



To: Paul A. Croce, Chairman  
Planning Board members

From: Anita Guo, Principal Planner

Date: June 7, 2023

Re: Inclusionary Zoning for Affordable Housing – Subcommittee Recommendation

The Planning Board held an advertised public workshop meeting on April 6, 2023 during which staff presented the proposed amendments. Public input was taken during this meeting. The matter was continued to allow for additional research on how other municipalities have implemented inclusionary zoning and its impacts on development. Attached is an inclusionary zoning comparison table of four other Rhode Island and two Massachusetts municipalities. The number of affordable units built because of inclusionary zoning is not well documented but municipal planners are generally supportive of this policy. The views on the fee in lieu of option was explored but its effectiveness is either unknown or limited. Please see the attached latest draft.

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. The Planning Board subcommittee tasked with reviewing prior efforts to draft an inclusionary zoning amendment met on two occasions and has forwarded the attached draft amendments to the full Board for consideration.

If adopted, the amendments would result in the following:

- Require that all major subdivisions (6 lots or more) and residential land development projects (6 residential units or more), including mixed use developments, must have a minimum of 20% of residential units dedicated for affordable housing.
- The inclusionary units must be affordable to low-income households earning less than 80% of area median income (AMI) based on household size (see attached chart).
- All inclusionary units must be constructed as part of the proposed development. No off-site construction or other alternative means for meeting the inclusionary requirement will be permitted.
- As required by the state law, compensation for the requirement to constructed inclusionary affordable units is provided in the form of a density bonus. As proposed, the bonus will allow for up to 150% of the number of residential units otherwise permitted in the subject zoning district. In the event that a developer chooses to not take advantage

of the density bonus, waiver of certain fees such as development impact fees and plan review fees may be offered as compensation, at the Planning Board's discretion.

Once the Board has considered and made any further revisions to the draft ordinance amendments, and is satisfied with the final draft, the Board should consider forwarding it to the Town Council for consideration. The Town Council will then hold the required public hearing before the amendments are finally considered for adoption. In support of its recommendation to the Town Council on a zoning ordinance amendment the Planning Board must make the following findings in accordance with the requirements of Section 45-24-52 of the Rhode Island General Laws:

- (1) The proposed amendment is generally consistent with the Middletown Comprehensive Community Plan, including the goals and policies statement, the implementation program, and all other applicable elements of the comprehensive plan; and
- (2) This recommendation is made in recognition and consideration of each of the applicable purposes of zoning, as presented in § 45-24-30 RIGL

Thank you for your consideration. Please contact me with any questions.

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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, except for those proposed in the R-40 and R-60 zoning districts, shall provide for the development of inclusionary units through construction or rehabilitation of on-site affordable housing units as proscribed in this article in accordance with RIGL 45-24-46.1.

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 of the earlier development. 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 and the required number of inclusionary units for the entire development is calculated and accounted for on the Master Plan.

### **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).

**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.

**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 residential or mixed-use subdivision or land development project, except for those proposed in the R-40 and R-60 zoning districts, shall be required to provide a minimum of 20% of all units as inclusionary affordable housing units that are deed restricted to households making 80% or less of the Area Median Income (AMI), ~~whether~~

for rental units or 120% AMI for homeownership units. When calculateing the the required number of affordable units, round up to the next whole number.

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, or through new construction or rehabilitation of housing units.

### ***Section X03 Density Bonus & Subsidy***

The Town offers a density bonus in the form of additional housing units over and above the original yield established in the subdivision regulations and requirements or the zoning ordinance. This bonus serves as a municipal subsidy toward the provision of deed restricted affordable housing in accordance with RIGL 45-24-46.

Each development subject to the requirements of this article may contain up to 150% of the maximum number of dwelling units that would be allowed based on the minimum land area and density requirements in the zoning district, but subject to all other dimensional requirements of Sections 603 and 604 of this chapter.

If a developer chooses to not take advantage of the density bonus, and the development will include only the number of units otherwise permitted by zoning or fewer, including the required inclusionary units, the municipal subsidy may consist of waiving of subdivision and development plan review fees and/or development impact fees for all dwelling units in the development, subject to the discretion of the Planning Board.

### ***Section X04 - On-Site Inclusionary Units***

Affordable housing units provided pursuant to this article shall be allocated to low-income households in a manner consistent with the Comprehensive Plan's priorities. All on-site affordable 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 amenities, such as open space, community space, and parking, than the market-rate units.

### **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 ninety-nine (99) 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.



