

**MEETING OF
THE HOUSING BLUE RIBBON COMMITTEE
PORTSMOUTH, NEW HAMPSHIRE
SCHOOL BOARD CONFERENCE ROOM**

5:30 p.m.

November 05, 2026

AGENDA

- I. MINUTES – October 08, 2026**
- II. DRAFT HOUSING OPPORTUNITY ZONE ORDINANCE**
- III. ACCESSORY DWEELLING UNIT REFERRAL FROM CITY COUNCIL**
- IV. EXPANSION OF WORK FORCE HOUSING OPTIONS**
- V. PUBLIC COMMENT**
- VI. ADJOURMENT**

**Members of the public also have the option to join this meeting over Zoom; a unique meeting ID and password will be provided once you register. To register, click on the link below or copy and paste this into your web browser:*

https://us06web.zoom.us/webinar/register/WN_393In6_KSmy8NVpdr94aWw

**CITY OF PORTSMOUTH, NEW HAMPSHIRE
HOUSING COMMITTEE**



THURSDAY, OCTOBER 8, 2026, 5:30 pm

City Hall Conference Room A

1 Junkins Avenue, Portsmouth NH

Zoom recording:

<https://www.youtube.com/live/OV9DWG0-VRk?si=F4cUgU8DbtLused0>

MINUTES

Meeting Called to Order at 5:35 pm

Roll Call and Welcome

Attending: Councilor John Tabor, Dagan Migirditch, Oliver Chag, Andrew Samonas, Councilor Beth Moreau, Eric Weinrieb, Erik Anderson, Mary Loane, Jennifer Stebbins Thomas. Staff: Planning and Sustainability Dept. Peter Britz, Peter Stith, Izak Gilbo, Stefanie Casella.

Members Excused: Assistant Mayor Joanna Kelley, co-chair; Angus MacDonald, Byron Matto, Caitlin McGrath-Levesque

1. **Approval of Minutes for July 9, 2026** – on a motion by Weinrieb, seconded by Samonas the committee voted unanimously to approve the minutes.
2. **Presentation by Jen Stebbins-Thomas**
Chair Tabor commented that Maeve Nolan, Communications & Engagement Coordinator for the Workforce Housing Coalition of the Greater Seacoast provided answers to prior meeting questions:
 - 79E allows more flexibility than a flay 80% AMI. A range is allowed.

Stebbins-Thomas then walked the Committee through an interactive spreadsheet showing how budget and proforma changes affected the threshold of 7% internal rate of return that developers seek when considering a project. Asking one-third of the units be workforce housing is not economically feasible.

The recording of this dynamic modeling presentation starts at timestamp 8:54.

Definitions and assumptions:

ROI: return on investment

ROE: return on equity (assumed at 30%, with 70% financed

Budget factors – all estimated conservatively. Samonas commented that the cost of land at \$35k in this model seems especially low and that economies of scale in soft costs are needed to make rentals work.

Stebbins-Thomas showed the difference if the amenities budget increases from \$260k to \$275k. At startup, there are operating costs that are not yet covered by rental income, including taxes and loan/interest payments. The Developer Fee os 4-5% is standard.

	A	B	C	D	E	F	G	H	K	L
26				Architecture, Design & Engineering		1,000,000		9,091		
34				Legal and Closing Costs		250,000		2,273		
35				Insurance & Taxes		288,627		2,624		
38				Permits and Fees		800,000		7,273		Very minimal offsite
39				Financing Cost & Fees		250,000		2,273		
40				Interest Carry		1,400,000		12,727		
41				Stabilization Interest and Operating Expense		900,000		8,182		
42				Developer's Fee	4.0%	1,144,000		10,400		
43				Marketing and Pre-Opening		110,000		1,000		
44				Leasing Commissions - Apartments		30,000		273		
45				FF&E		300,000		2,727		
46				Soft Cost Contingency	2.50%	161,816		1,471		
47				Total Soft Costs		6,634,443		60,313		
48				Total Development Costs		43,264,443		393,313		
52				Sources of Funds:						
53				Equity	30.00%	12,979,333		117,994		
54				Debt	70.00%	30,285,110		275,319		
56				Total Funds		43,264,443				

Then when 79E options/restrictions are made, the impact is shown in this dynamic modelling in the 10 year average ROI.

6	Total Dev Budget	\$	43,264,443		
7	Total Dev Budget Per Unit	\$	393,313		
9	79(E)?	Yes		Maxed at 5 years	
11	Affordability Requirements?	Yes		Assumes 10 years	
12	% Required	33%			
13	AMI Threshold	80%	30%, 50%, 80%		
15	Return Metrics				
17	Stabilized Year 3 ROI		6.34%		
18	Stabilized Year 3 ROE		3.44%		
20	10 Year Average ROI		6.27%	Threshold: 7%	
21	10 Year Average ROE		3.37%		

The specific impact on the number and types of units offered were then discussed. In Portsmouth demand is highest for studios and 3-bedroom apartments that can be shared by single renters, although this is an underwriting risk as the tenancies are not as stable as families in a 3 bedroom. Committee members considered whether a mix of units and AMI levels would work. Casella asked about reducing amenities and other soft costs to bring building costs down. Fewer amenities mean harder to rent: what Samonas called the law of diminishing return. But Migirditch noted that in an opportunity like the GNOD trade of 1 acre to the City there might be the opportunity to simplify the build to create true, but dignified, workforce housing.

Studio							
# units	sqft	Rent PSF	total sqft	Rent	Total Monthly Rent	Total Annual Rent	
15	515.00	\$ 4.50	7,725.00	2,317.50	34,762.50	417,150.00	
0	515.00	\$ 2.90	-	1,496.00	-	-	
1 Bed							
# units	sqft		total sqft	Rent	Total Monthly Rent	Total Annual Rent	
45	750.00	\$ 3.90	33,750.00	2,925.00	131,625.00	1,579,500.00	
0	750.00	\$ 2.14	-	1,602.50	-	-	
2 Bed 2 Bath							
# units	sqft		total sqft	Rent	Total Rent	Total Annual Rent	
42	1,000.00	\$ 3.65	42,000.00	3,650.00	153,300.00	1,839,600.00	
0	1,000.00	\$ 1.92	-	1,923.00	-	-	
3 Bed 2 Bath							
# units	sqft		total sqft	Rent	Total Rent	Total Annual Rent	
8	1,320.00	\$ 3.50	10,560.00	4,620.00	36,960.00	443,520.00	
0	1,320.00	\$ 1.68	-	2,221.50	-	-	
total/avg	110	854.86	3.79	94,035.00	3,242.25	356,647.50	4,279,770.00

Regarding the ask of one-third workforce units, Stebbins-Thomas showed how the ROI moves from 7.2% and 7.1% ROE without 79E, to 6.27% ROI and 3.37% ROE which is not attractive. She also noted “there is no magic number.”

Migirditch asked if it is permitted to spread the 79E required workforce units across an owner’s existing buildings while building a new building at market rate. Stebbins-Thomas and Samonas commented on the perception of lenders and investors.

Stebbins-Thomas was asked about adjustments other than to finishes/amenities that could reduce building costs to improve the ROI/ROE impacts and she noted that permitting can be costly, especially if infrastructure work is required.

