

Contents

The Issue of Housing Affordability in Rhode Island	3
A Basic Description of Inclusionary Zoning	4
Recent Changes to State Law	5
Planning for Housing Diversity	5
Preparing to Draft an Ordinance	6
Important Policy Questions	8
Sample Ordinance Language	12
I. Findings	14
II. Purposes	15
III. Applicability	16
IV. Set Aside	17
V. Density Bonuses	17
VI. Design Requirements and Dimensional Relief	19
VII. Alternatives to On-Site Construction of Deed Restricted Affordable Housing	20
VIII. Timing of Construction	21
IX. Certifying Buyers and Maintaining Affordability	22

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:

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

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The Issue of Housing Affordability in Rhode Island

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.
- High construction costs.
- High rents or sales prices.
- 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
- Municipal development moratoria, time-consuming procedures and permit limits, and fees
- Developer inexperience with tools to provide more affordable housing (market rate or subsidized)
- Zoning that limits housing diversity
- 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 and serves as an update to the handbook developed in 2006. This edition of the handbook was provided in response to the updated statute pertaining to inclusionary zoning, R.I. Gen. Law 45-24-46.1). As part of the state's Sustainable Communities initiative, technical assistance funding was provided to Rhode Island Housing to develop this guidance. The effort included outreach to local planners, builders, attorneys, and real estate professionals to gain insight into technical issues and hear stories about successes and shortcomings of existing ordinances.

The guidance provided here is consistent with the policies and action items within various elements of the State Guide Plan. 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).

A Basic Description of Inclusionary Zoning

The fundamental purpose of inclusionary zoning is to allow the development of deed restricted affordable housing to become an integral part of market rate housing development taking place in a given community. Municipalities adopt ordinances containing provisions to accomplish this goal. 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 for low- and moderate-income households. 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.

Cost guidelines for affordable dwelling units that will be offered for sale are comprised of: 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 are comprised of: 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 strongly recommend that income ranges targeted in local zoning ordinances should be consistent with the needs identified in the community’s comprehensive plan.

The provisions of an inclusionary zoning ordinance 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 legal mechanisms that can be used to guarantee that 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.

Recent Changes to State Law

The *Zoning Enabling Act*, R.I. Gen. Law 46-24-46.1 (Inclusionary Zoning), was recently amended and still requires that any inclusionary zoning ordinance must address the following:

- A minimum of 10 % of the total units in any development subject to inclusionary zoning must comply with the definition for “affordable” provided in the Low and Moderate Income Housing Act (LMIH).
- 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.

Beyond these core requirements, two important changes were made to the inclusionary zoning statute. First, zoning ordinances that require inclusionary zoning are now also required to include density bonuses or other incentives that will offset differential costs of below market-rate units. Second, zoning ordinances may now provide that the affordable housing that is required under an inclusionary zoning clause may be provided on-site or that an alternative method of production can be utilized, such as off-site construction or rehabilitation, donation of land, and/or the payment of a fee in-lieu of the construction of the units.

Payments of fee-in-lieu for the provision of affordable housing shall be the choice of the developer, and shall be applied on a per-unit basis. For affordable single-family homes and condominium units, the per-unit fee shall be the difference between the maximum affordable sales price for a family of four earning eighty 80% of the area median income, as determined by HUD, and the average cost of developing a single unit of affordable housing. Per the legislation, the average cost of developing a single unit of affordable housing shall be determined annually, based on the average per-unit development cost of affordable homes financed by Rhode Island Housing over the previous three (3) years. However, in no case shall the per-unit fee be less than \$40,000.

Municipalities must either deposit all in-lieu payments into restricted accounts or transfer in-lieu payments to the Housing Resources Commission or Rhode Island Housing. The local fund would be overseen by a local affordable housing board that must allocate collected monies for the creation and development of affordable housing within the municipality. All locally collected fees must be spent within two years, after which they will be moved to Rhode Island Housing. Rhode Island Housing calculates the municipal fee-in-lieu rates annually.

