

**Sec. 9.1. Affordable housing provisions. [Amended 12-22-2008 by Ord. No. 31008; 5-28-2019 by Ord. No. 34473]**

9.11. Purpose: to assist in the development and maintenance of affordable housing in the City of Waltham.

9.12. Applicability. Compliance with affordable housing criteria shall be required for every proposed multifamily dwelling development which will contain eight or more dwelling units and which is subject to a special permit for increased intensity of use. All proposed developments that have fewer than eight dwelling units shall be exempt from affordable housing requirements. Any application for a building permit for a development that meets these requirements shall require a sign-off by the Director of the Housing Department of the City of Waltham or, in the absence of the Director, the Assistant Director of the Housing Department before such building permit is issued. Phased developments which will have eight or more dwelling units, regardless of the number of dwelling units per phase, when complying with the requirements of Section 9.1 may prorate said requirements to the number of units built per phase, and provided, further, that abutting developments owned by the same individual or firm or a subsidiary firm that are placed on subdivided lots, which subdivision has been recorded subsequent to the effective date of the adoption of this article and in such a way that the resulting number of units is fewer than eight units per lot shall, for the purpose of affordable housing requirements, be considered as one project.

9.13. Determination of affordable housing requirements. An applicant seeking a special permit from the City Council to build or rehabilitate a development which is subject to the affordable housing requirements of Section 9.1 shall meet with the City of Waltham Municipal Affordable Housing Trust Fund prior to the special permit public hearing. Within 14 days of said public hearing or within such further time as the City Council may allow, upon the request of the City of Waltham Municipal Affordable Housing Trust Fund, said City of Waltham Municipal Affordable Housing Trust Fund shall make recommendations to the City Council regarding the method of meeting affordable housing requirements consistent with Section 9.1 of this chapter. If the City of Waltham Municipal Affordable Housing Trust Fund fails to make recommendations within the aforementioned time period, it shall be construed that the City of Waltham Municipal Affordable Housing Trust Fund has no comment on the proposed project. The City Council shall give due consideration to, but shall not be bound to accept, any recommendation of the City of Waltham Municipal Affordable Housing Trust Fund and may choose to select a different method of meeting affordable housing requirements consistent with said Section 9.1.

9.131. Displacement. Where a proposed development which is subject to the provisions of Section 9.1 displaces any households which are earning less than 80% of the area median income (as defined by HUD on an annual basis) of households within the Standard Metropolitan Statistical Area that includes Waltham, as published by the United States Department of Commerce, or estimates of these income figures as prepared by the United States Department

of Housing and Urban Development, these households shall be offered affordable dwelling units, up to the number of such units which are required to meet the affordable housing requirements applied to that particular development, and provided, further, that all replacement units must have at least the same number of bedrooms as the unit being replaced. If the instance arises that said income-eligible households are displaced, either temporarily or permanently, the developer will provide to the displaced household moving expenses, technical assistance in finding comparable units and financial assistance in the form of a one-time payment, upon displacement, that may be used as a security deposit and/or first or last month's rent deposit. This payment shall be the equivalent of three times the monthly rent prior to displacement paid within 90 days of displacement. Priority for the location of the comparable units is:

- (a) In the same building (of a multiunit structure).
- (b) In the same neighborhood.
- (c) In Waltham.
- (d) In nearby communities.

Furthermore, if the instance arises that said income-eligible households are displaced and cannot be accommodated within the new development for whatever reason, said households shall be eligible for priority consideration for placement in any development within the jurisdiction of the City of Waltham Municipal Affordable Housing Trust Fund so long as the relocation adheres to the requirements of any deed restriction, state, or federal requirements that have been placed on the Municipal Affordable Housing Trust properties being considered. Prior to the issuance of a certificate of occupancy for any unit, the Inspector of Buildings of the City of Waltham shall require the developer to provide documentary evidence that he has complied with the displacement provisions of Section 9.131.

9.14. Methods of meeting affordable housing requirements. The applicant shall provide affordable housing by one or more of the following methods or any combination thereof, as directed by the City Council. The City Council, in deciding which method or methods shall be used to provide said affordable housing, shall give due consideration to the written recommendations, if any, of the City of Waltham Municipal Affordable Housing Trust Fund.

