

2024 -- S 2999 SUBSTITUTE A

LC005868/SUB A

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2024

A N A C T

RELATING TO TOWNS AND CITIES -- ZONING ORDINANCES

Introduced By: Senator Jacob Bissaillon

Date Introduced: April 16, 2024

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. [Effective January 1, 2024.]**

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 ~~twenty five percent (25%)~~ fifteen
7 percent (15%) of the total units ~~in~~ proposed for the development; and that the units will remain
8 affordable for a period of not less than thirty (30) years from initial occupancy enforced through a
9 land lease and/or deed restriction enforceable by the municipality and the state of Rhode Island. A
10 zoning ordinance that requires the inclusion of affordable housing as part of a development shall
11 specify the threshold in which the inclusion of affordable housing is required, but in no event shall
12 a minimum threshold triggering the inclusion of affordable housing be higher than ten (10) dwelling
13 units. The total number of units for the development may include less than fifteen percent (15%)
14 affordable units after the density bonus described in subsection (c) of this section is determined.

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

1 (c) **Density bonus, zoning incentives, and municipal subsidies.** For all projects subject
2 to inclusionary zoning, subject to applicable setback, lot width, or frontage requirements or the
3 granting of relief from the same, a municipality shall allow the addition of ~~two (2)~~ one market rate
4 units for each affordable unit ~~provided~~ required and the minimum lot area per dwelling unit
5 normally required in the applicable zoning district shall be reduced by that amount necessary to
6 accommodate the development. Larger density bonuses for the provision of an increased percentage
7 of affordable housing in a development may be provided by a municipality in the zoning ordinance.
8 The total number of units for the development shall equal the number originally proposed, including
9 the required affordable units, plus the additional units that constitute the density bonus. Local
10 regulations shall provide for reasonable relief from dimensional requirements to accommodate the
11 bonus density under this section. ~~Nothing herein shall prohibit a A municipality from providing, or~~
12 ~~an applicant from requesting,~~ shall provide, and an applicant may request additional zoning
13 incentives and/or municipal government subsidies as defined in § 45-53-3 to offset differential
14 costs of affordable units. Available zoning incentives and municipal government subsidies ~~shall~~
15 may be listed in the zoning ordinance, but shall not be an exclusive list.

16 (d) **Fee-in-lieu.** To the extent a municipality provides an option for the payment of a fee-
17 in-lieu of the construction or provision of affordable housing, and an application seeks to utilize
18 fee-in-lieu, the use of such fee shall be the choice of the developer or builder applied on a per-unit
19 basis and may be used for new developments, purchasing property and/or homes, rehabilitating
20 properties, or any other manner that creates additional low- or moderate-income housing as defined
21 in § 45-53-3(9).

22 (1) Eligibility for density bonus. Notwithstanding any other provisions of this chapter, an
23 application that utilizes a fee-in-lieu ~~of the construction or provision of affordable housing,~~ off-site
24 construction or rehabilitation, or donation of land suitable for development of the required
25 affordable units shall not be eligible for the density bonus outlined in this section.

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

30 (3) Amount of fee-in-lieu. For affordable single-family homes and condominium units, the
31 per-unit fee shall be the difference between the maximum affordable sales price for a family of four
32 (4) earning eighty percent (80%) of the area median income as determined annually by the U.S.
33 Department of Housing and Urban Development and the average cost of developing a single unit
34 of affordable housing. The average cost of developing a single unit of affordable housing shall be

1 determined annually based on the average, per-unit development cost of affordable homes financed
2 by Rhode Island housing and mortgage finance corporation (RIHMFC) over the previous three (3)
3 years, excluding existing units that received preservation financing.

4 (i) Notwithstanding subsection (d)(3) of this section, in no case shall the per-unit fee for
5 affordable single family homes and condominium units be less than forty thousand dollars
6 (\$40,000).

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

14 (e) As an alternative to the provisions of subsection (d), the municipality may elect to
15 transfer in-lieu payments promptly upon receipt or within the three-year (3) period after receipt. A
16 municipality shall transfer all fee-in-lieu payments that are not allocated within three (3) years of
17 collection, including funds held as of July 1, 2024, to RIHMFC for the purpose of developing
18 affordable housing within that community.

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

23 **SECTION 2. This act shall take effect on January 1, 2025.**

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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RELATING TO TOWNS AND CITIES -- ZONING ORDINANCES

1 This act would provide amendments to the requirements of the inclusionary zoning law for
2 affordable housing development.

3 This act would take effect on January 1, 2025.

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