



Zoning & Planning Committee Report

Part 1

REVISED

City of Newton In City Council

Monday, October 25, 2021

Present: Councilors Crossley (Chair), Danberg, Albright, Leary, Ryan, Wright, Krintzman and Baker

Also Present: Councilors Bowman, Lipof, Downs, Norton, Malakie, Humphrey, Oliver, Lucas, Kalis and Greenberg

City Staff: Deputy Director of Planning and Development Jen Caira, Director of Planning and Development Barney Heath, Assistant City Solicitor Andrew Lee, Director of Housing and Community Development Amanda Berman, Chief of Long Range Planning Zachery LeMel, Planning Associate Cat Kemmett, Community Planner Engagement Specialist Nevena Pilipovic-Wengler and ADA Coordinator, Jini Fairley

Utile Consultants: Timothy Love and Lisa Hollywood

Planning and Development Board: Chair Peter Doeringer, Barney Heath, Kelley Brown, Sudha Maheshwari, Chris Steele, Kevin McCormick and Jennifer Molinsky

Others Present: NewTV

Public Hearing

#528-20

Requesting review and possible amendment to Local Preference in Chapter 30

COUNCILORS ALBRIGHT, NORTON, CROSSLEY, BOWMAN, NOEL, HUMPHREY, WRIGHT, LAREDO, KALIS, RYAN, LIPOF AND DANBERG requesting a review and possible amendment to the Local Preference Ordinance in Chapter 30 sections 5.11.8. This section requires an Affirmative Fair Housing Marketing and Resident Selection Plan (AFHMP) for all Inclusionary Units which provides for a local preference for up to 70% of the Inclusionary Units. Various groups including The Fair Housing Committee and the Newton Housing Partnership have questioned whether the percent of local preference

to current Newton residents should be lowered with the goal of increasing racial diversity in Newton.

Zoning & Planning Held 04/12/21, 07/26/21, 09/27/21.

Public Hearing scheduled for 10/25/21

ACTION: Zoning & Planning Approved 8-0; Public Hearing Closed on 10/25/21

NOTE: Chair Crossley reminded that the Newton Housing Partnership (NHP) hired a consultant to complete an in-depth review to determine what impacts reducing the local preference rate in the inclusionary zoning ordinance from 70% to 25% could have. We have discussed this item several times but will only vote on it tonight if the committee feels ready to do so.

Director of Housing and Community Development Amanda Berman and Assistant City Solicitor Andrew Lee joined the Committee for discussion on this item.

Ms. Berman presented a summary (PowerPoint attached) of the year long NHP discussion and analysis informed greatly by the Barrett Report, the proposed amendment to reduce the local preference threshold, and recommended actions beyond the scope of this one item.

Ms. Berman described the Barrett Planning Group's analysis and report, which assesses the impacts of Newton's local preference policy on the demographics of both local and non-local applicant pools versus the demographics of final tenant selection. The data shows a negative impact on people of color. Three recent rental housing lotteries were examined to assess the effect of Newton's 70% local preference policy, including TRIO on Washington Street, 28 Austin Street and the Hancock Estates at Kessler Woods.

Key findings include that the households that benefit the most from Newton's current local preference policy are white, non-Hispanic households.

Ms. Berman stated that the proposed amendments to the IZ Ordinance: Sec. 5.11 is as follows:

1. To the extent permitted by law, such plan must provide for a local preference for ~~up to 25%~~ 70% of the inclusionary units in a project and at least one of the local preference units must be a fully accessible unit.

Chair Crossley opened the public hearing.

Josephine McNeil, 53 Taft Avenue, asked if we are also concerned about the overall diversity within a particular project? Are we only concerned with people who are eligible for local preference? Because if you look at the people at the number of the racial breakdown over the entire project, it looks like it's almost 50%. It seems to me that, you shouldn't be looking at the minorities across the whole project. I'm not sure that the information we have, necessarily leads to changing the local preference. I also have questions as we look at the local preferences across the four categories, do we have that data? How does the racial breakdown factor in, because that could also be a factor. I think I would be more concerned about the people who are currently living here in Newton who win the lottery and have the

opportunity to move into a unit where they're only paying 30% of their rent, as opposed to where they currently live in and may be paying 50% of their rent because we know people at the low end are overburdened. But I think more study needs to be done before you make the change.

