

ORDINANCE NO. 2016-2

AN ORDINANCE TO AMEND  
CHAPTER 185  
OF THE ORDINANCES OF THE TOWN OF BARRINGTON

ARTICLE XXVII

**Low- and Moderate-Income Housing: Mandatory Inclusionary Zoning Requirements**  
[Added 8-28-2003 by Ord. No. 2003-14; amended 4-9-2007 by Ord. No. 2007-1;  
amended - -2016 by Ord. No. 2016-2]

**§ 185-190. Findings.**

- A. The Town of Barrington's Affordable Housing Plan outlines strategies to achieve the state-mandated ten-percent low- and moderate-income (LMI) housing goal, expanding housing options for current and future residents of Barrington. ~~It is estimated that as of 2007 the ten-percent goal requires approximately 500 additional affordable units to be constructed in Barrington over the next 20 years.~~
- B. ~~The Affordable Housing Plan states that the Town will need to produce 30 new low- and moderate income units each year to reach the projected number of LMI units that meet the ten-percent threshold.~~ Based on the Town's history of development and the limited amount of developable land remaining, approximately 300 acres, this is an aggressive goal that will require policy interventions, including the inclusionary zoning program as described in this article.
- C. Without the adoption of mandatory inclusionary zoning, along with other strategies identified in the Affordable Housing Plan, the Town's stock of affordable housing ~~will~~ would continue to be inadequate to meet the needs of Barrington's low- and moderate-income residents and employees.
- ~~D. The Town's voluntary inclusionary zoning provision (Article XXVII), which allows a thirty percent density bonus in exchange for affordable housing units by special use permit, is insufficient to generate a significant number of units that count toward the ten-percent LMI goal, as no units have been produced as a result of the voluntary measure. Therefore, the voluntary measure is being replaced by mandatory inclusionary zoning.~~
- DE. Inclusionary zoning is consistent with the State's Comprehensive Housing Production and Rehabilitation Act of 2004 (R.I.G.L. § 42-128-8.1), which states the following: "Creative funding mechanisms are needed at the local and state levels that provide additional resources for housing development, because there is an inadequate amount of federal and state subsidies to support the affordable housing needs of Rhode Island's current and projected population."
- FE. Pursuant to the Comprehensive Housing Production and Rehabilitation Act of 2004 (R.I.G.L. § 42-128-8.1g), the State has adopted a Strategic Plan for Housing which includes guidelines for higher density development, including, but not limited to, "inclusionary zoning provisions for low and moderate income housing with appropriate density bonuses and other subsidies that make the development financially feasible."

GE. Inclusionary zoning is consistent with State of Rhode Island General Laws (R.I.G.L. § 45-24-46.1), 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 10% of the total units in the development, and that the units will remain affordable for a period of not less than 30 years from initial occupancy enforced through a land lease and/or deed restriction enforceable by the municipality and the state of Rhode Island."

G. State of Rhode Island General Law § 45-24-46.1 enables municipalities to provide for the payment of a fee in lieu of the construction or provision of affordable housing units, provided that 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."

### **§ 185-191. Purpose.**

The purpose of this article is:

- A. To promote the public health, safety and welfare by promoting the development of low- and moderate-income housing within the Town of Barrington in accordance with the State mandate and to provide for a full range of housing choices throughout the Town for households of all incomes, ages and sizes.
- B. To promote the development of affordable housing throughout Town in a manner that is consistent with the Town's adopted Affordable Housing Plan and the Comprehensive Community Plan.
- C. To produce housing that qualifies as affordable as defined by the mandates of the State's Comprehensive Housing Production and Rehabilitation Act of 2004.
- D. To establish mixed-income households within new subdivisions and land development projects throughout the Town.
- E. To provide the Town's Affordable Housing Trust Fund financial resources for promoting the production of affordable units throughout Town, in lieu of on-site units provided within a subdivision subject to the provisions of this article.
- F. To provide the Town's Affordable Housing Trust Fund financial resources for promoting the production of affordable units throughout Town, in lieu of on-site units provided within a subdivision subject to the provisions of this article.

FG. To establish an affordable housing unit or funding set-aside requirement that allows for a reasonable return for property owners and developers, while recognizing the fact that most future subdivisions will be small-scale because few large parcels remain for development within Barrington.

