CITY OF CAMBRIDGE
Community Development Department

IRAM FAROOQ
Assistant City Manager for Community Development

SANDRA CLARKE
Deputy Director
Chief of Administration

KHALIL MOGASSABI
Deputy Director
Chief Planner

To: Yi-An Huang, City Manager

From: Iram Farooq, Assistant City Manager for Community Development
Nancy E. Glowa, City Solicitor

Date: October 13, 2022

Re: Policy Order O-12 dated October 3, 2022, regarding review of recent proposed amendments to the Incentive Zoning Rate Petition

We provide the following information in response to the City Council's request for the Community Development Department and Law Department to review the amendment that states: "excluding the first 30,000 square feet for buildings less than 60,000 square feet in total size," considered by the Council on October 3, 2022.

Summary of Amendments

As we understand, the intent of the proposed amendment would be to exclude the first 30,000 square feet from the calculation of the Housing Contribution, but only for Incentive Projects that are less than 60,000 square feet in total Gross Floor Area. The effect is summarized in the table below:

Incentive Project Gross Floor Area (GFA)	Housing Contribution
0 – 30,000 square feet	None – not an Incentive Project
30,000 – 59,999 square feet	(GFA minus 30,000) times applicable rate
60,000 square feet or more	GFA times applicable rate

Clarifying Suggestions

We suggest wording the amendment to read "excluding the first 30,000 square feet for <u>Incentive Projects</u> less than 60,000 square feet in total <u>Gross Floor Area</u>." The reason for the first change is that an Incentive Project can consist of multiple buildings, and we believe the intent is not to apply the deduction to each individual building within a single project. The reason for the second change is that "size" can have several different meanings in zoning.

Other Issues

The exemption of existing GFA that is demolished is still a concern because it has a greater impact on total contributions to the Cambridge Affordable Housing Trust. The prior analysis provided to the Council (attached) shows that the exemption of demolished GFA would reduce contributions by around twice as much as the 30,000 square-foot deduction when applied to past Incentive Projects. The reduction could be greater in the future as more sites with existing buildings are redeveloped.

344 Broadway
Cambridge, MA 02139
Voice: 617 349-4600
Fax: 617 349-4669
TTY: 617 349-4621
www.cambridgema.gov

That text also remains unclear and might lead to problems with interpretation, as summarized previously and copied below.

- Is "existing floor area that is demolished and subsequently rebuilt" intended to apply only to floor area that is in the same use, only to uses that have previously been subject to Incentive payments, or all uses? For example, if a warehouse is demolished and a lab is built, does the GFA of the warehouse get deducted from the area that is subject to the Incentive Zoning provisions? If the existing GFA is residential (or another use not subject to the Incentive Zoning provisions) would it also be deducted?
- In some cases, substantial rehabilitation and changes of use are currently subject to the Incentive Zoning provisions. Is the intent to continue to include substantial rehabilitation and change of use while excluding demolition and reconstruction? The amendment text would incentivize demolition and reconstruction over rehabilitation and adaptive reuse.
- Is there a timeframe in which buildings demolished must be rebuilt to not be subject to the Incentive Zoning provisions as being "subsequently rebuilt"?

Law Department's Comments

The Law Department concurs with CDD, and if this amendment moves forward we recommend including the clarifying suggestions made above. The Law Department notes its earlier two opinions advising that these amendments could be viewed as altering the fundamental character of the original petition and recommending that there be a new nexus study before moving forward with these amendments. Our recommendations therein remain unchanged.

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To: Yi-An Huang, City Manager

From: Iram Farooq, Assistant City Manager for Community Development

Date: September 29, 2022

Re: Policy Order O-12 dated September 12, 2022, regarding analysis of amendments to the Incentive Zoning Rate Petition

We provide the following information in response to the City Council's request for an analysis of the recent amendments to the Incentive Zoning Rate Petition, as incorporated by the Council on September 12, 2022.

Summary of Amendments

As we understand, the amendments would make the following changes:

- Amend the definition of "Incentive Project" to exclude "existing floor area that is demolished and subsequently rebuilt." The current definition of an Incentive Project includes all new development without deducting any existing development demolished from the site.
- Exempt the first 30,000 square feet of an Incentive Project from the calculation of the Housing Contribution payment. This is also a change to the current requirement, which applies the Housing Contribution Rate to the entire project Gross Floor Area (GFA)

As written, these changes would have a combined effect. A project that is subject to the Incentive Zoning provisions of the Zoning Ordinance would be able to first exempt the GFA of any existing buildings that are demolished and rebuilt, then deduct an additional 30,000 square feet of GFA from the calculation.

