

Inclusionary Housing

Section 1950. Purpose and Authority

a. Purpose and Uses. The intent of this ordinance is:

(1) To support the adopted State College Borough Strategic Plan, Action Plan Goal 1, Objective B. Encourage home ownership by expanding current programs and exploring new programs;

(2) To support the adopted State College Borough Strategic Plan, Goal 4, Expand Housing Opportunities;

(3) To prevent overcrowding and deterioration of the limited supply of housing, and thereby promote the public health, safety and general welfare;

(4) To increase the number of owner-occupied and rental housing units for households with an income of 120% or less of Area Median Income;

(5) To support the Centre Region Comprehensive Plan's goal to provide a wide range of sound, affordable and accessible housing consistent with the fair share needs of each municipality in the Centre Region;

(6) To facilitate and encourage development and redevelopment that includes a range of housing opportunities through a variety of residential types, forms of ownership, home sale prices and rental rates;

(7) To support the objectives of the current State College Borough Consolidated Plan and the 5-Year Consolidated Plan by expanding housing opportunities for households making 50% to 120% Area Median Income;

(8) To work in partnership and support programs like State College Community Land Trust (SCCLT), Housing Transitions, Inc, and Temporary Housing Foundation to create additional housing opportunities; and

(9) To ensure affordable homeownership which is, a mortgage payment and housing expenses (principal, interest, taxes and insurance no greater than 30% of a family's gross month income, per the HUD definition.)

b. Authority. Provisions for the Inclusionary Housing Ordinance are intended to comply with the following Articles of the Municipal Planning Code.

(1) Article VI Zoning

Section 603. Ordinance Provisions where:

(a) Zoning ordinances should reflect the policy goals of the statement of community development objectives and give consideration to the character of the municipality, the needs of the citizens and the suitabilities and special nature of particular parts of the municipality.

(c) Zoning ordinances may contain:

(5) provisions to encourage innovation and to promote flexibility, economy and ingenuity in development, including subdivisions and land developments as defined in this act;

(6) provisions authorizing increases in the permissible density of population or intensity of a particular use based upon expressed standards and criteria set forth in the zoning ordinance;

(j) Zoning ordinances adopted by municipalities shall be generally consistent with the municipal or multi-municipal comprehensive plan or, where none exists, with the municipal statement of community development objectives and the county comprehensive plan.

Section 604. Zoning Purposes. The provisions of zoning ordinances shall be designed:

(1) To promote coordinated and practical community development and proper density of population.

Section 605. Classifications.

(3) For the purpose of encouraging innovation and the promotion of flexibility, economy and ingenuity in development, including subdivisions and land developments as defined in this act, and for the purpose of authorizing increases in the permissible density of population or intensity of a particular use based upon expressed standards and criteria set forth in the zoning ordinance.

(2) These regulations are enacted under the authority of the Pennsylvania Human Relations Act (Act of October 27, 1995, P.L. 744, as amended), which guarantees fair housing.

(3) Posting of the Fair Housing Practices Notice is required pursuant to the Pennsylvania Human Relations Act.

(Ordinance 1972, August 15, 2011, Section 2.)

Section 1951. Inclusionary Units.

a. Applicability. This applies to all land development plans within all Zoning Districts that permit residential dwelling units, and for all of the following types of land development that contain six (6) or more additional residential dwelling units shall also contain inclusionary units as determined by the calculation in paragraph b below: (Exception: Dwelling units that are owned, rented or leased by The Pennsylvania State University for the sole purpose of housing full-time enrolled students in the UPD Zoning district.)

- (1) New residential construction, regardless of the type of dwelling unit.
- (2) New mixed-use development with a residential component.
- (3) Renovation of a multiple-family residential structure that increases the number of residential units from the number of units in the original structure.
- (4) Conversion of an existing residential structure regardless of dwelling type to a multiple-family residential structure.
- (5) Conversion of a non-residential property to a residential property.

b. Calculation of Inclusionary Units. To calculate the minimum number of inclusionary units required in any land development listed in paragraph a., Applicability, above, the total number of proposed units shall be multiplied by 10% percent (10%). If the product includes a fraction, a fraction of 0.5 or more shall be rounded up to the next whole number, and a fraction of less than 0.5 shall be rounded down to the next whole number. (See the table in paragraph Section 4a (8) for the percentage of the type of inclusionary units to be provided to specific qualified households.)

c. Alternatives to On-Site Construction of Inclusionary Units. The use of alternatives to on-site construction of inclusionary units in whole or in part will result in the same reduction in whole or in part of the bonus units permitted on site.

