

INCLUSIONARY HOUSING Motion

Motion: that the Town vote to amend the Lexington Zoning By-law as follows:

1. Add a new §135-46.I to read as follows:

I. Inclusionary Housing.

- (1) General Objective. This section is intended to ensure that those residential developments which are authorized through special permits with site plan review will provide some housing that is affordable to low-, moderate-, or middle-income households to offset the reduction in the Town's percentage of such housing that would result from those developments' incremental increase to the Town's overall housing stock. To achieve that intention, some of the units in such developments are required to be Inclusionary Units, as defined below.
- (2) Applicability. These provisions shall apply to all residential developments with five or more dwelling units which are authorized through special permits with site plan review, including residential developments in CD or RD Districts.
- (3) Inclusionary Units.
 - (a) Definition. "Inclusionary Units" are dwelling units which are subject to price restrictions and which may be owned and occupied or rented and occupied only by "Eligible Households" with income and assets below specified maximum limits, as provided in §135-46.I(3)(d) below.
 - (b) Siting. Inclusionary Units may result from either new construction or existing dwelling units, located on one or more sites.
 - (c) Accessory Apartments. An accessory apartment in compliance with §135-19 may be considered an Inclusionary Unit if it meets all requirements of this §135-46.I.
 - (d) Eligible Households. Eligible purchaser occupants or tenant occupants of an Inclusionary Unit shall be subject to maximum household income and asset limits established for that unit, based on the Area Median Income (AMI) as annually determined by the U.S. Department of Housing and Urban Development, assuming one more person in the household than the number of bedrooms in the unit. Eligible Households shall have incomes no greater than 120% of the AMI.
 - (e) Sales and Rental Pricing. Sales prices and rental rates of Inclusionary Units shall comply with the requirements of this §135-46.I, shall be consistent with applicable subsidy programs or with inclusionary administrative guidelines which may be adopted from time to time by the Planning Board, and shall meet the following standards:
 - [1] Maximum Housing Cost. The maximum housing cost to an Eligible Household shall be 30% of the household income. For the purpose of determining the sales pricing or rental rate of an Inclusionary Unit, the household income used shall be at least 10% of the AMI lower than the maximum household income established for that Inclusionary Unit.
 - [2] Ownership housing costs including mortgage principal and interest (assuming a 5% down payment), private mortgage insurance, real estate taxes, condominium or homeowners association fees, property insurance, and parking shall not exceed the maximum housing cost.

[3] The cost of any pending or anticipated special assessments based on deeded obligations such as those of a condominium or homeowners association shall be deducted from the allowable sales price of the Inclusionary Unit calculated per subparagraphs [1] and [2] immediately preceding.

[4] Rental housing costs including rent, heat, utilities, and parking shall not exceed the maximum housing cost.

(4) Inclusionary Credits.

(a) Net Units Added. The “Net Units Added” by a development is the difference between the total number of dwelling units existing before development and the total number of dwelling units that will exist after development, not including accessory apartments in either case. In the case of residential developments under §135-48, the applicant may substitute the “maximum number of dwellings” as calculated under §135-48.D(3) Step One in place of the total number of dwelling units that will exist after development.

(b) Required Number. All residential developments shall provide Inclusionary Units qualifying for “Inclusionary Credits” equal to at least 15% of the Net Units Added. Provision of Inclusionary Units qualifying for the required number of Inclusionary Credits shall be a condition of the special permit with site plan review authorizing the development.

(c) Selection of affordability levels. The number of Inclusionary Units designated for households with a maximum household income of 80% of AMI or less (“≤ 80% units”) shall be no fewer than the Net Units Added divided by eight and rounded down to the next whole number or zero.

(d) Existing Affordable Units. Existing dwelling units that are already subject to affordability restrictions, such as rent or price limits, do not qualify for Inclusionary Credits.

(e) Calculation of Inclusionary Credits. Inclusionary Units in developments shall qualify for Inclusionary Credits as follows:

Maximum Household Income (% of AMI)	Inclusionary Credits per Inclusionary Unit (2 bedrooms)	Inclusionary Credits per Inclusionary Unit (3 or more bedrooms)
≤ 50%	0.80	1.30
≤ 80%	0.60	1.00
≤ 100%	0.45	0.85
≤ 120%	0.30	0.70

(5) Continuing Affordability: Documentation.

(a) An applicant for a special permit with site plan review shall prepare all deeds, condominium documents, and legal instruments, including, without limitation, all documents required to comply with this §135-46.I, in a form satisfactory to Town Counsel.

