



## ORDINANCE

### AMENDING THE INCLUSIONARY ZONING SUPPLEMENTAL USE REGULATIONS

### *CITY OF NASHUA*

*In the Year Two Thousand and Twenty-One*

*The City of Nashua ordains* that Part II “General Legislation”, Chapter 190 “Land Use”, Part 2 “Zoning Districts and Supplemental Use Regulations”, Article VI “Supplemental Use Regulations”, Section 190-48 “Inclusionary Zoning” of the Nashua Revised Ordinances, as amended, be and hereby is further amended by deleting the existing section and replacing it in its entirety as follows:

#### **“§ 190-48. Inclusionary Zoning.**

A. Definitions. As used in this section, the following terms shall have the meanings indicated:

#### **AFFORDABLE**

- (1) For rental housing, that the total housing costs for the dwelling unit, inclusive of utilities and other directly related expenses, do not exceed 30% of the income of the household; or
- (2) For owner-occupied housing, that the total cost of mortgage principal and interest, property taxes, association fees and homeowners' insurance does not exceed 33% of the maximum allowed income of the purchaser. Calculation of housing costs shall be based on a methodology developed by the CDD that outlines reasonable assumptions for taxes, utilities, down payment levels, and mortgage terms. In the absence of a current methodology, the calculation shall be based on a 30-year fixed rate mortgage with the average current interest rate for a no-points mortgage, a five percent down payment, and most current taxes, insurance, and other incidental costs, and shall include an assumed private mortgage insurance if relevant.

**AFFORDABLE HOUSING**

Any housing unit for which occupancy is limited to households at or below income levels for which the unit is intended to be affordable and for which maximum rents or sales prices are set so the unit will be affordable at or below that income level.

**AREA MEDIAN INCOME (AMI)**

The most current median income in the HUD Metropolitan Fair Market Rent Area (HMFA) for Nashua, NH, adjusted for the number of persons in the household, as determined by the U.S. Department of Housing and Urban Development.

**CDD**

Community Development Department of the City of Nashua, or its successor. .

**COMMUNITY HOUSING DEVELOPMENT ORGANIZATION (CHDO)**

As defined in 24 CFR § 92.2, which is hereby incorporated by this reference.

**DOWNTOWN**

Any lot, parcel or tract within a contiguous area that is located within the D-1 or D-3 zoning districts.

**HOUSING DEVELOPMENT**

Creation of new housing units through new construction and/or conversion of existing space currently or previously used for non-residential purposes. Renovation of existing housing units is not considered housing development for the purposes of this § 190-48, unless it creates additional housing units in which case the net new number of units shall be considered Housing Development.

**OWNERSHIP HOUSING**

Any dwelling unit intended to be conveyed in fee simple, condominium, or equity-sharing arrangement such as a community housing land trust and limited equity cooperatives.

**RENTAL HOUSING**

Any dwelling unit intended to be rented rather than conveyed as Ownership Housing.

- B. Affordable Housing Requirements. This section applies to any application for housing development approval within the City as further outlined in Table 48-1 below. All housing developments must meet the requirements of Table 48-1 below as explained in this section:

- (1) Units: The total number of housing units in the proposed housing development.

- (2) Location: “Citywide” refers to projects in any location in the City of Nashua other than Downtown. “Downtown” refers to projects located in the Downtown.
- (3) IZ Required: This column indicates whether a housing development of a specific unit count in a specific location is required to include below-market affordable units as per this ordinance.
- (4) Total Percent Required: This column indicates the percentage of the total number of units that are required to meet Tier 1 and Tier 2 Target AMI levels as outlined in the next two columns.
- (5) Tier 1 Target AMI: This column indicates a percentage of the total number of units that must be affordable at or below a specific target AMI.
- (6) Tier 2 Target AMI: This column indicates a percentage of the total number of units that must be affordable at or below a second specific target AMI.
- (7) Payment in Lieu for Partial Units: This column indicates whether partial units from the Total Percent Required and Tier 1 and Tier 2 AMI levels can be met with a payment into the Housing Trust Fund (R-21-118 as amended.)
- (8) Payment in Lieu for All Units: This column indicates whether a developer has the option of meeting its requirements under this ordinance in full through payment to the Housing Trust Fund in lieu of providing units on-site into the Housing Trust Fund (R-21-118 as amended.) If this column says “No,” the developer shall not make payments in lieu of any whole unit calculated under the Tier 1 and Tier 2 requirements and must provide those full units.
- (9) Payment in Lieu Value: This column indicates the fee in lieu amount per full unit. That amount is prorated for partial units proportionately.
- (10) Bonus Density Ratio: This column indicates an additional number of market rate units that may be provided in a housing development in return for providing required affordable units on- site. This bonus does not apply for fractional units or full units for which a developer makes a payment in lieu, or for units provided off-site. For more details see E. below.

