



TOWN OF
WATERTOWN

Department of
Community Development and
Planning

Administration Building

149 Main Street

Watertown, MA 02472

Phone: 617 972 6417

Fax: 617 972 6484

www.watertown-ma.gov

Town of Watertown

Affordable Housing Development Requirements:

Complying with Section 5.07

March 2015

Be Informed

If you are considering the development of a project that will trigger the Town's Inclusionary Zoning Process you should contact Senior Planner, Andrea Adams at the Town of Watertown Planning Department early in your deliberations so that you are best prepared for the responsibilities of this Ordinance. The Planning Department is at 617-972-6417.

Do I have to do it?

Section 5.07 ("Inclusionary Zoning") applies to any development of

- six (6) or more housing units, *and to*
- mixed-use developments containing 15 or more residential units

How much do I have to do?

- 12.5% of units in the project must be "affordable"
- Any calculation resulting in a fraction of one half or above shall be increased to the next whole number
- Projects with 6-10 residential units may provide units onsite or provide a payment-in-lieu of units. The Special Permit Granting Authority (SPGA) may consider other requests for a payment in lieu of units in certain exceptional circumstances. *See Section 5.07 of the Zoning Ordinance for more information.*

What will it cost for Onsite Units?

- The "affordable" units are defined as a unit that is occupied by a low- or moderate-income household (one that is at or below 80% of Area Median Income - AMI) wherein their total housing costs do not exceed 30% of their gross monthly income.
- A Density Bonus is available to developers who target lower income households:
 - o Rents are established by the Town of Watertown and must be affordable to a household with incomes at or below 65% of the Area Median Income.
 - o Sales prices are established by the Town of Watertown and must be affordable to households at or below 70% of AMI.
- The affordable units must be comparable to the market units in size, location and overall construction quality.
- The floor area of the affordable unit may vary from the average market-rate unit within a margin of 20% but must meet the DHCD's minimum square footages. *See Section 5.07 of the Zoning Ordinance for more information.*

What will it cost for a Payment in Lieu of Units?

- For a development having 10 units or less, there is a decreasing percentage of the difference between fair market rate units and the affordable units
- The % difference starts out at 100% for 10 units and decreases 10% until the developer pays 60% at 6 units
- Occupancy permits are staggered based on the developer paying the fee
- 50% of the fee must be paid for Unit 6 to get a C/O in a six-unit project
- 50% of the fee must be paid for Unit 7-10 to get a C/O
- For projects of 10+ units, the fee must be paid prior to getting a C/O for Unit 11 and above

How does this affect me long term?

- There is a perpetual deed restriction that will restrict the occupancy of the household, establish the rent/sale price charged, and provide for annual monitoring and enforcement of the restriction.
- Property subject to the Affordable Housing Requirements will have lowered property value assessments and will therefore have lowered real estate taxes.

What additional paperwork is involved?

- The developer is responsible for complying with any documentation that may be required by DHCD to qualify the affordable unit for the 40B Subsidized Housing Inventory. That documentation may include:
 - Affordable Housing Agreement with the Town of Watertown
 - Affordable Housing Deed Restriction
 - Affirmative Fair Housing Marketing Plan
 - Local Action Unit Petition
- The developer may choose to participate in the Town of Watertown’s Regional Ready Program, which would provide each of the above documents as well as the marketing and assignment of units to eligible low income households. The fee for participation in the program is:
 - Rental Developments: an amount equal to one month’s rent for each affordable unit due upon vacancy
 - Home Buyer Developments: an amount equal to 2.5% of the sales price of each affordable unit due upon sale of unit
- The Ready Renter Program is administered by Metro West Collaborative Development

How do I get started?

On-Site Units	Payment in Lieu of Units
<p><u>Step One:</u> Staff Review – Contact the Watertown Planning Department to make an appointment to meet with staff to discuss the project and to obtain feedback/suggestions and an understanding of what happens when. Then fine-tune your proposal.</p>	<p><u>Step One:</u> Staff Review – Contact the Watertown Planning Department to make an appointment to meet with staff to discuss the project and to obtain feedback/suggestions and an understanding of what happens when. Then fine-tune your proposal.</p>
<p><u>Step Two:</u> Site Plan Review - Before filing an application for a Special Permit, the project must go before the Site Plan Review Committee (comprised of representatives from various Town Departments and Commissions). Additional meetings (such as with the Department of Public Works or with the Fire Department) may be necessary.</p>	<p><u>Step Two:</u> Site Plan Review- Before filing an application for a Special Permit, the project must go before the Site Plan Review Committee (comprised of representatives from various Town Departments and Commissions). Additional meetings (such as with the Department of Public Works or with the Fire Department) may be necessary.</p>

