

SECTION V-J INCLUSIONARY AFFORDABLE HOUSING REQUIREMENTS

V-J.1 Purpose and Intent

In addition to the purpose and intent set forth in Section 100 and Section 108 of the Natick Zoning Bylaw, the purpose of this bylaw is to encourage development of new housing that is affordable to eligible households. At minimum, affordable housing produced through this regulation should be in compliance with the requirements set forth in G.L. c. 40B sect. 20-23 and 760 CMR 56 or other affordable housing programs developed by federal, state, county and local governments so that the affordable dwelling units that result from this bylaw can be considered as Local Initiative Units, in compliance with the requirements for the same as specified by the Commonwealth's Department of Housing and Community Development (DHCD).

V-J.2 Applicability of Mandatory Provision of Affordable Units

A. Pursuant to G.L. Chapter 40A, sect. 9, the inclusionary affordable housing requirements of this section for the mandatory provision of affordable units shall apply to the following:

1. Any Residential Project, including Phased or Segmented Housing Developments, that results in a net increase of two (2) or more dwelling units, whether by new construction or by the alteration, expansion, reconstruction, or change of existing residential or non-residential space; and
2. Any Residential Project involving subdivision of land for development of two (2) or more dwelling units under an IHSP; and
3. Any Residential Project that includes two (2) or more assisted living units and accompanying services, unless a determination has been made satisfactory to the SPGA that such living units do not affect the Town's Statutory Minima or the Town's Computation of Statutory Minima as defined and/or set forth in 760 CMR 56 as maintained by the Massachusetts Department of Housing and Community Development (DHCD).

V-J.3 Special Permit

The development of any Residential Project set forth in Section V-J.2 shall require the grant of an Inclusionary Housing Special Permit (IHSP) from the Planning Board as the Special Permit Granting Authority (SPGA). If the development of a Residential Project is allowed As-of-Right, the Applicant may elect to develop said Project under an IHSP according to the provisions of Section V-J.4.B. A Special Permit may be granted if the proposal meets the requirements of this bylaw and Section VI-DD.2.A.

Since it is the intent of this bylaw to prohibit the subdivision of land or phasing of development to avoid the requirements of this section, it shall be presumed that land held in common ownership at the time this bylaw is approved shall be included for the purposes of calculating the number of affordable units to be provided. It shall also be presumed that phased developments of land held in common ownership shall be considered in its totality rather than as separate projects. These presumptions are rebuttable only upon credible evidence to the contrary. Further, if the SPGA determines that an applicant has established

surrogate or subsidiary entities to avoid the requirements of this Section, a special permit shall be denied.

V-J.4 Mandatory Provision of Affordable Units

- A. As a condition of approval for a Special Permit, the Applicant shall contribute to the local stock of affordable units in accordance with the following requirements and as illustrated in Table V-J.4:
1. At least fifteen (15) percent of the units in a Residential Project on a division of land or multiple unit development subject to this bylaw, rounded up to the nearest whole number and exclusive of additional dwellings allowed under Section V-J.4.B, shall be established as affordable dwelling units in any one or combination of methods provided for below:
 - a) constructed or rehabilitated on the locus subject to the Inclusionary Housing Special Permit (IHSP) (see Section V-J.5) in Residential Projects with six (6) or more net new dwelling units; or
 - b) constructed or rehabilitated on a locus different than the one subject to the IHSP (see Section V-J.6) in Residential Projects with six (6) or more net new dwelling units; or
 - c) an equivalent fee-in-lieu of units may be made (see Section V-J.7); or
 - d) An applicant may offer, and the SPGA may accept, provision of buildable land in fee simple, on or off-site, that the SPGA in its sole discretion determines is suitable for the construction of affordable dwelling units.
 2. At least twenty (20) percent of the units in a Residential Project on a division of land or multiple unit development with thirty (30) or more units in the Downtown Mixed Use district subject to this bylaw, rounded up to the nearest whole number and exclusive of additional dwellings allowed under Section V-J.4.B, shall be established as affordable dwelling units in any one or combination of methods provided for above in V-J.4.A.1.
 3. As a condition of approval for an Inclusionary Housing Special Permit, the SPGA may specify to an Applicant the combination of requirements described in Section V-J.4.A.1 to be used to satisfy compliance with the mandatory provision of affordable units. The applicant may offer, and the SPGA may accept, any combination of the requirements described in Section V-J.4.A.1 (a) - (d) provided that in no event shall the total number of units or the value of land provided be less than the equivalent number or value of Affordable Dwelling Units required by this bylaw. Non-acceptance of an offer by the SPGA does not release the Applicant from compliance with all provisions of this bylaw. The value of any combination of the Section V-J.4.A.1 (a) - (d) requirements provided by an applicant shall always be equal to or greater than the Total Development Cost of affordable units required by this bylaw. The SPGA may require, prior to accepting land as satisfaction of the requirements of this bylaw, that the applicant submit an appraisal of the land in question, prepared by a Massachusetts-certified appraiser and dated within six (6) months of the application, as well as other data relevant to the determination of equivalent value. Affordable Dwelling Units produced on-site, off-site, or contributed through fees-in-lieu or buildable land may consist of a mix of housing types, except as provided for below:

- a) In Residential Projects, including Phased and Segmented Developments, comprising six (6) or more single-family dwellings, only Section V-J.4.A.1 requirements (c) and (d) may be offered by the applicant and accepted by the SPGA. For such single-family Residential Projects, the value of Section V-J.4.A.1 requirement (c) offered by the applicant shall equal 100% of the Total Development Cost of affordable units required by this bylaw, while the value of Section V-J.4.A.1 requirement (d) offered by the applicant shall equal 110% of the Total Development Cost of affordable units required by this bylaw.
- b) In Residential Projects, including Phased and Segmented Developments, which result in a net increase of two (2) to five (5) dwelling units, in lieu of the requirements of Section V-J.4.A.1 a), b) or d), the Applicant shall contribute funds to the Natick Affordable Housing Trust. Such funds shall be used to assist households to occupy Affordable Dwelling Units in Natick, including the construction, purchase, or rehabilitation of such units consistent with this section in lieu of the Applicant constructing and offering affordable units within the locus of the proposed development or at an off-site locus, consistent with Section V-J.4.A.1.

Table V-J.4 Mandatory Provision of Affordable Units, by Residential Project Type

Residential Project, type:	Methods for fulfilling Mandatory Provision of Affordable Units, Section V-J.4.A.1
Multi-family dwellings, or mix of single-, two-, or multi-family dwellings (Projects with 6 or more units) Section V-J4.A.1	<ul style="list-style-type: none"> a) Provision of Affordable unit(s), on site b) Provision of Affordable unit(s), off-site* c) Provision of fee-in-lieu of units payment d) Provision of buildable land <p>*at 110% of value of on-site unit</p>
Single-family dwellings only (Projects with 6 or more units) Section V-J4.A.3 (a)	<ul style="list-style-type: none"> c) Provision of fee-in-lieu of units payment d) Provision of buildable land
Single-, two-, or multi-family dwellings (Projects with 2-5 units) Section V-J4.A.3 (b)	<ul style="list-style-type: none"> c) Provision of fee-in-lieu of units payment

- 4. As a condition for the granting of an Inclusionary Housing Special Permit (IHSP), all affordable dwelling units shall be subject to an affordable housing restriction and a regulatory agreement in a form acceptable to the SPGA. The regulatory agreement shall be consistent with any applicable guidelines issued by the Department of Housing and Community Development, shall ensure that affordable units are affordable in perpetuity, and shall ensure that affordable units can be counted toward the Natick Subsidized Housing Inventory. The regulatory agreement shall also

address all applicable restrictions listed in Section V-J.9 of this bylaw. The Special Permit shall not take effect until the restriction, the regulatory agreement and the special permit are recorded at the Registry of Deeds and a copy provided to the SPGA and the Building Commissioner.