Nancy Zollers, 154 Oliver Road, bravo to the planning department for the all the study and conversations over the last year, we have the best consultants too. Data from Ms. Berman and the Barrett Report puts us in such a good position. It puts me in a position of supporting the amendment to change from 70% (to 25%). It seems to me that this is a small, welcoming policy that will help us become the kind of city we hope to be. It is alignment with the Newton Housing Partnership that I'd like to support. I wish you were voting tonight.

Lizbeth Heyer, Chair Newton Housing Partnership, 25 Freeman Street, stated that she is speaking on behalf of the Newton Housing Partnership. As you know, the discussion is about what I think are really compelling benefits of lowering this local preference rule, since initially recommending this last year. Our initial recommendation was that we eliminate local preference altogether. We were really greatly aided by the Barrett Report and assistance from Ms. Berman and others to look at this important issue on a very deep level. I appreciate Ms. Berman's presentation tonight, which I think touched on a lot of really important points. The Barrett Report further underscores the importance of lowering or eliminating the local preference. Just picking up a little bit on what Ms. McNeil said, I think this is a very complex issue and there are multiple points of action. I think the Barrett Report pointed this out, that as it relates to the group of units we're talking about, the inclusionary units. I agree with Ms. McNeil (that) there are other issues as well, relative to the entirety of the population in these buildings. But what you can do and what the Council can do is a very specific action relative to the local preference policy for our regulated units. I think that's where we're focusing right now. Just to remind everybody that that Barrett Report found something really significant. I'll quote this now, "Newton's local preference policy is benefitting white local preference applicants over others, creating a disparate impact on other groups, particularly Black and African Americans, based on the Barrett Report findings. The Newton Housing Partnership continues to strongly recommend that the city revise its local preference rules to address the city's obligation to **affirmatively further fair housing for all protected classes**, and also address the additional barriers to tenant selection that the Barrett Report pointed out. This dramatic anti-racist action would reduce barriers to accessing affordable housing in Newton, which as currently applied creates a discriminatory effect and prevents you from being a city that is welcoming and accessible to all. Specifically, we recommend several things. First of all, to reduce the local preference from 70 to 25%, we believe this percentage will still address local housing needs, importantly, while meaningful by reducing local preference rules to mitigate the discriminatory effect of furthering affirmative Fair Housing outcomes. It's important in considering this to highlight that 24% of new households have incomes below 80% of area median income. Those two percentages are how we came to the conclusion that a 25% local preference was a good local preference (number), because that's directly addressing the percentage of people in the income group living who would qualify for these units. I want to point out that 25% local preference would preserve and strengthen the benefits of racial rebounds, which allows for the addition of non-local applicants in a local preference pool if the pool of minority applicants is lower than the MSA percent of minority households, which in the case of Newton's MSA is 27%. By setting

the local preference at 25%, we will have a much larger 70% non-local pool for the vastly larger non-white local applicant group, of which 65% was non-white, outside of Newton, while still being able to pull non-local, non-white applicants into this smaller 25% local pool. These two things combined will increase the overall likelihood of non-white applicants still winning the lottery. The Newton Housing Partnership also carefully considered how to avoid the potential negative impact, lowering the local preference on local households with disabilities. As Ms. Berman said, only four of nine affordable and accessible units in the Barrett Report bunch qualified households, suggesting that income is likely to vary. I want to share a little data because I think it points out how this plays out. The average annual Social Security Disability Income payment is about \$13,500 a year. A household, in order to qualify for an 80% unit would have to earn approximately \$70,000. You can see that there's a complete mismatch between the incomes of people who are earning disability support and the income that's required to qualify for one of these units. This is alarming and a very big problem and it suggests the need for other policies and actions to support local residents with disabilities. The Newton Housing Partnership has taken this issue up. We will be working on ways to make sure that we're still able to serve local households with disabilities but it's not going to be through local preference, it's going to be through much more targeted marketing, more creative use of Section A and other supports, that are really necessary for low-income people with disabilities to have housing. The Barrett Report also revealed a really significant additional problem that must still be addressed, even if you decide to lower the local preference. And that is - discrimination during the tenant selection process. These are people of color who actually win the lottery, but don't move into a unit. We really need to dig in and understand why that's happening and talk about additional policies and procedures that can disrupt this. This is a really unacceptable outcome as well and we really want to disrupt it. The Newton Housing Partnership is already starting to work on this, and what kind of policies and strategies the city can put in place. In summary, the Newton Housing Partnership is recommending that we lower the local preference to 25% and that this would be a dramatic action that would remove discriminatory barriers to affirmatively further fair housing a new group. It's a bold action. It would ensure that people of color have greater access to housing in Newton and open our doors to all and particularly those precious and few affordable units that we can create through our inclusionary zoning and comprehensive permit process.

