

Strike Section 12.12.300 in its entirety and replace with the following:

A. Purpose

The purpose of this Section is to promote the development of Affordable Housing in order to improve housing stability for low- and moderate-income households, mitigate the impact of increasing housing costs, and maintain an economically integrated community by promoting diverse affordable housing opportunities throughout Malden.

B. Definitions

For the purposes of this ordinance, the following terms shall have these meanings:

“Affordable Housing Trust Fund”: Malden’s municipal affordable housing trust fund, as defined in Malden Municipal Code 2.16.005

“Affordable Housing Unit”: A residential unit that is restricted by legally permissible instruments such as, but not limited to, deed covenants or restrictions, contractual agreements, or land trust arrangements in its sale, lease, and/or rental to an eligible household as defined in Section H of this ordinance at a price point such that housing and related costs do not exceed thirty percent (30%) of the renting/purchasing household’s gross income.

“Area Median Income (AMI)”: the midpoint of a specific area’s income levels, as determined by the U.S. Department of Housing and Urban Development

“Deed-restriction”: a recorded instrument held by a qualified holder which encumbers or restricts a real property interest for a set number of years, in perpetuity, or as long as legally permissible, for use as a residence occupied by a household at or below a set income threshold and with limitations on sale price or rent, as applicable.

“Developer”: a public, non-profit, or for-profit entity developing a housing project

“EOHLC”: The Massachusetts Executive Office of Housing and Livable Communities, or any successor agency

“OSPCD”: the City of Malden’s Office of Strategic Planning and Community Development, or any successor agency

“SHI”: the subsidized housing inventory published periodically by EOHLC

“Inclusionary Project”: a development which includes only the Affordable Housing Units required by the provisions of this Ordinance.

“Mixed-Income Project”: a development in which fewer than 100% of residential units, but more than the minimum required by this Ordinance, are Affordable Housing Units.

“Affordable Project”: a development in which all residential units are Affordable Housing Units.

C. Applicability –

1. The inclusionary zoning provisions of this Section shall apply to all projects and developments in all zoning districts that result in:
 - a. a net increase of eight (8) or more dwelling units, whether created, in whole or in part, through new construction in one or more buildings, and/or by alteration, extension, reconstruction, structural change or change of use of an existing building or buildings;
 - b. a net increase of eight (8) or more dwelling lots created through any subdivision of land.
2. Projects and developments shall not be segmented or phased in a manner to avoid compliance with the provisions of this Section. These provisions apply to the creation of units over a five-year period.
3. No special permit or site plan review for a development requiring a special permit or site plan review, and no building permit for a use permitted as of right, shall be issued for a development subject unless the applicant complies with the provisions of this Ordinance.
4. The provisions of this Section are intended to supplement other applicable provisions of the City's zoning ordinance, Chapter 12 of the Revised Ordinances of 2020, as Amended, of the City of Malden (the Ordinance), and do not supersede any other provision of the Ordinance unless expressly provided herein.
5. Nursing and convalescent homes are not subject to the provisions of this Ordinance.

D. Demonstration of Compliance

1. **Demonstration of Compliance Required.** An Affordable, Mixed-Income, or Inclusionary project, as defined herein this Ordinance, shall require a demonstration of compliance from the Director of the Office of Strategic Planning and Community Development (OSPCD).
2. **Approval Granting Authority.** The approval granting authority (AGA) for a project subject to this ordinance shall be the Director of OSPCD.
3. **Required Findings.** A demonstration of compliance may be granted only if the AGA finds the proposal complies with the requirements of this Section; and provided that the proposal complies with other applicable provisions of this Ordinance.

E. Mandatory Provision of Affordable Housing Units.

1. Any development subject to this Section shall provide a minimum of ten percent (10% of the total number of dwelling units as Affordable Housing Units, provided that, the total number used for this calculation shall exclude any units allowed under the Incentives provisions of this Section.
2. Affordable Housing Units required by this Section shall be made available to eligible households per the following requirements:
 - a. **Rental.** For projects with rental Affordable Housing Units, all required Affordable Housing Units shall be reserved for households earning income up to sixty percent (60%) of the median income of the Boston-Cambridge-Quincy, MA-NH HUD Metro FMR Area published annually by the U.S. Department of Housing and Urban Development.

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- b. Homeownership. For projects with homeownership Affordable Housing Units, all required Affordable Housing Units shall be reserved for households earning income up to eighty percent (80%) of the median income of the Boston-Cambridge-Quincy, MA-NH HUD Metro FMR Area published annually by the U.S. Department of Housing and Urban Development.
3. Fractional Units. Where the required number of Affordable Housing Units results in a fraction of a unit, the required number shall either be, rounded down to the nearest whole number and the difference shall be realized as a cash payment made to the Affordable Housing Trust Fund equal to the fractional unit multiplied by the current fee in lieu, or rounded up to the nearest whole number.

