

RHODE ISLAND GENERAL LAWS

related to

LAND USE AND PLANNING



STATE OF RHODE ISLAND STATEWIDE PLANNING PROGRAM

January 2014

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The Rhode Island Statewide Planning Program is pleased to provide this compilation of selected Rhode Island General Laws related to land use and planning. It includes the eleven principal acts that relate directly to community planning and comprehensive plan implementation. The Open Meetings Act and the Access to Public Records Act have been included as well.

THE FOLLOWING ACTS ARE INCLUDED IN THIS BOOK:

§45-22 LOCAL PLANNING BOARD OR COMMISSION

This Act institutes the requirement that all municipalities must establish a planning board or commission. The statute also sets size limits for a board/commission as well as powers and required duties.

§45-22.1 JOINT MUNICIPAL PLANNING COMMISSION

This Act authorizes two or more municipalities to establish a joint municipal planning commission.

§45-22.2 RHODE ISLAND COMPREHENSIVE PLANNING AND LAND USE REGULATION ACT

This Act establishes a system of land use planning whereby the State sets broad goals and policies through the State Guide Plan and municipalities develop comprehensive plans that reflect local desires and conditions but must be consistent with the State Guide Plan. The local comprehensive plans serve as the basis for land use regulation and establish an implementation program for achieving stated goals. The municipal zoning ordinance and map must be consistent with the comprehensive plan.

§45-23 RHODE ISLAND LAND DEVELOPMENT AND SUBDIVISION REVIEW ENABLING ACT

This Act establishes land development and subdivision enabling authority and requires each city and town to develop land development and subdivision regulations in accordance with the community comprehensive plan, capital improvement plan, and zoning ordinance, and to ensure the consistency of all local development regulations. It also sets certain standard procedures for review and approval of land development and subdivision requests.

§45-23.1 MAPPED STREETS

This Act authorizes municipalities to establish an “official map of the city or town identifying and showing the location of the streets of the city or town existing and established by law as public streets and the exterior lines of other streets deemed necessary by the city or town council for sound physical development”.

§45-24 RHODE ISLAND ZONING ENABLING ACT

This Act authorizes municipalities to establish zoning districts that establish regulations and standards relating to the nature and extent of uses of land and structures within the district.

§45-24.1 HISTORICAL AREA ZONING

This Act authorizes municipalities to adopt, as part of its zoning ordinance, regulations concerning the construction, alteration, repair, moving, and demolition of structures of historic or architectural value as well as historic cemeteries.

§ 45-35 CONSERVATION COMMISSIONS

This Act grants city and town councils the authority to create a conservation commission, the purpose of which is “to promote and develop the natural resources, protect the watershed resources, and preserve natural esthetic areas within municipalities”.

§ 45-46 SOIL EROSION AND SEDIMENT CONTROL

This Act authorizes municipalities to adopt ordinances and programs to control soil erosion and sedimentation and to prevent erosion-related damage.

§ 45-53 LOW AND MODERATE INCOME HOUSING ACT

This Act requires municipalities to provide opportunities for the establishment of low and moderate income housing. The law also establishes a “comprehensive permit” process whereby an applicant proposing to build low or moderate income housing may submit to the local review board a single application in lieu of separate applications to the applicable local boards.

§ 1-3 AIRPORT ZONING ACT

This Act requires every municipality containing an airport hazard area to adopt airport zoning regulations that specify the land uses permitted and the height to which structures and trees may be erected or allowed to grow in a manner that ensures the safe use of airspace.

§ 42-46 OPEN MEETINGS ACT

This Act set forth requirements for “public bodies” to conduct business in an open manner so that the public may easily participate. This law set standards for posting notices, emergency meetings, executive sessions, and taking and providing minutes of meetings.

§ 38-2 ACCESS TO PUBLIC RECORDS ACT

This Act defines public records and sets forth requirements for public bodies to make records available to the public upon request.

PLEASE NOTE:

Staff of the Rhode Island Statewide Planning Program have selected laws of routine use to those engaged in land use and planning and as such, it is not intended to be exhasustive. This handbook is intended to be used for basic reference purposes. It does not contain footnotes, complier notes, or other detailed references that may be found in fully annotated publications. While every effort has been made to duplicate the text of each of the laws exactly as they appear in the codified version of the State laws, there may still be minor differences.

Hyperlinks and crossreferences: For your convenience, the Table of Contents and the Indices of Sections contain links to those sections within this document. Within the body of the laws, blue text contains hyperlinks to the corresponding sections as found on the State of Rhode Island General Assembly Website.

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LOCAL PLANNING BOARD OR COMMISSION

{ RIGL § 45-22 }



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§ 45-22-1 Establishment of a planning board or commission – Home rule charter exempt. – All cities and towns shall, by ordinance, establish a planning board or commission under the provisions of this chapter. Any city or town operating under a home rule charter which provides for the establishment of a planning board or commission may continue under the provisions of that charter, except that the provisions of § 45-22-7, governing the formulation and adoption of a comprehensive plan and the duties of a planning board or commission, apply to all cities and towns.

§ 45-22-2 Appointing authority. – In cities and towns having an elected mayor or administrator, members of the planning board or commission are appointed by the mayor or administrator with the consent of the city or town council and, in other towns, members are appointed by the town council. Cities and towns operating under a home rule charter may continue the appointment of members in the manner established under that charter.

§ 45-22-3 Membership – Continuation of present membership. – (a) A planning board or commission consists of no less than five (5) members, and appointments are made for terms of a length that the terms of no more than one third (1/3) of the members of the board or commission expire each year. Any vacancy occurring in the membership of a planning board or commission shall be filled by the appointing authority for the remainder of the unexpired term. Any member of a planning board or commission may be removed from office by the appointing authority for due cause, following a public hearing.

(b) Vacancies to the planning board or commission occurring after May 4, 1972, shall be filled in the manner prescribed in this section, except as provided in § 45-22-1 in cities or towns operating under a home rule charter.

(c) The Hopkinton town council has the right to appoint two (2) alternate members to the Hopkinton planning board and the Exeter town council may appoint two (2) alternate members to the Exeter planning board and the Richmond town council has the right to appoint two (2) alternate members to the Richmond planning board.

§ 45-22-4 Compensation. – The appointing authority may provide and set standards for compensation for members of a planning board or commission within the limitation of funds appropriated for that purpose, and may, within those limits, provide for reimbursement of any expenses incurred by members in the performance of their duties.

§ 45-22-5 Organization, technical assistance, and cooperative agreements. – (a) A planning board or commission shall organize annually by electing from its membership a chairperson, a vice chairperson, and a secretary. The board or commission may adopt any procedural rules deemed necessary to the discharge of its duties.

(b) A planning board or commission may, subject to the approval of the appointing authority and within the limit of funds appropriated to it, enter into cooperative agreements with other city or town, state, regional, or federal agencies or private organizations to undertake studies deemed to be in the best interest of the locality, including cooperative agreements with cities or towns in neighboring states where problems of common interest are deemed to exist. The board or commission may be authorized to accept technical and financial assistance from other public agencies or private organizations, subject to the approval of the appointing authority.

(c) Within the limit of the funds appropriated to it, a planning board or commission may engage technical or clerical assistance to aid in the discharge of its duties. Where a city or town provides for the

establishment of a planning department, responsible to the chief administrative officer or city or town council, the department may, in addition to its other duties, be assigned to provide technical assistance to the planning board or commission and to make studies and prepare plans and reports for the board or commission as provided in § 45-22-7.

