

107 (a) Unit size. The size of an accessory dwelling unit must meet the minimum size for a
108 dwelling unit as set by building code standards adopted and amended from time to time by
109 Maine's Bureau of Building Codes and Standards, and be no larger than 1,000 square feet.
110 For principal dwelling units 1,000 square feet or smaller, an accessory dwelling unit may be
111 no greater than 80% of the size of the principal dwelling unit, as measured in square feet. An
112 accessory dwelling unit may have no more than two bedrooms.

113 (b) Unit location.

114 [1] An accessory dwelling unit must meet one or more of the following conditions:

115 [a] Be fully constructed within the existing footprint of any legal primary residence
116 or accessory building; or

117 [b] Share a common wall with the principal residence, providing yard setbacks per
118 § 16.5.3(2)(a); or

119 [c] Be constructed as a new accessory building containing an accessory dwelling
120 unit, providing yard setbacks can be met for the zone.

121 [2] Accessory dwelling units will be allowed to be fully constructed within the principal
122 residence even if the building does not meet yard setbacks.

123 [3] Accessory dwelling units will not be allowed in accessory buildings encroaching on
124 yard setbacks.

125 (3) Use Standards. The accessory dwelling unit may not be rented to the same person or party
126 for less than a thirty-day period.

127 (4) Development standards. Should an accessory dwelling unit fail to meet the applicable unit
128 standards listed in this article, the accessory dwelling unit may still be allowed if the
129 applicant obtains approval from the Board of Appeals under the provisions of a
130 miscellaneous variation request, as outlines in § 16.2.12. The Board of Appeals shall review
131 any appeal decision in conformance with § 16.2.12.F, Basis for decision.

132 (5) Violations. A violation of the use standard § 16.5.3.D(3) will lose the certificate of
133 occupancy for the unit for no less than 30 days, and be assessed a penalty of \$500.

134 16.5.4 Affordable Housing

135 A. Purpose.

136 Recognizing that the market alone will not provide the range and diversity of housing types
137 needed for a vibrant community, the Town of Kittery desires to encourage affordable housing for
138 households of modest means and for all ages. The purpose of this ordinance is to offer incentives
139 to developers to include affordable housing, either for lease or sale, particularly in those zones
140 that offer utilities and/or services, and to mitigate the impacts of market-rate housing
141 development on the limited supply of land available for suitable using. The Town looks to its

142 comprehensive plan and finds that this ordinance will assist in meeting housing goals and in
143 promoting the public health, safety and welfare of its residents.

144 B. Applicability.

145 (1) Affordable housing regulations are applicable only in zones which explicitly state so and as
146 follows:

147 (a) All development involving three or more new dwelling units. The proposed dwelling
148 units may be new construction, created through a change of use or created through a
149 renovation, rehabilitation or remodel. Projects may not be phased or segmented to avoid
150 compliance with these requirements.

151 (b) All major subdivisions, including those planned in phases, in all zones that create 5 or
152 more lots. Minor subdivisions are exempt.

153 (c) All developments as described in 1) and 2) above whether the dwelling units proposed
154 are intended for sale or for lease.

155 (2) Affordable housing regulations do not apply to hotels, motels, rooming houses, inns, bed
156 and breakfasts, residential care facilities or elder care facilities.

157 C. Requirements.

158 (1) For projects proposing five (5) or more dwelling units, at least 10% of the units, rounded
159 down to the nearest whole number, must be affordable housing units, as defined by this
160 code. Any fractional unit obligation left after the rounding results in a proportional payment-
161 in-lieu (see 3) below). For example, if 15 units are proposed, then one affordable unit is
162 required plus 50% of a payment-in-lieu. If an additional affordable unit is offered for the
163 fractional unit obligation, no payment-in-lieu is required.

164 (2) The affordable housing units must remain affordable (via a recorded land use restriction,
165 deed restriction or other legal instrument, a copy of which must be submitted to the Town
166 prior to issuance of any building permits) for the longest term permitted under federal, state
167 and local laws and ordinances, or 30 years, whichever is greater.

168 (3) As an alternative to providing affordable housing units, projects may pay a fee in lieu of
169 some or all of the units. In-lieu fees shall be paid into the Kittery Housing Reserve Fund, as
170 ordained by the Kittery Town Council. The fee for affordable units not provided must be
171 established by the Kittery Town Council in the schedule of fees.

172 (4) If the developer prefers to provide a payment-in-lieu instead of the required affordable
173 housing units, that proportional payment will be calculated based on the number of
174 affordable housing units that are required plus any fractional unit obligation. Using the
175 example above, if 15 units are proposed, the developer would provide 1.5 times the current
176 rate set by the Town.

