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Legislation Text

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ORDINANCE TEXT AMENDMENT TO THE NEW HAVEN ZONING ORDINANCE TO REQUIRE AND INCENTIVIZE THE INCLUSION OF AFFORDABLE HOUSING UNITS IN MARKET RATE DEVELOPMENT.

WHEREAS, on January 18, 2022 the New Haven Board of Alders passed an inclusionary zoning ordinance pursuant to Conn. Gen. Stat. Sec. 8-2i; and

WHEREAS, the intent of the Board of Alders in passing the Inclusionary Zoning Ordinance was to require the set aside of certain dwelling units to be affordable housing for persons of low and very low income very; and

WHEREAS, the Board of Alders wishes to make amendments to the Inclusionary Zoning Ordinance to make expressly clear the authority of the City to set rental limits and income qualifications for the inclusionary zoning set aside units; and

WHEREAS, the Board of Alders wishes to ensure due process for all persons subject to requirements of the Inclusionary Zoning Ordinance; and

WHEREAS, in accordance with the provisions of 1925 Special Act No. 490, Section 5, Article XIII, Sections 2A-2F and Article VII of the Charter of the City of New Haven (the "Charter") and Section 64(d)(1) of the New Haven Zoning Ordinance, the City Plan Department ("City Plan") of the City of New Haven (the "City"), which serves as staff to the New Haven City Plan Commission, filed with the New Haven City Clerk for transmission to the Board of Alders of the City of New Haven (the "Board of Alders") a Petition (the "Petition") requesting that the Board of Alders adopt text amendments to the Zoning Ordinance with regard to the mandatory inclusion of affordable units within a newly-proposed Overlay District and in projects of substantial size and the creation of city-wide incentives for the development of those affordable units, as more particularly described in Schedule A attached hereto (the "Text Amendments"); and

WHEREAS, City Plan submitted sufficient plans, information and related supporting materials; and

WHEREAS, pursuant to Article XIII, Section 2E of the Charter, the Board of Alders referred the Petition to the New Haven City Plan Commission for a public hearing; and

WHEREAS, on March 16, 2022, the City Plan Commission held a public hearing on the Petition after providing due notice of such hearing in accordance with the provisions of law; and

WHEREAS, on April 4, 2022, the City Plan Commission rendered an advisory report to the Board of Alders after considering the factors set forth in Article VII of the Charter and Sections 64(d)(2) of the Zoning Ordinance recommending approval of the Petition, CPC Report No. 1586-04 and

WHEREAS, the Board of Alders finds that the Text Amendments and their provisions are in accordance with the Comprehensive Plan of Development of the City and are consistent with the land uses and the zoning classifications of neighboring parcels and with the standards set forth in Article XIII, Sections 2B through 2E of the Charter; and

WHEREAS, the Board of Alders further finds that after public notice, hearing, and due comment from the public, interested parties, and the various agencies of the City, including, without limitation, the Department of Transportation, Traffic and Parking, the Engineering Department, and the Office of Building, Inspection and Enforcement that the Text Amendments meet the objectives set forth in Zoning Ordinance, Article VII, Section 64(d) in that the Text Amendments are responsive to changes that have taken place in the City and in patterns of construction and land use, the supply of land and its peculiar suitability for various purposes, the purposes of zoning and the comprehensive plan of the City.

NOW, THEREFORE BE IT ORDAINED by the Board of Alders that the Text Amendments are hereby adopted and made a part of this Ordinance.

BE IT FURTHER ORDAINED by the Board of Alders that except as amended herein, the Zoning Ordinance and the

Zoning Map of the City shall remain in full force and effect.

BE IT FURTHER ORDAINED that said Text Amendments shall take immediate effect on the day after the date of publication of notice of the adoption of the Zoning Ordinance Text Amendment in accordance with the requirements of Article IV, Section 3 of the Charter.

Article 1, § 1 - Definitions

AFFORDABLE HOUSING: The term “affordable housing,” “affordable rental housing” or “housing affordable to rental households” is housing that costs no more than 30 percent of household income for rent and utilities, for households earning 60% or less of area median income. Unless otherwise specified by funding sources, or other agreement made with the City of New Haven, deed restricted units shall remain affordable for a period of 40 years after following issuance of the last certificate of occupancy for the qualifying development. In multi-phased qualifying developments, the period of affordability may begin upon issuance of the last certificate of occupancy for each phase, at the discretion of the Affordable Housing Commission.

