

4600. Inclusionary Housing

4601. 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 be in compliance with the requirements set forth in G.L. c. 40B sect. 20-23 and other affordable housing programs developed by state, county and local governments. 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. Definitions for affordable housing unit and eligible household can be found in the Definitions Section.

4620. Definitions: The following definitions shall apply in this §4600. Where a term is undefined herein, the definition set forth in the Rules and Regulation governing Inclusion Housing adopted pursuant to this § 4600, if any, shall control. All other undefined terms in this section either governed by Zoning Bylaw section ___ Definitions of this Zoning Bylaw or shall be interpreted in accord with such normal dictionary meaning or customary usage as is appropriate to the context.

Affordable Housing Trust Fund: An account established and operated to receive fees-in-lieu-of when developers opt to provide equivalent units in cash or land instead of actual construction. Such trust funds are authorized by M.G.L. Chapter 44, Section 55C, Municipal Affordable Housing Trust Fund. Funds may be used for, but not limited to, the purchase and improvement of land, the purchase of housing units or the development of new and/or rehabilitated housing units for purchase or rental by Qualified Affordable Housing Purchasers or Tenants or to preserve existing affordable housing. Expenditures from the Affordable Housing Trust Fund shall be authorized by a majority vote of the Dighton Housing Trust. *[Or the entity that is or would be set up to administer the Affordable Housing Trust Fund]*

Another definition: a fund established by the Town of Dighton for the purpose of reducing the cost of housing for Eligible Purchasers or for the purpose of encouraging, creating, or subsidizing the construction or rehabilitation of housing for Eligible Purchasers or, if no such fund exists, a fund established by the Municipality pursuant to MGL c. 44 s. 53A, et seq.

Affordable Housing Unit: A dwelling unit with an Affordability Deed Restriction available at a cost of no more than 30% of gross household income of households at or below 80% of the Area Median Income as reported by the U.S.

Department of Housing and Urban Development, including units listed under M.G.L. Ch. 40B sect. 20-23 and the Commonwealth's Local Initiative Program.

Affordable Housing Unit: A housing unit that by Deed Restriction is and will remain:

- a. 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
- b. available for rental and rented at an annual rent, including all 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, not including any housing unit rented to a tenant receiving rental assistance pursuant to a state or federal rental assistance program; or
- c. affordable to and occupied by a low- or moderate-income household, meets the definition of low- or moderate-income housing at 760 CMR 30.02, and is eligible for inclusion in the Chapter 40B Subsidized Housing Inventory through the Local Initiative Program (LIP).

Annual Shelter Cost:

- a. For owners, 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.
- b. For tenants, the aggregate of annual charges for rent, utilities (except telephone) and renter's insurance.
- c. For assisted living facilities, the aggregate of annual charges for rent, utilities (except telephone), and renters insurance and all other mandatory charges imposed as a condition of residency by such facility.

Comparable Unit: When used with respect to quality, character, and room size, means that there are sufficient features in common between the Affordable Housing Unit and the market rate unit so as to render the units similar in nature. Moreover, while the actual design or finishes provided in the Affordable Housing Units versus the Market Rate Unit may differ in a non-material fashion and still constitute comparable units, the same amenities proposed for the Market Rate Unit must be provided for the Affordable Housing Units, including without limitation full kitchen, full bath, and parking. Further, the actual room size for the Affordable Housing Unit may not differ in any significant manner to that of the market rate unit. Notwithstanding the foregoing, when used with respect to external appearance, location and bedroom distribution, means that the external appearance of the Affordable Housing Unit and the market unit must be so

similar in nature so as to render them indistinguishable while the location of the Affordable Housing Units and the bedroom distribution of such units must be no different from that of the Market Rate Unit.

Deed Restriction: A provision, acceptable in form and substance to the Town of Dighton, in a deed to 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. Any restriction created under this By-Law shall survive any bankruptcy, insolvency, or other action, and shall not be subject to nullification for any reason.

