

**CASH PAYMENT IN LIEU OF AFFORDABLE UNITS**  
**in accordance with Section 4.08 of the Zoning By-law**  
**as amended, effective November 18, 2021**

Approved by the Brookline Planning Board, January 7, 2021

All projects that include four or more residential units, whether by new construction or conversion from a non-residential use, must comply with Section 4.08 of the Zoning By-law.

Developers of such projects are strongly encouraged to provide affordable units on-site. However, in accordance with paragraph 5.d of Section 4.08, developers of projects with four to 19 units may choose to make a cash contribution, referred to herein as a “Trust Payment”, to the Brookline Housing Trust in lieu of providing affordable units.

The following schedule and guidelines for payments in lieu of affordable units in condominium projects was originally approved by the Planning Board on September 13, 2001, expanded on January 7, 2004 to include rental projects, further expanded on October 30, 2014 to include subdivisions of land, and most recently amended on December 15, 2020, all based upon recommendations of the Housing Advisory Board and approval of the Planning Board.

The Trust Payment amount that each developer must contribute is based upon a Contribution Factor, which is related to the number of units in the project:

| <u>No. of Units</u> | <u>Contribution Factor</u> |
|---------------------|----------------------------|
| <u>4</u>            | <u>2.0%</u>                |
| <u>5</u>            | <u>3.0%</u>                |
| <u>6</u>            | <u>4.0%</u>                |
| <u>7</u>            | <u>5.0%</u>                |
| <u>8</u>            | <u>6.0%</u>                |
| <u>9</u>            | <u>7.0%</u>                |
| <u>10</u>           | <u>8.0%</u>                |
| <u>11</u>           | <u>9.0%</u>                |
| <u>12</u>           | <u>10.0%</u>               |

|           |              |
|-----------|--------------|
| <u>13</u> | <u>11.0%</u> |
| <u>14</u> | <u>12.0%</u> |
| <u>15</u> | <u>13.0%</u> |
| <u>16</u> | <u>14.0%</u> |
| <u>17</u> | <u>15.0%</u> |
| <u>18</u> | <u>16.0%</u> |
| <u>19</u> | <u>17.0%</u> |

- NOTE: In the case of a renovation of and/or an addition to a pre-existing building, any pre-existing units remaining within the building shall not be counted when applying the cash payment option. Projects that retain pre-existing units which, when subtracted from the total number of units in the project, result in few than four units, shall pay a pro rata share of the Contribution Fee shown above and as further illustrated in the examples below.

### **Condominium Projects**

At the time of initial sale of each condominium unit, the Trust Payment required from a developer shall be based upon the following formula:

$$\textit{Sales Price} \times \textit{Contribution Factor}$$

**Example:** *Upon the initial sale of an \$800,000 condominium unit in an eight-unit project the Trust Payment due would be  $\$800,000 \times .06 = \$48,000$ .*

The sales price of the unit shall include all parking spaces sold or committed to be sold to the buyer of the unit at the time of closing, as well as the cost to the buyer of any build-out, enhancement and/or finish package.

The developer shall provide a check made out to the “Brookline Housing Trust”, along with a copy of the unit deed and HUD Settlement Sheet upon the closing of each unit, as a precondition to the issuance of a final certificate of occupancy for the project.

## Rental Projects

For rental projects, the Trust Payment shall be based upon the market value of the residential portion of the project at the time of initial occupancy and will be a precondition to the Town's issuance of a certificate of occupancy for the project.

The Trust Payment required from a developer shall be based upon the following formula:

$$\textit{Project Value} \times \textit{Contribution Factor}$$

**Example:** *For an eight-unit rental project valued at \$6 million, the Trust Payment due would be  $\$6,000,000 \times .06 = \$360,000$ .*

Prior to requesting a certificate of occupancy, the developer shall provide the Town with the following:

- a list of units, indicating
  - square footage
  - number of bedrooms and baths
  - number of parking spaces
  - contract rent, including an indication of which utilities and which services (such as parking and concierge services) are included in the rent;
- the projected operating budget, detailing projected expenses and the basis (including comparisons from comparable properties owned by the developer) for these estimates;
- copy of any appraisal(s) previously completed for the property.

Based upon this information, the Assessing Department of the Town will estimate a Market Value for the property.

