

The following Affordable Housing Overlay ordinance was adopted by the City of Cambridge and is provided as an example which can be used as a base for the creation of a local Affordable Housing Overlay ordinance. It is recognized that there is no single ordinance that can be added to community regulations without some tailoring, therefore revisions to the text within this ordinance is encouraged. Cambridge is a large urban area and some of the standards in this ordinance will not apply to communities in Ulster County.

Example Model Ordinance

ORDINANCE NUMBER 1392

Final Publication Number 3436. First Publication in the Chronicle on March 23, 2017.

City of Cambridge

In the Year Two Thousand and Seventeen

In amendment to the Ordinance entitled “Zoning Ordinance of the City of Cambridge” be amended as follows:

Add the following definitions to Article 2.000 (in appropriate alphabetical locations):

Area Median Income (AMI). The Housing Area Median Family Income set forth in or calculated from regulations promulgated by the United States Department of Housing and Urban Development pursuant to Section 8 of the Housing Act of 1937, as amended by the Housing and Community Development Act of 1974, determined for the Boston-Cambridge-Quincy, MA-NH Metropolitan Statistical Area and adjusted for family size, or if such income standard no longer exists, such other equivalent income standard determined by the Community Development Department with the advice of the Affordable Housing Trust.

Dwelling Unit, Affordable. A dwelling unit for which occupancy is restricted to an Eligible Household and whose rent or initial sale price is established by (a) in the case of an Affordable Dwelling Unit in an Inclusionary Housing Project provided pursuant to Section 11.203.2, the provisions set forth in Sections 11.203.3 and 11.203.4, or (b) standards set forth in another applicable city, state, or federal housing program for Eligible Households.

Dwelling Unit, Family-Sized. A dwelling unit that contains three or more bedrooms and not less than one thousand one hundred (1,100) square feet of Dwelling Unit Net Floor Area.

Dwelling Unit, Studio. A dwelling unit in which there is no bedroom separated by a door or a change in story from the other living area, such as a living room and kitchen, within the dwelling unit.

Eligible Household. A household whose gross household income does not exceed (a) in the case of an Affordable Dwelling Unit in an Inclusionary Housing Project provided pursuant to Section 11.203.2, the

amounts set forth in Section 11.203.4, or (b) amounts set forth in another applicable city, state, or federal housing program.

Floor Area, Dwelling Unit Net. Floor area contained within dwelling units or single rooms in a lodging house excluding common areas, such as lobbies, hallways, elevator cores, amenity spaces, common storage areas or parking facilities, exterior walls, walls dividing dwelling units from each other, or walls dividing dwelling units from common areas, or unenclosed spaces such as open-air porches, balconies, or decks.

Incentive Project Any new development that consists of at least thirty thousand (30,000) square feet of Gross Floor Area devoted to one or more of the following uses listed in Section 4.30 of the Zoning Ordinance: Sections 4.31 i-1 (Hotel or motel), 4.32 f (Radio and television studio), 4.33 b-5 (College or University not exempt by statute, specifically including those uses and facilities listed in Subsection 4.56 c-4, c-5, and c-6), 4.33 c (Noncommercial Research Facility), 4.33 d (Health Care Facilities), 4.33 e (Social Service Facilities), 4.34 (Office and Laboratory Use), 4.35 (Retail Business and Consumer Service Establishments), 4.36 (Open Air or Drive In Retail Service), 4.37 (Light Industry, Wholesale Business and Storage), and 4.38 (Heavy Industry). For the purpose of this definition, new development shall mean (1) construction of new buildings or additions to existing buildings to accommodate uses in the above list, (2) substantial rehabilitation of buildings to accommodate uses in the above list for which the buildings were not originally used, or (3) Gross Floor Area whose use is changed from a use not included in the above list to a use included in the above list. In no case shall Gross Floor Area devoted to a Municipal Service Facility or Other Government Facility be considered an Incentive Project.

