



Board of Selectmen

# Meeting Agenda

**The Provincetown Board of Selectmen will hold a public meeting on Tuesday, October 11, 2016, at 5:00 p.m. in Judge Welsh Room, Town Hall, 260 Commercial Street, Provincetown, MA 02657.**

1. Joint Meeting with Planning Board – Update on the Inclusionary Housing Bylaw and other Potential Zoning Bylaws- Town Planner Gloria McPherson and Planning Board Members.
2. Others – Other matters that may legally come before the Board not reasonably anticipated by the Chair 48 hours before the meeting. Votes may be taken.

Posted by the Assistant Town Clerk: [www.provincetown-ma.gov](http://www.provincetown-ma.gov), 10/6/16 4:30 pm dv



Provincetown Board of Selectmen  
**AGENDA ACTION REQUEST**

Tuesday, October 11, 2016

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## JOINT MEETING – PLANNING BOARD

### Inclusionary and Potential Zoning Bylaws

Requested by: Town Manager David B. Panagore

Action Sought: Discussion

#### Proposed Motion(s)

**Discussion dependent – votes may be taken.**

#### Additional Information

See attached materials.

#### Board Action

<i>Motion</i>	<i>Second</i>	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Disposition</i>

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## **Section 4180 Inclusionary Housing By-Law**

### **1. Purpose and Intent**

The primary purpose of this bylaw is to:

- (a) Encourage the creation of a range of housing opportunities for households of all incomes, ages and sizes in order to support a strong, stable and diverse year round community and a viable and healthy local workforce and to prevent the displacement of Provincetown residents;
- (b) Mitigate the impact of residential development on the availability and cost of housing;
- (c) Protect the long-term affordability of such housing through appropriate, enforceable restrictions that run with the land;
- (d) Provide a mechanism by which residential development can contribute in a direct way to increasing the supply of Affordable and Community Housing in exchange for a greater density or intensity of development than is otherwise permitted as a matter of right;
- (e) Support the goals of Provincetown's December 2006 Affordable and Community Housing Action Plan and its January 2014 Update.

A secondary purpose is to create dwelling units eligible for inclusion in the Town's Chapter 40B Subsidized Housing Inventory.

### **2. Definitions**

The term "Housing Fund" as used in this section of the Zoning Bylaw shall refer to any affordable or community housing fund that has been duly established by the Town to promote Affordable or Community Housing at the time that a payment in lieu of creating Affordable or Community Housing units as described hereunder is made.

### **3. Applicability**

This inclusionary bylaw shall apply in all zoning districts to the following uses:

- (a) Except as identified under Sections 3(b) and 3(c) below, any development that results in an increase in the number of dwelling units, whether by new construction or alteration, expansion, reconstruction, or change of existing residential or non-residential space or use;
- (b) Any health care-related development that results in 6 or more independent living units.
- (c) This inclusionary bylaw shall not apply to the following:

- (1) Accessory Dwelling Units
- (2) A subdivision of land under G.L. c. 41, section 81K-81GG;

**4. Mandatory Provision of Affordable Units for all Development**

In any development identified in Section 3(a)-(b) above, the applicant shall contribute to the local stock of Affordable and Community Housing in accordance with the following requirements:

(a) For development consisting of between 1 and 5 dwelling units, a Housing Contribution shall be made to the Housing Fund in the form of a payment in-lieu of creating a fractional unit.

(1) Payment shall be made accordance with the following:

1 unit	1/6 of the payment in lieu fee for a single unit
2 units	1/3 of the payment in lieu fee for a single unit
3 units	1/2 of the payment in lieu fee for a single unit
4 units	2/3 of the payment in lieu fee for a single unit
5 units	5/6 of the payment in lieu fee for a single unit

(2) The payment shall be payable to the Housing Fund at and upon the sale or certificate of occupancy of the final unit, whichever occurs sooner.

