

Revisions related to housing – August 13, 2020 – DRAFT

Highlighted sections have changed since this document was reviewed by the Planning Board.

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 rent 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 except those to be created via subdivision and for which one single-family
20 dwelling is proposed for each lot. Single-family attached dwelling units, even if proposed
21 as a subdivision, are not exempt. The proposed dwelling units may be new construction,
22 created through a change of use or created through a renovation, rehabilitation or remodel.
23 Projects may not be phased or segmented to avoid compliance with these requirements.
24
- 25 2) All major subdivisions, including those planned in phases, in all zones that create 5 or more
26 lots. Minor subdivisions are exempt.
27
- 28 3) All developments as described in 1) and 2) above whether the dwelling units proposed are
29 intended for sale or for rent.
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 ten (10) or more dwelling units, at least 10% of the units, rounded
37 down to the nearest whole number, must be affordable housing units, as defined by this
38 code. Any fractional unit obligation left after the rounding results in a proportional
39 payment-in-lieu (see 3) below). For example, if 15 units are proposed, then one affordable
40 unit is required plus 50% of a payment-in-lieu. If an additional affordable unit is offered
41 for the fractional unit obligation, no payment-in-lieu is required.
42

Revisions related to housing – August 13, 2020 – DRAFT

Highlighted sections have changed since this document was reviewed by the Planning Board.

- 43 2) The affordable housing units must remain affordable (via a recorded land use restriction,
 44 deed restriction or other legal instrument, a copy of which must be submitted to the Town
 45 prior to issuance of any building permits) for the longest term permitted under federal, state
 46 and local laws and ordinances, or 30 years, whichever is greater.
 47
- 48 3) As an alternative to providing workforce housing units, projects may pay a fee in lieu of
 49 some or all of the units. In-lieu fees shall be paid into the Kittery Housing Reserve Fund,
 50 as ordained by the Kittery Town Council. The fee for affordable units not provided shall
 51 be annually established by the Kittery Town Council in the schedule of fees.
 52
- 53 4) If the developer prefers to provide a payment-in-lieu instead of the required affordable
 54 housing units, that proportional payment will be calculated based on the number of
 55 affordable housing units that are required plus any fractional unit obligation. Using the
 56 example above, if 15 units are proposed, the developer would provide 1.5 times the current
 57 rate set by the Town.
 58

D. Location

- 60
- 61 1) Required affordable housing may be located either on-site with any market rate dwelling
 62 units or off-site within areas appropriately zoned for residential use. For development
 63 proposed in the C-1, C-3, B-L and B-L1 zones, any off-site affordable housing must be
 64 located within one of those zones.
 65
- 66 2) Off-site affordable housing may be new construction, a rehabilitation, remodel or
 67 renovation of an existing structure, or a change of use from non-residential to residential.
 68
- 69 3) Developers of market-rate units for sale who seek to provide the required affordable
 70 housing units off-site may opt to provide such dwelling units as rentals, subject to review
 71 and approval by the Town.
 72

E. Incentives

- 73
- 74
- 75 1) Zoning districts C-1, C-3, B-L and B-L1 each have density incentives which can be
 76 reviewed under the pertinent zone in 16.3.
 77
- 78 2) The Town will reduce the permitting costs for developments including affordable housing
 79 as follows:
 80
- 81 a. For developments comprised of 10% – 15% affordable housing units: 10% off total
 82 permitting costs except for sewer connections.
 83
- 84 b. For developments comprised of 16% – 24% affordable housing units: 15% off total
 85 permitting costs except for sewer connections.

Revisions related to housing – August 13, 2020 – DRAFT

Highlighted sections have changed since this document was reviewed by the Planning Board.

86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129

- c. For developments comprised of 25% and over affordable housing units: 20% off total permitting costs except for sewer connections.

