

2023 -- S 1037 SUBSTITUTE A

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

A N A C T

RELATING TO TOWNS AND CITIES -- LOW AND MODERATE INCOME HOUSING

Introduced By: Senators Ruggerio, Pearson, Gallo, and Kallman

Date Introduced: May 19, 2023

Referred To: Senate Housing & Municipal Government

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 45-53-3 and 45-53-4 of the General Laws in Chapter 45-53 entitled  
2 "Low and Moderate Income Housing" are hereby amended to read as follows:

3 **45-53-3. Definitions Definitions -- Effective January 1, 2024.**

4 The following words, wherever used in this chapter, unless a different meaning clearly  
5 appears from the context, have the following meanings:

6 (1) "Adjustment(s)" means a request, or requests by the applicant to seek relief from the  
7 literal use and dimensional requirements of the municipal zoning ordinance and/or the design  
8 standards or requirements of the municipal land development and subdivision regulations. The  
9 standard for the local review board's consideration of adjustments is set forth in § 45-53-  
10 4(D)(2)(iii)(E)(II).

11 ~~(1)~~(2) "Affordable housing plan" means a component of a housing element, as defined in  
12 § 45-22.2-4(1), ~~to meet~~ that addresses housing needs in a city or town that is prepared in accordance  
13 with guidelines adopted by the state planning council, and/or to meet the provisions of § 45-53-  
14 4(b)(1) and (c).

15 ~~(2)~~(3) "Approved affordable housing plan" means an affordable housing plan that has been  
16 approved by the director of administration as meeting the guidelines for the local comprehensive  
17 plan as promulgated by the state planning council; provided, however, that state review and  
18 approval, for plans submitted by December 31, 2004, shall not be contingent on the city or town  
19 having completed, adopted, or amended its comprehensive plan as provided for in § 45-22.2-8, §

1 45-22.2-9, or § 45-22.2-9.

2 ~~(3)~~(4) “Comprehensive plan” means a comprehensive plan adopted and approved by a city  
3 or town pursuant to chapters 22.2 and 22.3 of this title.

4 ~~(4)~~(5) “Consistent with local needs” means reasonable in view of the state need for low-  
5 and moderate-income housing, considered with the number of low-income persons in the city or  
6 town affected and the need to protect the health and safety of the occupants of the proposed housing  
7 or of the residents of the city or town, to promote better site and building design in relation to the  
8 surroundings, or to preserve open spaces, and if the local zoning or land use ordinances,  
9 requirements, and regulations are applied as equally as possible to both subsidized and  
10 unsubsidized housing. Local zoning and land use ordinances, requirements, or regulations are  
11 consistent with local needs when imposed by a city or town council after a comprehensive hearing  
12 in a city or town where:

13 (i) Low- or moderate-income housing exists which is: (A) In the case of an urban city or  
14 town which has at least 5,000 occupied year-round rental units and the units, as reported in the  
15 latest decennial census of the city or town, comprise twenty-five percent (25%) or more of the year-  
16 round housing units, and is in excess of fifteen percent (15%) of the total occupied year-round  
17 rental units; or (B) In the case of all other cities or towns, is in excess of ten percent (10%) of the  
18 year-round housing units reported in the census.

19 (ii) The city or town has promulgated zoning or land use ordinances, requirements, and  
20 regulations to implement a comprehensive plan that has been adopted and approved pursuant to  
21 chapters 22.2 and 22.3 of this title, and the housing element of the comprehensive plan provides  
22 for low- and moderate-income housing in excess of either ten percent (10%) of the year-round  
23 housing units or fifteen percent (15%) of the occupied year-round rental housing units as provided  
24 in subdivision (4)(i).

25 (iii) Multi-family rental units built under a comprehensive permit may be calculated  
26 towards meeting the requirements of a municipality’s low- or moderate-income housing inventory,  
27 as long as the units meet and are in compliance with the provisions of § 45-53-3.1.

28 ~~(5)~~(6) “Infeasible” means any condition brought about by any single factor or combination  
29 of factors, as a result of limitations imposed on the development by conditions attached to the  
30 approval of the comprehensive permit, to the extent that it makes it ~~impossible for a public agency,~~  
31 ~~nonprofit organization, or limited equity housing cooperative~~ financially or logistically  
32 impracticable for any applicant to proceed in building or operating low- or moderate-income  
33 housing ~~without financial loss~~, within the limitations set by the subsidizing agency of government  
34 or local review board, on the size or character of the development, on the amount or nature of the

1 subsidy, or on the tenants, rentals, and income permissible, and without substantially changing the  
2 rent levels and unit sizes proposed by the ~~public agency, nonprofit organization, or limited equity~~  
3 ~~housing cooperative~~ applicant.

4 (6)(7) “Letter of eligibility” means a letter issued by the Rhode Island housing and  
5 mortgage finance corporation in accordance with § 42-55-5.3(a).

