

Inclusionary Zoning Bylaw

01.0 Purpose and Intent: The purpose of this bylaw is to encourage development of new housing that is affordable to low and moderate-income households. At minimum, affordable housing produced through this regulation should be in compliance with the requirements set forth in G.L. c. 40B sect. 20-24. It is intended that the affordable housing units that result from this bylaw be considered as Local Initiative Units, in compliance with the requirements for the same as specified by the Department of Housing and Community Development. Definitions for affordable housing unit and eligible household can be found in the Definitions Section.

02.0 Applicability

1. In all zoning districts, the inclusionary zoning provisions of this section shall apply to the following uses:

- (a) Any project that results in a net increase of ten (10) or more dwelling units, whether by new construction or by the alteration, expansion, reconstruction, or change of existing residential or non-residential space; and
- (b) Any subdivision of land for development of ten (10) or more dwelling units; and
- (c) Any life care facility development that includes ten (10) or more assisted living units and accompanying services.

03.0 Special Permit: The development of any project set forth in Section 02.0 (above) shall require the grant of a Special Permit from the Planning Board. A Special Permit shall be granted if the proposal meets the requirements of this bylaw. The application procedure for the Special permit shall be as defined in Section __ of the Town's zoning bylaw.

04.0 Mandatory Provision of Affordable Units:

1. As a condition of approval for a Special Permit, the applicant shall contribute to the local stock of affordable unit in accordance with the following requirements:

- (a) At least ten (10) percent of the units in a division of land or multiple unit development subject to this bylaw shall be established as affordable housing units in any one or combination of methods provided for below:
 - (1) constructed or rehabilitated on the locus subject to the Special Permit (see Section 05.0); or
 - (2) constructed or rehabilitated on a locus different than the one subject to the Special Permit (see Section 06.0); or
 - (3) an equivalent fees-in-lieu of payment may be made (see Section 07.0); or

(b) The applicant may offer, and the SPGA may accept, any combination of the Section 04.1(a)(1)-(3) requirements provided that in no event shall the total number of units or land area provided be less than the equivalent number or value of affordable units required by this bylaw/ordinance.

(c) As a condition for the granting of a Special Permit, all affordable housing units shall be subject to an affordable housing restriction and a regulatory agreement in a form acceptable to the Planning Board. The regulatory agreement shall be consistent with any applicable guidelines issued by the Department of Housing and Community Development and shall ensure that affordable units can be counted toward the town's Subsidized Housing Inventory. The regulatory agreement shall also address all applicable restrictions listed in Section 0.9 of this bylaw. The Special Permit shall not take effect until the restriction, the regulatory agreement and the special permit are recorded at the Registry of Deeds and a copy provided to the Planning Board and the Inspector of Buildings.

2. To facilitate the objectives of this Section 04.0, modifications to the dimensional requirements in any zoning district may be permitted for any project under these regulations, as the applicant may offer and the Planning Board may accept, subject to the conditions below:

(a) Density Bonus. The Planning Board may allow the addition of two market rate units for each affordable unit provided as part of compliance with the Special Permit. The minimum lot area per dwelling unit normally required in the applicable zoning district may be reduced by that amount necessary to permit up to two (2) additional market rate units on the lot for each one affordable unit required in Section 04.1 (above).

(c) Voluntary Inclusionary Housing Bonus. New affordable housing development that is not subject to Section 02.0 and exceeds the requirements specified in Section 04.1(a) may receive the same benefits specified in Sections 04.2(a) when the development is approved by the Planning Board. The net increase in housing units shall not exceed fifty percent (30%) of the original property yield before any density bonuses were applied.

05.0 Provisions Applicable to Affordable Housing Units On- and Off-Site:

1. Siting of affordable units. All affordable units constructed or rehabilitated under this bylaw shall be situated within the development so as not to be in less desirable locations than market-rate units in the development and shall, on average, be no less accessible to public amenities, such as open space, as the market-rate units.

2. Minimum design and construction standards for affordable units. Affordable housing units shall be integrated with the rest of the development and shall be compatible in design, appearance, construction, and quality of materials with other units. Interior features and mechanical systems of affordable units shall conform to the same specifications as apply to market-rate unit.

3. Timing of construction or provision of affordable units or lots. Where feasible, affordable housing units shall be provided coincident to the development of market-rate units, but in no event shall the development of affordable units be delayed beyond the completion of 30% of the market units constructed.

