

FREE MARKET AFFORDABLE RENT

A Model Zoning Bylaw Alternative to Rent Control for Massachusetts Towns

Thought Leadership by the



Boston, Massachusetts
July 2024

About NELF: For the past 50 years, the [New England Legal Foundation](#) has been the leading legal advocate in the Northeast for the foundational values of free enterprise, property rights, limited government based on rule of law, and inclusive growth. This paper advances all four of these missions in a topic that is relevant to public policy in the private sector and in state and local levels of government.

Acknowledgements

The best ideas in public policy are those that are forged in the crucible of public debate, where competing ideas and solutions are considered to yield a better outcome than any single point of view. In the current debate over affordable rental housing in Massachusetts, the default solution being advanced is a return to government-mandated rent control. The purpose of this paper is to advance a free market alternative to show Massachusetts towns that affordable rental housing construction or conversion is possible with less rather than more governmental involvement.

Our thanks to a gifted real estate lawyer, [Jennifer Connelly](#), at the Boston office of [Sherin and Lodgen](#), for her donated *pro bono* research and draft of the restriction agreement at the core of the tradeoff of less government burden for more affordable housing that forms the premise of this idea.

Our thanks also to the people or organizations that generously gave us their time to review our drafts and offer their suggestions for improvement.

While we gratefully acknowledge their assistance, the views expressed in this paper and any errors or shortcomings are entirely our own. We cannot offer legal advice to town governments or residents, but we welcome discussion with any town attorney of communities interested in considering this model at their Town Meeting or Town Council.

Daniel B. Winslow, President
[New England Legal Foundation](#)
dwinslow@newenglandlegal.org

Executive Summary

Excessive land use regulations [add costs, uncertainty, and delays in housing](#) construction that drive up the cost of housing for purchase or rent. In response to this self-inflicted injury, Massachusetts previously allowed communities to impose government-mandated rent control which [caused owners to shift units away from the rental market](#), among other [harmful effects](#). Massachusetts' experience with rent control was so negative that [voters repealed it in 1994](#). While some state politicians admit that rent control is [not a solution](#) to our state's housing crisis, [local authorities once again are urging](#) the Legislature to authorize government control of rental prices.

There is an alternative to government-mandated rental price controls. By removing excessive local regulations, increasing certainty and reducing timing of local permit approvals, and accelerating the process from proposal to construction, Massachusetts towns can create massive market-based incentives for landowners and developers to increase the supply of attainable rental units.

Implementation of model Free Market Affordable Rent zoning could have a widespread impact in Massachusetts. [Nearly two-thirds of Massachusetts' 351 communities](#) are organized as towns where the local legislative branch is the Town Meeting. 260 Massachusetts towns have Open Town Meeting, where any registered voter can participate in direct democracy as a citizen legislator. 32 Massachusetts towns have Representative Town Meeting, where citizens are represented by locally elected Town Meeting Members. Both forms of Town Meeting create an opportunity for interested citizens to use this model as a guide to prepare proposed zoning bylaw amendments by petition at the local level.

The model consists of several components:

1. [Definition](#). The model creates a definition of "Free Market Affordable Rent" use in the zoning bylaw that incorporates a deed restriction which limits the monthly rent that can be charged per bedroom to a price that is affordable (consisting of no more than 30% of gross income) based on the Annual Median Income as [published and most recently updated by HUD](#).
2. [Overlay Zone](#). Rather than weaving the model Free Market Affordable Rent zoning reform into existing zoning bylaws, the model creates a stand-alone overlay zone that carves out Free Market Affordable Rent development from all other existing zoning regulations. The overlay district will allow towns to specify which of their zoning districts they wish to allow Free Market Affordable Rent as a matter of right along with inclusion of such housing as a mixed use above the ground floor in business or commercial districts. The overlay significantly removes existing zoning restrictions regarding lot size and configuration, frontage, setbacks, height, coverage, and other dimensional restrictions.
3. [Compliance](#). The Free Market Affordable Rent model is self-policing as a zoning bylaw with information published and provided to tenants in such housing by the local housing boards and enforced by the Zoning Enforcement Officer.
4. [Process](#). For towns that are reluctant to allow Free Market Affordable Rent use as a matter of right, the model includes a general administrative provision that will accelerate any required local approval process by requiring the applicant's consent to continue any public hearing and causing any application that is not denied within 60 days after completion of the public hearing to be deemed approved.