- (1) Fee in-Lieu Inclusionary Housing.
 - (a) An applicant may pay a fee in-lieu constructing some or all of the required minimum number of inclusionary units required in any development listed in paragraph a, Applicability, above.

(b) Borough Council shall establish by resolution the amount of the fee-in-lieu payment per unit following written recommendation by the Borough Manager and adopt it as part of the Borough's schedule of fees. The per-unit amount shall be based on an estimate of the actual cost of providing an inclusionary unit using actual construction cost data, which shall include a consideration of land purchase costs. The per-unit amount shall be provided in accordance with the policy and procedures manual for administration of the program.

(c) All fee-in-lieu payments received pursuant to this ordinance shall be paid directly to the Borough and be used to further the Borough's mission of providing housing opportunities by purchasing, rehabilitating and selling homes in the Borough to income-qualified buyers and/or providing rentals to income-qualified renters. The Borough shall create and administer an Inclusionary Housing Fund for such payments.

(d) To determine the total fee-in-lieu payment, the per-unit amount established by the Borough shall be multiplied by at least 10 percent (10%) of the number of proposed units in the development pursuant to paragraph a, Applicability, above. For the purposes of such calculation, if 10 percent of the number of proposed units results in a fraction, the fraction shall not be round up or down. If the fee-in-lieu payment is made to substitute providing one or more of the required units, the calculation shall be prorated as appropriate.

(2) Off-Site Development. Inclusionary units otherwise required to be constructed as specified under paragraph a., Applicability, above, maybe constructed or rehabilitated off-site within the State College Borough. To determine the total number of off-site units, multiply the number of proposed units in the development by 10 percent. Applicant must obtain off-site development plan approval from the Borough at the same time the Applicant obtains plan approval for the proposed market-rate units within the covered development. The off-site development plan must include, among other land development plan requirements, documentation of site control, necessary financing in place to complete the off-site development or rehabilitation, architectural designs and elevations, and an Inclusionary Housing Development Agreement as required under Section 1952.a(3), below. As a condition of approval for the Applicant's off-site development, the Borough shall require that off-site inclusionary units shall be completed no later than completion of the Applicant's market-rate units. See Section 1952.e., Phasing of Inclusionary Units, for requirements of the off-site inclusionary units are not completed as required within the specified timeframe as described in the Inclusionary Housing Agreement.

(3) Land Donation. Land within the State College Borough may be donated to the Borough or its assignee with the Borough's approval. The land value must be equal to or greater than the value of fee-in-lieu payment in paragraph c (1). The value of the land will be determined by an appraisal completed by a certified appraiser shall be submitted to the Borough. If the submitted appraisal is in question the value of the land will be determined as outlined in the policy and procedures manual.

(a) The land to be donated must meet all applicable zoning and land development standards to construct the required units.

(b) The land donation must occur prior to the completion of the market-rate units. See Section 1952.e. Phasing of Inclusionary Units, for requirements if the land donation is not completed as required within the specified timeframe.

(4) Building and Land Donation. Building and Land within the State College Borough may be donated to the Borough or its assignee with the Borough's approval. The building and land value must be equal to or greater than the value of fee-in-lieu payment in paragraph c (1). The value of the building and land will be determined by an appraisal completed by a certified appraiser shall be submitted to the Borough. If the appraisal submitted is in question the value of the building and land will be determined as outlined in the policy and procedures manual.

(a) The land to be donated must meet all applicable zoning and land development standards to construct the required units.

(b) The building to be donated must meet all applicable building code and zoning requirements to construct the required units.

(c) The building and land donation must occur prior to the completion of the market-rate units. See Section 1952.e. Phasing of Inclusionary Units, for requirements if the building and land donation is not completed as required within the specified timeframe.

(Ordinance 1972, August 15, 2011, Section 3, as amended by Ordinance 2022, August 19, 2013.)

Section 1952. Requirements for Inclusionary Units.

a. General Requirements for Inclusionary Units. All covered projects must comply with the following requirements:

(1) Permitted Development Modifications. Developments that provide inclusionary units on-site will have the option to add one additional equivalent dwelling unit (bonus unit) for each inclusionary unit provided as part of the land development plan. The following provisions will be applied to the entire land development for the additional units to be accommodated on the site.

(a) One-family dwelling and two-family dwelling.