§ 45-22-6 Repealed. –

§ 45-22-7 Other duties of a planning board or commission. – (a) A planning board or commission established under the provisions of this chapter shall make studies and prepare plans and reports on the needs and resources of the community with reference to its physical, economic, and social growth and development as affecting the health, safety, morals, and general welfare of the people. The studies, plans, and reports shall concern, but not necessarily be limited to, the following:

- (1) Land use and land use regulation;
- (2) Transportation facilities;
- (3) Public facilities including recreation areas, utilities, schools, fire stations, police stations, and others;
- (4) Blighted areas including the designation of general areas for redevelopment, renewal, rehabilitation, or conservation;
- (5) Problems of housing and the development of housing programs.
- (6) Environmental protection;
- (7) Natural resource conservation;
- (8) Protection from disaster.
- (9) Economic and social characteristics of the population;
- (10) Preservation of historic sites and buildings; and
- (11) Economic development.

(b) When directed by the city or town council or by the appointing authority, a planning board or commission shall prepare an annual capital budget and a comprehensive long range capital improvement program for submission to the council, the appointing authority, or other designated official or agency.

(c) A planning board or commission shall submit an advisory opinion and recommendation on all zoning matters referred to it under the provisions of the city or town zoning ordinance and report on any other matter referred to it, by the city or town council, the chief executive, or the appointing authority.

(d) A planning board or commission shall perform any other duties that may be assigned to the board or commission from time to time by any act of the general assembly or by any ordinance, code, regulation order, or resolution of the city or town council or by the appointing authority.

(e) A planning board or commission has authority to call upon other departments, boards, and committees of the city or town and upon regional, state, and federal agencies for information and

assistance necessary to the performance of its duties, and shall cooperate with the city or town, regional, state, and federal agencies on matters of community, regional, and state planning and development.

(f) Each planning board or commission must adopt a provision requiring any person who will be required to file a request for access pursuant to § 24-8-34 to file that request not later than the day on which that person files any document in connection with the project in question with the applicable town or city, and to provide a copy of the request to the town or city.

§ 45-22-8 Reports. – A planning board or commission shall report annually to its appointing authority, summarizing its work of the preceding year and recommending programs, plans, and actions for future development. All studies, plans, and reports of the planning board or commission shall be submitted to the appointing authority and to any other designated agency or official, and shall, with the approval of the appointing authority, be published and made available to the public.

§ 45-22-9 Effect of chapter. – All local planning boards and commissions affected by the provisions of this chapter shall be reconstituted in accordance with the provisions of this chapter, except as provided in § 45-22-3, with regard to the existing membership of any city or town planning board or commission.

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JOINT MUNICIPAL PLANNING COMMISSION

{ RIGL § 45-22.1 }



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§ 45-22.1-1 Declaration of policy. – For the purpose of promoting health, safety, morals, and the general welfare of the various areas in the state of Rhode Island through the effective development of these areas, the following powers for the establishment of joint municipal planning commissions are hereby granted.

§ 45-22.1-2 Creation, appointment, and operation of joint municipal planning commission.

– The governing bodies of two (2) or more municipalities may, by ordinance or resolution, authorize the establishment and participation or membership in, and support of, a joint municipal planning commission. The number and qualifications of the members of the planning commission and their terms and method of appointment or removal shall be determined and agreed upon by the governing bodies. Members of a joint municipal planning commission shall serve without salary but may be paid expenses incurred in the performance of their duties. The joint municipal planning commission shall elect a chairperson whose term does not exceed one year and who is eligible for reelection. The commission may create and fill any other offices that it may determine. Every joint municipal planning commission shall adopt rules for the transaction of business and keep a record of its resolutions, transactions, findings, and determinations, which record is a public record. Each participating or member municipality may, from time to time, upon the request of the joint municipal planning commission, assign or detail to the commission any employees of the municipality to make special surveys or studies.

§ 45-22.1-3 Finances, staff, and planning programs. – (a) The governing bodies of municipalities have the authority to appropriate funds for the purpose of contributing to the operation of a joint municipal planning commission. A joint municipal planning commission, with the consent of all the governing bodies, may also receive grants from the federal or state governments, or from individuals or foundations, and has the authority to contract with these entities. Every joint municipal planning commission has the power to appoint any employees and staff that it deems necessary for its work, and may contract with planners and other consultants for the services it may require to the extent permitted by its financial resources. A joint municipal planning commission may also prepare and sell maps, reports, bulletins, or other material and establish reasonable charges for these materials.

(b) A joint municipal planning commission may provide planning assistance and do planning work, including surveys, land use studies, urban renewal plans, technical services, and other elements of comprehensive planning and planning effectuation programs in and for any participating or member municipality, and for this purpose may, with the consent of all the governing bodies, accept and utilize any funds, personnel, or other assistance made available by the federal or state governments or any of their agencies, or from individuals or foundations, and for the purposes of receiving and using federal or state planning grants for the provision of urban planning assistance, may enter into agreements or contracts regarding acceptance or utilization of the funds or assistance.

§ 45-22.1-4 Preparation of comprehensive plan. – (a) Every joint municipal planning commission may prepare and maintain a comprehensive plan, in accordance with the provisions of this chapter, for the guidance of the continuing development of the area encompassed by the participating or member municipalities.

(b) These plans and recommendations may be concerned with existing and proposed highways, public places, bridges and tunnels, viaducts, parks, parkways, recreation areas, sites for public buildings and structures, land use areas, building and zoning districts, waterways, routes of railroads and buses, location of sewers, water supplies and conduits, and other public utilities of the area.

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**RHODE ISLAND COMPREHENSIVE PLANNING
AND LAND USE REGULATION ACT
{ RIGL § 45-22.2 }**



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§ 45-22.2-1 Title. – This chapter shall be known as the “Rhode Island Comprehensive Planning and Land Use Regulation Act”.

§ 45-22.2-2 Status of comprehensive plans; relation to other statutes. – (a) All lawfully adopted comprehensive plans shall remain in full force and effect but shall be brought into conformance with this chapter prior to June 1, 2016.

(b) Nothing contained in this chapter is construed to supersede or diminish any regulatory or planning authority granted or delegated to a state agency by state or federal statute.

§ 45-22.2-3 Legislative findings and intent – Statement of goals. – (a) *Findings.* The general assembly recognizes these findings, each with equal priority and numbered for reference only, as representing the need for effective planning, declares that:

(1) Comprehensive planning by municipal government is necessary to form a rational basis for the long-term physical development of a municipality and to avoid conflicting requirements and reactive land use regulations and decisions.

(2) Municipal government is responsible for land use, and requires accurate technical information and financial resources to plan for orderly growth and development, and the protection and management of our land and natural resources.

(3) *Land, water, and air are finite natural resources.* Comprehensive planning is needed to provide for protection, development, use, and management of our land and natural resources.

(4) Comprehensive planning and its implementation are needed to promote the appropriate use of land. The lack of comprehensive planning and its implementation could lead to the misuse, underuse, and overuse of our land and natural resources.

(5) Comprehensive planning is needed to provide for the coordination of growth and the intensity of development with provisions for services and facilities.

(6) Comprehensive planning is needed to provide a basis for municipal and state initiatives to ensure all citizens have access to a range of housing choices, including the availability of affordable housing for all income levels and age groups.

(7) Comprehensive planning is needed to recognize and address potentially conflicting land uses as well as shared resources in contiguous municipalities and encourage cooperative planning efforts by municipalities.

(8) Comprehensive planning is needed to provide a basis for improved coordination so that local plans reflect issues of local, regional, and statewide concern. Municipalities must have a role in the formulation of state goals and policies.

(9) Improved coordination is necessary between state and municipal governments to promote uniform standards and review procedures as well as consistency in land use regulations.

(b) *Intent.* The general assembly declares it is the intent of this chapter to:

(1) Establish, in each municipality, a program of comprehensive planning that is implemented according to the standards and schedule contained in this chapter; comprehensive plans shall be

maintained and amended as necessary in order to achieve the goals established within this section.

(2) Provide financial assistance for the formulation and implementation of the comprehensive plan.

(3) Provide financial assistance to establish and maintain a uniform data and technical information base to be used by state and municipal governments and their agencies.

