



To: Paul A. Croce, Chairman
Planning Board members

From: Ron Wolanski, Town Planner

Date: October 4, 2022

Re: Inclusionary Zoning for Affordable Housing

During its October 3, 2022 meeting, the Town Council referred a request to the Planning Board for review and recommendation on potential amendments to the Zoning Ordinance to implement inclusionary zoning. The recent Town Council public hearing on amendments to the housing element of the Town's Comprehensive Plan and discussion of pending market-rate and affordable housing projects in town prompted the request to have the Board reconsider inclusionary zoning as another tool to address the demand for affordable housing.

Most recently, in 2017, a subcommittee of the Planning Board was tasked with drafting an inclusionary zoning ordinance amendment for consideration. After considerable discussion, the subcommittee decided to recommend against adopting such an ordinance, primarily due to the need to incorporate a density bonus or other compensation to offset the impact on developers of requiring the inclusion of affordable units in new residential developments. There was concern that the density bonus would be contrary to the Comprehensive Plan's future land use plan, particularly in areas of town designated for low or medium-density development. Resident opposition to such increased densities in new developments was anticipated. In early 2018 the Planning Board agreed with these concerns and sent the attached memo to the Town Council, which also noted that other measures should be taken to promote affordable housing development. No further action on inclusionary zoning has been taken since 2018.

There is now increasing recognition of the need for the Town to take additional action to address affordable housing demand, particularly given the recent spike in housing costs. Inclusionary zoning is a tool that should be considered.

Background: Inclusionary Zoning Practices and Definitions

Inclusionary Zoning promotes affordable housing by requiring developers to set aside a certain percentage of units in a development (minimum 10% per R.I.G.L. 45-24-46.1) to be priced for low- or moderate-income housing. Low- or moderate- income housing (low/mod) is defined as costing 30% or less of gross income for households making less than 120% of the area median income (AMI). There are varying levels of affordability based on incomes under 120% AMI.

Inclusionary housing is typically achieved through a mandatory "set-aside" of affordable units, which are deed restricted (minimum of 30 years per R.I.G.L. 45-24-46.1) in coordination with a density bonus or other incentive to offset the cost of developing below market- rate units. The state statute also allows for off-site development, rehabilitation, donation of land, or fee in-lieu of

construction of affordable units, which would result in additional Town oversight and cooperation. In addition to the Inclusionary Zoning statute (R.I.G.L. 45-24-46), there is the Low- and Moderate- Income Housing Act (R.I.G.L. 45-53-3) which requires that all communities in Rhode Island achieve 10% affordable housing. Middletown's current affordable housing inventory is 5.2% of total housing units.

Middletown Comprehensive Plan and proposed ordinance draft

The Town's Comprehensive Plan, in the Housing Element, includes the following language and outlines goals and action items related to inclusionary zoning:

"Therefore, the town will consider implementing a mandatory inclusionary zoning ordinance.

Positive attributes of inclusionary zoning are that it disperses affordable units throughout town and provides affordable housing without requiring municipal or other government funding. Inclusionary zoning may not produce a significant number of units due to its reliance on housing market conditions and the limited availability of land for large-scale residential development, however, if implemented could assist the town in maintaining its percentage of low-and-moderate income housing as new residential development occurs. The town currently issues an average of 25 building permits for new homes each year. Using this figure, the 20% mandatory inclusionary zoning ordinance could result in approximately 5 new LMI units each year." Comp. Plan Housing Element, p. VII-30

"Construction of market-rate units creates the need for additional affordable housing. Every ten market rate units constructed creates the need for one subsidized unit.

Therefore, implementing a mandatory inclusionary zoning ordinance is essential for meeting this goal; as it would ensure that new residential development fulfills the need for affordable housing that it creates." Comp. Plan Housing Element, p. VII-34

Goal H-III: Increase supply of workforce housing

Policy H-III.A. Promote the development of workforce housing

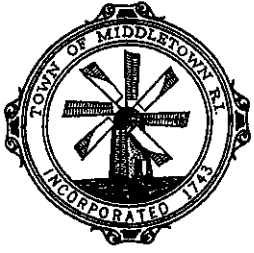
Action H-III.A.1. Consider adopting an inclusionary zoning ordinance with density bonus

Goal H-V. A. Integrate affordable housing into the community

Action H-V.A.1. Ensure affordable units are integrated with market-rate units in new developments whenever feasible, to avoid the concentration of units in specific areas of town

Action H-V.A.2. Require inclusionary units be on-site whenever feasible

Please see the attached draft ordinance considered by the Board in 2018. Thank you for your consideration, and please contact me with any questions.



