

## SECTION 5.F. INCLUSIONARY HOUSING REQUIREMENTS

*[Added by Amendments effective April 27, 2006 by vote of Annual Town Meeting and approved by the Attorney General on July 24, 2006 and posted according to law on July 27, 2006]*

### 5.F.1. Purpose

The Town of West Newbury sets forth the following requirements in an effort to provide multiple housing choices for people of all economic backgrounds and address the needs of current and future West Newbury residents by providing permanent affordable housing. The primary purpose of Section 5.F. is designed to increase the supply of rental and ownership housing for low and moderate income households in West Newbury, contribute affordable housing units to the town's Subsidized Housing Inventory, and sustain a viable community making multiple housing options available for future generations in West Newbury.

### 5.F.2. Definitions

- a) ~~Workforce Housing Trust Fund~~ West Newbury Affordable Housing Trust Fund (the "Fund"): An account established and operated for the purpose of providing for the preservation, creation and support of affordable housing in the Town of West Newbury for the benefit of low- and moderate-income households, and for the funding of community housing as defined by Massachusetts General Laws c. 44B (the "Community Preservation Act"). ~~exclusive purpose of creating and preserving affordable housing in the Town of West Newbury.~~
- b) Affordable Housing Unit: A housing unit secured by a Deed Restriction that is, and will remain, 1) available for sale and sold at a selling price that will result in an Annual Shelter Cost of not more than thirty percent (30%) of the annual income of a Qualified Affordable Housing Unit Purchaser or 2) available for rental and rented at an annual rent, including mandatory or unavoidable fees, that will result in an Annual Shelter Cost of not more than thirty percent (30%) of the annual income of a Qualified Affordable Housing Unit Tenant, or rented to a tenant receiving rental assistance pursuant to a state or federal rental assistance program; and, in either case 3) affordable to and occupied by a low or moderate income household, meeting the definition of low or moderate income housing at 760 CMR ~~3056.02~~ or successor regulation, and eligible for inclusion in the Chapter 40B Subsidized Housing Inventory through the Local Initiative Program ("LIP") under M.G.L. c.40B sec. 20-23.
- c) Annual Shelter Cost: The cost for owners shall be the aggregate of annual charges for debt service on a mortgage (assuming a 5% down payment), real estate taxes, homeowner's insurance, and condominium fees, if applicable. The cost for tenants shall be the aggregate of annual charges for rent, utilities (except telephone and other telecommunications), and renter's insurance.
- d) Deed Restriction: A provision, acceptable in form and substance to the Town Counsel of the Town of West Newbury, in a deed of real property that runs with the land in perpetuity or for the longest period of time allowed by law, so as to be binding on and enforceable against any person claiming an interest in the property. ~~The Deed Restrictions shall apply to both for both rental and ownership units.~~ The Deed Restriction shall apply to both for both rental and ownership units. The Deed Restriction shall limit the resale price of any ownership units, and shall bind all subsequent purchasers in perpetuity, consistent with Massachusetts Department of Housing and Community Development's ("DHCD") regulations and guidelines and under Chapter 40B of the Massachusetts General Laws. Subsequent resale prices shall be determined based on a percentage of the area median income at the time of resale as determined by DHCD. The resale price will be determined in accordance with the Deed Restriction and will be established based on the same percentage of the area median income that was used to set the

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price for which the unit was originally sold.

Notwithstanding the foregoing, the resale price of an Affordable Housing Unit shall not exceed that amount which will require a household earning 80% of the most recent area median income number, as published by HUD and adjusted for the household size that corresponds with the number of bedrooms in the Affordable Housing Unit, to spend a maximum of 30% of the household's annual income on Annual Shelter Cost. The method of resale price calculation shall be included as part of the Deed Restriction. The Town of West Newbury shall not be held responsible for any future fluctuations in market price or median income that may affect the resale price of any unit subject to a Deed Restriction. Any restriction created under this By-law shall survive any bankruptcy or insolvency or other actions and shall not be subject to nullification for any reason.