(4) Establish standards and a uniform procedure for the review and approval of municipal comprehensive plans and state guide plans and their consistency with overall state goals, objectives, standards, applicable performance measures, and policies.

(5) Establish and maintain a procedure for coordinating planning at state and municipal levels including addressing potentially conflicting land uses as well as shared resources in contiguous municipalities and encouraging cooperative planning efforts by municipalities.

(c) *Goals.* The general assembly hereby establishes a series of goals to provide overall direction and consistency for state and municipal agencies in the comprehensive planning process established by this chapter. The goals have equal priority and are numbered for reference only.

(1) To promote orderly growth and development that recognizes the natural characteristics of the land, its suitability for use, the availability of existing and proposed public and/or private services and facilities, and is consistent with available resources and the need to protect public health, including drinking water supply, drinking water safety, and environmental quality.

(2) To promote an economic climate which increases quality job opportunities and overall economic well being of each municipality and the state.

(3) To promote the production and rehabilitation of year-round housing and to preserve government subsidized housing for persons and families of low and moderate income in a manner that: considers local, regional, and statewide needs; housing that achieves a balance of housing choices, for all income levels and age groups; recognizes the affordability of housing as the responsibility of each municipality and the state; takes into account growth management and the need to phase and pace development in areas of rapid growth; and facilitates economic growth in the state.

(4) To promote the protection of the natural, historic and cultural resources of each municipality and the state.

(5) To promote the preservation of the open space and recreational resources of each municipality and the state.

(6) To provide for the use of performance-based standards for development and to encourage the use of innovative development regulations and techniques that promote the development of land suitable for development while protecting our natural, cultural, historical, and recreational resources, and achieving a balanced pattern of land uses.

(7) To promote consistency of state actions and programs with municipal comprehensive plans, and provide for review procedures to ensure that state goals and policies are reflected in municipal comprehensive plans and state guide plans.

(8) To ensure that adequate and uniform data are available to municipal and state government as the basis for comprehensive planning and land use regulation.

(9) To ensure that municipal land use regulations and decisions are consistent with the comprehensive plan of the municipality, and to ensure state land use regulations and decisions are consistent with state guide plans.

(10) To encourage the involvement of all citizens in the formulation, review, and adoption, or amendment of the comprehensive plan.

(11) [Deleted by P.L. 2011, ch. 215, § 1, and by P.L. 2011, ch. 313, § 1].

§ 45-22.2-4 Definitions. – As used in this chapter the following words have the meanings stated herein:

(1) «Agricultural land» means land suitable for agriculture by reason of suitability of soil or other natural characteristics or past use for agricultural purposes.

(2) «Capacity» or «land capacity» means the suitability of the land, as defined by geology, soil conditions, topography, and water resources, to support its development for uses such as residential, commercial, industrial, open space, or recreation. Land capacity may be modified by provision of facilities and services.

(3) «Capital improvements program» means a proposed schedule of all future projects listed in order of construction priority together with cost estimates and the anticipated means of financing each project.

(4) «Chief» means the highest-ranking administrative officer of the division of planning as established by subsection [42-11-10\(g\)](#).

(5) «Coastal features» means any coastal beach, barrier island or spit, coastal wetland, coastal headland, bluff or cliff, rocky shore, manmade shoreline or dune as outlined and defined by the coastal resources management program, and as may be amended.

(6) «Comprehensive plan» or «comprehensive land use plan» means a document containing the components described in this chapter, including the implementation program which is consistent with the goals and guidelines established by this chapter.

(7) «Days» means calendar days.

(8) «Division of planning» means the office established as a division of the department of administration by subsection [42-11-10\(g\)](#).

(9) «Floodplains» or «flood hazard area» means an area that is subject to a flood from a storm having a one percent (1%) chance of being equaled or exceeded in any given year, as delineated on a community's flood hazard map as approved by the federal emergency management agency pursuant to the National Flood Insurance Act of 1968, as amended (P.L. 90-448), 42 U.S.C. 4011 et seq.

(10) «Forecast» means a description of the conditions, quantities, or values anticipated to occur at a designated future time.

(11) «Goals» means those goals stated in [§ 45-22.2-3](#).

(12) «Historic or cultural resource» means any real property, structure, natural object, place, landmark, landscape, archaeological site or configuration or any portion or group of the preceding

which has been listed on the federal or state register of historic places or that is considered by the Rhode Island Historical Preservation & Heritage Commission to meet the eligibility criteria for listing on the state register of historic places pursuant to § 42-45-5 or is located in a historic district established by a municipality in accordance with chapter 45-24.1, Historic Area Zoning.

(13) «Land» means real property including improvements and fixtures on, above, or below the surface.

(14) «Land use regulation» means a rule or statute of general application adopted by the municipal legislative body which controls, directs, or delineates allowable uses of land and the standards for these uses.

(15) «Local government» means any governmental agency authorized by this chapter to exercise the power granted by this chapter.

(16) «Maintain» means to evaluate regularly and revise as needed or required in order to ensure that a comprehensive plan remains consistent with the goals and guidelines established by this chapter.

(17) «Municipal legislative body» means the town council in a town or the city council in a city; or that part of a municipal government that exercises legislative powers under a statute or charter.

(18) «Municipal reviewing authority» means the municipal planning board or commission.

(19) «Open space» means any parcel or area of land or water set aside, dedicated, designated, or reserved for public or private use or enjoyment or for the use and enjoyment of owners and occupants of land adjoining or neighboring the open space; provided that the area may be improved with only those buildings, structures, streets, and off-street parking, and other improvements that are designed to be incidental to the natural openness of the land.

(20) «Planning board» or «commission» means the body established by a municipality under chapter 45-22 or combination of municipalities which has the responsibility to prepare a comprehensive plan and make recommendations concerning that plan to the municipal legislative body.

(21) «State guide plan» means goals, policies, and plans or plan elements for the physical, economic, and social development of the state, adopted by the state planning council in accordance with § 42-11-10.

(22) «State or regional agency» means, for the purposes of this chapter, any state agency, department, public authority, public corporation, organization, commission, or other governing body with regulatory or other authority affecting the goals established either in this chapter or the state guide plan. Pursuant to § 45-22.2-2, the definition of state and regional agency shall not be construed to supersede or diminish any regulatory authority granted by state or federal statute.

(23) «State agency program or project» State agency program means any non-regulatory, coordinated group of activities implemented for the purpose of achieving a specific goal or objective. State agency project means a specific initiative or development on an identifiable parcel(s) of land.

(24) «Voluntary association of local governments» means two (2) or more municipalities that have joined together pursuant to a written agreement and pursuant to the authority granted under this chapter for the purpose of drafting a comprehensive land use plan and implementation program.

(25) «Wetland» a marsh, swamp, bog, pond, river, river or stream flood plain or bank; an area subject to flooding or storm flowage; an emergent or submergent plant community in any body of fresh water; or an area within fifty feet (50') of the edge of a bog, marsh, swamp, or pond, as defined in § 2-1-20; or any salt marsh bordering on the tidal waters of this state, whether or not the tidal waters reach the littoral areas through natural or artificial watercourses, and those uplands directly associated and contiguous thereto which are necessary to preserve the integrity of that marsh, and as further defined by the RI coastal resources management program, as may be amended.

(26) «Zoning» means the reservation of certain specified areas within a community or city for building and structures, or use of land, for certain purposes with other limitations as height, lot coverage, and other stipulated requirements.

§ 45-22.2-5 Formulation of comprehensive plans by cities and towns. – (a) The comprehensive plan is a statement (in text, maps, illustrations, or other media of communication) that is designed to provide a basis for rational decision making regarding the long-term physical development of the municipality. The definition of goals and policies relative to the distribution of future land uses, both public and private, forms the basis for land use decisions to guide the overall physical, economic, and social development of the municipality.