Planning for Housing Diversity

The term “housing diversity” is used often by planners and housing professionals to describe a condition in which different types of housing are provided to serve populations with different needs or preferences. Housing diversity can be measured at different scales such as within a single development, a neighborhood, a town, or a region. In general, housing diversity is valued

by community planners who see it as vital to creating vibrant communities. The most common way for municipalities to encourage housing diversity is through zoning regulations, and a number of different regulatory tools exist that help to guide developers toward creating a diverse housing stock.

Inclusionary Zoning is just one tool among many that can be used to help increase housing diversity at the local level and help a community achieve its overall housing goals. In the context of a broader, community-wide housing strategy, it is important to understand the potential and the limitations of this tool:

Inclusionary Zoning, by definition, depends on development activity. Therefore, the extent to which it can increase the number of affordable housing units in a given community is largely based on housing market conditions. Inclusionary Zoning, by the terms of the enabling statute, requires a minimum of 10% of a proposed housing development to be deed restricted affordable housing. While communities may provide incentives for a greater percentage within the local ordinance, overall gains to the town-wide stock of affordable housing using this tool will likely be modest. For any community that wishes to make more aggressive gains in their housing diversity efforts, tools designed for higher levels of production must be used. A detailed examination of these different tools is beyond the scope of this guidance, but many other resources exist that can help local governments identify tools that will not only increase housing diversity, but can also advance other goals for sustainable growth. These tools and resources can also be used to help develop a well-rounded housing strategy for the comprehensive plan.

Preparing to Draft an Ordinance

Understanding the Legal Framework

Before proceeding with the development of an Inclusionary Zoning ordinance, it is important to ensure there is expertise on the team regarding the legal framework for this ordinance. The most obvious candidate for this responsibility is the City/Town Solicitor. Planners or others involved with the drafting process should review the statutes together to ensure a common understanding of the key points that will shape the ordinance. Local planners may wish to develop a brief presentation for their Planning Board, Town Council, developers and the general public as part of early education efforts.

Connection to the Comprehensive Plan

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.

Community Education

The issue of creating housing diversity and deed restricted affordable housing requires a steady flow of information and educational outreach in communities that may wish to use tools like inclusionary zoning. It is essential that planners and advocates create a consistent message regarding the importance of housing diversity and that residents understand the many different needs within the community. Using the analyses required for the Comprehensive Plan as a foundation, planners should develop outreach materials and present these findings regularly to their Planning Board and Town Council. Planners should also ensure that local Board and Council members have a clear understanding of the Low and Moderate Income Housing Act and its relationship to tools like inclusionary zoning.

Becoming a Partner

During the outreach process for developing this guidance, developers' lack of familiarity with creating deed restricted affordable housing was identified as one of the most significant barriers to successful implementation. Notably, this sentiment was strongest among the developers interviewed for the project. Many of Rhode Island's developers are simply not experienced with the administrative issues associated with creating deed restricted affordable housing. The requirements for identifying income thresholds, identifying eligible families, and monitoring compliance over time can be intimidating for developers who have spent decades creating very simple, small subdivisions. Local communities looking to successfully implement inclusionary zoning must support developers through the process. Some things communities can consider:

- Have important information ready for developers as they enter the process. Household income limitations, sales price and rental price limits, and the schedule for density bonuses are examples of information that can be helpful to a developer in his/her early planning phases.
- Successful applications for previous developments can be made available to other developers who may wish to see how others navigated the process.
- Model deed restrictions can be provided by the municipal Solicitor for the developer to consider. This can reduce the amount of time the developer's attorney would need to prepare these documents.
- A list of monitoring agents that qualify for those responsibilities can be provided or a link to a clearinghouse that may be offered by the state.
- Examples of acceptable marketing plans can be provided by the municipality for consideration by the developer.

The extent to which this material is gathered into a single place and presented to developers in early discussions can greatly facilitate the permitting and construction process.

Important Policy Questions

Mandatory vs. Optional Inclusionary Zoning

The decision to make a local inclusionary housing ordinance mandatory or voluntary is an important one. Based on discussions with planners and developers, it seems clear that voluntary programs are far less likely to be used. Therefore, the policy recommendation is for mandatory provisions that are triggered by a certain threshold (thresholds discussed in more detail below). Importantly, if municipalities do choose a mandatory approach, these towns have a responsibility to make the permitting process as clear and transparent as possible. The guidance provided in this document, along with the sample ordinance language is designed to provide this clarity and support for the applicant.

