

## **Proposed Inclusionary Zoning Bylaw (8/3/2015 draft)**

**To see whether the Town will vote to amend Chapter 10 of the General Bylaws, known as the Zoning Bylaws, by adding the following Subsection \_\_ to Section III so that the new subsection \_\_ shall read:**

### **\_\_. INCLUSIONARY ZONING**

- 1. 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 in compliance with the requirements set forth in G.L.c40B section 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.
- 2. Applicability:** In all of the 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 six (6) or more dwelling units, whether by new construction or by alteration, expansion, reconstruction, or change of existing residential or non-residential space; and
  - b) Any subdivision of land for development of six (6) or more dwelling units; and
  - c) Any life care facility development that includes six (6) or more assisted living units and accompanying services.
- 3. Special Permit:** (a) The development of any project set forth in Section 2 (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.  
  
(b) Application shall include the following information, in addition to information otherwise required for Special Permits:
  - i. The location, structure, proposed tenure (rental or ownership) and size of the proposed Market Rate and Affordable Units;
  - ii. The calculations used to determine the number of Affordable Units;
  - iii. A floor plan or site plan depicting the location of the Affordable Units;
  - iv. The income level targets for each Affordable Unit;
  - v. The mechanisms that will be used to assure that the Affordable Units remain affordable;
  - vi. For phased developments, a phasing plan;
  - vii. A marketing plan for the process by which qualified households will be reviewed and selected to either purchase or rent affordable units, consistent with the Local Initiative Plan requirements of the Massachusetts Department of Housing and Community Development.
  - viii. Any other information requested by the Planning Board.

- 4. Mandatory Provision of Affordable Units:** (a) As a condition of approval for a Special Permit, the applicant shall contribute to the local stock of affordable housing units in accordance with the following requirements:
- i. Developments that result in six (6) or more residential lots or dwelling units shall provide Affordable Housing Units as outlined below:
    - 1) 6-12 lots or units 10%
    - 2) 13-40 lots or units 12%
    - 3) More than 40 lots or units 15%
  - ii. The affordable units shall be:
    - 1) Constructed or rehabilitated on the locus subject to Special Permit (see Section 5); or
    - 2) Constructed or rehabilitated on a locus different than the one subject to the Special Permit (see Section 6); or
    - 3) An equivalent fee-in-lieu of payment may be made (see Section 7).
  - iii. Where the calculation of affordable units results in a fractional unit equal to or greater than one-half (.5), the fraction shall be rounded up to the nearest whole unit. Where the calculation results in a fractional unit less than one-half (.5), the fraction shall be rounded down to the next whole unit.
  - iv. Applicants may sell or lease affordable units to the Town of Milton, the Milton Housing Authority or to a private nonprofit entity serving the Town for the purpose of providing affordable housing opportunities within the Town, in order that each entity carry out the steps needed to market the affordable housing units and manage the choice of buyers or renters.
  - v. This Section \_\_ shall not apply to the rehabilitation of any building or structure, all or substantially all of which is destroyed or damaged by fire or other casualty or natural disaster; provided, however, no rehabilitation nor repair shall increase the density, bulk, or size of any such building or structure which previously existing prior to the damage or destruction thereof except in conformance with this Section \_\_.
  - vi. The applicant may offer, and the Planning Board may accept, any combination of the Section 4 (a) i-iii requirements provided that in no event shall the total number of units or land area be less than the equivalent number or value of affordable units required by the this bylaw.
  - vii. As a condition for the granting of a Special Permit, all affordable housing units shall be subject to an affordable housing restriction and 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 towards the Town's Subsidized Housing Inventory. The regulatory agreement shall also address all applicable restrictions listed in Section 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 Building Inspector.

- (b) To facilitate the objectives of this Section 4, modifications to the dimensional requirements in any zoning district may be permitted for any project under this bylaw, as the Planning Board may accept, subject to conditions below:
- i. Density Bonus. The Planning Board may allow the addition of two (2) 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 the amount necessary to permit up to two (2) additional market rate units on the lot for each Affordable Unit required in Section 4.
  - ii. Voluntary Inclusionary Housing Bonus. New affordable housing development that is not subject to Section 2 and exceeds the requirements specified in Section 4 (a) may receive the same benefits specified in Section 4 (b) i when the development is approved by the Planning Board. The net increase in housing units shall not exceed thirty (30%) percent of the original property yield before any density bonuses are applied.

**5. Provisions Applicable to Affordable Units On- and Off-Site:**

- (a) 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 Market Rate Units.
- (b) 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 finishes and mechanical systems of affordable units shall conform to the same specifications as apply to market-rate units.
- (c) 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 thirty (30%) percent of the market units constructed.
- (d) 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 buyers or tenants. This plan shall include a description of the lottery or other process to be used for selecting buyers or tenants.
- (e) Local Preference. Milton residents shall be given preference for fifty (50%) percent of the affordable housing units created under this bylaw. Milton resident is defined as an individual or family maintaining a primary residence in the Town of Milton; an individual who is employed at least thirty (30) hours per week within the Town of Milton; or a parent or guardian with children attending the Milton Public Schools.

- 6. Provision of Affordable Units Off-Site:** As an alternative to the requirements of Section 5, an applicant subject to this bylaw may develop, construct or otherwise provide affordable units equivalent to those required by Section 4 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.

**7. Fees-in-Lieu-of Affordable Housing Unit Provision:** As an alternative to the requirements of Section 5 or Section 6, 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. The per-unit cash contribution shall be the greater of 1) one-half the difference between the average price of the market-rate unit and what would be the average price of an on-site affordable unit as determined by the Planning Board, or 2) \$300,000 per unit.
- (b) Schedule of fees-in-lieu of units payments. Fees-in-lieu of payments shall be made according to the schedule set forth in Section 5 above.
- (c) Creation of Affordable Units. Cash contributions and donations of land and/or buildings made to the Milton Affordable Housing Trust in accordance with Section 7 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.

**8. Maximum Income and Selling Prices: Initial Sale:**

- (a) To ensure that only eligible households purchase affordable units, the purchase of an affordable unit shall be required to submit copies of the last three years' of federal and state income tax returns and certify, in writing and prior to 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 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.
- (b) 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.

**9. Preservation of Affordability: Restriction on Resale:**

- (a) Each affordable unit created in accordance with this bylaw shall have limitation governing its resale through the use of a regulatory agreement (Section 4). 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.
  - i. 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 the resale. The percentage shall be

recorded as part of the restriction on the property as noted in Section 9 above.

- ii. 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 the Department of Housing and Community Development, granting, among other things, the Town's right of first refusal to purchase the property in the event that a subsequent qualified purchase cannot be located.
- iii. The Planning Board shall require, as a condition of the Special Permit under this bylaw, that the applicant comply with the mandatory set-asides and accompanying restrictions on affordability, including the execution of deed rider noted in Section 9 (b) above. The Building Commissioner shall not issue an occupancy permit for any affordable unit until the deed restriction is recorded.

**10. 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. 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. This 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.

Submitted by the Planning Board.