177 D. Location.

178 (1) Required affordable housing may be located either on-site with any market rate dwelling
179 units or off-site within areas appropriately zoned for residential use. For development
180 proposed in the C-1, C-3, B-L and B-L1 zones, any off-site affordable housing must be
181 located within one of those zones.

182 (2) Off-site affordable housing may be new construction, a rehabilitation, remodel or renovation
183 of an existing structure, or a change of use from non-residential to residential.

184 (3) Developers of market-rate units for sale who seek to provide the required affordable housing
185 units off-site may opt to provide such dwelling units as rentals, subject to review and
186 approval by the Planning Board.

187 E. Incentives.

188 (1) Zoning districts having density incentives may be reviewed under the pertinent zone located
189 in §16.4 Land Use Zone Regulations.

190 (2) The Town will reduce the permitting costs for developments including affordable housing as
191 follows:

192 (a) For developments comprised of 10% – 15% affordable housing units: 10% off total
193 permitting costs except for sewer connection fees.

194 (b) For developments comprised of 16% – 24% affordable housing units: 15% off total
195 permitting costs except for sewer connection fees.

196 (c) For developments comprised of 25% and over affordable housing units: 20% off total
197 permitting costs except for sewer connection fees.

198 F. Standards.

199 (1) Affordable housing units must be built in reasonable accordance with any market-rate units
200 such that at minimum, for every five market rate units built, one affordable unit must be
201 completed. All affordable housing units in a development must have received a certificate of
202 occupancy before the final market rate unit receives such. If a development is proposed for
203 five dwelling units, including one affordable unit, that affordable unit must be completed
204 before the last market rate unit receives its certificate of occupancy.

205 (2) When affordable housing units are part of a development which also includes market rate
206 housing units, the outside appearance of affordable units must be similar to the market rate
207 units and any affordable units must be integrated into the development as a whole.
208 Affordable units cannot be confined to one building of a multiple building development
209 except in the cases of cottage clusters, accessory dwelling units or two-family residences.

210 (3) Affordable housing units need not be the same size as market rate housing units but the
211 number of bedrooms in each such dwelling unit may not be less than 10% of the total
212 number of market rate bedrooms in the development, rounded up when the fractional portion
213 is .5 or more. For example, a five-unit multi-family dwelling with four market rate housing

214 units of 2 bedrooms each would be required to provide one affordable housing unit with one
215 bedroom.

216 (a) Studio dwelling units will be counted as a one-bedroom unit. In cases where a
217 development is providing only studio apartments and one-bedroom apartments, the Planning
218 Board has the authority to decide whether each required affordable housing unit will be a
219 studio or one-bedroom unit.

220 (4) Affordable housing units to be located off-site must be of comparable quality with the same
221 number of bedrooms (see 3) above) as any new affordable housing units that would be
222 created by the project on-site. The Town will not accept off-site units that are run-down or
223 show signs of substantial wear or deterioration. This includes but is not limited to: heating
224 and cooling systems, plumbing, wiring, appliances, flooring, walls, counters, cabinets, and
225 fixtures as well as roofing, siding, doors and windows.

226 G. Eligibility and Restrictions.

227 (1) Affordable housing units or lots that will be owner-occupied must be:

228 (a) Restricted to households having an income that does not exceed 120% of the area median
229 income for the family size having the same number of persons as the subject household for
230 the York-Kittery-South Berwick, Maine, Metro Fair Market Area (HMFA), as published by
231 the U.S. Department of Housing and Urban Development as of the date of the buyer's
232 application, and whose housing and utility costs do not exceed 30 percent of the household's
233 annual gross income; and

234 (b) Maintained as affordable housing units through a land use restriction agreement with the
235 Town of Kittery or its designee for a period no less than the maximum period permitted by
236 Maine law or thirty (30) years, whichever is longer.

237 (2) Affordable housing units that will be leased must be:

238 (a) Restricted to households having an income that does not exceed 80% of the area median
239 income for the family size having the same number of persons as the subject household for
240 the York-Kittery- South Berwick, Maine, Metro Fair Market Area, as published by the U.S.
241 Department of Housing and Urban Development as of the date of the household's
242 application, and whose housing and utility costs do not exceed 30 percent of the household's
243 annual gross income; and

244 (b) Maintained as affordable housing units through a land use restriction agreement with the
245 Town of Kittery or its designee for a period no less than the maximum period permitted
246 Maine law or thirty (30) years, whichever is longer.

247 (3) Subleasing of any leased affordable housing unit is not permitted. Leasing or renting,
248 including short-term rentals, of any owner-occupied affordable housing unit is not permitted.