Lynn Weissberg, 5 Alden Street, stated that the Newton Housing Partnership are housing professionals, they have been studying the issue and dug into the Barrett Report. Ms. Heyer presented her findings at least on two occasions to the partnership, a very complicated subject. I could not make the arguments better than Ms. Heyer. There is no question based on the Barrett Report findings that every single unit in any of these new permitted projects is going to be highly sought after. The ratio I believe for TRIO was that for every unit, there were 36 applicants. We have a scarce commodity. I think we all agree that we want Newton to be more racially diverse than it currently is. Ms. Berman did an excellent summary of the Barrett Report. I think that it is time hopefully tonight, but if not tonight in the very near future, for ZAP to vote and adopt the partnerships recommendation to reduce the local preference percentage to 25%. This will be a first step. There are many steps that have to be taken. But I am pleased that the committee is now at the point holding a public hearing and hopefully near a vote to reduce it to 25%. More study will need to

be done. But I think from all of the data that has been assembled, it is clear that that reduction will lead to a more diverse group of individuals getting the units.

Andrew Steinberg, 65 Westgate Road, I would like to speak in favor of reducing Newton's 70% (75%) local preference rate. I agree with the Newton Housing Partnerships assertion and everyone who spoke eloquently before me that this policy has discriminatory effects that must be changed. I was looking at the fact that 61 units consider that TRIO, Austin Street and the Hancock estates, like 48% of them went to white households while they were 35% of applicants. Newton is a mostly white city and our legal maximum 70% local preference rate uphold that. I don't think that is fair. I don't think that's the anti-racist city that I know we can build. I'm a student studying immigration law, and I'm deeply familiar with how systemic exclusion intersects with systemic racism. My family migrated to this country months before the Emergency Quota Act of 1921, which tied the number of immigrants from each country, the number of residents already living in the US as of 1910 and this love favorite groups who already were in the US, such as Northern and Western Europeans at the expense of less, quote, "desirable groups" like my Jewish ancestors. If the Quota Act was in place a few months earlier, I may not be giving you this testimony today. I see many parallels with national nativism, prioritizing those who have already benefited from an unjust system, and what is happening to my city today. It pains me as a conscious young person who wants to live here and be proud for the rest of my life. In essence, in group favoritism might be an enticing political strategy, but it has real consequences for the most vulnerable people and dismisses the idea that they can be amazing neighbors too, if just given the chance. I encourage the Council to think about this history and to dismantle this artificial barrier to equity and commit to true anti-racist action.