1. DEFINITION

Town Zoning Bylaws typically include a section of Definitions, usually shown as ALL CAPS or Initial Cap in the bylaw to alert readers that the word consists of a defined term, such as “Dwelling” defined as “any structure of building used in whole or in part for human habitation.” Where defined terms already exist in the town’s zoning bylaw, the model language below should be adapted to match the town’s existing definitions. Otherwise, the plain meaning of undefined words will apply.

The following definition should be inserted in alphabetical order in the section of the existing zoning bylaw where definitions are listed:

Free Market Affordable Rent: A Dwelling available for rental occupancy that is located on a lot that is subject to a deed restriction agreement in the form attached as Appendix A, where:

- a. Each Dwelling unit on the Property shall include complete facilities for living, sleeping, eating, cooking, and sanitation that are to be used on other than a transient basis.
- b. Owner shall neither advertise nor charge monthly rent (including without limitation any fees) of Dwelling Units per legal bedroom in half of the Dwelling units on the Property in excess of the 33% of the 80th percentile of the Annual Median Income (the 80th percentile referred to as “Adjusted AMI”)¹ for that location, as published and periodically updated by the federal department of Housing and Urban Development as of January 1 in a given year, as follows:
 - i. Studio or 1 Bedroom: 0.70 of Adjusted AMI
 - ii. 2 Bedrooms: 0.80 of Adjusted AMI
 - iii. 3 Bedrooms: 0.90 of Adjusted AMI
 - iv. 4 Bedrooms: 1.0 of Adjusted AMI
 - v. 5+ Bedrooms: 1.24 of Adjusted AMI
- c. If half of the Dwelling Units on the Property are a fractional number, the number of units subject to the deed restriction shall be rounded up to include an additional Dwelling Unit subject to this restriction.
- d. The maximum amount of rent chargeable per month may automatically increase or decrease on January 1 of a given year as HUD increases or decreases its published

¹ For illustration, at the time of publication, the HUD AMI for Boston is \$130,250 for a family of four. So, a 1 BR apartment in Boston for a single occupant would cost .80 of AMI for family of four= \$104,200, then adjusted per HUD data for family size of one person by multiplying by .70 = \$72,940, and maximum monthly rent allowed is 33% of that number = \$24,070.20, divided by 12 months = monthly maximum rent for 1 BR unit in Boston of \$2,005.85. The FMAR model uses family size income levels to approximate the number of bedrooms per apartment since the model sets maximum prices of apartments rather than maximum incomes for tenants.

median annual income data for the location of the property.

- e. Each Dwelling Unit on the Property shall have a 12-month lease. Rental of any unit for a period less than 12 months (including but not limited to seasonal rental, vacation rental, or rental through online services or websites) is prohibited. Proof of year-round rental shall be provided annually by the owner to the Zoning Enforcement Officer in the form of a copy of the lease and a signed affidavit stating that the unit is being rented in accordance with this bylaw.
- f. Notwithstanding any contrary provision of this definition, in the event more than one Dwelling unit is located on the Property, half of such Dwelling Units (rounded to the lowest whole number in the event of multiple units) shall be free from any restriction on the rental price or duration of tenancy and may be rented or sold at market prices in the discretion of the owner.²
- g. No building permit or certificate of occupancy shall issue for any Free Market Affordable Rent dwelling unless Town Counsel has verified in writing to the Zoning Enforcement Officer that the deed restriction agreement has been duly executed, that required consideration has been paid by the town, and that the deed restriction agreement has been recorded with the Registry of Deeds or Land Court, as appropriate.

The zoning bylaw should include the verbatim form of Restriction Agreement as an Appendix which is incorporated by reference in the definition of Free Market Affordable Rent uses. This Agreement runs with the land, even if divided into smaller building lots or if the property is sold, and the provisions are enforceable as a zoning compliance matter by the town's Zoning Enforcement Officer. Significantly, the restriction agreement expires 30 years after the date of the Agreement was recorded which allows the property to be sold without any restriction of use or maximum amount of rent at the end of its economic life. The property need not be subject to the restriction agreement to be optioned by a developer from a landowner since the trigger for compliance is the request to build (for new construction) or occupy (for new and existing construction); any required local approval (in towns that do not allow this use as a matter of right) can be conditioned on the verification by town counsel as noted in the definition.