### Inclusionary Zoning Comparison Table (6/5/23)

Municipality	Middletown, RI	East Providence, RI	Tiverton, RI	South Kingstown, RI	Lincoln, RI	Newton, MA	Duxbury, MA
<b>Adopted/Last Revised</b>	2023 DRAFT	2003/2019 Currently investigating adopting a citywide IZ regulation.	2003/2018	2006/2015	2007	1977/2019	Revised 2015 Working to do a comprehensive amendment this year and introduce best practices
<b>Required When</b>	6 units or more; in all zones except R-40 and R-60	5 units or more; only in the Waterfront District	All major residential or mixed-use land development or subdivision; Townwide	6 units or more; Townwide	5 units or more; Townwide	7 units or more; Citywide	6 units or more; Townwide
<b>Percent of affordable units required</b>	20%	10%	20%	20%	20%	1 unit for projects with 7-9 dwelling units; requirement starts at 15% for 10 units or more but depends on whether it is rental or ownership and total number of new units proposed	10%
<b>Density Bonus</b>	50%	10%	20%	20%	25%	Ratio of 2 (market-rate) : 1 (affordable unit)	No, but is considering it
<b>AMI</b>	80% AMI	Depend on HUD guidelines	RIGL 45-53 for Low and Mod Housing	80% AMI	80% AMI	2 tiers: 1st is for households at or below 50% and 80% AMI; 2nd is for earning greater than 80% but less or equal to 110% AMI	80% AMI
<b>Deed Restriction</b>	99 years min.	30 years min.	30 years min.	99 years	30 years min. Prefer 99 years	Yes	Resale restrictions
<b>Off site options</b>	No	No	No	Yes, but has not been utilized	Yes, but prefer onsite	Yes, but discouraged	Yes
<b>Fee In Lieu Of Option</b>	No (2022 Fee-in-Lieu for Middletown is \$40k/unit)	Yes (2022: \$78k/unit)	Yes (2022: \$76k/unit)	No (2022: \$72k/unit)	Yes (2022: \$63k/unit)	Yes. Allowed for projects w/ 7-9 units (\$389k/unit); can request permission for projects w/ 10 or more units	Yes

**Inclusionary Zoning Comparison Table (6/5/23)**

Municipality	Middletown, RI	East Providence, RI	Tiverton, RI	South Kingstown, RI	Lincoln, RI	Newton, MA	Duxbury, MA
<b>How has fee-in-lieu-of option worked?</b>	Current draft does not allow fee-in-lieu	Utilized for one development. Fee has been successful in the past but considering eliminating this option. Want to make sure affordability is built in the community and not regulated to other parts of the City.	Unknown.	N/A. Not supportive of this option. The fee-in-lieu is not proportional to building an affordable unit. More profit to developer to pay the fee.	All developers pay fee-in-lieu and Town can only charge the amount under state law. No density bonus if fee-in-lieu is utilized. Not allowing fee-in-lieu may be infeasible b/c could effectively stop developments by making them financially impractical. Dispensing affordable housing funds collected through fee-in-lieu could be a hassle, need to codify a process and establish an authority to oversee the funds.	Unknown	Unknown; bylaw has not been employed since 2016
<b>How many affordable units built with IZ?</b>	-	Unknown but partially help fund the 55 affordable units that are currently under construction.	Don't know	Unknown. It does not produce a lot of units but it does help with meeting 10% affordable housing.	0	225 units (2006)	Unknown
<b>Affordable Housing Percentage</b>	5.16% (2021)	9.83% (2021)	5.17% (2021)	5.57% (2021)	6.81% (2021)	7.8% (2020)	7.8% (2020)
<b>Sources</b>	Draft Ordinance (11/23/22)	<a href="https://library.municode.com/ri/east_providence/codes/code_of_ordinances?nodeId=PTIIREOR_CH19ZO_ARTIXWASPEDEI_S19-485AFINHO">https://library.municode.com/ri/east_providence/codes/code_of_ordinances?nodeId=PTIIREOR_CH19ZO_ARTIXWASPEDEI_S19-485AFINHO</a>	<a href="https://library.municode.com/ri/tiverton/codes/code_of_ordinances?nodeId=PTIICOOR_APXAZO_ARTXXILOMOINHO_S10AFHOPR">https://library.municode.com/ri/tiverton/codes/code_of_ordinances?nodeId=PTIICOOR_APXAZO_ARTXXILOMOINHO_S10AFHOPR</a>	<a href="https://library.municode.com/ri/south_kingstown/codes/code_of_ordinances?nodeId=PTIICOOOR_APXAZOOR_ART5SURE_S502SUDIRE">https://library.municode.com/ri/south_kingstown/codes/code_of_ordinances?nodeId=PTIICOOOR_APXAZOOR_ART5SURE_S502SUDIRE</a>	<a href="https://ecode360.com/9727239">https://ecode360.com/9727239</a>	<a href="https://www.newtonma.gov/home/showpublisheddocument/87296/637937324849270000">https://www.newtonma.gov/home/showpublisheddocument/87296/637937324849270000</a>	<a href="https://www.town.duxbury.ma.us/sites/g/files/vyhlif3056/f/uploads/zoningbylaw_updatedmay2021_1.pdf">https://www.town.duxbury.ma.us/sites/g/files/vyhlif3056/f/uploads/zoningbylaw_updatedmay2021_1.pdf</a>
	RIHousing	RIHousing	RIHousing	RIHousing	RIHousing	<a href="https://www.mass.gov/doc/subsidized-housing-inventory/download">https://www.mass.gov/doc/subsidized-housing-inventory/download</a>	<a href="https://www.mass.gov/doc/subsidized-housing-inventory/download">https://www.mass.gov/doc/subsidized-housing-inventory/download</a>
		Municipal Planner	Municipal Planner	Municipal Planner	Municipal Planner	Municipal Planner	RI Statewide Planning Handbook on Developing Inclusionary Zoning (2006)