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Barney S. Heath
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MEMORANDUM

DATE: September 24, 2021

TO: Councilor Crossley, Chair, Zoning and Planning
Members of the Zoning and Planning Committee

FROM: Barney S. Heath, Director of Planning and Development
Amanda Berman, Director of Housing & Community Development
Eamon Bencivengo, Housing Development Planner

RE: **Docket Item #528-20: Requesting review and possible amendment to Local Preference in Chapter 30**
COUNCILORS ALBRIGHT, NORTON, CROSSLEY, BOWMAN, NOEL, HUMPHREY, WRIGHT, LAREDO, KALIS, RYAN, LIPOF AND DANBERG requesting a review and possible amendment to the Local Preference Ordinance in Chapter 30 sections 5.11.8. This section requires an Affirmative Fair Housing Marketing and Resident Selection Plan (AFHMP) for all Inclusionary Units which provides for a local preference for up to 70% of the Inclusionary Units. Various groups including The Fair Housing Committee and the Newton Housing Partnership have questioned whether the percent of local preference to current Newton residents should be lowered with the goal of increasing racial diversity in Newton.

CC: Jonathan Yeo, Chief Operating Officer

On July 26th, Planning staff met with ZAP to provide a summary of the work and analysis conducted over the past year related to Newton's Local Preference Policy. As you know, this assessment was spurred in part by the Newton Housing Partnership's vote in July 2020 to recommend that the existing Local Preference policy be changed from 70% to zero, followed by a City Council Docket Item related to the matter in late 2020, as referenced above.

The impetus behind the past year of analysis around local preference was centered on the question of whether a 70% local preference policy in a majority White community like Newton created a disparate impact on people of color. Understanding the possible negative implications of this policy is

critical given the City’s obligation to abide by the Federal Fair Housing Act and its duty to affirmatively further fair and equal housing opportunity for all.

In January 2021, the Planning Department contracted with Judi Barrett of Barrett Planning Group to assess the effects of exercising Newton’s current local preference policy in three recent affordable rental housing development lotteries: TRIO, 28 Austin Street, and Hancock Estates. While the Barrett study and report were limited in scope, it did highlight that White, non-Hispanic “local preference” applicants were selected at higher rates than minority groups overall. Additionally, it showed that the non-local preference pools were overwhelmingly made up of minorities, which helped to offset the high selection rates of the local-preference White applicant group.

One straight forward conclusion that can be drawn from this analysis is that a reduction in the set-aside for local preference units would result in a higher number of units being afforded to persons of color. The identified correlation between Newton’s 70% local preference policy and the percentage of minorities, particularly Black and African American applicants, that are able gain access to these rare affordable units, as compared to the percentage that their White, local-preference counterparts consistently enjoy, suggests that, absent a change, lottery results will continue to perpetuate the current race advantage.

At its July 2021 meeting, the Newton Housing Partnership considered a motion to recommend lowering the percentage to 35%; however, the motion did not pass, as some members wanted more time to hold this important discussion and others expressed an interest in recommending an even lower percentage. On August 17th, the Newton Housing Partnership continued its debate of this matter, ultimately voting to recommend a reduction in the City’s local preference policy from 70% to 25% to “mitigate the discriminatory effect of the policy and to affirmatively further fair housing outcomes.”

The Partnership acknowledged that this reduction in the local preference policy is an important first step. The group has committed to continued analysis of other impediments that affect greater diversity outcomes across Newton’s housing landscape. As referenced in their recommendation letter, they plan to look into other policies that “prevent project sponsors from discriminating during the tenant selection process, for example by more closely monitoring owner screening processes... that some people of color face after winning the lottery,” including the review of applicant credit, rental history, or other factors that may prevent a selected applicant from being able to sign a lease for an affordable unit.