4. Marketing Plan for Affordable Units. Applicants under this bylaw shall submit a marketing plan or other method approved by the Town through its local comprehensive plan, to the Planning Board for its approval, which describes how the affordable units will be marketed to potential home buyers or tenants. This plan shall include a description of the lottery or other process to be used for selecting buyers or tenants.

06.0 Provision of Affordable Housing Units Off-Site:

1. As an alternative to the requirements of Section 05.0, an applicant subject to the bylaw may develop, construct or otherwise provide affordable units equivalent to those required by Section 04.0 off-site. All requirements of this bylaw that apply to on-site provision of affordable units, shall apply to provision of off-site affordable units. In addition, the location of the off-site units to be provided shall be approved by the Planning Board as an integral element of the Special Permit review and approval process.

07.0 Fees-in-Lieu-of Affordable Housing Unit Provision:

1. As an alternative to the requirements of Section 05.0 or Section 06.0, an applicant may contribute to the Milton Housing Trust Fund to be used for the development of affordable housing in lieu of constructing and offering affordable units within the locus of the proposed development or at an off-site locus.

(a) Calculation of fee-in-lieu-of units. The applicant for development subject to this bylaw may pay fees-in-lieu of the construction of affordable units. For the purposes of this bylaw/ordinance the fee-in-lieu of the construction or provision of affordable units will be determined as a per-unit cost as calculated from regional construction and sales reports. The Planning Board will make the final determination of acceptable value.

(b) Schedule of fees-in-lieu-of-units payments. Fees-in-lieu-of-units payments shall be made according to the schedule set forth in Section 05.3, above.

(c) Creation of Affordable Units. Cash contributions and donations of land and/or buildings made to the Town or its Housing Trust in accordance with Section 07.1 shall be used only for purposes of providing affordable housing for low or moderate income households. Using these contributions and donations, affordable housing may be provided through a variety of means, including but not limited to the provision of favorable financing terms, subsidized prices for purchase of sites, or affordable units within larger developments.

08.0 Maximum Incomes and Selling Prices: Initial Sale:

1. To ensure that only eligible households purchase affordable housing units, the purchaser of an affordable unit shall be required to submit copies of the last three years' federal and state income tax returns and certify, in writing and prior to transfer of title, to the developer of the housing units or his/her agent, and within thirty (30) days following transfer of title, to the local housing trust, community development corporation, housing authority or other agency as established by the Town,

that his/her or their family's annual income level does not exceed the maximum level as established by the Commonwealth's Department of Housing and Community Development, and as may be revised from time to time.

2. The maximum housing cost for affordable units created under this bylaw is as established by the Commonwealth's Department of Housing and Community Development, Local Initiative Program or as revised by the Town.

09.0 Preservation of Affordability; Restrictions on Resale:

1. Each affordable unit created in accordance with this bylaw shall have limitations governing its resale through the use of a regulatory agreement (Section 0.4.1(c)). The purpose of these limitations is to preserve the long-term affordability of the unit and to ensure its continued availability for affordable income households. The resale controls shall be established through a restriction on the property and shall be in force in perpetuity.

(a) Resale price. Sales beyond the initial sale to a qualified affordable income purchaser shall include the initial discount rate between the sale price and the unit's appraised value at the time of resale. This percentage shall be recorded as part of the restriction on the property noted in Section 9.1, above.

(b) Right of first refusal to purchase. The purchaser of an affordable housing unit developed as a result of this bylaw shall agree to execute a deed rider prepared by the Town, consistent with model riders prepared by Department of Housing and Community Development, granting, among other things, the municipality's right of first refusal to purchase the property in the event that a subsequent qualified purchaser cannot be located.

(c) The Planning Board shall require, as a condition for Special Permit under this bylaw, that the applicant comply with the mandatory set-asides and accompanying restrictions on affordability, including the execution of the deed rider noted in Section 10.1(b), above. The Building Commissioner/Inspector shall not issue an occupancy permit for any affordable unit until the deed restriction is recorded.

10.0 Conflict with Other Bylaws/Ordinances: The provisions of this bylaw shall be considered supplemental of existing zoning bylaws. To the extent that a conflict exists between this bylaw and others, the more restrictive bylaw, or provisions therein, shall apply.

11.0 Severability: If any provision of this bylaw is held invalid by a court of competent jurisdiction, the remainder of the bylaw shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this bylaw shall not affect the validity of the remainder of the town's zoning bylaw.

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