

**ORDINANCE NO. 23-\_\_\_**

**Town of Lincoln**

**AN ORDINANCE AMENDING**

**CHAPTER 260 ZONING**

Note: Words set as strikeover are to be **deleted** from the ordinance; words set in underline are to be **added** to the ordinance.

**ARTICLE VII – INCLUSIONARY ZONING**

**Chapter 260-42 Inclusionary zoning provisions.**

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

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

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

B. Purpose. The purposes of this article are to:

(1) Implement the Lincoln Affordable Housing Production Plan, and the Housing Element of the Lincoln Comprehensive Plan;

(2) Promote the construction of rental and homeownership housing that is affordable for the low- and moderate-income households of Lincoln;

(3) Maintain a balanced community that provides housing for people of all income levels; and

(4) Help Lincoln achieve the ten-percent low-moderate income housing goal set by the State of Rhode Island.

1 C. Definitions. The definitions contained in Article II shall apply to the provisions of  
2 this article.

3 **D. Applicability: This section shall not apply to any project filed after January 1, 2024.**

4 ~~D.E.~~ Inclusionary units or in-lieu-of fee required.

5 (1) All residential development projects shall include the number of inclusionary  
6 units required under Subsection E or, if applicable, shall pay the in-lieu-of fee  
7 required under Subsection N. No building permits shall be granted for a  
8 residential development project without compliance with this article.

9 (2) Exemptions. This article shall not apply to the reconstruction of any dwelling  
10 units that were destroyed by fire, flood, earthquake or other act of nature.

11 (3) It is permissible to apply for a subdivision of four lots or fewer where one of  
12 the lots has an area three times or more greater than the area required for that  
13 zone. However, further subdivision of the larger lot will be treated as a major  
14 subdivision and shall be subject to the requirements set out in this article.

15 ~~E.F.~~ Number of inclusionary units. Any proposed residential development containing  
16 five or more dwelling units is required to include at least 20% of the total number  
17 of dwelling units within the proposed development as affordable units. The  
18 inclusionary units must be affordable for a minimum of 30 years through a deed  
19 restriction or through being held in a community land trust. The Town of Lincoln  
20 prefers that inclusionary units be built on site. However, developers who  
21 satisfactorily demonstrate to the Planning Board that building the inclusionary units  
22 on site is infeasible may request to make a payment in-lieu-of fee or to build the  
23 inclusionary units off site. The Town, at the applicant's expense, may have an  
24 independent real estate consultant determine feasibility of building the inclusionary  
25 units on site. Developers must round up to the next highest number for fractional  
26 units. As an alternative, an in-lieu-of fee may be paid for the fractional unit. The  
27 amount of the in-lieu-of fee will be in direct proportion to the percentage (out to  
28 two decimal places) of a single unit that is represented by the fractional remainder  
29 of the above inclusionary unit calculation.

30 ~~F.G.~~ Density bonus. All projects shall be entitled to a density increase of 25% in  
31 accordance with the provisions of this section. This density bonus qualifies as a  
32 locally provided subsidy. Any project shall be entitled to an increase in the  
33 maximum lot coverage allowed for the site on which the project is located  
34 following the calculation of density, lot coverage, and setbacks. Any request for  
35 other density increases beyond 25% will be strictly considered under a  
36 comprehensive permit.

37 ~~G.H.~~ Unit mix. The unit mix (i.e., the number of bedrooms per unit) of the inclusionary  
38 units shall be in the same proportion as the unit mix of the market-rate units. If only  
39 one inclusionary unit is required and the other units in the project have various  
40 bedroom numbers, the number of bedrooms for that unit will be an average of the  
41 number of bedrooms located in the market-rate units in the qualified development  
42 rounded to the nearest whole number.

43 ~~H.I.~~ Location of inclusionary units. Except as provided for in this article:

44 (1) Inclusionary units shall be dispersed among the market-rate units

1 throughout the qualified development.

2 (2) The inclusionary units must have access to all on-site amenities.

3 (3) All inclusionary units shall be built on the same site as the remainder of the  
4 project.

5 ~~F.J.~~ Unit types permitted in inclusionary subdivisions or land development projects. The  
6 Town of Lincoln encourages developers of inclusionary subdivisions or land  
7 development projects to provide a variety of housing types in the subdivision. Permitted  
8 housing types for an inclusionary subdivision include the following: single-family and  
9 duplex. Townhouse style buildings are also permitted in an inclusionary development.  
10 Each inclusionary unit in a single-family development will have the appearance of a  
11 single-family home pursuant to design guidelines in Subsection J.

12 ~~J.K.~~ Design guidelines.

