

H. INCLUSIONARY HOUSING

1. Purpose and Intent

The purpose of this By-Law is to maintain provisions in accordance with the policies and goals found within the Framingham Master Land Use Plan and the Housing Plan as follows:

- a. To ensure that all development or redevelopment of ten or more dwelling units generates a minimum of ten percent affordable housing units which qualify for listing in the Massachusetts Department of Housing and Community Development's (DHCD) Subsidized Housing Inventory (SHI);
- b. To ensure that such affordable housing is made available to all eligible households on a non-discriminatory basis in accordance with the federal Fair Housing Act of 1968 and M.G.L. c. 151, as amended, and any regulations promulgated under federal and state law;
- c. To ensure that such housing remains affordable over the long term, and that to the extent allowed by law, preference is given to Framingham residents;
- d. To maintain an economically integrated community by promoting a mix and distribution of affordable housing opportunities throughout Framingham.

2. Definitions

Affordable Housing Restriction (AHR): A Deed Rider, covenant, contract, mortgage agreement, and/ or other legal instrument, acceptable in form and substance to the Town, that effectively restricts occupancy of an affordable housing unit to a qualified purchaser or renter, and that provides for the administration, monitoring, and/or enforcement of the restriction during the term of affordability. An AHR shall be placed on the land in perpetuity or for the maximum period allowed by law, and entered into as an agreement under the provisions of M.G.L. c. 184, Section s 31 to 33 or other equivalent state law.

Affordable Housing Unit (AHU): A residential unit that is restricted in its sale, lease, and/or rental to a Qualified Income-Eligible Household at specific price limits that qualify such residential unit for inclusion in the Massachusetts Department of Housing and Community Development's (DHCD) Subsidized Housing Inventory (SHI).

Affordable Housing Deed Rider: A deed rider or other legally binding instrument in a form consistent with the Local Initiative Program (LIP) requirements and acceptable under the LIP that will ensure the affordability of the Affordable Housing Unit (AHU) for a term of years established by the permit granting authority, but no less than forty years, that is appended to the deed to an AHU.

Area Median Income (AMI): The median family income, adjusted for household size, for the metropolitan area that includes the Town of Framingham, as determined by the U.S. Department of Housing and Urban Development (HUD).

Inclusionary Housing Project: Any proposed development or redevelopment of ten or more dwelling units on one or more contiguous parcels, whether such units are proposed under a special permit process pursuant to M.G.L. c. 40A, Section 9, [or proposed pursuant to "the Subdivision Control Law" M.G. L. c. 41, Sections 81K to 81GG inclusive, including divisions of land that do not require subdivision approval].

Local Initiative Program (LIP): A program administered by the Massachusetts Department of Housing and Community Development (DHCD) to encourage cities and towns to create low and moderate-income housing through means other than a comprehensive permit under M.G.L. c. 40B.

Market-Rate Housing: A residential unit that is not restricted in its sale, lease, and/or rental at specific price limits.

Qualified Income-Eligible Household: A household with combined incomes that do not exceed 80 percent of the median income for the Boston Metropolitan Statistical Area, with adjustments for household size as reported by the most recent information from the United States Department of Housing and Urban Development (HUD), or successor, and/or the Massachusetts Department of Housing and Community Development (DHCD), or successor.

Qualified Purchaser: Qualified Income-Eligible Household that purchases and occupies an Affordable Housing Unit as its principal residence.

Qualified Renter or Qualified Tenant: Qualified Income-Eligible Household that rents and occupies an Affordable Housing Unit as its principal residence.

3. Applicability and Basic Provisions

The provisions of this By-Law shall apply to any proposed development or redevelopment of ten or more dwelling units on one or more contiguous parcels, whether such units are proposed under a special permit process pursuant to M.G.L. c. 40A, Section 9, [or proposed pursuant to the Subdivision Control Law M.G.L. c. 41, Sections 81K to 81GG inclusive, including divisions of land that do not require subdivision approval “ANR plans”]. The following provisions shall be required for all Inclusionary Housing projects.

- a. In any development subject to this Section V.H, at least 10 percent of the dwelling units shall be Affordable Housing Units (AHU). Fractional interests shall be rounded up to the next whole number. Nothing shall preclude an applicant from providing more AHUs than the number required herein.
- b. Each AHU created under this Section V.H shall be sold or rented to a Qualified Income-Eligible Household, except that when the applicant provides at least one-half of the required affordable units for households with income at or below 50 percent of AMI, adjusted for income, the remaining affordable units may be sold or rented to households with incomes up to 100 percent of AMI, adjusted for household size, if approved by the SPGA.
- c. Except as provided under paragraph b. above, each AHU shall comply with DHCD’s LIP Guidelines for units not created under a M.G.L. c. 40B comprehensive permit.
- d. No building permit shall be issued for any unit in the development until the Building Commissioner receives verification that the AHR has been approved by DHCD and Town Counsel, and has been recorded with the Middlesex South Registry of Deeds, and that the affirmative fair housing marketing plan under Subsection 7 below has been approved by DHCD.

