



City of Malden

Massachusetts

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MALDEN, MASS.

August 12, 2021

The Honorable Malden City Council
Malden City Hall
215 Pleasant Street
Malden, MA 02148

**Re: Section 12.12, Chapter 12, Rev. Ordinances of 2020, as Amended
Inclusionary Zoning, Use Regulations
City Council Paper #232/2021**

Dear Councilors:

On August 11, 2021, the Planning Board and City Council Ordinance Committee jointly held a public hearing regarding the above-referenced proposed amendments.

As a result of the public hearing, on August 11, 2021, all nine members of the Planning Board present voted unanimously to recommend to the City Council approval of the proposed amendments as submitted.

The minutes of the joint public hearing will be made available at your request. For your reference, attached please find the Planning Report & Recommendation dated August 11, 2021.

Finally, please be advised, that, if the City Council fails to act on the amendments within ninety (90) days of the date the public hearing closed, a new duly advertised public hearing must be held. Accordingly, the final date for action is November 9, 2021.

I am available to discuss and answer any questions regarding the amendments and the Planning Board's recommendations. Please do not hesitate to contact me. Thank you.

Sincerely,

Michelle A. Romero
City Planner

Attachment
CC: Greg Lucey, City Clerk
Kathryn Fallon, City Solicitor
Mayor Gary Christenson

PLANNING REPORT & RECOMMENDATION

To: Malden Planning Board
From: Malden City Planner
Date: August 11, 2021
Subject: Amendments of Ch.12, Rev. Ord. of 2020 (Section numbers herein reference this Ordinance)
 Inclusionary Zoning, Use Regulations, §12.12 (CCP 232/2021)

PROCEDURAL: The petition was made by the City Council (§12.32.050), filed by sponsors Councilors-at-Large Craig Spadafora, Steve Winslow, and Ward Councilor Peg Crowe, Ward 3 Councilor Linehan, Ward 4 Councilor Ryan O'Malley and Ward 6 Councilor David Camell. (For full text of amendments, see attached City Council Paper 232/2021 and accompanying correspondence from Mayor Christenson to City Council dated May 11, 2021).

Note 1: The proposal was submitted to the City Council by Mayor Christenson on May 11, 2021 for review and discussion purposes; following discussion on June 15, 2021, the City Council Ordinance Committee recommended the proposal be filed and referred for joint public hearing (see CCP 320/2021 for Committee report of June 22, 2021); and the petition was filed on June 29, 2021 and referred for joint public hearing.

PROPOSED AMENDMENTS: (summary/highlights of provisions):

1. Applicability.
 - a) All zoning districts.
 - b) Developments that result in net increase of eight (8) or more dwelling units, dwelling lots or assisted living units (= "Inclusionary Development.")
 - c) The provisions are considered use regulations and use variances are expressly prohibited.
2. Special permit: required for Inclusionary Developments.
3. Special Permit Granting Authority (SPGA): Planning Board; or other SPGA (for other/underlying special permit).
4. Mandatory Provision of Affordable Housing Units: 15% of total.
5. Affordable Housing Unit:
 - a) restricted by legal instrument to sale/rental to an "eligible household."
 - b) "price point" for housing and related costs may not exceed 30% of household's gross income.
6. Household Eligibility:

a)

Type	Affordable Unit	Household Income Level
Rented	Required (15%)	<50% area median income
Rented	Additional (beyond required 15%)	<80% area median income
Owned	Required (15%)	51% -80% area median income
Owned	Additional (beyond required 15%)	<100% area median income

b) Local preference: lottery and marketing plan must include a preference for Malden residents.

7. Incentives:
 - a) Density Bonus. One additional dwelling unit per every required Affordable Housing Unit (regardless of density requirements).
 - b) Parking adjustment. One parking space/Affordable Housing Unit (regardless of number of bedrooms).
 - c) Applicable at applicant's choice/request.

8. **Development Standards:** Affordable Housing Units must be treated the same as market-rate units re: rental-ownership ratio, mix, siting, design and construction standards, timing of construction.
9. **Alternative Methods of Compliance:**
 - a) Offsite location: required Affordable Housing Units may be located in the same neighborhood (subject to SPGA approval)
 - b) Payment in Lieu to Affordable Housing Trust Fund: \$300,000 cash payment per required Affordable Housing Unit (developer's option/choice, no approval required).
10. **Administration:**
 - a) When filing the application, applicant/petitioner is required to submit documentation to show compliance with all requirements.
 - b) SPGA may employ an outside consultant to assist in its review of application and supporting documentation; consultant fee is paid by applicant/petitioner.
11. **Compliance and Monitoring:** The City may develop standards and procedures to do this.
12. **Needs Assessment Review:** To determine suitability and performance of this ordinance
 - a) To be done by the City of Malden and the Affordable Housing Trust Fund.
 - b) Consists of housing market assessment and financial feasibility analysis.
 - c) To be done not less than every 5 years (from date of enactment of ordinance)
 - d) Recommend amendments to the City Council.

CURRENT ZONING and History. The current zoning ordinance does not require the provision of affordable housing units. Affordable housing/Inclusionary zoning ordinances were previously proposed and considered in 2002 and 2016, but not ordained (CCP 31/2002 and CCP 335/2016).

Note 2: Previous proposals required 20% affordable housing units in developments of five or more units (CCP 335/2016) and 15% affordable housing units in developments of 10 or more units (CCP 31/2002).

BACKGROUND INFORMATION:

Affordable Housing Stock. According to the state Department of Housing and Community Development current Chapter 40B Subsidized Housing Inventory record, 10.2% of the housing units in Malden are Affordable, which exceeds the statutory threshold (M.G.L. c. 40B). This is based on the 2010 U.S. Census data and is determinative at this time.

