

2022 -- H 7941

LC005357

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2022

A N A C T

RELATING TO TOWNS AND CITIES – LOW AND MODERATE INCOME HOUSING

Introduced By: Representatives Shekarchi, Speakman, Potter, Fogarty, Hull, Casimiro,
and Alzate

Date Introduced: March 07, 2022

Referred To: House Municipal Government & Housing

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.**

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) "Affordable housing plan" means a component of a housing element, as defined in §
7 45-22.2-4(1), to meet housing needs in a city or town that is prepared in accordance with guidelines
8 adopted by the state planning council, and/or to meet the provisions of § 45-53-4(b)(1) and (c).

9 (2) "Approved affordable housing plan" means an affordable housing plan that has been
10 approved by the director of administration as meeting the guidelines for the local comprehensive
11 plan as promulgated by the state planning council; provided, however, that state review and
12 approval, for plans submitted by December 31, 2004, shall not be contingent on the city or town
13 having completed, adopted, or amended its comprehensive plan as provided for in § 45-22.2-8, §
14 45-22.2-9, or § 45-22.2-12.

15 (3) "Comprehensive plan" means a comprehensive plan adopted and approved by a city or
16 town pursuant to chapters 22.2 and 22.3 of this title.

17 (4) "Consistent with local needs" means reasonable in view of the state need for low and
18 moderate income housing, considered with the number of low income persons in the city or town
19 affected and the need to protect the health and safety of the occupants of the proposed housing or

1 of the residence of the city or town, to promote better site and building design in relation to the
2 surroundings, or to preserve open spaces, and if the local zoning or land use ordinances,
3 requirements, and regulations are applied as equally as possible to both subsidized and
4 unsubsidized housing. Local zoning and land use ordinances, requirements, or regulations are
5 consistent with local needs when imposed by a city or town council after a comprehensive hearing
6 in a city or town where:

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

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

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

22 (5) "Infeasible" means any condition brought about by any single factor or combination of
23 factors, as a result of limitations imposed on the development by conditions attached to the approval
24 of the comprehensive permit, to the extent that it makes it impossible for a public agency, nonprofit
25 organization, or limited equity housing cooperative to proceed in building or operating low or
26 moderate income housing without financial loss, within the limitations set by the subsidizing
27 agency of government, on the size or character of the development, on the amount or nature of the
28 subsidy, or on the tenants, rentals, and income permissible, and without substantially changing the
29 rent levels and unit sizes proposed by the public agency, nonprofit organization, or limited equity
30 housing cooperative.

31 (6) "Letter of eligibility" means a letter issued by the Rhode Island housing and mortgage
32 finance corporation in accordance with § 42-55-5.3(a).

33 (7) "Local board" means any town or city official, zoning board of review, planning board
34 or commission, board of appeal or zoning enforcement officer, local conservation commission,

1 historic district commission, or other municipal board having supervision of the construction of
2 buildings or the power of enforcing land use regulations, such as subdivision, or zoning laws.

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

6 (9) "Low or moderate income housing" means any housing whether built or operated by
7 any public agency or any nonprofit organization or by any limited equity housing cooperative or
8 any private developer, that is subsidized by a federal, state, or municipal government subsidy under
9 any program to assist the construction or rehabilitation of housing affordable to low or moderate
10 income households, as defined in the applicable federal or state statute, or local ordinance and that
11 will remain affordable through a land lease and/or deed restriction for ninety-nine (99) years or
12 such other period that is either agreed to by the applicant and town or prescribed by the federal,
13 state, or municipal government subsidy program but that is not less than thirty (30) years from
14 initial occupancy.

15 (10) "Meeting housing needs" means adoption of the implementation program of an
16 approved affordable housing plan and the absence of unreasonable denial of applications that are
17 made pursuant to an approved affordable housing plan in order to accomplish the purposes and
18 expectations of the approved affordable housing plan.

19 (11) "Municipal government subsidy" means assistance that is made available through a
20 city or town program sufficient to make housing affordable, as affordable housing is defined in §
21 42-128-8.1(d)(1); such assistance may include, but is not limited to, direct financial support,
22 abatement of taxes, waiver of fees and charges, and approval of density bonuses and/or internal
23 subsidies, and any combination of forms of assistance.