Town of Middletown Planning Department

350 East Main Rd., Middletown RI 02842 (401) 849-4027

To: Hon. Robert J. Sylvia, President
Town Council Members

From: Paul A. Croce, Chairman
Planning Board Members

Date: February 16, 2018

Re: Inclusionary Zoning for Affordable Housing recommendation

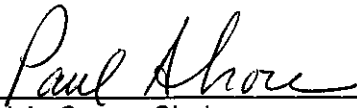
During its meeting of February 14, 2018, the Planning Board voted to recommend not moving forward with the Inclusionary Zoning for Affordable Housing ordinance as drafted. This topic stems from the Middletown Comprehensive Plan's Housing Elements Goals and Action Items and from guidance from the Town Council, which lists Inclusionary Zoning for Affordable Housing as a priority item.

In 2017, the Planning Board convened a subcommittee on Inclusionary Zoning for Affordable Housing to consider an Inclusionary Zoning Ordinance. The subcommittee supported the comprehensive plan's goals to integrate affordable housing into the community, but was unable support moving forward with the proposed inclusionary zoning ordinance for the following reasons:

- a) The housing density bonuses or incentives required by state law (R.I.G.L. 45-24-46.1) run counter to the Middletown Comprehensive Plan.
- b) Increasing the density of major subdivisions to accommodate affordable housing would meet with strong resident resistance.
- c) The Town could pursue other alternative means to achieve the goal of integrating affordable housing quotas (or percentages) into the community such as: working with affordable housing partners; working with state legislatures to include mobile homes in the definition of affordable housing stock; and/or rehabilitating structures in existing neighborhoods as affordable housing.

The full Planning Board supported the subcommittee's findings and recommendation to not proceed with inclusionary zoning, and chose to instead recommend that the Town pursue other alternative means, including other action items identified in the Middletown Comprehensive Community Plan, to achieve the goals of integrating affordable housing into the community.

On behalf of the Planning Board,



Paul A. Croce, Chairman

Middletown Planning Board

ARTICLE X – INCLUSIONARY ZONING

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Section X00 – General

A. Purpose and Authority

This article provides for the establishment of housing opportunities for low- and moderate-income individuals and families in order to meet Middletown’s established need for affordable, accessible, safe, and sanitary housing for all citizens, as documented in Middletown’s Comprehensive Community Plan.

Intended to promote a balance of housing choices for all income levels and groups; to assure the health, safety and welfare of all citizens and their rights to affordable, accessible, safe, and sanitary housing; and to provide opportunities for the establishment of low and moderate income housing, this article is in accordance with RIGL 45-24-30 “General purposes of zoning ordinances,” RIGL 45-24-46.1 “Inclusionary Zoning” and 45-53 “Low and Moderate Income Housing” such that development of affordable housing:

- 1) Is integrated into neighborhoods rather than isolated into separate communities or complexes;
- 2) Is designed in a manner consistent with Middletown’s historical development patterns and natural systems and, which has no significant negative impacts on the health and safety of current or future residents of the community or the environment;
- 3) Promotes mixed income occupancy in new subdivisions and land development projects throughout the Town;
- 4) Promotes affordable housing production in accordance with the goals and policies of the Middletown Comprehensive Community Plan’s Housing Element;
- 5) Encourages the development and availability of housing that qualifies as low- and moderate-income housing as mandated by RIGL 45-53 the Low- and Moderate- Income Housing Act, and the Rhode Island Comprehensive Housing Production and Rehabilitation Act of 2004, as amended;

- 6) Allows landowners and/or developers a reasonable return in all zones permitting residential development where the applicant proposes a development that would be classified as a major subdivision or a major residential land development project under the Middletown Subdivision and Land Development Regulations.

