

**Inclusionary Housing Ordinance**  
**Town of North Hampton**  
**Enacted 10 March 2009**

**I. Purpose.** The Town of North Hampton has a legal and moral responsibility to provide its “fair share” of “workforce housing” as defined under RSA 674:58-61. The purposes of this Article are as follows:

- A. To provide, over time, the town’s “fair share” of “workforce housing,” as determined on the basis of the Rockingham Planning Commission’s “Regional Housing Needs Assessment” and the Rockingham Planning Commission’s “Regional Fair Share Analysis,” both published from time to time, and data about the cost of housing in town relative to income standards defined under RSA 674:58-61;
- B. To encourage and provide “realistic and reasonable opportunities” for the development of “workforce housing” as defined in RSA 674:58-61;
- C. To ensure the continued affordability of workforce-housing dwelling units for home ownership and rental by low to moderate income households that are developed under provisions of this Article;
- D. To meet goals related to housing set forth in the town’s Master Plan; and
- E. To comply with the requirements of Chapter 299, Laws of 2008, an act establishing a mechanism for expediting relief from municipal actions which deny, impede, or delay qualified proposals for workforce housing (RSA 674:58-61).

In the course of implementing this Article, the Town of North Hampton has considered the region’s affordable housing needs as described in the Rockingham Planning Commission’s Housing Needs Assessment and the Rockingham Planning Commission’s Regional Fair Share Analysis.

**II. Authority.**

- A. This Article is an innovative land use control provision adopted under the authority of RSA 674:21, including the conditional use permit provision of RSA 674:21, II; and is intended as an “Inclusionary Zoning” provision as defined in RSA 674:21(I)(k) and 674:21(IV)(a), as well as RSA 672:1, III-e, effective July 2009, which states:

All citizens of the state benefit from a balanced supply of housing which is affordable to persons and families of low and moderate income. Establishment of housing which is decent, safe, sanitary and affordable to low and moderate income persons and families is in the best interests of each community and the state of New Hampshire, and serves a vital public need. Opportunity for development of such housing shall not be prohibited or unreasonably discouraged by use of municipal planning and zoning powers or by unreasonable interpretation of such powers.

- B. The Planning Board may adopt regulations, in addition to or instead of existing Site Plan Review and Subdivision Regulations, needed to implement this Article, including but not limited to regulations that assure that applications for affordable workforce housing do in fact provide such housing and that ensure that such housing approved under this article remains affordable.

### **III. Applicability.**

- A. Provided that the proposed development meets reasonable environmental standards and conditions for use of the land – including but not limited to standards and conditions for septic systems, wells for potable water, and storm water management -- development in accordance with the provisions of this Article is permitted as a conditional use in the following districts and only in these districts:

- i. Industrial-Business/Residential District (“I-B/R”)
- ii. R-1 High Density Residential District

Taken together, these districts comprise a majority of the land area of North Hampton that is zoned to permit residential use.

### **B. Permitted Uses:**

- i. I-B/R District: Single-family, duplexes, multi-family and manufactured housing or a mix of housing types within the same development, or a mix of commercial and multi-family housing are permitted in an application under this Article. In this respect, provisions of this article take precedence over conflicting provisions of the underlying district in which the development is approved.
- ii. R-1 High Density Residential District: Single-family housing (including manufactured housing), duplexes, or a mix of these housing types within the same development are permitted in an application under this Article. In this respect, provisions of this article take precedence over conflicting provisions of the underlying district in which the development is approved.

- C. **Appeal.** Any person aggrieved by a Planning Board decision that constitutes a denial of a Conditional Use Permit due to noncompliance with one or more of the provisions of this ordinance may appeal that decision to the Superior Court, as provided for in RSA 677:15. A Planning Board decision on the issuance of a Conditional Use Permit cannot be appealed to the Zoning Board of Adjustment (RSA 676:5 III).

### **IV. Procedural Requirements/ Applicant**

- A. **Notice of Intent to Build Workforce Housing.** Any person who applies to the Planning Board for approval of a development intended to qualify as workforce housing under this Article shall file a written statement of such intent as part of the application.

