

6.31. RESIDENTIAL INCLUSIONARY DEVELOPMENT

1.1. Purpose.

The purpose of this bylaw is to promote the general public welfare, including but not limited to ensuring an economically integrated and diverse community by maintaining and increasing the supply of affordable and accessible housing in the Town of Stockbridge. This purpose includes:

1. Ensuring that new development generates affordable housing as defined in Section 1.2.
2. Ensuring that affordable housing created under this section remains affordable over the long term, with the majority of such housing remaining affordable in perpetuity, except as may be otherwise required under state or deferral programs.
3. Maintaining a full mix of housing types while providing affordable housing opportunities in Stockbridge.
4. To the extent allowed by law, ensuring that preference for new affordable housing is given to eligible persons who live or work in Stockbridge.

1.2. Definitions

The following terms shall have the following definitions for the purposes of this Section 6.31:

1. "Affordable Housing" shall mean a unit that is affordable to and occupied by a low- or moderate-income household and meets the requirements for inclusion in the Chapter 40B Subsidized Housing Inventory.
2. "Maximum Resale Price" shall mean the sum of:
 - a. The initial sale price divided by the Area Median Income (AMI) for a four (4)-person household, then multiplied by the AMI for a four (4)-person household at the time that the Affordable Housing Unit is offered for resale; plus
 - b. 2% of the initial sale price for marketing and brokers' fees; plus
 - c. The original cost of capital improvements as evidenced by receipts with proof of payment submitted to the SBOS, depreciated by 10% per year from date of expenditure.
 - d. In no event shall the Maximum Resale Price exceed the purchase price for which a Qualified Purchaser earning 80% of the AMI for a household the size of the Qualified Purchaser's household could obtain mortgage financing using the same methodology then used by Department of Housing and Community Development's (DHCD) for its Local Initiative Program (LIP) or similar program.
3. "Qualified Purchaser" shall mean a purchaser who shall be required to submit copies of the last three years federal income tax returns and certify, in writing to the SBOS prior to transfer of title, that the family's annual income level does not exceed the maximum level as established by the Commonwealth's Department of Housing and Community Development, and as may be revised from time to time.

OPTION FOR 2. “Qualified Purchaser” shall mean an individual or household earning no more than 80% of Area Median Income as determined by Department of Housing and Urban Development (HUD) income limits which includes Stockbridge. To be considered a Qualified Purchaser, the individual or household must intend to occupy and thereafter must occupy the Unit as their principal residence.

4. “Unit” shall mean a residential housing unit.

1.3. Applicability

The provisions of this Section 6.31 shall apply to all new or substantial renovation of residential development in Stockbridge where the number of units exceeds 9.

1.4. Special Permit Authority

The development of any project under Section 6.31.1.3 shall require the grant of an Inclusionary Development Special Permit from the Stockbridge Board of Selectmen (SBOS). The Special Permit shall conform to the requirements of this bylaw and to Massachusetts General Laws Chapter 40A, and to regulations which the Board of Selectmen may adopt for carrying out its requirements hereunder.

1.5. Minimum Requirements for Inclusionary Development

Development subject to this Section 6.31 shall provide at a minimum, at the applicant’s choice, one of the following:

1. a. Include onsite affordable housing units at the following minimum rates:

Total Development Unit Count	Required Affordable Unit Provision
10 – 19 units	Minimum one (1) dwelling unit
20 – 29 units	Minimum two (2) dwelling units
30 units and up	Minimum 10% of total unit count*

* For developments of 30 or more units, calculation of the number of affordable units shall, if the required percent of the total results is a fraction, be rounded up to the next whole number where the fractional portion is equal to 0.5 or greater and shall be rounded down to the next whole number where the fractional portion is less than 0.5.

Affordable Housing Units provided under this subsection shall be dispersed throughout the buildings in the development and must be indistinguishable with regard to finishes, amenities, total square footage, room size, and construction from the development’s market rate units with the same number of bedrooms.

- b. Construct or rehabilitate one or more Affordable Housing Units off site that equal or exceed in construction cost the average construction cost of the development’s housing units. The offsite Affordable Housing Units provided under this subsection

must be comparable in finishes, amenities, total square footage, room size, and construction to that of the housing in the rest of the development.

c. A cash payment equivalent to the value of structures, land and appropriate on-site and off-site improvements for each low- or moderate-income dwelling unit that would otherwise have been constructed, be made to the Town of Stockbridge Affordable Housing Trust Fund. The cash payment shall be equal to the total cost of construction. The time and the amount of payment shall be determined through the Special Permit process.

