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

Introduced By: Senator Frank Lombardo
Date Introduced: June 20, 2022
Referred To: Senate Housing & Municipal Government

It is enacted by the General Assembly as follows:

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

45-53-3, Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Public Notice. Public notice for all public hearings will be the same notice required under local regulations for a public hearing for a preliminary plan promulgated in accordance with § 45-23-42. The cost of notice shall be paid by the applicant.
(iii) Review of minor projects. The review of a comprehensive permit application involving only minor land developments or minor subdivisions or requesting zoning ordinance relief or relief from other local regulations or ordinances not otherwise addressed in this subsection, shall be conducted following the procedures in the applicable local regulations, with the exception that all minor land developments or minor subdivisions under this section are required to hold a public hearing on the application, and within ninety-five (95) days of issuance of the certificate of completeness, or within such further time as is agreed to by the applicant and the local review board, render a decision.

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

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

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

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

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

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

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

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

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

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

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

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

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

(x) Any person aggrieved by the issuance of an approval may appeal to the superior court
within twenty (20) days of the issuance of approval.
(xi) A comprehensive permit shall expire unless construction is started within twelve (12) months and completed within sixty (60) months of final plan approval unless a longer and/or phased period for development is agreed to by the local review board and the applicant. Low and moderate income housing units shall be built and occupied prior to, or simultaneous with the construction and occupancy of market rate units.

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

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

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

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

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

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

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

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

(e) In planning for, awarding and otherwise administering programs and funds for housing
and for community development, state departments, agencies, boards and commissions, public
corporations, as defined in chapter 18 of title 35, shall among the towns subject to the provision of
§ 45-53-3(ii) give priority to the maximum extent allowable by law, to towns with an approved
affordable housing plan. The director of administration shall adopt not later than January 31, 2005,
regulations to implement the provisions of this section.
(f) Multi-family rental units built under a comprehensive permit may be calculated towards meeting the requirements of a municipality’s low or moderate income housing inventory, as long as the units meet and are in compliance with the provisions of § 45-53-3.1.

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

45-53-3.1. Formula to include non-income restricted multi-family rental units as low and moderate income housing.

(a) In calculating the number of year-round housing units towards meeting the goals of an excess of ten percent (10%) of the year-round housing units consistent with local needs required pursuant to § 45-53-4, rental units in multi-family housing built after the effective date of this section may be included as low or moderate income housing, in accordance with the following conditions:

(1) At least thirty percent (30%) of the units created are deed restricted for households earning not more than sixty percent (60%) of the area median income, adjusted for household size; or

(2) At least fifty percent (50%) of the units created are deed restricted for households earning not more than eighty percent (80%) of the area median income, adjusted for household size; and

(3) The proposed affordable units meet all other requirements of this chapter to be calculated as low or moderate-income housing; and

(4) All non-deed restricted units developed under the same comprehensive permit shall be included in the low and moderate income housing inventory as one-half (0.5) units each.

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

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

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

SECTION 3. This act shall take effect upon passage.
EXPLANATION
BY THE LEGISLATIVE COUNCIL

OF

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

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1 This act would allow deed restricted multi-family housing units and certain non-deed
2 restricted multi-family rental units to be counted as low and moderate income housing inventory
3 under a comprehensive permit and be calculated toward a city or town's ten percent (10%) minimum requirement of low and moderate income housing.
4
5 This act would take effect upon passage.

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