<p><u>Step Three:</u> Watertown Housing Partnership - The project will need to be submitted to the Watertown Housing Partnership for their review of the proposed affordable housing units. The Partnership provides their report and recommendations to the SPGA.</p>	<p><u>Step Three:</u> Watertown Housing Partnership - The project will need to be submitted to the Watertown Housing Partnership for their review of the proposed affordable housing units. The Partnership provides their report and recommendations to the SPGA.</p>
<p><u>Step Four:</u> Special Permit Approval - The project will need to be submitted to Special Permit Granting Authority (Planning Board and/or Zoning Board of Appeals) for their approval.</p>	<p><u>Step Four:</u> Special Permit Approval - The project will need to be submitted to Special Permit Granting Authority (Planning Board and/or Zoning Board of Appeals) for their approval.</p>
<p><u>Step Five:</u> Documentation for DHCD - The Developer prepares a Local Action Unit Application for submission to DHCD and the following documents will need to be included:</p> <ul style="list-style-type: none"> ✓ Watertown Affordable Housing Agreement ✓ DHCD Regulatory Agreement (for rental projects only) ✓ Affordable Housing Deed Restriction ✓ Affirmative Fair Housing Marketing Plan (Developer may choose to participate in the Regional Ready Program) 	<p><u>Step Five:</u> Documentation for DHCD - The Town will prepare a Local Action Unit Application for submission to DHCD and the following documents will need to be included:</p> <ul style="list-style-type: none"> ✓ Watertown Affordable Housing Agreement ✓ DHCD Regulatory Agreement (for rental projects only) ✓ Affordable Housing Deed Restriction ✓ Affirmative Fair Housing Marketing Plan (Developer may choose to participate in the Regional Ready Program)
<p><u>Step Six:</u> Building Permit - You can now apply for the Building Permit. A Building Permit will not be granted if the documents in <i>Step Five</i> following have not been received and approved by the Town</p>	<p><u>Step Six:</u> Building Permit - You can now apply for the Building Permit. A Building Permit will not be granted if the documents in <i>Step Five</i> have not been received and approved by the Town and at least 25% of the payment-in-lieu of units fee must be paid</p>
<p><u>Step Eight:</u> 100% Completion - Town inspects the units to ensure compliance with the Building Code. Submit Rent Roll to the Planning Department upon full lease-up</p>	<p><u>Step Eight:</u> 100% Completion – Final payment of 50% of the payment-in-lieu is due bringing total payments to 100% of payment due.</p>
<p><u>Every Year:</u> Annual Compliance - the Town will require annual income certification of households (Rental projects only)</p>	

SECTION 5.07 AFFORDABLE HOUSING REQUIREMENTS

(a) Intent and Purpose

The purposes of this Section are to encourage the expansion and improvement of the Town of Watertown's housing stock; to provide for housing choices for households of all incomes, ages, and sizes; to prevent the displacement of low- and moderate-income residents; to produce affordable housing units in order to meet existing and anticipated employment needs within the Town; to provide opportunities for conventional residential and mixed-use development to contribute to increasing the supply of affordable housing; and to establish standards and guidelines in order to implement the foregoing.

(b) Definitions

1. AFFORDABLE HOUSING PROGRAM

Collectively, Section 5.07 and other provisions of the Watertown Zoning Ordinance that pertain to the development and preservation of affordable housing in the Town of Watertown.

2. AFFORDABLE HOUSING RESTRICTION

A deed restriction, contract, mortgage agreement, or other legal instrument, acceptable in form and substance to the Town of Watertown, that effectively restricts occupancy of an affordable housing unit to qualified purchaser or qualified renter, and which provides for administration, monitoring and enforcement of the restriction during the term of affordability. An affordable housing restriction shall run with the land in perpetuity or for the maximum period of time allowed by law, and be enforceable under the provisions of Chapter 184, Sections 26 or 31-32 of the General Laws.

3. AFFORDABLE HOUSING FUND

A fund account established by the Town for the purpose of creating or preserving affordable housing in the Town of Watertown.

4. AFFORDABLE HOUSING UNIT

A dwelling unit that is affordable to and occupied by a low- or moderate-income household and meets the requirements of the Massachusetts Department of Housing and Community Development, Local Initiative Program, for inclusion on the Chapter 40B Subsidized Housing Inventory.