B. Applicability

All major subdivision or land development projects, as defined by the Town of Middletown's Rules and Regulations Regarding the Subdivision and Development of Land shall provide for the development of inclusionary units through one or more of the methods proscribed in this article in accordance with RIGL 45-24-46.1:

- 1) Construction or rehabilitation of on-site inclusionary units.
- 2) Construction or rehabilitation of off-site inclusionary units.
- 3) Donation of land suitable for the development of low- and moderate- income housing to the Town of Middletown or to a qualified non-profit housing developer, as approved by the Town.

Phasing of development projects may not be used to avoid compliance with this article. When a subdivision or land development project creating fewer than six (6) dwelling units is approved on a portion of a site, leaving another portion of the same site undeveloped, the portion left undeveloped must comply with the inclusionary requirements of this articles if it is subdivided or developed for residential use or mixed use within fifteen (15) years of Final Approval. The number of inclusionary units required in the later development shall be calculated as if the earlier development were part of it. This provision does not apply when an entire site receives Master Plan approval and is developed in phases.

C. Conditions of Approval

Any Final Approval of a residential development project subject to this article shall contain conditions sufficient to ensure compliance with the provisions of this article. Such conditions shall:

- 1) detail the number of low- and moderate- income units required;
- 2) specify the schedule of construction of low- and moderate- income units;
- 3) set forth the applicant's manner of compliance with this article and;
- 4) require the execution of an agreement imposing appropriate resale controls and/or rental restrictions on the low- and moderate- income units, as further detailed in this article.

Section X01 – Definitions

Affordable Housing: 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 thirty percent (30%) of the gross household income for a household with less than one hundred and twenty percent (120%) of area median income, adjusted for family size. In the case of dwelling units for rent, housing that is affordable means housing for which the rent, heat, and utilities other than telephone constitute no more than thirty percent (30%) of the gross annual household income for a household with eighty percent (80%) or less of area median income, adjusted for family size. Affordable housing may include all types of year-round housing, including, but not limited to, manufactured housing, housing originally constructed for workers and their families, accessory

dwelling units, and assisted living housing, where the sales or rental amount of such housing, adjusted for any federal, state, or municipal government subsidy, is less than or equal to thirty percent (30%) of the gross household income of the low and/or moderate income occupants of the housing (RIGL 42-128-8.1(d)-1).

Alternative Compliance: An off-site provision of affordable low- and moderate- income housing unit(s) or land donation.

Household: For the purposes of this article only, a household includes all of the people who occupy a housing unit. A household includes related family members and any unrelated people, such as lodgers, foster children, wards or employees who share the housing unit. A person living alone in a housing unit, or a group of unrelated people sharing a housing unit such as partners or roomers, is also counted as a household.

Inclusionary Unit: A unit created under the provisions of this article and which meets all applicable criteria to be considered a low- or moderate- income housing unit.

Low- and moderate- income housing unit: Consistent with RIGL SECTION 45-53-3 as amended, any housing unit 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 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 ninety-nine (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 thirty (30) years from initial occupancy.

Low- and moderate-Income household: Consistent with RIGL SECTION 42-128-8.1, as amended, a single person, family, or unrelated persons living together whose adjusted gross income is less than 80% for low income households or between 80% - 120% for moderate income households of Newport County's area median family income (AMI), adjusted for household size in accordance with the US Department of Housing and Urban Development's guidelines.

Market-rate unit: A unit that does not meet the definition of inclusionary, affordable, and/or is not a low- and moderate- income unit.

Municipal government subsidy: Assistance that is made available through a city or town program sufficient to make housing affordable, as affordable housing is defined in RIGL 42-128-8.1(d)(1); such assistance may include, but is not limited to, direct financial support, abatement of taxes, waiver of fees and charges, and approval of density bonuses and/or internal subsidies, and any combination of forms of assistance.

Off-Site Inclusionary Unit: A Low- and Moderate- income housing unit constructed or rehabilitated on a locus different than the one where market-rate units are developed.

On-Site Inclusionary Unit: A Low- and Moderate- income housing unit constructed or rehabilitated coincident with market-rate units.

Section X02 – Units Required

Any major subdivision or land development project shall be required to provide a minimum of 12% affordable housing that is deed restricted to households making 80% or less of the Area Median Income (AMI) for rental units, and 120% or less of AMI for homeownership units.