Applicability

The term “applicability” in zoning identifies which developments will be subject to particular standards or will be required to use particular tools. With inclusionary zoning, one of the most common triggers associated with single family home development is the size of the proposal. For example, a municipality may require the inclusion of affordable units in subdivisions of eight or more homes. Smaller subdivisions would not be subject to inclusionary zoning. Another important trigger is the potential location for where inclusionary zoning will be used. For example, many communities will limit the application to their largest residential zones, while others may apply the tools to every district in the community (e.g., single-family, multi-family, mixed use, etc.) Several issues should be carefully considered at the local level in determining thresholds for applicability:

If the number of lots is used as a trigger, will it capture enough development to make the ordinance effective?

The potential for large subdivisions in Rhode Island communities is limited. Large tracts of developable land are not common, in particular, large developable tracts under single ownership. If the trigger for inclusionary zoning is 10 lots, but most future subdivisions will be smaller than eight lots, the ordinance will not generate a significant number of affordable homes.

How will density bonuses affect where inclusionary zoning should be implemented?

Applying density bonuses to residential development and changing allowable housing types can be viewed as a significant zoning change by many communities. While some communities may apply inclusionary zoning to an entire residential district, others may wish to be more strategic about where this occurs. Areas surrounding village centers, abutting corridor commercial districts, or lying closer to established transit routes are examples of places where local communities may want to encourage more densely developed residential areas.

Will different housing types require different approaches to inclusionary zoning?

This guidance focuses primarily on inclusionary zoning in the context of single family home subdivisions. Communities may also wish to apply inclusionary zoning to other types of development such as multi-family housing, cottage communities, mixed use “top of the shop” housing, and others. Planners and local officials are encouraged to engage with the development community to understand the financial implications of developing different housing styles. A “one size fits all” approach to establishing bonuses, determining thresholds, and setting the level of affordability may not be appropriate and these parts of the ordinance may need to be calibrated to suit different districts.

Level of Affordability

Another critical component of inclusionary zoning is setting the level of affordability. This is addressed primarily in two separate elements of the ordinance:

Eligible Household Income – In Rhode Island, families that make 120% of the area median income (AMI) or below are eligible to live in deed restricted housing, and these units will qualify as part of the local Subsidized Housing Inventory (SHI). In other words, these units will count toward the statutory 10% affordable housing goal. Discussions with both municipal planners and developers during the development of this guidance confirmed that pricing thresholds set on the high range of affordability (i.e., between 100% and 120% of the AMI) can significantly reduce the ability to sell and occupy those units. Potential buyers that qualify for this range of housing price have more incentive to seek out market rate housing, even if it is slightly more difficult for them to afford these units. Because the market rate units do not have deed restrictions that limit resale value, buyers have more opportunity to generate equity and wealth.

Municipalities are strongly encouraged to restrict home resale prices to below 80% AMI. This will provide a more meaningful housing opportunity for a family that would not otherwise be able to live in that community and will enhance its marketability. Importantly, the lower the resale price required by the ordinance, the more important the bonuses and offsets become. Municipalities that target lower income households will need to provide meaningful density bonuses and consider a variety of housing types.

Number of Units that will be Deed Restricted – Inclusionary zoning ordinances typically require a fixed percentage of affordable, deed restricted units (e.g., 10%, 15%, or 20%). The enabling legislation for inclusionary zoning specifies that any locally adopted ordinance must produce at least 10% affordable units for each development subject to the ordinance. Communities are at liberty to require greater percentages if that is deemed appropriate and consistent with their goals as articulated in the comprehensive plan. However, communities will need to consider this question carefully if they truly want the ordinance to achieve its goal. Requiring the inclusion of affordable units in any development proposal reduces the profitability of the project and also places greater administrative burdens on

the developer. Without incentives to offset these costs permitting can become a combative process and municipalities will not likely achieve the desired results. The following sections on “Allowable Housing Types”, “Bonuses and Offsets”, and “Fee-in-Lieu” provide options that can help communities and developers achieve mutual gains from the process.

