

CONCISE EXPLANATORY STATEMENT

In accordance with the Administrative Procedures Act, R.I. Gen. Laws § 42-35-2.6, the following is a concise explanatory statement:

AGENCY: Rhode Island Executive Office of Housing

RULE IDENTIFIER: 310-RICR-60-35-1

RULE TITLE: Rules and Regulations for the Establishment of the Transit Oriented Development Pilot Program

REASON FOR RULEMAKING:

The Rhode Island Executive Office of Housing (the “Agency”) has promulgated rules and regulations for the establishment, implementation and administration of the Transit Oriented Development Pilot Program pursuant to R.I. Gen. Laws § 42-167-1 and R.I. Gen. Laws § 45-24-77, et seq.

ANY FINDING REQUIRED BY LAW AS A PREREQUISITE TO THE EFFECTIVENESS OF THE RULE:

None.

TESTIMONY AND COMMENTS:

The Executive Office of Housing (“EOH”) received public comment from three (3) entities/constituents to its proposed Rules and Regulations for the Transit Oriented Development Pilot Program (“TOD Program”). A summary of the public comment received, and the EOH’s decision to accept or reject the public comment, is set forth below.

A. COMMENTS FROM PETER FRIEDRICH

Mr. Friedrichs provided the following comment for consideration: “I think the draft regulations strike a balance between procedure and operational efficiency. My only real substantive comment is that it may be easier to utilize the general assembly’s definition of affordable housing from RIGL 45-53-3, rather than creating a new definition.”

EOH decision on comment: Partial acceptance of suggestion;¹ for the definition of rental housing, EOH is revising it to match the existing state definition outlined in RIGL § 42-128². For homeownership, EOH is keeping the language as proposed to ensure affordable homeownership in a TOD district is affordable to a larger group of low- and moderate-income buyers. By capping the maximum sales price at a level affordable to households at or below 110% AMI, we are ensuring the availability of affordably priced homes for households earning below 120% AMI. Revisions to the term of “affordable housing” is revised as follows:

~~For a rental unit, the tenant is required to be an individual or household whose annual income is less than or equal to 80% of the Area Median Income and the monthly rent, plus a reasonable allowance for applicable utilities, is less than or equal to 30% of one twelfth of 80% the Area Median Income; and~~ In the case of dwelling units for rent, housing that is affordable means housing for which the rent, heat, and utilities other than telephone constitute no more than thirty percent (30%) of the gross annual household income for a household with eighty percent (80%) or less of area median income, adjusted for family size.

B. COMMENTS FROM ANDREW TEITZ, ESQ.

Attorney Teitz provided the following comments for consideration:

1. “Why use a different term “affordable housing” and a different definition when there is already a long-used definition of “low and moderate income housing” in the General Laws to which you could reference. The definitions seem very similar except for the sale requirement at “110%.” Why is this in here?”

EOH decision on comment: Partial acceptance of suggestion; see above EOH decision on Mr. Friedrichs comment. Above referenced partial revision of the definition shall also be applied to this response.

2. “As a general comment, a lot of the “meat” of the regs is somewhat “buried” in the definitions. That is common in land use regs, but it would be less confusing if more of the standards were moved out of the definitions.”

EOH decision on comment: Reject comment; EOH believes it is appropriate to include this level of detail in the definitions.

¹ Proposed additions are underlined in red and proposed deletions have a strikethrough

² RIGL <https://webserver.rilegisature.gov/Statutes/TITLE42/42-128/42-128-8.1.htm>

3. “Why do you need Preliminary District Approval and Final? If the proposal submitted to you is approved, and passed without changes by the municipality, it should be approved. If any changes are made, it must come back to the Executive Office for approval. Why complicate the process?”

EOH decision on comment: Reject comment; EOH can't approve a TOD district in concept; it needs to be approved at the municipal level first (if one doesn't already exist). If a municipality receives a letter of preliminary approval, the next steps in the process are straightforward and streamlined. If a municipality already meets the requirements for a TOD district they can request a letter of final approval.

4. “Definition Z-2; why require comparison with the Prior Zoning, and why require increased density? If the prior zoning meets all the requirements, why do you need “increased density”?”

EOH decision on comment: Accept comment: Language was updated to reflect legislative changes made last session, to remain consistent with existing law:

Z.2. ~~Increases density as compared to the Underlying Zoning or Prior Zoning;~~ Provides for high density residential development;

5. “Definition X; “Suitable for Families” is going too far to say that there must be “NO” restrictions on the number of bedrooms and number of occupants. You do want municipalities to adopt this, and that may well scare them away.”

EOH decision on comment: Reject comment; EOH wants to encourage housing to serve all households, including individuals and families. The TOD Pilot Program is optional, and we want to encourage municipalities to apply for this. EOH believes that communities who are open to density near transit will not be discouraged by this provision. The program does not impact regulations for unrelated individuals and only prohibits limiting the number of occupants of the same family.

6. “Definition Z-3; why require parking ratio to be “eased” as to Prior Zoning, if it was already eased, as several municipalities have already done in all or parts of their downtowns.”

EOH decision on comment: Reject comment; please see the definition for “easing” under Section 1.5(I), pursuant to R.I. Gen. Laws § 45-24-77.

7. “Definition BB; overall, this is a definition with a lot of “standards” in it that would be better moved to a different section of the regs. Specifically, the last sentence beginning with “Notwithstanding” is VERY important and should not be buried at the end of this definition.”

EOH decision on comment: Accept comment; the definition has been revised as follows:

"TOD Pilot Program Zoning" means the zoning code provisions that create the TOD Pilot Program District and is all-inclusive such that development within a TOD Pilot Program District shall be governed solely by the TOD Pilot Program Zoning, without any reference to the standards or procedures of the Underlying Zoning that would otherwise be applicable to developments within the same geographic area as the TOD Pilot Program District. Without limitation, the TOD Pilot Program Zoning shall set out the dimensional, use, parking, and other standards applicable to development within the TOD Pilot Program District, including but not limited to height limits, setbacks, lot areas, lot dimensions, unit to lot ratios, floor area ratios, lot coverage ratios, open space ratios, residential parking ratios and locations, roadway design standards, and shall provide for housing opportunities that are Suitable for Families.