Eligible Household: For ownership units, a household whose total income does not exceed 80% of the Median Income of households in the *Taunton-Mansfield-Norton, MA HMFA* as defined by the U.S. Department of Housing and Urban Development adjusted for household size. For rental units, a household whose total income does not exceed 70% of the Median Income of households in the *Taunton-Mansfield-Norton, MA HMFA* as defined by the U.S. Department of Housing and Urban Development, adjusted for household size.

Median Income: The household income determined annually by the Department of Housing and Community Development and the US Department of Housing and Urban Development for Dighton or the region that includes Dighton.

Mixed-Use Residential Development: a multi-story development project with at a minimum the first floor reserved for commercial use, allowing common areas to access the upper floors.

Phased or Segmented Project: A project on one lot, or two or more adjoining lots in common ownership or common control for which special permits or building permits are sought within a period of two years from the first date of application for any special or building permits for the Project.

Qualified Affordable Housing Unit Purchaser or Tenant: A household with total annual income that does not exceed 80% of the median income of households in the Taunton-Mansfield-Norton, MA HMFA, adjusted for household size, as determined annually by the United States Department of Housing and Urban Development (as amended) and the Commonwealth's Local Initiative Program regardless of housing type or ownership.

4630. Applicability

4631. In [all 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 [ten (10)] or more dwelling units, whether by new construction or by the alteration, expansion, reconstruction, or change of existing residential or non-residential space, including Phased or Segmented Developments; and

(b) Any subdivision of land held in single ownership as of [the date of adoption of this bylaw] or anytime thereafter into [ten (10)] or more lots created at one time or are the accumulation of ten (10) or more lots created from said land held in single ownership. This shall be applicable to divisions allowed by G.L. c. 41, section 81L and Section 81-U, as well as those divisions of land that do not require subdivision approval per G.L. c. 41, section 81P.

(c) Any life care facility development that includes [ten (10)] or more assisted living units and accompanying services developed per section 4400.

4640. Segmentation or Phasing: The development or the creation of new lots shall not be segmented or phased to avoid compliance with this requirement. A larger tract may not be subdivided into smaller parcels, each of which is to contain less than [ten (10)] lots or phased in such a manner that each phase is to contain fewer than [ten (10)] units. Parcels held in common ownership as of the passage of this bylaw cannot later defeat the requirements of this regulation by segmenting the development. Divisions of land under [ten (10)] lots/units shall provide a restriction (suitable in the opinion of the Planning Board) that is recorded at the Bristol Registry of Deeds permanently prohibiting the creation of additional lots/units on the property.

4650. Special Permit: The development of any project set forth in Section 4630 (above) shall require the grant of a Special Permit from the Planning Board as the designated Special Permit Granting Authority (SPGA), who may adopt regulations for the orderly administration of this bylaw. 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 outlined in the regulations for inclusionary housing special permits, or as defined in Section 5300 of the zoning bylaw until such time that the SPGA has adopted such regulations.

NOTE: This is the section that Dighton's Town Counsel has an issue with. He feels this is affected by the Wall Street Development v. Canton case decision.

4660. Mandatory Provision of Affordable Units:

4661. As a condition of approval for a Special Permit, the applicant shall contribute to the local stock of affordable units in accordance with the following requirements:

(a) At least [ten (10)] percent of the units in a division of land or multiple units development subject to this bylaw shall be established as affordable housing units in any one or combination of methods provided for below:

- (1) constructed or rehabilitated on the locus subject to the Special Permit (see Section 4670); or
- (2) constructed or rehabilitated on a locus different than the one subject to the Special Permit (see Section 4670); or
- (3) an equivalent fees-in-lieu of payment may be made (see Section 4690); or
- (4) An applicant may offer, and the SPGA may accept, donations of land in fee simple, on or off-site, that the SPGA in its sole discretion determines are suitable for the construction of affordable housing units. The value of donated land shall be equal to or greater than the value of the construction or set-aside of the affordable units. The SPGA may require, prior to accepting land as satisfaction of the requirements of this bylaw/ordinance, that the applicant submit appraisals of the land in question, as well as other data relevant to the determination of equivalent value.

(b) The applicant may offer, and the SPGA may accept, any combination of the Section 4661(a)(1)-(4) requirements provided that in no event shall the total number of units or land area provided be less than the equivalent number or value of affordable units required by this bylaw/ordinance.

