

**Town of Dunbarton
Workforce Housing Ordinance**

- I. Purpose.** The purposes of this Article are as follows:
- A. To encourage and provide for the development of affordable workforce housing;
 - B. To ensure the continued availability of a diverse supply of home ownership and rental opportunities for low to moderate income households;
 - C. To meet the goals related to affordable housing provisions set forth in the town’s Master Plan; and
 - D. To comply with the requirements of SB 342, An Act establishing a mechanism for expediting relief from municipal actions which deny, impede, or delay qualified proposals for workforce housing (RSA674:58-61).

In the course of implementing this Article, the Town of Dunbarton has considered the region’s affordable housing needs as described in the Central New Hampshire Regional Planning Commission’s Housing Needs Assessment and relevant regional fair share analysis.

- II. Authority.** This innovative land use control Article is adopted under the authority of RSA 674:21, and is intended as an “Inclusionary Zoning” provision as defined in RSA 674:21(I)(k) and 674:21(IV)(a), as well as RSA 672:1, III-e, effective July 2009 which states:

“All citizens of the state benefit from a balanced supply of housing which is affordable to persons and families of low and moderate income. Establishment of housing which is decent, safe, sanitary and affordable to low and moderate income persons and families is in the best interests of each community and the state of New Hampshire, and serves a vital public need. Opportunity for development of such housing shall not be prohibited or unreasonably discouraged by use of municipal planning and zoning powers or by unreasonable interpretation of such powers.”

III. Applicability

- A. The provisions of this ordinance will be in effect only when Dunbarton does not meet its regional “fair share” of workforce housing at the present time and for a projection of the next 24 months. During those times when Dunbarton does meet its regional “fair share” of workforce housing the provisions of this ordinance will not apply. A Housing Commission, or the Planning Board (or its designee) in the absence of a Housing Commission,

will monitor and report regional housing trends to determine if Dunbarton meets its “fair share” of workforce housing for the region. The Central New Hampshire Regional Planning Commission Regional Housing Needs Assessment and any relevant methodology or documents will be consulted when determining if Dunbarton meets its “fair share” of the region’s workforce housing needs.

No more than one application for workforce housing shall be made for a parcel of land in existence as single lot of record as of March 8, 2011. For the purpose of this paragraph a “lot of record” means a parcel of land that was separately described and delineated by deed or on a locally approved subdivision plan recorded at the Merrimack County Registry of Deeds on or before March 8, 2011.

- B. Development in accordance with the provisions of this Article shall comply with all Zoning Ordinance, Site Plan Review Regulations, and/or Subdivision Regulations, other than those standards relaxed under the provisions of this Article.
- C. Development in accordance with the provisions of this Article is permitted as a conditional use in any part of town that permits residential uses.
- D. Permitted Uses: Single family, duplexes, and accessory apartments are permitted within an application under this Article anywhere in town where residential uses are permitted. Multi-family (3 units or more, no more than 5 units per single structure), manufactured housing parks or a mix of housing types (“types” meaning construction, not income) within the same development are permitted within an application under this Article provided that such uses are permitted in the underlying zoning district(s). Please see Dunbarton Zoning Ordinance for the locations in town where multi-family housing, manufactured housing parks or a mix of housing types are permitted. Currently (as of March, 2011) multi-family units are permitted only along Routes 13 and 77. Multi-family workforce housing units shall be limited to the areas as stipulated by the Dunbarton Zoning Ordinance, now or as may be amended.
- E. Appeal: Any person aggrieved by a Planning Board decision that constitutes a denial of a Conditional Use Permit due to noncompliance with one or more of the provisions of this ordinance may appeal that decision to the Superior Court, as provided for in RSA 677:15. A Planning Board decision on the issuance of a Conditional Use Permit cannot be appealed to the Zoning Board of Adjustment (RSA 676:5 III).
- F. Applicability of Remainder of Article if Portions Overturned: If any clauses or provisions of the Article are found to be illegal, void or unenforceable, the remainder of the Article shall not be affected thereby.

IV. **Procedural Requirements/ Applicant**

- A. Notice of Intent to Build Workforce Housing: Any person who applies to the Planning Board for approval of a development that is intended to qualify as workforce housing under this Article shall file a written statement of such intent as part of the application for a Workforce Housing (WFH) Conditional Use Permit. In addition, a Site Plan Review and/or Subdivision Application must be filed as required by a specific project. A WFH Conditional Use Permit can be processed concurrently with a Site Plan Review Application and or Subdivision Application.