5. AREA MEDIAN INCOME

The median family income for the metropolitan area that includes the Town of Watertown, as defined in the annual schedule of low- and moderate-income limits published by the U.S. Department of Housing and Urban Development, adjusted for household size.

6. COVERED DEVELOPMENT

Any development required to provide affordable housing in accordance with Section 5.07.

7. ELIGIBLE HOUSEHOLD

A low- or moderate-income household that purchases or rents an affordable housing unit as its sole residence.

8. INCLUSION UNIT

An affordable housing unit built on the same site as the market-rate units in a covered development under Section 5.07.

9. LOCAL INITIATIVE PROGRAM

A program administered by the Massachusetts Department of Housing and Community Development (DHCD) pursuant to 760 CMR 56.00 to develop and implement local housing initiatives that produce low- and moderate-income housing, with or without a comprehensive permit as defined in Chapter 40B, Section 20 through Section 23 of the General Laws.

10. LOW- OR MODERATE-INCOME HOUSEHOLD

A household with income at or below 80% of area median income, adjusted for household size, for the metropolitan area that includes the Town of Watertown, as determined annually by the United States Department of Housing and Urban Development (HUD).

11. MARKET-RATE DWELLING UNIT

All dwelling units in a development subject to this Section 5.07 that are not affordable housing units as defined herein.

12. MAXIMUM AFFORDABLE PURCHASE PRICE OR RENT

A purchase price or monthly rent that complies with the regulations and guidelines of the DHCD Local Initiative Program and the Watertown Planning Board, except that developments subject to Section 5.07(j)(3) shall comply with the maximum purchase price or rent requirements of that section. For homeownership units, the maximum affordable purchase price shall account for the monthly cost of a mortgage payment, property taxes, insurance, and condominium fees where applicable; and for rental units, the maximum affordable rent shall account for the monthly cost of rent and utilities. The household income used to compute the maximum affordable purchase price or rent shall be adjusted for household size, considering the household size for which a proposed affordable unit would be suitable under guidelines of the Local Initiative Program or any successor affordable housing program established by the state.

13. SMALL-SCALE INCLUSION DEVELOPMENT

A covered development that provides 6 or more up to 10 dwelling units.

14. SUBSIDIZED HOUSING INVENTORY

The Department of Housing and Community Development Chapter 40B Subsidized Housing Inventory as provided in 760 CMR 31.04.

(c) Applicability

(1) Section 5.07 applies to any development, whether new construction, conversion, adaptive reuse or expansion of an existing structure, involving the creation of more than five dwelling units or more than five (5) lots for residential use, and to any mixed-use development involving the creation of more than fifteen (15) dwelling units. Assisted living, outside of the Assisted Living Overlay Zone, Section 5.11, shall be considered institutional and shall be exempt from Section 5.07.

Developments may not be segmented to avoid compliance with this Section. “*Segmentation*” shall mean any development, whether new construction, adaptive reuse or redevelopment, or any division of land that would cumulatively result in an increase by five or more residential lots or dwelling units above the number existing on a parcel of land or contiguous parcels in common ownership twenty-four months prior to the application. Where such segmentation occurs, it shall be subject to this Section as a covered development. A subdivision or division of land shall mean any subdivision as defined in the Subdivision Control Law, G.L. c.41, Sections 81K-81GG, or any division of land under G.L. c.41, Section 81P, into lots for residential use.

(2) This Section does not apply to the rehabilitation of any building or structure, all of or substantially all of which is destroyed or damaged by fire or other casualty or a natural disaster; provided, however, no rehabilitation nor repair shall increase the density, bulk or size of any such building or structure which previously existed prior to the damage or destruction thereof except in conformance with this Section.

(d) Basic Requirements

(1) **Projects having more than five (5) units:** No special permit for a development requiring a special permit and no building permit for a use permitted as of right, shall be issued for a development subject to this section unless the Petitioner provides at least twelve and one-half percent (12.5%) of the total dwelling units in the development as affordable housing as described herein and otherwise consistent with this Section.

(2) Nothing in this Section shall preclude a developer from providing more affordable units than the minimum requirements. In no instance shall any permit or special permit approval create less than one affordable housing unit, and for purposes of this Section, any calculation of required affordable housing units that results in the fractional or decimal equivalent of one-half or above shall be increased to the next highest whole number.