24 **45-53-4. Procedure for approval of construction of low or moderate income housing.**

25 (a) Any applicant proposing to build low or moderate income housing may submit to the
26 local review board a single application for a comprehensive permit to build that housing in lieu of
27 separate applications to the applicable local boards. This procedure is only available for proposals
28 in which at least twenty-five percent (25%) of the housing is low or moderate income housing. The
29 application and review process for a comprehensive permit shall be as follows:

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

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

1 (ii) A written request to the local review board to submit a single application to build or
2 rehabilitate low or moderate income housing in lieu of separate applications to the applicable local
3 boards. The written request shall identify the specific sections and provisions of applicable local
4 ordinances and regulations from which the applicant is seeking relief; and

5 (iii) A proposed timetable for the commencement of construction and completion of the
6 project; and

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

11 (v) Identification of an approved entity that will monitor the long-term affordability of the
12 low and moderate income units; and

13 (vi) A financial pro-forma for the proposed development; and

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

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

32 (xi) Notwithstanding the submission requirements set forth above, the local review board
33 may request additional, reasonable documentation throughout the public hearing, including, but not
34 limited to, opinions of experts, credible evidence of application for necessary federal and/or state

1 permits, statements and advice from other local boards and officials.

2 (2) Certification of completeness. The application must be certified complete or incomplete
3 by the administrative officer according to the provisions of § 45-23-36; provided, however, that for
4 a major land development or major subdivision, the certificate for a master plan shall be granted
5 within thirty (30) days and for a preliminary plan shall be granted within forty-five (45) days. The
6 running of the time period set forth herein will be deemed stopped upon the issuance of a certificate
7 of incompleteness of the application by the administrative officer and will recommence upon the
8 resubmission of a corrected application by the applicant. However, in no event will the
9 administrative officer be required to certify a corrected submission as complete or incomplete less
10 than fourteen (14) days after its resubmission. If the administrative officer certifies the application
11 as incomplete, the officer shall set forth in writing with specificity the missing or incomplete items.

12 (3) Pre-application conference. Where the comprehensive permit application proposal is a
13 major land development project or a major subdivision pursuant to chapter 23 of this title a
14 municipality may require an applicant proposing a project under this chapter to first schedule a pre-
15 application conference with the local review board, the technical review committee established
16 pursuant to § 45-23-56, or with the administrative officer for the local review board and other local
17 officials, as appropriate. To request a pre-application conference, the applicant shall submit a short
18 description of the project in writing including the number of units, type of housing, as well as a
19 location map. The purpose of the pre-application conference shall be to review a concept plan of
20 the proposed development. Upon receipt of a request by an applicant for a pre-application
21 conference, the municipality has thirty (30) days to schedule and hold the pre-application
22 conference. If thirty (30) days has elapsed from the filing of the pre-application submission and no
23 pre-application conference has taken place, nothing shall be deemed to preclude an applicant from
24 thereafter filing and proceeding with an application for a comprehensive permit.

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

27 (i) Notification. Upon issuance of a certificate of completeness for a comprehensive permit,
28 the local review board shall immediately notify each local board, as applicable, of the filing of the
29 application, by sending a copy to the local boards and to other parties entitled to notice of hearings
30 on applications under the zoning ordinance and/or land development and subdivision regulations
31 as applicable.

32 (ii) Public Notice. Public notice for all public hearings will be the same notice required
33 under local regulations for a public hearing for a preliminary plan promulgated in accordance with
34 § 45-23-42. The cost of notice shall be paid by the applicant.

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

9 (iv) Review of major projects. In the review of a comprehensive permit application
10 involving a major land development and/or major subdivision, the local review board shall hold a
11 public hearing on the master plan and shall, within one hundred and twenty (120) days of issuance
12 of the certification of completeness, or within such further amount of time as may be agreed to by
13 the local review board and the applicant, render a decision. Preliminary and final plan review shall
14 be conducted according to local regulations promulgated pursuant to chapter 23 of this title except
15 as otherwise specified in this section.