AMI: Committee discussed whether the ordinance language should be “up to 100% AMI” with the Council determining the requirement on a case by case basis. Because Portsmouth is included with Rochester in the AMI each project needs to reflect reality.

The Committee also discussed income auditing and whether it would be possible to simplify the reporting – perhaps by a third party. PHA has a metric for adjusting rents and occupancies if a tenant’s income goes up.

The Committee recognized the need for workforce housing and how the modelling helps understand filling the gap. PHA reports a need for 1500 units by 2030. If AMI at 80% is do-able for a developer with just 10% of the units, then Portsmouth needs to build 15,000 mixed-income units to meet the demand.

Looking at demand, Samonas suggested that the rental demand is stagnating but not deflating. Rate growth has dropped from 3% to 1% and it’s been 6 years since the hyper-growth of in-migration to follow jobs. Stagnation is an equalizing moment and assumptions are lagging indicators that need scrutinizing. If rental costs shift, the 7% = do-able disappears. Chair Tabor commented that when the office development market softened, investors’ capital shifted to residential and now in cases like the Sunbelt residential is overbuilt.

[Timestamp 1:16:02]

3. Draft Housing Opportunity Grant Ordinance [item continued from September 9, 2026 meeting at which there was no quorum]. Director Britz summarized the adjustments from the Committee:

- The income level should be “under 100% (under 80%?) AMI
- The tax break extends, up to a max of twice the number of years, for lower AMI. At 100% the break is capped at 5 years. At 80% could be up to 15 years once the Council determines the public benefit.
- Migirditch: Build in flexibility to maximize opportunities for workforce housing. Stacking 79E and other incentives should work together.
- Anderson asked about how ‘public benefit’ is defined – do PHA and POHA have specifics on how tax relief affects the rest of the community? Dover has a formula but what is the delta between the property value before and after development and calculating the developer’s share. Moreau noted this is usually a non-public Council discussion.
- Percent of workforce units should change from “one-third” to “a target of 10% but no less than 5%, at City Council discretion.”
- Director Britz asked about the mechanics of the approval process. The Committee suggested the Planning Board should hold the first review, with

their recommendation then going to Council for approval rather than going to Council, referral to Planning and then back to Council.

- The Committee wondered if the proof of income process could be simplified. Councilor Moreau said the Seacoast Board of Realtors Housing Advocacy Committee is looking at that and the Federal and State control requirements.

4. Public Comment: None.

Other Business

Anderson asked about “nesting/nestor” (?) contracts. Currently in Boston, Maine, Mount Washington Valley.

5. Adjourned at 7:06 pm.

Next meeting: Thursday, November 5, 2026



City of Portsmouth
Planning Department
1 Junkins Ave, 3rd Floor
Portsmouth, NH
(603)610-7216

Memorandum

To: Housing Committee

From: Peter Stith, AICP
Assistant Planning Director

Date: October 29, 2026

Re: Preapproved Accessory Dwelling Units and Draft Zoning Amendment for Workforce Housing Options

A. Preapproved Plans for Accessory Dwelling Units

Background

At the June 22, 2026 meeting, the City Council voted to request the Planning & Sustainability Department, in collaboration with the Housing Committee and Planning Board, review already preapproved ADU plans used by other communities to determine whether the City of Portsmouth can adopt existing plans to be approved for use. Below is the discussion from the meeting minutes related to this request.

Councilor Cook explained her reason for this recommendation. She would like for the City to stay ahead of the trend. She explained that the Housing Blue Ribbon Committee is currently working on their Housing Action Plan and is asking for this to be included in that process and that the Planning & Sustainability and Legal Departments look at this in conjunction with the Housing Committee and the Planning Board. Councilor Moreau suggested we ask for a report back from the Legal Department regarding the use of other communities' preapproved plans. Councilor Tabor would like more explanation about how the plans fall within historic district guidelines. Outside the Historic District, the process and cost of approving an ADU is beneficial. Councilor Bagley mentioned this would make things more available by right of home ownership. The more things we can allow our residents to do by right, the easier it may be for them to stay in their homes. In addition to reaching out to other communities with established ADU plans, he mentioned reaching out to Cole Peterson from Portland, Oregon, a guru regarding ADUs for the past 20 years.

Several states and municipalities have recently implemented programs that provide homeowners with standardized ADU designs that have undergone advance review for code compliance. These programs are intended to reduce architectural design costs,

shorten permitting timelines, and simplify the process of constructing an ADU. While site-specific review for zoning compliance, utilities, drainage, and other local requirements is typically still required, the building design itself has already been reviewed and approved.

In 2026, the Massachusetts Executive Office of Housing and Livable Communities launched an [ADU Design Challenge](#) and now maintains a library of free downloadable ADU designs. The program was established to make ADUs easier and more affordable by providing ready-to-use plans that can reduce design costs and streamline permitting. The designs were specifically developed to address New England building conditions and housing needs.

The State of Vermont is currently developing the "[802 Homes](#)" catalog through its Homes for All initiative. The program will provide community-tested, construction-ready plans, including ADUs and other small-scale housing types, that municipalities may adopt to streamline development review and reduce housing development costs. The initiative focuses on context-sensitive designs compatible with Vermont's existing communities and village centers.

The City published an [ADU Homeowner's Handbook](#) in 2025 containing numerous ADU prototypes, conceptual floor plans, elevations, and design examples tailored to Portsmouth's housing stock and neighborhood character. While portions of the handbook relating to regulations and permitting requirements may need updating following recent changes to the zoning ordinance due to changes in state law, the design examples remain a useful resource for homeowners considering construction of an ADU. The City may wish to evaluate whether updating and expanding these materials could achieve some of the same objectives as a formal preapproved plan program while avoiding the costs associated with developing and maintaining construction-ready preapproved plans.

The Housing Committee has not discussed this topic yet and the Planning Board has had it on their agenda for the past two meetings but has not discussed it in depth. However, the initial response from the Planning Board has been to update the existing ADU Handbook to reflect the recent zoning changes which would remove the Conditional Use Permit and Administrative Approval process.

B. Workforce Housing Requirements

Staff have prepared draft zoning amendments to Articles 5A (Character Districts) and 5B (Gateway Neighborhood Mixed Use Districts) to provide additional options for satisfying workforce housing requirements associated with development incentives.

Currently, applicants seeking incentives under these provisions generally satisfy workforce housing requirements through the construction of workforce housing units within the development. The proposed amendments would allow applicants to satisfy workforce housing obligations through one or a combination of the following methods:

1. Provision of workforce housing units within the development;
2. Payment of a fee in lieu of workforce housing units in accordance with the City's adopted fee schedule;
3. Conveyance of land to the City for workforce housing purposes; or
4. A combination of the above methods.

The proposed amendments provide a framework for land conveyance utilizing the existing provisions of Section 10.686.30 of the Gateway Neighborhood Overlay District (GNOD), while modifying the standard to focus on the ability of the conveyed land to accommodate the number of workforce housing units otherwise required by the applicable incentive program.

