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## **INCLUSIONARY ZONING GUIDELINES**

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## **Section 1. Inclusionary Zoning Review Process**

### **A. Preliminary Meeting**

A developer of any multiple family project consisting of 8 units or more and any single family subdivision greater than 15 units must meet with the Director of the Department of Community Development and Planning prior to any permit/application hearings before the City Council, Planning Board or Board of Appeals or prior to filing a site plan or building permit plan application, in order to discuss the proposed project or activity and the Inclusionary Zoning Ordinance (the “Ordinance”) requirements and process.

### **B. Affordable Housing Application Submission**

Applicants shall complete and file any required Affordable Housing Application at the same time as the filing of a Site Plan or Building Permit Plan Application to the Planning Board. The Application, as further described in Section 2 below, shall be on the form approved by the Department of Community Development and Planning and shall be accompanied by the required materials. Upon receipt of any complete Affordable Housing Application, the Planning Board will within five (5) days of receipt forward the application to the Construction Review Committee for review and recommendation.

### **C. Construction Review Committee Review**

Within thirty (30) days of receipt of an Affordable Housing Application, the Construction Review Committee will review the application to confirm that the intent of the Ordinance, in terms of the physical design and location of the affordable units, is being carried out. The Committee will recommend to the Planning Board whether compliance with the Ordinance has been demonstrated and will also forward a copy of the application and recommendation to the City Council.

### **D. Planning Board Review and Recommendation**

Within thirty (30) days of receipt of the recommendation by the Construction Review Committee, and as part of the Site Plan or Building Permit Plan review, the Planning Board will review the Committee’s recommendation and the Affordable Housing Application. If the Planning Board deems that the application meets the requirements of the Ordinance, it will recommend approval of the Affordable Housing Application by City Council. The Planning Board will refer the application to the City Council for final action along with a recommendation and the draft of the Participation Agreement.

### **E. City Council Approval**

At its next regularly scheduled meeting, or within 30 days of receipt of a recommendation from Planning Board, the City Council shall review the Affordable Housing Plan and draft Participation Agreement for final approval. Within 30 days of receiving a recommendation from the Planning Board, the City Council shall certify in writing to the applicant whether or not the Affordable Housing Application has been approved. Failure to take action within said 30 day period will be deemed to be a grant of approval unless an extension is requested

by the applicant or the City Council. Approval of the Affordable Housing Application shall not be unreasonably withheld and any extension period shall not exceed an additional 30 day period.

## **Section 2. Affordable Housing Application Submission**

### **A. Application Form**

Applicants must complete the Affordable Housing Application, including the application form and all required documentation, and submit the completed Affordable Housing Application to the Planning Board. The Affordable Housing Application shall include the items listed below.

1. Affordable Housing Application Form, designed to obtain information from the Applicant related to Section 4.11 of the Zoning Ordinance.
2. Inclusionary Housing Plan. The Inclusionary Housing Plan must include the following information:
  - a. A description of the proposed project and the market rate and affordable units, including: number, size (both square footage and number of bedrooms/baths) and location of proposed units; description of proposed site improvements including parking and any amenities; the proposed projected sales prices or rents of the market rate and affordable units; any proposed project phasing.
  - b. Additional information that must be provided if affordable ownership units are proposed include: proposed condominium association fees, if any, for affordable and market rate units; and a draft restrictive covenant that meets the requirements set forth in Guidelines Section 3 below.
  - c. Additional information that must be provided if affordable rental units are being proposed includes: types of utilities being proposed and list of utilities for which tenants will pay directly; and form of a draft regulatory agreement or other form of restriction that meets the requirements set forth in Guidelines Section 3 below.
3. Alternative Methods of Affordability. If units are proposed to be constructed off-site or a cash payment in lieu of on-site units is proposed pursuant to Ordinance Section 4.11.6, fourteen (14) copies of any request for alternative methods of affordability must be filed with the City Clerk's Office. Eleven (11) copies of the application will be forwarded to members of the City Council, and three (3) copies will be forwarded to the Department of Community Development and Planning. All requests for approval of an alternative method of affordability must describe whether an off-site location or a cash contribution is being proposed. Applications will be reviewed in accordance with the procedures set forth in Guidelines Section 8 below. In addition, the following information must be provided:
  - a. For requests for off-site locations, applicants must provide:

1. Narrative description of site including: description of location, surrounding area, parking availability and access to transportation;
  2. Narrative supporting the need for an off-site location and why an alternative site is in the best interests of the City; site plan of alternative site and description of proposed affordable units including the number and type of off-site units.
- b. For requests for cash payment in lieu of units, the developer shall file the cash payment request form with the City Clerk documenting the reason that on-site provision of the affordable units is not feasible or not in the best interests of the City. The request should describe the proposed market rate project and any physical characteristics of the site or proposed project that support the request. A pro forma documenting project costs and projected sales or rental prices must be included.
4. Participation Agreement. Applicants must submit a signed draft of a Participation Agreement as part of the application.

### **Section 3. Documentation**

#### **A. Participation Agreement**

After the Affordable Housing Application has been approved by the City Council, a City/Developer Participation Agreement shall be executed by the developer and signed by the Mayor and recorded at the Essex County Registry of Deeds. The Agreement becomes an explicit acknowledgment of the affordability requirements and shall refer to the scope of the project, including the terms of affordability, as described by the Affordable Housing Application approved by the Planning Board and City Council. The Agreement shall stipulate that an Affordable Housing Declaration of Restrictions or equivalent agreement or restriction approved by the City shall be recorded with the deed and referenced with the deed prior to occupancy of the project. (See Section 3.B below). The City/Developer Participation Agreement shall be legally binding as part of the building permit issued for construction. No building permit for the project shall be issued prior to the execution of the City/Developer Participation Agreement.

#### **B. Declaration of Restrictions**

Prior to occupancy of the project, the Affordable Housing Declaration of Restrictions shall be recorded with the deed and referenced within the deed. The Declaration of Restrictions restricts the affordability permanently and binds the eligibility, affordability and resale restrictions on subsequent purchasers. The Declaration of Restrictions should be approved by the City's legal council and executed by the purchaser of each affordable unit in the case of ownership units, or by the owner of the development in the case of rental units.

The principal elements of the restriction are:

- Affordability is restricted in perpetuity;
- The unit must be occupied by the owner of the unit, if ownership, or the household named on the lease if rental.
- Resale by the purchaser is subject to eligibility and affordability requirements;

- Resale prices shall be calculated based on the percentage increase of the median income between the time of initial purchase to time of resale;
- With approval by the City, the resale price may be increased or decreased by 5% in order to assure that the target income groups' ability to purchase will be kept in line with the unit's market appreciation; and
- The eligibility, affordability, and resale restrictions are binding on subsequent purchasers.

The permanent affordability restriction must be approved by the Massachusetts Department of Housing and Community Development, as required by M.G.L. Chapter 184, Section 32. The burden of obtaining approval for the restriction shall be on the City.

## **Section 4. Affordability Requirements**

### **A. Household Income**

The Department of Community Development and Planning establishes current income figures for eligible households based upon percentages of median Standard Metropolitan Area household income, as provided in Section 4.11 of the Zoning Ordinance. The Department of Community Development and Planning will include the applicable income levels and example calculations as a part of the Affordable Housing Application Packet.

### **B. Affordability**

The Department of Community Development and Planning may establish current maximum sales prices and rents for affordable housing units in an inclusionary zoning development. These figures will be presented in the Affordable Housing Application Packet, and will be updated annually by the Department of Community Development and Planning.

## **Section 5. Construction Standards**

In general, Affordable Units should be comparable to market rate units. The exteriors of such units must closely resemble the exteriors of other units, and residents of Affordable Units will have full access to common areas. Affordable Units shall have the same amenities as market rate units, including without limitation, indoor parking spaces, balconies, private yard space and storage areas.

Whether Affordable Units are developed on-site or off-site, they will generally meet the following minimum size standards:

Studio	250 square feet	1 bathroom
1 bedroom	700 square feet	1 bathroom
2 bedrooms	900 square feet	1 bathroom
3 bedrooms	1200 square feet	1 ½ bathrooms
4+ bedrooms	1400 square feet	2 bathrooms

Where Affordable Units are developed off-site and/or in existing buildings, the level of construction undertaken shall result in units which are “good as new” in order to support permanent affordability. The level of rehabilitation and quality of equipment and materials will (i) assure durability and minimize future maintenance costs; (ii) include energy efficient and water conserving building elements typical of new construction (iii) be compatible with contemporary standards with regard to amenities (such as kitchen cabinets, size of appliances, electric service, etc.) and (iv) be free of such potentially hazardous conditions such as asbestos and lead paint. The Department of Community Development and Planning shall review and approve plans and specifications of affordable units for conformity with these standards.