- B. In any appeal where the applicant has failed to file the statement required by Section IV.A above, the applicant shall not be entitled to a judgment by a court on appeal that allows construction of the proposed development, or otherwise permits the proposed workforce housing development to proceed despite its nonconformance with the municipality's ordinances or regulations.

- C. Conditional Use Permit Application (CUP): 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, when applicable*. 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.

All of the following must be met, in the opinion of the Planning Board, in order for a Conditional Use Permit to be granted for the construction of workforce housing under the provisions of this Article:

1. That the property in question is in conformance with the dimensional requirements of the zone as stipulated by this Article.

2. That the proposal meets the purposes of this Article under which the application is proposed.

3. That there will be no significant adverse impacts resulting from the proposed use upon the public health, safety, and general welfare of the neighborhood and the Town of Dunbarton.

4. That the proposed use will not be more objectionable to nearby properties by reason of noise, fumes, vibration, or inappropriate lighting than any use of the property permitted under the existing zoning district ordinances.

5. That the proposed use will not adversely affect the ground water resources of the Town of Dunbarton.

6. That the proposed use meets all applicable provisions of this Article.

Items required for a CUP include:

1. An application form as created by the Planning Board for such purposes.
2. A plot plan depicting the proposal.
3. 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.
4. A written statement indicating whether the applicant prefers that the CUP and any required site plan or subdivision is processed by the Planning Board concurrently or sequentially.
5. List and mailing address of the abutters, the applicant and any easement holders on the property in question.
6. Fees for notifying abutters, the applicant and any easement holders.
7. All applicants under this Article must submit the following data to ensure project affordability:
 - a. Calculation of the number of workforce housing and market rate housing units provided under this Article and how it relates to its provisions, to include construction phasing, the number and timing of building permits required, and the number of additional units requested as per Section VII Density Bonus.
 - b. Description of each workforce housing unit's size, type, estimated sales price and other relevant data.
 - c. Builder's Agreement to comply with the Section X entitled Affordability of this Article.
 - d. All agreements established as part of section X.B Assurance of Continued Affordability of this Article.
 - e. List of required variances, Conditional Use Permits, and special exceptions including justification of their necessity and effectiveness in contributing to affordability.
 - f. 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. Such savings shall be depicted in relation to not granting said waiver request(s).
 - g. Two detailed pro formas depicting the costs of construction for the proposed development. One pro forma must show the itemized

costs for the affordable units and the other the same for market-rate units.

8. Written requests for waivers from any of the application submittal requirements or standards outlined in the Site Plan Review Regulations or the Subdivision Regulations.

9. Any other items that may be requested by the Planning Board.

V. Procedural Requirements/Planning Board

A. Approval Process: The Planning Board shall consider the Applicant's Conditional use Permit as stipulated in Section IV.C of this Article as well as the relevant Site or Subdivision Plan Application. The consideration of these two applications may be done concurrently at the request of the Applicant or sequentially. Such a request shall be in writing and part of the Conditional Use Permit application.

B. Notice of Conditions: If the Planning Board approves an application (to include any Site Plan and/or Subdivision applications, if required, in addition to the Conditional Use Permit) 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 board's notice to the applicant of the conditions and restrictions shall constitute a conditional approval solely for the purposes of complying with the requirements of RSA 676:4 I(i). It shall not constitute a final decision for any other purpose, including the commencement of any applicable appeal period.

C. Submission of evidence to establish cost of complying with conditions: Upon receiving notice of conditions and restrictions as described above, the applicant must submit evidence (i.e. updated pro forma per Section IV.C.7.g above per initial CUP submittal) to establish the cost of complying with the conditions and restrictions and the effect on economic viability within the period directed by the board, which shall not be less than 30 days. Upon receipt of such evidence, the Board shall allow the applicant to review the evidence at the board's next meeting for which 10 days notice can be given, and shall give written notice of the meeting to the applicant at least 10 days in advance. At such meeting, the board may also receive and consider evidence from other sources including paid professional expertise whose cost shall be borne by the applicant. Such relief is not to be confused with Section D.a in the following paragraph.

D. Cost Relief: The board may affirm, alter, or rescind any or all of the conditions or restrictions of approval at such a meeting. Upon reasonable showing demonstrated by the applicant (as per Section V.C. above) that after considering all cost factors, affordable housing cannot be provided

under the terms of the zoning ordinance, the Planning Board is authorized to consider relaxing or waiving, due to prohibitive costs that provide an impediment to affordability:

a) One or more provisions of the Town's Site Plan Regulations or Subdivision Regulations;

b) Zoning Ordinance interior road frontage requirements for individual lots; and,

c) The Planning Board shall also have the authority to reduce the vegetative buffer requirements from the original side property lines as outlined in Section IX.B of this Article if proven to be cost-prohibitive by the applicant.