² In addition to increased density, the Free Market Affordable Rent model zoning bylaw allows owners to sell or lease 50% of the units on restricted property at market rate, resulting in mixed-income development. Towns may adjust this percentage upon consideration of local development opportunities with or without such added incentive.

Appendix A.

FREE MARKET AFFORDABLE RENT
RESTRICTION AGREEMENT

This RESTRICTION AGREEMENT (“Agreement”) is made as of _____, 20____ between _____ **[PROPERTY OWNER]** (“Owner” which shall include its successors and assigns), and the Town of _____ **[NAME OF TOWN]** having its principal offices at _____ (“Beneficiary”).

B A C K G R O U N D

The following constitutes the background of this Agreement:

- (a) Owner is the owner of the Property (defined below).
- (b) A beneficiary is a Massachusetts town that owns public land or buildings (a Benefited Premises) (defined below).
- (c) Owner has agreed to impose certain restrictions on the operation of the Property.

A G R E E M E N T S

Now therefore, in consideration of One Dollar (\$1.00) and other good and valuable consideration paid by Beneficiary to Owner, receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby covenant and agree as follows:

1. Additional Definitions. As used herein, the following terms shall have the following respective meanings:
 - (a) “Restriction Termination Date” shall mean the date which is thirty (30) years from the date this Agreement was recorded in the Registry of Deeds or Land Court in accordance with pursuant to M.G.L. c. 184, Section 26.
 - (b) “Benefited Premises” shall mean public ways and any and all public land or buildings owned by Beneficiary and located within three (3) miles of the Property, including, without limitation, the premises more particularly described on the attached Exhibit A.
 - (c) “Covenantee” shall mean Beneficiary and its successors.
 - (d) “Property” shall mean the parcel of real property containing approximately _____ acres located at _____ **[STREET ADDRESS]** in _____ **[TOWN]**, Massachusetts, as more fully described on the deed attached as Exhibit B attached hereto, together with any land added or adjacent thereto or used in connection therewith.
 - (e) “Free Market Affordable Rent Restrictions” shall mean those restrictions set forth in the Zoning Bylaw of _____ **[TOWN]** which were in effect as of the date this Agreement was recorded in the Registry of Deeds or Land Court which

are hereby incorporated by reference and made a part of this instrument.

For the period beginning on the date this Agreement was recorded in the ____ County Registry of Deeds or filed in the ____ County Registry District of the Land Court and ending on the Restriction Termination Date (the "Restriction Period"), the Property and the Owner's rights in the Property, respectively, shall be owned, occupied, leased, possessed, transferred, assigned, sublet, and conveyed, as the case may be, subject to and are hereby made subordinate to the Free Market Affordable Rent Restrictions.

2. Leases, Subleases, or Occupancy Agreements. Owner represents, warrants, covenants, and agrees with Beneficiary that during the Restriction Period:
 - (a) Owner, and any person or entity claiming by, through, or under Owner shall not use, advertise, and shall not enter into, consent to, or permit any lease, sublease or other agreement with respect to, any portion of the Property and/or any premises on the Property which would violate the Free Market Affordable Rent Restrictions or other provisions hereof;
 - (b) Every lease, sublease or occupancy agreement entered into by Owner with respect to the Property and/or any premises on the Property shall have attached to it and incorporated therein by reference a copy of the Free Market Affordable Rent Restrictions; and
 - (c) Beneficiary has delegated enforcement of its rights under this Agreement to the Zoning Enforcement Officer. Beneficiary may elect to change the delegation of enforcement of its rights under this Agreement by written notice to Owner at any time during the term of this Agreement. Violations of this Agreement may be enforced by a daily fine of in the amount permitted by the Zoning Bylaw at the time of the violation. Each day of violation shall be considered to be a separate violation.
3. Effect. This Agreement shall not operate to place upon Beneficiary any responsibility for the operation, control, care, management or repair of (a) the Property (or any portion thereof) under or for the payment, performance, or observance of any obligation, requirement or condition under any lease, sublease, occupancy agreement, or other agreement relating thereto, or (b) any premises (or any portion thereof) on the Property demised under any lease, sublease, occupancy agreement, or other agreement or for the payment, performance or observance of any obligation, requirement or condition under any such lease, sublease, occupancy agreement or other agreement.
4. Rights and obligations of successors and assigns. It is understood and agreed:
 - (a) That the Free Market Affordable Rent Restrictions are imposed for the benefit of the Benefited Premises and as otherwise provided in the Free Market Affordable Rent Restrictions, shall bind Owner and its successors and assigns, and will be enforceable only by Beneficiary (through its delegation of authority to the Zoning Enforcement Officer or otherwise) and any other Covenantee.
 - (b) That for the Restriction Period the Free Market Affordable Rent Restrictions are

