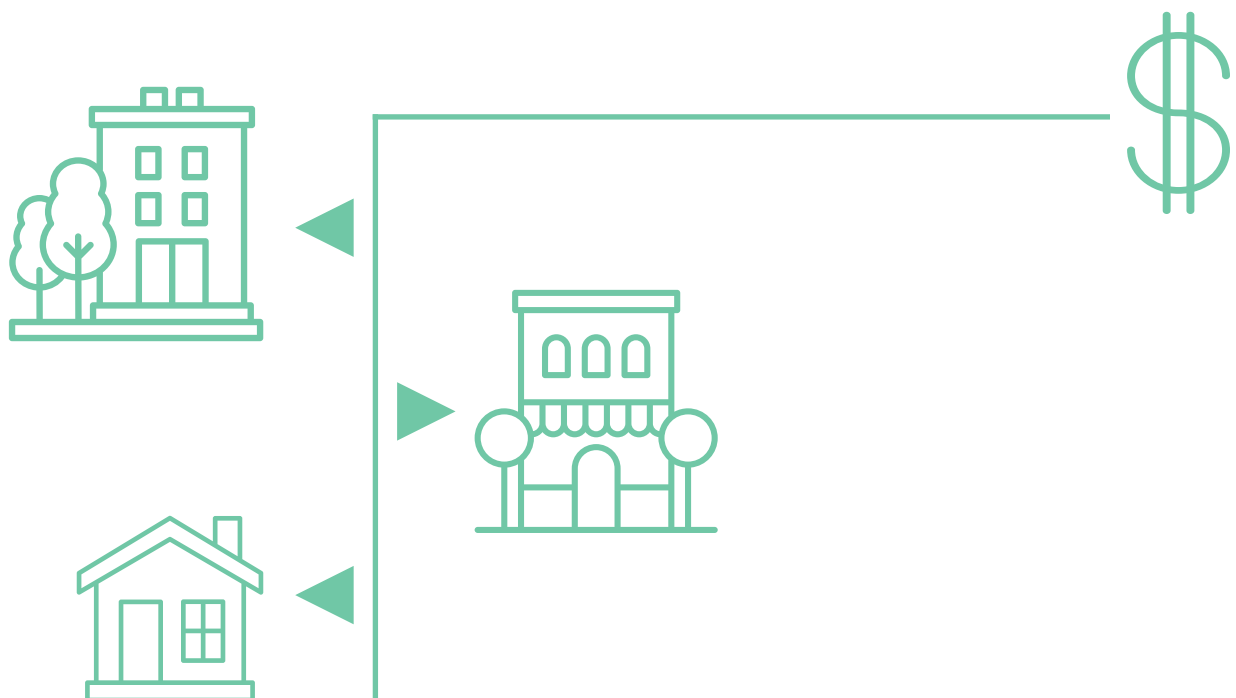


Inclusionary Zoning + Payment in Lieu of Units Analysis

Prepared by the Metropolitan Area Planning Council
(MAPC) for the Regional Housing Services Office (RHSO)
Member Towns of Acton, Bedford, Concord, and Lexington



Prepared for

The Regional Housing Services Office (RHSO)

Town of Acton

Town of Bedford

Town of Concord

Town of Lexington

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TABLE OF CONTENTS

ACKNOWLEDGEMENTS	3	Indexed Fees.....	22
TABLE OF CONTENTS	4	PILU Management	23
PROJECT SUMMARY	5	Housing Trust Fund	23
GLOSSARY	6		
SECTION 1. INCLUSIONARY ZONING + POLICY DESIGN	7	SECTION 3. EXISTING AFFORDABLE HOUSING REQUIREMENTS	25
Inclusionary Zoning Overview.....	7	Affordable Housing Requirements Overview	25
Economic Feasibility Considerations	8	Acton	27
Understanding the Local Housing Market.....	8	Bedford	33
Shifting the Costs	9	Concord	37
Conducting an Economic Feasibility Analysis	10	Lexington	41
Designing a Policy.....	11		
Program Structure.....	11	SECTION 4. LOCAL DEMOGRAPHICS + HOUSING	45
On-Site Development	11	Demographics.....	45
Alternate Compliance Options	13	Housing.....	49
Incentives and Cost Offsets.....	14	Affordable Housing Stock.....	53
Ensuring Long-Term Affordability.....	15		
Measuring Impact	16	SECTION 5. RECOMMENDATIONS	54
		Acton	54
SECTION 2. PILU OVERVIEW + METHODOLOGIES	18	Bedford	59
Setting A PILU Fee.....	18	Concord	63
PILU for Fractions	19	Lexington	67
PILU for Small Projects.....	19		
Choosing a PILU Methodology	20	APPENDIX	71
Affordability Gap.....	20	Inclusionary Zoning Comparison.....	72
Production Cost.....	21	Inclusionary Zoning Resources	76
		PILU Resources.....	78
		IZ + PILU Examples	79
		Project PowerPoint Presentation.....	80

PROJECT SUMMARY

The Towns of Acton, Bedford, Concord, and Lexington have seen an increase in home prices over the last decade, and housing affordability has become a concern.

This project builds on individual measures that the Towns have already set in place to increase the supply of affordable housing. The purpose of this project is to assess the participating towns' current affordable housing bylaws, review inclusionary zoning best practices, recommendations to strengthen existing affordable housing bylaws, and provide information on how best to approach Payment in Lieu of Units (PILU) to incentivize construction of units and deter cash payments.

This report is structured as follows:

- **Section 1:** Inclusionary Zoning + Policy Design
- **Section 2:** PILU Overview + Methodologies
- **Section 3:** Existing Affordable Housing Requirements
- **Section 4:** Local Demographics + Housing
- **Section 6:** Recommendations
- **Section 7:** Appendix

GLOSSARY

ACHC	Acton Community Housing Corporation
AHOD	Affordable Housing Overlay District
ALR	Assisted Living Residences
AMI	Area Median Income
CPA	Community Preservation Act
CRD	Clustered Residential Development
DHCD	Department of Housing and Community Development
DU	Dwelling Unit
HCV	Housing Choice Vouchers
HOA	Homeowner's Association
HOME	Home Investment Partnerships
HPP	Housing Production Plan
HTF	Housing Trust Fund
IZ	Inclusionary Zoning
LIP	Local Initiative Program
PILU	Payment in Lieu of Units
PMI	Private Mortgage Insurance
PRD	Planned Residential Development
QAP	Qualified Action Plan
RLV	Residual Land Value
ROE	Return on Equity
TDR	Transfer of Development Rights
SHI	Subsidized Housing Inventory
SP	Special Permit
SPGA	Special Permit Granting Authority

SECTION 1.

INCLUSIONARY ZONING + POLICY DESIGN

Inclusionary Zoning (IZ) is a strategy to ensure that the benefits of new investment and development are shared more equitably among households of different income levels.

The creation and preservation of affordable homes in asset-rich neighborhoods with access to quality schools, public services, and better job is one of the few proven strategies for increasing opportunity for a range of residents. IZ functions best when it is part of a comprehensive affordable housing policy that relies on a variety of programs and mechanisms to achieve a community's affordable housing goals.

INCLUSIONARY ZONING OVERVIEW

Inclusionary Zoning (IZ) mandates tie the development of market-rate housing with low- or moderate-income units in order to increase the supply of deed-restricted affordable housing in a community. Roughly 800 communities around the country have enacted IZ, including over 300 communities in the Commonwealth. While well-designed IZ can increase affordable housing without disrupting the market, it is sometimes perceived as controversial and requires town officials to assess economic feasibility and engage the community for buy-in.

IZ programs include a range of local policies that leverage the economic gains from rising real estate values to produce affordable housing. This is done by by tying the creation of homes for low- or moderate-income households to construction of market-rate residential units via a required set-aside of affordable units. The adoption of IZ may achieve a number of public purposes, including accommodating a community's need for affordable housing, addressing the effects of prior exclusionary zoning, providing opportunity to lower income level households, and affirmatively advancing integration and other fair housing goals.

There are numerous benefits of adopting inclusionary zoning, including:

- Ensuring that low- and moderate-income households are integrated within the community and have access to the same opportunities as middle- and high-income households
- Meeting the housing needs of households with a range of incomes within the same community
- Setting clear guidelines and processes for housing developers
- Supporting local economic development by increasing the number and economic mix of residents in the community

Effective IZ is tailored to local market conditions and can set standards that do not overburden new development or negatively impact the pace of development, while also resulting in meaningful increases in affordable units. A program that is designed and applied in a consistent and predictable manner, and that has widespread acceptance as a normal part of the development process, is most likely to be successful.

Effective IZ is tailored to local market conditions and can set standards that do not overburden new development or negatively impact the pace of development, while also resulting in meaningful increases in affordable units.

That said, there is no single best approach to IZ program design. Some key practices include program consistency, clearly documented rules, and predictability. A new or amended IZ bylaw must fit in the context of the demographic, market, and land use characteristics of the community, and respect local politics and policy priorities. The program must reflect the fact that there are real and important political and market conditions that differ from place to place. Effective IZ is designed with careful consideration of local development patterns, the affordability needs of the residents in the area, and political feasibility. In order to create a PILU option that results in substantive and regular payments to construct housing, the underlying IZ program must be strong and effective.

ECONOMIC FEASIBILITY CONSIDERATIONS

UNDERSTANDING THE LOCAL HOUSING MARKET

It is important to determine if the market is strong enough to support IZ. If the local market is weak, especially in relation to surrounding jurisdictions that don't have IZ, the requirements may serve as a disincentive to future development, market-rate or affordable. Some questions to consider include:

- How strong is demand for housing?
- How much land is available for development and how much does it cost?

- How do existing residential zoning bylaws affect multifamily housing development?
- How many units are in the development pipeline?
- Are IZ requirements able to be met given development costs?

The best way to understand the local housing market is to involve local housing developers early in the IZ design process. IZ only works when the program makes sense—financial and otherwise—to the development community.

SHIFTING THE COSTS

IZ asks developers to share the responsibility of creating affordable housing without creating uneconomic conditions that deter future housing development. These costs are usually absorbed by modest declines in land prices and reductions in developer profits instead of being passed on to tenants and homebuyers, as unit prices must continue to be competitive with the local real estate market. Incentives or cost-offsets offered by the program, such as density bonuses and parking waivers, would reduce the amount of the land price reduction. Over time, land prices will fall to absorb the cost of the IZ requirements as developers avoid projects with low profits.

Land values may be slow to change in response to new regulations. If possible, IZ requirements should be carefully phased-in so that developers can anticipate and plan for the upcoming changes. This will allow the development community to better negotiate concessions from landowners. Some programs may have a clearer and more predictable impact on land prices than others. An IZ policy that is widespread, universal, and with stable rules may translate into land price reductions more directly than one with complex or fluctuating requirements and many discretionary alternatives.

IZ requirements should be carefully phased-in so that developers can anticipate and plan for the upcoming changes. This will allow the development community to better negotiate concessions from landowners.

Generally, land prices tend to be slower to respond to factors that decrease prices, including changing market conditions and increased regulations or fees. Landowners may be reluctant to take a loss or adjust their expectations downward. Land prices are much more likely to react quickly to factors that increase prices, such as heightened rents and home prices.

It is important that the IZ program establish fair and reasonable expectations so that cost estimates are accurate and reliable. If the local housing market is volatile, the incentives and requirements may need to be adjusted regularly to ensure that the number and types of units remain aligned with local housing needs.

CONDUCTING AN ECONOMIC FEASIBILITY ANALYSIS

An economic feasibility analysis is a technical evaluation of IZ that uses housing development cost and profit models to assess the impact of an IZ policy. An economic feasibility analysis is an integral part of developing an IZ policy that responds to market dynamics and constraints. Through the analysis, town officials can ensure IZ policies produce the greatest number of affordable housing units while maintaining a strong residential development market. The analysis can calculate feasibility at the community level or within specific districts, and can be re-evaluated after implementation to account for changing market conditions or affordable housing needs.

Main components of an economic feasibility analysis

Numerous components can be added to the analysis depending on the municipality's regulations and interests. Specific elements of an analysis can be:

- Housing prototypes: Approximation of housing developments recently built in the community and in the development pipeline
- Tenure models: rental and homeownership
- Rental and home sale values
- Construction and operating costs
- Community cap rates
- Reasonable rates of return on equity
- Ratio of debt to equity
- Incentives: Density bonus, parking reductions, fee waivers, etc.
- Varying percentage of inclusionary requirements
- Level of affordability by area median income (AMI)
- Zoning requirements and restrictions

Economic feasibility analysis methodologies

There are multiple types of methodologies that can be used when calculating the economic feasibility of inclusionary zoning, these include:

Return on Equity

Return on Equity (ROE) is one way of determining if IZ requirements would unduly burden developers and stifle production. ROE calculates the value of a housing development based on its stabilized income potential and subtracts development costs (including land) to determine the developer profit. The financial feasibility of each IZ prototype is measured by the rate of return on equity that the profit represent

Residual Land Value

Residual land value (RLV) is a second way of determining IZ costs on developers. This approach calculates the income potential of development and subtracts the development costs (excluding land costs and including assumed return on equity). What is left over is what a developer is willing to pay for a site. A scenario that generates a land value that is well

below market prices indicates the development costs (including the required IZ units) are too high.

DESIGNING A POLICY

PROGRAM STRUCTURE

An IZ program can take many different forms depending on the structure employed. Municipalities interested in creating an IZ program have to decide whether the program will be mandatory or voluntary, target a specific district or neighborhood or the entire municipality, and what, if any, alternatives there will be to on-site units.

Mandatory or Voluntary

There are relatively few mandatory IZ programs in Massachusetts, but this is changing. Most communities use the special permit process authorized by Section 9 of the Zoning Act to relax zoning requirements in exchange for providing a certain number of affordable housing units in a residential development. In general, mandatory programs generate far more affordable units. Voluntary programs generate the most units when they either offer substantial subsidies to developers, or they function as mandatory programs where discretionary permits are denied without a robust affordable housing component included in the project.

Regardless of whether the program is designed as a mandatory requirement or an incentive-based voluntary special permit, it is advisable to adopt generally applicable standards with identified areas of flexibility to increase certainty and predictability, rather than imposing ad hoc conditions during the approval process.

Geographic Targeting

Another consideration for town officials is the extent of the geography that will be covered by IZ. Some IZ programs cover the entire extent of the municipality, while others apply the requirements to targeted neighborhoods, or have varying requirements by neighborhood. Programs that only target specific areas of a community may be more complex to design and administer, and could lead to developers foregoing development in IZ neighborhoods. Community-wide IZ programs are able to compensate neighborhood market conditions through incentives that balance costs and profit of development.

ON-SITE DEVELOPMENT

Typically, IZ applies to new construction of market-rate residential units. A few jurisdictions require an affordable unit or a payment in lieu of units fee (PILU) for every new unit of housing created; however, providing a unit or payment for very small projects may not be financially or politically feasible. For a comprehensive overview of PILU see Section 2.

Project Size Threshold

Most communities set a threshold, usually between 6-10 units, where IZ is triggered. Ideally, the project size threshold will be determined after an economic feasibility study to ensure a data-driven policy approach.

Required Set-Aside

Generally, IZ will establish a ratio between market-rate and affordable units, so that “10%” or “15%” of the total units (or net floor area) in the development must be set-aside for affordable housing. There is no one-size-fits-all set-aside, and most programs fall within the range of 5% to 25%. An economic feasibility analysis can provide town officials with a set-aside percent that makes sense for a community’s market conditions. The key is to balance the affordable set-aside with the strength of the local market. If the set-aside percentage is too low, the market is not being leveraged efficiently to meet the affordable housing goals of the community. However, if the percentage is set too high, the program could deter local development.

Likewise, communities may also incentivize that a certain number of the affordable housing set-aside meet specific local housing needs. For example, there may be a preference for large units that are suitable for families with children, units that are accessible for people with disabilities, or rental apartments. The required set-aside of affordable units is an important local decision. In communities where higher-density development is not practical or politically feasible, high set-asides may not be possible, but lower requirements may still be effective. There may also be more reliance on PILU fees in lower-density areas because smaller-scale development will result in fewer affordable units per project.

Fractions

Sometimes, the IZ set-aside calculation will result in a fraction of a unit. It is common for municipalities to round up to the next whole number if the percentage calculation results in a fraction higher than 0.5 units. Some programs require PILU for the total fraction (multiplying the percentage by the total PILU for one unit) or if the fraction is lower than 0.5.

Income Targets

Many IZ programs have established tiers of affordability, with a certain percentage of units reserved for very low-income households (under 50% AMI), a second tier for low-income households (50-80% AMI), a third tier for moderate-income households (80-100% AMI), and sometimes a fourth tier for middle-income households (100-120+% of AMI) depending on the local affordability gap and unmet need. The rule of thumb is to limit the housing cost to 30% of gross household income. Some IZ programs are structured to target people who are not well-served by the market or other publically-funded programs, while others address some of the need across all incomes.

Some cities and towns further leverage the local IZ units by partnering with Housing Authorities to reach deeper levels of affordability by matching low-income households with housing choice vouchers (HCV) and moderately affordable rental units. For cities and towns seeking to reach those with the most acute housing needs (less than 50% of AMI), the program may allow for the option

of providing a fewer number of units at a deeper level of affordability—this is most appropriate for rental projects.

Finally, in many cases, there is a higher income target for homeownership units than for rental units. For example, an IZ program may set a target of 80% of AMI for rental developments and 100% of AMI for ownership.

Design Standards

When affordable units are required on-site, they should be dispersed throughout the project and not clustered in any one part. The units should also be indistinguishable (at least from the exterior) from market-rate units. The SPGA may also wish to require certain minimum standards regarding square footage and appliances. In some cases, municipalities require that affordable units be similar in size, layout, construction materials, fixtures, amenities, and interior and exterior finishes to market-rate units.

Additionally, the IZ should specify that affordable owners or renters have similar access to common areas, facilities, and services. Finally, the IZ should specify that affordable units be proportionate to market-rate units with regards to unit size and the number of bedrooms, or encourage a greater proportion of the required affordable units to be family-sized with 3 or more bedrooms to increase options for larger households.

Phasing

IZ should specify that the affordable units be phased on a set schedule during construction. It is recommended that the affordable units are produced on a schedule that is proportionate with market-rate unit production.

ALTERNATE COMPLIANCE OPTIONS

Some IZ programs require that the affordable units must be provided “on-site” as part of the proposed development, while others allow units to be provided “off-site” or through PILU. Another option is to allow developers to preserve or rehab existing affordable housing units. An argument in favor of on-site provision is that it disperses affordable housing throughout the community and prevents income-based concentration or segregation. This is an especially relevant concern in a town where land prices in one area differ widely from those in another part of town. Additionally, affordable housing units are more likely to be produced quickly if they are on-site, while PILU offers funding without site and developer determination.

PILU

The option of a PILU fee give developers more flexibility in their development program. There may be instances where a PILU can be used to build more than the required units because the municipality can combine it with other sources of funding or targeted land. PILU can also be a more economically-feasible option for developers building smaller housing projects and can be an alternative if the set-aside results in a fraction. However, it is not recommended that PILU fees be allowed for proposed rental developments. Rental units should be constructed and managed on-site as part of

the larger development to ensure the long-term viability and maintenance of the affordable units. PILU fees should also be due at certain points along the development process, such as issuance of building permits or certificates of occupancy for the market-rate units. See Section 2 for additional information on PILU.

It is not recommended that PILU fees be allowed for proposed rental developments. Rental units should be constructed and managed on-site as part of the larger development to ensure the long-term viability and maintenance of the affordable units.

Off-Site Units

A number of programs set additional standards for off-site units in order to ensure that the units are located in appropriate neighborhoods, built to a high standard of quality, and well maintained over the long term. Often the developer is required to provide additional public benefits (i.e. playgrounds and public open space) as part of the off-site project, or an increased number of affordable units. Some programs also require the off-site units to be within a certain distance of the market-rate project. Other projects permit off-site development if the affordable units will be in low-poverty block groups to ensure economic integration. Extra care should be used if off-site units are provided by buying and restricting existing homes, instead of new construction. In these cases, the Special Permit Granting Authority (SPGA) should ensure that the units are free of lead and mold, and that the roof, windows, and major mechanical systems have been recently replaced or updated. Off-site affordable units should be produced on a schedule that is proportionate with the market-rate development.

INCENTIVES AND COST OFFSETS

Effective IZ usually offers a range of incentives to reduce the cost of providing the affordable units. The intention of incentives is to meet a double bottom line of providing affordable housing and realizing a reasonable overall return for developers and their lenders. Most inclusionary zoning in Massachusetts is more accurately known as “incentive zoning.” A true IZ program mandates that developers restrict some of their housing as affordable. Incentive programs provide that a SPGA may allow for favorable zoning treatment in exchange for providing affordable housing.

Some of the most common incentives include:

- Density bonuses
- Unit design flexibility
- Dimensional zoning relief
- Fast track permitting
- Parking waivers
- Fee deferral
- Fee reduction or waiver
- Subsidies
- Tax abatements

Density Bonus

An extra density bonus above the by-right maximum is by far the most common development incentive. One example of a density bonus is the allowance of an additional 30% of floor area or unit count when IZ units are provided. In a community where the IZ set-aside is 20%, the density bonus would cover all of the IZ units, as well as a 10% increase in the density of market-rate units. A second common approach is to increase the density on a 1:1 basis: for each IZ unit required, the development is also allowed to build an additional market-rate unit. Both the affordable unit and corresponding bonus market-rate unit would be in excess of the by-right development.¹

Expedited Processing

Allowing expedited processing for projects with an affordable housing component can save developers weeks or months of the permitting process, reducing some risk and financial costs of development. In San Diego, California, the expedited process offers developers access to specialized city staff, priority on hearing dockets, and shorter staff review times. Municipalities considering expedited processing should consider their staff resources and the number of projects expected to request expediting to assess realistic processing times.

Design Flexibility

Flexible design grants developers relief from some unit and lot dimensional requirements that may constrain development. Relief can include waving or reducing setbacks and minimum lot sizes, as well as minimum open space requirements and minimum unit sizes.

Parking Waivers

Some IZ programs allow developers to build fewer parking spaces than required under local zoning to save parking costs. Reductions of 10% - 20% of parking requirements are common. Parking waivers should be informed by the project's proximity to transit options.

ENSURING LONG-TERM AFFORDABILITY

In order for IZ to serve local housing needs, it must specify who qualifies for the affordable units and ensure long-term affordability.

Affordability Restrictions

IZ should require a term of affordability of at least 30-years, legally restricted by a deeded covenant. Many communities require that the affordability be maintained by the deed restriction in perpetuity (or 99 years). If the city or town intends to include the affordable units created through a local IZ program on the Department of Housing and Community Development's (DHCD) Subsidized Housing Inventory (SHI), the standard Local Initiative Program (LIP) deed rider should be used.

¹ In both examples, the unit count may be calculated as net floor area for IZ programs based on square footage, rather than unit counts

Deed Restrictions

It is recommended that cities and towns use DHCD's standard deed rider or a covenant prepared by the Town Counsel or City Solicitor to ensure that the instrument will survive foreclosure, protect the public interest, and provide continuity in the terms between projects.

Monitoring of Affordable Units

The municipality and developer may enter into a "Development Agreement" outlining how the affordable units must be maintained and monitored over the life of the affordability period, or the special permit decision itself may serve as the record of the agreement. Some conditions to require include:

- How will the resale price of the unit be calculated at the time of a sale?
- How are annual rent limits calculated?
- Which party is responsible for marketing available units and certifying income eligibility of prospective purchasers or tenants?
- Do Home Owners Association (HOA) or condominium documents adequately protect the owners of affordable units?
- Does the city, town, local housing authority, or housing trust have a right of first refusal upon resale of the property?
- Who prepares and records the deed rider at closing?
- Are household incomes for rental units certified annually?

Fair Housing Marketing Plan

Communities are strongly encouraged to include a requirement for a Fair Housing-compliant marketing plan as part of the IZ program. Fair Housing marketing is also a requirement of DHCD for inclusion of LIP units on the SHI. A marketing and tenant selection plan that identifies how eligible buyers and renters will be selected for available units should be developed. The prospective buyer or renter should also be fully informed about the benefits and responsibilities of buying or leasing an IZ unit.

MEASURING IMPACT

The IZ program administrator should seek to measure and document the program's impact on meeting local needs by tracking demographic information, sales prices, and rents across successive occupants. A standard annual report can summarize the number of units produced, number of households served, household income levels, amount of PILU fees collected and their use, and make recommendations for future policy revisions.

Ongoing Administration and Monitoring

Implementation is the most practical consideration to keep in mind when designing and enacting IZ. Carefully drafted decisions with clear conditions, effective monitoring, and detailed recordkeeping to support long-term affordability are key elements of a successful program. In some cases, the

municipality chooses to administer the local IZ program and monitor the resulting units. In other cases, the local Housing Authority, an Affordable Housing Trust, or a housing consultant perform these tasks on behalf of the City or Town. Responsible and effective administration, monitoring, and enforcement are critical factors, and require a significant investment in staffing and training to oversee the development process and steward the units after they are built. The program designers should plan ahead to adequately cover administrative costs in both high-growth and low-growth periods.

SECTION 2.

PILU OVERVIEW + METHODOLOGIES

Inclusionary Zoning (IZ) often includes a provision known as a “payment in lieu of units” (PILU), which is a fee paid by the developer instead of providing affordable units on or off site.

A PILU is an optional means of compliance that gives both municipalities and developers flexibility in providing affordable housing. A PILU is most appropriate when a development is small or specialized so providing an on-site unit is more likely to create a financial hardship. Additionally, when the affordable requirement results in a fraction of a unit being required, a PILU may be allowed for the fraction instead of requiring that the affordable unit count be rounded up or down.

SETTING A PILU FEE

There is no agreed upon standard for setting PILU fees, but there are two major approaches that are commonly used:

- **Affordability Gap:** PILU is based on the typical difference in price between units available on the open market and affordable units. This is commonly thought of as the cost of “buying down” an existing unit and reselling it at an affordable level.
- **Production Cost:** PILU is based on the average amount that the public has historically invested in projects to produce each additional affordable unit. This is often thought of as a local non-profit developer’s cost of development.

Historically, PILUs were customarily structured to capture the production cost. In recent years, especially in response to the foreclosure crisis of 2008-2012, more communities implemented affordability gap payments with the intent of capturing a portion of the lower-priced supply on the

market, buying it down, and permanently restricting it. Regardless of the approach selected, each relies on assumptions and estimations that may result in an approximate, but slightly imperfect fit for any given project.

A PILU is most appropriate when a development is small or specialized so providing an on-site unit is more likely to create a financial hardship.

The key factor for a town to consider prior to creating a PILU policy is whether it is preferable to encourage on-site production (limit PILU use) or collect revenue to leverage other funding sources (maximize PILU use) to build units off-site. The higher the fee, the more likely that developers will choose to build the units on-site and avoid the PILU option. The project developer must evaluate the PILU in light of the “opportunity cost” of providing the units on-site. This is the value that the developer gives up by renting or selling the affordable unit at a restricted price. The opportunity cost is likely to be higher for higher-priced units, but often the PILU is based on expected average costs or median prices, and therefore the same for all projects of similar size (usually number of bedrooms). Therefore, when the PILU is standardized, there will be a tendency for higher-end projects to choose to pay the fee, and more moderately priced projects to provide units on site.

PILU FOR FRACTIONS

PILU can also be used as an alternative for fractions. In this case, developers are required to build the housing units resulting from whole number calculation, and pay a fee for the remaining fraction.

Example:

Units in project: 12

Inclusionary requirement: 10%

Inclusionary units required: 1.2

Inclusionary units built: 1

PILU fee: 20% of PILU for one unit

PILU fee for 1 unit (based on QAP for large unit): \$349,000

Total PILU payment: **\$69,800**

PILU FOR SMALL PROJECTS

PILU can also be given as an option for developers with smaller projects, who may not find it financially feasible to build more units. The size of projects that can qualify for PILU should be determined following an economic analysis.

CHOOSING A PILU METHODOLOGY

A municipality may choose to enact a general methodology or formula as a part of the Zoning Bylaw or Ordinance and further elaborate the specific calculation as part of the SPGA's Rules and Regulations. This allows for future flexibility when adjusting the calculation in response to changes in the housing market, construction costs, municipal capacity, or capacity of development partners. Outlined below are examples of affordability gap, production cost, and indexed calculations.