~~Notwithstanding the foregoing, such zoning code provisions shall not take precedence over otherwise generally applicable state requirements, historic districts or overlay zones, or environmental regulations or overlay zones.~~

Also in response to this comment, **Section 1.3 – Scope**, shall be revised as follows:

These Rules shall apply to any application for funding under the Act. Notwithstanding anything contained in these Rules to the contrary, the Executive Office shall have and may exercise all general powers set forth in the Act that are necessary or convenient to affect its purposes, and these Rules shall be liberally construed so as to permit the Executive Office to effectuate the purposes of the Act, the public interest, and other applicable state laws and regulations.

~~Notwithstanding the foregoing, such zoning code provisions shall not take precedence over otherwise generally applicable state requirements, historic districts or overlay zones, or environmental regulations or overlay zones.~~

8. “Definition DD-2; I am troubled by the subjectivity of “as demonstrated by existing or anticipated market conditions” which sounds like it would lead to an appraiser finding as to “highest and best use.” Almost any use could conceivably be found to be underutilized.”

EOH decision on comment: Reject comment; EOH believes that this definition as it appears in the proposed regulations has enough qualifiers and encourages development.

9. “Section 1.6.A.4; again, why is it given that restrictions must be “eased” from the prior zoning. And what if some are eased and some are tightened?”

EOH decision on comment: Reject comment; please see definition for “easing” under Section 1.5(I), pursuant to R.I. Gen. Laws § 45-24-77.

10. “Section 1.7.C; the scoring criteria perhaps should be ranked? I would think that since you are the Housing office, that #4, “the total number of affordable units proposed”

should rank at the top. Or, since this is “TRANSIT” oriented development, #8 “frequency and accessibility of current and future transit services” should also rank at the top.”

EOH decision on comment: Reject comment; the scoring criteria is not ranked in the regulations. EOH is developing a scoring rubric with the criteria listed to evaluate proposals, which will be reviewed by EOH staff and do not want to unnecessarily limit through the regulations.

C. OTHER CHANGES MADE

After further review, EOH made the below change to ensure RIHousing is captured in this definition:

"Affordable Housing Restriction" means a restriction in favor of HUD, any agency or instrumentality of the State, or a municipality and in the chain of title to a housing unit limiting the sale price or rent and limiting occupancy to an individual or household of a certain income as defined above, “Affordable Housing.”

CHANGE TO TEXT OF THE RULE:

Changes to the text of the proposed Rules and Regulations are set forth below, and explanations of those changes are referenced above in the testimony addressing public comment.

310-RICR-60-35-1

TITLE 310 - EXECUTIVE OFFICE OF HOUSING

CHAPTER 60 - PILOT PROGRAMS

SUBCHAPTER 35 - TRANSIT-ORIENTED DEVELOPMENT PILOT PROGRAM

PART 1 - Rules and Regulations for the Establishment of the Transit-Oriented Development Pilot Program

1.1 Purpose

- A. These rules and regulations (“Rules”) are promulgated to set forth the principles, policies, and practices of the Executive Office of Housing (the “Executive Office”) in implementing and administering the Transit-Oriented Development Pilot Program (hereinafter referred to as “Program”) created under R.I. Gen. Laws § 45-24-77, et seq. (the “Act”).

1.2 Authority

- A. These Rules and Regulations are promulgated pursuant to R.I. Gen. Laws § 45-24-77(d). These Rules have been prepared in accordance with the requirements of the Rhode Island Administrative Procedures Act, R.I. Gen. Laws § 42-35-1 et seq.

1.3 Scope

- A. These Rules shall apply to any application for funding under the Act. Notwithstanding anything contained in these Rules to the contrary, the Executive Office shall have and may exercise all general powers set forth in the Act that are necessary or convenient to affect its purposes, and these Rules shall be liberally construed so as to permit the Executive Office to effectuate the purposes of the Act, the public interest, and other applicable state laws and regulations.
Notwithstanding the foregoing, such zoning code provisions shall not take precedence over otherwise generally applicable state requirements, historic districts or overlay zones, or environmental regulations or overlay zones.

1.4 Severability

- A. If a court of competent jurisdiction invalidates any provision of these rules and regulations, or their application to any local government unit or circumstance, the remaining rules and regulations will not be affected. The invalidity of any section or sections, or parts of any section or sections, shall not affect the validity of the remainder of these rules and regulations.

1.5 Definitions

- A. "Affordable Housing." A housing unit will be considered Affordable if:
1. It is subject to an affordable housing restriction with a term of no less than 30 years;
 2. In the case of dwelling units for rent, housing that is affordable means housing for which the rent, heat, and utilities other than telephone constitute no more than thirty percent (30%) of the gross annual household income for a household with eighty percent (80%) or less of area median income, adjusted for family size.
 3. For a homeownership unit, the purchaser is required to be an individual or household whose annual income is less than or equal to 120% of the Area Median Income and the maximum sale price at initial sale and resale is less than or equal to a level affordable to households at or below 110% of the Area Median Income assuming that the household would not expend more than 30% of monthly income for the total of mortgage principal and interest, property taxes, hazard insurance, private mortgage insurance, and condominium, co-op or homeowner association payments.
- B. "Affordable Housing Restriction" means a restriction in favor of HUD, any agency or instrumentality of the State, or a municipality and in the chain of title to a housing unit limiting the sale price or rent and limiting occupancy to an individual or household of a certain income as defined above, "Affordable Housing."
- C. "Approved TOD Pilot Program District" means a district for which Transit-Oriented Development (TOD) Zoning has been adopted by a Municipality and for which a Certificate of Final District Approval has been issued by the Executive Office.
- D. "Area Median Income" means the area-wide median income as determined by HUD, adjusted for household size and using HUD's rules for attribution of income to assets.
- E. "As-of-right" means a residential development allowed within the TOD Pilot District without the need for a special permit, variance, zoning amendment, discretionary waiver, or other form of zoning relief.