- (i) a personal covenant with Owner, and (ii) a covenant running with the Property and binding upon any succeeding owner or tenant of all or any portion of, or premises on, the Property. To the extent that any deed is recorded to convey the Property during the term of this Agreement, such deed shall reference this Agreement therein (but failure to do so shall not deem this Agreement one which does not run with the land).
- (c) That if, during the Restriction Period, Owner or any succeeding owner of the Property shall sell, convey, assign or otherwise transfer any portion of the Property or its interest therein or the lessor's interest in any lease of the Property or any portion thereof to another ("Transferee"), the Transferee shall deliver to the Covenantee, an agreement (an "Assumption Agreement") under seal, recordable in form, and in substance reasonably satisfactory to the Covenantee, by the terms of which, the Transferee shall agree with the Covenantee to be bound by and to comply with the terms of the restrictions herein contained for the duration thereof on the terms and conditions and subject to the remedies contained in this Agreement. This Agreement shall be binding upon any Transferee regardless of the delivery of the Assumption Agreement.
- (d) That, as to any lease, sublease, occupancy agreement or other agreement which has been entered into during the Restriction Period in breach of any representation, warranty, covenant or agreement under this Agreement, for which an Assumption Agreement was not delivered, Owner shall be and remain liable for any breach or violation of any of the restrictions contained in this Agreement for the duration of the Restriction Period.
5. Remedies. Notwithstanding the imposition of daily fines pursuant to the Zoning Bylaw at the time of violation, Owner agrees that if any of the covenants, restrictions or agreements set forth in this Agreement agreed to by Owner, shall be breached or violated by Owner or a successor or assign of Owner, Beneficiary shall be without an adequate remedy at law, and it is especially understood and agreed that any breach or violation of any of the covenants, restrictions or agreements set forth in this Agreement shall be remediable by injunction or an action for specific performance, which shall be cumulative remedies in addition to every other remedy under this Agreement, at law or in equity.
6. This Restriction Agreement is intended to, and shall, run with the land and is binding upon and inures to the benefit of the parties hereto and their respective successors and assigns and shall take effect as a sealed instrument.

[Signatures on Following Page]

EXECUTED under seal as of the date first written above.

_____,
a _____

By: _____
Name: _____
Title: _____
Hereunto duly authorized

_____,
a _____

By: _____
its Manager

By: _____
Name: _____
Title: _____
Hereunto duly authorized

COMMONWEALTH OF MASSACHUSETTS

_____, ss.

On this ___ day of ___, 20___, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purposes as the _____ for _____, and that he/she, as _____, being authorized to do so, executed the foregoing on behalf of _____.

Notary Public
My Commission expires:

COMMONWEALTH OF MASSACHUSETTS

_____, ss.

On this ____ day of ____, 20____, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purposes as the _____ for _____, and that he/she, as _____, being authorized to do so, executed the foregoing on behalf of _____.

Notary Public

My Commission expires:

RESTRICTION AGREEMENT

EXHIBIT A

[LIST OF TOWN-OWNED PROPERTY OR BUILDINGS WITHIN THREE MILES RADIUS OF SUBJECT PROPERTY]

EXHIBIT B

[LEGAL DESCRIPTION OF THE SUBJECT PROPERTY]

2. OVERLAY ZONE

The Free Market Affordable Rent should be a separate section, article, or chapter of the town's zoning bylaw since it does not depend on any other sections for completeness. Each town offers a different starting point of local restriction of housing construction, so the model should be adapted to reduce restriction and limitation in relation to each town's current residential zoning requirements of lot size, frontage, height, setbacks, lot coverage, and the like.

Chapter XYZ. FREE MARKET AFFORDABLE RENT OVERLAY ZONE (FMAR)

Section 1.0. Purpose and Applicability.

- 1.1 Purpose. The purpose of this overlay zone is to encourage the construction, expansion or conversation of affordable rental housing to create a larger supply and diversity of housing stock attainable by persons of finite means, without creating new or costly demands on town government.
- 1.2 Applicability. This overlay zone applies to any property subject to this section that meets the definition of Free Market Affordable Rent use as described in the Definitions, Section ZZ.

