

ARTICLE XXVI – Draft October 6, 2022
WORKFORCE HOUSING OVERLAY DISTRICT

- A. **Purpose:** The purpose of this Article is to provide reasonable opportunities for the Development of Workforce Housing within New London for both home ownership and rental opportunities. The Town recognizes the importance and benefit to the community and its citizens in the establishment of suitable opportunities for Workforce Housing. The Town recognizes that there are some situations in which normal Zoning, Site Plan Review and/or Subdivision requirements may be waived without sacrificing public health, safety and welfare so long as proper safeguards are maintained. Accordingly, it has been deemed advisable to adopt Workforce Housing in accordance with 674:58-61.

This Article was established in order to meet the goals related to Workforce Housing section of the Housing Chapter in the New London Master Plan. Additionally, in implementing this article New London has considered the region’s Affordable housing needs as defined in the Upper Valley Lake Sunapee Regional Planning Commission Housing Needs Assessment ~~dated January 1, 2006.~~

- B. **Authority:** This Workforce Housing Article is adopted under the authority of RSA 674:58-61 and RSA 674:21.
- C. **Applicability:** This article applies to Workforce Housing Developments proposed under RSA 674:58-61.
- D. **Conditional Use Permit Requirement:** Development of a Workforce Housing project in accordance with the provisions of this ~~a~~Article is permitted through a Conditional Use Permit administered by the Planning Board.
- E. **Permitted Zone Districts:** Development of a Workforce Housing project in accordance with the provisions of this ~~a~~Article is permitted through a Conditional Use Permit for the following Uses detailed in Table One located within a Workforce Overlay District that encompasses all or part of the following zone districts in this Zoning Ordinance:

Table One Permitted Types of Residential Uses by Zone District					
Zone District	Single Family Dwelling	Manufactured Home	Two-Family Dwelling	Multi-Family Housing- Garden	<u>Multifamily Townhomes¹</u>
Urban Residential (R-1)	X	X	X	X	<u>X</u>
Residential (R-2)	X	X	X		<u>X</u>
Agricultural & Rural Residential	X	X	X		
Commercial				X	<u>X</u>

F. Overlay District Boundaries: The boundaries of this Overlay District are shown on the map entitled Workforce Housing Overlay District dated March 10, 2009. Amend to include all College Lot 33 and Hospital lands Lot 18.

G. Incentives for Workforce Housing: ~~After considering all cost factors including, but not limited to, land, subdivision improvements for roads, utilities & drainage, marketing, insurance, labor, Building materials, and profit to identify a total gross cost of the project and per unit gross costs, t~~The Planning Board may approve one or more of the following incentives. ~~only if the applicant demonstrates the Town's land use ordinances and regulations induce a cost prohibitive project.~~

1. Density Increase: The Planning Board may approve a density increase. The following specific applications of Zoning Incentives shall be permitted. Alternative development programs other than those listed below may be permitted if the proposed development adheres to the Purpose of this Article.

a. Multi-family garden style buildings are permitted at 12 units an acre.

b. Multi-family townhome buildings are permitted at 6 units an acre.

c. Single and two-family developments are permitted to increase density by 40%

d. Single access Backlots occupied by a single family Workforce unit is permitted provided that the lot has a minimum of 25 feet of frontage and a minimum lot area meeting New Hampshire Department of Environmental Services standards. No more than one adjoining Backlot, served by a single access drive, shall be permitted per property. Backlots shall be prohibited for those properties that lie within the Shore Land Overlay District as detailed in Article XVI.

¹ Maximum 5 unit buildings.

e. Fraction calculation: Any calculation of Workforce Housing or market rate housing units that does result in a whole number shall increase to the next whole number. (Ex. Density/Workforce unit set aside results in a figure of 11.1, the number of units will increase to 12)

f. Multi-family Garden style buildings shall be limited to a maximum of three stories and 36 housing units.

1.2. Lot Size Reductions: The Planning Board may allow a decrease of the minimum Lot size.

2.3. Road Frontage Reductions: The Planning Board may allow a decrease in road Frontage.

3.4. Setback Reductions: ~~The Yard/Setback requirements of the underlying zone shall apply; the~~ The Planning Board may set alternative minimum Yard/sSetbacks on each Lot. Perimeter setbacks shall be sufficient to buffer and protect adjacent properties and the Street from encroachment. ~~At a minimum there shall be a fifty (50) foot setback from the property line around the perimeter of the property.~~

4.5. Open Space Reduction: The Planning Board may approve a reduction in Open Space. Open space shall be sufficient to accommodate the needs of the proposed occupants of the project.

