

*Revisions related to housing – September 24, 2020 – DRAFT—Underlined and bolded text represent proposed additions to the ordinance and ~~strikethrough text as proposed deletions~~ from the ordinance.*

1 **16.X. Affordable Housing**  
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3 **A. Purpose**  
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5 **Recognizing that the market alone will not provide the range and diversity of housing types**  
6 **needed for a vibrant community, the Town of Kittery desires to encourage affordable**  
7 **housing for households of modest means and for all ages. The purpose of this ordinance is to**  
8 **offer incentives to developers to include affordable housing, either for lease or sale,**  
9 **particularly in those zones that offer utilities and/or services, and to mitigate the impacts of**  
10 **market-rate housing development on the limited supply of land available for suitable**  
11 **housing. The Town looks to its comprehensive plan and finds that this ordinance will assist**  
12 **in meeting housing goals and in promoting the public health, safety and welfare of its**  
13 **residents.**  
14

15 **B. Applicability**  
16

17 **Affordable housing regulations are applicable to the following:**  
18

- 19 1) **All development in the C-1, C-3, B-L, and B-L1 zones involving three or more new**  
20 **dwelling units. The proposed dwelling units may be new construction, created**  
21 **through a change of use or created through a renovation, rehabilitation or remodel.**  
22 **Projects may not be phased or segmented to avoid compliance with these**  
23 **requirements.**  
24  
25 2) **All major subdivisions, including those planned in phases, in all zones that create 5**  
26 **or more lots. Minor subdivisions are exempt.**  
27  
28 3) **All developments as described in 1) and 2) above whether the dwelling units proposed**  
29 **are intended for sale or for lease.**  
30

31 **Affordable housing regulations do not apply to hotels, motels, rooming houses, inns, bed and**  
32 **breakfasts, residential care facilities or elder care facilities.**  
33

34 **C. Requirements**  
35

- 36 1) **For projects proposing five (5) or more dwelling units, at least 10% of the units,**  
37 **rounded down to the nearest whole number, must be affordable housing units, as**  
38 **defined by this code. Any fractional unit obligation left after the rounding results in**  
39 **a proportional payment-in-lieu (see 3) below). For example, if 15 units are proposed,**  
40 **then one affordable unit is required plus 50% of a payment-in-lieu. If an additional**

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41 affordable unit is offered for the fractional unit obligation, no payment-in-lieu is  
42 required.

43  
44 2) The affordable housing units must remain affordable (via a recorded land use  
45 restriction, deed restriction or other legal instrument, a copy of which must be  
46 submitted to the Town prior to issuance of any building permits) for the longest term  
47 permitted under federal, state and local laws and ordinances, or 30 years, whichever  
48 is greater.

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

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

61  
62 D. Location

63  
64 1) Required affordable housing may be located either on-site with any market rate  
65 dwelling units or off-site within areas appropriately zoned for residential use. For  
66 development proposed in the C-1, C-3, B-L and B-L1 zones, any off-site affordable  
67 housing must be located within one of those zones.

68  
69 2) Off-site affordable housing may be new construction, a rehabilitation, remodel or  
70 renovation of an existing structure, or a change of use from non-residential to  
71 residential.

72  
73 3) Developers of market-rate units for sale who seek to provide the required affordable  
74 housing units off-site may opt to provide such dwelling units as rentals, subject to  
75 review and approval by the Town or the Town's designee.

76  
77 E. Incentives

78  
79 1) Zoning districts C-1, C-3, B-L and B-L1 each have density incentives which can be  
80 reviewed under the pertinent zone in 16.3.

81

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82 2) The Town will reduce the permitting costs for developments including affordable  
83 housing as follows:

84  
85 a. For developments comprised of 10% – 15% affordable housing units: 10% off  
86 total permitting costs except for sewer connection fees.

87  
88 b. For developments comprised of 16% – 24% affordable housing units: 15% off  
89 total permitting costs except for sewer connection fees.

