

2023 -- S 1038 SUBSTITUTE A

LC003016/SUB A

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

A N A C T

RELATING TO TOWNS AND CITIES -- RHODE ISLAND COMPREHENSIVE PLANNING
AND LAND USE ACT

Introduced By: Senator Dominick J. Ruggiero

Date Introduced: May 19, 2023

Referred To: Senate Housing & Municipal Government

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 45-22.2-8 of the General Laws in Chapter 45-22.2 entitled "Rhode
2 Island Comprehensive Planning and Land Use Act" is hereby amended to read as follows:

3 **45-22.2-8. Preparation, adoption, and amendments of comprehensive plans.**

4 (a) The preparation of a comprehensive plan shall be conducted according to the following
5 provisions in addition to any other provision that may be required by law:

6 (1) In addition to the duties established by chapter 45-22, local planning board or
7 commission, to the extent that those provisions do not conflict with the requirements of this chapter,
8 a planning board or commission has the sole responsibility for performing all those acts necessary
9 to prepare a comprehensive plan for a municipality.

10 (2) Municipalities which choose to conduct joint planning and regulatory programs
11 pursuant to this section shall designate and establish a local planning committee which has
12 responsibility for the comprehensive planning program.

13 (3) The conduct of the planning board, commission, or the local planning committee shall
14 include:

15 (i) Preparation of the comprehensive plan, including the implementation program
16 component.

17 (ii) Citizen participation through the dissemination of information to the public and
18 solicitation of both written and oral comments during the preparation of the plan.

1 (iii) Conducting a minimum of one public hearing.

2 (iv) Submission of recommendations to the municipal legislative body regarding the
3 adoption of the plan or amendment.

4 (4) The municipality may enter into a formal written agreement with the chief to conduct
5 a review of a draft plan or amendment in order to provide comments prior to the public hearing by
6 the planning board, commission, or committee.

7 (b) The adoption or amendment of a comprehensive plan shall be conducted according to
8 the following provisions in addition to any other provision that may be required by law:

9 (1) Prior to the adoption or amendment of a comprehensive plan, the city or town council
10 shall first conduct a minimum of one public hearing.

11 (2) A comprehensive plan is adopted, for the purpose of conforming municipal land use
12 decisions and for the purpose of being transmitted to the chief for state review, when it has been
13 incorporated by reference into the municipal code of ordinances by the legislative body of the
14 municipality. All ordinances dealing with the adoption of or amendment to a municipal
15 comprehensive plan shall contain language stating that the comprehensive plan ordinance or
16 amendment shall not become effective for the purposes of guiding state agency actions until it is
17 approved by the State of Rhode Island pursuant to the methods stated in this chapter, or pursuant
18 to any rules and regulations adopted pursuant to this chapter. The comprehensive plan of a
19 municipality shall not take effect for purposes of guiding state agency actions until approved by
20 the chief or the Rhode Island superior court.

21 (3) A municipality may not amend its comprehensive plan more than four (4) times in any
22 one calendar year. Amendments that are required to address the findings of the chief, changes to
23 the state guide plan, or changes to this act shall not be included under this provision.

24 (c) The intent of this section is to provide for the dissemination and discussion of proposals
25 and alternatives to the proposed comprehensive plan by means of either individual or joint
26 legislative and planning commission hearings which disseminate information to the public and
27 which seek both written and oral comments from the public. Public hearing requirements for either
28 joint hearings or for individual hearings of the planning board or commission and for the municipal
29 legislative body shall include the following:

30 (1) Prior to the adoption of, or amendment to, a comprehensive plan, notice shall be given
31 of the public hearing by publication of notice in a newspaper of ~~general~~ local circulation within the
32 city or town at least once each week for three (3) successive weeks prior to the date of the hearing,
33 which may include the week in which the hearing is to be held, at which hearing opportunity shall
34 be given to all persons interested to be heard. ~~Written notice, which may be a copy of the newspaper~~