9.141. (Reserved)

9.142. **Assignment.** The applicant shall sell, lease or otherwise assign, at reduced prices, a specific number of dwelling units which equal 15% of the total number of dwelling units in the proposed development, to individuals and/or families meeting the income guidelines below. Provided, however, that if a proposed development will contain more than 18 dwelling units, then the applicant shall sell, lease or otherwise assign, at reduced prices, a specific

number of dwelling units which equal 20%, rather than 15%, of the total number of dwelling units in the proposed development, to individuals and/or families meeting the income guidelines below. Resulting fractions of dwelling units shall be treated as indicated in Section 9.145. The reduced prices shall be set by the requirements of the state or federal funding source used for the construction of the development and/or to subsidize the affordable units or, where City of Waltham Municipal Affordable Housing Trust Fund is used, by those regulations of the City of Waltham Municipal Affordable Housing Trust Fund which are not inconsistent with federal or state requirements. Where no state, federal or local funds are used, the prices shall be consistent with price limits used by the United States Department of Housing and Urban Development (HUD) targeted for households earning less than 80% of the area median income (as defined by HUD on an annual basis) within the Standard Metropolitan Statistical Area that includes Waltham, provided further that at least 1/3 of the units sold, leased, or otherwise assigned shall be priced consistent with price limits used by the United States Department of Housing and Urban Development (HUD) targeted for households earning less than 50% of the area median income (as defined by HUD on an annual basis) within the Standard Metropolitan Statistical Area that includes Waltham. The affordable housing restriction shall run with the land and be in force in perpetuity, and be enforceable under the provisions of Chapter 184, Section 26 or Sections 31 through 32 of the General Laws, including the recording of a deed restriction. The required deed restriction shall be in such form as to comply with DHCD requirements. Such deed restrictions shall bear the signature of the Secretary of the Massachusetts Department of Housing and Community Development (DHCD) and be recorded at the Registry of Deeds. The deed restriction must be recorded by the applicant once signed by the Secretary, and no units may be permitted to be sold, leased, or otherwise assigned until said deed restriction is recorded and proof thereof provided to the Building Inspector. The sale, lease or assignment shall occur within 30 days of the receipt of a temporary or permanent occupancy permit. Dwelling units selected for sale, lease, or assignment as affordable shall equal or surpass the average size and quality of all units in the development. Should a dwelling unit subject to rental limitations under Section 9.142 be converted to a condominium, the qualified tenant of the unit shall have first right of refusal to purchase the unit at a price conforming to limits established under Section 9.142. Should the tenant not choose to purchase the unit, either: **[Amended 10-26-2020 by Ord. No. 34937]**

- (a) All the terms of the restrictions shall be made to apply to another equivalent and previously unrestricted unit in the project, which shall then be restricted as affordable in perpetuity, with the recording of a deed restriction for that unit. The required deed restriction shall be in such form as to comply with DHCD requirements. Such deed restriction shall bear the signature of the Secretary of the Massachusetts Department of Housing and Community Development (DHCD) and be recorded at the Registry of Deeds. The deed restriction must be recorded by the applicant

once signed by the Secretary, and no units may be permitted to be sold, leased, or otherwise assigned until said deed restriction is recorded and proof thereof provided to the Building Inspector; or

- (b) The sale price of the converted unit shall conform to price limits required for units sold under Section 9.142, and the unit shall be sold to a household eligible under Section 9.15; and said unit shall, upon its sale or transfer, be restricted by deed to remain affordable in perpetuity, with the recording of a deed restriction. The required deed restriction shall be in such form as to comply with DHCD requirements. Such deed restrictions shall bear the signature of the Secretary of the Massachusetts Department of Housing and Community Development (DHCD) and be recorded at the Registry of Deeds. The deed restriction must be recorded by the applicant once signed by the Secretary and no units may be permitted to be sold, leased, or otherwise assigned until said deed restriction is recorded and proof thereof provided to the Building Inspector; or
- (c) The owner shall be required to pay to the City of Waltham Municipal Affordable Housing Trust Fund, the entire fee in lieu of dwelling units calculated for the original project.

9.143. Fee in lieu of dwelling units. The applicant shall provide a cash fee in lieu of on-site affordable housing dwelling units. As the basis for determining the amount of the cash fee, the City Council shall use the appropriate current year edition of Building Construction Cost Data, published by the R.S. Means Company of Kingston, Massachusetts, or if such publication ceases to exist, an equivalent recognized construction cost publication. The City Council shall calculate 15% of total development cost (TDC) by using total development cost estimates and, for construction, more specifically by using the relevant R.S. Means or equivalent data referenced above. Provided that, for proposed developments of more than 18 dwelling units, the percentage of total development costs to be calculated as identified in the preceding sentence and below shall be 20% rather than the 15% required to be calculated for developments of eight to 18 dwelling units. The TDC shall comprise all development costs recognized under state, federal or local programs used. Where state, federal or local funds are not used, the TDC shall be consistent with development costs recognized under the HUD targeted for households earning less than 80% of the area median income (as defined by HUD on an annual basis) within the Standard Metropolitan Statistical Area that includes Waltham, complying with the HUD Unit Total Development (TDC) Limits that are published annually. Should the building permit or special permit for the project expire before completion of the project, the fee may be adjusted to reflect updated TDC for the project. The resulting dollar value, rounded to whole dollars, shall be known as the "fee in lieu of dwelling units" ("fee") and shall be paid directly to the City of Waltham Municipal Affordable Housing Trust Fund. The fee shall be paid prior to issuance of an occupancy permit issued pursuant to the special permit or, for a phased development, a part of the fee shall be paid in proportion to the percent of the development for which

each occupancy permit is being issued. **[Amended 10-26-2020 by Ord. No. 34937]**