Section 2.0. District Boundaries.

- 2.1 Residential Districts. The Free Market Affordable Rent overlay district shall be allowed as a matter of right in all Residential districts as reflected on the town Zoning Map.³
- 2.2 Business/Commercial Districts. The Free Market Affordable Rent overlay district shall be allowed as a matter of right at all stories above ground floor in Business/Commercial districts as reflected on the town Zoning Map.⁴

Section 3.0. Lot, Yard and Dimensional requirements.⁵

- 3.1. Minimum Lot Size: 10,000 square feet [or a lesser size, provided that the applicant provides engineering support for environmentally sufficient water and sewer to the satisfaction of the Planning Board in consultation with the Board of Health and Conservation Commission.]⁶
- 3.2 Minimum Frontage: 50 feet. For the purposes of this section, "frontage" shall be the distance from one side of the lot line to the other measured along the street line. Frontage is to be measured continuously along one street line between side lot lines and their intersection with the street line or, in the case of a corner lot, to the midpoint of the corner arc.
- 3.3 Minimum side yard setbacks: 10 feet, except 0 feet for lots in common ownership at the time the building permit is issued.⁷
- 3.4 Minimum rear yard setbacks: 10 feet.
- 3.5 Minimum front yard setbacks: 25 feet.⁸ The front setback line is parallel to the street at a distance equal to the depth of the required front setback.

³ Different towns may wish to more precisely define which Residential zoning districts should be included in the Free Market Affordable Rent overlay zone, depending on their local needs. Similarly, some towns may prefer that a Planning Board Special Permit is required to establish a low threshold for local approval but higher than use as a matter of right. For towns that opt for Free Market Affordable Rent by permit, see the proposed expedited permit process described below.

⁴ This section encourages mixed use of apartments above stores or offices in Business or Commercial zoning districts. Again, different towns may wish to more precisely define which zoning districts should be included or excluded from the Free Market Affordable Rent overlay zone.

⁵ This model assumes that the town has private septic. For towns with municipal sewer and water, the density of development can be even greater than suggested here.

⁶ For towns that allow smaller lot sizes than 10,000 square feet, where soil conditions can support smaller lot size, the Planning Board Special Permit is an avenue for denser development and consultation with other local boards in their relevant areas of expertise ensures that the Planning Board review is not bogged down by multiple local agency approvals.

⁷ Fire trucks typically require 9 feet of width for egress but allowing 0 feet for lots in common ownership at the time of construction will allow townhouse-style construction with common walls to reduce construction costs per unit.

⁸ Or lesser distance to allow buildings to front sidewalks in pedestrian-oriented areas.

3.6 Building Height: 4 stories.⁹

3.7 Maximum Lot Coverage: [50% more than currently allowed under town zoning].¹⁰

3.8 Additional Intensity/Density Restrictions. This section will supersede all other zoning provisions of the Zoning Bylaw that restrict or limit intensity or density of construction and use.

Section 4.0. Sign Regulation. All signs and advertising devices shall be subject to the [existing Sign regulation section].

Section 5.0. Parking Requirements. The requirements of the [existing Parking Requirements section] are modified by the following subsections. In the event of a conflict between [Section ZZ] and the following subsections, the subsections shall prevail.

5.1 Shared Parking. Any required parking located within 100 yards radius and accessible by pedestrian traffic of a Dwelling and in common ownership at the time the building permit was issued for said Dwelling shall apply to satisfy parking requirements per Dwelling.

5.2 On-Street Parking Capacity. Each eighteen (18) feet of frontage, excluding driveway access from the public way, shall be credited as one parking space to satisfy parking requirements per Dwelling.

Section 6.0. Multiple and Accessory Dwelling Units. Except as otherwise required by state law, more than one building may be constructed on a single lot, including Accessory Dwelling Units within or adjacent to another dwelling, with shared septic or utilities in the Owner's discretion. For shared septic systems, Owners shall be jointly and severally responsible for septic pump out every two years or more often as sanitary conditions may require and certify compliance with this section to the Board of Health upon request.

Section 7.0. Conversion of Single-Family Dwelling. Conversion of a single-family dwelling, in existence at the time of the adoption of this bylaw, to accommodate two or more families, shall be allowed by right provided that each resulting dwelling unit shall contain no less than 600 square feet not included in any basement space or area below ground level and shall have complete lavatory and sanitary facilities.