In cases of conflict between Table 48-1 and this section, the language in the table shall prevail.

C. Term, Location and Size of Affordable Units.

- (1) The intent of this ordinance is to ensure that affordable units created under its requirements be affordable for a period of ninety-nine (99) years. The developer must make a binding commitment that such units will remain affordable for the longest time periods permissible by federal and state law. Affordability of the units for the required terms shall be controlled through a deed restriction, restrictive covenant, or CDHO approved by CDD, that will provide details on how to ensure households are below income maximums; resale of units is limited to prices

affordable below income maximums; and other relevant terms to ensure that the units meet the intent of this ordinance.

- (2) Required affordable units must be integrated with the rest of the housing development, must use a common entrance, and must provide no indications from common areas that these units are affordable housing units.
- (3) Required affordable units need not be the same size as other units in the housing development but the number of bedrooms in such units shall be no less than 10 percent of the total number of bedrooms in the housing development. For the purposes of calculating the number of bedrooms in a housing development, every 400 square feet in each market rate unit will count as a bedroom if CDD determines this method is appropriate in lieu of counting actual bedrooms.

D. Certificates of Occupancy and Project Phasing.

- (1) No final Certificate of Occupancy (CO) shall be issued for a housing development until the terms of this section are met, including but not limited to the requirements of C. above and the complete payment of any fees in lieu of units to the Housing Trust Fund.
- (2) Certificates of Occupancy for affordable units must be obtained at the same time as those of other housing units in the housing development.
- (3) A housing development may be separated into phases of reasonable sizes, in which case the affordable units and/or fees in lieu must be provided in proportion to the portion of the project completed. However, projects shall not be segmented or phased to avoid compliance with these provisions, such as by proposing more units than are intended.

E. Bonus Density Ratios

- (1) Any development that provides required affordable units as outlined in this section is eligible for a bonus density ratio as listed in Table 48-1.
- (2) This ratio is an additional number of market-rate units that may be built in proportion to the total number of on-site required affordable units. Off-site units or fees-in-lieu do not count towards this total.
- (3) All project phases shall have an affordable housing component. In the case of fractional units, the number of bonus units shall be rounded down. However, fractional bonus density units may be combined with other fractional units for which a project may be eligible for to create additional units if the fractions add up to one or more. For example, a ten-unit project with a ten percent inclusionary requirement and a 2.5:1 bonus density ration would be able to build eleven market rate units (9 + 2.5 rounded down) and one on-site affordable unit. If the base zoning permitted this project to have 10.5 units in total, the project could have twelve market rate units (9.5 + 2.5) and one on-site unit, as well as a fee-in- lieu for 0.05 units (0.5 x 10%.)

- (4) The bonus density units do not count toward the base number of units for which an Inclusionary Zoning requirement is calculated in this section. For example, a ten-unit project with a ten percent inclusionary requirement and a 2:1 bonus density ratio would be able to build eleven market rate units and one on-site affordable unit. However, if the affordable unit is not provided on-site, or replaced with a fee-in-lieu, the project could only build ten units.

**F. Enforcement**

- (1) Affordability of rental units shall be enforced through a deed restriction and lien granted to the City of Nashua.
- (2) Affordability of ownership units shall be enforced through a deed restriction. Rental of affordable ownership units shall be permitted only upon notification of the City of Nashua and demonstration of compliance with rental affordability requirements as defined in this section.