Allowable Housing Types

The guidance provided in this document can be adapted to many different housing development situations, but is geared primarily toward the typical single family subdivision that is found in most of Rhode Island’s suburban and rural communities. While these neighborhoods have been the mainstay of housing development for several decades, demographic trends are affecting the market in ways that suggest different housing types have a significant pent up demand. These trends do *not* suggest that there will be no demand for traditional single family homes, only that there will be significant market opportunities for other types.

In order to accommodate the density bonuses recommended in this guidance, it may be beneficial to integrate different types of housing into the typical single-family subdivision. This will help meet the goals for affordability, and can also capture new market-rate opportunities. Duplexes, bungalows, cottages, townhouse, tri-plex and quad-plex are examples of smaller, more densely developed housing styles that can be used to facilitate inclusionary housing.

Bonuses and Offsets

Perhaps the most important issue to consider for those communities that are seriously considering inclusionary zoning is bonuses. As discussed above, the addition of deed restricted affordable housing to any development adds administrative burden and reduces profits for the developer. The most effective inclusionary zoning programs will attempt to compensate developers for these costs through a variety of means. These tools are often referred to as a ‘municipal subsidy’. Importantly, the revised statute for inclusionary zoning requires municipalities to provide these forms of compensation:

“For all projects subject to inclusionary zoning, density bonuses and other incentives shall be established by the community and shall apply to offset differential costs of below-market units.”

Fees – Municipalities using inclusionary zoning should carefully review the fees associated with a land development or subdivision process. There may be opportunity to reduce or waive fees as part of a larger package to reduce development costs.

Development Standards – Another opportunity to reduce development costs in an acceptable manner is through the reduction or waiver of construction specifications that are costly. Roadway widths, curbing, landscaping and other subdivision standards may be reduced in a manner that cuts costs for developers.

Density Bonuses – While the waiver of fees and the reduction of development standards may help to mitigate the development costs of deed restricted housing, the most effective municipal subsidy for inclusionary zoning is a density bonus. Density bonuses are often provided as some sort of ratio of additional market rate units for every deed restricted unit. For example, a municipality may offer one or possibly two additional market rate units for each deed restricted unit. From a legal perspective, however a municipality chooses to calculate the bonus, the end result must be at least 10% deed restricted housing within that development.

Fee-in-Lieu of Construction – The revised statute enabling inclusionary zoning in Rhode Island provides specific language regarding the use of fee-in-lieu payments. Where a municipality offers fee-in-lieu, this option may be exercised at the discretion of the developer.

Donation of Land – A town may determine that the developer will not be required to build affordable units if (s)he provides a land donation that is comparable in value to what the fee-in-lieu would otherwise be.

Design Requirements – Most inclusionary zoning ordinances in the State of Rhode Island and beyond use design requirements to ensure that the construction methods and materials used to develop deed restricted housing units are comparable to those used for market rate units. The goal is to have deed restricted units blend in with market rate units. Ordinance language is provided in the final section of this document for consideration.

Another important consideration related to design relates to the potential use of density bonuses. As discussed in *Recent Changes to State Law* above, the revised statute requires density bonuses and other incentives as part of inclusionary zoning. Depending on the level of density bonus offered, some sort of dimensional relief may be required to accommodate units above the original site yield. Reductions in minimum lot sizes and setbacks are the most common forms of relief required to accommodate an increased number of housing units. Importantly, if alternative housing types are allowed, dimensional relief may not be required, but zoning must specify that more than one residence can be provided on a single lot. Also, those communities looking to apply inclusionary zoning within Conservation Subdivision Design may need to revisit the design requirements associated with that innovative subdivision approach. Minimum lot sizes, setbacks, and minimum open space requirements may need to be adjusted to accommodate greater density.

Timing of Construction – A sensitive issue for the developer and the municipality involves the timing of construction of deed restricted affordable housing. 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). Other ordinances set a concrete schedule, but also provide an option for negotiation between the town and the developer.

Controls over Resale – A successful inclusionary zoning ordinance must include explicit restrictions on the future rental or sale of affordable units. The ordinance must require the units to remain affordable for a minimum of 30 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 through specific rent limits and requiring verification of new tenant’s incomes as they move into the development is a straight forward process. Maintaining affordability on *for-sale housing* is more complicated. For example, 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. Regardless of the approach, the use of an official marketing strategy and a qualified monitoring agent are critical to the ongoing success of the program.