6 (7) ~~“Local board” means any town or city official, zoning board of review, planning board~~  
7 ~~or commission, board of appeal or zoning enforcement officer, local conservation commission,~~  
8 ~~historic district commission, or other municipal board having supervision of the construction of~~  
9 ~~buildings or the power of enforcing land use regulations, such as subdivision, or zoning laws.~~

10 (8) “Local review board” means the planning board as defined by § 45-22.2-4(20), ~~or if~~  
11 ~~designated by ordinance as the board to act on comprehensive permits for the town, the zoning~~  
12 ~~board of review established pursuant to § 45-24-56.~~

13 (9) “Low- or moderate-income housing” shall be synonymous with “affordable housing”  
14 as defined in § 42-128-8.1, and further means any housing whether built or operated by any public  
15 agency or any nonprofit organization or by any limited equity housing cooperative or any private  
16 developer, that is subsidized by a federal, state, or municipal government subsidy under any  
17 program to assist the construction or rehabilitation of ~~housing~~ affordable housing to low or  
18 ~~moderate income households, as defined in the applicable federal or state statute, or local ordinance~~  
19 and that will remain affordable through a land lease and/or deed restriction for ninety-nine (99)  
20 years or such other period that is either agreed to by the applicant and town or prescribed by the  
21 federal, state, or municipal government subsidy program but that is not less than thirty (30) years  
22 from initial occupancy.

23 (10) “Meeting local housing needs” means as a result of the adoption of the implementation  
24 program of an approved affordable housing plan ~~and~~, the absence of unreasonable denial of  
25 applications that are made pursuant to an approved affordable housing plan in order to accomplish  
26 the purposes and expectations of the approved affordable housing plan, and a showing that at least  
27 twenty percent (20%) of the total residential units approved by a local review board or any other  
28 municipal board in a calendar year are for low- and moderate-income housing as defined in § 42-  
29 128-8.1.

30 (11) “Monitoring agents” means those monitoring agents appointed by the Rhode Island  
31 housing resources commission pursuant to § 45-53-3.2 and to provide the monitoring and oversight  
32 set forth in this chapter, including, but not limited to, §§ 45-53-3.2 and 45-53-4.

33 (12) “Municipal government subsidy” means assistance that is made available through a  
34 city or town program sufficient to make housing affordable, as affordable housing is defined in §

1 42-128-8.1(d)(1); such assistance ~~may~~ shall include a combination of, but is not limited to, direct  
2 financial support, abatement of taxes, waiver of fees and charges, and approval of density bonuses  
3 and/or internal subsidies, zoning incentives, and adjustments as defined in this section and any  
4 combination of forms of assistance.

5 **45-53-4. Procedure for approval of construction of low- or moderate-income housing**

6 **Procedure for approval of construction of low- or moderate-income housing -- Effective**  
7 **January 1, 2024.**

8 (a) Any applicant proposing to build low- or moderate-income housing may submit to the  
9 local review board a single application for a comprehensive permit to build that housing in lieu of  
10 separate applications to the applicable local boards. This procedure is only available for proposals  
11 in which at least twenty-five percent (25%) of the housing is low- or moderate-income housing.

12 (b) Municipal government subsidies, including adjustments and zoning incentives are to  
13 be made available to applications under this chapter to offset the differential costs of the low- or  
14 moderate-incoming housing units in a development under this chapter. At a minimum, the  
15 following zoning incentives shall be allowed for projects submitted under this chapter:

16 (1) Density bonus. A municipality shall provide an applicant with more dwelling units than  
17 allowed by right under its zoning ordinance in the form of a density bonus to allow an increase in  
18 the allowed dwelling units per acre (DU/A), as well as other incentives and municipal government  
19 subsidies as defined in § 45-53-3. Furthermore, a municipality shall provide, at a minimum, the  
20 following density bonuses for projects submitted under this chapter, provided that the total land  
21 utilized in the density calculation shall exclude wetlands, wetland buffers, area devoted to  
22 infrastructure necessary for development and easements or rights of way of record:

23 (i) For properties connected to public sewer and water, or eligible to be connected to public  
24 sewer and water based on written confirmation from each respective service provider, the density  
25 bonus for a project which provides at least twenty-five percent (25%) low- and moderate-income  
26 housing shall be at least five (5) units per acre;

27 (ii) For properties connected to public sewer and water, or eligible to be connected to public  
28 sewer and water based on written confirmation from each respective service provider, the density  
29 bonus for a project which provides at least fifty percent (50%) low- and moderate-income housing  
30 shall be at least nine (9) units per acre;

31 (iii) For properties connected to public sewer and water, or eligible to be connected to  
32 public sewer and water based on written confirmation from each respective service provider, the  
33 density bonus for a project which provides one hundred percent (100%) low- and moderate-income  
34 housing shall be at least twelve (12) units per acre;

1 (iv) For properties not connected to either public water or sewer or both, but which provide  
2 competent evidence as to the availability of water to service the development and/or a permit for  
3 on-site wastewater treatment facilities to service the dwelling units from the applicable state  
4 agency, the density bonus for a project which provides at least twenty-five percent (25%) low- and  
5 moderate-income housing shall be at least three (3) units per acre;

