

## 1. CASH-IN-LIEU OF UNITS

### Description

Under Sec. 30-15(f)(4), Newton's current Inclusionary Zoning allows developers of *six or fewer housing units* to pay a cash fee to the City in lieu of building and setting aside some of their units as Inclusionary Units. Larger developments currently do not have this option; Inclusionary Units *must* be provided on site, where they are to be integrated with market-rate units.' The proposed amendment would remove the six-unit limit, allowing developments of any size to contribute cash-in-lieu of building Inclusionary Units (affordable units) on site, though for developments over six units, the Board of Alderman would have to approve the fee option as part of a special permit petition.

In approving fee-in-lieu of units for developments over six units, the Board of Alderman would have to make findings that there would be "an unusual net benefit to achieving the City's housing objectives." The Board would consider several factors related to the appropriateness of a development site for affordable housing, including the disparity in prices between the market rate and affordable units, and location, including access to public transportation, schools, and other services. The Board would also examine the level of uncommitted money in the fund established for the collection of cash-in-lieu payments (described below). As under current Inclusionary Zoning rules, developments of six or fewer units would not need special Board of Alderman approval to pay cash-in-lieu of building units on site.

Specifically, the petition proposes deleting existing **Sec. 30-24(f)(4)** and replacing it with the following:

**Sec. 30-24(0(4)0 Eligibility.** The Inclusionary Unit requirements of Sec. 30-24(f)(3) may, if proposed by the applicant in its special permit application, alternatively be met through payment of a Fee In Lieu of providing those Inclusionary Units. Such request shall be approved only if the development (a) contains no more than six dwelling units or (b) the Board of Aldermen, in acting upon the special permit for the development, make specific findings that there will be an unusual net benefit to achieving the City's housing objectives as a result of allowing a fee rather than Inclusionary Units. The findings shall include consideration of how wide the disparity would be in unit size and price between on-site market-rate and affordable units, the appropriateness of the development site location for income-eligible households regarding proximity to and quality of public transportation, schools, and other services; and the level of uncommitted funds in the Receipts Reserved for Appropriation Fund.

The petition would also amend the formula by which a cash payment is calculated, and the new formula would apply to developments of any size, whether at, under or over six

---

There is one exception for developments over six units: as set out in Sec. 30-15(f)(5), Inclusionary Units may, with the approval of the Board of Alderman, be constructed or rehabilitated offsite when the developer is working in partnership with a non-profit housing development organization.

units. The current cash payment, applicable to developments of six or fewer units, is set at three percent of the sales price of each unit or, for rental housing, three percent of the assessed value of each unit. The petition proposes a fee equal to 12% of the sales price at closing of each market rate unit (as verified by the Planning Director), or, if rental housing, 12% of the estimated assessed value of each unit (as determined by the City Assessor), *for all units over the first two in a development.*

The proposed text relating to the fee amount formula is as follows:

**Sec. 30-24(0(4)b) Fee amount.** The first two units in a development granted a Certificate of Occupancy shall require no Fee In Lieu. For each remaining unit in the development the Fee In Lieu shall be equal to 12 percent of the sales price at closing of each unit as verified by the planning and development department or, if rental housing, the cash payment shall be equal to 12 percent of the estimated assessed value of each unit as determined by the City assessor.

Currently, the Inclusionary Zoning Ordinance does not name a specific fund to which monies collected for fee-in-lieu payments shall be made. This petition would establish a "Receipts Reserved for Appropriation Fund" to which cash payments would be made and through which they would be distributed equally to the Newton Housing Authority and Planning and Development Department, for construction, purchase, or rehabilitation of housing for eligible households (as under current zoning provisions). Finally, while current zoning requires that the Comptroller annually review payments to the fund, the petition proposes that this responsibility be given to the Housing Authority and Planning Department, and that these departments report annually to the Board of Aldermen on the use of the funds.