## **Section 6. Ownership Units**

### **A. Initial Sales Prices**

Prior to marketing “for sale” Affordable Units, the Department of Community Development and Planning will provide the Owner with a sales price worksheet which the Owner shall complete and sign. Upon written notification by the Owner to the Department of Community Development and Planning that marketing activities may commence, the Department will calculate a final sales price which reflects then current and confirmed data. The final sales price will be based on the most current HUD Boston Area Median Income adjusted for family size, and current mortgage interest rates, property taxes, and insurance costs estimated by the Department, and a monthly condominium fee estimated by the Owner. The Owner will provide verification to the Department of the component costs making up the condominium fee. If there is a significant change in the condominium fee prior to the closing, the Department reserves the right to recalculate the sales price. The final sales price must be in conformance with the Massachusetts Department of Housing and Community Development Local Initiative Program.

### **B. Condominium Documents**

In cases in which the Owner is filing a master deed and developing a new condominium association, the Owner will be required to submit the proposed condominium draft condominium documents to the Department of Community Development and Planning for review. Review will address issues relating to long-term affordability.

### **C. Marketing of Ownership Units**

Affordable ownership units shall initially be sold via a lottery conducted by the developer or their consultant, at the owners sole cost and expense, as approved by the Department of Community Development and Planning and must be in accordance with the guidelines of the Massachusetts Department of Housing and Community Development Local Initiative Program (LIP). Seventy percent of the units shall be reserved for Peabody residents (including individuals who are employed within the City of Peabody, and former residents as defined in the Ordinance). The units shall be affirmatively marketed in accordance with the guidelines set forth by the LIP program. The applicant shall submit lottery plans to the Department of Community Development at least six (6) months prior to the projected date of requesting certificates of occupancy for the project of the projected occupancy date of the affordable units.

A qualified lottery agent that is accepted by the City of Peabody Department of Community Development and Planning, will conduct the marketing of the ownership Affordable Units. Marketing activities will include publication of criteria as to sufficient income, credit status, and residency status and downpayment requirements. The Affordable Units will be marketed at the expense of the Owner through the following media at a minimum:

- Direct mail to the Department's database of local organizations and agencies and first-time homebuyer counseling graduates.
- Newspaper advertising in the Peabody/Lynnfield Weekly, the Salem Evening News, El Mundo, and the Baystate Banner.
- A notice on the City of Peabody cable television channel.
- Inter-departmental emails to Peabody municipal employees.
- Flyers distributed within the neighborhood of the Affordable Units.

#### **D. Monitoring**

The applicant will verify annually that any ownership Affordable Unit is occupied on a year-round basis as the eligible household's principal residence. The applicant will contract with an independent Monitoring Agent and provide to the Department of Community Development and Planning their Monitoring Services agreement that addresses: compliance monitoring; supervision of resales; monitoring services fee; annual reports; and enforcement services.

#### **E. Resale**

When the owner of an affordable ownership unit seeks to sell or convey the property, he or she shall be subject to the resale restrictions established in the Deed Rider attached to the property and approved by the Department of Housing and Community Development under the Local Initiative Program.

#### **F. Waiting List**

The Department of Community Development and Planning shall maintain a waiting list of Eligible Households by priority status who have filed an application or a letter and who meet the qualifications defined herein. Such application should include at least the following, in order to classify the applicant: the ages and relationships of household members, gross household income, and information related to priority status. It is understood that it is the responsibility of the applicant to update information, which will affect either income or priority status, and that it is not the responsibility of the Department to verify actual status until a unit becomes available.

### **Section 7. Rental Units**

#### **A. Setting of Rents for Affordable Rental Units**

The monthly rents charged to tenants of low income units shall not exceed an amount equal to thirty percent (30%) of the monthly adjusted income of a household whose gross income equals seventy percent (70%) of the median income for the Area, with adjustment for the number of bedrooms in the unit, as provided by HUD, excluding a utility allowance for any utilities and services (not including telephone or cable). Rents must be in conformance with the Local Initiative Program and approved by the Massachusetts Department of Housing and Community Development.

