

**Town of Hopkinton, RI
Inclusionary Zoning Ordinance**

Chapter 214

The Town Council of the Town of Hopkinton does hereby ordain the following:

Amendments to the Hopkinton Zoning Ordinance

Amend Section 2 to add the following:

AFFORDABLE HOUSING – Year-round housing that has a sale price that is within the means of a household of moderate-income or less, as that term is defined by the Comprehensive Housing Production and Rehabilitation Act of 2004, R.I. Gen. Laws ' 42-128-8.1(d), as amended. Year-round rental housing must have a rent that is within the means of a low-income household.

AFFORDABLE HOUSING PLAN – An affordable housing plan that the director of the Rhode Island Department of Administration has approved as meeting the guidelines for a comprehensive plan promulgated by the State Planning Council.

CONSISTENT WITH LOCAL NEEDS - In determining whether a given project is consistent with local needs, the following **MUST** be considered:

That the proposed development is consistent with local needs as identified in the local comprehensive community plan with particular emphasis on the community's affordable housing plan and/or has satisfactorily addressed the issues where there may be inconsistencies. R.I.G.L. §45-53-4(a)(4)(v)(A).

The following additional factors **MAY** also be considered:

- A. Reasonable in view of the state's need for low- and moderate-income housing, considered with the number of low-income persons in Hopkinton; and
 - (1) The need to protect the health and safety of the community; or
 - (2) The need to promote better site design and building design in relation to the surroundings; or
 - (3) To protect Hopkinton's sole source aquifer; or
 - (4) The need to preserve open spaces.
- B. Not designed or intended to exclude low- and moderate-income residents from Hopkinton or to discourage or frustrate the likelihood of success of the project.
- C. Applied as equally as possible to both subsidized and unsubsidized housing.

INCLUSIONARY DWELLING UNIT – A low- or moderate-income dwelling unit developed pursuant to an inclusionary zoning provision.

INCLUSIONARY ZONING – A zoning ordinance provision that requires the development of low or moderate income housing as part of residential development.

LAND UNSUITABLE FOR DEVELOPMENT – Land that cannot be included in the buildable acreage of a parcel when calculating the maximum number of lots or dwelling units permitted. Land unsuitable for development consists of wetlands as they are defined by state law, but not wetland buffers, land in any public or private easement where electrical transmission lines or other utilities are built, areas within a High Flood Danger zone, as defined by Section 33 of the Hopkinton Zoning Ordinance, and areas with a slope greater than 15%.

LOW AND MODERATE-INCOME HOUSING – Housing that counts toward satisfying a community's goal of maintaining 10% of its housing stock as affordable. The housing must be:

- (a) Affordable to low- or moderate-income households, as defined by state law.
- (b) Subsidized by a federal, state, or town program intended to assist in providing affordable housing.
- (c) Affordable through a deed restriction or land lease for at least ninety-nine (99) years from the date of initial occupancy.

LOW INCOME HOUSEHOLD – A household with an adjusted gross income that is eighty percent (80%) or less of the area median income. See the R.I. Low and Moderate Income Housing Act, R.I. Gen. Laws ' 45-53-3(5) and the R.I. Housing Resources Act of 1998, R.I. Gen. Laws ' 42-128-8.1(d) (1).

MODERATE INCOME HOUSEHOLD – A household with an adjusted gross income that is more than eighty percent (80%) but less than one hundred twenty percent (120%) of the area median income. See the R.I. Housing Resources Act of 1998, R.I. Gen. Laws ' 42-128-8.1(d) (1).

MUNICIPAL SUBSIDY – Assistance the Town provides for construction or rehabilitation of low and moderate income housing to encourage the creation of that housing, pursuant to R.I. Gen. Laws ' 45-53-3 (11). Municipal subsidies include, but are not limited to, density bonuses and payments from the Town's restricted account containing fees in lieu of construction for the creation of additional low- and moderate-income dwelling units.

YIELD PLAN – A plan of a conventional subdivision or land development project that shows the basic maximum number of building lots or dwelling units permitted on the parcel when the lot area and dimensional regulations of the Zoning Ordinance are applied after land unsuitable for development has been eliminated.