Fran Godine, 19 Crofton Road, stated as a member of Engine 6, we fully support the shift in the Inclusionary Zoning law from 70% to 25%, as stated in the wonderful letter from the Newton Housing Partnership. Although designed with good intentions, the recent study by the Barrett Report planning group of June 2021, requested by our own planning and development department identifies the disadvantages leading to negative impacts for Newton's goals of inclusion and the potential for discrimination violating the city's federal obligations to affirmatively further fair housing for all protected groups. The report noted that 70% local preference has benefited the white local preference applicants creating this kind of a disparate impact on other groups, particularly the black African American applicants. Further I commend the city considering ways to eliminate barriers for some people, that some people of color face even after winning the lottery, such as potential prior evictions and inadequate credit ratings, which may be worthy of more detailed detail from applicants who would currently be fine residents. Monitoring where residents are marketed for both people of color and people with disabilities may also enable these communities to be better informed of all availabilities. The opportunity presented by the Riverside Development makes this the perfect opportunity for ZAP and the full council to consider the positive impact. This shift will allow by reducing the local preference to 25% will be advancing the opportunity for all of our residents to live in a more inclusive community that we desire and protect as Newton to be.

Lisa Monahan, 1105 Walnut Street, stated: I am really impressed with the job that the Newton Housing Partnership, the planning department and the consulting firm have done in assembling this

work and this analysis. I think it's amazing. I do agree that it sounds like there is further study and issues to be grappled with. But this reduction in the local preference percentage sounds like a no brainer, first important step. The issue that Mr. Steinberg brought up about looking at this moment as a moment in a bigger historical context. I just want to say thank you, Mr. Steinberg that was an amazing point that you raised. I would hope that the committee votes on this.

Lucie Chansky, 259 Jackson Street, stated that she wants to support the idea that people with disabilities need to be considered for lower rental apartments. I'm really disappointed in the round of recent decisions about apartments that have been made. Those people who are really low income somebody mentioned 30, around \$13,000 a year have not been able to be served at all were in previous building projects. They were many of the Avalon apartments have allowed people with disabilities to live there and be affordable to them. I urge them and the counselors to continue thinking about it.

Sean Roche, 42 Daniel Street, stated that he requests the ability to continue to lavish praise on Ms. Berman, Barrett Report and Ms. Heyer and the Partnership, the Engine 6 steering committee which have made this a huge priority and the lovely words from Mr. Steinberg. I do want to echo Ms. McNeil's point that we really need to worry about the yield over on a project and then on the point that Ms. Heyer made that we need to improve the yield from the lottery and that lottery selection does not mean that folks get apartments and there's a lot of work to be done there. I would also like to address Councilor Wright's point about the long waiting lists for Newton residents. I think that's a legitimate concern. I think that that's in part addressed by the 25% local preference as opposed to the original proposed 0%. I would like to point out to Councilor Wright and others on the council, the way to shorten the waiting lists. For folks who qualify for affordable housing, whoever Newton is to build more affordable housing in this climate, the way to build more affordable housing is to accept that the Affordable Housing engine is cross-subsidized, affordable housing, it's cross subsidized by market rate housing. As long as Councilor Wright and others on the Council continue to object to the size and scale of developments, demonize developers and seek to limit the amount of market rate housing that's being built by comprehensive permit and special permit projects, we are not going to get more affordable housing. You have to be for affordable housing, or you have to be anti-developer, but you cannot be both.

Tom Gagen, 32 Fern Street, stated that he would like to speak on behalf of the 75% for people on housing. I just think we have a great city here. It would be wonderful if we could welcome more people into our city and this is one way to balance the needs of our own residents and with people outside the city who want to come here. I hope that council approves 75%.

Chair Crossley stated the item on the table is to reduce the local preference from 70% to 25%. Mr. Gagen, are you supporting 70% or are you supporting the reduction to 25% so that more people from outside the city can come into the city? Mr. Gagen answered that he supports the 25%.

Doris Ann Sweet, 21 Lexington Street, stated that she wants to add her support for reducing to 25%. It's one concrete action that we can take to mitigate racism that has historically crept its way into

our zoning code. I'm so pleased to hear from both planning and Newton Housing Partnership, that there are many other possible actions in the future that can take care of some of the other maybe more administrative types of concerns that may keep people of color from becoming members of our community.