2020 U.S. Census data for cities and towns is expected to be released in May 2022.

General Land Area Minimum Calculation. According to the analysis conducted in 2019 by the Metropolitan Area Planning Council (MAPC), Malden's ratio is 3.13%, which exceeds the statutory threshold (1.5%) required to assert "safe harbor" (M.G.L. c.40B).

Malden Housing Needs Assessment (2019). A housing needs assessment was undertaken by the City to understand the City's housing stock, supply and needs. According to the Assessment completed by the MAPC, Malden has "significant current unmet housing needs;" many Malden residents are "housing cost-burdened" (=paying more than 30% of their incomes on housing); 56% of Malden households are low-income and 67% of those are housing cost-burdened; housing demand and housing costs are expected to increase.

Inclusionary Zoning Feasibility Study (2021). A financial feasibility study was undertaken by the City to analyze the impacts of an inclusionary zoning ordinance on new development. According to the Study prepared by Levine Planning Strategies, LLC with Colliers International, the Malden housing market can sustain a "reasonable inclusionary zoning requirement;" and the proposed ordinance (CCP 232/2021) incorporates the requirements of one of three options recommended by the Study.

Affordable Housing Trust Fund (§3.08.030, Ch. 3, Revised Ordinances of 2020): Established in 2019, the Fund is funded through the Expendable Trust Fund (CCP 321/2019); may be funded by other sources, such as Community Preservation Act (CPA) and development mitigation fees; and would be funded from Payments In-Lieu made under the proposed ordinance (Alternative Methods of Compliance, §12.12.200.G.2-30)

Affordable Housing Trust Fund Board of Trustees (§2.16.005, Ch. 2, Revised Ordinances of 2020): Established in 2019, the Board administers the Affordable Housing Trust Fund to create and preserve affordable housing and pursue other strategies to support the City's affordable housing goals (CCP 320/2019).

Affordable Housing Trust Fund Action Plan (2021). The Plan identifies goals re: Malden's housing affordability needs; describes priority initiatives in the areas of funding, advocacy and capacity building; and contains a five-year Action Plan that includes an implementation schedule and budget.

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 and §12.28.010; the express language of the amendment; the subject of a building permit or special permit issued before the first publication of notice of the public hearing (July 23, 2021); or land part of an approved and endorsed Approval Not Required or Definitive subdivision plan.

The following projects are exempt from the proposed amendments, given issuance of a special permit before the first publication of hearing notice:

1. 54 Eastern Avenue. 14 units (Special Permit Case #20-16, granted December 9, 2020).
2. 368 Pleasant Street. 30 units (Special Permit Case #20-01, granted January 8, 2020)

Note 3: Per state statute, applications for permits that are in the processing stage when publication occurs are not protected; historically, the City interprets, in consideration of any pending petitioner's good faith reliance on current regulations, that proposed amendments do not apply to applications filed prior to the first publication of notice of public hearing (July 23, 2021). There are no applications in the processing stage.

Note 4: The effective date is the date of City Council's vote to ordain the amendment (§12.32.050.F).

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 amendments are consistent with the findings, goals and recommendations identified in the following various plans:

1. Malden Vision (2008).
2. Malden Master Plan (2010).
3. Malden Housing Needs Assessment (2019).
4. Inclusionary Zoning Feasibility Study (2021).
5. Affordable Housing Trust Fund Action Plan (2021).

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

1. Approval of the amendments in City Council Paper 232/2021 as submitted.



www.cityofmalden.org

Gary Christenson, Mayor

May 11, 2021

Malden City Council
Attn: Neal Anderson, President
215 Pleasant Street
Malden, MA 02148

Dear President Anderson:

I am pleased to present to you our proposal for Malden's first inclusionary zoning ordinance. This is the culmination of two years of exhaustive investigations, conversations with community members and experts, and numerous iterations.

Inclusionary zoning will require a percentage of housing units in new residential developments to be set aside as below-market affordable housing. We knew from the outset that if this were to work in Malden, it needed to be designed with Malden's housing market and housing needs in mind. To achieve that, we hired Levine Planning Strategies and Colliers International to conduct a feasibility study, which was funded by contributions from the City, Malden Redevelopment Authority, Malden Housing Authority, and a grant from East Boston Savings Bank. We formed an advisory group to meet regularly with the consultants, made up of City and MRA staff, City Councillors, and the Affordable Housing Trust Fund Board members.

The study included a thorough review of Malden's housing needs, a market analysis, interviews with market-rate and affordable housing developers and owners, and a financial model to test the impacts of inclusionary requirements on prototypical developments. Our goal was to develop a policy that would maximize the potential for new affordable units without preventing new construction altogether. After numerous iterations, the advisory group settled on three alternatives, which were presented to the Affordable Housing Trust Fund on January 20. The Trust voted unanimously to endorse Alternative 2, which is the basis of the proposal that you will see tonight.

We expect the Council will want to have a comprehensive discussion on the details of this proposal. Tonight, Evan Spetrini, MRA Senior Planner, will present an overview of the

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Strong Past... Proud Future

City of Malden, MA

May 11, 2021

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proposed ordinance and Jeff Levine of Levine Planning Strategies will be available to attend Ordinance Committee meetings to give an overview of the study, which is now published on the City's website. We are submitting this draft for discussion purposes only to allow the Council time to thoroughly review and deliberate before moving through the rest of the process.

Adopting an inclusionary zoning ordinance is a huge step forward for Malden. It will ensure that new development will provide affordable housing opportunities for all residents. We have a lot more work to do, but this ordinance is a crucial piece of our efforts to make long-term investments that will preserve our community and protect our neighbors. Thank you for your consideration and I look forward to working together to move this legislation forward.

Sincerely,



GARY CHRISTENSON
Mayor, City of Malden

12.12.200 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 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.