

SPECIAL BOARD OF ALDERMEN

DECEMBER 21, 2021

7:00 PM

Aldermanic Chamber and via Zoom

To Join Zoom meeting: <https://us02web.zoom.us/j/86064624182?pwd=VXVXKzloUjh2OGhkciVOYnAwdUtYdz09>
Meeting ID: 860 6462 4182 Passcode: 334087

To Join by Telephone: 1-929-205-6099
Meeting ID: 860 6462 4182 Passcode: 334087

If anybody has a problem accessing the meeting via phone or Channel 16, please call 603-589-3329 and they will help you connect.

PRESIDENT LORI WILSHIRE CALLS ASSEMBLY TO ORDER

PRAYER OFFERED BY CITY CLERK SUSAN K. LOVERING

PLEDGE TO THE FLAG LED BY ALDERMAN LINDA HARRIOTT-GATHRIGHT

ROLL CALL

PUBLIC HEARING

O-21-073

AMENDING THE INCLUSIONARY ZONING SUPPLEMENTAL USE REGULATIONS

Testimony in Favor

Testimony in Opposition

Testimony in Favor

Testimony in Opposition

NEW BUSINESS – ORDINANCES

O-21-083

Endorsers: Alderman Thomas Lopez
Alderman Patricia Klee

RELATIVE TO REQUIRING FACE COVERINGS THROUGH JANUARY 31, 2022

ADJOURNMENT



ORDINANCE

AMENDING THE INCLUSIONARY ZONING SUPPLEMENTAL USE REGULATIONS

CITY OF NASHUA

In the Year Two Thousand and Twenty-One

The City of Nashua ordains that Part II “General Legislation”, Chapter 190 “Land Use”, Part 2 “Zoning Districts and Supplemental Use Regulations”, Article VI “Supplemental Use Regulations”, Section 190-48 “Inclusionary Zoning” of the Nashua Revised Ordinances, as amended, be and hereby is further amended by deleting the existing section and replacing it in its entirety as follows:

“§ 190-48. Inclusionary Zoning.

A. Definitions. As used in this section, the following terms shall have the meanings indicated:

AFFORDABLE

- (1) For rental housing, that the total housing costs for the dwelling unit, inclusive of utilities and other directly related expenses, do not exceed 30% of the income of the household; or
- (2) For owner-occupied housing, that the total cost of mortgage principal and interest, property taxes, association fees and homeowners' insurance does not exceed 33% of the maximum allowed income of the purchaser. Calculation of housing costs shall be based on a methodology developed by the CDD that outlines reasonable assumptions for taxes, utilities, down payment levels, and mortgage terms. In the absence of a current methodology, the calculation shall be based on a 30-year fixed rate mortgage with the average current interest rate for a no-points mortgage, a five percent down payment, and most current taxes, insurance, and other incidental costs, and shall include an assumed private mortgage insurance if relevant.

AFFORDABLE HOUSING

Any housing unit for which occupancy is limited to households at or below income levels for which the unit is intended to be affordable and for which maximum rents or sales prices are set so the unit will be affordable at or below that income level.

AREA MEDIAN INCOME (AMI)

The most current median income in the HUD Metropolitan Fair Market Rent Area (HMFA) for Nashua, NH, adjusted for the number of persons in the household, as determined by the U.S. Department of Housing and Urban Development.

CDD

Community Development Department of the City of Nashua, or its successor. .

COMMUNITY HOUSING DEVELOPMENT ORGANIZATION (CHDO)

As defined in 24 CFR § 92.2, which is hereby incorporated by this reference.

DOWNTOWN

Any lot, parcel or tract within a contiguous area that is located within the D-1 or D-3 zoning districts.

HOUSING DEVELOPMENT

Creation of new housing units through new construction and/or conversion of existing space currently or previously used for non-residential purposes. Renovation of existing housing units is not considered housing development for the purposes of this § 190-48, unless it creates additional housing units in which case the net new number of units shall be considered Housing Development.

OWNERSHIP HOUSING

Any dwelling unit intended to be conveyed in fee simple, condominium, or equity-sharing arrangement such as a community housing land trust and limited equity cooperatives.

RENTAL HOUSING

Any dwelling unit intended to be rented rather than conveyed as Ownership Housing.

- B. Affordable Housing Requirements. This section applies to any application for housing development approval within the City as further outlined in Table 48-1 below. All housing developments must meet the requirements of Table 48-1 below as explained in this section:

- (1) Units: The total number of housing units in the proposed housing development.