- i. Year-round rental unit development: When the development consists of year-round rental units, a lien shall be filed against the property which states that the payment-in-lieu shall be deferred until such time as the year-round rental use ceases, with the full balance due upon change of use. (proportional, to the percentage of units developed changed, if not all of them?)
- ii. One time exemption for primary residence of lot owner: When the development consists of one single-family home on its own lot and is continuously occupied by an owner who has legally declared domicile at the same location, a lien shall be filed against the property which states that the payment-in-lieu shall be deferred for a period of up to five years with the full balance due upon the sale of the dwelling. After being occupied continuously for no less than five years immediately following the issuance of a certificate of occupancy, the payment-in-lieu shall be forgiven. No person or household shall be permitted to use the exemption set forth in this subsection more than one time.

(3) The developer shall enter into a binding written agreement with the Town of Provincetown, before the issuance of the first Building Permit

and with appropriate payment surety arrangements, to provide the required payment(s) to the Housing Fund, and with a notice of the required payments to be recorded against the property before any certificate of occupancy is issued if full payment has not been made when the certificate of occupancy is applied for.

- (4) The in-lieu payment shall be made into the Housing Fund, as defined hereunder, and the Board of Selectmen shall determine which fund shall receive the deposit.
- (b) Development consisting of a total of 6 dwelling units or more shall require the granting of a Special Permit by the Planning Board and at least 15% of the units created shall be established as Affordable or Community Housing units in any one or combination of methods provided for below.

When the 15% calculation results in a fractional unit of .7 or greater, the developer shall provide a whole unit.

When the 15% calculation results in a fractional unit of less than .7, the developer shall provide a whole unit or make a housing contribution payment in lieu of the fractional unit in accordance with Section 3(a) above.

- (1) The Affordable or Community Housing units shall be constructed or rehabilitated on the locus subject to the Special Permit, in accordance with Section 7; or
- (2) The Affordable or Community Housing units shall be constructed or rehabilitated on a locus other than the one subject to the Special Permit, in accordance with Section 7, provided justification is provided that on-site development of units is not feasible and off-site development of units is beneficial to the Town, and Special Permits are granted contemporaneously for both developments; or
- (3) Payment in lieu contribution. In lieu of providing such units either on or off-site, an applicant may satisfy the inclusionary housing requirement by making a contribution to the Housing Fund. The cash contribution shall be calculated by the Town Manager annually as follows:
  - i. Developments with 6 or more units: the payment in lieu contribution for each required inclusionary dwelling unit for FY18 shall be \$###,000.
  - ii. Developments with 5 or fewer units: the payment in lieu contribution for each required inclusionary dwelling unit for FY 18

shall be \$###,000.

- iii. These amounts shall be reduced for developments where the average floor area of all dwelling units in the development is less than 1,000 sf [average sf of units in Provincetown] in a proportionate manner such that the amount for a unit 10 percent smaller is 10 percent lower.
  - iv. [Should there be an adjustment up for waterfront property?]
  - v. These amounts shall be adjusted annually by the Town Manager, so that the payment in lieu contribution amount is equal to [50?]% of the affordability gap using the most recent housing data for developments with 5 or fewer units, [75?]% of the affordability gap for developments with 6-9 units, and [100?]% of the affordability gap for developments with 10 or more units.
  - vi. Affordability gap means the difference between the market purchase price of a dwelling unit and the amount affordable to a household earning the HUD low-income limit for the Barnstable MSA. The Town Manager shall calculate the affordability gap each year.
  - vii. A payment-in-lieu of providing affordable or community housing units shall not allow an applicant to take advantage of any of the incentives in Section 5 below; or
- (1) In lieu of providing such units either on- or off-site, an applicant may provide a donation of land to the Provincetown Affordable Housing Trust or a non-profit housing development organization approved by the Planning Board, provided that the receiving organization agrees in writing to accept the land and the applicant demonstrates to the Planning Board's satisfaction that the land serves the development of Affordable and Community Housing. The value of donated land shall be equivalent to or greater than the value of an in-lieu payment. The Planning Board may require, prior to accepting land as satisfaction of the requirements of this bylaw, that the applicant submit an appraisal of the land in question that was prepared by a licensed appraiser using professionally accepted methods, as well as other data relevant to the determination of equivalent value, and the Planning Board may obtain expert peer review of the appraisal at the applicant's expense. Closing on the land donation shall occur before the issuance of the first building permit.