(c) As a condition for the granting of a Special Permit, all affordable housing units shall be subject to an affordable housing restriction and a regulatory agreement in a form acceptable to the SPGA. 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 toward the [town]'s Subsidized Housing Inventory. The regulatory agreement shall also address all applicable restrictions listed in Section 46010 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 Inspector of Buildings.

4662. To facilitate the objectives of this Section 4660, modifications to the dimensional requirements in any zoning district may be permitted for any project under these regulations, as the applicant may offer and the SPGA may accept, subject to the conditions below:

NOTE: Does Dighton want to include any provision for an increase of market rate units

(a) *Floor Area Ratio (FAR) Bonus. The FAR normally permitted in the applicable zoning district for residential uses may be increased by up to thirty (30) percent for the inclusion of affordable units in accordance with Section 4661 (above), and at least fifty (50) percent of the additional FAR should be allocated to the affordable units. In a mixed use development, the increased FAR may be applied to the entire lot; however any gross*

floor area increase resulting from increased FAR shall be occupied only by residential uses.

(b) *Density Bonus.* The SPGA may allow the addition of two 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 that amount necessary to permit up to two (2) additional market rate units on the lot for each one affordable unit required in Section 4651 (above).

COMMENT: *The provisions above provide a baseline density bonus of two market rate units for every one affordable unit provided by an applicant. This density bonus will likely cover the cost to the developer of providing each required affordable unit. These provisions may also make the adoption of mandatory inclusionary zoning more politically feasible. Communities may choose to omit this provision in favor of offering density bonuses for affordable units above and beyond the baseline requirement of 10%. However, the two different approaches may be used together as in this model bylaw. The following provision (04.2(c)) illustrates how density bonuses can be provided for affordable units beyond the baseline 10%.*

(c) *Voluntary Inclusionary Housing Bonus.* New affordable housing development that is not subject to Section 4630 and exceeds the requirements specified in Section 4661(a) may receive the same benefits specified in Sections 4662(a) and 4662(b) when the development is approved by the SPGA. *The net increase in housing units shall not exceed [fifty percent 50%] of the original property yield before any density bonuses were applied.*

4670. Provisions Applicable to Affordable Housing Units On- and Off-Site:

4671. 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 the market-rate units.

4672. 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 features and mechanical systems of affordable units shall conform to the same specifications as apply to market-rate units.

4673. 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 schedule noted below:

Market-rate Unit (% Complete)	Affordable Housing Unit (% Required)
Up to 30%	None Required
30% plus 1 unit	At least 10%
Up to 50%	At least 30%
Up to 75%	At least 50%
75% plus 1 unit	At least 70%
Up to 90%	100 %

Any fractions of an affordable unit shall be rounded up to a whole unit.

4674. Marketing Plan for Affordable Units. Applicants under this bylaw/ordinance shall submit a marketing plan or other method approved by the SPGA, which describes how the affordable units will be marketed to potential home buyers or tenants. This plan shall include a description of the lottery or other process to be used for selecting buyers or tenants. The plan shall be in conformance to DHCD rules and regulations, and shall be subject to the prior review and approval of DHCD and Town Counsel at the applicant's expense.

COMMENT: A marketing plan is considered essential to the success of affordable housing development in many parts of Massachusetts. Issues of how the units are advertised, how qualified applicants are sought and determined, and methods for reducing delays for qualified applicants are key to the use of this bylaw/ordinance. As an option, the responsibilities under this provision could be transferred to a local housing partnership or authority.

4680. Provision of Affordable Housing Units Off-Site:

4681. As an alternative to the requirements of Section 4670, an applicant subject to the bylaw/ ordinance may develop, construct or otherwise provide affordable units equivalent to those required by Section 4660 off-site. All requirements of this bylaw/ordinance 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 SPGA as an integral element of the Special Permit review and approval process.

4690. Fees-in-Lieu-of Affordable Housing Unit Provision: Does Dighton want this provision? See comment below:

COMMENT: This is the appropriate section for specifying guidelines for administering the housing trust and stipulating the governance structure by which the trust will be managed. Municipalities that significantly lack affordable housing opportunities should consider heavily restricting the fee-in-lieu payment option. In built-out communities, housing trust funds often grow and sit unused because sites appropriate for affordable housing development are not available.