- B. Density Bonus. For Residential Projects consisting entirely of single or two-family homes, or any other Residential Projects that are allowed As-of-Right in the zoning district underlying their location, that yield an increase of two (2) to five (5) net new dwelling units the SPGA may allow the addition of one (1) unregulated Dwelling Unit in return for fee-in-lieu payment as part of compliance with the IHSP process outlined in Section V-J.4.A.1. For Residential Projects consisting entirely of single or two-family homes, or that are allowed As of right in the zoning district underlying their location, that yield an increase of six (6) or more net new dwelling units the SPGA may allow the addition of two (2) additional Dwelling Units for each Affordable Dwelling Unit provided as part of compliance with the IHSP process outlined in Section V-J.4.A.1. In order to accommodate those additional unregulated units on site, the SPGA may modify minimum lot sizes and any other intensity or density regulations, except height, normally required in Section IV.B in the applicable zoning district, to a maximum cumulative increase of 35% or, calculated separately, a maximum cumulative decrease of 35%. These shall be calculated according to the provisions of Section V-E.3, to accommodate up to two (2) additional Unregulated Dwelling Unit(s) on a site for each one (1) Affordable Dwelling Unit in compliance with the Inclusionary Housing Special Permit process in Section V-J.4.A, provided that the Floor Area Ratio of all units in the subject Residential Project not exceed 250% of the Maximum Lot Coverage permitted in the applicable zoning district under Section IV.B. The SPGA may place conditions on the number of bedrooms and other characteristics of additional Unregulated Dwelling Units permitted as part of compliance with the provisions outlined in Section V-J.4.A.

Example 1: An Applicant can build a Residential Project on a subdivision with five homes (As-of-Right) in an RSA zone. Under V-J.4.B, that Applicant could request an IHSP, under which they could build six homes (the original 5 unregulated units + 1 additional unregulated unit) and make a payment to the Natick Affordable Housing Trust as specified in Section V-J.7. The Floor Area Ratio (FAR) of each of these six units, as well as the units in total, could not exceed 0.625 (2.5 x Maximum Lot Coverage of 25% in the RSA zone).

Example 2: An Applicant can build a Residential Project on a subdivision with ten two-family homes with twenty dwellings (As-of-Right) in an RG zone. Under V-J.4.B, the Applicant could request an IHSP, which would require three (3) dwellings designated as Affordable Units, but would allow a total of twenty-six units (23 unregulated units + 3 affordable units) to be developed on the site. Alternatively, at the discretion of the SPGA, the Applicant makes some combination of off-site units, payment to the Natick Affordable Housing Trust, or a grant of buildable land, as specified in Sections V-J.6.A, V-J.7, and V-J.4.A.4, respectively in place of providing the three (3) affordable units on-site. The Floor Area Ratio (FAR) of each of these 26 units, as well as the units in total, could not exceed 0.625. (2.5 x Maximum Lot Coverage of 25% in the RSA zone).

V-J.5 Provisions Applicable to Affordable Dwelling Units On- and Off-Site

- A. Siting of affordable units. All affordable units constructed or rehabilitated under this bylaw shall be distributed proportionately within the development so as not to be in less desirable locations than unregulated units in the development and shall, on average, be no less accessible to public amenities, such as open space, as the unregulated units.
- B. Minimum design and construction standards for affordable units. All affordable units constructed or rehabilitated under this bylaw shall comply with the Design and Construction Standards for Local Initiative Units specified by the Department of Housing and Community Development in the Guidelines for the Local Initiative Program. Affordable dwelling units shall be integrated with the rest of the development, shall be proportionately distributed in terms of unit size/type and shall be comparable in exterior design, appearance, construction, and quality of materials with other units. Interior features of affordable units shall contain, at a minimum, complete living facilities including a stove, kitchen cabinets, plumbing fixtures, a refrigerator, a microwave oven, and access to laundry facilities. The interior finishes and features of affordable units may differ from those of market-rate units, provided that such finishes and features are durable, of good quality and consistent with current standards for new housing. The Planning Board reserves the right to consult with the Building Commissioner to verify the durability and quality of interior finishes proposed by the applicant and to require changes to better achieve comparability of units. All affordable dwelling units shall have an equivalent level of accessibility as that of the market-rate units.
- C. Timing of construction or provision of affordable units or land. Affordable dwelling units shall be provided coincident to the development of market-rate units, but in no event shall the development of affordable units be delayed beyond the schedule noted below:

Market-rate Unit (% Complete)	Affordable Housing Unit (% Required)
<30%	-
30% plus 1 unit	10%
Up to 50%	30%
Up to 75%	50%
75% plus 1 unit	70%
Up to 90%	100%

Fractions of units shall not be counted.

