

DRAFT**Article XIII. Inclusionary Housing Requirements****§ 300-73. Purpose.**

The purposes of this bylaw are:

- A. To increase the supply of housing in the Town of Salisbury that is permanently available to and affordable by low- and moderate-income households;
- B. To encourage greater diversity of housing accommodations to meet the needs of Salisbury residents, including certain local employees; and
- C. To develop and maintain a satisfactory proportion of the Town's housing stock as affordable housing units.

§ 300-74. Definitions.**AFFORDABLE HOUSING TRUST FUND (“FUND”)**

An account established and operated by the Town for the exclusive purpose of creating or preserving affordable housing units in the Town of Salisbury.

AFFORDABLE HOUSING

A dwelling unit that is affordable to and occupied by a low or moderate income household and meets the requirements for inclusion on the Massachusetts Department of Housing and Community Development (DHCD) Chapter 40B Subsidized Housing Inventory. Affordable units shall remain as affordable units in perpetuity or for the maximum period allowed by law. Such units shall have the same construction methods and physical characteristics as, and be intermingled with, other units in the development.¹

AFFORDABLE HOUSING RESTRICTION

A contract, mortgage agreement, deed restriction or other legal instrument, acceptable in form and substance to the Town, that effectively restricts occupancy of an affordable housing unit to a qualified purchaser or renter, and which provides for administration, monitoring, and enforcement of the restriction during the term of affordability. An affordable housing restriction shall run with the land in perpetuity or for the maximum period allowed by law, and be entered into and enforceable under the provisions of G.L. c. 184, §§ 31-33 or other equivalent state law.

¹ Removed obsolete references to the pre-2008 Chapter 40B regulations. Linking the definition to DHCD's requirements for SHI eligibility is all you need to say here, i.e., the detailed discussion of annual shelter cost and so forth is not necessary.

LOW OR MODERATE INCOME

Household income that does not exceed 80 percent of the area median family income, adjusted for household size, for the metropolitan or non-metropolitan area that includes the Town of Salisbury as determined by the United States Department of Housing and Urban Development (HUD).

QUALIFIED AFFORDABLE HOUSING PURCHASER OR TENANT

A Low- or Moderate-Income Household that purchases or rents and occupies an Affordable Housing unit as its principal residence.

§ 300-75. Applicability.

- A. The requirements of this Article XIII shall apply to any multifamily or mixed-use development or any residential development requiring a special permit from the Planning Board² or a finding or a variance from the Zoning Board of Appeals that results in a net increase of three or more dwelling units, whether by new construction or by the alteration, expansion, reconstruction, or change of existing residential or non-residential space, whether on one or more contiguous parcels.³
- B. Construction of a residential development shall not be segmented to avoid compliance with this section. Segmentation shall mean one or more divisions of land that cumulatively result in a net increase of six or more lots or dwelling units above the number existing 36 months earlier on any parcel or set of contiguous parcels held in common ownership on or after the effective date of this Article XIII.⁴
- C. Motel or hotel units shall not be considered as housing units under this bylaw. If requested by the Planning Board or the Zoning Board of Appeals, based on advice from the Assessor, the Building Inspector shall determine in writing the number of preexisting, legal housing units on a development site.

§ 300-76. Development requirements.

In any development subject to this Article XIII, at least 10 percent of the dwelling units shall be affordable housing. Fractions shall be rounded up to the next whole number.

§ 300-77. General provisions.

- A. Consultation with **Affordable Housing Trust**. Applicants are encouraged to consult with the **Affordable Housing Trust** early in the development process concerning the Town's affordable housing needs and the optimum manner in which the Town's needs and the developer's affordable housing requirements can be met by the proposed development consistently with any affordable housing planned production plan then in effect in the Town. The **Affordable Housing Trust**

² Conventional subdivisions under G.L. c.41, §§K-GG and so-called Approval Not Required Lots are excluded from Article XIII.