## Conversion of Rental Project to Condominiums

Should a rental project that has made a Trust Payment subsequently be converted and sold as condominiums, the developer or any subsequent owner shall make an Additional Trust Payment as a condition of the transfer of each condominium, calculated as follows:

Trust Payment, based upon the actual sales price of each condominium, *applying the same Contribution Factor that was used for the original Trust Payment*

LESS the following amount:

[(square footage of unit to be sold, *divided by* total square footage of residential units)

*multiplied by:* original Trust Payment already made for the whole project as a rental project

*multiplied by:* an “inflation factor” applied to the period of time between the payment of the initial Trust Payment and the sale of the condominium unit.]

*NOTE: The inflation factor shall be defined as the Consumer Price Index for Northeast Urban Consumers for the most recent six-month period available at the time of condo sale, divided by the Consumer Price Index for Northeast Urban Consumers for the year of the original Trust Payment.*

**Example:** *If the original Trust Payment for an 8-unit rental project completed in November 2010 was \$200,000, and a unit representing 15% of the total square footage of the project sold in November, 2021 for \$800,000, the payment due, using the original 4.5% Contribution Factor, would be  $(\$800,000 \times .045) - [(.15 \times 200,000) \times (273.5/235.1)] = \$1,110.$*

This obligation will be secured by a document recorded at the Norfolk Country Registry of Deeds or the Land Court, if registered land for the longest period allowable by law.

## Subdivisions of Land and Other Residential Projects

For other residential projects of four or more units, including the subdivision of land, whether or not the subdivision requires approval under the Subdivision Control Law (M.G.L., c.41, §§81K-81GG), the developer shall have the choice of either of the two following alternatives:

### Alternative 1

Prior to receipt of a permit to construct one or more dwelling units on land that is part of a Project subject to Section 4.08, the subdivision developer may make the Trust Payment based upon 2 times the lot value (as assessed by Tax Assessor or sales price, whichever is higher) as follows:

$$(2 \times \text{Lot Value}) \times \text{Contribution Factor}$$

**Example:** *The Trust Payment due upon the sale of an \$800,000 single-family home building lot within a subdivision potentially allowing 8 potential new residential units would be  $(2 \times \$800,000) \times .06 = \$96,000$ .*

Upon closing on each lot, the developer shall provide a check made out to the “Brookline Housing Trust,” along with a copy of the deed and settlement statement. Security for such payment shall be required as a condition of the special permit.

### Alternative 2

The Trust Payment shall be based upon the sales price of each lot in the Project, plus, as a condition of issuance of a certificate of occupancy for any home subsequently constructed on such lot, the then property owner shall make an Additional Trust Payment based upon the home’s Affidavit for Final Cost of Construction, including all land improvement costs, submitted by the general contractor to the Building Department:

Trust Payment based on Lot sale:

$$\text{Lot Value} \times \text{Contribution Factor}$$

PLUS Additional Trust Payment based on unit construction:

Cost of Construction x Contribution Factor

**Example:** *The total Payment due, in two stages, for a \$1 million home on an \$800,000 lot that is part of an 8-unit project would be  $(\$800,000 \times .06) + (\$1,000,000 \times .06) = \$108,000$ .*

In lieu of payment prior to the time of issuance of the certificate of occupancy, the Town may require the developer to provide a mortgage or other surety to the Town securing payment upon sale of the unit.

Note: A subdivision of land shall be subject to the requirements of Section 4.08 if four or more residential lots are created within a five year period.

**Further examples**

Example #1: Four-unit project with three pre-existing units and one new unit.

Required Contribution Factor =  $\frac{1}{4} \times 2\% = 0.5\%$ .

If the total project value (rental) or sales price (condominium) = \$2 million,  
the Cash Payment due =  $\$2\text{mm} \times .005 = \$10,000$

Example #2: Five-unit project with two pre-existing units and three new units.

Required Contribution Factor =  $\frac{3}{5} \times 3\% = 1.8\%$

If the total project value (rental) or sales price (condominium) = \$3 million,  
the Cash Payment due =  $\$3\text{mm} \times .018 = \$54,000$

Example #3: Eight-unit project with six pre-existing units and two new units.

Required Contribution Factor =  $\frac{2}{8} \times 6\% = 1.5\%$

If the total project value (rental) or sales price (condominium) = \$6 million,  
the Cash Payment due =  $\$6\text{mm} \times .015 = \$90,000$