- e) Qualified Affordable Housing Unit Purchaser or Tenant: An individual or family with household income that does not exceed 80% of the median income for the Lawrence metropolitan statistical area, with adjustments for household size, as reported by the most recent information from DHCD.
- f) Resale of Affordable Housing Units  
Subsequent resale prices shall be determined based on a percentage of the median income at the time of resale as determined by DHCD. The resale price will be established based on the income target percentage of the individual or family for which the unit was originally sold. The resale price calculation shall be included in the deed restriction.
- g) Vacant Affordable Housing Units  
In the event that a qualified ~~a~~Affordable ~~h~~Housing ~~u~~Unit becomes vacant for a term beyond that designated in the Deed Restriction, the Town of West Newbury shall have the Right of First Refusal to purchase said unit and the West Newbury Housing Authority shall be notified of vacant affordable housing rental units.
- h) Local Preference: To the extent permitted by law, and pursuant to DHCD Local Initiative Program (LIP) Guidelines, as may be amended from time to time, a local preference may be required for not more than 70% of the Affordable Housing Units in a Project as follows: In accordance with DHCD regulations, local preference shall be granted to West Newbury residents as follows:
  - a. an individual or family or a parent or child of an individual maintaining a primary residence in the Town of West Newbury;
  - b. an individual who is employed at least 20 hours a week in the Town of West Newbury;  
or
  - c. an individual who is employed at least 20 hours a week by the Town of West Newbury or by the Pentucket Regional School District;~~;~~~~or~~
  - d. ~~an individual who, for a continuous period of at least five years within the thirty years immediately preceding application for a West Newbury Affordable Housing Unit, maintained a primary residence within the Town of West Newbury~~  
Explanation: Durational residency requirements are not permitted. (See LIP Guidelines Sec. D.3.c, p. III-7)

### 5.F.3. Applicability

The requirements of this section apply to:

- a) Any proposed residential development that would create three or more attached or detached housing units on a single parcel of land;
- b) Any proposed subdivision of land for residential development that would permit construction of three or more attached or detached housing units, including land divisions under G.L. c. 40A, sec. 9 (Special Permits), as well as conventional subdivisions allowed by G.L. c. 41, sec. 8K-81GG (Subdivision Control Law).
- c) Any Open Space Preservation Development under Section 6B of this By-law that would permit construction of three or more attached or detached housing units; and
- d) Any application to the Zoning Board of Appeals for a variance or a finding that would permit construction of three or more attached or detached housing units.

*Willful evasion* of this section of the West Newbury Zoning Bylaw is prohibited. Willful evasion is defined as follows: segmenting land or properties with the intention of avoiding Inclusionary Housing requirements by either subdividing one parcel of land into two parcels of land in such a manner that each parcel will have less than three units of housing or purposefully dividing a large development into phases that would develop less than three units of housing during each phase.

Residential developments subject to this section shall include new housing units created by new construction or new housing units created by remodeling or conversion of an obsolete or unused building or other structure from its original use to an alternate use.

### 5.F.4. Requirements

At least ten percent (10%) of the new housing units in any residential development shall be designated as and fulfill the requirements of Affordable Housing Units.

### 5.F.5. General Provisions

- a) Consultation

Developers whose projects are subject to this By-law are encouraged to consult with the Trustees of the West Newbury Affordable Housing Trust ~~Lead Town Entity on Affordable Housing~~ early in the development process concerning the Town's affordable housing needs and the optimum manner in which the Town's needs and the developer's affordable housing requirements can be met by the proposed development consistent with any affordable housing planned production plan then in effect in the Town. The Lead Town Entity on Affordable Housing may consult with and give advice to the Planning Board and the Zoning Board of Appeals during the development process and, as a part of the process, may submit written reports to the board reviewing any proposed development subject to the By-law.

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b) Comparability

Unless otherwise approved by (a) the Planning Board or (b) the Zoning Board of Appeals in the case of residential developments requiring a finding or variance, all Affordable Housing Units shall be dispersed throughout the site and shall be indistinguishable from market-rate units except in interior finish, fixtures, and appliances. The number of bedrooms in Affordable Housing Units shall be comparable to the bedroom mix in market-rate units in the development.

c) Selection Process

The selection of Qualified Affordable Housing Unit Purchasers or Tenants shall be conducted as follows:

1) The selection process shall include an affirmative fair marketing plan prepared by the Developer for marketing the Affordable Housing Units created under this By-law which describes how the Affordable Housing Units will be marketed to potential homebuyers. This plan shall include a description of the lottery or other process to be used for selecting buyers and/or renters. The marketing plan must describe how the applicant will accommodate local preference requirements of this By-law in a manner that complies with the nondiscrimination in tenant or buyer selection guidelines of the [DHCD](#) Local Initiative Program. The duration and design of the plan shall reasonably inform all those seeking affordable housing, both within and outside the Town, of the availability of such units.

2) To the extent practicable, local preference shall be included in each development for the maximum number of the Affordable Housing Units created in any development subject to this By-law that is permitted [by law and](#) subject to ~~Massachusetts Department of Housing and Community Development~~[DHCD](#) guidelines.

d) Developers may sell affordable for-sale units to the Town, the West Newbury Housing Authority, or to a private nonprofit entity serving West Newbury for the purpose of providing affordable housing opportunities and to permit such entity to market the Affordable Housing Units and manage the choice of buyers.