249 H. Market and Pricing.

250 (1) Affordable housing units must be actively marketed for sale or lease, as applicable, to
251 eligible households, which active marketing must include, as a minimum, the following:

252 (a) The owner shall provide a notice of availability to the Town of intent to lease or sell an
253 affordable housing unit. Such notice must be given at least 14 days prior to advertising the
254 unit.

255 (b) The owner or their authorized representative shall provide an affidavit to the Town
256 confirming that household eligibility requirements have been met upon successful sale or
257 lease of an affordable housing unit. Any lease agreement must be in writing and provided to
258 the Town upon request.

259 (c) A non-eligible household may occupy an affordable housing unit if, despite active
260 marketing, an eligible household is not available to lease the housing unit. If an affordable
261 housing unit is being offered for lease, a non-eligible household may occupy it under the
262 following conditions:

263 [1] The housing unit must be marketed for 90 days after the Town's receipt of notice of
264 availability.

265 [2] If no eligible household is found, a lease may be signed with a non-eligible household
266 14 days after the Town is notified of the failure to lease, with the condition that the
267 next housing unit that becomes available in the development must be offered as an
268 affordable unit so that the affordable housing requirements for the development
269 continue to be met.

270 (d) If, 120 days after the Town's receipt of notice of availability, the initial sale of an
271 affordable housing unit by the developer has not occurred, a non-eligible household may
272 occupy it but that household may only lease the unit for one year from the developer thus
273 preserving the affordable restrictions. The unit must again be offered for sale upon
274 termination of the one-year lease. The lease may not be renewed. The Town must be notified
275 of the failure to sell 14 days before the lease is signed and of the subsequent lease agreement
276 within 30 days of such lease being signed.

277 (2) Initial maximum sale pricing of new affordable units must be set as follows:

278 (a) Establish the target percentage of area median income level from the York-Kittery-South
279 Berwick, Maine, Metro Fair market Area (HMFA), as published by the U.S. Department of
280 Housing and Urban Development that the unit will be marketed to. For projects being
281 funded privately, that number must be 110% of area median income. For projects that
282 include state, federal or municipal funding, that number will be influenced by the
283 stipulations attached to the funding.

284 (b) From the table below, determine the minimum household size based on the number of
285 bedrooms in the unit

286

	<u>1 – bedroom or studio</u>	<u>2 - bedroom</u>	<u>3 - bedroom</u>	<u>4 - bedroom</u>
<u>Minimum Household Size</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>

287

288 (c) Calculate 30% of the gross median income based on the area median income from the
 289 York- Kittery-South Berwick, Maine, Metro Fair market Area (HMFA), as published by the
 290 U.S. Department of Housing and Urban Development for the minimum household size
 291 based on the number of bedrooms. For example: (Household’s 110% AMI x .30)/12 =
 292 monthly income available for housing-related expenses

293 (d) The amount obtained from the formula above must then have other housing-related
 294 expenses, such as mortgage insurance, real estate taxes, home insurance and any
 295 HOA/condominium fees removed. Mortgage insurance must be estimated similar to current
 296 rates utilized by the Federal Housing Administration unless otherwise agreed to by the Town
 297 or its designee. What remains after removing non-mortgage related housing expenses is that
 298 portion of a household’s monthly income which is available for a mortgage payment.

299 (e) The sale price will then be set based on a 30-year fixed-rate mortgage with a minimum
 300 3.5% down payment. Larger down payments will not change the maximum allowable sale
 301 price.

302 (f) No affordable housing unit may be sold for more than the maximum sale price.

303 (3) Affordable housing units located in a development for which a home owner association
 304 (HOA) or condominium association will be established must obtain the Town’s review and
 305 approval of the draft budget and condominium/HOA documents. The Town or its designee
 306 may request quotes for costs such as replacement reserves and insurance. Fees will be shared
 307 proportionately based on the Town’s tax assessment of the properties or if that information
 308 is not available, on the initial sales price of the units. Affordable units will be assessed with
 309 consideration given to the associated restrictions. The condominium/HOA fees may not
 310 increase more than 5% any given year and cannot exceed 15% within any five-year period
 311 without a supermajority 67% vote of the association. The Town may choose to have a
 312 consultant or the Town Attorney review the condominium/HOA documents, which fee is
 313 payable by the developer.

314 (4) Maximum resale pricing of affordable units must be set as follows:

315 (a) Calculate the average percentage change in the area median income used for the initial
 316 pricing for the relevant minimum household size between the year of purchase and the
 317 present.

