**Inclusionary zoning remains an optional tool for municipalities to implement. The language in red is directly from state law and must be inserted into the inclusionary ordinance as written, should the municipality decide to adopt the provision. The additional language in black is derived from best practices and examples of inclusionary zoning regulations. Those sections are recommended for consideration by the municipality to accompany the required text and provide guidance to applicants and the municipality.**

**TEMPLATE SECTIONS FOR INSERTION INTO THE ZONING ORDINANCE**

* 1. *Applicability.*

1. This article shall apply to all subdivisions and land development projects resulting in the net addition of ten (10)**[[1]](#footnote-1)** or more housing units.
   1. *Affordability requirements.*
2. For all applicable projects, at least twenty five percent (25%) of the units within the project must qualify as affordable housing, as defined by [INSERT LOCAL (OR RIGL 42-128-8.1(d)(1)) SECTION REFERENCE].
3. *Fractional units.* Where the required number of affordable units results in a fraction the applicant shall round up to the nearest whole number.
4. A [CITY/TOWN] approved monitoring service agreement with a qualified organization.
   1. *Off-site option.*
5. *Off-site options.* The [planning board], at its sole discretion, may allow an applicant of an inclusionary zoning project to comply with the requirements of [INSERT LOCAL SECTION REFERENCE] by constructing inclusionary units on a site other than that which the project is located. The following may be required by the [planning board] for such off-site construction.
   1. Off-site rehabilitation of affordable units in existing buildings.
   2. Off-site construction of affordable units.
6. *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. New off-site units shall be compatible in architectural style to the existing units in the surrounding neighborhood in which they are being constructed.
   3. 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.

**COST MITIGATING MEASURES, INCENTIVES, AND BONUSES MUST BE STATED IN THE LOCAL ZONING ORDINANCE.**

* 1. *Incentives*.[[2]](#footnote-2)

1. *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 and the minimum lot area per dwelling unit normally required in the applicable zoning district shall be reduced by that amount necessary to accommodate the development.**[[3]](#footnote-3)**

*1.*6 Fee *In-Lieu Payments***[[4]](#footnote-4)***.* [If in-lieu of payments are permissible by the [CITY/TOWN] as a substitute for the creation of on or offsite affordable units]

1. 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 following shall be required:
2. The application is not eligible for administrative review under the Rhode Island Land Development and Subdivision Review Enabling Act of 1992, codified at §§ 45-23-25 – 45-23-74.
3. The application is not eligible for the density bonus outlined in this section.
4. 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.
5. 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).
6. The [CITY/TOWN] will allocate in-lieu payments within three years of collection to the creation of affordable housing, in accordance with [GENERAL CODE SECTION] of the [CITY/TOWN] Code of Ordinances.**[[5]](#footnote-5)**

**NOTES:**

* + Sections 1.2 c and d should be checklist items
  + Items from Section 1.3 and 1.4.b are not required within the state enabling legislation but are best practices. Each municipality should discuss these provisions with their local solicitor prior to including them in their local ordinance.

1. Amended RIGL §45-24-46.1(a) requires that the threshold for the inclusion of affordable units be no more than ten (10) units. A municipality may set the threshold for the number of units at a number less than ten (10). [↑](#footnote-ref-1)
2. Amended RIGL §45-24-46.1(c) provides that municipalities may provide, or an applicant may request, additional zoning incentives and/or municipal government subsidies (as defined in §45-53-3 (including direct financial support, abatement of taxes, waiver of fees and charges, and approval of density bonuses and/or internal subsides, zoning incentives, and adjustments), such available subsidies shall be listed in the zoning ordinance (here). [↑](#footnote-ref-2)
3. Amended RIGL §45-24-46.1(c) provides that larger density bonuses for the provision of an increased percentage of affordable housing in a development may be provided by a municipality. For example, a municipality may provide that, when 50% or more units are proposed to be affordable, then the project may include the addition of four (4) market rate units for each affordable unit provided; 100%, then six (6) market rate units. [↑](#footnote-ref-3)
4. Fee-in-lieu payments are optional and must be provided for in the local ordinance. The option for payment of the fee-in-lieu shall be at the choice of the developer with approval from the [planning board]. Calculation of fee-in-lieu payments is not discretionary and is regulated by RIGL §45-24-46.1(d)(3). [↑](#footnote-ref-4)
5. Amended RIGL 45-24-46.1(d)(4) provides that in-lieu payments shall be deposited into restricted accounts that shall be allocated and spent only for the creation and development of affordable housing serving individuals or families at or below eighty percent (80%) of the median income and that the municipality shall maintain a local housing board to oversee the funds in the restricted accounts and shall allocate the funds within three (3) years of collection). Section 45-24-46.1(e) provides that all in-lieu payments not allocated within three years of collection, including fees held as of July 1, 2024, shall transfer to RI Housing. In lieu of municipal process to allocate the funds, such funds can be turned over to RIHMFC for use in developing affordable housing in that same community. Additionally, the municipality must pass by ordinance (best place in general code) the process it will use to allocate the funds. [↑](#footnote-ref-5)