

SECTION VIIC. RESIDENTIAL DENSITY AND AFFORDABLE HOUSING PROVISIONS
[06/06/2007][amended 11/06/2013; amended 03/09/18; amended 12/19/18; amended 06/07/2023; amended 07/19/2023]

A. RESIDENTIAL DENSITY FACTORS [amended 07/19/2023]

The following density factors apply only in those zoning districts that explicitly provide for residential density to be determined in accordance with these provisions. In those zones, the maximum number of dwelling units that can be placed on any site in accordance with the net residential density provisions shall be calculated based upon the following density factors for dwelling units that are located in two-family dwellings, multifamily dwellings, and/or mixed use buildings based upon the type of dwelling units proposed to be developed.

1. A dwelling unit with not more than one (1) bedroom and not more than seven hundred fifty (750) square feet of living space or a live/work unit with not more than one thousand two hundred (1,200) square feet of total floor area shall be counted as 0.5 dwelling unit for the purpose of the density calculation.

2. A dwelling unit with not more than two (2) bedrooms and not more than one thousand two hundred (1,200) square feet of living space or a live/work unit with not more than one thousand eight hundred (1,800) square feet of total floor area shall be counted as 0.66 dwelling unit for the purpose of the density calculation.

3. A dwelling unit with three (3) or more bedrooms or more than one thousand two hundred (1,200) square feet of living space or a live/work unit with more than one thousand eight hundred (1,800) square feet of total floor area shall be counted as 1.0 dwelling unit for the purpose of the density calculation.

B. AFFORDABLE HOUSING DENSITY BONUS [adopted 07/19/2023]

This section applies to affordable housing developments approved on or after July 1, 2023, located in a zoning district where multifamily dwellings are allowed, and either be located in a designated growth area of the Town of Scarborough or be served by a public, special district or other centrally managed water system and a public, special district or other comparable sewer system.

1. For affordable projects meeting the requirements herein, the maximum density shall be 2 1/2 times the base density that is otherwise allowed in that location.

2. For the purposes of this section, "affordable housing development" means:
 - a) For rental housing, a development in which a household whose income does not exceed 80% of the median income for the area as defined by the United States Department of Housing and Urban Development under the United States Housing Act of 1937, Public Law 75-412, 50 Stat. 888, Section 8, as amended, can afford a majority of the units that the developer designates as affordable without spending more than 30% of the household's monthly income on housing costs; and

 - b) For owned housing, a development in which a household whose income does not exceed 120% of the median income for the area as defined by the United States Department of Housing and Urban Development under the United States Housing Act of 1937, Public Law 75-412, 50 Stat. 888, Section 8, as amended, can afford a majority of the units that the developer designates as affordable without spending more than 30% of the

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household's monthly income on housing costs.

- 3. Rate of growth permits shall apply in accordance with Chapter 413.
- 4. Reduced Parking Standards. Two (2) off-street parking spaces shall be required for every three (3) units.
- 5. Minimum lot size and setback requirements shall apply in accordance with zoning standards as applicable.
- 6. Shoreland Zoning requirements shall apply as applicable.
- 7. Subdivision Ordinance shall apply as applicable.
- 8. All other ordinance requirements not specifically addressed within this section shall apply as applicable.
- 9. The owner of the affordable housing development must execute a restrictive covenant, recorded in the appropriate registry of deeds, for the benefit of and enforceable by a party acceptable to the municipality, to ensure that for at least 30 years after completion of construction:
 - a) For rental housing, occupancy of all of the units designated affordable in the development will remain limited to households at or below 80% of the local area median income at the time of initial occupancy; and
 - b) For owned housing, occupancy of all of the units designated affordable in the development will remain limited to households at or below 120% of the local area median income at the time of initial occupancy.
- 10. The owner of an affordable housing development shall provide written verification to the municipality that each unit of the housing development is connected to adequate water and wastewater services before the municipality may certify the development for occupancy. Written verification under this subsection must include:
 - a) If a housing unit is connected to a public, special district or other comparable sewer system, proof of adequate service to support any additional flow created by the unit and proof of payment for the connection to the sewer system;
 - b) If a housing unit is connected to a septic system, proof of adequate sewage disposal for subsurface wastewater. The septic system must be verified as adequate by a local plumbing inspector under section 4221. Plans for subsurface wastewater disposal must be prepared by a licensed site evaluator in accordance with subsurface wastewater disposal rules adopted under Title 22, section 42;
 - c) If a housing unit is connected to a public, special district or other centrally managed water system, proof of adequate service to support any additional flow created by the unit, proof of payment for the connection and the volume and supply of water required for the unit; and
 - d) If a housing unit is connected to a well, proof of access to potable water. Any tests of an existing well or proposed well must indicate that the water supply is potable and acceptable for domestic use.
- 11. This section may not be construed to interfere with, abrogate or annul the validity or enforceability of any valid and enforceable easement, covenant, deed restriction or other

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agreement or instrument between private parties that imposes greater restrictions than those provided in this section, as long as the agreement does not abrogate rights under the United States Constitution or the Constitution of Maine.