Sample Ordinance Language

When developing an inclusionary zoning ordinance, it is critical to tailor the ordinance to the unique local housing needs, governmental structure, and staffing levels. Therefore, the drafting of an effective inclusionary zoning ordinance requires the municipality to carefully consider the policy questions provided above, and then translate those decisions into an ordinance.

This section presents ideas for an inclusionary zoning ordinance that can be considered by communities wishing to draft a new ordinance or looking to revise their existing ordinance based on the new statute and/or “lessons learned”. The language provided here is not designed to represent a complete ordinance and cannot simply be copied into existing Zoning Ordinances. As already mentioned, 18 Rhode Island municipalities have some form of inclusionary zoning and it is recommended that local planners review many of these ordinances to see how different municipalities have addressed the key issues raised in this guidance. As with any sample ordinance language, it is imperative that municipal Solicitors thoroughly review any proposed language before entering into the adoption process.

Importantly, the language provided here does attempt to address many of the barriers identified by planners, developers, advocates, attorneys, and realtors during the outreach phase of this project. Readers are encouraged to consider the ideas and language presented here as potential answers to real “on the ground” issues that have emerged over the years with inclusionary zoning.

As a matter of presentation, the language provided below is presented in the format of a nine part ordinance. This presentation allows the reader to see how a typical inclusionary zoning

ordinance is structured and where all of the key policy questions are answered. There are also small annotations provided as *italicized language in grey boxes*. These annotations provide context for the individual sections of the ordinance and also pose questions that may require further exploration at the local level. Where specific standards or language may be changed based on local conditions, the text is presented in [brackets].

Recommended Definitions

A fundamental consideration when adding any new language to a zoning ordinance is related to definitions. This guidance begins with a list of definitions as it is considered “best practice” in zoning to place all of the ordinance definitions into a catch all Definitions section. Therefore these are provided outside of the sample ordinance language below. As with any local ordinance language, terms to be defined should be cross-referenced with state law to ensure consistency. Readers are strongly encouraged to reference the following statutes and resources:

- § 45-24-31 (Definitions under Zoning Ordinances)
- § 45-53-3 (Definitions under the Low and Moderate Income Housing Act)
- The HousingWorks RI Glossary
(<http://www.housingworksri.org/affordable-homes/affordable-housing-101/glossary>)

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 [§ 42-128-8.1(d)-1].

Deed restricted affordable housing – any housing whether built or operated by any public agency or any nonprofit organization or by any limited equity housing cooperative or any private developer, that is subsidized by a federal, state, or municipal government subsidy under any program to assist the construction or rehabilitation of housing affordable to low or

moderate income households, as defined in the applicable federal or state statute, or local ordinance and that will remain affordable through a land lease and/or deed restriction for 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.

Seasonal housing – means housing that is intended to be occupied during limited portions of the year.

Year-round housing – 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.

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)].

Major subdivision – Any subdivision not classified as either an administrative subdivision or a minor subdivision [§45-23-32 (22)].

I. Findings

An ordinance for inclusionary housing can begin with findings stating the need for affordable housing in the municipality as cited in the approved local Comprehensive 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 minimum requirements and best practices for developing this part of a comprehensive plan are provided in the draft Rhode Island Comprehensive Planning Guidance & Standards Manual, which may be found on line at:

<http://www.planning.ri.gov/statewideplanning/complanning/handbook.php>

The first findings below are adapted from the Comprehensive Housing Production and Rehabilitation Act of 2004 (R.I.G.L 42-128-8.1). Generally, language from the statute was adjusted to reflect a local ordinance. A findings section should mirror the applicable statewide findings in addition to any local findings from the locally adopted comprehensive plan.

1. The Town of [INSERT NAME] developed a comprehensive housing strategy as part of the comprehensive plan that addresses the housing needs of different populations including, but not limited to our workforce and young families, older citizens, students

attending institutions of higher education, low and very low income individuals and families, and vulnerable populations including, but not limited to, people with disabilities, homeless individuals and families, and individuals released from correctional institutions.