- F. "Certificate of Final District Approval" means a certificate issued by the Executive Office to a Municipality confirming that the TOD Pilot Program District meets the requirements of the Act and these Rules.
- G. "Days" means calendar days.
- H. "Developable Land" means all land within a District that can be feasibly developed into residential or Mixed-use Development Projects. Developable Land shall not include:
1. Substantially Developed Land;
 2. Protected Open Space;
 3. The rights-of-way of existing public streets, ways, and transit lines; or
 4. Land currently in use for governmental functions (except to the extent that such land qualifies as Underutilized Land).
- I. "Easing" as the term relates to dimensional restrictions and parking requirements means a reduction/lessening, or, in cases where the underlying zoning already met the TOD Pilot Program District standards, that such elements continue to meet the standards.
- J. "Executive Office" means The Rhode Island Executive Office of Housing established pursuant to R.I. Gen. Laws § 42-167-1.
- K. "HUD" means the United States Department of Housing and Urban Development.
- L. "Letter of Compliance" means a letter issued by the Executive Office to a Municipality confirming that the Executive Office is withdrawing a Letter of Noncompliance, and that is filed with the town or city clerk of the Municipality.
- M. "Letter of Noncompliance" means a letter issued by the Executive Office to a Municipality stating that the actions of the Municipality preclude compliance with the requirements set forth in the Act and these Rules, or that the Municipality has adopted amendments to the TOD Pilot Program District or TOD Pilot Program Zoning that render(s) a TOD Pilot Program District noncompliant with the Act or these Rules, and which shall be filed with the town or city clerk of the Municipality.
- N. "Letter of Preliminary District Approval" means a letter issued by the Executive Office to a Municipality prior to its adoption of a TOD Pilot Program District confirming that the proposed District would meet the requirements of the Act and these Rules.

- O. "Low Impact Development (LID) Techniques" means strategies suitable to a particular site that protect the natural features of the site, including, without limitation:
1. Natural resource-oriented site design;
 2. Appropriately scaled and decentralized stormwater management techniques that limit the rate of off-site storm water runoff (both peak and non-peak flows) to levels substantially similar to natural hydrology (or, in the case of a redevelopment site, that reduce such flows from pre-existing conditions), through means including but not limited to bioretention/rain gardens, infiltration/permeable pavements, stormwater planters, vegetated swales, vegetated buffers, cisterns, rain barrels, and green roofs; and
 3. Appropriately scaled roads as promoted by Complete Streets (see R.I. Gen. Laws § 24-16).
- P. "Mixed-use Development" means a Project containing a mix of residential uses, together with commercial, institutional, industrial, or other non-residential uses; in which the applicable residential densities set forth in this Rule apply.
- Q. "Municipality" means any Rhode Island city or town.
- R. "Notice of Deficiencies" means a letter issued by the Executive Office to a Municipality stating its determination that a proposed TOD Pilot Program District does not satisfy all the criteria as set forth in the Act and these Rules and shall identify the deficiencies on which the determination was made.
- S. "Notice of Revocation" means a letter issued by the Executive Office to a Municipality revoking a Certificate of Final District Approval or Letter of Compliance and which shall be filed with the town or city clerk of the Municipality and shall be appended to the relevant zoning map of the Municipality.
- T. "Prior Zoning" means, for a TOD Pilot District created through base zoning regulations, the zoning requirements for the TOD Pilot District that were in place immediately prior to the adoption of a TOD Pilot District through base zoning.
- U. "Protected Open Space" means land dedicated in perpetuity to protect one or more of the following: land for existing and future well fields, aquifers, and recharge areas; watershed land; agricultural land; grasslands; fields; forest land; fresh and saltwater marshes and other wetlands; ocean, river, stream, lake and pond frontage; beaches, dunes, and other coastal lands; lands to protect scenic vistas; land for wildlife or nature preserves; land for active or passive recreational use; parklands, plazas, playgrounds, and reservations; and cemeteries. Protected Open Space may be in public or private ownership.
- V. "Smart Growth" means a principle of land development that furthers, on balance, the following goals:

1. Increasing the availability of affordable housing by creating a range of housing opportunities in neighborhoods;
 2. Emphasizing mixing land uses;
 3. Taking advantage of compact design;
 4. Providing walkable neighborhoods incorporating complete streets design pursuant to R.I. Gen. Laws § 24-16;
 5. Fostering distinctive and attractive communities;
 6. Preserving open space, farmland, natural beauty, and critical environmental areas; by prioritizing higher density development in town/city centers, where infrastructure already exists;
 7. Providing accessibility to a variety of transportation choices;
 8. Making development decisions predictable, fair, and cost effective.
- W. "Substantially Developed Land" means land that is currently developed, and which does not qualify as Underutilized Land.
- X. "Suitable for Families" means residential development comprised of dwelling units that are not age-restricted housing, and for which there are no zoning requirements for age-restricted housing and no restrictions on the number of bedrooms, the size of bedrooms, or the number of occupants.
- Y. "Transit-Oriented Development (TOD)" means the creation of compact, walkable, pedestrian-oriented, mixed-use communities centered around transit nodes that support vibrant, sustainable, and equitable communities.
- Z. "TOD Pilot Program District" means an established overlay district or other zoning provisions that create a district within a Municipality that meets the following requirements and for which the Executive Office has issued a Certificate of Final District Approval:
1. Meets the requirements of § 45-24-77 of the Act;
 2. Provides for high density residential development;
 3. Eases the parking ratio for residential uses as compared to the Underlying Zoning or the Prior Zoning, provided that the maximum parking allowed does not exceed 1.5 parking spaces per unit of housing. For the purposes of calculating maximum parking spaces, fractions shall be rounded up to the nearest integer.

