

6.10 Inclusionary Housing

*Note: §6.10 was adopted under Article 17 at the 2013 Special Town Meeting.
Note: §6.10 was amended under Article 3 at the 2024 Special Town Meeting.*

6.10.1 Purpose

The purposes of this Section are to encourage the expansion and upgrade of the Town's affordable housing stock, in order to provide for a full range of housing choices for households of all incomes, ages, and sizes; to prevent the displacement of low- to moderate-income Town residents; to increase the production of Affordable Housing Units to meet existing and anticipated employment needs within the Town; to establish standards and guidelines in order to implement the foregoing; and to meet the requirements of MGL c. 40B and the Local Initiative Program.

6.10.2 Definitions

For purposes of this Section 6.10 of the Zoning By-Law, capitalized words shall mean as defined elsewhere in this By-Law or as defined below:

Affordability Gap - The difference between the average assessment of all one and two-bedroom condominiums in Belmont and the sale price of a one or two-bedroom housing unit affordable to a 2-person household at 80% of the U.S. Department of Housing and Urban Development (HUD) Area Median Income (AMI) for Boston-Cambridge-Quincy, MA-NH HUD Metropolitan Area (HMFA), and shall be calculated and posted annually in July by the Office of Planning and Building, using the most recent HUD and Belmont Assessor data available.

Example:

Average Assessment of Condominiums = \$661,636

Sale Price of Two-Bedroom Housing Unit Affordable to a 2-Person Household = \$549,500

Assumptions: Monthly Budget of 30% and 5% Down Payment

Affordability Gap = \$112,136

Affordable Housing Trust Fund - An account established and operated for the exclusive purpose of creating or preserving affordable housing in the Town. The Affordable Housing Trust Fund ~~may shall~~ be ~~used~~ utilized by the Belmont Housing Trust to further its mission of supporting affordable housing in Belmont. Actions to support this include, but are not limited to,: ~~for the following purposes within the Town:~~ the purchase and improvement of land ~~and for Affordable~~ Housing Units, ~~for the development~~ of new and/or rehabilitated Affordable Housing Units for purchase or rental by Qualified ~~Affordable Housing Purchasers Homebuyers~~ or Tenants, or to preserve existing ~~affordable Affordable housing Housing Units~~. Expenditures from the Affordable Housing Trust Fund shall be authorized by a majority vote of the Belmont Housing Trust.

Affordable Housing Unit - A Housing Unit is mandated to maintain a level of affordability through a Regulatory Agreement or that by Deed Restriction and is ~~and shall remain affordable to~~ ~~and purchased, rented, and/or~~ occupied by a Qualified ~~Affordable Housing Unit Purchaser Homebuyer~~ or Tenant, and is eligible for inclusion in the Chapter 40B Subsidized Housing Inventory through the Local Initiative Program.

Area Median Income – ~~the~~ The mid-point of household incomes ~~of households~~ in the statistical area (currently Boston-Cambridge-Quincy, MA-NH) that includes Belmont, ~~that is used~~ calculated by the United States Department of Housing and Urban Development (“HUD”), or its successor, to determine housing affordability adjusted for household size, as determined annually by the United States Department of Housing and Urban Development and regardless of housing type or ownership.

Belmont Housing Trust – Belmont Housing Trust, Inc., a Massachusetts charitable housing corporation created by Chapter 126 of the Acts of 1999.

Belmont Resident – Since there is a “local preference” for some of the Affordable Housing Units, the people or households that may qualify for the local preference ~~must~~ shall be Belmont Residents, defined as follows:

- a. an individual or family maintaining a primary residence within the Town of Belmont; or
- b. an individual who is employed within the Town of Belmont; or
- c. a parent or guardian with children attending the Town of Belmont Public Schools.

Comparable Unit - When used with respect to quality, character, and room size, means that there are sufficient features in common between the Affordable Housing Unit and the Market Rate Housing Unit so as to render the units similar in nature. Moreover, while the actual design or finishes provided in the Affordable Housing Units versus the Market Rate Housing Unit may differ in a non-material fashion and still constitute Comparable Units, the same amenities proposed for the Market Rate Housing Unit must be provided for the Affordable Housing Units, including without limitation full kitchen, full bath, and parking.

Further, the actual room size for the Affordable Housing Unit may not differ in any significant manner to that of the Market Rate Housing Unit.

Notwithstanding the foregoing, when used with respect to external appearance, location and bedroom distribution, means that the external appearance of the Affordable Housing Unit and the Market Rate Housing Unit must be so similar in nature so as to render them indistinguishable while the location of the Affordable Housing Units and the bedroom distribution of such units must be no different from that of the Market Rate Housing Unit.

Deed Restriction - A provision, acceptable in form and substance to the Town of Belmont, in a deed to real property that runs with the land in perpetuity or for the longest period of time allowed by law, so as to be binding on and enforceable against any person claiming an interest in the property. Any Restriction created under this Section 6.10 shall survive any bankruptcy, insolvency, foreclosure, or other action, and shall not be subject to nullification for any reason. Additionally, the Restriction shall provide that in the event that any affordable rental unit is converted to a condominium unit, the condominium unit shall be restricted in perpetuity to ensure that it remains affordable to households in the same income range as prior to the condominium conversion.