6. Waiver of Application Fees: Planning Board application fees for Site Plan Review, Subdivision, and Conditional Use Permit applications may be waived except the direct cost of notice to Abutters, the applicant and any easement holders during the planning process and the fees for any independent consultants.

H. Assurance of Continued Affordability & Documentation of Eligibility

1. The Workforce hHousing unit initially created constructed and offered for sale or rent shall meet the definition of Workforce Housing as defined in ARTICLE III Definitions of the Zoning Ordinance.

2. In order to qualify as Workforce Housing under this Article, the Applicant developer shall make a binding commitment that the Workforce Housing units will remain a Workforce Housing unit Affordable for a period of 30 20 years for owner occupied units and 30 years for rental units. The developer shall ensure this by securing a third party Administrator approved by the Planning Board and paid for by the Applicant developer to administer, monitor and enforce this binding commitment as provided in Section O.

~~2. Acceptable third parties include a local, state or federal housing authority or other non-profit housing trust or agency. For the 30-year term, this binding obligation must make the following commitments for continued affordability:~~

~~a Affordable housing rental units shall limit annual rent increases to the percentage increase in the Merrimack County median income.~~

~~a Resale of Owner Occupied Housing shall be to a Family that qualifies for a Workforce Housing unit that is Affordable.~~

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3. For owner occupied Workforce Housing units, appropriate deed restrictions shall be in place to ensure that all future owners meet Workforce Housing income criteria for at least 20 years. Said deed restriction shall expire only if the qualified unit owner has occupied the unit for a minimum of five years prior to the expiration of the 20 year term. If the a qualified owner purchases said Workforce unit with less than five years remaining on the noted Workforce deed restriction, then the deed restriction shall be automatically extended until such time that no less than five continuous years of occupancy has occurred. At the end of this period, the deed restriction shall sunset. (For example if a qualified buyer should purchase a Workforce Housing unit at year 17 of the 20 year restrictive convenient period; the restrictive covenant shall be extended by 2 years.)

~~3. Deed restrictions, restrictive covenants, or contractual arrangements related to Dwelling Units established under this Article must be documented on all plans filed with the New London Planning Board and the Registry of Deeds and in all deeds to individual units.~~

4. Each Workforce Housing lot or dwelling unit shall remain affordable, as defined in RSA 674:58-61, for a periods not less than prescribed with this Ordinance. This section shall be administered by the Planning Board.

A. For-Sale Workforce Housing:

1. No Certificate of Occupancy shall be issued for a Workforce Housing unit without written confirmation of the income eligibility of the buyer and the selling price of the Workforce Housing unit. An executed purchase and sale agreement shall be used to document selling price. Income eligibility of the buyer shall be certified by a qualified third-party Administrator with expertise in determining the eligibility of the prospective owners to purchase Workforce Housing, and provided to the Town in the form of an affidavit of compliance prior to closing on the unit

2. There shall be a limitation on the resale price of a Workforce Housing unit consistent with RSA 674:58 – 61 and in every transfer of a unit’s ownership. A restriction of resale to an income-eligible buyer is required by means of legally enforceable deed restrictions, restrictive covenants, contractual arrangements established to meet these continued Workforce Housing requirements, or other suitable methods specified in a legally enforceable document, applicable to the development and to each Workforce dwelling unit, found by the Planning Board to be appropriate and effective for ensuring such affordability, and filed in the Merrimack County Registry of Deeds. For each sale or re-sale of a Workforce unit, the deed shall reflect submission of an affidavit of compliance to the Town certifying income eligibility and qualifying selling price.

3. The documents specifying such legally enforceable methods shall provide that the Town of New London has legal rights on its own volition, or through its duly designated agent, to monitor and ensure the continuing validity of such covenant or document and to renew or cause renewal of such covenant or document for the purpose of extending for as many times as necessary the continuing affordability of Workforce Housing units as originally approved by the Planning Board.

B. Rental Workforce Housing:

1. The property owner, successor, or assign, shall be responsible for the continued affordability of Rental Workforce Dwelling Units consistent with RSA 674:58-61 and aforementioned covenants and documents, as certified by a qualified third-party entity with expertise in determining the eligibility of the prospective renters. Annual reports for the prior calendar year shall be submitted to the Board of Selectmen or their designee by April 30th of the following year. These reports shall contain all pertinent information relative to determination of gross rents and respective income qualification of tenants in accordance with the RSA's.