(b) There is established a program of local comprehensive planning to address the findings and intent and accomplish the goals of this chapter. Rhode Island's cities and towns, through the exercise of their power and responsibility pursuant to the general laws, applicable articles of the Rhode Island Constitution, and subject to the express limitations and requirements of this chapter, shall prepare, adopt, amend, and maintain comprehensive plans, including implementation programs, that relate development to land capacity, protect our natural resources, promote a balance of housing choices, encourage economic development, preserve and protect our open space, recreational, historic and cultural resources, provide for orderly provision of facilities and services and are consistent with the goals, findings, intent, and other provisions of this chapter and the laws of the state.

(c) Each municipality shall ensure that its zoning ordinance and map are consistent with its comprehensive plan.

(d) Each municipality shall submit to the chief, as provided for in §§ 45-22.2-9 and 45-22.2-12 and the rules promulgated by the state planning council:

- (1) Its locally adopted comprehensive plan;
- (2) Any amendment to its comprehensive plan;
- (3) An informational report on the status of its implementation programs; and
- (4) Its zoning ordinance text and generalized zoning map or maps.

§ 45-22.2-6 Required content of a comprehensive plan. – (a) The comprehensive plan must utilize a minimum twenty (20) year planning timeframe in considering forecasts, goals, and policies.

(b) The comprehensive plan must be internally consistent in its policies, forecasts, and standards, and shall include the content described within this section. The content described in subdivisions (1) through (10) may be organized and presented as deemed suitable and appropriate by the municipality. The content described in subdivisions (11) and (12) must be included as individual sections of the plan.

(1) *Goals and policies.* The plan must identify the goals and policies of the municipality for its future growth and development and for the conservation of its natural and cultural resources. The goals and policies of the plan shall be consistent with the goals and intent of this chapter and embody the goals and policies of the state guide plan.

(2) *Maps.* The plan must contain maps illustrating the following as appropriate to the municipality:

(i) Existing conditions:

(A) Land use, including the range of residential housing densities;

(B) Zoning;

(C) Key infrastructure such as, but not limited to, roads, public water, and sewer;

(D) Service areas for public water and sewer;

(E) Historical and cultural resource areas and sites;

(F) Open space and conservation areas (public and private); and

(G) Natural resources such as, but not limited to, surface water, wetlands, floodplains, soils, and agricultural land;

(ii) Future land use illustrating the desired patterns of development, density, and conservation as defined by the comprehensive plan; and

(iii) Identification of discrepancies between future land uses and existing zoning use categories.

(3) *Natural resource identification and conservation.* The plan must be based on an inventory of significant natural resource areas such as, but not limited to, water, soils, prime agricultural lands, forests, wildlife, wetlands, aquifers, coastal features, and floodplains. The plan must include goals, policies, and implementation techniques for the protection and management of these areas.

(4) *Open space and outdoor recreation identification and protection.* The plan must be based on an inventory of outdoor recreational resources, open space areas, and recorded access to these resources and areas. The plan must contain an analysis of forecasted needs, policies for the management and protection of these resources and areas, and identification of areas for potential expansion. The plan must include goals, policies, and implementation techniques for the protection and management of existing resources and acquisition of additional resources if appropriate.

(5) *Historical and cultural resources identification and protection.* The plan must be based on an inventory of significant historical and cultural resources such as historical buildings, sites, landmarks, and scenic views. The plan must include goals, policies, and implementation techniques for the protection of these resources.

(6) *Housing.* The plan must include the identification of existing housing patterns, an analysis of existing and forecasted housing needs, and identification of areas suitable for future housing development or rehabilitation. The plan shall include an affordable housing program that meets the requirements of § 42-128-8.1, the “Comprehensive Housing Production and Rehabilitation Act of 2004” and chapter 45-53, the “Rhode Island Low and Moderate Income Housing Act”. The plan must include goals and policies that further the goal of subdivision 45-22.2-3(c)(3) and implementation

techniques that identify specific programs to promote the preservation, production, and rehabilitation of housing.

(7) *Economic development.* The plan must include the identification of existing types and patterns of economic activities including, but not limited to, business, commercial, industrial, agricultural, and tourism. The plan must also identify areas suitable for future economic expansion or revitalization. The plan must include goals, policies, and implementation techniques reflecting local, regional, and statewide concerns for the expansion and stabilization of the economic base and the promotion of quality employment opportunities and job growth.

(8) *Services and facilities.* The plan must be based on an inventory of existing physical infrastructure such as, but not limited to, educational facilities, public safety facilities, libraries, indoor recreation facilities, and community centers. The plan must describe services provided to the community such as, but not limited to, water supply and the management of wastewater, storm water, and solid waste. The plan must consider energy production and consumption. The plan must analyze the needs for future types and levels of services and facilities, including, in accordance with, water supply system management planning, which includes demand management goals as well as plans for water conservation and efficient use of water concerning any water supplier providing service in the municipality, and contain goals, policies, and implementation techniques for meeting future demands.

(9) *Circulation/Transportation.* The plan must be based on an inventory and analysis of existing and proposed major circulation systems, including transit and bikeways; street patterns; and any other modes of transportation, including pedestrian, in coordination with the land use element. Goals, policies, and implementation techniques for the provision of fast, safe, efficient, and convenient transportation that promotes conservation and environmental stewardship must be identified.

(10) *Natural hazards.* The plan must include an identification of areas that could be vulnerable to the effects of sea-level rise, flooding, storm damage, drought, or other natural hazards. Goals, policies, and implementation techniques must be identified that would help to avoid or minimize the effects that natural hazards pose to lives, infrastructure, and property.

(11) *Land use.* In conjunction with the future land use map as required in subdivision [45-22.2-6\(b\)\(2\)\(ii\)](#), the plan must contain a land use component that designates the proposed general distribution and general location and interrelationships of land uses including, but not limited to, residential, commercial, industrial, open space, agriculture, recreation facilities, and other categories of public and private uses of land. The land use component shall be based upon the required plan content as stated in this section. It shall relate the proposed standards of population density and building intensity to the capacity of the land and available or planned facilities and services. The land use component must contain an analysis of the inconsistency of existing zoning districts, if any, with planned future land use. The land use component shall specify the process and schedule by which the zoning ordinance and zoning map shall be amended to conform to the comprehensive plan and shall be included as part of the implementation program.

(12) *Implementation program.*

(i) A statement which defines and schedules the specific public actions to be undertaken in order to achieve the goals and objectives of each component of the comprehensive plan. Scheduled expansion or replacement of public facilities, and the anticipated costs and revenue sources proposed to meet those costs reflected in a municipality's capital improvement program, must be included in the

implementation program.

(ii) The implementation program identifies the public actions necessary to implement the objectives and standards of each component of the comprehensive plan that require the adoption or amendment of codes and ordinances by the governing body of the municipality.

(iii) The implementation program identifies other public authorities or agencies owning water supply facilities or providing water supply services to the municipality, and coordinates the goals and objectives of the comprehensive plan with the actions of public authorities or agencies with regard to the protection of watersheds as provided in [§ 46-15.3-1](#), et seq.

(iv) The implementation program must detail the timing and schedule of municipal actions required to amend the zoning ordinance and map to conform to the comprehensive plan.

§ 45-22.2-7 Coordination of municipal planning activities. – (a) A municipality shall exercise its planning authority over the total land and inland water area within its jurisdiction.

(b) Any combination of contiguous municipalities may, upon formal adoption of an official comprehensive planning and enforcement agreement by the municipal legislative bodies, conduct joint planning and regulatory programs to fulfill the responsibilities established under this chapter. The municipalities shall agree:

(1) On procedures for joint action in the preparation and adoption of comprehensive plans and land use regulations;

(2) On the manner of representation on any joint land use body;

(3) On the amount of contribution from each municipality for any costs incurred in the development of the plan and land use ordinances; and

(4) On the zoning designation for those areas in contiguous municipalities which border upon each other. The zoning designations for these border areas must be consistent and compatible with the adjacent area in the neighboring community.

