

INCLUSIONARY ZONING

Introduction and Summary to March 25, 2009 Draft

The purpose of Inclusionary Zoning is to provide for affordable housing by requiring that a minimum percentage of housing units in a proposed subdivision or planned unit development meet defined affordability standards.

From Wikipedia:

Inclusionary zoning, also known as inclusionary housing, refers to municipal and county planning ordinances that require that a given share of new construction be affordable to people with low to moderate incomes. ... In practice, these policies involve placing deed restrictions on 10%-30% of new houses or apartments in order to make the costs of the housing affordable to lower-income households. The mix of "affordable housing" and "market-rate" housing in the same neighborhood is seen as beneficial by many. Inclusionary zoning is becoming a common tool for local municipalities in the United States to help provide a wider range of housing options than the market provides on its own.

Major provisions of the proposed Norwich Inclusionary Zoning Amendment:

(B) The proposed amendment requires that 20% of the units in a new development with five or more housing units shall be Affordable Housing or Moderate Income Housing. The five or more unit threshold includes the conversion of existing structures into five or more additional housing units and also other housing units developed by the same person on the same or contiguous parcels within the previous seven years.

(C) Inclusionary Zoning Standards:

- (1) Standards ensure that the affordable units are similar in basic quality and appearance to the market rate units while allowing for some variations.
- (2) Construction schedules ensure integrated development of the inclusionary units throughout the development. A Phasing Plan shall provide for development of affordable units concurrently with market rate units.
- (3) Applicant may elect to pay fees in lieu of building the required affordable units.
- (4) Project developer incentives include a 50% density bonus.
- (5) Preference will be given to potential buyers who are employed in the Town of Norwich.
- (6) Affordable units shall remain affordable in perpetuity.

March 30, 2009

Inclusionary Zoning Section

March 25, 2009 DRAFT

5.0? Inclusionary Zoning

(A) Purpose. Provide for affordable housing by requiring that a minimum percentage of housing units in a proposed subdivision or planned unit development meet defined affordability standards.

Comment: The term “inclusionary zoning” is intended to distinguish ordinances that seek to encourage affordable housing from so-called “exclusionary zoning” practices that seek to exclude it.

Inclusionary zoning ordinances have been enacted by many jurisdictions across the U.S. However, most such jurisdictions are in urban or suburban areas that are quite dissimilar to Norwich. The only jurisdiction in Vermont, for example, that has enacted an inclusionary zoning ordinance is the City of Burlington. It remains to be seen whether inclusionary zoning can work effectively to create affordable housing in a small, rural, well-to-do area with housing market prices that are well above average, or whether it will instead have the result of discouraging all new housing, both market-rate and affordable.

The Planning Commission will need to monitor the effects of this ordinance periodically and amend it as necessary to ensure that its stated purpose is achieved.

(B) Applicability.

For the following developments, 20% of the units (all fractions of a unit shall be rounded to the nearest whole number) shall be required to be Affordable Housing or Moderate Income Housing as defined in Section 7:

- (1) All new developments with *five* or more units.
- (2) Conversion of existing structures into five or more additional housing units.
- (3) Other housing units developed by the same person on the same or contiguous parcels in the Town of Norwich within the previous *seven* years shall be included in the “five or more units” calculation in (1) & (2).

Comment: The purpose of (B) is to provide a specific formula for the affordable housing requirement. This formula is driven by 1) the percentage of units required to be affordable and 2) the minimum size development to which the percentage applies.

This section is the one that determines the impact of the inclusionary zoning ordinance, and it has been the subject of considerable discussion by the Planning Commission. Housing developers must realize a financial return on their investment, or no housing will be built. The higher the percentage and the smaller the size of the development to which it applies, the more difficult it will be for a developer to “make the numbers work.” If the numbers don’t work, then affordable housing will not be built.

