38-34 INCLUSION OF AFFORDABLE HOUSING
(Ord. No. 103, 7-17-07)

A. Purposes and Intent

1. To provide affordable housing choices throughout the City, in furtherance of the housing goals of the City of Beverly Master Plan and the City of Beverly Affordable Housing Plan.

2. To provide for a diverse, balanced and inclusive community, with housing for persons of all income levels as a matter of basic fairness and social responsibility.

3. To assure that affordable housing is made available on an equal basis to all eligible households without regard to race, religion, age, sex or other class status as defined in the federal Fair Housing Act of 1968, as amended.

4. To encourage the inclusion of affordable housing in all new residential and mixed-use developments.

B. Applicability

1. This Section applies to any development that results in or contains ten (10) or more residential dwelling units. The types of development subject to the provisions of this Section include, without limitation, the following:

   a. A division of land resulting in the creation of ten or more residential lots. Developments shall not be segmented to avoid compliance with this Section. "Segmentation" shall mean divisions of land that would cumulatively result in an increase of ten (10) or more residential lots above the number existing on a parcel of land or contiguous parcels in common ownership or control twenty-four months prior to the application. Where such segmentation occurs, it shall be subject to Section 38-34.1. A subdivision or division of land shall mean any subdivision as defined in the Subdivision Control Law, Chapter 41, Sections 81K-81GG of the Massachusetts General Laws, or any division of land under Chapter 41, Section 81P of the Massachusetts General Laws, when such division of land results in lots for residential use.

   b. New residential construction or new mixed-use construction that includes ten (10) or more dwelling units.

   c. A development of 10 (10) or more new dwelling units that involves the redevelopment, reconstruction or rehabilitation of an existing multi-family building or structure, if such development results in an increase of ten or more units in the number of dwelling units in the original structure.

d. A development that will change the use of an existing building from non-residential to residential use.

2. This Section does not apply to nursing homes, projects meeting the definition of subsidized elderly housing or congregate elderly housing, nor to the rehabilitation of any building or structure wholly or substantially destroyed or damaged by fire or other casualty; provided, however, that no rehabilitation nor repair shall increase the number of dwelling units on the lot as existed prior to the damage or destruction thereof, except in conformance with this Section. (Ord. No. 72, 7-9-09)

3. Any other development with dwelling units to which this Section does not otherwise apply may elect to be subject to this Section, provided the development meets all applicable requirements herein. Special permits authorized under this Section for developments with ten (10) or more dwelling units may also be granted to any other development with dwelling units, in the discretion of the Planning Board.

C. Housing Affordability

1. Except as provided below, each affordable unit created under this Section shall be sold or rented to a household with income at or below 80% of the area median income that applies to subsidized housing in the City of Beverly, as reported annually by the U.S. Department of Housing and Urban Development (HUD), adjusted for household size.

2. When an applicant provides at least one-half of the required affordable units for households with income at or below 50% of area median income, the remaining affordable units may be sold or rented to households with incomes up to 100% of area median income, adjusted for household size, subject to approval by the Planning Board.

D. Planning Board Regulations

The Planning Board shall adopt Affordable Housing Regulations to administer this Section and may from time to time revise said regulations, following a public hearing for which notice has been given in accordance with Chapter 40A, Section 11 of the Massachusetts General Laws.

E. Minimum Percentage of Affordable Units

In any development subject to this Section, at least twelve percent (12%) of the dwelling units shall be affordable housing. In the instance of a fraction, a fraction of a lot or dwelling unit shall be rounded up to the nearest whole number. Nothing in this section shall preclude a developer from providing more affordable housing units than required hereunder.

F. Location and Comparability of Affordable Units

1. Affordable units shall be dispersed throughout a development and be comparable to market-rate units in exterior building materials and finishes; overall construction quality; and energy efficiency. Interior finishes shall be in accordance with the Planning Board's Affordable Housing Regulations.

2. Affordable units in two-family, semi-detached and multi-family dwellings shall generally be similar in size (in gross floor area) to market-rate units of the same type; provided, however, that the gross floor area of the affordable units shall not be less than the minimum floor area required by the Department of Housing and Community Development (DHCD) for units eligible for the Subsidized Housing Inventory as Local Initiative Program (LIP) units.

3. For a development of detached one-family dwellings in a zoning district in which said dwellings are permitted as of right, the following shall apply:

   a. Affordable detached one-family dwellings may be smaller than market-rate dwellings, but in no event shall the gross floor area of any affordable unit be less than the minimum floor area required under the regulations or guidelines of the Local Initiative Program except by Special Permit from the Planning Board.

   b. Alternatively, up to 20% of the units may be in two-family, semi-detached or multi-family dwellings of not more than three units, and all or a majority of the required affordable units may be located in said dwellings; provided, however, that the units shall conform to the Planning Board's Affordable Housing Regulations and shall not be concentrated in one part of the development.

