

## **Town of Lancaster Inclusionary Zoning Article**

Article \_\_\_\_ To see if the Town will vote to add “Inclusion of Affordable Housing” to the Lancaster Zoning Bylaws as Section 220-8.8 of Article III, by inserting the following sections: A. Purpose and intent, B. Definitions, C. Applicability, D. Inclusionary housing special permit, E. Mandatory provision of affordable housing. F. Preservation of affordability, G. Timing of construction for affordable units, H. Siting of affordable units, I. Minimum design and construction standards, J. Minimum lot size, K. Payment-in-lieu-of-units, L. Combining construction with payment-in-lieu-of-units, M. Local preference, N. Affirmative fair housing marketing and resident selection plan for affordable units, O. Related fees, P. Conflict with other bylaws, Q. Severability

## **§ 220-8.8 – Inclusion of Affordable Housing**

A. Purpose and intent. The purpose and intent of this zoning bylaw is to promote the inclusion of affordable housing as part of the development of housing overall in the Town of Lancaster. This is also known as Inclusionary Zoning. More specifically:

- (1) The purpose of these provisions is to encourage development of new or renovated housing that is affordable to eligible low- and moderate-income households in perpetuity. At a minimum, affordable housing produced through this regulation shall be in compliance with the requirements set forth in Massachusetts General Laws (MGL) Chapter 40B, Sections 20 through 23 (as the same may be amended from time to time), and other affordable housing programs developed by state, county and local governments.
- (2) It is intended that the Affordable Housing Units (AHU's) that result from the application of this bylaw be considered as Local Action Units (LAU's), in compliance with the requirements for the same as specified by the Massachusetts Department of Housing and Community Development (DHCD) or successor state agency or regulations.
- (3) The LAU's created by this bylaw are intended to add to the Town of Lancaster's Subsidized Housing Inventory (SHI) and contribute to local efforts to meet the state's requirement for affordable housing levels. Accordingly, these units must meet DHCD's Local Incentive Program (LIP) criteria to be suitable for inclusion and counted in the Town's SHI.

B. Definitions.

### **AFFORDABLE HOUSING UNIT (AHU)**

A dwelling unit available at a cost of not more than 30% of gross household income of households at or below 80% of the Metropolitan Statistical Area (MSA) which includes the Town of Lancaster's median income as reported by the United States Department of Housing and Urban Development, including units listed under MGL Chapter 40B, Sections 20 through 23 and the Commonwealth's Local Initiative Program.

### **ASSISTED LIVING RESIDENCE**

A property offering a combination of housing, meals, and personal care services to adults for a monthly fee that includes rent and services. Assisted Living Residences are not the same as licensed nursing facilities, often referred to as "nursing homes," "skilled nursing facilities," or "nursing and rehabilitation facilities."

### **DEPARTMENT OF HOUSING AND COMMUNITY DEPARTMENT (DHCD)**

The Commonwealth of Massachusetts' agency charged to oversee funding and resources to help people in Massachusetts live affordably and safely. DHCD, through its community and business partners, provides affordable housing options, financial assistance, and other support to Massachusetts communities.

### **INCLUSIONARY HOUSING SPECIAL PERMIT (IHSP)**

A special permit issued for affordable housing units created by an Inclusionary Zoning bylaw.

### **INCOME ELIGIBLE**

A household comprised of a single individual or a family with household income that does not exceed 80% of the median income, with adjustments for household size, as reported by the most recent annual information from the United States Department of Housing and Urban Development and/or the Massachusetts Department of Housing and Community Development.

**LANCASTER AFFORDABLE HOUSING TRUST (LAHT)**

The trust fund established at the 2020 Annual Town Meeting adopting the provisions of MGL Chapter 44, Section 55C, and whose purpose is to provide for the preservation and creation of affordable housing in the Town of Lancaster for the benefit of low- and moderate-income households.

**LOCAL ACTION UNIT (LAU)**

A dwelling unit created through local municipal action other than comprehensive permits; for example, through special permits, inclusionary zoning, conveyance of public land, utilization of Community Preservation Act (CPA) funds, etc.

**LOCAL INTIATIVE PROGRAM (LIP)**

A state housing initiative administered by the Department of Housing and Community Development to encourage communities to produce affordable housing for low- and moderate-income households.