16 (v) Required findings. In approving on an application, the local review board shall make
17 positive findings, supported by legally competent evidence on the record which discloses the nature
18 and character of the observations upon which the fact finders acted, on each of the following
19 standard provisions, where applicable:

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

23 (B) The proposed development is in compliance with the standards and provisions of the
24 municipality's zoning ordinance and subdivision regulations, and/or where expressly varied or
25 waived local concerns that have been affected by the relief granted do not outweigh the state and
26 local need for low and moderate income housing.

27 (C) All low and moderate income housing units proposed are integrated throughout the
28 development; are compatible in scale and architectural style to the market rate units within the
29 project; and will be built and occupied prior to, or simultaneous with the construction and
30 occupancy of any market rate units.

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

33 (E) There will be no significant negative impacts on the health and safety of current or
34 future residents of the community, in areas including, but not limited to, safe circulation of

1 pedestrian and vehicular traffic, provision of emergency services, sewerage disposal, availability
2 of potable water, adequate surface water run-off, and the preservation of natural, historical or
3 cultural features that contribute to the attractiveness of the community.

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

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

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

14 (vii) In reviewing the comprehensive permit request, the local review board may deny the
15 request for any of the following reasons: (A) if city or town has an approved affordable housing
16 plan and is meeting housing needs, and the proposal is inconsistent with the affordable housing
17 plan; (B) the proposal is not consistent with local needs, including, but not limited to, the needs
18 identified in an approved comprehensive plan, and/or local zoning ordinances and procedures
19 promulgated in conformance with the comprehensive plan; (C) the proposal is not in conformance
20 with the comprehensive plan; (D) the community has met or has plans to meet the goal of ten
21 percent (10%) of the year-round units or, in the case of an urban town or city, fifteen percent (15%)
22 of the occupied rental housing units as defined in § 45-53-3(2)(i) being low and moderate income
23 housing; or (E) concerns for the environment and the health and safety of current residents have
24 not been adequately addressed.

25 (viii) All local review board decisions on comprehensive permits shall be by majority vote
26 of the membership of the board and may be appealed by the applicant to the state housing appeals
27 board.

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

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

1 (xi) A comprehensive permit shall expire unless construction is started within twelve (12)
2 months and completed within sixty (60) months of final plan approval unless a longer and/or phased
3 period for development is agreed to by the local review board and the applicant. Low and moderate
4 income housing units shall be built and occupied prior to, or simultaneous with the construction
5 and occupancy of market rate units.

6 (xii) A town with an approved affordable housing plan and that is meeting local housing
7 needs may by council action limit the annual total number of dwelling units in comprehensive
8 permit applications from for-profit developers to an aggregate of one percent (1%) of the total
9 number of year-round housing units in the town, as recognized in the affordable housing plan and
10 notwithstanding the timetables set forth elsewhere in this section, the local review board shall have
11 the authority to consider comprehensive permit applications from for-profit developers, which are
12 made pursuant to this paragraph, sequentially in the order in which they are submitted.

13 (xiii) The local review board of a town with an approved affordable housing plan shall
14 report the status of implementation to the housing resources commission, including the disposition
15 of any applications made under the plan, as of June 30, 2006, by September 1, 2006 and for each
16 June 30 thereafter by September 1 through 2010. The housing resources commission shall prepare
17 by October 15 and adopt by December 31, a report on the status of implementation, which shall be
18 submitted to the governor, the speaker, the president of the senate and the chairperson of the state
19 housing appeals board, and shall find which towns are not in compliance with implementation
20 requirements.

21 (xiv) Notwithstanding the provisions of § 45-53-4 in effect on February 13, 2004, to
22 commence hearings within thirty (30) days of receiving an application remanded by the state
23 housing appeals board pursuant to § 45-53-6(f)(2) shall be heard as herein provided; in any town
24 with more than one remanded application, applications may be scheduled for hearing in the order
25 in which they were received, and may be taken up sequentially, with the thirty (30) day requirement
26 for the initiation of hearings, commencing upon the decision of the earlier filed application.