F. Standards

- 1) Affordable housing units must be built in reasonable accordance with any market-rate units such that at minimum, for every 10 market rate units built, one affordable unit must be completed. All affordable housing units in a development must have received a certificate of occupancy before the final market rate unit receives such. If a development is proposed for ten dwelling units including one affordable unit, that affordable unit must be completed before the last market rate unit receives its certificate of occupancy.
- 2) When affordable housing units are part of a development which also includes market rate housing units, the outside appearance of affordable units must be similar to the market rate units and any affordable units must be integrated into the development as a whole. Affordable units cannot be confined to one building of a multiple building development except in the cases of cottage clusters, accessory dwelling units or two-family residences.
- 3) Affordable housing units need not be the same size as market rate housing units but the number of bedrooms in each such dwelling unit may not be less than 10% of the total number of market rate bedrooms in the development, rounded up when the fractional portion is .5 or more. For example, a 10-unit multi-family dwelling with 9 market rate housing units of 2 bedrooms each would be required to provide one affordable housing unit with two bedrooms.
 - a. Studio dwelling units will be counted as a one-bedroom unit. In cases where a development is providing only studio apartments and one-bedroom apartments, the Planning Board has the authority to decide whether each required affordable housing unit will be a studio or one-bedroom unit.
- 4) Affordable housing units to be located off-site must be of comparable quality with the same number of bedrooms (see 3) above) as any new affordable housing units that would be created by the project on-site. The Town will not accept off-site units that are run-down or show signs of substantial wear or deterioration. This includes but is not limited to: heating and cooling systems, plumbing, wiring, appliances, flooring, walls, counters, cabinets, and fixtures as well as roofing, siding, doors and windows.

G. Eligibility and Restrictions

- 1) Affordable housing units or lots that will be owner-occupied shall be:
 - a. Restricted to households having an income that does not exceed 120% of the area median income for the family size having the same number of persons as the subject

Revisions related to housing – August 13, 2020 – DRAFT

Highlighted sections have changed since this document was reviewed by the Planning Board.

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

156 **H. Marketing and Pricing**
 157

- 158 1) Affordable housing units shall be actively marketed for sale or lease, as applicable, to
 159 eligible households, which active marketing shall include, as a minimum, the following:
 160
 161 a. The owner shall provide a notice of availability to the Town of intent to rent or sell
 162 an affordable housing unit. Such notice must be given at least 14 days prior to
 163 advertising the unit.
 164
 165 b. The owner or their authorized representative shall provide an affidavit to the Town
 166 confirming that household eligibility requirements have been met upon successful
 167 sale or rental of an affordable housing unit. Any lease or rental agreement shall be
 168 in writing and provided to the Town upon request.
 169
 170 c. A non-eligible household may occupy an affordable housing unit if, despite active
 171 marketing, an eligible household is not available to rent the housing unit. If an
 172 affordable housing unit is being offered for lease, a non-eligible household may

Revisions related to housing – August 13, 2020 – DRAFT

Highlighted sections have changed since this document was reviewed by the Planning Board.

173 occupy it on the date 90 days after the Town’s receipt of a notice of availability
 174 with the condition that the next housing unit that becomes available in the
 175 development must be offered as an affordable unit so that the affordable housing
 176 requirements for the development continue to be met.

177
 178 d. If, 120 days after the Town’s receipt of notice of availability, the initial sale of an
 179 affordable housing unit by the developer has not occurred, a non-eligible household
 180 may occupy it but that household may only rent the unit for one year from the
 181 developer thus preserving the affordable restrictions. The unit must again be offered
 182 for sale upon termination of the one-year lease. The Town must be notified of the
 183 failure to sell and of the subsequent lease agreement within 30 days of such lease
 184 being signed.

185
 186 e. The Town, with guidance from the Affordable Housing Committee, reserves the
 187 right to modify the conditions in 10) a - d as needed to advance Kittery’s affordable
 188 housing goals and objectives.

189
 190 2) Initial maximum sale pricing of new affordable units must be set as follows:

191
 192 a. Establish the target percentage of area median income level from the York-Kittery-
 193 South Berwick, Maine, Metro Fair market Area (HMFA), as published by the U.S.
 194 Department of Housing and Urban Development that the unit will be marketed to.
 195 For projects being funded privately, that number must be 110% of area median
 196 income. For projects that include state, federal or municipal funding, that number
 197 will be influenced by the stipulations attached to the funding.

198
 199 b. From the table below, determine the minimum household size based on the number
 200 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>

201
 202 c. Calculate 30% of the gross median income based on the area median income from
 203 the York-Kittery-South Berwick, Maine, Metro Fair market Area (HMFA), as
 204 published by the U.S. Department of Housing and Urban Development for the
 205 minimum household size based on the number of bedrooms.