The purpose of the amendments is to provide greater flexibility in achieving workforce housing objectives while ensuring that developments receiving zoning incentives continue to contribute toward the City's housing goals. The proposed amendments directly advance Priority Action #5 identified in the adopted Housing Action Plan to establish an in-lieu fee mechanisms to support housing production through the Housing Trust Fund.

The Housing Committee should review/modify the proposed amendments prior to making a recommendation to City Council to initiate the formal zoning amendment process.

Portsmouth Draft Ordinance – Adapted from Town of Conway Community Revitalization Tax Incentive

Purpose.

The Community Revitalization Tax Relief Incentive program permitted by RSA 79-E, allows a tax relief period intended to incentivize the substantial rehabilitation of qualifying structures; the construction of new affordable housing within Housing Opportunity Zones; and the conversion of office, commercial, or industrial buildings to residential use where such projects create affordable housing.

The City of Portsmouth hereby adopts RSA 79-E in the manner specified under RSA 79-E:3. In addition, the City has modified the incentive program to best suit the needs of Portsmouth.

Declaration of public benefit.

It is declared to be a public benefit to create long-term affordable housing within the City of Portsmouth. A protective covenant to maintain long-term and affordable residential units, as required under this ordinance, is considered to provide a demonstrated public benefit.

Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

AFFORDABLE HOUSING — A long-term, non-transient housing unit or units constructed or rehabilitated and designated for households with an income of 80% or less of the area median income as measured by the United States Department of Housing and Urban Development or designated for households with incomes as provided in RSA 204-C:57, IV.

COVENANT — A formal and legally binding agreement such as a deed restriction or other acceptable agreement recorded at the Rockingham County Registry of Deeds. The covenant may be effective for a period of time up to twice the duration of the tax relief period.

HOUSING OPPORTUNITY ZONE — An overlay district, as depicted on the Official RSA 79:E Map of the City of Portsmouth which includes all zoning districts with the exception of land within the Floodplain Conservation Overlay District or non-buildable areas as outlined in applicable zoning regulations.

Zones to consider:

CD4-W

G-1

G-2

Business

QUALIFYING STRUCTURE — A residential or mixed-use structure, or portion thereof,

containing at least one affordable housing unit within a Housing Opportunity Zone. A minimum of one-third (1/3) of the total dwelling units shall be restricted as Affordable Housing. In addition, a Qualifying Structure shall include (a) new construction of housing units located within a Housing Opportunity Zone; and (b) any office, commercial, or industrial building or structure, in whole or in part, that is converted to residential use and that complies with the requirements of this chapter.

REPLACEMENT — The demolition or removal of a qualifying structure and the construction of a new structure on the same lot.

SUBSTANTIAL REHABILITATION — Rehabilitation of a structure which costs at least 10% of the pre-rehabilitation assessed valuation or at least \$35,000; whichever is less.

TAX RELIEF — A period of time, as determined by the City Council in accordance with this ordinance, which the property tax on a qualifying structure shall not increase pursuant to Chapter 26.

RESIDENTIAL CONVERSION — The conversion of an office, commercial, or industrial building or structure, in whole or in part, to residential use.

Community revitalization tax relief incentive.

An owner of a proposed qualifying structure who intends to: substantially rehabilitate a qualifying structure; replace a qualifying structure; construct new affordable housing units within a Housing Opportunity Zone; or convert an office, commercial, or industrial building or structure to residential use

- A. may apply to the City Council for community revitalization tax relief. The applicant shall file a complete application, including, a description of the intended rehabilitation, replacement, or construction; any changes in use of the property resulting from the rehabilitation or replacement, and associated application fee.
- B. Tax relief granted under this chapter shall be calculated on the value in excess of the original assessed value. Original assessed value shall mean the value of the qualifying structure assessed at the time the City Council approves the application for tax relief.
- C. The tax relief granted under this chapter shall only apply to substantial rehabilitation, replacement, or construction that commences after the City Council approves the application for tax relief and the owner grants to the City the covenant to protect the public benefit as required in this chapter.

Relationship to Other Ordinance Requirements

The affordable housing requirements of this chapter establish minimum eligibility criteria for tax assessment relief under RSA 79-E.

Nothing in this chapter shall be construed to waive, reduce, or modify any workforce housing or affordable housing requirement otherwise applicable under the City of Portsmouth Zoning Ordinance. Where a project is subject to housing requirements under both this chapter and the Zoning Ordinance, the more restrictive requirement shall apply.

Duration of tax relief period.

- A. The City Council may grant such tax assessment relief for a period of up to 15 years, beginning with the completion of the construction.
 - (1) For the approval of a replacement of a qualifying structure, the City Council may grant such tax assessment relief for a period of up to 15 years, beginning only upon the completion of construction. For the purposes of this section, the issuance of a certificate of occupancy shall constitute completion of construction. The municipal tax assessment of the replacement structure and the property on which it is located shall not increase or decrease in the period between the approval by the City Council for the replacement structure and the time the owner completes construction of the replacement structure and grants to the City the covenant to protect the public benefit as required by this chapter. The City Council have no obligation to grant any tax assessment relief under this chapter with respect to property and structures for which an election has been made for property appraisal under NH RSA 75:1-a, Residential Property Subject to Housing Covenant Under the Low-Income Housing Tax Credit Program.
- B. Upon receipt of an application, the Planning Department will review the proposal for compliance or zoning issues.
- C. The City Council will hold a duly noticed public hearing to take place no later than 60 days from receipt of an application, to determine whether the structure at issue is a qualifying structure and whether there is a public benefit to granting the requested tax relief.
- D. Upon the determination of a qualify structure by the City Council, the property owner must consent to an inspection of the property by the Assessing Department to establish a property value prior to any proposed construction.
- E. No later than 45 days after the public hearing, the City Council shall render a decision granting or denying the requested tax relief and, if so granting, establishing the tax relief period.
- F. The City may grant the tax relief, provided:
 - (1) The City Council grant the request by a majority vote; and
 - (2) The City Council finds a public benefit as defined in this chapter; and
 - (3) The specific public benefit is preserved through a protective covenant; and
 - (4) The City Council finds that the proposed use is consistent with the municipality's Master Plan and regulations; and

- (5) In the case of a replacement, the City Council specifically finds that the replaced qualifying structure does not possess significant historical, cultural, or architectural value, the replacement of a qualifying structure will achieve one or more of the public benefits identified in Chapter 26 to a greater degree than the renovation of the underutilized structure, and the historical, cultural, or architectural resources in the community will not be adversely affected by the replacement.
- G. If the City Council grants the tax relief, they shall identify the specific public benefit achieved under Chapter 26, and shall determine the precise terms and duration of the covenant to preserve the public benefit under this chapter.
- H. The City Council shall have no obligation to grant an application for tax relief for properties when its determined, in the Boards sole discretion, that the granting of tax relief will impede, reduce, or negatively affect the community.

Extent of tax relief.

Tax relief granted under this chapter shall pertain only to assessment increases attributable to: the substantial rehabilitation of a qualifying structure; the construction of new housing units eligible under this chapter; or the conversion of office, industrial, or commercial space to residential use;

performed under the conditions approved by the City Council;

and shall not apply to increases attributable to market forces or other unrelated factors.

- A. No commercial portion of a qualifying structure shall be eligible for tax relief.

Covenant to protect public benefit.