(3) Affordable units shall be made available to eligible low- or moderate-income households at purchase prices or rents that comply with the Massachusetts Department of Housing and Community Development (DHCD) Local Initiative Program regulations, 760 CMR 56.00, or any successor program as may be determined by the Special Permit Granting Authority (SPGA) in consultation with the Watertown Housing Partnership (WHP).

(e) Methods of Providing Affordable Units

(1) A covered development with more than five (5) and up to ten (10) units, shall have the option of providing an affordable unit on site or making a cash payment. A covered development with more than ten (10) units shall provide the affordable units on site. However, approval for cash payment in lieu of on-site affordable units may be granted by the SPGA in certain exceptional circumstances. The SPGA must find that the developer has clearly demonstrated that providing such unit(s) on-site would create significant hardship and that a cash payment in lieu of on-site unit(s) is in the best interest of the Town. Any request for alternative means of compliance shall be reviewed by the WHP, which shall then make its recommendation to the SPGA.

(2) The SPGA shall authorize that an alternative method of compliance be used, in accordance with the following:

(A) *Cash Payment:* The SPGA may grant a special permit to provide affordable housing through a cash payment to the Watertown Affordable Housing Fund, in lieu of providing one or more of the affordable units required under this Section; provided, however, that a fee in lieu of affordable units may be authorized only for a covered developments with more than five (5) and up to ten (10) units of for rental, for-sale or homeownership units. The cash payment shall be equal to the difference between the fair market value for a typical market-rate housing unit and the price of the affordable housing unit consistent with DHCD LIP Guidelines and shall be in accordance with a schedule of affordable housing payments as outlined in Section 5.07(h)(6) and guidelines adopted and amended from time to time by the SPGA, following a public hearing, in consultation with the WHP and the Watertown Department of Community Development and Planning.

(f) Location and Comparability of Affordable Units

(1) Affordable units shall be proportionately distributed throughout the building(s) in a covered development.

(2) Affordable units shall be indistinguishable from market-rate units in exterior building materials and finishes; overall construction quality; and energy efficiency, including mechanical equipment and plumbing, insulation, windows, and heating and cooling systems, as determined by the Building Inspector

(3) Affordable units may differ from market-rate units in type of appliances, finishes; however, the affordable units shall be comparable to the base market-rate units in such instances.

(4) Affordable units shall have the same gross floor area as the median market-rate units of the same number of bedrooms within a margin of 20%; provided that units are not less than the minimum square foot required by DHCD. The bedroom mix in the affordable units shall be proportionate to the market-rate units, unless the SPGA authorizes a different mix by special permit upon the recommendation of the WHP.

(5) The SPGA may adopt regulations or guidelines to further define comparability of the foregoing requirements.

(6) The WHP shall provide the Petitioner and SPGA as provided in 5.07(j) with its recommendations with reference to the Petitioner's proposal in meeting the requirements for affordable housing.

(g) Affirmative Marketing and Local Preference Policy

Affordable units shall be made available for purchase or rent to eligible low- or moderate-income households under an affirmative marketing plan that complies with federal and state fair housing laws, and fair housing and local preference guidelines established by the

Watertown Housing Partnership. No building permit for a covered development shall be issued unless the Department of Community Development and Planning (**DCDP**) has determined that the Petitioner's affirmative marketing plan complies with this requirement. The affirmative marketing costs for the affordable housing units shall be the responsibility of the Petitioner.

(h) Preservation of Affordability

(1) Affordable units provided under this Section shall be subject to an Affordable Housing Restriction that contains limitations on use, occupancy, resale and rents, and provides for periodic monitoring to verify compliance with and enforce said restriction. Affordability restrictions shall be contained in applicable affordable housing restrictions, regulatory agreements, deed covenants, contractual agreements, land trust arrangements and/or other mechanisms to ensure compliance with the affordability requirements of this Section 5.07 (collectively, "Affordable Housing Restriction").

(2) The Affordable Housing Restriction shall run with the land and be in force in perpetuity or for the maximum period allowed by law, and be enforceable under the provisions of Chapter 184, Section 26 or Sections 31-32 of the General Laws.

(3) The Affordable Housing Restriction shall provide that initial sales and rental of affordable housing units and their subsequent re-sales and re-rentals shall comply with federal, state and local fair housing laws, regulations and policies.

