

PROPOSED ZONING ORDINANCE AMENDMENT

It is proposed to amend the Portsmouth Zoning Ordinance, as follows:

1. Amend ARTICLE II by adding the following definitions:

AFFORDABLE HOUSING.

Residential housing that has a sales price or rental amount that is within the means of a household that is moderate income or less. In the case of dwelling units for sale, housing that is affordable means housing in which principal, interest, taxes, which may be adjusted by state and local programs for property tax relief, and insurance constitute no more than 30 percent of the gross household income for a household with less than 120 percent of area median income, adjusted for family size. In the case of dwelling units for rent, housing that is affordable means housing in which the rent, heat, and utilities other than telephone constitute no more than 30 percent of the gross annual household income for a household with 80 percent or less of area median income, adjusted for family size. Such housing shall remain affordable through a land lease and/or deed restriction for 99 years or such other period that is either agreed to by the applicant and Town or prescribed by the federal, state, or municipal government subsidy program but that is not less than 30 years from initial occupancy.

APPROVED AFFORDABLE HOUSING PLAN.

The affordable housing plan that has been approved by the **director of administration** as meeting the guidelines for the local comprehensive plan as promulgated by the State Planning Council.

Commented [LR1]: Or other Town officer designated by the Town Council.

INCLUSIONARY HOUSING AGREEMENT.

An agreement recorded in the Town's Land Evidence Records describing how the developer will comply with the Inclusionary Zoning provisions of this Ordinance.

INCLUSIONARY HOUSING PLAN.

A plan setting forth in detail the manner in which the Inclusionary Housing provisions of this Ordinance will be implemented.

INCLUSIONARY UNIT.

An Affordable Housing Unit, as defined in this Ordinance.

LOW OR MODERATE INCOME HOUSING.

Any housing whether built or operated by any public agency or any nonprofit organization or by any limited equity housing cooperative or any private developer, that is subsidized by a

federal, state, or municipal government subsidy under any program to assist the construction or rehabilitation of housing affordable to low or moderate income households, as defined in the applicable federal or state statute, or local ordinance and that will remain affordable through a land lease and/or deed restriction for 99 years or such other period that is either agreed to by the applicant and town or prescribed by the federal, state, or municipal government subsidy program but that is not less than 30 years from initial occupancy.

2. Amend VIII, D, 4, g(2)(v) to read as follows:

“Residential including single-family dwellings, condominiums, apartments, multi-family homes, and attached town homes, provided that at least ten percent (10%) of all units within each phase of the development are affordable according to the terms of the Town’s Low and Moderate Income Housing Plan. Such Affordable Units shall be provided by bedroom size in the same proportion as the applicable phase of the development. Such Affordable Units may be built on-site or utilize one or more alternative methods of production, including, but not limited to off-site construction or rehabilitation, donation of land suitable for development of the required Affordable Units and/ or the payment of a fee in lieu of the construction or provision of the required Affordable Units, according to the terms of this Ordinance.”

Commented [LR2]: New language to be added to permitted uses in a Planned Resort Development. The Town may wish to add similar language to other PUDs.

3. Add Section G to ARTICLE XIX of Zoning Ordinance:

G. Inclusionary Zoning

1. *Applicability.* This section shall apply to all subdivisions of five or more units and all land development projects including new development and redevelopment of existing buildings, with five or more dwelling units, as classified under Portsmouth's Zoning Ordinance and Land Development and Subdivision Regulations.

2. *Affordability requirement.* For all applicable projects as defined in ARTICLE 2, Section B hereof, at least ten percent (10%) of the units on site must qualify as Affordable Housing, as defined by RIGL 45-24-46.1. Fractions of a lot or dwelling unit shall be rounded up to the nearest whole number.

3. *Design and building requirements.*

- (a) All Inclusionary Units provided within a development shall:
 - (i) Be reasonably dispersed throughout the development.
 - (ii) Be indistinguishable in appearance or quality of construction from the other units in the development.

- (iii) Contain a mix of bedrooms, up to and including three bedroom units.
 - (iv) Be compatible in architectural style to the market rate units within the project.
 - (v) Be built and occupied prior to, or simultaneous with the construction and occupancy of any market rate units.
- (b) Any existing dwelling units proposed to be counted as Inclusionary Units must be in full compliance with all applicable construction and occupancy codes, and shall be sufficiently maintained or rehabilitated so that all major systems meet standards comparable to new construction.

(4) *Incentives.*

- (a) *Reduction in minimum lot area.* All projects subject to this ARTICLE shall be entitled to a density bonus allowing for reduction in the minimum lot area per dwelling unit in the development based upon the underlying zoning. The density bonus shall be 30 percent for developments up to and including ten dwelling units and shall be 25 percent for developments with more than ten dwelling units.
- (b) *Modification of lot dimensional requirements.* The density bonus shall correspond with a 25 percent decrease in the minimum front, rear and side yard setback requirements and a 25 percent decrease in the minimum frontage and lot width requirements of the Portsmouth Zoning Ordinance for the zoning district in which the property is located.

Commented [LR3]: This language was taken from the Bristol Ordinance. It may be adjusted per Town requirements.

Commented [LR4]: Same comment as above.