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 town must remove barriers to housing development and update and maintain regulations to facilitate the construction, rehabilitation of properties and retrofitting of buildings for use as safe affordable housing.
4. Innovative community planning tools, including, but not limited to, density bonuses and inclusionary zoning, 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 households.
5. The gap between the annual increase in personal income and the annual increase in the median sales price of a single-family home is growing. Therefore, municipalities must look for opportunities to allow for a diversity of housing types that can produce more compact development patterns. These housing types will provide more rental housing options to individuals and families, especially those who are unable to afford homeownership of a single-family home.

II. Purposes

Purpose statements are used to explain broad policy directives of an ordinance. These statements are particularly important for Inclusionary Zoning as they can be used to identify key policy decisions made by the town through the comprehensive plan. The following purposes statements are adapted from the South Kingstown ordinance.

The purposes of this Chapter of the Zoning Ordinance are as follows:

1. To encourage and perpetuate the historic diversity of the community through the development of housing for all populations within the Town, including, but not limited to, housing for the resident workforce and housing for special needs populations;
2. To promote mixed income Household occupancy in new subdivisions and land development projects throughout the Town;
3. To promote affordable housing production in the Town in accordance with the goals and policies of the South Kingstown Comprehensive Community Plan's Housing Element and Affordable Housing Production Plan;
4. 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;

5. 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.

III. 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.

The language below uses an entire zoning district, the "R-80", as part of the criteria for applicability. Municipalities have several important issues to consider when determining applicability, which are presented in more detail above in "Important Policy Questions". The language below also addresses situations where a property may be developed in phases, thereby avoiding the inclusionary zoning thresholds. This language is taken from the Charlestown Zoning Ordinance.

1. The inclusionary zoning requirements found in this chapter of the Zoning Ordinance shall apply to any subdivision in the [R-80 District] that would yield [six (6) or more] units of housing or that will be developed on a parcel containing more than [ten (10)] contiguous acres of developable land.
2. Applicants may acknowledge the applicability of the inclusionary zoning requirements through a letter delivered to the Planning Board during the Pre-Application phase of review. Where an applicant wishes to demonstrate that a parcel is not subject to the requirements of this ordinance contrary to the opinion of the Planning Board, a site plan shall be submitted to the Planning Board with all of the requirements on the Major Subdivision Master Plan Checklist to demonstrate that the yield is lower than [six (6) units] and the site is less than [ten (10) acres] of contiguous developable land.
3. When a subdivision or land development project that creates fewer than [six (6)] additional dwelling units is approved on a portion of a parcel of land, leaving another portion of the same parcel undeveloped, the portion left undeveloped shall not be subdivided or developed for residential use or mixed use within fifteen (15) years of Final Approval of the first development unless the undeveloped portion is subject to the inclusionary requirements of this Chapter. 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 parcel receives Master Plan approval and is developed in phases.

IV. Set Aside

A set-aside provision establishes the required percentage of deed restricted affordable housing units in a given proposal. Typical inclusionary zoning ordinances establish a concrete threshold early in the ordinance then work to set up bonuses that compensate the developer for this set-aside. 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. However, there may be opportunities to yield greater percentages of deed restricted affordable housing units with appropriate incentives (see Section V).

In addition to the amount of deed restricted affordable units, the municipality must decide what income tier to target for the affordable units. Within this provision of the ordinance, the developer's pricing schedule must be consistent with the municipal affordable housing element of the comprehensive plan. This guidance recommends the requirement of deeper municipal subsidies to create more meaningful housing opportunities. Importantly, restrictions to these low income levels will require more aggressive subsidies by the municipality, which are discussed in Section V.

Any subdivision or development proposal to which this ordinance applies in accordance with Section III shall include minimum of 10% affordable housing that is deed restricted to households making [60% of the Area Median Income] or less for rental, and [80% of the Area Median Income] for homeownership units. 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 just cause for adjusting the target income limits.

The income limitation provided above is significantly less than the maximum income level allowable by statute. Communities will need to make local decisions about what this number should be based on local needs. This issue is discussed in greater detail under "Important Policy Questions".

V. Density Bonuses

The approach provided below shows that one deed restricted unit AND one market rate unit shall be provided until the percentage of deed restricted units meets or exceeds 10%. Communities may wish to provide two additional market rate units for each deed restricted to provide greater incentive, especially if the subsidized units will be made available to households at lower income levels.

