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TO: City Council

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SUBJECT: Inclusionary Zoning Ordinance Amendment Summary

Newton's Inclusionary Zoning Ordinance includes a provision in section 5.11.13 which requires the City to conduct a reevaluation of the inclusionary zoning program no more than every 5 years. The last such reevaluation was finalized in August 2019.

During the summer of 2024, Planning staff engaged with RKG Associates to begin the work of reevaluating the Inclusionary Zoning Ordinance. Through numerous discussions held with the Newton Fair and Affordable Housing Partnership (Partnership), Zoning and Planning Committee (ZAP), and Planning staff, as well as with members of the development community and advocates for affordable housing, RKG Associates developed recommendations which led to the proposed changes to the inclusionary zoning ordinance, as shown below. In addition, Planning staff have consulted several times with ZAP, the Partnership, and the Planning & Development Board to achieve consensus on the following proposed amendment changes to Section 5.11 Inclusionary Zoning (see attached redline and clean ordinance language)

Change #1. Replace the current definitions of *Tier 1 Unit(s)* and *Tier 2 Unit(s)* with a definition for *Affordable Units (at or below 80% AMI)* and *Middle-Income Units (greater than 80% AMI to at or below 110% AMI).* This will help clarify questions staff often receive regarding what *Tier 1* or *Tier 2* means in practice.

Change #2. Remove the middle-income affordability level for rental projects and adjust the percentage of affordable rental units required to reflect current market conditions.

a. RKG found through their research and data collection that many of the middle-income reserved rental units are difficult to lease and often sit vacant for periods of time. RKG stated that individuals and families at this income level had the capital to rent elsewhere without the additional requirements. In addition, there was a strong desire on the part of the

Partnership to direct available units to lower income households. Please see Tables 1 and 2 below to view the current requirements vs. proposed changes.

b. RKG recommended adjusting the percentage of affordable units required for projects between 21-99 units and over 100 units, which is reflected in Tables 1 and 2 below.

Table 1: Current Requirements:

Rental Projects: Number of Inclusionary Units Required			
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%**

Table 2: Proposed Changes:

Rental Projects: Number of Inclusionary Units Required (PROPOSED)			
Inclusionary Unit Level	**7-20 UNITS**	**21-99 UNITS**	**100+ UNITS**
Affordable Units: 50-80% AMI	15%	17.5%	18.5%
Total	**15%**	**17.5%**	**18.5%**

Change #3. <u>Adjust the percentage of affordable homeownership units required to reflect the current market conditions.</u> RKG has recommended a slight reduction in percentage of affordable homeownership units required for projects between 21 and 99 units and over 100 units in order to account for the rising costs of construction. There was a consensus among the review bodies that middle income ownership units should be retained for larger development projects. Please see Tables 3 and 4 below for those changes.

Table 3: Current requirements:

Ownership Projects: Number of Inclusionary Units Required				
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%**

Table 4: Proposed requirements:

Ownership Projects: Number of Inclusionary Units Required (PROPOSED)			
Inclusionary Unit Level	**7-20 UNITS**	**21-99 UNITS**	**100+ UNITS**
Affordable Units: 80% AMI	15%	10%	10%
Middle-Income Units: 110% AMI	0%	7.5%	8.5%
Total	**15%**	**17.5%**	**18.5%**

Change#4. <u>Adjust the fractional cash payment requirement to include a by-right cash payment option for any fractional unit.</u> In discussions with developers and key stakeholders early in the review process, RKG Associates found that developers were often choosing to develop fewer units to avoid having to cover the full cost of providing a full unit when the percentage requirement resulted in a .5 unit of greater. In the proposed change, developers would maintain the option to provide an additional Inclusionary Unit on-site but would also have a by-right option to provide a fractional cash payment for any required fractional Inclusionary Unit.

<u>Current requirements:</u>

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.

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.

Proposed changes:
Where the inclusionary zoning requirement results in a fraction of a unit, 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.

Change #5. Allow for by-right cash payment to be made for rental projects with 7 to 19 units. RKG Associates recommended allowing a by-right cash payment option for 7 to 19 units, as opposed to 7 to 9 units allowed by the existing Inclusionary Zoning Ordinance. Currently, the by-right cash payment option allows a developer to provide a payment-in-lieu of one Inclusionary Unit. The proposed version would increase the by-right cash payment option to allow a payment-in-lieu of two Inclusionary Units. After a substantive discussion at the November 24th Zoning and Planning Committee, the Committee landed on allowing a by-right in-lieu cash payment for 7-19 unit rental developments but to retain the current by-right in-lieu restriction to 7-9 unit ownership projects only..