Amend Section 5.1, Supplemental Regulations, to add the following section:

Section 5.3 Inclusionary Zoning

(A) Purpose.

The purpose of inclusionary zoning is to guide new residential development so that it supports Hopkinton's housing goals, as stated in the Housing Element of the Comprehensive Plan, including the goal that at least 10% of Hopkinton's housing will be low-or moderate-income housing by 2025. This Section is intended to ensure that all development consisting of six (6) or more lots, or six (6) or more dwelling units, will contribute to the supply of low-or moderate-income housing in Hopkinton.

To help satisfy the Town's low-or moderate-income housing goals, a portion of the additional dwelling units resulting from all such development must be affordably priced according to state

guidelines, must receive a federal, state or municipal subsidy, and must have affordability guaranteed for at least ninety-nine (99) years by a deed restriction or land lease.

(B) Definitions.

The terms used in this Section, including “affordable housing,” “inclusionary zoning,” “inclusionary dwelling unit,” “low and moderate income housing,” “low and moderate income household” “yield plan” and “municipal subsidy,” are defined in Section 2.

(C) Required inclusionary dwelling units.

- (1) In all subdivisions except residential compounds that consist of six (6) or more lots or six (6) or more dwelling units for residential development, and in all land development projects containing residential development that create six or more principal dwelling units, low- and moderate-income units must be provided. This requirement applies to development of rental property as well as development of property for sale. The number of inclusionary units required is equal to the number of units otherwise permitted, as shown in the yield plan, multiplied by 20%. When the calculation results in a fraction of less than 0.5, the number shall be rounded downward to the next whole number. When the calculation results in a fraction of 0.5 or more, the number shall be rounded upward to the next whole number.
- (2) In developments where the units will be offered for sale, all of the required inclusionary dwelling units shall be affordable for a family with an adjusted gross income that is one hundred percent (100%) or less of the area median income, and half of those shall be affordable for a family with an adjusted gross income that is eighty percent (80%) or less of the area median income. In developments where the units will be rental units, the rent for all inclusionary dwelling units must be affordable for a family with an adjusted gross income that is eighty percent (80%) or less of the area median income.
- (3) The exterior appearance of the inclusionary dwelling units must be substantially similar to that of the market rate units. The inclusionary dwelling units must be compatible in scale and architectural style with the market-rate units.
- (4) The inclusionary dwelling units must be integrated throughout the development, rather than segregated in a particular area or areas, so they will not be in less desirable locations than market-rate units. The inclusionary units shall, on average, be no less accessible to public amenities such as open space or recreational features than market rate units. In developments consisting of multi-unit dwelling structures, the inclusionary dwelling units must be integrated throughout the structure.
- (5) The inclusionary dwelling units must be built and offered for sale concurrently with the market rate units. For developments consisting of single-household or two-household dwellings, the percentage of market-rate units for which building permits have been issued shall not exceed the percentage of inclusionary dwelling units for which building permits have been issued by more than 20%. In subdivisions or land development projects that are constructed in phases, these requirements apply separately to each phase.

(D) Density bonuses.

- (1) In every development in which inclusionary dwelling units are required, the number of dwelling units permitted on a parcel shall be increased above the number that otherwise would be permitted. The purpose of this density bonus is to mitigate the cost of creating

inclusionary dwelling units by providing sites on which the units can be developed. The basic number of dwelling units permitted on the parcel, as shown in the yield plan, shall be increased by a number equal to the number of low- and moderate-income units required.

- (2) When residential density is increased in a development, the Planning Board shall have the authority to adjust the lot area, lot frontage, front yard setback, side yard setback, rear yard setback, accessory dwelling setback, and other dimensional regulations otherwise applicable in the zoning district if the Board finds the adjustments to be necessary and consistent with good planning practice. The adjusted dimensional regulations applicable to the development shall be shown on the final plat, and shall be recorded in the land evidence records as a separate document that lists each lot, the street address to that lot and the dimensional regulations applicable to that lot.

(E) Table showing required number of inclusionary units.