The Town offers density bonuses in the form of additional housing units over and above the original yield as established in Section III. These bonuses serve as a municipal subsidy toward the provision of deed restricted affordable housing. The applicant shall provide [one market rate unit] and one affordable unit beyond the original yield until the percent of affordable units meets or exceeds 10% of the total number of housing units. The applicant shall not be allowed to add units beyond the point where this density bonus meets or exceed this threshold. A schedule of how density bonuses shall be applied to meet the minimum 10% requirement is provided in Appendix A.

The last sentence provided above could be adjusted to allow for greater bonuses as follows:

“Applicants may propose, and the Planning Board may approve, a greater number of affordable units than what is needed to achieve the minimum of 10% deed restricted housing. In these cases, the applicant shall receive [one additional unit] of market rate housing for each deed restricted unit as a bonus. However, the total number of approved housing units shall never exceed [50%] more than the original site yield.”

Sample calculations (“one for one” bonus):

Original Yield = 8 units Add 1 market rate unit Add 1 affordable unit Total Units = 10 Affordable Units = 1 Percent affordable = 10%	Original Yield = 17 units Add 3 market rate units Add 3 affordable units Total Units = 23 Affordable Units = 3 Percent affordable = 13%
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Sample calculations (“two for one” bonus):

Original Yield = 8 units Add 4 market rate units Add 2 affordable units Total Units = 14 Affordable Units = 2 Percent affordable = 14%	Original Yield = 17 units Add 6 market rate units Add 3 affordable units Total Units = 26 Affordable Units = 3 Percent affordable = 11.5%
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VI. Design Requirements and Dimensional Relief

1. Design of Housing – 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 shall have the appearance of a single family home. Residential structures shall not be taller than [two stories].

The language provided above is typical of inclusionary zoning ordinances and is used to ensure a reasonable level of consistency in construction. The language also establishes a maximum number of stories, which may be an important design consideration for community character in certain districts. Municipalities may wish to rely on the existing height limitations and ignore this requirement.

2. Housing Types – Applicants are encouraged to explore the development of different housing types within a single subdivision. Allowable housing types in subdivisions subject to inclusionary zoning include:
 - a. Single family detached dwellings;
 - b. Two-family units;
 - c. Tri-plex housing;
 - d. Quad-plex housing;
 - e. Town houses;
 - f. Cottage or bungalow communities; and/or
 - g. Accessory dwelling units.
3. Dimensional Relief – In order to accommodate housing at a density that exceeds the base requirements within the [insert name of base district], the Planning Board is hereby authorized to reduce the minimum lot size and all setbacks by up to [50%]. The Planning Board is also authorized to allow for multiple structures on a single lot. The following design guidelines will be used by the Planning Board when considering any proposed reduction in dimensional requirements:
 - a. Whether the dimensional relief results in a design that integrates market rate and deed restricted housing into a cohesive neighborhood;
 - b. Whether allowing the dimensional relief would be suitable to the housing types proposed by the developer. For example, very small setbacks between dense housing types may not be appropriate for the neighborhood or conducive to quality of life for residents;
 - c. Whether reduced setbacks from the roadway are compatible with neighborhood development patterns;
 - d. Whether residents will have adequate access to private or shared yard space for recreation and enjoyment; and
 - e. Whether access for utilities and public safety is adequate.

VII. Alternatives to On-Site Construction of Deed Restricted Affordable Housing

Most inclusionary zoning ordinance across the country offer a standard suite of alternatives to providing deed restricted affordable housing units on site. The language below lists the usual options and provides a framework for deciding whether alternatives are desirable. The language below does not provide any guidance as to whether certain alternatives are preferable to the town. It is noted that the ordinance for the Town of South Kingstown provides clear policy preferences for these alternatives. Practitioners are encouraged to read that ordinance and others to see how local communities in Rhode Island are setting preferences.

