

# City of Cambridge

*Louis A. DePasquale • City Manager*



# Executive Department

*Lisa C. Peterson • Deputy City Manager*

February 13, 2017

To the Honorable, the City Council:

Please find attached a response to Council Order Numbers 13, 14, 15 and 18 dated January 24, 2017, regarding Inclusionary Housing Zoning Petition, received from Assistant City Manager for Community Development Iram Farooq.

Also attached is a legal opinion received from City Solicitor Nancy Glowa.

Very truly yours,

A handwritten signature in cursive script that reads "Louis DePasquale".

Louis A. DePasquale  
City Manager

LAD/mec  
Attachment(s)



CITY OF CAMBRIDGE  
COMMUNITY DEVELOPMENT DEPARTMENT

IRAM FAROOQ  
Assistant City Manager for  
Community Development

SANDRA CLARKE  
Deputy Director  
Chief of Administration

To: Louis A. DePasquale, City Manager  
From: Iram Farooq, Assistant City Manager for Community Development  
Date: February 8, 2017  
Re: Inclusionary Housing Zoning Petition

This memo responds to requests made by the City Council at the Ordinance Committee hearing on January 4, 2017, regarding the Inclusionary Housing Zoning Petition, as well as the Planning Board recommendations on this petition.

At its meeting on January 4, 2017 the Ordinance Committee passed several orders which were adopted as the following policy orders on January 23, 2017:

- Policy Order No. 13: That the City Manager is requested to direct the Assistant City Manager for Community Development Department and the Law Department to insert language that there be an annual housing review in the inclusionary housing ordinance and further that clarifying language be provided relating to CDD developing policies, standards and procedures and the Assistant City Manager promulgating regulations; said information be forwarded back to the Ordinance Committee no later than February 13, 2017.
- Policy Order No. 14: That the City Manager is requested to direct the Community Development Department and the Law Department to review the language in the inclusionary ordinance to change the wording to read "no more than five years;" to provide information on the trigger for the special permit requirement for the bonus; and that there be a public participation process when regulation changes are proposed; and said information be forwarded back to the Ordinance Committee no later than February 13, 2017.
- Policy Order No. 15: That the City Manager is instructed to direct the Community Development Department and the Law Department to provide a record of all outstanding large project PUDs, including special permits for large projects, and the status, history, schedule and time extensions; said information be forwarded back to the Ordinance Committee no later than February 13, 2017.
- Policy Order No. 18: That the City Manager is requested to direct the Community Development Department and the Law Department to review the comments made by Matt McLaughlin, Lee Farris and Ellen Schacter at the Ordinance Committee held on January 4, 2017 and that the comments be converted into a bulleted list of recommendations and that the staff respond to each one and that said information be forwarded back to the Ordinance Committee no later than February 13, 2017.

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Responses to the questions and comments asked are organized as follows:

**A. Suggested Changes to the Zoning Petition**

1. Periodic Reevaluation of Requirements – Section 11.203.2, Paragraph (c)
2. Requirement for Family-Sized Units – Section 11.203.3, Paragraph (g)
3. Modifications to Text Regarding Standards – Section 11.203.4, Paragraph (a)
4. Threshold for Special Permit Review – Section 11.203.5, Paragraph (c)
5. Implementation and Enforcement– Section 11.204 and Section 11.205

**B. Additional Requests for Information**

1. Planned Unit Development (PUD) Special Permits
2. Responses to Comments Made by Cambridge and Somerville Legal Services (CASLS) and Cambridge Residents Alliance

**A. Suggested Changes to Zoning Petition**

**1. Periodic Reevaluation of Requirements – Section 11.203.2, Paragraph (c)**

The Council asked for clarification of the zoning language regarding reevaluation of the inclusionary housing requirements. In particular, the Council asked to specify that reevaluations would be initiated at intervals of no more than five years, and to include annual reviews as well.

These approaches could be accomplished by modifying the language of the petition as suggested below (using underlined text to show additions and strikethrough text to show deletions):

- (c) The City shall initiate a reevaluation of the Inclusionary Housing Requirement at an interval of no ~~less~~more than five (5) years from the time the Inclusionary Housing Requirement was last amended. Such reevaluation shall include a report provided to the City Council reviewing factors such as changes in demographic characteristics and residential development activity, housing trends measured in terms of, but not limited to, vacancy rates, production statistics, prices for dwelling units, and affordability, and the relationship between Inclusionary Housing Projects and all housing in Cambridge. The Community Development Department shall also conduct an annual review of the Inclusionary Housing Program.

