

Revisions related to housing – September 15, 2020 – DRAFT

Highlighted sections show the most recent changes or discussion points for PB workshop

1 **16.X. Affordable Housing**
2

3 A. Purpose
4

5 Recognizing that the market alone will not provide the range and diversity of housing types needed
6 for a vibrant community, the Town of Kittery desires to encourage affordable housing for
7 households of modest means and for all ages. The purpose of this ordinance is to offer incentives
8 to developers to include affordable housing, either for lease or sale, particularly in those zones that
9 offer utilities and/or services, and to mitigate the impacts of market-rate housing development on
10 the limited supply of land available for suitable housing. The Town looks to its comprehensive
11 plan and finds that this ordinance will assist in meeting housing goals and in promoting the public
12 health, safety and welfare of its residents.
13

14 B. Applicability
15

16 Affordable housing regulations are applicable to the following:
17

- 18 1) All development in the C-1, C-3, B-L, and B-L1 zones involving three or more new
19 dwelling units. The proposed dwelling units may be new construction, created through a
20 change of use or created through a renovation, rehabilitation or remodel. Projects may not
21 be phased or segmented to avoid compliance with these requirements.
22
23 2) All major subdivisions, including those planned in phases, in all zones that create 5 or more
24 lots. Minor subdivisions are exempt.
25
26 3) All developments as described in 1) and 2) above whether the dwelling units proposed are
27 intended for sale or for lease.
28

29 Affordable housing regulations do not apply to hotels, motels, rooming houses, inns, bed and
30 breakfasts, residential care facilities or elder care facilities.
31

32 C. Requirements
33

- 34 1) For projects proposing five (5) or more dwelling units, at least 10% of the units, rounded
35 down to the nearest whole number, must be affordable housing units, as defined by this
36 code. Any fractional unit obligation left after the rounding results in a proportional
37 payment-in-lieu (see 3) below). For example, if 15 units are proposed, then one affordable
38 unit is required plus 50% of a payment-in-lieu. If an additional affordable unit is offered
39 for the fractional unit obligation, no payment-in-lieu is required.
40
41 2) The affordable housing units must remain affordable (via a recorded land use restriction,
42 deed restriction or other legal instrument, a copy of which must be submitted to the Town

Revisions related to housing – September 15, 2020 – DRAFT

Highlighted sections show the most recent changes or discussion points for PB workshop

43 prior to issuance of any building permits) for the longest term permitted under federal, state
44 and local laws and ordinances, or 30 years, whichever is greater.

45
46 3) As an alternative to providing affordable housing units, projects may pay a fee in lieu of
47 some or all of the units. In-lieu fees shall be paid into the Kittery Housing Reserve Fund,
48 as ordained by the Kittery Town Council. The fee for affordable units not provided shall
49 be annually established by the Kittery Town Council in the schedule of fees.

50
51 4) If the developer prefers to provide a payment-in-lieu instead of the required affordable
52 housing units, that proportional payment will be calculated based on the number of
53 affordable housing units that are required plus any fractional unit obligation. Using the
54 example above, if 15 units are proposed, the developer would provide 1.5 times the current
55 rate set by the Town.

56
57 D. Location

58
59 1) Required affordable housing may be located either on-site with any market rate dwelling
60 units or off-site within areas appropriately zoned for residential use. For development
61 proposed in the C-1, C-3, B-L and B-L1 zones, any off-site affordable housing must be
62 located within one of those zones.

63
64 2) Off-site affordable housing may be new construction, a rehabilitation, remodel or
65 renovation of an existing structure, or a change of use from non-residential to residential.

66
67 3) Developers of market-rate units for sale who seek to provide the required affordable
68 housing units off-site may opt to provide such dwelling units as rentals, subject to review
69 and approval by the Town or the Town's designee.

70
71 E. Incentives

72
73 1) Zoning districts C-1, C-3, B-L and B-L1 each have density incentives which can be
74 reviewed under the pertinent zone in 16.3.

75
76 2) The Town will reduce the permitting costs for developments including affordable housing
77 as follows:

78
79 a. For developments comprised of 10% – 15% affordable housing units: 10% off total
80 permitting costs except for sewer connection fees.

81
82 b. For developments comprised of 16% – 24% affordable housing units: 15% off total
83 permitting costs except for sewer connection fees.

84

Revisions related to housing – September 15, 2020 – DRAFT

Highlighted sections show the most recent changes or discussion points for PB workshop

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

87
88 F. Standards

89
90 1) Affordable housing units must be built in reasonable accordance with any market-rate units
91 such that at minimum, for every five market rate units built, one affordable unit must be
92 completed. All affordable housing units in a development must have received a certificate
93 of occupancy before the final market rate unit receives such. If a development is proposed
94 for five dwelling units, including one affordable unit, that affordable unit must be
95 completed before the last market rate unit receives its certificate of occupancy.