Rents may be updated on an annual basis, based upon changes in the appropriate published income limits and/or in the Area Median Income. The Department of Planning and Community Development will notify Owners upon publication of new maximum rent limits. Upon notification by the Department of Community Development and Planning of new maximum rent limits, the Owner may increase rents with thirty (30) days notice to tenants of Affordable Units.

## **B. Marketing of Rental Units**

Affordable rental units shall be rented by the owner in accordance with the requirements of the Inclusionary Zoning Ordinance and the LIP program, including the local preference and affirmative marketing requirements. Prior to marketing or otherwise making available for rental any of the Affordable Units, the Owner must obtain the Department of Community Development's approval of a marketing plan for the Affordable Units. Such marketing plan must describe the tenant selection process for the Affordable Units and must set forth a plan for affirmative marketing of Affordable Units to minority households. All costs of carrying out the marketing plan shall be paid by the Owner. The Owner shall maintain for five years following the rental of the Affordable Units a record of all newspaper advertisements, outreach letters, translations, leaflets and any other outreach efforts.

Owners of rental units may require a security deposit equal to one month's rent (except where any subsidy program requirements would prohibit it) and the payment of the first month's rent at the time a lease is signed with an eligible tenant. A tenant shall not be charged leasing or broker fees. The Owner is entitled to conduct tenant related reference and background checks conforming to State and Federal Fair Housing Laws and in a manner consistent with all other market rate units and the Owner's customary practices. The tenant shall complete a tenant application to certify income. The Owner shall notify the City as to the incomes and household sizes of the chosen tenants.

## **C. Monitoring**

The project owner shall be responsible for annually ensuring and reporting income eligibility of tenants in rental projects. The Owner will file an annual report to the Department of Community Development and Planning within sixty (60) days of the end of each calendar year according to a format provided by the City. The report shall state current rent levels, rental income and verification of tenant income. The annual report shall state any changes in income of tenants in Affordable Units, proposed changes in rent levels or proposed changes in designation of specific units. The following rules shall apply:

1. Owners may make rent determinations no more than twice annually.

2. Any Affordable Unit occupied by an Eligible Household at the commencement of occupancy shall be deemed an Affordable Unit so long as (i) such unit continues to be rent restricted and (ii) the tenant's income does not exceed 140% of the maximum income.

3. If a tenant's income exceeds 140% of the maximum income at the time of annual eligibility determination, the unit shall be deemed an Affordable Unit until the next available unit with the same number of bedrooms which is not an Affordable Unit is rented to an Eligible Household.

4. Upon the designation of a new Affordable Unit, the unit occupied by the household with an income above 140% of the maximum income shall lose its designation as a Affordable Unit, and the rent charged the tenant may be at the market rate.

#### **D. Waiting List**

The Owner shall maintain a waiting list of Eligible Households by priority status who have filed an application or a letter and who meet the qualifications defined herein. Such application should include at least the following, in order to classify the applicant: the ages and relationships of household members, gross household income, and information related to priority status. It is understood that it is the responsibility of the applicant to update information, which will affect either income or priority status, and that it is not the responsibility of the Owner to verify actual status until a unit becomes available.

#### **E. Sale of Rental Property**

When the owner of a rental development with affordable rental units seeks to sell or convey the property, he or she shall be subject to the resale restrictions established in any Regulatory Agreement attached to the property and approved by the Department of Housing and Community Development under the Local Initiative Program. The Owner shall notify the Department of Community Development in writing if the property is leased or sold.

### **Section 8: Alternative Methods of Compliance**

Section 4.11 mandates that affordable units shall be provided onsite. However, in certain circumstances the City Council may, at the formal written request of the developer, consider an alternative method of compliance. In granting such authorization, the City Council must find that the developer has demonstrated such alternate method of compliance is in the best interests of the City. To have such a request considered, the burden of proof shall be on the developers, who must make full disclosure to the City Council of all relevant information. Approval of alternate methods of compliance shall be only for the methods described below in Ordinance Section 4.11.6.

Except as set forth below, affordable units provided through an alternate method shall comply in all other respects with the requirements of this Ordinance. The incentives described in Section 4.11.5 are not available to development proposals in which the

requirements of this Section are met when the affordable units are provided on-site or off-site.