- 9.144. Purchase or construction of off-site dwelling units. The City of Waltham Municipal Affordable Housing Trust Fund shall be directed by the City Council to calculate the fee in lieu of dwelling units and use said fee to purchase existing housing units in the City of Waltham or to build new housing units, off site in the City of Waltham. Ownership of units which are purchased or built as affordable housing units shall be transferred to the City of Waltham Municipal Affordable Housing Trust Fund or the Waltham Housing Authority (WHA) or the WHA's designee, within 30 days of the receipt by the applicant of a temporary or permanent occupancy permit for the applicant's original development. In order to ensure that the value of the purchased, rehabilitated or newly constructed housing, including rehabilitation costs where applicable, is of an equivalent value to said fee, the applicant shall be required to contract for an independent appraisal of the housing units and to receive approval for all purchases and rehabilitation and other services from the City of Waltham Municipal Affordable Housing Trust Fund, including City of Waltham Municipal Affordable Housing Trust Fund approval of the firm which will conduct the appraisal. In addition, the appraisal firm shall be selected from a list provided by the City of Waltham Municipal Affordable Housing Trust Fund. If the value of said housing units is less than the total amount of the fee, the applicant shall, at the time of the transfer of ownership of said housing to the City of Waltham Municipal Affordable Housing Trust Fund, the Waltham Housing Authority (WHA), or the WHA's designee, make a payment to the City of Waltham Municipal Affordable Housing Trust Fund of a sum of money which is equal to the full amount of the difference between the amount of the fee in lieu of dwelling units and the value of the purchased, rehabilitated or newly constructed housing.
- 9.145. If, when applying a specified percentage to calculate the required number of units, the resulting number of dwelling units includes a fraction of a unit this fraction, if equal to or greater than 1/2, shall be rounded up to the next whole number.
- 9.15. Eligibility. All affordable units shall be affordable to, and rented, sold, or otherwise assigned only to, eligible individuals or families. Eligibility for housing units created by the provisions of Section 9.1 and its subsections shall be in accordance with the federal, state or local programs used for the construction of the development and/or to subsidize the affordable units. Where no federal, state, or local funds are used, eligibility shall be consistent with standards recognized under the HUD targeted for households earning less than 80% of the area median income (as defined by HUD on an annual basis) within the Standard Metropolitan Statistical Area that includes Waltham; provided, further, that 1/3 of the affordable units shall be affordable to, and rented, sold, or otherwise assigned only to households earning less than 50% of the area median income (as defined by HUD on an annual basis) within the Standard Metropolitan Statistical Area that includes Waltham.

9.16. Waiver of traffic impact fee. The City Council may waive the traffic impact fee of a project subject to the affordable housing requirement if, after consultation with the City of Waltham Traffic Commission, it is determined that no intersection within 1/4 mile of the proposed project accommodating at least 500 vehicles during the peak hour will, as a direct result of the project, have an a.m. or p.m. peak hour level of service below LOS D.

9.17. (Reserved)

9.18. Enforcement. Any project subject to providing affordable housing under this article shall include the requirements of this article in a deed restriction on the subject dwellings, approved by the Director of the Housing Department of the City of Waltham. Such deed restriction is to remain in effect in perpetuity, and shall survive every sale of the property. A deed restriction shall be recorded which shall bear the signature of the Secretary of the Massachusetts Department of Housing and Community Development (DHCD) and be recorded at the Registry of Deeds. The owner of dwellings subject to said deed restriction shall make annual reports to the Director of the Housing Department detailing compliance with the terms of this article, and shall submit to said Director reasonable monitoring requirements. The Director of the Housing Department shall notify the Inspector of Buildings of the City of Waltham of any failure to comply with this article. Said owner shall correct within 30 days of notification by the Inspector of Building. Where the failure is not corrected to the satisfaction of said Inspector of Buildings, the owner shall be required to pay to the City of Waltham Municipal Affordable Housing Trust Fund the pro rata share of the fee in lieu of dwelling units calculated for the original project attributable to the unit or units in violation. If the income of a household renting a dwelling unit subject to price limitations under Section 9.142 increases beyond income limits allowed by this article, the household's rent may be increased above restricted limits, at the end of the term of its current lease, only after the restrictions and limitations are alternately applied to another equivalent and previously unrestricted unit in the same project, and provided to another eligible household.