

**2023 -- S 1051 SUBSTITUTE A**

LC002507/SUB A

**STATE OF RHODE ISLAND**

**IN GENERAL ASSEMBLY**

**JANUARY SESSION, A.D. 2023**

**A N A C T**

**RELATING TO TOWNS AND CITIES -- ZONING ORDINANCES**

Introduced By: Senator David P. Tikoian

Date Introduced: May 19, 2023

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 45-24-46.1 of the General Laws in Chapter 45-24 entitled "Zoning  
2 Ordinances" is hereby amended to read as follows:

3 **45-24-46.1. Inclusionary zoning.**

4 (a) A zoning ordinance requiring the inclusion of affordable housing as part of a  
5 development shall provide that the housing will be affordable housing, as defined in § 42-128-  
6 8.1(d)(1); that the affordable housing will constitute not less than ~~ten percent (10%)~~ twenty-five  
7 (25%) of the total units in the development; and that the units will remain affordable for a period  
8 of not less than thirty-years (30) from initial occupancy enforced through a land lease and/or deed  
9 restriction enforceable by the municipality and the state of Rhode Island. A zoning ordinance which  
10 requires the inclusion of affordable housing as part of a development shall specify the threshold in  
11 which the inclusion of affordable housing is required, but in no event shall a minimum threshold  
12 triggering the inclusion of affordable housing be higher than ten (10) dwelling units.

13 (b) A zoning ordinance that includes inclusionary zoning may provide that the affordable  
14 housing must be built on-site or utilize one or more alternative methods of production, including,  
15 but not limited to, off-site construction or rehabilitation, donation of land suitable for development  
16 of the required affordable units, and/or the payment of a fee in lieu of the construction or provision  
17 of affordable housing units.

18 (c) Density bonus, zoning incentives and municipal subsidies. For all projects subject to  
19 inclusionary zoning, ~~density bonuses and other incentives shall be established by the community~~

1 ~~and shall apply to offset differential costs of below market units.~~ subject to applicable setback, lot  
2 width, or frontage requirements or the granting of relief from the same, a municipality shall allow  
3 the addition of two (2) market rate units for each affordable unit provided and the minimum lot  
4 area per dwelling unit normally required in the applicable zoning district shall be reduced by that  
5 amount necessary to accommodate the development. Larger density bonuses for the provision of  
6 an increased percentage of affordable housing in a development may be provided by a municipality  
7 in the zoning ordinance. Nothing herein shall prohibit a municipality from providing, or an  
8 applicant from requesting additional zoning incentives and/or municipal government subsidies as  
9 defined in § 45-53-3 to offset differential costs of affordable units. Available zoning incentives and  
10 municipal government subsidies shall be listed in the zoning ordinance.

11 ~~(e) This~~ (d) Fee-in-lieu. To the extent a municipality provides an option for the payment of  
12 a fee-in-lieu of the construction or provision of affordable housing, such fee ~~in lieu of the~~  
13 ~~construction or provision of affordable housing~~ shall be the choice of the developer or builder  
14 applied on a per-unit basis and may be used for new developments, purchasing property and/or  
15 homes, rehabilitating properties, or any other manner that creates additional low-or-moderate  
16 income housing as defined in § 45-53-3(9).

17 (1) Eligibility for density bonus. Notwithstanding any other provisions of this chapter, an  
18 application which utilizes a fee-in-lieu of the construction or provision of affordable housing shall  
19 not be eligible for the density bonus outlined in this section.

20 (2) An application which seeks to utilize a fee-in-lieu of the construction or provision of  
21 affordable housing must be permitted by the planning board or commission and is not eligible for  
22 administrative review under the Rhode Island Land Development and Subdivision Review  
23 Enabling Act of 1992, codified at §§ 45-23-25 - 45-23-74.

24 (3) Amount of fee-in-lieu. For affordable single-family homes and condominium units, the  
25 per-unit fee shall be the difference between the maximum affordable sales price for a family of four  
26 (4) earning eighty percent (80%) of the area median income as determined annually by the U.S.  
27 Department of Housing and Urban Development and the average cost of developing a single unit  
28 of affordable housing. The average cost of developing a single unit of affordable housing shall be  
29 determined annually based on the average, per-unit development cost of affordable homes financed  
30 by Rhode Island housing and mortgage finance corporation (RIHMFC) over the previous three (3)  
31 years, excluding existing units that received preservation financing.

32 ~~(2)(i)~~ (d)(3) Notwithstanding subsection ~~(e)(1)~~ (d)(3) of this section, in no case shall the per-unit  
33 fee for affordable single family homes and condominium units be less than forty thousand dollars  
34 (\$40,000).

1           ~~(d)~~(4) Use of fee-in-lieu. The municipality shall deposit all in-lieu payments into restricted  
2 accounts that shall be allocated and spent only for the creation and development of affordable  
3 housing within the municipality serving individuals or families at or below eighty percent (80%)  
4 of the area median income. The municipality shall maintain a local affordable housing board to  
5 oversee the funds in the restricted accounts and shall allocate the funds within ~~two (2) years~~ three  
6 (3) years of collection. The municipality shall include in the housing element of their local  
7 comprehensive plan, ~~if applicable,~~ and shall pass by ordinance, the process it will use to allocate  
8 the funds.

9           (e) As an alternative to the provisions of subsection (d), the municipality may elect to  
10 transfer in-lieu payments promptly upon receipt or within the ~~two-year (2)~~ three (3) year period  
11 after receipt. A municipality shall transfer all fee-in-lieu payments which are not allocated within  
12 three (3) years of collection, including funds held as of July 1, 2024, to ~~the housing resources~~  
13 ~~commission or Rhode Island housing~~ RIHMFC for the purpose of developing affordable housing  
14 within that community.

15           (f) ~~Rhode Island housing~~ Both the municipalities and RIHMFC shall report annually with  
16 the first report due December 31, 2024 to the general assembly, the secretary of housing and the  
17 housing resources commission the amount of fees in lieu collected by community; the projects that  
18 were provided funding with the fees, the dollar amounts allocated to the projects and the number  
19 of units created.

20           SECTION 2. This act shall take effect on January 1, 2024.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO TOWNS AND CITIES -- ZONING ORDINANCES

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1           This act would increase the amount of allowable units per acre for all projects subject to  
2 inclusionary zoning as well as other incentives and subsidies to offset differential costs of  
3 affordable units.

4           This act would take effect on January 1, 2024.

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