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

18 (2) The interior appearance and finishes of the inclusionary units may differ from  
19 market-rate units in regard to interior finishes and gross floor areas, provided  
20 that the bedroom combination of affordable units shall be in proportion to the  
21 bedroom combination of the market-rate units.

22 ~~K.L.~~ Inclusionary housing agreement at preliminary plan.

23 (1) Approval. The inclusionary housing agreement must be approved before the  
24 developer receives preliminary plan approval.

25 (2) Agreements required. Applications for residential development projects  
26 seeking preliminary plan approval shall be approved only concurrently with  
27 the approval of an inclusionary housing agreement pursuant to this article.  
28 This section shall not apply should the developer choose to pay an in-lieu-of  
29 fee.

30 (3) Information in the inclusionary housing agreement:

31 (a) The location, structure, proposed tenure, and size of the proposed market-  
32 rate and inclusionary units.

33 (b) The calculations used to determine the number of required inclusionary  
34 units.

35 (c) A site plan depicting the location of the inclusionary units.

36 (d) The mechanisms that will be used to assure the inclusionary units remain  
37 affordable for the required term.

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- (e) For phased developments, a phasing plan.
  - (f) A marketing plan for the process by which qualified households will be reviewed and selected to either purchase or rent the affordable units.
  - (g) Any other information reasonably requested by the Planning Board to assure compliance with the purposes and provisions of this section.
- (4) The Town will provide its preferred format for the inclusionary housing agreement upon request.

L.M. Timing of construction and assurance.

- (3) Phasing of construction. The inclusionary housing agreement shall include a phasing plan (if a phased development) that provides for the timely and integrated development of the inclusionary units as the proposed project is built out. The phasing plan shall provide for the development of the affordable housing units concurrently with the development of the market-rate units. Building permits shall be issued for the qualified development project based upon the phasing plan. The phasing plan may be adjusted when necessary in order to account for the different financing and funding environments, economies of scale, and infrastructure needs applicable to development of the market-rate and affordable housing units. The phasing plans shall also provide that the affordable housing units shall not be the last units built in any development.
- (4) 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 Town of Lincoln prefers that inclusionary units be built prior to or concurrent with the market-rate units.

M.N. Off-site construction of inclusionary units. Inclusionary units may be constructed off site only upon a determination by the Planning Board that on-site construction is infeasible. If this option is chosen, then the off-site inclusionary units must be constructed prior to or concurrently with the construction of the proposed market-rate project. The inclusionary unit size and count must meet the same requirements as if the inclusionary units were constructed on site. If subdivision or land development project approval of the proposed off site location is not required, no certificate of occupancy will be issued for any corresponding market-rate units prior to the inclusionary unit construction completion or payment of the required in-lieu-of fees. Planning Board approval of the agreement to build off-site inclusionary units is required.

1    N.O. In-lieu-of fees.

- 2           (5) The Town of Lincoln prefers that inclusionary units be constructed on site. To  
3           that end, developers must prove that providing the inclusionary units on site is  
4           infeasible to the Planning Board (as provided for in this article, if approved).  
5           Planning Board approval of the agreement to pay an in-lieu-of fee in order to  
6           providing inclusionary units in a residential development is required. The  
7           amount of the fee in lieu of providing inclusionary units shall be determined  
8           using the fee schedule calculation set forth in Subsection N(3). For projects  
9           constructed in phases, in-lieu-of fees shall be paid prior to the issuance of each  
10          building permit in the proportion that the phase bears to the overall project. The  
11          in-lieu-of fees shall be paid into the Affordable Housing Trust Fund as  
12          established and administrated by the Town of Lincoln's Town Council or its  
13          designee.
- 14          (6) For projects to be developed on subdivided lots, in-lieu-of fees shall be paid by  
15          the developer prior to issuance of final subdivision approval or, in such cases  
16          where subdivision approval is not required, prior to issuance of a building  
17          permit for the project or as determined by the project's adopted conditions of  
18          approval.
- 19          (7) An in-lieu-of fee is due from developers of residential projects where payment  
20          of affordable housing in-lieu-of fees and/or fractional unit fees was included as  
21          a condition of project approval. The fee amount due per each whole affordable  
22          dwelling unit required shall equal the sum of the cost of the land as assessed  
23          by the Town at the time of subdivision application and the cost of development,  
24          including construction, of an affordable unit on the same site as the proposed  
25          market-rate units. The development cost used to complete in-lieu-of fee  
26          calculations shall be determined by Rhode Island Housing. Projects with  
27          fractional unit requirements shall pay an amount equal to the applicable in-lieu-  
28          of fee amount for a whole unit multiplied by the fractional requirement  
29          calculated out to two decimal places. This in-lieu-of fee shall be reviewed and  
30          may be adjusted as necessary by the Town of Lincoln's Town Council.