4. In a development of multi-family units, affordable units shall be dispersed throughout the buildings and the floors of each building, such that no single building or floor therein has a disproportionate percentage of affordable units.

5. In a development of homeownership units, the affordable units may be restricted for occupancy by eligible homebuyers or renters, or sold to non-profit organizations or public agencies that provide and manage rental housing to low- or moderate-income households.

G. Methods of Providing Affordable Units

1. Construction of affordable units on the locus of the development ("on-site units") shall be permitted as of right in any development, and is the preferred method of providing affordable units under this Section.

2. The Planning Board may grant a Special Permit for one or more of the following alternative methods, including any combination thereof. In granting a Special Permit hereunder, the Planning Board may impose any conditions it deems necessary to assure compliance with this Section:

a. "Off-site units," or the provision of comparable affordable units on another site in the City of Beverly, subject to Site Plan Review under Section 38-29(C) or Subsection I of this Section, as applicable. Off-site units need not be located in the same zoning district as the development.

b. Payment of a fee in lieu of affordable units to the City of Beverly Affordable Housing Trust Fund. This provision shall apply only to developments of homeownership units. The fee per affordable unit shall be determined by Planning Board regulation in accordance with Subsection D above.

c. Donation of developable land in the City of Beverly to the Beverly Housing Authority, the Beverly Affordable Housing Coalition, Inc. or a comparable entity determined at the discretion of the Planning Board, provided the receiving organization agrees in writing to accept the land and the applicant demonstrates to the Planning Board's satisfaction that said land is developable for an equivalent number of affordable units in conformance with the Beverly Zoning Ordinance. This provision shall apply only to developments of homeownership units. Donated land need not be located in the same zoning district as the development, and shall be subject to a deed restriction limiting its use to mixed-income or affordable housing.

3. In the R6, RMD, RHD, RSD, CN, CC or CG district, if the developer provides a greater number of affordable units <u>on site</u> than the minimum required to comply with Subsection E above, the Planning Board may grant a Special Permit for "credit units" to reduce the number of affordable units that must be provided under this Section in another development in a different location, whether in the same zoning district or a different zoning district. The developer may apply the credit units to a future project or transfer the credits in writing to another developer, provided that the credit units are used within ten (10) years from the effective date of the Special Permit.

H. <u>Dimensional and Density Regulations for On-Site Units</u>

1. The following dimensional and density regulations shall apply to any development that provides <u>all</u> of the required affordable units as on-site units; provided, however, that for purposes of determining a development's base maximum density and required percentage of affordable units under Subsection E above, the Building and Area Requirements set forth in Section 38-7(D) through Section 38-16(D) shall apply.

a. In the R-90, R-45, R-22, R-15 or R-10 district, for each on-site affordable unit, the applicant may propose <u>one</u> additional dwelling unit over that which would otherwise be permitted in the district. The minimum lot area for any lot in the development shall be not

less than 85% of the minimum lot area in Section 38-7(D) through Section 38-11(D), as applicable.

b. In the R-6 district, for each on-site affordable unit, the applicant may propose one additional dwelling unit over that which would otherwise be permitted, except that if the development includes two-family or semi-detached units and the required percentage of affordable units results in an odd number, the applicant may propose an additional unit in order to build an even number of units. The minimum lot area shall be not less than 85% of the minimum lot area for a detached one-family dwelling, nor less than 80% of the minimum lot area for a two-family or semi-detached dwelling, as set forth in Section 38-12(D).

c. In the RMD, RHD and RSD districts, for each on-site affordable unit, the applicant may propose two additional dwelling units over the number of units that would otherwise be permitted in the district. The minimum lot area shall be not less than 85% of the minimum lot area for a detached one-family dwelling, nor less than 80% of the minimum lot area per unit for a two-family or semi-detached dwelling, nor less than 70% of the minimum lot area per unit for a multi-family unit, as set forth in Section 38-13(D) through Section 38-15(D), as applicable.

d. In the CN district, for each on-site affordable unit, the applicant may propose two additional dwelling units over the number of units that would otherwise be permitted in the least restrictive adjacent residential district. The minimum lot area shall be in accordance with (a) through (c) above, as applicable.

2. The Planning Board may grant a Special Permit to increase the total number of units for any development that provides at least fifty percent (50%) of the required affordable housing units on site and the balance of such units off site, or to waive any other dimensional or density requirements in the applicable zoning district(s) when doing so furthers the purposes of this Section and is not inconsistent with the City of Beverly Master Plan; provided that no Special Permit granted hereunder shall result in a total number of dwelling units exceeding the maximum number allowable under Subsection H(1) above, and provided further that neither the maximum building height nor the number of required off-street parking spaces may be varied or waived by the Planning Board.

