

2016 -- S 2227

=====
LC004031
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

—————
A N A C T

RELATING TO TOWNS AND CITIES -- ZONING ORDINANCES

Introduced By: Senators Pagliarini, Algiere, and Kettle

Date Introduced: January 27, 2016

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 45-24-31 and 45-24-37 of the General Laws in Chapter 45-24
2 entitled "Zoning Ordinances" are hereby amended to read as follows:

3 **45-24-31. Definitions.** -- Where words or terms used in this chapter are defined in § 45-
4 22.2-4, or 45-23-32, they have the meanings stated in that section. In addition, the following
5 words have the following meanings. Additional words and phrases may be used in developing
6 local ordinances under this chapter; however, the words and phrases defined in this section are
7 controlling in all local ordinances created under this chapter:

8 (1) Abutter. - One whose property abuts, that is, adjoins at a border, boundary, or point
9 with no intervening land.

10 (2) Accessory Dwelling Unit. - A dwelling unit: (i) rented to and occupied either by one
11 or more members of the family of the occupant or occupants of the principal residence; or (ii)
12 reserved for rental occupancy by a person or a family where the principal residence is owner
13 occupied, and which meets the following provisions:

14 (A) In zoning districts that allow residential uses, no more than one accessory dwelling
15 unit may be an accessory to a single-family dwelling.

16 (B) An accessory dwelling unit shall include separate cooking and sanitary facilities,
17 with its own legal means of ingress and egress and is a complete, separate dwelling unit. The
18 accessory dwelling unit shall be within or attached to the principal dwelling unit structure or
19 within an existing structure, such as a garage or barn, and designed so that the appearance of the

1 principal structure remains that of a one-family residence.

2 (3) Accessory Use. - A use of land or of a building, or portion thereof, customarily
3 incidental and subordinate to the principal use of the land or building. An accessory use may be
4 restricted to the same lot as the principal use. An accessory use shall not be permitted without the
5 principal use to which it is related.

6 (4) Aggrieved Party. - An aggrieved party, for purposes of this chapter, shall be:

7 (i) Any person or persons or entity or entities who can demonstrate that their property
8 will be injured by a decision of any officer or agency responsible for administering the zoning
9 ordinance of a city or town; or

10 (ii) Anyone requiring notice pursuant to this chapter.

11 (5) Agricultural Land. - "Agricultural land", as defined in § 45-22.2-4.

12 (6) Airport Hazard Area. - "Airport hazard area", as defined in § 1-3-2.

13 (7) Applicant. - An owner or authorized agent of the owner submitting an application or
14 appealing an action of any official, board, or agency.

15 (8) Application. - The completed form or forms and all accompanying documents,
16 exhibits, and fees required of an applicant by an approving authority for development review,
17 approval, or permitting purposes.

18 (9) Buffer. - Land which is maintained in either a natural or landscaped state, and is used
19 to screen and/or mitigate the impacts of development on surrounding areas, properties, or rights-
20 of-way.

21 (10) Building. - Any structure used or intended for supporting or sheltering any use or
22 occupancy.

23 (11) Building Envelope. - The three-dimensional space within which a structure is
24 permitted to be built on a lot and which is defined by regulations governing building setbacks,
25 maximum height, and bulk; by other regulations; and/or by any combination thereof.

26 (12) Building Height. - The vertical distance from grade, as determined by the
27 municipality, to the top of the highest point of the roof or structure. The distance may exclude
28 spires, chimneys, flag poles, and the like.

29 (13) Cluster. - A site planning technique that concentrates buildings in specific areas on
30 the site to allow the remaining land to be used for recreation, common open space, and/or
31 preservation of environmentally, historically, culturally, or other sensitive features and/or
32 structures. The techniques used to concentrate buildings shall be specified in the ordinance and
33 may include, but are not limited to, reduction in lot areas, setback requirements, and/or bulk
34 requirements, with the resultant open land being devoted by deed restrictions for one or more

1 uses. Under cluster development there is no increase in the number of lots that would be
2 permitted under conventional development except where ordinance provisions include incentive
3 bonuses for certain types or conditions of development.

4 (14) Common Ownership. - Either:

5 (i) Ownership by one or more individuals or entities in any form of ownership of two (2)
6 or more contiguous lots; or

7 (ii) Ownership by any association (ownership may also include a municipality) of one or
8 more lots under specific development techniques.

