

Draft zoning amendment to incorporate Affordable Housing regulations previously approved by the EPWC in December 2019 with RIGL § 45-24-46.1.

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

The purpose of inclusionary zoning is to ensure that housing opportunities in the waterfront district are available to households of a range of incomes and to increase the stock of workforce housing in East Providence to meet the state goal of ten percent (10%) of housing units affordable to households of low and moderate income.

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

(1) Definitions:

- a. Workforce/Inclusionary housing shall be affordable housing as defined in RIGL § 42-128-8.1(d)(1); housing will constitute not less than ten percent (10%) of the total units in the development per section 485(2); and units shall remain affordable for a period of not less than thirty-years (30) from initial occupancy enforced through a land lease and/or deed restriction enforceable by the City of East Providence and the state of Rhode Island.
  - b. Workforce housing has a sales price or rental amount that is within the means of a household with an income that is 80% of the area median income. In the case of dwelling units for sale, housing that is affordable means housing in which principal, interest, taxes, and insurance constitute no more than thirty percent (30%) of the gross household income for a household with less than or equal to eighty percent (80%) of area median income, adjusted for family size (based on the number of bedrooms). In the case of dwelling units for rent, housing that is affordable means housing for which the rent, heat, and utilities other than telephone constitute no more than thirty percent (30%) of the gross annual household income for a household with eighty percent (80%) or less of area median income, adjusted for family size (based on the number of bedrooms).
- (2) 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.
- a. In projects of five or more dwelling units, a ten percent minimum inclusionary requirement shall apply for low- to moderate-income households as workforce housing. If, in the applications of the requirements of this article, a decimal fraction unit requirement is obtained, an in-lieu fee payable to the East Providence Waterfront District Commission Affordable Housing In-Lieu Fee account shall be provided equal to the applicable decimal fraction cost of a full housing unit. Said fee shall be administered per section 485(5).
  - b. Workforce/ inclusionary housing must be built on-site or utilize one or more alternative methods of production, including, but not limited to, off-site construction or rehabilitation, donation of land suitable for development of the required affordable units, and/or the payment of a fee in-lieu of the construction or provision of affordable housing units. Waterfront district zoning enables increased residential density compared to more proscriptive East Providence residential zoning districts as indicated in chapter 19, zoning, article III, section 19-98 and Schedule of use regulations and article IV, section 19-145 Schedule; this increased density is an incentive to offset differential costs of below-market units.
  - c. The applicant must indicate his or her intent to implement an option to constructing on-site required units with submission of the complete application for project approval. The

commission shall not consider any subsequent request for options in-lieu of onsite workforce housing.

- (3) Payment of a fee in-lieu of the construction or provision of on-site workforce housing shall be the choice of the developer or builder applied on a per-unit basis and may be used for new developments, purchasing property and/or homes, rehabilitating properties, or any other manner that creates additional low-or-moderate income housing as defined in RIGL § 45-53-3(9).
  - a. Calculation of in-lieu fees shall be in accordance with RIGL § 45-24-46.1 Inclusionary Zoning or as established annually by RI Housing.
  - b. 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.
  - c. For phased projects, applicant may petition the waterfront commission for approval to pay a prorated fee for payment in full prior to the application for the first building permit for each phase. All checks for in-lieu payments shall be payable to the East Providence Waterfront District Commission Affordable Housing In-Lieu Fee account.
  - d. The commission shall oversee the funds in the restricted accounts as indicated in section 19-485(5) and shall allocate the funds within two (2) years.
  - e. If the applicant commits to providing off-site workforce housing in-lieu of on-site units, the in-lieu fee may be applied as a municipal subsidy. Such units must be acquired or constructed and deed restricted within twelve (12) months from the date of issuance of a notice of decision on commission approval of payment in-lieu of on-site affordable housing. If units are not provided and deed restricted within said period, the commission will elect to use the payment in-lieu for other purposes in accordance with section 19-485(5).
- (4) On-site inclusionary units shall be constructed 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 workforce/inclusionary units in a project shall be comparative to the completion of the market-rate units.
  - a. Inclusionary units must be distributed throughout the development.
  - b. 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.
  - c. 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.
  - d. A program to assure continued affordability for these units shall be administered by the East Providence Community Development Division or other agency approved by HUD. 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.
  - e. 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.