**PAYMENT-IN-LIEU-OF-UNITS (PILU)**

A developer’s monetary contribution reserved for affordable housing production within the Town, in place of constructing affordable units within a proposed project.

**PROJECT**

Any residential or other development, including a cluster development, which results in the construction of new dwelling units, including assisted living units.

**SHALL**

For the purposes of this bylaw, the term “shall” has the same meaning as “must” and denotes a requirement.

**SPECIAL PERMIT GRANTING AUTHORITY (SPGA)**

The applicable town board granting the Inclusionary Housing Special Permit (IHSP), typically, but not limited to, the Planning Board and/or the Zoning Board of Appeals.

C. Applicability. In all current and future zoning districts, including overlay districts, the Inclusionary Zoning provisions of this section shall apply to the following uses:

- (1) Division of land. This bylaw shall apply to the division of contiguous land held in single or common ownership into six (6) or more residential lots, including but not limited to, those consisting of Approval Not Required (ANR) lots, or any combination of subdivision and ANR lots.
- (2) Multiple dwelling units. This bylaw shall apply to the construction of six (6) or more dwelling units, whether on one or more contiguous parcels, alteration, expansion, reconstruction, or change of existing residential or non-residential space.
- (3) Flexible development. This bylaw shall apply to any Flexible Development (Lancaster Zoning Code Chapter 220, Article IV, Section 15) that includes six (6) or more dwelling units. Subsection B(2)(b) “Affordability” of Chapter 220-15 shall apply to Affordable Housing Units (AHU’s) created, and not to Payments-in-lieu-of-Units (PILU’s).
- (4) Assisted living. This bylaw shall apply to any life care facility development that includes six (6) or more assisted living units and accompanying services.
- (5) The provisions of Subsection C(2) above shall apply to the construction of six (6) or more dwelling units on individual lots if said six or more lots are held in single or common ownership.

- (6) To prevent the intentional segmentation of projects designed to avoid the requirements of this bylaw, parcels held in single or common ownership and which are subsequently divided into six (6) or more lots shall also be subject to this bylaw.
- (7) To address the possible segmentation of projects over time, any construction that results in additional dwelling units from the date of issuance of the Inclusionary Housing Special Permit (IHSP) or from the issuance of the certificate of occupancy over a 10-year period shall be subject to this bylaw.
- (8) If the Special Permit Granting Authority (SPGA) determines that an applicant has established surrogate or subsidiary entities to avoid the requirements of Subsection C, then an IHSP shall be denied.

D. Inclusionary housing special permit. The development of any project of 6 (six) or more dwelling units set forth in Subsection C above shall require the issuance of an Inclusionary Housing Special Permit (IHSP). The Special Permit Granting Authority (SPGA) for such permit shall be the SPGA for the use proposed, if applicable, and otherwise shall be the Planning Board or the Zoning Board of Appeals. A site plan(s) shall be submitted to the SPGA and Planning Board for their review and approval. The Special Permit may be granted if the proposal meets the requirements of this bylaw and all other applicable bylaws.

E. Mandatory provision of affordable housing. As a condition for approval of a special permit, the applicant shall contribute to the local inventory of affordable housing by providing at least the number of AHU's specified below, which must be eligible for inclusion in the Town's SHI.

- (1) For developments of six (6) to nine (9) ownership or rental units, at least one (1) unit of the total proposed dwelling units shall be affordable.
- (2) For development of ten (10) to nineteen (19) ownership or rental units, at least two (2) units of the total proposed dwelling units shall be affordable.
- (3) For development of twenty (20) to twenty-nine (29) ownership or rental units, at least three (3) units of the total proposed dwelling units shall be affordable.
- (4) For development of thirty (30) to forty-four (44) ownership or rental units, at least twelve and a half percent (12.5%) of the total proposed dwelling units shall be affordable.
- (5) For development of forty-five (45) or more ownership or rental units, at least fifteen percent (15%) of the total proposed dwelling units shall be affordable.
- (6) For development of seventy-five (75) or more ownership or rental units, at least seventeen and a half percent (17.5%) of the total proposed dwelling units shall be affordable.
- (7) The following summary table is provided for allocating affordable units given a particular range of total lots in a subdivision or total units in a multi-family development.