6 (v) For properties not connected to either public water or sewer or both, but which provide  
7 competent evidence as to the availability of water to service the development and/or a permit for  
8 on-site wastewater treatment facilities to service the dwelling units from the applicable state  
9 agency, the density bonus for a project which provides at least fifty percent (50%) low- and  
10 moderate-income housing shall be at least five (5) units per acre;

11 (vi) For properties not connected to either public water or sewer or both, but which provide  
12 competent evidence as to the availability of water to service the development and/or a permit for  
13 on-site wastewater treatment facilities to service the dwelling units from the applicable state  
14 agency, the density bonus for a project which provides one hundred percent (100%) low- and  
15 moderate-income housing shall be at least eight (8) units per acre;

16 (2) Parking. A municipality shall not require more than one off-street parking space per  
17 dwelling unit for units up to and including two (2) bedrooms in applications submitted under this  
18 chapter;

19 (3) Bedrooms. A municipality shall not limit the number of bedrooms for applications  
20 submitted under this chapter to anything less than three (3) bedrooms per dwelling unit for single  
21 family dwelling units;

22 (4) Floor area. A municipality shall not utilize floor area requirements to limit any  
23 application, except as provided by § 45-24.3-11;

24 (c) A municipality shall not restrict comprehensive permit applications and permits by any  
25 locally adopted ordinance or policy that places a limit or moratorium on the development of  
26 residential units.

27 (d) The application and review process for a comprehensive permit shall be as follows:

28 ~~(1) Submission requirements. Applications for a comprehensive permit shall include:~~

29 ~~(i) A letter of eligibility issued by the Rhode Island housing and mortgage finance~~  
30 ~~corporation, or in the case of projects primarily funded by the U.S. Department of Housing and~~  
31 ~~Urban Development or other state or federal agencies, an award letter indicating the subsidy, or~~  
32 ~~application in such form as may be prescribed for a municipal government subsidy; and~~

33 ~~(ii) A written request to the local review board to submit a single application to build or~~  
34 ~~rehabilitate low or moderate income housing in lieu of separate applications to the applicable local~~

1 ~~boards. The written request shall identify the specific sections and provisions of applicable local~~  
2 ~~ordinances and regulations from which the applicant is seeking relief; and~~

3 ~~(iii) A proposed timetable for the commencement of construction and completion of the~~  
4 ~~project; and~~

5 ~~(iv) A sample land lease or deed restriction with affordability liens that will restrict use as~~  
6 ~~low and moderate income housing in conformance with the guidelines of the agency providing~~  
7 ~~the subsidy for the low and moderate income housing, but for a period of not less than thirty (30)~~  
8 ~~years; and~~

9 ~~(v) Identification of an approved entity that will monitor the long term affordability of the~~  
10 ~~low and moderate income units; provided, that, on and after July 1, 2022, this entity shall include~~  
11 ~~the Rhode Island housing resources commission established pursuant to chapter 128 of title 42 and~~  
12 ~~acting through its monitoring agents, and these agents shall monitor the long term affordability of~~  
13 ~~the low and moderate income units pursuant to § 45-53-3.2; and~~

14 ~~(vi) A financial pro forma for the proposed development; and~~

15 ~~(vii) For comprehensive permit applications: (A) Not involving major land developments~~  
16 ~~or major subdivisions including, but not limited to, applications seeking relief from specific~~  
17 ~~provisions of a local zoning ordinance, or involving administrative subdivisions, minor land~~  
18 ~~developments or minor subdivisions, or other local ordinances and regulations: those items required~~  
19 ~~by local regulations promulgated pursuant to applicable state law, with the exception of evidence~~  
20 ~~of state or federal permits; and for comprehensive permit applications; and (B) Involving major~~  
21 ~~land developments and major subdivisions, unless otherwise agreed to by the applicant and the~~  
22 ~~town; those items included in the checklist for the master plan in the local regulations promulgated~~  
23 ~~pursuant to § 45-23-40. Subsequent to master plan approval, the applicant must submit those items~~  
24 ~~included in the checklist for a preliminary plan for a major land development or major subdivision~~  
25 ~~project in the local regulations promulgated pursuant to § 45-23-41, with the exception of evidence~~  
26 ~~of state or federal permits. All required state and federal permits must be obtained prior to the final~~  
27 ~~plan approval or the issuance of a building permit; and~~

28 ~~(viii) Municipalities may impose fees on comprehensive permit applications that are~~  
29 ~~consistent with but do not exceed fees that would otherwise be assessed for a project of the same~~  
30 ~~scope and type but not proceeding under this chapter, provided, however, that the imposition of~~  
31 ~~such fees shall not preclude a showing by a nonprofit applicant that the fees make the project~~  
32 ~~financially infeasible; and~~

33 ~~(xi) Notwithstanding the submission requirements set forth above, the local review board~~  
34 ~~may request additional, reasonable documentation throughout the public hearing, including, but not~~