- A. Tax relief for the substantial rehabilitation or replacement of a qualifying structure shall be effective only after a property owner grants to the municipality a covenant ensuring that the structure shall be maintained and used in a manner that furthers the public benefits for which the tax relief was granted and as otherwise provided in this chapter.
- B. The covenant shall be coextensive with the tax relief period. The covenant may, if required by the City, be effective for a period of time up to twice the duration of the tax relief period.
- C. The covenant shall include provisions requiring the property owner to obtain and maintain a certificate of occupancy for the duration of the tax relief period.
- D. The covenant shall include provisions requiring the property owner to obtain casualty insurance, and flood insurance if appropriate. The covenant may include, at the City Council's sole discretion, a lien against proceeds from casualty and flood insurance claims for the purpose of ensuring proper restoration or demolition or damaged structures and property. If the property owner has not begun the process of restoration, rebuilding, or demolition of such structure within one year following damage or destruction, the

property owner shall be subject to the termination of provisions set forth in the chapter.

- E. The covenant shall restrict all residential units within a qualifying structure for long-term use with a minimum tenancy of six months.
- F. The covenant must require the leasee of any unit restricted for affordability not be the property owner, including the member or owner of any company (LLC, S-corp, C-corp, partnership of any kind or the beneficiary of any trust) with an ownership interest in the property.
- G. To protect public benefits, the City must record the covenant with the registry of deeds. It shall be a burden upon the property owner and must bind all transferees and assignees of such property.
- H. The applicant shall provide to the City a draft covenant, prepared by legal counsel, prior to recording. The applicant shall be responsible for the cost of recording the covenant.

Resumption of full tax liability.

Upon expiration of the tax relief period, the property shall be taxed at its market value in accordance with RSA 75:1.

Termination of covenant; reduction of tax relief; penalty.

- A. If the owner fails to maintain or utilize the building according to the terms of the covenant, or fails to restore, rebuild, or demolish the structure following damage or destruction as provided in this chapter, the City Council shall, after a duly noticed public hearing, determine whether and to what extent the public benefit of the rehabilitation or replacement has been diminished and shall determine whether to terminate or reduce the tax relief period in accordance with such determination. If the covenant is terminated, the City shall assess all taxes to the owner as though no tax relief was granted.
- B. At any time during the tax relief period, the City may demand current lease agreements or other applicable documents to verify the public benefit is maintained.
- C. All taxes levied pursuant to RSA 79-E:9 which are not paid when due shall be collected in the same manner as provided in RSA 80 and be subject to penalties defined in RSA 79-E:9.

Article 5A Character-Based Zoning

10.5A43.33 For a **development** with a mix of residential and non-residential uses located within a CD4, CD4W, or CD5 **Character District** that is not located in an incentive overlay district and that contains at least one acre of **lot area**, the Planning Board may grant a conditional use permit to allow an additional **story** in height (up to 15 feet) for houses, duplexes, or mixed-use **buildings** where the building type is otherwise permitted by this Ordinance and if all of the following requirements are met:

- a) **Community Space** – The **development** shall have at least 50% of the property assigned and improved as a **community space**. Given the large scale of the **development**, the **community space** shall include a Plaza or Square of at least 5,000 sq. ft. per acre and any combination of the following: a Pedestrian Passage; a Wide Pedestrian Sidewalk; a Pedestrian Arcade; a Pocket Park; a Playground, or a Public Observation Deck, as further described and depicted in Figure 10.5A45.10. Such **community space** shall count toward the required **open space** listed in Figures 10.5A41.10A-D (Development Standards). The size, shape, location and type of the **community space** shall be determined by the Planning Board and be based on the proposed land use and the size and location of the **buildings** within the **development**, and the **adjacent uses** and public amenities.
- b) **Workforce Housing** – The **development** shall have either: 1) 10% of any proposed for sale **dwelling units** within a **development** shall be **workforce housing units** (**affordable** to a household with an income of no more than 100 percent of the **area median income** for a 4-person household); or 2) 5% of any proposed for rent **dwelling units** within a **development** shall be **workforce housing units** (**affordable** to a household with an income of no more than 60 percent of the **area median income** for a 3-person household). Any **workforce housing units** shall be at least 600 sq. ft. in **gross floor areas** and be distributed throughout the **building** wherever **dwelling units** are located.
- c) Calculations for **workforce housing unit** requirements shall be rounded to the nearest whole number, with 0.5 and below being rounded down.
- d) The proposal is consistent with the findings, goals, and objectives of the Portsmouth Master Plan.

10.5A43.40 Maximum Building Footprint

10.5A43.41 No **building** or **structure** footprint shall exceed the applicable maximum **building footprint** listed in Figures 10.5A41.10A-D (Development Standards) except as provided in Sections 10.5A43.42-44 below.

- 10.5A43.42 In the CD5 district, a detached **liner building** may have a **building footprint** of up to 30,000 sq. ft. if it meets all other **development** standards and is integrated into a **parking structure** through the provision of **community space** or shared access.
- 10.5A43.43 For a **building** that contains **ground floor** parking, a **parking garage** or **underground parking levels**, and is not subject to Section 10.5A43.42, the Planning Board may grant a conditional use permit to allow a **building footprint** of up to 30,000 sq. ft. in the CD4 or CD4-W districts, and up to 40,000 sq. ft. in the CD5 district, if all of the following criteria are met:
- (a) No **story** above the **ground floor** parking shall be greater than 20,000 sq. ft. in the CD4 or CD4-W districts or 30,000 sq. ft. in the CD5 district.
 - (b) All **ground floor** parking areas shall be separated from any public or private **street** by a **liner building**.
 - (c) At least 50% of the **gross floor area** of the **ground floor** shall be dedicated to parking.
 - (d) For **developments** with more than five (5) **dwelling units** at least 10% of the property shall be assigned and improved as **community space** and comply with the **workforce housing** requirements listed in (e). For **developments** with 5 or less **dwelling units**, 30% of the property shall be assigned and improved as **community space**. Such **community space** shall count toward the required **open space** listed under Figures 10.5A41.10A-D (Development Standards) and **community space** required under Section 10.5A46.20. The size, location and type of the **community space** shall be determined by the Planning Board based on the size and location of the **development**, and the proposed and **adjacent uses**.
 - (e) For **developments** with more than five (5) **dwelling units**, the **dwelling units** within a **building** shall be **workforce housing units** in compliance with state law for either: 1) 10% of any proposed for sale **dwelling units** within a **development** shall be **workforce housing units** (**affordable** to a household with an income of no more than 100 percent of the **area median income** for a 4 **person** household) or 2) 5% of any proposed for rent **dwelling units** within a **development** shall be **workforce housing units** (**affordable** to a household with an income of no more than 60 percent of the **area median income** for a 3 **person** household). Such **units** shall be at least 600 sq. ft. The **workforce housing units** shall be distributed throughout the **building** wherever **dwelling units** are located.
 - (f) The **development** shall comply with all applicable standards of the ordinance and the City's land use regulations.
 - (g) Calculations for **workforce housing unit** requirements shall be rounded to the nearest whole number, with 0.5 and below begin rounded down.
 - (h) The proposal is consistent with the findings, goals, and objectives of the Portsmouth Master Plan.
- 10.5A43.44 The **building footprint** of a **parking structure** shall be no greater than 40,000 sq. ft., and the **façade** length shall be no greater than 300 feet.