E. Final decision: The 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 board, in which case it may issue its final decision any time after the expiration of the period. If the applicant notifies the board in writing at any time that the applicant accepts the conditions and restrictions of the approval, the board may issue its final decision without further action under this paragraph.

F. Appeals: Any person who has filed the written notice and whose application 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 municipal action to the Superior Court under RSA 677:4 or RSA 677:15 seeking permission to develop the proposed workforce housing.

VI. **Definitions**

A. Area Median Income (AMI): Means the median income of the greater region, either the HUD Metropolitan or Non-Metropolitan Fair Market Rent Area to which the community belongs, as is established and updated annually by the United States Department of Housing and Urban Development. Income considers both wage income and assets.

B. Affordable: Affordable means housing with combined rental and utility costs or combined mortgage loan debt services, property taxes, and required insurance that does not exceed 30 percent of the household's gross annual income.

C. Community Water System: A small community water system serving 10 or more households in accordance with ENV-WS 372.

D. Market-rate Housing: Means any units within a development, whether the unit is to be owner or renter occupied, that is intended to be available for sale or occupancy at the prevailing market value for the area similar to the comparable real estate transactions.

- E. Multi-family housing: Multi-family housing for the purposes of workforce housing, means a building or structure containing 3 units or more but no more than 5 units per single structure, each designed for occupancy by an individual household.
- F. Reasonable and realistic opportunities for the development of workforce housing: Means Opportunities to develop economically viable workforce housing within the framework of a municipality's ordinances and regulations adopted consistent with RSA 672:1, III-e. The collective impact of all such ordinances and regulations on a proposal for the development of workforce housing shall be considered in determining whether opportunities for the development of workforce housing are reasonable and realistic.
- G. Unit: Means a single unit of housing, rental or owner-occupied, for occupation by a single household.
- H. Vegetative Buffer: Shall mean an area along property lines containing trees, shrubs and other natural vegetation that reasonably obstructs development from view of abutters.
- I. Workforce housing/owner occupied: Means housing which is intended for sale and which is affordable to a household with an income of no more than 100% of the median income for a 4-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development. Housing developments that exclude minor children from more than 20% of the units, or in which more than 50% of the dwelling units have fewer than two bedrooms, shall not constitute workforce housing for the purposes of this subdivision.
- J. Workforce housing/renter occupied: Means rental housing which is affordable to a household with an income of no more than 60% of the median income for a 3-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development. Housing developments that exclude minor children from more than 20% of the units, or in which more than 50% of the dwelling units have fewer than two bedrooms, shall not constitute workforce housing for the purposes of this subdivision.

VII. Density Bonus

Density for a proposed workforce housing project will be controlled by Table 1 below or, where stipulated, density will be determined by the underlining zoning density. Deductions for development constraints such as wetlands and steep slopes shall not be necessary provided there is adequate land for a well and proper septic loading. Every

proposal for workforce housing shall provide adequate drinking water and waste provisions (town sewer and water or well and septic where no such utilities exist). Every proposal for workforce housing will guarantee that at least 50% of the total units will be permanently reserved as workforce housing. A proposal for a single duplex on a single lot of record may not require site plan or subdivision approval but the remaining provisions of this Article shall apply. Table 1 indicates density incentives per type of use. Permitted uses and their locations are stipulated in sections III.D within this Article. All community water systems are subject to approval per RSA 485.8, as amended and ENV-Ws 372, as amended.

TABLE I

		Number of Units Permitted	
Subject Parcel Acreage		Detached Single Family*	Attached Multi-Family
Base Acreage	Under 8.5 acres	Underlying Zoning Density Shall Apply	Underlying Zoning Density Shall Apply
	8.5 Acres or Greater, Individual Water & Septic	1 unit per every 2 acres, 20 unit max	1 unit per every 1.5 acres, 20 unit max
	15 Acres or Greater, COMMUNITY Water & Septic	1 unit per every 1.5 acre, 20 unit max	1 unit per every 1.5 acres, 20 unit max

**Unit means a single unit of housing, rental or owner-occupied, for occupation by a single household.*

VIII. Frontage Relief Provisions

When appropriate to contribute to the affordability of a proposal, the Planning Board shall have the authority and discretion to determine and adjust proposed road frontage requirements for interior lots to be created within a cluster-type workforce housing development proposal on a case-by-case basis. Such a reduction in frontage shall only be granted by the Board when reduced frontage will directly contribute to a decrease in road length in a cluster-type development. This provision is not to be confused with, nor does it apply to any frontage requirements that may be required elsewhere pertaining to subject parcels before development of a workforce housing project; i.e. lot frontage requirements for lots before subdivision and/or development.