- B. **Waiver.** Failure to file such a statement shall constitute a waiver of the applicant's rights under RSA 674:61 to use the accelerated appeal mechanism and to challenge the cost of conditions of approval, but shall not preclude an appeal under other applicable laws.
- C. **Appeal.** In any appeal where the applicant has failed to file the statement required by this section, the applicant shall not be entitled to a judgment by a court on appeal that allows construction of the proposed development, or otherwise permits the proposed workforce housing development to proceed despite its nonconformance with the municipality's ordinances or regulations.

#### **V. Planning Board Procedural Requirements**

- A. **Notice of conditions.** If the Planning Board approves an application to develop workforce housing subject to conditions or restrictions, within 144 hours (seven days) of that decision it shall notify the applicant in writing of such conditions and restrictions and give the applicant an opportunity to establish the cost of complying with those conditions and restrictions and the effect of compliance on the economic viability of the proposed development. The Board's notice to the applicant of the conditions and restrictions shall constitute a conditional approval solely for the purpose of complying with the requirements of RSA 676:4 I (i). It shall not constitute a final decision for any other purpose, including the commencement of any applicable appeal period.
- B. **Submission of evidence to establish cost of complying with conditions.** Upon receiving notice of conditions and restrictions as described above, the applicant may submit evidence to establish the cost of complying with the conditions and restrictions and the effect on economic viability within 60 days. Upon receipt of such evidence, the Board shall allow the applicant to review the evidence at the Board's next meeting for which 10 days notice can be given, and shall give written notice of the meeting to the applicant at least 10 days in advance. At such meeting, the Board may also receive and consider evidence from other sources. The Board may affirm, alter, or rescind any or all of the conditions or restrictions of approval after such meeting.
- C. **Final decision.** The Board shall not issue its final decision on the application before such meeting, unless the applicant fails to submit the required evidence within the period designated by the Board, in which case it may issue its final decision any time after the expiration of the period. If an applicant notifies the Board in writing at any time that the applicant accepts the conditions and restrictions of approval, the Board may issue its final decision without further action under this paragraph.
- D. **Appeals.** Any person who has filed the written notice and whose application to develop workforce housing is denied or is approved with conditions or restrictions which have a substantial adverse effect on the viability of the proposed workforce housing development may appeal the municipal action to the superior court under RSA 677:4 or RSA 677:15 seeking permission to develop the proposed workforce housing.

#### **VI. Definitions**

- A. **Fair share:** “Fair share” means the percentage of dwelling units of specified types under RSA 674:58-61 that are required for the Town of North Hampton to demonstrate that the Town is providing the number of units of each type as indicated by the Rockingham Planning Commission’s Regional Fair Share Analysis.
- B. **Affordable:** “Affordable” means housing with combined rental and utility costs or combined mortgage loan debt service, property taxes, and required insurance that do not exceed 30 percent of a household’s gross annual income.
- C. **Multi-family housing:** “Multi-family housing” for the purposes of this Article, means a building or structure containing five (5) or more dwelling units with at least two (2) bedrooms in 50 percent of the units, with no more than 20 percent of those units having restrictions against children and with each unit designed for occupancy by an individual household.
- D. **Reasonable and realistic opportunities for the development of workforce housing:** Opportunities to develop economically viable workforce housing within the framework of the Town’s ordinances and regulations adopted pursuant to this Article and consistent with RSA 672:1, III-e.
- E. **Workforce housing/owner occupied:** Housing that is intended for sale and is affordable by a household with an income of no more than 100 percent of the median income for a four (4)-person household for the Portsmouth-Rochester HUD Metropolitan Fair Market Rent Area (“HMFA”) or county in which the housing is located as published annually by the United States Department of Housing and Urban Development. Such dwelling units shall have at least two (2) bedrooms in 50 percent of the units, with no more than 20 percent of those units having restrictions against children and with each unit designed for occupancy by an individual household.
- F. **Workforce housing/renter occupied:** Rental housing that is affordable by a household with an income of no more than 60 percent of the median income for a three (3)-person household for the Portsmouth-Rochester HMFA as published annually by the United States Department of Housing and Urban Development. Housing developments that exclude minor children from more than 20 percent of the units, or in which more than 50 percent of the dwelling units have fewer than two bedrooms, shall not constitute workforce housing for the purposes of this Article.
- G. **Area Median Income (AMI):** The median income of the greater region, either the HUD Metropolitan or Non-Metropolitan Fair Market Rent Area to which the Town of North Hampton belongs, as is established and updated annually by the United States Department of Housing and Urban Development. Income considers both wage income and assets.
- H. **Market Rate Housing:** Any units within a development, whether the unit is to be owner or renter occupied, that are intended to be available for sale or occupancy at the prevailing market value in the area for comparable real estate transactions – as determined, if necessary, by a certified residential real estate appraiser.