1 ~~notice;~~ The same notice shall be posted in the town or city clerk's office and one other municipal
2 building in the municipality and the municipality must make the notice accessible on their
3 municipal home page of its website at least fourteen (14) days prior to the hearing. The notice shall
4 be mailed to the statewide planning program of the department of administration at least fourteen
5 (14) days prior to the hearing. The ~~newspaper notice shall be published as a display advertisement,~~
6 ~~using a type size at least as large as the normal type size used by the newspaper in its news articles,~~
7 ~~and~~ notice shall:

- 8 (i) Specify the place of the hearing and the date and time of its commencement;
- 9 (ii) Indicate that adoption of, or amendment to, the comprehensive plan is under
10 consideration;
- 11 (iii) Contain a statement of the proposed amendments to the comprehensive plan that may
12 be printed once in its entirety, or summarize and describe the matter under consideration; the plan
13 need not be published in its entirety;
- 14 (iv) Advise those interested where and when a copy of the matter under consideration may
15 be obtained or examined and copied; and
- 16 (v) State that the plan or amendment may be altered or amended prior to the close of the
17 public hearing without further advertising, as a result of further study or because of the views
18 expressed at the public hearing. Any alteration or amendment must be presented for comment in
19 the course of the hearing.

20 SECTION 2. Sections 45-23-42 and 45-23-53 of the General Laws in Chapter 45-23
21 entitled "Subdivision of Land" are hereby amended to read as follows:

22 **45-23-42. General provisions — Major land development and major subdivision —**
23 **Public hearing and notice.**

24 (a) A public hearing is required for a major land development project or a major subdivision
25 or where a street extension or creation requires a public hearing for a minor land development
26 project or minor subdivision.

27 (b) Notice requirements. Public notice of the hearing shall be given at least fourteen (14)
28 days prior to the date of the hearing in a newspaper of ~~general~~ local circulation within the
29 municipality following the municipality's usual and customary practices for this kind of
30 advertising. The same notice shall be posted in the town or city clerk's office and one other
31 municipal building in the municipality and the municipality must make the notice accessible on
32 their municipal home page of its website at least fourteen (14) days prior to the hearing. Notice
33 shall be sent to the applicant and to each owner within the notice area, by ~~certified mail, return~~
34 ~~receipt requested~~ first class mail, of the time and place of the hearing not less than ten (10) days

1 prior to the date of the hearing. Notice shall also be sent to any individual or entity holding a
2 recorded conservation or preservation restriction on the property that is the subject of the
3 application at least fourteen (14) days prior to the hearing. The notice shall also include the street
4 address of the subject property, or if no street address is available, the distance from the nearest
5 existing intersection in tenths (1/10's) of a mile. Local regulations may require a supplemental
6 notice that an application for development approval is under consideration be posted at the location
7 in question. The posting is for informational purposes only and does not constitute required notice
8 of a public hearing. For any notice sent by first-class mail, the sender of the notice shall submit a
9 notarized affidavit to attest to such mailing.

10 (c) Notice area.

11 (1) The distance(s) for notice of the public hearing shall be specified in the local
12 regulations. The distance may differ by zoning district and scale of development. At a minimum,
13 all abutting property owners to the proposed development's property boundary shall receive notice.

14 (2) Watersheds. Additional notice within watersheds shall also be sent as required in § 45-
15 23-53(b) and (c).

16 (3) Adjacent municipalities. Notice of the public hearing shall be sent by the administrative
17 officer to the administrative officer of an adjacent municipality if (1) the notice area extends into
18 the adjacent municipality, or (2) the development site extends into the adjacent municipality, or (3)
19 there is a potential for significant negative impact on the adjacent municipality.

20 (d) Notice cost. The cost of all ~~notice~~ newspaper and mailing notices shall be borne by the
21 applicant.