AFFORDABILITY GAP

$$\text{PILU} = \text{fair market value} - \text{sales price of an affordable unit}$$

In this approach, the SPGA must determine how to calculate a fair market price for a home in the area along with a reasonable estimate of what a low-or moderate-income household can afford to pay towards the cost of housing. DHCD offers clear guidance regarding maximum sales prices for homes that are intended to be included on the SHI. If a local IZ program is targeting higher-income populations (80-120% of AMI), the DHCD housing cost calculator can be adapted to determine appropriate affordable costs.

There are a number of factors to consider when determining how to capture the fair market value of the homes in the community. It is important to discuss this with the local Assessing Department to understand what data is collected on a regular basis regarding housing prices and is available for the calculation. As further discussed below, some communities prefer to use the market-rate units in the proposed project as the comparable units, while other communities use a town-wide median or mean value. Using a town-wide value based on actual recent sales will be more representative of the fair market, but requires accurate and regularly updated data.

Fair market value may be determined through the following methods:

- Median cost of units in PILU development (examples: Arlington, Wellesley, Barnstable, Brookline):
 - The fee can be calculated using the projected sales prices in the development proforma with a look-back provision that if actual sales prices are significantly higher than projected, the final PILU payment will be adjusted based on sales data.
 - The fee can be calculated based on the cost of construction reported on the building permit application.
 - The fee can be based on the estimated assessed value.
 - Calculation must adjust for different unit sizes based on number of bedrooms or on a square foot price.
 - Require comparison units of a similar size, such as at least 1,500 square feet and 3 bedrooms.

- Note: This option may be difficult to use in the case of a single-family subdivision where the lots are offered for sale, but homes are built independently of the developer over time.
- Town-wide median sales price (example: Somerville):
 - The SPGA or Housing Trust works with the local Assessing Department to analyze all the sales over the previous 4-6 quarters to determine median price.
 - Fee can be adjusted for unit size based on number of bedrooms or on a square foot price.
 - Fee can be updated on a regular basis (i.e. when updated AMI figures are released by HUD or at the beginning of the fiscal or calendar year).

Affordable sale prices may be determined through:

- A price limit that is certified by DHCD to comply with the provisions of affordable housing for inclusion on the SHI:
 - This is a price limit that is calculated to be affordable for a household (based on number of people) at 70% AMI.
 - Homeowner’s Insurance, property taxes, Private Mortgage Insurance (PMI), Homeowner’s Association (HOA) fees are accounted for in the total cost of the unit.
 - Some communities also include parking fees and a utility allowance.
- Note that in some communities, the PILU fee is NOT discounted by the price of an affordable unit (example: Medway). In these cases, the PILU is equal the total cost of the fair market unit. This is a clear signal to the developer that a PILU is an option of last resort and that there is a strong public preference for providing the units on-site.

PRODUCTION COST

PILU = average total development cost of local partners - sales price of an affordable unit

With this approach, the SPGA works closely with developers and builders in the area to determine how much it costs to build a comparable affordable unit in the community. This may be a good choice for a municipality that has experienced a lot of recent affordable housing development or ones with very robust non-profit developers. Often, municipalities will work with cooperative developers to review the cost certifications of recent 40B projects or town-sponsored affordable housing units to determine the actual construction costs in the local market.

Cities and towns that have not experienced consistent affordable housing development may find it difficult to collect year-to-year data on construction costs. In some cases, industry estimates (i.e. RS Means) may be a substitute, but that is likely to be less accurate than the local market. This option

is much more reliant on cooperative development partners who are willing to publically share information on costs.

Average total development costs may be determined by:

- The actual costs of recently funded/completed off-site projects of nonprofit and for-profit affordable housing partners (example: Falmouth).
 - Survey the past 12 months of completed projects.
 - Update the analysis annually with the help of development partners.

- The average cost per square foot or unit size based on the number of bedrooms (example: Cambridge’s linkage fees).
 - If converting between cost per square foot and unit size, the SPGA should set reasonable minimum square footage limits for units (i.e. a 3-bedroom unit shall not be smaller than 1,100 square feet).

- The cost of the land and all hard, soft, and carrying costs associated with the entire project.

Affordable sale prices include all of the considerations outlined in the “affordability gap” discussion above. Again, it is the SPGA’s decision on whether or not to discount the PILU by the revenue realized at the time of sale of the affordable unit.

INDEXED FEES

PILU = Standardized cost of providing affordable housing

PILU calculations based on a fixed fee per unit, or per square foot of floor area, will change over time in relation to inflation and increasing development costs. An annual approval process to analyze current costs and recalculate the fee may be a challenging source of local controversy. Programs often attempt to balance these factors by tying the fee to an index that allows for regular increases (and potential decreases) in response to market conditions for construction costs and land prices.

The use of an index is not as common as the two approaches discussed above. However, in some jurisdictions the PILU is tied to DHCD’s annual Qualified Action Plan (QAP). The QAP is a state-wide plan that explains how Federal Low-Income Housing Tax Credits (LIHTC) will be allocated throughout the state. The QAP includes a maximum for total development costs per unit of affordable housing for different types of housing in different locations. This number serves as a maximum subsidy limit and is updated annually (example: Watertown).

Per the DHCD’s 2018-2019 QAP, the Towns of Acton, Bedford, Concord and Lexington are considered Suburban Areas within Metro Boston and are subject to the following recommended production cost limits:

Table 1 QAP Production Cost Limits, 2018-19

TYPE OF PROJECT	DESCRIPTION	TOTAL RESIDENTIAL DEVELOPMENT COST LIMIT
SMALL UNITS	Studios, average of 1 bedroom per unit	\$329,000
LARGE UNITS	Average of at least 2 bedrooms per unit or at least 65% of units with two or more bedrooms and 10% with three or more bedrooms	\$349,000

PILU MANAGEMENT

Municipalities interested in adopting a PILU should decide what entity will be in charge of managing the payments and how these will be used. Many municipalities have used a housing trust fund (HTF) for PILU payments, which ensures that funds are used to address a community’s housing need. Municipalities can also make a local non-profit housing development corporation or housing authority PILU manager. Some communities have chosen to place PILU fees in a community-wide fund. This method of PILU management is not recommended, as PILU fees may be used for purposes other than affordable housing provision and may have complicated procurement processes.

HOUSING TRUST FUND

A local housing trust fund allows municipalities to collect funds earmarked specifically for affordable housing, and use them for local initiatives that create or preserve it. Section 55C of M.G.L Chapter 44 delineates the provisions for towns in the Commonwealth to establish a Municipal Housing Trust Fund (HTF). The law sets guidelines of what local housing trusts can do, specifies who can serve on a local housing trust fund board, and what powers a community can grant the board.

Where does funding come from?

In Massachusetts, CPA funds are the most common source of funding for HTFs. These funds can be used in numerous ways, although specific uses should be designated by the HTF. Funding for a HTF can come from a variety of other sources, including:

- Inclusionary Zoning payments (PILU)
- Payments from other special bylaws/ordinances
- HOME funds
- Negotiated developer fees
- Municipality’s general fund
- Private donations

The most popular applications of HTF funds are:

- Financial support for the construction of affordable homes by for- or non-profit developers
- Rehabilitation or upgrading existing affordable housing

- Conversion of market-rate homes to affordable homes
- Increased affordable units in new housing developments
- Development of municipal land or buildings into affordable housing
- Preservation of deed-restricted properties at risk of expiration
- Creation of programs to assist low- and moderate-income homebuyers
- Creation of programs to assist low- and moderate-income households with home repairs
- Advocacy and education about affordable housing

Under the Commonwealth's law, a community's HTF must be overseen by a board of trustees with a minimum of five members, including members with expertise in affordable housing development, real estate development, banking, finance, and real estate law. In addition, one of the board members needs to be the Chief Executive Officer of the municipality or one of the Selectmen. The HTF board is granted several powers in order to advance affordable housing preservation and provision in a community, including accepting and receiving property or money, purchasing or selling property, and managing or improving existing properties.

A successful HTF needs the ongoing support of the community and Town officials, as well as a clear action plan and guidelines for financial sustainability and funding applications. The Massachusetts Housing Partnership (MHP) has various resources for establishing and operating a HTF on their website, see Appendix for link.

SECTION 3.

EXISTING AFFORDABLE HOUSING REQUIREMENTS

There is a range of requirements and incentives for affordable housing development across the towns.

This section of the report offers an overview of each participating town's existing affordability policies.

AFFORDABLE HOUSING REQUIREMENTS OVERVIEW

Currently, all participating towns have specific affordable housing provisions in their bylaws, although only some have instituted a mandatory affordable housing requirement for new development. There is a range of requirements and incentives for affordable housing across the participating towns, with one town having implemented an affordable housing overlay district. Acton is the only town with a PILU system, although other towns have negotiated payments with developers of specific projects.

Table 2 Inclusionary Zoning + PILU Capacity Parameters by Town

TOWN	AFFORDABLE HOUSING PROVISIONS IN BYLAW	MANDATORY PROGRAM	PILU	HOUSING TRUST FUND (or similar)	HOUSING AUTHORITY	COMMUNITY HOUSING CORPORATION (or similar)	HOUSING PRODUCTION PLAN	10% SHI
ACTON	X		X	X	X	X	X	
BEDFORD	X	X		X	X			X
CONCORD	X	X			X	X	X	X
LEXINGTON	X			X	X	X	X	X

Only Bedford has a municipal housing trust fund, Acton has a trust fund administered by the Acton Community Housing Corporation, and Lexington recently created a housing stabilization fund. A housing trust fund or a similar entity usually serves as a repository for PILU fees and ensures funds are earmarked for affordable housing production and preservation. Every town has a housing authority, which can provide support to IZ by matching eligible households with units, managing affordable units, and recommending how PILU funds may be used. Three communities have a community housing corporation or a similar entity dedicated to affordable housing production. Community housing corporations commonly assume the role of non-profit affordable housing developers and could be assigned PILU funds for affordable housing development. Bedford is the only town without a Housing Production Plan (HPP).

Table 3 Existing Affordable Housing Bylaws by Town

TOWN	MANDATORY OR VOLUNTARY	GEOGRAPHY	THRESHOLD	SET-ASIDE REQUIREMENT	INCOME GROUPS (AMI)	DESIGN STANDARDS	TERM OF AFFORDABILITY	PILU	INCENTIVES
ACTON	Voluntary	Affordable Housing Overlay District	All projects	Minor: 1% Major: 20-40%	80-100%	Dispersed Visually similar 2+ bedrooms	Max. permitted by law	Allowed Cost of unit development	Minor: Up to 25% density Dimensional reductions
BEDFORD	Voluntary + Mandatory	Residence D North Road Depot Area Pine Hill PRD	All projects 8+ units	10-15%	80-100%		Perpetuity		More density Dimensional + parking waivers
CONCORD	Voluntary + Mandatory	Business/Residence Industrial / Business / Residence RCD PRD	All projects 4+ units	10-20% 1 unit min.	80%	Can be smaller	Perpetuity		Increased height + density Open space + parking waivers
LEXINGTON	Mandatory	PRD-SBD	All projects	10-20%	80%	Dispersed GFA reqs.	Perpetuity		Dimensional waivers 1.5-2 times proof plan lots

ACTON

Located 21 miles to the northwest of Boston, the Town of Acton grew from a small rural community at the beginning of the 20th century to a suburb following growth in the 1950s and 1960s. Currently, Acton is a mature suburb of about 23,209 residents. The town is surrounded by seven communities, including Westford to the north, Carlisle to the northeast, Concord to the east, Sudbury on the southeast corner, Maynard to the south, Stow to the southwest, Boxborough to the west and Littleton to the northwest. Most of the Town is zoned for residential use, with some allowances for retail/business, and light industrial and office park uses. The majority of households in the community are families and homeowners that live in single-family homes. In recent years, Acton has seen gradual demographic shifts towards more seniors and fewer children, coinciding with renewed interest in compact development and walkability.

Past Plans

Comprehensive Community Plan Acton 2020 - 2012

The Comprehensive Community Plan Acton 2020 has a list of objectives, strategies, and action items to achieve the community vision. Objective 5.2 is to support households of all income levels, while Strategy 5.2.1 is to create a comprehensive and proactive affordable housing strategy to ensure a wide range of housing types for households of limited means. Action 5.2.1.2 is to provide incentives for well-located affordable housing at small scattered sites in proximity to village centers.

Housing Production Plan - 2015

The Acton Housing Production Plan identified three goals relevant to this research:

- Goal 1: Work to preserve and advance housing affordability in Town.
- Goal 3: Increase Town financial, organizational, and infrastructural capacity for affordable housing production.
- Goal 5: Adopt zoning changes to allow for housing choices and flexible approaches to achieve housing affordability.

Residential Zoning

Residential regulations impact a municipality's ability to add to its affordable housing supply. Because most affordable housing is within multifamily housing structures, restrictive zoning against this typology can deter its development. In Acton, multifamily housing is allowed by right in 5 districts, while single-family housing is allowed in 12. In 3 of the districts where multifamily is allowed by right, the maximum number of units per building is 4. Additionally, multifamily housing is only allowed with a special permit from the Board of Selectmen in Residence-A, and with a special permit from the Board of Appeals in the Village Residential District.

Table 4 Residential Zoning in Acton

	RESIDENTIAL ZONING DISTRICTS												SITE PLAN
	RESIDENTIAL			VILLAGE					BUSINESS DISTRICTS				
HOUSING TYPE	R-2 R-4 R-8 R-8/4 R-10 R-10/8	R-A	R-AA	VR	EAV	EAV-2	NAV	SAV	WAV	KC	LB	PM	
SINGLE-FAMILY	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
TWO-FAMILY	N	Y	Y	SPA	Y	Y	Y	Y	Y	N	N	N	
MULTIFAMILY	N	SPS	Y	SPA <4 DUs per bldg.	Y <4 DUs per bldg.	Y <4 DUs per bldg.	N Except for TDR or PCRC	Y <4 DUs per bldg., can increase with SP	Y	N	N	N	Required
SPA	Special Permit from the Board of Appeals												
SPS	Special Permit from the Board of Selectmen												
TDR	Transfer of Development Rights												

Affordable Housing Overlay District

The primary bylaw for affordable housing provision in Acton is the ‘Affordable Housing Overlay District’ (AHOD), enacted in 1990. According to the town’s 2017 Zoning Bylaw, developers are encouraged, but not required, to build low- and moderate-income housing within the Overlay District. While the Overlay District covers areas zoned for residential use, it also allows developers to build in parcels where residential uses are not generally allowed if they include a portion of affordable housing. There are two sub-districts within the overlay: Sub-District A and Sub-District B:

Table 5 Affordable Housing Overlay Districts in Acton

DISTRICT	MANDATE
Sub-District A	The Planning Board may authorize a MINOR affordable housing development when issuing a Special Permit for an Open Space Development
Sub-District B	The Planning Board may authorize a MINOR affordable housing development or allow a MAJOR affordable housing development through a Special Permit

In addition to requiring a Special Permit for affordable housing development, Acton’s bylaws also include specific requirements for minor and major affordable housing development.

Table 6 Requirements and Incentives for Affordable Housing Projects in Affordable Housing Districts

AFFORDABLE HOUSING TYPE	REQUIREMENTS	INCENTIVES
MINOR AFFORDABLE HOUSING DEVELOPMENT	Must meet existing Open Space Development provisions or PCRC	<p><u>Density bonus:</u> Up to 25% per Table 4</p> <p><u>Dimensional requirements reduction:</u> For lots and structures, not less than the percentage increase by density bonus</p> <p><u>Two-family structures:</u> If 15% of the total number of units are affordable, no more than 50% of the total number of units are two-family structures, and no more than 50% of units are in two-family structures</p>
MAJOR AFFORDABLE HOUSING DEVELOPMENT	<p>Special Permit</p> <p>Must meet one or a combination of the following:</p> <ul style="list-style-type: none"> • Min. 40% of units for moderate-income households • Min. 30% of units sold to the Acton Housing Authority • Min. 20% of units donated to Acton Housing Authority <p>Dimensional Provisions:</p> <ul style="list-style-type: none"> • Land area: 80,000sf • Land frontage: 50ft • Max. density: 5 DU per acre • Min. land width: 50ft • Max. building height: 36ft • Max. DU per building: 8-15 • Min. building separation: 20ft • Min. open area: 30% • Min. perimeter buffer: 50ft 	

Acton’s AHOD does not require a minimum percentage of affordable units under Minor Affordable Housing Development, but instead offers guidelines for developers interested in providing affordable units as an exchange for higher density. Developers have five different mechanisms under which they can increase the affordable housing stock of the town in exchange for a density bonus of up to 25% of the original density.

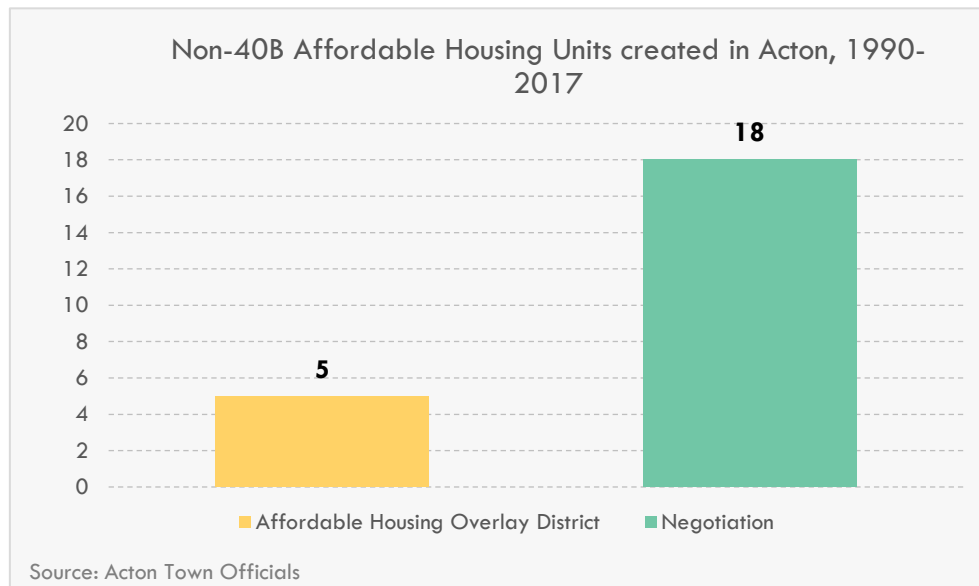
Table 7 Minor Affordable Housing Development – Affordable Dwelling Unit Provisions

	ACTION	UNITS PROVIDED*	DENSITY BONUS
OPTION 1	Donation to AHA	1%	5%
OPTION 2	Sale to AHA	1%	2.5%

OPTION 3	Sale, rental, or lease to moderate-income households	1%	1.75%
OPTION 4	Cash payment to the town of Acton	Total cost of developing 1% of total units	5%
OPTION 5	Property title of affordable dwelling units is donated to the Town of Acton	1%	2.5%

* The number of affordable housing units is rounded up to the next whole number

Only two housing developments have been built under the AHOD, one Major Affordable Housing Developments and one Minor Affordable Housing Development. These three developments created five affordable housing units. Meanwhile, Acton was able to add 18 units to the SHI through negotiations outside of the AHOD. While two of the negotiated developments were 100% affordable, the majority had less than 5% of deed-restricted units.



PILU

Of the bylaw's five provision options, Option 4 of Table 4, is a PILU option that allows developers to make a cash payment to the Town of Acton in the amount of the cost of development of 1% of units. The development costs are evidenced by a pro-forma prepared by the developer and accepted by the Planning Board. The cash payment must be used for the purpose of purchasing, rehabilitating, and/or building low- or moderate-income housing. Outside of AHOD, case by case agreements with developers have also resulted in PILU, although there is no clear methodology used to determine the payment amount. In all cases, the payment is placed in Acton's Affordable Housing Trust Fund, which is administered by the Acton Community Housing Corporation (ACHC).

Design + Terms

According to the bylaw, the affordable housing units must be dispersed across the development in order to ensure mixed-income housing. The exterior appearance of the affordable housing units should be visually equal to the market-rate units, and their interior design should be largely the same. In order to ensure affordability for families, the Town requires all affordable units to contain two or more bedrooms. To preserve long-term affordability, every affordable housing unit must have resale controls. The maximum price for rental units cannot be more than 20% of AMI, adjusted to the dwelling unit size.

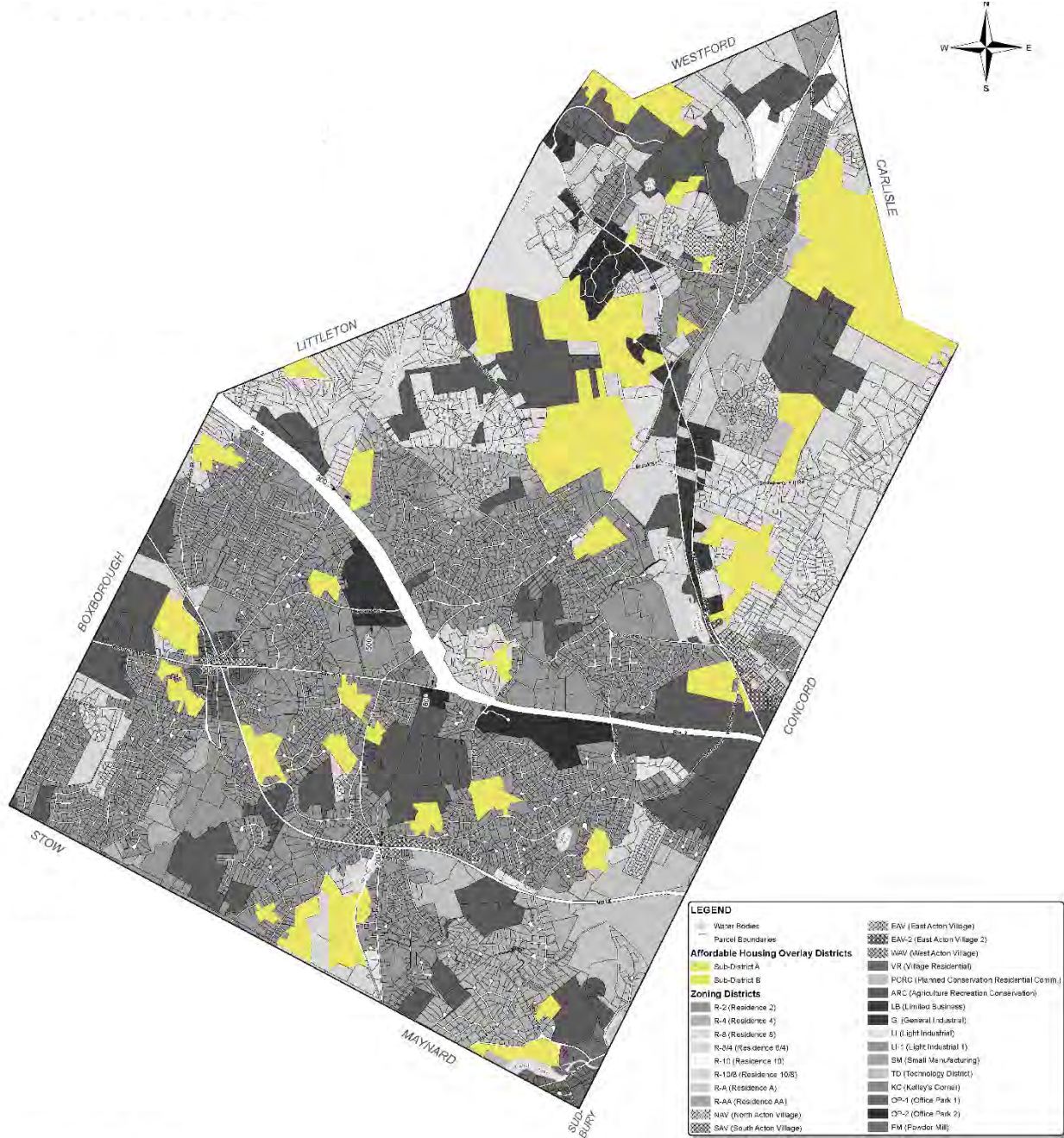
Affordable Housing Results

According to town officials, AHOD has not been successful after 28 years of enactment. The AHOD's requirements may have been too high for developers to meet, especially during the brief 1990 recession. The recession drastically altered the real estate market in Acton, and the number of housing sales have not increased to 1980 levels despite increases in house sale prices. Outside of 40B projects, the Town has relied on case by case negotiations with developers to increase the affordable housing stock. These negotiations are not based on consistent rules or regulations, and yield a varied percentage of affordable housing units per project. Negotiations with developers may also decrease staff time spent on other duties.

Additionally, while Acton has received PILU from case by case negotiations with developers, the ACHC lacks the capacity to develop housing projects. As a result, the entity instead engages in other types of support such as homeowner education, buying down market rate units, and contributing funds to Habitat for Humanity, while contracting out any new housing development. ACHC has also engaged as Town partner in a number of Local Initiative Program (LIP) 40B projects, which have yielded a significant portion of Acton's SHI. ACHC has lobbied the Planning Department for developers to include affordable housing or make a PILU despite a lack of formal requirements in the zoning bylaw. Despite previous success, ACHC officials believe new market-rate developments and subdivisions are much smaller than in previous decades, leaving little room for affordable housing or PILU requests.

Figure 1 Acton affordable housing overlay map

The areas in town where affordable housing is allowed are marked in yellow.



BEDFORD

The Town of Bedford is located 14 miles northwest of Boston and is home to approximately 14,088 residents. There are six towns surrounding Bedford, including Billerica to the north, Burlington to the east, Lexington to the southeast, Lincoln to the south, Concord to the west, and Carlisle to the northwest. Bedford is a predominantly residential town, although it is also home to numerous small businesses, research and development companies, and divisions of large corporations. The majority of households in Bedford are families, and they primarily live in single-family homes that they own. Although Bedford has surpassed the 10% SHI mark, the Selectmen and the Planning Board have voiced their support for further increasing the Town's deed-restricted housing to meet housing need in town.

Past Plans

Comprehensive Plan - 2012

Bedford's 2012 Comprehensive Plan puts forth nine different goals for housing development in Town. Relevant goals for this research include:

- #1: Provide a variety of housing opportunities to meet the needs of Bedford's households and workforce
- #3: Increase housing choices for those who have difficulty accessing suitable housing, including younger households, seniors on moderate fixed incomes, and very low-income households who are struggling to remain in a viable dwelling in town
- #5: Improve mixed-use zoning provisions to clarify community goals and provide market incentives and practical development alternatives

Strategies to achieve these goals that are relevant to this research include considering incentives to encourage well-planned residential opportunities for households in need, support the strategic use of CPA funds, HOME Consortium grants, MassHousing funding and other sources to encourage development and rehabilitation of projects to maintain the affordable housing stock, and identify realistic locations for smaller detached homes in higher density areas.

Comprehensive Affordable Housing Plan - 2002

The 2002 Comprehensive Affordable Housing Plan recommends undertaking a comprehensive review and revision of the Town's Zoning Bylaw to promote affordable housing. Suggested additions include adopting an inclusionary zoning bylaw to support affordable housing supply, and continuing to capitalize the Town's housing trust fund through the Community Preservation Fund and private developers.

Residential Zoning

Until recently, multifamily housing was not allowed by right in any district, and was only allowed by special permit from the Planning Board in Residence D District. Following Town Meeting in March of 2018, the community approved the Pine Hill Overlay District and the Great Road District. Although Pine Hill only allows single and two-family housing, it does so at a greater density than in

other districts. The Great Road District is divided into 4 separate sub districts. Multifamily housing is allowed by-right in two of those districts and by special permit in the remaining two. Live/work multifamily units are also allowed in three of the four sub-districts. Bedford’s bylaw also allows for cluster development and planned residential development through a special permit from the Planning Board. Single-family housing is allowed by-right in all the residential districts and in Business District LB.

The Planning Department has voiced interest in combining the Planned Residential Development (PRD) and Cluster Development provisions into one district, and adding a density bonus in exchange for affordability.

Table 8 Residential Zoning in Bedford

HOUSING TYPE	RESIDENTIAL ZONING DISTRICTS												
	RESIDENTIAL					BUSINESS			PH OVERLAY	RECENTLY APPROVED			
	R	A	B	C	D	LB	GB	C			GR/S	GR/M	GR/C
SINGLE-FAMILY	Y	Y	Y	Y	Y	Y	N	N	SP				
TWO-FAMILY	Y	Y	Y	Y	Y	N	N	N	SP				
MULTIPLE DWELLINGS	N	N	N	N	SP	N	N	N	N	SP	SP	Y	Y
LIVE/WORK	N	N	N	N	N	N	N	N	N	Y	Y	N	Y
CLUSTER DEVELOPMENT	SP	SP	SP	SP	SP	N	N	N	N				
PLANNED RESIDENTIAL DEVELOPMENT	SP	SP	SP	SP	SP	N	N	N	N				

SP Special Permit from the Planning Board

Affordable Housing Requirements

While the Town does not have an inclusionary zoning bylaw, it does have various affordable housing provisions. According to the 2017 Zoning Bylaw, affordable housing is required in Residence D, the North Road Mixed-Use Overlay District, the Depot Area Mixed-Use Overlay District, and any Planned Residential Development (PRD). The Pine Hill Overlay District requires 10% of units to be set aside for households at or below 80% AMI.