1 ~~limited to, opinions of experts, credible evidence of application for necessary federal and/or state~~  
2 ~~permits, statements and advice from other local boards and officials.~~

3 ~~(2) Certification of completeness. The application must be certified complete or incomplete~~  
4 ~~by the administrative officer according to the provisions of § 45-23-36; provided, however, that for~~  
5 ~~a major land development or major subdivision, the certificate for a master plan shall be granted~~  
6 ~~within twenty five (25) days and for a preliminary plan shall be granted within twenty five (25)~~  
7 ~~days. The running of the time period set forth herein will be deemed stopped upon the issuance of~~  
8 ~~a certificate of incompleteness of the application by the administrative officer and will recommence~~  
9 ~~upon the resubmission of a corrected application by the applicant. However, in no event will the~~  
10 ~~administrative officer be required to certify a corrected submission as complete or incomplete less~~  
11 ~~than ten (10) days after its resubmission. If the administrative officer certifies the application as~~  
12 ~~incomplete, the officer shall set forth in writing with specificity the missing or incomplete items.~~

13 ~~(3)(1) Pre-application conference. Where the comprehensive permit application proposal~~  
14 ~~is a major land development project or a major subdivision pursuant to chapter 23 of this title a A~~  
15 ~~municipality may require an applicant proposing a project under this chapter to first schedule~~  
16 ~~complete, or the applicant proposing a project under this chapter may request a pre-application~~  
17 ~~conference with the local review board, the technical review committee established pursuant to §~~  
18 ~~45-23-56, or with the administrative officer for the local review board ~~and other local officials~~, as~~  
19 ~~appropriate. ~~To request~~ In advance of a pre-application conference, the applicant shall be required~~  
20 ~~to submit only a short description of the project in writing including the number of units, type of~~  
21 ~~housing, density analysis, preliminary list of adjustments needed, as well as a location map, and~~  
22 ~~conceptual site plan. The purpose of the pre-application conference shall be to review a concept~~  
23 ~~plan of the proposed development and to elicit feedback from the reviewing person or board. Upon~~  
24 ~~receipt of a request by an applicant for a pre-application conference, the municipality ~~has~~ shall have~~  
25 ~~thirty (30) days to schedule and hold the pre-application conference, unless a different timeframe~~  
26 ~~is agreed to by the applicant in writing. If thirty (30) days has elapsed from the filing of the pre-~~  
27 ~~application submission and no pre-application conference has taken place, nothing shall be deemed~~  
28 ~~to preclude an applicant from thereafter filing and proceeding with an application for preliminary~~  
29 ~~plan review for a comprehensive permit.~~

30 ~~(4) Review of applications. An application filed in accordance with this chapter shall be~~  
31 ~~reviewed by the local review board at a public hearing in accordance with the following provisions:~~

32 ~~(i) Notification. Upon issuance of a certificate of completeness for a comprehensive permit,~~  
33 ~~the local review board shall immediately notify each local board, as applicable, of the filing of the~~  
34 ~~application, by sending a copy to the local boards and to other parties entitled to notice of hearings~~

1 ~~on applications under the zoning ordinance and/or land development and subdivision regulations~~  
2 ~~as applicable.~~

3 ~~(ii) Public notice. Public notice for all public hearings will be the same notice required~~  
4 ~~under local regulations for a public hearing for a preliminary plan promulgated in accordance with~~  
5 ~~§ 45-23-42. The cost of notice shall be paid by the applicant.~~

6 ~~(iii) Review of minor projects. The review of a comprehensive permit application involving~~  
7 ~~only minor land developments or minor subdivisions or requesting zoning ordinance relief or relief~~  
8 ~~from other local regulations or ordinances not otherwise addressed in this subsection, shall be~~  
9 ~~conducted following the procedures in the applicable local regulations, with the exception that all~~  
10 ~~minor land developments or minor subdivisions under this section are required to hold a public~~  
11 ~~hearing on the application, and within ninety five (95) days of issuance of the certificate of~~  
12 ~~completeness, or within such further time as is agreed to by the applicant and the local review~~  
13 ~~board, render a decision.~~

14 ~~(iv) Review of major projects. In the review of a comprehensive permit application~~  
15 ~~involving a major land development and/or major subdivision, the local review board shall hold a~~  
16 ~~public hearing on the master plan and shall, within ninety (90) days of issuance of the certification~~  
17 ~~of completeness, or within such further amount of time as may be agreed to by the local review~~  
18 ~~board and the applicant, render a decision. Preliminary and final plan review shall be conducted~~  
19 ~~according to local regulations promulgated pursuant to chapter 23 of this title except as otherwise~~  
20 ~~specified in this section.~~

21 (2) Preliminary plan review.