RL notation: The literature suggests that <60% income levels are already being addresses through housing programs, and that upper moderate-income level households (100+%) don't participate in affordable housing options in large numbers due to deed restrictions limiting the desirability of affordable housing for those on the upper edge of median income levels. The subcommittee may wish to amend the AMI percentage requirements as only less than 120% of AMI is required in the RIGL.

12% affordable units is being suggested since this ordinance only pertains to major subdivisions. Other land development projects not participating in inclusionary zoning (such as minor subdivisions) would cause the town to not realistically be able to achieve the 10% goal of affordable housing if the required percentage was kept at the 10% minimum.

The Planning Board may adjust these income limits in response to unique opportunities associated with an individual project if an adjustment is deemed to be consistent with the Comprehensive Plan. Financial hardship on the part of the applicant shall not be considered as just cause for adjusting the target income limits. Additional studies may be requested by the Planning Board, to justify a change in the income limits.

Inclusionary units may be created through application of required restrictions to existing units, through construction/ rehabilitation of housing units, or donation of land that would allow for the eventual development of a substantially similar number of inclusionary units, as determined by the Town.

Section X03 Density Bonus

The Town offers density bonuses in the form of additional housing units over and above the original yield established in the subdivisions regulations. These bonuses serve as a municipal subsidy toward the provision of deed restricted affordable housing in accordance with RIGL 45-24-46.

For each unit in a development that meets the low- or moderate- income housing unit definition, one additional market-rate unit is permitted, provided that the number of approved housing units shall not exceed 150% of the original site yield. Additionally, the resulting percent of low- or moderate- income housing units (inclusionary units) must be greater than or equal to 12% of the total development and subject to all other local and state regulations. All mathematical calculations follow traditional rounding standards.

For example:

A residential development that would be allowed 6 units based on zoning requirements for the district in which it is located, could be permitted a maximum of 9 units per the following schedule:	A residential development that would be allowed 10 units based on zoning requirements for the district in which it is located, could be permitted a maximum of 15 units per the following schedule:	A residential development that would be allowed 17 units based on zoning requirements for the district in which it is located, could be permitted a maximum of 26 units per the following schedule:
6 market-rate units allowed based on zoning	10 market-rate units allowed based on zoning	17 market-rate units allowed based on zoning
1 additional market rate unit permitted in conjunction with 1 required inclusionary unit	2 additional market rate units permitted in conjunction with 2 required inclusionary units	4 additional market rate units permitted in conjunction with 4 required inclusionary units
1 additional inclusionary unit may be permitted based on 150% of original yield	1 additional inclusionary unit may be permitted based on 150% of original yield	1 additional inclusionary unit may be permitted based on 150% of original yield
Total possible units = 9 (2 of which are inclusionary)	Total possible units = 15 (3 of which are inclusionary)	Total possible units = 26 (5 of which are inclusionary)
Percent inclusionary = 22%	Percent inclusionary = 20%	Percent inclusionary = 19%

Section X04 - On-Site Inclusionary Units

Low- and Moderate- income housing units provided pursuant to this article shall be allocated to low-, and moderate- income households in a manner consistent with the Comprehensive Plan’s priorities. All on-site low- and moderate- income housing units shall:

- 1) be consistent with market rate units in terms of external design, construction and building materials;
- 2) consist of a mix of unit sizes and number of bedrooms proportionate to that of the development as a whole, or meet a need specifically identified in the Comprehensive Plan;
- 3) be situated within the development so as not to be in less desirable locations than market-rate units in the development and;
- 4) shall be no less accessible to public amenities, such as open space, as the market-rate units.

Section X05 – Alternative Compliance

Whenever practicable, the requirements of this ordinance shall be met through development/redevelopment of on-site inclusionary units integrated among the market-rate units. Alternative methods of compliance shall only be permitted when an applicant demonstrates to

the satisfaction of the Planning Board that the purposes of this article will be better served by allowing the applicant to comply with this article through alternative means.

An applicant may be permitted to provide some or all of the required inclusionary units through one or more alternative means including the creation of off-site inclusionary units or donation of land suitable for the development of affordable housing to the Town of Middletown, if evidence to the satisfaction of the Planning Board is provided that one or more of the following conditions apply:

- 1) Development of on-site inclusionary housing is not practicable due to environmental and/or infrastructure constraints.
- 2) Employing an alternate means of compliance would better meet the siting goals of the Comprehensive Plan and result in at least one of the following:
 - a) Redevelopment of an existing structure or structures as low- and moderate- income housing.
 - b) Creation of low- and moderate- income housing in a location that provides greater access to public transit, jobs, or other public service amenities.
 - c) Creation of a greater number of low- and moderate-incomes units than would be developed on-site.