- D. Pricing of Affordable Units. The household size figure used to calculate the Initial Sales Price or Rent of an Affordable Unit shall equal the number of bedrooms in each Affordable Unit plus one (1).
- E. Local Preference. Unless otherwise regulated by an applicable Federal or State agency under a financing or other subsidy program, at least fifty percent (50%) of the affordable units shall be initially offered for 180 days in the following priority, to:
 1. Persons who currently reside within the Town of Natick;
 2. Persons who are employed by the Town of Natick;
 3. Persons who are employed by businesses located within the Town of Natick;
- F. Marketing Plan for Affordable Units. Applicants under this bylaw shall submit a marketing plan or other method approved by the Town through its Housing Production Plan to the SPGA for its approval, which describes how the affordable

units will be marketed to potential home buyers or tenants. This plan shall include a description of the lottery or other process to be used for selecting buyers or tenants.

- G. Condominiums. Condominium documentation shall provide the owners of the Affordable Units with full and equal rights to all services and privileges associated with condominium ownership. Condominium fees shall be included in the calculation of Initial Sales Price in Section V-J.8.
- H. Legal Review. All legal documents, including but not limited to: affordable housing deed riders, affordability restrictions, leases, condominium documents and/or homeowner's agreements shall be subject to peer legal review by the SPGA, to be paid in full by the Applicant.

V-J.6 Provision of Affordable Dwelling Units Off-Site:

- A. An applicant subject to this bylaw may develop, construct or otherwise provide affordable units offsite, valued at one hundred and ten percent (110%) of those required by Section V-J.4 and meeting all quality criteria outlined in Section V-J.5.B. All requirements of this bylaw that apply to on-site provision of affordable units, shall apply to provision of off-site affordable units. In addition, the location, housing type and character of the off-site units to be provided must be approved by the SPGA as an integral element of the Inclusionary Housing Special Permit review and approval process.
- B. If the applicant's proposal involves existing dwelling units, the special permit application must demonstrate to the SPGA's satisfaction that the following conditions have or will be met prior to the issuance of any building permits for the Residential Project.
 - 1. Evidence that the applicant owns or will own the premises
 - 2. The dwelling unit(s) has/have no violations of the State Building Code or Article II of the State Sanitary Code
 - 3. The dwelling units(s) has/have no lead paint hazards
 - 4. The dwelling unit(s) is/are/will be vacant
 - 5. No Eligible Households will be displaced permanently
 - 6. No existing affordable dwelling units will be eliminated.
- C. Approved off-site units shall also comply with the same project schedule, affordability provisions and marketing plan requirements that apply to the Residential Project units

V-J.7 Calculation of Fees-in-Lieu-of Affordable Dwelling Units

Calculation of fee-in-lieu-of units. For the purposes of this bylaw the fee-in-lieu of the construction or provision of affordable units shall be determined as a per-unit cost for all units in the Residential Project, calculated as: $0.125 \times \text{Initial Sales Price of an Affordable Dwelling Unit of identical size (in terms of average number of bedrooms)}$, and shall be payable on the same schedule set forth in Section V-J.5.C and in full prior to issuance of a final occupancy permit. The SPGA shall annually review the acceptable value of the fee in-lieu-of units according to maximum income levels promulgated by the Commonwealth's Department of Housing and Community Development.

Example 3: An Applicant proposes a Residential Project with four (4) two-bedroom single family homes under an Inclusionary Housing Special Permit. Under V-J.4.A.3 (b), the Applicant would be required to pay a fee to the Natick Affordable Housing Trust equal to (4 dwellings x 0.125 x Initial Sales Price for an Affordable two-bedroom Dwelling Unit) as

specified in Section V.J.4.A.3 (b)

The SPGA may reduce the applicable fee-in-lieu-of unit(s) charge by up to fifty percent (50%) for each dwelling in a housing development with initial rents or sale prices that are affordable to households earning 81-120% of Median Income, calculated according to standards promulgated by the Department of Housing and Community Development (DHCD), and in compliance with the household size provisions of Section V-J.5.D of this bylaw.

