



Handbook On: Developing Inclusionary Zoning

For the Comprehensive
Housing Production and Rehabilitation Act of 2004



*Harrisville Village
Burrillville, Rhode Island*

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Statewide Planning Program,
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Abstract

The Rhode Island Statewide Planning Program is established by *Chapter 42-11-10 of the Rhode Island General Laws* as the central planning agency for state government. The State Planning Council comprised of state, local, and public representatives, and federal and other advisors, guides the work of the Program.

The objectives of the Program are:

- (1) to prepare strategic and systems plans for the state
- (2) to coordinate activities of the public and private sectors within this framework of policies and programs
- (3) to assist local governments in management, and
- (4) to advise the Governor and others concerned on physical, social, and economic topics.

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The cover images are from the Burrillville Planning Office for the Harrisville Village redevelopment project located in Burrillville, RI. For information on the project contact Thomas Kravitz, Burrillville Town Planner and Economic Development Director, at 401-4300 ext. 130 or look on the web at

http://www.burrillville.org/Public_Documents/BurrillvilleRI_EconDev/Redevelopment_Projects.

Preface

The affordability of housing is not a problem restricted to lower-income populations of inner cities and declining urban areas. It is, in fact, an issue for all municipalities, affecting the poor and lower-income as well as a large portion of the middle-income population of every city and town. The cost of land and basic building construction are matters largely beyond the control of local governments, but housing opportunities and affordability can be promoted through land use codes and development controls that reduce development costs.

Factors Limiting Housing Affordability in Rhode Island

- High land costs, aggravated by requirements in excess of environmental or social need
- High construction costs
- High rents or sales prices
- High median household income and low vacancy rates
- Deterioration of older housing stock
- Elimination of housing stock by demolition or conversion to other uses
- Marginal funding of federal and state housing programs
- Unemployment and under-employment
- Attraction of employment opportunities without consideration of housing supply availability and cost for workers
- Municipal development moratoria, time-consuming procedures and permit limits, and fees
- Lack of municipal facilities and services for potentially suitable housing and development sites
- Failure to use federal, state or private programs designed to enhance housing opportunity and availability
- Local opposition to affordable housing development

This handbook examines the use of inclusionary zoning to promote affordable housing. This edition of the handbook was updated to provide Rhode Island communities with a recommended set of guidelines, derived from the "Rhode Island Five Year Strategic Housing Plan", for the drafting of inclusionary zoning provisions in order to promote affordable housing in the State. It is intended to assist municipalities in developing actions for compliance with the **Comprehensive Housing Production and Rehabilitation Act of 2004 (R.I. Gen. Law 42-128.8.1)**.

The Act finds that the "state in partnership with local communities must remove barriers to housing development". It goes on to require "affordable housing plans" to be prepared and adopted by cities and towns to satisfy the requirements of the *Low and Moderate Income Housing Act* (R.I. Gen. Law 45-53.). These "affordable housing plans" developed by each community establish guidelines for higher density development including inclusionary zoning.

Acknowledgements

In recognition of the adoption of the **Comprehensive Housing Production and Rehabilitation Act of 2004 (R.I. Gen. Law 42-128.8.1)** this handbook was prepared by the RI Statewide Planning Program to help municipal officials begin to address expanding opportunities for affordable housing in their community. The handbook represents a sum of efforts contributed by numerous individuals of the Program. The following individuals assisted with the writing of this handbook:

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Part 1: Introduction

This handbook is intended to be a guide for municipal governments to utilize, as a reference tool, to craft an inclusionary housing section for their zoning ordinance that fits the needs and staffing levels of their own community. This handbook is a compilation of existing work condensed for use by Rhode Island communities. This handbook does not attempt to outline all the possible options concerning affordable housing; however, it does outline those items to be considered along with legal counsel concerning inclusionary zoning for affordable housing. Furthermore, every community must realize that inclusionary zoning is not a cure-all for Rhode Island's housing problems; it is one of many tools available to local agencies to develop affordable housing units in their communities. Therefore, each community will have to draft its own text, and use the type of provisions for affordable housing that will work for them based on the advice presented herein and the requirements of the Comprehensive Housing Production and Rehabilitation Act of 2004 and recommended guidelines from the "Rhode Island Five Year Strategic Housing Plan".

This handbook is not a substitute for legal advice.

The handbook is divided into five sections. The first and second sections provide a brief explanation and general introduction to inclusionary housing. The third section contains excerpts from national, regional, and local case studies that deal with established inclusionary affordable housing programs. The fourth section looks at provisions to consider before crafting the ordinance. Lastly, the fifth section looks at the technical aspects involved in the writing of such ordinance provisions and it provides excerpts of inclusionary housing ordinances from other local New England municipalities to illustrate the various techniques in use. The fifth section, also presents recommended guidelines from the "Rhode Island Five Year Strategic Housing Plan", which have been highlighted in bold print. At the end of the handbook is the Bibliography Section, which contains the citations, world-wide-web addresses and a list of additional housing resources should the reader wish to find more information on the topics. Access is provided purely as a public service. The State of Rhode Island does not endorse any of the linked sites or any products or services found at the linked sites.

Part 2: What is Inclusionary Zoning?

The fundamental purpose of inclusionary zoning is to allow the development of affordable housing to become an integral part of other kinds of development taking place in a community. Inclusionary housing provisions promote the production of affordable housing by requiring developers to set aside a certain percentage of the housing units in a proposed development to be priced affordable to low- and moderate-income households. It is to the benefit of the public that a minimum percentage of affordable units be constructed to meet the affordable housing needs of the community that adopts the ordinance. The goal of such a process is to establish a relatively permanent stock of affordable housing units provided by the private market. Typically, inclusionary provisions require that new developments include "mandatory set-asides" of affordable units, which are made available to low and moderate-income households within future market-level developments. According to recent studies by the American Planning Association¹, mandatory programs have produced the most affordable housing units across the United States.

The *amended Zoning Enabling Act*, R.I. Gen. Law 46-24-46.1, requires that an inclusionary housing section of a zoning ordinance must address the following:

1. Affordable housing, as defined by the Act in subsection 42-128.81(d), be constructed.
2. A minimum of 10 % of the total units in the development must comply with the above-cited affordable definition of the Act.
3. The affordable units must remain affordable for a period of not less than 30 years from initial occupancy enforced through a land lease and/ or deed restriction.

The types of housing that are required can vary from community to community as well as within a municipality and will relate to the specific needs as defined in the approved Affordable Housing Plan. Some inclusionary zoning programs include a payment in lieu of construction of affordable units option. These payments may support a dedicated fund such as a housing trust fund that would finance future affordable units. Some programs include incentives such as density bonuses, allowing a developer to create more units on a parcel of land, the relaxation of development regulations, or the reduction or waiver of fees to encourage more affordable housing than the minimum percentage mandated.

¹ *Zoning Practice*, no. 9 (Washington, DC: American Planning Association, September 2004).

Part 3: Case Studies

There is a range of programs in use around the country as providing affordable housing is a national issue all communities face today. This part reviews several programs that have adopted procedures through zoning ordinances to provide for affordable housing. These programs vary and have been adopted to fit local housing needs and market conditions and many use a combination of providing affordable housing units along with market rate units to produce affordable housing.

A. NATIONAL CASE STUDY

Montgomery County, Maryland

Inclusionary zoning started in the Washington, D.C. metropolitan area. In 1973, Montgomery County, Maryland, instituted countywide mandatory inclusionary zoning, known as the Moderately Priced Dwelling Unit (MPDU) ordinance. Montgomery County is the leading national example of the use of this technique at the county level. According to the Innovative Housing Institute, the Montgomery County program has produced nearly 10,000 units of affordable housing. Most jurisdictions can trace some aspect of their inclusionary zoning ordinances to the Montgomery County program.²

The MPDU ordinance requires that developments of 50 units or more include 15% MPDUs. Of that 15%, two-thirds are sold to moderate-income homebuyers and the remainder is offered to housing commissions and non-profits for use in their affordable housing programs (many of which retain rental units). Developers receive a density bonus of up to 22% through this program.³ Throughout the program's history, nearly 10,600 affordable units have been created. However, roughly 6,800 units are no longer governed by inclusionary zoning requirements or any other affordability regulations. According to the ordinance, rental units must be regulated under the inclusionary zoning provisions for 20 years and owner-occupied units for 10 years.⁴ Montgomery County's program targets households earning 65% or less of the area median income of \$82,800 in the fiscal year 2000.⁵

One of the greatest challenges facing the Montgomery County program is that the first units built by the program are quickly becoming unregulated and the development of new affordable units is slow. Many policy think tanks and housing advocates, including the Brookings Institution, suggest that one-way to remedy the situation is to make it easier for non-profits and housing authorities to purchase the units once the affordable price regulations expire. Perhaps by extending the non-profit agency's right of first refusal so that they may pre-empt private developers from purchasing the affordable units.⁶

B. MASSACHUSETTS (MA) CASE STUDIES

Federal and state low and moderate-income housing programs have created more than eight % of Massachusetts's housing stock. The creation of new affordable units, however, has slowed due to scarce developable land, opposition to development in general, and the reputation of large affordable housing projects.⁷ In 1975 Massachusetts enacted a state zoning act authorizing the use of incentives for the development of low and moderate-income housing. While more than a third of the communities in

², Robert W. Burchell and Catherine C. Galley, "Inclusionary Zoning: A Viable Solution to the Affordable Housing Crisis? Inclusionary Zoning: Pros and Cons," *New Century Housing Newsletter* 1, no.2 (Washington DC: Center for Housing Policy, October 2000).

