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MEMORANDUM

DATE: October 22, 2021

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

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

RE: **Docket Item #528-20: Requesting amendment to Local Preference in Chapter 30** COUNCILORS ALBRIGHT, NORTON, CROSSLEY, BOWMAN, NOEL, HUMPHREY, WRIGHT, LAREDO, KALIS, RYAN, LIPOF AND DANBERG requesting an amendment to the Newton Zoning Ordinance, Chapter 30, Section 5.11.8 Inclusionary Housing Plans and Covenants to lower the percent of Inclusionary Units dedicated as local preference units.

CC: Jonathan Yeo, Chief Operating Officer

In preparation for the public hearing scheduled for Monday, October 25, 2021, this memo provides a summary of the assessment of Newton's Local Preference Policy over the past year, as well as the recommendation to lower the percentage requirement from 70% to 25%.

As you know, this assessment was spurred in part by the Newton Housing Partnership's vote in July 2020 to recommend that the existing Local Preference policy be changed from 70% to zero, followed by a City Council Docket Item related to the matter in late 2020. The impetus behind the past year of analysis around local preference was centered on the question of whether a 70% local preference policy in a majority White community like Newton created a disparate impact on people of color. Understanding the possible negative implications of this policy is critical given the City's obligation to abide by the Federal Fair Housing Act and its duty to affirmatively further fair and equal housing opportunity for all.

Newton's Local Preference Policy can be found in Section 5.11.8.C. of Newton's Inclusionary Zoning ordinance. The Local Preference (LP) section outlines Newton's policy with respect to establishing a

resident selection plan for “affordable” housing units which would be made available as part of the affordable housing lottery held prior to tenant lease-up. Newton’s current policy, which has been in effect since at least 2014, sets-aside 70% of the available affordable units to be filled by income eligible local preference households. The current 70% percentage is the maximum set-aside permitted by the Massachusetts Department of Housing and Community Development (DHCD).

Local Preference is a concept that is defined within Massachusetts’ state statute Chapter 40B. Per the Massachusetts Department of Housing and Community Development’s [Chapter 40B Guidelines](#), the Local Preference “allowable categories” include:

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

In Newton, like many other Massachusetts communities, Local Preference policy has been an attractive and effective mechanism over the years for ensuring that income eligible “Newton” households (see above) are afforded a greater opportunity to stay or locate in the community in which they live or happen to work. Both existing affordable housing wait lists and local preference lottery pools continue to show a strong desire to secure affordable units within the City.

Assessment of Newton’s Affordable Housing Local Preference Policy

The murder in May 2020 of George Floyd, a young black man, and the subsequent racial reckoning, led the Newton Housing Partnership to think deeply about its role in taking affirmative action to ensure that people of color have greater access to housing in Newton. The Partnership identified the City’s 70% Local Preference policy as a barrier to equal housing access in Newton, as the intent of the provision is that local residents benefit from City-sponsored affordable housing opportunities. With a local population that is approximately 70% white¹, the Partnership stated that “imposing a high local preference perpetuates a racist housing system that gives significant preferential access to white households, while drastically limiting opportunities for people of color to move to Newton.”² To that end, the Partnership voted at its July 2020 meeting to recommend that the City adopt a zero Local Preference policy for the Riverside development to “send a strong message that Newton will not perpetuate policies that keep non-white people out of our City.”³

At that same meeting, the Partnership and the Planning Department decided to look more closely at the data from recent affordable housing lotteries in Newton to assess the extent of the unintended

¹ 2020 U.S. Census Bureau, Decennial Census. 2015-2019 American Community Survey (ACS) 5-Year Estimates show Newton’s percent of White Households at 82.80%.

² Newton Housing Partnership letter to Mayor Fuller, July 26, 2020

³ Ibid.

consequences that the City's Local Preference policy is having on minority populations and to assess if the 70% policy should be reduced or eliminated altogether. Concurrently, the Fair Housing Committee was having similar conversations, reaching out to local lottery agents to analyze the results of the lotteries, and the ultimate demographics of those that leased the affordable units. Local preference was also reviewed last year as part of the WestMetro HOME Consortium's update to its Analysis of Impediments to Fair Housing Choice (AI) report. In fact, the Town of Brookline, a member of the WestMetro HOME Consortium, reduced its local preference requirement from 70% to 25% in July 2020 and the possibility of further reductions and outright elimination of local preference still remains on the table in Brookline.

After an initial review of the available lottery / lease-up data from the newly leased TRIO development, 28 Austin Street, and Hancock Estates, the Planning Department and Partnership recognized that a consultant's analysis and perspective would be helpful in determining the potential need for a change in the City's Local Preference Policy. A third-party report could help identify the benefits and/or negative implications of the policy, particularly as it relates to the City's obligation to affirmatively further equal housing opportunity for all.