4. Exemptions

Section V.H. shall not apply to the rehabilitation of any building or structure wholly or substantially destroyed or damaged by fire or other casualty, provided that no rehabilitation or repair shall increase the number of dwelling units on the lot as existed prior to the damage or destruction thereof, except in conformance with this By-Law.

5. Application Procedures, Submission Requirements, and Mandatory Provision of Affordable Units

Application, review, and decision procedures shall be in accordance with residential or residential mixed-use development regulations Sections VI.E. and/or F. of this By-Law, and/or the Town’s Subdivision Rules & Regulations. The Planning Board shall require that the applicant comply with

the obligation to provide affordable housing pursuant to this By-Law as provided below as a condition of approval of any residential development and/or redevelopment.

- a. Siting: AHUs shall be dispersed and sited throughout a development so as not to be in less desirable locations than the development's market-rate units.
- b. Design and Construction: AHUs shall be comparable to and indistinguishable from market-rate units in exterior building materials and finishes, windows, and other improvements related to the energy efficiency of the units.
- c. Rights and Privileges: Owners and tenants of AHUs and market-rate units shall have equal rights and privileges to access and use of the development's amenities and facilities.
- d. Units to be Rented or Sold: The Applicant shall provide one AHU for each ten dwelling units to be created. Fractions shall be rounded up to the next whole number.
- e. Phasing: Affordable units shall not be the last units to be built in any development and/or redevelopment covered by this Section V.H.
- f. Non-Avoidance by Phasing or Segmentation: A development shall not be phased or segmented in a manner to avoid compliance with this By-Law. The Planning Board shall not approve any application for development or redevelopment that results in ten or more new dwelling units if the land or parcels of land were held in common ownership (including ownership by related or jointly controlled persons or entities) and were subdivided or otherwise modified to avoid compliance. Dwelling units shall be considered as part of a single development if located either on a single parcel or contiguous parcels of land that have been in the same common ownership at any time subsequent to the date of adoption of this Section V.H. Affordable Housing. This By-Law shall be enforceable also against purchasers of land previously held in common ownership with land that received, after the date of adoption of this Section V.H, approvals or permits for development, to the effect that units developed under such previous development shall be counted toward the calculation of number of units under Sections V.H.4.a. and V.H.4.b. herein.

6. Density Bonus

- a. A Special Permit may be granted for applicants who seek a density bonus for the inclusion of AHU within a residential project. The Planning Board shall be the SPGA for Section V.H.6. herein. Projects shall be required to provide four market-rate housing units for every one AHU. The applicant shall be subject to all of the requirements of this By-Law, unless modified within Section V.H.6.
- b. A density bonus pursuant to Section V.H.6. may be permitted for residential projects with a minimum of four residential building lots that are allowed by right.
- c. Projects that provide four market rate units and one AHU may reduce the lot size by twenty percent for each of the five lots. All other Dimensional Regulations in Section IV.E.2. shall be met for each lot.
- d. Additional lots in a project that do not meet the requirements of four market rate units and one AHU shall not be eligible for a decrease in lot area. Therefore, if a project provides seven lots, only five of the lots shall be eligible for the 20 percent lot area decrease. However, ten lots providing eight market rate units and two AHU shall be eligible for the 20 percent lot area decrease.

7. Affordable Housing Regulations

- a. Pursuant to M.G.L. c. 40A, Section 9, the Planning Board shall adopt and maintain a set of Affordable Housing Regulations that contain the necessary policies, procedures, and requirements to implement the provisions of this Section V.H.