³ Karen Destorel Brown, "Expanding Affordable Housing Through Inclusionary Zoning: Lessons from the Washington Metropolitan Area," *Cities and Suburbs* (Washington DC: The Brookings Institution, October 2001).

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

⁷ Phillip B. Herr & Associates, "Zoning for Affordability," *Community Strategies* (Boston, MA: Massachusetts Housing Partnership, 1999).

Massachusetts have adopted zoning incentives for affordable developments, very few units are generally created.⁸ The zoning statute, Chapter 40B commonly known as the "anti-snob" zoning ordinance, exempts developers of affordable units from certain zoning regulations if 20-25% of units in municipalities have affordability restrictions. The restrictions include being affordable for households earning less than 80% of the area's median income and must remain affordable for 30 years.⁹ Much of land use control is local in Massachusetts, so depending on the community, inclusionary zoning programs may or may not be directly influenced by 40B.¹⁰ The following are two different examples of the impact of Chapter 40B, and the successes and failures of inclusionary zoning.

Barnstable, MA.

In an attempt to address the state's 10 % affordability requirement, the town of Barnstable, Massachusetts on Cape Cod drafted an Inclusionary Housing Ordinance that charged developers a fee that was placed in an Inclusionary Housing Fund to purchase land and develop affordable units. A suit was brought against the town, claiming that the fee was an illegal tax. A Superior Court ruled in favor of the plaintiff in Dacey v. Town of Barnstable. A part of the inclusionary ordinance was struck down when the court ruled that the Town's imposition of an Inclusionary Housing Fee on developers whose projects were not covered under the ordinance constituted an exaction.¹¹ ***The lesson learned from Barnstable is that an inclusionary zoning program can be implemented in several different ways, and that it is important to find a program that suits an individual town.*** In the case of Barnstable, the courts ruled that imposing an exaction places the burden of developing affordable units on developers only. Rather, an inclusionary zoning program should be viewed as a community program. The Comprehensive Permit Law in Massachusetts (under Chapter 40B) expedites the permitting process for developers building affordable units, thus providing incentives for private development- making it the better option to achieve affordable housing goals.

Newton, MA.

Newton, Massachusetts is an older suburb of Boston with a population of 85,000. In 1977, Newton drafted its own inclusionary zoning ordinance, which has since provided 225 units of affordable housing over a thirty-year period. In addition, almost 450 units have been constructed in the community under the mandate of Chapter 40B. Newton's ordinance mandates that all units created have to be rental and leased through the Newton Housing Authority. Other options for developers such as off-site units and cash payments in lieu of construction are available, although tightly regulated. Newton's program also contains strict regulation in the design of affordable units. The units must be equal in character to market rate units, in order to avoid stigmatization.

One of the challenges of the Newton program is that there is a fee for developments under 10 units that do not come under the town ordinance. Therefore, many developers choose to pay the fee and under-develop. However, the Newton Housing Authority does not have an effective method to allocate funds received by the fee and in lieu payments. This case study shows the difficulty in creating many cash payment loopholes for developers. One remedy would be to mandate the construction of affordable units in all developments in return for a density bonus.¹²

⁸ National Housing Conference (NHC), "Inclusionary Zoning: Lessons Learned in Massachusetts," *NHC Affordable Housing Policy Review* 2, no. 1 (Washington, DC: Center for Housing Policy, January 2002).

⁹ Ibid.

¹⁰ Phillip B. Herr & Associates, "Zoning for Affordability," *Community Strategies* (Boston, MA: Massachusetts Housing Partnership, 1999).

¹¹ Commonwealth of Massachusetts Superior Court, Civil Action No. 00-53 (October 18, 2000), *Brian Dacey vs. Town of Barnstable*.

¹² National Housing Conference (NHC), "Inclusionary Zoning: Lessons Learned in Massachusetts," *NHC Affordable Housing Policy Review* 2, no. 1 (Washington, DC: Center for Housing Policy, January 2002).

C. RHODE ISLAND (RI) CASE STUDIES

Rhode Island's municipal affordable housing provisions within existing zoning ordinances are widely varied. In Rhode Island at this time, only East Providence and Tiverton have mandatory inclusionary zoning in use. There are 8 other municipalities that have some sort of an incentive zoning provision in the local zoning ordinance relating to affordable housing. These municipalities are Barrington, Burrillville, East Greenwich, Hopkinton, New Shoreham, North Kingstown, Richmond, and South Kingstown. This section provides a brief summary of the various incentive zoning techniques currently in use. The local ordinance citations follow each summary with a web link to the homepage of the municipality where online information is available for more information about each community and the ordinance cited.

- ◆ **Barrington, RI:** density bonus in an Elderly Housing District as part of a zoning ordinance amendment, with a 30-year affordability provision, but there is no provision for a percentage of low/moderate income family units. [Section 185-139-B] <http://www.ci.barrington.ri.us/>.
- ◆ **Burrillville, RI:** In Village Planned Development Districts flexibility in siting units is permitted by the Planning Board for all dimensional requirements but the 12,000 square feet minimum lot size. [Section 11-8.9.4] http://www.burrillville.org/Public_Documents/index.
- ◆ **East Greenwich, RI:** density bonus to a maximum of six units per acre provided that 10% of the units within the development are affordable in Mixed Use Planned Development Districts. [Article VIII, 6.3] <http://www.eastgreenwichri.com/>.
- ◆ **East Providence, RI:** a density bonus of up to 10% may be permitted according to the number of affordable units developed [Article VIII, Section 19-456]. Also the new Waterfront Development District (WWD) requires that all new residential development or property conversions resulting in 5 or more parcels or new dwelling units must supply a minimum of 10% of low to moderate income housing units as part of the development. An In-Lieu fee option is allowed per the rules and regulations of the East Providence Waterfront Special Development District Commission. [Article 9.(j), Affordable Housing] <http://www.eastprovidence.com/>.
- ◆ **Hopkinton, RI:** a density bonus of up to 10% may be permitted by the Planning Board according to the number of affordable units developed in cluster developments. [Section 14(A)(2)]
- ◆ **New Shoreham, RI:** density bonus of 100% may be granted to accommodate affordable units by the Zoning Board as a special-use permit. [Section 405]
- ◆ **North Kingstown, RI:** 10% density bonus may be granted for 10% of all dwelling units to be marketed at a moderate price in a Planned Unit Development by the Planning Commission. [Section 21-487(m)] <http://www.northkingstown.org/>.
- ◆ **Richmond, RI:** 20% affordable units in subdivisions (if the Planning Board determines that the development meets critical needs), the development is exempt from Growth Rate Control [Section 18.72.020(C), and affordable units are also exempt from impact fees. [Section 18.33.040(A)] <http://www.richmon드리.com/>.
- ◆ **South Kingstown, RI:** Affordable Housing is exempted from the Fair Share Development Fee. [Section 1101 D 1] <http://www.southkingstownri.com/>.
- ◆ **Tiverton, RI:** A mandatory alternative concept plan for all major land developments showing a 20% set-aside for low or moderate income housing is required. Planning Board will endorse or reject concept plan. A density bonus up to 30% over allowed density for additional units of low or moderate housing may be granted at the discretion of the Planning Board. [Article XXI, Section 9, a & b]

Part 4: Items to Consider

Developing an inclusionary housing section for a zoning ordinance is difficult, and many components of such an ordinance must be taken into consideration before the section can be written. Before proceeding, it is critical to familiarize oneself with the Rhode Island General Laws establishing the planning framework for housing development and zoning in general, along with the requirements of the *Comprehensive Housing Production and Rehabilitation Act of 2004* and the associated amendments to 7 other related enabling acts concerning affordable housing. The following 12 items are considered essential for communities to address concerning inclusionary housing and were adopted from an Enterprise Foundation Brief.¹³

A good World Wide Web site to review the RI planning and development laws is located at:

<http://www.rilin.state.ri.us/Statutes/TITLE45/INDEX.HTM>.