**5.F.6. Fractional Affordable Housing Units and Housing Contribution Payments**

a) Requirements for Fractional Affordable Housing Units

When the calculation of Section 5.F.4. results in a Fractional Affordable Housing Unit ("[FAHU](#)") of 0.8 or 0.9, the developer shall provide ~~a whole~~[one](#) On-Site Unit for that fractional unit. When the calculation of Section 5.F.4. results in a Fractional Affordable Housing Unit of 0.1 to 0.7, the developer shall provide a ~~whole~~[one](#) On-Site Unit or make a Housing Contribution Payment in lieu of the fractional unit [as calculated in Section 5.F.6\(c\) below](#).

b) Housing Contribution Payments in Lieu of Fractional Affordable Housing Units.

To make a Housing Contribution Payment in lieu of a qualifying Fractional Affordable Housing Unit the developer shall make a binding, written agreement with the Town of West Newbury (with appropriate payment security arrangements) to provide such payment to the ~~F~~[fund](#) established for this purpose. The contribution payment shall be paid in full prior to the issuance of a final occupancy permit for any portion of the project.

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c) Amount of Housing Contribution Payments

*For ownership developments of three (3) to seven (7) units, the amount of the Housing Contribution Payment, ("HCP"), shall be equal to:*

$$\text{HCP} = \text{AMSP} \times (\# \text{ of new units}) \times 4\%$$

*For ownership developments of eleven (11) units or more, the housing contribution shall be equal to:*

$$\text{HCP} = \text{AMSP} (\text{FAHU} \times 10) \times 4\%$$

where:

*AMSP* = the Average Market Sales Price for the market-rate units in the subject development,

*For rental units, the per-unit contribution payment shall be equal to the difference between the average market rental price for the market-rate units in the subject development and the rent affordable to a family of four at or below 80% of the median income, calculated for a term of 10 years without adjustments for interest or inflation.*

**5.F.7. Off-Site Affordable Housing Creation**

With the approval of the Planning Board, the inclusionary housing requirement may be met through the provision of all required Affordable Housing Units on an alternative site or multiple sites suitable for housing use. Affordable off-site housing units may be either new construction or located in a rehabilitated existing structure. In determining compliance with this By-law, affordable off-site units that are newly created and are not replacing existing, legal housing units shall be counted in the total number of housing units created by a proposed development. Unless otherwise approved, Affordable Housing Units provided under this subsection shall comply in all respects, other than on-site location, with the requirements of this By-law.

**5.F.8. Regulations**

Affordable housing production, Housing Contribution Payments, and rental and resale restrictions required by this section shall be governed by regulations promulgated by the Planning Board and approved by the ~~Select Board of Selectmen~~ for purposes of carrying out this By-law and shall be consistent with ~~the Massachusetts Department of Housing and Community Development's ("DHCD")~~ DHDC's regulations and guidelines under Chapter 40B of the Massachusetts General Laws.

**5.F.9. Compliance**

a) Building Permit Conditions

All contractual agreements with the Town of West Newbury and other documents necessary to ensure compliance with this Section 5F shall be executed and delivered to the Planning Board office and to the Town board reviewing any project or development prior to and as a condition of the issuance of a building permit. The Building Inspector shall not issue a building permit with respect to any project or development subject to this Section 5F unless and until the

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Planning Board has certified in writing to the Building Inspector that all conditions of this Section 5F, including any conditions that may be established by the Planning Board or Zoning Board of Appeals in any decision or approval, have been met.

#### b) Occupancy Conditions

##### 1). Compliance

No certificate of occupancy shall be issued for any market-rate units in a development subject to this Section 5F until all Deed Restrictions, agreements with the Town of West Newbury and/or other documents necessary to ensure compliance by the applicant (and any purchasers of the Affordable Housing Units) with the requirements of this By-law have been executed and recorded.

##### 2) Housing Contribution Payments

Required Housing Contribution Payments shall be made with respect to each market-rate housing unit or rental unit prior to issuance of an occupancy permit for the unit; provided that such payments may be made at the time of conveyance of each unit to an end user or upon occupancy by any tenant if appropriate security arrangements to guarantee such payment have been made and are in effect under an agreement with the Town

##### 3) Timing of Construction

As a condition of issuance of approval under this Section 5F, Affordable Housing Units shall be provided concurrently with the development of market-rate units. The Planning Board may exercise authority in setting a time schedule for construction of both affordable and market rate housing units.

#### **5.F.10. Severability**

In the event that one or more of the provisions of this section 5.F.~~10~~ of the West Newbury zoning by-law are found or determined to be illegal or unenforceable, such finding shall not **ea**ffect the validity of any other provisions of this by-law which provisions will remain in full force and effect.