4. Eases dimensional restrictions as compared to the Underlying Zoning or Prior Zoning;
 5. Incorporates Smart Growth principles; and
 6. Meets the requirements for TOD Pilot Program Zoning.
 7. TOD Pilot Program Districts may allow commercial, institutional, mixed-use, open space, or other reasonable land uses, but only eligible residential and mixed-use projects may apply for funding under the TOD Pilot Program.
- AA. "TOD Pilot Program" means a program to provide funding for residential development as authorized by the Act and administered according to these Rules.
- BB. "TOD Pilot Program Zoning" means the zoning code provisions that create the TOD Pilot Program District and is all-inclusive such that development within a TOD Pilot Program District shall be governed solely by the TOD Pilot Program Zoning, without any reference to the standards or procedures of the Underlying Zoning that would otherwise be applicable to developments within the same geographic area as the TOD Pilot Program District. Without limitation, the TOD Pilot Program Zoning shall set out the dimensional, use, parking, and other standards applicable to development within the TOD Pilot Program District, including but not limited to height limits, setbacks, lot areas, lot dimensions, unit to lot ratios, floor area ratios, lot coverage ratios, open space ratios, residential parking ratios and locations, roadway design standards, and shall provide for housing opportunities that are Suitable for Families. ~~Notwithstanding the foregoing, such zoning code provisions shall not take precedence over otherwise generally applicable state requirements, historic districts or overlay zones, or environmental regulations or overlay zones.~~
- CC. "Underlying Zoning" means, in the case of creating a TOD Pilot Program District through an overlay zone, the Municipal zoning requirements that are otherwise or were previously applicable to the geographic area where such TOD Pilot Program District is located or proposed. The Underlying Zoning shall include all zoning and existing overlays applicable to such geographic area and shall not be limited to the base zoning layer.
- DD. "Underutilized Land" means Developable Land within a TOD Pilot District that would otherwise qualify as Substantially Developed Land but which:
1. Is characterized by improvements that have a marginal or significantly declining use, as measured by such factors as vacancy rates, extent of operation, current and projected employment levels, market demand for the current uses or the uses to which the existing improvements could readily be converted, low value of improvements in relation to land value,

and low floor area ratio in relation to the floor area ratio that would be permitted under the applicable Underlying Zoning or Prior Zoning; or

2. As demonstrated by existing or anticipated market conditions, may have reasonable potential to be developed, redeveloped, or converted into residential or Mixed-use Development consistent with Smart Growth principles.

EE. “RIHousing” means Rhode Island Housing and Mortgage Finance Corporation.

1.6 TOD Pilot Program District Approval Process

A. Application for Preliminary District Approval

1. Prior to adoption of new TOD Pilot Program Zoning, the chief executive of a Municipality or duly authorized designee shall submit to the Executive Office an application for a Letter of Preliminary District Approval. Any Municipality which has an existing zoning district that it believes is compliant with the requirements of a TOD Pilot Program District may submit an application to receive a Certificate of Final District Approval for their existing zone without first receiving a Letter of Preliminary District Approval. The application for a Letter of Preliminary District Approval shall contain the following materials, and such forms issued by the Executive Office, for its determination that the TOD Pilot Program District would meet the requirements of the Act and these Rules if adopted by the Municipality:
 - a. An application in the form prescribed by the Executive Office.
 - b. A copy of the proposed TOD Pilot Program Zoning ordinance.
 - c. One or more plat plans, maps and/or aerial photographs that collectively are sufficient to show:
 - i. The location of the proposed TOD Pilot Program District;
 - ii. The relation of the proposed TOD Pilot Program District to a regional mobility hub or frequent transit stop as defined in § 45-24-77 of the Act;
 - iii. The areas within the proposed TOD Pilot Program District that qualify as Developable Land including Underutilized Land (if any), and areas excluded from Developable Land pursuant to these Rules;
 - d. Written confirmation from the Rhode Island Metropolitan Planning Organization that the proposed TOD Pilot Program District meets the transit service requirements of § 45-24-77 of the Act.

- e. A copy, including both text and map(s), of the Underlying Zoning or Prior Zoning for the proposed TOD Pilot Program District.
- f. A description of the dimensional restrictions that have been eased in the proposed TOD Pilot Program Zoning as compared to the Underlying Zoning or Prior Zoning.
- g. Any other material required by the Executive Office.

B. Preliminary District Approval Review Process

- 1. Within 30 days of the Executive Office's receipt of a Municipality's application for a Letter of Preliminary District Approval, or other reasonable time period as the Executive Office may establish by written notice to the Municipality, the Executive Office shall notify the Municipality in writing or by electronic communication if any required element of its application is missing or incomplete. Such notification shall constitute a denial of the application unless the missing or incomplete elements are addressed within 30 days after the notification, or other reasonable period established at the Executive Office's discretion.
- 2. The Executive Office shall communicate its determination on an application for a Letter of Preliminary District Approval to the Municipality by issuing a Letter of Preliminary District Approval or Notice of Deficiencies within (1) 60 days from the date on which the Executive Office received a Municipality's complete application for a Letter of Preliminary District Approval, or other reasonable time period as the Executive Office may establish by written notice to the Municipality, or (2) 45 days from the Executive Office's receipt of the last missing or incomplete element of the application for a Letter of Preliminary District Approval, or other reasonable time period as the Executive Office may establish by written notice to the Municipality. A Notice of Deficiencies shall identify the specific elements of the proposed TOD Pilot Program District that conflict with or fail to satisfy elements required by the Act and these Rules for a TOD Pilot Program District. A municipality that receives a Notice of Deficiencies may re-submit for a Letter of Preliminary District Approval at any time after addressing any identified deficiencies.
- 3. To issue a Letter of Preliminary District Approval, which approves the application without conditions, the Executive Office must find that a proposed TOD Pilot Program District satisfies each of the relevant requirements set forth in the Act and these Rules.

