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 **building**s 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 **building**s within the **development**, and the **adjacent use**s and public amenities.

b) **Workforce Housing** – The **development** shall have either: 1) 10% of any proposed for sale **dwelling unit**s within a **development** shall be **workforce housing unit**s (**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 unit**s within a **development** shall be **workforce housing unit**s (**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 unit**s shall be at least 600 sq. ft. in **gross floor area**s and be distributed throughout the **building** wherever **dwelling unit**s 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 level**s, 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 **development**s 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 **development**s with 5 or less **dwelling unit**s, 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 use**s.
(e) For **development**s with more than five (5) **dwelling unit**s**,** the **dwelling unit**s within a **building** shall be **workforce housing unit**s in compliance with state law for either: 1) 10% of any proposed for sale **dwelling unit**s within a **development** shall be **workforce housing unit**s (**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 unit**s with in a **development** shall be **workforce housing unit**s (**affordable** to a household with an income of no more than 60 percent of the **area median income** for a 3 **person** household). Such **unit**s shall be at least 600 sq. ft. The **workforce housing unit**s shall be distributed throughout the **building** wherever **dwelling unit**s 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 block**s shall be separated by **open space**, **community space**, or surface parking areas of at least 30 feet in width. Parking areas located between **building**s 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 **building**s. 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 **lot**s 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 **development**s with more than 5 **dwelling unit**s 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 **development**s with five (5) or less **dwelling unit**s, 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, **use**s 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 **development**s with five (5) or less **dwelling unit**s, no **workforce housing unit**s are required**.** For a **development** with more than five (5) **dwelling unit**s**,** at least 20% of the **dwelling unit**s within a **building**, shall be **workforce housing unit**s 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 unit**s shall be distributed throughout the **building** wherever **dwelling unit**s are located; or at least 10% of the **dwelling unit**s within a **building** shall be **workforce housing unit**s 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 unit**s shall be distributed throughout the **building** wherever **dwelling unit**s 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 Unit**s Per **Building**: The Planning Board may, by conditional use permit, allow up to a maximum of 36 **dwelling unit**s per **building**.

10.5B72.20 **Dwelling Unit**s 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 unit**s 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 unit**s shall be distributed throughout the **building** wherever **dwelling unit**s 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** it if 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 unit**s, identifying quantity, location, and type;
2) Documentation that the proposed units qualify as **workforce housing unit**s 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 **lot**s, 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 unit**s per **building**.

The following incentives apply to residential **development**s and mixed-use **development**s 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, *One of the Following*:			
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.