Inclusionary Housing Project. Any development of detached single-family, two-family, multifamily, and townhouse housing, elderly oriented congregate housing, and lodging houses as set forth in Sections 4.31 a-h and i-3, or development which includes any such residential use and at least one non-residential use, that creates at least ten (10) dwelling units or at least ten thousand (10,000) square feet of residential Gross Floor Area on one (1) lot or Development Parcel or two (2) or more adjoining lots in common ownership or under common control at any time within five (5) years following the first date of application for any special or building permit for development on the lot or lots or at any time within the twelve (12) months immediately preceding the first date of application for any special or building permit. For the purpose of this definition, development shall include (1) construction of new buildings or additions; (2) increasing the number of dwelling units or amount of residential Gross Floor Area within an existing residential building; (3) occupancy of existing buildings which have not been used for any residential use for a period of at least two (2) years; or (4) conversion of Gross Floor Area in existing buildings from non-residential to residential use. Development of fewer than ten (10) dwelling units and fewer than ten thousand (10,000) square feet of residential Gross Floor Area may be an Inclusionary Housing Project where the owner chooses voluntarily to comply with the provisions of Section 11.203.

1. Delete the existing Sections 11.200 to 11.206 and replace with new Sections 11.200 to 11.206 as set forth below:

11.200 INCENTIVE ZONING AND INCLUSIONARY HOUSING

11.201 Purposes.

The purposes of Sections 11.200 to 11.206 are to promote the public health, safety, and welfare by accommodating the expansion of commercial and residential opportunities throughout the city; by providing for a full range of housing choices throughout the City for households of all incomes, ages, and

sizes in order to meet the City’s goal of preserving diversity by mitigating the impacts of commercial and residential development on the availability and cost of housing and especially housing affordable to low and moderate income households; by increasing the production of affordable housing to meet anticipated housing and employment needs throughout the city; by providing a mechanism through which commercial and residential development can contribute in a direct way to increasing the supply of affordable housing in exchange for a greater density or intensity of development than that otherwise permitted as a matter of right; and by establishing standards for the use of such contributions from the application of incentive zoning and inclusionary housing provisions.

11.202 Incentive Zoning. The developer or owner of an Incentive Project shall make a Housing Contribution in accordance with this Section 11.202.

- (a) *Calculation of Housing Contribution.* The Housing Contribution shall be calculated by multiplying the Gross Floor Area devoted to the uses that qualify the new development as an Incentive Project by the Housing Contribution Rate effective at the time the Superintendent of Buildings issues the first building permit for the Incentive Project. If a building permit is not required, the Housing Contribution Rate shall be the rate effective at the time the Housing Contribution is provided.
- (b) *Housing Contribution Rate.* The Housing Contribution Rate effective on September 28, 2015 shall be twelve dollars (\$12.00) per square foot of Gross Floor Area devoted to the uses that qualify the new development as an Incentive Project. The effective rate shall be subject to annual escalation equal to annual percentage increases in the Consumer Price Index (CPI) Housing Index for Boston-Brockton-Nashua, MA-NH-ME-CT or similar index to reflect changes in dollar values over time; however, annual decreases in CPI shall not cause the contribution rate to be decreased. In addition, on September 28 each year from 2016 to 2018 inclusive, the Housing Contribution Rate shall increase by one dollar (\$1.00). The table below sets forth the Housing Contribution Rate over time.

Effective Date	Housing Contribution Rate
September 28, 2015	\$12.00 per square foot.
September 28, 2016 (Annual Adjustment)	\$13.00 per square foot.
November 16, 2016 (CPI Adjustment)	\$13.50 per square foot.

- (c) *Timing of Payment.* The developer or owner of an Incentive Project shall provide the Housing Contribution to the Managing Trustee of the Affordable Housing Trust or its designee, who shall certify to the Superintendent of Buildings that the requirements of this Section are met prior to issuance of a certificate of occupancy for the Incentive Project. If the Gross Floor Area of an Incentive Project is subsequently increased accommodating uses that qualify as Incentive Project uses, then notwithstanding the size of the increase, a Housing Contribution calculated in the manner set forth in this Section shall be provided for every square foot of that increase.

