

PLANNING REPORT & RECOMMENDATION

To: Malden Planning Board
From: Malden City Planner
Date: January 11, 2023
Subject: Amendment of §12.12.300, Title 12, Code of City of Malden (MCC)
Use Regulations for Inclusionary Zoning (CCP 516/2022)

PROCEDURAL: The petition was filed by the City Council (§12.32.050) by sponsor Ward 1 City Councilor Peg Crowe. For full text of amendment, see attached City Council Paper 516/2022.

CURRENT ZONING: The current zoning ordinance for Inclusionary Development (Title 12.12.300, MCC, attached) was ordained on September 21, 2021 (CCP 232/2021).

SUMMARY of PROPOSED AMENDMENT:

- A. **Purpose and Intent:** To encourage the creation of more affordable housing units. The amendment changes the current provision that requires a developer to make a cash payment for the required fractional unit of Affordable Housing and establishes a second option for the developer to provide one additional Affordable Housing Unit for the required fractional unit of Affordable Housing.
- B. **Current zoning and Proposed zoning:** See below for current provision and proposed new provision.

Section 12.12.300.G. Alternative Methods of Compliance.

3. Fractional Units. Where the required number of Affordable Housing Units results in a fraction of a unit, the required number shall **either** be:

- a.** 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 ~~three hundred thousand dollars (\$300,000)~~ **the current fee-in-lieu; or**
- b. rounded up to the nearest whole number.**

Note 1: Per the express language of the ordinance, all provisions of the Inclusionary Zoning ordinance are use regulations and there shall be no variance of any provision (§12.12.300.B.4).

C. Illustrative Example:

Total Dwelling Units in Inclusionary Development: 24

Required Affordable Housing Units: 3.6

Required under current provision: 3 Affordable Housing Units and a cash payment (0.6 x \$300,000).

Required under proposed amendment: 3 Affordable Housing Units and either a cash payment (0.6 x \$300,000) **or** one additional Affordable Housing Unit.

APPLICATION and EXEMPTIONS: The amendments will apply to new construction and new use/occupancy of existing buildings, unless exempt by M.G.L. c. 40A, §6; §12.28.010; the express language of the amendment; or the subject of a building permit or special permit issued before the first publication of notice of the public hearing (December 23, 2022).

The following project is exempt from the proposed amendment, given issuance of a building permit and/or special permit before the date of first publication of hearing notice:

1. 90-92 Salem Street/special permit granted May 11, 2022 (Case 22-07/permit application #CMID 040388-2021); building permit issued December 27, 2022 (permit application # CMID-050385-2022).

Note 2: Per statute, applications for permits in the processing stage when publication occurs are not protected; historically, the City interprets, in consideration of a pending petitioner's good faith reliance on

current regulations, that proposed amendments do not apply to applications filed prior to the first publication of the notice of public hearing (see date above). There are no complete applications in the processing stage.

EFFECTIVE DATE: The effective date of an amendment is the date of the City Council’s vote to ordain the amendment (§12.32.050.F). The Council must act on the amendment within ninety (90) days after the public hearing closes, otherwise, a new duly advertised public hearing must be held (§12.32.050.D); accordingly, if the public hearing closes on January 11, 2023, the final date for action is April 11, 2023.

STANDARD of REVIEW: The Planning Board’s review and recommendation of the proposed zoning changes should be directed by *substantive planning objectives, community need and general welfare.*

The proposed amendment serves to address impacts of the current provision that were not fully understood or contemplated prior to the actual application/administration of the ordinance:

- the current provision does not encourage the creation of additional Affordable Housing Units.
- the current provision does not take into account the creation of additional Affordable Housing Units by proposals that create more than the required number of Affordable Housing Units, including those that will provide as much as 100% Affordable Housing Units.

The amendment is supported by community need to create more affordable housing.