9 (15) Community Residence. - A home or residential facility where children and/or adults
10 reside in a family setting and may or may not receive supervised care. This does not include
11 halfway houses or substance abuse treatment facilities. This does include, but is not limited, to the
12 following:

13 (i) Whenever six (6) or fewer children or adults with retardation reside in any type of
14 residence in the community, as licensed by the state pursuant to chapter 24 of title 40.1. All
15 requirements pertaining to local zoning are waived for these community residences;

16 (ii) A group home providing care or supervision, or both, to not more than eight (8)
17 persons with disabilities, and licensed by the state pursuant to chapter 24 of title 40.1;

18 (iii) A residence for children providing care or supervision, or both, to not more than
19 eight (8) children including those of the care giver and licensed by the state pursuant to chapter
20 72.1 of title 42;

21 (iv) A community transitional residence providing care or assistance, or both, to no more
22 than six (6) unrelated persons or no more than three (3) families, not to exceed a total of eight (8)
23 persons, requiring temporary financial assistance, and/or to persons who are victims of crimes,
24 abuse, or neglect, and who are expected to reside in that residence not less than sixty (60) days
25 nor more than two (2) years. Residents will have access to and use of all common areas, including
26 eating areas and living rooms, and will receive appropriate social services for the purpose of
27 fostering independence, self-sufficiency, and eventual transition to a permanent living situation.

28 (16) Comprehensive Plan. - The comprehensive plan adopted and approved pursuant to
29 chapter 22.2 of this title and to which any zoning adopted pursuant to this chapter shall be in
30 compliance.

31 (17) Day Care -- Day Care Center. - Any other day care center which is not a family day
32 care home.

33 (18) Day Care -- Family Day Care Home. - Any home other than the individual's home
34 in which day care in lieu of parental care or supervision is offered at the same time to six (6) or

1 less individuals who are not relatives of the care giver, but may not contain more than a total of
2 eight (8) individuals receiving day care.

3 (19) Density, Residential. - The number of dwelling units per unit of land.

4 (20) Development. - The construction, reconstruction, conversion, structural alteration,
5 relocation, or enlargement of any structure; any mining, excavation, landfill or land disturbance;
6 or any change in use, or alteration or extension of the use, of land.

7 (21) Development Plan Review. - The process whereby authorized local officials review
8 the site plans, maps, and other documentation of a development to determine the compliance with
9 the stated purposes and standards of the ordinance.

10 (22) District. - See "zoning use district".

11 (23) Drainage System. - A system for the removal of water from land by drains, grading,
12 or other appropriate means. These techniques may include runoff controls to minimize erosion
13 and sedimentation during and after construction or development, the means for preserving surface
14 and groundwaters, and the prevention and/or alleviation of flooding.

15 (24) Dwelling Unit. - A structure or portion of a structure providing complete,
16 independent living facilities for one or more persons, including permanent provisions for living,
17 sleeping, eating, cooking, and sanitation, and containing a separate means of ingress and egress.

18 (25) Extractive Industry. - The extraction of minerals, including: solids, such as coal and
19 ores; liquids, such as crude petroleum; and gases, such as natural gases. The term also includes
20 quarrying; well operation; milling, such as crushing, screening, washing, and flotation; and other
21 preparation customarily done at the extraction site or as a part of the extractive activity.

22 (26) Family. - A person or persons related by blood, marriage, or other legal means. See
23 also "Household".

24 (27) Floating Zone. - An unmapped zoning district adopted within the ordinance which
25 is established on the zoning map only when an application for development, meeting the zone
26 requirements, is approved.

27 (28) Floodplains, or Flood Hazard Area. - As defined in § 45-22.2-4.

28 (29) Groundwater. - "Groundwater" and associated terms, as defined in § 46-13.1-3.

29 (30) Halfway House. - A residential facility for adults or children who have been
30 institutionalized for criminal conduct and who require a group setting to facilitate the transition to
31 a functional member of society.

32 (31) Hardship. - See § 45-24-41.

33 (32) Historic District, or Historic Site. - As defined in § 45-22.2-4.

34 (33) Home Occupation. - Any activity customarily carried out for gain by a resident,

1 conducted as an accessory use in the resident's dwelling unit.

2 (34) Household. - One or more persons living together in a single dwelling unit, with
3 common access to, and common use of, all living and eating areas and all areas and facilities for
4 the preparation and storage of food within the dwelling unit. The term "household unit" is
5 synonymous with the term "dwelling unit" for determining the number of units allowed within
6 any structure on any lot in a zoning district. An individual household shall consist of any one of
7 the following:

8 (i) A family, which may also include servants and employees living with the family; or

9 (ii) A person or group of unrelated persons living together. The maximum number may
10 be set by local ordinance, but this maximum shall not be less than three (3).