Table 9 Bedford Affordable Housing Requirements

BYLAW	DESCRIPTION	AFFORDABILITY REQUIREMENTS*
RESIDENCE D DISTRICT	Mandatory - All residential projects must provide affordable housing	15%
NORTH ROAD MIXED-USE OVERLAY DISTRICT	Mandatory - All projects with 8 or more units	10%, but 5% more may be required for 81% to 100% AMI

DEPOT AREA MIXED-USE OVERLAY DISTRICT	Mandatory - All projects with 8 or more units	10%, but 5% more may be required for 81% to 100% AMI
PLANNED RESIDENTIAL DEVELOPMENT (PRD)	Optional - The number of dwelling units may be increased by twice the number if a percentage of the additional units is affordable	10% - 50% of additional units
PINE HILL OVERLAY DISTRICT	Mandatory	10%

* The number of affordable housing units is rounded up to the next whole number

Design + Terms

All affordable housing units created in any of the aforementioned districts or PRDs must be affordable in perpetuity to households with qualifying incomes. Furthermore, the Town may require the option to purchase or lease a portion or all of the affordable housing units in a development. Currently, Bedford bylaws do not allow PILU.

Incentives

For developers interested in building within the Residence D District, the bylaw allows for multiple units to be built on a single lot at a greater density than elsewhere. In the North Road and Depot Area Mixed-Use Overlay Districts, the Planning Board can grant a special permit to vary the dimensional and parking requirements in exchange for affordable units. For PRD projects, developers are able to build twice the number of units if a percentage of the new units is affordable.

PILU

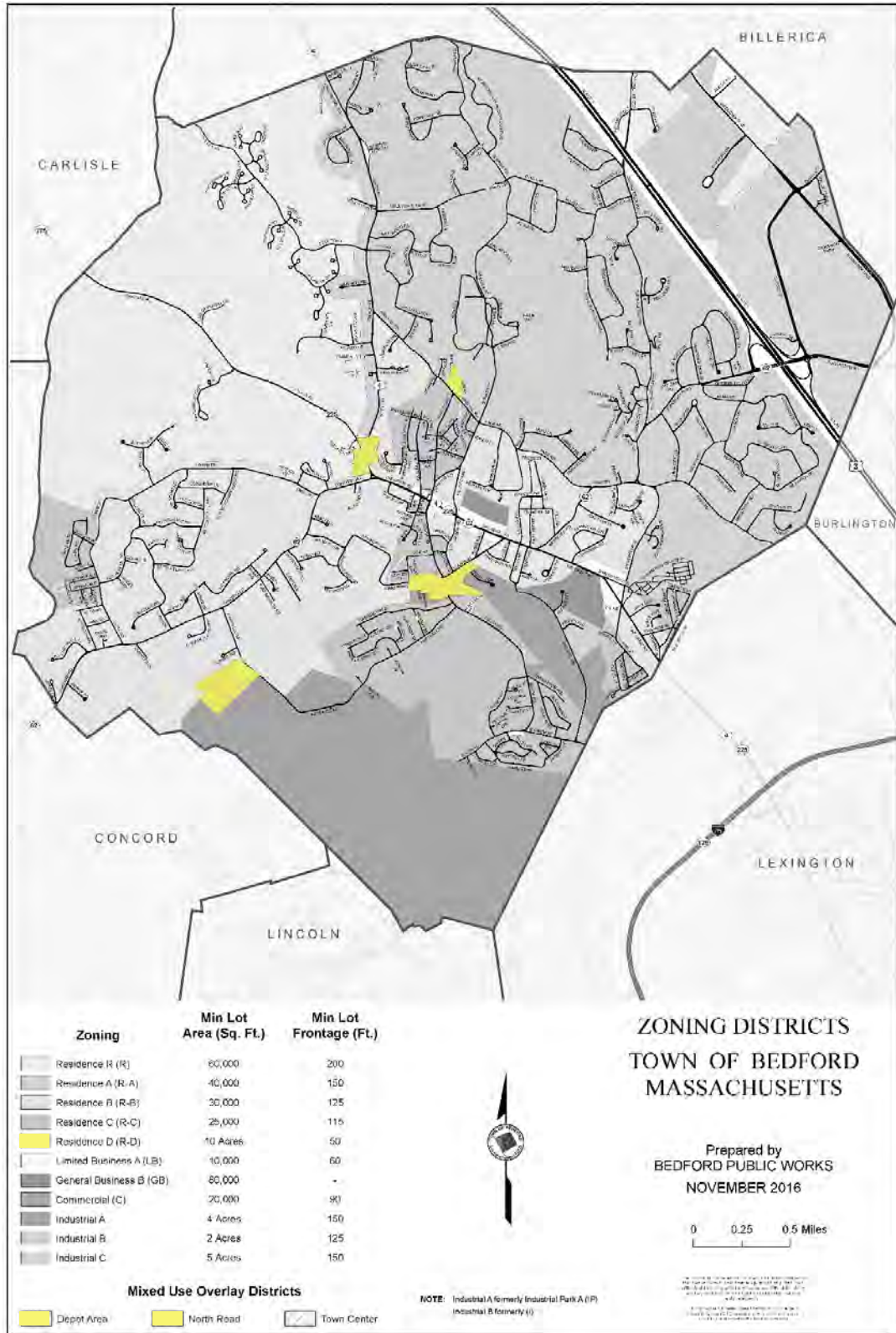
Although Bedford's zoning bylaw does not offer PILU, the Town negotiated PILU on one occasion. The project was in the Residence D district and required to provide 15% affordable units; the calculation resulted in a fraction, which was given as a payment to the Bedford Housing Trust Fund.

Affordable Housing Results

According to town officials, PRD has been the most successful method for affordable housing provision. Additional affordable housing has been created through the Mixed-Use Districts, and only one project has been developed under the Residence D District. It is too early to see the results of the 10% affordable housing provision of the recently approved Pine Hill Overlay District.

Figure 2 Bedford affordable housing overlay map

The areas in town where affordable housing is allowed are marked in yellow.



CONCORD

The Town of Concord is home to approximately 19,432 residents and is located 16 miles to the northwest of Boston. It is neighbored by Carlisle to the north, Bedford to the northeast, Lincoln to the east, Sudbury to the south, and Acton to the west. Concord's accessibility to public transit and major highways, as well as its well-performing schools, has made it a desirable residential community. The majority of households in Concord are families, and most live in single-family houses that they own. By and large, residential land uses make up most of the Town, although there is some land for industrial and medical uses.

Past Plans

Concord has developed and ratified land use plans to help guide development for the future, including several that are relevant to housing:

- Community Preservation Plan (2016) provides guidance on the use of Community Preservation Act funds in Concord and includes a regularly updated summary of the community housing needs, resources, goals, and strategies.
- Analysis of Impediments to Fair Housing (2013) provides a comprehensive review of Concord's existing housing programs and practices and provides recommendations for improving access to housing.
- Housing Production Plan (2010) provides a framework for the development of affordable housing, and also lays out strategies to expand the housing supply.
- Comprehensive Long Range Plan (2005) outlines a long range strategy for development in Concord through the year 2020.

In 2015, Concord updated their Housing Production Plan and included eight different housing goals. The following are most relevant to this study:

- Goal 3. Encourage creation of affordable rental and ownership housing for households with low-, moderate-, and middle-incomes throughout the community.
- Goal 4. Encourage the preservation of existing smaller homes and the construction of new smaller homes, especially as permanently affordable homes for low-income families.
- Goal 5. Promote and support affordable housing for families, including rental and homeownership opportunities.
- Goal 7. Continue to nurture and maintain working partnerships with organizations focused on addressing affordable housing needs in Concord and the region.
- Goal 8. Continue to support the monitoring and preservation of existing affordable units.

Residential Zoning

In Concord, multifamily housing is not allowed by right in any district. Although developers can build multifamily housing through the combined business/residence and combined

industrial/business/residence, these typologies are only allowed in three districts, respectively. The only other possibility for building multifamily housing is through a Planned Residential Development (PRD) project.

Table 10 Residential Zoning in Concord

HOUSING TYPE	RESIDENTIAL ZONING DISTRICTS															Site Plan Approval
	RESIDENTIAL					COMMERCIAL					INDUSTRIAL					
	AA	A	B	C	WCV	B CCB TDB NACB	WCB	LB	MP	WCI	I	IPA	IPB	LIP #1 LIP #2		
SINGLE-FAMILY	Y	Y	Y	Y	N	Y	N	N	Y	N	N	N	N	N		
TWO-FAMILY OR ADDITIONAL DWELLING	SP	SP	SP	SP	N	SP	SP	N	SP	N	N	N	N	N		
BUSINESS/RESIDENCE	N	N	N	N	Y Not on 1st floor	Y	Y	Y	SP	N	N	N	N	N	Required	
INDUSTRIAL/BUSINESS/RESIDENCE	N	N	N	N	N	N	N	N	N	SP	SP	N	N	SP	Required	
RESIDENTIAL COMPOUND	SP	SP	SP	SP	N	SP	N	N	N	N	N	N	N	N		
RESIDENTIAL CLUSTER DEVELOPMENT	SP	SP	SP	SP	N	SP	N	N	N	N	N	N	N	N		
PLANNED RESIDENTIAL DEVELOPMENT	SP	SP	SP	SP	N	SP	N	N	N	N	N	N	N	SP		

Affordable Housing Requirements

Although Concord does not have a town-wide inclusionary zoning bylaw, it does have requirements for specific zones and development types. According to the 2017 Zoning Bylaw, affordable housing is mandatory for any new development that combines business and residential uses; combined industrial, business, and residential uses; Assisted Living Residences (ALR); Residential Cluster Developments (RCD); and Planned Residential Developments (PRD).

Table 11 Concord Affordable Housing Requirements

DEVELOPMENT TYPE	DESCRIPTION	AFFORDABILITY REQUIREMENTS*
COMBINED BUSINESS/RESIDENCE	Projects with 4 or more units	20% and no less than 1
COMBINED INDUSTRIAL/BUSINESS/RESIDENCE	Mandatory for all projects	20% and no less than 1, 10% allowed if 10% of non-retail

		business and/or industrial is affordable rental
ASSISTED LIVING RESIDENCE	Mandatory for all projects	20% or more
RESIDENTIAL CLUSTER DEVELOPMENT (RCD)	Optional for all new projects	For each lot donated to Town, two more lots may be added (up to 40% of original) and open space requirements reduced (no more than 40% reduction)
PLANNED RESIDENTIAL DEVELOPMENT (PRD)	Optional for all new projects	Increased density in exchange for 10% or more affordable units for lease or purchase by Concord Housing Authority or households with incomes less than 150% AMI

* the number of affordable housing units is rounded up to the next whole number

Design + Terms

Affordable housing units must be indistinguishable from market-rate units, although they can be smaller in size (no less than 400 square feet). For PRD projects, affordable housing units are required to be integrated in the development. All affordable units must be deed-restricted and cost 30% or less of an annual household income. Affordable units in a PRD project must be affordable for a minimum of 40 years. In RCD projects, lots dedicated for affordable housing must be granted to the Town prior to the issuance of building permits. Currently, Concord does not allow PILU.

Incentives

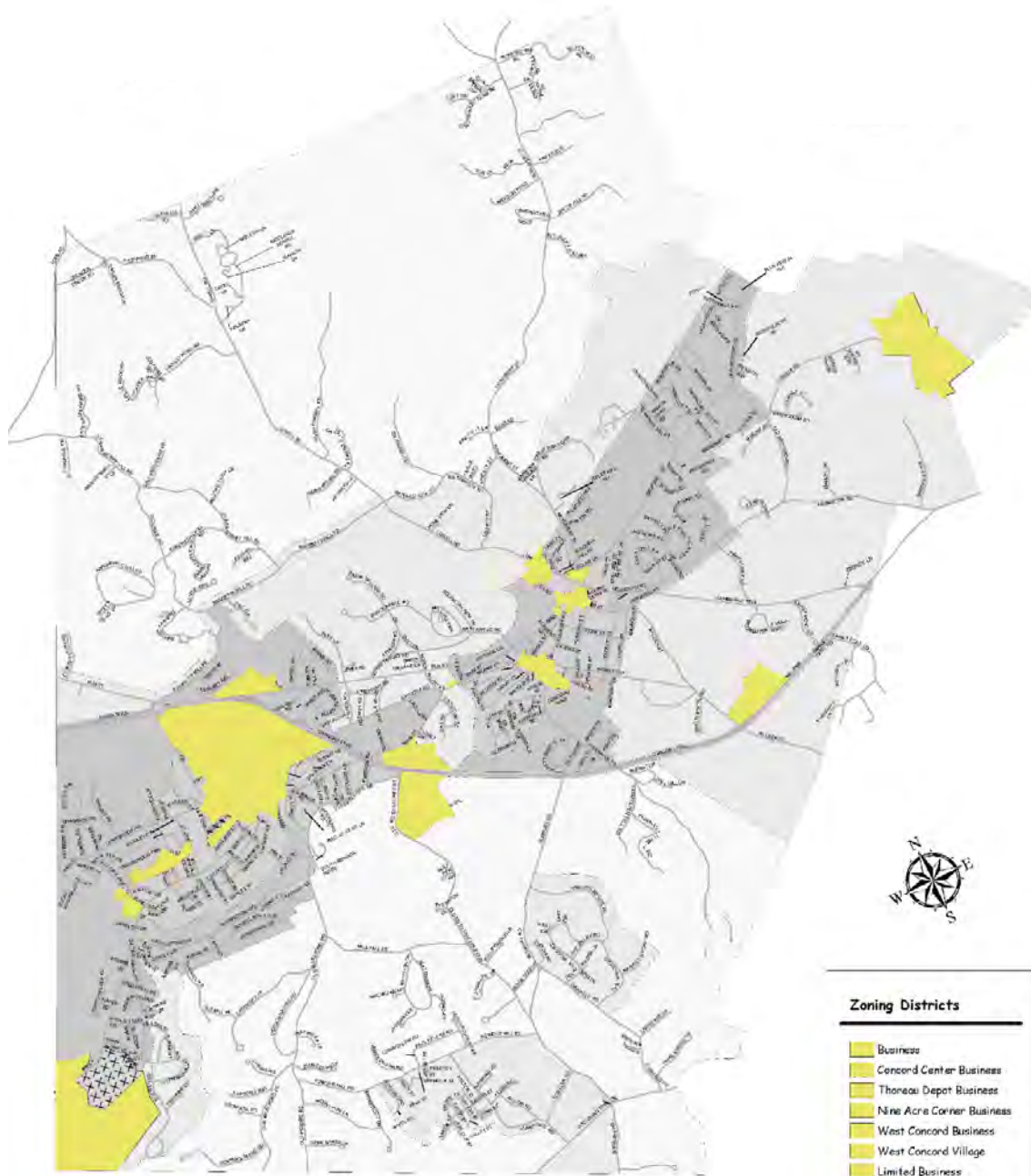
Concord offers a variety of incentives to develop affordable housing. If more than 10% of dwelling units are affordable in a combined business/residence project, the Planning Board may allow a decrease in open space and parking lots, and an increase of the building height to 40 feet. Likewise, the Planning Board may allow a height increase for up to 40 feet for a combined industrial/business/residence project over 10% affordable. In RCD projects, the Town will allow 2 more lots and a decrease in open space for every 1 lot donated for affordable housing, for up to 40% more lots and 40% open space decrease. Any PRD project that includes 10% affordable units can have an increase in density. Furthermore, affordable units in a PRD project are not included in maximum gross floor area calculations.

Affordable Housing Results

The affordable housing provision of the PRD model was mandatory when first implemented, yet became optional after 10 years due to limited use. In the majority of PRD projects, more than 10% of units were deed-restricted. To date, 64 deed-restricted units have been added through PRD projects in exchange for increased density. The RCD model has only been used in a couple of instances, but it is unclear to town officials why it hasn't been more popular. At least one project has been successfully developed under the Combined Industrial/Business/Residence model. Town officials believe that the various density incentives in exchange for affordable housing production have worked successfully.

Figure 3 Concord affordable housing overlay map

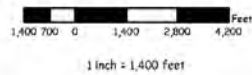
The areas in town where affordable housing is allowed are marked in yellow.



Zoning Districts

	Business
	Concord Center Business
	Thoreau Depot Business
	Nine Acres Corner Business
	West Concord Business
	West Concord Village
	Limited Business
	By-Pass
	Industrial
	Industrial Park A
	Industrial Park B
	West Concord Industrial
	Limited Industrial Park 1
	Limited Industrial Park 2
	Medical Professional
	Residence A
	Residence AA
	Residence B
	Residence C

This map was created by Concord GIS. The information is provided as a reasonably accurate point of reference, but is not intended to represent authoritative location, and is not to be used for conveyances. The Town of Concord shall not be held responsible for the accuracy or misuse of these data.



LEXINGTON

The Town of Lexington is located 10 miles northwest of Boston and is home to 32,936 residents. Lexington is surrounded by Burlington to the north, Woburn to the northeast, Winchester to the east, Arlington and Belmont to the southeast, Waltham to the south, Lincoln to the west, and Bedford to the northwest. Lexington’s proximity to Boston and its high-performing schools has made it a desirable place to live, especially for higher-income families. Of the four participating communities, Lexington has the highest percentage of homeowner households and single-family houses.

Past Plans

The Town of Lexington has been proactive in planning for the future, including planning for affordable housing production and preservation. Plans with housing objectives include:

- Lexington 20/20 Vision: Developed themes, goals and recommended actions to implement a shared vision for Lexington in the year 2020. Many of these goals and actions related directly to providing a range of housing options to different household types. Goal 2 of the Plan focuses on creating strong incentives to maintain and expand affordable housing.
- 2002 Comprehensive Plan: “The Lexington We Want”, sets out the key goals, strategies, and guidelines for Lexington, including housing.

Lexington underwent a planning process in 2014 to create a Housing Production Plan with the following goals:

- Goal 1: At a minimum, maintain Lexington’s SHI above 10% through 2020 and beyond
- Goal 2: Provide more housing options for Lexington’s low-income households earning less than 80% of the AMI

Residential Zoning

Lexington’s zoning allows multifamily housing in Planned Residential Developments (PRD) under the Planned Development District (PD). The RD zoning allows for higher density development in specific sites on a project by project basis with a special permit from the Zoning Board of Appeals and approval at Town Meeting. The largest residential districts, One-Family Dwelling (RO) and One-Family Dwelling (RS), only allow single-family by right.

Table 12 Residential Zoning in Lexington

HOUSING TYPE	RESIDENTIAL ZONING DISTRICTS							
	RESIDENTIAL					COMMERCIAL		
	RO	RS	RT	RD	CN	CRS	CS	CB
SINGLE-FAMILY	Y	Y	Y	SP	Y	N	N	N
TWO-FAMILY	N	N	Y	SP	Y	N	N	N
DU ABOVE COMMERCIAL OR INSTITUTIONAL	N	N	N	SP	N	N	N	Y

PUBLIC BENEFIT DEVELOPMENT	SP	SP	SP	SP	N	N	N	N
MULTIFAMILY HOUSING	N	N	N	SP	N	N	N	N

Affordable Housing Bylaws

In the mid-1990s, the Lexington Planning Board instituted an inclusionary housing policy for all development proposals, covering most residential development and PRDs. In 2007 there was an effort to develop and codify this policy into an inclusionary zoning bylaw, but it failed to garner the necessary two-thirds vote for adoption at Town Meeting. Until 2018, the only mechanism for affordable housing provision in Lexington was through the Public Benefit Development (PBD) permit under the Special Permit Residential Development (SPRD). Under this permit, developers were allowed to have unlimited dwelling units as long as they complied with gross floor area requirements and 10% of the total units are affordable to households earning 80% AMI or less.²

In the spring of 2018, Town Meeting voted to amend the SPRD bylaw for PBD with Shared Benefit Developments (SBD), a new special permit type that requires affordable housing units, units built to accessibility standards, smaller unit sizes, and minimum requirements for public open space. Contrary to the PBD, which had an unlimited number of dwelling units, the number of dwellings in a SBD is a multiplier of either 1.5 or 2 times the number of proof plan lots. SBDs with a unit multiplier of 1.5 require a minimum of 15% affordable units, while SBDs with a multiplier of 2 require a minimum of 20%.

Table 13 Non 40B Housing Developments with Affordable Units

DEVELOPMENT	TOTAL UNITS	SHI UNITS	% AFFORDABLE	NOTES
KEELER FARMS	1	1	100%	Sold to LexHAB, negotiated as a public benefit, no special permit
LEXINGTON PLACE CONDOS	30	3	10%	Re-zoned
MANOR HOUSE	51	6	12%	PRD Special Permit
BROOKHAVEN	49	0	PILU: \$2.1 million over 15 years to build 5 to 6 units	

PILU

Lexington negotiated a PILU agreement for one project, Brookhaven, in 2017, despite lacking a standard PILU system in their bylaws. The negotiated PILU requires the Brookhaven senior living center to pay \$2.1 million over the next 15 years to a special fund the Town can use to build 5-6

² At least 25% of dwelling units must have a gross floor area no larger than 2,700 square feet and at least 50% of the dwelling units must have a gross floor area no larger than 3,500sf

affordable units elsewhere in Lexington, rather than the 10% affordable units otherwise required of the developer.

Design + Terms

The bylaw states a legally-binding document must be produced to ensure affordability in perpetuity. Any affordable units are subject to maximum household income levels based on HUD standards for 80% AMI. There are no design standards for affordable housing units.

Incentives

The main incentive for building an affordable SBD is the increased number of affordable units.

Affordable Housing Results

Since 2008, only four affordable units have been created through SPRD with a PBD permit. Town officials believe that affordable housing provisions should be required in a greater number of districts. While it is too early to tell what the results of the SBD bylaw will be, its provisions may have an adverse effect on the residential market. The bylaw limits the number of housing units and gross floor area, and increases requirements for open space, small unit size, and affordability, increasing the demands of developers without increasing the incentives.

Figure 4 Lexington affordable housing overlay district

The areas in town where affordable housing is allowed are marked in yellow.



SECTION 4.

LOCAL DEMOGRAPHICS + HOUSING

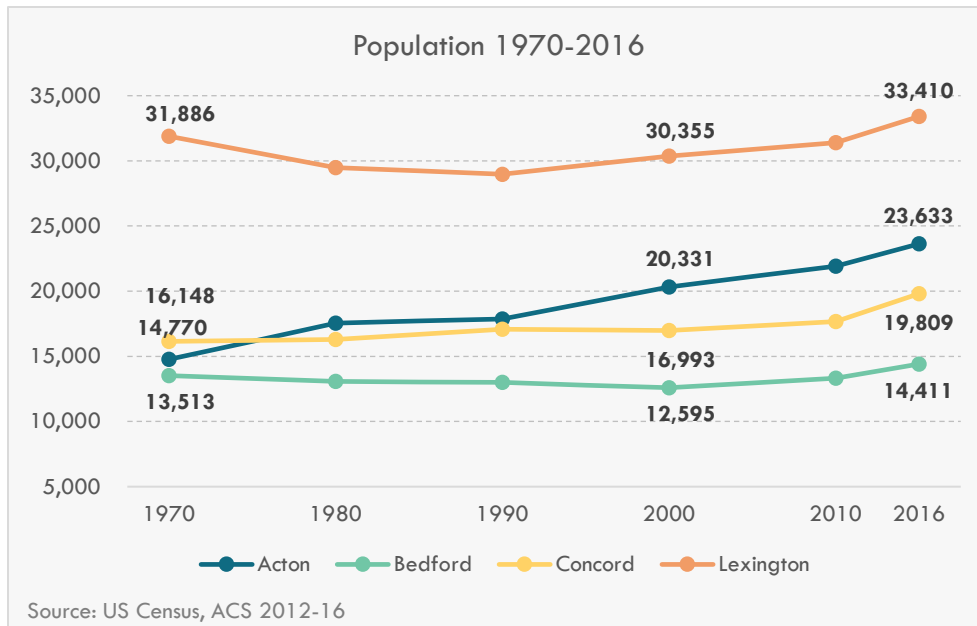
Data shows the participating towns are composed of primarily higher-income family households and have relatively strong housing markets that have by and large recovered from the Great Recession.

Recommendations to strengthen existing affordable housing provisions are rooted in an analysis of the current housing supply and market conditions. IZ programs can influence the greater housing market, and could lead to impacts on the price and supply of existing and future market-rate housing³. IZ programs must be appropriate for the housing market so as not to deter development.

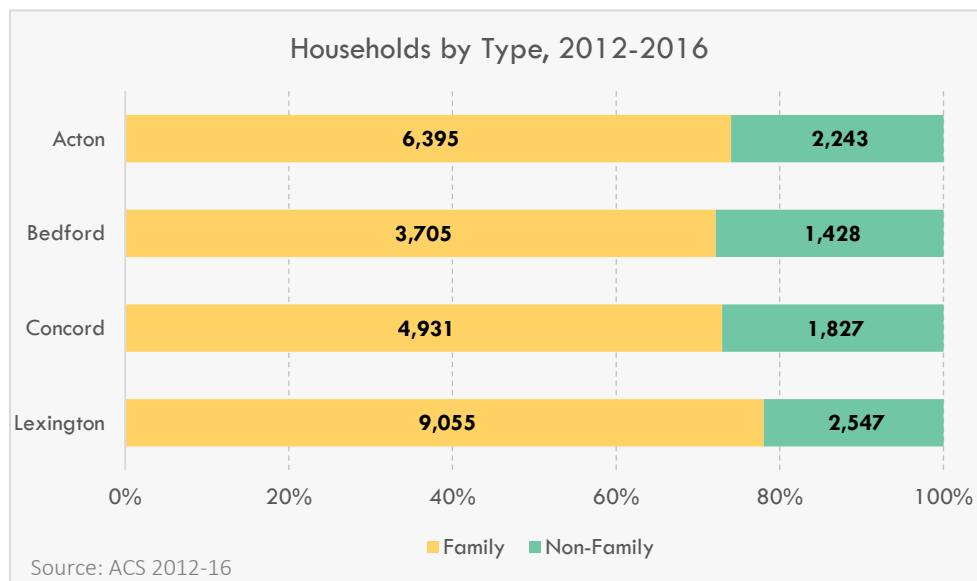
DEMOGRAPHICS

The four towns have experienced over 10% growth in population since 2000, with Acton (16%) and Concord (17%) undergoing the greatest growth. While the current population in Acton and Concord represents a 38% and 18% growth respectively since 1970, population in Bedford and Lexington has only increased by 6% and 5% respectively during the same time period.

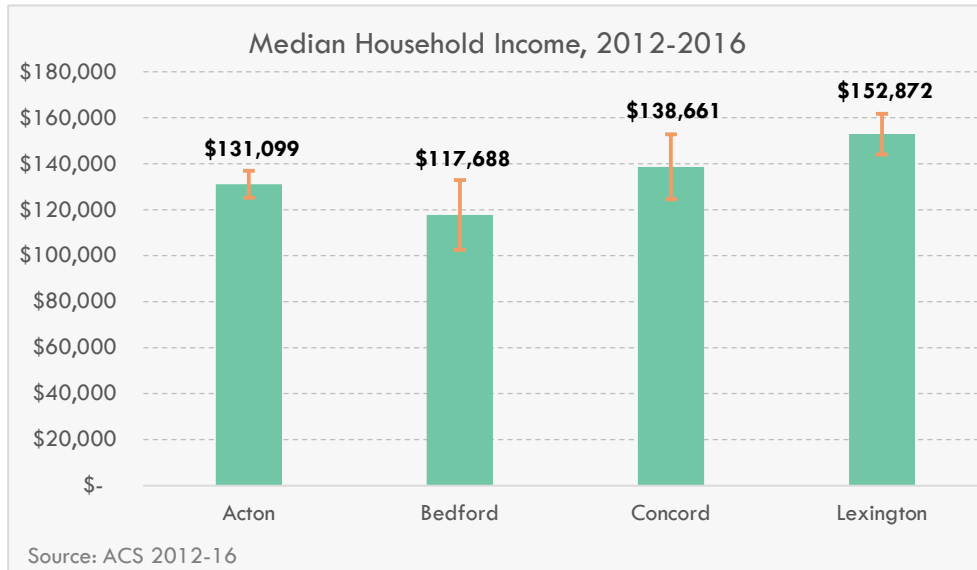
³ See the Furman Center for Real Estate and Urban Policy housing policy brief “The Effects of Inclusionary Zoning on Local Housing Markets: Lessons from the San Francisco, Washington DC and Suburban Boston Areas.”