PLANNING RECOMMENDATION: *(Made prior to the public hearing)* That the Planning Board recommends to the City Council:

1. Approval of the proposed amendment of Section 12.12.300.G.



Legislation Details (With Text)

File #: 516-22 **Version:** 1 **Name:**
Type: Ordinance **Status:** In Committee
File created: 12/7/2022 **In control:** Rules & Ordinance Committee
On agenda: 12/13/2022 **Final action:**
Title: Be it hereby Ordained by the Malden City Council that the Code of the City of Malden (MCC) 12.12.300(G)(3) Inclusionary Zoning is hereby amended by striking and including the following language regarding fractional units:
Sponsors: Peg Crowe
Indexes:
Code sections:
Attachments: 1. IZ Fractional Unit Amendment Prop 12.22 rev

Date	Ver.	Action By	Action	Result
12/13/2022	1	City Council		

Be it hereby Ordained by the Malden City Council that the Code of the City of Malden (MCC) 12.12.300(G)(3) Inclusionary Zoning is hereby amended by striking and including the following language regarding fractional units:

Fractional Units. Where the required number of Affordable Housing Units results in a fraction of a unit, the required number shall either be:

- a.** 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 ~~three hundred thousand dollars (\$300,000)~~ the current fee-in-lieu; or
- b.** rounded up to the nearest whole number.

12.12.300 INCLUSIONARY ZONING

A. Purpose.

In accordance with the findings and goals of the Malden Housing Needs Assessment of 2019, Inclusionary Zoning Feasibility Study of 2021, Affordable Housing Trust Fund Action Plan of 2021, and the Malden Master Plan of 2010, the purpose of this Section is to promote the development of permanent Affordable Housing in order to improve housing stability for low- and moderate-income households, mitigate the impacts of new residential development on the availability and cost of housing, and maintain an economically integrated community by promoting diverse affordable housing opportunities throughout Malden.

B. 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; and
 - c. a net increase of eight (8) or more assisted living units in any nursing/convalescent home or other development.
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. 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.
4. All provisions of this Section are use regulations and there shall be no variance of any provision.

C. Special Permit

1. Special Permit Required. An Inclusionary Development, as defined herein this Ordinance, shall require a special permit.
2. Special Permit Granting Authority. The special permit granting authority (SPGA) for an Inclusionary Development shall be the Planning Board; provided that, where a project includes Inclusionary Development and a special permit is also required under other provisions of this Ordinance, the SPGA for the Inclusionary Development shall be the same SPGA as for the other special permit.
3. Required Findings. A special permit may be granted only if the SPGA finds the proposal complies with the requirements of this Section; and provided that the proposal complies with other applicable provisions of this Ordinance.

D. Mandatory Provision of Affordable Housing Units. An Inclusionary Development shall provide a minimum of fifteen (15) percent 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.

E. Incentives. To facilitate the objectives of this Section, an Inclusionary Development shall comply with all applicable dimensional controls and parking requirements of the Ordinance, except for requirements regarding density and number of parking spaces and only as stated in the following incentive provisions:

1. Density Bonus. For every required Affordable Housing Unit in an Inclusionary Development, the developer may build one (1) additional dwelling unit in the development, regardless of the density requirement of the Ordinance for the additional unit or units. Except for the density requirement, all other

dimensional controls of this Ordinance shall apply to an Inclusionary Development.

2. **Parking Adjustment.** For any Affordable Housing Units in an Inclusionary Development, the minimum number of on-site parking spaces shall be one (1) parking space per unit.

F. **Development Standards.** An Inclusionary Development 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 within the Inclusionary Development 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 within the Inclusionary Development shall be proportionally equal to the bedroom mix of market-rate units, i.e., studios, one-bedroom, two-bedroom, and/or three-bedroom units;
3. **Siting of Affordable Housing Units.** Affordable Housing Units shall be sited within the Inclusionary Development so as not to be in less desirable locations 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 within an Inclusionary Development shall be compatible 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; and
5. **Timing of Construction.** Affordable Housing Units within the Inclusionary Development shall be developed and completed coincident to the development and completion of market-rate units.