**2. Requirement for Family-Sized Units – Section 11.203.3, Paragraph (g)**

In order to seek maximum opportunity to create family-sized affordable units, the Planning Board suggested a slight modification to the threshold at which projects would be required to provide affordable family-sized units. The petition stated that for projects of 50,000 square feet or more, the project would be required to provide at least 20% (or one-fifth) of its required Affordable Dwelling Unit Net Floor Area within Family-Sized Units, which have three or more bedrooms, and at least 1,100 square feet of Dwelling Unit Net Floor Area in each unit.

The Planning Board suggested reducing the threshold to 30,000 square feet, based on the logic that a project of that size would be required to provide 6,000 square feet of affordable floor area under the 20% requirement, and 20% of that amount would result in 1,200 square feet, which is a reasonable size for a three-bedroom unit. Therefore, a project of that size is the smallest project for which the proposed

standards would yield one family-sized unit. Staff would note that this logic only holds if the 30,000 square-foot threshold is based on Dwelling Unit Net Floor Area rather than Gross Floor Area.

In evaluating this recommended change, staff discovered potential complications in applying the standards as written to projects of certain sizes. For instance, if a project were required to provide 10,000 square feet of Affordable Dwelling Unit Net Floor Area, the standards would require 2,000 square feet to be contained in Family-Sized Units. This might result in confusion because 2,000 square feet could not be divided into two family-sized units, given the 1,100 square foot minimum size, but might also be uncharacteristically large for a single unit.

Therefore, along with changing the threshold, staff suggests reframing the provision to require a certain minimum number of family-sized units based on dividing the required Affordable Dwelling Unit Net Floor Area by 6,000 square feet, and rounding up or down to the nearest whole number. This standard is approximately equivalent to the current petition, but its application results in a clearer requirement for the number of family-sized units.

This change could be accomplished by modifying the language of the petition as suggested below (using underlined text to show additions and strikethrough text to show deletions):

- (g) Townhouse or multifamily residential projects of at least ~~fifty thousand (50,000)~~ thirty thousand (30,000) square feet of ~~Gross Floor Area~~ Dwelling Unit Net Floor Area shall ~~have at least twenty percent (20%) of their total Affordable Dwelling Unit Net Floor Area devoted to provide~~ Family-Sized Affordable Dwelling Units at a ratio of at least one dwelling unit per every six thousand (6,000) square feet of required Affordable Dwelling Unit Net Floor Area in the project, rounded to the nearest whole unit with fractions of 0.5 unit or more rounded up and fractions of less than 0.5 unit rounded down, regardless of the proportion of non-Affordable Family-Sized Dwelling Units within the non-Affordable Dwelling Units in the project or the ratio derived from paragraph (f) above, whichever is greater

### **3. Modifications to Text Regarding Standards – Section 11.203.4, Paragraph (a)**

Minor wording changes to this section are suggested below (using underlined text to show additions and strikethrough text to show deletions), in response to Council requests for clarifications on the Community Development Department's role in implementation as well as suggestions made by Cambridge and Somerville Legal Services, which are explained in more detail later in this memo:

- (a) Affordable Dwelling Units shall be rented or sold only to Eligible Households, with preference given to Cambridge residents, in accordance with ~~policies,~~ standards, and procedures related to selection, transfers, asset limits, and marketing established by the Community Development Department.

### **4. Threshold for Special Permit Review – Section 11.203.5, Paragraph (c)**

As is the case in current zoning, the petition states that an inclusionary project would not trigger a special permit review (under the townhouse, multifamily or project review special permit provisions) after applying the “bonus” density provided under the inclusionary housing provisions if it would not

have triggered that same special permit review under base zoning limitations. The rationale is that inclusionary housing is required for all applicable development, whether or not special permit approval is required, and therefore the bonus is granted “as-of-right” without causing the project to be subject to discretionary approval that would not apply if the project were built under normal zoning limitations.

However, both the City Council and Planning Board suggested reassessing whether the threshold should be applied without regard to whether or not the development is taking advantage of the inclusionary “bonus” density. The rationale for this approach is that the issues addressed in special permit review, including urban design and transportation impacts, would be the same above a certain threshold regardless of whether or not the threshold is exceeded due to the inclusionary housing bonus. However, because there is additional time and cost associated with special permit approval, this approach could arguably reduce the benefit of the bonus to the property owner, which could raise potential concern of a legal challenge.

If the latter approach were taken, the language of the petition could be modified by deleting the word “not” in Paragraph (c) of Section 11.203.5 as shown below.

- (c) The additional Gross Floor Area or dwelling units permitted herein shall ~~not~~ be counted toward the determination of any applicable threshold triggering the requirement of a special permit, including but not limited to Section 19.20 Project Review Special Permit, Section 4.26 Multifamily Special Permit, and Section 11.10 Townhouse Development Special Permit.