IX. General Requirements of Workforce Housing Units

A. Architectural compatibility of all units: The dwellings qualifying as workforce housing shall be compatible in architectural style and exterior appearance with the market-rate dwellings of similar type, (i.e. affordable and market-rate multifamily units, affordable and market-rate single family homes) in the proposed development. The workforce housing units should be interspersed throughout the overall development and not concentrated in a separate area of the development. Workforce housing units shall be mixed with, and not clustered together or segregated in any way from the market-rate units.

- B. Buffers and Setbacks, Original Subject Parcel: Developments on lots larger than 8.5 acres will be set back 200 feet from the original property lines of the subject parcel and shall be adequately screened with vegetative buffers.
- C. Setbacks for Individual Housing Lots Within Development: Individual housing lots shall maintain 50-foot setbacks at all property lines.
- D. Phasing: The phasing plan for the development shall provide for the development of workforce housing units concurrently with the market-rate units.

X. Affordability

- A. Certification of Income Levels: To ensure that only eligible households purchase/rent the designated affordable housing units, the purchaser/renter of a workforce housing unit must satisfactorily demonstrate income eligibility to all parties administering this ordinance.
- B. Assurance of Continued Affordability: Affordable units offered for sale and approved by the planning board as part of a subdivision or site plan and subject to RSA 674:58-61 shall require a restrictive covenant and lien granted to the Town of Dunbarton. The initial value of the lien shall be equal to the difference between the fair market value of the unit and its reduced affordable sale price, which is indexed according to the qualifying income standards. The Town of Dunbarton lien is indexed over time at a rate equal to a consumer price index identified in the restrictive covenant and lien document. Future maximum resale limits shall be calculated as the fair market value minus the adjusted lien value and a transaction administrative fee. Subsequent sales prices are not limited based on income targets, but on the housing unit's fair market value, minus the adjusted lien value. The restrictive covenant and lien shall be in a form approved by the planning board. Workforce housing rental units (i) shall limit annual rent increases to the percentage increase in the area median income, except to the extent that further increases are made necessary by hardship or other unusual conditions; or (ii) shall be subject to affordability controls imposed by a state or federal governmental entity.
- C. Documentation of restrictions: Deed restrictions, restrictive covenants, or contractual arrangements related to dwelling units established under this Article must be documented on all plans filed with the town's Planning Board and with the Merrimack County Registry of Deeds.

XI. Administration, Compliance, and Monitoring

- A. This Article shall be administered by the Planning Board.

- B. Certificate of Occupancy: No certificate of occupancy shall be issued for a workforce housing unit without written confirmation of the income eligibility of the tenant or buyer of the workforce housing unit and the confirmation of the rent or price of the workforce housing unit as documented by an executed lease or purchase and sale agreement.
- C. Ongoing responsibility for monitoring part X.A and B: Certification of Income Levels and Compliance With Continued Affordability of the resale and rental of workforce housing units shall be the responsibility of the organization(s) designated by the Board of Selectmen or, in the absence of an outside monitoring organization, the Dunbarton Planning Board or its designee. This Article shall grant the Board of Selectmen the authority to enter into agreement with said outside monitoring organizations. All costs for administering this subsection shall be borne by the applicant/buyer/seller/owner, as appropriate depending upon the type of application, or other appropriate party other than the Town of Dunbarton.
- D. Annual Report: The owner of a project containing workforce housing units for rent shall prepare an annual report certifying that the gross rents of affordable units and the household income of tenants of workforce housing units have been maintained in accordance with this Article. Such reports shall be submitted to the monitoring agent indicated in XI.C above or their designee and shall list the contract rent and occupant household incomes of all workforce housing units for the calendar year.

XII. Relationship to other ordinances and regulations

No portion of this ordinance shall nullify the provisions of any other town ordinance provisions which relate to environmental protection, water supply, sanitary disposal, traffic safety, and fire and life safety protection.

XIII. Conflict

If any provisions of this ordinance are in conflict with the provisions of other ordinances, the more restrictive provisions shall apply, except for any provision dealing with affordability, in which the provisions of this ordinance shall apply.