To view the House and Senate bills related to the *Comprehensive Housing Production and Rehabilitation Act of 2004* see:

[H-8574A, S-3148.](#)

1. How does the ordinance provision relate to adopted Municipal Plans?

When drafting inclusionary provisions for a zoning ordinance, a nexus needs to be established between the approved Affordable Housing Plan of the municipality and the purpose of the ordinance. The ordinance sections concerning Findings and Purpose should restate the community need for affordable housing, environmental and infrastructure constraints, and recommendations from the approved Affordable Housing Plan and the Housing Element of the Comprehensive Plan.

2. Will the inclusionary requirement be mandatory or voluntary?

The decision to make your requirement mandatory or voluntary is an important one. It seems most inclusionary zoning ordinances are voluntary. Voluntary programs are harder to challenge in court, but they should have incentives included to be successful. Mandatory programs, on the other hand, are obviously easy to enforce and evidence supports that they produce more units. The combination of approaches is probably best. Included within regulatory strategies usually are requirements to insure that developments mitigate the impacts of their projects on the community's need for affordable housing and incentives for developers to volunteer to provide affordable housing.

3. What will be the development threshold size for applicability?

The threshold size describes how the size of a development will trigger an affordability requirement.¹⁴ In the examples that follow in Part 5, there is a low of 3 units to a high of 50. In the Burlington example, a redevelopment of project of 10 acres or 50 or more units or a development using more than 10 acres or 50 or more units will trigger an affordability requirement.

¹³ Peter Werwath, "Program Design Considerations," *An Enterprise Issue Brief* (Columbia, MD: The Enterprise Foundation, 1994).

¹⁴ Business and Professional People for the Public Interest. "Issues to Consider in Developing an Inclusionary Zoning Ordinance," *Inclusionary Zoning Policy Briefs*, (Chicago, IL: Business and Professional People for Regional Affordable Housing Publications, Winter 2003).

4. What "set aside" of affordable units must be included?

It is important to gauge your community's needs (by referencing your municipality's Affordable Housing Plan) and determine a percentage of the total development's units that will be deemed as a "set aside." Certain inclusionary zoning ordinances either only include for-sale housing or rental housing. It appears that including both types of housing stock would benefit because the ordinance could target both low and moderate-income households. Some inclusionary programs have found that a key to success is an appropriate mix of affordable units coupled with a density bonus for market units. **Keep in mind that under the recent changes to the *Zoning Enabling Act*, any inclusionary housing zoning must provide that at least 10% of the total units in a development satisfy the affordable definition of the Act.**

5. What income groups are to be served?

A statement of the income group to be served must be drafted. Income eligibility standards are adjusted by family size, and most ordinances have a system for certifying income eligibility by an agreed-to standard. An ordinance may include a tiered income standard to aid developers: a lower percentage of affordable units can be built if the units are lower priced. Every ordinance should have some type of system to verify and certify incomes, or other special characteristics (such as disabilities).¹⁵ The system will have to adjust for varying incomes and family sizes. Whose regulations will you use to target a specific income group? In some communities, nonprofit organizations qualify homebuyers and renters for inclusionary developments, and they may also regulate trust fund monies, and other monies. It is important to establish who will supervise and enforce your inclusionary zoning ordinance.

6. What types of housing stock will be developed?

Another element to take into consideration is the style and design of affordable housing units. Some ordinances include strict design regulations. It would be beneficial for the community if the affordable units were compatible and similar to market rate design construction in the community.¹⁶

7. When will the affordable units be developed?

A sensitive issue for the developer and the municipality involves the timing of the affordable unit construction. While a developer may argue that s/he needs revenues from the market-rate units in order to feasibly construct the affordable units, a common goal is to have both types built concurrently to avoid any community controversy or having the developer leave the affordable units un-built. A compromise solution that appears in a number of ordinances is a phased construction of affordable rate units at an agreeable ratio to market-rate construction (e.g., one affordable unit for every five market-rate units constructed). Additionally, fees would be paid at the appropriate juncture (Netter, 2000).¹⁷

8. What type of cost- offsets and / or incentive(s) will you provide the developer?

There are ways of reducing the costs of a development to enable the construction of affordable housing such as the waiving of certain review fees or the amount of parking to be provided (see Part 5 for more details). These cost offsets allow a municipality to decrease the costs developers would incur for affordable housing, and minimize the possibility of a developer showing that mandatory inclusionary zoning causes an excessive loss such that it effects a taking. The cost offsets give developers certain benefits to compensate the developer for pricing some units below market rates. One of the most common incentives for an inclusionary zoning ordinance is to provide density bonuses to developers. Density bonuses allow developers to increase the number of units allowed on a piece of property if they

¹⁵ Peter Werwath, "Program Design Considerations," *An Enterprise Issue Brief* (Columbia, MD: The Enterprise Foundation, 1994).

¹⁶ Joyce Siegel, "Inclusionary Zoning Around the Country" (Baltimore, MD: Innovative Housing Institute, 2 March 2000).

¹⁷ Edith Netter, Esq., "Inclusionary Zoning Guidelines for Cities and Towns," *Community Strategies*. (Boston, MA: Massachusetts Housing Partnership, September 2000).

agree to make some percentage of those units affordable. Developers use additional cash flow from these bonus units to offset the revenue lost from the affordable units.¹⁸

9. How will the municipality sustain an ongoing inclusionary program?

It is important to ensure a total program when adopting an inclusionary zoning ordinance. If developers create affordable units without long-term affordability controls (30 year minimum in RI) or site units close too far from community and social services then the program will fail. This is important to consider as the community may want to stipulate special conditions for preserving the affordable housing created above and beyond the provisions required by the housing program funders. Special siting factors such as proximity to employment and other public services are necessary for affordable units. For example, one siting requirement may be that affordable units be located close to major employers and/or public transportation routes where possible.

10. What will be the type of controls on rental and for-sale housing?

A successful inclusionary zoning ordinance must include explicit restrictions on the future rental or sale of affordable units. Again, this is important to consider as the community may want to stipulate special conditions for preserving the affordable housing created above and beyond the provisions required by the housing program funders. The ordinance must require the units to remain affordable for a minimum of thirty years, and it may also specify that the affordable units must continue to be available to income-qualified occupants. Restricting income levels and rents for rental units is simple- the jurisdiction can specify rent limits and require verification of new tenant's incomes as they move into the development. Maintaining affordability on for-sale housing is more complicated. The ordinance may require that homeowners sell their unit to income-qualified buyers at a price that incorporates inflation and the cost of home improvement, but remains affordable. One compromise would be that homeowners could sell their home with affordability restrictions and donate a certain percentage of the profits to a housing trust fund.¹⁹ The ordinance should take into consideration inflation and the cost of living adjustments over time and who will be qualified in later years (see Part 5, numbers 10 & 11 for more details).

11. Can the developer make in-lieu-of payments?

A town may determine that the developer not be required to build affordable units if he pays a fee-in-lieu of development either (a) in cash or (b) by dedication of land. This fee is usually dedicated to a land trust or land bank for future affordable housing for the town, which may need to be established if none exists. A dedication of land may be advantageous to a community that has prioritized conservation along with affordable housing as a complementary goal. The community should specify whether the developer has the option of a fee-in-lieu by right, or require that the developer demonstrate that building the units as required presents a financial hardship.

In deciding the amount of a fee-in-lieu the ordinance needs to consider what the developer's costs might be to produce a unit of affordable housing, including current land costs, the need for infrastructure, current construction costs, etc. The object is to create a fee that is not too low so as to make it economically advantageous for the developer to opt out of building affordable units and high enough to make a reasonable gain by the community's affordable housing trust fund or land bank if they choose to allow the developer to opt out.

12. Can the developer build affordable units off-site?

Allowing developers the flexibility of delivering affordable housing off-site can help them economically. For example, if they are developing on expensive land, they can build more affordable units on other land. Also, affordable units may have special needs such as proximity to transportation

¹⁸ Regulatory Barriers Clearinghouse , "Considerations for Density Bonus Ordinance," *Breakthroughs: Solutions that support affordable housing* 2, no. 4, Washington, DC.