### **5. Implementation and Enforcement – Section 11.204 and Section 11.205**

The Council asked for clarification of the roles of different City agencies and officials in the implementation of the inclusionary housing provisions.

The first clarification is that the City Council, through its adoption of the zoning ordinance, is the City’s legislative body and thus is primarily responsible for establishing Cambridge’s inclusionary housing policy. The role of staff is to develop standards and procedures to implement the provisions set forth in the zoning ordinance. Therefore, one suggested change is simply to remove the word “policies” when referring to the implementation responsibilities of the Community Development Department.

One of the proposed changes to current zoning is that this zoning petition authorizes the promulgation of regulations, due to the programmatic elements of the ordinance that benefit from a more detailed explanation of requirements, standards and procedures that can be adapted to ensure that the ordinance is carried out effectively over time. As a matter of good practice, regulations are typically promulgated by the head of the department or agency primarily responsible for their implementation, which in this case is the Community Development Department.

Regulations are often promulgated following a period of public review and comment. As suggested in the comments from Cambridge and Somerville Legal Services (see further below), draft regulations would be subject to a thirty-day comment period, including a public meeting, before final promulgation in order to receive input from community members and organizations.

The Board of Trustees of the Cambridge Affordable Housing Trust would continue to play a central advisory role in providing recommendations on proposed zoning amendments that relate to

Cambridge's affordable housing programs (as it has in the creation of this petition), in addition to its primary responsibility as the overseers of City funds that go toward affordable housing development and preservation. One small change to the petition clarifies that the Community Development Department's ability to develop regulations, standards and procedures does not apply to the Cambridge Affordable Housing Trust itself; Section 11.206 establishes that the Trust is responsible for its own standards and procedures.

The issues described above are addressed in the modifications to the petition text suggested below (using underlined text to show additions and strikethrough text to show deletions):

#### 11.204 Implementation of Incentive Zoning and Inclusionary Housing.

- (a) The Assistant City Manager for Community Development shall have the authority to promulgate regulations for the implementation of the provisions of Sections 11.200 to ~~11.206~~ 11.205. There shall be a thirty day review period, including a public meeting, to receive public comments on draft regulations before final promulgation.
- (b) The Community Development Department may develop ~~policies,~~ standards, and procedures appropriate to and consistent with the provisions of Sections 11.200 to ~~11.206~~ 11.205.

#### 11.205 Enforcement of Incentive Zoning and Inclusionary Housing.

The Community Development Department shall certify in writing to the Superintendent of Buildings that all applicable provisions of Sections 11.200 to ~~11.206~~ 11.205 have been met before issuance of any building permit for any Incentive Project or Inclusionary Housing Project, and shall further certify in writing to the Superintendent of Buildings that all documents have been filed and all actions taken necessary to fulfill the requirements of Sections 11.200 to ~~11.206~~ 11.205 before the issuance of any certificate of occupancy for any such project.

## **B. Additional Requests for Information**

### **1. *Planned Unit Development (PUD) Special Permits***

The Council asked for additional information regarding ongoing PUD projects that include residential development but are not yet complete.

It should be reiterated, as explained in a previous communication from the City Solicitor, that zoning changes cannot affect projects that have been issued a building permit or special permit prior to the date of first advertisement of the zoning petition. This includes PUD special permits, which often authorize multiple phases of development over a longer timeframe than other types of special permits.

Questions were raised at the Ordinance Committee hearing about Somerville’s inclusionary housing requirements adopted in May of last year, and how they affect current development projects. The text of the Somerville inclusionary housing ordinance states that it applies to “all residential developments seeking special permits with site plan review to develop 6 or more dwelling units, whether new construction, substantial rehabilitation, Planned Unit Development, residential conversion, or adaptive reuse,” and that the new requirements “shall become effective on the day of passage by the Board of Aldermen, but shall not apply to any project that has received approval for a Special Permit with Site Plan Review prior to date of the vote of the Board of Aldermen to adopt said amendment.” In Somerville’s zoning, some redevelopment areas (like Assembly Square) are zoned for future development that has not yet received a special permit with site plan review, which makes them subject to future zoning changes while other, permitted development projects are not.

CDD has prepared a summary of outstanding PUD special permits in Cambridge that include residential development, along with housing units completed to date and the timeframe set forth in the special permit for completion. There are six PUD projects meeting these criteria. Details about the remaining phases of development and timeframes for completion are provided in the table on the following page.

