

City of Biddeford
Policy Committee
June 12, 2023 6:30 PM Council Chamber & Zoom

Please click this URL to join:

<https://biddeford.zoom.us/j/92079875601?pwd=QWVIZ3UvYkZnWWZQRnplREw2ZmxJZz09>

Passcode: 645176

Webinar ID: 920 7987 5601

Or One tap mobile:

+13126266799,,92079875601# US (Chicago)

+16465588656,,92079875601# US (New York)

Or join by phone:

Dial(for higher quality, dial a number based on your current location):

US: +1 312 626 6799 or +1 646 558 8656 or +1 646 931 3860 or +1 301 715 8592

International numbers available: <https://biddeford.zoom.us/j/92079875601>

Status: In-Person and via Zoom; Council Chambers; 6:30 p.m.

- 1. Roll Call**
- 2. Pledge of Allegiance**
- 3. Adjustments to the Agenda**

Consideration of Minutes

- 4. Discussion/Review**

- 4.1. Inclusionary Zoning**

[FINAL IZ ORDINANCE 6-8-23](#)

[IZ Policy Committee Memo 6-8-23](#)

- 5. Adjourn**

City of Biddeford, Maine
DRAFT Inclusionary Zoning Regulations
As of June 8, 2023

DEFINITIONS

Affordable Housing. Housing for which the percentage of income a household is charged in rent and other housing expenses or must pay in monthly mortgage payments (including condominium/HOA fees, mortgage insurance, other insurance and real estate taxes), does not exceed 30% of a household income, or other amount established in City regulations that does not vary significantly from this amount.

Workforce housing unit for rent for which:

- A. The rent is affordable to a household earning 80% or less than of AMI.
- B. The unit is rented to a household earning 80% or less than of AMI.
- C. The requirements of (A) and (B) above are limited by deed restriction or other legally binding agreement for the applicable length of time in this ordinance.

HOUSING

AFFORDABLE HOUSING

Purpose

It is in the public interest to promote an adequate supply of housing that is affordable to a range of households at different income levels. The purpose of this section therefore is to offer incentives to developers to include units of affordable and workforce housing within development projects, thereby mitigating the impact of market rate housing construction, or the demonstrated increase in affordable housing needs resulting from the creation of new lower-income jobs, on the limited supply of available land for suitable housing, and helping to meet the housing needs of all economic groups within the city. The City believes that this section will assist in meeting the City's comprehensive goals for affordable housing, in the prevention of overcrowding and deterioration of the limited supply of affordable housing, and by doing so promote the health, safety, and welfare of its citizens.

Ensuring Workforce Housing

- A. Purpose.** Based on City Council adopted the 2023 City's Comprehensive Plan and the Mayor Affordable Housing Task Force Report dated December, 2022, it is in the public interest to promote an adequate supply of housing that is affordable to a range of households at different income levels. The purpose of this subsection is to ensure that housing developments over a certain size provide a portion of workforce housing units and, by doing so, promote the health, safety, and welfare of Portland citizens.
- B. Applicability.** This subsection shall apply to development projects that create eight (8) or more net new dwelling units for rent through new construction, substantial rehabilitation of existing structures, adaptive reuse or conversion of a nonresidential use to residential use, or any combination of these elements. ***This ordinance shall not apply to projects using public financing requiring affordability restrictions, as defined by tax increment financing, U.S. Department of Housing and Urban Development funds such as HOME or CDBG, other federal, state, or local housing program, or the Low Income Housing Tax Credit Program.***
- C. Standards.** Development projects subject to this subsection shall be subject to the following requirements:
1. Notwithstanding any language to the contrary in this Land Use Code, all developments of eight (8) units or more are conditional uses subject to Planning Board review on the condition that they comply with the requirements of this subsection.
 2. At least 10% of the units in the project shall meet the definition of workforce housing units for rent to an eligible household, as defined in Article XXX. The project shall have the option of paying a partial fee-in-lieu as per XX below. Where the required number of units results in a fraction of less than 0.5, the required number of onsite units is rounded down to the nearest whole number. Where the required number of units results in a fraction of 0.5 or more, the development project shall have the option of paying a partial fee-in-lieu for the fractional value or rounding the number of onsite units up to the nearest whole number.