Change #6. Leave the current total development cost (TDC) per unit cash payment at $650,000 and require an annual review by staff and vote by the Newton Fair and Affordable Housing Partnership. RKG Associates found in their research that the housing development market in Newton has adjusted to the existing TDC. ZAP and the Partnership reviewed this recommendation and agreed with the $650,000 TDC figure. In addition, ZAP and the Partnership recommended that the current annual CPI update be removed and that instead the TDC per unit payment be reevaluated by the Partnership on an annual basis instead of every three years as stated in the existing ordinance.Change #7. Include that the cash payment will be calculated at the time the applicant applies for their Building Permit. Currently, there is not a time included in the Inclusionary Zoning Ordinance when the cash payment is required to be calculated. This addition clarifies this piece of the process for applicants.

Change #8. Simplify the size requirements for Inclusionary Units. Staff have found the current size comparison requirements to be confusing for applicants as well as difficult for applicants to meet in a reasonable amount of time. As such, RKG Associates recommended, and the Partnership agreed to simplify the current requirements as detailed below:

Current requirements:
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;

Proposed requirements:

The Inclusionary Units on average must be the same size or larger than the average size of the onsite market units of the same bedroom count.

Change #9. Remove the Public Funding Limitation provision of the Inclusionary Zoning Ordinance (Section 5.11.9). In consultation with the Partnership and Law Department over the last several months, Planning staff are recommending removing this provision in its entirety as it is confusing, inflexible, and potentially counterproductive in achieving the goal of building more affordable units.

Change #10. Remove the Supportive Services Partnership requirement and the Tier 2 affordability level from the Extremely Low-Income (ELI) Alternative Compliance Option. After discussing the ELI Alternative Compliance Option with local developers, RKG Associates found that the requirement to provide on-going support services to ELI units is so cost prohibitive as to discourage developers from ever choosing this option.

RKG and Planning staff have also recommended increasing the project minimum total from 21 units to 40 units so at least 1 ELI unit would be required, and adjusting the percentage of Inclusionary Units required, as reflected in Tables 7 and 8.

Table 7: Current requirements:

Extremely Low Income (ELI) Alternative Compliance Option: Number of Inclusionary Units Required		
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%**

Table 8: Proposed requirements:

Extremely Low Income (ELI) Alternative Compliance Option: Number of Inclusionary Units Required (PROPOSED)		
Inclusionary Unit Level	**40-99 UNITS**	**100+ UNITS**
ELI Units: 30% AMI	2.5%	5%
Affordable Units: 50-80% AMI	10%	10%
Total	**12.5%**	**15%**

Change #11. Remove the 'Independent Living" from the definition of Elder Housing with Services and adjust the by-right cash payment calculation. Unlike the other categories of elder housing found in this section, Independent Living units operate like other forms of housing and therefore should be subject to the base Inclusionary Zoning requirements. For other forms of elder housing with service units, RKG and staff have found the calculation of the cash-in-lieu of beds payment allowed by-right under the Elder Housing with Services provision that required a medical services calculation to estimate the cost of care for an individual 3 hours per day, 7 days per week, 52 weeks a year over a 10-year period to be a complete non-starter as an alternative. In addition, staff have found the actual provision of beds under this ordinance to be extremely challenging for both the developer and staff to implement and monitor.

Current requirements:

The current alternative compliance option allows the applicant to choose to provide a cash payment to the City in lieu of units. 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 Fair and Affordable 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. The total cash payment is determined by utilizing the following calculation:

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 = Total cost per bed
	STEP 2: C x 0.05 = # of inclusionary beds required (rounded to nearest 10th)
C = # of beds in proposed project	**STEP 3:** (A+B)x (C x 0.05 rounded) = Total Cash Payment

Proposed requirements:

The proposed change would still allow the applicant to comply with their Inclusionary Zoning requirement through a cash payment to the City, but the payment would no longer include the cost of care payment. The new total cash payment for projects of this type would be based on the provisions described in 5.11.5. with each Inclusionary Bed counting as 0.5 of an Inclusionary Unit for the purposes of calculating the case payment.

Elder Housing with Services: Inclusionary Zoning Payment Calculation	
A= average total development costs (TDC) in Newton B= number of beds in proposed project	A x B x 0.5 = Total Cash Payment

Effective Date: Planning staff are recommending an effective date of January 1, 2026 for the revised Inclusionary Zoning Ordinance to go into effect.

Complete red-line and clean ordinance amendment texts are attached.