(c) All agreements between municipalities shall be in writing, approved in appropriate official action by the municipal legislative bodies, and forwarded to the director. All joint plans adopted by contiguous municipalities must be submitted to the director for approval.

(d) All municipalities shall provide for coordinating land uses with contiguous municipalities, other municipalities, and other agencies, as appropriate, including the management of resources and facilities that extend beyond municipal boundaries as rivers, aquifers, transportation facilities, and others. The comprehensive plan shall demonstrate consistency with the comprehensive plans of contiguous municipalities and other municipalities as appropriate.

§ 45-22.2-8 Preparation, adoption, and amendments of comprehensive plans. – (a) The preparation of a comprehensive plan shall be conducted according to the following provisions in addition to any other provision that may be required by law:

(1) In addition to the duties established by chapter [45-22](#), local planning board or commission, to the extent that those provisions do not conflict with the requirements of this chapter, a planning board or commission has the sole responsibility for performing all those acts necessary to prepare a

comprehensive plan for a municipality.

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

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

- (i) Preparation of the comprehensive plan, including the implementation program component.
- (ii) Citizen participation through the dissemination of information to the public and solicitation of both written and oral comments during the preparation of the plan.
- (iii) Conducting a minimum of one public hearing.
- (iv) Submission of recommendations to the municipal legislative body regarding the adoption of the plan or amendment.

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

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

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

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

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

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

(1) Prior to the adoption of, or amendment to, a comprehensive plan, notice shall be given of the public hearing by publication of notice in a newspaper of general circulation within the city or town at

least once each week for three (3) successive weeks prior to the date of the hearing, which may include the week in which the hearing is to be held, at which hearing opportunity shall be given to all persons interested to be heard. Written notice, which may be a copy of the newspaper notice, shall be mailed to the statewide planning program of the department of administration. The newspaper notice shall be published as a display advertisement, using a type size at least as large as the normal type size used by the newspaper in its news articles, and shall:

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

§ 45-22.2-9 State review of local comprehensive plans. – (a) There is established a program of comprehensive planning review to promote the preparation and implementation of local comprehensive plans, and to provide technical and financial assistance to accomplish this purpose. The program also ensures that all local comprehensive plans are consistent with the goals, findings, and intent as established by this chapter and the state guide plan.

(b) The chief is designated as the reviewing agent, and is responsible for carrying out the provisions of this chapter and ensuring that the findings, intent, and goals of this chapter are achieved. The chief shall publish guidelines for the preparation of comprehensive plan content required by [§ 45-22.2-6](#).

(c) The chief shall review any comprehensive plan or amendments adopted under the provisions of this chapter for consistency with the goals and intent established in the chapter and in the state guide plan, and in accordance with the following schedule:

(1) Comprehensive plans or amendments shall be submitted to the chief within thirty (30) days of adoption by the municipal legislative body, pursuant to subdivision [45-22.2-8\(b\)\(2\)](#).

(2) Within fifteen (15) days of the receipt of a comprehensive plan the chief shall solicit comments from the public, regional and state agencies, and all municipalities contiguous to the municipality submitting the plan or amendment. The comment period shall extend for thirty (30) days and shall be posted on the division of planning website.

(3) Review of the plan or amendment, and comments by the chief shall be completed and forwarded to the municipality as follows:

(i) Within one hundred twenty (120) days of the end of the comment period for new plan or amendments that have not been submitted under the provisions of subdivision [45-22.2-8\(a\)\(4\)](#); or

(ii) Within thirty (30) days of the end of the comment period for new plans or amended plans previously submitted for review under subdivision [45-22.2-8\(a\)\(4\)](#).

(iii) The chief is authorized to discuss and negotiate, with the municipality, concerning any aspect of a plan or amendment being reviewed under subdivision (3)(i) or (3)(ii) of this subsection.

(iv) The chief and the municipality submitting a plan amendment may mutually agree, in writing, to reduce or extend the review period established by this section.

(4) Municipalities shall correct any deficiencies reported by the chief within sixty (60) days of the receipt of the chief's review and comments provided that the chief and the municipality submitting a plan or amendment may mutually agree, in writing, to reduce or extend this period.

(5) The chief shall review all corrections and related material submitted by the municipality and render a final decision on the plan. In the event of disapproval, the chief shall notify the municipality by registered mail and shall issue findings specifically describing the deficiencies in the plan or amendment as it relates to the goals and other provisions of this chapter.

(6) The municipality may appeal the decision of the chief to a hearing officer as provided for under [§ 45-22.2-9.1](#). The appeal must be filed within thirty (30) days of receipt of the decision by the chief.

(d) Comprehensive plans and amendments shall be reviewed by the chief to ensure that the following requirements are complied with:

(1) The intent and goals of this chapter have been met.

(2) All required content as stated in [§ 45-22.2-6](#) is complete.

(3) The plan or amendment is consistent with, and embodies the goals and policies of, the state and its departments and agencies as contained in the state guide plan and the laws of the state.

(4) Municipal planning activities have been coordinated according to the provisions of [§ 45-22.2-7](#).

(5) The plan or amendment has been officially adopted and submitted for review in accordance with [§ 45-22.2-8](#) of this chapter and other applicable procedures.

(6) The plan or amendment complies with rules and regulations adopted by the state planning council as provided for by subsection [45-22.2-10\(c\)](#).

(7) Adequate, uniform, and valid data have been used in preparing each plan or amendment.

(e) State approval of a plan and any amendment thereto shall expire upon the tenth (10th) anniversary of the chief's or superior court's approval and shall not be extended.

(f) After an amendment to this chapter or to the state guide plan, all municipalities shall, within one year, amend their comprehensive plan to conform with the amended chapter or the amended state guide plan. Failure to do so may result in the rescission, in whole or in part, of state approval. The chief shall notify the municipality in writing of a rescission.

(g) Disapproval of an amendment to a state approved plan shall apply to the amendment only and not affect the validity of a previously existing plan approval.

(h) Upon approval by the chief or superior court, the municipality is eligible for all benefits and

incentives conditioned on an approved comprehensive plan pursuant to this chapter, and the municipality is allowed to submit the approved comprehensive plan or relevant section thereof to any state agency which requires the submission of a plan as part of its requirements, and the plan or relevant section thereof shall satisfy that requirement.

(i) Those portions of a comprehensive plan for which state approval was rescinded under subsection **45-22.2-9(f)** and those amendments to a state approved plan for which state approval was not received under subsection **45-22.2-9(g)**, shall not be subject to the provisions of subsection **45-22.2-9(h)**.

§ 45-22.2-9.1 Appeals. – (a) A decision of the chief involving the disapproval of a comprehensive plan or amendment thereto, or rescission in whole or in part, of a plan approval may be appealed by the municipality under the provisions of chapter **42-35**, the Administrative Procedures Act, to a hearing officer designated by the director of the department of administration.

(b) The decision of the hearing officer shall be in writing and shall include findings of fact and conclusions of law as required in **§ 42-35-12**. The chief may, in his or her discretion, adopt, modify, or reject such findings of fact and/or conclusions of law provided; however, that any such modification or rejection of the proposed findings of fact or conclusions of law shall be in writing and shall state the reason therefor. The hearing officer shall not revise the comprehensive plan or amendment thereto, but may suggest alternative language as part of his or her decision.

(c) A municipality, having exhausted all administrative remedies available within the agency, and who is aggrieved by a final administrative decision is entitled to judicial review under the provisions of **§ 42-35-15**, the Administrative Procedures Act.

§ 45-22.2-10 Coordination of state agencies. – (a) State agencies shall develop their respective programs and conduct their respective activities in a manner consistent with the findings, intent, and goals established under this chapter.