In January 2021, the Planning Department contracted with Judi Barrett of Barrett Consultant Group to perform the following scope of work:

- Evaluate the effectiveness of and need for the City's existing "local preference" policy, i.e., the policy that gives priority to Newton residents, employees and public school households for access to affordable housing units
- Assess the potential barriers created by the policy
- Review available Affirmative Fair Housing Marketing and Resident Selection Plans (AFHMP), where available
- Review lottery data for selected developments, for size and the makeup of local preference and general pools
- Review lease-up data for the same developments and compare with lottery results
- Consult with developers and lottery agents to understand differences (if any) in the makeup of lottery v. lease-up groups
- Consider available data in light of City's established local preference policy
- Deliver a technical memorandum outlining project approach, methodology, findings, and recommendations

From January through April of 2021, the consultant team met with the Newton Housing Partnership, the Fair Housing Committee, and the Zoning & Planning Committee (ZAP) to share their initial findings and takeaways and to solicit feedback from these advisory and legislative committees. From there, Ms. Barrett and her team finalized their report for submission to the Planning Department in June of 2021.

Barrett Planning Group's Local Preference Report

Attached is the final report commissioned by the Planning Department to help assess the effects of exercising Newton's current local preference policy in three recent affordable rental housing development lotteries: TRIO, 28 Austin Street, and Hancock Estates.

As outlined in the Barrett report, the ability for local Massachusetts communities to choose to enact and exercise a "local preference" policy has been authorized by the State of Massachusetts for decades. Newton has from its inception employed the Massachusetts Department of Housing and Community Development (DHCD) maximum allowable 70% local preference set-aside and it is currently regulated as part of any development subject to the City's Inclusionary Zoning Ordinance. Under the City's IZ ordinance, 70% of the affordable units in IZ-covered projects must be offered preferentially to applicants with existing residential, employment, or school-system connections to Newton. These income-eligible applicants are defined as the Local Preference Pool, and those units set aside for the Local Preference applicants are defined as the Local Preference Units.

Understanding how lotteries work to establish the initial groups of **potentially** eligible households for available affordable units is fundamental. There are two pools of applicants from which income-eligible households are selected: the Local Preference Pool, as described above, and the General Pool. The General Pool includes all applicants that do not qualify as "local preference", as well as all local preference applicants. As described above, 70% of a project's affordable units are set aside as Local Preference Units, offered first to the local preference pool applicants, and the remaining 30% of affordable units are the General Pool Units, offered to the entire general pool of applicants. Applicants that qualify for a local preference category are essentially given two bites at the apple to be selected for an affordable unit through the lottery process – first through the smaller local preference pool, and then again through the general pool.

The Barrett report provides historical and present racial demographics of the city, as well as the racial breakdown of the lottery results for each of the three developments analyzed. As detailed in the report:

- Per the United States Census' 2019 American Community Survey data, approximately 83% of Newton's households are White; 2.4% are Black or African American; 12.4% are Asian; 1.3% identify as Other; and 1% identify as Two or More Races.
- The three developments analyzed in the Barrett report received a total of 1,157 applications for 71 affordable units: 27% were local preference applicants and 73% were non-local preference applicants.⁴
- Local preference applicants represented 72% of the initial lease-ups, while non-local preference applicants represented 28% of the initial lease-ups.
- The local preference pool of qualified applicants tends to be less racially diverse (51% White, 49% Minority) than the non-local preference pool (30% White, 70% Minority). However, as

⁴ The report provides initial lease-up data for 61 of the 71 affordable units (as 10 of the units at TRIO had not been leased at the time of the study)

noted above, the local preference pool is significantly more diverse than Newton’s population as a whole.

While the determining factor for initial lease-up statistics for the affordable units in each development examined are even more multi-layered and difficult to quantify (i.e., credit analysis), certain conclusions may also be drawn:

- 44 of the 61 units leased at the time of the study went to local preference applicants, of which 61% were White households; 16% Hispanic/Latinx households; 14% Black households; 7% Asian households; and 2% households indicating a race of “other”
- The local preference pool overall had a greater diversity outcome than the makeup of the units leased by local preference applicants (Local Preference Pool: 51% White, 49% Minority vs. Local Preference Lessees: 61% White, 39% Minority)
- The diversity profile of the units leased by non-local preference applicants (17 of 61) was greater than the non-local preference pool overall (Non-Local Preference Pool: 70% Minority, 30% White vs. Non-Local Preference Lessees: 88% Minority, 12% White)
- The following table summarizes this data, broken out by Local Preference, Non-Local Preference, and General Pool Applicants & Tenants. General Pool includes both local preference and non-local preference applicants and tenants:

| Local Preference Applicant Pool | LP Tenants (44/61) | Non-local Preference Applicant Pool | Non-LP Tenants (17/61) | General Applicant Pool | General Pool Tenants |
|---------------------------------|--------------------|-------------------------------------|------------------------|------------------------|----------------------|
| 51% White | 61% White | 30% White | 12% White | 35% White | 47.5% White |
| 49% Minority | 39% Minority | 70% Minority | 88% Minority | 65% Minority | 52.5% Minority |

As part of their study, the consultant team did attempt to analyze available data related to the accessible affordable units in these three developments. While collectively nine accessible affordable units were included in these projects, only four of those units were initially leased to tenants with disabilities. The Barrett report concludes that outside factors beyond local preference affect the leasing outcomes of these units, including that the pricing of these affordable units may be too high for people with disabilities. Further study on this matter is recommended.

