

## **Sec. 19-485. - Affordable/inclusionary housing.**

Developers of new market rate single- and/or multi-family housing developments within the waterfront district are required to provide affordable housing units for low- and moderate-income households in order to ensure safe, decent and affordable housing to families, elderly and people with special needs.

~~(1) The provisions of this article shall apply to all new residential development or property conversions resulting in five or more parcels or new dwelling units intended and designed for permanent occupancy which receives subdivision, conditional use or design review committee approval after the effective date of this article.~~

~~(2) In projects of five or more dwelling units, a ten percent minimum inclusionary requirement shall apply for low to moderate income households. If, in the applications of the requirements of this article, a decimal fraction unit requirement is obtained, an in-lieu fee shall be provided equal to the applicable decimal fraction cost of a full housing unit.~~

~~(3) The applicant may request that the commission allow the applicant to make a payment of an in-lieu fee for constructing affordable housing units with submission of the complete application for project approval. The commission shall not consider any subsequent application for in-lieu funding. The commission shall consider the following issues, among others, in making this determination: the reasons the applicant desires to pay the in-lieu fee; the types of housing proposed for the development; the difference in price between the affordable units and the market priced units; and the public benefit that would be obtained by not building the units on-site. The applicant shall pay for the number of affordable dwelling units, or partial units that subsection (2) above would otherwise require, according to the following fee schedule.~~

~~(4) The commission shall promulgate rules and regulations regarding calculation of the housing in-lieu fee in accordance with G.L. § 45-24-16.1, said fee to be commensurate with the value that would have been provided through the actual construction of the affordable units. The housing in-lieu fee shall be reviewed by the commission every three years. The commission shall use money received under this subsection only for the construction and promotion of affordable housing.~~

~~a. Fifty percent of any fee required pursuant to this section shall be paid prior to the issuance of a building permit for the project. The remaining 50 percent shall be paid in full before a certificate of occupancy is issued for any unit in the housing project.~~

~~b. Any fee required by this section shall be paid to the East Providence Waterfront Commission Affordable Housing Fund.~~

~~(5) Construction of inclusionary units shall be provided at the same time as other units within the development, with ten percent of the units in each phase of the residential development dedicated at the time building permits are issued, and identified as such on the site plan or development plan and final subdivision plat, as applicable. The completion of inclusionary units in a project shall be comparative to the completion of the market rate units.~~

~~(6) Inclusionary units must be distributed throughout the development.~~

~~(7) The inclusionary units shall be substantially the same as the market rate units or buildings in exterior materials and finish. The developer may reduce either the size or provide less expensive interior amenities for the inclusionary units as long as there are not significant differences visible from the exterior of the units and the size, fixtures and design of the units are reasonably consistent with the market rate units in the project, provided all units conform to the requirements of local building codes in effect at the time.~~

~~(8) Only qualified households shall be eligible to occupy or own and occupy the inclusionary units. Developers may utilize an entity such as a non-profit housing corporation or a public housing authority to obtain qualified applicants. Developers shall select only qualified households to occupy or own and occupy inclusionary units. Immediate relatives of developers, by virtue of their position or relationship, are ineligible to occupy inclusionary units.~~

~~(9) The executive director shall promulgate rules and regulations governing the affordable housing programs, including the eligibility for purchasers and renters of affordable housing units. Those rules and regulations shall govern household size, household makeup, and household income, and shall be consistent with The U.S. Department of Housing and Urban Development's Program Income Eligibility Determination Guidelines. Sales prices for affordable units shall be determined based on these same references. The income limits, sales prices, and rental rates shall be determined based on these same references. The income limits, sales prices, and rental rates shall be updated annually as soon as HUD releases the median income updates and shall be made available to the public immediately thereafter by inclusion in the city's affordable housing program guidelines and information and through the city's CDBG office, planning and building inspection departments.~~

~~(10) When inclusionary units are required, a deed restriction shall be recorded setting forth the applicable restrictions in this chapter. The minimum period of affordability for inclusionary units are as follows:~~

~~a. Projects receiving public subsidies shall maintain affordability for a period of not less than 30 years or a different period when required by city or state law. A program to assure continued affordability for these units shall be administered by the commission or by a non-profit housing agency approved by the commission.~~