C. Final District Approval Submittal

- 1. Upon adoption of the TOD Pilot Program Zoning, or to certify an existing zone as a TOD Pilot Program District, a Municipality shall submit to the

Executive Office a request for Final District Approval. The request for Final District Approval shall include proof of such adoption and:

- a. Certification by the chief executive of the Municipality or duly authorized designee that the TOD Pilot Program Zoning has not changed since the Executive Office issued a Letter of Preliminary District Approval; or
- b. If any element of the TOD Pilot Program District or TOD Pilot Program Zoning has changed since the Executive Office issued a Letter of Preliminary District Approval, the Municipality shall identify those elements and provide materials related to such changes, including but not limited to the TOD Pilot Program Zoning and TOD Pilot Program District map, that enable the Executive Office to determine that the TOD Pilot Program District as adopted meets the requirements of the Act and these Rules; or
- c. In the case of certifying an existing zone as a TOD Pilot Program District, the applicant must submit all items listed in §§ 1.6(A)(1)(a-d) and (g).

D. Final District Approval Review

1. The Executive Office shall confirm its decision by issuance of a Certificate of Final District Approval or Notice of Deficiencies within forty-five (45) days from the date on which the Executive Office received a Municipality's request for Final District Approval, or thirty (30) days from the Executive Office's receipt of the last missing or incomplete element of the request for Final District Approval, or other reasonable time period as the Executive Office may establish by written notice to the Municipality.
2. If the submission satisfies all the criteria for a TOD Pilot Program District and TOD Pilot Program Zoning set forth in the Act and these Rules, the Executive Office shall issue a Certificate of Final District Approval. If the Executive Office determines that the submission does not satisfy all the criteria for a TOD Pilot Program District and TOD Pilot Program Zoning set forth in the Act and these Rules, the Executive Office shall issue a Notice of Deficiencies that identifies the specific elements of the proposed TOD Pilot Program District that conflict with or fail to satisfy elements required by the Act and these Rules for a TOD Pilot Program District.

E. Appeals

1. A Municipality may appeal the Executive Office's decision to issue a Notice of Deficiencies by requesting that the Secretary of Housing review the Notice. The request shall be in writing to the Secretary not later than thirty (30) days after receipt of the Notice of Deficiencies and shall set out the reasons that Notice of Deficiencies should be revoked and a

Certificate of Final District Approval issued to the Municipality. The Secretary shall respond to the appeal in writing within sixty (60) days of receipt of the appeal, or such other reasonable time period as the Secretary may establish by written notice to the Municipality.

F. Amendments to Certified TOD Pilot Program Districts

1. Any proposed amendment to the TOD Pilot Program District or TOD Pilot Program Zoning, if proposed after issuance of a Certificate of Final District Approval, shall be treated as a new application under Section 1.6 of these Rules. Applicants for amended TOD Pilot Program Zoning are encouraged to clearly identify all changes to the previously certified district and explain how the changes are compliant with TOD Pilot Program zoning requirements. If the changes to a TOD Pilot Program District or TOD Pilot Program Zoning fail to comply with the approval criteria set forth in the Act and these Rules, and the municipality adopts the amendment without written confirmation of conformance from the Executive Office, the Executive Office shall issue a Letter of Noncompliance.

G. Repeals

1. A Municipality may at any time repeal the TOD Pilot Program Zoning for an approved TOD Pilot Program District, pursuant to the following review procedure. The Municipality shall provide thirty (30) days prior written notice to the Executive Office that such repeal has been proposed for action by the Municipal legislative body under applicable law, and it shall provide subsequent written notice to the Executive Office if such Municipal repeal action is taken. If a TOD Pilot Program Zoning is repealed, the Executive Office shall issue a Letter of Revocation indicating that the Certificate of Final District Approval for the TOD Pilot Program District has been revoked.

1.7 TOD Pilot Program Funding Process

A. Application for Funding

1. Any developer or Municipality proposing a residential or Mixed-use development that includes affordable housing in a TOD Pilot Program District for which a Municipality has received a Certificate of Final District Approval, and which has not been revoked or is not the subject of a Letter of Noncompliance, is eligible to apply for TOD Pilot Program funding pursuant to the requirements of this section.
2. TOD Pilot Program funding may be made available by the Executive Office and/or RIHousing through a competitive solicitation process in compliance with applicable procurement statutes and regulations. The application for funding through the TOD Pilot Program shall be in a form

prescribed by the Executive Office or its designee and shall contain, at a minimum:

- a. A copy of the Certificate of Final District Approval for the TOD Pilot Program District in which the proposed development will be located;
- b. A map of the TOD Pilot Program District showing the location of the proposed development;
- c. A copy of the most current proposed or final approved plan set for the project;
- d. A breakdown of the total proposed units, Affordable Housing units, and proposed income restrictions for the Affordable Housing units;
- e. The qualifications and experience of the development team;
- f. Detailed financial information demonstrating the financial feasibility of the project;
- g. Construction/project timeline including phasing information, as applicable; and
- h. A narrative of how the project employs Smart Growth Principles and LID Techniques.

B. Funding Application Review

1. The Executive Office shall review the application for the TOD Pilot Program funding and shall make awards and distribute funding in accordance with the requirements of the Act, these Rules, and the solicitation posted for the TOD Pilot Program.

C. The scoring criteria shall prioritize proposals based on a variety of criteria, including but not limited to:

1. Alignment with the Housing 2030 strategic plan or any successor plan;
2. The total number of residential units proposed;
3. The density of units proposed;
4. The total number of affordable units proposed;
5. Qualifications and experience of the development team;
6. The degree to which Smart Growth Principles, parking minimization, and LID Techniques are integrated into the proposal;

7. Financial feasibility of the proposal;
8. Frequency and accessibility of current and future transit service; and
9. Readiness to proceed.