¹⁹ Anne Ray, "Inclusionary Housing A Discussion of Policy Issues," (Gainesville, FL: Shimberg Center for Affordable Housing, 15 June 2001).

and employment. Alternatively, while a municipality may allow the developer to build the affordable units off-site; however, this practice is less favored since one of the goals of inclusionary zoning is to promote the mixture of affordable units among market-rate housing to soften opposition to the construction as well as for the beneficial socio-economic impact. If off-site building is permitted, it is recommended that the units continue serving the same geographic locality.

Part 5: Developing an Ordinance

During the development of an inclusionary housing section for a municipal zoning ordinance, it is critical to tailor the section to the unique local housing conditions/ needs, governmental structure, and staffing levels - as defined by each locally approved Affordable Housing Plan. Therefore, the drafting of an effective inclusionary zoning ordinance requires the municipality to present a wide array of options that need to be viewed separately, and then evaluated in terms of how they work together.

This handbook is a reference tool not a model ordinance.

This section addresses those variables and options to be weighed in developing an effective inclusionary zoning ordinance. Communities should utilize this section as a guide to explain those issues that contribute to their unique needs, as there does not exist a one-size fits all solution. A municipality seeking to draft and implement an inclusionary zoning ordinance should consult with their legal counsel.

In addition, this section is formatted to resemble a general municipal zoning ordinance provision and includes the recommended guidelines presented within the "Rhode Island Five Year Strategic Housing Plan".

The eleven items below are standard items for a community to include when drafting an inclusionary zoning ordinance. These standard items were adopted from a multitude of sources and a regional housing educational publication by the Business and Professional People for the Public Interest. An explanation of each item is presented, along with a bolded description of the recommended guideline for each, if applicable, from the "Rhode Island Five Year Strategic Housing Plan". Following the explanation and recommendation is actual ordinance language examples that have been underlined to identify the illustrated State law and guideline requirements. Lastly, the language municipalities use to draft the inclusionary zoning ordinance should be checked for consistency with Rhode Island law by legal counsel.

1. Findings

An ordinance section on inclusionary housing should begin with findings stating the need for affordable housing in the municipality as cited in the approved local Affordable Housing Plan. Typically this is the section that would summarize the planning process the community has undertaken, trends in housing stock, the need for and benefits of affordable housing, the constraints to be addressed and the benefits anticipated by enactment of an inclusionary zoning ordinance provision.

The first findings below are cited from the newly adopted **Comprehensive Housing Production and Rehabilitation Act of 2004 (R.I.G.L 42-128-8.1)**. A findings section should mirror the general statewide findings in addition to any local findings from the local approved Affordable Housing Plan. Additional sample findings are from other places using inclusionary housing provisions in their zoning ordinances.

42-128-8.1. Housing production and rehabilitation.

(a) *Short title. This section shall be known and may be cited as the "Comprehensive Housing Production and Rehabilitation Act of 2004."*

(b) *Findings. The general assembly finds and declares that: (excerpts)*

(2) *Efforts and programs to increase the production of housing must be sensitive to the distinctive characteristics of cities and towns, neighborhoods and areas and the need to manage growth and to pace and phase development, especially in high growth areas.*

(3) *The state in partnership with local communities must remove barriers to housing development and update and maintain zoning and building regulations to facilitate the construction, rehabilitation of properties and retrofitting of buildings for use as safe affordable housing.*

(4) Creative funding mechanisms are needed at the local and state levels that provide additional resources for housing development, because there is an inadequate amount of federal and state subsidies to support the affordable housing needs of Rhode Island's current and projected population.

(5) Innovative community planning tools, including, but not limited to, density bonuses and permitted accessory dwelling units, are needed to offset escalating land costs and project financing costs that contribute to the overall cost of housing and tend to restrict the development and preservation of housing affordable to very low income, low income and moderate income persons.

(Lincoln, RI) [DRAFT: 02-06 Article VII]

A Findings: A diverse housing stock is necessary in this community in order to serve people of all income levels. Based upon the review and consideration of the recent Lincoln Affordable Housing Production Plan, it has become clear that the provisions of the Article are necessary in order to preserve some diversity of housing opportunities for the residents and the working people of Lincoln.

The program defined by this article is necessary to provide continuing housing opportunities for low and moderate income persons in Lincoln. It is necessary to help maintain a diverse housing stock and allow residents and employees of Lincoln to have better access to housing and jobs. The local and statewide trend of increasing housing costs as identified in the Lincoln Affordable Housing Production Plan will, without intervention; result in inadequate supplies of affordable housing here for low and moderate income residents and employees.

Remaining land for residential development in Lincoln is limited. It is essential that at least ten percent (10%) of such land be developed into housing units affordable to low and moderate income households. The primary objective of this article is to obtain affordable rental and homeownership units within qualified subdivisions or land development projects. Some provisions of this chapter provide for alternatives to the production of such on-site units. Those provisions recognize the fact that individual site and economic factors can make on-site production less desirable than the alternatives for particular developers. However, the intent and preference of this article is that wherever possible, affordable units constructed pursuant to this Article be located on site.

2. Statement of Purpose

Purpose statements typically explain broad policy directives of an ordinance.

(South Kingstown, RI) [FINAL DRAFT: Inclusionary Zoning Ordinance and Subdivision Regulations: Revised February, 2006]

- a. To encourage and perpetuate the historic diversity of the community through the development of housing and housing for all populations within the Town, including, but not limited to, housing for the resident workforce and housing for special needs populations;
- b. To promote mixed income Household occupancy in new subdivisions and land development projects throughout the Town;
- c. To promote affordable housing production in the Town in accordance with the goals and policies of the South Kingston Comprehensive Community Plan's Housing Element and Affordable Housing Production Plan;
- d. To encourage the development and availability of housing that qualifies as low and moderate income housing as mandated by RIGL 45-53, the Rhode Island Low and Moderate Income Housing Act, and the Rhode Island Comprehensive Housing Production and Rehabilitation Act of 2004, as amended;
- e. To allow 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 (6 residential units or greater) or major land development project under the South Kingstown Subdivision and Land Development Regulations.

(Lincoln, RI) [DRAFT: 02-06 Article VII]

The purposes of this article are to:

- (1) Maintain a balanced community that provides housing for people of all income levels, and
- (2) Promote the construction of rental and homeownership housing that is affordable for the low and moderate income households of Lincoln.

- (3) Implement the Lincoln Affordable Housing Production Plan, and the Housing Element of the Lincoln Comprehensive Plan, and Help Lincoln achieve the 10% low-moderate income housing goal set by the State.

3. Definitions

This part provides explanations to clarify certain specific terms used in the inclusionary zoning ordinance. Any housing, planning, or zoning terms that are not commonly used should be included in this section. Knowledge of existing definitions as established by the various Rhode Island General Laws (<http://www.rilin.state.ri.us/Statutes/TITLE45/INDEX.HTM>) concerning housing development is necessary for this section. Definitions are already provided in the legislation for many terms relevant to an inclusionary zoning ordinance provision such as:

- Affordable Housing
 - Approved Affordable Housing Plan
 - Moderate Income Household
 - Seasonal housing
 - Year-round Housing
 - Low and Moderate Income Housing
- (1) **"Affordable housing"** means 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 shall 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, housing accepting rental vouchers and/or tenant-based certificates under Section 8 of the United States Housing Act of 1937, as amended, 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 [§ 42-128-8.1(d)-1].
- (2) **"Affordable housing plan"** - means a plan prepared and adopted by a town or city either to meet the requirements of chapter 45-53 or to meet the requirements of [§ 45-22.2-10(f)], which require that comprehensive plans and the elements thereof be revised to conform with amendments to the state guide plan.
- (3) **"Approved affordable housing plan"** - means an affordable housing plan that has been reviewed and approved in accordance with [§ 45-22.2-9].
- (4) **"Moderate income household"** - means a single person, family, or unrelated persons living together whose adjusted gross income is more than eighty percent (80%) but less than one hundred twenty percent (120%) of the area median income, adjusted for family size.
- (5) **"Seasonal housing"** - means housing that is intended to be occupied during limited portions of the year.
- (6) **"Year-round housing"** - means housing that is intended to be occupied by people as their usual residence and/or vacant units that are intended by their owner for occupancy at all times of the year; occupied rooms or suites of rooms in hotels are year-round housing only when occupied by permanent residents as their usual place of residence.
- (7) **"Minor subdivision"** - A plan for a subdivision of land consisting of five (5) or fewer units or lots, provided that the subdivision does not require waivers or modifications as specified in this chapter [§45-23-32 (25)].