~~b. Inclusionary units which are built without public subsidies shall be required to maintain affordability for a period of 30 years or for a different period when required by city or state law. A program to assure continued affordability for these units shall be administered by the commission or by a non-profit housing agency approved by the commission. The applicant shall enter into an agreement with the commission or its designee to provide monitoring and to assure the affordability of the inclusionary units for a period of not less than 30 years from the effective date of occupancy. The executive director shall be authorized to enter into such an agreement on behalf of the city. The approved agreement shall be recorded with the city clerk prior to the issuance of a building permit for the project.~~

~~1. All buyers of "for sale" inclusionary units shall enter into a resale agreement with the commission or its designee prior to the close of escrow for such inclusionary unit (a standard form option agreement instrument shall be reviewed and approved by the commission). The resale agreement shall specify the required affordability term, shall provide for an option for the commission or its designee to designate an eligible purchaser and shall provide the commission or its designee with first right of refusal to purchase the units, and shall provide for a calculation of future equity assignment upon sale of the unit. Such agreement shall be recorded against each lot or unit.~~

~~2. Conversion of an inclusionary rental unit to a "for sale" unit, if otherwise permitted, shall not void any provisions of applicable inclusionary housing agreements or requirements.~~

~~(11) Each owner of any rental inclusionary units shall submit an annual report to the commission by January 31 for the previous calendar year, identifying monthly rental rates, vacancy status of each inclusionary unit, income status for residents and any other related data deemed necessary by the commission while ensuring privacy for all residents. The deed restriction for ownership units shall require conformance reporting upon sale of ownership of inclusionary units.~~

(1) Applicability. The inclusionary zoning requirement shall apply to all developments resulting in the net addition of five (5) or more housing units.

(2) Affordability requirements.

- a. For all applicable projects, at least twenty five percent (25%) of the units within the development must qualify as affordable housing, as defined by RIGL 42-128-8.1(d)(1).
- b. Fractional units. Where the required number of affordable units results in a fraction the applicant shall round up to the nearest whole number.
- c. The applicant shall enter into a monitoring service agreement with a qualified organization, to be approved by the executive director.
- d. Each owner of any rental inclusionary units shall submit an annual report to the commission by January 31 for the previous calendar year, identifying monthly rental rates, vacancy status of each inclusionary unit, income status for residents and any other related data deemed necessary by the commission while ensuring privacy for all residents. The deed restriction for ownership units shall require conformance reporting upon sale of ownership of inclusionary units.

(3) Off-site options.

- a. Off-site options. The commission, at its sole discretion, may allow an applicant to comply with the inclusionary zoning requirement by constructing inclusionary units on a site within the Waterfront District other than that at which the development is located. The following may be required by the commission for such off-site construction.
  1. Off-site rehabilitation of affordable units in existing buildings.
  2. Off-site construction of affordable units in new or existing buildings.

b. Conditions. Provisions of off-site inclusionary units shall be subject to the following conditions:

1. Off-site inclusionary units shall have a certificate of occupancy prior to, or simultaneous with, the occupancy of market-rate units.
2. Renovated off-site units shall be in full compliance with all applicable construction and occupancy codes and shall be sufficiently maintained or rehabilitated so that all major systems meet standards comparable to new construction.

(4) Incentives.

a. Density bonus. The number of housing units allowable on the site or sites involved shall be increased to two market rate units for each affordable unit. The performance standards set forth in 19-482 shall otherwise apply.

(5) Fee In-Lieu Payments.

a. The developer may choose the option to pay a fee in-lieu of the construction of provision of affordable housing. In the event the developer chooses this option, the application is not eligible for the density bonus outlined in this section.

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

1. Notwithstanding subsection (b) above, in no case shall the per-unit fee for affordable single-family homes and condominium units be less than forty thousand dollars (\$40,000.00).
2. The commission will allocate in-lieu payments within three years of collection to the creation of affordable housing.
3. Fifty percent of any fee required pursuant to this section shall be paid prior to the issuance of a building permit for the project. The remaining 50 percent shall be paid in full before a certificate of occupancy is issued for any unit in the housing project.
4. Any fee required by this section shall be paid to the East Providence Waterfront Commission Affordable Housing Fund.