AREA MEDIAN INCOME or “AMI” means the median income by household size for New Haven County, as adopted by HUD.

FLOOR AREA RATIO or “FAR” The ratio of the *gross floor area* to the *principal building* or *principal buildings* on a lot to the total lot area.

“HUD” means the United States Department of Housing and Urban Development.

STUDENT HOUSING means a subtype of multi-family residential dwelling units and is characterized by being owned or leased by a school or university, not available to the general public, and serving as housing exclusively for boarding school, undergraduate or graduate college students. Student Housing is leased by room or bed rather than entire dwelling unit, and may be on- or off-campus. Student housing is sometimes, but not always, rented for less than one (1)-year terms or follows an academic calendar schedule. Student Housing does not include co-living arrangements, such as roommates, in dwelling units available to the general public, regardless of the tenants’ school enrollment status.

Article VI. - Other Districts. § 50. - Inclusionary Zoning Overlay Zone. [Move § 50 to Article VI; Delete

“Reserved” and replace with the following language in its entirety.]

§ 50(a). - Purpose, Overlay Area, & Effective Date

(1) Purpose. The purpose of this ordinance is to create mixed-income housing through new construction, conversion, or renovation that assists the City in promoting the creation of Inclusionary Developments and Affordable Housing as the City grows and attracts new market-rate residential development. By linking the production of affordable housing to private market development, this inclusionary zoning policy aims to expand the supply of affordable housing. The effect is to foster mixed-income communities and create housing choice in high-opportunity areas. This policy will support the provision of safe and affordable housing options in areas of opportunity, especially for communities that have been historically marginalized, including low-income and communities of color.

(2) Enactment and Mapped area. There is hereby created an Inclusionary Zoning Overlay District (IZO), the boundaries of the IZO and its tiered areas are established on the map entitled “INCLUSIONARY ZONING: Overlay District and Markets” (the “Map”). In order to accurately reflect changes in housing market conditions, the City Plan Commission shall prepare and adopt updates to the Map every three (3) years. In addition, every calendar year, no later than February 1, the Commission shall, submit to the Mayor any recommended amendments to the in-lieu fee schedule, which subject to final adoption by the Board of Alders, shall take effect no later than July 1 of the calendar year. The Map is available in the New Haven Affordable Housing Manual and is on file and available for public inspection with the City Plan Department and the Livable City Initiative (as staff to the Affordable Housing Commission). The IZO is comprised of two sub-districts:

Core Market. The Core Market represents locations where the majority of new market-rate development is occurring as of the effective date, rents are highest, and where the majority of new market-rate development is anticipated.

Strong Market. The Strong Market represents areas that have potential to support new market-rate development today and in the immediate future.

(3) The Effective Date shall be the published notice of this Section's passage.

§ 50(b) Definitions for Inclusionary Zone Overlay Zone

For the purposes of this § 50 "Inclusionary Zoning Overlay Zone," the following definitions apply:

APPLICABLE DEVELOPMENT means any plan or application for construction, development, or rehabilitation of real property for which the development application to the City agency with appropriate jurisdiction, including but not limited the Board of Alders, City Plan Commission, Board of Zoning Appeals, or Office of Building Inspection and Enforcement, was submitted on or after February 18, 2022 and is (a) new construction; or (b) constitutes rehabilitation, conversion, or renovation of any existing buildings if the value of such rehabilitation, conversion, or renovation is greater than fifty percent (50%) of the existing assessed value of the property; and (c) is a (i) Mandatory Market-Driven Inclusionary Development; (ii) Large-Scale Inclusionary Development; (iii) Voluntary Inclusionary Development; or (iv) an Applicable PDU/PDD Development, as defined in Section 50(b) below.

For the purposes of the applicability of Article VI, § 50, Applicable Development does not include any Prior Approved Development, Prior Submitted Development, or any development application subject to a Restricted Housing Agreement.

AVERAGE GROSS FLOOR AREA PER DWELLING UNIT means the gross floor area of the principal building or buildings divided by the total number of housing units in the inclusionary development.