## VII. Density

- A. A site plan or subdivision plan that guarantees a percentage of workforce housing units for each type of workforce housing unit proposed that is equal to or greater than the Town's "fair share" of workforce housing, expressed as a percentage of total dwelling units in Town, will be granted relief from the minimum lot size, frontage, front-yard, side-yard and rear-yard setback requirements in the underlying district.
- B. When applying the Town's "fair-share" percentage to the total number of units proposed in an application under this Article results in a number that is not a whole number, the required number of workforce housing units shall be rounded up to the next whole number.
- C. Relief from minimum lot size, frontage, front-yard, side-yard and rear-yard setback requirements in the underlying district will be granted as follows:
  - i. Minimum lot size for single-family dwellings, including manufactured housing units, under this Article shall be one-third (1/3) acre of contiguous upland as long as soil conditions permit the siting of requisite septic systems and wells within the decreased lot size.
  - ii. Minimum lot size for duplexes under this Article shall be one-half (1/2) acre of contiguous upland as long as soil conditions permit the siting of requisite septic systems and wells within the decreased lot size.
  - iii. Minimum lot size for qualifying multi-family housing (cf. Section V.C above) – including both rental units and units under condominium ownership -- under this Article shall be one (1) acre of contiguous upland for the first dwelling unit and an additional one-quarter (1/4) acre of contiguous upland for each additional unit so long as soil conditions permit the siting of requisite septic systems and wells within the proposed lot size. Thus, the minimum lot size for a qualifying multi-family housing proposal under this Article is two (2) acres.
  - iv. Minimum lot size for qualifying multi-family housing (cf. Section V.C above) in mixed-use developments in the Industrial-Business Residential District – including both rental units and units under condominium ownership -- under this Article shall have minimum lot sizes as follows:
    1. If the multi-family housing units are in one or more discrete buildings or attached to other buildings on the site and at ground level, in addition to the lot-size requirements for those other uses of the site, the minimum lot area required for such housing units shall be one (1) acre of contiguous upland for the first dwelling unit and an additional one-quarter (1/4) acre of contiguous upland for each additional unit so long as soil conditions permit the siting of requisite septic systems and wells within the parcel on which the development is proposed. Thus, the minimum lot area requirement on the proposed site for a qualifying mixed-use, multi-family housing proposal of this type under this Article is two (2) acres in addition to lot-size requirements for other uses of the lot.

2. If the multi-family housing units are on the upper floor or floors of buildings used for other purposes on the site, in addition to the lot-size requirements for those other uses of the site, the minimum lot area for such housing units shall be one-half (1/2) acre of contiguous upland for the first dwelling unit and an additional one-quarter (1/4) acre of contiguous upland for each additional unit so long as soil conditions permit the siting of requisite septic systems and wells within the parcel on which the development is proposed. Thus, the minimum previously undeveloped lot area on the proposed site for a qualifying mixed-use, multi-family housing proposal of this type under this Article is one and one-half (1 1/2) acres in addition to lot-size requirements for other uses of the lot.
- v. Minimum frontage for lots for all types of workforce housing units shall be 100 feet.
- vi. Minimum front-yard, side-yard, and rear-yard setback requirements for any structure approved under this Article shall be 15 feet.