The text relating to the fee recipient is as follows:

**Sec. 30-24(0(4)c) Fee recipient.** The fee payment shall be made to a Receipts Reserved for Appropriation fund established by the board of aldermen. Proceeds from the fund shall be distributed equally to the Newton Housing Authority and the planning and development department and shall be used exclusively for construction, purchase, or rehabilitation of housing for Eligible Households. The Authority and the department shall each maintain an ongoing record of payments to the fund on their behalf and shall report annually to the board of aldermen on the use of the proceeds for the purposes stated herein.

### **Analysis and Recommendation**

In general, the Planning Department believes that integrating affordable units with market rate units in new, mixed-income developments is preferable to separating affordable units and locating them elsewhere. Integrating units in a development can help ensure that affordable housing is spread throughout the City, consistent with the goal of providing a diversity of housing options to low, moderate, and middle income families across the City's neighborhoods. *(The rationale for allowing cash-in-lieu fees for small developers, as allowed by current zoning, is that the burden of providing on-site units in small developments would be a disincentive to these units being built at all.)*

However, the City's housing objectives may sometimes be better served if, rather than integrate affordable units with market rate units, a developer could provide funds that the City could use to purchase units off-site. In the case of very large developments, such as Kessler Woods, Inclusionary Units are concentrated in one location rather than distributed around the City. Affordable housing may also be inappropriate in certain locations if not convenient to transit or other services. Additionally, the Newton Housing Authority has found that, for low-income tenants, it can be difficult to manage very high end units, which are more expensive to maintain, and they would prefer finding units off-site.

Indeed, before the most recent amendments to the Inclusionary Zoning Ordinance were enacted in 2002, a form of fee-in-lieu of units was allowed, and two high end developments (the Terraces and the Residences at Chestnut Hill) with extremely large units (approximately 4,000 sq. ft.) were allowed to make payments of nearly \$3 million each (substantially less than would be provided under the proposed ordinance) on the recommendation of the Newton Housing Authority. There were difficulties with the "old" fee-in-lieu structure that the current petition aims to address, including making the fee structure clear and easy to calculate.

Given that providing affordable units on-site is *generally* preferable, it is important that the fee option not provide too great an incentive for developers that they may always seek approval making a cash payment. ***Table 1 uses the example of a large development of 62 condominium units*** to compare the proposed fee with providing units on-site. If Inclusionary Units were provided on-site, the developer would need to designate nine units (15% of 62), two-thirds of which would have to be affordable to households at 80% of area median income (AMI) and one-third of which would have to be affordable to households at or under 120% AMI. To the developer, the sales income foregone by selling these Inclusionary Units would be equal to nearly \$3 million. Currently, there is no fee-in-lieu option for a development of this size. Under the proposed fee-in-lieu plan (12% of the sales price of all units excluding two), the developer would pay over \$6 million. In this case, from the developer's perspective, the fee in lieu option is significantly more costly than the expense of providing Inclusionary Units on site. However, another perspective is that paying a fee rather than providing Inclusionary Units on-site simplifies the marketing of high-end units and takes the developer out of the affirmative marketing and tenant selection process; and, from the City's perspective, if there is already ample affordable housing in the area or if the location is not convenient to public transportation and support services, other sites may better serve the objectives of the *Newton Comprehensive Plan* for creating a diversity of housing City-wide.

Under the proposed zoning, the Board of Aldermen would consider these factors, as well as the "the level of uncommitted funds in the Receipts Reserved for Appropriation Fund," when it makes a determination about fee-in-lieu of Inclusionary Units. If the

fund is growing too much and not being spent, it may indicate that finding units in the marketplace (off-site) is too difficult, and that on-site units would be preferable.

**Table 1: Large Project Example**

<b>Number of units</b>	<b>62</b>
<b>Option 1: Building Inclusionary Units on Site</b>	
Required number of Inclusionary Units if provided on site	9
Market price per unit	\$875,000
Affordable price if Inclusionary Units provided on site (80% AMI)	\$138,000
Affordable price if Inclusionary Units provided on site (120% AMI)	\$285,700
Total sales if units provided on site	\$47,853,770
Amount of sales foregone by building Inclusionary Units	(\$6,189,900)
<b>Option 2: Cash-in-Lieu of Units</b>	
Proposed fee-in-lieu calculation (12% of sales price after first two units)	(\$6,300,000)