Jini Fairley, City ADA Coordinator, stated that she applauds all the work that's been done. I just would like to remind everyone here, that diversity includes disability, and the Fair Housing Act recognizes that one of the protected classes, besides racial, and economic and families, etc. are specifically people with disabilities. Not that I'm opposed for the reasons that everyone wants to reduce the number of apartments that are under local preference. Remember, this isn't 25% of the population. This is 25% of the units for each project that Ms. Berman clearly stated these are usually brand-new construction, special permit or comprehensive permit projects. Believe it or not, that's pretty much the only place someone can find an accessible apartment. I get many calls. I'm the ADA coordinator. I also am a Newton resident. I've done housing searches for people with disabilities in my previous job for 10 years, homeless people, etc. so I know where I come from about housing. I'm just a little concerned that we're losing a part of the picture and part of that picture is that the Newton Housing Authority doesn't have a whole lot of accessible apartments. None of the 70% of privately home apartments, I mean, houses have accessible apartments. It is very, very difficult to find accessible apartments for people with disabilities who need that accessibility. Only 5% of these special projects are fully accessible. These are some of the statistics some people might not know, but at least because they are new construction. The rest of the apartments are what we call adaptable accessible. When someone calls me and says what do I do to get an accessible apartment? I say, well, I hope you get lucky and yes apply for all the new construction affordable apartments, projects that are going up. I know the research that went into this, the Barrett Report and at least one of the three places didn't even have an accessible apartment in the local preference. We're comparing apples to oranges in some ways. If we do reduce this to 25% for a better racial mix, and I applaud that I absolutely do. I just want to be sure that some protected class such as people with disabilities are not all of a sudden at a disadvantage and discriminated against. This is where I feel that I'm calling some cautionary measures here. How are we going to measure? What if of the three places we looked at, one of them wasn't even having an accessible apartment in the local preference? How are we going to measure that this is to someone's advantage or disadvantage going forward? I'd like to see that in place before you make that decision. In an apartment project, that's 1/4 of the apartments that are going to be affordable, are going to be in this this this range when you think that only 5% of them are fully accessible in the entire project, how many do you think are going to even make it into the affordable, so this is what this is why it is so complex. I need to speak up for people with disabilities, especially those who need the accessible apartment, don't even get me going on what Ms. Chansky referred to is the income level of people with disabilities, and they cannot afford an 80% Ami project such as Austin Street. They cannot afford even 50% Ami most of the time. This is this is a real problem we have. That is why four out of the nine accessible apartments only went to people who really needed it and qualify meaning they had an accessible need. I know someone who's in one of those four so it's not, it's just and they and guess what, she is a Newton resident. If we start putting it down and down, you might just be eliminating those people who are waiting to get into a more accessible apartment who live right here in our city. I don't know

what color they are, and I am worried about this that they're not going to get an accessible apartment. In any case, please be careful on this and put in place a way to measure whether this move from 70 to 25% actually does achieve the goal you're looking for a more racially mixed city, and also that we keep in mind diversity. The diversity also means disability. Inclusion also means disability, people with accessible needs.

Councilor Krintzman made a motion to close the public hearing. Committee members agreed 8-0.

Committee members comments, questions and answers:

Please clarify what does it mean in the lottery that we have close to ten-year wait list for the residents to get an affordable unit. How do residents get off the list? Ms. Berman answered that the list is used for public Housing Authority units. The Newton waiting list depends on what type of unit is desired through the City's Comprehensive Permit or Special Permit projects. Each of these projects must follow an affirmative fair housing marketing and resident selection plan which is reviewed by the City and the State requiring an outreach marketing and application lottery process for each project. Each project generates their own wait list that are separate wait list that are administered from the Housing Authority. Usually, interested residents are on multiple wait lists across the municipality where they are hoping to live. There could be a lot of people who are on that public housing authority waitlist for 10 years and apply to one of our lotteries and get a unit at TRIO for instance. They make the decision to take themselves off the Housing Authority waitlist, although it's different. With Housing Authority units, the households are only ever paying 30% of their income, regardless of if their income goes up or down. Whereas these units through our comprehensive permit projects and our special permit projects, their rent is based off the income limit of that unit. Depending on the household situation is what is most needed by that household, I would say is where they might choose to live if they are so lucky to be offered an opportunity because it is so challenging to be offered an opportunity regardless of the type of project.