1.8 Annual Report

- A. On or before October 1st of each year, each Municipality that contains a TOD Pilot Program District for which a Certificate of Final District Approval had been issued by the end of the previous fiscal year ending on June 30th shall submit to the Executive Office, in a form to be prescribed by the Executive Office, an Annual TOD Pilot Program Report. The Municipality shall provide the following information in the annual update:
 1. A list of all TOD Pilot Program Districts approved by the Executive Office and any new proposed TOD Pilot Program Districts within the Municipality;
 2. A tabulation for each TOD Pilot Program District including the total land area, the Developable Land area, the number of residential units completed under the TOD Pilot Program Zoning; and the number of Affordable units created under the TOD Pilot Program Zoning.
 3. Any additional information which the Executive Office shall prescribe in writing by June 30th of the year in which the report is due.

1.9 Noncompliance

- A. If the approved TOD Pilot Program District is not being developed or permitted to be developed as a result of subsequent actions by the Municipality that restrict development in the TOD Pilot Program District, in a manner that would preclude compliance with the requirements set forth in the Act and these Rules, or the Municipality has adopted amendments to the TOD Pilot Program District or TOD Pilot Program Zoning that render(s) a TOD Pilot Program District noncompliant with the Act or these Rules, the Executive Office shall issue a Letter of Noncompliance, stating the grounds for noncompliance and granting the Municipality sixty (60) days in which to furnish the Executive Office with satisfactory documentation that the grounds for noncompliance set forth in the letter have been cured or measures to cure have commenced and that such measures shall be undertaken with diligence to completion within a reasonable period. A Letter of Noncompliance shall be filed with the town or city clerk of the Municipality.
- B. If the Executive Office finds within a further thirty (30) days that the documentation provided by the Municipality in response to the Letter of Noncompliance is satisfactory, the Executive Office shall issue a Letter of Compliance.

- C. If the Municipality has failed to show within the sixty (60) day period that it has cured or has commenced measures to cure its noncompliance, the Executive Office shall revoke the Certificate of Final District Approval by issuing a Letter of Revocation. A Letter of Revocation shall be filed with the town or city clerk of the Municipality.
- D. A Municipality may appeal the Executive Office's decision to issue a Letter of Noncompliance or a Letter of Revocation by requesting that the Secretary of Housing review the findings and conclusion(s) of such Letter. The request shall be in writing to the Secretary not later than thirty (30) days after receipt of the Letter of Noncompliance or Letter of Revocation and shall set out the reasons that the Executive Office's decision should be overturned and a Letter of Compliance issued to the Municipality. The Secretary shall respond to the appeal in writing within sixty (60) days of receipt of the appeal, or such other reasonable time period as the Secretary may establish by written notice to the Municipality.
- E. Any issuance of a Letter of Noncompliance or Letter of Revocation by the Executive Office shall not affect the application of such TOD Pilot Program Zoning to any development which has been awarded funding under the TOD Pilot Program, provided that there has not been any changes to the development since the funding was awarded that would have caused the Executive Office to determine that the development did not meet the requirements of the Act and these Rules at the time of the application to the TOD Pilot Program.
- F. For so long as a Letter of Noncompliance or Letter of Revocation is outstanding, or an Annual TOD Pilot Program Report has not been filed in compliance with Section 1.8 of these Rules, no development with the TOD Pilot Program District shall be eligible for funding under the TOD Pilot Program, however, any application for TOD Pilot Program Funding that was submitted prior to a Letter of Noncompliance, a Letter of Revocation, or a failure to file an Annual TOD Pilot Program Report shall remain eligible for funding under the TOD Pilot Program.

1.10 Waiver

- A. The Secretary of Housing may waive, in writing, any provision of these Rules not required by statute on findings that such waiver is consistent with the purposes set out in the Act and that desirable relief in the public interest will be accomplished through such waiver. A request for waiver shall be in writing to the Secretary of Housing, Rhode Island Executive Office of Housing and shall contain a reliable showing that the waiver meets all the requirements of the Act and, except as embodied in the waiver, these Rules.

REGULATORY ANALYSIS:

The Rhode Island Executive Office of Housing proposes to adopt rules and regulations regarding the establishment of the Transit Oriented Development Pilot Program created under R.I. Gen. Laws § 42-167-1 and R.I. Gen. Laws § 45-24-77, et seq. This analysis estimates the societal benefits and costs that result from the adoption of the proposed rule.

Pursuant to the Administrative Procedures Act (APA), R.I. Gen. Laws § 42-35-2.9, the Agency has conducted a regulatory cost/benefit analysis for the proposed regulation. This analysis will show that the proposed regulation has a low impact effect on the financial security of society at large and will not financially affect small businesses within the State of Rhode Island. There will be no financial damage to the State upon the adoption of the proposed Rule and regulation. The analysis examined the costs and benefits of the discretionary decisions made by the Agency.

Cost/Benefit Analysis

Pursuant to the APA, R.I. Gen. Laws § 42-35-2.9(b)(1), the regulatory analysis must include “the benefits and costs of a reasonable range of regulatory alternatives.” Below, the Agency analyzes the quantitative and qualitative costs and benefits resulting from the regulatory provisions exclusive of those attributable to statutory provisions.

Determining the total impact of the LID techniques and parking ratio allowance for the TOD Pilot requires the EOH to estimate the funding to be awarded by the Program. For the purpose of this analysis only, EOH assumes a per unit maximum award of \$60,000. Allowing for the construction period (Year 0), units start coming “on-line” in the second 12-month period of the program (Year 1 for this analysis).

1. Low Impact Development (LID) Techniques

LID principles and practices are an approach to stormwater management that “reduces the effects of built areas and promotes the natural movement of water in an ecosystem or watershed”.³ At the site level, LID captures and reuses stormwater rather than pushing it to the municipal stormwater run-off infrastructure, as well as filtering the stormwater on-site. LID includes measures such as porous pavement instead of impervious surfaces; green roofs and bioretention techniques; and water collection methods such as cisterns.