31    O.P. Requirements.

- 32          (8) Manner of compliance. All permanently affordable obligations of rental  
33          housing projects shall be met through on-site units, unless the developer shows  
34          that developing the approved inclusionary units on site is financially infeasible.  
35          All rental inclusionary units must be restricted as affordable for a minimum of  
36          30 years. The Town's preferred affordability period is 99 years for all projects.
- 37          (9) Determination of rental rates for affordable units; maximum rents. Rents  
38          charged for inclusionary rental units in any project must, on average, be  
39          affordable to households earning 80% or less of the area median income (AMI)  
40          as determined by the United States Department of Housing and Urban  
41          Development (HUD). No affordable unit may rent at a rate which exceeds  
42          affordability for a household earning 50% to 80% of AMI as determined by

1 HUD. Up-to-date AMI statistics may be obtained from Rhode Island Housing  
2 at [www.rihousing.com](http://www.rihousing.com).

3 (10) Sales prices for affordable units. The maximum sales price for an affordable  
4 ownership unit shall be set by Rhode Island Housing according to its accepted  
5 formula. The mix of unit sales prices will seek to be consistent with the goals  
6 of the Town of Lincoln's Affordable Housing Plan. Within a development, the  
7 average price charged for affordable ownership units in any project shall be  
8 either:

9 (a) A price affordable to a household earning no more than 80% of the AMI  
10 as defined by HUD with a local, state, or federal subsidy; or

11 (b) Be affordable to a household earning no more than 120% of the AMI as  
12 defined by HUD with a local, state, or federal subsidy.

13 (11) Approved purchasers of affordable units. A developer or owner shall select an  
14 eligible purchaser after completing a good-faith marketing and selection  
15 process, as provided or approved by the Town of Lincoln. Upon request, the  
16 Town may provide the developer or owner of an affordable unit with a list of  
17 households certified by the Town as eligible to purchase the unit. However, a  
18 developer or property owner may select an income eligible purchaser who is  
19 not on a furnished list so long as the Town can verify the purchaser's income  
20 and asset eligibility and the unit is sold at an affordable price as described in  
21 this chapter.

22 (12) Purchasers of affordable units required to reside in those units. A purchaser of  
23 an affordable unit shall occupy the purchased unit as their primary residence.  
24 No person shall rent an affordable ownership unit. Ownership units must  
25 remain exclusively owner-occupied for the entire required affordability period.

26 (13) Resale restrictions applicable to affordable units. All affordable ownership  
27 units as developed under this article shall be subject to the following  
28 restrictions: A seller of an affordable unit must select a low-income purchaser  
29 by a method that complies with a Town-approved good-faith marketing and  
30 selection process. At the request of a seller, the Town will provide the seller  
31 with the description of a process that meets this requirement. Upon request, the  
32 Town may provide the seller with a list of households certified by the Town as  
33 income eligible to purchase the unit. All purchasers of affordable units shall be  
34 part of an income eligible household.

35 (14) Resale price for affordable units.

36 (a) Any unit originally sold to a family earning 80% or less of the AMI at the  
37 time of purchase shall have a resale price not exceeding that which is  
38 affordable to a household earning 80% or less of the AMI as defined by  
39 HUD at the time of the sale and depending on subsidy as described in the  
40 above Subsection O(3).

41 (b) Any unit originally sold to a family earning more than 80% up to 120%

1 of the AMI at the time of purchase shall have a resale price not exceeding  
2 that which is affordable to a household earning more than 80% up to 120%  
3 of the AMI as defined by HUD at the time of the sale and depending on  
4 subsidy as described in the above Subsection O(3).

5 (15) Deed restriction or incorporation into a community land trust required. No  
6 person offering an affordable unit for sale shall fail to lawfully reference in the  
7 grant deed conveying title of any such unit and recorded with the Town's Land  
8 Evidence Records a covenant or declaration of restrictions in a form approved  
9 by the Town. Such covenant or declaration of restrictions shall reference  
10 applicable contractual arrangements, restrictive covenants, and resale  
11 restrictions as are necessary to carry out the purposes of this article.

12 (16) Requirements may be amended in furtherance of the purposes of this section.

13 P.Q. Monitoring. The Lincoln Housing Authority, or another selected agency as determined  
14 by the Town of Lincoln's Town Council, will be designated as the monitoring agent to  
15 ensure compliance with the requirements of this article.