22 **45-23-53. Local regulations — Public hearing and notice requirements.**

23 (a) No local regulations shall be adopted, repealed, or amended until after a public hearing
24 has been held upon the question before the city or town planning board. The city or town planning
25 board shall first give notice of the public hearing by publication of notice in a newspaper of ~~general~~
26 local circulation within the municipality at least once each week for three (3) successive weeks
27 prior to the date of the hearing, which may include the week in which the hearing is to be held. The
28 same notice shall be posted in the town or city clerk's office and one other municipal building in
29 the municipality and the municipality must make the notice accessible on their municipal home
30 page of its website at least fourteen (14) days prior to the hearing. At this hearing, opportunity shall
31 be given to all persons interested on being heard upon the matter of the proposed regulations. The
32 newspaper notice ~~shall be published as a display advertisement, using a type size at least as large~~
33 ~~as the normal type size used by the newspaper in its news articles, and~~ shall:

34 (1) Specify the place of the hearing and the date and time of its commencement;

1 (2) Indicate that adoption, amendment, or repeal of local regulations is under consideration;

2 (3) Contain a statement of the proposed amendments to the regulations that may be printed
3 once in its entirety, or may summarize or describe the matter under consideration as long as the
4 intent and effect of the proposed regulation is expressly written in that notice;

5 (4) Advise those interested where and when a copy of the matter under consideration may
6 be obtained or examined and copied; and

7 (5) State that the proposals shown on the notice may be altered or amended prior to the
8 close of the public hearing without further advertising as a result of further study or because of the
9 views expressed at the public hearing. Any alteration or amendment must be presented for comment
10 in the course of the hearing.

11 (b) Notice of the public hearing shall be sent by first-class mail to the city or town planning
12 board of any municipality where there is a public or quasi-public water source, or private water
13 source that is used, or is suitable for use, as a public water source, located within two thousand feet
14 (2,000') of the municipal boundaries.

15 (c) Notice of a public hearing shall be sent to the governing body of any state or municipal
16 water department or agency, special water district, or private water company that has riparian rights
17 to a surface water resource and/or surface watershed that is used, or is suitable for use, as a public
18 water source, located within either the municipality or two thousand feet (2,000') of the municipal
19 boundaries; provided, that a map survey has been filed with the building inspector as specified in
20 § 45-24-53(f).

21 (d) Notwithstanding any of the requirements set forth in subsections (a) through (c) above,
22 each municipality shall establish and maintain a public notice registry allowing any person or entity
23 to register for electronic notice of any changes to the local regulations. Municipalities shall annually
24 provide public notice of the existence of the registry by a publication of notice in a newspaper of
25 general circulation within the municipality. In addition, each municipality is hereby encouraged to
26 provide public notice of the existence of the public notice registry in all of its current and future
27 communications with the public, including, but not limited to, governmental websites, electronic
28 newsletters, public bulletins, press releases, and all other means the municipality may use to impart
29 information to the local community.

30 (1) Provided, however, notice pursuant to a public notice registry as per this section does
31 not alone qualify a person or entity on the public notice registry as an "aggrieved party" under §
32 45-24-31(4).

33 (e) No defect in the form of any notice under this section renders any regulations invalid,
34 unless the defect is found to be intentional or misleading.

1 [\(f\) The cost of newspaper notice and mailings shall be borne by the applicant.](#)

2 ~~(g)~~ The requirements in this section are to be construed as minimum requirements.

3 SECTION 3. Sections 45-24-41 and 45-24-53 of the General Laws in Chapter 45-24
4 entitled "Zoning Ordinances" are hereby amended to read as follows:

5 **45-24-41. General provisions — Variances.**

6 (a) An application for relief from the literal requirements of a zoning ordinance because of
7 hardship may be made by any person, group, agency, or corporation by filing with the zoning
8 enforcement officer or agency an application describing the request and supported by any data and
9 evidence as may be required by the zoning board of review or by the terms of the ordinance. The
10 zoning enforcement officer or agency shall immediately transmit each application received to the
11 zoning board of review and a copy of each application to the planning board or commission.