2. For renter occupied Workforce Housing units, appropriate deed restrictions shall be in place to ensure that all future renters meet Workforce Housing income criteria for at least 30 years. Said deed restriction shall expire only if the property owner has owned the property for a minimum of five years prior to the expiration of the 30 year term. If the owner of the Workforce Housing rental property purchases said Workforce Housing rental property with less than five years remaining on the noted Workforce deed restriction, then the deed restriction shall be automatically extended until such time that no less than five continuous years of ownership has occurred. At the end of this period, the deed restriction shall sunset. (For example if a purchaser of a Workforce Housing rental property should purchase Workforce Housing rental property at year 27 of the 30 year restrictive convenient period; the restrictive covenant shall be extended by 2 years.)

3. Annual rent increases for Workforce Housing units shall not exceed any increase in Area Median Income as reported by the US Department of Housing and Urban Development

~~I. **Documentation of Eligibility for Workforce Housing:** To ensure that only eligible households purchase/rent the designated Workforce Housing, the purchaser/renter of a Workforce Housing unit must submit copies of their last three years' federal income tax returns and written certification verifying their annual household income level does not exceed the maximum level as established by the applicable definitions in ARTICLE III of the terms used in this Article. Prior to the transfer of title, the tax returns and written certification of household income must be submitted to the Administrator and the developer of the housing units, or the developer's agent. The Administrator shall determine whether the purchaser/renter qualifies for Workforce Housing.~~

J.I. **Conditional Use Permit Application:** A complete application for a Conditional Use Permit includes the materials listed below *in addition to an application for a Site Plan Review and/or a Subdivision*. An application for a Conditional Use Permit can be processed concurrently with the application for a Site Plan Review and/or a Subdivision, as required for the specific project.

1. An application form.
2. The applicant shall file a written statement indicating the applicant's intent to develop land that is intended to qualify as Workforce Housing under RSA 674:58-61.
3. List and mailing address of the Abutters, the applicant and any easement holders on the property in question.
4. Fees for notifying Abutters, the applicant and any easement holders.

5. An application under this ~~a~~Article must include, but is not limited to the following data to ensure project affordability:
 - a. Calculation of the number of units provided under this Article and how it relates to its provisions.
 - ~~b. A project cost estimate including, but not limited to all costs for land; costs for constructing subdivision improvements including roads, utilities and drainage; financing; profit; sales & marketing; insurance; labor; Building materials; and other cost factors. A gross total project cost and gross cost per housing unit shall be identified.~~
 - b. A total project cost estimate including, but not limited to all costs for land; costs for constructing site improvements including roads, utilities and drainage; financing; sales & marketing; insurance; labor; Building materials; and other cost factors.
 - c. Description of each unit's size and; type, ~~estimated cost and other relevant data.~~
 - d. ~~Documentation of household eligibility as required in Section J.6 of this Article.~~
 - e. All agreements established as part of Section H Assurance of Continued Affordability of this Article.
 - ~~f. List of required variances, Conditional Use Permits, and Special Exceptions including justification of their necessity and effectiveness in contributing to affordability.~~
 - ~~g. Cost savings associated with any written waiver request to the application submittal requirements or the standards outlined in the Site Plan Review Regulations or the Subdivision Regulations.~~
6. Written requests for waivers from any of the application submittal requirements or standards outlined in the Site Plan Review Regulations or the Subdivision Regulations.

K.J. **Conditional Use Permit Criteria:** The applicant needs to demonstrate to the Planning Board that the application for Workforce Housing meets the following criteria:

- ~~1. The Planning Board must determine that the type and density of proposed Workforce Housing units is compatible with or provides a compatible transition to the Use and density of any neighboring residential areas and that the project will be designed in a manner that is harmonious with neighboring Developments, natural surroundings, and housing context (the housing type, density and land Use in the surrounding area).~~

The subject site is reasonably suited for the Workforce Housing use, and the site design represents to the extent practicable, preservation of natural resources, open space, and does not create an incompatible environment to adjoining land uses.