11 (35) Incentive Zoning. - The process whereby the local authority may grant additional
12 development capacity in exchange for the developer's provision of a public benefit or amenity as
13 specified in local ordinances.

14 (36) Infrastructure. - Facilities and services needed to sustain residential, commercial,
15 industrial, institutional, and other activities.

16 (37) Land Development Project. - A project in which one or more lots, tracts, or parcels
17 of land are developed or redeveloped as a coordinated site for one or more uses, units, or
18 structures, including, but not limited to, planned development and/or cluster development for
19 residential, commercial, institutional, recreational, open space, and/or mixed uses as provided in
20 the zoning ordinance.

21 (38) Lot. - Either:

22 (i) The basic development unit for determination of lot area, depth, and other
23 dimensional regulations; or

24 (ii) A parcel of land whose boundaries have been established by some legal instrument
25 such as a recorded deed or recorded map and which is recognized as a separate legal entity for
26 purposes of transfer of title.

27 (39) Lot Area. - The total area within the boundaries of a lot, excluding any street right-
28 of-way, usually reported in acres or square feet.

29 (40) Lot Area, Minimum. - The smallest land area established by the local zoning
30 ordinance upon which a use, building or structure may be located in a particular zoning district.

31 (41) Lot Building Coverage. - That portion of the lot that is or may be covered by
32 buildings and accessory buildings.

33 (42) Lot Depth. - The distance measured from the front lot line to the rear lot line. For
34 lots where the front and rear lot lines are not parallel, the lot depth is an average of the depth.

1 (43) Lot Frontage. - That portion of a lot abutting a street. A zoning ordinance shall
2 specify how noncontiguous frontage will be considered with regard to minimum frontage
3 requirements.

4 (44) Lot Line. - A line of record, bounding a lot, which divides one lot from another lot
5 or from a public or private street or any other public or private space and shall include:

6 (i) Front: the lot line separating a lot from a street right-of-way. A zoning ordinance shall
7 specify the method to be used to determine the front lot line on lots fronting on more than one
8 street, for example, corner and through lots;

9 (ii) Rear: the lot line opposite and most distant from the front lot line, or in the case of
10 triangular or otherwise irregularly shaped lots, an assumed line at least ten feet (10') in length
11 entirely within the lot, parallel to and at a maximum distance from the front lot line; and

12 (iii) Side: any lot line other than a front or rear lot line. On a corner lot, a side lot line
13 may be a street lot line, depending on requirements of the local zoning ordinance.

14 (45) Lot Size, Minimum. - Shall have the same meaning as "minimum lot area" defined
15 herein.

16 (46) Lot, Through. - A lot which fronts upon two (2) parallel streets, or which fronts
17 upon two (2) streets which do not intersect at the boundaries of the lot.

18 (47) Lot Width. - The horizontal distance between the side lines of a lot measured at
19 right angles to its depth along a straight line parallel to the front lot line at the minimum front
20 setback line.

21 (48) Mere Inconvenience. - See § 45-24-41.

22 (49) Mixed Use. - A mixture of land uses within a single development, building, or tract.

23 (50) Modification. - Permission granted and administered by the zoning enforcement
24 officer of the city or town, and pursuant to the provisions of this chapter to grant a dimensional
25 variance other than lot area requirements from the zoning ordinance to a limited degree as
26 determined by the zoning ordinance of the city or town, but not to exceed twenty-five percent
27 (25%) of each of the applicable dimensional requirements.

28 (51) Nonconformance. - A building, structure, or parcel of land, or use thereof, lawfully
29 existing at the time of the adoption or amendment of a zoning ordinance and not in conformity
30 with the provisions of that ordinance or amendment. Nonconformance is of only two (2) types:

31 (i) Nonconforming by use: a lawfully established use of land, building, or structure
32 which is not a permitted use in that zoning district. A building or structure containing more
33 dwelling units than are permitted by the use regulations of a zoning ordinance is nonconformity
34 by use; or

1 (ii) Nonconforming by dimension: a building, structure, or parcel of land not in
2 compliance with the dimensional regulations of the zoning ordinance. Dimensional regulations
3 include all regulations of the zoning ordinance, other than those pertaining to the permitted uses.
4 A building or structure containing more dwelling units than are permitted by the use regulations
5 of a zoning ordinance is nonconforming by use; a building or structure containing a permitted
6 number of dwelling units by the use regulations of the zoning ordinance, but not meeting the lot
7 area per dwelling unit regulations, is nonconforming by dimension.