³ Another option for overhauling Article XIII is to say that any project with 6 or more units is subject to the bylaw, but only projects with 15 (or some other number) of units are required to provide affordable units within the development. This means that projects with 6-14 units would be able to pay a fee in lieu of units.

⁴ You need a standard that defines "segmentation."

~~Partnership Committee~~ may consult with and give advice to the Planning Board and the Zoning Board of Appeals during the development process and, as a part of the process, may submit written reports to the board reviewing any proposed development subject to the bylaw.

- A. Comparability. Unless otherwise approved by the Planning Board or the Zoning Board of Appeals, as applicable, all on-site affordable housing units shall be dispersed throughout the site and shall be indistinguishable from market-rate units except in interior finish, fixtures and appliances. For both on-site and off-site units that are a part of any development proposal, the number of bedrooms in affordable housing units shall be comparable to the bedroom mix in market-rate units in the development.
- B. Selection process. The selection of qualified purchasers or qualified renters shall be carried out under an affirmative fair housing marketing plan submitted by the applicant and approved by the Planning Board or Zoning Board of Appeals, following consultation with the Affordable Housing Trust. The marketing plan shall comply with the Department of Housing and Community Development (DHCD) Local Initiative Program (LIP) guidelines in effect on the date of the application for a special permit or other approval from the Planning Board or Zoning Board of Appeals.⁵

§ 300-78. Methods of providing affordable units.

For any development that is subject to this Article XIII, the following shall apply:

- A. On-site units. Construction of affordable units on the locus of the project is the preferred approach to creating affordable housing and shall be required for any development that includes 20 or more dwelling units.⁶
- B. The Planning Board or Zoning Board of Appeals, as applicable, may approve one or both of the following methods, alone or in combination. In no event shall the total number of units provided through such methods be less than the number of affordable housing units required under § 300-76.
 - 1) A housing contribution payment to the Affordable Housing Trust, determined in accordance with § 300-79, for any development with up to nineteen dwelling units.
 - 2) “Off-site units,” or comparable affordable units on another site in Salisbury. Off-site units need not be located in the same district as the development. The approved location of the off-site affordable housing units shall be identified in the applicable board’s decision. Preservation of existing dwelling units for affordable housing may be accomplished by

⁵ The criteria for Salisbury resident in Section 300-74 substantially conflicts with current DHCD fair housing guidelines. Don’t try to define Local Preference in your zoning bylaw. Refer to DHCD Guidelines and leave it at that.

⁶ Do you want to say that on-site is the preferred approach to complying with Article XIII?

purchasing deed restrictions and providing funds for capital improvements to create housing with equal or greater value as new-construction units.

§ 300-79. Housing contribution payments in lieu of on-site units.

- A. Approval. Subject to approval by the Planning Board or, where applicable, the Zoning Board of Appeals, the inclusionary housing requirement may be met by making a housing contribution payment in accordance with this § 300-79, subject to a binding written agreement with the Town of Salisbury.
- B. Amount. The housing contribution payment for each market-rate housing unit in the development shall be equal to \$10,000 for all housing units with a sales price of \$300,000 or less and shall be equal to 3.5% of the selling price of all market-rate housing units with a sales price higher than \$300,000, provided that the housing contribution payment for any market-rate housing unit shall not exceed a maximum of \$21,000. The maximum per unit housing contribution payment amount shall be adjusted annually by the Planning Board as set forth herein.⁷
- C. Adjustment. The Planning Board shall adjust the maximum housing contribution payment annually, effective March 1 of each year. The annual adjustment shall be equal to the percentage change in the median sale price of single-family homes in the Town of Salisbury during the previous calendar year, as reported by the Warren Group (or another independent reporting agency selected by the Planning Board if the Warren Group no longer reports such information), and rounded to the nearest tenth of a percent. For example, if the median sales price of single-family homes was \$275,000 for the previous calendar year and was \$250,000 for the calendar year before that, the Planning Board would adjust the maximum housing contribution payment by +10%. The adjusted maximum payment amount shall apply to all housing contribution payments made on or after March 1st of any year until the last day of February of the next year.
- D. Method of Payment. The following methods of payment may be used at the option of the applicant:
- 1) The total amount due shall be paid upon the release of any lots or, in the case of a development other than a subdivision, upon the issuance of the first building permit; or,
 - 2) The total amount due shall be divided by the total number of market rate units in the development. The resulting quotient shall be payable at, or prior to, the closing of each market rate unit. or,
 - 3) A combination of the above methods if approved by the Planning Board or, where applicable, the Zoning Board of Appeals.