- (2) Location: “Citywide” refers to projects in any location in the City of Nashua other than Downtown. “Downtown” refers to projects located in the Downtown.
- (3) IZ Required: This column indicates whether a housing development of a specific unit count in a specific location is required to include below-market affordable units as per this ordinance.
- (4) Total Percent Required: This column indicates the percentage of the total number of units that are required to meet Tier 1 and Tier 2 Target AMI levels as outlined in the next two columns.
- (5) Tier 1 Target AMI: This column indicates a percentage of the total number of units that must be affordable at or below a specific target AMI.
- (6) Tier 2 Target AMI: This column indicates a percentage of the total number of units that must be affordable at or below a second specific target AMI.
- (7) Payment in Lieu for Partial Units: This column indicates whether partial units from the Total Percent Required and Tier 1 and Tier 2 AMI levels can be met with a payment into the Housing Trust Fund (R-21-118 as amended.)
- (8) Payment in Lieu for All Units: This column indicates whether a developer has the option of meeting its requirements under this ordinance in full through payment to the Housing Trust Fund in lieu of providing units on-site into the Housing Trust Fund (R-21-118 as amended.) If this column says “No,” the developer shall not make payments in lieu of any whole unit calculated under the Tier 1 and Tier 2 requirements and must provide those full units.
- (9) Payment in Lieu Value: This column indicates the fee in lieu amount per full unit. That amount is prorated for partial units proportionately.
- (10) Bonus Density Ratio: This column indicates an additional number of market rate units that may be provided in a housing development in return for providing required affordable units on-site. This bonus does not apply for fractional units or full units for which a developer makes a payment in lieu, or for units provided off-site. For more details see E. below.

In cases of conflict between Table 48-1 and this section, the language in the table shall prevail.

C. Term, Location and Size of Affordable Units.

- (1) The intent of this ordinance is to ensure that affordable units created under its requirements be affordable for a period of ninety-nine (99) years. The developer must make a binding commitment that such units will remain affordable for the longest time periods permissible by federal and state law. Affordability of the units for the required terms shall be controlled through a deed restriction, restrictive covenant, or CDHO approved by CDD, that will provide details on how to ensure households are below income maximums; resale of units is limited to prices

affordable below income maximums; and other relevant terms to ensure that the units meet the intent of this ordinance.

- (2) Required affordable units must be integrated with the rest of the housing development, must use a common entrance, and must provide no indications from common areas that these units are affordable housing units.
- (3) Required affordable units need not be the same size as other units in the housing development but the number of bedrooms in such units shall be no less than 10 percent of the total number of bedrooms in the housing development. For the purposes of calculating the number of bedrooms in a housing development, every 400 square feet in each market rate unit will count as a bedroom if CDD determines this method is appropriate in lieu of counting actual bedrooms.

D. Certificates of Occupancy and Project Phasing.

- (1) No final Certificate of Occupancy (CO) shall be issued for a housing development until the terms of this section are met, including but not limited to the requirements of C. above and the complete payment of any fees in lieu of units to the Housing Trust Fund.
- (2) Certificates of Occupancy for affordable units must be obtained at the same time as those of other housing units in the housing development.
- (3) A housing development may be separated into phases of reasonable sizes, in which case the affordable units and/or fees in lieu must be provided in proportion to the portion of the project completed. However, projects shall not be segmented or phased to avoid compliance with these provisions, such as by proposing more units than are intended.

E. Bonus Density Ratios

- (1) Any development that provides required affordable units as outlined in this section is eligible for a bonus density ratio as listed in Table 48-1.
- (2) This ratio is an additional number of market-rate units that may be built in proportion to the total number of on-site required affordable units. Off-site units or fees-in-lieu do not count towards this total.
- (3) All project phases shall have an affordable housing component. In the case of fractional units, the number of bonus units shall be rounded down. However, fractional bonus density units may be combined with other fractional units for which a project may be eligible for to create additional units if the fractions add up to one or more. For example, a ten-unit project with a ten percent inclusionary requirement and a 2.5:1 bonus density ration would be able to build eleven market rate units ($9 + 2.5$ rounded down) and one on-site affordable unit. If the base zoning permitted this project to have 10.5 units in total, the project could have twelve market rate units ($9.5 + 2.5$) and one on-site unit, as well as a fee-in- lieu for 0.05 units ($0.5 \times 10\%$.)