96
97 2) When affordable housing units are part of a development which also includes market rate
98 housing units, the outside appearance of affordable units must be similar to the market rate
99 units and any affordable units must be integrated into the development as a whole.
100 Affordable units cannot be confined to one building of a multiple building development
101 except in the cases of cottage clusters, accessory dwelling units or two-family residences.

102
103 3) Affordable housing units need not be the same size as market rate housing units but the
104 number of bedrooms in each such dwelling unit may not be less than 10% of the total
105 number of market rate bedrooms in the development, rounded up when the fractional
106 portion is .5 or more. For example, a five-unit multi-family dwelling with four market rate
107 housing units of 2 bedrooms each would be required to provide one affordable housing unit
108 with one bedroom.

109
110 a. Studio dwelling units will be counted as a one-bedroom unit. In cases where a
111 development is providing only studio apartments and one-bedroom apartments, the
112 Planning Board has the authority to decide whether each required affordable
113 housing unit will be a studio or one-bedroom unit.

114
115 4) Affordable housing units to be located off-site must be of comparable quality with the same
116 number of bedrooms (see 3) above) as any new affordable housing units that would be
117 created by the project on-site. The Town will not accept off-site units that are run-down or
118 show signs of substantial wear or deterioration. This includes but is not limited to: heating
119 and cooling systems, plumbing, wiring, appliances, flooring, walls, counters, cabinets, and
120 fixtures as well as roofing, siding, doors and windows.

121
122 G. Eligibility and Restrictions

123
124 1) Affordable housing units or lots that will be owner-occupied shall be:
125
126 a. Restricted to households having an income that does not exceed 120% of the area
127 median income for the family size having the same number of persons as the subject
128 household for the York-Kittery-South Berwick, Maine, Metro Fair Market Area

Revisions related to housing – September 15, 2020 – DRAFT

Highlighted sections show the most recent changes or discussion points for PB workshop

129 (HMFA), as published by the U.S. Department of Housing and Urban Development as
130 of the date of the buyer’s application, and whose housing and utility costs do not exceed
131 30 percent of the household’s annual gross income; and
132

133 b. Maintained as affordable housing units through a land use restriction agreement with
134 the Town of Kittery **or its designee** for a period no less than the maximum period
135 permitted by Maine law or thirty (30) years, whichever is longer.
136

137 2) Affordable housing units that will be **leased** shall be:
138

139 a. Restricted to households having an income that does not exceed 80% of the area
140 median income for the family size having the same number of persons as the subject
141 household for the York-Kittery-South Berwick, Maine, Metro Fair Market Area,
142 as published by the U.S. Department of Housing and Urban Development as of the
143 date of the household’s application, and whose housing and utility costs do not
144 exceed 30 percent of the household’s annual gross income; and
145

146 b. Maintained as affordable housing units through a land use restriction agreement
147 with the Town of Kittery **or its designee** for a period no less than the maximum
148 period permitted Maine law or thirty (30) years, whichever is longer.
149

150 3) Subleasing of any leased affordable housing unit is not permitted. Leasing **or renting,**
151 **including short-term rentals,** of any owner-occupied affordable housing unit is not
152 permitted.
153

154 H. Marketing and Pricing
155

156 1) Affordable housing units shall be actively marketed for sale or lease, as applicable, to
157 eligible households, which active marketing shall include, as a minimum, the following:
158

159 a. The owner shall provide a notice of availability to the **Town** of intent to **lease** or
160 sell an affordable housing unit. **Such notice must be given at least 14 days prior to**
161 **advertising the unit.**
162

163 b. The owner or their authorized representative shall provide an affidavit to the **Town**
164 confirming that household eligibility requirements have been met **upon successful**
165 **sale or lease of an affordable housing unit.** Any **lease** agreement shall be in writing
166 and provided to the Town upon request.
167

168 c. A non-eligible household may occupy an affordable housing unit if, despite active
169 marketing, an eligible household is not available to **lease** the housing unit. If an
170 affordable housing unit is being offered for lease, a non-eligible household may
171 occupy it **under the following conditions:**

Revisions related to housing – September 15, 2020 – DRAFT

Highlighted sections show the most recent changes or discussion points for PB workshop

172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200

201
202
203
204
205
206

i. The housing unit must be marketed for 90 days after the Town’s receipt of notice of availability.