(4) The Affordable Housing Restriction shall provide that in the event that any affordable rental unit is converted to a condominium unit, the condominium unit shall be restricted in perpetuity in the manner provided for by Section (h)(1) above to ensure that it remains affordable to households in the same income range as prior to the condominium conversion.

(5) For a covered development that provides Inclusion Units:

(A) No building permit shall be issued until an Affordable Housing Restriction has been executed by the Petitioner and the SPGA and the Petitioner provides evidence acceptable to the Director of DCDP that the agreement has been recorded at the Middlesex County Registry of Deeds.

(B) For a rental, for-sale or homeownership unit, the Department of DCDP shall not sign off an authorize or sign off on a Certificate of Occupancy until the applicant Petitioner submits documentation acceptable to the Director of DCDP that an affordable housing deed rider has been signed by affordable unit homebuyer and recorded at the Middlesex County Registry of Deeds.

(6) For a covered development that provides affordable housing through a cash payment in lieu of affordable units:

(A) For a covered development having 10 units or less that provides affordable housing through a cash payment in lieu of affordable units; the following reduced percentage (%) of the

difference between fair-market value and affordable housing unit as described in Section e. 2. A. shall apply: 10 units – 100%; 9 units- 90%; 8 units – 80%; 7 units – 70% and 6 units – 60%.

(B) The DCDP shall not sign off on Certificate(s) of Occupancy for Unit 6 until the applicant Petitioner pays 50% of the required fee; or payment in full if it is a 6-unit covered development. Before a certificate of occupancy can be issued for Units 7-10, the applicant Petitioner must pay the remaining 50% or payment in full for covered developments having 7, 8, and 9 units and provide evidence to the Director of DCDP that the cash payment has been paid in full to the Affordable Housing Fund. For projects above 10 units, the remaining fee must be paid prior to the issuance of the Certificates of Occupancy for unit 11 and above.

(7) All legal documentation in connection with the affordable housing units shall be in the standard form provided by the Town of Watertown, as approved by legal counsel to the Town. If the Petitioner proposes to use documentation other than that provided by the Town, any and all costs associated with review by legal counsel to the Town shall be paid by the Petitioner.

(i) Submission Requirements and Procedures

Projects requiring the provision of affordable units under this Section must submit a proposal as to the method of meeting the affordable housing requirements with the application for zoning relief and a copy to the WHP. The WHP shall, in writing, provide the Petitioner with their recommendations no later than forty (40) days from submission. The SPGA may adopt additional submission requirements and procedures not inconsistent with this Section, following a public hearing and consultation with the WHP.

(j) Special Regulations for Inclusion Units

(1) Use Regulations: Developments with Inclusion Units shall comply with Section 5.01, Table of Use Regulations; provided, however, that a covered development with not more than ten (10) multi-family units shall be a permitted use when at least 12.5% of the units are Inclusion Units as defined hereunder, in which case the development shall qualify for review as a Small-Scale Inclusion Development.

(2) Small-Scale Inclusion Development Submission Requirements and Procedures: No building permit for a Small-Scale Inclusion Development shall be issued until the SPGA has approved a site plan in accordance with Section 9.03 and the provisions of this Section. The SPGA may adopt regulations for submission requirements and procedures not inconsistent with this Section, following a public hearing.

(3) Cost Offsets and Affordability Requirements: Inclusion Units shall be exempt from the minimum lot area per dwelling unit and/or maximum floor area ratio, as set forth in Section 5.04, provided that the Inclusion Units comply with the following affordability requirements:

(A) Rental Units: For the affordable units, the maximum affordable rent shall be affordable to a household with income at or below 65% area median income (AMI), adjusted for household size; provided, however, that the SPGA may grant a special permit for a development in which the affordable unit rents are, on average, affordable for a household with

income at 65% AMI. For example, in a development with two Inclusion Units, the maximum rent for each unit may be that which is affordable to a household with income at 65% AMI, or one unit may be affordable to a household with income at 50% AMI and the second unit may be affordable to a household with income at 70% AMI. However, no affordable unit in a rental development shall be priced for affordability to a household with income exceeding 80% AMI.

(B) Homeownership Units: For the affordable units, the maximum purchase price shall be affordable to a household with income at 70% AMI, adjusted for household size.

(4) Local Initiative Program Requirements. The Petitioner shall be responsible for preparing and complying with any documentation that may be required by DHCD to qualify affordable units for listing on the Chapter 40B Subsidized Housing Inventory.

(k) Severability

If any portion of this Section is declared to be invalid, the remainder shall continue to be in full force and effect.