- Any Workforce Housing projects with Multi-Family Housing shall ~~have direct access to a paved Street.~~
- a. ~~Have a landscaped buffer one hundred (100) feet in width around the perimeter of the project;~~
 - b. ~~Have direct access to a paved Street; and~~
 - c. ~~Be served by public water and sewer service.~~
1. ~~The housing proposed shall qualify as Workforce Housing as defined in ARTICLE III Definitions.~~
 2. ~~The Applicant shall demonstrate that the proposed use shall meet reasonable standards or conditions of approval related to environmental protection, water supply, sanitary disposal, traffic safety, and fire and life safety protection.~~
 3. ~~Adequate provisions shall be established to ensure the Workforce Housing units remain affordable consistent with RSA 674:58-61.~~
 4. ~~All rental Workforce Housing units must be completed and made available for rent at the same time as the market-rate rental units.~~
 5. ~~Although not mandatory, dependent upon site conditions and project layout, the applicant is encouraged to evenly distribute Workforce Housing units throughout the proposed development.~~
 6. ~~At a minimum, at least 25% of proposed rental units (total project density) shall be set aside for Workforce Housing qualifying occupants and 30% of owner occupied units (total project density) shall be set aside for Workforce Housing qualifying occupants. For owner occupied single family and duplex developments, 30% of the base density units (before accounting for density bonus) shall be set aside as Workforce Housing units.~~
 7. ~~At least 51% of the Workforce Housing units shall be two bedroom as required by RSA 674:58,IV.~~
 8. ~~In determining the minimum Lot size in areas served by on-site water and sewer systems or public water, the minimum Lot size shall comply with the New Hampshire Department of Environmental Services minimum Lot sizing based on soil type and slope.~~

L. **Conditional Use Permit Procedure**

1. Any person who applies to the Planning Board for approval of a Development that is intended to qualify as Workforce Housing under this subdivision shall file a written statement of such intent as part of the application. See Section J.2. The failure to file such a statement shall constitute a waiver of the applicant's rights under RSA 674:61, but shall not preclude an appeal under other applicable laws. In any appeal where the applicant has failed to file the statement required by this paragraph, the applicant shall not be entitled to a judgment on appeal that allows construction of the proposed Development, or otherwise permits the proposed Workforce Housing Development to proceed despite its nonconformance with the Town's ordinances or regulations.

2. If the Planning Board approves an application to develop Workforce Housing subject to conditions or restrictions, it shall notify the applicant in writing of such conditions and restrictions and give the applicant an opportunity to establish the cost of complying with the conditions and restrictions and the effect of compliance on the economic viability of the proposed Development. The Planning Board's notice to the applicant of the conditions and restrictions shall constitute a conditional approval solely for the purpose of complying with the requirements of RSA 676:4, I(c)(1). It shall not constitute a final decision for any other purpose, including the commencement of any applicable appeal period.
3. Upon receiving notice of conditions and restrictions under paragraph 2 and in the event the applicant objects to any conditions and restrictions, they shall, submit evidence to establish the cost of complying with the conditions and restrictions and the effect on economic viability within the period directed by the Planning Board, which shall not be less than 30 days.
 - a. Upon receipt of such evidence from the applicant, the Planning Board shall allow the applicant to review the evidence at the Planning Board's next regular business meeting for which ten days of public notice can be provided. Ten (10) days notice by certified mail shall be given to Abutters, the applicant and the holders of any easements on the subject property. The general public shall be given ten (10) days notice by posting the public notice in two public places. At such meeting, the Planning Board may also receive and consider evidence from other sources.
 - b. The Planning Board may affirm, alter, or rescind any or all of the conditions or restrictions of approval after such meeting. In order to provide for the reasonable and realistic opportunity for the creation of Workforce Housing units, ~~the~~ Planning Board is authorized to consider relaxing or waiving one or more of the standards in the Town's land use ordinances and regulations. This flexibility is authorized in order to allow for the construction of Workforce Housing units ~~make the housing units in the project Affordable~~ as provided in Paragraph G, Incentives for Workforce Housing.
 - c. Subject to subparagraph (d), the Planning Board shall not issue its final decision on the application before such meeting, unless the applicant fails to submit the required evidence within the period designated by the Planning Board, in which case it may issue its final decision any time after the expiration of the period.
 - d. If an applicant notifies the Planning Board in writing at any time that the applicant accepts the conditions and restrictions of approval, the Planning Board may issue its final decision without further action under this paragraph.

M. Appeals Procedure (as specified in RSA 674:58-61, as amended)

1. Any person who has filed the written notice required by RSA 674:60, and whose application to develop Workforce Housing is denied or is approved with conditions or restrictions which have a substantial adverse effect on the viability of the proposed Workforce Housing Development may appeal the Town's action ~~to the superior court~~ under RSA 677:15 (obtain opinion from Town Council on this provision now that there is a Housing Appeals Board) seeking permission to develop the proposed Workforce Housing. The petition to the court shall set forth how the denial is due to

the Town's failure to comply with the Workforce Housing requirements of RSA 674:59 or how the conditions or restrictions of approval otherwise violate such requirements.