- (8) "**Major subdivision**" - Any subdivision not classified as either an administrative subdivision or a minor subdivision [§45-23-32 (22)].
- (9) "**Cluster**" - A site planning technique that concentrates buildings in specific areas on the site to allow the remaining land to be used for recreation, common open space, and/or preservation of environmentally, historically, culturally, or other sensitive features and/or structures. The techniques used to concentrate buildings shall be specified in the ordinance and may include, but are not limited to, reduction in lot areas, setback requirements, and/or bulk requirements, with the resultant open land being devoted by deed restrictions for one or more uses. Under cluster development there is no increase in the number of lots that would be permitted under conventional development except where ordinance provisions include incentive bonuses for certain types or conditions of development [§ 45-24-31 (13)].
- (10) "**Incentive Zoning**" - The process whereby the local authority may grant additional development capacity in exchange for the developer's provision of a public benefit or amenity as specified in local ordinances [§ 45-24-31 (35)].

4. Standards - Threshold Size and Applicability

Threshold size and applicability is a two-fold standard requirement, by which the developer must comply. Therefore, the language within the inclusionary zoning ordinance must identify a standardized number of units or acres to be established as the threshold size. If the number of units or acres within the proposed land and/or building rehab development meets or exceeds the threshold size, then the threshold size will function as a trigger for the application of a set-aside provision requirement. For instance, the "Rhode Island Five Year Strategic Housing Plan" guidelines suggest the **minimum threshold trigger for this inclusionary zoning provision to be six for-sale or six rental units**. This standard trigger of six for-sale or six rental units is based on R.I. enabling legislation, which differentiates a major subdivision from a minor subdivision based upon a standard of six or more units. Nonetheless, the State would not discourage a reduction of this standard trigger as every municipality possesses unique local housing conditions/ needs, governmental structure, staffing levels, and locally approved Affordable Housing Plans. Furthermore, in some cases where large redevelopment projects are involved, a standardized number of acres must be identified as the trigger. Additionally, and only if applicable, this section of the ordinance should state whether the threshold size be applicable to all zoning districts or just specific zoning districts.

Details for the income groups to be served by the set-aside provision will be established in the "certifying buyers and renters and maintaining affordability" provision within the inclusionary zoning ordinance.

(Burlington, VT) *The following residential development projects shall be Covered Projects and shall be subject to the requirements of this Article: all development of residential property larger than 10 acres or containing 50 or more dwelling units taking place through the construction of new structures or through the substantial rehabilitation of existing structures. Covered Projects shall include all development of residential property in excess of 10 acres or containing 50 or more dwelling units in the City by the same responsible party in any calendar year.*

(A covered project in Burlington, VT is defined as - units that are offered for sale via the conveyance of a deed or share for individual units).

(Lexington, MA) *These provisions shall apply to all residential developments with three or more dwelling units which are authorized through special permits with site plan review, including residential developments in CD or RD Districts.*

(Lincoln, RI) [DRAFT: 02-06 Article VII]

E. Number of Inclusionary Units: *Any development containing five or more dwelling units is required to include at least twenty percent (20%) of the total number of dwelling units within the development as affordable units.*

(South Kingstown, RI) [FINAL DRAFT: Inclusionary Zoning Ordinance and Subdivision Regulations: Revised February, 2006]

- B. Applicability. This section shall be applicable in all zones permitting residential development where the applicant proposes a development that would be classified as a major subdivision (6 residential units or greater) or major land development project under the South Kingstown Subdivision and Land Development Regulations.

5. Standards - Set-Asides

A set-aside provision pertains to the required percentage of a proposed development that a developer must price as affordable. There is no one-size-fits-all set-aside that can be used to do this. **The Zoning Enabling Act [R.I.G.L. 45-24-46.1] mandates that inclusionary zoning set-asides must be at least 10% of the total units proposed for development. In an attempt to maintain progress towards achieving the State's 10% goal, the "Rhode Island Five Year Strategic Housing Plan" guidelines suggest that municipalities consider a higher affordability set-aside, which will be off-set with a higher density bonus.** Based upon the State law and guidelines, perhaps the best general set-aside for a municipality would be to allow no less than 12.5% to 15%, but no greater than 25%.

Additionally, the municipality must decide what income tier to target for the affordable units, and balance those requirements with projects thought to have economic feasibility. Within this provision of the ordinance, the developer's pricing schedule must be consistent with the municipal affordable housing element of the comprehensive plan and the fiscal boundaries pre-established by the municipality. (The set-aside should be related directly to the Findings Section for ordinance consistency).

(Lincoln, RI) [DRAFT: 02-06 Article VII]

- E. Number of Inclusionary Units: Any development containing five or more dwelling units is required to include at least twenty percent (20%) of the total number of dwelling units within the development as affordable units.

(Canton, MA)

Ten percent (10%) of the dwelling units in the Continued Care Retirement Community shall be available to and permanently affordable for households earning less than or equal to 80% of the median income for Worcester County. An increase in the number of units of up to twenty percent (20%) of the maximum dwelling units allowed may be permitted on a one to one basis for units above and beyond the required ten percent (10%).

(Duxbury, MA) [DRAFT]

At least ten (10) percent of the lots in a division of land or units in a multiple unit development subject to this Bylaw shall be established as affordable housing units in any one or combination of methods provided for below. Fractions of a lot or dwelling unit shall be rounded up to the nearest whole number, such that a development proposing six (6) dwelling units shall require one affordable unit, a development proposing eleven (11) dwelling units shall require two affordable units and so on.

6. Standards - Design and Building Requirements

Within the inclusionary zoning ordinance, it is important to establish the specific site design and architectural standards that will be implemented to move forward with the construction of the affordable housing units. In addition, while the type and design of a proposed development will be determined by the needs of the community, **the inclusionary zoning ordinance should implement guidelines that require affordable units to be similar in outward appearance to market rate units in the municipality.** More often than not, visual compatibility positively contributes to the overall aesthetic quality of the municipality; and this can make it easier for low or moderate income residents to both accommodate and assimilate themselves into the municipality. **In addition, the ordinance should provide implementation guidelines for developments that may include a mix of housing types and lot sizes, such as single-family units, duplexes, triplexes, and quadruplexes.**

Lastly, the inclusionary zoning ordinance should address two additional building alternatives: off-site construction and land dedication. In the event a developer proves that the construction of on-site affordable units is infeasible (due to environmental constraints or other fiscal considerations); he may be granted the option, with approval from the municipal Planning Board, for off-site construction. An approval of this nature should require the developer to construct both the market and the affordable units simultaneously. A land dedication provision would allow a developer, demonstrating a unique hardship, to **substitute a donation of land suitable for development that can accommodate affordable units in place of constructing the units.**

Presented below are six examples of either approved ordinances or ordinances still in the drafting phase demonstrating those guidelines set within the "Rhode Island Statewide Strategic Housing Plan". Examples one and two demonstrate guideline language for development design and location; examples three and four demonstrate guideline language for a variety of different mixed use developments; example five demonstrates guideline language for the circumstances and requirements for off-site developments; lastly, example six demonstrates guideline language for the requirements for land dedication.

Example One

(Lexington, MA)

6. *Development Design. Location and design of Inclusionary Units shall comply with the following:*
- (a) *Inclusionary Units shall be sited in no less desirable locations than the other units located on the same site.*
 - (b) *The materials used and the quality of construction for Inclusionary Units, including heating, ventilation, and air conditioning systems, shall be equal to those of the other units in the development, but amenities such as designer or high end appliances and fixtures need not be provided for Inclusionary Units.*
 - (c) *To be credited towards the count of Inclusionary Units any existing dwelling 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 (including, but not limited to, roof, windows and building envelope, HVAC, plumbing, and electrical) meet standards comparable to new construction.*
 - (d) *The exterior appearance of the Inclusionary Units shall be compatible with the other units on the same site.*

Example Two

(Lincoln, RI) [DRAFT: 02-06 Article VII]

J. Design Guidelines

- (1.) *The exterior appearance of the Inclusionary units in any development shall be visually compatible with the market rate units in the development. External building materials and finishes shall be substantially the same in type and quality for inclusionary units as for market rate units and have the appearance of a single family home.*

Example Three

(Providence Inclusionary Zoning Recommendations) [PolicyLink]

Design Standards for Inclusionary Units

Affordable units must be similar to and compatible with market rate units in outward appearance and in number of bedrooms, but size of affordable units may be reduced to a minimum standard, e.g. for apartments, the minimum sizes could be:

- *Efficiencies at 450 sq. ft.*
- *One bedrooms at 600 sq. ft.*
- *Two bedrooms at 850 sq. ft.*
- *Three bedrooms at 1,050 sq. ft.*
- *Four bedrooms at 1,120 sq. ft.*

Townhouses, multiplex, and single family units would generally be larger than these minimums due to developer design and compatibility goals. Interior finishes, appliances, and amenities need not be compatible with market rate units.

