

**AN ORDINANCE AMENDING THE  
ZONING ORDINANCE OF THE CITY OF PEABODY**

**BE IT ORDAINED** by the City Council of the City of Peabody, that the Zoning Ordinance of the City of Peabody, entitled “Peabody Zoning Ordinance -1978” adopted on June 27, 1978, as heretofore amended, is further amended as follows:

**SECTION ONE:**

1. In Section 2 “DEFINITIONS” by inserting the following terms with their definitions in proper alphabetical order:

*Affordable Unit:* Shall mean any dwelling unit for which the rent (including utilities) does not exceed thirty (30) percent of the income of an Eligible household or for which the mortgage payment (including insurance, utilities, real estate taxes, and condominium or homeownership fees) does not exceed thirty (30) percent of the income of an Eligible household. Monthly rents of affordable rental units and initial purchase prices and resale prices of affordable ownership units shall meet the requirements of the Massachusetts Department of Housing and Community Development regulations governing the Local Initiative Program, 760, CMR 45, or other standards that have been established pursuant to any city, state or federal housing program designed to assist low and moderate income households and approved by the City of Peabody Department of Community Development and Planning.

*Eligible Household:* shall mean any household whose income does not exceed eighty (80%) of the median income of households in the Boston Standard Metropolitan Statistical Area adjusted for household size and that meet the income and asset limits established by the Massachusetts Department of Housing and Community Development regulations governing the Local Initiative Program, 760 CMR 45.

**SECTION TWO:** By inserting a new Section 4.11 as follows:

**4.11 INCLUSIONARY ZONING REQUIREMENTS**

**4.11.1 Purpose**

The City of Peabody declares that the provision of a decent home and a suitable living environment for all is a community priority of the highest order; and that this priority is consistent with state, regional and national policies. The purpose of this Ordinance is to enhance the public welfare through increasing the production of housing affordable to eligible households. In order to encourage utilization of the City's land in a manner consistent with local housing policies and needs, the City requires new, converted or renovated housing developments to include a proportion of housing units that shall be affordable to persons of low and moderate income. Accordingly, the provisions of this Ordinance are designed to: (1) increase the supply of rental and ownership housing in the

City of Peabody that is available to and affordable to low and moderate income households; (2) exceed the 10% affordable housing threshold established by the Commonwealth in M.G.L. Chapter 40B, Section 20; (3) encourage a greater diversity and distribution of housing to meet the needs of families and individuals of all income levels.

#### **4.11.2 Applicability**

- (1) *General.* The provisions of this Ordinance shall apply in zoning districts R2, R3, R4, R5, BN, MPRD, DDD, PRD, and BC to all residential developments that involve the creation of eight (8) or more housing units, whether rental or ownership, and shall apply to zoning districts R1, R1A, and R1B that involve the creation of fifteen (15) or more housing units.
- (2) *Types of developments.* This Ordinance shall apply to new housing units created by: new construction; renovation or reconstruction of an existing building that increases the number of residential units from the number of units in the original structure; or conversion of an existing building or other structure
- (3) *Segmentation.* Developments may not be segmented or phased to avoid compliance with these provisions.

#### **4.11.3 Requirements for Provision of Affordable Units.**

- (1) *Number of units to be provided:* All developments including a residential component which are subject to this Ordinance shall be required to set aside a minimum of fifteen percent (15%) of the total number of dwelling units as Affordable Units that shall be made available for rent or sale to Eligible Households. Each Affordable Unit shall meet the standards established in Section 4.11.5.
- (2) *Fractions:* If when applying the percentage to the total number of units to determine the number of affordable units, the resulting number of affordable units includes a fraction of a unit, this fraction, if over one-half (1/2), shall be rounded up to the next whole number. If the resulting number of affordable units includes a fraction of a unit equal to or less than one-half, the fraction shall be rounded down to the next whole number.
- (3) *Sale, lease or rental of Affordable Units:* Affordable Units shall be set aside for sale or rental to Eligible Households and shall be restricted for occupancy by Eligible Households set forth in this ordinance.
- (4) *Relationship to the affordable housing inventory.* All Affordable Units created to fulfill the requirements of this Ordinance must qualify as “Local Initiative Units” in compliance with the provisions of the Local Initiative Program (LIP) regulations, 760 CMR 45.00 and Local Initiative Program Guidelines, as promulgated and amended by the Commonwealth of Massachusetts Department of Housing and Community Development or other criteria as may be designated in the inclusionary zoning guidelines as approved by the City Council.