(b) The chief shall develop standards to assist municipalities in the incorporation of the state goals and policies into comprehensive plans, and to guide the chief's review of comprehensive plans and state agency activities.

(c) The state planning council shall adopt and maintain all rules and regulations necessary to implement the standards established by this chapter.

(d) The chief shall develop and make readily available to all municipalities statewide data and technical information for use in the preparation of comprehensive plans. Data specific to each municipality shall be provided by that municipality. The chief shall make maximum use of existing information available from other agencies.

(e) The chief may contract with any person, firm, or corporation to develop the necessary planning information and coordinate with other state agencies as necessary to provide support and technical assistance for local planning efforts.

(f) The chief shall notify appropriate state agencies of the approval of a comprehensive plan or amendment to a comprehensive plan.

(g) Once a municipality's comprehensive plan is approved, programs and projects of state agencies, excluding the state guide plan as provided for by **§ 42-11-10**, shall conform to that plan. In the event that a state agency wishes to undertake a program, project, or to develop a facility which is not in

conformance with the comprehensive plan, the state planning council shall hold a public hearing on the proposal at which the state agency must demonstrate:

(1) That the program, project, or facility conforms to the stated goals, findings, and intent of this chapter; and

(2) That the program, project, or facility is needed to promote or protect the health, safety, and welfare of the people of Rhode Island; and

(3) That the program, project, or facility is in conformance with the relevant sections of the state guide plan; and

(4) That the program implementation, project, or size, scope, and design of the facility will vary as little as possible from the comprehensive plan of the municipality.

§45-22.2-11 State technical and financial assistance. – (a) There is established a program of technical and financial assistance for municipalities to encourage and facilitate the adoption and implementation of comprehensive planning throughout the state. The program is administered by the chief.

(b) The chief shall develop and administer a grants program to provide financial assistance to municipalities for the preparation of comprehensive plans pursuant to this chapter.

(c) Grants may be expended for any purpose directly related to the preparation of a municipal comprehensive plan including, without limitation, the conduct of surveys, inventories, and other data-gathering activities, the hiring of planning and other technical staff, the retention of planning consultants, contracts for planning, and related services, and other related purposes, in order to provide sufficient economies of scale and to build planning capacity at the municipal level.

(d) The chief shall establish a program of technical assistance to the various municipalities, utilizing its own staff and resources to assist municipalities in the development of a comprehensive plan. It is also a function of the chief to establish a statewide data base for the use of the municipalities. The chief also validates data established by the municipalities in the formulation of their comprehensive plans.

(e) All departments and agencies of the state, to the extent practicable, shall provide technical assistance to municipalities in the development of a comprehensive plan at the request of a municipality.

§ 45-22.2-12 Maintaining and re-adopting the plan. – (a) A municipality must maintain a single version of the comprehensive plan including all amendments, appendices, and supplements. One or more complete copies of the comprehensive plan including, all amendments, shall be made available for review by the public. Availability shall include print, digital formats, and placement on the internet.

(b) A municipality shall periodically review and amend its plan in a timely manner to account for changing conditions. At a minimum, a municipality shall fully update and re-adopt its entire comprehensive plan, including supplemental plans, such as, but not limited to, special area plans, that may be incorporated by reference, at least once every ten (10) years from the date of municipal adoption. A minimum twenty (20) year planning timeframe in considering forecasts, goals, and policies must be utilized for an update.

(c) A newly adopted plan shall supersede all previous versions.

(d) A municipality shall file an informational report on the status of the comprehensive plan implementation program with the chief not more than five (5) years from the date of municipal approval.

§ 45-22.2-13 Compliance and implementation. – (a) The municipality is responsible for the administration and enforcement of the plan.

(b) All municipal land use decisions shall be in conformance with the locally adopted municipal comprehensive plan.

(c) Each municipality shall amend its zoning ordinance and map to conform to the comprehensive plan in accordance with the implementation program as required by subdivision **45-22.2-6(b)(11)** and paragraph **45-22.2-6(b)(12)(iv)**. The zoning ordinance and map in effect at the time of plan adoption shall remain in force until amended. In instances where the zoning ordinance is in conflict with an adopted comprehensive plan, the zoning ordinance in effect at the time of the comprehensive plan adoption shall direct municipal land use decisions until such time as the zoning ordinance is amended to achieve consistency with the comprehensive plan and its implementation schedule. In instances of uncertainty in the internal construction or application of any section of the zoning ordinance or map, the ordinance or map shall be construed in a manner that will further the implementation of, and not be contrary to, the goals and policies and applicable content of the adopted comprehensive plan.

(d) Limitations on land use approvals may be imposed according to the following provisions in addition to any other provision that may be required by law.

(1) Nothing in the chapter shall be deemed to preclude municipalities from imposing limitations on the number of building permits or other land use approvals to be issued at any time, provided such limitations are consistent with the municipality's comprehensive plan in accordance with this chapter and are based on a reasonable, rational assessment of the municipality's sustainable capacity for growth.

(2) In the event of a dire emergency not reasonably foreseeable as part of the comprehensive planning process, a municipality may impose a limitation on the number of building permits or other land use approvals to be issued at any time, provided that such limitation is reasonably necessary to alleviate the emergency and is limited to the time reasonably necessary to alleviate the emergency.

(e) A one-time moratorium, for the purpose of providing interim protection for a planned future land use or uses, may be imposed during the twelve (12) months subsequent to the adoption of the local comprehensive plan provided that a change to the zoning ordinance and map has been identified and scheduled for implementation within twelve (12) months of plan adoption. The moratorium shall be enacted as an ordinance and may regulate, restrict, or prohibit any use, development, or subdivisions under the following provisions:

(1) The moratorium is restricted to those areas identified on the map or maps as required by paragraph **45-22.2-6(b)(2)(iii)**.

(2) A notice of the moratorium must be provided by first class mail to property owners affected by said moratorium at least fourteen (14) days in advance of the public hearing.

(3) The ordinance shall specify:

(i) The purpose of the moratorium;

- (ii) The date it shall take effect and the date it shall end;
- (iii) The area covered by the moratorium, and;
- (iv) The regulations, restrictions, or prohibitions established by the moratorium.

(4) The moratorium may be extended up to an additional ninety (90) days if necessary to complete a zoning ordinance and map change provided that: (i) The public hearing as required by § 45-24-53 has commenced; and (ii) The chief approves the extension based on a demonstration of good cause. Said extension shall not be deemed as non-conformance to the implementation schedule.

(f) A moratorium enacted under the provisions of subsection (e) shall not apply to state agencies until such time that the municipal comprehensive plan receives approval from the chief or superior court.

(g) In the event a municipality fails to amend its zoning ordinance and map to conform to the comprehensive plan within the implementation schedule, or by the expiration of the moratorium period, a municipality must amend either their implementation schedule or, if the future land use is no longer desirable or feasible, amend the future land use map.

(1) Failure to comply with this provision within one hundred twenty (120) days of the date of the implementation schedule or the expiration of the moratorium period shall result in the denial or rescission, in whole or in part, of state approval of the comprehensive plan and of all benefits and incentives conditioned on state approval.

(2) An implementation schedule amended under this provision shall not be eligible for an additional moratorium as provided for in subsection (e).

§ 45-22.2-14 Severability. – If any provision of this chapter or of any rule, regulation or determination made under it, or the application to any person, agency, or circumstances, is held invalid by a court of competent jurisdiction, the remainder of the chapter, rule, regulation, or determination and the application of the provisions to other persons, agencies, or circumstances shall not be affected by the invalidity. The invalidity of any section or sections or parts of any section or sections of this chapter shall not affect the validity of the remainder of the chapter.