Inclusionary Housing Zoning Petition – Responses for Ordinance Committee

**Summary of Uncompleted PUD Projects with Residential Use**

| Case    | Project                                  | Original SP Issued | Last Major Amendment | Development Timeframe                        | Total Units Approved | Total Units Built | Total Units Remaining | Other Notes  |
|---------|--|--------------------|----------------------|--|----------------------|-------------------|-----------------------|--|
| PB-141  | Cambridge Research Park / Kendall Square | 1999               | N/A                  | 2017 completion                              | Flexible             | 465               | 0                     | Final phase is non-residential (theater space).                                  |
| PB-175  | North Point / East Street (Avalon Bay)   | 2002               | 2015                 | N/A  | 830                  | 489               | 341                   | Final phase in construction.   |
| PB-179  | North Point PUD (DivcoWest/HYM)          | 2003               | 2016                 | 2030 completion                              | 3,177 (approx)       | 684               | 2,493 (approx)        | Recent amendment and extension due to restructuring of project ownership.        |
| PB-231A | First Street PUD                         | 2010               | 2016                 | 2021 commencement of final residential phase | 251                  | 115               | 136                   | Recent amendment added new commercial and residential development sites.         |
| PB-243  | Alexandria PUD                           | 2010               | N/A                  | 2018 commencement of final residential phase | 220                  | 91                | 129                   | Zoning has different affordable housing requirements in place of Section 11.200. |
| PB-302  | MIT "NoMa" PUD (One Broadway)            | 2016               | N/A                  | 2026 completion                              | 290-300              | 0                 | 290-300               | Zoning sets inclusionary housing requirement at 18%.                             |

Attachment: Zoning IZ Council Ord Rsp 02-13-17 FINAL (417) : response to Council Order RE:



**2. Responses to Comments Made by Cambridge and Somerville Legal Services (CASLS) and Cambridge Residents Alliance**

The Council asked for responses to comments made by Ellen Shachter on behalf of Cambridge and Somerville Legal Services and Lee Farris on behalf of the Cambridge Residents Alliance. The table below notes comments submitted by CASLS and CRA along with responses from City staff and recommendations for changes in the zoning petition. Where changes to the petition are recommended, they have been included in suggested changes outlined in the previous section. Where CASLS and CRA commented on the same issue, those comments have been combined for single response.

|    | CASLS/CRA COMMENT  | RESPONSE  | RECOMMENDATION         |
|----|--|---|------------------------|
| 1. | CASLS: Definition of Dwelling Unit, Affordable: Under this definition as drafted, the rent (including utilities and fees) is 30% (or 25% for certain studios) of gross household income or as established by “standards set forth in another applicable city, state, or federal housing program for Eligible Households.” Originally, the primary federal housing program (known as the Section 8 program) had a “percentage of income” limit on the tenant’s portion of the rent, but under the current regulations, this is no longer the case. Therefore, we suggest adding the following language at the end of the definition: or (b) standards set forth in another applicable city, state or federal housing program for Eligible Households except that in no case shall the gross rent for a tenant with a mobile Section 8 voucher exceed the payment standard set by the housing agency administering the voucher.” | The concern is that rent for an inclusionary unit could exceed the rent that a housing authority authorizes for tenants with housing vouchers, and result in the tenant paying more than 30% of their income for rent. However, the language in Section 11.203.4, Paragraph (c) (ii) of the petition restricts all tenants’ rents to 30% of their household income (except in the case of a studios, where rent is 25% of income). The petition does limit how much any tenant, including those with housing vouchers, may pay as an affordable rent. | No change to petition. |
| 2. | CASLS: Definition of Inclusionary Housing Project: CASLS continues to believe that it is advisable to have projects of six or greater units be considered inclusionary housing projects with at least SOME contribution to abating the housing affordability crisis in Cambridge. Perhaps developers with projects of  | The Housing Committee discussed the possibility of lowering the threshold for the inclusionary provisions and recommended maintaining the current threshold at 10 units or 10,000 square feet. There were 7 new residential developments between 6-9 units from 2010-2016.  | No change to petition. |

Inclusionary Housing Zoning Petition – Responses for Ordinance Committee

|    | CASLS/CRA COMMENT  | RESPONSE  | RECOMMENDATION   |
|----|--|---|--|
|    | six to nine units could be required to make a one-time up front contribution to the Affordable Housing Trust Fund (AHTF) rather than being required to build affordable units. The City of Somerville has a threshold of five (5) for its Inclusionary Ordinance.  |   |  |
| 3. | CASLS: Section 11.203.2 (a): CASLS' continues to believe that neither the business community nor the CDD have established a clear reason why the increase to 20% cannot be effective immediately. CASLS' recommends immediate application on passage. These changes have been pending for a long period of time and come as a surprise to no one. I fear the six-month window will lead to a significant loss in affordable units.   | The phasing in of new inclusionary provisions was discussed in the Housing Committee which recommended that the requirement be increased to 15% immediately and increased to 20% no later than June 30, 2017. | No change to petition.   |
| 4. | CASLS: 11.203.2(c) – Schedule for review – While CASLS understands that review of the IZ Ordinance is costly and time consuming, it may make sense to have the same review period for IZ as for linkage (three years). Alternatively, CASLS supports comments submitted by Cambridge Residents Association (CRA) asking for a review to be conducted in three to five years with interim reports. In any event there should be a maximum number of years between reviews.<br><br>CRA: p. 2, Ordinance review: "Ordinance review conducted within no less than five years." Review should be conducted sooner, and there needs to be an upper time limit, so that review does not take 20 years. Add: Review will be conducted in three to five years. Require interim annual reports from the CDD as to what is occurring in the inclusionary housing program. | This is addressed in Section A.1 above  | See Section A.1 for suggested changes to Section 11.203.2, Paragraph (c) |