### **§ 185-192. Applicability.**

This article shall apply to all subdivisions ~~of three or more units~~ and land development projects of three or more additional housing units or buildable vacant house lots, as classified under

Barrington's Zoning Ordinance and Land Development and Subdivision Regulations,<sup>1</sup> within all residential zones, ~~the Recreation and Education zone,~~ Senior Residential Village and Village zones, if established, the Business zone and the Neighborhood Business zone. “Assisted Living Residence” units, as defined in R.I.G.L. § 23-17.4-2(4) shall be subject to this article, but “Alzheimer's dementia special care unit or program” units, as defined in R.I.G.L. § 23-17.4-2(3) shall not be subject to this article.

### **§ 185-193. Affordability requirement.**

For all applicable projects as defined in § 185-192, at least 20% of the units on site must qualify as affordable housing, as defined by § 185-5. ~~—~~Fractions of a lot or dwelling unit shall be rounded up to the nearest whole number.

### **§ 185-194. Design and building requirements.**

A. All inclusionary units provided within a development shall:

- (1) Location of affordable units. Affordable units shall be dispersed throughout the development so as to ensure a true mix of market-rate and affordable housing.
- (2) Comparability. Affordable units shall be to the extent possible externally indistinguishable from market rate units in the same development. Affordable units should be comparable to market rate units in terms of location, quality, character, and room size.
- (3) Unit size. ~~Except as otherwise authorized by the Town, affordable units shall contain one or more bedrooms.~~The mix of unit sizes among the affordable units shall be proportionate to that of the development as a whole.
- (4) Rights and privileges. The owners or renters of affordable units shall have all rights, privileges and responsibilities accorded to market-rate owners or renters, including access to all non-fee amenities within the development.
- (5) Timing. The affordable units in any specific approved phase shall be built and occupiable prior to, or simultaneous with, the construction and occupancy of any market-rate units in that specific phase.

### **§ 185-195. In-lieu fee option.**

A. The applicant for development subject to this article may pay a fee in lieu of providing the required number of affordable housing units. In so choosing to make such a payment, the applicant will receive the density bonus described in § 185-196.

B. This 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

<sup>1</sup>. Editor's Note: See Ch. 200, Land Development and Subdivision Regulations.

additional low-or-moderate income housing as defined in § 45-53-3(9). The fee-in-lieu option shall be elected by the applicant by the close of the Public Information Meeting at the master plan stage of review by written notice submitted to the Administrative Officer.

(1) For affordable, single-family homes and condominium units, the per-unit fee shall be as set forth in R.I. Gen. Laws § 45-24-46.1(c)(1).

(2) Pursuant to R.I. Gen. Laws § 45-24-46.1(d), the Town shall deposit all in-lieu payments into restricted accounts that shall be allocated and spent only for the creation and development of affordable-housing within the municipality serving individuals or families at or below eighty percent (80%) of the area median income. The Town's Housing Board of Trustees shall oversee the funds in the restricted accounts and shall allocate the funds within two (2) years of receipt of the funds. Allocation of funds shall mean a designation or apportionment for a specific purpose.

C. Required in-lieu fees shall be paid prior to the issuance of building permits for the subdivision/development. For large projects of 20 units or more which are developed in approved phases, a portion of the in-lieu fee may be deferred, upon mutual agreement in writing by both the developer and the Planning Board, until after the initial phase is complete, but shall be paid per such agreement before building permits are issued for each subsequent phase.

#### **§ 185-~~195~~196. Incentives.**

- A. Reduction in minimum lot area. All projects subject to this article, with the exception of mixed-use commercial projects, shall be entitled to a density bonus allowing for a twenty-percent (20%) reduction in the minimum lot area for each house lot in the development based upon the underlying zoning (e.g., where the minimum lot size would be 32,000 square feet in a Residence 40 Zone, 20,000 square feet in a Residence 25 Zone, and 8,000 square feet in a Residence 10 Zone).
- B. Modification of lot dimensional requirements. The density bonus (Section 185-195A) shall correspond with a twenty-percent decrease in the minimum front, rear and side yard setback requirements and a twenty-percent decrease in the minimum frontage and lot width requirements of the Barrington Zoning Ordinance for the zoning district in which the property is located. Where new house lots abut lots with existing houses, the front setback shall be based on the predominant front setbacks of existing houses on the street within 300 feet of the new lot(s). This incentive is not applicable to mixed-use commercial projects subject to this article.