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**RHODE ISLAND LAND DEVELOPMENT AND SUBDIVISION REVIEW
ENABLING ACT**

{ RIGL § 45-23 }



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§ 45-23-1 – 45-23-24. Repealed. –

§ 45-23-25 Title. – Sections 45-23-25 – 45-23-74 shall be known as the “Rhode Island Land Development and Subdivision Review Enabling Act of 1992”. The short title shall be the “Development Review Act”.

§ 45-23-26 Requirement in all municipalities. – (a) Every municipality in the state shall adopt land development and subdivision review regulations, referred to as local regulations in this chapter, which comply with all the provisions of this chapter.

(b) All municipalities shall establish the standard review procedures for local land development and subdivision review and approval as specified in this chapter. The procedures are intended to provide thorough, orderly, and expeditious processing of development project applications.

§ 45-23-27 Applicability. – (a) Sections 45-23-25 – 45-23-74 and all local regulations are applicable in all of the following instances:

(1) In all cases of subdivision of land, including re-subdivision, as defined in **§ 45-23-32**, all provisions of §§ 45-23-25 – 45-23-74 apply;

(2) In all cases of land development projects, as provided for in **§ 45-24-47** of the Zoning Enabling Act of 1991, where a municipality has allowed for the land development projects in its local zoning ordinance; and/or

(3) In all cases of development plan review, as provided for in **§ 45-24-49** of the Zoning Enabling Act of 1991, where a municipality has established, within their zoning ordinance, the procedures for planning board review of applications.

(b) Plats required.

(1) All activity defined as subdivision requires a new plat, drawn to the specifications of the local regulations, and reviewed and approved by the planning board or its agents as provided in this chapter; and

(2) Prior to recording, the approved plat shall be submitted for signature and recording as specified in **§ 45-23-64**.

§ 45-23-28 Continuation of ordinances – Supersession – Relation to other statutes. – (a) Any land development and subdivision review ordinance, regulation or rule, or amendment, enacted after December 31, 1994 shall conform to the provisions of this chapter. All lawfully adopted land development and subdivision review ordinances, regulations, and rules shall be brought into conformance with this chapter by December 31, 1995.

(b) All subdivision ordinances, regulations or rules adopted under authority of **§§ 45-23-1 through 45-23-24**, or any special subdivision enabling act that is in effect on July 21, 1992 remains in full force and effect until December 31, 1995, unless amended earlier so as to conform to the provisions of this chapter.

(c) Sections 45-23-1 through 45-23-24 and all special subdivision enabling acts in effect on July 21, 1992 are repealed effective December 31, 1995.

(d) Nothing contained in this chapter and no local ordinance, rule or regulation adopted under this chapter impairs the validity of any plat legally recorded prior to the effective date of the ordinance, rule or regulation.

§ 45-23-29 Legislative findings and intent. – (a) The general assembly recognizes and affirms in §§ 45-23-25 – 45-23-74 that the findings and goals stated in §§ 45-22.2-3 et seq. and 45-24-27 et seq., known as the Rhode Island Comprehensive Planning and Land Use Regulation Act and the Rhode Island Zoning Enabling Act of 1991, respectively, present findings and goals with which local regulations must be consistent.

(b) The general assembly further finds that:

(1) The subdivision enabling statutes contained in §§ 45-23-1 through 45-23-24, hereby repealed as of December 31, 1995, have been enacted in a series of separate actions over many years and do not provide for all the elements presently necessary for proper municipal review and approval of land development and subdivision projects;

(2) The character of land development and subdivision, and the related public and private services, have changed substantially in recent years;

(3) The responsibilities of the local governments in regulating land development and subdivision have changed, increased in complexity, and expanded to include additional areas of concern;

(4) State and federal laws increasingly require the interaction of local land development regulatory authorities with those of the federal and state agencies and adjacent municipalities;

(5) Not all instances of land development or subdivision are sufficiently reviewed prior to recording or construction, resulting in unwarranted environmental impacts, financial impacts on private individuals and communities, and inappropriate design;

(6) At present the cities and town throughout the state each establish their own procedures for review, approval, recording, and enforcement of land development and subdivision projects;

(7) It is necessary to provide for review and approval of land development projects within the subdivision review and approval procedures, as specified in the Rhode Island Zoning Enabling Act of 1991 (§ 45-24-27 et seq.); and

(8) It is necessary to require that the regulations and standards for all land development projects and subdivisions be sufficiently definite to provide clear direction for development design and construction and to satisfy the requirements for due process for all applicants for development approval.

(c) Therefore, it is the intent of the general assembly:

(1) That the land development and subdivision enabling authority contained in this chapter provide all cities and towns with the ability to adequately address the present and future needs of the communities;

(2) That the land development and subdivision enabling authority contained in this chapter require each city and town to develop land development and subdivision regulations in accordance with the community comprehensive plan, capital improvement plan, and zoning ordinance and to ensure the consistency of all local development regulations;

(3) That certain local procedures for review and approval of land development and subdivision are the same in every city and town;

(4) That the local procedure for integrating the approvals of state regulatory agencies into the local review and approval process for land development and subdivision is the same in every city and town; and

(5) That all proposed land developments and subdivisions are reviewed by local officials, following a standard process, prior to recording in local land evidence records.

§ 45-23-30 General purposes of land development and subdivision review ordinances, regulations and rules. – Land development and subdivision review ordinances, regulations and rules shall be developed and maintained in accordance with this chapter and with a comprehensive plan which complies with chapter 22.2 of this title and a zoning ordinance which complies with § 45-24-27 et seq. Local regulations shall address the following purposes:

(1) Providing for the orderly, thorough and expeditious review and approval of land developments and subdivisions;

(2) Promoting high quality and appropriate design and construction of land developments and subdivisions;

(3) Promoting the protection of the existing natural and built environment and the mitigation of all significant negative impacts of any proposed development on the existing environment;

(4) Promoting design of land developments and subdivisions which are well-integrated with the surrounding neighborhoods with regard to natural and built features, and which concentrate development in areas which can best support intensive use by reason of natural characteristics and existing infrastructure;

(5) Encouraging local design and improvement standards to reflect the intent of the community comprehensive plans with regard to the physical character of the various neighborhoods and districts of the municipality;

(6) Promoting thorough technical review of all proposed land developments and subdivisions by appropriate local officials;

(7) Encouraging local requirements for dedications of public land, impact mitigation, and payment-in-lieu thereof, to be based on clear documentation of needs and to be fairly applied and administered; and

(8) Encouraging the establishment and consistent application of procedures for local record-keeping on all matters of land development and subdivision review, approval and construction.

§ 45-23-31 Purpose and consistency with comprehensive plan, zoning ordinance and other local land use regulations. – (a) Local regulations adopted pursuant to this chapter shall provide a statement of purposes. These purposes shall be consistent with purposes stated in chapters 22.2 and 24 of this title concerning comprehensive plans and zoning ordinances, respectively, as well as with § 45-23-30. The local regulations shall also be consistent with the adopted local comprehensive plan, local zoning ordinance and all other duly adopted local development regulations.

(b) In the instance of uncertainty in the construction or application of any section of the local regulations, the local regulations shall be construed in a manner that will further the implementation of, and not be contrary to, the goals and policies and applicable elements of the comprehensive plan. Furthermore, the local regulations shall be construed in a manner which is consistent with the legislative findings, intents, and purposes of §§ 45-23-25 – 45-23-74.

§ 45-23-32 Definitions. – Where words or phrases used in this chapter are defined in the definitions section of either the Rhode Island Comprehensive Planning and Land Use Regulation Act, § 45-22.2-4, or the Rhode Island Zoning Enabling Act of 1991, § 45-24-31, they have the meanings stated in those acts. Additional words and phrases may be defined in local ordinances, regulations and rules under this act. The words and phrases defined in this section, however, shall be controlling in all local ordinances, regulations, and rules created under this chapter. See also § 45-23-34. In addition, the following words and phrases have the following meanings:

(1) Administrative officer. The municipal official designated by the local regulations to administer the land development and subdivision regulations and to coordinate with local boards and commissions, municipal staff and state agencies. The administrative officer may be a member of, or the chair, of the planning board, or an appointed official of the municipality. See § 45-23-55.