Inclusionary Housing Zoning Petition – Responses for Ordinance Committee

|    | CASLS/CRA COMMENT  | RESPONSE  | RECOMMENDATION   |
|----|--|---|--|
| 5. | <p>CASLS:11.203.3(g) – CASLS agrees with the position expressed by the Cambridge Residents’ Association (CRA) that family sized affordable dwelling units should be required for at least some projects under 50,000 sq. ft. perhaps at a 10% requirement level.</p> <p>CRA: p.3, <u>Family-sized units</u>: "Affordable units must have the same or greater proportion of family-sized units as the project as a whole. Additionally, for projects of over 50,000 square feet, at least 20% of the required affordable floor area must be devoted to family sized units. May result in fewer but larger affordable units. "Family sized units are very needed. Smaller developments can also provide 3BRs at a lower rate. Add: A) For projects of 20,000-50,000 Sq. Ft., 10% of the required affordable floor area must be devoted to family-sized units. B) Add language to explain how fractional units will be addressed, for example if the calculation is 2.4 family units are required, does that result in 2 or 3 units? If rounded down to 2 units, the value of .4 family unit should be paid into the Affordable Housing Trust fund.</p> | <p>This is addressed in Section A.2 above.</p>  | <p>See Section A.2 for suggested changes to Section 11.203.3, Paragraph (g)</p>  |
| 6. | <p>CASLS: 11.203.4(a) – transfers – We think it is critical that the CDD develop a clear policy on IZ unit transfers in the same and different developments. This is particularly important for tenants needing a transfer due to reasonable accommodation, domestic violence and/or low income housing tax credit restrictions. In a recent case CASLS was contacted by a disabled tenant in an IZ unit with tax credit restrictions who was faced with eviction when she became a full time student. In such a case a tenant</p>   | <p>CDD currently has procedures for tenants who desire to transfer within the building in which they live and works with building managers to transfer tenants who need or request to move within a building. Where buildings with inclusionary units are privately-owned and managed separately, tenants cannot transfer between different buildings. Tenants in inclusionary units who wish to move to a different building must apply again through CDD’s Rental Applicant Pool.</p> | <p>See Section A.3 for suggested changes to Section 11.203.4, Paragraph (a).</p> |

Attachment: Zoning IZ Council Ord Rsp 02-13-17 FINAL (4171) : response to Council Order RE:

Inclusionary Housing Zoning Petition – Responses for Ordinance Committee

|    | CASLS/CRA COMMENT   | RESPONSE   | RECOMMENDATION   |
|----|---|--|--|
|    | should have the option to move to another IZ unit without tax restrictions. Therefore we suggest add the word "transfer" as indicated: "...in accordance with policies, standards, and procedures related to selection, <i>transfer, asset limits</i> ."  | Adding "transfer" to Section 11.203.4, Paragraph (a) is suggested as a change to the petition in Section A.3 above. Additional details of transfer procedures can be included in regulations.  |  |
| 7. | <p>CASLS: 11.203.4(c) – There should be a clear prohibition on denying a family referred for an affordable unit based on income. This would mean that an owner could not deny an applicant at 51% of AMI in favor of a later applicant at 79% of AMI in order to maximize income.</p> <p>CRA: p. 3, <u>Income eligibility</u>: "For rental, income range is from 50% to 80% of AMI or lower than 50% AMI if household has a voucher. For homeownership, income limit is 100% AMI." Previously this said "Income limit for rental and homeownership is 80% AMI with a target income of 65% AMI" which means that collectively the residents' income should be 65% AMI. if there is no target, it means that all of the renters' income could be 79% AMI and all homeowners' income could be 99% AMI. Add language that current income targets will be continued, to ensure a range of below market residents are served.</p> | <p>CDD does not allow owners and managers to use income in their applicant screening criteria. The way in which CDD operates the Inclusionary Rental Program does not afford owners and managers an opportunity to see an applicant's income documentation. Screening criteria used by property managers is not generally addressed in detail in the Zoning Ordinance, but could be addressed through procedures or regulations.</p> <p>For new homeownership units, applicants are screened for eligibility by CDD and then a lottery is held to select buyers from all eligible applicants in the highest preference group. Property owners have no role in approving homebuyers for inclusionary units.</p> | No change to petition. Comment can be addressed through regulations. |