27 (b)(1) The general assembly finds and declares that in January 2004 towns throughout
28 Rhode Island have been confronted by an unprecedented volume and complexity of development
29 applications as a result of private for-profit developers using the provisions of this chapter and that
30 in order to protect the public health and welfare in communities and to provide sufficient time to
31 establish a reasonable and orderly process for the consideration of applications made under the
32 provisions of this chapter, and to have communities prepare plans to meet low and moderate income
33 housing goals, that it is necessary to impose a moratorium on the use of comprehensive permit
34 applications as herein provided by private for-profit developers; a moratorium is hereby imposed

1 on the use of the provisions of this chapter by private for-profit developers, which moratorium shall
2 be effective on passage and shall expire on January 31, 2005 and may be revisited prior to expiration
3 and extended to such other date as may be established by law. Notwithstanding the provisions of
4 subsection (a) of this section, private for-profit developers may not utilize the procedure of this
5 chapter until the expiration of the moratorium.

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

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

12 (c) Towns and cities that are not in conformity with the provisions of § 45-53-3(2)(i) shall
13 prepare by December 31, 2004, a comprehensive plan housing element for low and moderate
14 income housing as specified by § 45-53-3(2)(ii), consistent with applicable law and regulation.
15 That the secretary of the planning board or commission of each city or town subject to the
16 requirements of this paragraph shall report in writing the status of the preparation of the housing
17 element for low and moderate income housing on or before June 30, 2004, and on or before
18 December 31, 2004, to the secretary of the state planning council, to the chair of the house
19 committee on corporations and to the chair of the senate committee on commerce, housing and
20 municipal government. The state housing appeals board shall use said plan elements in making
21 determinations provided for in § 45-53-6(b)(2).

22 (d) If any provision of this section or the application thereof shall for any reason be judged
23 invalid, such judgment shall not affect, impair, or invalidate the remainder of this section or of any
24 other provision of this chapter, but shall be confined in its effect to the provision or application
25 directly involved in the controversy giving rise to the judgment, and a moratorium on the
26 applications of for-profit developers pursuant to this chapter shall remain and continue to be in
27 effect for the period commencing on the day this section becomes law [February 13, 2004] and
28 continue until it shall expire on January 31, 2005, or until amended further.

29 (e) In planning for, awarding and otherwise administering programs and funds for housing
30 and for community development, state departments, agencies, boards and commissions, public
31 corporations, as defined in chapter 18 of title 35, shall among the towns subject to the provision of
32 § 45-53-3(ii) give priority to the maximum extent allowable by law, to towns with an approved
33 affordable housing plan. The director of administration shall adopt not later than January 31, 2005,
34 regulations to implement the provisions of this section.

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

4 SECTION 2. Chapter 45-53 of the General Laws entitled "Low and Moderate Income
5 Housing" is hereby amended by adding thereto the following section:

6 **45-53-3.1. Formula to include multi-family rental apartment units as low and**
7 **moderate income housing.**

8 (a) In calculating the number of year-round housing units towards meeting the goals of an
9 excess of ten percent (10%) of the year-round housing units or an excess of fifteen percent (15%)
10 of the total year-round rental units consistent with local needs required pursuant to § 45-53-4, multi-
11 family rental apartments in multi-family housing built under a comprehensive plan pursuant to §
12 45-53-4 may be included as low or moderate income housing, provided the following conditions
13 are met:

14 (1) That at least twenty-five percent (25%) of the units created are deed restricted for
15 households earning not more than sixty percent (60%) of the area median income; and

16 (2) The proposed units are built as part of a comprehensive plan as provided for in § 45-
17 53-4 and are otherwise in compliance and meet all other requirements of this chapter to be
18 calculated as low or moderate-income housing.

19 (b) As used in this section and as applied to this chapter:

20 (1) "Area median income (AMI)" means area median household income as defined by the
21 U.S. Department of Housing and Urban Development, adjusted for household size.

22 (2) "Multi-family housing" means a building with three (3) or more residential dwelling
23 units or two (2) or more buildings on the same lot with more than one residential dwelling unit in
24 each building.

25 SECTION 3. This act shall take effect upon passage.

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LC005357
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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

1 This act would permit multi-family rental apartment units to be built as part of a
2 comprehensive plan and to be included in the calculation of low or moderate income housing.

3 This act would take effect upon passage.

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