Additionally, affordable housing trusts can force municipal agents into the role of real estate developers, which local government officials may be poorly suited for or reluctant to do. Cities such as Cambridge have eliminated the fee-in-lieu payment option in almost all cases except for extreme hardship in order to ensure that affordable housing is built by the developers at the same time that new development is under construction.

4691. As an alternative to the requirements of Section 4670 or Section 4680, an applicant may contribute to an established local 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. For the purposes of this bylaw/ordinance the fee-in-lieu of the construction or provision of affordable units will be determined as a per-unit cost as calculated from regional construction and sales reports. **The SPGA will make the final determination of acceptable value. Note: Towns calculate this differently:**

Wellesley: The amount of the cash contribution shall be determined by the Planning Board and shall be the amount equal to the product of (1) the required number of Affordable Units multiplied by (2) the difference in sale price between an Affordable Unit and a Conventional Unit. For the purposes of determining the amount of the cash contribution, an Affordable Unit shall be deemed to have at least three bedrooms and 1,500 square feet of living space.

BELMONT: The Special Permit Granting Authority, in its sole discretion, may require a developer of non-rental housing units to make a cash payment, upon a recommendation from the Belmont Housing Trust, to the Affordable Housing Trust Fund for each affordable unit required.

1) Amount

The cash payment shall be determined as a percentage of the difference between the fair market value for a typical market-rate housing unit in the development and the price of an affordable unit as shown in the following Table.

Fair Market Value as percentage of Affordable Price	In-lieu Payment as percentage of Difference
Less than 300%	100%
300% or greater but less than 400%	95%
400% or greater but less than 500%	90%
500% or greater but less than 600%	85%
600% or greater	80%

The Fair Market Value shall be defined as the value of a typical market-rate housing unit in the development as determined by the Special Permit Granting Authority.

The Affordable Price shall be defined as the price of an affordable housing unit for a household at 80% of median income, as provided in Section 6.10.2(9), for a family the size of which is calculated by adding one (1) to the total number of bedrooms in the average unit.

See also Brookline’s “Cash Payment in lieu of Affordable Units”.

(b) Schedule of fees-in-lieu-of-units payments. Fees-in-lieu-of-units payments shall be made according to the schedule set forth in Section 4673, above.

(c) Creation of Affordable Units. Cash contributions and donations of land and/or buildings made to the Town or its Housing Trust in accordance with Section 4691 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.

4610. Maximum Incomes and Selling Prices - Initial Sale:

4610.1. To ensure that only eligible households purchase affordable housing units, the purchaser of an affordable unit shall be required to submit copies of the last three years’ federal and state income tax returns and certify, in writing and prior to transfer of title, to the developer of the housing units or his/her agent, and within thirty (30) days following 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’s annual 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.

4610.2. 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.

4611. Preservation of Affordability; Restrictions on Resale:

4611.1. Each affordable unit created in accordance with this bylaw shall have limitations governing its resale through the use of a regulatory agreement (Section 4661(c)). 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**.

(a) 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 resale. This percentage shall be recorded as part of the restriction on the property noted in Section 4611.1, above.

(b) 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 Department of Housing and Community Development, granting, **among other things**, the municipality's right of first refusal to purchase the property in the event that a subsequent qualified purchaser cannot be located.

(c) The SPGA shall require, as a condition for Special Permit under this bylaw, that the applicant comply with the mandatory set-asides and accompanying restrictions on affordability, including the execution of the deed rider noted in Section 4611.1(b), above. The Building Commissioner/Inspector shall not issue an occupancy permit for any affordable unit until the deed restriction is recorded.

4612. Conflict with Other Bylaws/Ordinances: The provisions of this bylaw/ordinance shall be considered supplemental of existing zoning bylaws/ordinances. To the extent that a conflict exists between this bylaw/ordinance and others, the more restrictive bylaw/ordinance, or provisions therein, shall apply.

4613. 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.

The 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.