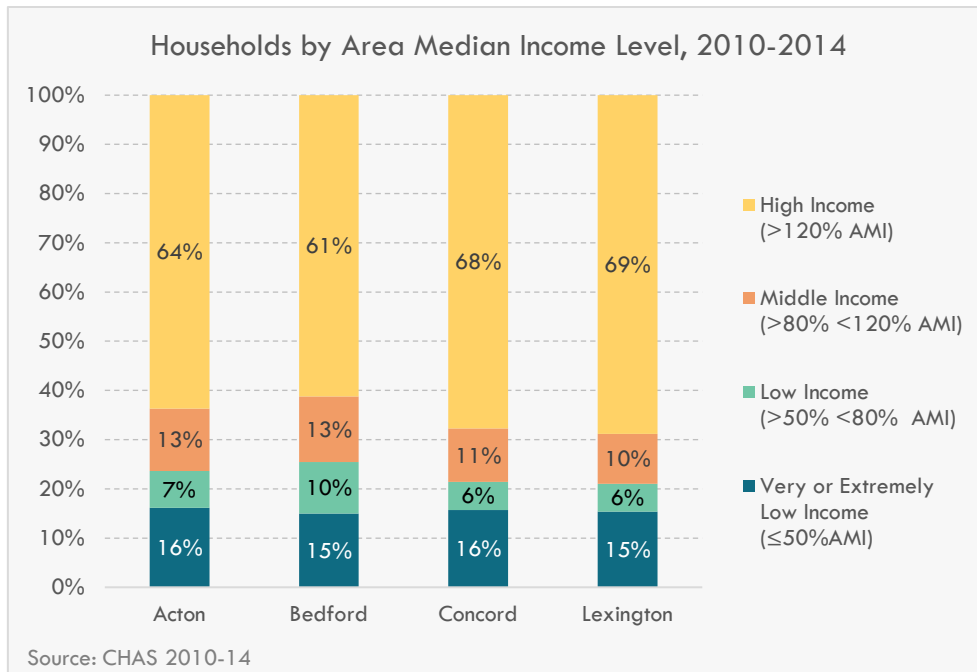
Presently, the majority of households in the four communities are families, which represent over 70% of total households. Lexington has the highest percentage of family households (78% or 9,055), while Bedford has the lowest (72% or 3,705).



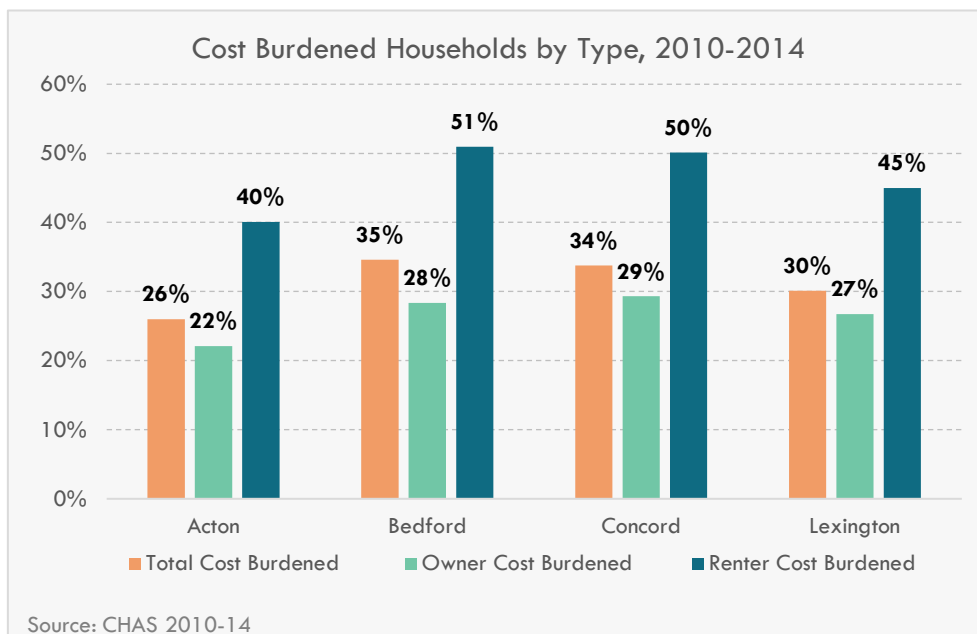
Partly due to the high percentage of families, the median household income in the four towns is relatively high. Bedford has the lowest median income at \$117,688, while Lexington has the highest median income at \$152,872.



A high number of households in the four participating towns are low- or very low-income, earning less than 80% of the Area Median Income (AMI). In the Town of Bedford, 25% of all households are low income, the highest percentage of the four towns; 24% of households in Acton are low income; and approximately 21% of households in Concord and Lexington are low income. These households may be eligible for rental and homeownership assistance programs and units created through IZ policies.

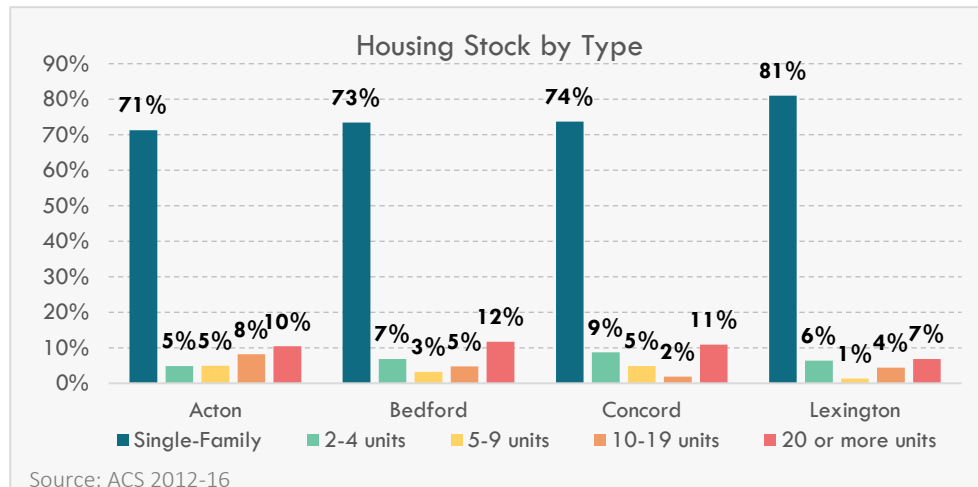


Housing cost burden can also determine the number and percentage of households that are underserved by the current housing market. Households that are cost burdened are paying more than 30% of their income on housing, and may have to forego meals, health care, and other basic needs in order to pay for housing. In Bedford, 35% of households are cost burdened, followed by 34% in Concord, 30% in Lexington, and 26% in Acton. Households that rent in the four towns are almost twice as likely to be cost burdened than homeowner households: half of the renter households in Bedford and Concord are cost burdened, with slightly fewer in Lexington and Acton.

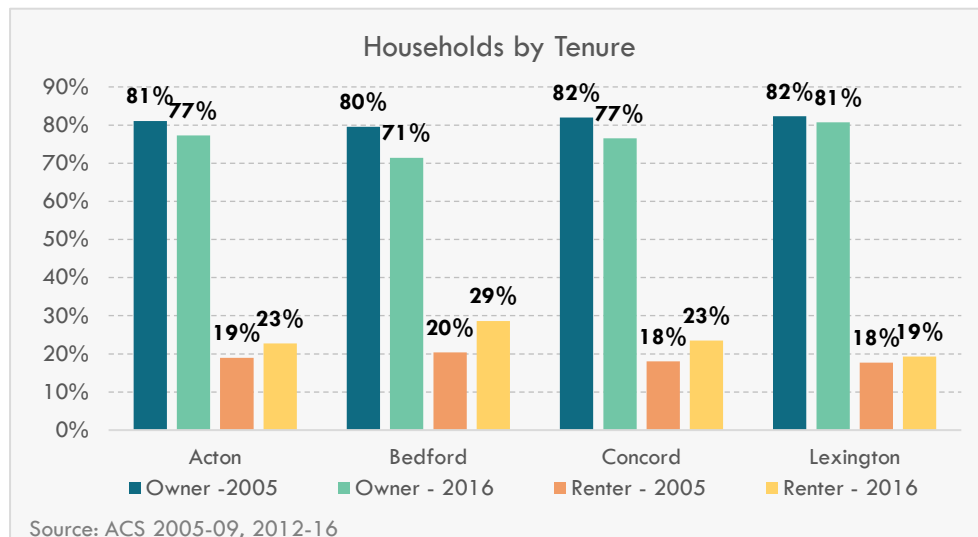


HOUSING

As established suburbs, the four communities share similar housing characteristics.⁴ Their density is lower than communities in the inner core, and the majority of their housing stock is comprised of owner-occupied single-family homes (ranging from 71% in Acton to 81% in Lexington). However, large multifamily structures are also well-represented in all the towns, constituting 7% (Lexington) to 12% (Bedford) of the total housing stock.

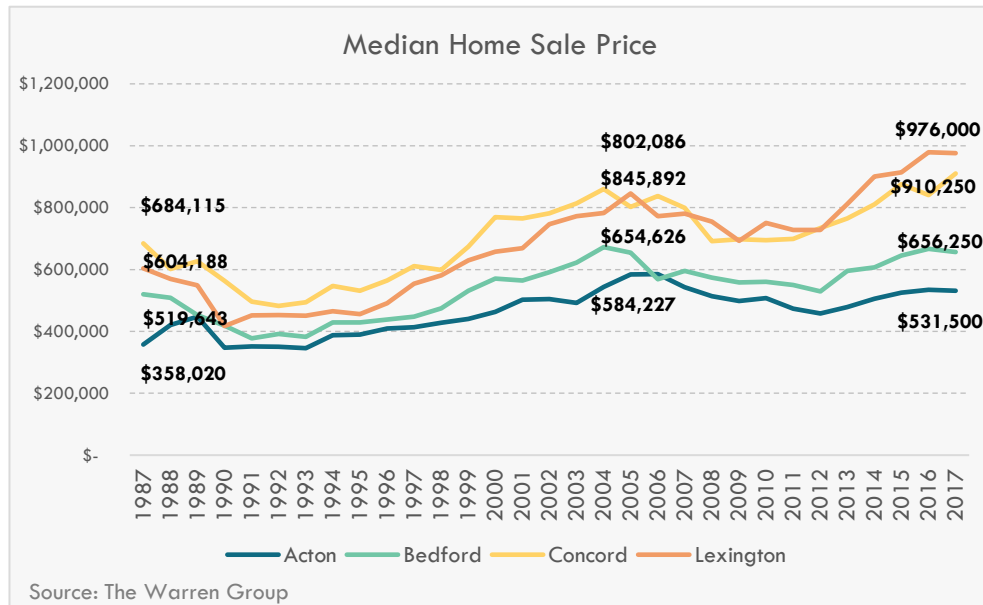


Households in the four towns tend to be homeowners, although these demographics have changed in the last ten years. The percentage of homeowner households ranges from 71% (Bedford) to 81% (Lexington), while Bedford has the highest percentage of renters (29%).

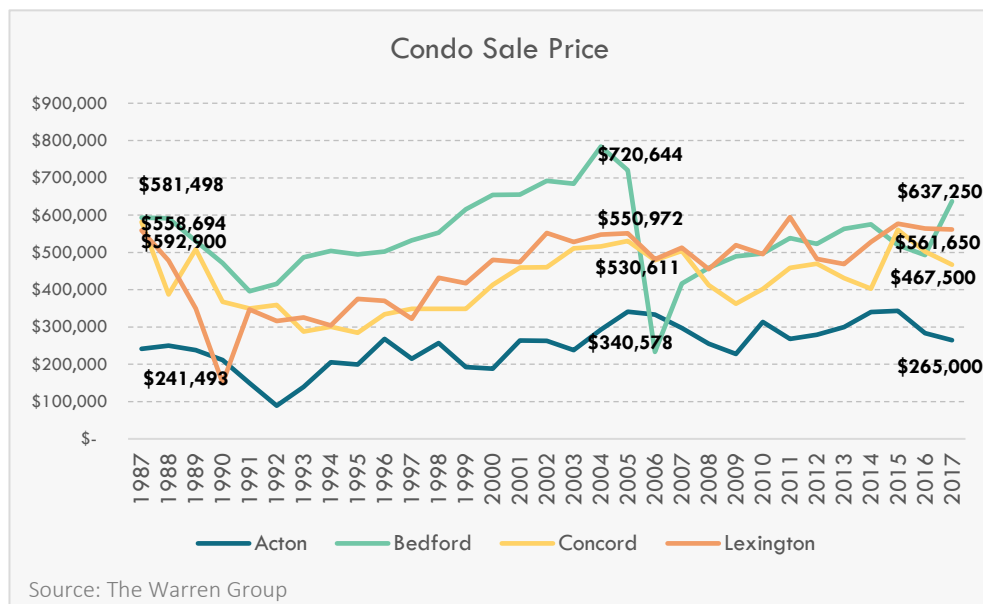


⁴ Under MAPC's municipality classification system, established suburbs tend to have a mixed-use town center surrounded by compact neighborhoods (1/4 - 1/2 acre lots) with low-density outlying areas. They are approaching buildout and have less than 20% of land area vacant and developable. New growth in established suburbs is limited to teardowns, small-scale greenfield development, and some redevelopment, with a population that is stable or growing moderately.

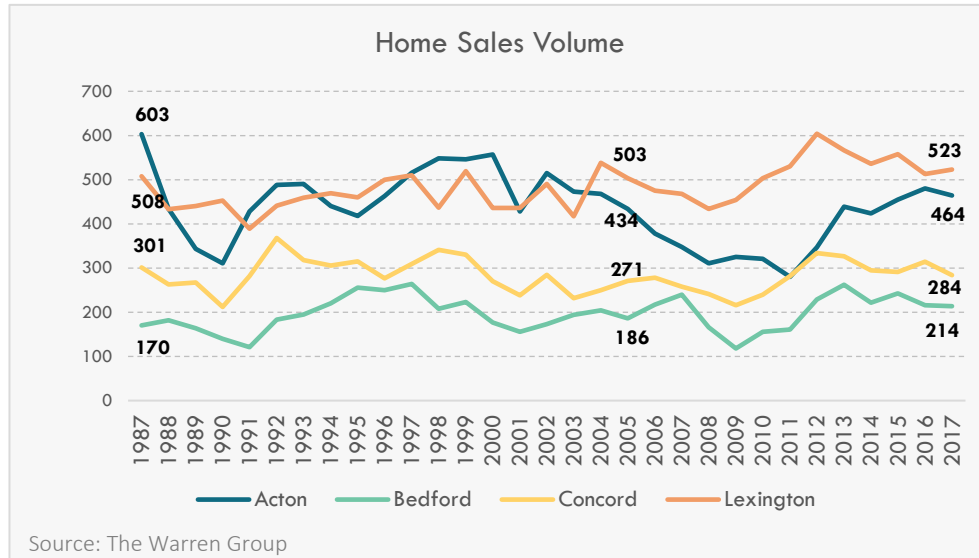
Data indicates that the towns' housing markets have recovered since the Great Recession, with median home sale prices near the 2005 peak prices in the case of Acton and Bedford or surpassing them in the case of Concord and Lexington (adjusted for inflation). The single-family house median for Acton and Bedford has remained relatively stable since 2015, while prices in Concord and Lexington have increased dramatically since 2012.



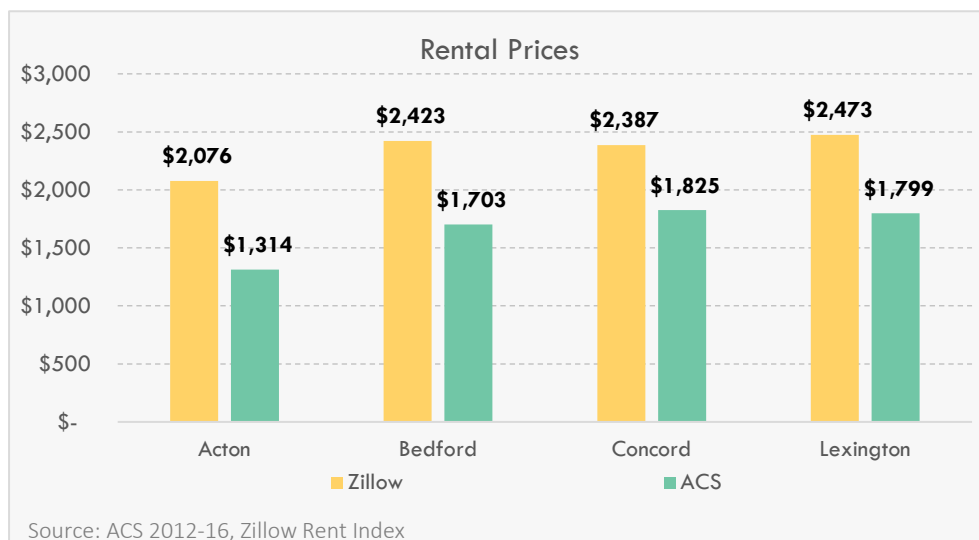
Condo prices have not experienced the same rise as single-family homes: only Bedford has seen prices rise since 2015 after a precipitous drop in 2006. The only community that has seen prices surpass the last peak is Lexington.



The number of home sales in the four towns has increased following the Great Recession, although sales have decreased since 2013 in Bedford and Concord. Only Acton has seen a consistent increase in single-family home sales since 2013, while condo sales have remained steady in all towns except Acton in the same time period.

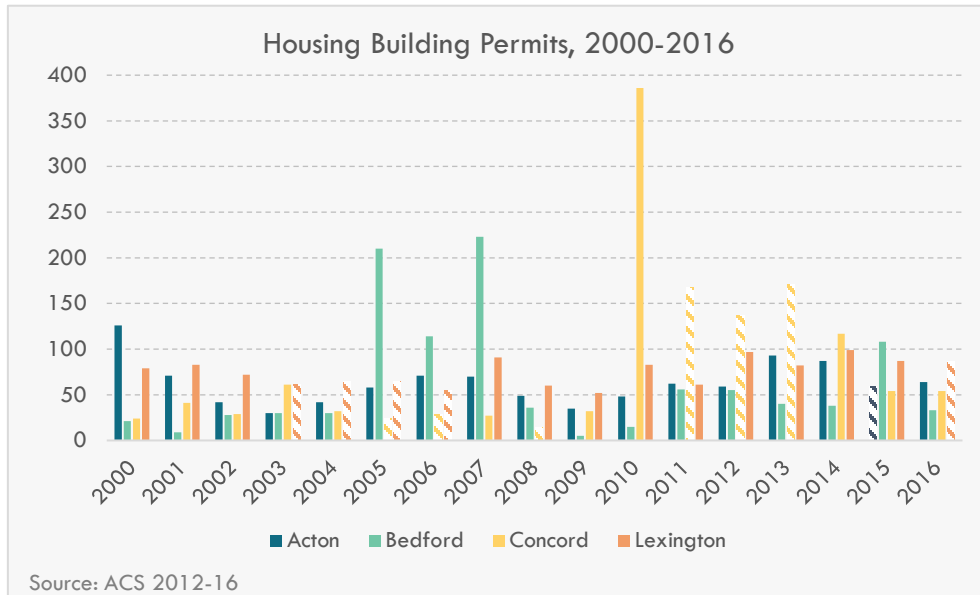


Latest rental rates demonstrate high-priced rental markets in the four participating communities.⁵ The high costs in the four towns indicate that there is demand for rental housing that the current market is not meeting. The table below shows rental prices in the four participating communities. The Zillow Rent Index (ZRI) provides a median estimated market rent for units currently on the market, while the American Community Survey (ACS) rental prices show the median rent for households already living in a rented unit.

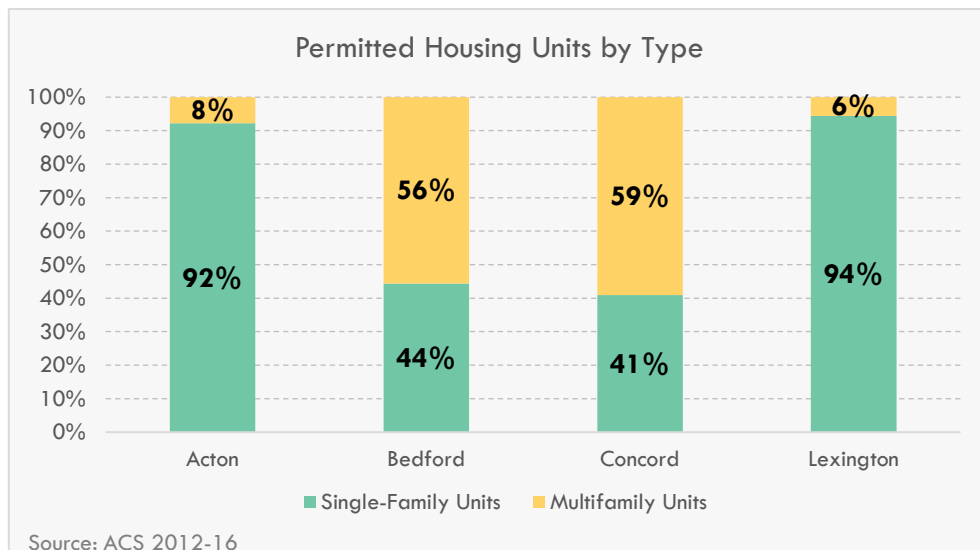


⁵ As estimated by the American Community Survey and the Zillow Rental Index

Overall, the number of building permits issued by each town since 2011 has remained relatively constant. The total number of permits issued in 2015 and 2016 was higher or similar to the early 2000s, indicating a stable market outside of the Housing Bubble and Great Recession. However, the number of permits issued per year may not be accurate, as only Bedford has reported a complete permit record since 2000.



Despite a predominantly single-family housing stock and high homeownership rates, permit data from 2000 to 2016 indicate that these trends might be changing. In Concord and Bedford, the majority of housing units permitted during this time were in housing structures with two or more units. The high number of multifamily units permitted in Bedford is in part explained by the number of 40B projects the town received between 2002 and 2008. In Acton and Lexington, the majority of permits were for single-family houses.



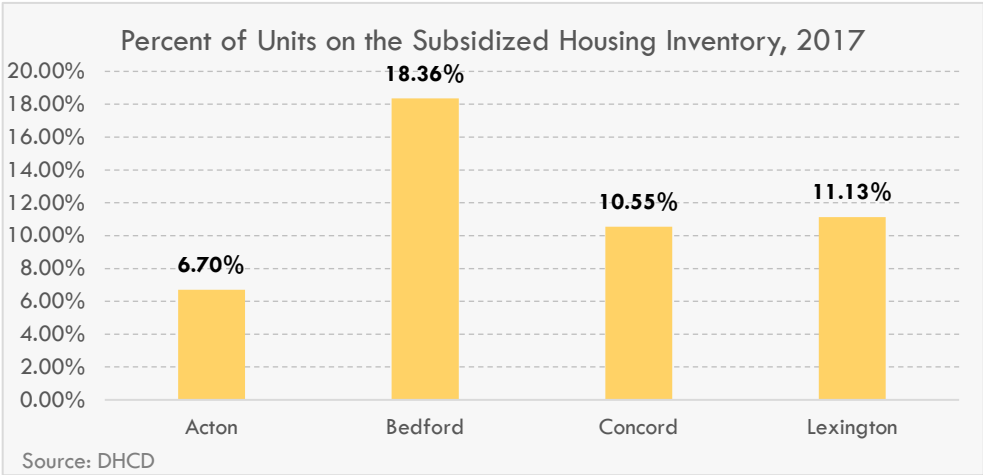
AFFORDABLE HOUSING STOCK

As of 2017, every town but Acton had surpassed the recommended 10% Subsidized Housing Inventory (SHI) mark. The SHI is used to measure a municipality’s stock of deed-restricted low- and moderate-income housing for the purposes of M.G.L. Chapter 40B⁶.

Of the participating towns, Bedford has the highest percentage of units on the SHI. The community has 5,322 housing units, of which 977 (18.36%) are on the SHI, almost double the recommended. One of the main drivers behind Bedford’s SHI is the high number of 40B developments built between 2002 and 2008. However, the percentage of deed-restricted units in town has decreased as market-rate units continue to be built. Additionally, 170 of these are expiring in the next 30 years; if their affordability is not renewed, the total number of deed-restricted units will fall to 802.

The Town of Concord has 6,852 housing units, of which 723 (10.55%) classify on the SHI. In 2016, Concord was selected by the Massachusetts Housing Partnership (MHP) as a recipient of the ‘Housing Hero’ award due to its affordable housing efforts: it quadrupled the number of subsidized housing units in a decade.

Lexington has 11,946 housing units, of which 1,330 (11.13%) are on the SHI. As of late 2017, the town of Acton had 8,475 housing units, of which 568 (6.67%) are listed on the SHI. Because the SHI in Acton is less than 10% recommended under M.G.L. Chapter 40B, mixed-income housing developers can develop projects under flexible zoning.



⁶ M.G.L. Chapter 40B defines affordable housing units as housing that is developed or operated by a public or private entity and reserved for income-eligible households earning at or below 80% of AMI. Units are secured by deed restriction to ensure affordability terms and rules. Housing that meets these requirements, if approved by DHCD, is added to the Subsidized Housing Inventory (SHI). If less than 10% of a community’s housing is included on the SHI, Chapter 40B allows developers of low- and moderate-income housing to obtain a Comprehensive Permit to override local zoning and other restrictions.

SECTION 5.

RECOMMENDATIONS

Recommendations include short, medium, and long-term strategies that build upon each town's current and past efforts for affordable housing provision.

Each of the four participating towns has demonstrated continued interest in and support for increasing affordable housing. Current affordable housing requirements can be strengthened and greater incentives offered to developers to offset the financial costs of providing affordable housing.

ACTON

Acton's Affordable Housing Overlay District (AHOD) has not been effective at increasing the amount of affordable units in town. Currently, the Town relies on informal, case-by-case negotiations with developers in order to raise funds for affordable housing. While negotiations are sometimes necessary, they can undermine guidelines and procedures, be time-consuming, and may result in precedents that weaken affordable housing production. In the case of Acton, these negotiations have overwhelmingly relied on the benevolence of developers and have yielded very affordable housing units and limited PILU.

1. SHORT TERM: STATUS QUO +

1. Modify existing PILU Option

Modify Option 4 for Affordable Dwelling Unit provisions for Minor Affordable Housing Developments to be based on the QAP index fee

2. Conduct an economic feasibility analysis for affordable housing provision through inclusionary zoning.

The AHOD was created under past economic assumptions and does not respond to the current market conditions in town. An economic feasibility analysis should be conducted that reflects local real estate trends to determine an appropriate project size to trigger the

housing bylaw, the percentage of required affordable units, the level of affordability, PILU, and incentives to offset increased costs. The economic analysis should include recommendations to ensure IZ is feasible in a variety of economic conditions.

2. MEDIUM TERM: FUNCTIONAL IZ

1. Engage community + increase awareness of affordable housing need.

Building support for affordable housing production is essential prior to proposing any regulatory changes. Town officials and staff should identify community groups and regional partners that support affordable housing production, and work with them to increase community dialogue around housing and build a coalition of housing advocates.

2. Revise existing affordable housing bylaws.

Only 5 affordable housing units have been built under the existing AHOD. Following an economic feasibility analysis, the Town should revise the existing requirements and incentives of the AHOD to match analysis findings.

a. Determine incentives for developers.

Data shows that inclusionary requirements work best when they offer reasonable incentives for development.⁷ These incentives commonly include density bonuses, fast-track permitting, and reduced parking requirements if the project is located in proximity to public transit. Other popular incentives are direct subsidies, tax abatements, unit size reduction, and design flexibility. Incentives can also include by-right permitting to remove the special permitting obstacle for developers.

b. Determine alternatives to on-site units.

Depending on local market conditions and needs, Acton may choose to provide developers with an alternative to on-site unit production to make projects economically feasible. Such alternatives can include off-site affordable units and/or PILU. If Acton decides to allow off-site units, the bylaw should ensure that their location does not result in the economic segregation of low-income households. In order to incentivize developers to build more units, PILU fees should be set at a level comparable to the present and projected future cost of developing affordable housing in form, as PILU fees that are based on the difference between market and affordable unit production costs or on a percentage of the total development cost fail to generate enough funding to successfully develop affordable housing in the future.