#### **A. Request to Provide Affordable Units Off-Site**

1. Upon receipt of a complete request to provide affordable units off-site, the Department of Community Development shall review the request and make a recommendation to the City Council within thirty (30) days.
2. Upon receipt of a recommendation from the Department of Community Development and Planning, the application shall be placed on the next City Council meeting agenda for review. The developer or his representative should be present at the Council meeting in order for the City Council to act on the request.
3. In the event that the City Council deems that a filed application lacks enough information upon which to base a decision regarding the matter, the applicant shall be advised and given an opportunity to submit additional information or revise the request. A request may be dismissed for failure to comply with these rules.
4. The petitioner shall produce at the meeting any information as requested by the City Council, and the City Council may retain any record or plan which has been introduced in evidence.
5. Within thirty (30) days of the matter being placed on the City Council's agenda, the City Council shall certify in writing to the developer whether or not the request to provide affordable units off-site has been approved. If approved, the Council shall at the same time certify in writing whether or not the Affordable Housing Application is approved. Failure to take action within said thirty (30) day period will be deemed to be a grant of approval unless an extension is requested by the applicant or the Council and such request is approved by the Council or the applicant, respectively.
6. In no case may a building permit for the market rate units be issued by the Building Inspector until the Affordable Housing Application for the off-site affordable units has been approved.

#### **B. Request to Provide a Cash Payment in Lieu of Units**

1. Upon receipt of a complete request to provide a cash payment in lieu of units (as defined by the checklist on the application), the Department of Community Development shall review the request to determine whether the proposal meets the requirements of the Inclusionary Zoning Ordinance and make a recommendation to the City Council within thirty (30) days.
2. Upon receipt of a recommendation from the Department of Community Development and Planning, the application shall be placed on the next City Council agenda for review. The developer or his representative should be

present at the Council meeting in order for the City Council to act on the request.

3. In the event that the City Council deems a filed application or plan inadequate to a proper understanding of the matter, the applicant shall be advised and given an opportunity to submit additional information or revise the request. A request may be dismissed for failure to comply with these rules.
4. The petitioner shall produce at the meeting any information as requested by the City Council, and the City Council may retain any record or plan which has been introduced in evidence.
5. Within thirty (30) days of the matter being on the City Council's agenda, the City Council shall certify in writing to the developer whether or not the request to provide a cash payment in lieu of affordable units has been approved. Failure to take action within said thirty (30) day period will be deemed to be a grant of approval unless an extension is requested by the applicant and such request is approved by the Council.
6. If the request to provide a cash payment in lieu of units is approved, no Certificate of Occupancy shall be issued for any part of the project until the entire cash payment has been received by the City, or a payment schedule has been approved by the City Council and the Mayor. The funds shall be kept in a separate account by the City Treasurer, and any interest earned shall be credited to and become part of the fund. Funds donated to the City in lieu of affordable units shall be restricted solely for the creation of affordable housing located in the City of Peabody as defined by the Inclusionary Zoning Ordinance.

## **B. Calculation of Cash Payment in Lieu of Units**

If approved by the City Council to make a cash payment in lieu of units, the applicant shall convey the required payment to the City of Peabody prior to issuance of an Occupancy Permit. Every year a flat cash payment fee per affordable unit will be adopted based on updated income information, market data, and interest rates.

For apartment and condominium developments, the cash payment per Affordable Unit shall be comparable to the value of the difference between the value of a typical newly constructed market rate condominium unit and the value of a 2-bedroom unit affordable to a 3-person household earning 70% of the median income. For single family home developments, the cash payment per Affordable Unit shall be comparable to the value of the difference between the value of a typical newly constructed single family home and the value of a 3-bedroom home affordable to a 4-person household earning 80% of the median income. The cash payment in lieu option will be entirely optional for single family developers. The Department of Community Development and Planning shall annually establish these values based on annual income limits and monthly market sales data published by the Department of Housing and Urban Development, Banker and Tradesman, The Warren Group, or other comparable sources to determine typical market sales prices. The Council will adopt fees based on neighborhood market conditions. A downtown

neighborhood will be delineated as distinct from the rest of the City. The fee will be reviewed and published annually. A developer seeking to provide a cash payment would therefore be able to identify the amount required at the outset of the development process.