- f. 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.
  - g. On-site workforce rental housing shall be maintained by a property management firm for the duration of the thirty-year deed restriction to assure that the property meets minimum housing standards per RIGL § 45-24.2. Owner-occupied workforce housing units shall be managed by a condominium or homeowners association that assures that the property meets state minimum housing standards for the duration of the thirty-year deed restriction.
- (5) The East Providence Waterfront District Commission Affordable Housing In-Lieu Fee account shall be administered by the commission as a restricted use account to increase the number of workforce housing units through new construction, deed restriction for affordability of existing dwelling units, or other alternative method of affordable housing production per RIGL § 45-24-46.1.
- a. Award of funding must meet the following criteria:
    - 1. Workforce housing shall meet the definition of affordable as established by the US Department of Housing and Urban Development (HUD) and shall count toward the statutory goal of 10 percent affordable housing units for the City of East Providence;
    - 2. Affordable housing units shall be created either through the construction of new affordable units or the renovation of existing housing stock with a 30-year deed restriction in accordance with HUD requirements;
    - 3. Annual compliance monitoring shall be conducted by the East Providence Community Development Division or other agency approved by HUD.
  - b. Priority shall be given to the use of payment in-lieu of on-site affordable housing funds for the creation of workforce housing within the Waterfront district if possible or in another East Providence neighborhood in or near areas with municipal services, access to public transportation, and safe walkability to schools, local community services, retail, and other services. Award of funding shall be consistent with the East Providence Strategic Housing Plan as adopted by the City of East Providence City Council.
  - c. Financing provided through the East Providence Waterfront District Commission Affordable Housing In-Lieu Fee account shall be considered a "municipal government subsidy" as defined in RIGL § 45-53-3(11).
  - d. Developers interested in using payments in-lieu of on-site affordable housing for gap financing of workforce or affordable housing shall meet with the Executive Director of the Commission, Planning and Economic Development Director, and the Community Development Director. Staff shall review applicant's history of providing workforce housing units (including references from Rhode Island Housing or other affordable housing funding source); location of proposed development; housing type (rental or for sale units) and other on-site mixed use development; targeted income market (at or below 80% of median income for rental or sales); zoning; a detailed pro forma including current and proposed federal, state, city, and non-profit funding sources; identification of financing "gap;" and how the proposed project meets the criteria and other factors identified in section 485 (5)b.
  - e. Distribution of payments in-lieu of on-site affordable housing shall require the approval of the commission, subject to the following:
    - 1. Rental applications for workforce housing units shall be reviewed and approved by the East Providence Community Development Division or other independent monitoring

- agent approved by HUD with report back to the Waterfront Commission upon rental of an affordable unit. Applications for purchase of for sale workforce housing units shall be pre-screened by the East Providence Community Development Division or other independent monitoring agent approved by HUD with documentation forwarded to the Waterfront Commission executive director upon sale. Annual compliance monitoring shall be conducted by the East Providence Community Development Division or other agency approved by HUD.
2. Property shall be deed restricted for thirty years for households of low or moderate income.
- f. In the event that a housing development using payment in-lieu for gap financing does not reach its goal to provide affordable housing units in East Providence, the payment in-lieu of on-site affordable housing shall be reimbursed in full to the East Providence Waterfront Commission Affordable Housing In-Lieu Fee account.
1. At project construction financing closing, a lien shall be recorded in the land evidence records naming the commission as a creditor in the event that awarded funds do not lead to construction of certified affordable housing units. Said lien to be discharged at the end of the 30-year compliance period.
  2. At project construction financing closing, the developer shall sign a note and loan agreement, secured by a mortgage in favor of the East Providence Waterfront Commission Affordable Housing In-Lieu Fee account.
  3. In the event that an affordable unit is no longer occupied by an income-eligible household, the amount of the payment in-lieu of on-site affordable housing shall be returned in full to the East Providence Waterfront Commission Affordable Housing In-Lieu Fee account and the lien discharged.
- g. Off-site workforce housing built by the applicant or by an affordable housing developer shall be subject to all planning, zoning and building requirements.
- h. Workforce rental housing shall be maintained by a property management firm for the duration of the thirty-year deed restriction to assure that the property meets minimum housing standards per RIGL § 45-24.2. Owner-occupied workforce housing units shall be managed by a condominium association that assures that the property meets state minimum housing standards for the duration of the thirty-year deed restriction.
- i. The waterfront commission may elect to transfer in-lieu payments promptly upon receipt or within the two-year period after receipt to the housing resources commission or Rhode Island housing for the purpose of developing affordable housing within East Providence in accordance with RIGL 45-24-46.1.
- j. The Executive Director shall report to the commission and Rhode Island Housing annually on in-lieu funds received, available funding and status of affordable housing projects underway utilizing in-lieu funding.
- (6) Each owner of any rental inclusionary units located in the District or funded by the East Providence Waterfront District Commission Affordable Housing In-Lieu Fee account 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.

(Ch. 317, § I, 3-2-04) May 2019 approved.