### **VIII. General Requirements of Workforce Housing Units**

- A. **Architectural compatibility of all units.** The dwellings qualifying as workforce housing shall be compatible in architectural style and exterior appearance with the market-rate dwellings of similar type, (i.e., workforce and market-rate multifamily units, workforce and market-rate single family homes) in the proposed development. The workforce units should be interspersed throughout the overall development and not concentrated in a separate area of the development. Workforce housing units shall be mixed with, and not clustered together or segregated in any way from market-rate units.
- B. **Phasing.** The phasing plan for the development shall provide for the development of workforce housing units concurrently with the market-rate units, and occupancy permits for no more than 80 percent of all units shall be issued until all workforce housing units are certified for occupancy.
- C. **Use of units.** No workforce housing units of any type, owner-occupied or rental, that are approved under this Article shall be leased or sublet to anyone other than the qualified owner or renter. All such units are intended for occupation as their primary residence by individuals or families whose incomes qualify them to purchase or rent these units and who have been properly qualified according to the provisions of this Article, Sections IX, A-B, below.
- D. **Expansion or Modification of Units.** Expansion or modification of workforce housing units approved under this Article is permissible. However, two conditions shall apply in all cases:
  - i. Such expansion or modification shall not exempt the owner from continuing to meet applicable affordability standards; and
  - ii. Such expansion or modification shall meet all Inclusionary Housing Ordinance restrictions current at the time it is proposed.

## **IX. Affordability.**

- A. Affordability Monitoring Agent.** As a condition of approval, the applicant shall negotiate and submit written evidence that an agreement has been executed with a qualified third party, acceptable to the Planning Board, as Monitoring Agent for the development.
- i. The Monitoring Agent shall review and approve all documentation required to ensure that affordability provisions of this Article are fully enforced and maintained initially and over the duration of the required period of affordability.
  - ii. Said Agent shall not be changed without prior approval of the Planning Board.
  - iii. Should said Agent cease to provide such services for any reason without due prior notice, the applicant, his/her successor or designee shall promptly notify the Planning Board and propose a successor Monitoring Agent for approval of the Board.
  - iv. Said Agent shall submit annually a written report to the applicant and Planning Board that characterizes all transactions that have been reviewed by the Agent and states the sales prices or lease prices of all units subject to the Agent's purview.
  - v. Said Agent shall submit annually written certification that, during the reporting period, all units under his or her purview have continuously met affordability standards under this Article.
- B. Certification of Income Levels.** To ensure that only eligible households purchase or rent and occupy the designated workforce housing units in any development approved under this Article, the purchaser or renter of an affordable unit shall submit to the monitoring agent copies of his or her federal income tax returns for the three years immediately prior to occupancy and written certification that verifies that his or her annual income level, combined with household assets, does not exceed the maximum level as established by this ordinance.
- i. The tax returns and written certification of income and assets shall be submitted to the monitoring agent engaged by the developer of the housing units prior to the execution of any lease for any workforce-housing rental unit or execution of a purchase and sale agreement for any workforce-housing owner-occupied unit.
  - ii. A copy of the tax returns and written certification of income and assets shall be submitted to the monitoring agent, not less than 30 days prior to the transfer of title of an owner-occupied unit or not less than 14 days prior to occupancy by the lessee of a rental unit.
- C. Assurance of Continued Affordability (Owner-occupied Units).** Approval of applications to develop owner-occupied workforce-housing units offered for sale shall require that a lien, granted to the Town of North Hampton, be placed on each workforce-housing unit.

- i. The initial value of the lien shall be equal to the difference between the fair market value of the unit, as determined by a certified residential real estate appraiser, and its reduced affordable sale price under this Article, which is indexed according to the qualifying income standards.
- ii. The Town’s lien shall be increased over its term at a compound rate equal to the Consumer Price Index (CPI) for Shelter in the Boston metropolitan area.
- iii. Future maximum resale values shall be limited to the then current affordability standards for workforce housing.
- iv. In the event that the owner of any owner-occupied workforce-housing unit does not comply with provisions of Section .C.i-iii of this Article, the Town at its sole discretion may exercise its lien on the unit.
- v. The combination of maintenance of the Town’s lien and adherence to this Article’s standards of affordability for workforce-housing shall remain in force until such time as two criteria are satisfied, as of the filing date of any application for lien release:
  - a. **“Fair-share” criterion.** The Town has fully met its requirement for providing its “fair share” of workforce housing, and
  - b. **“First-in-first-out” criterion.** The unit in question is the first among units of its type that were approved as workforce-housing units under this Article, or the owner of all units that were approved earlier than the unit in question have:
    - 1. Waived their right to mark their units to market prices or
    - 2. Not applied for lien release
- vi. No lien release under C.v shall be granted until an owner has made an application to the Planning Board requesting a lien release and the Planning Board determines in its sole discretion that criteria (a) and (b) of paragraph C.v have been fully satisfied.