10.5A46 Incentive Overlay Districts

The Incentive Overlay Districts are designated on Map 10.5A21B. In such areas, certain specified **development** standards may be modified as set forth in Section 10.5A46.10 below, if the **development** provides **community space** or **workforce housing** in accordance with Section 10.5A46.20, as applicable:

10.5A46.10 Incentives to Development Standards

DEVELOPMENT STANDARDS	INCENTIVES	
	North End Incentive Overlay District	West End Incentive Overlay District
Maximum building coverage	No Change	80%
Maximum building footprint	30,000 sf	30,000 sf ^{1,2}
Maximum building block length	No Change	No Change ³
Minimum lot area	No Change	2,000 sf
Minimum lot area per dwelling unit	No Change	No minimum
Maximum building height	Plus 1 story up to 10 ft ⁴	Plus 1 story up to 10 ft ^{4,5}
Minimum ground story height	No Change	9 feet
Minimum off-street parking	No Change	Non-residential: 25% reduction from underlying standard
Ground story parking	Permitted with a liner building ⁶	Permitted with a liner building ⁶

¹ In CD4-L1 and CD4-L2 the maximum **building footprint** shall be 3,500 SF. Where the **building footprint** exceeds 2,500 SF, individual **building blocks** shall be separated by **open space**, **community space**, or surface parking areas of at least 30 feet in width. Parking areas located between **buildings** are not required to be set back from the **building** façade.

² For properties located within 200 feet of the North Mill Pond in the CD4-W District, the maximum **building footprint** shall be 20,000 sq. ft.

³ In CD4-L1 and CD4-L2 the maximum **building block** length shall be 100 feet.

⁴ In order to receive the **building height** incentive, the **sidewalk** width in front of any **façade** shall be at least 10 feet plus two feet for each story of **building height** above three stories. Any property area needed to comply with this requirement shall count as **open space** as required in Figures 10.5A41.10A-D (Development Standards) and as **community space**; even if less than 15 feet in width.

⁵ For parcels over 80,000 sq. ft. in area that are located south of Islington Street, up to two stories or 20 feet may be added to the maximum **building height** provided both requirements listed under Section 10.5A46.22 (1) and (2) are met.

⁶ If **ground story** parking is proposed, at least 50% of the **ground story** facing a **street** shall include a **liner building**.

10.5A46.20 Requirements to Receive Incentives to the Development Standards

10.5A46.21 For a **lot** located **adjacent** to, or within 100 feet of, North Mill Pond, Hodgson Brook or the Piscataqua River, the Planning Board may grant a conditional use permit to allow the incentive to the development standards listed under 10.5A46.20, provided the **development** shall include **community space** equal to 20% of the **lot area** that includes a continuous public **greenway** at least 20 feet in width with a multi-use path and that is parallel and located within 50 feet of the waterfront with at least a 10 foot setback from adjacent **buildings**. Trail connections to abutting **street(s)** and sidewalks shall be provided and there shall be no buildings between the waterfront and the greenway unless otherwise approved by the Planning Board. The **greenway** shall include legal and physical access to abutting **lots** or public ways. When access is not available due to current conditions on an abutting **lot**, provisions shall be made for future access in a location determined by the Planning Board.

10.5A46.22 For a **lot** that is more than 100 feet from North Mill Pond, Hodgson Brook or the Piscataqua River, the Planning Board may grant a conditional use permit to allow the incentive to the development standards listed under Section 10.5A46.20, provided the **development** shall include both **community space and workforce housing** as specified below:

(1) **Community space** option – All of the following criteria shall be met:

- (a) The **community space** shall be a **community space** type that is permitted within the applicable Character district.
- (b) For **developments** with more than 5 **dwelling units** the **community space** shall constitute at least 10% of the gross area of the **lot** and shall not have any dimension less than 15 feet. For **developments** with five (5) or less **dwelling units**, 20% of the property shall be assigned **community space**.
- (c) The **community space** shall adjoin the public **sidewalk** and shall be open on one or more sides to the **sidewalk**.
- (d) The **community space** shall include trees and other **landscaping** to provide shade and reduce noise, and pedestrian amenities such as overlooks, benches, lighting and other **street** furniture.
- (e) The proposal is consistent with the findings, goals, and objectives of the Portsmouth Master Plan.
- (f) The **community space** shall be located on or **adjacent** to the same **lot** as the **development**, except as provided in (g) below.
- (g) The Planning Board may grant a conditional use permit to allow a proposed **community space** to be located on a different **lot** than the **development** if it finds that all of the following criteria will be met:

- (i) An appropriate **community space** cannot feasibly be provided on the same **lot** as the **development**.
 - (ii) The proposed **community space** is within the same Incentive Overlay District as the **development**.
 - (iii) The proposed **community space** is suited to the scale, density, **uses** and character of the surrounding properties.
 - (iv) The proposal is consistent with the findings, goals, and objectives of the Portsmouth Master Plan.
- (2) **Workforce housing** option – One of the following criteria shall be met:
- (a) For **developments** with five (5) or less **dwelling units**, no **workforce housing units** are required. For a **development** with more than five (5) **dwelling units**, at least 20% of the **dwelling units** within a **building**, shall be **workforce housing units** for sale (**affordable** to a household with an income of no more than 100 percent of the **area median income** for a 4-**person** household). Such units shall be at least 600 sq. ft. The **workforce housing units** shall be distributed throughout the **building** wherever **dwelling units** are located; or at least 10% of the **dwelling units** within a **building** shall be **workforce housing units** for rent (**affordable** to a household with an income of no more than 60 percent of the **area median income** for a 3-**person** household). Such units shall be at least 600 sq. ft. The **workforce housing units** shall be distributed throughout the **building** wherever **dwelling units** are located.
 - (b) Calculations for **workforce housing unit** requirements shall be rounded to the nearest whole number, with 0.5 and below being rounded down.
 - (c) The proposal is consistent with the findings, goals, and objectives of the Portsmouth Master Plan.

10.5A46.23 When a proposed **development** in an Incentive Overlay District includes **community space** in excess of the amount required to support a proposed incentive under Section 10.5A43.43 or Sections 10.5A46.10 through 10.5A46.22, the Planning Board may grant a conditional use permit to allow the excess **community space** to be credited to the developer or its assigns for use in another **development** in the same Incentive Overlay District.

- (1) The conditional use permit shall specify the total amount of **community space** provided, the portion of such **community space** to be credited toward incentives in the proposed **development**, and the amount of excess **community space** that may be credited toward a future project in accordance with the standards set forth in Section 10.5A43.43 or Sections 10.5A46.10 through 10.5A46.22.

