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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2024

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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 municipality from providing, or
12 an applicant from requesting, additional zoning incentives and/or municipal government subsidies
13 as defined in § 45-53-3 to offset differential costs of affordable units. Available zoning incentives
14 and municipal government subsidies shall be listed in the zoning ordinance.

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

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

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

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

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

5 (i) Notwithstanding subsection (d)(3) of this section, in no case shall the per-unit fee for
6 affordable single family homes and condominium units be less than forty thousand dollars
7 (\$40,000).

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

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

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

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

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
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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