⁹ Towns often have a two-story height limit, so the model proposes doubling the height. Care should be taken in any town considering this model to confer with the Fire Chief to determine the maximum height the town's fire apparatus can reach to remove occupants from a structure fire.

¹⁰ This requirement varies by town. The intent of the model is to allow more dense development of land.

Section 8.0. Enforcement; violations and penalties.

8.1. Criminal penalty. This bylaw shall be enforced by the Building Commissioner/Zoning Enforcement Officer. No building shall be built or altered and no use of land or a building shall be begun or changed pursuant to the Free Market Affordable Rent zoning bylaw without a permit having been issued by the Building Commissioner/Zoning Enforcement Officer. Any violation of the provisions of this bylaw shall be liable to a fine of not more than \$300¹¹ for each offense. Each day such violation continues shall be deemed a separate offense.

8.2. Noncriminal disposition. In addition to the procedures for enforcement as described above, the provisions of this bylaw may be enforced by the Building Commissioner/Zoning Enforcement Officer by noncriminal complaint pursuant to the provisions of MGL c. 40, § 21D. The fine for any violation disposed of through this procedure shall be \$300 for each offense. Each day such violation continues shall be deemed a separate offense.

Section 9.0. Severability. Should any provision of FMAR zoning overlay or restriction agreement be held invalid, such holding shall not be construed as affecting the validity of any remaining provisions or section, it being the intent that the FMAR zoning overlay and restriction agreement shall stand notwithstanding the invalidity of any section or provision thereof. Such invalidity shall be construed as narrowly as possible.

3. COMPLIANCE

The Free Market Affordable Rent model is self-policing as a zoning bylaw with information about the current maximum amount of rent allowed to be charged published and provided to tenants in such rental housing by local housing boards and enforced by the Zoning Enforcement Officer. Any tenants who are notified what the maximum amount of monthly rent costs should be motivated supporters of Zoning Enforcement Officer compliance efforts.

Violation of the Free Market Affordable Rent zoning bylaw will result in fines, often daily fines for each day of violation, as would any other zoning violation in accordance with Section 8.0 of the overlay model.

¹¹ \$300 or whatever the daily fine amount is under the town's existing zoning bylaw for violation.

4. PROCESS

Some towns may be reluctant to entrust the Free Market Affordable Rent zoning bylaw to “as right” decisions by owners and developers, instead choosing to require some level of local regulatory review. For those towns, whether requiring Planning Board or Zoning Board special permit, the following model zoning bylaw language can create the predictability, timeliness and finite process that itself may encourage development of more affordable dwellings in the town.

The “Expedited Review” procedure described below can be included only in the Free Market Affordable Rent zoning overlay if that overlay requires municipal board approval or, if the town is willing to encourage development generally, can be incorporated as a general provision of the zoning bylaw.

Chapter ZYX. Expedited Development Review. The following provisions shall govern all local review of any construction or development proposed pursuant to this zoning bylaw:

- A. Continuation of Public Hearing. No public hearing on any application shall be open and continued beyond the first date of hearing without the consent of the applicant or applicant’s counsel. Said consent shall be in writing, unless stated on the record by the applicant or applicant’s counsel during the public hearing and recorded in the minutes thereof.
- B. Automatic Approval. Upon the close of the public hearing, any application not denied in writing by any town board or department with jurisdiction thereof within 90 days shall be deemed to be approved. For purposes of this section, if the 90th day falls on a weekend or legal holiday or during a declared emergency, the deadline shall be at the close of business on the next business day. The absence of timely written denial on file with the Town Clerk shall create prima facie evidence of approval by the board or department before which the application is pending.
- C. Permit Issuance. The Building Commissioner/Zoning Enforcement Officer shall forthwith issue a building permit for the construction or development of the structure(s) applied for upon certificate by the Town Clerk that all necessary approvals have been given or deemed approved pursuant to this chapter, upon full payment of all fees therefor.¹²

¹² We shared a draft of this proposal with a town planner for her feedback. Her reaction was “this will drive up our costs of litigation in town” because of all the denials the town would need to issue in the 90-day period. Our suggestion instead is that the town limit its denials only to projects and developments that create a risk to public life, health or safety or otherwise harm the town.

FREE CONSULTATION

The New England Legal Foundation legal staff are available without cost to confer with the town attorney(s) of any town that is considering the model Free Market Affordable Rent zoning bylaw to assist in final drafting and customizing the model for the particular needs of the town.