- (2) The conditional use permit may allow for conveyance to the City of unimproved land in lieu of **community space** that conforms to the types shown in Figure 10.5A45.10, subject to the following:
 - (a) The application for a conditional use permit to credit unimproved land in lieu of **community space** shall include a complete site plan and design for the proposed **community space**.
 - (b) In order for a future **development** to receive incentive credit for the excess unimproved land, the future developer will be required to improve the land to be a conforming **community space** as determined by the Planning Board at the time of site plan approval, except as provided in (c) below.
 - (c) At any time after receiving title to such unimproved land, the City may, at its option, improve such land to be a conforming **community space**. If the City exercises this option, in order for a future **development** to receive the incentive credit, the future developer shall pay to the City an amount representing the cost to the City of carrying out the improvements that were required to improve the land to be a conforming **community space**.
- (3) The terms of the conditional use permit shall be documented in a Prospective Development Incentive Agreement (PDIA) to be entered into between the developer and the Planning Department. The maximum term of a PDIA shall not exceed fifteen (15) years, following which the rights to any unused incentive shall become null and void.
- (4) The only effect of a conditional use permit and PDIA under this section shall be to increase the allowable **building footprint** or **building height**, or to reduce the required **off-street parking**, in accordance with Section 10.5A43.43 or Sections 10.5A46.10 through 10.5A46.22.
- (5) The granting of a conditional use permit and the execution of a PDIA under this Section 10.5A46.23 shall not be deemed to supersede or waive any of the other provisions of this Article 5A or other applicable provisions of this Ordinance, nor shall such approval be considered to represent the granting of land use approval for any future **development**.
- (6) Future use of the excess **community space** to support a future project shall require the granting of a conditional use permit by the Planning Board, whether or not the **community space** is on the same parcel as the future project.

10.5A46.24 Workforce Housing Requirement Alternatives

Where workforce housing units are required pursuant to this Article, such requirements may be satisfied through one or a combination of the following:

- (a) Provision of workforce housing units within the development;
- (b) Payment to the City in lieu of providing workforce housing in an amount based on the particular makeup of the development and in accordance with the fees established annually by the Fee Committee and the City Council in the fee schedule;
- (c) Conveyance of land to the City for workforce housing purposes in accordance with Section 10.686.30; or
- (d) A combination of the foregoing options.

10.5A46.25 Land Conveyance

Where land is conveyed pursuant to Section 10.5A46.24(c), the acreage calculation contained in Section 10.686.30 shall not apply. The land conveyed shall contain sufficient developable area to accommodate not less than the number of workforce housing units otherwise required by this Article, as determined by the Planning Board. Any such conveyance shall be subject to acceptance by the City Council.

10.5A46.50 Modification of Standards

In granting a Conditional Use Permit, the Planning Board may modify specific standards and requirements set forth in this Article provided that the Planning Board finds such modification will promote design flexibility and overall project quality, or that such modification is required for the development to provide a workforce housing component, and that such modification is consistent with the purpose and intent of the Character District and this Article.

- 10.5A46.51 In considering a request for a modification of the standards and requirements, the Planning Board may request that the applicant provide additional documentation and information from the applicant demonstrating that the requirements of this Ordinance are prohibitive to the successful completion of the project as proposed. Such information shall include, but not be limited to, project cost factors related to land acquisition, improvements for roads, utilities & drainage, insurance, labor, building materials, and profit to identify a total gross cost of the project and per unit gross costs.

Article 5B Gateway Neighborhood Mixed Use Districts

10.5B72 Density Bonus Incentives

A conditional use permit may be granted by the Planning Board for increased housing density or for increased **building height** and **footprint** as described in this section. Such conditional use permit shall be contingent upon satisfying the requirements of Section 10.5B73.

10.5B72.10 **Dwelling Units Per Building:** The Planning Board may, by conditional use permit, allow up to a maximum of 36 **dwelling units** per **building**.

10.5B72.20 **Dwelling Units per Acre:** The Planning Board may, by conditional use permit, allow higher density up to the maximum established in Section 10.5B71.

10.5B72.30 **Building Height and Building Footprint:** The Planning Board may, by conditional use permit, allow an increase in the maximum **building height** by one (1) story or 10' and an increase in the maximum **building footprint** and square footage by 20 percent.

10.5B73 Bonus Incentive Requirements

In order to be eligible one of the bonus incentives outlined in section 10.5B72, a **development** shall include **workforce housing** according to the requirements of 10.5B73.10. In order to be eligible for multiple bonus incentives outlined in Section 10.5B72 a **development** shall also provide **public realm** improvements according to the requirements of 10.5B73.20. Required documentation for these improvements must be submitted with the application as outlined in Section 10.5B74.

10.5B73.10 **Workforce Housing Requirement:** At least 20% of the **dwelling units** in the **development**, but no less than three units, shall be **workforce housing units** for sale or rent complying with the following criteria:

- 1) For sale units shall be at least the average **gross floor area** of the proposed units in the **building** or 1,000 sq. ft., whichever is greater.
- 2) Rental units shall be at least the average **gross floor area** of the proposed units in the **building** or 800 sq. ft., whichever is greater.
- 3) The **workforce housing units** shall be distributed throughout the **building** wherever **dwelling units** are located.

10.5B73.11 Where workforce housing units are required pursuant to this Article, such requirements may be satisfied through one or a combination of the following:

(a) Provision of workforce housing units within the development;

(b) A payment to the City in lieu of providing workforce housing in an amount based on the particular makeup of the development and in

accordance with the fees established annually by the Fee Committee and the City Council in the fee schedule;

(c) Conveyance of land to the City for workforce housing purposes in accordance with Section 10.686.30; or

(d) A combination of the foregoing options.

10.5B73.12 Where land is conveyed pursuant to subsection (c), the acreage calculation contained in Section 10.686.30 shall not apply. The land conveyed shall be sufficient to accommodate not less than the number of workforce housing units otherwise required by this Section, as determined by the Planning Board. Any such conveyance shall be subject to acceptance by the City Council.

10.5B73.20 **Public Realm Improvements:** All **public realm** improvements used for a density bonus shall be recommended in plans adopted by the City of Portsmouth including but not limited to the Master Plan, Bicycle and Pedestrian Plan, and Capital Improvement Program. Eligible improvements include the following:

- 1) Design and construction of an off-road trail or **path** that is at least equal to the linear public **street frontage** of the site and expands the Portsmouth Bicycle and Pedestrian Network consistent with the Portsmouth Bicycle and Pedestrian Plan. The trail or **path** shall be located on or adjacent to the project's **building lot** or **development site**, except as provided in (4) below.
- 2) Design and construction of a public park or athletic facility that is designed for active or passive recreation equal to at least 20% of the project's **gross floor area** that is located on or adjacent to the project's **building lot** or **development site**, except as provided in (d) below.
- 3) On-site **public realm** improvements provided for the purpose of satisfying the requirements of this section shall not be counted toward the required minimum **community space coverage**.
- 4) The Planning Board may allow a proposed **public realm** improvement to be located on a different **lot** than the **development** if it finds that all of the following criteria will be met:
 - (a) An appropriate **public realm** improvement cannot feasibly be provided on the same **lot** as the **development**.
 - (b) The proposed **public realm** improvement is within the same Zoning District as the **development**.