Overall, the report identifies a handful of key takeaways that should be considered alongside the city’s efforts and obligations to affirmatively further fair and equal housing opportunity for all and to reduce potential discriminatory impacts on all protected classes:

- The community that benefits the most from Newton's local preference policy is White, non-Hispanic local households

- Selection rates were higher for White applicants in each of the researched developments than for minority applicants overall
- When split into local preference and non-local preference households, selection rates among local preference households were higher for White applicants than minority applicants; and among non-local preference households, selection rates were higher for minority applicants (specifically highest for Asian households in each case)
- The effect of local preference on households requiring accessibility features in their units is unclear and requires further study

Page 22 of the Barrett report outlines several potential policy alternatives for the City to consider including:

- Retaining the current policy of 70%
- Reducing the local preference set-aside to some percentage less than 70%
- Investigating the plausibility of limiting the local preference pool to only the households from outside of Newton who work in Newton or have children in Newton public schools
- Expanding local preference to include a wider geographic pool including nearby MetroWest communities.
- Eliminating local preference altogether

Recommendations for Reducing Newton’s Local Preference Requirement

The impetus behind the past year of analysis around local preference was the question of whether a 70% local preference policy in a majority White community like Newton created a disparate impact on people of color. While our study commissioned to assess this question was limited in scope, it did highlight that White, non-Hispanic “local preference” applicants were selected at higher rates than minority groups overall. Additionally, it showed that the non-local preference pools were overwhelmingly made up of minorities, which helped to offset the high selection rates of the local-preference White applicant group. Thus, one conclusion that might be assumed is that a reduction in the set-aside for local preference units would result in a higher number of units being afforded to persons of color.

A reduction in the local preference percentage will likely result in greater opportunity for the large non-local minority applicant pool to secure affordable units in Newton through lottery processes. Continued analysis and tracking of the lotteries are necessary to better understand other factors that determine who is ultimately offered a lease. The need for further study into the effects of local preference and the lottery system altogether on people with disabilities is also a critical next step. The identified correlation between Newton’s 70% local preference policy and the percentage of minorities, particularly Black and African American applicants, that sign leases for these affordable units, as compared to their White, local-preference counterparts, sheds light on the need to enact a change to the long-standing requirement.

On July 20, 2021, Planning staff discussed its recommendation to reduce the city’s local preference percentage to 50% or 35% with the Newton Housing Partnership. In general, the Partnership

members were in agreement that a change in the local preference percentage was necessary to reduce the discrepancy in outcomes related to the affordable housing lottery processes in Newton. However, the Partnership also expressed a strong desire to explore the other barriers that may be factoring into minority applicants' chances of leasing these affordable units, as well the reasons behind the mismatch in the accessible affordable units offered through the lotteries. The Partnership acknowledged that while reducing the local preference percentage was not the sole solution to this issue, it was an important first step.

A motion was made to recommend lowering the percentage to 35%; however, the motion did not pass, as some members wanted more time to hold this important discussion and others expressed an interest in recommending an even lower percentage. The Partnership did commit to continuing this critical conversation in August to be able to identify and recommend a lower percentage that would garner consensus among the group. On August 17th, the Newton Housing Partnership continued its debate of this matter, ultimately voting to recommend a reduction in the City's local preference policy from 70% to 25% to "mitigate the discriminatory effect of the policy and to affirmatively further fair housing outcomes."

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

Additionally, both staff and the Partnership recognize the incredible need for greater affordable housing opportunities for individuals and households with disabilities. As part of the Barrett Planning Group's study, the consultant team did attempt to analyze available data related to the accessible affordable units in these three developments. While collectively nine accessible affordable units were included in these projects, only four of those units were initially leased to tenants with disabilities. The Barrett report concludes that outside factors beyond local preference affect the leasing outcomes of these units, including that the pricing of these affordable units may be too high for people with disabilities. Further study will be conducted on this matter; however, with the proposed reduction of the local preference requirement, staff recommends that new language be added to the policy to ensure that at least one of the local preference units in the project be a fully accessible affordable unit. This change is reflected in the attached red-line DRAFT of the local preference policy language in the City's Inclusionary Zoning Ordinance.

ATTACHMENTS:

- Answers to the Questions Raised at the July 26, 2021 ZAP Meeting
- Newton Housing Partnership 9/21/21 recommendation letter re: 25% Local Preference Policy

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