Clarifying Questions

The amended definition of "Incentive Project" needs some clarification of intent:

- Is "existing floor area that is demolished and subsequently rebuilt" intended to apply only to floor area that is in the same use, only to uses that have previously been subject to Incentive payments, or all uses? For example, if a warehouse is demolished and a lab is built, does the GFA of the warehouse get deducted from the area that is subject to the Incentive Zoning provisions? If the existing GFA is residential (or another use not subject to the Incentive Zoning provisions) would it also be deducted?

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- In some cases, substantial rehabilitation and changes of use are currently subject to the Incentive Zoning provisions. Is the intent to continue to include substantial rehabilitation and change of use while excluding demolition and reconstruction? The amendment text would incentivize demolition and reconstruction over rehabilitation and adaptive reuse.
- Is there a timeframe in which buildings demolished must be rebuilt to not be subject to the Iincentive Zoning provisions as being "subsequently rebuilt"?

Analysis of Outcomes

Effects on Contributions to Affordable Housing Trust

The amendments could substantially change the total amount of funding received from Housing Contributions, but it is difficult to predict exactly how much.

<u>The deduction of 30,000 square feet</u> from the calculation of the Housing Contribution is straightforward to evaluate. At the proposed rate of $33.34 per square foot, the 30,000 square-foot exemption would reduce the Housing Contribution by $1,000,200 per project. For comparison, at the current rate of $21.02 per square foot, the deduction would be $630,600 per project.

<u>The exemption of existing GFA that is demolished</u> is more difficult to predict because the existing GFA of sites can vary and will be impacted based on responses to the questions in the prior section. In Cambridge there are relatively few "empty lots," so existing buildings are often demolished or rehabbed when new buildings are built. For example, if a one-story building is demolished and replaced by a 4 or 5 story building, then the "net new" GFA can be about 20-30% less than the total GFA of the new building.

The combined effect of the exemptions could be substantial. Consider two hypothetical cases below of a new 200,000 square-foot commercial laboratory building on a 100,000 square-foot site. We show below how the amount of existing GFA on the site would impact the Housing Contribution. Hypothetical example 1 is if the new building were to replacing an existing 40,000 square-foot building and hypothetical example 2 shows the impact if the new building were to replace an existing building of 60,000 square feet.

	Current Zoning	**Original Petition**	**Amended Petition**
Hypothetical Example 1			
GFA of New Construction	200,000 SF	200,000 SF	200,000 SF
Existing GFA Demolished	40,000 SF	40,000 SF	40,000 SF
Additional GFA Exemption	None	None	30,000 SF
GFA Applicable to Contribution	**200,000 SF**	**200,000 SF**	**130,000 SF**
Contribution Rate	**$21.02/SF**	**$33.34/SF**	**$33.34/SF**
Total Contribution	**$4,204,000**	**$6,668,000**	**$4,334,200**
Hypothetical Example 2			
GFA of New Construction	200,000 SF	200,000 SF	200,000 SF
Existing GFA Demolished	60,000 SF	60,000 SF	60,000 SF
Additional GFA Exemption	None	None	30,000 SF
GFA Applicable to Contribution	**200,000 SF**	**200,000 SF**	**110,000 SF**
Contribution Rate	**$21.02/SF**	**$33.34/SF**	**$33.34/SF**
Total Contribution	**$4,204,000**	**$6,668,000**	**$3,334,200**

In the first example, where the difference between the existing and new GFA on the site is around 160,000 square feet, the total contribution under the amended Petition is nearly the same as under current zoning. For other project where that difference is less than 160,000 square feet, such as the second example, the Housing Contribution under the amended Petition would be less than under current zoning.

For context, we looked back at Incentive Zoning Projects completed in FY19-22 to compare the impact if they were to be built under the current or proposed provisions. The table attached at the end of this document adjusts the qualifying GFA for each project by excluding the existing GFA on the sites and deducting 30,000 square feet (note that for Planned Unit Developments with multiple sites, the deduction is applied once and not for each building because the entire PUD is treated as the "Incentive Project").

Because it is impossible to predict what future sites would be subject to the Incentive Zoning provisions, this only illustrates the difference between the current zoning and the amended petition if each were applied to this set of past Incentive Zoning Projects. In this analysis, the effect of the proposed GFA exemptions and deductions would reduce the qualifying GFA by roughly 20%, which partially offsets the proposed 60% increase in the Housing Contribution Rate.