90  
91 c. For developments comprised of 25% and over affordable housing units: 20% off  
92 total permitting costs except for sewer connection fees.

93  
94 F. Standards

95  
96 1) Affordable housing units must be built in reasonable accordance with any market-  
97 rate units such that at minimum, for every five market rate units built, one affordable  
98 unit must be completed. All affordable housing units in a development must have  
99 received a certificate of occupancy before the final market rate unit receives such. If  
100 a development is proposed for five dwelling units, including one affordable unit, that  
101 affordable unit must be completed before the last market rate unit receives its  
102 certificate of occupancy.

103  
104 2) When affordable housing units are part of a development which also includes market  
105 rate housing units, the outside appearance of affordable units must be similar to the  
106 market rate units and any affordable units must be integrated into the development  
107 as a whole. Affordable units cannot be confined to one building of a multiple building  
108 development except in the cases of cottage clusters, accessory dwelling units or two-  
109 family residences.

110  
111 3) Affordable housing units need not be the same size as market rate housing units but  
112 the number of bedrooms in each such dwelling unit may not be less than 10% of the  
113 total number of market rate bedrooms in the development, rounded up when the  
114 fractional portion is .5 or more. For example, a five-unit multi-family dwelling with  
115 four market rate housing units of 2 bedrooms each would be required to provide one  
116 affordable housing unit with one bedroom.

117  
118 a. Studio dwelling units will be counted as a one-bedroom unit. In cases where a  
119 development is providing only studio apartments and one-bedroom  
120 apartments, the Planning Board has the authority to decide whether each  
121 required affordable housing unit will be a studio or one-bedroom unit.  
122

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

129  
 130 G. Eligibility and Restrictions

- 131  
 132 1) Affordable housing units or lots that will be owner-occupied shall be:  
 133  
 134 a. Restricted to households having an income that does not exceed 120% of the area  
 135 median income for the family size having the same number of persons as the  
 136 subject household for the York-Kittery-South Berwick, Maine, Metro Fair  
 137 Market Area (HMFA), as published by the U.S. Department of Housing and  
 138 Urban Development as of the date of the buyer's application, and whose housing  
 139 and utility costs do not exceed 30 percent of the household's annual gross income;  
 140 and  
 141  
 142 b. Maintained as affordable housing units through a land use restriction agreement  
 143 with the Town of Kittery or its designee for a period no less than the maximum  
 144 period permitted by Maine law or thirty (30) years, whichever is longer.  
 145  
 146 2) Affordable housing units that will be leased shall be:  
 147  
 148 a. Restricted to households having an income that does not exceed 80% of the  
 149 area median income for the family size having the same number of persons as  
 150 the subject household for the Y York-Kittery-South Berwick, Maine, Metro  
 151 Fair Market Area, as published by the U.S. Department of Housing and Urban  
 152 Development as of the date of the household's application, and whose housing  
 153 and utility costs do not exceed 30 percent of the household's annual gross  
 154 income; and  
 155  
 156 b. Maintained as affordable housing units through a land use restriction  
 157 agreement with the Town of Kittery or its designee for a period no less than  
 158 the maximum period permitted Maine law or thirty (30) years, whichever is  
 159 longer.  
 160  
 161 3) Subleasing of any leased affordable housing unit is not permitted. Leasing or renting,  
 162 including short-term rentals, of any owner-occupied affordable housing unit is not  
 163 permitted.

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**H. Marketing and Pricing**

- 1) **Affordable housing units shall be actively marketed for sale or lease, as applicable, to eligible households, which active marketing shall include, as a minimum, the following:**
  - a. **The owner shall provide a notice of availability to the Town of intent to lease or sell an affordable housing unit. Such notice must be given at least 14 days prior to advertising the unit.**
  - b. **The owner or their authorized representative shall provide an affidavit to the Town confirming that household eligibility requirements have been met upon successful sale or lease of an affordable housing unit. Any lease agreement shall be in writing and provided to the Town upon request.**
  - c. **A non-eligible household may occupy an affordable housing unit if, despite active marketing, an eligible household is not available to lease the housing unit. If an affordable housing unit is being offered for lease, a non-eligible household may occupy it under the following conditions:**
    - 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:**

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- 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.  
  