An applicant may request that the fee be determined with information current at the time of application for a certificate of occupancy. Any unpaid fee balance must be paid prior to the issuance of any certificate of occupancy for the project.

Cash Payment Per Unit = Typical Neighborhood Market Rate Condominium or Single Family Home Price – Affordable Price

Downtown Neighborhood

Typical newly constructed market rate condominium price:	\$212,900
Price affordable to income eligible household	- \$175,000
Cash Payment Per Unit	<b>\$37,900</b>

Greater Peabody

Typical newly constructed market rate condominium price:	\$271,133
Price affordable to income eligible household	- \$175,000
Cash Payment Per Unit	<b>\$96,133</b>

Greater Peabody

Typical newly constructed market rate single family home	\$466,320
Price affordable to income eligible household	\$245,000
Cash Payment Per Unit	<b>\$221,320</b>

**Section 9. Guidelines for Use of Affordable Housing Funds**

**A. Approval of Alternative Methods of Compliance**

Situations in which it might be beneficial for City for the units to be constructed off-site include:

- Location is not suitable for affordable housing, because it not close to public transportation, schools, shopping, etc.
- Nature of the design of the development is such that it is not in the best interest of the low-income households to occupy units.
- Development is targeted toward a specific population (i.e. seniors) that does not match the population in need of affordable housing.

Situations in which it might be beneficial for the City to receive a fee in lieu include:

- All of those listed above, where the developer has no access to a second site.
- The City can construct many more units with funds than the units that would be included as part of the development.

## **B. Approval and Allocation of Affordable Housing Funds**

If, upon receipt of Affordable Housing Funds, the City decides that it cannot or will not use these funds to develop property itself or through an agent (with ownership retained by the City), then the City shall advertise through a formal bidding process that the funds are available for the development/provision of affordable housing in accordance with the City's Affordable Housing Strategy. Notice shall be sent to the Housing Authority, to local non-profit developers, and shall be advertised in local papers. Notice shall be approved by the City Council prior to advertisement

Applicants shall apply for use of the funds by either using a form provided by the City or by responding to the request for information set forth in the formal bid.. Eligible applicants shall include:

- Public and nonprofit developers (including Peabody Housing Authority)
- For-profit developers with affordable housing proposals
- Housing Trusts

Eligible project proposals shall include, but not be limited to:

- New affordable units or mixed income developments through the development of rental or homeownership opportunities through new construction or rehabilitation of existing structures.
- The acquisition of land, buildings or units within existing or proposed market rate projects.
- Preservation of the affordability restrictions on existing affordable units that would otherwise be removed from the City's Affordable Housing Inventory.

The City Council shall review all the applications according to the following criteria, as appropriate:

- The absence of alternative resources under the City's control.
- The proponent has made reasonable efforts to raise the maximum amount of outside funding.
- The cost per affordable unit.
- The number of affordable units to be developed.
- The targeted household income (very-low and low income households)
- The developer's capacity, determined through consideration of the developer's past history and current expertise in completing projects of similar scale and nature.
- Capacity of other members of the development team, including architect and management agent, as relevant.
- Degree of site control
- Location of proposed project.

- The degree to which the design of the project maintains and increases the character of the neighborhood.
- Whether the commitment of local funds increases the potential for and/or outside funding.

Based on its review, the City Council shall vote whether or not to appropriate the funds to each applicant. The Mayor must approve each appropriation.

**For Sale Housing**  
**Affordability Analysis for Restricted Units**

Unit Type:	HUD 80%, Hhld of 2	HUD 80%, Hhld of 3	HUD 80%, Hhld of 4/5	HUD 80%, Hhld of 6
	1- BR	2-BR	3-BR	4-BR

**Annual Income Level (80%)**

"Window" adjustment @ **10.0%**

Available for Housing @ **30.0%**

Monthly amount:

**Non-mortgage expenses:**

**Condo. Association Fees**

**Taxes**

**Owner's Insurance**

**Private Mortgage Insurance**

**Available for Mortg. Principal.**

**Max. Mortgage at**

**6.250%** Ann. Interest

**30.00** Yr. Amortization

**Loan as % of Sales Price** **95%**  
**Maximum Sale Price**