(b) For each Inclusionary Unit, an applicant shall provide to the Planning Board a Unit Restriction and Regulatory Agreement (URRA) among the developer; the property

- owner; an approval agency, if applicable; and the Selectmen; which shall detail the calculation of the price of such unit as required by §135-46.I(3)(e) above, and shall require that at any future resale of the unit, the price shall be calculated at the same level with reference to the then current AMI. The URRA shall state the income and asset restrictions applicable to the purchaser or renter of such unit as required by 135-46.I(3)(d) above, and shall require that such restrictions, calculated in the same way, shall be applicable to all future purchasers and renters. It shall contain a marketing plan that meets local preference and fair housing requirements, consistent with state and federal laws. The URRA shall also contain provisions for annual monitoring of the units to ensure compliance with income and residency requirements.
- (c) The URRA shall set out provisions under which the Town shall be entitled to exercise a right of first refusal to purchase an Inclusionary Unit being offered for sale. Such provisions shall be substantially in the form of (a) any sample regulatory agreement established by the applicable site approval agency (including, without limitation, the Local Initiative Program of the Department of Housing and Community Development) or (b) any applicable administrative guidelines that may be adopted by the Planning Board.
 - (d) For each Inclusionary Unit eligible for inclusion in the Town's Chapter 40B Subsidized Housing Inventory, an applicant shall provide to the Planning Board a site approval letter from a site approval agency or other documents sufficient to ensure such inclusion in accordance with M.G.L. Chapter 40B, or any successor statute, and all applicable state regulations.
 - (e) For each Inclusionary Unit, the special permit with site plan review decision of the Planning Board, the URRA, and any documents attached thereto, shall be recorded as restrictive covenants with the unit deed in the Middlesex Registry of Deeds, prior to the issuance of any building permit for the development, so as to ensure continuing compliance with the requirements of this §135-46.I.
- (6) Development Design. Location and design of Inclusionary Units shall comply with the following:
- (a) Inclusionary Units shall be sited in no less desirable locations than the other units located on the same site.
 - (b) The materials used and the quality of construction for Inclusionary Units, including heating, ventilation, and air conditioning systems, shall be equal to those of the other units in the development, but amenities such as designer or high end appliances and fixtures need not be provided for Inclusionary Units.
 - (c) To be credited towards the count of Inclusionary Units any existing dwelling units must be in full compliance with all applicable construction and occupancy codes, and shall be sufficiently maintained or rehabilitated so that all major systems (including, but not limited to, roof, windows and building envelope, HVAC, plumbing, and electrical) meet standards comparable to new construction.
 - (d) The exterior appearance of the Inclusionary Units shall be compatible with the other units on the same site.
 - (e) The timing of completion of Inclusionary Units shall parallel that of the other units in accord with a phasing schedule approved by the Planning Board.
 - (f) The Planning Board may waive strict compliance with the design standards in this section because of such considerations as a subsidizing agency's occupancy

requirements or the applicant's offer of an alternative better meeting the Town's identified housing needs.

- (7) Multiple Site Provisions. At the developer's option, permitting may be sought and determination of required Inclusionary Units may be based upon dwelling units on multiple sites subject to the following:
- (a) The creation of units on all sites involved shall be acted upon under either a single special permit or under contemporaneous special permits, possibly involving multiple applicants, related through a binding development agreement made enforceable by the Town.
 - (b) The total number of Inclusionary Credits required shall be based upon the total Net Units Added summed over the sites involved.
- (8) Significant Public Benefit. Consistent with §135-49.D(3), provision of Inclusionary Units which are affordable only to the level necessary to satisfy the Inclusionary Credit requirement set forth above shall not be considered to provide significant public benefit pursuant to §135-49.D(1).

2. Add a new §135-46.J as follows:

- J. Segmentation. In determining whether a project is a residential development, the Planning Board shall consider the entirety of the development, including (a) any likely future expansion of the project on the subject property or on any property which is contiguous to the subject property or under related ownership or (b) any past, related development on any property which is contiguous to the subject property or any property that was under related ownership with the subject property at the time that §135-46.J was adopted. A developer or property owner may not phase or segment a project or transfer ownership of contiguous properties to evade, defer or curtail the residential development requirements set forth in §135-46. The Planning Board shall consider all circumstances as to whether various work or activities, taken together, comprise a common plan or independent undertakings, regardless of whether there is more than one developer or property owner, including, without limitation, any time interval(s) between the work or activities and whether the development impacts are separable or cumulative.

3. Add a new §135-13.J as follows:

- J. All involved departments, boards and staff shall develop and implement procedures which will expedite the application and review procedures for residential developments proposing Inclusionary Units pursuant to §135-46.I to the extent consistent with ensuring well-considered outcomes, by such measures as giving scheduling priority to such applications, arranging for staff assistance to applicants, or scheduling concurrent rather than sequential agency reviews. Issuance of a decision on an application for a special permit with site plan review shall be within 45 days after the close of the public hearing.