A further complication is whether projects that have already received special permits or building permits would seek an exemption. The original Petition would have increased the required Housing Contribution for all projects, but projects are protected from changes in zoning if their permits had been issued before the Petition was advertised. However, projects could also seek approval to follow the new zoning if it is more favorable to them. Because the Petition would result in a lower total Housing Contribution for some projects that have already received permits, they might seek a reduction or waiver of the contribution under the amended zoning.

Below is a list of four Incentive Zoning Projects that received Planning Board special permits in the past year, before the Petition was advertised. These projects do not yet have building permits, so the applicable Housing Contribution has not yet been determined. Three out of the four would have substantially less qualifying GFA under the amended Petition, resulting in a lower contribution under the $33.34 per square-foot rate, or none at all.

				Current Zoning		**Amended Petition**	
	Total GFA	New Const.	Demo./ Rebuilt	**Incentive GFA**	**@$21.02/SF**	**Incentive GFA**	**@$33.34/SF**
Alewife Park	735,500	551,500	198,000	**551,500**	**$11,592,530**	**323,500**	**$10,785,490**
180 Fawcett St	58,027	58,027	38,028	**58,027**	**$1,219,727**	**0**	**$0**
81-93 Mt. Auburn St.	87,494	87,494	78,300	**87,494**	**$1,839,123**	**0**	**$0**
585 Third St	500,000	500,000	[none]	**500,000**	**$10,510,000**	**500,000**	**$16,670,000**

NOTE: Figures are approximate. Incentive Zoning contributions have not been certified for these projects.

Effects on Development Outcomes

The issue has been raised of whether the requirement to comply with the Incentive Zoning provisions has an effect on the size or type of projects that are built. Generally, what is built on a site is determined by a combination of zoning and economic factors.

Zoning Factors:

- Allowed uses
- Maximum GFA and height

Economic Factors:
- Market demand for space
- Development costs

The Incentive Zoning provisions do not directly impact how much development is allowed by zoning. However, these provisions can increase development costs, which affects the economics of a development project.

It has been suggested that developers might try to avoid making Incentive Zoning contributions by reducing the project GFA to be below the 30,000 square-foot threshold. Looking at available records, there are only a few examples of non-residential stand-alone projects (not part of Planned Unit Developments or mixed-use buildings) between 20,000 and 30,000 square feet from the past several years, all three hotel projects.

In two cases, the zoning for the site would not have allowed more development than 30,000 square feet. In one case, the development size was reduced to just under 30,000 square feet. The Incentive Zoning provisions may have been a factor in that decision, along with other factors such as site constraints and other zoning requirements (in that specific case, exceeding 90% of allowed GFA would have required additional payments in lieu of parking, which would have added more to the development cost).

Project Address	Uses	New Non-Res. GFA*	Total GFA	Allowed GFA	Status
263 Msgr. O'Brien Hwy.	Hotel	21,796 SF	21,796 SF	23,235 SF	Permitted 2019
38-40 Hampshire St.	Hotel	23,030 SF	23,030 SF	23,032 SF	Permitted 2021, not built
907 Main St.	Hotel, retail	29,860 SF	29,860 SF	38,020 SF	Completed 2020

** Refers to GFA that would be subject to Incentive Zoning if the project were at least 30,000 square feet.*

Conversely, projects in the 30,000-90,000 square-foot range have included 1 JFK Street (38,439 SF of new office/retail construction, recently completed), and the recently permitted projects in the table listed above at 180 Fawcett Street and 81-93 Mt. Auburn Street, and a 33,000 square-foot addition recently approved by the Planning Board at 125 Cambridgepark Drive. In all of those cases the projects sought to maximize their GFA allowable under zoning. We are not aware of cases where a project that was allowed to build more than 40,000 square feet has reduced its size to below 30,000 square feet to avoid Incentive Zoning payments.

It was suggested that the Incentive Zoning requirements may be encouraging office or laboratory uses over other uses such as retail or hotel uses. The list of projects above shows that most development subject to the Incentive Zoning provisions is for office and/or laboratory use, sometimes with retail as a component. The Incentive Zoning provisions does not necessarily cause those outcomes. Other economic factors, such as market demand and construction costs, play a much larger role in determining what uses developers will seek to build. The additional cost of Incentive Zoning (per square foot) is the same for all types of qualifying uses. That additional cost might make some types of commercial projects less financially feasible than others, but developers in many cases will be motivated to build projects with the highest market value regardless of the fixed costs.