Land donation instead of providing affordable or community housing units shall not allow an applicant to take advantage of any of the

incentives in Section 5 below.

## 5. Incentives

### **Density Bonus**

(a) The allowable density for an eligible project:

- Located in any Zoning District except Res1
- Of which 20% or more of the dwelling units are affordable or community housing units

Shall be based on the number of bedrooms able to be served by a non-varianced septic system contained on the same parcel, so that the project may have up to as many dwelling units as bedrooms that can be supported.

(b) For developments consisting of 6 dwelling units or more, the Planning Board may provide a density bonus, which shall be made part of the Special Permit, to increase the number of dwelling units allowed on the parcel beyond the maximum number allowed under the Dimensional Schedule, the Density Schedule and Section 2550 of this Zoning Bylaw, as follows:

- (1) For every deed restricted unit of Affordable Housing constructed or rehabilitated either on or off the site subject to the Special Permit, two market rate dwelling units may be added as a density bonus.
- (2) For every deed restricted unit of Community Housing constructed or rehabilitated either on or off the site subject to the Special Permit, one market rate dwelling unit may be added as a density bonus.

(c) To facilitate the objectives of a density bonus, the Planning Board shall have the authority to modify or waive any lot or dimensional regulations and parking regulations appropriate and necessary to accommodate the additional unit(s) on the site as part of the Special Permit relief.

(d) Developments of 1-5 units that exceed the requirements of Section 4 above may receive the same density bonus as specified above, provided the development is approved by the Planning Board through the Special Permit process.

(e) In the Res1 Zoning District, any net increase in housing units through a density bonus shall not exceed 50% 200% (for a total of three units on a lot) OR 100% (for a total of two units on a lot) of the base number of units allowed under this Zoning Bylaw.

### **Building Height Bonus**

The maximum building height for an eligible project building:

- Located in Zoning District (GC, Res3, Res B? or new overlay district? Specific streets? But NOT the High Elevation Protection District?)
- That contains 6 or more dwelling units
- Of which 20% or more of the dwelling units are affordable or community housing units

Is an additional 10 feet above the maximum structure height that would otherwise be allowed under this ZBL.

[potential language: any additional height allowed shall be limited to coverage of 50% of the area of the floor below AND/OR under certain circumstances the Planning Board may require that the additional story be stepped back to minimize the appearance of mass]

**Growth Management Bonus**

Growth Management Category #, for an eligible project of which 20% or more of the dwelling units are affordable or community housing units

Growth Management Category #, for an eligible project of which 10-20% of the dwelling units are affordable or community housing units

**Fee Reduction Bonus**

Permit fees

Building fees

[different percentage reduction for different percentages of affordable/community units, as above]

**6. Submission Requirements and Procedures**

(a) Special Permit application, review and decision procedures shall be in accordance with this Zoning Bylaw and the Planning Board's rules and regulations. Additionally, the project must comply with the provisions of Article 4, Section 4000 and 4100.

(b) Affordable and Community Housing units created in accordance with this bylaw shall use deed restrictions that require the units to remain income restricted in perpetuity or the longest period allowed by law and for so long as any such unit does not conform to the underlying as-of-right zoning requirements. Such restriction shall also grant the Town's right of first refusal to purchase the property in the event that a subsequent qualified purchaser cannot be located.

(c) No building permit shall be issued for any units in the development until the Planning Department receives evidence that the Affordable Housing restriction has been approved by DHCD, or the Community Housing restriction has been approved by Town Counsel.

(d) No certificate of occupancy shall be issued for any units in the

development until the Planning Department receives evidence that the housing restriction has been executed and recorded at the Barnstable County Registry of Deeds.