3. Decide how affordable housing funds will be used.

⁷ See the Furman Center for Real Estate and Urban Policy housing policy brief “The Effects of Inclusionary Zoning on Local Housing Markets: Lessons from the San Francisco, Washington DC and Suburban Boston Areas.”

Currently, the ACHC administers Acton's housing trust fund, which is not ratified under Section 55C of M.G.L Chapter 44. Although ACHC must receive approval from the Board of Selectmen prior to using the funds, officials believe the entity operates well. However, it is unclear whether new PILU funds would provide enough funding for affordable housing production, especially given the lack of capacity of the ACHC to act as a developer. Town officials should determine how, when, and by what entities PILU funds can be used in order to meet goals prioritized by the community.⁸

3. LONG TERM: ONGOING AFFORDABLE HOUSING PRODUCTION

1. Make affordable housing provisions mandatory.

Another step Acton can take to strengthen its existing affordable housing bylaw is to make compliance mandatory. Multiple studies and case studies indicate that mandatory inclusionary housing programs more effectively generate affordable housing, both in terms of absolute numbers and percentage of total units developed.⁹ Currently, Acton engages with developers on a case by case basis, and the Town relies on developer benevolence to get affordable housing units or PILU. Making provisions mandatory would ensure the Town receives a set percentage of units for every qualifying development, increasing the housing stock for households in need and raising the SHI percentage.

2. Increase extent of AHOD.

The Affordable Housing Overlay District (AHOD) currently overlaps parts of Residential Districts 2, 8, and 10. However, studies have shown that a single policy that applies uniformly across a municipality is preferable, as it can provide clarity to developers and lower administration and time costs for town officials.¹⁰ Moreover, a uniform policy ensures developers don't choose to build in a different part of town to avoid affordable housing requirements. Certain neighborhoods that have been zoned for higher density can have stronger affordability requirements with accompanying incentives.

3. Modify existing residential zoning.

For inclusionary zoning to work successfully, developers should be able to build multifamily housing with ease, as these are the developments to most likely include affordable housing units under IZ. Currently, residential zoning allows multifamily by right in five districts (R-AA and WAV, EAV, EAV-2 and SAV), but limits the number of dwelling units per structure to 4 in 3 of the districts (EAV, EAV-2b and SAV). Expanding existing multifamily zoning can provide more opportunity to trigger IZ. Districts might include the Limited Business District (LB) and Residence 2 District (R-2) on Great Road/Route 2A, as well as R-10 and R-10/8

⁸ See Appendix for MHPs *Municipal Affordable Housing Trust: Operations Manual*

⁹ See Business and Professional People for the Public Interest "Voluntary of Mandatory Inclusionary Housing?" report, National Housing Conference (NHC) "Inclusionary Zoning: The California Experience" report, and NHC "Inclusionary Zoning: Lessons Learned in Massachusetts" report.

¹⁰ See Grounded Solutions Network's "Best Practices in Geographic Scoping and Tiering of Inclusionary Housing Policies" report and Lincoln Institute of Land Policy's "Inclusionary Housing" report.

along Main Street/Route 27. Officials should also take into account the zoning strategies identified in the 2015 HPP, such as rezoning to allow by-right development of well-located vacant office buildings and large structures for multifamily housing and consider additional districts where mixed-use development is appropriate.

Table 14 Affordable Housing Recommendations for Acton

TIME	RECOMMENDATION	ACTION ITEM	OUTCOME(S)
SHORT TERM	Modify existing PILU Option	Modify Option 4 for Affordable Dwelling Unit provisions for Minor Affordable Housing Developments to be based on the QAP index fee	PILU option brings increased funding to town
	Conduct economic feasibility analysis for affordable housing provision through inclusionary zoning	Determine housing prototypes Assess exiting market conditions Assess potential incentives Assess potential percentage of affordable housing units per project Assess PILU	Town has data-based parameters for creating inclusionary zoning requirements
MEDIUM TERM	Engage community + increase awareness of affordable housing	Identify community groups and regional partners for housing production Engage the community in dialogue around housing need Build a coalition for regulatory changes	Engaged and aware community Positive outcomes from regulatory proposals
	Revise existing affordable housing bylaws	Determine incentives for developers Determine PILU Determine alternatives to on-site units Make affordable housing provisions mandatory	Bylaw responds to existing market dynamics and affordable housing needs. Town has formal requirements for developers More affordable housing is produced.
	Decide how affordable housing funds will be used	Determine how, when, and by what entities funds can be used	Fund works efficiently to support affordable housing provision.
LONG TERM	Modify existing residential zoning	Allow multifamily housing by right or with a special permit in a greater number of districts such as: Limited Business District (LB) Residence 2 District (R-2) Residence 10 District (R-10) Residence 10/8 District (R-10/8)	Increase opportunities for development that triggers and adds IZ affordable housing units to town
	Increase extent of AHOD	Apply the AHOD town-wide and determine if specific areas can accommodate increased affordable housing requirements	More opportunities for development that triggers IZ

BEDFORD

Bedford's affordable housing provisions have had mixed results. The affordable housing options under the PRD and the two Mixed-Use Overlay Districts have been used by developers and have added affordable units to the housing stock, while only one project has been approved under Residence D District. The inclusionary housing requirements of the new Pine Hill Overlay District are promising, but it is too soon to tell what the results will be. To continue to build its affordable housing supply, the Town should make key changes to its existing housing regulations.

1. SHORT TERM: STATUS QUO +

1. Use QAP index fee calculation for PILU, but favor on-site affordable units.

Use existing zoning to leverage increased affordable housing units from developers. Wherever negotiations result in PILU, use the QAP index fee to assess payments.

2. Conduct an economic feasibility analysis for affordable housing provision through inclusionary zoning.

Currently, the percentage of affordable units ranges from 10-15%, and the number of units needed to trigger the bylaw from 0-8. An economic feasibility analysis should be conducted that reflects local real estate trends to determine an appropriate project size to trigger the housing bylaw, the percentage of required affordable units, PILU, and incentives to offset increased costs.

2. MEDIUM TERM: FUNCTIONAL IZ

1. Engage community + increase awareness of affordable housing.

Building support for affordable housing production is essential prior to proposing any regulatory changes. Town officials and staff should identify community groups and regional partners that support affordable housing production, and work with them to increase community dialogue around housing and build a coalition of housing advocates.

2. Revise existing affordable housing bylaws.

Bedford should revise the existing requirements and incentives for affordable housing provision to take into account findings from the economic feasibility analysis.

a. Determine incentives for developers.

Although a density bonus is given for PRD developments with affordable housing, most modalities for housing provision do not offer incentives for developers. Data shows that IZ works best when it offers reasonable incentives for development.¹¹ These incentives commonly include density bonuses, fast-track permitting, and reduced parking requirements if the project is located in proximity to public transit.

¹¹ See the Furman Center for Real Estate and Urban Policy housing policy brief "The Effects of Inclusionary Zoning on Local Housing Markets: Lessons from the San Francisco, Washington DC and Suburban Boston Areas."

Other popular incentives are direct subsidies, tax abatements, unit size reduction, and design flexibility. Incentives can also include by-right permitting for developers building housing with an affordable component.

b. Determine alternatives to on-site units.

Depending on local market conditions and needs, Bedford may choose to provide developers with an alternative to on-site unit production to make some projects more economically feasible. Such alternatives can include off-site affordable units and/or PILU. An economic feasibility analysis can help determine which are more appropriate in Bedford now. If Bedford decides to allow off-site units, the bylaw should ensure that their location does not result in the economic segregation of low-income households. In order to incentivize developers to build more units, PILU fees should be set at a level comparable to the present and projected future cost of developing affordable housing, as PILU fees that are based on the difference between market and affordable unit production costs or on a percentage of the total development cost fail to generate enough funding to successfully develop affordable housing in the future.

c. Amend PRD affordable housing provisions so that compliance is mandatory.

The affordable housing provisions of the PRD have been successful, despite being optional. Nevertheless, mandatory requirements would ensure that Bedford continues to increase its affordable housing supply despite developer inclinations. Multiple studies and case studies indicate that mandatory inclusionary housing programs are more effective at generating a larger supply of affordable housing, both in terms of absolute numbers and percentage of total units developed.¹²

3. Decide how PILU funds will be used.

The local housing trust fund should decide how PILU funds will be used. This decision should be based on the Town's affordable housing priorities, and could range from production of affordable housing to supporting homeownership and repair programs.¹³

3. LONG TERM: ONGOING AFFORDABLE HOUSING PRODUCTION

1. Modify existing residential zoning.

For inclusionary zoning to work successfully, developers should be able to build multifamily housing with ease, as these are the developments to most likely trigger IZ. In Bedford, multifamily housing is allowed by right in Great Road-C and Great Road-NR districts, and with a special permit in Residence D, Great Road-S, and Great Road-M. PRD developments are allowed in all of the residential districts, but require a special permit. Districts that could

¹² See Business and Professional People for the Public Interest "Voluntary of Mandatory Inclusionary Housing?" report, National Housing Conference (NHC) "Inclusionary Zoning: The California Experience" report, and NHC "Inclusionary Zoning: Lessons Learned in Massachusetts" report.

¹³ See Appendix for MHPs *Municipal Affordable Housing Trust: Operations Manual*

accommodate multifamily housing by-right or by special permit due to their proximity to main roadways and economic development areas include Residence B (R-B) and Residence C (R-C).

2. Extend mandatory affordable housing requirements throughout town.

Outside of Residence D district, Bedford’s affordable housing requirements have produced units. However, the districts with affordable housing requirements are only a small portion of the entire municipality. Studies have shown that a single policy that applies uniformly across a municipality is preferable, as it can provide clarity to developers and lower administration and time costs for town officials.¹⁴ Extending the affordable housing requirements throughout the municipality would increase opportunities for more affordable housing in multifamily housing and single-family developments across town.

¹⁴ See Grounded Solutions Network’s “Best Practices in Geographic Scoping and Tiering of Inclusionary Housing Policies” report and Lincoln Institute of Land Policy’s “Inclusionary Housing” report.

Table 15 Affordable Housing Recommendations for Bedford

TIME	RECOMMENDATION	ACTION ITEM	OUTCOME(S)
SHORT TERM	Use QAP index fee calculation for PILU but favor on-site affordable units.	Use existing zoning to leverage increased affordable housing Use the QAP index fee to assess payments	Increased funds for affordable housing Standard fee process
	Conduct an economic feasibility analysis for affordable housing provision through inclusionary zoning.	Determine housing prototypes Assess exiting market conditions Assess potential incentives Assess potential percentage of affordable housing units per project Assess PILU	Town has a data-driven method for determining its affordable housing requirements
MEDIUM TERM	Engage community + increase awareness of affordable housing	Identify community groups and regional partners for housing production Engage the community in dialogue around housing need Build a coalition for regulatory changes	Engaged and aware community Positive outcomes from regulatory proposals
	Revise existing affordable housing bylaws	Determine incentives for developers Determine alternatives to on-site units such as off-site units and PILU Make the PRD affordable housing provisions mandatory	Developers are more likely to continue to build in Town Developers have more flexibility to comply with IZ Town has a clear alternatives to on-site provision
	Decide how PILU funds will be used.	Determine how, when, and by what entities funds can be used	PILU addresses affordable housing need
LONG TERM	Modify existing residential zoning	Allow multifamily housing by right or with a special permit in a greater number of districts such as: Residence B (R-B) Residence C (R-C)	Increase opportunities for development that triggers and adds IZ affordable housing units to town
	Extend mandatory affordable housing requirements throughout town.	Apply affordable housing requirements town-wide	More opportunities for development that triggers IZ

CONCORD

Concord has made progress in the last decade toward increasing affordable housing in town. One of the most successful strategies has been the PRD affordable housing option, while the RCD model has only been used in a couple of instances and only one project has been successfully developed under the Combined Industrial/Business/Residence model. Changes to existing affordable housing requirements could facilitate additional affordable housing development in town.

1. **SHORT TERM:** STATUS QUO +

1. **Use QAP index fee calculation for PILU, but continue favoring on-site affordable units.**

Continue using existing zoning to leverage increased affordable housing units from developers. Wherever negotiations result in PILU, use the QAP index fee to assess payments.

2. **Conduct an economic feasibility analysis for affordable housing provision through inclusionary zoning.**

Currently, the percentage of affordable units and the number of units needed to trigger IZ differ by type of housing development, are not always mandatory, and may be confusing to developers. An economic feasibility analysis should be conducted to understand local real estate trends and inform project size to trigger the housing bylaw, the percentage of required affordable units, PILU, and incentives to offset increased costs.

2. **MEDIUM TERM:** FUNCTIONAL IZ

1. **Revise existing affordable housing bylaws.**

Concord should revise the existing requirements and incentives for affordable housing provision to take into account findings from the economic feasibility analysis.

a. **Determine incentives for developers.**

Although a density bonus is available for CRD and PRD housing developments with affordable housing, the other modes for affordable housing provision do not include developer incentives. Data shows that inclusionary requirements work best when they offer reasonable incentives for development.¹⁵ These incentives commonly include density bonuses, fast-track permitting, and reduced parking requirements if the project is located in proximity to public transit. Other popular incentives are direct subsidies, tax abatements, unit size reduction, and design flexibility. Incentives can also include by-right permitting to remove the special permitting obstacle for developers.

b. **Determine alternatives to on-site units.**

¹⁵ See the Furman Center for Real Estate and Urban Policy housing policy brief “The Effects of Inclusionary Zoning on Local Housing Markets: Lessons from the San Francisco, Washington DC and Suburban Boston Areas.”

If the economic feasibility analysis recommends it, Concord may choose to provide developers with an alternative to on-site unit production to make some projects economically feasible. Such alternatives can include off-site affordable units and/or PILU. If Concord decides to allow off-site units, the bylaw should ensure that their location does not result in the economic segregation of low-income households. In order to incentivize developers to build more units, PILU fees should be set at a level comparable to the present and projected future cost of developing affordable housing, as PILU fees that are based on the difference between market and affordable unit production costs or on a percentage of the total development cost fail to generate enough funding to successfully develop affordable housing in the future.

c. Make the PRD and CRD affordable housing provisions mandatory.

The affordable housing provisions of the PRD and CRD have produced units despite being optional, but making these provisions mandatory would ensure that Concord can expect affordable housing development in a more reliable fashion. Multiple studies and case studies indicate that mandatory inclusionary housing programs are more effective at generating a larger supply of affordable housing, both in terms of absolute numbers and percentage of total units developed.¹⁶

2. Decide who will control PILU funds and how they will be used.

Currently, Concord does not have a dedicated housing trust fund, although certain traditional trust fund responsibilities have been given to the Concord Housing Development Corporation (CHDC). The Town should decide if the CHDC should also receive PILU, or if an independent Municipal Housing Trust Fund should be created. The local housing trust fund will have to decide how to use funds received by PILU. This decision should be based on the Town's affordable housing priorities, found in the 2016 Community Preservation Plan, 2013 Analysis of Impediments to Fair Housing, and 2010 Housing Production Plan.¹⁷

3. LONG TERM: ONGOING AFFORDABLE HOUSING PRODUCTION

1. Modify existing residential zoning.

For inclusionary zoning to work successfully, developers should be able to build multifamily housing with ease, as these are the developments to most likely include affordable housing units. Concord's zoning bylaw does not have any by-right multifamily provisions, while PRD and CRD developments are allowed by special permit in the residential districts and some commercial and industrial districts. Allowing multifamily development (in addition to mixed-use development) in key parts of town will create more opportunities to trigger IZ and result in more affordable housing. Areas that could accommodate multifamily development due

¹⁶ See Business and Professional People for the Public Interest "Voluntary of Mandatory Inclusionary Housing?" report, National Housing Conference (NHC) "Inclusionary Zoning: The California Experience" report, and NHC "Inclusionary Zoning: Lessons Learned in Massachusetts" report.

¹⁷ See Appendix for MHPs *Municipal Affordable Housing Trust: Operations Manual*

to their proximity to main roadways and commercial districts include the Main Street and Bedford Street areas of the Residence B District, as well as Residence C District.

2. Extend mandatory affordable housing requirements throughout town.

Currently, the Combined Business/Residence, Combined Industrial/Business/Residence, Assisted Living Residence, Residential Cluster Developments, and Planned Residential Developments have affordable housing requirements. However, studies have shown that a single policy that applies uniformly across a municipality is preferable, as it can provide clarity to developers and lower administration and time costs for town officials.¹⁸ Moreover, a uniform policy ensures developers don't choose to build in a different part of town to avoid affordable housing requirements. Certain neighborhoods that have been zoned for higher density such as the Overlay Business Districts and Residence C can have higher affordability requirements with accompanying incentives.

¹⁸ See Grounded Solutions Network's "Best Practices in Geographic Scoping and Tiering of Inclusionary Housing Policies" report and Lincoln Institute of Land Policy's "Inclusionary Housing" report.

Table 16 Affordable Housing Recommendations for Concord

TIME	RECOMMENDATION	ACTION ITEM	OUTCOME(S)
SHORT TERM	Use QAP index fee calculation for PILU but continue favoring on-site affordable units	Use QAP index fee for all negotiations that result in a payment	Increased funds for affordable housing Standard fee process
	Conduct an economic feasibility analysis for affordable housing provision through inclusionary zoning	Determine housing prototypes Assess exiting market conditions Assess potential incentives Assess potential percentage of affordable housing units per project Assess PILU	Town has a data-driven method for determining its affordable housing requirements
MEDIUM TERM	Revise existing affordable housing bylaws	Determine incentives for developers Determine PILU Determine alternatives to on-site units Make the PRD and CRD affordable housing provisions mandatory	Developers are more likely to continue to build in Town Developers have more flexibility to comply with IZ Town has a clear alternatives to on-site provision
	Decide who will control PILU funds and how they will be used.	Determine how, when, and by what entities funds can be used	Fund works efficiently and supports affordable housing provision.
LONG TERM	Modify existing residential zoning	Allow multifamily housing by right or with a special permit in a residential districts such as: Residence B District Residence C District	Increase opportunities for development that triggers and adds IZ affordable housing units to town
	Extend mandatory affordable housing requirements throughout town.	Apply the affordable housing requirements town-wide	More opportunities for development that triggers IZ

LEXINGTON

Lexington has sought to increase affordable housing through bylaws that include affordable housing requirements, such as PBD and SBD. In addition to these measures, Lexington could increase its affordable housing stock through stronger IZ requirements, multifamily zoning, and increased support for affordable housing providers.

1. SHORT TERM: STATUS QUO +

1. Use QAP index fee calculation for PILU, but favor on-site affordable units.

Use SPRD zoning to leverage increased affordable housing units from developers. Wherever negotiations result in PILU, use the QAP index fee to assess payments.

2. Conduct an economic feasibility analysis for affordable housing provision through inclusionary zoning.

An economic feasibility analysis should be conducted to assess local real estate trends and inform the appropriate project size to trigger the housing bylaw, the percentage of required affordable units, PILU, and incentives to offset increased costs.

2. MEDIUM TERM: FUNCIONAL IZ

1. Revise existing affordable housing bylaws.

Lexington should revise the existing requirements and incentives for affordable housing provision to take into account findings from the economic feasibility analysis as well as lessons learned from existing affordable housing requirements.

a. Determine incentives for developers.

While a density bonus is given for SBD housing developments, offering more of a variety of incentives could support developers that may struggle to meet IZ requirements. Data shows that inclusionary requirements work best when they offer reasonable incentives for development.¹⁹ These incentives commonly include density bonuses, fast-track permitting, and reduced parking requirements if the project is located in proximity to public transit. Other popular incentives are direct subsidies, tax abatements, unit size reduction, and design flexibility. Incentives can also include by-right permitting to remove the special permitting obstacle for developers.

b. Determine alternatives to on-site units.

Depending on the economic feasibility analysis, Lexington may choose to provide developers with an alternative to on-site unit production to make certain projects more economically feasible. Such alternatives can include off-site affordable units and/or PILU. If Lexington decides to allow off-site units, the bylaw should ensure

¹⁹ See the Furman Center for Real Estate and Urban Policy housing policy brief “The Effects of Inclusionary Zoning on Local Housing Markets: Lessons from the San Francisco, Washington DC and Suburban Boston Areas.”

that their location does not result in the economic segregation of low-income households. In order to incentivize developers to build more units, PILU fees should be set at a level comparable to the present and projected future cost of developing affordable housing, as PILU fees that are based on the difference between market and affordable unit production costs or on a percentage of the total development cost fail to generate enough funding to successfully develop affordable housing in the future.

c. Add inclusionary housing provisions for Planned Residential Development (PD) District.

Currently, there are no affordable housing provisions for PDs. Given the flexibility of this type of development and its potential for increasing the housing supply, Lexington should add a mandatory affordable housing provision in keeping with the findings of an economic feasibility analysis.

2. Decide who will control PILU funds and how they will be used.²⁰

Currently, Lexington does not have a dedicated housing trust fund, although an Affordable Housing Capital Stabilization Fund was approved by Town Meeting in 2018 with the purpose of funding affordable and community housing construction, renovation, and land acquisition. Lexington should decide if the Stabilization Fund should receive PILU, or if an alternative entity, such as LexHAB, is more appropriate. The entity will have the authority to determine how any influx of PILU funds will be used. This decision should be based on the Town's affordable housing priorities, which can be found in the Lexington 20/20 Vision, the 2002 Comprehensive Plan, and the 2014 Housing Production Plan.

3. LONG TERM: ONGOING AFFORDABLE HOUSING PRODUCTION

1. Modify existing residential zoning.

For inclusionary zoning to work successfully, developers should be able to build multifamily housing with ease, as these are the developments to most likely include affordable housing units under IZ. Lexington's zoning bylaw only allows multifamily development in the PD district through special permit. Extending multifamily zoning in districts with access to roadways and economic development centers can provide greater opportunity to trigger IZ and result in more affordable housing. This can include converting the Central Business District into a mixed-use district with multifamily housing, as well as allowing multifamily by-right or by special permit in the Two-Family Dwelling District (RT) and around key areas of the One-Family Dwelling District (RS) on Massachusetts Ave.

2. Extend mandatory affordable housing requirements throughout town.

²⁰ See Appendix for MHPs *Municipal Affordable Housing Trust: Operations Manual*

Currently, only SBD developments permitted through SPRD have affordable housing requirements. However, studies have shown that a single policy that applies uniformly across a municipality is preferable, as it can provide clarity to developers and lower administration and time costs for town officials.²¹ Moreover, a uniform policy ensures developers don't choose to build in a different part of town to avoid affordable housing requirements.

²¹ See Grounded Solutions Network's "Best Practices in Geographic Scoping and Tiering of Inclusionary Housing Policies" report and Lincoln Institute of Land Policy's "Inclusionary Housing" report.

Table 17 Affordable Housing Recommendations for Lexington

TIME	RECOMMENDATION	ACTION ITEM	OUTCOME(S)
SHORT TERM	Use QAP index fee calculation for PILU but favor on-site affordable units.	Use SPRD zoning to leverage increased affordable housing Use the QAP index fee to assess payments	Increased funds for affordable housing Standard fee process
	Conduct an economic feasibility analysis for affordable housing provision through inclusionary zoning.	Determine housing prototypes Assess exiting market conditions Assess potential incentives Assess potential percentage of affordable housing units per project Assess PILU	Town has a data-driven method for determining its affordable housing requirements
MEDIUM TERM	Revise existing affordable housing bylaws	Determine incentives for developers Determine PILU Determine alternatives to on-site units Add inclusionary housing provisions for the Planned Residential Development (PD) District	Developers are more likely to continue to build in Town Developers have more flexibility to comply with IZ Town has a clear alternatives to on-site provision
	Decide who will control PILU funds and how they will be used.	Determine how, when, and by what entities funds can be used	Fund works efficiently and supports affordable housing provision
LONG TERM	Modify existing residential zoning	Allow multifamily housing by right or with a special permit in a greater number of districts such as: Central Business District (CB) Two-Family Dwelling District (RT) One-Family Dwelling District (RS)	Increase opportunities for development that triggers and adds IZ affordable housing units to town
	Extend mandatory affordable housing requirements throughout town.	Apply the affordable housing requirements town-wide	More opportunities for development that triggers IZ

APPENDIX

INCLUSIONARY ZONING COMPARISON

IZ + PILU RESOURCES

IZ + PILU ORDINANCE AND BYLAW EXAMPLES

RHSO POWERPOINT PRESENTATION

INCLUSIONARY ZONING COMPARISON

The following table provides an overview of IZ programs in six different towns in Massachusetts, and can serve as a guideline for communities interested in creating an IZ program. Of the six programs, only one offers a voluntary IZ, while the rest are mandatory. Five of the programs are town-wide, and the threshold for IZ to trigger ranges from 6 to 10 units, while some programs also require IZ for land subdivisions. The set-aside requirement varies from 10-25%, and income eligibility ranges from 80-100% of the Area Median Income (AMI). All the communities require the affordable units to be comparable in exterior and interior design and finishes to the market-rate units. Most communities require the units to be affordable in perpetuity, while some have varying requirements depending on the housing tenure. Three communities have PILU as an option, with varying methods of calculating the payment amount. Most communities offer a density bonus as an incentive, while one has reduced parking requirements.