- (4) The bonus density units do not count toward the base number of units for which an Inclusionary Zoning requirement is calculated in this section. For example, a ten-unit project with a ten percent inclusionary requirement and a 2:1 bonus density ratio would be able to build eleven market rate units and one on-site affordable unit. However, if the affordable unit is not provided on-site, or replaced with a fee-in-lieu, the project could only build ten units.

F. Enforcement

- (1) Affordability of rental units shall be enforced through a deed restriction and lien granted to the City of Nashua.
- (2) Affordability of ownership units shall be enforced through a deed restriction. Rental of affordable ownership units shall be permitted only upon notification of the City of Nashua and demonstration of compliance with rental affordability requirements as defined in this section.

G. Administration.

- (1) This section shall be administered by the CDD, including establishing and updating affordable sales prices and rents based on reasonable and documented methodologies.
- (2) CDD shall promulgate regulations to further specify the details of this section, which shall be approved after a hearing and vote of the Planning Board.”

This ordinance shall become effective immediately upon passage.

THROUGH JUNE 30, 2022

Inclusionary Zoning (IZ) Policy Matrix

UNITS	LOCATION	IZ REQUIRED?	TOTAL PERCENT REQUIRED	TIER 1 TARGET AMI [1]	TIER 2 TARGET AMI	PAYMENT IN LIEU FOR PARTIAL UNITS?	PAYMENT IN LIEU FOR ALL UNITS?	PAYMENT IN LIEU VALUE	BONUS DENSITY RATIO [2]
OWNERSHIP HOUSING									
Less than 10	Citywide	N							
10 - 49	Citywide	N							
50 - 99	Citywide	Y	15%	80% (10%)	100% (5%)	Y	N	\$100,000	2:1
100+	Citywide	Y	20%	80% (10%)	100% (10%)	Y	N	\$100,000	2:1
RENTAL HOUSING									
Less than 10	Citywide [3]	N							
10 - 49	Citywide	N							
50 - 99	Citywide	Y	15%	80%	N/A	Y	N	\$37,000	1:1
100+	Citywide	Y	20%	80%	N/A	Y	N	\$37,000	1:1
Less than 10	Downtown	N							
10 - 49	Downtown	N							
50 - 99	Downtown	Y	7.5%	80%	N/A	Y	Y	\$37,000	2.5:1
100+	Downtown	Y	10%	80%	N/A	Y	Y	\$37,000	2.5:1

NOTES:

[1] Target income tiers are applied based on share of total IZ requirement

[2] Bonus density ratio reflects number of additional market rate units allowed for every IZ unit provided

[3] Citywide IZ policy for rental housing does not apply in designated Downtown District

STARTING JULY 1, 2022

Inclusionary Zoning (IZ) Policy Matrix

UNITS	LOCATION	IZ REQUIRED?	TOTAL PERCENT REQUIRED	TIER		PAYMENT IN			BONUS DENSITY RATIO [2]
				TARGET AMI [1]	TIER 2 TARGET AMI	LIEU FOR PARTIAL UNITS?	PAYMENT IN LIEU FOR ALL UNITS?	PAYMENT IN LIEU VALUE	
OWNERSHIP HOUSING									
Less than 10	Citywide	N							
10 - 49	Citywide	Y	10%	80%	N/A	Y	N	\$100,000	1:1
50 - 99	Citywide	Y	15%	80% (10%)	100% (5%)	Y	N	\$100,000	2:1
100+	Citywide	Y	20%	80% (10%)	100% (10%)	Y	N	\$100,000	2:1
RENTAL HOUSING									
Less than 10	Citywide [3]	N							
10 - 49	Citywide	Y	10%	80%	N/A	Y	N	\$37,000	1:1
50 - 99	Citywide	Y	15%	80%	N/A	Y	N	\$37,000	1:1
100+	Citywide	Y	20%	80%	N/A	Y	N	\$37,000	1:1
Less than 10	Downtown	N							
10 - 49	Downtown	Y	5%	80%	N/A	Y	Y	\$37,000	2.5:1
50 - 99	Downtown	Y	7.5%	80%	N/A	Y	Y	\$37,000	2.5:1
100+	Downtown	Y	10%	80%	N/A	Y	Y	\$37,000	2.5:1

NOTES:

[1] Target income tiers are applied based on share of total IZ requirement

[2] Bonus density ratio reflects number of additional market rate units allowed for every IZ unit provided

[3] Citywide IZ policy for rental housing does not apply in designated Downtown District

LEGISLATIVE YEAR 2021

ORDINANCE: O-21-073

PURPOSE: Amending the Inclusionary Zoning Supplemental Use Regulations

SPONSOR(S): Mayor Jim Donchess
Aldерwoman-at-large Shoshanna Kelly
Alderman Patricia Klee
Alderman Thomas Lopez
Alderman Michael B. O'Brien Sr.