8 (52) Overlay District. - A district established in a zoning ordinance that is superimposed
9 on one or more districts or parts of districts. The standards and requirements associated with an
10 overlay district may be more or less restrictive than those in the underlying districts consistent
11 with other applicable state and federal laws.

12 (53) Performance Standards. - A set of criteria or limits relating to elements which a
13 particular use or process must either meet or may not exceed.

14 (54) Permitted Use. - A use by right which is specifically authorized in a particular
15 zoning district.

16 (55) Planned Development. - A "land development project", as defined in § 45-24-
17 31(37), and developed according to plan as a single entity and containing one or more structures
18 and/or uses with appurtenant common areas.

19 (56) Plant Agriculture. - The growing of plants for food or fiber, to sell or consume.
20 Plant agriculture shall not include the growing, cultivation, acquisition, production and/or
21 processing of marijuana for distribution, wholesale, transfer, transport, dispensing, administration
22 or retail sale.

23 (57) Preapplication Conference. - A review meeting of a proposed development held
24 between applicants and reviewing agencies as permitted by law and municipal ordinance, before
25 formal submission of an application for a permit or for development approval.

26 (58) Setback Line or Lines. - A line or lines parallel to a lot line at the minimum distance
27 of the required setback for the zoning district in which the lot is located that establishes the area
28 within which the principal structure must be erected or placed.

29 (59) Slope of Land. - The grade, pitch, rise or incline of the topographic landform or
30 surface of the ground.

31 (60) Site Plan. - The development plan for one or more lots on which is shown the
32 existing and/or the proposed conditions of the lot.

33 (61) Special Use. - A regulated use which is permitted pursuant to the special-use permit
34 issued by the authorized governmental entity, pursuant to § 45-24-42. Formerly referred to as a

1 special exception.

2 (62) Structure. - A combination of materials to form a construction for use, occupancy,
3 or ornamentation, whether installed on, above, or below, the surface of land or water.

4 (63) Substandard Lot of Record. - Any lot lawfully existing at the time of adoption or
5 amendment of a zoning ordinance and not in conformance with the dimensional and/or area
6 provisions of that ordinance.

7 (64) Use. - The purpose or activity for which land or buildings are designed, arranged, or
8 intended, or for which land or buildings are occupied or maintained.

9 (65) Variance. - Permission to depart from the literal requirements of a zoning ordinance.
10 An authorization for the construction or maintenance of a building or structure, or for the
11 establishment or maintenance of a use of land, which is prohibited by a zoning ordinance. There
12 are only two (2) categories of variance, a use variance or a dimensional variance.

13 (i) Use Variance. - Permission to depart from the use requirements of a zoning ordinance
14 where the applicant for the requested variance has shown by evidence upon the record that the
15 subject land or structure cannot yield any beneficial use if it is to conform to the provisions of the
16 zoning ordinance.

17 (ii) Dimensional Variance. - Permission to depart from the dimensional requirements of
18 a zoning ordinance, where the applicant for the requested relief has shown, by evidence upon the
19 record, that there is no other reasonable alternative way to enjoy a legally permitted beneficial use
20 of the subject property unless granted the requested relief from the dimensional regulations.
21 However, the fact that a use may be more profitable or that a structure may be more valuable after
22 the relief is granted are not grounds for relief.

23 (66) Waters. - As defined in § 46-12-1(23).

24 (67) Wetland, Coastal. - As defined in § 45-22.2-4.

25 (68) Wetland, Freshwater. - As defined in § 2-1-20.

26 (69) Zoning Certificate. - A document signed by the zoning enforcement officer, as
27 required in the zoning ordinance, which acknowledges that a use, structure, building, or lot either
28 complies with or is legally nonconforming to the provisions of the municipal zoning ordinance or
29 is an authorized variance or modification therefrom.

30 (70) Zoning Map. - The map or maps which are a part of the zoning ordinance and which
31 delineate the boundaries of all mapped zoning districts within the physical boundary of the city or
32 town.