(i) Reduction in lot size by 25 percent.

(ii) Lot width may be reduced to the extent needed to provide for all inclusionary units required and the allowable bonus units provided all setback requirements are met.

(b) Row dwelling or townhomes-7 units per row will be permitted.

(c) Multi-family dwellings.

(i) Off-street parking may be provided but is not required for any inclusionary unit

(ii) Side yard requirements can be reduced to 5 feet.

(d) Inclusionary units may be up to 10% smaller than the market-rate units.

(e) Density restrictions (such as FAR, minimum lot area per unit, etc.) may be modified to the extent needed to accommodate all required inclusionary units and allowable bonus units.

(f) The overall height for developments of multi-family units cannot exceed one additional story over and above the underlying zoning.

(2) Development Composition. Inclusionary units shall be mixed with, and not clustered together or segregated in any way from, market-rate units.

(3) Inclusionary Housing Development Agreement. Prior to the issuance of a zoning permit for any development in which inclusionary units are required, the applicant shall have entered into with the Borough an Inclusionary Housing Development Agreement, as defined in the Codification of Ordinances, Chapter XIX, Section 201, Definitions.

(4) Primary Place of Residence. Inclusionary units required under this ordinance shall be offered for sale or rent to a qualified household to be used for its own primary residence, except for units purchased by the Borough or its assignee.

(5) Phasing Plan. If the development plan, for which inclusionary housing is required, contains a phasing plan, the phasing plan shall provide for the development of inclusionary units concurrently with the market-rate units. No phasing plan shall provide that the inclusionary units built are the last units constructed.

(6) Bedroom Mix. In order to assure an adequate distribution of inclusionary units by household size, the bedroom mix of inclusionary units in any project shall be in the same ratio as the bedroom mix of the market-rate units of the project, unless waived by the Borough.

(7) Like Units. Inclusionary units shall be like units with regard to number of bedrooms, amenities and access to amenities, but may differ from the market-rate units in a covered project with regard to interior amenities, provided that:

- These differences, excluding differences related to size differentials, are not apparent in the general interior and exterior appearance of the project's units; and
- These differences do not include insulation, windows, heating systems, and other improvements related to the energy efficiency and standard components, as defined by the Borough, of the project's units.

(8) Qualified Households. The sale or lease of inclusionary units shall be limited to households earning up to one hundred twenty percent (120%) of median income, adjusted for household size. See the following table for the percentage of inclusionary units to be provided to specific qualified households.

Population to be Served	Percentage of Inclusionary Units for the Development	
	<i>For Sale Units</i>	<i>Rental Units</i>
≤ 60% Area Median Income (AMI)	N/A	Minimum 50%
61-80% AMI	Minimum 50%	Minimum 25%
81-120% AMI	Maximum 50%	Maximum 25%
TOTAL	100%	100%

In instances where there are three inclusionary units for rent a minimum of one unit must be provided for each population to be served. In instances where there are less than three inclusionary units for rent a minimum of one unit for ≤ 60% Area Median Income (AMI) must be provided at a commensurate price. In instances where there are less than three inclusionary units for sale a minimum of one unit for ≤ 80% Area Median Income (AMI) must be provided at a commensurate price.

(9) Limitations.

(a) Priority given to residents of Centre County for a minimum of one year or employed by a business located in Centre County. Must be a United States citizen or have permanent resident alien status.

(b) Must use unit as principal place of residence.

(c) Except for student status, household income, asset limitations and the primary residency requirement as set forth herein, occupancy of any inclusionary unit shall not be limited by any conditions that are not otherwise applicable to all units within the covered project.

(d) A full-time student is defined as an individual enrolled in a post secondary program, college or university that is registered as an undergraduate according to the enrollment requirements where the student is enrolled.

(e) Students are eligible when they can provide proof they are:

(i) graduate students

(ii) undergraduate students who are enrolled at least half-time, are not part of a household outside of the Inclusionary Housing Program (i.e., not a dependent of another individual) and who meet at least one of the following criteria:

1. married
2. domestic partners, as defined herein
3. single parents who have at least 50% custody
4. veterans with a service-related disability as determined by the Veterans Administration
5. individuals who are receiving assistance under Title IV of the Social Security Act (i.e. TANF)
6. individuals who are enrolled in a job training program receiving assistance under the Workforce Investment Act or under other similar federal, state or local laws.