F. Incentives.

To facilitate the objectives of this Section, a development subject to this Section shall comply with all applicable requirements of the Ordinance, except for requirements stated in the following incentive provisions:

1. Density Bonus.
 - a. For any project subject to this Ordinance, for every required Affordable Housing Unit in a development, the developer may build two (2) additional dwelling units in the development, regardless of the residential density requirement of the Ordinance. In Affordable Projects, all additional dwelling units must also be Affordable Housing Units.
 - b. For an Affordable Project, an additional one (1) story, not to exceed a height of eleven (11) feet, is allowed beyond the number of stories allowed for the given residential use by special permit. The Special Permit Granting Authority is the body granting the special permit for the use.
2. Location.
 - a) The Planning Board may grant a special permit for an Affordable Project use, provided height does not exceed three (3) stories and a height of 35 feet, in any district in the City, excluding Industrial Districts.
3. Parking Adjustment. For developments subject to this Section, off-street parking must be provided in accordance with the below requirements:

Table of Off-street Parking and Loading Regulations

Use	Minimum Number of Parking Spaces	Minimum Number of Loading Bays	Minimum Number of Loading Spaces
Inclusionary Project	1 space per unit	N/A	N/A
Mixed-Income Project	0.75 space per unit	N/A	N/A
Affordable Project	0.75 space per unit	N/A	N/A

G. Development Standards.

A development subject to this Section shall comply with the following Development Standards:

1. Ratio of Rental- to Owner-Occupied Affordable Housing Units. The ratio of rental- to owner-occupied Affordable Housing Units shall be the same as the ratio of rental- to owner-occupied market-rate units;
2. Mix of Affordable Housing Units. The bedroom mix of Affordable Housing Units shall be proportionally equal to the bedroom mix of market-rate units, i.e., studios, one-bedroom, two-bedroom, and/or three-bedroom units, and the unit mix shall be approved by OSPCD prior to permit issuance;
3. Siting of Affordable Housing Units. Affordable Housing Units shall be sited so as not to be in less desirable locations on site than market-rate units, shall be distributed evenly throughout the project, and shall be, on average, no less accessible to building features and public amenities, such as open space, parking, laundry facilities, access/egress, as market-rate units;
4. Design and Construction Standards. Affordable Housing Units shall be comparable in design, appearance, construction, and quality of materials with market-rate units. Interior features and mechanical systems of Affordable Housing Units shall conform to the same specifications as applicable to market-rate units. The comparability of units shall be confirmed by OSPCD and/or Inspectional Services Department (ISD) prior to issuance of Certificate of Occupancy; and
5. Timing of Construction. Affordable Housing Units shall be developed and completed coincident to the development and completion of non-affordable dwelling units.

H. In-Lieu Fee

A developer may make a one-time cash payment to the Affordable Housing Trust Fund in the amount of three hundred seventy-five thousand dollars (\$375,000.00) per required Affordable Housing Unit in lieu of providing the required Affordable Housing Units, contingent on approval by the **Affordable Housing Trust**. The developer must submit a detailed narrative to OSPCD that justifies the need to make an in-lieu payment instead of providing the required Affordable Housing Unit. **The Affordable Housing Trust** may at its sole discretion choose to grant or not grant the request for an in-lieu of payment based on whether or not an in-lieu payment is likelier to advance the City's housing goals than the creation a new affordable unit. The in-lieu fee shall be adjusted for inflation annually based on the change in the Consumer Price Index for All Urban Consumers (CPI-U) Housing Index for the Boston-Cambridge-Newton, MA-NH area or any successor index. The City of Malden shall update and publish the adjusted fee-in-lieu annually.

I. Local Preference

To the maximum extent permitted by law, and subject to approval by EOHLC, a development subject to this Section shall seek to provide a local preference for Malden residents included as part of the lottery and marketing plan for the Affordable Housing Units.