33 (71) Zoning Ordinance. - An ordinance enacted by the legislative body of the city or
34 town pursuant to this chapter and in the manner providing for the adoption of ordinances in the

1 city or town's legislative or home rule charter, if any, which establish regulations and standards
2 relating to the nature and extent of uses of land and structures, which is consistent with the
3 comprehensive plan of the city or town as defined in chapter 22.2 of this title, which includes a
4 zoning map, and which complies with the provisions of this chapter.

5 (72) Zoning Use District. - The basic unit in zoning, either mapped or unmapped, to
6 which a uniform set of regulations applies, or a uniform set of regulations for a specified use.
7 Zoning use districts include, but are not limited to: agricultural, commercial, industrial,
8 institutional, open space, and residential. Each district may include sub-districts. Districts may be
9 combined.

10 **45-24-37. General provisions -- Permitted uses.** -- (a) The zoning ordinance provides a
11 listing of all land uses and/or performance standards for uses which are permitted within the
12 zoning use districts of the municipality.

13 (b) Notwithstanding any other provision of this chapter, the following uses are permitted
14 uses within all residential zoning use districts of a municipality and all industrial and commercial
15 zoning use districts except where residential use is prohibited for public health or safety reasons:

- 16 (1) Households;
- 17 (2) Community residences; and
- 18 (3) Family day care homes.

19 (c) Any time a building or other structure used for residential purposes, or a portion of a
20 building containing residential units, is rendered uninhabitable by virtue of a casualty such as fire
21 or flood, the owner of the property is allowed to park, temporarily, mobile and manufactured
22 home or homes, as the need may be, elsewhere upon the land, for use and occupancy of the
23 former occupants for a period of up to twelve (12) months, or until the building or structure is
24 rehabilitated and otherwise made fit for occupancy. The property owner, or a properly designated
25 agent of the owner, is only allowed to cause the mobile and manufactured home or homes to
26 remain temporarily upon the land by making timely application to the local building official for
27 the purposes of obtaining the necessary permits to repair or rebuild the structure.

28 (d) Notwithstanding any other provision of this chapter, appropriate access for people
29 with disabilities to residential structures is allowed as a reasonable accommodation for any
30 person(s) residing, or intending to reside, in the residential structure.

31 (e) Notwithstanding any other provision of this chapter, an accessory family dwelling
32 unit in an owner-occupied, single-family residence shall be permitted as a reasonable
33 accommodation only for family members with disabilities. The appearance of the structure shall
34 remain that of a single-family residence and there shall be an internal means of egress between

1 the principal unit and the accessory family dwelling unit. If possible, no additional exterior
2 entrances should be added. Where additional entrance is required, placement should generally be
3 in the rear or side of the structure. When the structure is serviced by an individual sewage
4 disposal system, the applicant shall have the existing or any new system approved by the
5 department of environmental management. The zoning enforcement officer shall require that a
6 declaration of the accessory family dwelling unit for the family member or members and its
7 restrictions be recorded in the land evidence records and filed with the zoning enforcement officer
8 and the building official. Once the family member or members with disabilities no longer resides
9 in the premises on a permanent basis, or the title is transferred, the property owner shall notify the
10 zoning official in writing, and the accessory family dwelling unit shall no longer be permitted,
11 unless there is a subsequent, valid application.

12 (f) When used in this section the terms "people with disabilities" or "member or
13 members with disabilities" means a person(s) who has a physical or mental impairment which
14 substantially limits one or more major life activities, as defined in § 34-37-3 of the general laws.

15 (g) Notwithstanding any other provisions of this chapter, plant agriculture is a permitted
16 use within all zoning districts of a municipality, including all industrial and commercial zoning
17 districts, except where prohibited for public health or safety reasons or the protection of wildlife
18 habitat. [The growing, cultivation, acquisition, production and/or processing of marijuana, for
19 distribution, wholesale, transfer, transport, dispensing, administration or retail sale, is specifically
20 excluded from the definition of plant agriculture as defined in §45-24-31, and is prohibited in all
21 zoning districts of a municipality as an agricultural use.](#)

22 SECTION 2. This act shall take effect upon passage.

=====
LC004031
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO TOWNS AND CITIES -- ZONING ORDINANCES

1 This act would exclude the growing, cultivation, acquisition, production and/or
2 processing of marijuana, for distribution or retail sale from the definition of "plant agriculture"
3 under chapter 24 of title 45 relating to towns and cities -- zoning ordinances, and would prohibit
4 any town or city from passing any ordinance which would allow such activity.

5 This act would take effect upon passage.

=====
LC004031
=====