(10) Final Number of Units and Pricing shall be determined as outlined in this ordinance and the policy and procedures manual.

b. Calculating Rents and Sales Prices. The following provision shall apply to the calculation of rents, selling prices and/or carrying charges of inclusionary units:

(1) Average Rent. Inclusionary rental units shall be rented at a price which, on average, is affordable for a household with an annual income that is no more than 65% of median income adjusted for household size.

(2) Average Sales Price. Inclusionary units for sale shall be sold at a price which, on average, is affordable for a household with an annual income that is no more than 90% of median income adjusted for household size.

(3) Unit/Household Size Pricing Calculation. In calculating the rents or carrying charges of inclusionary units, the following maximum relationship between unit size and assumed household size shall apply:

- Efficiency units: 1 person household
- One bedroom units: 2 person household
- Two-bedroom units: 3 person household
- Three-bedroom units: 4 person household
- Four-bedroom units: 5 person household

Household size numbers used for price calculation will not be used to determine maximum legal occupancy of a dwelling unit. Maximum legal occupancy of a dwelling unit will be based on standards in the State College Zoning Ordinance for one-and two-family dwellings and in the Centre Region Building Safety & Property Maintenance Code for multi-family dwellings.

(4) Sales Price Calculation. With respect to inclusionary units offered for sale, prices will be calculated on the basis of:

- An available fixed-rate, thirty-year mortgage, consistent with the average rate published from time to time, typically quarterly, by Freddie Mac or its equivalent.
- A down payment of no more than five (5) percent of the purchase price.
- A calculation of property taxes.
- A calculation of homeowner insurance.
- A calculation of condominium or homeowner association fees.
- Other monthly fees, as allowed by the Borough, such as monthly land lease fees.

(5) Rent Calculation. With respect to inclusionary units offered for rent, initial rents are calculated based on HUD Area Median Income (AMI) for the State College Metropolitan Statistical Area as follows: HUD publishes annual AMI data for one- to eight-person households.

Maximum monthly rents would be 30% of designated AMI, divided by twelve based on the number of bedrooms, less the current utility allowance per the Housing Authority of Centre County. Any Owner who charges rent in violation of this provision shall refund excess to tenant.

c. **Borough's Option to Purchase.** The following provisions apply to the initial offering of inclusionary units for sale or rent:

(1) **Notification.** As a condition of land development approval, the developer shall notify the Borough or its assignee of the prospective availability of any inclusionary units at time the design and pricing are being established for such units.

(2) **Initial Option.** From the time of building permit issuance, the Borough or its assignee shall have an exclusive option for one hundred twenty (120) days to enter into a purchase and sales agreement at or below the inclusionary unit pricing per Section 4. for each inclusionary unit offered for sale by the developer. The Borough may waive or assign this option.

(3) **Waiver.** If the Borough or its assignee fails to exercise its option for the inclusionary units, or if the Borough or its assignee declares its intent not to exercise its option, the developer shall offer the units for purchase or rent to households per Section 1952.a(8). If requested by the developer, the Borough or its assignee shall execute documents that may be recorded with the Centre County Office of Recorder of Deeds to evidence said waiver of the option.

(4) **Time of Closing.** Closing on inclusionary units purchased by the Borough or its assignee occurs on or after the time of issuance of the certificate of occupancy. If the Borough or its assignee fails to close on these inclusionary units, the developer shall offer the unit for purchase or rent to households per Section 1952.a(8).

(5) **Transfer of Option.** The Borough may assign its options under this section, in which event it shall notify the developer of the agency to which it has assigned the option, which agency shall deal directly with the developer, and shall have all of the authority of the Borough as provided under this section.

(6) **Additional Option.** At any point after the Initial Option period, c.(2) above, the developer may offer the inclusionary units to the Borough or its assignee for purchase at or below the inclusionary unit pricing per Section 4. The Borough or its assignee then shall have thirty (30) days to enter into a purchase and sales agreement.

d. **Continued Affordability Requirements.** All covered projects shall comply with the following provisions to ensure continued affordability of inclusionary units provided under this ordinance and units required to be continually inclusionary hereunder.

(1) 99-Year Requirement. All inclusionary units shall remain inclusionary for a period of no less than ninety-nine (99) years commencing from the date of initial occupancy of the units.

(2) Affordability Instruments. Provisions to ensure continued affordability of inclusionary units shall be embodied in legally binding agreements and/or deed restrictions, which shall be prepared by the Borough and agreed to by the developer and upon execution, shall be recorded and filed.