(C) Inclusionary Zoning Standards

(1) Design variations between inclusionary and non-inclusionary units:

- a. The following features shall be the same for both inclusionary and non-inclusionary units:
 - i) Exterior finish and design elements
 - ii) Quality of structural construction
 - iii) Energy-saving features
 - iv) Desirability of location within project
- b. There may be variations in the following:
 - i) Size (minimum of 1,000 sf)
 - ii) Accessory buildings or apartments
 - iii) Appliances and fixtures (minimum of “contractor grade”)
 - iv) Bathrooms (minimum of 1½)
 - v) Bedrooms (minimum of 2)

Comment: The primary purpose of (C)(1) is to ensure that affordable housing units do not have differences in exterior appearance or other major issues that might make them less desirable and, perhaps, depress the property value of neighboring units. Most inclusionary zoning ordinances include similar provisions—the Inclusionary Zoning Subcommittee selected both lists above from those contained in various model and existing ordinances.

(2) Construction Schedule for Inclusionary Units –

The application for any development subject to the requirements of Section 5.0? (B) shall include a Phasing Plan that provides for the timely and integrated development of the inclusionary units throughout the development. The Phasing Plan shall provide for development of inclusionary units concurrently with non-inclusionary units as indicated by the guidelines in Table 5.0?. Building permits shall be issued for units based upon the Phasing Plan. Permits shall not be issued for non-inclusionary units in each phase, until the required inclusionary units based on the Plan are substantially complete. The Phasing Plan may be revised by the Development Review Board, upon request of the Applicant, when necessary in order to account for the different financing and funding environments, economies of scale,

and infrastructure needs applicable to development of the project. The Phasing Plan shall, however, provide that the inclusionary units shall not be the last units to be built in any development. See guidelines in Table 5.0?

Table 5.0? – Phasing Guidelines for Construction of Inclusionary Units

Phase		Total Units in Development					
% of units complete	% affordable units required	5		10		20	
		Total	Incl. Units	Total	Incl. Units	Total	Incl. Units
Less than 30%	0	1	0	2	0	5	0
30% of units plus 1 unit	10%	2	0	4	0	7	0
Up to 50%	30%	2	0	5	0	10	1
Up to 75%	50%	3	0	7	1	15	2
75% plus 1 unit	70%	4	0	8	1	16	2
Up to 90%	100%	4	1	9	2	18	4
100%	100%	5	1	10	2	20	4

Comment: The purpose of (C)(2) is to prevent a situation in which the affordable units are left until last and the developer runs out of funds with which to build them. This again is a provision that requires some caution: if affordable units are required too early in the construction schedule, the developer may not be able to be able to support them while still making the financial return that allows completion of the overall project. If that is the case, again, the ordinance will act as a disincentive to all housing, rather than as an incentive to affordable housing.

(3) In-lieu-of fees – Fees paid in lieu of building affordable units.

- a. Applicant may elect to pay fees in lieu of building the required inclusionary units.
- b. If applicant does not build inclusionary units, fees are paid and affordable housing incentives are lost.
- c. The fees shall be the difference between the selling price of an inclusionary unit and that of a comparable market rate unit.

- d. Payment of fees shall be made at the sale, lease, or transfer of ownership of the unit that would have been required to be inclusionary. Some form of lien or other legal means shall be executed prior to the start of construction to guarantee payment of applicable fee at closing.
- e. Payment shall be made to the “Town of Norwich Affordable Housing Trust Fund.”

Comment: The purpose of (C) (3) is to make the ordinance more flexible in achieving its purpose. A developer may elect to not build affordable units, but rather to pay into a trust fund that would be used to subsidize construction of affordable housing. Many inclusionary zoning ordinances provide this alternative, and a number use the method prescribed in (C)(3)(c) to determine the size of payment required.

(4) Project developer incentives –

- a. A density bonus of up to 50 percent, not additive to any other bonuses.
- b. Reduction or waiver of developer fees.
- c. Priority zoning review scheduling for complete applications
- d. Possible reduction of parking space based on specifics of the development.