10.5B74 Approval of Density Bonus Incentives

10.5B74.10 Required Information: In order to be eligible for bonus incentives as described in 10.5B72, the following submissions must be included with an application for a Conditional Use Permit:

10.5B74.11 **Workforce Housing:**

- 1) A description of the **workforce housing units**, identifying quantity, location, and type;
- 2) Documentation that the proposed units qualify as **workforce housing units** as defined by this Ordinance;
- 3) Proposed covenant or other legally binding documents that provide enforceable restrictions as to price and occupancy to ensure long-term availability and affordability of the units.

10.5B74.12 **Public Realm Improvements:**

- 1) A written description of the intended site **development** or District improvements, the relevant City plan, the public benefit provided, provision for design, construction, management and maintenance if required, and plans showing the location and type, size and extent of each of the eligible improvements.
- 2) A specific time frame for the completion of all required on-site and off-site improvements shall be incorporated as a condition of approval of the Planning Board.
- 3) A list of all permits and approvals required in connection with any proposed **public realm** improvements with the application. These approvals shall be obtained prior to approval of the **development**, unless authorized by the Planning Board.

10.5B74.13 Any requests by the applicant for the Planning Board to modify specific standards and requirements set forth in this Section 10.5B70 as allowed under Section 10.5B74.30 and a detailed justification for the requested modification.

10.5B74.20 Planning Board Findings: Prior to granting a conditional use permit for density bonus incentives under this section, the **Board** shall make the following findings:

10.5B74.21 The proposed project (and any conditions of approval) satisfies the requirements in Section 10.5B73;

10.5B74.22 The proposed project is consistent with the purpose and intent set forth in Section 10.5B11.

10.5B74.30 Modification of Standards: In granting a conditional use permit, the Planning Board may modify specific standards and requirements set forth in Section 10.5B20, 10.5B30, 10.5B40 and 10.5B70 provided that the

Planning Board finds such modification will promote design flexibility and overall project quality, or that such modification is required for the **development** to provide a proposed **workforce housing** component, and that such modification is consistent with the purpose and intent set forth in Section 10.5B11.

10.5B74.31 In considering a request for a modification of the standards and requirements, the Planning Board may request that the applicant provide additional documentation and information from the applicant demonstrating that the requirements of this Ordinance are prohibitive to the successful completion of the project as proposed. Such information shall include, but not be limited to, project cost factors related to land acquisition, improvements for roads, utilities & drainage, insurance, labor, **building** materials, and profit to identify a total gross cost of the project and per unit gross costs.

Article 6 Overlay Districts

Section 10.610	Overlay Districts Generally
Section 10.620	Floodplain District
Section 10.630	Historic District
Section 10.640	Downtown Overlay District
Section 10.650	Osprey Landing Overlay District
Section 10.660	Airport Approach Overlay District
Section 10.670	Highway Noise Overlay District

Section 10.680 Gateway Neighborhood Overlay District

10.681 Purpose

The Gateway Neighborhood Overlay District is hereby created for the purpose of creating additional housing opportunities in certain neighborhoods and is referred to herein as the GNOD. This overlay shall allow for higher density housing in order to create neighborhoods where residents can live and work. A proposed **development** electing to use the provisions of the GNOD is referred to below as a GNOD **development**.

10.682 Applicability

- 10.682.10 The provisions of the GNOD shall apply to all land identified on the Zoning Map as the Gateway Neighborhood Overlay District (GNOD).
- 10.682.20 The requirements and provisions of the GNOD shall apply to any **development** containing residential uses, and/or any **development** electing any of the incentives of the GNOD. If the GNOD overlay options are not a part of a proposed **development**, then the underlying provisions of the zoning district shall apply.

10.683 Standards

- 10.683.10 All residential or **mixed-use** GNOD **developments** that include a residential use shall comply with the provisions of Article 5B of this Ordinance, with the following exceptions:
- (1) No more than 24 **dwelling units** per **building** shall be allowed without providing Incentive Bonus Option(s) as provided herein.
 - (2) Maximum **building height** for any **apartment building** or **mixed-use building** containing residential uses shall not exceed 4 stories or 50 feet without providing Incentive Bonus Option(s) as provided herein.
 - (3) Maximum **building length** shall not exceed 400 linear feet without an approved conditional use permit.

- (4) Front, side, and rear **building setback** from **lot lines** shall be a minimum of 10 feet.
- (5) Maximum **building coverage** shall not exceed 75%.
- (6) Minimum **open space coverage** shall be 10%.
- (7) Except for the above setback requirements, the requirements of Sections 10.5B22.20, .30 and .40, 10.5B33, and 10.5B71 shall not apply to land within the GNOD.
- (8) A **development** within the GNOD may include multiple lots owned or controlled by the same person or entity and assembled for a GNOD **development site without a CUP**. A GNOD **development** may contain more than one principal **building** or **building** type on the same **lot**.

10.683.20 Relationship to Other Provisions of this Zoning Ordinance

The provisions of the GNOD shall take precedence over all other provisions of the Zoning Ordinance that directly conflict with the provisions of the GNOD; otherwise, all other provisions shall apply.

10.684 Allowed Uses

In addition to the uses permitted in the underlying district, the following uses shall be permitted within the GNOD:

1. Multifamily Dwelling
2. Assisted Living Facility
3. **Retail Sales** conducted within a **building**
4. **Restaurant**, place of public assembly or function room
5. **Personal Services**
6. Consumer services such as copy shop, bicycle repair, and pet grooming.
7. Health club, yoga studio, martial arts school or similar **use**.

10.685 Parking

In the GNOD, the shared parking provisions of Section 4.4 of the Site Plan Review Regulations shall apply, and shared parking shall be permitted on separate **lots**, whether in common ownership or separate ownership. The provisions of Section 4.6 of the Site Plan Review Regulations (Location of Vehicular Use Facilities) shall not apply to a GNOD **development**.

10.686 Optional Density Bonus Incentives

Buildings in the GNOD containing residential **dwelling units** are permitted to be up to four stories and to contain up to 24 units per **building** as a matter of right. In order to

encourage **multifamily** housing within the GNOD, additional opportunities are provided through the optional incentives below that permit increased **building** heights and increased numbers of **dwelling units** per **building**.

The following incentives apply to residential **developments** and mixed-use **developments** that include residential uses in the GNOD, with allowable bonuses as indicated in Table 1.

10.686.10 Table 1: Optional Density Bonus Incentives Maximums (If Requirements Are Met)			
Incentive Option	Building Height Stories/Feet	Dwelling Units/Building	Approval Requirements
For All GNOD Developments over 4 Stories, 50 Feet and 24 Units Per Building:			
10.686.10 Public Realm Improvements	5/68	80	Director of Planning and Sustainability
And For Additional Height and Density, <i>One of the Following</i> :			
10.686.20 Workforce Housing	6/80	120	Conditional Use Permit by the Planning Board
10.686.20 Payment in Lieu	6/80	120	Conditional Use Permit by the Planning Board
10.686.30 Land Transfer	6/80	120	City Council Approval

10.686.10 Public Realm Improvements Incentive Option

In order to qualify for a **public realm** improvements incentive bonus in the GNOD, as described here and in Section 10.5B73.20, the proposed **public realm** improvements shall be reviewed by the Planning Board as a part of site plan approval. The Planning Board shall then make written comments regarding the proposed public realm improvements to the Director of Planning and Sustainability. To the extent that the Planning Board's comments are not followed or incorporated into the Director of Planning and Sustainability's decision, the Director shall set forth findings relative to the Planning Board's comments.