#### **B.C. Mixed-Use Commercial.**

- (1) All Mixed-Use Commercial projects subject to this article shall be entitled to a density bonus allowing for a twenty percent (20%) reduction in the minimum residential unit size for all residential units in the building (e.g., the minimum size of a residential unit in a mixed-use commercial project containing at least 20 percent affordable units shall be 800 square feet.)
- (2) In the Business and Neighborhood Business zones, proposed Mixed-Use Commercial buildings subject to this article may exceed the height limit by ten (10) feet provided

the roof slope is a minimum of 8:12, for a maximum height of 45 feet. The maximum number of dwelling units on a site is 10 units per acre.

**§ 185-196197. Off-site option.**

A. Off-site options. The Planning Board, at its sole discretion, may allow any developer of an inclusionary project to comply with the requirements of § 185-193 by constructing inclusionary units on a site other than that on which the project is located. The following off-site exactions may be allowed by the Planning Board:

- (1) Off-site rehabilitation of affordable units in existing buildings, preferably within the same school district.
- (2) Off-site new construction of affordable units.

B. Conditions. Provision of off-site inclusionary units shall be subject to the following conditions:

~~(1) Any subdivision or land development project that utilizes an off site option in place of developing the required affordable units on site shall not be entitled to an incentive as described in § 185-195.~~

- (2) Off-site inclusionary units shall have a certificate of occupancy prior to, or simultaneous with, the occupancy of any market-rate units.
- (3) New off-site units shall be compatible in architectural style to the existing units in the surrounding neighborhood.
- (4) Renovated off-site units shall be in full compliance with all applicable construction and occupancy codes, and shall be sufficiently maintained or rehabilitated so that all major systems meet standards comparable to new construction.

**§ 185-197198. Preference of options.**

A. Before considering the use of an off-site exaction, the Planning Board must first make a finding that it would be infeasible, as defined below, to develop the affordable units on-site because of environmental, public health, public safety, and/or regulatory reasons. [The Planning Board need not make this finding when the developer opts to pay a fee in lieu of providing the required affordable units.](#)

B. "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 subdivision, to the extent that it makes it impossible for the applicant to proceed in building or operating low- or moderate-income housing without financial loss, within the limitations set by the subsidizing agency of government, on the size or character of the development, on the amount or nature of the subsidy, or on the tenants, rentals, and income permissible, and without substantially changing the rent levels and unit sizes proposed by applicant.

C. The following is the Town's preferred progression of affordable housing options:

- (1) First preference: affordable units developed on-site.
- (2) Second preference: off-site options:
  - (a) Off-site rehabilitation of affordable units in existing buildings.
  - (b) Off-site new construction of affordable units.
- (3) Third preference: payment of fee-in-lieu to meet all or a portion of the inclusionary unit requirement.

**§ 185-~~198~~199. Affordability requirements.**

All affordable housing units constructed pursuant to this article must qualify as low- and moderate-income housing units as defined in Title 42, Chapter 128 and Title 45, Chapter 53, of the Rhode Island General Laws. To accomplish this, an applicant shall, at a minimum, make the following submission in conjunction with the final plan:

- A. A Town-approved monitoring service agreement, with a qualified organization; and
- B. A Town-approved land lease and/or deed restriction that includes the Town as a signatory, and grants to the Town enforcement authority and the right to notice.

**§ 185-~~199~~200. Implementation of inclusionary unit provisions.**

Implementation procedures, to be developed administratively by the Town and approved by the Planning Board as part of Barrington's Land Development and Subdivision Regulations, shall further describe the submission requirements and review timelines for the inclusionary housing plan and inclusionary housing agreement.

**§ 185-~~200~~201. Exemptions.**

Exempt from the requirements of this article are:

- A. Projects that are developed by an educational institution for the exclusive residential use and occupancy by that institution's students.

**~~§ 185-201. through § 185-202. (Reserved) Sunset provision.~~**

The provisions of § 185-195 of this article shall expire as of 12:00 midnight on January 1, 2017, unless renewed by the Town Council in the same manner as the enactment of a new ordinance. The option to pay a fee in lieu of providing affordable units, if exercised in writing pursuant to said § 185-195, and if granted Master Plan Approval by the Planning Board prior to such expiration date, shall be deemed to be vested and shall survive the expiration of this Section of this Article.

\* \* \*

This ordinance shall take effect upon passage.

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Council Member

Filed: \_\_\_\_\_  
Introduced: \_\_\_\_\_  
Amended: \_\_\_\_\_  
Adopted: \_\_\_\_\_