Comment: The purpose of (C)(4) is to strengthen the legal basis for inclusionary zoning. An ordinance that simply placed a requirement for affordable housing on developers, without providing any compensating incentives, could face legal challenge on the grounds that it constitutes a taking of private property rights. The incentives listed here are among those found in a number of existing IZ ordinances.

(5) Preference given to potential buyers who are employed in the Town of Norwich.

Comment: The purpose of (C)(5) is to respond to the strong concern expressed by many Norwich residents that people who work in town cannot afford to live there. Additional research will be needed to determine whether this provision is legal.

(6) Maintaining Affordability of Inclusionary Units

- a. Inclusionary units shall remain affordable in perpetuity.
- b. **Resale Price** - Sales beyond the initial sale to a qualified affordable income purchaser shall include the initial discount rate between the sale price and the unit's appraised value at the time of resale. This percentage shall be recorded as part of the restriction on the property. For example, if a unit appraised for \$100,000 is sold for \$75,000 as a result of this bylaw, it has sold for 75 percent of its appraised value. If, several years later, the appraised value of the unit at the time of proposed resale is \$150,000, the

unit may be sold for no more than \$112,500--75 percent of the appraised value of \$150,000.

Comment: The purpose of (C)(6) is to ensure the future affordability of affordable units built under inclusionary zoning. The approach selected in (C)(6)(b) for pricing units is one that is used in several existing IZ ordinances.

Definitions:

Affordable Housing - Housing that is either (1) owned by inhabitants whose gross annual household income does not exceed 80% of the Windsor County median income, and having a total annual cost, including principal, interest, taxes, insurance, and condominium association fees of not more than 30% of the household's gross annual income; or (2) rented by inhabitants whose gross annual household income does not exceed 80% of the county median income, as defined by the United States Department of Housing and Urban Development, and having a total annual cost, including rent, utilities, and condominium association fees, of not more than 30% of the household's gross annual income. "Perpetually affordable" shall mean housing that meets the affordability requirements of these regulations for a minimum of 99 years from the date of first sale or lease.

Moderate Income Housing - Housing that is either (1) owned by inhabitants whose gross annual household income does not exceed 120% of the Windsor County median income, and having a total annual cost, including principal, interest, taxes, insurance, and condominium association fees of not more than 30% of the household's gross annual income; or (2) rented by inhabitants whose gross annual household income does not exceed 120% of the county median income, as defined by the United States Department of Housing and Urban Development, and having a total annual cost, including rent, utilities, and condominium association fees, of not more than 30% of the household's gross annual income. "Perpetually affordable" shall mean housing that meets the affordability requirements of these regulations for a minimum of 99 years from the date of first sale or lease.

Act 250 Definition of "Person"

T.10 §6001 (14)(A) "Person":

(i) shall mean an individual, partnership, corporation, association, unincorporated organization, trust or other legal or commercial entity, including a joint venture or affiliated ownership;

(ii) means a municipality or state agency;

(iii) includes individuals and entities affiliated with each other for profit, consideration, or any other beneficial interest derived from the partition or division of land;

(iv) includes an individual's parents and children, natural and adoptive, and spouse, unless the individual establishes that he or she will derive no profit or consideration, or acquire any other beneficial interest from the partition or division of land by the parent, child or spouse;

(B) The following individuals and entities shall be presumed not to be affiliated for the purpose of profit, consideration, or other beneficial interest within the meaning of this chapter, unless there is substantial evidence of an intent to evade the purposes of this chapter:

(i) a stockholder in a corporation shall be presumed not to be affiliated with others, solely on the basis of being a stockholder, if the stockholder and the stockholder's spouse, and natural or adoptive parents, children, and siblings own, control or have a beneficial interest in less than five percent of the outstanding shares in the corporation;

(ii) an individual shall be presumed not to be affiliated with others, solely for actions taken as an agent of another within the normal scope of duties of a court appointed guardian, a licensed attorney, real estate broker or salesperson, engineer or land surveyor, unless the compensation received or beneficial interest obtained as a result of these duties indicates more than an agency relationship;

(iii) a seller or chartered lending institution shall be presumed not to be affiliated with others, solely for financing all or a portion of the purchase price at rates not substantially higher than prevailing lending rates in the community, and subsequently granting a partial release of the security when the buyer partitions or divides the land.