Handbook on Developing Inclusionary Zoning
Part 5: Developing an Ordinance

Example Four

(South Kingstown, RI) [FINAL DRAFT: Inclusionary Zoning Ordinance and Subdivision Regulations: Revised February, 2006]

- C. Permitted Uses. (Note: the section below is modeled after the existing provisions of Section 502.5 Flexible Design Residential Projects.).
- a) The following residential uses are permitted (Y) in subdivisions or land development projects to these inclusionary provisions.

<u>Use Code</u>	<u>Description</u>
10	Single household detached structure
11	Two household detached structure
12	Multi-household detached structure (up to four-dwelling units per structure in subdivisions, up to 12 units per structure LDP, Land Development Project)
12.1	Multi-household Land Development Project (see Appendix A, Use Code Descriptions)
12.2	Multi-household Detached Structure-Elderly Only, LDP (see Appendix A, Use Code Descriptions)
12.3	Multi-household Land Development Project - Elderly Only, LDP (see Appendix A, Use Code Descriptions)
12.4	Residential Compound (see Appendix A, Use Code Descriptions)
16.1	Mobile or Manufactured Home Park, Land Development Project (see Appendix A, Use Code Descriptions)
16.2	Senior Residential Community – LDP (Land Development Project) – Elderly-Only, (see Section 501.7, permitted only in the R40 zoning district subject to the additional requirements listed therein)

- I. Design Standards for Inclusionary Dwelling Units in Major Subdivisions and Major Land Development Projects
- 1 Intent
It is the intent of this Section to establish general design and procedural standards for the siting and construction of affordable dwelling units (inclusionary zoning) in major land developments and major subdivisions. By the application of these standards and procedural requirements it is intended to create subdivision neighborhoods and land development projects that have long desirability, provide housing opportunities for a broad range of households with varying incomes and housing needs and are compatible with the surrounding community.
- a) Inclusionary Dwelling Unit Design Considerations ...For conventional subdivisions or Flexible Design Residential Projects (FDRP's) such units may be designed as single household units, duplexes, triplexes or in a quadraplex configuration.

Example Five

(Lincoln, RI) [DRAFT: 02-06 Article VII]

- M. Off-site Construction of Inclusionary Units: Inclusionary units may be constructed off-site only upon the determination by the Planning Board or Zoning Board that on-site construction is infeasible. If this option is chosen, then the off-site inclusionary units must be constructed prior to or concurrently with the construction of the on-site project. The inclusionary unit size and count must meet the same requirements as if the inclusionary units were constructed on-site.

Example Six

(Towns in Barnstable County, MA) [Inclusionary Housing Bylaw]*

- 05 Provision of Affordable Units:
4. An applicant may offer, and SPGA may accept, donations of land in fee simple, on or off-site, that the SPGA in its sole discretion determines are suitable for the construction of affordable housing units. The value of donated land shall be equal to or greater than the value of the construction or set-aside of the affordable units. The SPGA may require, prior to accepting land as satisfaction of the requirements of this provision/ordinance, that the applicant submit appraisals of the land in question, as well as other data relevant to the determination of equivalent value.

*Note: If item 4 were to be incorporated into the language of a RI ordinance, replace the "SPGA" with "Zoning Board of Review or Planning Board (ZBR or PB)"; and replace the word "bylaw" with the word "ordinance".

7. Standards - Timing of construction

It is important to establish when the affordable units shall be constructed. Most municipalities require affordable units to be built concurrently with market units to ensure integration of affordable and market units, and to prevent developers from abandoning projects prior to completing the affordable units. This section can be used to stipulate when phasing is used how many affordable units are to be constructed as part of each phase. **The "Rhode Island Five Year Strategic Housing Plan" guidelines state that the inclusionary ordinance may stipulate an upfront commitment from developers to create affordable units in a timely manner through the use of bonds or the requirement of phased construction plans, encouraging developers to construct affordable units either before or concurrent with market rate units.**

(Burlington, VT) *Inclusionary units shall be made available for occupancy on approximately the same schedule as a Covered Project's market units, except that certificates of occupancy for the last ten percent of the market units shall be withheld until certificates of occupancy have been issued for all of the inclusionary units. A schedule setting forth the phasing of the total number of units in a Covered Project, along with a schedule setting forth the phasing of the required inclusionary units, shall be established prior to the issuance of a building permit for any development subject to the provisions of this Article.*

(A covered project in Burlington, VT is defined as - units that are offered for sale via the conveyance of a deed or share for individual units).

(Lexington, MA) *POLICY 4.15: TIMING OF CONSTRUCTION: Building permits should not be issued for the construction of any dwelling unit in the second 50% of the market rate dwelling units, which are linked to affordable dwelling units, whether on the same site or elsewhere in town, until construction has begun on ALL the affordable dwelling units.*

(Massachusetts Smart Growth Model IZ Bylaw)

05.0 Provisions Applicable to Affordable Housing Units On- and Off-Site:

3. Timing of construction or provision of affordable units or lots. Where feasible, *affordable housing units shall be provided coincident to the development of market-rate units, but in no event shall the development of affordable units be delayed beyond the schedule noted below:*

<u>Market rate Unit (% Complete)</u>	<u>Affordable Housing Unit (% Required)</u>
<30%	-
30% plus 1 unit	10%
Up to 50%	30%
Up to 75%	50%
75% plus 1 unit	70%
Up to 90%	100%

Fractions of units shall not be counted.

(Charlton, MA) [DRAFT]

- (4.) *The construction of the affordable units will be built (a unit is considered "built" upon the issuance of an Occupancy Permit) coincident with the development of market-rate units, but in no event shall the development of affordable units be delayed beyond the schedule noted below:*

<u>Market rate units (% built)</u>	<u>Affordable housing units (% built)</u>
Up to 30%	None required
30% to 50%	At least 30%
51% to 75%	At least 75%
76% or more	100%

8. Cost Offsets and Density Bonuses

State inclusionary zoning guidelines suggest ways of reducing the costs of a development to enable the construction of affordable housing. Municipalities may implement cost offsets in a variety of ways. These include waivers from development standards such as set-back requirements, parking and landscaping requirements, waivers of impact fees and streamlining permitting to reduce the cost of constructing affordable units. These cost offsets allow a municipality to decrease the developer costs to be incurred while constructing affordable housing. In addition, the cost offsets minimize the possibility of a developer showing that inclusionary zoning causes an excessive loss such that it presents itself as a taking. Furthermore, the cost offsets give developers certain benefits to compensate themselves for pricing some units at below market rates.

(South Kingstown, RI) [FINAL DRAFT: Inclusionary Zoning Ordinance and Subdivision Regulations: Revised February, 2006]

502.6 A. Fair Share Development Fee Exemption. Per section 1101.D. 1. of this Ordinance, required Inclusionary dwelling units in major land development projects, major subdivisions or off-site exactions shall be exempt from payment of Fair Share Development Fees for both school facilities and open space, conservation, park and recreation land and/or facilities.

One of the most popular developer incentives used by a municipality is the density bonus. Consequently, the incorporation of the density bonus provision has become an essential component of the inclusionary zoning ordinance, as it has proven advantageous to both the developer and municipality. **The State guidelines indicate that for the density bonus provision to be effective, it must be offered at a higher percentage than the affordable set-aside requirement in order to offset the cost of the affordable unit requirements.**

(Charlton, MA) [DRAFT]

O. Provision of Affordable Units and Density Bonus

- (1.) Utilizing the Affordable Housing Incentive Option will require the granting of a Special Permit from the Planning Board.
- (2.) *Density Bonus Applicability: The density bonus is only available in those areas of Charlton serviced by both municipal water and sewer, or upon approval of both the Planning Board and the Board of Health.
- (3.) Density Bonus Formula: For projects resulting in a net increase of six (6) or more dwelling units, the applicant has the option of obtaining a density bonus in exchange for the provision of affordable housing. The number of additional lots derived from the density bonus shall not exceed 25% of the total lots that could be created under a conventional definitive subdivision plan design. The density bonus shall be calculated according to the following formula:

 - 3-a. For those residential development projects that will set aside a minimum of fifteen percent (15%) of the total proposed housing units for affordable housing, the minimum lot area per dwelling normally required in the applicable zoning district may be reduced by the amount necessary to permit up to two (2) additional units for each one affordable housing unit provided.
 - 3-b. For those residential development projects that will set aside a minimum of ten percent (10%) of the total proposed housing units for affordable housing, the minimum lot area per dwelling normally required in the applicable zoning district may be reduced by the amount necessary to permit up to one (1) additional unit for each one affordable housing unit provided.
 - 3-c. Fractions: If when applying the above percentages to the total number of units to determine the number of affordable units, the resulting number of affordable units includes a fraction of a unit, this fraction shall be rounded up to the next whole number.