3. Projects shall not be segmented or phased to avoid compliance with these provisions. In cases where projects are completed in phases, affordable units shall be provided in proportion to the development of market rate units unless otherwise permitted through regulations.
4. Workforce units must be integrated with the rest of the development, must use a common entrance, and must provide no indications from common areas that these units are workforce housing units. Exteriors of affordable units shall be consistent with and indistinguishable from the exteriors of other units in the project. Workforce units shall be comparable in materials, interior finishes, amenities, and parking to dwelling units in the neighborhood and in the development in which they are located.
5. Workforce units need not be the same size as other units in the development but the number of bedrooms in such units, either on- or off-site, shall be no less than 10 percent of the total number of bedrooms in the development. For the purposes of calculating the number of bedrooms in a development, every 400 square feet in each market rate unit will count as a bedroom if the Planning Authority determines this method is appropriate in lieu of counting actual bedrooms.
6. As an alternative to providing workforce housing units, the project may:
 - a. *Create offsite units, which fulfill the purposes of this ordinance if the following conditions are present: located within the same neighborhood; comparable or larger unit bedroom sizes to the average unit created on □ site; comparable quality to the units being created on □ site; same amenities provided whether in the unit or on the property as those offered for on □ site units; same income level served as the on □ site units; the term of affordability is the same as would have been provided through on □ site compliance; and delivered safe in accordance with all federal, state, and local environmental regulations pertaining to hazardous conditions common to residential structures. The Certificate of Occupancy for any off □ site units must be received prior to the Certificate of Occupancy for any on □ site units.*
 - b. Pay a fee-in-lieu of some or all of the units. In-lieu fees shall be paid into the Housing Trust Fund. The fee for affordable units not provided shall be \$100,000 per unit, adjusted annually in the same way as the fee under Subsection XXX. The payment shall be required in conjunction with a request for a Certificate of Occupancy.
7. If at least 33% of the units in a development are workforce units, the development is eligible for subsidy through an Affordable Housing Tax Increment Financing (TIF) District Credit Enhancement Agreement, subject to City Council approval.
8. The term of affordability for the required % workforce units provided shall be defined as shown in Table XXX.

D. Implementing regulations. Regulations to further specify the details of this subsection shall be developed, including, but not limited to:

1. Specific methodology for income verification.
2. Situations where less than permanent affordability might be considered.

3. Guidelines for meeting the requirement that off-site units be “in the same neighborhood.”

E. Reporting to City Council. In conjunction with the annual report on the Housing Trust Fund, the Planning Authority shall annually report on developments subject to this subsection, the number of units produced, the amount of fee-in-lieu collected, and the overall effectiveness of this subsection in achieving its stated purpose.

HOUSING TRUST FUND

Purpose

The purpose of enacting this section is:

- A.** To establish a City of Biddeford Housing Trust Fund for the promotion, retention, and creation of an adequate supply of housing, particularly affordable housing, for all economic groups and to limit the net loss of housing units in the city.
- B.** To serve as a vehicle for addressing very low, low, and median income housing needs through a combination of funds as set out in this article.

Establishment of the Housing Trust Fund

The City Council shall establish a special revenue account under the name “City of Biddeford Housing Trust Fund” (Housing Trust Fund). Deposits into the fund shall include:

- A.** In-lieu fees under Subsection XXX.
- B.** Funds appropriated to be deposited into the fund by vote of the City Council.
- C.** Voluntary contributions of money or other liquid assets to the fund.
- D.** Any federal, state, or private grant or loan funds provided to the fund.
- E.** Interest from fund deposits and investments.
- F.** Repayments of loans made from the fund.

Management of the Trust Fund

The City Manager, or his or her designee, shall serve as the manager of the Housing Trust Fund. The responsibilities of the manager, subject to the orders of the City Council, shall include:

- A.** Maintaining the financial and other records of the Housing Trust Fund.
- B.** Disbursing and collecting Housing Trust Fund monies in accordance with the Housing Trust Fund Annual Plan.
- C.** Monitoring the use of monies distributed to successful applicants for Housing Trust Fund support to assure on-going compliance with the purposes of the fund and the conditions under which these monies were granted or loaned.

Housing Trust Fund Annual Plan

- A.** Each fiscal year, the City Council shall adopt a Housing Trust Fund Annual Plan. The City Manager shall submit to the City Council a recommended Housing Trust Fund Annual Plan, utilizing the revenues of the Housing Trust Fund as well as any other funds the City Manager may propose as appropriate.

- B.** The Housing Trust Fund annual plan shall include:
 - 1. A description of all programs to be funded in part or in full by the Housing Trust Fund.
 - 2. A description of how funds from the Housing Trust Fund will be distributed among very low-income, low-income and moderate-income households.
 - 3. The amount of funds budgeted for programs funded in part or in full from the Housing Trust Fund.
- C.** Priority for the expenditure of funds collected pursuant to Section XXX shall be given to the creation of new housing stock, through either new construction or conversion of nonresidential buildings to residential use.