22 (i) Submission requirements.-- Applications for preliminary plan review under this chapter  
23 shall include:

24 (A) A letter of eligibility issued by the Rhode Island housing and mortgage finance  
25 corporation, or in the case of projects primarily funded by the U.S. Department of Housing and  
26 Urban Development or other state or federal agencies, an award letter indicating the subsidy, or  
27 application in such form as may be prescribed for a municipal government subsidy; and

28 (B) A letter signed by the authorized representative of the applicant, setting forth the  
29 specific sections and provisions of applicable local ordinances and regulations from which the  
30 applicant is seeking adjustments; and

31 (C) A proposed timetable for the commencement of construction and completion of the  
32 project; and

33 (D) Those items required by local regulations promulgated pursuant to applicable state law,  
34 with the exception of evidence of state or federal permits; and for comprehensive permit



1 applications included in the checklist for the preliminary plan review in the local regulations  
2 promulgated pursuant to chapter 23 of title 45; and

3 (E) Notwithstanding the submission requirements set forth above, the local review board  
4 may request additional, reasonable documentation throughout the public hearing, including, but not  
5 limited to, opinions of experts, credible evidence of application for necessary federal and/or state  
6 permits, statements and advice from other local boards and officials.

7 (ii) Certification of completeness. The preliminary plan application must be certified  
8 complete or incomplete by the administrative officer according to the provisions of § 45-23-36;  
9 provided, however, that the certificate shall be granted within twenty-five (25) days of submission  
10 of the application. The running of the time period set forth herein will be deemed stopped upon the  
11 issuance of a written certificate of incompleteness of the application by the administrative officer  
12 and will recommence upon the resubmission of a corrected application by the applicant. However,  
13 in no event will the administrative officer be required to certify a corrected submission as complete  
14 or incomplete less than ten (10) days after its resubmission. If the administrative officer certifies  
15 the application as incomplete, the officer shall set forth in writing with specificity the missing or  
16 incomplete items.

17 (iii) Review of applications. An application filed in accordance with this chapter shall be  
18 reviewed in accordance with the following provisions:

19 (A) Public hearing. A public hearing shall be noticed and held as soon as practicable after  
20 the issuance of a certificate of completeness.

21 (B) Notice. Public notice for the public hearing will be the same notice required under local  
22 regulations for a public hearing for a preliminary plan promulgated in accordance with § 45-23-42.  
23 The cost of notice shall be paid by the applicant.

24 (C) Timeframe for review. The local review board shall render a decision on the  
25 preliminary plan application within ninety (90) days of the date the application is certified  
26 complete, or within a further amount of time that may be consented to by the applicant through the  
27 submission of a written consent.

28 (D) Failure to act. Failure of the local review board to act within the prescribed period  
29 constitutes approval of the preliminary plan and a certificate of the administrative officer as to the  
30 failure of the local review board to act within the required time and the resulting approval shall be  
31 issued on request of the applicant. Further, if the public hearing is not convened or a decision is not  
32 rendered within the time allowed in subsections (c)(2)(iii)(A) and (c)(2)(iii)(C) of this section, the  
33 application is deemed to have been allowed and the preliminary plan approval shall be issued  
34 immediately.

1           ~~(E)~~(E) Required findings for approval. In approving an application, the local review board  
2 shall make positive findings, supported by legally competent evidence on the record that discloses  
3 the nature and character of the observations upon which the fact finders acted, on each of the  
4 following standard provisions, where applicable:

5           ~~(A)~~(I) The proposed development is consistent with local needs as identified in the local  
6 comprehensive community plan with particular emphasis on the community's affordable housing  
7 plan and/or has satisfactorily addressed the issues where there may be inconsistencies.

8           ~~(B)~~(II) The proposed development is in compliance with the standards and provisions of  
9 the municipality's zoning ordinance and subdivision regulations, and/or where ~~expressly varied or~~  
10 ~~waived~~ adjustments are requested by the applicant, that local concerns that have been affected by  
11 the relief granted do not outweigh the state and local need for low- and moderate-income housing.

12           ~~(C)~~(III) All low- and moderate-income housing units proposed are integrated throughout  
13 the development; are compatible in scale and architectural style to the market rate units within the  
14 project; and will be built and occupied prior to, or simultaneous with the construction and  
15 occupancy of any market rate units.

16           ~~(D) There will be no significant negative environmental impacts from the proposed~~  
17 ~~development as shown on the final plan, with all required conditions for approval.~~

18           ~~(E)~~(IV) There will be no significant negative impacts on the health and safety of current or  
19 future residents of the community, in areas including, but not limited to, safe circulation of  
20 pedestrian and vehicular traffic, provision of emergency services, sewerage disposal, availability  
21 of potable water, adequate surface water run-off, and the preservation of natural, historical, or  
22 cultural features that contribute to the attractiveness of the community.

23           ~~(F)~~(V) All proposed land developments and all subdivisions lots will have adequate and  
24 permanent physical access to a public street in accordance with the requirements of § 45-23-60(5).

25           ~~(G)~~(VI) The proposed development will not result in the creation of individual lots with  
26 any physical constraints to development that building on those lots according to pertinent  
27 regulations and building standards would be impracticable, unless created only as permanent open  
28 space or permanently reserved for a public purpose on the approved, recorded plans.