Reevaluation of Housing Contribution Rate. The City shall initiate a reevaluation of the Housing Contribution Rate and any other aspect of these Incentive Zoning Provisions at an interval of no less than three (3) years from the time the rate was last amended by the City Council. Such

reevaluation shall include a report provided to the City Council reviewing economic factors including but not limited to development activity, commercial rents per square foot, employment, growth, housing trends measured in terms of, but not limited to, vacancy rates, production statistics, and prices for dwelling units, and the nexus between Incentive Projects and housing.

11.203 *Inclusionary Housing.*

11.203.1 *Applicability.*

- (a) Except as otherwise provided, this Section 11.203 shall apply in all zoning districts throughout the city.
- (b) The requirements of this Section 11.203 shall apply to any Inclusionary Housing Project issued a special permit or, if no special permit has been issued, a building permit on or after December 1, 2016, (the date of the first advertisement of the most recent amendment to this Section 11.203)
- (c) For any Inclusionary Housing Project that has been issued a Special Permit for a Planned Unit Development by the Planning Board prior to December 1, 2016, (the date of the first advertisement of the most recent amendment to this Section 11.203), an amendment to that Special Permit that relates to modification of the street layout or other aspects of the Final Development Plan directly resulting from a delay, cancellation, or change in a state controlled infrastructure project shall be subject to the Inclusionary Housing provisions in effect at the time of the issuance of the original Special Permit or any amendment thereto issued prior to December 1, 2016, (the date of the first advertisement of the most recent amendment to this Section 11.203.) In no case shall this provision allow an increase of gross floor area, an increase in the number of units above what is allowed by the Special Permit, or an increase of the maximum height allowed by zoning for the Project.

11.203.2 *Inclusionary Housing Requirement.*

- (a) For Inclusionary Housing Projects issued a special permit or, if no special permit has been issued, a building permit on or after December 1, 2016 (the date of the first advertisement of the most recent amendment to this Section 11.203) but on or before June 30, 2017, fifteen percent (15%) of the total Dwelling Unit Net Floor Area within the project shall be devoted to Affordable Dwelling Units.
- (b) For Inclusionary Housing Projects issued a special permit or, if no special permit has been issued, a building permit after June 30, 2017, twenty percent (20%) of the total Dwelling Unit Net Floor Area within the project shall be devoted to Affordable Dwelling Units.
- (c) The City shall initiate a reevaluation of the Inclusionary Housing Requirement at an interval of no more than five (5) years from the time the Inclusionary Housing Requirement was last amended. Such reevaluation shall include a report provided to the City Council reviewing factors such as changes in demographic characteristics and residential development activity, housing trends measured in terms of, but not limited to, vacancy rates, production statistics, prices for dwelling units, and affordability, and the relationship between

Inclusionary Housing Projects and all housing in Cambridge. The Community Development Department shall also conduct an annual review and report on the Inclusionary Housing Program.

11.203.3 *Standards for Providing Affordable Dwelling Units Created through Inclusionary Housing.*