Distribution and use of the Housing Trust Fund's Assets

- A.** All distribution of principal, interest, or other assets of the Housing Trust Fund shall be made in furtherance of the public purposes set out in Section XXX.
- B.** During each year, the Housing Trust Fund shall disburse as grants or loans so much of the Housing Trust Fund's assets as the City Council in its discretion has approved in the Housing Trust Fund annual plan.
- C.** Funds shall not be used for City administrative expenses.
- D.** Funds shall not be used for property operating expenses or supporting services.
- E.** No grants or loans shall be awarded by the Housing Trust Fund to corporations, partnerships, or individuals who are delinquent at the time of application in the payment of property taxes or other fees to the City of Biddeford, who have been convicted of arson, who have been convicted of discrimination in the sale or lease of housing under the fair housing laws of the State of Maine, or who have pending violations of current City electrical, plumbing, building, or housing codes or zoning ordinances.

Term of Affordability

- A.** Whenever funds from the Housing Trust Fund are used for the acquisition, construction, or substantial rehabilitation of an affordable rental or cooperative unit, the City of Biddeford shall impose enforceable requirements on the owner of the housing unit that the unit remain affordable for the remaining life of the housing unit, assuming good faith efforts by the owner to maintain the housing unit and rehabilitate it as necessary. The remaining life of the housing unit shall be presumed to be a minimum of 30 years.
- B.** Whenever funds from the Housing Trust Fund are used for the acquisition, construction, or substantial rehabilitation of ownership housing, the City of Biddeford shall impose enforceable resale restrictions on the owner to keep the housing unit affordable for the longest feasible time, while maintaining and equitable balance between the interests of the owner and the interests of the City of Biddeford.
- C.** The affordability restriction requirements described in this subsection shall run with the land and the City of Biddeford shall develop appropriate procedures and documentation to enforce these requirements and shall record such documentation in the York County Registry of Deeds.



Policy Committee Meeting

Meeting Date: June 12, 2023

Meeting Time: 6:30pm

Agenda Item No:

Item Description: Draft Inclusionary Zoning Regulations

Submitted by: Greg Mitchell, Planning & Development Director

Supporting Information/Documentation:

Attached are City of Biddeford Draft Inclusionary Zoning (IZ) Regulations.

Key Terms:

Inclusionary Zoning (IZ)

Executive Summary:

Based upon direction from the City Council and the Policy Committee, City Staff has prepared Draft Inclusionary Zoning Regulations for discussion and direction at the June 12, 2023 Policy Committee meeting.

Detailed Review:

Definition. Inclusionary zoning (IZ) is sometimes known as inclusionary housing, a reference to the desired outcome of the zoning. Simply stated, IZ requires that all new construction of housing units, most especially rentals, must participate in the creation of affordable housing units. Usually, IZ is designed to target community members that are considered to have very low to moderately low incomes. These zoning regulations are mandates without any public financial investment.

The Draft City of Biddeford IZ Regulations have been prepared to possibly create a Housing Chapter in the City of Biddeford Code of Ordinances. Also, the City of Biddeford IZ Regulations are based upon City of Portland IZ Regulations.

Overview of Draft Biddeford Inclusionary Zoning Regulations with the following City Staff comments:

- *Applicable to Rental Projects including eight (8) or more residential units.*
- *Affordability Level:* Eighty (80) percent of Area Medium Income. The 80% affordability level is included based upon City Council and Policy Committee direction. However, City staff has concerns that this level of affordability cannot be supported by current private sector market

conditions. Staff recommends a one hundred (100) percent affordability level combined by using municipal (i.e. Affordable Housing Tax Increment Financing Districts, Housing Density Bonuses, Reductions in Fees for Affordable Housing Projects, Proposed City Housing Trust Fund) and state (Maine State Affordable Housing Programs) affordable housing financial incentives to achieve the 80% affordable housing level.

- *Percent of Required Affordable Units:* 10%
- *Term:* Thirty (30) years to be consistent with LD 2003.
- *Opt Out Fees:* \$100,000 per unit
- *Exceptions (for discussion):* See language in italics and bold on Page 2, which exempts affordable housing projects utilizing public financing requiring affordability restrictions, as defined by tax increment financing, US Housing and Urban Development (HUD) funds such as HOME or CDBG, or other federal, state, or local housing programs, or Low-Income Housing Tax Credit Program. Also, see language in italics and bold on Page 3 which allows the creation of off-site residential units to satisfy City IZ requirements.

Also, City staff is preparing revisions to the City Code of Ordinances to comply with LD2003 including revisions to the existing City Housing Density Bonus Regulations and will present them as soon as they are ready for public discussion at future Planning Board and City Council meetings.

Funding Source:

Not applicable.

Staff Recommendation:

City staff looks forward to discussion and direction on the Draft Inclusionary Zoning Regulations.