"INCLUSIONARY DEVELOPMENT" means a development containing both affordable and market-rate units.

"IZ Affordable Unit" means a residential dwelling unit, which is a required or voluntarily set aside unit under this Section 50 and which is restricted for occupancy by households that have a combined total annual income for all members that does not exceed fifty percent (50%) of the New Haven Area Median Income as defined by HUD at the time of initial occupancy; and for which the costs for rent and utilities do not exceed thirty percent (30%) percent of household income.

"IZO" - means Inclusionary Zoning Overlay District.

LARGE-SCALE INCLUSIONARY DEVELOPMENT means a development anywhere in the City that proposes seventy-five (75) or more residential dwelling units, which is required to be an Inclusionary Development under the Inclusionary Zoning policy.

LOW-INCOME HOUSEHOLD means a household in which the combined total annual income for all members of a household does not exceed fifty percent (50%) of the area median income. These income limits are adjusted by household size based on multipliers used by HUD to adjust area median income by household size.

MARKET-RATE UNITS means housing not restricted to low-income households that may sell or rent at any price that the market may bear.

PRIOR APPROVED DEVELOPMENT means an otherwise Applicable Development for the construction, development, or rehabilitation of real property for which the development application to the City agency with appropriate jurisdiction, including but not limited the Board of Alders, City Plan Commission, Board of Zoning Appeals, or Office of Building Inspection and Enforcement, was submitted prior to February 18, 2022, and which has received the required approval of one or more of the City agencies with appropriate jurisdiction, but which requires the approval of one or more additional City agencies, and for which the application to such agency is submitted on or after February 18, 2022.

PRIOR SUBMITTED DEVELOPMENT means an otherwise Applicable Development for the construction, development, or rehabilitation of real property for which the development application to the City agency with appropriate jurisdiction, including but not limited to the Board of Alders, City Plan Commission, Board of Zoning Appeals, or Office of Building Inspection and Enforcement, was submitted prior to February 18, 2022.

RESTRICTED HOUSING AGREEMENT means an agreement or a commitment to enter into an agreement existing and in force on the Effective Date between an owner of property, a developer of property, or a lessee of property with (i) the City of New Haven, including but not limited to a Development and Land Disposition Agreement, a grant agreement, a loan agreement, and/or a tax abatement agreement, (ii) another governmental entity, including but not limited to the State of Connecticut Department of Housing or the Connecticut Housing Finance Authority, or (iii) a third party for low-income tax credits which requires a property, project, and/or a development to provide Restricted Units (whether or not such Restricted Units meet the definition of Affordable Units and/or such agreement complies with the Inclusionary Housing Set-Aside requirements of Section 50(c)(3)).

RESTRICTED UNIT means a dwelling unit, whether a rental unit or ownership unit, that is subject to affordability controls.

§ 50(c). - Set-Aside of IZ Affordable Units.

(1) Applicability. The requirements and incentives in this Section 50 shall apply to all Applicable Developments which include any new construction and any rehabilitation, conversion, or renovation of existing buildings that is valued greater than fifty percent (50%) of the existing assessed value of the property and which is a:

a. Mandatory Market-Driven Inclusionary Developments. After the Effective Date of this Section, compliance with this Section is required for all properties or developments with a residential component that are proposing ten (10) or more dwelling units that are located within the IZO; or

b. Large-Scale Inclusionary Developments. After the Effective Date of this Section, compliance with this Section is required for all properties or developments proposing seventy-five (75) dwelling units or more (herein referred to as "Large-Scale Residential Developments"), outside of the IZO; or

c. Voluntary Inclusionary Developments. After the Effective Date of this Section, compliance with this Section is optional for all properties or developments with a Residential component of (i) less than seventy-five (75) dwelling units outside the IZO and (ii) less than ten (10) dwelling units within the IZO that elect to construct IZ Affordable Units, consistent with this Section. Such Voluntary Inclusionary Developments shall be eligible for certain zoning bonuses as outlined herein; or.

d. Applicable PDU/PDD Developments. Except as provided in §50(c)(2)(d) below, otherwise Applicable Developments meeting the definitions of this Section 50(c)(1), within an existing PDD or a PDU are subject to this policy. A new PDD or PDU may not create an exemption from this policy.