206
 207 For example: (Household’s 110% AMI x .30)/12 = monthly income available for

Revisions related to housing – August 13, 2020 – DRAFT

Highlighted sections have changed since this document was reviewed by the Planning Board.

- 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. What remains after removing non-mortgage
- 215 related housing expenses is that portion of a household’s monthly income which is
- 216 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 5% down payment. Larger down payments will not change the maximum
- 220 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 may request
- 227 quotes for costs such as replacement reserves and insurance. Fees will be shared
- 228 proportionately based on the Town’s tax assessment of the properties or if that information
- 229 is not available, on the initial sales price of the units. Affordable units will be assessed with
- 230 consideration given to the associated restrictions. The condominium/HOA fees may not
- 231 increase more than 5% any given year and cannot exceed 15% within any five-year period
- 232 without a supermajority vote of the association. The Town may choose to have a consultant
- 233 or the Town Attorney review the condominium/HOA documents, which fee is payable by
- 234 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 – August 13, 2020 – DRAFT

Highlighted sections have changed since this document was reviewed by the Planning Board.

249
250
251
252
253
254

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

a. Find the minimum household size based on the number of bedrooms from the table below:

	1-bedroom or studio	2-bedroom	3-bedroom	4-bedroom
Minimum Household Size	1	2	3	4

255
256
257
258
259
260

Use the formula below to calculate the monthly rent:

$$0.30 \times (\text{annual income based on minimum household size}/12) \text{ minus utilities} = \text{affordable rental unit rent.}$$

261
262
263
264

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

265

I. Supplemental Standards for Approval

266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284

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

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

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

Revisions related to housing – August 13, 2020 – DRAFT

Highlighted sections have changed since this document was reviewed by the Planning Board.

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

§16.7.8.4 Exemptions to net residential acreage calculations.

- 296 C. The Mixed-Use – Neighborhood Zone (MU-N) ~~zone~~ and certain residential uses in the C-
- 297 1 and C-3 zones as noted in §16.3.2.11 are is exempt from § 16.7.8.2, Net residential
- 298 acreage calculation, but is are subject to the minimum land area per dwelling unit as defined
- 299 in Chapter 2, Definitions, except that 50% of all wetlands may be subtracted, rather than
- 300 100%.
- 301
- 302
- 303

§16.8.9.4 Off-Street Parking Standards

[The table and text below to be added below existing parking standard Table 2]

Table 2-A

Compact Car Parking

Angle of Parking (degrees)	Stall Width (feet)	Stall Depth (feet)	Stall to Curb (feet)	Skew (feet)	Width of Maneuvering Aisle – 1-way (feet)	Width of Maneuvering Aisle – 2-way (feet)
61 to 90	8	16	TBD	TBD	22	22
46 to 60	8	16	TBD	TBD	18	18
45	8	16	TBD	TBD	15	18
Parallel	8	16	8	TBD	12	18

- 308
- 309 N. Compact-size parking spaces, unless restricted for use by and located adjacent to a dwelling
- 310 unit, must be located in one (1) or more continuous areas and cannot be intermixed with
- 311 spaces designed for full size vehicles.
- 312
- 313 O. Compact-size parking spaces shall be clearly designated by pavement marking and by
- 314 direction signs in conformance with 16.8.10.9.
- 315
- 316
- 317
- 318

Revisions related to housing – August 13, 2020 – DRAFT

Highlighted sections have changed since this document was reviewed by the Planning Board.

319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341

Title 16 Land Use and Development Code

§16.3 Land Use Zone Regulations

§16.3.2.4 Residential – Urban RU

§16.3.2.4.D Standards

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

- (a) Municipal sewerage and water must be provided.
- (b) A minimum land area of three acres must be provided.
- (c) The maximum net density may not exceed four dwelling units per net residential acre. In no event may the Planning Board authorize a departure which increases the total number of dwelling units greater than that specified under the applicable zoning ordinance.
- (d) ~~A single bedroom unit may not be less than 550 square feet and a two bedroom unit not less than 650 square feet.~~

Recommended motion to continue the public hearing

Move to continue the public hearing to September 10, 2020 that seeks to amend Title 16 to add a new section entitled “Affordable Housing”, to amend §16.7.8.4 Exemptions to net residential acreage standards, to amend §16.3.2.4.D Standard, and to amend §16.8.9.4 Off-street parking standards.