMPLE: 48 Unit Rental Project

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

TOTAL UNITS = 7 units

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

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

TOTAL UNITS = 1 unit

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

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

- D. Payment Deadline.** Any Inclusionary Unit cash payment must be paid in full to the City prior to the granting of any Certificate of Occupancy.
- E. Cash Payment Recipient.**
1. The cash payment is made to the City's Inclusionary Zoning Fund, to be distributed equally to the Newton Housing Authority and the City of Newton.
 2. These funds are to be used for the restoration, creation, preservation, associated support services, and monitoring of deed-restricted units affordable to households with annual gross incomes at or below 80% of AMI, to the extent practical.
 3. Notwithstanding Section 2 above, funds received from Inclusionary Housing Projects with 7-9 units, as described in Section 5.11.5.B.3, must be used for the creation of deed-restricted units affordable to households at or below 80% of AMI.
 4. Appropriation of these funds for use by the City or the Newton Housing Authority must first be

approved by the Planning & Development Board and then by the Mayor.

5. The Newton Housing Authority and the City must each maintain an ongoing record of payments to the fund on their behalf and the use of the proceeds for the purposes stated in this Sec. 5.11.

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

5.11.6. Off-Site Development.

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

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

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

1. The applicant must submit a development plan for off-site development for review and comment by the Planning and Development Department prior to submission to the City Council. The plan must include at a minimum, demonstration of site control, necessary financing in place to complete the off-site development or rehabilitation, an architect's conceptual site plan with unit designs and architectural elevations,

and agreement that the off-site units will comply with Sec. 5.11.7.

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

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

5.11.7. Design and Construction.

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

- A. Inclusionary units provided on-site, and their associated parking spaces, must be proportionally distributed throughout the Inclusionary Housing Project and be sited in no less desirable locations than the market-rate units;
- B. The bedroom mix of Inclusionary Units must be equal to the bedroom mix of the market-rate units in the Inclusionary Housing Project;
- C. The Inclusionary Units must meet the following size specifications:
 - 1. Must be comparable in size to that of the market rate units;
 - 2. Whichever is greater of the two:
 - a. Must meet the minimum square footage and bathroom requirements, as required by DHCD's most current Comprehensive Permit Guidelines.
 - b. Must have an average square footage of not less than 80% of the average square footage of the market-rate units with the same number of bedrooms; and
 - 3. The total square footage of Inclusionary Units in a proposed development must not be less than 10% of the sum of the total square footage of all market-rate and all Inclusionary Units in the proposed development;
- D. Inclusionary Units must have exteriors that are indistinguishable in design and of equivalent materials to the exteriors of the market-rate units in the project;
- E. The materials used and the quality of construction for inclusionary units, including heating, ventilation, and air conditioning systems, must be equal to that of the market rate units in the Inclusionary Housing Project, as reviewed by the Planning and Development Department; provided that amenities such as designer or high end appliances and fixtures need not be provided for inclusionary units;
- F. At a minimum, the Inclusionary Units must have an equivalent level of accessibility as that of the market-rate units, and the Inclusionary Units must have an equivalent mix of disabled-accessible units as that of the market-rate units; and
- G. The Inclusionary Units must have equal access to all amenities that are offered to the market-rate units in a project, such as parking, on-site fitness centers, laundry facilities, and community rooms.

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

5.11.8. Inclusionary Housing Plans and Covenants.

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

re-sales of Inclusionary Units to eligible households in accordance with provisions reviewed and approved by the Director of Planning and Development, which incorporates the provisions of this Section; and

2. For rental units, a covenant to be filed prior to the issuance of any occupancy permit and running in favor of the City of Newton, in a form approved by the City Solicitor, which limits rental of Inclusionary Units to eligible households in accordance with provisions reviewed and approved by the Director of Planning and Development, which incorporates the provisions of this Section.

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

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

5.11.9. Public Funding Limitation.

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

1. Those that represent a greater number of affordable units than are otherwise required by

this subsection and not receiving additional market rate units according to Section 5.11.4.C;

2. Those that are lower than the maximum eligible income limit for some or all inclusionary units by at least 10 percentage points below that stipulated in Sec. 5.11.4; and
3. Those that exceed regulatory requirements in providing for persons having disabilities.

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

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

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

A. ELI Alternative Compliance Option Project

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

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

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

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

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

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

1. The applicant must submit a Resident Selection and Supportive Services Plan for the ELI units for review and comment by the Director of Planning and Development prior to submission for approval from the City Council as part of the special permit process. The plan must include, at a minimum, the following:

- a. Demonstration of a formal partnership with a qualified agency that specializes in supportive housing and case management for extremely low-income individuals or families;
- b. A marketing and resident selection plan that details how the tenants of the ELI units will be selected;
- c. A detailed plan that outlines the ongoing regular on-site support services and case management to be provided to each household residing in the ELI units; and
- d. An operating pro forma highlighting the initial and ongoing funding for the support services and case management.

2. The designated qualified agency must provide regular on-site support services for the tenants of the ELI units, including, but not limited to, assistance with daily living activities, healthcare referrals, community integration, job training, and employment opportunities.

