

AN ORDINANCE AMENDING ARTICLE 5, SECTION 10 INCLUSIONARY ZONING OF THE SMITHFIELD ZONING ORDINANCE

IT IS HEREBY ORDAINED BY THE TOWN OF SMITHFIELD AS FOLLOWS:

Section 1. Article 5, Dimensional Regulations, Section 10 Inclusionary Zoning of the Smithfield Zoning Ordinance are hereby amended as follows:

5.10 Inclusionary Zoning

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

...

(2) Inclusionary zoning is consistent with State of Rhode Island General Laws (§45-24-46.1, as amended), where inclusionary zoning is defined as a "zoning ordinance requiring the inclusion of affordable housing as part of a development shall provide that the housing will be affordable housing, as defined in § 42-128-8.1(d)(1), that the affordable housing will constitute not less than ten percent (15%) of the total units in the development, and that the units will remain affordable for a period of not less than thirty (30) years from initial occupancy enforced through a land lease and/or deed restriction enforceable by the municipality and the state of Rhode Island."

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C. Definitions:

The definitions contained in Article 2 shall apply to the provisions of this Article. As used in this article, the following terms shall have the meanings indicated:

"LOW- OR MODERATE-INCOME HOUSING" shall be synonymous with "affordable housing" as defined in § 42-128-8.1, and further means any type of 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 affordable housing 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.

AFFORDABLE HOUSING PLAN — (2) "Affordable housing plan" means a component of a housing element, as defined in § 45-22.2-4(1), that addresses

housing needs in a city or town that is prepared in accordance with guidelines adopted by the state planning council, and/or to meet the provisions of § 45-53-4(e)(1) and (f). **APPROVED AFFORDABLE HOUSING PLAN** — An affordable housing plan that has been approved by the director of administration as meeting the guidelines for the local comprehensive plan as promulgated by the state planning council; provided, however, that state review and approval, for plans submitted by December 31, 2004, shall not be contingent on the city or town having completed, adopted, or amended its comprehensive plan as provided for in § 45-22.2-8, § 45-22.2-9, or § 45-22.2-12. ...

INFEASIBLE - means any condition brought about by any single factor or combination of factors, as a result of limitations imposed on the development by conditions attached to the approval of the development, to the extent that it makes it financially or logistically impracticable for any applicant to proceed in building or operating low or moderate income housing without financial loss, within the limitations ...

D. **Applicability:** These regulations shall apply to all proposed subdivisions creating ten (10) or more individual lots consisting of single family dwelling units or residential subdivision or land development project containing six (6) or more multi-family dwelling units filed with the Planning Department after May 5, 2009 and which include new construction, substantial rehabilitation of existing structures, and/or adaptive reuse or conversion of a nonresidential use to residential use. When a subdivision or land development project that creates fewer than ten additional dwelling units or six multi-family 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 five (5) 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.

Any project meeting the criteria of this Section shall be deemed a covered project.

...

A.

B. Required Percentage of Affordable Units: Twenty percent (20%) of the allowable unit yield as provided in Section 6.8 herein to be created in every residential or mixed use covered project, as defined in Sec. 11.4, must qualify as an Inclusionary Unit.

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Number of Inclusionary Units: Any proposed subdivision creating ten (10) or more individual lots consisting of single family dwelling units or residential subdivision or land development project containing six (6) or more multi-family dwelling units is required to include at least twenty percent (20%) of the unit yield based on zoning as low or moderate income housing units as defined by RIGL Section 45-53-3, also referred to herein as affordable units or inclusionary units. The Inclusionary Units

must be affordable for a minimum of ninety-nine (99) years through a deed restriction or land lease. The Town of Smithfield prefers that Inclusionary Units be built on-site. The Town, at the applicant's expense, may have an independent real estate consultant determine feasibility of building the Inclusionary Units on-site. Developers, in calculating the number of inclusionary units, must round up to the next highest number for fractional units. As an alternative, an in-lieu-of fee may be paid for the fractional unit in accordance with paragraph M hereof.