For example: (Household’s 110% AMI x .30)/12 = monthly income available for housing-related expenses
- d. The amount obtained from the formula above should then have other housing-related expenses, such as mortgage insurance, real estate taxes, home insurance and any HOA/condominium fees removed. Mortgage insurance must be estimated similar to current rates utilized by the Federal Housing Administration unless otherwise agreed to by the Town or its designee. What remains after removing non-mortgage related housing expenses is that portion of a household’s monthly income which is available for a mortgage payment.
- e. The sale price will then be set based on a 30-year fixed-rate mortgage with a minimum 3.5% down payment. Larger down payments will not change the maximum allowable sale price.

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- 238           f. No affordable housing unit may be sold for more than the maximum sale price.  
 239  
 240           3) Affordable housing units located in a development for which a home owner  
 241 association (HOA) or condominium association will be established must obtain the  
 242 Town’s review and approval of the draft budget and condominium/HOA documents.  
 243 The Town or its designee may request quotes for costs such as replacement reserves  
 244 and insurance. Fees will be shared proportionately based on the Town’s tax  
 245 assessment of the properties or if that information is not available, on the initial sales  
 246 price of the units. Affordable units will be assessed with consideration given to the  
 247 associated restrictions. The condominium/HOA fees may not increase more than 5%  
 248 any given year and cannot exceed 15% within any five-year period without a  
 249 supermajority 67% vote of the association. The Town may choose to have a consultant  
 250 or the Town Attorney review the condominium/HOA documents, which fee is payable  
 251 by the developer.  
 252  
 253           4) Maximum resale pricing of affordable units must be set as follows:  
 254  
 255           a. Calculate the average percentage change in the area median income used for  
 256 the initial pricing for the relevant minimum household size between the year  
 257 of purchase and the present.  
 258  
 259           b. Using that percentage number, calculate the new selling price. For example, if  
 260 the average percentage change in area median income over the time the home  
 261 was owned is 2% then:  
 262  
 263                   (original purchase price) \* 1.02 = new selling price.  
 264  
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- 266 5) Monthly rental costs for affordable housing units will be set based on the following:  
 267  
 268 a. Find the minimum household size based on the number of bedrooms from the  
 269 table below:  
 270  
 271

	<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>

272  
 273 Use the formula below to calculate the monthly rent:  
 274  
 275 0.30 x (annual income based on minimum household size/12) minus utilities =  
 276 affordable rental unit rent.  
 277

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

281  
 282 I. Supplemental Standards for Approval

- 283  
 284 a. Prior to submission of any plan for review by a Town land use board such as  
 285 the Planning Board or Board of Appeals, the developer shall submit a Housing  
 286 Plan to the Planning Department outlining the incentives sought, target  
 287 median income percentage for the affordable units, proposed location of  
 288 affordable housing and standards satisfied from this section.  
 289  
 290 b. The Town must review the plan and certify in writing that the development  
 291 for which approval is sought, as described in the Housing Plan, is consistent  
 292 with all applicable requirements of this Section. If the plan does not meet the  
 293 requirements, the Town must notify the developer and the project may not  
 294 proceed to the applicable land use board.  
 295  
 296 c. In addition, all housing-related projects in the C-1 zone must undergo master  
 297 site plan review even if only one building is proposed. See Chapter 16.6.  
 298  
 299 d. Prior to the submittal of any development application for consideration by a  
 300 Town land use board, a pre-application conference between the developer and



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**the Town is required to discuss the application, site design and relevant requirements of the certified Housing Plan.**

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- 303 e. Prior to issuance of a building permit, a land use restriction agreement shall  
304 be executed between the Town Manager and the developer, in a form  
305 promulgated by the Town and approved by the Town Attorney, based on the  
306 Housing Plan, which land use restriction agreement sets forth the land use  
307 restrictions required by this section.
  
