

2022 -- H 7948

LC005358

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 Potter, and Speakman

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) "Area median income" means area median income figures as generated by the U.S.
16 Department of Housing and Urban Development ("HUD").

17 ~~(3)~~(4) "Comprehensive plan" means a comprehensive plan adopted and approved by a city
18 or town pursuant to chapters 22.2 and 22.3 of this title.

19 ~~(4)~~(5) "Consistent with local needs" means reasonable in view of the state need for low and

1 moderate income housing, considered with the number of low income persons in the city or town
2 affected and the need to protect the health and safety of the occupants of the proposed housing or
3 of the residence of the city or town, to promote better site and building design in relation to the
4 surroundings, or to preserve open spaces, and if the local zoning or land use ordinances,
5 requirements, and regulations are applied as equally as possible to both subsidized and
6 unsubsidized housing. Local zoning and land use ordinances, requirements, or regulations are
7 consistent with local needs when imposed by a city or town council after a comprehensive hearing
8 in a city or town where:

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

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

21 (iii) Mobile and manufactured homes as defined in chapter 44 of title 31 (“mobile and
22 manufactured homes”), that are newly constructed on or after July 1, 2022, and that are also HUD-
23 approved and compliant manufactured structures, may be included in calculating the number of
24 total year-round housing units that qualify as low and moderate income housing for purposes of
25 this section. In addition, mobile and manufactured homes which are HUD compliant may be
26 calculated as a year-round rental unit for the decennial census of a city or town, for purposes of
27 meeting low and moderate income housing thresholds set forth in this chapter. Provided, mobile
28 and manufactured homes shall be included and counted as set forth in subsection (5) of this section.

29 (iv) Two (2) separate mobile and manufactured homes may be counted as one housing unit
30 of low or moderate income housing for purposes of calculating low or moderate income housing
31 pursuant to this chapter; provided that:

32 (A) The total income the household occupying the mobile or manufactured home, is less
33 than fifty percent (50%) of the area median income for the municipality, as calculated by HUD;

34 (B) The mobile or manufactured home, if rented or if it is situated on real estate which is

1 rented, is subject to a deed restriction of at least ten (10) years in length; and

2 (C) The municipality is able to determine and certify that the household income is less than
3 fifty percent (50%) of the area median income in every year that the municipality seeks to count
4 the mobile or manufactured home towards meeting the municipality's low and moderate income
5 housing requirements.

6 ~~(5)~~(6) "Infeasible" means any condition brought about by any single factor or combination
7 of factors, as a result of limitations imposed on the development by conditions attached to the
8 approval of the comprehensive permit, to the extent that it makes it impossible for a public agency,
9 nonprofit organization, or limited equity housing cooperative to proceed in building or operating
10 low or moderate income housing without financial loss, within the limitations set by the subsidizing
11 agency of government, on the size or character of the development, on the amount or nature of the
12 subsidy, or on the tenants, rentals, and income permissible, and without substantially changing the
13 rent levels and unit sizes proposed by the public agency, nonprofit organization, or limited equity
14 housing cooperative.

15 ~~(6)~~(7) "Letter of eligibility" means a letter issued by the Rhode Island housing and
16 mortgage finance corporation in accordance with § 42-55-5.3(a).

17 ~~(7)~~(8) "Local board" means any town or city official, zoning board of review, planning
18 board or commission, board of appeal or zoning enforcement officer, local conservation
19 commission, historic district commission, or other municipal board having supervision of the
20 construction of buildings or the power of enforcing land use regulations, such as subdivision, or
21 zoning laws.

22 ~~(8)~~(9) "Local review board" means the planning board as defined by § 45-22.2-4(20), or if
23 designated by ordinance as the board to act on comprehensive permits for the town, the zoning
24 board of review established pursuant to § 45-24-56.