Density Bonus: All projects shall be entitled to an increase in the number of market rate units equal to the number of low and moderate income units constructed as part of the development. In calculating the density bonus, the Town shall round up to the next highest number for fractional units. The developer or builder that chooses the fee in lieu of the construction option described in paragraph M or the off-site construction or rehabilitation option shall not be entitled to the density bonus. The total number of units for the development shall equal the number originally proposed, including the required affordable units, plus the additional units that constitute the density bonus. The Town will provide for reasonable relief from dimensional requirements to accommodate the bonus density.

The Town will waive the Town portion of building permit fees due for affordable units.

J. Inclusionary Housing Agreement at Preliminary Plan:

...

- (2) **Agreements Required:** Applications for residential development projects seeking preliminary plan approval shall be approved only concurrently with the approval of an Inclusionary Housing Agreement pursuant to this Article. This Section shall not apply should the developer choose to pay an in-lieu-of fee.

K. Timing of Construction and Assurance:

- (1) **Phasing of Construction:** The Inclusionary Housing Agreement shall include a ...
- (2) **Assurance of Completion of Inclusionary Units:** It is the responsibility of the original developer to ensure development of any required Inclusionary Units prior to the assigning or conveying of any subdivided lot and/or dwelling unit. A developer must either construct the required Inclusionary Units prior to construction of any market rate units or obtain a surety bond in an amount not less than 1.5 times the amount of the established cash in-lieu-of fee for each required Inclusionary Unit. The surety bond shall be held in escrow by the Town until such time as the Inclusionary Units are constructed. The Inclusionary Units must be built prior to or concurrent with the market rate units. ...

M. In-Lieu-of Fees:

The Town of Smithfield prefers that Inclusionary Units be constructed on site. However, the fee in lieu of the construction or provision of affordable housing shall be the choice of the developer or builder applied on a per-unit basis and may be used for new developments, purchasing property and/or homes, rehabilitating properties, or any other manner that creates additional low-or-moderate income housing as defined in § 45-53-3(9).

- (1) The amount of the fee in-lieu-of providing Inclusionary Units shall be determined by Rhode Island Housing in accordance with R.I.G.L. § 45-24-46.1.,(c), (1) & (2).
- (2) For projects to be developed on subdivided lots, in-lieu-of fees shall be paid by the Developer prior to issuance of final subdivision approval or in such cases where subdivision approval is not required, prior to issuance of a building

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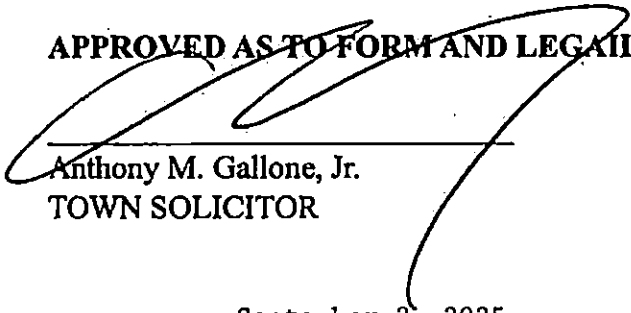
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permit for the project or as determined by the project's adopted Conditions of Approval.

- (3) All in-lieu fees shall be deposited into the Smithfield Affordable Housing Fund to be managed by the Town's Finance Director. Such funds may be expended or utilized only on the production of affordable housing within the municipality serving individuals or families at or below eighty percent (80%) of the area median income. in accordance with R.I.G.L.§ 45-24-46.1., (d) & (e).
- (4) An application that seeks to utilize a fee-in-lieu of the construction or provision of affordable housing must be reviewed by the planning board or commission and is not eligible for administrative review under the Rhode Island Land Development and Subdivision Review Enabling Act of 1992, codified at §§ 45-23-25 — 45-23-74.

Section 6. These Ordinance Amendments shall take effect Thirty (30) days after their adoption by the Smithfield Town Council.

APPROVED AS TO FORM AND LEGALITY:



Anthony M. Gallone, Jr.
TOWN SOLICITOR

ADOPTED: September 2, 2025



John J. Tassoni
TOWN COUNCIL PRESIDENT



Lyn M. Antonuccio
TOWN CLERK