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A cash payment equivalent to 5 times 80% of the AMI as determined by HUD income limits which includes Stockbridge for every ten (10) new units of market rate Units.

The applicant for development subject to this bylaw may pay fees in lieu of the construction or provision of affordable units to the Town. The fees shall be paid in increments prior to the issuance of a building permit for each and every unit, or otherwise at the sole discretion of the SBOS, based on the sales price of an affordable unit as calculated each year when income limits are published by HUD. The sales price of an affordable unit shall be based on the DHCD LIP price calculator (using median income of a family of four at 80% of the median, as reported by HUD).

As a condition for granting of a Special Permit, all Affordable Housing Units shall be subject to an affordable housing restriction perpetuated in a deed in the form acceptable to the SBOS, enforceable in perpetuity under the applicable provisions of G.L. c. 184 and including the right of first refusal described in Section 1.10.1.b, *infra*. The affordable restriction shall be approved as to form by legal counsel to the SBOS. The Special Permit must be recorded at the Berkshire Middle Registry of Deeds and a copy noting the Book and Page of recording filed with the SBOS and Building Commissioner.

1.6. Types of Building

The development subject to this Section 6.31 may consist of any combination of single-family, two-family, multifamily residential structures or other allowable uses under the applicable zoning district of the Town of Stockbridge Zoning Bylaw.

1.7. Decision

The SBOS may approve with conditions or deny an application for an Inclusionary Development Special Permit after determining whether the Inclusionary Development promotes the purposes of this Section 6.31 and is otherwise consistent with the purposes of the Zoning Bylaw.

1.8. Relation to Other Requirements

The provisions of this Section shall be in addition to any other requirements of the Subdivision Control Law G.L. c. 41 or any other provisions of the Town of Stockbridge Zoning Bylaw. To the extent that a conflict exists between this bylaw and others, the more restrictive bylaw or provisions therein shall apply.

1.9. Maximum Incomes and Selling Prices: Initial Sale

1. The developer must ensure that only Qualified Purchasers purchase an Affordable Housing Unit.
2. The Affordable Housing Units shall initially be sold to a Qualified Purchaser for no more than the maximum price as established under affordability guidelines by DHCD or a successor agency in effect at the time the Unit is built.
3. The SBOS may condition the Special Permit on a requirement that the Affordable Housing Unit be first offered for sale to a Qualified Purchaser who is a current resident of Stockbridge.

1.10. Reservation of Affordability; Restrictions on Resale or Rent

1. Each Affordable Housing Unit created in accordance with this Section 6.31 shall be subject to resale restrictions through the use of a deed restriction or deed rider. The purpose of these limitations is to preserve the long-term affordability of the unit and to ensure its continued availability for affordable income households.
 - a. Resale price. Every sale after the initial sale must be to a Qualified Purchaser for a price that does not exceed 120% of the owner's purchase price, but if the Unit is sold when owned by the current owner for less than five years, the sale offering price may not exceed 110% of the owner's purchase price.

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No sale after the initial sale shall be valid unless the aggregate value of all consideration and payments of every kind given or paid by the Qualified Purchaser is equal to or less than the Maximum Resale Price.

- b. Right of first refusal to purchase. The purchaser of an Affordable Housing Unit developed as a result of this bylaw shall agree to execute a deed rider prepared by the town, consistent with model riders prepared by Department of Housing and Community Development, granting, among other things, Stockbridge's right of first

refusal to purchase the unit in the event that a subsequent qualified purchaser cannot be located within 365 days of the unit being offered for sale. The owner must notify the Board of Selectmen in writing when the 365 days have passed without sale. By vote of the Board of Selectmen, Stockbridge may assign the right of first refusal to purchase to the Stockbridge Affordable Housing Trust, or any other governmental or non-profit organization committed to preserving and maintaining affordable housing. The right is exercisable by Stockbridge or its assignee within 150 days of offer.

- c. The SBOS shall require, as a condition for Special Permit under this bylaw, that the applicant comply with the mandatory set-asides and accompanying restrictions on affordability, including execution of the deed rider.
- d. In the event that a Qualified Purchaser cannot be found and the right of first refusal is not exercised, the Affordable Housing Unit may be sold at market rate and the Town shall take any and all steps necessary to extinguish the affordable restriction described in Section 1.5.
- e. Units subject to an affordable restriction under this bylaw cannot be rented.

1.11. Severability

If any provision of this bylaw is held invalid by a court of competent jurisdiction, the remainder of the bylaw shall not be affected thereby. The invalidity of any section or section or parts of any section of this bylaw shall not affect the validity of the remainder of the town's zoning bylaw.