(2) Exemptions.

The following development projects are exempt from the requirements of this §50(c):

a. Any project which is to be undertaken by the New Haven Housing Authority.

b. Any project that proposes, Student Housing, a Dormitory, or Rooming, Boarding, or Lodging Houses.

c. Any development project which is a Prior Approved Development, a Prior Submitted Development, or any development application subject to a Restricted Housing Agreement.

d. Any PDD or PDU existing on the Effective date which contains a requirement concerning Restricted Units or Affordable Housing.

e. Minor changes to approved site plan approvals which may be granted by the City Plan Staff under Section 64(f)(7)f.

(3) Inclusionary Housing Set-Aside

a. In the Core Market of the IZO, Applicable Developments shall set aside not less than ten percent (10%) of the total number of dwelling units as IZ Affordable Units.. IZO applicable developments shall prioritize an additional five percent (5%) of the total number of dwelling units for persons or families with Housing Choice (Section 8) vouchers. Such Housing Choice Voucher units shall be offered such that the cost for rent and utilities do not exceeds fair market rents as determined by HUD. If tenants with Housing Choice vouchers are not able to be placed and proper documentation is approved by the City, a unit with Housing Choice priority may be rented to a tenant with a household income no more than eighty percent (80%) of AMI until vacancies occur, at which time. Housing Choice tenants will be re-prioritized.

b. In the Strong Market of the IZO, Applicable Developments shall set aside not less than five percent (5%) of the total number of dwelling units as IZ Affordable Units.

c. City-Wide Inclusionary Housing Set-Aside. Outside of the IZO, Large-Scale Inclusionary Developments shall set aside not less than five percent (5%) of the total number of dwelling units as IZ Affordable Units.

d. Voluntary Inclusionary Set-Aside.

i. Outside of the IZO, a development of less than seventy-five (75) dwelling units may set aside five percent (5%) of the total number of dwelling units as IZ Affordable Units on a voluntary basis. A development that opts in will be required to comply with all of the provisions of this Section.

ii. Within the IZO, any project involving ten (10) dwelling units or less may opt into this policy by setting aside the number of units required in a. and b. above, as applicable as IZ Affordable Units. If the calculation results in a partial unit, it is rounded up to the nearest whole unit for the purposes of calculating the units to be provided on site. If the calculation results in less than one-half (0.5) units, then one (1) affordable unit will be required to opt into this policy and receive the incentives. For a payment in-lieu of constructing a unit, the developer pays an in-lieu fee based on the share of total units required under a. and b. above, as applicable. If the calculation results in a partial unit, the in-lieu fee is calculated based on the partial unit (e.g., if the unit calculation requires one-half (0.5) dwelling units, the developer pays fifty percent (50%) of the established in-lieu fee).

e. This Inclusionary Housing Set-Aside applies to rental units. All IZ Affordable Units must be constructed and maintained in a manner consistent with market-rate units provided as part of the Inclusionary Development.

f. The Director of the City Plan Department or his/her designee shall review all Applicable Developments at the time of application for site plan review to verify compliance with income and rental limits as required for the IZ Affordable Units.

g. The Director of the Livable City Initiative or his/her designee shall review leasing plans and rent rolls to verify ongoing compliance with income and rental limits of the IZ Affordable Units.

h. The set-aside IZ Affordable Units shall be deed-restricted to ensure the units have rent limits and income limits to ensure the units are set aside and occupied as IZ Affordable Units for a minimum of ninety-nine (99) years. The deed restriction shall be recorded on the New Haven Land Records in advance of final Certificate of Occupancy.

i. Rounding. When any calculation of the mandatory set aside results in a fractional income restricted unit, the fraction is rounded to the nearest whole unit. If the calculation results in less than one-half (0.5) units total (which would be rounded to zero (0) under this subsection), then one (1) IZ Affordable Unit will be required.

j. IZ Affordable Unit requirements.

i. IZ Affordable Units must be evenly distributed throughout the Inclusionary Development, including across project phases.

ii. IZ Affordable Units must be a mix of unit types and sizes that matches the overall mix of unit types and sizes in the Inclusionary Development.

iii. IZ Affordable Units must have comparable finishes and access to amenities to Market-Rate Units in the Inclusionary Development.

iv. IZ Affordable Units IZ Affordable Units shall reflect the composition of the overall development in terms of accessible design (ANSI Type A and Type B).

k. A payment may be made in lieu of on-site construction, in accordance with Subsection 59(e) below.