12 (b) A zoning ordinance provides that the zoning board of review, immediately upon receipt
13 of an application for a variance in the application of the literal terms of the zoning ordinance, may
14 request that the planning board or commission and/or staff report its findings and recommendations,
15 including a statement on the general consistency of the application with the goals and purposes of
16 the comprehensive plan of the city or town, in writing, to the zoning board of review within thirty
17 (30) days of receipt of the application from that board. The zoning board shall hold a public hearing
18 on any application for variance in an expeditious manner, after receipt, in proper form, of an
19 application, and shall give public notice at least fourteen (14) days prior to the date of the hearing
20 in a newspaper of ~~general~~ [local](#) circulation in the city or town. Notice of hearing shall be sent by
21 first-class mail to the applicant, and to at least all those who would require notice under § 45-24-
22 53. The notice shall also include the street address of the subject property. A zoning ordinance may
23 require that a supplemental notice, that an application for a variance is under consideration, be
24 posted at the location in question. The posting is for information purposes only and does not
25 constitute required notice of a public hearing. [The same notice shall be posted in the town or city
26 clerk's office and one other municipal building in the municipality and the municipality must make
27 the notice accessible on their municipal home page of its website at least fourteen \(14\) days prior
28 to the hearing. For any notice sent by first-class mail, the sender of the notice shall submit a
29 notarized affidavit to attest to such mailing.](#) The cost of [newspaper and mailing](#) notification shall
30 be borne by the applicant.

31 (c) A zoning ordinance may provide for unified development review, pursuant to § 45-24-
32 46.4. Requests for dimensional and use variances submitted under a unified development review
33 provision of a zoning ordinance shall be submitted as part of the subdivision or land-development
34 application to the administrative officer of the planning board or commission, pursuant to § 45-24-

1 46.4(a). All subdivision or land-development applications submitted under the unified development
2 review provisions of a zoning ordinance shall have a public hearing, which shall meet the
3 requirements of § 45-23-50.1(c).

4 (d) In granting a variance, the zoning board of review, or, where unified development
5 review is enabled pursuant to § 45-24-46.4, the planning board or commission, shall require that
6 evidence to the satisfaction of the following standards is entered into the record of the proceedings:

7 (1) That the hardship from which the applicant seeks relief is due to the unique
8 characteristics of the subject land or structure and not to the general characteristics of the
9 surrounding area; and is not due to a physical or economic disability of the applicant, excepting
10 those physical disabilities addressed in § 45-24-30(a)(16);

11 (2) That the hardship is not the result of any prior action of the applicant and does not result
12 primarily from the desire of the applicant to realize greater financial gain;

13 (3) That the granting of the requested variance will not alter the general character of the
14 surrounding area or impair the intent or purpose of the zoning ordinance or the comprehensive plan
15 upon which the ordinance is based; and

16 (4) That the relief to be granted is the least relief necessary.

17 (e) The zoning board of review, or, where unified development review is enabled pursuant
18 to § 45-24-46.4, the planning board or commission, shall, in addition to the above standards, require
19 that evidence is entered into the record of the proceedings showing that:

20 (1) In granting a use variance, the subject land or structure cannot yield any beneficial use
21 if it is required to conform to the provisions of the zoning ordinance. Nonconforming use of
22 neighboring land or structures in the same district and permitted use of lands or structures in an
23 adjacent district shall not be considered in granting a use variance; and

24 (2) In granting a dimensional variance, that the hardship suffered by the owner of the
25 subject property if the dimensional variance is not granted amounts to more than a mere
26 inconvenience. The fact that a use may be more profitable or that a structure may be more valuable
27 after the relief is granted is not grounds for relief. The zoning board of review, or, where unified
28 development review is enabled pursuant to § 45-24-46.4, the planning board or commission has the
29 power to grant dimensional variances where the use is permitted by special-use permit if provided
30 for in the special use permit sections of the zoning ordinance.