**7. Provisions Applicable to Affordable and Community Housing Units Located both On-Site and Off-Site**

- (a) Affordable and Community Housing units constructed under this by-law shall be situated within the development or off-site as approved by the Planning Board, so as not to be in less desirable locations than market rate units and shall, on average, be no less accessible to public amenities as market-rate units.
- (b) Affordable and Community Housing units shall be integrated with the rest of the development or with the off-site location, and shall be comparable to and indistinguishable from market rate units in exterior design and interior features, appearance, construction and quality of materials, and energy efficiency.
- (c) The number of bedrooms in each Affordable or Community Housing unit shall be made a part of the Special Permit and shall be based on local need as determined in consultation with the Community Housing Counsel for each project.
- (d) Owners and tenants of Affordable and Community Housing units and market rate units shall have the same rights and privileges to access and use any of the development's amenities and facilities.
- (e) The development of Affordable and Community Housing units shall take place at the same rate and timeframe as the development of market rate units.
  - (1) Building permits for any phase shall be issued at a ratio of 5 (five) market rate units to 1 (one) Affordable/Community Housing unit. Building permits for subsequent phases shall not be issued unless all the required Affordable/Community Housing units in the preceding phase are constructed and the deed restrictions recorded. The last unit permitted, constructed and occupied shall be a market rate unit.
  - (2) The project may also be constructed in its entirety with all permits issued at once, provided that the occupancy permits are issued at a ratio of 5 (five) market rate units to 1 (one) Affordable/Community Housing unit. The last certificate of occupancy to be issued shall be for a market rate unit and shall not be issued unless all Affordable/Community Housing units are occupied.

**8. Distribution of Affordability**

Distribution of affordability for rental or ownership units as Extremely Low, Low or Moderate Income Affordable Housing or Median or Middle Income Community Housing shall be determined by the Planning Board in consultation

with the Community Housing Council and set as follows, being made a condition of the Special Permit under this Bylaw:

- (a) When the number of the Town's SHI eligible affordable housing units is below 10%, the units created shall be Extremely Low, Low or Moderate Income Affordable Housing units, unless otherwise approved by the Planning Board if adequate justification is provided that the development of Affordable Housing units is not feasible and it is beneficial to the Town that Community Housing units are provided instead, and the exception is made a part of the Special Permit.
- (b) When the number of the Town's SHI eligible affordable housing units is at or above 10%, it is encouraged that units created be Median or Middle Income Community Housing units.

[Encourage community housing units and encourage home-ownership for middle-income residents with the goal of enhancing the year-round community]

**9. Maximum Incomes and Selling Price; Affordable and Community Housing Inventory**

Maximum incomes and sales prices and rents shall be as set forth in Article 1, Definitions, of this Zoning Bylaw.

**10. Segmentation**

Developments shall not be phased or segmented to avoid compliance with conditions or provisions of this bylaw. "Segmentation" shall mean development that cumulatively results in a net increase of dwelling units above the number existing 36 months earlier on any parcel or set of contiguous parcels held in common ownership or under common control on or after the effective date of this Section 4180.

**11. 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.

**12. Severability**

If any provision of this bylaw is 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 shall not affect the validity of the remainder of Provincetown's zoning bylaw.

**Joint meeting with the Board of Selectmen to discuss:**

- i. Inclusionary and Incentive Zoning Bylaw
  
- ii. Other potential Zoning Bylaw amendments:
  - a. Section 4120 Density Schedule, for changes to the Commercial Accommodations section
  - b. Section 3200 Sign Regulations, and Section 3420 Outside Display (these changes are related)
  - c. Section 2630 regarding roof configuration (dormers, kneewalls, percentage of floor area, etc...) and corollary changes to 2560 Dimensional Schedule, and definitions of story, floor area and dormer
  - d. ZBL potential clarification of the scale bylaw depending on the results of the appeal at 294 Bradford
  - e. ZBL TIF District (associated with Inclusionary)
  - f. ZBL Seasonal Housing Density Overlay Zone (associated with a TIF?)
  - g. Urban Agriculture (chickens, beekeeping, community gardens, edible landscaping, municipal composting)
  - h. Food Trucks (only allowed at certain times, in certain locations; Farmer's Market Saturday, Food Trucks Sunday; monthly Food Truck Festival)



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## OTHER

Requested by: Town Manager David B. Panagore

Action Sought: Discussion

Proposed Motion(s)

**Discussion Dependent – votes may be taken.**

Additional Information

Board Action

<i>Motion</i>	<i>Second</i>	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Disposition</i>