*Note – If item (2) were to be incorporated into the language of a RI ordinance, the language would need to be specific with regard to the type of water supply (i.e. – municipal water source; or a private/public well water source) available to it and its wastewater management system. Furthermore, if specific approvals need to be obtained, the municipality would need to identify those particular municipal and state departments.

(Lincoln, RI) [DRAFT: 02-06 Article VII]

Density Bonus: All projects shall be entitled to a density increase of twenty-five percent (25%) in accordance with the provisions of this section. This density bonus qualifies as a locally provided subsidy. Any project shall be entitled to an increase in the maximum lot coverage allowed for the site on which the project is located following the calculation of density, lot coverage, and setbacks.

(Somerville, MA) *The affordable housing requirements of this Article shall apply to all residential developments seeking special permits with site plan review to develop 8 or more dwelling units, whether new construction, substantial rehabilitation, or adaptive reuse. Developments shall not be segmented or phased in a manner to avoid compliance with these provisions. Developers providing more than 12.5% of the total units in the development as affordable units may apply for an additional density bonus under the terms of this Article. Bonuses may be awarded on the basis of a 2 to 1 ratio of market rate units to affordable housing units. For every additional unit provided beyond the 12.5% required, 2 additional market rate units may be authorized.*

9. Fee In Lieu

An inclusionary zoning ordinance may allow the option for the developer to pay a fee in lieu should it not be possible to construct the required affordable units for a variety of reasons. Several methods exist for the use of fee in lieu of construction. Such fees can be established that permit payment as a right. **In addition, an alternative is to require developers to show that constructing units would constitute a unique hardship, or that a fee would produce a greater benefit. State guidelines recommend that each community adopt a schedule of in-lieu fees that is based on a sound methodology, such as a percentage of the appraised value of the market-rate units. The fee should not exceed the difference between the cost of development and the sales price for an affordable unit.** The fee in lieu paid, is linked to the cost of producing a unit, and typically varies in every community, as the formulas for calculating an appropriate fee in lieu are dependent upon the local housing market.

(Massachusetts Smart Growth Model IZ Bylaw)

07.0 Fees-in-Lieu-of Affordable Housing Unit Provision: [Commentary Included]

1. As an alternative to the requirements of Section 05.0 or Section 06.0, an applicant may contribute to an established local housing trust fund to be used for the development of affordable housing in lieu of constructing and offering affordable units within the locus of the proposed development or at an off-site locus.

(a) Calculation of fee-in-lieu-of units. The applicant for development subject to this bylaw may pay fees-in-lieu of the construction of affordable units. For the purposes of this bylaw/ordinance the fee-in-lieu of the construction or provision of affordable units will be determined as a per-unit cost as calculated from regional construction and sales reports. The SPGA will make the final determination of acceptable value.

COMMENT: This Section provides a cash payment option in lieu of providing affordable units. The payment value may differ for each municipality and will depend on the size of the affordable housing unit discount that would be necessary to make the unit affordable (e.g. median sale price of market rate unit minus maximum sale price of a three-bedroom affordable dwelling unit). Fees in-lieu will need to be recalculated regularly to account for inflation and other market changes. Furthermore, the local housing trust fund will need to be closely regulated to ensure that dollars contributed to the fund are spent exclusively on the provisioning of affordable housing. This is the appropriate section for specifying guidelines for administering the housing trust and stipulating the governance structure by which the trust will be managed. Municipalities that significantly lack

affordable housing opportunities should consider heavily restricting the fee-in-lieu payment option. In built-out communities, housing trust funds often grow and sit unused because sites appropriate for affordable housing development are not available. Additionally, affordable housing trusts can force municipal agents into the role of real estate developers, which local government officials may be poorly suited for or reluctant to do. Cities such as Cambridge have eliminated the fee-in-lieu payment option in almost all cases except for extreme hardship in order to ensure that affordable housing is built by the developers at the same time that new development is under construction.

(Duxbury, MA) [DRAFT]

560.12 Fees-in-Lieu of Affordable Housing Unit Provision

As an alternative to the requirements of Section 560.5, and as allowed by law, an applicant may contribute to the Duxbury Housing Trust Fund to be used for the development of affordable housing in lieu of constructing and offering affordable units within the locus of the proposed development or off-site.

Calculation of fees-in-lieu of units. The applicant for development subject to this Bylaw may pay fees in lieu of the construction of affordable units. For the purposes of this Bylaw, the fee in lieu of the construction or provision of affordable units is determined to be \$200,000 per unit. For example, if the applicant is required to construct two affordable income units, they may opt to pay \$400,000 in lieu of constructing or providing the units. Unless and until adjusted by Town Meeting, the fee in lieu of the construction of affordable units shall increase three (3%) percent every twelve months from the effective date of this Bylaw.

10. Certifying Buyers and Renters and Maintaining Affordability

An inclusionary zoning ordinance can provide regulations with extensive instructions for marketing to and certifying buyers and renters of affordable units. **Affordable dwelling units for sale cost guidelines comprise: the principal, interest, property insurance, and taxes - which may be adjusted by state and local programs for property tax relief.** These consolidated costs may not constitute more than 30 percent of the gross household income for a moderate income household. In the case of affordable dwelling units for rent cost guidelines comprise: the rent, heat, and utilities - other than telephone - and may not constitute more than 30 percent of the gross annual household income for a household with 80 percent or less of Area Median Income (AMI), adjusted for household size. State guidelines suggest that income ranges targeted in local zoning ordinances be consistent with the needs identified in the community's affordable housing plan.

In addition, the provisions must have a system to make sure that eligible families are being housed in the affordable units over the long-term. **The Zoning Enabling Act [R.I.G.L. 45-24-46] mandates that the minimum time period for affordability maintenance shall be 30 years; and the State guidelines recommend that the period of affordability can be established in the ordinance as perpetuity meaning 99 years or the useful life of the building.**

The methods utilized to maintain the time frames for affordability vary with regard to the staffing and enforcement capabilities of each municipality. Typically affordability is maintained by certain legal mechanisms such as deed restrictions and covenants that can be used to guarantee the units remain affordable for that time period maintained through deed restrictions or covenants recorded against the property. These affordability controls often specify that a unit must be sold or rented to an income eligible buyer at an affordable price. Most ordinances impose price restrictions that keep units affordable when they pass to new occupants. More recently, municipalities have incorporated specific affordability maintenance periods, which would subsequently reinstate the original time period of affordability.

Lastly, guidelines need to be provided on the subject of resale pricing and maintaining the affordability of the housing units. Municipalities must address whether sellers should be allowed to recoup the value of capital investments in their homes. All of the aforementioned considerations can be facilitated by designating a monitoring agent in the ordinance. **The State inclusionary zoning guidelines recommends that the local municipality should select an agent approved to**

monitor the affordable units for long-term compliance from RI Housing's list of approved monitoring agents, which may include local housing authorities, RI Housing, a community housing land trust, or the state or federal agency providing subsidies.

(Duxbury, MA) [DRAFT]

560.10 Maximum Incomes and Selling Prices: Initial Sale

To ensure that only eligible households purchase affordable units, the purchaser of an affordable unit shall be required to submit copies of the last three years' federal and state income tax returns and certify, in writing and prior to transfer of title, to the developer of the housing units or his/her agent, and within thirty (30) days following transfer of title, to the Duxbury Housing Authority, that his/her or their family's annual income level does not exceed the maximum level as established by the Commonwealth's Division of Housing and Community Development, and as may be revised from time to time.

The maximum housing cost for affordable units created under this Bylaw is as established by the Commonwealth's Division of Housing and Community Development or as revised by the Town.

560.11 Preservation of Affordability: Restrictions on Resale

Each affordable unit created in accordance with this Bylaw shall have the following limitations governing its resale. The purpose of these limitations is to preserve the long-term affordability of the unit and to ensure its continued availability for affordable income households. The resale controls shall be established through a deed restriction on the property, recorded at the Plymouth County Registry of Deeds or the Land Court, and shall be in force for as long a period as is lawful.