COMMITTEE ASSIGNMENT: Planning and Economic Development Committee
Planning Board

FISCAL NOTE: This ordinance will not result in any increases in costs to the general fund. As units come on board, any monitoring costs paid to a 3rd party contractor will be paid for out of the housing trust fund.

ANALYSIS

This legislation amends the Inclusionary Zoning Supplemental Use Regulations.

State statute (RSA 675:2) and NRO Section 190-132 require a public hearing and referral to the city planning board. The public hearing is conducted by the aldermanic planning and economic development committee with notice published in a newspaper of general circulation and posted in two public places at least ten calendar days prior to the date of the hearing. (Notice period does not include the day notice is posted or the day of the public hearing. RSA 675:7, 1.) A favorable vote of two-thirds of all the members of the board of aldermen present and voting would be required if a protest petition is filed pursuant to RSA 675:5. Under RSA 676:12 and NRO Section 105-3, no building permit may be issued after the legal notice has been posted if the proposed changes would, if adopted, justify refusal of the permit. This limitation applies for a period of 120 days.

Approved as to form: Office of Corporation Counsel

By: /s/Celia K. Leonard

Date: November 3, 2021



ORDINANCE

RELATIVE TO REQUIRING FACE COVERINGS THROUGH JANUARY 31, 2022

CITY OF NASHUA

In the Year Two Thousand and Twenty One

Whereas, the Nashua Board of Health provided the following statement:

Relevant statistics as of December 14, 2021, comparing the change over the prior 2 weeks. Nationwide:

- Cases of Covid-19 are up 47%
- Hospitalizations are up 21%
- Deaths are up 40%

This is all despite just a 1% increase in testing. And New Hampshire, along with Rhode Island, leads the country in cases per capita.

Gene sequencing has showed that the Omicron variant has arrived in New Hampshire, and we have verified that Covid-19 tests do not cross-react with either the flu virus or the common cold, even in the face of the Omicron variant. A positive Covid-19 test means Covid-19. To date, 799, 000 Americans have died of Covid-19. Many more have been left with disabilities due to the ravages of serious Covid-19 infection. We have come to learn this virus has killed 1 of every 415 Americans.

We are setting records with the number of cases seen here in New Hampshire, Greater Nashua and the City of Nashua. There is an increasing number of cases in those who are unvaccinated. Our local hospitals are reporting 60%-80% of patients are unvaccinated and very ill. In addition, our hospitals are over capacity, having to stand up temporary ICU beds, and they are facing significant staffing issues, so much so, that Governor Sununu activated the National Guard to assist the hospitals in providing care.

Multiple scientific analysis and projections show that we are headed for a substantial increase in illness and hospitalizations due to a triple threat: the overwhelming presence of the highly contagious and deadly Delta variant, flu season and the even more contagious Omicron variant. This does not even take into account the uptick in non-Covid-19 illness due to pandemic delays in care and testing.

We know that vaccines are safe and remain very effective in preventing hospitalization and death. A significant portion of the 52.8 percent of people who were vaccinated were vaccinated more than six months ago, and immunity wanes. Children were only recently approved in the past couple of months. Getting a booster or completing the vaccine series for most children is not something that can reasonably be accomplished before the holidays.

Much has been written about the effectiveness of masks, and our understanding of their role in preventing serious illness in the wearer and in reducing spread in the community in general. The CDC has updated their assessment of mask effectiveness as recently as December 6th. Masks are unequivocally an important tool in fighting the spread of Covid-19. In fact, in one of the most controlled settings known, an outbreak of Covid-19 in the contained environment of an aircraft carrier, wearing a face covering was associated with a 70% reduction in the risk of infection with Covid-19. Masks have also been proven to be safe. Details can be found on the CDC website. <https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/masking-science-sars-cov2.html>

We recognize the trend in the uptick in cases during the holidays last year. We saw an increase in cases during this past Thanksgiving holiday on top of the already increasing number of cases due to the high transmissibility of the Delta variant. With the onset of the December holiday and recreational activities, individuals will engage in more indoor activities that will increase crowding in indoor public settings for gatherings, traveling, shopping and other venues. We want to increase the protection of everyone during and after those activities. This recommendation is made based on the substantial and high transmissions that are occurring in the community setting.