Additional Notes

Off-Site Mitigation – There is no provision for off-site mitigation.

Comment: Some inclusionary zoning ordinances include provisions allowing a developer to build all market-rate units in Development A and affordable units elsewhere in Development B. The Norwich Affordable Housing Committee recommended against this approach, in part because it “does not encourage integration and does not guarantee equal quality in construction or location.”

PUD Density Bonuses - Changes to the PUD density bonuses in Section 5.06 of the Norwich Zoning Regulations are recommended to maintain an incentive for applicants to create more affordable units than required by the proposed inclusionary zoning provisions.

Section 5.06 Planned Unit Developments

(D)(4)(b)the permitted density so determined may be increased as permitted below to reflect:

- i) a density bonus of up to 25% of the permitted overall density in the Rural Residential District in instances in which not less than 60% of the total acreage is set aside in the deed as open space in accordance with Section 3.10 of the Subdivision Regulations; or
- ii) a density bonus of up to 25% of the permitted overall density in the Village Residential I District in instances where the PUD complies with the standards set forth in subsection (10) below; or
- ~~iii) except in the Village Residential II District, a density bonus of 25% of the permitted overall density, in accordance with Section 4407(3) of the Act, in instances in which not less than 20% of the total number of dwelling units created are affordable housing units, as defined in Section 7; or~~
- iv) except in the Village Residential II District, a density bonus of up to ~~50%~~ **70%** of the permitted overall density, in accordance with Section 4407(12) of the Act, in instances in which not less than ~~50%~~ **70%** of the total number of dwelling units created are affordable housing units, as defined in Section 7, or a density bonus of up to 195% of the permitted overall density in the Village Residential II District in instances in which not less than 70% of the total number of dwelling units created are affordable housing units or moderate income housing units as defined in Section 7, which housing shall remain affordable in perpetuity.

Note: Fractional density bonuses are not rounded up.

Appendix - Table Required Units with Bonus (Changed to standard rounding)

Inclusionary Zoning -

Allowed Units	Total with 50% Bonus		Inclusionary Units Required	
	Raw	Rounded	Units	Rounded
5	7.5	8	1.6	2
6	9	9	1.8	2
7	10.5	11	2.2	2
8	12	12	2.4	2
9	13.5	14	2.8	3
10	15	15	3	3
11	16.5	17	3.4	3
12	18	18	3.6	4
13	19.5	20	4	4
14	21	21	4.2	4
15	22.5	23	4.6	5
16	24	24	4.8	5
17	25.5	26	5.2	5
18	27	27	5.4	5
19	28.5	29	5.8	6
20	30	30	6	6
21	31.5	32	6.4	6
22	33	33	6.6	7
23	34.5	35	7	7
24	36	36	7.2	7
25	37.5	38	7.6	8
26	39	39	7.8	8
27	40.5	41	8.2	8
28	42	42	8.4	8
29	43.5	44	8.8	9
30	45	45	9	9
31	46.5	47	9.4	9
32	48	48	9.6	10
33	49.5	50	10	10
34	51	51	10.2	10
35	52.5	53	10.6	11
36	54	54	10.8	11
37	55.5	56	11.2	11
38	57	57	11.4	11
39	58.5	59	11.8	12
40	60	60	12	12
41	61.5	62	12.4	12
42	63	63	12.6	13
43	64.5	65	13	13
44	66	66	13.2	13

All Inclusionary Units must be completed before bonus units may be built