8. Restrictions

- a. Restrictive documents: To ensure unit affordability, AHUs shall be rented or sold subject to applicable AHR, acceptable to the Town and established in accordance with the standards of the DHCD, or its successor entity, or such additional programs as may be adopted by the Commonwealth or its agencies, restricting the use and occupancy, rent level, and sales price of such AHUs.
- b. Term of Affordable Housing Restriction: An AHU shall ensure that AHUs created under this section shall remain affordable in perpetuity or for the longest period of time allowed by law. All restrictive documents shall be enforceable and renewable by the Town pursuant to applicable law.
- c. DHCD SHI: An AHU shall be restricted in its initial and any subsequent sale, lease, and/or rental to a Qualified Income-Eligible Household at a specific price limit that will qualify such residential unit for inclusion in the DHCD SHI.
- d. Selection of Eligible Tenants and Homeowners: There shall be a fair and reasonable procedure in compliance with fair housing laws for the selection of tenants for affordable rental units and for the selection of homeowners for affordable homeownership units. The Town may contract with a quasi-public, public, and/or private entity, experienced in affordable housing operation, for provision of tenant and homeowner selection services but shall be required to monitor the performance of any private entity providing such services and shall retain final responsibility for ensuring compliance.
- e. Income and Asset Limits: Qualified Income-Eligible Household income of prospective purchasers and renters shall not exceed 80 percent of area median income based on household size as determined by HUD. Qualified Purchaser or Qualified Renter shall also be required to demonstrate that total household assets, other than income are not so high that a household has no substantial need of a rental unit with a reduced rent or of an ownership unit with a reduced purchase price.
- f. Occupancy: The AHR for AHUs shall require, whether the unit initially is sold or rented, that the occupant of that unit must be a Qualified Income-Eligible Household as defined in this Section V.H. This provision shall not prohibit a unit initially designated as owner-occupied from being leased, so long as it is a lease qualifying under the provisions hereunder and the occupant is a Qualified Income-Eligible Household.

9. Monitoring and Enforcement

- a. The Planning Board shall maintain an inventory of the Town's AHU and shall prepare an annual report, a copy of which shall be provided to DHCD, stating the following:
 - i. whether rental units are rented to low or moderate income households at rents not exceeding the maximum rents set forth above,
 - ii. whether ownership units continue to be occupied as the domicile and principal residence of the owner, and

- iii. in the event of a resale, whether the unit has been resold to a low or moderate income buyer for no more than the maximum permissible resale price and subject to a new or continued AHR.
- b. Monitoring of Rental Units: AHUs shall be subject to an AHR that contains limitations on use, occupancy, resale and rents, and provides for periodic monitoring to verify compliance with and enforce said restriction.
- c. Monitoring of AHUs: Upon conveyance or resale, affordable homeownership units shall be monitored by the Town, DHCD, or a qualified third party for compliance with the AHR's resale provisions.
- d. Loss of Eligibility Status: Nothing in this section shall be construed to permit eviction of a Qualified Purchaser or Qualified Tenant of an AHU due to loss of his/her eligibility status during the time of ownership or term of lease or rental.
- e. Transfer of AHU: The restrictions governing an AHU shall be enforced upon resale, re-rental, and/or renewal of lease of the AHU. For owner-occupied units, the use restriction shall ensure that units may only be resold to Qualified Income-Eligible Household who are Qualified Purchasers or Qualified Renters consistent with the then applicable income limits established by HUD, or successor, and/or the DHCD, or successor.
- f. All Restrictions Remain in Effect: Nothing in this By-Law shall be construed to permit any Deed Rider, covenant, agreement, and/or other mechanism restricting such items as the use and occupancy, rent level, and resale price of AHUs, and the enforcement thereof to expire prior to any maximum limitations set forth by applicable state law. It is intended that the restrictions required herein shall survive, to the limit allowed by law, including, but not limited to, bankruptcy and foreclosure.
- g. Timing of commitments: All contractual agreements required hereunder and any documents necessary to ensure compliance with this section shall be approved as to content by the Planning Board and Town Counsel prior to the issuance of any occupancy permit for newly constructed, redeveloped, rehabilitated, and/or rental units.
- h. Approval of Form and Content of Legal Documents: The applicant shall be responsible for preparing any documentation required by DHCD in order to secure LIP approval of the AHU and ensure their eligibility for the DHCD SHI. Furthermore, the applicants shall prepare all AHR and/or legal instruments required to comply with Section V.H. herein, and such documents shall be in a form satisfactory to Town Counsel. The applicant shall reimburse the Town for reasonable legal expenses incurred by Town Counsel in reviewing or revising said deed and legal instruments.
- i. [Recording of Restrictions: The special permit decision, if applicable, and all restrictive covenants required under said special permit or this Section V.H. shall be recorded at the Registry of Deeds or filed with the Registry District of the Land Court, as applicable, prior to the endorsement of any subdivision plan for the development and before the issuance of any building permit for the development.]
- j. Content of Restrictions: Where the Planning Board endorses a subdivision of land that contains tracts of land not divided into building lots, but which land could later trigger the provisions of Section V.H.4.e. herein, the covenant for such subdivision shall note the potential for the provisions of Section V.H.4.e. to apply to a later development.