- C. **No Public Funding Limitation.** Inclusionary Housing Projects that choose the Alternative Compliance Option may seek and accept public development funds to construct and operate the ELI units, notwithstanding Section 5.11.9.
- D. Inclusionary Housing Projects that choose the Alternative Compliance Option must comply with all other applicable requirements of Section 5.11.

5.11.11. Elder Housing with Services.

In order to provide affordable elder housing with affordable and sustainable services on-site, this section applies to all housing with amenities and services designed primarily for elders, such as residential care, continuing care retirement communities (CCRCs), assisted living, independent living, and congregate care. This provision also applies to Congregate Living Facilities, as defined in Section 6.2.8, where these facilities are serving elderly households. The base amenities and services to be provided must be included in the annual housing costs and must be comparable to the base amenities and services offered to all residents regardless of income status. Such amenities and services may include long term health care,

nursing care, home health care, personal care, meals, transportation, convenience services, social, cultural, educational programming, and the like. This Sec. 5.11.11 does not apply to a nursing or dementia care facility subject to certificate of need programs regulated by the Commonwealth of Massachusetts Department of Public Health or to developments funded under a state or federal program which requires a greater number of elder units or nursing beds than required here.

- A. Definition of Elderly Households.** For all such projects, an elderly household is defined as a single person who is 62 years of age or older at the time of initial occupancy; or 2 persons living together, where at least one of whom is 62 years of age or more at the time of initial occupancy.
- B. Definition of Inclusionary Beds.** For all such projects, an Inclusionary Bed is defined as any residential bed that meets the provisions of this section 5.11.11, Elder Housing with Services.
- C. Number of Inclusionary Beds Required.** For all Elder Housing with Services projects, 5% of beds provided on-site must be Inclusionary Beds designated affordable to eligible elderly households with annual gross incomes up to 80% of AMI, adjusted for household size. The applicable household income limit for all Inclusionary Beds subject to the provisions of Section 5.11.11 is 80% of the AMI at the time of marketing. Inclusionary Beds may be located in single-occupancy rooms or in shared rooms. The Inclusionary Beds must be proportionally distributed throughout the site and must be indistinguishable from the market-rate beds.
- D. Monthly Housing and Service Costs.** Total monthly housing costs, inclusive of entrance fees, rent or monthly occupancy fees, amenities, and base services may not exceed a fixed percentage of the applicable household annual income limit for the Inclusionary Bed based on the type of elder housing with services facility, as described below.
 - 1. Independent Living Facilities.** Total monthly housing costs for an Inclusionary Bed in an Independent Living Facility may not exceed 15% of the applicable household income limit for the Inclusionary Bed.
 - 2. Assisted Living Residences.** Total Monthly housing costs for an Inclusionary Bed in an

Assisted Living Residence may not exceed 30% of the applicable household income limit for the Inclusionary Bed.

- 3. Continuing Care Retirement Communities (CCRCs).** Due to their unique structure in providing independent living, assisted living, and skilled nursing and related services to elderly households in one location, CCRCs may choose to satisfy their Inclusionary Zoning requirement through either the provisions related to Independent Living Facilities of those related to Assisted Living Residences.
- E. 100% Deed-Restricted Affordable Facilities.** Any proposed Elder Housing with Services project that consists of 100% deed-restricted affordable units up to 150% of AMI is not subject to the Number of Inclusionary Beds Required per Section 5.11.11.C and may seek and accept public development funds to construct the project. The percentage of AMI used for establishing monthly housing and service costs and the applicable household income limit for all units in the project must average no more than 110% of AMI. However, projects of this type are subject to all other applicable sections of this Section 5.11.
- F. Use Restrictions.** For all such projects, all Inclusionary Beds must be subject to an affordable covenant approved by the City Solicitor, executed by the City and the developer, and recorded at the Registry of Deeds for the Southern District of Middlesex County or the Land Court Registry of Deeds for the Southern District of Middlesex County.
- G. Tenant Selection.** For all such projects, all Inclusionary Beds must be subject to an Affirmative Fair Housing Marketing and Resident Selection Plan to be approved by the Director of Planning and Development. To the extent permitted by law, such plan must provide for a local preference for up to 70% of the Inclusionary Beds in the project.
- H. Fractional Units.** Where the inclusionary zoning requirement results in a fraction of a bed greater than or equal to 0.5, the development must provide one Inclusionary Bed to capture that fraction.
- I. Alternative Compliance.** The applicant may choose to comply with their inclusionary zoning requirement through a cash payment to the City. The total cash payment for projects of this type is based on the

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

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

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

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

5.11.12. No Effect on Prior or Existing Obligations.

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

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

5.11.13. Inclusionary Zoning Program Reevaluation Requirement.

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

5.11.14. Effective Date.

The effective date of the amended provisions of Section 5.11 is August 1, 2019. The requirements of Section 5.11 do not apply to any special permit (or in the event that a special permit is not required, any building permit) issued prior to the effective date of this amendment. Effective January 1, 2021, rental and ownership Inclusionary Housing Projects with 100 or more residential dwelling units will be subject to an increased inclusionary zoning requirement per Sections 5.11.4.B.4.c, 5.11.4.B.5.c, and 5.11.10.A.2.

Sec. 5.12. Environmental Standards in the Manufacturing District

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