- (a) Affordable Dwelling Units shall be provided on-site.
- (b) Affordable Dwelling Units shall be similar in size, layout, construction materials, fixtures, amenities, and interior and exterior finishes to comparable non-Affordable Dwelling Units in the project.
- (c) Affordable Dwelling Units shall have similar access to common areas, facilities, and services as that enjoyed by comparable non-Affordable Dwelling Units in the project including but not limited to outdoor spaces, amenity spaces, storage, parking, bicycle parking facilities, and resident services.
- (d) Affordable Dwelling Units shall be dispersed throughout the project rather than concentrated on particular floors, within sections of a building, or within particular buildings in a project with multiple buildings.
- (e) Except as specified below for Family-Sized Dwelling Units, the proportionate amounts of Affordable Dwelling Units defined by size and number of bedrooms within the total amount of Affordable Dwelling Units shall be similar to the proportionate amounts of non-Affordable Dwelling Units defined by size and number of bedrooms within the total amount of non-Affordable Dwelling Units in the project.
- (f) The ratio of Family-Sized Affordable Dwelling Units to all Affordable Dwelling Units shall be greater than or equal to the ratio of non-Affordable Family-Sized Dwelling Units to all non-Affordable Dwelling Units in the project, notwithstanding that in some cases this may result in a smaller proportion of Affordable Dwelling Units that are not Family-Sized Dwelling Units in the project and a smaller proportion of total Affordable Dwelling Units in the project in order to meet the required percentage of Dwelling Unit Net Floor Area devoted to Affordable Dwelling Units in the project.
- (g) Townhouse or multifamily residential projects of at least thirty thousand (30,000) square feet of Dwelling Unit Net Floor Area shall provide Family-Sized Affordable Dwelling Units at a ratio of at least one dwelling unit per every six thousand (6,000) square feet of required Affordable Dwelling Unit Net Floor Area in the project, rounded to the nearest whole unit with fractions of 0.5 unit or more rounded up and fractions of less than 0.5 unit rounded down, or the ratio derived from paragraph (f) above, whichever is greater.
- (h) The ratio of rental to owner-occupied Affordable Dwelling Units shall mirror the ratio of rental to owner-occupied non-Affordable Dwelling Units in the project except that no Affordable Dwelling Units shall be rental Affordable Dwelling Units where a majority of all dwelling units in the project are initially offered for sale.

In cases where the owner and the Community Development Department agree that the above standards, as applied, result in a total Dwelling Unit Net Floor Area of all Affordable

Dwelling Units that is less than the Affordable Dwelling Unit Net Floor Area required to be provided pursuant to the Inclusionary Housing Requirement, the remainder of the Inclusionary Housing Requirement shall be met through a monetary contribution to the Affordable Housing Trust equal to the amount of subsidy necessary to create an equivalent amount of Affordable Dwelling Unit Net Floor Area in a project assisted by the Affordable Housing Trust. The Affordable Housing Trust shall periodically provide to the Community Development Department a report on projects it has assisted from which the Community Development Department shall calculate the amount of subsidy necessary to create a square foot of Dwelling Unit Net Floor Area in an affordable housing project assisted by the Affordable Housing Trust. Such calculation may be adjusted by the Community Development Department from time to time. Prior to issuance of a building permit for the project, the Community Development Department shall multiply the calculated per-square-foot amount by the outstanding Affordable Dwelling Unit Net Floor Area necessary to satisfy the Inclusionary Housing Requirement to determine the necessary monetary contribution, which shall be made prior to the issuance of any certificate of occupancy for the project.

11.203.4 Standards for Eligibility, Rent, Initial Sale Price, and Parking Fees for Affordable Dwelling Units Created through Inclusionary Housing.

- (a) Affordable Dwelling Units shall be rented or sold only to Eligible Households, with preference given to Cambridge residents, in accordance with standards and procedures related to selection, transfers, asset limits, and marketing established by the Community Development Department.
- (b) Affordable Dwelling Units shall be created and conveyed subject to recorded covenants guaranteeing the permanent availability of the Affordable Dwelling Units for Eligible Households.
- (c) For rental Affordable Dwelling Units:
 - (i) The gross household income of an Eligible Household upon initial occupancy shall be at least fifty percent (50%) and no more than eighty percent (80%) of AMI. A gross household income less than fifty percent (50%) of AMI may be permitted in the case of an Eligible Household having a rental subsidy allowing it to pay a rent equivalent to that paid by an Eligible Household with a gross household income within the range set forth above.
 - (ii) Rent, including utilities and any other fees routinely charged to tenants and approved by the Community Development Department, shall not exceed thirty percent (30%) of the gross household income of the Eligible Household occupying the Affordable Dwelling Unit, except that in the case of Affordable Studio Dwelling Units, rent shall not exceed twenty-five percent (25%) of the gross household income of the Eligible Household occupying the Affordable Dwelling Unit.
 - (iii) After initial occupancy, the gross household income of an Eligible Household shall be verified annually to determine continued eligibility and rent, in accordance with

policies, standards, and procedures established by the Community Development Department.