25 ~~(9)~~(10) "Low or moderate income housing" means any housing whether built or operated
26 by any public agency or any nonprofit organization or by any limited equity housing cooperative
27 or any private developer, that is subsidized by a federal, state, or municipal government subsidy
28 under any program to assist the construction or rehabilitation of housing affordable to low or
29 moderate income households, as defined in the applicable federal or state statute, or local ordinance
30 and that will remain affordable through a land lease and/or deed restriction for ninety-nine (99)
31 years or such other period that is either agreed to by the applicant and town or prescribed by the
32 federal, state, or municipal government subsidy program but that is not less than thirty (30) years
33 from initial occupancy.

34 ~~(10)~~(11) "Meeting housing needs" means adoption of the implementation program of an

1 approved affordable housing plan and the absence of unreasonable denial of applications that are
2 made pursuant to an approved affordable housing plan in order to accomplish the purposes and
3 expectations of the approved affordable housing plan.

4 ~~(H)~~(12) "Municipal government subsidy" means assistance that is made available through
5 a city or town program sufficient to make housing affordable, as affordable housing is defined in §
6 42-128-8.1(d)(1); such assistance may include, but is not limited to, direct financial support,
7 abatement of taxes, waiver of fees and charges, and approval of density bonuses and/or internal
8 subsidies, and any combination of forms of assistance.

9 **45-53-4. Procedure for approval of construction of low or moderate income housing.**

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

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

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

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

24 (iii) A proposed timetable for the commencement of construction and completion of the
25 project; and

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

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

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

33 (vii) For comprehensive permit applications: (A) not involving major land developments
34 or major subdivisions including, but not limited to, applications seeking relief from specific

1 provisions of a local zoning ordinance, or involving administrative subdivisions, minor land
2 developments or minor subdivisions, or other local ordinances and regulations: those items required
3 by local regulations promulgated pursuant to applicable state law, with the exception of evidence
4 of state or federal permits; and for comprehensive permit applications; and (B) involving major
5 land developments and major subdivisions, unless otherwise agreed to by the applicant and the
6 town; those items included in the checklist for the master plan in the local regulations promulgated
7 pursuant to § 45-23-40. Subsequent to master plan approval, the applicant must submit those items
8 included in the checklist for a preliminary plan for a major land development or major subdivision
9 project in the local regulations promulgated pursuant to § 45-23-41, with the exception of evidence
10 of state or federal permits. All required state and federal permits must be obtained prior to the final
11 plan approval or the issuance of a building permit; and

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

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

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

31 (3) Pre-application conference. Where the comprehensive permit application proposal is a
32 major land development project or a major subdivision pursuant to chapter 23 of this title a
33 municipality may require an applicant proposing a project under this chapter to first schedule a pre-
34 application conference with the local review board, the technical review committee established

1 pursuant to § 45-23-56, or with the administrative officer for the local review board and other local
2 officials, as appropriate. To request a pre-application conference, the applicant shall submit a short
3 description of the project in writing including the number of units, type of housing, as well as a
4 location map. The purpose of the pre-application conference shall be to review a concept plan of
5 the proposed development. Upon receipt of a request by an applicant for a pre-application
6 conference, the municipality has thirty (30) days to schedule and hold the pre-application
7 conference. If thirty (30) days has elapsed from the filing of the pre-application submission and no
8 pre-application conference has taken place, nothing shall be deemed to preclude an applicant from
9 thereafter filing and proceeding with an application for a comprehensive permit.

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

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

17 (ii) Public Notice. Public notice for all public hearings will be the same notice required
18 under local regulations for a public hearing for a preliminary plan promulgated in accordance with
19 § 45-23-42. The cost of notice shall be paid by the applicant.