Chair Crossley said that she was asked a question from a member of the Newton Housing Partnership and asked Attorney Lee if he would speak to the requirement to affirmatively further fair housing. Can we have any local preference requirement and still meet the requirement to AFFH? If we have proven to a degree that the local preference is causing a discriminatory effect, how can we have any local preference? If that's the result, when we're supposed to be Affirmatively Furthering Fair Housing, is there is there a conflict there? Attorney Lee answered that this is established as a matter of state law. As Ms. Berman explained in her presentation, local preference is something that's specifically provided for in MA law, the city is able to allow up to 70%. The fact that the city is taking steps to reduce that to address some racial inequality that might be an outcome of the local preference as it is today, - I don't see how those conflict with any Fair Housing Act or any goal for creating more accessibility.

I would like additional information on the issues that Ms. Fairley raises regarding disability and how this might impact them. It's really a question of income level, that's the biggest barrier. Why are only 5% of our new developments fully accessible, versus fully adaptable?

I think the idea of monitoring to see the effect of this change is essential. Whatever we do will apply not just to Riverside but also Northland once we have a new inclusionary zoning ordinance. It would apply because they have not pulled their building permit yet and they haven't submitted an affirmative Fair Housing marketing resident's selection plan that can be approved by the city or the state. They will not be doing that until the first quarter of next year, but it could be early in the second quarter.

Is part of the proposal to reserve one unit for disabled people? Ms. Berman answered yes, that at least one of the local preference units will be a fully accessible unit.

There are people with disabilities that don't just have physical disabilities. I would rather understand what it is we're going to do to address the housing needs for disabled people, whether it's a physical, mental, visual or hearing disability. I would like some commitment on what that really means, as we vote on this.

The Chair noted that Ms. Berman's report quite clearly discusses that there's a real difference between physical and cognitive disabilities in terms of housing needs.

Is at least one of the local preference units accessible? Ms. Berman answered yes, that is the proposal regardless of the change down to 25%, that at least one of the local preference units will be a fully accessible unit.

When does it increase to two or three units? Ms. Berman answered that with each project, we are more and more diligent about proportionality across the board. As Ms. Fairley mentioned 5% of all units in new construction are fully accessible units. What we work towards is that 5% of all inclusionary units are fully accessible. We try to take those percentages just across the board and Ms. Fairley is correct, we didn't always get it right. It is something we are extremely aware of, and it becomes a math problem, essentially. If there are 10 local preference units 5% of the 10 is point five, at least one of those units will be accessible. It's very complicated, but you just take those percentages for all these different elements across the board and that is what we do now.

Does the city meet the need for accessible units? Ms. Berman answered that the need for affordable housing is so vast, that we don't come close to meeting the need.

Planning Board members questions and answers:

Regarding 5% or whatever the percentage would be for accessible housing, is that part of the zoning or administrative practice? Ms. Berman answered: It's in ministry of practice, although I don't have the language right now, we talk about this type of proportionality. We do have a provision in the inclusionary zoning ordinance that talks about that the level of accessibility across the project and that it will be proportionate across the inclusionary units.

The Planning & Development Board voted 6-0 to close the public hearing.

The Planning & Development Board voted 5-0-1 to approve this item, Planning Director Heath abstaining.

Committee members thanked Ms. Berman for her excellent comprehensive work and her diligence.

Straw vote:

Committee members took a straw vote that they were ready to vote on this item. Committee members agreed 6-2, Councilor Leary and Albright opposed as they wanted additional information. Ms. Berman stated that answers to outstanding questions would be provided.

The Chair noted that there seemed to be a clear commitment to furthering the work needed to address matters in addition to local preference requirements that affect leasing outcomes – and that the committee is clearly wanting to pursue these issues with the NHC.

Without further discussion, Councilor Krintzman made a motion to approve this item reducing the local preference rate in the inclusionary zoning ordinance from 70% to 25% to make deed restricted affordable housing more accessible. Council members agreed 8-0.

The Committee adjourned at 10:10 p.m.

Respectfully submitted,

Deborah J. Crossley, Chair