- (iv) An Eligible Household may continue to rent an Affordable Dwelling Unit after initial occupancy even if the Eligible Household's gross household income exceeds eighty percent (80%) of AMI, but if the Eligible Household's gross household income exceeds one hundred percent (100%) of AMI, or a percentage promulgated in a regulation by the Community Development Department from time to time, for more than one year after that Eligible Household's gross household income has been verified to exceed such percentage, the dwelling unit shall no longer qualify as an Affordable Dwelling Unit and either the dwelling unit must be rented to a new Eligible Household or a comparable non-Affordable Dwelling Unit in the project must become an Affordable Dwelling Unit.
 - (v) An Eligible Household may continue to rent an Affordable Dwelling Unit after initial occupancy even if the Eligible Household's gross household income falls below fifty percent (50%) of AMI, but the Eligible Household shall pay a rent that is no less than thirty percent (30%) of forty percent (40%) of AMI or, in the case of an Affordable Studio Dwelling Unit, the Eligible Household shall pay a rent that is no less than twenty-five percent (25%) of forty percent (40%) of AMI.
 - (vi) Where an optional parking fee exists, it shall not exceed the lesser of the following amounts for Affordable Dwelling Units:
 - (1) an amount calculated by applying to the rent of the Affordable Dwelling Unit the ratio of optional parking fee to rent for comparable non-Affordable Dwelling Units with the lowest non-affordable rent in the project, or
 - (2) an amount which, when added to the rent for an Affordable Dwelling Unit, shall not exceed thirty-three percent (33%) of the renting Eligible Household's gross household income or, in the case of an Affordable Studio Dwelling Unit, twenty-eight percent (28%) of the renting Eligible Household's gross household income.
 - (vii) Notwithstanding the requirements set forth in (i) through (vi) above, an owner may voluntarily choose to charge a lower rent than as provided herein for Affordable Dwelling Units or to rent Affordable Dwelling Units to Eligible Households with lower gross household incomes than as provided herein.
- (d) For owner-occupied Affordable Dwelling Units:
- (i) The gross household income of an Eligible Household upon initial occupancy shall be no more than one hundred percent (100%) of AMI.
 - (ii) The initial sale price of an Affordable Dwelling Unit shall be determined to ensure that the monthly housing payment (which shall include debt service at prevailing mortgage loan interest rates, utilities, condominium or related fees, insurance, real estate taxes, and parking fees, if any) shall not exceed thirty percent (30%) of ninety percent (90%) of monthly AMI, except that in the case of an Affordable Studio Dwelling Unit, the monthly housing payment shall not exceed twenty-five percent (25%) of ninety percent (90%) of monthly AMI.

11.203.5 Relaxation of Dimensional Requirements for Inclusionary Housing Projects.

The following relaxations of the dimensional requirements in any zoning district, including base or overlay zoning districts, shall be permitted as-of-right for an Inclusionary Housing Project:

- (a) The Gross Floor Area permitted by the applicable zoning may be increased by thirty percent (30%), as long as such additional Gross Floor Area is used for residential uses not including hotel or motel use.
- (b) The number of dwelling units permitted by the applicable zoning through rules for minimum lot area per dwelling unit or other applicable rules may be increased by thirty percent (30%).
- (c) The additional Gross Floor Area or dwelling units permitted herein shall be counted toward the determination of any applicable threshold triggering the requirement of a special permit, including but not limited to Section 19.20 Project Review Special Permit, Section 4.26 Multifamily Special Permit, and Section 11.10 Townhouse Development Special Permit.