Table 18 Inclusionary Zoning Comparison

CITY	PROGRAM STRUCTURE			ON-SITE DEVELOPMENT			OFF-SITE DEVELOPMENT			
	MANDATORY OR VOLUNTARY	GEOGRAPHY	THRESHOLD	SET-ASIDE REQUIREMENT	INCOME GROUPS	DESIGN STANDARDS	TERM OF AFFORDABILITY	PILU	OFF-SITE UNITS	INCENTIVES
<p>AMHERST</p> <p>Pop: 37,819 HHs: 9,259 SHI: 11.26%</p>	Mandatory, by SP	Town-wide	10+ units	<p>10-14 = 1 unit</p> <p>15-20 = 2 units</p> <p>21 = 12%</p>	<p>80-120% AMI</p> <p>If 2+ units are required, at least 49% must be for 80% AMI</p>	<p>Units must be dispersed</p> <p>Comparable in quality of design, materials, and general appearance</p>	<p>Perpetuity for ownership</p> <p>20+ years for rental</p>	Disallowed	Disallowed	Density bonus
<p>BARNSTABLE</p> <p>Pop: 45,193 HHs: 19,225 SHI: 7.11%</p>	Mandatory	Town-wide	<p>Division of land into 2+ lots</p> <p>Development with construction value of \$100,000+/unit</p> <p>Non-residential development or addition</p>	<p><10 acres = \$500/lot</p> <p>>10 acres = 10%</p> <p><10 units = \$10 per \$1,000 of the building permit value</p> <p>>10 units = 10%</p> <p><5,000SF = \$0.10/SF</p> <p>> 5,000 = \$0.20/SF</p>	<p>80% AMI single-family</p> <p>65% AMI condo and rental unit</p>	<p>Units must be integrated</p> <p>Compatible in design, appearance, construction, and quality of materials</p> <p>Interior features must comply with minimum design/construction standards</p>	Perpetuity	Fractions require payment based on 10% of average value of all lots/units created	As part of a developer's agreement	

<p>BROOKLINE</p> <p>Pop: 58,732 HHs: 25,092 SHI: 9.37%</p>	<p>Mandatory, by SP</p>	<p>Town-wide</p>	<p>6+ units</p>	<p>15%</p>	<p>2/3 at 80% AMI 1/3 at 100% AMI</p>	<p>Units must be dispersed</p> <p>Same external appearance, finishes and appliances as market-rate units</p> <p>Bathroom to bedroom ratio for units is regulated</p> <p>Units must contain SF no less than average size of market-rate units</p>	<p>Perpetuity</p>	<p>6-15 units: PILU = B-A A=Value of AH units B=Fair market value of units</p>	<p>By Board of Appeal ruling</p> <p>Preferably in the same neighborhood as development</p>	<p>Reduced parking by SP</p>
<p>DENNIS</p> <p>Pop: 14,207 HHs: 6,928 SHI: 4.23%</p>	<p>Mandatory, by SP</p>	<p>Town-wide</p>	<p>Residential development on more than 2.5 acres</p>	<p>25%</p>	<p>80% AMI</p>	<p>DHCD regulations</p>	<p>Perpetuity (ownership units)</p>	<p>Disallowed</p>	<p>Disallowed</p>	<p>Density bonus by SP</p> <p>Reduced dimensional regulations</p> <p>Reduced parking for more than 25% AH units</p>
<p>NORTHAMPTON</p> <p>Pop: 28,549 HHs: 12,000 SHI: 10.76%</p>	<p>Voluntary</p>	<p>Sustainable Growth Overlay District, Subzone A and B</p>	<p>All new developments</p>	<p>20%</p>	<p>80% AMI</p>	<p>Units must be dispersed</p> <p>Comparable in construction quality and exterior design</p> <p>Comparable bedroom mix</p>	<p>30+ years</p>	<p>Disallowed</p>	<p>Disallowed</p>	<p>Density bonus up to 8 units/acre</p>

<p>WATERTOWN</p> <p>Pop: 35,756 HHs: 15,645 SHI: 6.90%</p>	Mandatory	Town-wide	6+ units	<p>6-19 = 12.5%</p> <p>20+ = 15%</p>	80% AMI	<p>Units must be dispersed</p> <p>Indistinguishable in exterior materials + finishes</p> <p>Comparable in appliances and interior finishes</p> <p>Same floor area within a margin of 20%</p> <p>Comparable bedroom mix</p>	Perpetuity	<p>PILU = QAP</p> <p>QAP=DHCD's Qualified Allocation Plan</p> <p><10 units</p> <p>PILU = A * B</p> <p>A=Units in development</p> <p>B=Percentage (9 units-90%; 8 units-80%; 7units-70%; etc.)</p>	Disallowed	NA
<p>WELLESLEY</p> <p>Pop: 27,982 HHs: 8,695 SHI: 6.30%</p>	Mandatory	Town-wide	<p>Projects of Significant Impact"</p> <p>Subdivisions of 5+ lots</p>	<p>20%</p> <p>2% per each 1,000 SF of non-DU use</p>	80% AMI	<p>Units must be dispersed</p> <p>Indistinguishable in external appearance</p>	Perpetuity	<p>PILU = A * (B-C)</p> <p>A=AH units B=Market-rate price* C=AH price</p> <p>*Min. 3BR, 1,500SF</p> <p>Fraction = A * B</p> <p>A=fraction B=PILU</p>	Allowed	NA

Data from the American Community Survey (ACS) 2012-16 and the U.S. Census Population Estimate 2017

INCLUSIONARY ZONING RESOURCES

Cambridge Inclusionary Housing Study

David Paul Rosen + Associates

http://www.cambridgema.gov/CDD/News/2016/4/~/_media/1654E3C5BEE546ED9610252E460EFFF3.ashx

Deed-Restricted or Inclusionary Housing Programs

National Community Land Trust Network

<http://cltnetwork.org/topics/deed-restricted-or-inclusionary-housing-programs/>

Delivering on the Promise of Inclusionary Housing: Best Practices in Administration and Monitoring

Rick Jacobus

PolicyLink

<http://www.policylink.org/resources-tools/delivering-on-the-promise-of-inclusionary-housing-best-practices-in-administration-and-monitoring>

Effects of Inclusionary Zoning on Local Housing Markets: Lessons from the San Francisco, Washington DC and Suburban Boston Areas

Furman Center for Real Estate and Urban Policy

New York University

http://furmancenter.org/files/publications/IZPolicyBrief_LowRes.pdf

Equitable Development Toolkit: Inclusionary Zoning

PolicyLink

<http://www.policylink.org/sites/default/files/inclusionary-zoning.pdf>

Expanding Affordable Housing through Inclusionary Zoning: Lessons from the Washington Metropolitan Area

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<https://www.brookings.edu/wp-content/uploads/2016/06/inclusionary.pdf>

Evaluation of the City of Burlington's Inclusionary Zoning Ordinance

CZB LLC.

https://www.burlingtonvt.gov/sites/default/files/BurlingtonIZEvaluationFinalDraftJanuary2017_2.pdf

Inclusionary Housing

Grounded Solutions Network

<https://inclusionaryhousing.org/>

Inclusionary Housing: Creating and Maintaining Equitable Communities

Lincoln Institute of Land Policy

https://www.lincolninst.edu/sites/default/files/pubfiles/inclusionary-housing-full_0.pdf

Inclusionary Housing in the United States

Emily Thaden and Ruoniu Wang

Lincoln Institute of Land Policy

https://www.lincolninst.edu/sites/default/files/pubfiles/thaden_wp17et1_0.pdf

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Commonwealth of Massachusetts

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Inclusionary Zoning: Guidelines for Cities + Towns

Edith M. Netter

Massachusetts Housing Partnership Fund

https://www.mhp.net/writable/resources/documents/inclusionary_zoning_guidelines_netter.pdf

Is Inclusionary Zoning Inclusionary? A Guide for Practitioners

Heather L. Schwartz, Liisa Ecola, Kristin J. Leuschner, and Aaron Kofner

RAND Corporation

https://www.rand.org/pubs/technical_reports/TR1231.html

Mixed-Income Housing in the Suburbs: Lessons from Massachusetts

Aaron Gornstein and Ann Verrilli

CHAPA

<https://www.chapa.org/sites/default/files/ssssssss.pdf>

The Economics of Inclusionary Development

Urban Land Institute

<https://uli.org/wp-content/uploads/ULI-Documents/Economics-of-Inclusionary-Zoning.pdf>

PILU RESOURCES

Building Better: Recommendations for Boston’s Inclusionary Development Policy

Massachusetts Association of Community Development Corporations

https://macdc.org/sites/default/files/research/IZ_Report_-_final_version.pdf

Evaluation of In-Lieu Fees and Offsite Construction as Incentives for Affordable Housing Production

Elizabeth B. Davison and Douglas R. Porter

Cityscape. Vol. 11 Num. 2. 2009.

https://www.jstor.org/stable/20868702?seq=1#page_scan_tab_contents

Incentive Policy for Affordable Housing

City of Flagstaff

https://www.mayorsinnovation.org/images/uploads/pdf/13_-_Incentive_Policy_for_Affordable_Housing.pdf

Making Inclusionary Housing More Flexible: Four Ideas for Urban Settings

Robert Hickey

Center for Housing Policy – National Housing Conference

https://www.honolulu.gov/rep/site/dpptom/officehousing_docs/ahr_docs/Making-Inclusionary-Housing-More-Flexible_Hickey_2015.pdf

Municipal Affordable Housing Trust: Operations Manual

The Massachusetts Housing Partnership

https://www.mhp.net/writable/resources/documents/MAHT-Ops-Manual_final.pdf

IZ + PILU EXAMPLES

MA SMART GROWTH INCLUSIONARY ZONING BYLAW

TOWN OF BROOKLINE – AFFORDABLE HOUSING REQUIREMENTS

TOWN OF WATERTOWN – AFFORDABLE HOUSING REQUIREMENTS

TOWN OF WELLESLEY – INCLUSIONARY ZONING

Inclusionary Zoning Bylaw

Introduction

This model bylaw provides a menu of options for crafting inclusionary zoning bylaws that respond directly to local housing demands and real estate financial conditions. The zoning structure begins as a mandatory inclusionary zoning provision, then offers a series of optional exemptions to affordable housing development that mitigate hardships associated with affordable housing development. Section 04.2 includes a variety of incentives that can be used spur affordable housing development and mitigate the costs borne by developers. Commentary below specific provisions details the development implications of each exemption and incentive. Municipalities should carefully consider the development consequences of each of these policy choices in order to assemble zoning bylaws that respond directly to local economies. However, note that previous studies, [<http://www.mhp.net/vision/zoning.php>], indicate that mandatory provisions combined with strong incentives are most effective in promoting affordable housing development.

01.0 Purpose and Intent: The purpose of this bylaw is to encourage development of new housing that is affordable to low and moderate-income households. At minimum, affordable housing produced through this regulation should be in compliance with the requirements set forth in G.L. c. 40B sect. 20-24 and other affordable housing programs developed by state, county and local governments. It is intended that the affordable housing units that result from this bylaw/ordinance be considered as Local Initiative Units, in compliance with the requirements for the same as specified by the Department of Housing and Community Development. Definitions for affordable housing unit and eligible household can be found in the Definitions Section.

02.0 Applicability

1. In all zoning districts, the inclusionary zoning provisions of this section shall apply to the following uses:

- (a) Any project that results in a net increase of [ten (10)] or more dwelling units, whether by new construction or by the alteration, expansion, reconstruction, or change of existing residential or non-residential space; and

COMMENT: *The number of units required to trigger the applicability of the inclusionary zoning provisions should reflect local real estate development demands. In built-out communities, inclusionary zoning could apply to developments with fewer units. For example, Brookline's affordable housing requirements apply when six new residential units are proposed. Other Massachusetts communities, including Boston and Cambridge bylaws specify ten (10) as the threshold number of new units required to trigger the application inclusionary zoning bylaws. The Cape Cod Commission regulations specify 30 units, but encourage the member towns to specify a 10-unit minimum.*

- (b) Any subdivision of land for development of ten (10) or more dwelling units; and

COMMENT: *It is recommended that the Town adopt a companion regulation to prevent intentional segmentation of projects designed to avoid the requirements of this bylaw (e.g. subdividing one large tract into two smaller tracts, each of which will contain fewer than 10 units or phasing a development such that each phase will contain fewer than 10 units). This “anti-segmentation” bylaw can specify that parcels held in common ownership as of the passage of this bylaw cannot later defeat the requirements of this regulation by segmenting the development. Note that the division of land trigger is accomplished by either filing a plan for the subdivision of land or the filing of a so-called approval not required plan.*

- (c) Any life care facility development that includes ten (10) or more assisted living units and accompanying services.

COMMENT: *It is recommended that the Town review zoning definitions for life care facilities to ensure coordination between sections.*

03.0 Special Permit: The development of any project set forth in Section 02.0 (above) shall require the grant of a Special Permit from the Board of Appeals or other designated Special Permit Granting Authority (SPGA). A Special Permit shall be granted if the proposal meets the requirements of this bylaw. The application procedure for the Special permit shall be as defined in Section _____ of the Town’s zoning bylaw.

04.0 Mandatory Provision of Affordable Units:

1. As a condition of approval for a Special Permit, the applicant shall contribute to the local stock of affordable unit in accordance with the following requirements:

(a) At least ten (10) percent of the units in a division of land or multiple unit development subject to this bylaw shall be established as affordable housing units in any one or combination of methods provided for below:

- (1) constructed or rehabilitated on the locus subject to the Special Permit (see Section 05.0); or
- (2) constructed or rehabilitated on a locus different than the one subject to the Special Permit (see Section 06.0); or
- (3) an equivalent fees-in-lieu of payment may be made (see Section 07.0); or
- (4) An applicant may offer, and the SPGA may accept, donations of land in fee simple, on or off-site, that the SPGA in its sole discretion determines are suitable for the construction of affordable housing units. The value of donated land shall be equal to or greater than the value of the construction or set-aside of the affordable units. The SPGA may require, prior to accepting land as satisfaction of the requirements of this bylaw/ordinance,

that the applicant submit appraisals of the land in question, as well as other data relevant to the determination of equivalent value.

(b) The applicant may offer, and the SPGA may accept, any combination of the Section 04.1(a)(1)-(4) requirements provided that in no event shall the total number of units or land area provided be less than the equivalent number or value of affordable units required by this bylaw/ordinance.

COMMENT: *The provisions above establish the minimum number of, and methods for, provision of affordable units. Note that the applicant has four choices for providing affordable units. First, they may construct or rehabilitate units on the site subject to the Special Permit. Second, they may construct or rehabilitate units at a different site than the one subject to the Special Permit. Third, they may offer fees-in-lieu of the construction of affordable housing units, more fully discussed in Section 07. Fourth, they may offer, and the SPGA may accept, land on- or off-site for the purposes of constructing affordable units, perhaps by the Town or a non-profit entity or a subsequent developer. Finally, the applicant may propose and the SPGA may accept any combination of options one through four.*

(c) As a condition for the granting of a Special Permit, all affordable housing units shall be subject to an affordable housing restriction and a regulatory agreement in a form acceptable to the Planning Board. The regulatory agreement shall be consistent with any applicable guidelines issued by the Department of Housing and Community Development and shall ensure that affordable units can be counted toward the [town]’s Subsidized Housing Inventory. The regulatory agreement shall also address all applicable restrictions listed in Section 0.9 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 Planning Board and the Inspector of Buildings.

COMMENT: *Regulatory agreements are an essential component to any affordable housing development as they are the primary vehicle for recording these restrictions in a manner recognized by the Commonwealth. The content of agreements will vary depending on a variety of factors including: the type of housing (rental or ownership), the method of property transferal, the income limits, the town’s housing administrative structure, etc. Sample restrictions can often be found attached to approved Plan Production Plans (<http://www.mass.gov/dhcd/components/SCP/PProd/plans.htm>).*

2. To facilitate the objectives of this Section 04.0, modifications to the dimensional requirements in any zoning district may be permitted for any project under these regulations, as the applicant may offer and the SPGA may accept, subject to the conditions below:

(a) FAR Bonus. The FAR normally permitted in the applicable zoning district for residential uses may be increased by up to thirty (30) percent for the inclusion of affordable units in accordance with Section 04.1 (above), and at least fifty (50) percent of the additional FAR should be allocated to the affordable units. In a mixed use

development, the increased FAR may be applied to the entire lot, however any gross floor area increase resulting from increased FAR shall be occupied only by residential uses, exclusive of any hotel or motel use.

(b) Density Bonus. The SPGA may allow the addition of two market rate units for each affordable unit provided as part of compliance with the Special Permit. The minimum lot area per dwelling unit normally required in the applicable zoning district may be reduced by that amount necessary to permit up to two (2) additional market rate units on the lot for each one affordable unit required in Section 04.1 (above).

***COMMENT:** The provisions above provide a baseline density bonus of two market rate units for every one affordable unit provided by an applicant. This density bonus will likely cover the cost to the developer of providing each required affordable unit. These provisions may also make the adoption of mandatory inclusionary zoning more politically feasible. Communities may choose to omit this provision in favor of offering density bonuses for affordable units above and beyond the baseline requirement of 10%. However, the two different approaches may be used together as in this model bylaw. The following provision (04.2(c)) illustrates how density bonuses can be provided for affordable units beyond the baseline 10%.*

(c) Voluntary Inclusionary Housing Bonus. New affordable housing development that is not subject to Section 02.0 and exceeds the requirements specified in Section 04.1(a) may receive the same benefits specified in Sections 04.2(a) and 04.2(b) when the development is approved by the SPGA. The net increase in housing units shall not exceed [fifty percent 50%] of the original property yield before any density bonuses were applied.

***COMMENT:** Where communities are willing to allow density increases for associated with affordable units provided above and beyond the baseline 10%, the important issue to address is what the overall “cap” will be for the density bonus. The model uses a net 50% over the property yield as a potential cap for density increase, but communities could consider higher increases depending on the existing minimum lot size and the goals of their Comprehensive Plan.*

05.0 Provisions Applicable to Affordable Housing Units On- and Off-Site:

1. Siting of affordable units. All affordable units constructed or rehabilitated under this bylaw shall be situated within the development so as not to be in less desirable locations than market-rate units in the development and shall, on average, be no less accessible to public amenities, such as open space, as the market-rate units.

2. Minimum design and construction standards for affordable units. Affordable housing units shall be integrated with the rest of the development and shall be compatible in design, appearance, construction, and quality of materials with other units. Interior features and mechanical systems of affordable units shall conform to the same specifications as apply to market-rate units.

COMMENT: The provisions above provide general guidelines meant to ensure that the affordable housing is well integrated with and visually indistinguishable from market rate housing. These goals can be strengthened by specifying site plan and building material standards.

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.

3. Timing of construction or provision of affordable units or lots. Where feasible, affordable housing 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:

COMMENT: The table above establishes the required schedule for completion of affordable units in conjunction with the completion of market rate units. For example, a 100-lot subdivision requires 10 affordable units. Assume all 10 affordable units are to be constructed on-site. Upon completion of the 31st market rate unit, the developer must construct at least 1 affordable unit (10% of 10). After completion of the 50th unit, the applicant must have constructed at least 3 affordable units (30% of 10), and so on. Towns are free to adjust this schedule, but should bear in mind that a minimum number of market rate units are often needed to create sufficient cash flow to make the overall project work. To that end, it is recommended that the initial affordable unit requirement not be triggered until at least one-third of the market units are constructed.

4. Marketing Plan for Affordable Units. Applicants under this bylaw/ordinance shall submit a marketing plan or other method approved by the Town through its local comprehensive 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.

COMMENT: A marketing plan is considered essential to the success of affordable housing development in many parts of Massachusetts. Issues of how the units are advertised, how qualified applicants are sought and determined, and methods for reducing delays for qualified applicants are key to the use of this bylaw/ordinance. As an option, the responsibilities under this provision could be transferred to a local housing partnership or authority.

06.0 Provision of Affordable Housing Units Off-Site:

1. As an alternative to the requirements of Section 05.0, an applicant subject to the bylaw/ordinance may develop, construct or otherwise provide affordable units equivalent to those required by Section 04.0 off-site. All requirements of this bylaw/ordinance that apply to on-site provision of affordable units, shall apply to provision of off-site affordable units. In addition, the location of the off-site units to be provided shall be approved by the SPGA as an integral element of the Special Permit review and approval process.

COMMENT: *Allowing off-site provision of affordable units gives flexibility to developers and allows municipalities to more carefully control the siting of new affordable housing development. Towns should add review criteria for the approval of off-site locations to ensure that new affordable housing development promotes the goal of creating mixed-income neighborhoods and encourages development or conversion of affordable units near areas with municipal services or access to public transportation may. Relegating the provision of the affordable units to undesirable portions of the community does little to promote the purposes of this bylaw/ordinance. Furthermore, towns and cities with more economically segregated neighborhoods should consider striking this provision from the bylaws to ensure that each new residential development built in any neighborhood contains some affordable housing.*

07.0 Fees-in-Lieu-of Affordable Housing Unit Provision:

1. As an alternative to the requirements of Section 05.0 or Section 06.0, an applicant may contribute to an established local housing trust fund to be used for the development of affordable housing in lieu of constructing and offering affordable units within the locus of the proposed development or at an off-site locus.

(a) Calculation of fee-in-lieu-of units. The applicant for development subject to this bylaw may pay fees-in-lieu of the construction of affordable units. For the purposes of this bylaw/ordinance the fee-in-lieu of the construction or provision of affordable units will be determined as a per-unit cost as calculated from regional construction and sales reports. The SPGA will make the final determination of acceptable value.

COMMENT: *This Section provides a cash payment option in lieu of providing affordable units. The payment value may differ for each municipality and will depend on the size of the affordable housing unit discount that would be necessary to make the unit affordable (e.g. median sale price of market rate unit minus maximum sale price of a three-bedroom affordable dwelling unit). Fees-in-lieu will need to be recalculated regularly to account for inflation and other market changes. Furthermore, the local housing trust fund will need to be closely regulated to ensure that dollars contributed to the fund are spent exclusively on the provisioning of affordable housing. This is the appropriate section for specifying guidelines for administering the housing trust and stipulating the governance structure by which the trust will be managed.*

Municipalities that significantly lack affordable housing opportunities should consider heavily restricting the fee-in-lieu payment option. In built-out communities, housing trust funds often grow and sit unused because sites appropriate for affordable housing development are not available. Additionally, affordable housing trusts can force municipal agents into the role of real estate developers, which local government officials may be poorly suited for or reluctant to do. Cities such as Cambridge have eliminated the fee-in-lieu payment option in almost all cases except for extreme hardship in order to ensure that affordable housing is built by the developers at the same time that new development is under construction.

(b) Schedule of fees-in-lieu-of-units payments. Fees-in-lieu-of-units payments shall be made according to the schedule set forth in Section 05.3, above.

COMMENT: This section establishes the fee-in-lieu of payments schedule to coincide with the schedule for provision of units established by Section 05.3. For example, a 50-lot subdivision requires five affordable units. An applicant choosing to make fee-in-lieu of payments would be required to pay \$5X (5 units @ \$X per unit). The payment schedule would require 10 percent of the \$5X after the 16th market rate unit was built, and \$100,000 after the 38th market rate unit was built and so on, according to the schedule noted in Section 05.3.

- (c) Creation of Affordable Units. Cash contributions and donations of land and/or buildings made to the Town or its Housing Trust in accordance with Section 07.1 shall be used only for purposes of providing affordable housing for low or moderate income households. Using these contributions and donations, affordable housing may be provided through a variety of means, including but not limited to the provision of favorable financing terms, subsidized prices for purchase of sites, or affordable units within larger developments.

08.0 Maximum Incomes and Selling Prices: Initial Sale:

1. To ensure that only eligible households purchase affordable housing units, the purchaser of a 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 Commonwealth's Department of Housing and Community Development, and as may be revised from time to time.
2. The maximum housing cost for affordable units created under this bylaw is as established by the Commonwealth's Department of Housing and Community Development, Local Initiative Program or as revised by the Town.

COMMENT: The Department of Housing and Community Development publishes maximum income, selling prices and monthly rent ceilings for occupants of affordable income housing units (Department of Housing and Community Development, Local Initiative Program, July 1996). Individual towns are free to adjust these numbers to accommodate local needs and concerns; however, it is recommended that the Department's guidelines be reviewed prior to setting local ceilings. These provisions may be more appropriately handled by the local housing partnerships rather than the developer.

09.0 Preservation of Affordability; Restrictions on Resale:

1. Each affordable unit created in accordance with this bylaw shall have limitations governing its resale through the use of a regulatory agreement (Section 0.4.1(c)). 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 and shall be in force in perpetuity.
 - (a) Resale price. Sales beyond the initial sale to a qualified affordable income purchaser shall include the initial discount rate between the sale price and the unit's appraised value at the time of resale. This percentage shall be recorded as part of the restriction on the property noted in Section 9.1, above.

COMMENT: For example, if a unit appraised for \$100,000 is sold for \$75,000 as a result of this bylaw, it has sold for 75 percent of its appraised value. If the appraised value of the unit at the time of proposed resale is \$150,000, the unit may be sold for no more than \$112,500-- 75 percent of the appraised value of \$150,000.

(b) 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, consistent with model riders prepared by Department of Housing and Community Development, granting, among other things, the municipality's right of first refusal to purchase the property in the event that a subsequent qualified purchaser cannot be located.

(c) The SPGA shall require, as a condition for 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 10.1(b), above. The Building Commissioner/Inspector shall not issue an occupancy permit for any affordable unit until the deed restriction is recorded.

COMMENT: This Section provides language to ensure that the affordable housing units remain affordable by restricting re-sales in perpetuity and by granting the Town a right of first refusal to purchase the dwelling unit should a qualified purchaser, beyond the initial purchaser, not be found. The restrictions on resale are designed to encourage the homeowner to maintain and improve the property while at the same time ensure that if and when sold, the new qualified buyer is able to enjoy the same discount between sale price and appraised value. It is important to emphasize that the restrictions on resale do not block, in any way, the property owner from realizing a profit on the resale of the dwelling unit. Rather, as noted, the resale restriction passes on the initial discounted rate enjoyed by the initial buyer to the new, qualified buyer.

10.0 Conflict with Other Bylaws/Ordinances: The provisions of this bylaw/ordinance shall be considered supplemental of existing zoning bylaws/ordinances. To the extent that a conflict exists between this bylaw/ordinance and others, the more restrictive bylaw/ordinance, or provisions therein, shall apply.

COMMENT: This provision establishes that where a conflict exists between this bylaw/ordinance and an existing (or future) bylaw/ordinance, the more restrictive provisions of either would apply. For example, this bylaw/ordinance requires a Special Permit for the division of land into ten or more lots, whereas that requirement may not currently exist in existing town bylaws/ordinances. Section 10.0 states that the more restrictive provision applies during a conflict, thus the Special Permit requirements of this bylaw/ordinance would supersede (overrule) the provisions of existing bylaws/ordinances.

11.0 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 [town]'s zoning bylaw.

COMMENT: *This Section is a generic severability clause. Severability clauses are intended to allow a court to strike or delete portions of a regulation that it determines to violate state or federal law. In addition, the severability clause provides limited insurance that a court will not strike down the entire bylaw should it find one or two offending sections.*

§4.08 – AFFORDABLE HOUSING REQUIREMENTS

1. Purpose

The purpose of this section is to promote the public welfare by:

- a. increasing the supply of housing that is available and affordable to low or moderate income households, with an emphasis on family housing; and
- b. preventing the displacement of Brookline residents.

2. Definitions

The following definitions shall apply in this §4.08. Where a term is undefined herein, the definition set forth in the Affordable Housing Guidelines adopted pursuant to this §4.08, if any, shall control. All other undefined terms in this section shall either be governed by Article II, Definitions of this Zoning Bylaw or shall be interpreted in accord with such normal dictionary meaning or customary usage as is appropriate to the context.

- a. AFFORDABLE HOUSING GUIDELINES are written policies and criteria, recommended by the Housing Advisory Board and adopted by the Planning Board, which supplement and serve to aid in the interpretation of this section. They may be revised from time to time without an amendment to the Zoning Bylaw.
- b. AFFORDABLE HOUSING PLAN means a document that constitutes the applicant's showing of compliance with the requirements of this section.
- c. AFFORDABLE UNIT means a dwelling unit which meets the following conditions:
 - 1) In a project in which affordable dwelling units will be rented, a unit shall be considered an affordable unit if: (a) it is rented to an eligible low or moderate income household; and (b) it is made available at an initial rent that is calculated such that a hypothetical household with 1.5 persons per bedroom and with an income set at 10 percentage points less than the applicable income limit would be paying 30% of gross income on rent and tenant-paid utilities, unless the occupant has a tenant-based subsidy, in which case the rent may be the amount allowed under the subsidy, provided that the occupant is not paying more than 30% of gross income on rent and tenant-paid utilities.
 - 2) In a project in which affordable dwelling units will be sold, a unit shall be considered an affordable unit if: (a) it is sold to an eligible low or moderate income household; and (b) it is made available at a sales price that is calculated such that a hypothetical household with 1.5 persons per bedroom and with an income set at 10 percentage points less than the applicable income limit would be paying 30% of gross income towards a mortgage, mortgage insurance, condominium fee and property taxes for a standard thirty-year mortgage at 95% of sales price.
- d. ELIGIBLE HOUSEHOLD means a household comprised of a single individual or a family eligible for housing under regulations promulgated by the United States Department of

Housing and Urban Development, pursuant to Section 8 of the Housing Act of 1937, as amended by the Housing and Community Development Act of 1974, or any successor federal or state program.

- e. INCOME, LOW OR MODERATE means a combined household income which is less than or equal to 100% of the median income, except for those units provided under paragraph 5 subparagraph a which shall comply under Chapter 40B of the Massachusetts General Laws, in which case low or moderate income shall mean a combined household income which is less than or equal to 80% of median income or any other limit established under Chapter 40B, its regulations or any amendment thereto.
- f. INCOME, MEDIAN means the median income, adjusted for household size, for the Boston Metropolitan Statistical Area published by or calculated from regulations promulgated by the United States Department of Housing and Urban Development, pursuant to Section 8 of the Housing Act of 1937, as amended by the Housing and Community Development Act of 1974, or any successor federal or state program.
- g. PROJECT means any residential or other development, including a cluster development, which results in the construction of new dwelling units, including those set forth in paragraph 3, subparagraph a, b, or c herein. Where the project is a life care facility development, as set forth in paragraph 3, subparagraph c., the term "dwelling unit" shall be construed to mean "assisted living unit".

3. *Applicability*

In all zoning districts, the provisions of this §4.08 shall apply to the following uses:

- a. any project that results in the creation of six or more dwelling units, whether by new construction or by the alteration, expansion, reconstruction or change of existing residential or non-residential space, except that the resulting number of pre-existing units remaining within the pre-existing building shall not contribute to such count. A unit shall qualify as within the pre-existing building if no more than five percent of the unit's floor area falls outside of the pre-existing building; and
- b. any subdivision of land for development of six or more dwelling units; and
- c. any life care facility development that includes six or more assisted living units and accompanying services.

4. *Special Permit Required*

The development of any project set forth in **§4.08, paragraph 3.**, above, shall require the grant of a special permit from the Board of Appeals.