29           ~~(vi) The local review board has the same power to issue permits or approvals that any local~~  
30 ~~board or official who would otherwise act with respect to the application, including, but not limited~~  
31 ~~to, the power to attach to the permit or approval, conditions, and requirements with respect to~~  
32 ~~height, site plan, size or shape, or building materials, as are consistent with the terms of this section.~~

33           ~~(vii)~~(F) Required findings for denial. In reviewing the comprehensive permit request, the  
34 local review board may deny the request for any of the following reasons: ~~(A)~~(I) If the city or town

1 has an approved affordable housing plan and is meeting housing needs, and the proposal is  
2 inconsistent with the affordable housing plan; provided that, the local review board also finds that  
3 the municipality has made significant progress in implementing that housing plan; ~~(B)~~(II) The  
4 proposal is not consistent with local needs, including, but not limited to, the needs identified in an  
5 approved comprehensive plan, and/or local zoning ordinances and procedures promulgated in  
6 conformance with the comprehensive plan; ~~(C)~~(III) The proposal is not in conformance with the  
7 comprehensive plan; ~~(D)~~(IV) The community has met or has plans to meet the goal of ten percent  
8 (10%) of the year-round units or, in the case of an urban town or city, fifteen percent (15%) of the  
9 occupied rental housing units as defined in § 45-53-3(4)(i) being low- and moderate-income  
10 housing; provided that, the local review board also finds that the community has achieved or has  
11 made significant progress towards meeting the goals required by this section; or ~~(E)~~(V) Concerns  
12 for the environment and the health and safety of current residents have not been adequately  
13 addressed.

14 (iv) Vesting. The approved preliminary plan is vested for a period of two (2) years with the  
15 right to extend for two (2), one-year extensions upon written request by the applicant, who must  
16 appear before the planning board for each annual review and provide proof of valid state or federal  
17 permits as applicable. Thereafter, vesting may be extended for a longer period, for good cause  
18 shown, if requested, in writing by the applicant, and approved by the local review board. The  
19 vesting for the preliminary plan approval includes all ordinance provisions and regulations at the  
20 time of the approval, general and specific conditions shown on the approved preliminary plan  
21 drawings and supporting material.

22 (3) Final plan review. The second and final stage of review for the comprehensive permit  
23 project shall be done administratively, unless an applicant has requested and been granted any  
24 waivers from the submission of checklist items for preliminary plan review, and then, at the local  
25 review board's discretion, it may vote to require the applicant to return for final plan review and  
26 approval.

27 (i) Submission requirements. -- Applications for final plan review under this chapter shall  
28 include:

29 (A) All required state and federal permits must be obtained prior to the final plan approval  
30 or the issuance of a building permit; and

31 (B) A draft monitoring agreement which identifies an approved entity that will monitor the  
32 long-term affordability of the low- and moderate-income units pursuant to § 45-53-3.2; and

33 (C) A sample land lease or deed restriction with affordability liens that will restrict use as  
34 low- and moderate-income housing in conformance with the guidelines of the agency providing

1 the subsidy for the low- and moderate-income housing, but for a period of not less than thirty (30)  
2 years; and

3 (D) Those items required by local regulations promulgated pursuant to applicable state law  
4 included in the checklist for final plan review in the local regulations promulgated pursuant to  
5 chapter 23 of title 45, including, but not limited to:

6 (I) Arrangements for completion of the required public improvements, including  
7 construction schedule and/or financial guarantees; and

8 (II) Certification by the tax collector that all property taxes are current; and

9 (III) For phased projects, the final plan for phases following the first phase, shall be  
10 accompanied by copies of as-built drawings not previously submitted of all existing public  
11 improvements for prior phases.

12 (ii) Certification of completeness. The final plan application must be certified complete or  
13 incomplete by the administrative officer according to the provisions of § 45-23-36; provided  
14 however, that, the certificate shall be granted within twenty-five (25) days of submission of the  
15 application. The running of the time period set forth herein will be deemed stopped upon the  
16 issuance of a written certificate of incompleteness of the application by the administrative officer  
17 and will recommence upon the resubmission of a corrected application by the applicant. However,  
18 in no event will the administrative officer be required to certify a corrected submission as complete  
19 or incomplete less than ten (10) days after its resubmission. If the administrative officer certifies  
20 the application as incomplete, the officer shall set forth in writing with specificity the missing or  
21 incomplete items.

22 (iii) Review of applications.

23 (A) Timeframe for review. The reviewing authority shall render a decision on the final plan  
24 application within forty-five (45) days of the date the application is certified complete.

25 (B) Modifications and changes to plans:

26 (I) Minor changes, as defined in the local regulations, to the plans approved at preliminary  
27 plan may be approved administratively, by the administrative officer, whereupon final plan  
28 approval may be issued. The changes may be authorized without additional public hearings, at the  
29 discretion of the administrative officer. All changes shall be made part of the permanent record of  
30 the project application. This provision does not prohibit the administrative officer from requesting  
31 a recommendation from either the technical review committee or the local review board. Denial of  
32 the proposed change(s) shall be referred to the local review board for review as a major change.