Conclusions

Some aspects of the amended Petition, particularly those relating to exempting existing GFA on a site that is demolished and rebuilt, require clarification of the Council's intent in order to fully understand the possible outcomes.

The approach taken by the amended Petition of exempting existing GFA and deducting the first 30,000 square feet of remaining GFA from the Incentive Zoning requirement will reduce the Housing Contribution from all projects subject to Incentive Zoning contributions. The reduction will be roughly a million dollars or more for each project. While the impact of exempting the first 30,000 square feet of projects is clear, the financial impact of exempting existing GFA can have negligible or significant impact, depending on amount of existing development on a site.

Some of the master-planned/PUD projects included in the attached chart – for example, Cambridge Crossing – have been built on largely undeveloped land such as rail yards and surface parking lots. The impact of exempting demolished GFA on these sites is small. Similar projects in more built out locations, such as Alewife, could have a significantly greater financial impact on the Housing Contribution to the Affordable Housing Trust.

As a percentage of the total cost, the reduction in contributions will be greater for projects that are closer to 30,000 square feet in size, which could make some small and medium-sized projects more financially feasible. However, the data do not indicate a correlation with the Incentive Zoning size threshold so our assessment is that the change will not discourage projects from building to the maximum allowed by zoning. There is not likely to be any decrease in the size of commercial projects as a result.

The exemptions introduced may reduce contributions and counteract the effect of increasing the Housing Contribution rate for many projects. Because the characteristics of future projects are unknown, it is difficult to predict the exact impact on total contributions to the Affordable Housing Trust.

Incentive Zoning Projects completed in FY19-22
Theoretical Analysis of Housing Contributions under Current and Proposed Incentive Zoning Provisions

PUD/Stand-alone Project	Address	Uses	GFA (sf)			CONTRIBUTION COMPARISON ($)				
			Qualifying Non-Res. GFA (Current Zoning)	Existing. GFA Demolished and Rebuilt	30,000 sf GFA Deduction	Current Zoning @$21.02	@$33.34 No Deduction	@$33.34 Demolition Deduction Only	@$33.34 30KSF Deduction Only	@$33.34 Demo+30KSF Deduction
Stand-alone	10 North Point Blvd.	Education	40,573	6,100	30,000	852,844	1,352,704	1,149,330	352,504	149,130
Stand-alone	399 Binney Street	Office/lab, retail	156,276	29,200	30,000	3,284,922	5,210,242	4,236,714	4,210,042	3,236,514
Cambridge Crossing	222 Jacobs Street	Office/lab, retail	253,001	0	30,000	5,318,081	8,435,053	8,435,053	7,434,853	7,434,853
	350 Water Street	Office/lab, retail	231,319	0	0	4,862,325	7,712,175	7,712,175	7,712,175	7,712,175
	450 Water Street	Office/lab, retail	350,500	0	0	7,367,510	11,685,670	11,685,670	11,685,670	11,685,670
First Street PUD	121 First Street	Office, retail	57,000	9,000	30,000	1,198,140	1,900,380	1,600,320	900,180	600,120
MIT Kendall	314 Main Street	Office/lab, retail	371,457	6,804	30,000	7,808,026	12,384,376	12,157,531	11,384,176	11,157,331
	238 Main Street	Office/lab, retail	373,009	94,413	0	7,840,649	12,436,120	9,288,391	12,436,120	9,288,391
	165 Main Street	Residential, retail	8,686	0	0	182,580	289,591	289,591	289,591	289,591
MXD-IDCP	145 Broadway	Office/lab, retail	441,614	78,636	30,000	9,282,726	14,723,411	12,101,687	13,723,211	11,101,487
	325 Main Street	Office/lab, retail	383,479	117,201	0	8,060,729	12,785,190	8,877,709	12,785,190	8,877,709
TOTAL			**2,666,914 sf**	**341,354 sf**	**180,000 sf**	**$ 56,058,532**	**$ 88,914,913**	**$ 77,534,170**	**$ 82,913,713**	**$ 71,532,970**
DIFFERENCE COMPARED TO PETITION AS FILED						n/a	-	($ 11,380,742) -13%	($ 6,001,200) -7%	($ 17,381,942) -20%
DIFFERENCE COMPARED TO EXISTING ZONING						-	$32,856,381 59%	$21,475,638 24%	$26,855,181 35%	$15,474,438 19%

NOTE: Figures are approximate.