2. A hearing on the merits of the appeal shall be held within 6 months of the date on which the action was filed unless counsel for the parties agree to a later date, or the court so orders for good cause. If the court determines that it will be unable to meet this requirement, at the request of either party it shall promptly appoint a referee to hear the appeal within 6 months. Referees shall be impartial, and shall be chosen on the basis of qualifications and experience in planning and zoning law.
3. In the event the decision of the court or referee grants the petitioner a judgment that allows construction of the proposed Development or otherwise orders that the proposed Development may proceed despite its nonconformance with local regulations, conditions, or restrictions, the court or referee shall direct the parties to negotiate in good faith over assurances that the project will be maintained for the long term as Workforce Housing. The court or referee shall retain jurisdiction and upon motion of either party affirming that negotiations are deadlocked, the court or referee shall hold a further hearing on the appropriate term and form of Use restrictions to be applied to the project.

N. ~~Limitation on Improvements: Repairs, remodeling, additions, expansions, restorations, reconstructions, Alterations, and the addition of Accessory Buildings are allowed provided:~~

- ~~1. The Workforce Housing unit continues to be Affordable. The resale price of units shall consider cost recovery for basic necessary capital improvements such as for the heating system, the water system, the sewer or septic system and the roof. The depreciated cost for any of these capital improvements shall be added onto the future value of the Affordable unit which is based on the latest median household income data for Merrimack County based on Family size. For Workforce Housing rental apartment Buildings, a portion of the rents shall be allocated to a capital improvement fund for basic necessary capital improvements identified above. The details of these capital programs will be spelled out in the regulations implementing the terms of this ordinance as provided in Section O.6, below; and~~
- ~~2. The improvements comply with the required setbacks.~~

O. Administration, Professional Reviews, Compliance and Monitoring

1. Applications for a Conditional Use Permit under this Article shall be made to the Planning Board and shall be part of the submission of an application and notice for Site Plan Review and/or Subdivision approvals as needed.

- ~~1. The Planning Board may require the developer to pay the cost of a professional review of various parts or of the whole of the proposed Workforce Housing project upon such terms and conditions as the Planning Board deems to be appropriate. By way of example, the Planning Board may request professional reviews by a civil engineer, attorney, financial analyst, environmental consultant, soil scientist, wetland scientist, wildlife biologist, etc. The Planning Board shall select the professional(s). For each professional review required by the Planning Board on a particular~~

~~application, the Planning Board shall determine an amount to be placed in an escrow account with the Town for the estimated cost of the scope of services to be provided by the consultant chosen by the Planning Board. The developer must deposit this amount with the Town to establish this escrow account before the consultant will begin his/her review for the Planning Board and before the application will proceed in the review process.~~

~~2. Workforce Housing projects approved under this Article shall be administered, monitored and enforced by the Administrator as provided in Section H. above.~~

4. No certificate of occupancy shall be issued for a Workforce Housing unit without written confirmation from the Administrator of the:

a. Income eligibility of the tenant or buyer of the Workforce Housing Affordable housing unit; and

b. Confirmation of the rent or price of the Workforce Housing Affordable housing unit as documented by an executed lease or purchase and sale agreement by the Administrator.

~~5. The Administrator shall be responsible for the ongoing responsibility of monitoring compliance with resale and rental restrictions on Affordable units.~~

~~6.5. The owner of a project containing Affordable units for rent shall prepare an annual report, due at the end of December each year certifying that the gross rents of Affordable units and the household income of tenants of Affordable units have been maintained in accordance this Article. Such reports shall be submitted to the Administrator. The annual report shall list the contract rent and occupant household incomes of all Affordable housing units for the calendar year.~~

7.6. The Planning Board has authority to adopt regulations implementing the terms of this ordinance.

P. **Effective Date**

~~1. This ARTICLE XXVI of the New London Zoning Ordinance will become effective on July 1, 2009 unless the required effective date of RSA 674:58-61 is postponed by the New Hampshire Legislature as provided in Section P. 2 of this Article.~~

2.1. ~~If the New Hampshire Legislature enacts legislation postponing the required effective date of RSA 674:58-61, then this ARTICLE XXVI of the New London Zoning Ordinance shall not become effective until the required effective date provided in such legislative amendment.~~