Projects with six or fewer units currently have the option to pay cash in lieu of building Inclusionary Units, but as the fee calculation would change under petition #303-07, it is important to look at the potential effect on smaller projects as well. *The example set out in Table 2 examines a six-unit development* If building Inclusionary Units on-site, the developer would have to provide one unit which, in this example, would lead to foregone sales income of \$737,000. Under the current fee-in-lieu calculation, that developer could instead build all market rate units and pay a fee equal to three percent of the sales price of the units, calculated here as \$157,000. Under petition #303-07, this fee would rise to \$420,000. In this example, although the fee would rise under the petition, the fee option remains less costly to the developer than providing an Inclusionary Unit.

**Table 2: Small Project Example**

<b>Number of units</b>	<b>6</b>
<b>Option 1: Building Inclusionary Units on Site</b>	
Required number of Inclusionary Units if provided on site	1
Market price per unit	\$875,000
Affordable price if Inclusionary Unit provided on site (80% AMI)	\$138,000
Total sales if units provided on site	\$4,586,700
Amount of sales foregone by building Inclusionary Units	(\$737,000)
<b>Option 2: Cash-in-Lieu of Units</b>	
Current fee-in-lieu calculation (3% of sales price)	(\$157,500)
Proposed fee-in-lieu calculation (12% of sales price after first two units)	(\$420,000)

As noted above, the proposed fee calculation is 12% of sales prices, exempting the first two units. From a developers' perspective, the smaller the project, the more important this two-unit exemption is in reducing the fee that would be paid in lieu of providing Inclusionary Units.

The above examples look at the proposed changes to the fee-in-lieu provisions from the developer's perspective. It is more difficult to quantify the benefit to the City, which must assess the value of receiving an on-site Inclusionary Unit with receiving a fee to acquire land and develop a unit off-site. Since this decision depends on the characteristics of specific proposed projects, the criteria for determining whether a fee is appropriate should help guide the process. Additionally, since the Board of Aldermen must approve the fee-in-lieu option (as part of the special permit process), taking into account the specifics of an application and the level of funding available to use elsewhere in the City at the time of the application, its use will be closely monitored and tied both to the specifics of proposed developments and to affordable housing needs elsewhere in the City.

Overall, the petition may result in more affordable housing because, in large developments, if a developer opts to pay a fee and the Board allows it as part of a special permit, there should be enough funds to create affordable housing elsewhere in the City; currently, the funds collected from fee-in-lieu payments made by small developers are so small it is difficult to use them to create (buy) affordable units off-site.

*The Planning Department recommends adoption of the proposed fee-in-lieu option for developments larger than six units and of the proposed new fee calculation and fee recipient* In our opinion, the proposed fee structure does not create too large an incentive for developers of large projects to always seek the cash-in-lieu option, but does allow its use, if approved by the Board of Aldermen in making findings that it will benefit the City of Newton and further its housing objectives.

## 2. INCENTIVES FOR EXCEEDING MINIMUM INCLUSIONARY HOUSING REQUIREMENTS

### Description

The current Inclusionary Zoning Ordinance does not offer incentives for developers to exceed minimum Inclusionary Unit requirements. A density bonus, expedited review, or other incentive might encourage developers who are interested in providing affordable housing to build additional Inclusionary Units, and to do so through the special permit process in zoning, rather than through the Comprehensive Permit process (through the City's Zoning Board of Appeals).

In the past decade, the City's stock of affordable housing as counted by the Commonwealth of Massachusetts grew by almost 1,300 units, but only about 30 of those units were developed through the Inclusionary Zoning provisions; the majority were permitted and built rest came through the Comprehensive Permit process, which allow developers to submit applications for affordable housing developments that override local zoning to the Zoning Board of Appeals (ZBA) rather than the Board of Alderman and to appeal any denial (or approval granted with conditions which would make building "uneconomic") to the state Housing Appeals Committee. Communities such as Newton, where less than 10% of the housing stock is considered "affordable" to low- and moderate-income households have a strong burden of proof in Chapter 40B appeal cases. Because the Board of Alderman have less control over the