1. Consideration of Alternatives – The applicant may propose, and the Planning Board may approve, an alternative method of increasing housing diversity within the community through inclusionary zoning. The options available to an application that is subject to inclusionary zoning are listed below. Consistent with R.I. Gen. Law 46-24-46.1, developers may use the fee-in-lieu option at their discretion. For all other options, the applicant may satisfy all or a portion of the inclusionary housing requirements with any one or combination of these alternatives at the sole discretion of the Planning Board. In addition to any specific criteria listed below for each alternative, the Planning Board will consider whether:
 - a. Existing physical conditions on the site present unusual challenges to development of increased housing density (e.g., high water table, presence of wildlife habitat, lot geometry, etc.);
 - b. An alternative approach better meets the housing needs of the community as specifically identified in the Comprehensive Plan; or
 - c. An alternative approach would create higher quality housing or would develop housing in a location that provides greater access to amenities, jobs, and/or transit.

2. Land Dedication – Applicants may propose donations of land in fee simple, on or off-site, that the town, in its sole discretion, determines are suitable for the construction of affordable housing units. In addition to the criteria provided in Section VII.1 above, the Planning Board shall consider the following:
 - a. Whether the value of donated land is equal to or greater than the fee-in-lieu value established in the previous subsection. The Planning Board may require, prior to accepting land as satisfaction of the requirements of this provision, that the applicant submit appraisals of the land in question, as well as other data relevant to the determination of equivalent value.
 - b. Whether there are environmental constraints, legal encumbrances or other conditions that would otherwise limit the development potential of the site.

3. Off-site Construction – Applicants may propose the construction of the required number of deed restricted affordable housing units on a site other than the one that is the subject of the application. The construction of any off site units shall follow the requirements of Section VIII unless an alternative schedule is approved by the Planning Board and recorded as part of Final Approval in the subdivision or Land Development permit process.

4. Fee-in-Lieu – Applicants may elect to contribute a fee to the town’s [Affordable Housing Trust] instead of constructing all or a portion of the required deed restricted affordable housing on site. The fee amount shall be determined in accordance with RIGL 46-24-46.1. The amount of the contribution shall be recorded as part of the Final Plan approval along with the approved payment schedule. Unless an alternative payment schedule is approved by the Planning Board, the payment schedule shall mirror the construction schedule for deed restricted affordable housing set forth in Section VIII below.

VIII. 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 construction of the affordable units will be built (a unit is considered “built” upon the issuance of an Occupancy Permit) using the schedule noted below as a guide:

Market Rate Units (% built)	Affordable Housing Units (% built)
Up to 30%	None required
30% to 50%	At least 30%
51% to 75%	At least 75%
76% or more	100%

Approval of the Final Plan associated with the Major Subdivision or Major Land Development shall include a final construction schedule that details the number of affordable units that shall be constructed in comparison with the construction schedule for market rate units. A schedule showing the number of bonus units required to reach 10% deed restricted affordable housing is provided as [Appendix A] to this ordinance.

IX. Certifying Buyers and Maintaining Affordability

One of the highest priorities for municipalities with inclusionary zoning is to create deed restricted affordable housing that can be included on the local inventory maintained by Rhode Island Housing. These units are ultimately counted toward the statutory 10% goal for each city or town subject to that requirement. The language below is adapted from the North Kingstown ordinance.

1. Basic requirement – All inclusionary units required under this section shall be eligible for the Town of [insert name] official inventory of affordable housing as maintained by Rhode Island Housing. The required minimum term of affordability shall be not less than [30 years], and shall be renewable for the same term upon resale of the unit prior to expiration of the term.
2. Eligible occupants – Ownership units shall be occupied by their purchasers as their primary residence and not rented for seasonal occupancy nor rented for any other occupancy except during temporary absences totaling not more than eight weeks in any 12-month period. Rental units may be sub-leased only to a household meeting the applicable income restrictions on affordability.
3. Qualification and monitoring – The developer or owner shall contract with a monitoring agency approved by Rhode Island Housing for the following purposes:
 - a. To determine pricing for initial sale, resale, lease, transfer or sublease of the inclusionary dwelling units.
 - b. To qualify purchasers or renters for initial occupancy based on household size and income.
 - c. 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.
4. Long-term affordability – 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:
 - a. The basis for calculation of the maximum allowable sales or rental price for the housing unit both initially and for future buyers or renters.
 - b. Restrictions concerning who may occupy the unit, and for what period.
 - c. A marketing plan that meets local preferences and state and federal fair housing requirements.
 - d. Provisions for monitoring and assurance of compliance over time.
 - e. 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.