Development - A single parcel or set of contiguous parcels of land held in common ownership for which one or more building permits will be sought within a ~~24-month~~ five (5) year period of time. The number of Housing Units to be counted from any project shall be calculated as the net increase in the number of Housing Units as compared to the number of Housing Units in existence on such land as of the date that the building permit application is filed with the Town of Belmont Office of ~~Community Development~~ Planning and Building. Units undergoing substantial rehabilitation shall be counted in the net increase.

Dwelling Unit - A Building or portion of a Building intended as living quarters for a single family, having a single set of kitchen facilities (a stove plus either or both refrigerator and sink), sleeping quarters, and sanitary facilities not shared with any other unit; or quarters for up to five persons in a dormitory, congregate dwelling, or similar group dwelling.

Housing Unit ~~–~~ Any of the following:

~~A~~ Dwelling Unit; or

~~A~~ habitable unit within a senior or assisted living facility.

Market Rate Housing Unit – Housing Units available to the general public on the open market, without price restrictions, asset limitations, or consumer income limitations.

Qualified Affordable Housing Unit Purchaser or Tenant - A household with total annual income that does not exceed ~~eighty percent (80%)~~ of the ~~Area Median Income~~ AMI, except where affordability is targeted to a lower level.

Substantial Rehabilitation – Alterations, reconstruction, repairs, or a change in use from non-residential residential to residential, to a building or structure, within any period of five (5) years, costing in excess of 50% of the Gross Floor Area (GFA) of a building undergoing rehabilitation, not inclusive of roofing or exterior cladding. Physical value of a building or structure shall be based on the assessed value as recorded in the Assessor’s Office of the Town of Belmont.

6.10.3 Applicability

This Section 6.10 shall apply in all zoning districts to the following uses:

- a) Any development that results in a net increase of six (6) or more dwelling units, whether by new construction, alteration, expansion, reconstruction, or substantial rehabilitation, or change of existing residential or non-residential space or use, or to any division or subdivision of land for the development or substantial rehabilitation of six (6) or more dwelling units, except as identified under b) below.
- b) Any health care-related development that results in a net increase of six (6) or more independent living units.
- c) Substantial rehabilitation may vary in degree from gutting and extensive reconstruction to the cure of substantial accumulation of deferred maintenance. Cosmetic improvements alone do not qualify as substantial rehabilitation under this definition. Substantial accumulation of deferred maintenance is the significant buildup of necessary repairs, upkeep, and maintenance activities that have been delayed or postponed and determined via application of the Facility Condition Index (FCI) performed by a CFM or equivalent.

Note that this applies to projects that intend to alter, expand, reconstruct, or change the use of at least 50% of all units in a Development simultaneously or phased over no more than five (5) year period. This Section 6.10 shall apply to any Development with six (6) or more new Housing Units.

6.10.4 Requirements

a) Developments with six (6) or more new Housing Units shall provide Affordable Housing Units as outlined in the table below:

<u>New or SR Housing Units in Development</u>	<u>Percent of Affordable Housing Units Required</u>	<u>Payment in Lieu Provision (Only for Ownership Units)</u>
<u>6-10 Housing Units</u>	<u>10%</u>	<u>Optional</u>
<u>11-20 Housing Units</u>	<u>12%</u>	<u>No</u>
<u>21 or More Housing Units</u>	<u>15%</u>	<u>No</u>

a)b)

New Housing Units in the Development	Percent of Affordable Housing Units Required for the Development

6 to 12 Housing Units	40%
13 to 20 Housing Units	42%
More than 20 Housing Units	45%

Note: §6.10.4 was amended under Article 3 at the 2019 Annual Town Meeting.

b)c) Where the calculation of Affordable Housing Units results in a fractional unit, the fraction shall be rounded up to the next whole unit.

e)d) Developments with for-rent housing units for households at 50% or less of Area Median Income may reduce the total number of required Affordable Housing Units by an amount equal to the number of for-rent units available to households at 50% or less of Area Median Income, or by 25% of the Affordable Housing Units required, whichever is less.

e)e) Except for cash payments permitted under Section 6.10.4 and 6.10.5 with respect to for-sale Developments, Affordable Housing Units shall be provided within the Development that requires the Affordable Housing Units.

6.10.5 Cash Payment Option for For-Sale Affordable Housing Units

If required for feasibility, in exceptional circumstances, the Planning Board may allow the applicant of a Development from 6-10 for-sale new Housing Units to make a cash payment to the Affordable Housing Trust Fund in lieu of providing Affordable Housing Units as required under this Section 6.10 on site. The applicant must clearly demonstrate the infeasibility of providing the unit. Such cash payment shall be based on the following formula:

Formula – From 6-10 Units (Optional)

Total # of Units x 16.67% x affordability gap x 300% = Total In-Lieu Payment

Example:

6 Units x 16.67% x \$112,136 x 300% = **\$336,475**

Applicants seeking the payment in-lieu option shall provide a narrative justification explaining the rationale for this request providing the demonstrated infeasibility of providing the required unit. In exceptional circumstances, the Planning Board may allow the applicant for a Development of 6 or more for-sale new Housing Units to make a cash payment to the Affordable Housing Trust Fund in lieu of providing Affordable Housing Units required under this Section 6.10.