⁷ I have left this "as is," but it is a very odd fee-in-lieu bylaw. Typically the fee in lieu is per *affordable* unit that is not built within the project.

E. As an alternative to subsections B through D above, the applicant’s housing contribution payment may be satisfied under an affordable housing tax incentive agreement approved by the Board of Selectmen.⁸

§ 300-80. Planning Board Regulations.

The Planning Board shall adopt rules and regulations to administer this Article XIII, following consultation with the Affordable Housing Trust. Such rules and regulations shall not be inconsistent with the Department of Housing and Community Development's (DHCD) regulations and guidelines under G.L. c. 40B.

§ 300-81. Building permit and occupancy conditions.

- A. Building permit conditions. All agreements with the Town of Salisbury and other documents necessary to ensure compliance with this Article XIII shall be executed and delivered to the Department of Planning and Development prior to and as a condition of the issuance of any approval required to commence construction. The Building Inspector shall not issue a building permit with respect to any project or development subject to this article unless and until the Department of Planning and Development has verified in writing to the Building Inspector that all conditions of this Article XIII, including any conditions that may be established by the Planning Board or Zoning Board of Appeals in any decision or approval, have been met.
- B. Occupancy conditions. No certificate of occupancy shall be issued for any market-rate units in a development subject to this article until all deed restrictions, agreements with the Town of Salisbury and/or other documents necessary to ensure compliance by the applicant (and any purchasers of the affordable housing units) with the requirements of this bylaw have been executed and recorded and any required housing contribution payments with respect to the unit have been made. Occupancy permits for any market-rate housing units shall be issued at an equal ratio to the occupancy permits for required affordable housing units for the entire project.
- C. Timing of construction: Where feasible, affordable housing units shall be provided coincident with the development of market-rate units, but in no event shall the development of affordable on-site or off-site housing units or payment of fees in lieu of units be delayed beyond the following schedule:

Market-Rate Unit %	Affordable Housing Unit %
Up to 30%	None required
30% to 50%	At least 10%
Over 50% to 75%	At least 40%

⁸ As we discussed, this option will require special legislation.

Market-Rate Unit %	Affordable Housing Unit %
Over 75% to 90%	At least 70%
Over 90%	100%

Fractions of units shall not be counted.

§ 300-82. Adjustments

The Planning Board or Zoning Board of Appeals, as applicable, may grant a special permit to adjust the requirements of this Article XIII, as follows:

- A. To award a density bonus for a development that includes more than the minimum number of affordable units required under § 300-76, if the affordable units are provided on site. For each additional affordable unit over and above the minimum, the board may approve 2 additional market-rate units, up to a maximum density bonus of 50 percent. Example: for a development of 12 housing units, compliance with this Article XIII would require 2 affordable units. The applicant who agrees to provide 2 more affordable units on site may request an additional 4 market-rate units, bringing the total development to 18 units (12 x 150 percent = 18).
- B. To reduce or waive the requirements of this Article XIII for a development that provides a significant alternative public benefit, the cost of which makes the inclusion of affordable housing uneconomic. The board's decision to approve a waiver shall be based upon the following considerations:
 - 1) The requested adjustment or waiver promotes the health, safety, and welfare of the Town;
 - 2) The applicant has submitted reasonable evidence, satisfactory to the board, that compliance with Article XIII would create a significant hardship for the applicant;
 - 3) The proposed alternative public benefit(s) provided by the development are equal to or outweigh the need for affordable housing; and
 - 4) The proposed alternative public benefit is consistent with the goals and policies of the Salisbury Master Plan.