Basic number of units allowed	Number of inclusionary units required (basic number x 20%)	Total number of units (market rate and affordable)
6	1	7
7	1	8
8	2	10
9	2	11
10	2	12
11	2	13
12	2	14
13	3	16
14	3	17
15	3	18
16	3	19
17	3	20
18	4	22
19	4	23
20	4	24
21	4	25
22	4	26
23	5	28
24	5	29
25	5	30
26	5	31

27	5	32
28	6	34
29	6	35
30	6	36

(F) Alternatives to construction of inclusionary units.

When, in the judgment of the Planning Board, a density increase or on-site construction of inclusionary dwelling units would not be in the best interests of good planning, or when a density increase is otherwise prohibited by law or regulation, the developer shall contribute to the Town's supply of low- and moderate-income housing through any one of, or any combination of, the following methods, subject to the approval of the Planning Board. The Planning Board's decision to require an alternative to on-site construction of inclusionary units shall be in writing and accompanied by findings of fact.

(1) Payment of a fee in lieu of construction.

- (a) The fee for each inclusionary dwelling that is not constructed shall be calculated by the Tax Assessor as the median market value of all homes sold in Hopkinton during the previous calendar year minus the assessed valuation of the lot associated with said median price house sale during the previous calendar year.
- (b) Fees in lieu of construction shall be calculated and paid at the time of the recording of the Final Plan for each phase of a development. The fees shall be paid into a restricted account maintained by the Town pursuant to R.I. Gen. Laws § 45-23-47, as amended.

(2) Construction of low- and moderate-income units at an off-site location.

- (a) Low- and moderate-income dwelling units may be constructed at another site. The developer must demonstrate that the alternate site does not have constraints to development that would prevent it from accommodating residential construction.
- (b) The exterior appearance of the inclusionary dwelling units must be substantially similar to that of the market rate units. The inclusionary dwelling units must be compatible in scale and architectural style with the market-rate units.
- (c) The low- and moderate-income off-site units must be built and offered for sale contemporaneously with the market rate units.
- (d) A density bonus of up to 20% may be applied to off-site developments, at the discretion of the Planning Board. If no density bonus is provided, the developer shall receive another municipal subsidy if the developer is not receiving a state or federal subsidy for the same development.

(3) Rehabilitation of existing units.

- (a) A developer may create low and moderate-income units for sale, or low-income units for rent, by rehabilitating an existing structure and imposing deed restrictions or a

land lease to assure affordability for ninety-nine (99) years. Dwelling units that are rehabilitated cannot be units that already qualify as low- and moderate-income housing.

- (b) The Planning Board may, in its sole discretion, provide a density bonus equal to up to one hundred percent (100%) of one dwelling unit at the rehabilitation site. If no density bonus is provided, the developer shall receive another municipal subsidy or subsidies if the developer is not receiving a state or federal subsidy for the same development. Fee waivers and municipal subsidies are the purview of the Hopkinton Town Council and may be recommended by the Planning Board and the Affordable Housing Partnership and granted by the Council after a public hearing from monies contained in the Hopkinton Municipal Affordable Housing Fund.
- (c) The number of low- and moderate income units created shall be equal to or greater than the number that would have been required at the primary development site. The newly created low and moderate-income units must be constructed and offered for sale contemporaneously with the market-rate units being constructed at the primary development site.

(G) Assurance of affordability and fair marketing.


- (1) Inclusionary dwelling units that are sold shall be occupied by the buyers as their primary legal residence, in accordance with the IRS definition of "primary residence". Inclusionary dwelling units that are sold shall not be rented seasonally or for any period other than a temporary absence of not more than eight weeks in any twelve-month period. The lessees of rental inclusionary dwelling units may sub-lease those units only to low-income households. Hardship cases such as extended medical or nursing home absences will be considered on a case-by-case basis by the monitoring agency. Income eligibility and occupancy shall be monitored by the approved monitoring agent as provided in the below paragraph.
- (2) The developer shall contract with a monitoring agency approved by the R.I. Housing and Mortgage Finance Corporation (Rhode Island Housing) for the following purposes:
 - (a) To determine pricing for initial sale, resale, lease, or sublease of the inclusionary dwellings and any off-site dwellings,
 - (b) To determine income eligibility and qualify purchasers and renters for initial occupancy based on household size and income,
 - (c) To determine pricing for resale, re-lease or transfer of dwelling unit,
 - (d) To assist in the development of a marketing and resident selection plan, to be approved by the Affordable Housing Partnership, that meets state and federal fair housing requirements, and is in accordance with Hopkinton's requirement that half the inclusionary units (rounded down to the nearest whole unit) be given in resident selection to households containing current residents of Hopkinton, persons currently employed in Hopkinton or within 25 miles of Hopkinton or relatives by blood or marriage of Hopkinton residents; provided, however, that if the applicant pool of such households contains a smaller percentage of minority applicants as categorized by HUD than the State-wide percentage then additional minority applicants not qualifying for local preference shall be added to the pool until it reaches Statewide percentage; and,