31 **45-24-53. Adoption — Notice and hearing requirements.**

32 (a) No zoning ordinance shall be adopted, repealed, or amended until after a public hearing
33 has been held upon the question before the city or town council. The city or town council shall first
34 give notice of the public hearing by publication of notice in a newspaper of ~~general~~ local circulation

1 within the city or town at least once each week for three (3) successive weeks prior to the date of
2 the hearing, which may include the week in which the hearing is to be held, at which hearing
3 opportunity shall be given to all persons interested to be heard upon the matter of the proposed
4 ordinance. Written notice, ~~which may be a copy of the newspaper notice,~~ shall be mailed to the
5 parties specified in subsections (b), (c), (d), (e), and (f) of this section, at least two (2) weeks prior
6 to the hearing. ~~The newspaper notice shall be published as a display advertisement, using a type~~
7 ~~size at least as large as the normal type size used by the newspaper in its news articles, and~~ The
8 same notice shall be posted in the town or city clerk's office and one other municipal building in
9 the municipality and the municipality must make the notice accessible on their municipal home
10 page of its website at least fourteen (14) days prior to the hearing. The notice shall:

- 11 (1) Specify the place of the hearing and the date and time of its commencement;
- 12 (2) Indicate that adoption, amendment, or repeal of a zoning ordinance is under
13 consideration;
- 14 (3) Contain a statement of the proposed amendments to the ordinance that may be printed
15 once in its entirety, or summarize and describe the matter under consideration as long as the intent
16 and effect of the proposed ordinance is expressly written in that notice;
- 17 (4) Advise those interested where and when a copy of the matter under consideration may
18 be obtained or examined and copied; and
- 19 (5) State that the proposals shown on the ordinance may be altered or amended prior to the
20 close of the public hearing without further advertising, as a result of further study or because of the
21 views expressed at the public hearing. Any alteration or amendment must be presented for comment
22 in the course of the hearing.

23 (b) Where a proposed general amendment to an existing zoning ordinance includes changes
24 in an existing zoning map, public notice shall be given as required by subsection (a) of this section.

25 (c) Where a proposed text amendment to an existing zoning ordinance would cause a
26 conforming lot of record to become nonconforming by lot area or frontage, written notice shall be
27 given to all owners of the real property as shown on the current real estate tax assessment records
28 of the city or town. The notice shall be given by first-class mail at least two (2) weeks prior to the
29 hearing at which the text amendment is to be considered, with the content required by subsection
30 (a). If the city or town zoning ordinance contains an existing merger clause to which the
31 nonconforming lots would be subject, the notice shall include reference to the merger clause and
32 the impacts of common ownership of nonconforming lots. ~~The sender of the notice shall utilize and~~
33 ~~obtain a United States Postal Service certificate of mailing, and the certificate or an electronic copy~~
34 ~~thereof shall be retained to demonstrate proof of the mailing.~~ For any notice sent by first-class mail,

1 [the sender of the notice shall submit a notarized affidavit to attest to such mailing.](#)

2 (d) Where a proposed amendment to an existing ordinance includes a specific change in a
3 zoning district map, but does not affect districts generally, public notice shall be given as required
4 by subsection (a) of this section, with the additional requirements that:

5 (1) Notice shall include a map showing the existing and proposed boundaries, zoning
6 district boundaries, existing streets and roads and their names, and city and town boundaries where
7 appropriate; and

8 (2) Written notice of the date, time, and place of the public hearing and the nature and
9 purpose of the hearing shall be sent to all owners of real property whose property is located in or
10 within not less than two hundred feet (200') of the perimeter of the area proposed for change,
11 whether within the city or town or within an adjacent city or town. Notice shall also be sent to any
12 individual or entity holding a recorded conservation or preservation restriction on the property that
13 is the subject of the amendment. The notice shall be sent by ~~registered, certified, or~~ first-class mail
14 to the last known address of the owners, as shown on the current real estate tax assessment records
15 of the city or town in which the property is located; provided, for any notice sent by first-class mail,
16 the sender of the notice shall ~~utilize and obtain a United States Postal Service certificate of mailing,
17 PS form 3817, or any applicable version thereof, to demonstrate proof of~~ [submit a notarized](#)
18 [affidavit to attest to](#) such mailing.