(4) Approving Authority. All Applicable Developments must be reviewed and approved by the City Plan Commission as part of Site Plan Review or Detailed Site Plan Review in accordance with Section 64 and Section 50(f) below.

§ 50(d). - Incentives for the Development of IZ Affordable Units.

All applicable Inclusionary Developments, whether mandatory or voluntary, are eligible for the following incentives, the purpose of which is to offset the cost burden of constructing and maintaining affordable units.

(1) FAR Bonus. The Inclusionary Development is entitled to a bonus in FAR of up to twenty-five percent (25%) over the permitted FAR in the underlying zone in which the property is located, but may be otherwise limited by height restrictions and other bulk area requirements of the underlying zone.

(2) Waived Parking Minimums. The Inclusionary Development does not have a minimum amount of automobile parking required for Residential uses, but may elect to include parking as part of the development. Sections 29 and 45 of the Zoning Ordinance, as they relate to motor vehicle parking for Residential uses, are waived.

Notwithstanding the foregoing,

the Inclusionary Development shall comply with bicycle parking requirements. As part of its review, the City Plan Commission may require additional bicycle parking as a condition of approval.

Where the Inclusionary Development is mixed-use with a commercial component or parking is provided voluntarily, the Inclusionary Development must also include loading spaces in accordance with Section 45(a)(1)b. Notwithstanding the criteria of §2 ½-25 of the New Haven Code of General Ordinances, an Inclusionary Zoning application to the City Plan Commission shall include a Traffic Impact and Multi Modal Transport Safety Study as part of the development application for any development project under the Inclusionary Zoning overlay involving new construction of more than seventy-five (75) residential units, more than fifty thousand (50,000) gross square feet of floor area in one structure, or the addition of two hundred (200) or more parking spaces. The study shall show the amount and direction of traffic to be generated by the proposed development and shall estimate its effect on the roadway capacity as well the safety with regards to pedestrian, bicycle, and transit patterns. Furthermore, the traffic study shall provide an analysis of pedestrian, bicycle and transit infrastructure within one-quarter (¼) mile radius, and include best practices in site plan design to connect safely to and to enhance multi modal transportation options.

(3) Density Bonus. Irrespective of density limitations in the underlying zone, the Inclusionary Development is entitled to a density of six hundred (600) square feet for the average gross floor area per dwelling unit. This reduction is applicable to all structures, regardless of age and lot size, whether conforming or nonconforming, so long as they are permissible under applicable building codes.

§ 50(e). - Payment In Lieu of Developing IZ Affordable Units

For projects meeting Section 50(b)(1)(a) or 50(b)(1)(b), the property owner/developer may pay a fee in lieu of building on-site IZ Affordable Units for some or all the obligation in accordance with the following:

(1). A developer may provide a payment in lieu of constructing the IZ Affordable Units obligation to the City of New Haven

deposited in a special fund designated for such purpose. A developer may build a portion of the required IZ Affordable Units and provide a payment in lieu of the remainder of the required IZ Affordable Units. However, the policy of this Section favors construction of on-site affordable units.

(2) Payment in-lieu fee. The amount of the payment-in-lieu figure is based upon a tiered payment in-lieu system that will be reassessed every three (3) years from the effective date of this Section's adoption. The fees and any assessed premium is available in the New Haven Affordable Housing Manual and is on file with City Plan Department and the Livable City Initiative.

(3) Condition of Approval. In advance of Site Plan Approvals by the City Plan Commission, the developer shall enter into an IZ Affordable Unit Agreement, deed restriction or Payment in Lieu of Agreement with the City of New Haven.

§ 50(f). - Performance and compliance.

(1) Inclusionary Developments containing one (1) or more IZ Affordable Unit(s) must meet all applicable requirements under the laws of the State of Connecticut.

(2) All Inclusionary Zoning applications will be formalized with an IZ Affordable Unit Agreement. The IZ Affordable Unit Agreement is required for all Applicable Projects. The IZ Affordable Unit Agreement must be to the satisfaction of the Director of the Livable City Initiative before the project's Site Plan Review or Detailed Site Plan Review application is reviewed by the City Plan Department.