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

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

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

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

12 (C) All low and moderate income housing units proposed are integrated throughout the
13 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) 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) 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) The proposed development will not result in the creation of individual lots with any
26 physical constraints to development that building on those lots according to pertinent regulations
27 and building standards would be impracticable, unless created only as permanent open space or
28 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) In reviewing the comprehensive permit request, the local review board may deny the
34 request for any of the following reasons: (A) if city or town has an approved affordable housing

1 plan and is meeting housing needs, and the proposal is inconsistent with the affordable housing
2 plan; (B) the proposal is not consistent with local needs, including, but not limited to, the needs
3 identified in an approved comprehensive plan, and/or local zoning ordinances and procedures
4 promulgated in conformance with the comprehensive plan; (C) the proposal is not in conformance
5 with the comprehensive plan; (D) the community has met or has plans to meet the goal of ten
6 percent (10%) of the year-round units or, in the case of an urban town or city, fifteen percent (15%)
7 of the occupied rental housing units as defined in § 45-53-3(2)(i) being low and moderate income
8 housing; or (E) concerns for the environment and the health and safety of current residents have
9 not been adequately addressed.

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

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

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

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

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

32 (xiii) The local review board of a town with an approved affordable housing plan shall
33 report the status of implementation to the housing resources commission, including the disposition
34 of any applications made under the plan, as of June 30, 2006, by September 1, 2006 and for each

1 June 30 thereafter by September 1 through 2010. The housing resources commission shall prepare
2 by October 15 and adopt by December 31, a report on the status of implementation, which shall be
3 submitted to the governor, the speaker, the president of the senate and the chairperson of the state
4 housing appeals board, and shall find which towns are not in compliance with implementation
5 requirements.

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

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

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

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

31 (c) Towns and cities that are not in conformity with the provisions of § 45-53-3(2)(i) shall
32 prepare by December 31, 2004, a comprehensive plan housing element for low and moderate
33 income housing as specified by § 45-53-3(2)(ii), consistent with applicable law and regulation.
34 That the secretary of the planning board or commission of each city or town subject to the

1 requirements of this paragraph shall report in writing the status of the preparation of the housing
2 element for low and moderate income housing on or before June 30, 2004, and on or before
3 December 31, 2004, to the secretary of the state planning council, to the chair of the house
4 committee on corporations and to the chair of the senate committee on commerce, housing and
5 municipal government. The state housing appeals board shall use said plan elements in making
6 determinations provided for in § 45-53-6(b)(2).

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

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

20 (f) Mobile and manufactured homes may be included and counted as low and moderate
21 income housing units, subject to the definitions and limitations set forth in §§ 45-53-3 and 45-53-
22 3.1.

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

25 **45-53-3.1. Formula to determine additional units as low and moderate income**
26 **housing.**

27 (a) In calculating the number of year-round housing units towards meeting the goals of an
28 excess of ten percent (10%) of the year-round housing units or an excess of fifteen percent (15%)
29 of the total year-round rental units required pursuant to § 45-53-4, households with certain area
30 median incomes may be counted towards meeting the low and moderate income requirements as
31 follows:

32 Household income as a percent

33 Percent of Area Median Income (AMI): How much the household can be counted

34 as a low and moderate income housing unit:

1	<u>120% AMI</u>	<u>0.5 Units</u>
2	<u>100% AMI</u>	<u>0.75</u>
3	<u>80% AMI (Rental only)</u>	<u>0.75</u>
4	<u>80% AMI (Home ownership)</u>	<u>1.0</u>
5	<u>60% AMI</u>	<u>1.5</u>
6	<u>50% AMI and below (except mobile and manufactured homes)</u>	<u>2.0</u>
7	<u>(b) Provided, mobile and manufactured homes may be included and counted as low and</u>	
8	<u>moderate income housing units pursuant to the definitions and limitations set forth in § 45-53-3.</u>	
9	SECTION 3. This act shall take effect upon passage.	

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LC005358
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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 allow mobile and manufactured homes to be included and counted as low
2 and moderate income housing units pursuant to the definitions and limitations set forth in § 45-53-
3 3.

4 This act would take effect upon passage.

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LC005358
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