- (5) *Relationships to other organizations.* Subject to the approval of the City Council and the applicable subsidizing agency, developers may elect to work with a local nonprofit housing provider, such as the Peabody Housing Authority, to distribute, maintain or operate the units in accordance with the requirements and intent of this Section 4.11.
- (6) *Duration of affordability:* Affordable Units shall be subject to restrictions that to the extent legally possible shall preserve the permanent affordability (in perpetuity) of the units as defined by this ordinance, but in no case shall be fewer than thirty (30) years. Affordable Units purchased or rented by Eligible Households shall be subject to a deed rider that is approved as to form by the Department of Community Development and Planning and resale prices shall be calculated in accordance with the methodology set forth in the approved deed rider.
- (7) *Sales Prices:* Initial purchase prices and resale prices of Affordable Ownership Units shall be established so that households are not required to spend more than thirty percent (30%) of the income of a household earning eighty percent (80%) of area median income, with a ten percent (10%) window adjustment, for annual debt service on a mortgage (at 30 year fixed-interest rates at the time of initial sale), taxes, insurance, and condominium or homeowners fees with no more than a 5 percent down payment, including any required entrance deposit.
- (8) *Rental Costs:* Payment of housing and related costs for Affordable Rental Units shall be established so that households are not required to spend more than thirty percent (30%) of the income of a household earning eighty percent (80%) of area median income, with a ten percent (10%) window adjustment, for monthly rent and utilities (excluding cable and telephone service). Affordable Rents shall not exceed the current Fair Market Rents set by the U. S. Department of Housing and Urban Development.
- (9) *Marketing Plan:* Affordable Units must be rented or sold using marketing and selection guidelines approved by the Department of Community Development and Planning.
- (10) *Preference for City residents and persons employed within the City:* Unless otherwise prohibited by a federal or state agency under a financing or other subsidy program, not less than seventy percent (70%) of the affordable units shall be initially offered to (a) individuals whose primary residence is in the City of Peabody, (b) to households that include an individual who attended Peabody public schools, (c) to municipal employees of Peabody employed at least thirty (30) hours per week, and (d) to persons employed at least thirty (30) hours per week within the City of Peabody, or in accordance with the inclusionary zoning guidelines as approved by the City Council.

#### **4.11.4 Development standards for Affordable Units.**

- (1) *Location of affordable units.* In developments consisting of one structure, affordable units shall be evenly distributed between stories and no affordable units shall be abutting. In developments consisting of more than one structure, affordable units shall be distributed evenly between buildings and stories to ensure that the affordable units are not all located in one building, and that each building must contain 15% affordability.
- (2) *Comparability.* Affordable Units shall be generally comparable in size and materials to the market rate units in a development and consistent with local needs for affordable housing. Rental or ownership of affordable units shall proportionally mirror the project as a whole and Affordable Units should be sold if a majority of the units in a development are offered for sale.
- (3) *Unit size.* Except as otherwise authorized by the Department of Community Development, affordable units shall contain one or more bedrooms. The bedroom mix among the affordable units shall be proportionate to that of the development as a whole.
- (4) *Rights and privileges.* The owners or renters of affordable units shall have all rights, privileges and responsibilities accorded to market-rate owners or renters, including access to all non-fee amenities within the development.

#### **4.11.5 Incentives**

To facilitate the objectives of this Ordinance, modifications to the dimensional or parking requirements in the applicable zoning district shall be permitted for projects subject to the requirements of this Ordinance. The modifications shall be permitted as set forth below. The following incentives are available only for projects in which the affordable units are provided on-site or off-site.