- (e) To determine income eligibility and qualify all buyers, owners, renters, and occupants of said dwelling unit that includes the resale, re-lease, and/or transfer of dwelling unit to new occupants during the entire ninety-nine (99)-year affordability period.
- (3) Long-term affordability of “home” ownership units shall be assured by placing the affordable unit within the stewardship program of a Community Housing Land Trust through a land lease and/or deed restriction recorded in the Hopkinton Land Evidence Records before the sale of the inclusionary dwelling unit. Long-term affordability of “rental” units shall be assured by proof that the “developer” has entered into a long-term monitoring agreement with a Rhode Island Housing approved monitoring agent prior to the rental of the first dwelling unit of the rental development project. In both cases of dwelling units for sale or rent, the land lease and/or deed restriction shall provide that affordability shall be maintained for ninety-nine (99) years from the date of initial occupancy, which shall be renewed for a new ninety-nine (99) year time period upon transfer if the ninety-nine (99) year time period in effect has not expired.
- (4) The lease or deed restriction shall include information regarding:
- (a) The basis for calculation of the maximum sale or rental price for the unit, both initially and for future buyers or renters,
 - (b) Restrictions concerning who may occupy the unit and for what period,
 - (c) Provisions for monitoring and assurance of compliance over time.
- (5) The Community Housing Land Trust (CHLT) entity within which all “home” ownership units shall be placed shall meet the following criteria:
- (a) CHLT shall meet the criteria in this section and be approved by the Town Council,
 - (b) Registered as a non-profit corporation in the State of Rhode Island,
 - (c) Possess an IRS 501(c)3 status as a charitable organization
 - (d) Operate as a mission-driven organization whose primary purpose is to provide permanent, affordable, re-sale restricted and owner-occupied housing for low and moderate income persons as defined by the US Department of Housing and Urban Development and the State of Rhode Island Under RI Gen. Laws 45-53 and to assist municipalities in the lessening of the burden of monitoring and enforcement of long-term occupancy, eligibility, and affordability controls over the use, sale, and re-sale of affordable housing as required by the government entity that provided public assistance during the creation of the affordable dwelling unit,
 - (e) Demonstrate its capability of operating and sustaining a Stewardship Program overseeing long-term housing affordability and occupancy for a term of ninety-nine (99) years or more which is overseen by an active Board of Directors which meets no less than 4 times each year,
 - (f) Possess adopted By-Laws that specifically address, at the very least, the issues of name, office, and purpose; directors, officers; committees; membership; stewardship of land; ownership of land; ownership of housing and other improvements located on lands owned or administered by the corporation and limitations on resale; amendments; dissolution; and miscellaneous provisions,
 - (g) Includes provisions in By-Laws for dissolution that include the transfer of assets and property to another similarly mission-driven non-profit, charitable organization that will continue the stewardship program and preserve the ninety-nine (99) year affordability period of each affordable dwelling unit in its portfolio.

(H) Cumulative impact.

When a subdivision or land development project that consists of five or fewer lots for development or five or fewer principal dwelling units is approved on a portion of a parcel of land, leaving another portion of the same parcel undeveloped, no part of the portion left undeveloped shall be subdivided or developed for residential use or mixed use, unless the subsequent development is subject to the inclusionary requirements of this ordinance. The number of inclusionary units required in the subsequent 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.

Adopted: September 20, 2010

ATTEST: 
Elizabeth J Cook-Martin
Town Clerk