<b>Total Units</b>	<b>Minimum Affordable Units</b>
6 to 9	1
10 to 19	2
20 to 29	3
30 to 44	12.5%
45 to 74	15.0%
75 and above	17.5%

- (8) For the calculation of AHU's per Subsections E(1) through E(7), fractions of a dwelling unit shall be rounded up to the nearest whole number. For example, a proposed development of:

- a) 35 housing units (12.5% minimum) would require 4.375 affordable units, rounded up to 5 total affordable units (14.2%)
- b) 50 housing units (15% minimum) would require 7.5 affordable units, rounded up to 8 units (16%)
- c) 85 housing units (17.5% minimum) would require 14.875 affordable units, rounded up to 15 units (17.6%).

F. Preservation of affordability.

- (1) All ownership developments shall be subject to a permanent affordable housing restriction and/or regulatory agreement, ensuring that the AHU's shall remain affordable in perpetuity, and each affordable unit shall be conveyed subject to a deed rider acceptable to and approved by the Town and DHCD and granting the Town such rights as are required, which shall include a right of first refusal, to ensure that said AHU's remain affordable in perpetuity and be counted toward Lancaster's SHI. In addition, no building permit shall be granted for any home-ownership development containing affordable units prior to the recording of the affordable housing restriction and/or regulatory agreement at the Registry of Deeds.
- (2) All multi-family rental developments with affordable housing units shall be subject to a regulatory agreement, ensuring that the AHU's shall remain affordable in perpetuity. Said regulatory agreement shall be approved by the Town and DHCD. In addition, no building permit shall be granted for any multi-family rental development containing affordable units prior to the recording of the regulatory agreement at the Registry of Deeds.
- (3) In the event that any rental unit is converted to a condominium ownership unit, the condominium unit shall be restricted in perpetuity as per Subsections F(1) and F(2) to ensure that it remains affordable to income-eligible households as prior to the condominium conversion.
- (4) In the event an affordable ownership unit is sold at a market rate greater than the allowable affordable rate, the net excess proceeds (subject to DHCD guidelines) resulting from the monetary difference at the date of closing shall be transferred to the Lancaster Affordable Housing Trust (LAHT), its agent, or its successor organization. As per DHCD's LIP criteria, any net excess proceeds over the allowable affordable rate will be fully credited to the LAHT account within 30 days from the date of closing and designated for affordable homeownership programs or assisting other eligible buyers. This shall only apply in the event of net excess proceeds, and not to AHUs sold at a market rate below the allowable affordable rate.
- (5) The LAHT, its agent, or its successor organization shall monitor, oversee, and administer the details for all re-sale or re-lease of any affordable units in the Town.

G. Timing of construction for affordable units.

- (1) The construction of affordable units shall be commensurate with the construction of market rate units per the schedule in Subsection E. Should projects be built in phases, each phase shall contain the same proportion of affordable units to market rate units as the overall development.
- (2) The building permit for the last-market rate unit shall not be issued until all affordable units have been constructed, unless an alternate construction schedule has been approved by the SPGA.

H. Siting of affordable units. The affordable units created under this bylaw shall be proportionally distributed throughout the proposed project, in terms of location, size, and type.

- (1) Affordable units shall be provided within the development that requires the affordable units.

- (2) Their siting shall be integrated within the development along with the locations of the other dwellings, rather than segregated or concentrated in one area.
- (3) The AHU's shall not be situated in less desirable locations than market-rate units and shall, on average, be no less accessible to public amenities such as transportation, recreation or open spaces, and shopping or other businesses.
- (4) The location of each and every AHU shall be identified on the site plans to be reviewed and approved by the SPGA and the Planning Board. In the case of multi-family dwellings, the locations of affordable units shall be identified on the building floor plans for each and every structure of this type and approved by the SPGA.

I. Minimum design and construction standards. The exterior appearance of the affordable units shall be compatible with and essentially indistinguishable from the other units in the development. The AHU's shall be designed with similar features and built with comparable quality materials with respect to the market-rate dwellings built.

J. Minimum lot size. The average lot size for affordable home units shall be comparable to those of their market-rate counterparts within the development.

K. Payment-in-lieu-of-units. As an alternative to the requirements of Subsection E and to the extent allowed by law, an applicant may provide a payment to the LAHT to be used for the production of affordable housing in lieu of constructing home-ownership units within the proposed development.