- (1) *In any R1, R1A, R1B, R2, R3, R4, R5, BN, MPRD, PRD, DDD or BC district:*  
Applicable application fees or building permit fees imposed by the City in connection with all Affordable Units shall be waived.
- (2) *In any R1, R1A, R1B, R2, R3, R4, R5, BN, MPRD, PRD, DDD, or BC district:*  
A minimum of 2.0 parking spaces per housing unit, inclusive of visitor parking, shall be provided.
- (3) In addition, the affordable units shall be exempted in calculations pertaining to lot coverage, floor area ratio, and minimum lot area and size and any other area calculations.

#### **4.11.6 Alternative Methods of Affordability**

- (1) Section 4.11 mandates that affordable units shall be provided onsite. However, in certain exceptional circumstances the City Council may, at the formal written request of the applicant, consider an alternative method of compliance. In granting such authorization, the City Council shall consider the location of the development, access to transportation, the type and character of the units proposed, and (if

applicable) the number, quality and type of units off-site affordable units proposed. The Council must find that the applicant has demonstrated that such alternate method of compliance is in the best interests of the City. To have such a request considered, the burden of proof shall be on the applicant, who must make full disclosure to the City Council of all relevant information. Approval of alternate methods of compliance shall be only for the methods described below in Section 4.11.6 paragraphs (2).

Except as set forth below, affordable units provided through an alternate method shall comply in all other respects with the requirements of this Ordinance. The incentives described in Section 4.11.6 are not available to applicants who request to provide a cash payment in lieu of units if such request is approved by the City Council.

(2) The following alternative methods of compliance, may be considered by the City Council:

- *Off-site Location.* With authorization by the City Council as described above, affordable units may be constructed by the developer on an alternate site. The alternate site must be suitable for residential development and must be within the City of Peabody; the project must add to the City's stock of affordable housing units, and must be in the best interests of the City of Peabody. If off-site Affordable Units are not comparable to the market-rate units, a greater percentage of affordability shall be required.
- *Cash Contribution.* With authorization by the City Council as described above, applicants may make a cash payment to the City to be used for the purposes of providing Affordable Units to Eligible Households as defined by this Ordinance. Prior to the issuance of a final occupancy permit for any portion of the project the contribution shall be payable in full, or a written agreement for payment approved by a majority of the City Council must be recorded. In order to assist in their review, the City Council may, by majority vote, require that the applicant pay a reasonable review fee for the employment of outside consultants chosen by the Council. All written results and reports are made part of the record before the Board.

For rental and ownership developments, the financial contribution for each affordable unit shall be comparable to the difference between the value of an affordable ownership unit required under this Ordinance and the fair market value of a typical newly constructed ownership unit free of any affordability restrictions based on neighborhood market conditions. A downtown neighborhood will be delineated as distinct from the remainder of the City. This neighborhood is shown in exhibit A. This financial value shall be established and published by the City Council in the Inclusionary Zoning Guidelines as described in Section 4.11.7 (1) of this Ordinance.

- (3) Administration of funds. Funds donated to the City in accordance with the provisions outlined in M.G.L., Chapter 44, Section 53A, shall be restricted solely for the creation of affordable housing located in the City of Peabody as defined by this ordinance, and for the administration of this Ordinance. The funds shall be kept in a separate account by the City Treasurer. The City Treasurer shall deposit the funds in a bank or invest the same in securities as are legal under the law of the Commonwealth of Massachusetts. Any interest earned shall be credited to and become part of the fund. Any moneys conveyed to the City in accordance with this Section 4.11.6, Paragraphs 2 and 3, shall be expended only with approval of the majority of the City Council.