33 (II) Major changes, as defined in the local regulations, to the plans approved at preliminary  
34 plan may be approved only by the local review board and must follow the same review and public

1 hearing process required for approval of preliminary plans as described in subsection (c)(2)(iii) of  
2 this section.

3 (III) The administrative officer shall notify the applicant in writing within fourteen (14)  
4 days of submission of the final plan application if the administrative officer is referring the  
5 application to the local review board under this subsection.

6 (C) Decision on final plan. An application filed in accordance with this chapter shall be  
7 approved by the administrative officer unless such application does not satisfy conditions set forth  
8 in the preliminary plan approval decision or such application does not have the requisite state and/or  
9 federal approvals or other required submissions, does not post the required improvement bonds, or  
10 such application is a major modification of the plans approved at preliminary plan.

11 (D) Failure to act. Failure of the reviewing authority to act within the prescribed period  
12 constitutes approval of the final plan and a certificate of the administrative officer as to the failure  
13 to act within the required time and the resulting approval shall be issued on request of the applicant.

14 (iv) Vesting. The approved final plan is vested for a period of two (2) years with the right  
15 to extend for one one-year extension upon written request by the applicant, who must appear before  
16 the planning board for the extension request. Thereafter, vesting may be extended for a longer  
17 period, for good cause shown, if requested, in writing by the applicant, and approved by the local  
18 review board.

19 (4) Infeasibility of conditions of approval. The burden is on the applicant to show, by  
20 competent evidence before the local review board, that proposed conditions of approval are  
21 infeasible, as defined in § 45-53-3. Upon request, the applicant shall be provided a reasonable  
22 opportunity to respond to such proposed conditions prior to a final vote on the application.

23 (5) Fees. Municipalities may impose fees on comprehensive permit applications that are  
24 consistent with but do not exceed fees that would otherwise be assessed for a project of the same  
25 scope and type, but not proceeding under this chapter; provided, however, the imposition of such  
26 fees shall not preclude a showing by an applicant that the fees make the project financially  
27 infeasible; and

28 (6) Recording of written decisions. All written decisions on applications under this chapter  
29 shall be recorded in the land evidence records within twenty (20) days after the local review board's  
30 vote or the administrative officer's decision, as applicable. A copy of the recorded decision shall be  
31 mailed within one business day of recording, by any method that provides confirmation of receipt,  
32 to the applicant and to any objector who has filed a written request for notice with the administrative  
33 officer.

34 (7) Local review board powers. The local review board has the same power to issue permits

1 or approvals that any local board or official who would otherwise act with respect to the application,  
2 including, but not limited to, the power to attach to the permit or approval, conditions, and  
3 requirements with respect to height, site plan, size or shape, or building materials, as are consistent  
4 with the terms of this section.

5 ~~(viii)~~(8) Majority vote required. All local review board decisions on comprehensive  
6 permits shall be by majority vote of the members present at the proceeding; provided that, there is  
7 at least a quorum of the local review board present and voting at the proceeding, ~~and may be~~  
8 ~~appealed by the applicant to the state housing appeals board.~~

9 ~~(ix) If the public hearing is not convened or a decision is not rendered within the time~~  
10 ~~allowed in subsections (a)(4)(iii) and (iv), the application is deemed to have been allowed and the~~  
11 ~~relevant approval shall issue immediately; provided, however, that this provision shall not apply to~~  
12 ~~any application remanded for hearing in any town where more than one application has been~~  
13 ~~remanded for hearing provided for in § 45-53-6(f)(2).~~

14 ~~(x) Any person aggrieved by the issuance of an approval may appeal to the superior court~~  
15 ~~within twenty (20) days of the issuance of approval.~~

16 ~~(xi)~~(9) Construction timetable. A comprehensive permit shall expire unless construction is  
17 started within twelve (12) months and completed within sixty (60) months of the recording of the  
18 final plan ~~approval~~ unless a longer and/or phased period for development is agreed to by the local  
19 review board and the applicant. Low- and moderate-income housing units shall be built and  
20 occupied prior to, or simultaneous with the construction and occupancy of market rate units.

21 ~~(xii)~~(10) For-profit developers -- Limits. A town with an approved affordable housing plan  
22 and that is meeting local housing needs, as defined in this chapter, may by council action limit the  
23 annual total number of dwelling units in comprehensive permit applications from for-profit  
24 developers to an aggregate of one percent (1%) of the total number of year-round housing units in  
25 the town, as recognized in the affordable housing plan and notwithstanding the timetables set forth  
26 elsewhere in this section, the local review board shall have the authority to consider comprehensive  
27 permit applications from for-profit developers, which are made pursuant to this paragraph,  
28 sequentially in the order in which they are submitted.