3. The applicability of Site Plan Review under Section 38-29(C) shall be based on the maximum number of dwelling units allowable in accordance with Building and Area Requirements for the applicable zoning district. When a development of multi-family or townhouse units would not be subject to said Section 38-29(C) except for the provision of on-site affordable units under Subsection H(1) above, Site

Plan Review shall be conducted in accordance with Subsection I(3) below.

I. Submission Requirements and Procedures for On-Site and Off-Site Units

1. No building permit shall be issued until the Planning Board has reviewed and acted upon a site plan submitted by the applicant in accordance with this Section.

2. A development that is subject to Site Plan Review under Section 38-29(C) or 38-24(B) of this Ordinance shall be reviewed in accordance with the provisions of said Sections. The Planning Board may request information in addition to the required site plan contents in Section 38-29(C)(3) or 38-24(B), and impose conditions on its approval of the site plan to assure that the development complies with Subsections E, F, G and H above.

3. For a development that is not subject to Section 38-29(C) or 38-24(B), the applicant shall submit a site plan that conforms to the application requirements set forth in Section 38-29(C)(3) and the Planning Board's Affordable Housing Regulations.

   a. The Planning Board shall conduct an administrative review of the site plan at a posted open meeting, and may refer the plan to the Design Review Board for comments and recommendations.

   b. The Planning Board shall take final action on the site plan within 35 days of the date of the open meeting, and may impose conditions on its approval of the site plan to assure that the development complies with Subsections C, D, E and F above. Failure of the Planning Board to act within 35 days of the open meeting shall be deemed as conclusion of review and it shall forthwith make its endorsement on said plan and, on its failure to do so, the City Clerk shall issue a certificate to the same effect.

   c. For a development that constitutes a subdivision under Chapter 41, Section 81K-81GG of the Massachusetts General Laws, site plan review may be extended by written agreement of the applicant and Planning Board for purposes of coordinating the review and decision periods of this Section and the Subdivision Control Law.

J. Submission Requirements and Procedures for Special Permit

For any development that requires a Special Permit under this Section, the Planning Board shall be the Special Permit Granting Authority. Application, review and decision procedures shall be in accordance with Section 38-28(C) and the Planning Board's Affordable Housing Regulations.

K. Phased Construction

Affordable units shall be constructed or otherwise provided in proportion to market-rate units. Proportionality shall be determined by the number of

building or occupancy permits issued for affordable and market-rate units, or lot releases, as applicable. Affordable units shall not be the last units to be built in any development covered by this Section.

L. Selection of Affordable Unit Purchasers or Renters

The selection of purchasers or renters for affordable units shall be carried out under an affirmative marketing plan approved by the City Planning Director prior to the issuance of any building permits for the development.

M. Preservation of Affordability

1. Affordable units provided under this Section shall be subject to an affordable housing restriction that contains limitations on use, occupancy, resale and rents, and provides for periodic monitoring to verify compliance with and enforce said restriction. The affordable housing restriction shall run with the land and be in force in perpetuity or for the maximum period allowed by law, and be enforceable under the provisions of Chapter 184, Section 26 or Sections 31-32 of the Massachusetts General Laws.

2. The applicant shall be responsible for preparing and complying with any documentation that may be required by DHCD to qualify affordable units for listing on the Chapter 40B Subsidized Housing Inventory as LIP units.

3. For a development that provides on-site or off-site affordable units:

   a. No building permit shall be issued until the applicant executes an enforceable agreement with the City and provides evidence acceptable to the Planning Director that the agreement has been recorded at the Essex County Registry of Deeds.

   b. For an affordable homeownership unit, no certificate of occupancy shall be issued until the applicant submits documentation acceptable to the Planning Director that an affordable housing deed rider has been signed by the homebuyer and recorded at the Essex County Registry of Deeds.

4. For a development that provides affordable units through a fee in lieu of units, no building permit shall be issued until the applicant pays at least five percent (5%) of the total required fee to the Beverly Affordable Housing Trust Fund. Additionally, no more than fifty percent (50%) of the certificates of occupancy shall be issued until the applicant pays at least 50% of the total required fee to the Beverly Affordable Housing Trust Fund. 10% of the total number of certificates of occupancy shall be withheld until the applicant submits evidence acceptable to the Planning Director that the remaining balance has been paid to the Affordable Housing Trust Fund. The

Planning Board may modify the schedule for fee payment for projects covered by a single occupancy permit.

5. For a development that provides affordable units through a land donation, no building permits shall be issued until the applicant submits evidence acceptable to the Planning Director that the land has been conveyed to the receiving organization identified in the Planning Board's Special Permit and an affordable housing restriction has been recorded at the Essex County Registry of Deeds.

N. Severability

If any portion of this Ordinance is declared to be invalid, the remainder shall continue to be in full force and effect.