Thus, the Board of Health urges the Board of Alderman to implement a mask mandate and to do so without delay given the impending Holidays.

Now therefore, the City of Nashua ordains that the following Emergency Public Health Order adopted by the Nashua Board of Health is hereby approved:

1. Employees of all businesses shall wear a face covering over their mouth and nose when interacting with the public and whenever they are within six feet of a co-worker or a customer.
2. Members of the public entering any business, including without limitation any outdoor area where business of any sort is conducted, work site, or government building must wear a face covering over their nose and mouth.
3. Members of the public entering a restaurant for the purpose of picking up food for take-out or any other purpose must wear a face covering over their mouth and nose. Members of the public dining at a restaurant may remove face covering when actively eating and drinking.
4. Residents, visitors, and members of the public entering or present at a residential or commercial building complex of greater than two (2) units must wear a face covering over their nose and mouth while in common areas and communal spaces.

5. This order applies to all individuals over the age of 2, regardless of vaccination status.
6. A face covering is not required to be worn by any person if said person can show a medical professional has advised that wearing a face covering may pose a risk to said person for health related reasons. This exception to the face covering requirement for health reasons shall require a person to have in his or her immediate possession a written document executed by a medical doctor, registered nurse practitioner, or a physician's assistant authorized to prescribe medication which document certifies that the practitioner has warned the individual that he or she should not wear a face covering because it would pose a risk to his or her health.
7. All businesses open to the public, including restaurants, retail stores, service providers, and places of amusement and recreation, and residential and commercial buildings of greater than two (2) units shall post at each public entrance a notice stating "FACE COVERINGS REQUIRED."
8. Persons engaged in utilizing cardio, strength training, and other gymnasium equipment may remove the face covering during the actual use of such equipment provided a distance of six (6) feet from any other person is maintained.
9. Persons at places of amusement, including bingo halls, bowling alleys, charitable gaming facilities, and similar places where food and drink is served secondarily to the main activity may remove face covering while actually engaged in eating or drinking and not at other times.
10. Persons receiving personal care services including hair cutting and other hair treatment, facials, tattooing, piercing, and similar services, may remove face covering during any limited period during which the face covering actually interferes with the performing of the service.
11. For purposes of this ordinance and any other face covering requirements now in force or hereafter adopted the following words shall have the indicated meanings:

"Business" means any manager or supervisor on the premises when a violation occurs and any owner of the business.

"Face covering" means a covering made of cloth, fabric, or other soft or permeable material, without holes, that covers only the nose, mouth, and surrounding areas of the lower face. A face covering may be a 2-layer cloth mask or a surgical mask, but may not be a gaiter or scarf.

"Owner" means any one or more of the natural persons owning a business; in the case of a business owned by a partnership "owner" means the partnership and all general and limited partners; in the case of a business owned by a limited liability company "owner" means the company and all managers and members thereof; in the case of a business owned by a corporation "owner" means the corporation and all officers, and directors,

ORDINANCE

O-21-083

thereof; and in the case of a business owned by a corporation having fewer than ten (10) shareholders "owner" means all shareholders.

This ordinance shall be effective immediately and shall continue in effect until the end of the day of January 31, 2022. The Board of Health and the Board of Aldermen reserve the right to revisit this end date if the public's health remains threatened due to increased transmission.

The City Clerk is directed not to codify this ordinance in the Nashua Revised Ordinances but to designate it as **Covid-19 Emergency Measure No. _____** (City Clerk to assign appropriate number upon passage) and publish it and any subsequent emergency measures on the city website.

LEGISLATIVE YEAR 2021

ORDINANCE:

O-21-083

PURPOSE:

Relative to requiring face coverings through January 31, 2022

ENDORSERS:

**Alderman Thomas Lopez
Alderman Patricia Klee**

**COMMITTEE
ASSIGNMENT:**

FISCAL NOTE:

None.

ANALYSIS

This legislation approves the regulation adopted by the Board of Health requiring the wearing of face coverings by persons at various places, effective through January 31, 2022.

Approved as to form:

Office of Corporation Counsel

By: /s/ Steven A. Bolton

Date: December 17, 2021