**G. Administration.**

- (1) This section shall be administered by the CDD, including establishing and updating affordable sales prices and rents based on reasonable and documented methodologies.
- (2) CDD shall promulgate regulations to further specify the details of this section, which shall be approved after a hearing and vote of the Planning Board.”

This ordinance shall become effective immediately upon passage.

**THROUGH JUNE 30, 2022**

**Inclusionary Zoning (IZ) Policy Matrix**

UNITS	LOCATION	IZ REQUIRED?	TOTAL PERCENT REQUIRED	TIER		PAYMENT IN			BONUS DENSITY RATIO [2]
				TARGET AMI [1]	TIER 2 TARGET AMI	LIEU FOR PARTIAL UNITS?	PAYMENT IN LIEU FOR ALL UNITS?	PAYMENT IN LIEU VALUE	
<b>OWNERSHIP HOUSING</b>									
Less than 10	Citywide	N							
10 - 49	Citywide	N							
50 - 99	Citywide	Y	15%	80% (10%)	100% (5%)	Y	N	\$100,000	2:1
100+	Citywide	Y	20%	80% (10%)	100% (10%)	Y	N	\$100,000	2:1
<b>RENTAL HOUSING</b>									
Less than 10	Citywide [3]	N							
10 - 49	Citywide	N							
50 - 99	Citywide	Y	15%	80%	N/A	Y	N	\$37,000	1:1
100+	Citywide	Y	20%	80%	N/A	Y	N	\$37,000	1:1
Less than 10	Downtown	N							
10 - 49	Downtown	N							
50 - 99	Downtown	Y	7.5%	80%	N/A	Y	Y	\$37,000	2.5:1
100+	Downtown	Y	10%	80%	N/A	Y	Y	\$37,000	2.5:1

**NOTES:**

[1] Target income tiers are applied based on share of total IZ requirement

[2] Bonus density ratio reflects number of additional market rate units allowed for every IZ unit provided

[3] Citywide IZ policy for rental housing does not apply in designated Downtown District

**STARTING JULY 1, 2022**

**Inclusionary Zoning (IZ) Policy Matrix**

UNITS	LOCATION	IZ REQUIRED?	TOTAL PERCENT REQUIRED	TIER		PAYMENT IN			BONUS DENSITY RATIO [2]
				TARGET AMI [1]	TIER 2 TARGET AMI	LIEU FOR PARTIAL UNITS?	PAYMENT IN LIEU FOR ALL UNITS?	PAYMENT IN LIEU VALUE	
<b>OWNERSHIP HOUSING</b>									
Less than 10	Citywide	N							
10 - 49	Citywide	Y	10%	80%	N/A	Y	N	\$100,000	1:1
50 - 99	Citywide	Y	15%	80% (10%)	100% (5%)	Y	N	\$100,000	2:1
100+	Citywide	Y	20%	80% (10%)	100% (10%)	Y	N	\$100,000	2:1
<b>RENTAL HOUSING</b>									
Less than 10	Citywide [3]	N							
10 - 49	Citywide	Y	10%	80%	N/A	Y	N	\$37,000	1:1
50 - 99	Citywide	Y	15%	80%	N/A	Y	N	\$37,000	1:1
100+	Citywide	Y	20%	80%	N/A	Y	N	\$37,000	1:1
Less than 10	Downtown	N							
10 - 49	Downtown	Y	5%	80%	N/A	Y	Y	\$37,000	2.5:1
50 - 99	Downtown	Y	7.5%	80%	N/A	Y	Y	\$37,000	2.5:1
100+	Downtown	Y	10%	80%	N/A	Y	Y	\$37,000	2.5:1

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[1] Target income tiers are applied based on share of total IZ requirement

[2] Bonus density ratio reflects number of additional market rate units allowed for every IZ unit provided

[3] Citywide IZ policy for rental housing does not apply in designated Downtown District

PASSED BY THE BOARD OF ALDERMEN – DECEMBER 28, 2021  
APPROVED BY THE MAYOR – JANUARY 3, 2022  
ATTEST: SUSAN K. LOVERING, CITY CLERK