All public realm improvements shall be subject to administrative approval by the Director of Planning and Sustainability. The Director of Planning and Sustainability shall review all proposed public realm improvements for compliance with Section 10.5B73.20, ensure that proposed public realm improvements are constructed to City standards, and are in the public interest. Public realm improvements under this section shall be permitted on a different lot than the **development**, and the remaining requirements of Section 10.5B73.20 (4) shall not apply to **public realm** improvements within the GNOD.

10.686.20 Workforce Housing or Payment in Lieu Incentive Option

The Planning Board may grant a conditional use permit for this optional bonus in accordance with Sections 10.240, et. seq. To qualify for this bonus, a development shall include either or a combination of the following:

- (1) Workforce Housing may be provided in accordance with Section 10.5B73.10.

- (2) A payment to the City in lieu of providing workforce housing in an amount based on the particular makeup of the development and in accordance with the fees established annually by the Fee Committee and the City Council in the fee schedule.

10.686.30 Land Transfer Incentive Option

In order to facilitate future development of below-market rate housing, there may be appropriate circumstances where applicants may convey real property to the City in lieu of or in conjunction with meeting the other requirements for workforce housing of the GNOD. However, recognizing the unique nature of land, not all property may be suitable or desirable for this purpose. Therefore, any real property offered to the City pursuant to this section shall be subject to acceptance by the City Council, and in accordance with the following requirements.

- (1) In lieu of constructing workforce housing units within a GNOD Development, an applicant may offer real property to the City. Any real property offered to the City shall be suitable for developing workforce housing of a size set forth in section 10.686.40 and shall not require a conditional use permit from the Planning Board. Instead, the conveyance shall be subject to approval and acceptance by the City Council. In exchange for transferring land to the City, the developer shall be permitted to construct buildings up to six stories and 80 feet in height, and to construct up to 120 units per building.
- (2) Any applicant must, at their own expense, provide a certificate of title and a Phase One environmental report for any property offered to the City Council. All closing costs shall be borne by the applicant. The City Council may request any additional information regarding the offered real property or the proposed transfer, the preparation of which shall be by the applicant.
- (3) Any applicant must, at their own expense, demonstrate the suitability of the proposed land to be conveyed to the City for workforce housing purposes. This requirement shall be met by submitting a constraints site plan to the Director of Planning and Sustainability depicting: boundaries, existing and proposed; the setbacks; wetlands and wetlands buffers, if any; rights of way; utility easements; and, other identifiable **development** constraints. The Director of Planning and Sustainability shall provide comments on the proposed site's suitability based on the constraints site plan to the City Council prior to acceptance.
- (4) Prior to acceptance by the City Council, the Planning Board shall provide written comments to the City Council regarding the offered real property and its compliance with this Article. Any comments offered by the Planning Board shall be advisory in nature only, but the City Council shall, to the extent that the Planning Board's comments are not followed or incorporated into the City Council's decision, set forth findings relative to the Planning Board's comments.
- (5) The City Council shall not accept any real property offered if acceptance would subject the municipality to potential liability as an owner of property under the Comprehensive Environmental Response, Compensation and Liability Act of

1980, 42 U.S.C. section 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. section 6901 et seq., RSA 147-A and 147-B, and any other federal or state environmental statute which imposes strict liability on owners for environmental impairment of the real estate involved.

- (6) In addition to the circumstances described in paragraph 2, the City Council may refuse to accept any offered real property whenever in its judgment acceptance and ownership of the real estate would subject the municipality to undesirable obligations or liability risks, including obligations under real estate covenants or obligations to tenants, or for any other reason would be contrary to the public interest.
- (7) In order to qualify for this optional incentive, the amount of the proposed land transfer will be dependent on the size of the proposed GNOD development as follows:
 - (a) The developer shall convey at least one contiguous acre of **Developable Upland** to the City for up to twenty acres of **Developable Upland** in a proposed GNOD (the Parcel). For a GNOD larger than twenty acres, the size of the Parcel shall increase in the proportion of one acre of **Developable Upland** per each additional twenty acres of **Developable Upland** in the proposed GNOD.
 - (b) The City Council, at its sole discretion and following a recommendation by the Planning Board, may accept multiple parcels of not less than one acre each, if the City Council determines it is in the best interest of the City.
- (8) Any property acquired by the City pursuant to this section shall be primarily utilized for below-market rate housing. The City Council shall designate the appropriate method for procurement, development, form of ownership, disposition and administration of individual parcels of land acquired pursuant to this section.
- (9) Any land conveyed under this section may be conveyed as a condition subsequent to final Planning Board approval(s) and execution of the site review agreement, but in any event shall be conveyed prior to the issuance of a building permit for any project.
- (10) If land is conveyed under this section, there shall be no further requirement to meet any specific percentage of workforce housing units in a GNOD as provided in Section 10.5B73.10, unless a building is proposed over 400 linear feet in length, in which case the Bonus Incentive Requirements of Section 10.5B73.10 shall apply.

10.686.40 Transfer of Development Rights Acquired through Land Transfer

- (1) Land may be conveyed in conjunction with, or separately from a proposed **development** (GNOD conveyance). In the event that a GNOD conveyance

exceeds the amount required in order to support a proposed **development**, or when land is conveyed separately from any proposed development, the developer or its assigns will receive future credit for a future project or projects in accordance with the standards set forth below.

- (2) Following any acceptance of real property by the City Council and successful transfer of fee ownership with warranted title, if there is any excess acreage above what is necessary for a proposed GNOD **development**, the Director of Planning and Sustainability shall notify the Planning Board and the transferor of land of the amount of Land Credit the developer shall receive, which shall be memorialized in a Proposed Development Incentive Agreement (PDIA), as defined below.
- (3) Contemporaneous with any GNOD conveyance, the City and the developer shall enter into a PDIA, which shall specify the amount of land conveyed to the City, the amount if any used for a pending development, and the amount of excess land that may be credited toward a future project in accordance with the GNOD. Any excess land credit may only be used within the GNOD but may be sold or transferred without limitation for GNOD purposes. A sale or transfer of excess credits pursuant to this section is only valid upon written notice of the transfer to the Director of Planning and Sustainability.
- (4) The maximum term of any PDIA shall not exceed fifteen (15) years, following which the rights to any unused incentive shall automatically expire and become null and void.
- (5) Entering into a PDIA under this section shall not be deemed to supersede or waive any of the other provisions of the GNOD or Article 5B or other applicable provisions of this Ordinance, nor shall any approval be considered to represent the granting of land use approval or vesting for any future **development**.
- (6) Future use of the excess land credit to support a future project shall require administrative approval of the Director of Planning and Sustainability, who shall certify to the Planning Board both the amount of land credit used as a part of a **development** and the remaining land credit pursuant to the PDIA.
- (7) Excess land credits may be used in full or partial fulfillment of the requirements of a future **development** set forth in section 10.686.20.

10.687 Definitions

Developable Upland

Net land area of property suitable for, or used for, **development**, excluding any public rights of way or street rights of way platted as a part of the **development**, wetlands, and wetland buffers.