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

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

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

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

b. From the table below, determine the minimum household size based on the number of bedrooms in the unit

	<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>

c. Calculate 30% of the gross median income based on the area median income from the York-Kittery-South Berwick, Maine, Metro Fair market Area (HMFA), as published by the U.S. Department of Housing and Urban Development for the minimum household size based on the number of bedrooms.

Revisions related to housing – September 15, 2020 – DRAFT

Highlighted sections show the most recent changes or discussion points for PB workshop

207 For example: (Household’s 110% AMI x .30)/12 = monthly income available for
208 housing-related expenses

209
210 d. The amount obtained from the formula above should then have other housing-
211 related expenses, such as mortgage insurance, real estate taxes, home insurance and
212 any HOA/condominium fees removed. Mortgage insurance must be estimated
213 similar to current rates utilized by the Federal Housing Administration unless
214 otherwise agreed to by the Town **or its designee**. What remains after removing non-
215 mortgage related housing expenses is that portion of a household’s monthly income
216 which is available for a mortgage payment.

217
218 e. The sale price will then be set based on a 30-year fixed-rate mortgage with a
219 minimum **3.5%** down payment. Larger down payments will not change the
220 maximum allowable sale price.

221
222 f. No affordable housing unit may be sold for more than the maximum sale price.

223
224 3) Affordable housing units located in a development for which a home owner association
225 (HOA) or condominium association will be established must obtain the Town’s review and
226 approval of the draft budget and condominium/HOA documents. The Town **or its designee**
227 may request quotes for costs such as replacement reserves and insurance. Fees will be
228 shared proportionately based on the Town’s tax assessment of the properties or if that
229 information is not available, on the initial sales price of the units. Affordable units will be
230 assessed with consideration given to the associated restrictions. The condominium/HOA
231 fees may not increase more than 5% any given year and cannot exceed 15% within any
232 five-year period without a supermajority **67%** vote of the association. The Town may
233 choose to have a consultant or the Town Attorney review the condominium/HOA
234 documents, which fee is payable by the developer.

235
236 4) Maximum resale pricing of affordable units must be set as follows:

237
238 a. Calculate the average percentage change in the area median income used for the
239 initial pricing for the relevant minimum household size between the year of
240 purchase and the present.

241
242 b. Using that percentage number, calculate the new selling price. For example, if the
243 average percentage change in area median income over the time the home was
244 owned is 2% then:

245
246 (original purchase price) * 1.02) = new selling price.

247
248

Revisions related to housing – September 15, 2020 – DRAFT

Highlighted sections show the most recent changes or discussion points for PB workshop

- 249 5) Monthly rental costs for affordable housing units will be set based on the following:
250
251 a. Find the minimum household size based on the number of bedrooms from the table
252 below:
253
254

	<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>

255
256 Use the formula below to calculate the monthly rent:
257
258 0.30 x (annual income based on minimum household size/12) minus utilities =
259 affordable rental unit rent.
260

- 261 6) The Town, with guidance from the Affordable Housing Committee, reserves the right to
262 modify the requirements in H. as needed to advance Kittery’s affordable housing goals and
263 objectives.
264

265 I. Supplemental Standards for Approval
266

- 267 a. Prior to submission of any plan for review by a Town land use board such as the
268 Planning Board or Board of Appeals, the developer shall submit a Housing Plan to
269 the Planning Department outlining the incentives sought, target median income
270 percentage for the affordable units, proposed location of affordable housing and
271 standards satisfied from this section.
272

- 273 b. The Town must review the plan and certify in writing that the development for
274 which approval is sought, as described in the Housing Plan, is consistent with all
275 applicable requirements of this Section. If the plan does not meet the requirements,
276 the Town must notify the developer and the project may not proceed to the
277 applicable land use board.
278

- 279 c. In addition, all housing-related projects in the C-1 zone must undergo master site
280 plan review even if only one building is proposed. See Chapter 16.6.
281

- 282 d. Prior to the submittal of any development application for consideration by a Town
283 land use board, a pre-application conference between the developer and the Town
284 is required to discuss the application, site design and relevant requirements of the
285 certified Housing Plan.

Revisions related to housing – September 15, 2020 – DRAFT

Highlighted sections show the most recent changes or discussion points for PB workshop

- 286 e. Prior to issuance of a building permit, a land use restriction agreement shall be
287 executed between the Town Manager and the developer, in a form promulgated by
288 the Town and approved by the Town Attorney, based on the Housing Plan, which
289 land use restriction agreement sets forth the land use restrictions required by this
290 section.
- 291
- 292 f. Prior to issuance of the certificate of occupancy for a development subject to this
293 section, the developer shall provide the Town with a fully executed copy of the land
294 use restriction agreement as recorded in the real property records maintained by the
295 York County Registry of Deeds.