5. *Required Affordable Units*

As a condition for granting any special permit hereunder, applicants shall contribute to the Town's stock of affordable units in accordance with the following requirements:

- a. For projects resulting in the creation of six or more dwelling units in accordance with paragraph 3., above, the applicant shall be required to set aside 15% of the units so created as affordable units, except as the provisions of subparagraph d., below, shall apply. Unless at the time of filing for a building permit for a project the number of housing units in Brookline that are qualified as low or moderate income under the Comprehensive Permit Law (Massachusetts General Laws Chapter 40B, Sections 20-23, and Massachusetts regulations thereunder) exceeds the number needed to meet the standard of requirements or regulations that are "consistent with local needs" in Section 20 of said Comprehensive Permit Law, not less than two-thirds of the required affordable units provided under this subparagraph shall be qualified as low or moderate income units under said Comprehensive Permit Law.
- b. The required affordable units shall contain 15% of the bedrooms in the project as a whole.
- c. In determining the total number of affordable units or bedrooms required in subparagraphs a. and b. above, a fractional unit of 0.5 or more shall be regarded as a whole unit or bedroom.
- d. For projects resulting in the creation of six to 15 dwelling units, in accordance with paragraph 3., above, the applicant may choose to make a cash payment to the Housing Trust based on the Affordable Housing Guidelines.

6. *Standards*

Projects containing affordable units shall meet the following standards:

- a. Projects shall not be segmented or phased to avoid compliance with these provisions.
- b. Affordable units shall be dispersed throughout the project and shall be indistinguishable from market rate units in external appearance. The affordable units shall have the same mechanical systems as market units, except that affordable units with up to two bedrooms may have only one bathroom, affordable units with three bedrooms shall have at least 1.5 bathrooms, and affordable units with four bedrooms shall have at least two bathrooms. Affordable units shall have the same finishes and appliances as the market rate units except where the Director of Planning and Community Development specifically approves, in advance, a request for different finishes and/or appliances.
- c. The affordable units shall contain square footage which is no less than (1) the average size of market rate units containing the same number of bedrooms, or (2) the following, whichever is the smaller:

0 bedrooms:	500 square feet
1 bedroom:	700 square feet
2 bedrooms:	900 square feet
3 bedrooms:	1100 square feet
4 bedrooms:	1300 square feet

For purposes of this subparagraph only, square footage shall be calculated within the interior surfaces of the perimeter walls of the unit.

- d. Floor plans for affordable units which differ from those of market rate units shall not be approved without the recommendation of the Director of Planning and Community Development.
- e. Sales prices, resale prices, initial rents, and rent increases for the affordable units shall be established in accordance with this section, as further clarified in the Affordable Housing Guidelines and shall be permanently restricted, to the extent legally permissible, to ensure long-term affordability.
- f. The Town may establish a system of priorities for selecting buyers or renters, in accordance with the Affordable Housing Guidelines.
- g. The Town may require that lessees of affordable rental units meet income recertification requirements upon renewal of lease terms, in accordance with the Affordable Housing Guidelines.
- h. The Town may require, for itself or its designee, an option to purchase or lease affordable units for amounts consistent with **paragraph 2, subparagraph c.** above. The option shall apply to the initial and any subsequent sale or lease of affordable units.
- i. Affordability restrictions shall be embodied in applicable deed covenants, restrictive covenant agreements, other contractual agreements, land trust arrangements, and/or other mechanisms designed to ensure compliance with this section.
- j. Covenants and other documents necessary to ensure compliance with this section shall be executed and, if applicable, recorded prior to and as a condition of the issuance of any building permit or certificate of occupancy, as the Board of Appeals shall deem appropriate.

7. *Alternative Requirements for Affordable Units*

Subject to a finding by the Board of Appeals that the result will be advantageous to the Town in creating or preserving affordable units and not result in the undue concentration of affordable units, the requirements of this section may be satisfied through one or more of the following methods, listed in the order of preference:

- a. Off-Site Location—Affordable units may be located on an alternative site or sites in Brookline suitable for housing use, preferably in the same neighborhood as the on-site development. While off-site affordable units may be located in an existing structure, the potential for displacement of existing tenants shall be considered by the Zoning Board of Appeals.
- b. Conveyance of Land and/or Buildings—The applicant may donate to the Town or its designee land and/or buildings suitable for housing use, preferably in the same neighborhood as the on-site development. Such land and/or buildings shall have a fair market value comparable to the difference between the value of the affordable units required under this **§4.08** if provided on-site and the fair market value of such units free of the conditions set **forth in paragraph 2, subparagraph c.**

- c. Cash Payment—The applicant may make a cash payment to the Town’s Housing Trust with a value comparable to the difference between the value of the affordable units required under this **§4.08** if provided on-site, and the fair market value of such units free of the conditions set forth in **paragraph 2, subparagraph c.**

The applicant’s Affordable Housing Plan shall show that the applicant shall provide a greater affordable housing benefit to the Town than would have been provided on site. Affordable units provided through the alternative methods above shall comply in all respects other than on-site location with the requirements of this section.

8. Procedures

All projects shall comply with the following procedures as applicable:

- a. Pre-Application Meeting—The applicant shall convene a pre-application meeting with the Director of Planning and Community Development to discuss the project proposal and affordable housing requirements.
- b. Submittal of Affordable Housing Plan—The applicant shall fill out and submit an Affordable Housing Plan form to the Planning and Community Development Department prior to making an application for a building permit. This form requires the following information:
 - i. On-Site Unit Projects—Applicants electing to develop on-site affordable units shall provide a schedule of all project units by location, square footage, unit types, number and types of rooms, and location of affordable units.
 - ii. Cash Contribution Projects Under Paragraph 5, Subparagraph d.—Applicants electing to make a cash contribution in lieu of providing affordable units shall provide a statement of the number of project units and the corresponding formula required by the Affordable Housing Guidelines.
- 3) Alternative Requirements—Applicants proposing to **employ paragraph 7, Alternative Requirements for Affordable Units**, above shall provide a proposal specifying the land, buildings, off-site affordable units, and/or cash contribution; and a schedule and proposed security for providing these.
- c. Building Permit Application—The applicant shall submit a formal application for a building permit, including the Affordable Housing Plan form.
- d. Board of Appeals Application—The applicant shall make a formal application for a special permit to the Town Clerk.
- e. Housing Advisory Board Review—Except for applications proposing cash contributions under **paragraph 5, subparagraph d.**, the Housing Advisory Board shall, in the next regularly scheduled meeting after necessary public notice, review the Affordable Housing Plan and prepare a recommendation to the Planning Board.
- f. Planning Board Review—The Planning Board shall, in the next regularly scheduled meeting

after necessary public notice, hear and make a recommendation on the special permit application. The recommendation of the Housing Advisory Board (or Director of Planning and Community Development with respect to cash contributions under **paragraph 5, subparagraph d.** shall be considered by the Planning Board. The Planning Board shall explain any deviation from Housing Advisory Board recommendations in writing in its report to the Zoning Board of Appeals.

- g. Zoning Board of Appeals Meeting—The Zoning Board of Appeals shall meet to hear the special permit application. The Board of Appeals decision may require modifications, conditions, and safeguards, including documentation regarding affordability and funding commitments reasonably related hereto. The Zoning Board of Appeals shall explain any deviation from Housing Advisory Board recommendations in writing in its decision.

9. *Conditions*

- a. The Zoning Board of Appeals shall require that a Revised Affordable Housing Plan, which shall include any conditions in the grant of a special permit from the Zoning Board of Appeals, shall be submitted to the Director of Planning and Community Development for final approval prior to the issuance of a building permit. For projects providing affordable units, the Affordable Housing Plan shall include a reference to specific floor plans of the affordable units that shall be attached to the plan. For projects providing cash or other contributions under **paragraph 5, subparagraph d. or paragraph 7.**, the revised Affordable Housing Plan shall set forth a detailed description, if applicable, and schedule for contributions, including any documentation required to secure such, in accordance with the Affordable Housing Guidelines. The Revised Affordable Housing Plan shall be legally binding as part of a special permit which shall refer to it in any decision.
- b. Where set forth as a condition in the approved Revised Affordable Housing Plan, no building permit shall be issued until the applicant submits to the Director of the Department of Planning and Community Development a proper bond, letter of credit, or other financial instrument designed to secure performance of the requirements of this section.
- c. No building permit shall be issued until the applicant submits proof that the special permit decision of the Zoning Board of Appeals has been recorded and that the Director of Planning and Community Development has issued a final approval letter for the Revised Affordable Housing Plan.
- d. The Zoning Board of Appeals may impose conditions in which the Building Commissioner may limit, restrict, or withhold the issuance of a certificate of occupancy for any market rate unit(s) in a development until:
- 1) all of the affordable units have obtained a certificate of occupancy; or
 - 2) any land, buildings and/or off-site units required to be donated to the Town or its designee have been conveyed.
- e. Prior to issuance of any certificate of occupancy for the a project including affordable units, the applicant shall submit to the Director of Planning and Community Development for approval

a plan for marketing and selection of occupants; initial rents or sales prices for the units designated as affordable; and, prior to their being recorded, condominium, cooperative or other homeowner association documents, as appropriate. For projects including affordable units for rent, this plan shall be recorded as a part of the affordable housing restriction set forth in **paragraph 6., subparagraphs i. and j.** herein. All plans shall be consistent with the Affordable Housing Guidelines.

10. Affordable Housing Guidelines

The Planning Board, in consultation with the Housing Advisory Board and after public notice and hearing, shall adopt Affordable Housing Guidelines.

11. Contributions of Cash, Land and/or Buildings

Cash contributions and donations of land and/or buildings made to the Town or its Housing Trust in accordance with this §4.08 shall be used only for purposes of providing affordable housing for low or moderate income households as defined by this section.

§4.09 – WIRELESS TELECOMMUNICATIONS SERVICES

1. Purpose

The purpose of this section is to allow the adequate development of wireless telecommunications services and at the same time regulate the design and location of wireless telecommunications facilities to ensure that demand is fulfilled in a manner which preserves the safety, character, appearance, property values, natural resources, and historic sites of the Town. The intent of the Town of Brookline is to exercise the full rights that §704(a) of the Federal Telecommunications Act of 1996, 47 U.S.C. s 332(c) et. seq. confers to localities in regulating the siting of antennas. The standards herein are intended to achieve the following goals: encourage location of antennas on existing commercial buildings and structures rather than on residential ones or new towers, mitigate any adverse visual and audio effects through proper design, location and screening, encourage co-location where it will minimize visual and other impacts, and prohibit new towers in districts where they may be incompatible with existing residential uses. Monopoles may be approved in non-residential districts by special permit, only if no other alternative is possible.

2. Scope

This **§4.09** shall apply to all wireless telecommunication antennas and towers and related equipment, fixtures and enclosures, including Distributed Antenna Systems located on public utility poles and any modifications to any of the preceding, but shall not apply to dish or television antennas which receive and do not transmit; amateur ham radio antennas; citizens band radio antennas; fire, police, ambulance and other safety communication antennas; antennas utilized by the Town for its communications systems; and to antennas to be located on Town-owned property, except that paragraph 4., subparagraph c. of this section shall apply.

3. Definitions

a. ANTENNA—A device used to receive or transmit electromagnetic waves, such as panel

(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, §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 §5.07.

7. ELIGIBLE HOUSEHOLD

A low- or moderate-income household that purchases or rents an affordable housing unit and occupies it as their domicile and principal residence.

8. INCLUSION UNIT

An affordable housing unit built on the same site as the market-rate units in a covered development under §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 §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 requirements and Table shown in §5.07(d)(4) and that complies with the regulations and guidelines of the DHCD Local Initiative Program and the Watertown Planning Board, except that developments subject to § 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. 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) §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. Assisted living, outside of the Assisted Living Overlay Zone, § 5.11, shall be considered institutional and shall be exempt from §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, §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 the percentage of the total dwelling units in the development as affordable housing as described herein, within §5.07(d)(4) and otherwise consistent with this Section.

(2) Nothing in this Section shall preclude a developer from providing additional affordable units, or greater affordability, or both, 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) upon recommendation of the Watertown Housing Partnership (WHP) and as indicated in §5.07(d)(4).

(4) The Rent and Ownership Affordability Requirements are as follows:

Total Project Size	Affordable Units	Rental Price	Ownership Price
1 to 5 units	0	NA	NA
6 to 19 units	12.5%	80% AMI	80% of AMI
20 and over units	15.0%	No less than 5% of the total units at 65% AMI	80% AMI
		10% of total units at 80% AMI	80% AMI

(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 in lieu of. 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 extraordinary 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’s affordable housing needs.

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 may authorize that an alternative method of compliance be used, in accordance with the following:

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. The cash payment shall be equal to the most current Total Development Cost as articulated in the MA Department of Housing & Community Development’s Qualified Allocation Plan for Low Income Housing Tax Credit, for the areas described as Within Metro Boston/Suburban Area, as adjusted for the type of project and number of units. The cash payments shall also be in accordance with a schedule of affordable housing payments as outlined in §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 (DCDP).

(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 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.

(5) 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.

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

(7) The WHP shall provide the Petitioner and SPGA as provided in §5.07(i) 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 §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 § 5.07(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 DCDP shall not authorize or sign off on a certificate of occupancy until the 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 §5.07(e)(2) 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 until the Petitioner pays 100% of the required cash in lieu payment.

(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 SPGA 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 §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 §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 provided in excess of what is required in §5.07(d)(4) shall be exempt from the minimum lot area per dwelling unit and/or maximum floor area ratio, as set forth in §5.04, provided that the Inclusion Units comply with the following affordability requirements:

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.

(k) 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. The Petitioner shall also be responsible for providing annual compliance monitoring and certification to the Town, or to cover the costs of the Town for provision of such compliance monitoring.

(i) Severability

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

SECTION XVIB. INCLUSIONARY ZONING

A. Purpose - to recognize the affordable housing need in Wellesley; to require applicants for development projects having a significant impact on the Town to contribute toward this need; to encourage the expansion and upgrade of the Town's affordable housing in order to provide for a full range of housing choices for households of all incomes, ages and sizes; to prevent the displacement of low to moderate income Wellesley residents; to increase the production of affordable housing units; and to encourage affordable housing to be incorporated into new development projects.

B. Applicability

The provisions of this section shall apply to all projects requiring approval as Projects of Significant Impact under SECTION XVIA. PROJECT APPROVAL in BUSINESS DISTRICTS, BUSINESS DISTRICTS A, INDUSTRIAL DISTRICTS, INDUSTRIAL DISTRICTS A, and WELLESLEY SQUARE COMMERCIAL DISTRICT and to single family residential subdivisions on sites having a development potential under current zoning of five or more lots.

The provisions of this section shall not apply to any project undertaken by the Town for any municipal purposes.

C. Requirements

An applicant for a project defined in B. Applicability, above, shall provide in conjunction with that project, a minimum ratio of Assisted Units on the project site in accordance with the following:

1. .02 Assisted Units per each 1,000 square feet of floor area in the project devoted to any allowed use other than Dwelling Units; and
2. .20 Assisted Units per each Dwelling Unit in the project.

Both of the above ratios will apply in any mixed-use project which includes both Dwelling Units and floor area devoted to any allowed use other than Dwelling Units. If the project's required ratio includes any fraction of an Assisted Unit, the project's obligation with respect to such fractional Assisted Unit shall be determined in accordance with Part D., subpart 3. below.

D. Alternatives to Satisfy Assisted Unit Ratio

The following alternatives may be used to satisfy the requirements of Part C., subparts 1. and 2. above, subject to the issuance of a special permit by the Planning Board acting as Special Permit Granting Authority:

1. Assisted Units may be located on land within the Town of Wellesley other than on the project site; and/or

2. A cash contribution may be made to the affordable housing trust fund account established by the Wellesley Housing Development Corporation pursuant to Chapter 311 of the Acts of 1998 as a payment-in-lieu of providing the required ratio of Assisted Units on the project site. Moneys so deposited with in such trust fund account shall only be used to provide Assisted Units within the Town according to the required ratio for that project; and/or
3. If the required ratio calculated under part C., subparts 1. and 2. above includes any fractional Assisted Unit, the project's obligation with respect to such fractional Assisted Unit may be satisfied either by providing a whole Assisted Unit for such fractional Assisted Unit either on the project site or off the project site or by making a cash contribution under Part D., subpart 2. above in the amount equal to the product of (a) such fraction multiplied by (b) the cash contribution for a whole Assisted Unit determined under Part E. below. In a mixed use development fractional Assisted Units attributable to commercial and residential must be accounted for separately, and may not be added together.

E. Determination of Cash Contribution

The amount of the cash contribution described in Part D., subpart 2. above shall be determined by the Planning Board and shall be the amount equal to the product of (1) the required number of Assisted Units multiplied by (2) the difference in sale price between an Assisted Unit and a Conventional Unit. For the purposes of determining the amount of the cash contribution, an Assisted Unit shall be deemed to have at least three bedrooms and 1,500 square feet of living space.

The sale price for the Assisted Unit shall be determined in accordance with the Local Initiative Program regulations of the Massachusetts Department of Housing and Community Development (DHCD) at 760 CMR 45.00 or any successor regulations or program of DHCD establishing guidelines for low or moderate income housing programs that qualify under General Laws Chapter 40B. The sale price for the Conventional Unit shall be based on the current median sale price in the Town for Conventional Units similar in size and type to the Assisted Unit.

F. General Provisions:

1. The Planning Board shall be charged with administering this by-law and shall promulgate rules and regulations to implement its provisions.
2. To the extent practicable, Assisted Units shall be dispersed throughout the project unless they are to be provided on other land. The Assisted Units shall be indistinguishable in external appearance from any market-rate housing units in the project.
3. Accessible unit(s), not to exceed 15% of the total number of units, may be required in any project.

4. Tenants or purchasers, as the case may be, shall be selected for the Assisted Units by, and in accordance with the procedures of, the Wellesley Housing Development Corporation.
5. The Assisted Units shall remain so in perpetuity in accordance with a deed restriction or other method satisfactory to the Planning Board.
6. Projects shall not be segmented or phased to avoid compliance with these provisions.

G. Construction:

1. Occupancy permits for any Conventional Unit or uses other than Dwelling Units in a project shall be issued proportionately in the required ratio as occupancy permits for the required Assisted Units are issued or payment of the cash contribution in lieu of the required Assisted Units is made for the entire project.
2. All documents necessary to ensure compliance with this by-law shall be subject to the review and approval by Town Counsel and shall be executed prior to and as a condition of the issuance of any Certificate of Occupancy.

PROJECT POWERPOINT PRESENTATION

Inclusionary Zoning + PILU

ANALYSIS + RECOMMENDATIONS

Presented by the Metropolitan Area Planning Council

Project Overview

1. Participating towns' existing affordable housing bylaws
2. Inclusionary Zoning (IZ) Best Practices
3. PILU Recommendations
4. Town Recommendations

1. Affordable Housing Bylaws Overview

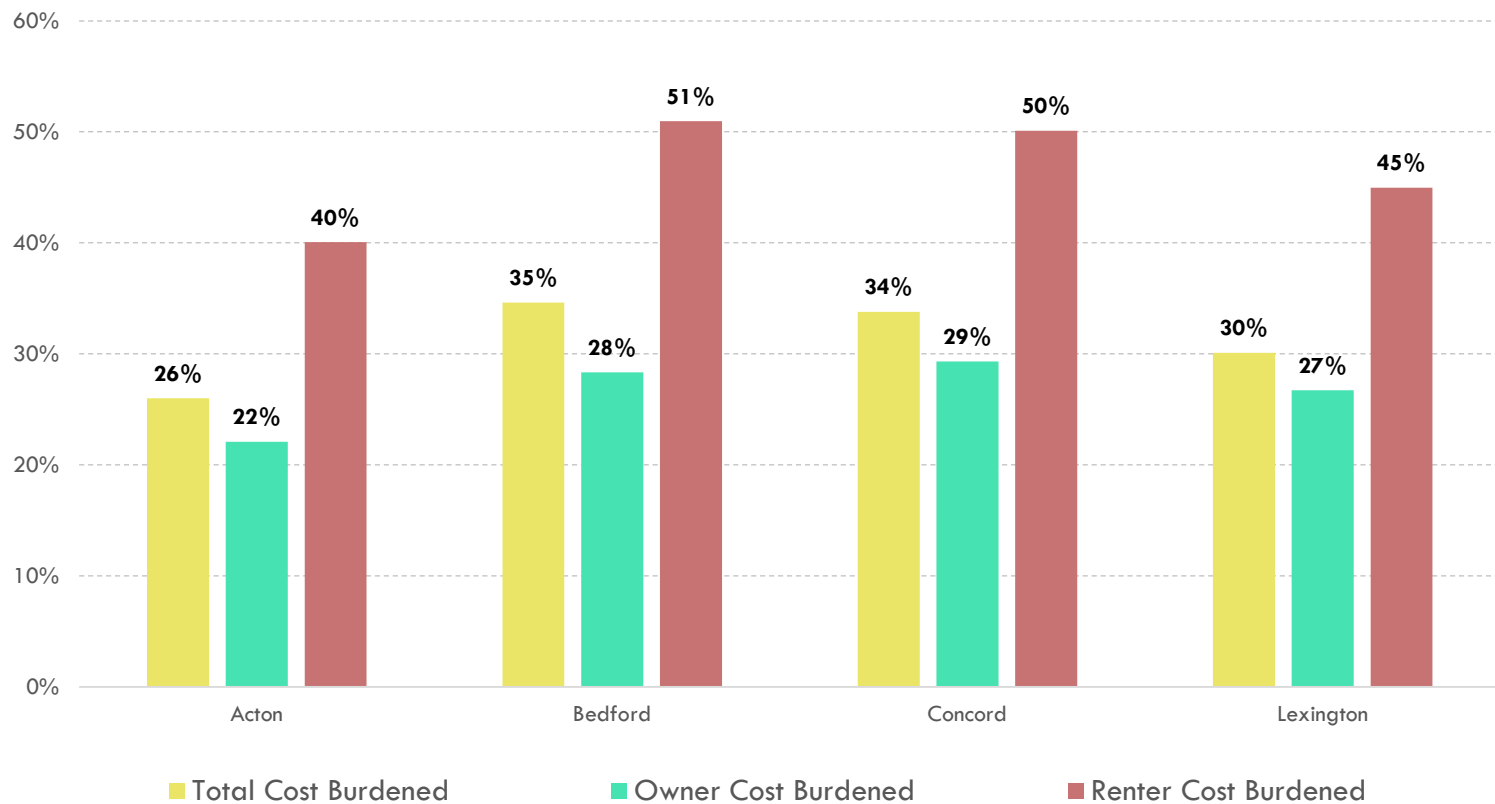
- Inclusionary Zoning + PILU Parameters
- Existing Affordable Housing Requirements

Inclusionary Zoning + PILU Parameters

Towns	Affordable Housing Provisions in Bylaw	Mandatory Program	PILU	Housing Trust Fund (or similar)	Affordable Housing Authority	Community Housing Corporation (or similar)	Housing Production Plan	10% SHI
Acton	X		X	X	X	X	X	
Bedford	X	X		X	X			X
Concord	X	X			X	X	X	X
Lexington	X			X	X	X	X	X

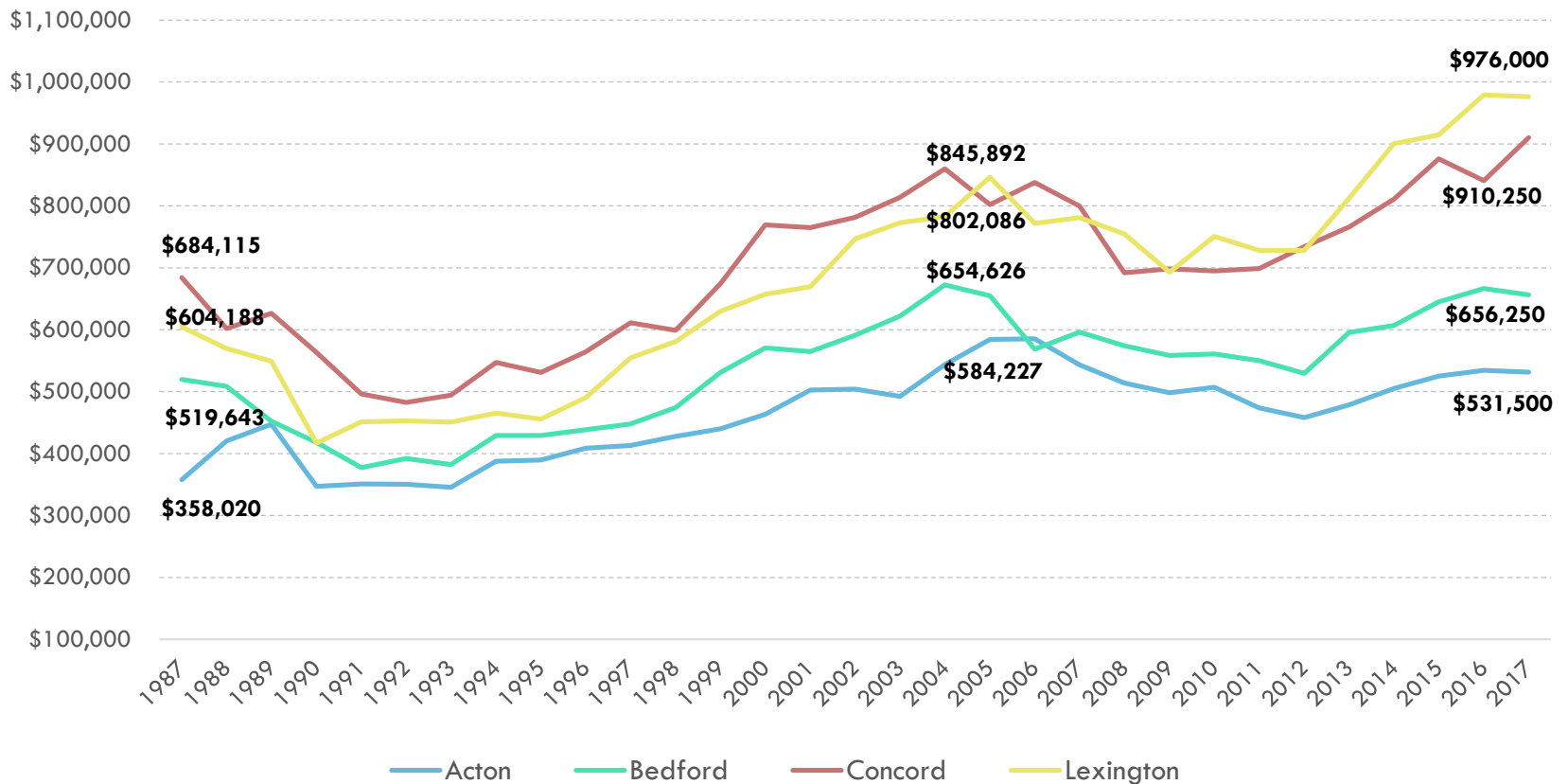
Inclusionary Zoning + PILU Parameters

There is a high number of cost burdened households



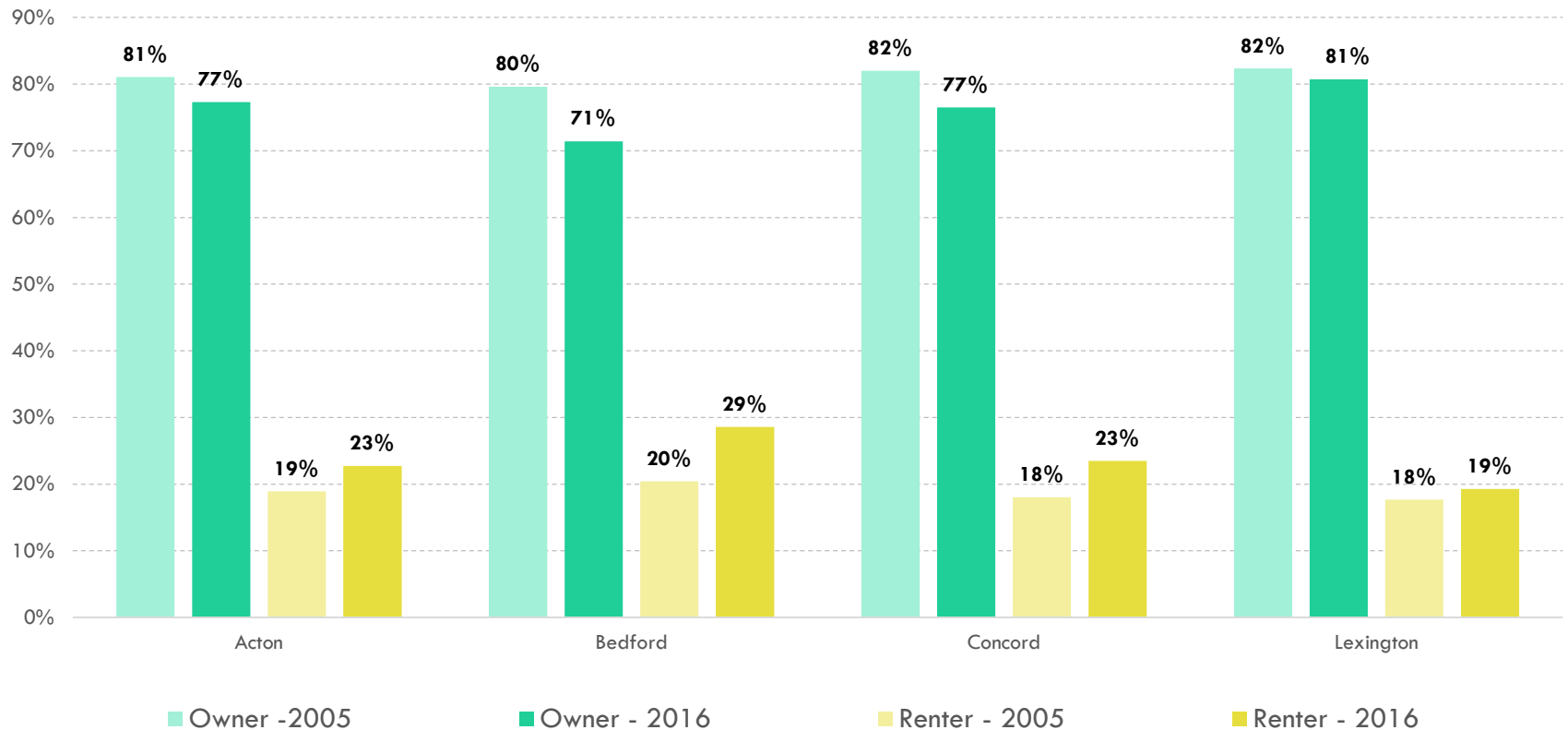
Inclusionary Zoning + PILU Parameters

Housing prices continue to rise



Inclusionary Zoning + PILU Parameters

More households are renters



Existing AH Requirements

TOWN	MANDATORY OR VOLUNTARY	GEOGRAPHY	THRESHOLD	SET-ASIDE REQUIREMENT	INCOME GROUPS (AMI)	DESIGN STANDARDS	TERM OF AFFORDABILITY	PILU	OFF-SITE UNITS	INCENTIVES
ACTON	Voluntary	Affordable Housing Overlay District	All projects	Minor: 1% Major: 20%-40%	80-100%	Dispersed Visually similar 2+ bedrooms	Max. permitted by law	Allowed Cost of unit development		Minor: Up to 25% density Dimensional reductions
BEDFORD	Voluntary + Mandatory	Residence D North Road Depot Area PRD Pine Hill	All projects 8+ units	10-15%	80-100%		Perpetuity			More density Dimensional + parking waivers
CONCORD	Voluntary + Mandatory	Business/Residence Industrial/Business/Residence RCD PRD	All projects 4+ units	10-20% No less than 1 unit	80%	Can be smaller	Min. 40 years			Increased height, density Open space + parking waivers
LEXINGTON	Mandatory	PRD - Shared Benefit Development	All projects	10-20%	80%	Dispersed GFA reqs.	Perpetuity			Dimensional waivers 1.5-2 times proof plan lots

2. IZ Best Practices

- Economic feasibility considerations
- Designing a policy
- Measuring impact

On-Site Development

Required Set-Aside

Taking advantage of economies of scale to increase affordable housing



Percentage

Ratio is established
between affordable
per market-rate units



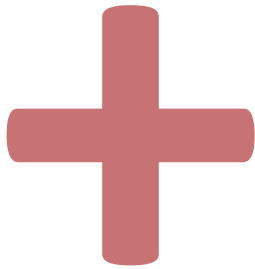
Town-Specific Needs

Units for families,
people with
disabilities, rental or
ownership, etc.