A. Off-Site Inclusionary Units

As an alternative to providing the required low- and moderate- income units onsite, an applicant subject to this article may develop, construct or otherwise provide low- and moderate- income units off-site. The location of the off-site units shall be approved by the Planning Board and are subject to the following:

- 1) The same restrictions as would on-site low- and moderate- income units, in accordance with Section X07(A)- Legal Restrictions.
- 2) Conditions of approval for the project, or other security such as a cash deposit, bond, or letter of credit, shall be sufficient to ensure that off-site units are constructed in accordance with Section X06 - Timing of Construction.

B. Land Dedication

An applicant may dedicate land to the Town or Town-designated non-profit housing developer, if the Planning Board determines the land is suitable for construction of the number and type of affordable housing units proposed. No donation of land shall be accepted unless the Planning Board finds that:

- 1) the dedicated land is suitable for development of low- and moderate- income housing, including availability of infrastructure, parcel size, shape, topography, location and environmental constraints, and;
- 2) the proposed land dedication is of sufficient size to construct the number of units that the applicant would otherwise be required to construct by Section X02 – Units Required, and;
- 3) the location of the land meets the siting goals of the Middletown Comprehensive Plan, and;
- 4) that there are no environmental constraints, legal encumbrances, or other conditions that would otherwise limit the development potential of the site.

Section X06 - Timing of Construction

Low- and moderate- income housing units shall be constructed prior to or contemporaneously with the development of market-rate units according to the following schedule:

% Market-rate units constructed	Required provision of low- and moderate- income units (or equivalent)
Up to 30%	None required
Up to 50%	At least 30%
Up to 75%	At least 50%
Up to 90%	100%
A unit is considered constructed upon the issuance of a certificate of occupancy by the Middletown Building Official.	

Section X07 – Affordability Guarantee

In order to ensure low- and moderate- income units produced under this article remain available to low- and moderate-income households for the full term of the deed restriction associated with the unit, the applicant must submit plans for marketing, managing, and monitoring of the low- and moderate- income units. Such plans shall be submitted with the initial land development application in addition to all required items in the Middletown Rules and Regulations Regarding the Subdivision and Development of Land. Any legal restrictions required by this article shall be recorded in the land evidence records.

A. Legal Restrictions

Low- and moderate- income units shall be rented or sold subject to deed covenants, contractual agreements, and/or other mechanisms restricting the use and occupancy, rent levels and/or sales prices of such units to assure their affordability. All restrictive instruments shall be subject to review and approval by the Town Solicitor. Such legal restrictions shall, to the extent legally possible, guarantee the permanent availability of the inclusionary units to eligible households.

In no circumstance, shall such restrictions run for a time period of less than thirty (30) years. All affordable units required under this article shall be eligible for the Town’s official inventory of affordable housing as maintained by Rhode Island Housing.

Long-term affordability shall be assured through a land lease and/or deed restriction recorded in the Town land evidence records before the sale or lease of the inclusionary unit. The lease or deed restriction shall include information regarding:

- 1) The basis for calculation of the maximum allowable sales or rental price for the housing unit both initially and for future buyers or renters.
- 2) Restrictions concerning who may occupy the unit, and for what period.
- 3) A marketing plan that meets local preferences and state and federal fair housing requirements.
- 4) Provisions for monitoring and assurance of compliance over time.
- 5) Provisions under which the Town, a non-profit organization designated by the Town, or Rhode Island Housing may exercise a right of first refusal to purchase an inclusionary unit being offered for sale.

B. Marketing, Management, and Monitoring

The developer or owner shall contract with a monitoring agency approved by Rhode Island Housing and the Planning Board for the following purposes:

- 1) To determine pricing for initial sale, resale, lease, transfer or sublease of the low- and moderate- income dwelling units.
- 2) To qualify purchasers or renters for initial occupancy based on household size and income.
- 3) To assist in the development of a marketing and resident selection plan that meets state and federal fair housing requirements, to be approved by the Planning Board.

DRAFT