Additionally, both staff and the Partnership recognize the incredible need for greater affordable housing opportunities for individuals and households with disabilities. As part of the Barrett Planning Group’s study, the consultant team did attempt to analyze available data related to the accessible affordable units in these three developments. While collectively nine accessible affordable units were included in these projects, only four of those units were initially leased to tenants with disabilities. The Barrett report concludes that outside factors beyond local preference affect the leasing outcomes of these units, including that the pricing of these affordable units may be too high for people with disabilities. Further study will be conducted on this matter; however, with the proposed reduction of the local preference requirement, staff recommends that new language be added to the

policy to ensure that at least one of the local preference units in the project be a fully accessible affordable unit. This change is reflected in the attached red-line DRAFT of the local preference policy language in the City's Inclusionary Zoning Ordinance.

Lastly, a handful of questions were raised during your July 26th ZAP meeting. Below are some of the questions (and answers) that staff was unable to answer at the time.

Answers to Questions Raised at July 26, 2021 ZAP Meeting:

- 1.) What about disabled individuals who aren't necessarily physically disabled and don't require the features of a fully-accessible unit, but have an intellectual disability – those that live at home with their parents? Where does this group fall in terms of local preference?

Answer:

Staff consulted with a DHCD-certified local lottery agent on this question. The lottery agent explained that in order to qualify for a disabled-accessible unit, applicants must provide a note from a medical professional who treats the disability, stating that they need the special features in the unit. Additionally, the lottery agent provided that according to *Mass Access: The Accessible Housing Registry*, "units that are barrier-free are accessible to people with disabilities that are wheelchair users but could also be used by people of different types of disabilities. For example, a person of very short stature, a person with a brain injury or stroke, severe cardiac or respiratory problems, or a person with limited standing, walking, or reaching ability, may use the design features of a wheelchair accessible unit." Verification from a doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may be requested. But documentation submitted must specify that the household needs the features of an accessible or hearing-impaired unit.

Someone with an intellectual or developmental disability doesn't necessarily require the features of a disabled-accessible or hearing-impaired unit and, therefore, would not be given top priority for these units or any of the other affordable units in a project, even if they qualify as a local preference applicant.

- 2.) Of the 1,157 total applicants across the three projects analyzed in the Barrett study, how many of these applicants were deemed to be "eligible" for inclusion in the lotteries?

Answer:

1,157 was the total number of households entered into these three lotteries. The lottery agent determines initial eligibility for inclusion in the lottery based on households' own self-reported income/assets, which they include in their lottery application. A deeper vetting of income, assets, tax documentation, etc. is only conducted for those households that are invited to apply for a lease, based on their ranking on the lottery wait lists. This second level of eligibility certification is required to ensure that the household truly meets the income requirements of the program before signing a lease for an affordable unit.

- 3.) How is it decided which units across all income levels are designated as the Local Preference units?

Answer:

Staff works with the Lottery Agent to assign which units are local preference units, based on the overall unit and affordability mix of the project and the identified housing needs of the community. Staff also works to ensure that the appropriate number of accessible affordable units are designated as local preference units.

- 4.) For those minority applicants that qualify as local preference, is there a way to enhance the probability that they are chosen for a unit?

Answer:

No. There are four local preference “allowable categories,” per DHCD, and each category carries the same weight; therefore, a local preference applicant that identifies as a minority and is a current resident of Newton is given the same priority as a White local preference applicant that is an employee of a local Newton business but is not a current Newton resident. Per the Massachusetts Department of Housing and Community Development’s [Chapter 40B Guidelines](#), the Local Preference “allowable categories” include:

- 1.) Current residents: A household in which one or more members is living in the city or town at the time of application. Documentation of residency should be provided, such as rent receipts, utility bills, street listing or voter registration listing.
- 2.) Municipal Employees: Employees of the municipality, such as teachers, janitors, firefighters, police officers, librarians, or town hall employees.
- 3.) Employees of Local Businesses: Employees of businesses located in the municipality.
- 4.) Households with children attending the locality’s schools, such as METCO students.

ATTACHMENTS:

- Newton Housing Partnership 9/21/21 recommendation letter re: 25% Local Preference Policy
- Red-line DRAFT of Local Preference Policy language in Inclusionary Zoning Ordinance
- Staff presentation from 7/26/21 ZAP Mtg.
- “Local Preference in Affordable Housing: Analysis of Data from Recent Rental Developments, June 2021” – Barrett Planning Group report to the City of Newton Department of Planning & Development: [click here to download report](#)