Increasingly, state and local governments are requiring the inclusion of LID when considering new construction projects due to the benefits to the environment, public infrastructure costs and increased aesthetics.⁴ Indeed, the Rhode Island Coastal Resources Management Council

³ “Incorporating Low Impact Development into Municipal Stormwater Programs”, EPA 901-F-09-005, April 2009.

⁴ Ibid; “Case Studies Analyzing the Economic Benefits of Low Impact Development and Green Infrastructure Programs,” EPA 841-R-13-004, August 2013;

“requires LID practices as the primary means to manage stormwater treatment for the Metro Bay area”.⁵

While there has been some concern in the early days of experimenting with LID about the cost effectiveness of LID measures as compared to traditional stormwater infrastructure, studies are fairly unanimous in concluding that LID techniques reduce up front capital costs as well as ongoing operation and maintenance costs.⁶ Specifically, LID reduces infrastructure and site preparation costs due to reductions in grading, pipes, curbs and paving as well as long term maintenance costs because landscaping is less expensive than infrastructure repair.⁷ Moreover, LID techniques preserves the natural landscape such as trees and uses landscaping features such as swales, enhancing the value of the affected site⁸, improving air quality and reducing energy usage.⁹

Some examples:

- South Kingstown, RI: conservation subdivisions were more profitable than conventional due to decreased costs, decreased selling time, and increased value.¹⁰
- Prince George County, MD (Somerset Project): 80-acre subdivision with 200 house lots; half built with LID (bioretention and swales) realized 32% savings as compared to gray infrastructure; additionally, through eliminating the need for retention pond, created 6 additional lots; LID area had less runoff and lower concentrations of metals in runoff.¹¹
- From New Hampshire’s Stormwater Center¹²: Boulder Hills residential development reduced its construction costs by 6%, generated additional resident lots within the site, and established ‘zero discharge’.
- Pierce County, WA (Meadow on the Hylebos): 9-acre residential development in which LID lowered construction costs by 9% as compared to the conventional plan.¹³
- Pervious (LID) vs. Impervious (traditional) Surface:¹⁴
- Olympia, Washington: life cycle cost for permeable was \$8/sf versus \$15/sf for impermeable due to stormwater pond necessary to treat discharge.
- West Union, AK: greater upfront capital costs offset by savings over life span due to lower maintenance and repair costs.

The BCA calculations related to LID techniques assume a range of construction costs savings of between 6% and 9%, as indicated by the sources cited herein. Further, we assume a construction

⁵ Op. Cit.

⁶ Ibid.; “Builder’s Guide for Low Impact Development”, National Association of Homebuilders Research Center; “Costs of Low Impact Development: LID Saves Money and Protects Your Community’s Resources”, EPA 841-N-12-003C, March 2012; Economic Benefits of Low Impact Development: Projects for Stormwater Management”, Ivan Ussach, Millers River Watershed Council, November 2015;

⁷ www.mass.gov/info-details/basics-of-low-impact-development; www.mapc.org/resource-library/lid-frequently-asked-questions.

⁸ Op.Cit.: “Builder’s Guide”; “Banking on Green: A Look at How Green Infrastructure Can Save Money and Provide Economic Benefits Community-wide”, America Rivers, the American Society of Landscape Architects, et.al.; April 2012.

⁹ Ibid, “Banking on Green”.

¹⁰ Op. Cit.: “Economic Benefits”.

¹¹ Ibid.

¹² Ibid.

¹³ “Low Impact Development at the Local Level: Developers’ Experiences and City and County Support”, ECONorthwest, February 25, 2009.

¹⁴ “Stormwater Best Management Practices: Permeable Pavements”, EPA 832-F-21-031W, December 2021.

cost of \$259,232 for 2-bedroom rental units (the average for RIHousing, not adjusted for inflation). Based upon the assumptions, over the course of 5-years (2026 – 2030), the per unit potential savings *in construction only* are set out below. It is important not to interpret the above numbers as a comprehensive accounting of all relevant benefits and costs. As indicated in several of the cited case studies, developers have realized additional developable land area due to the use of LID techniques. With respect to aesthetics, increased open space and landscaping adds to the value of a housing site. Moreover, these LID techniques accrue to the community as a whole, reducing heat island effects, improving air quality and reducing stormwater run-off.

As well, the potential cost benefits of LID techniques must be evaluated with a specific site in mind; it is not a “one size fits all” application. With that in mind, it is important to note that EOH’s proposed regulations do not mandate any particular set of LID techniques. Municipal planners and developers have the flexibility to apply LID techniques in a manner best suited to a specific site and use.

LOW IMPACT DEVELOPMENT TECHNIQUES			
Per Unit Present Value – Least Cost Savings (6%)			
	Net Cost (Undiscounted)	PV (3% Discount Rate)	PV (7% Discount Rate)
Year 0	\$0	\$0	\$0
Year 1	\$15,554	\$15,101	\$14,536
Year 2	\$15,554	\$14,661	\$13,585
Year 3	\$15,554	\$14,234	\$12,697
Year 4	\$15,554	\$13,819	\$11,866
Year 5	\$15,554	\$13,417	\$11,090

LOW IMPACT DEVELOPMENT TECHNIQUES			
Per Unit Present Value – Most Cost Savings (9%)			
	Net Cost (Undiscounted)	PV (3% Discount Rate)	PV (7% Discount Rate)
Year 0	\$0	\$0	\$0

Year 1	\$23,331	\$22,651	\$21,805
Year 2	\$23,331	\$21,992	\$20,378
Year 3	\$23,331	\$21,351	\$20,378
Year 4	\$23,331	\$20,729	\$17,799
Year 5	\$23,331	\$20,125	\$16,635

2. Parking Ratio

The second area in which EOH is exercising discretion in the proposed regulation is the mandated parking ratio of 0.0 to 1.5/dwelling unit. The statute mandates “reduced parking ratios” but does not establish a specific requirement.