(5) *In-lieu fee option.*

- (a) The applicant for development subject to this Article may pay a fee in-lieu of providing the required number of Affordable Housing Units. By choosing this option, the applicant will not receive the density bonus described in ARTICLE XIX, Section G, 4.
- (i) The in-lieu fee per affordable unit required shall be the difference between the median sales price of a single-family home in Portsmouth and the maximum affordable sales price of a single-family home for a Portsmouth household of four earning 80 percent of the area median income (as determined annually by

the U.S. Department of Housing and Urban Development), as determined in accordance with the following:

- (aa) The median sales price of a single-family home in Portsmouth shall be derived from statistics collected by the Statewide Multiple Listing Service for the previous calendar year as determined by the Town's Tax Assessor.
 - (bb) The most recent calculation of the maximum affordable sales price of a single-family home for a Portsmouth household of four at 80 percent of the area median income, provided by Rhode Island Housing.
 - (cc) Notwithstanding Section (5)(a)(i)(aa) and (bb) of this Section, in no case shall the per-unit fee for affordable single family homes and condominium units be less than forth thousand (\$40,000.00).
- (ii) All in-lieu fees are to be deposited into a restricted account under the oversight of the Portsmouth Affordable Housing Board, which shall allocate the funds within two (2) years of receipt. Such funds may be expended or utilized only on the production of or rehabilitation of Affordable Housing Units in Portsmouth.
- (iii) Required in-lieu fees shall be paid prior to the issuance of building permits for the subdivision/development or in a manner directed by the Planning Board. For large projects developed in phases, a portion of the in-lieu fee may be deferred, at the Planning Board's discretion, until after the initial phase is complete, but before building permits are issued for a subsequent phase.
- (b) *In lieu of fee for a fraction of a unit.* The applicant shall have the option of paying a cash-in-lieu of a fractional Inclusionary Unit, whereby the payment is calculated by multiplying the in-lieu fee for one unit, calculated as per ARTICLE XIX, Section G, 5 by the fractional Inclusionary Unit. This option is available when the calculation results in a fraction of less than 0.5. Fractions of 0.5 or greater shall be rounded

Commented [LR5]: I believe this Board will have to be created. This can be done in this Ordinance Amendment or in a separate Ordinance.

Commented [LR6]: Per RI Statute, the Comprehensive Plan should include the process used to allocate the funds.

up to the next highest whole number for the purpose of calculating the payment in lieu.

(6) *Off-site option.*

(a) *Off-site options.* The Planning Board at its sole discretion may allow any developer of an inclusionary project to comply with the requirements of ARTICLE XIX, G, 2 through one of the following off-site exactions:

- (i) Off-site rehabilitation of Affordable units in existing buildings.
- (ii) Off-site new construction of affordable Units.
- (iii) Donation of one or more parcels of land suitable for residential development to be held by the Affordable Housing Board.

(b) *Conditions.* Use of an off-site option shall be subject to the following conditions:

- (i) Any subdivision or land development project that utilizes an off-site option in place of developing the required affordable units on-site shall not be entitled to the dimensional incentives as described in ARTICLE XIX, G, 4.
- (ii) Off-site Inclusionary Units shall have a certificate of occupancy prior to, or simultaneous with the occupancy of any market rate units.
- (iii) New off-site Inclusionary Units shall be compatible in architectural style to the existing units in the surrounding neighborhood.
- (iv) Renovated off-site Inclusionary Units shall be in full compliance with all applicable construction and occupancy codes, and shall be sufficiently maintained or rehabilitated so that all major systems meet standards comparable to new construction.
- (v) The Planning Board in its sole discretion may further condition the use of any off-site option.

(7) *Preference of options.*

- (a) Before considering the use of the off-site exaction, the Planning Board must first make a finding that it would be Infeasible, as defined below, to develop the Inclusionary Units on-site because of environmental, public health, public safety, and/or regulatory reasons.
- (b) *Infeasible* means any condition brought about by any single factor or combination of factors, as a result of limitations imposed on the development by conditions attached to the approval of the subdivision, to the extent that it makes it impossible for the applicant to proceed in building or operating Low or Moderate Housing without financial loss, within the limitations set by the subsidizing agency of government, on the size or character of the development, on the amount or nature of the subsidy, or on the tenants, rentals, and income permissible, and without substantially changing the rent levels and unit sizes proposed by applicant.
- (c) The following is the preferred progression of Affordable Housing options, subject to the right of a developer to apply the payment of fee in-lieu option on a per unit basis:
 - (i) First preference: Affordable Units developed on-site.
 - (ii) Second preference: Payment of fee in-lieu to meet all or a portion of the Inclusionary Unit requirement.
 - (iii) Third preference: Off-site options:
 - (aa) Off-site rehabilitation of affordable units in existing buildings.
 - (bb) Off-site new construction of Affordable Units.
 - (cc) Donation of one or more parcels of land suitable for residential development to be held by the Portsmouth Affordable Housing Board.

8. *Affordability requirements.* All affordable housing units constructed pursuant to this Article must qualify as low- and moderate- income housing units as

defined in RIGL Tit. 45, Ch. 53. To accomplish this, an applicant shall, at a minimum, make the following submission in conjunction with the final plan:

- (a) A Town approved monitoring service agreement, with a qualified organization (Inclusionary Housing Agreement); and,
- (b) A Town approved land lease and/or deed restriction that includes the Town as a signatory, and grants to the Town enforcement authority and the right to notice.

9. *Implementation of Inclusionary Unit provisions.* Implementation procedures, to be developed administratively by the Town and approved by the Planning Board as part of the Town's Land Development and Subdivision Regulations, shall further describe the submission requirements and review timelines for the Inclusionary Housing Plan and Inclusionary Housing Agreement.