G. **Alternative Methods of Compliance.**

1. **Off-Site Location.** It is intended that Affordable Housing Units be included on the project site of an Inclusionary Development, however, the SPGA may approve of the provision of Affordable Housing Units in an off-site location in order to meet the requirements of this Section, only in conformance with the following requirements:
 - a. Affordable Housing Units shall comply with all requirements of this Section including all Development Standards;
 - b. Affordable Housing Units shall be located in the same neighborhood as the Inclusionary Development; and
 - c. The SPGA must find that the provision of off-site units is in the interest of the common good and does not conflict with the intent of this Section or any other provisions of this Ordinance.
2. **In-Lieu Payment.** A developer may make a one-time cash payment to the Affordable Housing Trust Fund of three hundred thousand dollars (\$300,000) per required Affordable Housing Unit in lieu of providing the required Affordable Housing Units. This 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 beginning on July 1, 2022.
3. **Fractional Units.** Where the required number of Affordable Housing Units results in a fraction of a unit, the required number shall 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 three hundred thousand dollars (\$300,000).
4. **Conveyance of Land and/or Buildings.** The conveyance of land and/or buildings in lieu of providing Affordable Housing Units shall not be accepted as an alternative form of compliance.

H. **Household Eligibility.** An Inclusionary Development shall comply with the following regulations:

1. **Rental.** For Inclusionary Developments with rental Affordable Housing Units, all required Affordable Housing Units shall be reserved for households earning income up to fifty percent (50%) 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. Additional Affordable Housing Units beyond the required fifteen percent (15%) shall be reserved for households earning 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.

2. Homeownership. For Inclusionary Developments with homeownership Affordable Housing Units, all required Affordable Housing Units shall be reserved for households earning income of fifty-one percent (51%) 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. Additional Affordable Housing Units beyond the required fifteen percent (15%) shall be reserved for households earning up to one hundred percent (100%) 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. Local Preference. To the maximum extent permitted by law, including the regulations of the Department of Housing and Community Development or any successor agency, any special permit granted hereunder shall include a condition that a preference for Malden residents shall be included as part of the lottery and marketing plan for the Affordable Housing Units.

I. Affordability. An Inclusionary Development shall comply with the following regulations:

1. Rental. For 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.

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. 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 Department of Housing and Community Development, granting, among other things, the Affordable Housing Trust Fund's 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.

J. Administration.

1. Submission requirements. In addition to any other Submission Requirements of this Ordinance or the SPGA, an applicant for an Inclusionary Development shall submit the following with its application for a special permit:

- a. Narrative that describes compliance with the Development Standards of this Section.
- b. Narrative that identifies any proposed Alternative Methods of Compliance, including the reasons for the request and supporting documentation.
- c. Lottery Plan for Affordable Units that includes Local Preference required by this Section.
- d. Marketing Plan for Affordable Units that includes Local Preference required by this Section.
- e. Draft legal instruments that describe Preservation of Affordability required by this Section.

2. Outside Consultants. The SPGA may hire and employ an outside consultant to assist the SPGA 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 an Inclusionary Development shall be issued, in whole or in part, until all Affordable Units are created and the legal instruments that ensure Preservation of Affordability are recorded.

4. The developer/owner of an Inclusionary Development shall provide the City with required information to submit the application to the DHCD for inclusion of the Affordable Housing Units on the City's SHI before the issuance of the certificates of occupancy for the Affordable Housing Units.

K. Relationship to SHI. The Affordable Housing Units shall qualify as local action units in compliance with the provisions of 760 CMR for inclusion on the Subsidized Housing Inventory (SHI) or any successor inventory. Failure to gain approval to maintain compliance with the criteria for inclusion on the SHI, or removal of an Affordable Housing Unit from the SHI for any reason, shall be deemed to be noncompliance with this Ordinance.

L. Compliance and Monitoring.

1. Rental. Developers/owners of Inclusionary Developments 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.

2. Homeownership. If the owner 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.

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.

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.

12.32.060 Definitions.

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.

Inclusionary Development. A project or development that results in a net increase of eight (8) or more dwelling units, whether created, in whole or in part, through new construction or by alteration, extension, reconstruction, structural change or change of use of an existing building.

HISTORY

Amended by Ord. [232-21](#) Add Section 12.12.300 Inclusionary Zoning on 9/21/2021