The concern here is not of a cost to the state or a municipality, but to a housing developer. Reducing parking spaces does reduce development costs. While construction costs vary, the data provided by one source indicates that the square foot cost to building parking in Boston, MA, in 2023 was \$125/sf for ground parking and \$143/sf for basement parking.¹⁵ Using common requirements for the size of a perpendicular parking space for a standard car (9’x18’ =162 sf), the cost of each parking space ranges from approximately \$20,250 for ground parking, to \$23,166 for below-ground parking. Therefore, the cost of housing development is decreased approximately \$20,000 - \$23,000 for each space *not* provided.

Parking ratios differ from municipality to municipality, but a scan of common zoning requirements indicates that it is standard to require 2 spaces per detached dwelling unit; a minimum of 1 space per multifamily unit (plus guest spaces) and often a requirement of 2 spaces per unit. Thus, the proposed regulation decreases the cost of development compared to standard zoning requirements. Allowing a minimum of 0.0 spaces/du in a community that otherwise requires 2 spaces/du would reduce the average ground parking cost per dwelling unit (DU) by \$40,000 and the average below ground parking by \$46,000 per dwelling unit. At the maximum allowable parking ratio of 1.5, the average ground parking cost per dwelling unit would be reduced by \$10,000 and the average below ground parking by \$11,500 per unit. With these assumptions, the potential savings are:

¹⁵ Statista 2023, www.statista.com

REDUCED PARKING REQUIREMENT			
Present Value – Savings at Ground Parking: 0/DU			
	Net Benefit (Undiscounted)	Present Value 3% Discount Rate	Present Value 7% Discount Rate
Year 0	0	0	0
Year 1	\$40,000	\$38,835	\$37,383
Year 2	\$40,000	\$37,704	\$34,938
Year 3	\$40,000	\$36,606	\$32,652
Year 4	\$40,000	\$35,539	\$30,516
Year 5	\$40,000	\$34,504	\$28,519

REDUCED PARKING REQUIREMENT			
Present Value – Savings at Ground Parking: 1.5/DU			
	Net Benefit (Undiscounted)	Present Value 3% Discount Rate	Present Value 7% Discount Rate
Year 0	0	0	0
Year 1	\$10,000	\$9,709	\$9,346
Year 2	\$10,000	\$9,426	\$8,734
Year 3	\$10,000	\$9,151	\$8,163
Year 4	\$10,000	\$8 885	\$7,629
Year 5	\$10,000	\$8,626	\$7,130

REDUCED PARKING REQUIREMENT			
Net Present Value – Savings at Below Ground: 0/DU			
	Net Benefit (Undiscounted)	Present Value 3% Discount Rate	Present Value 7% Discount Rate
Year 0	0	0	0
Year 1	\$46,000	\$44,660	\$42,991
Year 2	\$46,000	\$43,359	\$40,178
Year 3	\$46,000	\$42,097	\$37,550
Year 4	\$46,000	\$40,870	\$35,093
Year 5	\$46,000	\$39,680	\$32,797

REDUCED PARKING REQUIREMENT			
Present Value – Savings at Below Ground: 1.5/DU			
	Net Benefit (Undiscounted)	Present Value 3% Discount Rate	Present Value 7% Discount Rate
Year 0	0	0	0
Year 1	\$11,500	\$11,165	\$10,748
Year 2	\$11,500	\$10,840	\$10,045
Year 3	\$11,500	\$10,524	\$ 9,387
Year 4	\$11,500	\$10,218	\$ 8,773
Year 5	\$11,500	\$ 9,920	\$ 8,199

3. Suitable for Families

The matter of school costs related to new development is often raised as a local financial concern, though such costs have yet to be documented. In fact, a 2015 report (“Bryant Report”) indicates that in Rhode Island, as elsewhere, households with children contribute positively to the overall economy.¹⁶ With respect to school costs in particular, the same report concluded that owing to economies of scale, “increasing the size of the student population could reduce the per pupil costs of K-12 educational services” and that “there is strong evidence in support for the presence of economies of scale in educational services and that no school district is large enough to be subject to diseconomies of scale in Rhode Island.” Referencing many of the same economic data as the Bryant Report, the Rhode Island Division of Statewide Planning recommends that the State “require/incentivize” housing units with at least two-bedrooms.¹⁷

However, the 2015 Bryant Report also noted that the positive economic benefits of child rearing households are not shared evenly by the State and municipalities and recommended that the State consider additional financial mechanisms to reduce any financial burden on municipalities arising from an increase in student population. The State followed through on this recommendation, creating a School Impact Offset Payments to address this concern. EOH is currently working with a consultant to study the fiscal impact of housing production on municipalities and create a formula for quantifying the net fiscal impact of additional development on municipalities and to fashion a formula to quantify the fiscal impact, if any. This work will be complete by the first quarter of 2026. Consequently, if a municipality would incur additional costs due to new family housing construction under the TOD Pilot, the municipality will be compensated by the Offset Payments.

Additionally, it is important to note that familial status is a protected class under the federal Fair Housing Act. Thus, the State has an obligation to ensure that families with children have access to housing opportunities. Therefore, the Executive Office of Housing did not adopt an alternative that would have been neutral on this point, thus permitting the exclusion of certain households.

Conclusion

The proposed TOD Pilot Program regulations serve primarily to set out the requirements of the enabling legislation. However, in three areas – requiring LID techniques, the minimum parking ratios, and requiring that family housing not be excluded, EOH has exercised discretion in areas that have cost consequences. However, as set out above, the Department has chosen alternatives in which the benefits outweigh the costs in both firm economic terms as well as quality of life and equity considerations.

¹⁶ Edinaldo Tebaldi and Jongsung Kim, “The Economic Impact of School-Age Population Loss on Rhode Island’s Economy”, The Center for Global and Regional Economic Studies, Bryant University, May 2015 (Bryant Report).

¹⁷ Groch, Roberta, RI Division of Statewide Planning, “Where are the Children? Impacts of Demographic Trends on Local Economic Development”, October 2019 (powerpoint deck).