29 ~~(xiii)~~(11) Report. The local review board of a town with an approved affordable housing  
30 plan shall report the status of implementation to the housing resources commission, including the  
31 disposition of any applications made under the plan, as of June 30, 2006, by September 1, 2006,  
32 and for each June 30 thereafter by September 1 through 2010. The housing resources commission  
33 shall prepare by October 15 and adopt by December 31, a report on the status of implementation,  
34 which shall be submitted to the governor, the speaker, and the president of the senate, ~~and the~~

1 ~~chairperson of the state housing appeals board~~, and shall find which towns are not in compliance  
2 with implementation requirements.

3 ~~(xiv)~~(12) Remanded applications. Notwithstanding the provisions of § 45-53-4 in effect on  
4 February 13, 2004, ~~to~~ a local review board shall commence hearings within thirty (30) days of  
5 receiving an application remanded by the state housing appeals board ~~pursuant to § 45-53-6(f)(2)~~  
6 ~~shall be heard as herein provided; in~~ or superior court, as applicable. In any town with more than  
7 one remanded application, applications may be scheduled for hearing in the order in which they  
8 were received, and may be taken up sequentially, with the thirty-day (30) requirement for the  
9 initiation of hearings, commencing upon the decision of the earlier filed application.

10 ~~(b)~~(d)(1) The general assembly finds and declares that in January 2004 towns throughout  
11 Rhode Island have been confronted by an unprecedented volume and complexity of development  
12 applications as a result of private for-profit developers using the provisions of this chapter and that  
13 in order to protect the public health and welfare in communities and to provide sufficient time to  
14 establish a reasonable and orderly process for the consideration of applications made under the  
15 provisions of this chapter, and to have communities prepare plans to meet low- and moderate-  
16 income housing goals, that it is necessary to impose a moratorium on the use of comprehensive  
17 permit applications as herein provided by private for-profit developers; a moratorium is hereby  
18 imposed on the use of the provisions of this chapter by private for-profit developers, which  
19 moratorium shall be effective on passage and shall expire on January 31, 2005, and may be revisited  
20 prior to expiration and extended to such other date as may be established by law. Notwithstanding  
21 the provisions of subsection (a) of this section, private for-profit developers may not utilize the  
22 procedure of this chapter until the expiration of the moratorium.

23 (2) No for-profit developer shall submit a new application for comprehensive permits until  
24 July 1, 2005, except by mutual agreement with the local review board.

25 (3) Notwithstanding the provisions of subdivision (b)(2) of this section, a local review  
26 board in a town which has submitted a plan in accordance with subsection (c) of this section, shall  
27 not be required to accept an application for a new comprehensive permit from a for-profit developer  
28 until October 1, 2005.

29 ~~(e)~~(e) Towns and cities that are not in conformity with the provisions of § 45-53-3(4)(i)  
30 shall prepare by December 31, 2004, a comprehensive plan housing element for low- and moderate-  
31 income housing as specified by § 45-53-3(4)(ii), consistent with applicable law and regulation.  
32 That the secretary of the planning board or commission of each city or town subject to the  
33 requirements of this paragraph shall report in writing the status of the preparation of the housing  
34 element for low- and moderate-income housing on or before June 30, 2004, and on or before

1 December 31, 2004, to the secretary of the state planning council, to the chair of the house  
2 committee on corporations and to the chair of the senate committee on commerce, housing and  
3 municipal government. The state housing appeals board shall use said plan elements in making  
4 determinations provided for in § 45-53-6(c)(2).

5 ~~(f)~~(f) If any provision of this section or the application thereof shall for any reason be  
6 judged invalid, the judgment shall not affect, impair, or invalidate the remainder of this section or  
7 of any other provision of this chapter, but shall be confined in its effect to the provision or  
8 application directly involved in the controversy giving rise to the judgment, and a moratorium on  
9 the applications of for-profit developers pursuant to this chapter shall remain and continue to be in  
10 effect for the period commencing on the day this section becomes law [February 13, 2004] and  
11 continue until it shall expire on January 31, 2005, or until amended further.

12 ~~(g)~~(g) In planning for, awarding, and otherwise administering programs and funds for  
13 housing and for community development, state departments, agencies, boards and commissions,  
14 and public corporations, as defined in chapter 18 of title 35, shall among the towns subject to the  
15 provision of § 45-53-3(ii), give priority to the maximum extent allowable by law to towns with an  
16 approved affordable housing plan. The director of administration shall adopt not later than January  
17 31, 2005, regulations to implement the provisions of this section.

18 ~~(h)~~(h) Multi-family rental units built under a comprehensive permit may be calculated  
19 towards meeting the requirements of a municipality's low- or moderate-income housing inventory,  
20 as long as the units meet and are in compliance with the provisions of § 45-53-3.1.

21 SECTION 2. This act shall take effect on January 1, 2024.

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LC002500/SUB A  
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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO TOWNS AND CITIES -- LOW AND MODERATE INCOME HOUSING

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- 1           This act would provide amendments relative to low- and moderate-income housing and
- 2   modify and clarify the procedure for review of applications to build such housing.
- 3           This act would take effect on January 1, 2024.

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LC002500/SUB A  
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