J. Affordability.

A development shall comply with the following regulations:

1. Rental. For rental Affordable Housing Units, payment of housing and related costs (including utility costs for heat, electricity, water, and hot-water, and including access to all amenities that are typically offered to a tenant in the building, such as parking, access to an onsite gymnasium, and other such amenities) shall be set at a level not to exceed thirty percent (30%) of annual gross income for the renting household. Standardized rents for Affordable Housing Units are based on annual information provided by HUD, such as Fair Market Rents or Low and High HOME rents.
2. Homeownership. For homeownership Affordable Housing Units, the maximum sales price for initial purchase and subsequent sales shall be set at a level such that housing related costs (including utility costs for heat, electricity, water, and hot-water, mortgage payments, insurance, real estate taxes, and condominium fees) do not exceed thirty percent (30%) of the purchasing household's annual gross income.
3. Preservation of Affordability. Affordable Housing Units required by and provided under the provisions of this ordinance shall remain affordable to the designated income group in perpetuity, or for as long as legally permissible as dictated by applicable federal, state, local, or quasi-public funding mechanisms. Sales prices, resale prices, initial rents, and rent increases for the Affordable Housing Units shall be restricted by legally permissible instruments such as, but not limited to, deed covenants or restrictions, contractual agreements, or land trust arrangements, to ensure long-term affordability and compliance with this Ordinance.
4. Right of First Refusal. The developer of an affordable homeownership unit developed as a result of this ordinance shall agree to execute a deed rider consistent with model riders prepared by Executive Office of Housing and Livable Communities (EOHLC), granting, among other things, the Affordable Housing Trust Fund, or its assignee, the right of first refusal to purchase the property at the point of original sale or any subsequent resale in the event that a qualified purchaser cannot be located, or in the event of a foreclosure on the property.

K. Administration.

1. Submission Requirements. In addition to any other Submission Requirements of this Ordinance, an applicant shall submit the following to the AGA prior to project approval:
 - a. Narrative that describes compliance with the Development Standards of this Section including the proposed unit mix approved by AGA.
 - b. Narrative that identifies any proposed In-Lieu Fee payment, including the reasons for the request and supporting documentation.
 - c. Lottery Plan for Affordable Housing Units that includes Local Preference, as applicable, required by this Section.
 - d. Marketing Plan for Affordable Housing Units that includes Local Preference, as applicable, required by this Section.
 - i. AGA may allow applicant to execute a Memorandum of Understanding in lieu of submitting the Lottery Plan and Marketing plan at the time of project

submission. Applicant shall submit the above required documents prior to the issuance of a Certificate of Occupancy.

2. Outside Consultants. The AGA may hire and employ an outside consultant to assist the AGA in its review of the application, any study and supporting documentation submitted in conjunction with a petition for a special permit, including conducting a peer review and analysis of any study or documentation, and the fees for the employment of said consultant shall be reasonable and paid to the City by the petitioner or applicant in advance of the consultant services being performed, and in accordance with M.G.L. c. 44, Section 53G.
3. Occupancy Permit. Notwithstanding any other provisions of this Ordinance or local, state or federal law, no occupancy permit for a project subject to this Ordinance shall be issued, in whole or in part, until all Affordable Housing Units are created and the legal instruments that ensure preservation of affordability are recorded, and that unit comparability has been verified.
4. Applicant shall provide the City with required information to submit the application to the EOHLC for inclusion of the Affordable Housing Units on the City's SHI, as applicable, before the issuance of the certificates of occupancy for the Affordable Housing Units.

L. Compliance and Monitoring.

1. Rental. Owners of a development subject to this Section with rental Affordable Housing Units shall be required to submit to the City of Malden an annual statement of rent level, rental income, verification of tenant income, and any other information necessary to confirm compliance with the requirements of this ordinance. Tenants residing in an Affordable Housing Unit must complete an income certification on an annual basis. Income eligibility must be confirmed prior to the execution of a new lease. The owner/developer will be responsible for conducting the income certification, which shall be done consistent with the guidance in HUD Part 5. OSPCD will provide assistance as needed, and will verify each income certification prior to the execution of any new lease.
2. Homeownership. If the owner of a development subject to this Section shall desire to sell, dispose of, or otherwise convey a homeownership Affordable Housing Unit, the owner shall notify the City of Malden prior to listing the property for-sale to ensure compliance with the requirements of this ordinance. Owners of homeownership Affordable Housing Units must verify to OSPCD that the unit is their primary residence on an annual basis.
3. The City of Malden shall have the authority to develop standards and procedures appropriate to and consistent with the compliance and monitoring provisions of this Section. If another public subsidizing agency has monitoring guidelines that take precedent over any requirements set by the City of Malden, the City of Malden may at its sole discretion defer to that agency's requirements.

M. Needs Assessment Review.

The City of Malden, in cooperation with the Affordable Housing Trust Fund, shall undertake a housing market assessment and financial feasibility analysis to determine the suitability and performance of the provisions of this ordinance for potential revision and improvement not less than every five (5) years from the date of enactment of this ordinance. Upon completing its assessment, the City of Malden shall recommend to the City Council any amendments to this ordinance deemed necessary to improve the means of providing Affordable Housing Units in the city.