(3) All Inclusionary Developments will comply with tenant screening processes for available affordable units as described in the New Haven Affordable Housing Manual on file with City Plan Department and the Livable City Initiative.

(4) All Inclusionary Developments will be required annually to certify compliance, including certification of incomes of tenants in affordable units and submit a Compliance Report to the Director of the Livable City Initiative. Information on income certification processes and tenant eligibility is provided in the New Haven Affordable Housing Manual and is on file with City Plan Department and the Livable City Initiative.

§ 50(g). - Violation, default and remedies

Upon a violation of any of the provisions of the affordable housing agreement, the Zoning Enforcement Officer will give written notice to the developer or property owner specifying the nature of the violation and require corrective action within a reasonable period of time. If the developer or property owner does not reply or correct the violation within the time specified, they will, for each and every violation, be fined up one hundred dollars (\$100), or the maximum allowed by state statutes for each day that such violation continues after such notice.

§ 50(h). - Severability.

If any Section, Subsection, sentence, clause, phrase, or portion of this Article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion is deemed a separate, distinct, and independent provision, and such holding does not affect the validity of the remaining portions thereof.

§ 50(i) - Fixing of Assessments for Inclusionary Development Property.

Pursuant to Section 12-65b of the Connecticut General Statutes, any owner of real property proposing an Inclusionary Development of not less than four residential units and which Inclusionary Development complies the IZ Affordable Unit set aside requirement of Section 50(c) of this ordinance shall, in addition to incentives identified in Section 50(d), be eligible to enter into an agreement with the City fixing the assessment on such Inclusionary Development property fixing the assessment at the amount equal to seventy percent (70%) of the otherwise applicable assessment on any property within the Core Market as identified in the Inclusionary Zoning Monitoring and Procedures Manual, or ninety-five percent (95%) of the otherwise applicable assessment on any property outside of the Core Market, for a period of ten years.

§ 50(j) - Development Incentives May Be Aggregated

Notwithstanding the limitation of any other section of this Zoning Ordinances or the New Haven Code of Ordinances, or other City regulation to the contrary, an Inclusionary Development that qualifies for one or more benefits or incentives

under this § 50 may receive any other development incentive or benefit for which the development would otherwise qualify.

§ 50(k) - City Plan Commission to Promulgate Regulations; Recommend Fees

The City Plan Commission shall promulgate regulations to implement the intent and purposes of this Section 50. Such regulations shall be compiled in a document to be entitled "Inclusionary Zoning Monitoring and Procedures Manual," and shall include, but not be limited to (1) Inclusionary Zoning Policy & Development Guidelines, (2) Permitting and Approvals, (3) Tenant Selection and Protections, (4) Monitoring and Enforcement; (5) rental and income limits to ensure set aside units are maintained as IZ Affordable Units; (6) a recommended schedule of administrative fees including but not limited to application fees, In-Lieu payment fees and fines for non-compliance with the requirements of this Ordinance and the Inclusionary Zoning Monitoring and Procedures Manual to be included in the Mayor's budget subject to approval by the Board of Alders in a manner consistent with the annual amendment of Chapter 17 of the Code of General Ordinances; and (7) such other regulations, consistent with this Section 50, as may be necessary to effect the purposes of this ordinance. The City Plan Commission shall approve such regulations after public notice and a public hearing of the Commission.

§50(l) - Right of Appeal

(1) Appeals of Administrative Orders. An appeal from an administrative order of the Zoning Enforcement Officer (ZEO) or other City staff charged with enforcing this Section 50 may be taken to the Board of Zoning Appeals as provided in section 63.

(2) IZ Land Use Permitting or Site Plan - any person aggrieved by any decision of a board pursuant to this Section 50, including a decision to approve or deny a site plan, may take an appeal to the Superior Court pursuant to the procedures for such appeal in Connecticut General Statutes §8-8.

(3) Non-Compliance With Operation or Maintenance of IZ Affordable Units - All violations order issued pursuant to §50(g) shall be issued and enforced and shall have the same right and procedures for appeal as violations under Section 9-51 (l) - (l) of the Code of General Ordinances.