- 308 f. Prior to issuance of the certificate of occupancy for a development subject to  
309 this section, the developer shall provide the Town with a fully executed copy  
310 of the land use restriction agreement as recorded in the real property records  
311 maintained by the York County Registry of Deeds.  
312  
313

*Revisions to 16.8.9.4 Off Street Parking related to housing – September 24, 2020–  
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**ITEM 2**

314 16.8.9.4 Off-Street Parking Standards  
315 **[The table and text below to be added below existing parking standard Table 2]**  
316  
317 Table 2-A

**Compact Car Parking**

<u>A</u> <u>Angle of</u> <u>Parking</u> <u>(degrees)</u>	<u>B</u> <u>Stall</u> <u>Width</u> <u>(feet)</u>	<u>C</u> <u>Stall</u> <u>Depth</u> <u>(feet)</u>	<u>D</u> <u>Stall to Curb</u> <u>(feet)</u>	<u>E</u> <u>Skew (feet)</u>	<u>F</u> <u>(Aisle Width)</u>	
					<u>One-Way Traffic</u> <u>(feet)</u>	<u>Two-Way Traffic</u> <u>(feet)</u>
<u>Parallel</u>	<u>8</u>	<u>16</u>	<u>8.0</u>	<u>16.0</u>	<u>12</u>	<u>19</u>
<u>45</u>	<u>8</u>	<u>16</u>	<u>17.0</u>	<u>5.7</u>	<u>13</u>	<u>20</u>
<u>60</u>	<u>8</u>	<u>16</u>	<u>17.8</u>	<u>6.9</u>	<u>18</u>	<u>20</u>
<u>90</u>	<u>8</u>	<u>16</u>	<u>16.0</u>	<u>8.0</u>	<u>22</u>	<u>22</u>

- 318  
319 N. **Compact-size parking spaces, unless restricted for use by and located adjacent to a**  
320 **dwelling unit, must be located in one (1) or more continuous areas and cannot be**  
321 **intermixed with spaces designed for full size vehicles.**  
322  
323 O. **Compact-size parking spaces shall be clearly designated by pavement marking and by**  
324 **direction signs in conformance with 16.8.10.9.**

*Revisions to 16.7.8.4 Exemptions to net residential acreage calculations related to housing – September 24, 2020 – DRAFT— Underlined and bolded text represent proposed additions to the ordinance and ~~strikethrough text as proposed deletions~~ from the ordinance.*

**ITEM 2**

325 § 16.7.8.4 Exemptions to net residential acreage calculations.

326

327 c. The Mixed-Use – Neighborhood Zone (MU-N) ~~zone~~ **and certain residential uses in the**  
328 **C-1 and C-3 zones as noted in §16.3.2.11 are** is exempt from § 16.7.8.2, Net residential  
329 acreage calculation, but is are subject to the minimum land area per dwelling unit as defined  
330 in Chapter 2, Definitions, except that 50% of all wetlands may be subtracted, rather than 100%.

***Revisions to 16.3.2.4.D Standards related to housing – September 24, 2020 –  
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**ITEM 2**

331 Title 16 Land Use and Development Code  
332 §16.3 Land Use Zone Regulations  
333 §16.3.2.4 Residential – Urban RU  
334 §16.3.2.4.D Standards

335  
336 (4) In the case of housing for the elderly, the above standards may be modified in accordance with  
337 the special provisions of Article XIII of Chapter 16.8 and with the condition that:

338 (a) Municipal sewerage and water must be provided.

339 (b) A minimum land area of three acres must be provided.

340 (c) The maximum net density may not exceed four dwelling units per net residential acre. In  
341 no event may the Planning Board authorize a departure which increases the total number  
342 of dwelling units greater than that specified under the applicable zoning ordinance.

343 (d) ~~A single bedroom unit may not be less than 550 square feet and a two-bedroom unit not~~  
344 ~~less than 650 square feet.~~

345