Resale Price – Sales beyond the initial sale to a qualified affordable income purchaser shall include the initial discount rate between the sale price to and the unit's appraised value at the time of resale. This percentage shall be recorded as part of the restriction on the property noted in Section 560.11. For example, if a unit appraised for \$300,000 is sold for \$225,000 as a result of this Bylaw, it has sold for 75% of its appraised value. If several years later, the appraised value of the unit at the time of proposed resale is \$325,000, the unit may be sold for no more than \$243,750, or 75% of the appraised value of \$325,000.

(Lincoln, RI) [DRAFT: 02-06 Article VII]

O. Requirements

(2) Determination of Rental Rates for Affordable Units:

Maximum Rents: Rents charged for inclusionary rental units in any one project must average, be affordable to households earning eighty percent (80%) or less of the Area Median Income (AMI) as determined by HUD. No unit may rent at a rate, which exceeds affordability for a household earning fifty percent (50%) to eighty percent (80%) of AMI as determined by HUD. Latest AMI statistics may be obtained from Rhode Island Housing at www.righthousing.com.

(3) Sales Prices for Affordable Units: *The maximum sales price for an affordable ownership unit shall be set by Rhode Island Housing according to their accepted formula. The home price for affordable units in any development shall be a price affordable to a household earning no more than eighty (80%) of the AMI as defined by HUD if subsidized with federal funds. The home price for affordable units in any development not being subsidized by federal funds the price must be affordable as follows:*

a One unit shall be made available at a price affordable to a household earning no more than eighty percent (80%) of the AMI as defined by HUD.

b One unit shall be made available at a price affordable to a household earning no more than one hundred percent (100%) of the AMI as defined by HUD.

c Any additional units may be made available at a price affordable to a household earning no more than one hundred twenty percent (120%) of AMI as defined by HUD.

(4.) Approved Purchasers of Affordable Units: *A developer or owner shall select an eligible purchaser after completing a good faith marketing and selection process. Upon request, the Town may provide the developer or owner of an affordable unit with a list of households certified by the Town as eligible to purchase the unit. However, a developer or property owner may select an income eligible purchaser who is not on a furnished list so long as the Town can verify the purchaser's income and asset eligibility and the unit is sold at an affordable price as described in this chapter.*

(5.) Purchasers of Affordable Units Required to Reside in Those Units: *A purchaser of an affordable unit shall occupy the purchased unit as their primary residence. No person shall rent an affordable*

- ownership unit. Ownership units must remain exclusively owner occupied for the entire required affordability period.*
- (6.) *Resale Restrictions; Applicable to Affordable Units: All affordable ownership units as developed under this Article shall be subject to the following restrictions: A seller of an affordable unit must select a low-income purchaser by a method that complies with an approved good faith marketing and selection process. At the request of the applicant, the Town will provide the seller with the description of a process that meets this requirement. Upon request, the Town may provide the seller with a list of households certified by the Town as income eligible to purchase the unit. All purchasers of affordable units shall be part of an income eligible household.*
- (7.) *Resale Price for Affordable Units: The resale price of any affordable unit shall not exceed that which is affordable to a household earning no more than eighty percent (80%) to one-hundred twenty percent (120%) of the AMI as defined in Section N.(3).*

11. Housing Agency Right to Purchase

Where appropriate, some inclusionary zoning ordinances give the municipality and/or designated not-for-profit entities a right to purchase a fixed percentage of affordable units. This can be required when the units are first offered for sale or rent, so that the units will stay permanently affordable. Lastly, the local trends in housing stock, the need for and benefits of affordable housing, and the staff capability of each community and/or the presence of a qualified community development corporation should dictate how this guideline shall be incorporated within the municipality's inclusionary zoning ordinance.

(Duxbury, MA) [DRAFT]

560.11 Preservation of Affordability; Restrictions on Resale

Right of first refusal to purchase – The purchaser of an affordable housing unit developed as a result of this Bylaw shall agree to execute a deed rider prepared by the Town, granting, among other things, the Town's right of first refusal for a period not less than one hundred and eighty (180) days to purchase the property of assignment thereof, in the event that, despite diligent efforts to sell the property, a subsequent qualified purchaser cannot be located.

(Lincoln, RI) [DRAFT: 02-06 Article VII]

O. Requirements

- (8.) *Deed Restriction or Incorporation into a Community Land Trust Required: No person offering an affordable unit for sale shall fail to lawfully reference in the grant deed conveying title of any such unit and recorded with the Register of Deeds, a covenant or Declaration of Restrictions in a form approved by the Town. Such covenant or Declaration of Restrictions shall reference applicable contractual arrangements, restrictive covenants, and resale restrictions as are necessary to carry out the purposes of this Article.*

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Rhode Island State Agency World Wide Web Pages:

RI Statewide Planning Program	http://www.planning.state.ri.us
RI Housing and Mortgage Finance Corporation	http://rihousing.com
Rhode Island Government	www.ri.gov
Rhode Island General Laws	http://www.rilin.state.ri.us/Statutes/TITLE45/INDEX.HTM

World Wide Web Pages of Various Case Studies & Sample Ordinances

Barrington, RI	http://www.ci.barrington.ri.us
Barnstable, MA	www.capecodcommission.org/bylaws/affordhous.html
Boston, MA	http://www.cityofboston.gov
Burlington, VT	http://www.ci.burlington.vt.us
Burrillville, RI	http://www.burrillville.org
Cambridge, MA	http://www.cambridgema.gov/index.cfm
Clinton, MA	http://www.town.canton.ma.us
Charlton, MA [DRAFT]	http://www.townofcharlton.net
Duxbury, MA [DRAFT]	http://www.town.duxbury.ma.us
East Greenwich, RI	http://www.eastgreenwichri.com
East Providence, RI	http://www.eastprovidence.com
Lexington, MA	http://ci.lexington.ma.us
Lincoln, RI [DRAFT: 02-06 Article VII]	http://www.lincolnri.org
Massachusetts	http://www.state.ma.us/dhcd/components/hac/zone.htm
Massachusetts Smart Growth Model IZ Bylaw	http://www.mass.gov/ocd
Montgomery County, MD	www.inhousing.org/InclusionaryZoning/zonelaws.htm
North Kingstown, RI	http://www.northkingstown.org
Providence Inclusionary Zoning Recommendations [PolicyLink]	http://www.policylink.org/Projects/IZ/
Richmond, RI	http://www.richmon드리.com

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Somerville, MA

<http://www.ci.somerville.ma.us>.

South Kingstown, RI [FINAL DRAFT:
Inclusionary Zoning Ordinance and Subdivision
Regulations; Revised February, 2006]

<http://www.southkingstownri.com>.

Links

If you are looking for additional housing-related information, you may want to visit one of the following sites. Access is provided purely as a public service. The State of Rhode Island does not endorse any of the linked sites or any products or services found at the linked sites.

Citizens' Housing and Planning Association
www.chapa.org.

Enterprise Foundation www.enterprisefoundation.org.

Fannie Mae www.fanniemae.com.

Federal Home Loan Bank of Boston
www.fhlbboston.com.

Freddie Mac www.freddiemac.com.

Grow Smart Rhode Island
<http://www.growsmartri.com/affordablehousing.html>.

Harvard University Joint Center for Housing Studies
www.jchs.harvard.edu.

HUD www.hud.gov.

LISC www.liscnet.org.

Massachusetts Housing Partnership Fund
www.mhp.net/termsheets/inclusionaryzoning.pdf.

Minority Business Enterprise Commission
www.rimbe.org.

National Association of Housing & Redevelopment
Officials www.nahro.org.

National Association of Realtors www.realtor.com.

National Association of Home Builders www.nahb.com.

National Coalition for the Homeless
www.nationalhomeless.org.

National Council of State Housing Agencies
www.ncsha.org.

National Housing Conference www.nhc.org.

National Low Income Housing Coalition www.nlihc.org.

Neighborworks www.nw.org.

Pioneer Institute www.pioneerinstitute.org.

Research Institute for Housing America
www.housingamerica.org.

Rhode Island Association of Realtors www.riliving.com.

RI Builders Association www.ribuilders.org.

RI Chapter of the American Planning Association
www.riapa.org.

RI Coalition for the Homeless www.rihomeless.com.

RI Housing Resources Commission
www.hrc.state.ri.us.

Southeastern Regional Planning and Economic
Development District <http://www.srpedd.org>.

Statewide Housing Action Coalition www.shac-ri.org.