C. AFFORDABLE HOUSE IN LIEU FEE [adopted 11/06/2013; amended 07/19/2023]

This mechanism enables developments in designated zoning districts to contain additional residential density if a fee is paid per additional dwelling unit to support the creation of affordable housing within the community. These provisions may only be applied to residential developments that require subdivision and/or site plan review by the Planning Board within zoning districts that explicitly allow for the affordable housing in-lieu fee.

Affordable House in Lieu Fees factors do not apply to affordable housing projects receiving density bonuses based on Section VIIC. B Affordable Housing.

The use of this mechanism requires Planning Board review and approval in accordance with the following provisions:

1. An application for use of the affordable housing in-lieu fee shall be submitted by the applicant as an element of their overall submission for subdivision and/or site plan review and approval. This submission shall include the number of additional dwelling units proposed utilizing the affordable housing in-lieu fee, the proposed dwelling unit types, and the overall residential density.
2. The payment of an in-lieu fee shall be required for each additional dwelling unit permitted through this provision, unless the zoning district in which the project is located allows for density to be determined on a bedroom and square footage basis in accordance with Section VII.C.(A) Residential Density. In these cases, the payment of a fraction of the fee shall be required for each unit in the same proportion as the density requirement for the type and size of the unit proposed (For example, a unit that is counted as half (0.5) a dwelling unit for density purposes required half (0.5) the fee amount as a full dwelling unit). The affordable housing in-lieu fee amount is listed in the Town of Scarborough Schedule of License, Permit and Application Fees (Chapter 311).
3. The total amount of the affordable housing in-lieu fees for the development may either be apportioned to each development phase for multi-phase projects or each dwelling unit or residential building lot within the development. In these cases the fees shall be paid prior to the commencement of construction of each phase of development or prior to the issuance of a building permit for each unit or lot. This schedule of payment shall be established as part of the Planning Board approval for the development.
4. These fees shall be paid to the Town of Scarborough.
5. Affordable housing in-lieu fees collected by the Town shall be deposited into a specific account, segregated from the Town's general revenue, and created for supporting the creation of affordable housing. These funds shall be used in accordance with the following: [Amended 06/07/2023]

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- a. The funds contributed to the specific account, entitled the Affordable Housing Initiative Fund, shall be used to further the establishment of affordable housing within the Cumberland County. More specifically, these funds may be used for the land acquisition, infrastructure, and/or building construction costs of an affordable housing project. [Amended 06/07/2023]
- b. A portion of these funds may also be used for administrative, legal, engineering or other costs related to the planning, design, permitting, and property acquisition for an affordable housing project.
- c. A portion of these funds may also be used to establish a revolving loan program to provide direct financial assistance to qualified homebuyers with down payments and other financing needs for purchasing affordable housing units.
- d. The Affordable Housing Trust Fund may be used in combination with other Town funds, and other private, non-profit, and government funding for establishing affordable housing within the community.
- e. The in-lieu fees contributed by a development shall not be used by the same or other developments to fund the construction of affordable housing required to meet a residential density bonus for the creation of affordable housing.
- f. The in-lieu fees collected by the Town shall not be utilized to fund affordable housing portions of a development which are otherwise required to included affordable housing in order to meet minimum zoning standards. [adopted 03/09/18]

C. AFFORDABLE HOUSING CERTAINTY [Adopted 12/19/18]

1. Prior to the sale of an Owner-Occupied Affordable Housing Unit, the owner of the unit shall obtain approval from the Town Manager to transfer the unit to a new buyer. In determining whether to approve the transfer, the Town shall determine whether the proposed buyer will be a Qualifying Household and that the sale price does not exceed the maximum sale price as defined in this Ordinance. The proposed buyer shall provide documentation, as reasonably requested by the Town, to support the transfer request. In granting the request, the Town shall be entitled to impose conditions upon the transfer to ensure that physical deficiencies and code violations are addressed and that delinquent property tax, water and sewer bills are paid.

2. Owners of Renter-Occupied Affordable Housing Units shall be required to certify that the units continue to be occupied by Qualifying Households on an annual basis to the Town Manager and in so certifying shall be entitled to rely upon the household certifications described in the following sentence. Households shall certify to Owners of Renter-Occupied Affordable Housing Units that they continue to qualify based on the standards in this Ordinance and shall provide documentation to support their certification upon the reasonable request of the Town through the Town Manager.