(3) Resale Restrictions. The Borough shall require resale conditions in order to maintain the availability of inclusionary units in perpetuity be specified in the Affordability Instrument, including resale calculations.

a. At the time of purchase, the owners of any inclusionary unit shall execute a Resale Restriction Agreement and Option to Purchase provided by the Borough, stating the restrictions imposed pursuant to this Resale Restrictions section, including but not limited to all applicable resale controls and occupancy restrictions. This Resale Restriction Agreement and Option to Purchase shall be recorded in the Centre County Office of Recorder of Deeds and shall afford the Borough or its assignee the right to enforce the declaration of restrictions.

b. The Borough or its assignee shall be responsible for monitoring and facilitating the resale of inclusionary units. Any abuse in the resale provisions shall be referred to the Borough for action.

(4) Rent Increases. Provisions for continued affordability of inclusionary rental units shall limit annual rent increases to the percentage increase in the median household income within the State College Metropolitan Statistical Area (MSA), except to the extent that further increases are made necessary by hardship or other unusual conditions, as defined in the policies and procedures manual, and shall provide that no rent increase may take effect until it has received approval from the Borough in writing. Any Owner who charges rent in violation of this provision shall refund excess to tenant.

(5) Purchase Option. Provisions for continued affordability of inclusionary units shall provide that the Borough or its assignee shall have an exclusive option to purchase any inclusionary unit when it is offered for resale. The purchase option period and process shall be detailed in the Affordability Instrument.

e. Phasing of Inclusionary Units. Inclusionary units shall be made available for occupancy on approximately the same schedule as a covered project's market-rate units, except that certificates of occupancy for the last 10% of the market-rate units shall be withheld until certificates of occupancy have been issued for all of the inclusionary units or the land donation or land and building donation is complete. Where the Borough determines that completion of inclusionary units has been delayed for extraordinary reasons beyond the reasonable control of

the Applicant, the Borough may, in its discretion, permit the Applicant to post a monetary bond and release one or more market-rate units. The amount of the bond shall be sufficient in the determination of the Borough Planning Department to assure completion of the inclusionary units.

A schedule setting forth the phasing of the total number of units in a covered project, along with a schedule setting forth the phasing of the required inclusionary units shall be established prior to the issuance of a building permit for any development subject to the provisions of this ordinance.

f. Certificate of Occupancy. No certificate of occupancy shall be issued for a covered project unless all inclusionary units within the covered project are eligible for a certificate of occupancy; except that with respect to covered projects to be constructed in phases, certificates of occupancy may be issued on a phased basis consistent with the provisions of paragraph e, Phasing of Inclusionary Units, above.

g. Enforcement. Violations of this ordinance shall be punishable as provided by Part I: Remedies, Penalties and Validity, of Chapter XIX, Zoning.

h. Policy and Procedures Manuals for Administration and the Marketing of Units for Sale and Rent. The State College Borough Planning Department shall provide an administrative manual for the execution of the inclusionary housing ordinance. This manual shall be followed by the applicant to provide the inclusionary units.

The marketing and sales and rents manual shall also be provided to establish requirements for this aspect of the program. Developers and their agents are expected to work closely and in cooperation with Borough staff to make the inclusionary marketing and sales process as efficient and equitable as possible.

These documents will include clarifying information and procedures when requested by the Borough. These procedures may be updated from time to time to increase the effectiveness of the inclusionary housing program.

i. Inability to Rent or Sell Inclusionary Units to Qualified Households. If the developer meets or exceeds the marketing requirements, referenced in paragraph h above, for a period of one (1) year from final certificates of occupancy issuance, and is still unable to lease or sell inclusionary units to qualified households, the developer shall offer the inclusionary units to the Borough or its assignee for purchase per Section 4.c.(6). If the Borough or its assignee does not purchase the inclusionary units, the developer may pay the fee-in-lieu for the number of available inclusionary units. If the developer has met all the other requirements of this ordinance, this payment shall release the inclusionary units to market-rate units.

j. Administration. The State College Borough Planning Department shall administer and monitor activity under this ordinance and shall report periodically to the Borough Council, setting forth its findings, conclusions and recommendations for changes that will render the program more effective.

k. Fees. Fees to administer the program such as a monitoring fee, refinance fee, or resale fee, may be established by Borough Council resolution following written recommendation by the Borough Manager and adopted as part of the Borough's schedule of fees.

(Ordinance 1972, August 15, 2011, Section 4.)