318 (b) Using that percentage number, calculate the new selling price. For example, if the
 319 average percentage change in area median income over the time the home was owned is 2%

320 then: (original purchase price) * 1.02) = new selling price.

321 (5) Monthly rental costs for affordable housing units will be set based on the following:

322 (a) Find the minimum household size based on the number of bedrooms from the table
 323 below:

324

	<u>1 – bedroom or studio</u>	<u>2 - bedroom</u>	<u>3 - bedroom</u>	<u>4 - bedroom</u>
<u>Minimum Household Size</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>

325 (b) Use the formula below to calculate the monthly rent:

326 0.30 x (annual income based on minimum household size/12) minus utilities = affordable
 327 rental unit rent.

328 (6) The Town Manager or designee, with recommendation from the Affordable Housing
 329 Committee, may modify the requirements in 16.5.4(H) as needed to advance Kittery’s
 330 affordable housing goals and objectives.

331 I. Supplemental Standards for Approval.

332 (1) Prior to submission of any plan for review by a Town land use board such as the Planning
 333 Board or Board of Appeals, the developer shall submit a Housing Plan to the Planning
 334 Department outlining the incentives sought, target median income percentage for the
 335 affordable units, proposed location of affordable housing and standards satisfied from this
 336 section.

337 (2) The Town must review the plan and certify in writing that the development for which
 338 approval is sought, as described in the Housing Plan, is consistent with all applicable
 339 requirements of this Section. If the plan does not meet the requirements, the Town must
 340 notify the developer and the project may not proceed to the applicable land use board.

341 (3) In addition, all housing-related projects in the C-1 zone must undergo master site plan
 342 review even if only one building is proposed. See Chapter 16.6.

343 (4) Prior to the submittal of any development application for consideration by a Town land use
 344 board, a pre-application conference between the developer and the Town is required to
 345 discuss the application, site design and relevant requirements of the certified Housing Plan.

346 (5) Prior to issuance of a building permit, a land use restriction agreement shall be executed
 347 between the Town Manager and the developer, in a form promulgated by the Town and
 348 approved by the Town Attorney, based on the Housing Plan, which land use restriction

349 agreement sets forth the land use restrictions required by this section.

350 (6) Prior to issuance of the certificate of occupancy for a development subject to this section,
351 the developer shall provide the Town with a fully executed copy of the land use restriction
352 agreement as recorded in the real property records maintained by the York County Registry
353 of Deeds.

354 16.5.5 Agriculture

355 A. Agricultural practices must be conducted to minimize soil erosion, sedimentation,
356 contamination and nutrient enrichment of groundwater and surface waters.

357 B. All spreading or disposal of manure must be accomplished in conformance with the
358 Manure Utilization Guidelines, November 1, 2001, published by the Maine Department of
359 Agriculture and the Nutrient Management Act (7 M.R.S. §§ 4201 to 4214).

360 C. Manure must not be stored or stockpiled within 100 feet, horizontal distance, of the
361 normal high-water line of any water bodies, tributary streams, coastal wetlands or
362 freshwater wetlands shown on the Map. Within five years of the effective date of this
363 chapter, all manure storage areas within the Shoreland Overlay and Resource Protection
364 Overlay Zones must be constructed or modified so the facility produces no discharge of
365 effluent or contaminated stormwater. Existing facilities which do not meet the setback
366 requirement may remain, but must meet the no-discharge provision within the above five-
367 year period.

368 D. Owners of agricultural activities involving tillage of soil greater than 40,000 square feet in
369 surface area or the spreading, disposal or storage of manure within the Shoreland Overlay
370 Zone are required to submit a soil and water conservation plan to the Planning Board for
371 review and approval. Nonconformance with the provisions of said approved plan will be
372 considered to be a violation of this section.

373 E. New tilling of soil within 100 feet, horizontal distance, of the normal high-water line of
374 water bodies or coastal wetlands; within 25 feet, horizontal distance, of the normal high-
375 water line of tributary streams and freshwater wetlands shown on the Map is prohibited.
376 Operations in existence on the effective date of this chapter and not in conformance with
377 this provision may be maintained.

378 F. After the effective date of this section, newly established livestock grazing areas will not
379 be permitted within 100 feet, horizontal distance, of the normal high-water line of any
380 water bodies or coastal wetlands or within 25 feet, horizontal distance, of the normal high-
381 water line of tributary streams and freshwater wetlands shown on the Zoning Map.
382 Livestock grazing associated with ongoing farm activities, and which are not in
383 conformance with the above setback provision, may continue, provided that such grazing
384 is conducted in accordance with a soil and water conservation plan that has been approved
385 by the Planning Board.