On-Site Development

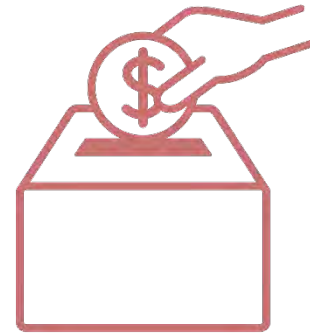
Fractions

Decide what to do if IZ set-aside calculation results in a fraction



Round Up

Fraction can be rounded up to the next whole number if over 0.5



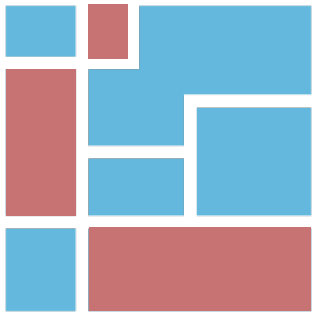
PILU

Fraction is multiplied by cost of PILU for one unit

On-Site Development

Design Standards

Ensure equity across IZ housing developments



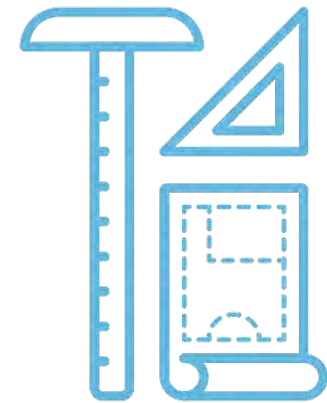
Unit Dispersal

AH units should be dispersed and not clustered together



Bedrooms

Number of bedrooms should be proportionate to those of market-rate units, family-sized units can be encouraged



Design

Exterior, interior, and finishes of AH units should be commiserate to market-rate units

On-Site Development

Phasing

Affordable units must be produced in a timely manner

Timing of Construction of Affordable Units

% Market-Rate Constructed	Required Affordable Units Constructed or Payment
Up to 30%	None
31% - 50%	At least 1 unit or 10% of required units/payment
51% - 60%	At least 2 units or 30% of required units/payment
61% - 75%	At least 3 units or 50% of required units/payment
76% - 90%	At least 70% of required units/payment
Over 90%	100% of required units/payment

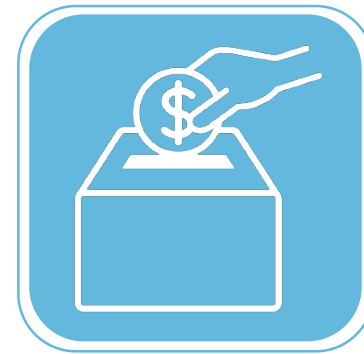
Alternate Compliance Options

Option to produce off-site units or make a Payment In Lieu Of Units (PILU)



Off-Site Units

Developers can have the option of producing required affordable units elsewhere in Town



PILU

A PILU can be acceptable for smaller projects or fractions, and should reflect market rates

Incentives

Effective IZ offers a range of incentives to reduce AH costs for developers



Density Bonus

Increases the total number of market-rate units by a number or percentage



Expedited Processing

Reduce permitting times and/or increase technical assistance for developers



Design Flexibility

Waive or reduce unit and lot dimensional requirements



Parking Waivers

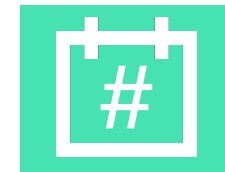
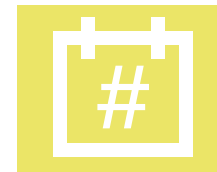
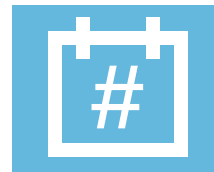
Reduce number of parking spaces

Long-Term Affordability

Ensure affordable units will stay affordable

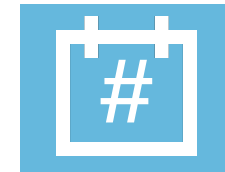
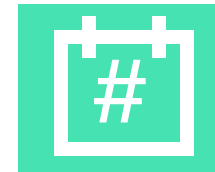
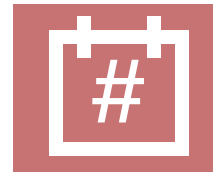
Affordability Restrictions

Minimum of 30 years, or in perpetuity



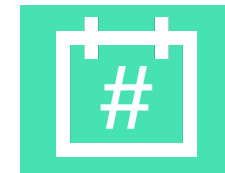
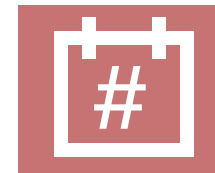
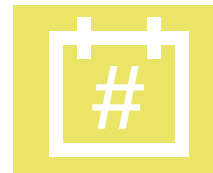
Deed Restrictions

Deed rider or covenant to ensure survival of units



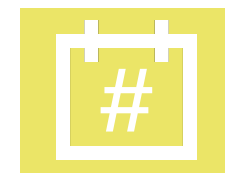
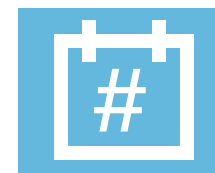
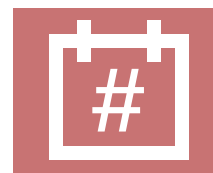
Affordability Monitoring

Development agreement to ensure rental rates, ownership, certifications, etc.



Fair Housing Marketing Plan

Eligible households' selected and informed of affordability according to HUD rules



3. PILU Recommendations

- Setting a Fee
- Indexed Fees
- PILU Management

Payment in Lieu of Units (PILU)

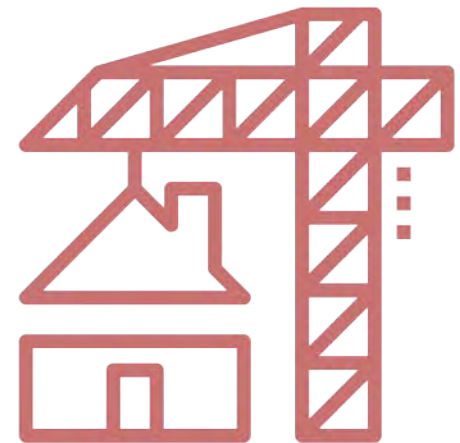
Setting a Fee

There is no agreed upon standard for setting PILU fees, but there are two common approaches



Affordability Gap

Cost of buying down an existing unit



Production Cost

Cost of unit development in same housing project, in an affordable project, or average in Town or State

Payment in Lieu of Units (PILU)

Indexed Fees

Tie fee to DHCD's annual Qualified Action Plan (QAP)

\$329,000

Small Units

Studios, 1 bedroom unit

\$349,000

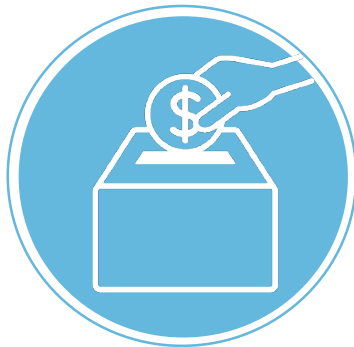
Large Units

2 bedrooms per unit, or at least
65% of units with 2+ bedrooms
and 10% with 3+ bedrooms

Payment in Lieu of Units (PILU)

PILU Management

Ensure an entity is in charge of managing payments



PILU Fund

Many municipalities create or use a housing trust fund for PILU payments, but local non-profits, housing authorities, or alternative funds can also be used



PILU Use

Municipalities should ensure PILU is earmarked for affordable housing development or preservation

4. Town Recommendations

- Economic Feasibility Analysis
- Revise Existing Affordable Housing Bylaws
- Decide PILU Usage
- Modify Existing Zoning
- Require IZ Town-Wide

Town Recommendations

Economic Feasibility Analysis

- **ACTON:** AHOD was created under past economic assumptions and does not respond to the current market conditions in town
- **BEDFORD:** Percentage of affordable units ranges from 10% to 15%, and the number of units needed to trigger the bylaws from none to 8
- **CONCORD:** Percentage of affordable units and the number of units needed to trigger IZ differ by type of housing development, are not always mandatory, and may be confusing to developers
- **LEXINGTON:** Confirm PRD Shared Benefit Development requirements are economically feasible

Town Recommendations

Revise Affordable Housing Bylaws

- **PROJECT THRESHOLD, ON-SITE REQUIREMENTS:** Based on economic feasibility analysis
- **INCENTIVES:** Determine what incentives should be given to developers
- **OFF-SITE ALTERNATIVES:** Define when and under what conditions PILU + off-site units should be allowed
- **MANDATORY COMPLIANCE:** Modify voluntary compliance to mandatory for all existing affordable housing provision requirements

Town Recommendations

Decide PILU Usage

- **PILU FUNDS MANAGEMENT:** What entity will be in charge of managing funds? How does the disbursement process work?
- **PILU FUNDS USAGE:** What will funds be used for? Who decides? New development? Preservation? Loan or grant programs?

Town Recommendations

Modify Existing Residential Zoning

- **ACTON:** Zoning allows multifamily by right in five districts (R-AA and WAV, EAV, EAV-2 and SAV), but limits the number of dwelling units per structure to 4 in three of the districts (EAV, EAV-2 and SAV)
- **BEDFORD:** Multifamily housing is allowed by right in Great Road-C and Great Road-NR districts, and with a special permit in Residence D, Great Road-S, and Great Road-M
- **CONCORD:** Zoning does not have any by-right multifamily provisions, while PRD and CRD developments are allowed by special permit in the residential districts and some commercial and industrial districts
- **LEXINGTON:** Lexington's zoning bylaw only allows multifamily development in the PD district through special permit

Town Recommendations

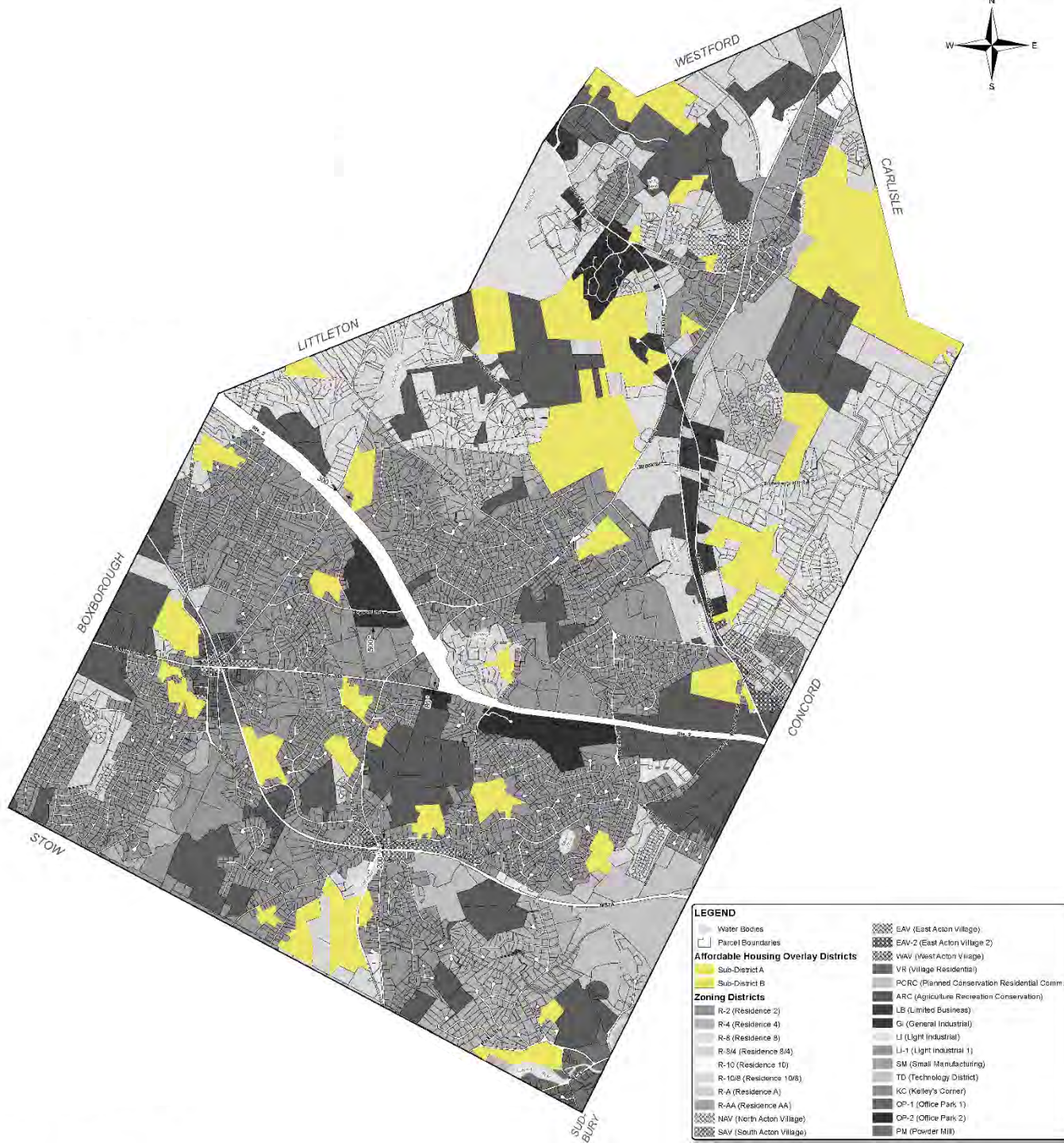
TOWN	# OF DISTRICTS SINGLE-FAMILY IS ALLOWED	# OF DISTRICTS MULTIFAMILY IS ALLOWED BY RIGHT	# OF DISTRICTS MULTIFAMILY IS LIMITED OR ALLOWED BY SPECIAL PERMIT	MULTIFAMILY DISTRICTS	# OF PRD DISTRICTS	# OF CLUSTER DEVELOPMENT DISTRICTS
ACTON	12	2	4	R-A R-AA VR EAV EAV-2 SAV WAV		
BEDFORD	7	2	3	D GR/S GR/M GR/C GR/NR	5	4
CONCORD	6	-	-	-	6	5
LEXINGTON	5	-	1 3 (SBD)	PD RO RS RT		

Town Recommendations

Require IZ Town-Wide

- A single policy that applies uniformly across a municipality is preferable, as it can provide clarity to developers and lower administration and time costs for town officials
- A uniform policy ensures developers don't choose to build in a different part of town to avoid affordable housing requirements
- Certain neighborhoods that have been zoned for higher density can have stronger affordability requirements with accompanying incentives

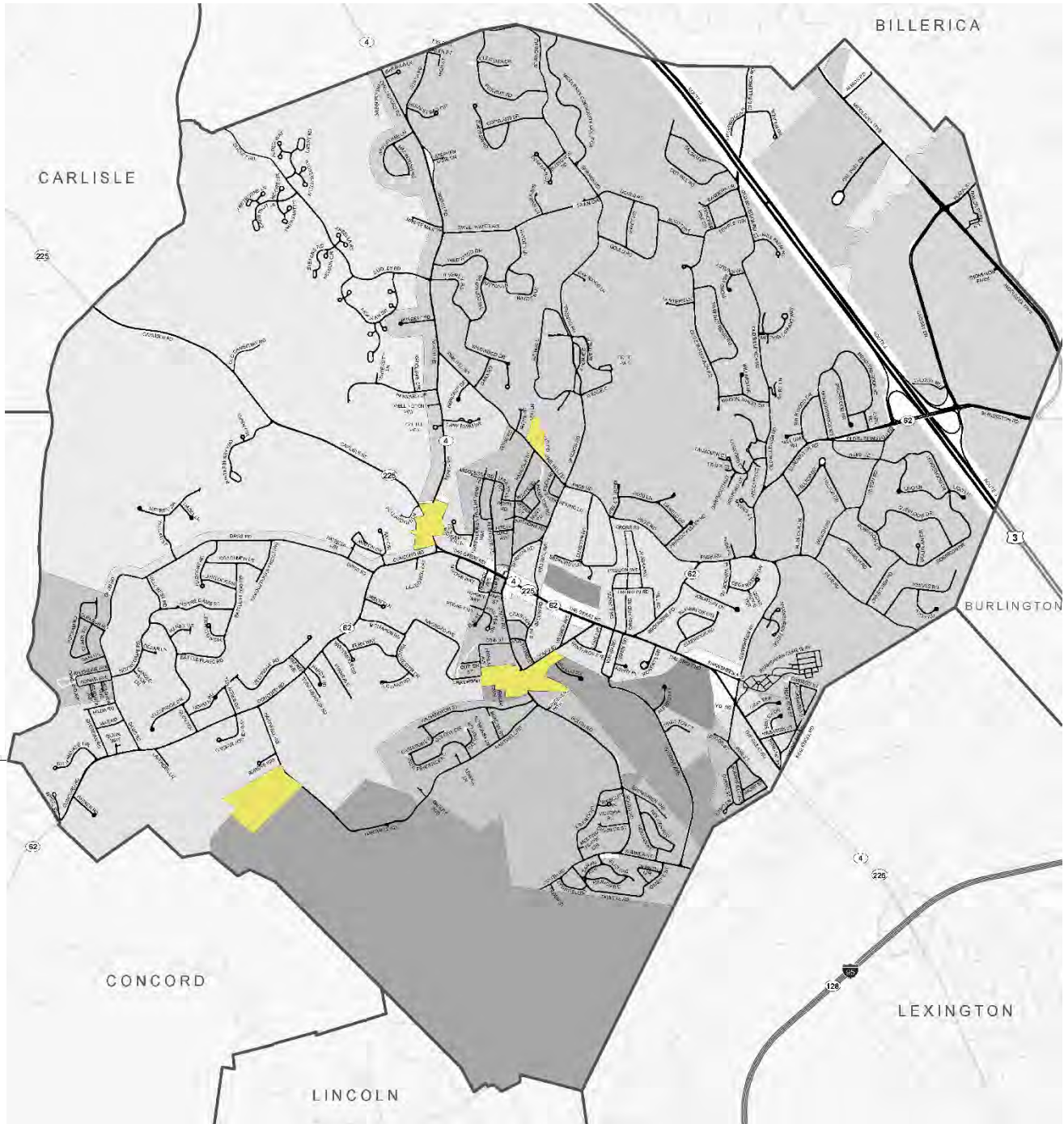
Acton



LEGEND

Water Bodies	EAV (East Acton Village)
Parcel Boundaries	EAV-2 (East Acton Village 2)
Affordable Housing Overlay Districts	
Sub-District A	WAV (West Acton Village)
Sub-District B	VR (Village Residential)
Zoning Districts	
R-2 (Residence 2)	PCRC (Planned Conservation Residential Comm.)
R-4 (Residence 4)	LB (Limited Business)
R-6 (Residence 6)	GI (General Industrial)
R-8M (Residence 8/4)	LI (Light Industrial)
R-10 (Residence 10)	LI-1 (Light Industrial 1)
R-10B (Residence 10B)	SM (Small Manufacturing)
R-A (Residence A)	TD (Technology District)
R-4A (Residence AA)	KC (Kotley's Corner)
NAV (North Acton Village)	OP-1 (Office Park 1)
SAV (South Acton Village)	OP-2 (Office Park 2)
	PM (Power Mill)

Bedford

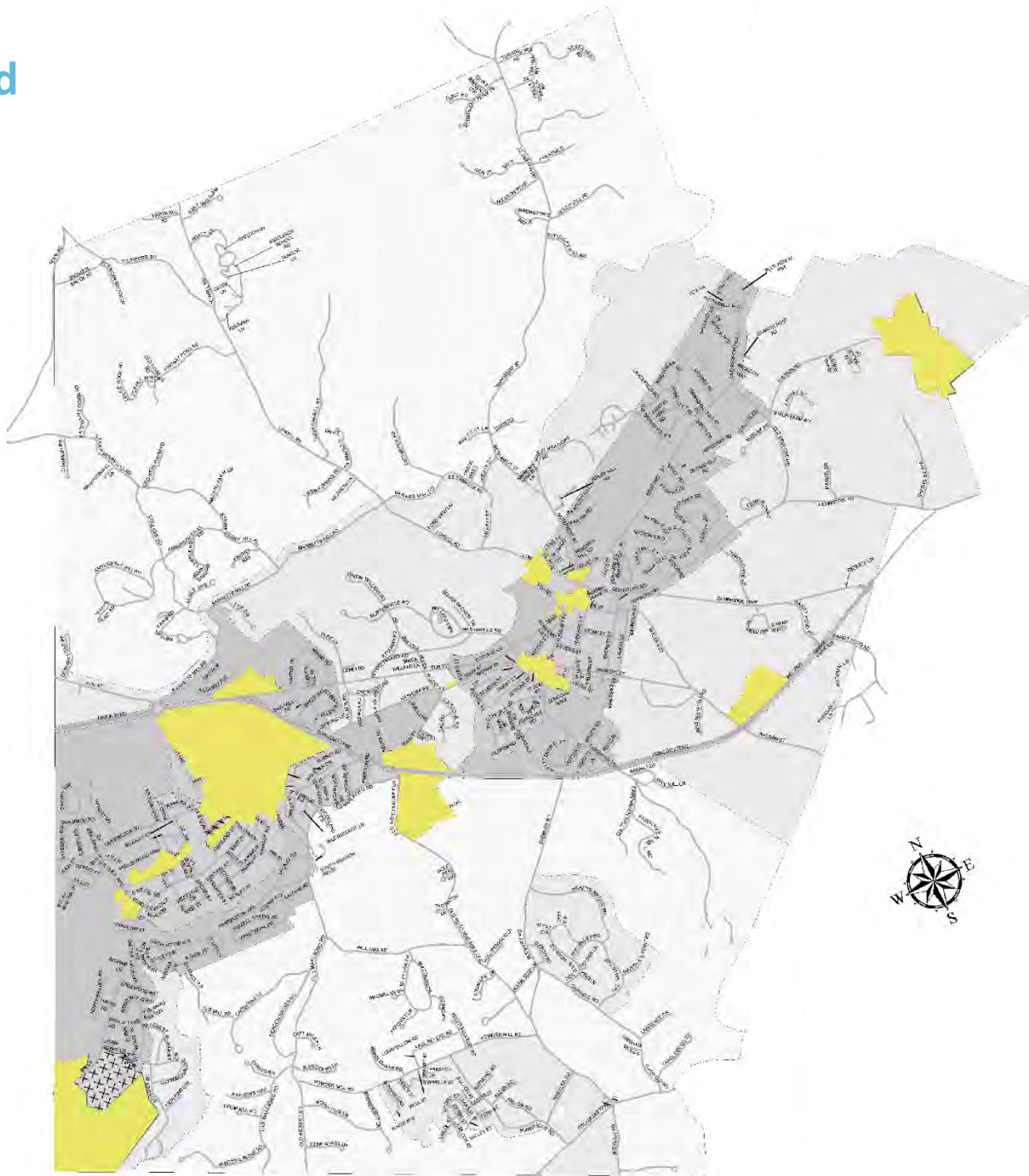


Zoning	Min Lot Area (Sq. Ft.)	Min Lot Frontage (Ft.)
Residence R (R)	60,000	200
Residence A (R-A)	40,000	150
Residence B (R-B)	30,000	125
Residence C (R-C)	25,000	115
Residence D (R-D)	10 Acres	50
Limited Business A (LB)	10,000	60
General Business B (GB)	30,000	-
Commercial (C)	20,000	90
Industrial A	4 Acres	150
Industrial B	2 Acres	125
Industrial C	5 Acres	150

Mixed Use Overlay Districts

- Depot Area
- North Road
- Town Center

Concord






Zoning Districts	
	Business
	Concord Center Business
	Thoreau Depot Business
	Nine Acre Corner Business
	West Concord Business
	West Concord Village
	Limited Business
	By-Pass
	Industrial
	Industrial Park A
	Industrial Park B
	West Concord Industrial
	Limited Industrial Park 1
	Limited Industrial Park 2
	Residence A
	Residence AA
	Residence B
	Residence C

Lexington

MAP LEGEND

RESIDENTIAL DISTRICTS

-  RO - One Family Dwelling
-  RS - One Family Dwelling
-  RT - Two Family Dwelling



COMMERCIAL / INDUSTRIAL DISTRICTS

-  CB - Central Business
-  CLO - Local Office
-  CM - Manufacturing
-  CN - Neighborhood Business
-  CRD - Regional Office
-  CRS - Retail Shopping
-  CS - Service Business

OTHER

-  GC - Government/Civic

PLANNED DEVELOPMENT DISTRICTS

-  CD - Planned Commercial
-  RD - Planned Residential

OVERLAY ZONING DISTRICTS

-  TMO - Transportation Management
-  FEMA 100 Yr. Floodplain
-  FEMA Regulatory Floodway
-  Historic Districts
-  Lakes and Ponds
-  State or Town Accepted Way
-  Unaccepted Way, Post Subdivision Control
-  Unaccepted Way, Pre Subdivision Control *
-  Other Federal and State Ways
-  Private
-  Minuteman Commuter Bikeway



Discussion + Thank You!

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