Such cash payment shall be equal to 5% of the projected total sale price of the Housing Units based on an appraisal satisfactory to the Planning Board. In making its decision, the Planning Board shall seek a recommendation from the Belmont Housing Trust.

Note: §6.10.5 was amended under Article 3 at the 2019 Annual Town Meeting.

6.10.6 Selection of Qualified Affordable Housing Unit Purchasers or Tenants

The selection of Qualified Affordable Housing Unit Purchasers or Tenants shall be pursuant to the Local Initiative Program and shall be administered as follows:

- a. The selection process shall include a plan for marketing of the Affordable Housing Units created under this Section 6.10. The duration and design of this plan shall reasonably inform all those seeking affordable housing, both within and outside the Town, of the availability of such units.
- b. Belmont Residents shall be given preference for seventy percent (70%) of the Affordable Housing

Units created under this Section 6.10.

- c. Owners of Developments may sell or lease Affordable Housing Units to the Town of Belmont, the Belmont Housing Trust, the Belmont Housing Authority, or to a private nonprofit entity serving Belmont for the purpose of providing affordable housing opportunities within the Town, in order that such entity carry out the steps needed to market the Affordable Housing Units and manage the choice of buyers or renters.

6.10.7 Timing of Construction

- 1) Occupancy permits for any new Market-Rate Housing Units or nonresidential space shall be issued at an equal ratio of occupancy permits for required Affordable Housing Units.
- 2) Affordable Housing Units shall be dispersed throughout the Building(s) and shall be comparable to Market-Rate Housing Units. Affordable Housing Units provided under terms of this Section 6.10 shall be provided on-site in the subject Development.

For an Affordable Housing Unit within a senior or assisted living facility, a comparable Affordable Housing Unit shall include the provision of mandatory living services.

6.10.8 Rental Development Annual Oversight and Monitoring

- 1) There shall be a monitoring agent for rental Developments with Affordable Housing Units, to be agreed upon by the owner of the Development and either the Special Permit Granting Authority, or if there is none, the Planning Board. In making its decision, the Special Permit Granting Authority or Planning Board shall seek and follow a recommendation from the Belmont Housing Trust, in the absence of extenuating circumstances.
- 2) The owner shall be responsible for all payments charged by, or related to, the monitoring agent.
- 3) An annual independent compliance audit shall be submitted to the Town by the monitoring agent to ensure compliance with this Section 6.10 and the Local Initiative Program provisions.

6.10.9 General Provisions

- 1) All documents necessary to ensure compliance with this Section 6.10 and, as applicable, the Local Initiative Program provisions, including a fair housing marketing plan, a lottery plan, and a rental application shall be subject to the review and approval of the Special Permit Granting Authority, or if there is none, the Planning Board and Town Counsel.
- 2) Prior to rendering its decision, the Special Permit Granting Authority or Planning Board shall solicit a recommendation from the Belmont Housing Trust. In light of the Trust's expertise on and knowledge of affordable housing requirements, in the absence of extenuating circumstances the Special Permit Granting Authority or Planning Board shall give the Belmont Housing Trust recommendation substantial weight. The recommendation from the Belmont Housing Trust shall be provided prior to the commencement of the Planning Board's deliberations on the application.
- 3) The compliance documents shall be a condition of any Special Permit, or if there is none, Design and Site Plan Review, and executed prior to the issuance of any Certificate of Occupancy.
- 4) Enforcement of this Section 6.10, as it applies to all Developments, shall be the responsibility of the Building Inspector.
- 5) Provision of accessible Housing Units shall be as determined by Federal Regulations. Standards for accessible units shall comply with 24 C.F.R. Section 8.32.

- 6) This Section 6.10 shall not apply to the rehabilitation of any Building or Structure, all of or substantially all of which is destroyed or damaged by fire or other casualty or a natural disaster; provided, however, no rehabilitation nor repair shall increase the density, bulk, or size of any such Building or Structure which previously existed prior to the damage or destruction thereof except in conformance with this Section 6.10.
- 7) This Section 6.10 shall not apply to Developments under Massachusetts General Laws (MGL) Chapter 40B.

6.10.10 Severability, Conflict with Other By-Laws

- 1) If a court of competent jurisdiction holds any provision of this Section 6.10 invalid, the remainder of this Section shall not be affected thereby. The invalidity of any section or sections, or parts of any section or sections, of this Section shall not affect the validity of the remaining sections or parts of sections or the General Bylaws of the Town of Belmont.
- 2) Nothing contained in this Section 6.10 shall be construed to apply to the use of land or structures for religious or educational purposes if doing so would violate the applicable provisions of M.G.L. Chapter 40A, Section 3.
- 3) To the extent this Section 6.10 is silent on a particular issue or conflicts with the Local Initiative Program, the requirements of the Local Initiative Program shall govern.