Attachment: Zoning IZ Council Ord Rsp 02-13-17 FINAL (4171 : response to Council Order RE:

Inclusionary Housing Zoning Petition – Responses for Ordinance Committee

|    | CASLS/CRA COMMENT  | RESPONSE  | RECOMMENDATION   |
|----|--|---|--|
| 8. | <p>CASLS: Section 11.203.4 (c)(iv) – there should be clarification as to what happens to the rent of a family in an IZ unit when their income exceeds 100% of AMI at an annual recertification date. Does the rent jump to market? If the answer would be yes there needs to be better protections in place for such tenants.</p>  | <p>Tenants may stay in their inclusionary unit for up to one year after they are determined to be over income (over 100% AMI) at the time of their annual recertification. These are longstanding procedures and are noted in the City’s Inclusionary Housing Covenant and can be included regulations.</p>   | <p>No change in petition. Comment is addressed in the Inclusionary Housing Covenant and can also be included in regulations.</p> |
| 9. | <p>CASLS: 11.203.4 There should be an additional section with a prohibition against denying admission to Section 8 voucher and other rental subsidy holders due to credit other than a history of nonpayment of rent. In our experience, qualified Section 8 voucher holders are often denied occupancy for affordable units by owners based on credit history or a credit score. As we all know, many Section 8 voucher holders, who are by definition low or moderate income and most are extremely low income, will have difficult credit histories simply as a matter of having insufficient income to pay their expenses. Where rent is essentially guaranteed to be affordable and where the government is guaranteeing payment of most of the rent, landlords should be prohibited from rejecting tenants based on poor or no credit history/score except a history of non-payment of rent. In addition, where there is a history of non-payment of rent it should not be disqualifying if the applicant was then paying 50% of more of their income for shelter expenses (rent plus utilities). This is similar to the rule in most Mass Housing funded multi-family developments.</p> | <p>It is common for property owners to screen all prospective tenants – market rate, inclusionary, and voucher holders – for credit. In the Inclusionary Rental Program, property owners do not necessarily know which applicants have vouchers when they screen them. As noted above (#7) the criteria property owners use to screen tenants are not generally addressed in the Zoning Ordinance. We will consider this comment when regulations are developed. It will require further analysis to determine how we can regulate a property owner’s review of credit for inclusionary housing applicants.</p> | <p>No change in petition. Comment will be considered as regulations are developed but will require further review.</p>           |

Attachment: Zoning IZ Council Ord Rsp 02-13-17 FINAL (4171) : response to Council Order RE:

Inclusionary Housing Zoning Petition – Responses for Ordinance Committee

|     | CASLS/CRA COMMENT   | RESPONSE   | RECOMMENDATION  |
|-----|---|--|---|
| 10. | <p>CASLS: 11.203.4 (c) (i) and (iii) and (v) – interim rent decreases and minimum rents: CASLS is very concerned about what happens to families in affordable units when their income decreases, at and in between annual recertifications. First, we think it needs to be clarified here and elsewhere that tenants can go to the CDD to get interim rent decreases when their gross household income decreases at least by 10%. Second, we think that there should be no minimum rent when income decreases. For the most part this will come into play when tenants were employed and thus met minimum income requirements but later became disabled and/or when a family members loses employment or suffers a break up. CASLS believes it is critical that these tenants be protected at a minimum for a period of up to twelve months to get them back on their feet if at all possible and/or to apply for other affordable housing with a deep subsidy. It would also be extremely helpful for the CDD to negotiate with CHA and other providers of affordable housing to give emergency preference to tenants in inclusionary housing who can no longer afford the minimum rent. At a minimum, if the city retains a minimum rent, it should not be worse than at present, which provides for zero rent for a six month period (to allow the person time to try to secure income) and then the 30% of the 40% of AMI for the second six month period (minus the applicable utility allowance).</p> | <p>Interim Rent - Tenants must be provided 12-month leases, with required annual income recertifications. In limited cases, CDD has recertified income of tenants during their lease term to establish a new affordable rent. This has only been done when both the tenant and the property manager or owner (the parties to the lease contract) have agreed to change the lease terms. Whether CDD can require a property manager to change a rent during an existing lease term will require more analysis.</p> <p>Minimum Rent – The petition does alter the longstanding minimum rent policy as the 6-month transition period for tenants whose income falls below 40% AMI is no longer covered. CDD is exploring other ways to assist tenants during the first six months of minimum rent, so they are able to pay no more than 30% of their income during this period as they transition to paying a rent based on a minimum rent standard. The minimum rent standard of 30% of 40% AMI would be effective at the seventh month.</p> | <p>No change in petition. City staff will further analyze whether and how CDD might require interim rent recertifications. CDD will continue to explore ideas for supplementing rent for tenants during the first six months of minimum rent.</p> |
| 11. | <p>CASLS: 11.203.4 (c)(ii) and (vi): We are quite concerned that rental housing retain affordability</p>  | <p>The petition includes the parking language from the existing ordinance which allows for reduced parking payments for tenants in inclusionary units. We have</p>   | <p>No change to petition. Comment can be further</p>  |