- (1) Payment-in-lieu-of-units (PILU). The applicant for development subject to this bylaw may choose a payment in lieu of the construction or provision of affordable ownership units to the LAHT at the sole discretion of the SPGA. The fees shall be paid in increments prior to the issuance of a building permit for each and every unit, or otherwise at the sole discretion of the SPGA.
- (2) Calculation of PILU. The fee for an affordable ownership unit shall be equal to eighty (80%) of the average listing price of all combined market-rate units within the proposed development. The SPGA shall make the final determination of the PILU. For example, if the average listing price of all combined market-rate units within the proposed development is \$500,000, the PILU is \$500,000 multiplied by 80%, i.e. \$400,000 for each affordable unit.
- (3) PILU's are not applicable to affordable rental units.
- (4) Incremental payments of total PILU. The incremental payments shall be equal to: the PILU as calculated for a single ownership unit in Subsection K(2) multiplied by the total number of affordable ownership units subject to PILU, divided by the total number of ownership units in the subject development. For example, a proposed development of 15 ownership units requires 2 affordable units per Subsection E. If the projected average sales price of each unit is \$500,000, the total amount of the PILU's is \$400,000 multiplied by 2 units, i.e. \$800,000. The incremental cost is \$800,000 divided by 15 units, i.e. \$53,333 per unit.
- (5) Timing of payment before issuance of building permits. Payment shall be received by LAHT prior to issuance of building permit for each unit to be constructed.
- (6) Revised calculation before issuance of building permits. The PILU calculation shall be confirmed with current market rates for the proposed development within sixty (60) days prior to issuance of building permit.
- (7) Creation of affordable units. PILU's made to LAHT in accordance with this section shall be used only for purposes of providing affordable housing for low- or moderate-income households. Using these payments, 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, additional affordable units within existing or proposed developments, and other initiatives allowed under the Municipal Affordable Housing Trust Fund Law, MGL Chapter 44, Section 55C.

- (8) If the LAHT or its successor organization has been dissolved or is otherwise no longer in existence as of the time the application has been stamped received by the Town Clerk, then PILU's are to be paid to the Town and held in escrow for affordable housing production. Funds in escrow shall be transferred commensurate to the LAHT upon its re-establishment.

L. Combining construction with payment-in-lieu-of units. A combination of construction of dwelling units and payment of fee-in-lieu of-units may be combined by the applicant to meet a single project's requirement if granted approval by the SPGA.

M. Local preference. To the maximum extent permitted by law, including the regulations of DHCD, any IHSP granted hereunder shall include a condition that a preference for income eligible Lancaster residents, Town of Lancaster employees, employees of schools and businesses located within Lancaster, and families of students attending schools within Lancaster shall be included as part of the lottery and marketing plan for the affordable units.

N. Affirmative fair housing marketing and resident selection plan for affordable units. Applicants creating affordable units under this bylaw are required to select qualified homebuyers or renters via lottery under an Affirmative Fair Housing Marketing and Resident Selection Plan prepared and submitted by the applicant and approved by DHCD and the SPGA. This Plan shall include a description of the lottery or other process to be used for selecting income eligible buyers and tenants. The plan shall be in conformance with federal and state fair housing laws in effect on the date of the special permit or other permit application with the Town of Lancaster. No building permit for a development subject to the Lancaster Inclusionary Zoning Bylaw shall be issued unless the SPGA has determined that the applicant's affirmative marketing and resident selection plan complies with this requirement. The affirmative marketing costs for the affordable housing units shall be the responsibility of the applicant. The applicant shall also submit the affirmative marketing and resident selection plan for review by the LAHT.

O. Related fees. The SPGA is authorized to retain professional consultants to advise the SPGA on any and all aspects of the application, the project's compliance with this bylaw, and to determine whether AHU's authorized by an IHSP will be included in the Town's SHI. The SPGA may require the applicant to pay reasonable costs incurred by the SPGA for the employment of outside consultants pursuant to SPGA regulations, as authorized by MGL Chapter 44, Section 53G.

P. Conflict with other bylaws. The provisions of this bylaw shall be considered supplemental of existing zoning bylaws. To the extent that a conflict exists between this bylaw and others, the more restrictive bylaw, or provisions therein, shall apply.

Q. Severability. If any provision of this bylaw or other aspects of Lancaster's Zoning Code are 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 or other aspects of Lancaster's Zoning Code shall not affect the validity of the remainder of the Lancaster Inclusionary Zoning bylaw.