11.204 Implementation of Incentive Zoning and Inclusionary Housing.

- (a) The City Manager shall have the authority to promulgate regulations for the implementation of the provisions of Sections 11.200 to 11.205. There shall be a thirty day review period, including a public meeting, to receive public comments on draft regulations before final promulgation.
- (b) The Community Development Department may develop standards and procedures appropriate to and consistent with the provisions of Sections 11.200 to 11.205.

11.205 Enforcement of Incentive Zoning and Inclusionary Housing.

The Community Development Department shall certify in writing to the Superintendent of Buildings that all applicable provisions of Sections 11.200 to 11.205 have been met before issuance of any building permit for any Incentive Project or Inclusionary Housing Project, and shall further certify in writing to the Superintendent of Buildings that all documents have been filed and all actions taken necessary to fulfill the requirements of Sections 11.200 to 11.205 before the issuance of any certificate of occupancy for any such project.

11.206 Affordable Housing Trust.

The entity “Cambridge Affordable Housing Trust Fund” was established by Chapter 482 of the Acts of 1991, and has been thereafter identified and known as the Cambridge Affordable Housing Trust or the Affordable Housing Trust.

11.206.1 Board of Trustees.

- (a) The City Manager shall appoint and chair a nine (9) member Board of Trustees of the

Affordable Housing Trust. The Board of Trustees shall be composed of the City Manager and representatives from different sectors of the community concerned with housing policy, including members of City boards and agencies, individuals affiliated with Cambridge non-profit housing organizations, and Cambridge community representatives.

- (b) The Trustees shall establish regulations for the operations of the Trust.
- (c) The Trustees shall administer the Affordable Housing Trust, whose activities shall include but not be limited to the following:
 - (i) Disburse funds and property pursuant to the provisions of Sections 11.200 to 11.206;
 - (ii) Review and approve or disapprove proposals submitted for use of funds and property;
 - (iii) Advise on the establishment of new programs designed to meet the City's affordable housing needs;
 - (iv) Provide assistance and reports where appropriate to any special permit granting authority authorized to issue a special permit for any development making use of funds from the Affordable Housing Trust; and
 - (v) Advise on policies, standards, and procedures for the implementation of the provisions of Sections 11.200 to 11.206.

11.206.2 *Receipt and Use of Funds and Property.*

- (a) The Affordable Housing Trust may receive funds and property generated by the provisions of Sections 11.200 to 11.206 as well as funds and property generated from other sources.
- (b) The funds and property of the Affordable Housing Trust may be used for, but shall not be limited to, the following:
 - (i) Creation of rental or owner-occupied Affordable Dwelling Units through such mechanisms as favorable financing terms, capital grants to write down project costs, subsidies for land acquisition, subsidies for acquisition of existing structures, and subsidies for acquisition of Affordable Dwelling Units within a larger development;
 - (ii) Substantial rehabilitation of distressed multifamily residential properties in a manner that preserves the affordability of units through favorable financing terms or capital grants to write down project costs, interest rate subsidies, and loan guarantees with priority funding consideration given to multifamily housing owned by non-profit housing entities that ensure maximum long-term affordability;
 - (iii) Acquisition and rehabilitation of potential limited equity housing cooperatives or condominium conversions using low interest loans, share loans, or capital grants to write down project costs;
 - (iv) Preservation of existing affordable housing by providing acquisition and/or financing assistance for Affordable Dwelling Units that are part of a larger development; and

- (v) Reasonable administrative expenses necessary to support Affordable Housing Trust activities, including but not limited to payment for consulting services such as legal, appraising, or engineering services, and other project related expenses.

In City Council April 3, 2017.

Passed to be ordained by a yea and nay
vote:- Yeas 9; Nays 0; Absent 0.

Attest:- Donna P. Lopez, City

Clerk. A true copy;

ATTEST:-

Donna P. Lopez
City Clerk