19 (e) Notice of a public hearing shall be sent by first-class mail to the city or town council of
20 any city or town to which one or more of the following pertain:

21 (1) That is located in or within not less than two hundred feet (200') of the boundary of the
22 area proposed for change; or

23 (2) Where there is a public or quasi-public water source, or private water source that is
24 used, or is suitable for use, as a public water source, within two thousand feet (2,000') of any real
25 property that is the subject of a proposed zoning change, regardless of municipal boundaries.

26 (f) Notice of a public hearing shall be sent to the governing body of any state or municipal
27 water department or agency, special water district, or private water company that has riparian rights
28 to a surface water resource or surface watershed that is used, or is suitable for use, as a public water
29 source and that is within two thousand feet (2,000') of any real property that is the subject of a
30 proposed zoning change; provided, that the governing body of any state or municipal water
31 department or agency, special water district, or private water company has filed with the building
32 inspector in the city or town a map survey, that shall be kept as a public record, showing areas of
33 surface water resources and/or watersheds and parcels of land within two thousand feet (2,000')
34 thereof.

1 (g) Notwithstanding any of the requirements set forth in subsections (a) through (e), each
2 municipality shall establish and maintain a public notice registry allowing any person or entity to
3 register for electronic notice of any changes to the zoning ordinance. The city or town shall provide
4 public notice annually of the existence of the electronic registry by publication of notice in a
5 newspaper of general circulation within the city or town. In addition, each municipality is hereby
6 encouraged to provide public notice of the existence of the public notice registry in all of its current
7 and future communications with the public, including, but not limited to, governmental websites,
8 electronic newsletters, public bulletins, press releases, and all other means the municipality may
9 use to impart information to the local community.

10 (1) Provided, however, notice pursuant to a public notice registry as per this section does
11 not alone qualify a person or entity on the public notice registry as an “aggrieved party” under §
12 45-24-31(4).

13 (h) No defect in the form of any notice under this section shall render any ordinance or
14 amendment invalid, unless the defect is found to be intentional or misleading.

15 (i) Costs of ~~any notice~~ newspaper and mailing notices required under this section shall be
16 borne by the applicant.

17 (j) In granting a zoning ordinance amendment, notwithstanding the provisions of § 45-24-
18 37, the town or city council may limit the change to one of the permitted uses in the zone to which
19 the subject land is rezoned and impose limitations, conditions, and restrictions, including, without
20 limitation: (1) Requiring the petitioner to obtain a permit or approval from any and all state or local
21 governmental agencies or instrumentalities having jurisdiction over the land and use that are the
22 subject of the zoning change; (2) Those relating to the effectiveness or continued effectiveness of
23 the zoning change; and/or (3) Those relating to the use of the land as it deems necessary. The
24 responsible town or city official shall cause the limitations and conditions so imposed to be clearly
25 noted on the zoning map and recorded in the land evidence records; provided, that in the case of a
26 conditional zone change, the limitations, restrictions, and conditions shall not be noted on the
27 zoning map until the zone change has become effective. If the permitted use for which the land has
28 been rezoned is abandoned or if the land is not used for the requested purpose for a period of two
29 (2) years or more after the zone change becomes effective, the town or city council may, after a
30 public hearing, change the land to its original zoning use before the petition was filed. If any
31 limitation, condition, or restriction in an ordinance is held to be invalid by a court in any action,
32 that holding shall not cause the remainder of the ordinance to be invalid.

33 (k) The above requirements are to be construed as minimum requirements.

1 SECTION 4. This act shall take effect upon passage.

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LC003016/SUB A
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T
RELATING TO TOWNS AND CITIES -- RHODE ISLAND COMPREHENSIVE PLANNING
AND LAND USE ACT

- 1 This act would amend certain notification procedures relating to comprehensive planning
- 2 and land use, subdivision of land and zoning ordinances.
- 3 This act would take effect upon passage.

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