**D. Assurance of Continued Affordability (Workforce-housing Rental Units).**

- i. Any increases in rent for workforce-housing rental units shall be limited to an amount that does not increase the rent to a level that exceeds the then current affordability limit under this Article.
- ii. Approval of applications to develop workforce-housing rental units shall require that a lien, granted to the Town of North Hampton, be placed on each building that includes such units.
  - a. The initial value of the lien shall be equal to the present value over a period of 20 years of the difference between the fair-market-value rental of the units and their reduced affordable rental under this Article.
  - b. The Town’s lien shall be increased over its term at a compound rate equal to the annual rate of change in the difference between fair-market-value rental and affordable rental of the units.

- c. In the event that the owner of any workforce-housing rental unit does not comply with provisions of Section IX.D.i of this Article, the Town at its sole discretion may exercise its lien on the building in which this unit was approved.
- iii. This Article’s standards of affordability for workforce-housing rental units shall remain in force until such time as two criteria are satisfied, as of the filing date of any application for lien release:
  - a. **“Fair-share” criterion.** The Town has fully met its requirement for providing its “fair share” of workforce housing, and
  - b. **“First-in-first-out” criterion.** The unit in question is the first among units of its type that were approved as workforce-housing units under this Article, or the owner of all units that were approved earlier than the unit in question have:
    - 1. Waived their right to mark their units to market prices or
    - 2. Not applied for lien release
- iv. No lien release under D.iii shall be granted until an owner has made an application to the Planning Board requesting a lien release and the Planning Board determines in its sole discretion that criteria (a) and (b) of paragraph D.iii have been fully satisfied.
- v. As provided under Section IX.A.v above, the Monitoring Agent shall certify at least annually that this Section IX.D is being enforced for all units under the Agent’s purview.
- vi. **Transfer of ownership.** Conveyance of ownership of any rental units approved under this Article shall require prior written approval of the Planning Board to ensure that any new owner understands the terms of this Article and agrees to adhere to them. Such approval shall not be unreasonably withheld. A statement of this provision shall be included as a restriction on all deeds for rental units approved under this Article.

**Documentation of restrictions.** Deed restrictions, restrictive covenants, and contractual arrangements related to workforce-housing units approved under this Article shall be noted on all plans filed with the Town’s Planning Board and shall be registered at the Rockingham County Registry of Deeds.

**X. Administration, Compliance, and Monitoring**

- A. The Planning Board shall be responsible for administration, compliance and ensuring that monitoring requirements are met under this Article.
- B. **Certificate of Occupancy.** No certificate of occupancy shall be issued for a workforce-housing unit approved under this Article without written confirmation of the income eligibility of the tenant or buyer of the workforce-housing unit by the monitoring agent and confirmation of the rent or price of the workforce-housing unit as documented by an executed lease or purchase and sale agreement and verified in writing by the monitoring agent.

- C. Ongoing responsibility for monitoring the compliance with resale and rental restrictions on affordable units shall be the responsibility of the monitoring agent, as defined in Section VIII.A above.
- D. **Annual report.** The owner of a project containing affordable units for rent shall prepare an annual report certifying that the gross rents of affordable units and the household income of tenants of affordable units have been maintained in accordance with this Article. Such reports shall be submitted to the monitoring agent and shall list the contract rent and occupant household incomes of all affordable housing units for the appropriate reporting period.
- E. **Relationship to other ordinances and regulations.** Except as specifically provided herein, no portion of this ordinance shall nullify provisions of the Zoning Ordinance -- including, but not limited to Zoning Ordinance Section 414: Water Resources and Aquifer Protection -- or of any other town ordinances which relate to environmental protection, water supply, sanitary disposal, traffic safety, or fire and life safety protection.
  - i. Where applicants for affordable housing propose a development of single family homes or mixed single family and multi-family homes, all provisions of the subdivision and site plan regulations shall apply, except as specifically waived by the Planning Board.
  - ii. Where applicants for affordable housing propose a development of multi-family units, the site plan regulations shall apply except as specifically waived by the Planning Board.

**XI. Conflict.** If any provision of this ordinance is in conflict with the provisions of other ordinances, except as specifically provided herein, the more restrictive provision shall apply. With respect to provisions relating to lot size, setbacks, or density the provisions of this ordinance shall apply.