#### **4.11.7 Administration**

- (1) *Inclusionary Zoning Guidelines.* The City Council shall adopt Inclusionary Zoning Guidelines for the implementation and administration of this Ordinance. The Guidelines shall be reviewed and updated as needed by the City Council.
- (2) *Affordable Housing Application and Site Plan/ Building Permit Review:* As part of the regular Site Plan or Building Permit Plan Review, the applicant shall submit to the Planning Board an Affordable Housing Plan. The Application shall indicate the number of units in the project and the number of Affordable Units required broken down by bedroom and square footage. The Application shall also include a building permit plan indicating the proposed location of the affordable units. The Planning Board shall forward the Affordable Housing Plan to the Construction Review Committee for review.
- (3) *Construction Review Committee:* At its next regularly scheduled meeting or within 30 days of submittal to the Planning Board, the Construction Review Committee shall review the Affordable Housing Plan to confirm that the intent of the Inclusionary Zoning Ordinance, in terms of the physical design and location of the Affordable Units, is being carried out. The Committee shall recommend to the Planning Board whether compliance with Inclusionary Zoning has been demonstrated. A copy of the application and recommendation shall be forwarded to the City Council as well.
- (4) *Planning Board Approval:* Upon receipt of the recommendation by the Construction Review Committee, and as part of the Site Plan or Building Permit Plan review, the Planning Board shall review whether the intent of Inclusionary Zoning Ordinance has been carried out by the Applicant. If the Planning Board deems that it has, it shall recommend approval of the Affordable Housing Application as part of Site Plan or Building Permit Plan approval.
- (5) *City Council Approval:* At its next regularly scheduled meeting, or within 30 days of receipt of a recommendation from Planning Board, the City Council shall review the Affordable Housing Plan and draft Participation Agreement for final approval. Within 30 days of receiving a recommendation from the Planning Board, the City Council shall certify in writing to the applicant whether or not the Affordable Housing Application has been approved. An extension may be requested by the applicant or the City Council. Approval of the Affordable Housing Application

shall not be unreasonably withheld and any extension period shall not exceed an additional 30 day period.

- (6) *Participation Agreement:* After the Affordable Housing Plan has been approved by the City Council, a City/Developer Participation Agreement incorporating the approved Affordable Housing Plan shall be executed by the applicant, signed by the Mayor and recorded at the Essex County Registry of Deeds. The Agreement becomes an explicit acknowledgement of the affordability requirements and shall refer to the scope of the project, including the terms of affordability, as described by the Affordable Housing Plan approved by the City Council. The Agreement shall stipulate that an Affordable Housing Declaration of Restrictions shall be recorded with the deed and referenced with the deed prior to the occupancy of the project. The City/Developer Participation Agreement shall be legally binding as part of the building permit issued for construction. No building permit for the project shall be issued prior to the execution of the City/Developer Participation Agreement.

#### **4.11.8 Enforcement**

- (1) *Legal restrictions.* Affordable units shall be rented or sold subject to deed covenants, contractual agreements, and/or other mechanisms restricting the use and occupancy, rent levels and sales prices of such units to assure their affordability. All restrictive instruments shall be subject to review and approval by the Department of Community Development. All condominium documents and fees shall be subject to review and approval by the Department of Community Development and the City Solicitor.
- (2) *Timing of commitments.* All contractual agreements with the City and other documents necessary to ensure compliance with this Ordinance shall be executed prior to and as a condition of the issuance of any approval required to commence construction.
- (3) *Timing of construction.* As a condition of the issuance of approval under this Ordinance, the Department of Community Development may set a time schedule for the construction of on-site affordable units. If the City Council approves an alternative method of compliance with this Ordinance, the Council may set a time schedule for the construction of off-site affordable units.

#### **4.11.9 Needs Assessment Review**

The City Council, in cooperation with the Department of Community Development and Planning, and relevant agencies, shall undertake an economic and housing market needs assessment not less than every fifth calendar year from the date of enactment of this Ordinance. The purposes of said assessment shall be to assess the performance of the provisions herein in terms of resultant affordable housing units, to assess any need for improved rules and regulations regarding implementation, and to ascertain the need for revision of any provisions of this Ordinance relative to the provision of affordable housing units in the City. Provisions subject to review shall

include, at a minimum: revisions of the applicability requirements of this Ordinance, revisions to percentage requirements of affordable units in inclusionary zoning developments, revisions to income and affordability guidelines, and revisions to methodologies for alternative methods of compliance.

**4.11.10 Severability**

In case any paragraph or part of this Ordinance should be for any reason declared invalid or unconstitutional by any court of last resort, every other paragraph or part shall continue in full force and effect.

**4.11.11 Reserved**