Attachment: Zoning IZ Council Ord Rsp 02-13-17 FINAL (4171) : response to Council Order RE:

Inclusionary Housing Zoning Petition – Responses for Ordinance Committee

|     | CASLS/CRA COMMENT   | RESPONSE  | RECOMMENDATION   |
|-----|---|---|--|
|     | <p>regardless of extra charges. We believe that rent should INCLUDE parking and all other amenities regularly offered to market rate tenants. This could include monthly pet fees, parking fees, guest parking fees, gym fees. This is essentially the rule that has been implemented in Somerville under its revised IZ Ordinance. If amenities are not included in the 30% (or 25%) of income, then ALL amenities should be prorated, not just parking.</p> <p>CRA: p. 2, <u>Standards for affordable units</u>: "affordable units must have...similar access to amenities".</p> <p>Clarify will affordable tenants pay for parking and gym access at the full cost or a prorated cost?</p> | <p>also added language to the petition which will enable CDD to consider other fees as part of the affordable rent based on 30% of tenant's income. Section 11.203.4, Paragraph (c) (ii) gives authority to include other fees routinely charged to tenants in the affordable rent payment. CDD can identify what fees will be considered as part of the affordable rent through regulations.</p> | <p>addressed through regulations.</p>  |
| 12. | <p>CASLS: 11.203.4(c): Good cause for non-renewal: Typically tenants in inclusionary units are under a one year lease. We believe that, like with other low income housing programs, security of tenure is particularly important. Accordingly we suggest that a provision be added at the end of Section 4(c) that states the following: "No tenant shall be evicted from an affordable dwelling unit, during or at the end of a lease term, except for good cause related to tenant fault."</p>   | <p>Whether the city can require just cause for non-renewal will require further analysis. This is an issue that is not generally dealt with in the Zoning Ordinance, but may be possible to address through another mechanism. This will require further analysis.</p>  | <p>Further review.</p>   |
| 13. | <p>CASLS: 11.204 (a) and (b). As implementation of the IZ Ordinance is critical to many issues facing low income tenants in Cambridge, CASLS believes that there should be mandatory public participation requirements for significant policies adopting by the</p>   | <p>This is addressed in Section A.5 above.</p>  | <p>See Section A.5 for suggested changes to Section 11.204, Paragraph (a).</p> |

Attachment: Zoning IZ Council Ord Rsp 02-13-17 FINAL (4171) : response to Council Order RE:

Inclusionary Housing Zoning Petition – Responses for Ordinance Committee

|     | CASLS/CRA COMMENT  | RESPONSE                    | RECOMMENDATION        |
|-----|--|-----------------------------|-----------------------|
|     | CDD. We would ask that recommendations for policy changes have a thirty day comment period and with proposed policies being distributed to known community groups and organizations at the beginning of the comment period (and posted on the CDD’s website). There should also be an opportunity for a meeting or hearing prior to final decision-making.   |                             |                       |
| 14. | <p>CRA: p. 2 of the CDD memo, <u>Applicability:</u> "Applies throughout the city except as otherwise provided. Projects are subject to the inclusionary housing provisions applicable at the time of issuance of a building permit or special permit. For PUD special permits, amendments may be approved and inclusionary provisions ineffect when the permit was originally issued will apply, except where residential development is decreased or non-residential development is increased."</p> <p>A) We believe projects with PUD special permits should be required to include the full 20% of IZ units for the remaining buildings in their projects, which would result in much more affordable housing. Affordable housing should get the same treatment as other changing city requirements. For example, the COD memo on the MXD PUD project states: "As sustainability standards evolve for the entire city, the revised plan submission further commits to following the standards applicable in zoning at the time of design review." That approach should also apply to inclusionary housing. Change language: Projects with PUD special permits are required to include the full 20% of IZ units for the remaining buildings in</p> | See attached legal opinion. | No change to petition |

Attachment: Zoning IZ Council Ord Rsp 02-13-17 FINAL (4171) : response to Council Order RE:



Inclusionary Housing Zoning Petition – Responses for Ordinance Committee

|     | CASLS/CRA COMMENT  | RESPONSE   | RECOMMENDATION         |
|-----|--|--|------------------------|
|     | PUDs, unless they ask permission to not provide 20% inclusionary housing, and publicly demonstrate that it is not financially feasible to provide 20%. If this change is not approved, add: B) For residential buildings covered by existing PUD special permits, the family sized units, as described below, will be required at the design review stage. This would add very little cost, and would still accomplish an important goal.  |  |                        |
| 15. | CRA: <u>Fractional unit requirement</u> : "When formula requires additional affordable square footage that does not comprise a full unit, a per-square foot monetary contribution to the Affordable Housing Trust is required, based on the amount of subsidy needed to create an equivalent amount of floor area."<br>a. Add language to explain who decides the subsidy amount, using what formula.<br>b. Fractional Unit – Add language to explain who decides subsidy amount and what formula: | Section 11.203.3, Paragraph (i) describes this. The calculation will be based on funding needs of affordable housing developments provided by the Affordable Housing Trust. CDD will make the calculation based on this information and may adjust it from time to time. | No change to petition. |
| 16. | CRA: p. 3, <u>Rents and sale prices</u> : "Rents at 30% of household's income; ownership units priced so that housing costs are 30% of 90% of AMI." Language should say "ownership units priced so that housing costs are 30% of up to 90% of AMI."  | Section 11.203.4, Paragraph (d)(ii) provides that homeownership units shall be priced so that the monthly housing payment does not exceed 30% of 90% AMI (the affordability target for homeownership units).   | No change to petition. |
| 17. | CRA: p. 4, Regulations: "Affordable Housing Trust advises on policies, standards, and procedures. Assistant City Manager for Community   | This is addressed in Section A.5 above.  | No change to petition. |

Inclusionary Housing Zoning Petition – Responses for Ordinance Committee

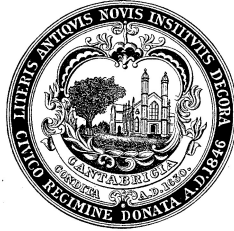
|     | CASLS/CRA COMMENT   | RESPONSE                                | RECOMMENDATION  |
|-----|---|---|---|
|     | Development may promulgate regulations. CDD may develop policies, standards and procedures for implementation, and monitors that requirements are met." CEOC's letter to the Ordinance Committee noted that previously the city manager promulgated regulations, and objected to this change. Change language so that the manager continues to promulgate regulations.  |   |   |
| 18. | CRA: p. 16, "Proposed zoning also codifies the current practice of not including the "bonus" when determining the threshold for special permit review. See Section 11.203.2 in current zoning." Special permit review is triggered at 50,000 Sq.Ft., which is quite a large building, and merits public review. Change language: The actual Sq. Ft. including the bonus Sq. Ft. will trigger a special permit review. | This is addressed in Section A.4 above. | See Section A.4 for suggested changes to Section 11.203.5, Paragraph (c). |

Attachment: Zoning IZ Council Ord Rsp 02-13-17 FINAL (4171) : response to Council Order RE:

Nancy E. Glowa  
City Solicitor

Arthur J. Goldberg  
Deputy City Solicitor

Vali Buland  
First Assistant City Solicitor



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## CITY OF CAMBRIDGE

Office of the City Solicitor  
795 Massachusetts Avenue  
Cambridge, Massachusetts 02139

To: Housing Committee

From: Nancy E. Glowa

Re: Inclusionary Zoning – Application to Permitted Residential Projects

Date: August 30, 2016

As discussions of amendments to the inclusionary housing provisions of the Zoning Ordinance have continued, there have been questions about housing developments now underway, and the impact of such amendments on these developments. Our response to the questions that have been raised is provided below.

Subject to certain exceptions, a zoning ordinance or amendment will not apply to a building or special permit that is approved before the first publication of notice of the public hearing on such zoning ordinance or amendment, provided that a special permit must be acted upon within two years of its issuance, use or construction of the property must be commenced within a period of not more than six months after the issuance of a building permit, and construction must be continued through to completion “as continuously and expeditiously as is reasonable.” See, G.L. c. 40A, § 6 and Article 8, § 8.25 of the Zoning Ordinance. Certain special permits such as Planned Unit Development (“PUD”) special permits for the development of large parcels have different terms including start of construction and development phasing. Property owners are advised to obtain legal advice if they are uncertain whether their property is subject to amendments to the inclusionary housing provisions of the Zoning Ordinance once passed.

The effective date of a zoning ordinance or amendment is in most circumstances the date it is passed by the City Council unless otherwise provided by the ordinance or amendment. A zoning amendment may provide that the changes may be phased in over time.