V-J.8 Maximum Incomes and Selling Prices: Initial Sale

- A. To ensure that only eligible households purchase affordable dwelling units, the purchaser of an affordable unit shall be required to submit copies of the last three years' federal and state income tax returns and certify, in writing and prior to transfer of title, to the developer of the housing units or his/her agent, and within thirty (30) days following transfer of title, to the local housing trust, community development corporation, housing authority or other agency as established by the Town, that his/her or their family's annual income level does not exceed the maximum level as established by the Department of Housing and Community Development (DHCD), and as may be revised from time to time.
- B. The maximum housing cost for affordable units created under this bylaw is as established by the Department of Housing and Community Development (DHCD), as specified in the guidelines for the Local Initiative Program, or as revised by the Town.

V-J.9 Preservation of Affordability; Restrictions on Resale

- A. Each affordable unit created in accordance with this bylaw shall have limitations governing its resale through the use of a regulatory agreement (Section V-J.4.A.4). The purpose of these limitations is to preserve the long-term affordability of the unit and to ensure its continued availability for affordable income households. The resale controls shall be established through a restriction on the property recorded at the Registry of Deeds and shall be in force in perpetuity. The terms "Base Income Number," Resale Price Multiplier," "Resale Fee," "Approved Capital Improvements," and "Maximum Resale Price" are as defined in the MassHousing 40B Affordability Monitoring Handbook.
 - 1. Resale price. Sales beyond the initial sale to a qualified affordable income purchaser shall include the sum of
 - i) the Base Income Number (at the time of resale) multiplied by the Resale Price Multiplier, PLUS
 - ii) the Resale Fee and any necessary marketing expenses (including the broker's fees) as may have been approved by the Monitoring Agent, PLUS
 - iii) Approved Capital Improvements, if any, made with the consent of the Town and Department of Housing and Community Development (DHCD).

In no event shall the Maximum Resale Price be greater than the purchase price for which a credit-worthy Eligible Household could obtain mortgage financing (such purchase price as determined by the Monitoring Agent using the same methodology used by DHCD for its Local Initiative Program or similar comprehensive permit program). The Maximum Resale Price shall not be less than the purchase price paid for the Property by the owner unless the Owner agrees to accept a lower price.

2. Right of first refusal to purchase. The purchaser of an affordable housing unit developed as a result of this bylaw shall agree to execute a deed rider prepared by the Town of Natick, consistent with model riders prepared by the Department of Housing and Community Development (DHCD), granting, among other things, the Town's right of first refusal to purchase the property in the event that a subsequent qualified purchaser cannot be located within 90 days of receiving notification.
3. The SPGA shall require, as a condition for an Inclusionary Housing Special Permit under this bylaw, that the applicant comply with the mandatory set-asides and accompanying restrictions on affordability, including the execution of the deed rider noted in Section V-J.9.A.2 above. The Building Commissioner shall not issue an occupancy permit for any affordable unit until the deed restriction has been recorded.

V-J.10 Periodic Review of Inclusionary Housing Requirements

In conjunction with the five-year update of the Town's Housing Production Plan, the Natick Affordable Housing Trust shall evaluate the Inclusionary Affordable Housing Requirements. Such evaluation shall include a report provided to the Board of Selectmen and the Planning Board reviewing factors such as changes in demographic characteristics and residential development activity, housing trends measured in terms of, but not limited to, vacancy rates, production statistics, prices for dwelling units, and affordability, and the relationship between Inclusionary Housing projects and all housing in Natick. The Natick Affordable Housing Trust shall also prepare an annual report to the Planning Board on the Inclusionary Housing Program.

V-J.11 Conflict with Other Bylaws

The provisions of this section shall be considered supplemental to existing zoning bylaws except for the provisions of Section III-A.6.C (Smart Growth Overlay (SGO)). To the extent that a conflict exists between this section and others, the more restrictive bylaws or provisions therein shall apply.

V-J.12 Severability:

If any provision of this bylaw is held invalid by a court of competent jurisdiction, the remainder of the bylaw shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this bylaw shall not affect the validity of the remainder of the Natick Zoning Bylaw.

(Art 32 Fall TM, 10/16/18)