(2) Administrative subdivision. Re-subdivision of existing lots which yields no additional lots for development, and involves no creation or extension of streets. The re-subdivision only involves divisions, mergers, mergers and division, or adjustments of boundaries of existing lots.

(3) Board of appeal. The local review authority for appeals of actions of the administrative officer and the planning board on matters of land development or subdivision, which shall be the local zoning board of review constituted as the board of appeal. See § 45-23-57.

(4) Bond. See improvement guarantee.

(5) Buildable lot. A lot where construction for the use(s) permitted on the site under the local zoning ordinance is considered practicable by the planning board, considering the physical constraints to development of the site as well as the requirements of the pertinent federal, state and local regulations. See § 45-23-60(4).

(6) Certificate of completeness. A notice issued by the administrative officer informing an applicant that the application is complete and meets the requirements of the municipality's regulations, and that the applicant may proceed with the approval process.

(7) Concept plan. A drawing with accompanying information showing the basic elements of a proposed land development plan or subdivision as used for pre-application meetings and early discussions, and classification of the project within the approval process.

(8) Consistency with the comprehensive plan. A requirement of all local land use regulations which means that all these regulations and subsequent actions are in accordance with the public policies arrived at through detailed study and analysis and adopted by the municipality as the comprehensive community plan as specified in § 45-22.2-3.

(9) Dedication, fee-in-lieu-of. Payments of cash which are authorized in the local regulations when requirements for mandatory dedication of land are not met because of physical conditions of the site or other reasons. The conditions under which the payments will be allowed and all formulas for

calculating the amount shall be specified in advance in the local regulations. See § 45-23-47.

(10) Development regulation. Zoning, subdivision, land development plan, development plan review, historic district, official map, flood plain regulation, soil erosion control or any other governmental regulation of the use and development of land.

(11) Division of land. A subdivision.

(12) Environmental constraints. Natural features, resources, or land characteristics that are sensitive to change and may require conservation measures or the application of special development techniques to prevent degradation of the site, or may require limited development, or in certain instances, may preclude development. See also physical constraints to development.

(13) Final plan. The final stage of land development and subdivision review. See § 45-23-43.

(14) Final plat. The final drawing(s) of all or a portion of a subdivision to be recorded after approval by the planning board and any accompanying material as described in the community's regulations and/or required by the planning board.

(15) Floor area, gross. See R.I. State Building Code.

(16) Governing body. The body of the local government, generally the city or town council, having the power to adopt ordinances, accept public dedications, release public improvement guarantees, and collect fees.

(17) Improvement. Any natural or built item which becomes part of, is placed upon, or is affixed to, real estate.

(18) Improvement guarantee. A security instrument accepted by a municipality to ensure that all improvements, facilities, or work required by the land development and subdivision regulations, or required by the municipality as a condition of approval, will be completed in compliance with the approved plans and specifications of a development. See § 45-23-46.

(19) Local regulations. The land development and subdivision review regulations adopted under the provisions of this act. For purposes of clarification, throughout this act, where reference is made to local regulations, it is to be understood as the land development and subdivision review regulations and all related ordinances and rules properly adopted pursuant to this chapter.

(20) Maintenance guarantee. Any security instrument which may be required and accepted by a municipality to ensure that necessary improvements will function as required for a specific period of time. See improvement guarantee.

(21) Major land development plan. Any land development plan not classified as a minor land development plan.

(22) Major subdivision. Any subdivision not classified as either an administrative subdivision or a minor subdivision.

(23) Master plan. An overall plan for a proposed project site outlining general, rather than detailed, development intentions. It describes the basic parameters of a major development proposal, rather than giving full engineering details. Required in major land development or major subdivision review. See § 45-23-40.

(24) Minor land development plan. A development plan for a residential project as defined in local regulations, provided that the development does not require waivers or modifications as specified in this act. All nonresidential land development projects are considered major land development plans.

(25) Minor subdivision. A plan for a subdivision of land consisting of five (5) or fewer units or lots, provided that the subdivision does not require waivers or modifications as specified in this chapter.

(26) Modification of requirements. See [§ 45-23-62](#).

(27) Parcel. A lot, or contiguous group of lots in single ownership or under single control, and usually considered a unit for purposes of development. Also referred to as a tract.

(28) Parking area or lot. All that portion of a development that is used by vehicles, the total area used for vehicular access, circulation, parking, loading and unloading.

(29) Permitting authority. The local agency of government specifically empowered by state enabling law and local ordinance to hear and decide on specific matters pertaining to local land use.

(30) Phased development. Development, usually for large-scale projects, where construction of public and/or private improvements proceeds by sections subsequent to approval of a master plan for the entire site. See [§ 45-23-48](#).

(31) Physical constraints to development. Characteristics of a site or area, either natural or man-made, which present significant difficulties to construction of the uses permitted on that site, or would require extraordinary construction methods. See also environmental constraints.

(32) Planning board. The official planning agency of a municipality, whether designated as the plan commission, planning commission, plan board, or as otherwise known.

(33) Plat. A drawing or drawings of a land development or subdivision plan showing the location, boundaries, and lot lines of individual properties, as well as other necessary information as specified in the local regulations.

(34) Pre-application conference. An initial meeting between developers and municipal representatives which affords developers the opportunity to present their proposals informally and to receive comments and directions from the municipal officials and others. See [§ 45-23-35](#).

(35) Preliminary plan. The required stage of land development and subdivision review which requires detailed engineered drawings and all required state and federal permits. See [§ 45-23-41](#).

(36) Public improvement. Any street or other roadway, sidewalk, pedestrian way, tree, lawn, off-street parking area, drainage feature, or other facility for which the local government or other governmental entity either is presently responsible, or will ultimately assume the responsibility for maintenance and operation upon municipal acceptance.

(37) Public informational meeting. A meeting of the planning board or governing body preceded by a notice, open to the public and at which the public is heard.

(38) Re-subdivision. Any change of an approved or recorded subdivision plat or in a lot recorded in the municipal land evidence records, or that affects the lot lines of any areas reserved for public use, or that affects any map or plan legally recorded prior to the adoption of the local land development and subdivision regulations. For the purposes of this act any action constitutes a subdivision.

(39) Slope of land. The grade, pitch, rise or incline of the topographic landform or surface of the ground.

(40) Storm water detention. A provision for storage of storm water runoff and the controlled release of the runoff during and after a flood or storm.

(41) Storm water retention. A provision for storage of storm water runoff.

(42) Street. A public or private thoroughfare used, or intended to be used, for passage or travel by motor vehicles. Streets are further classified by the functions they perform. See street classification.

(43) Street, access to. An adequate and permanent way of entering a lot. All lots of record shall have access to a public street for all vehicles normally associated with the uses permitted for that lot.

(44) Street, alley. A public or private thoroughfare primarily designed to serve as secondary access to the side or rear of those properties whose principal frontage is on some other street.

(45) Street, cul-de-sac. A local street with only one outlet and having an appropriate vehicular turnaround, either temporary or permanent, at the closed end.

(46) Street, limited access highway. A freeway or expressway providing for through traffic. Owners or occupants of abutting property on lands and other persons have no legal right to access, except at the points and in the manner as may be determined by the public authority having jurisdiction over the highway.

(47) Street, private. A thoroughfare established as a separate tract for the benefit of multiple, adjacent properties and meeting specific, municipal improvement standards. This definition does not apply to driveways.

(48) Street, public. All public property reserved or dedicated for street traffic.

(49) Street, stub. A portion of a street reserved to provide access to future development, which may provide for utility connections.

(50) Street classification. A method of roadway organization which identifies a street hierarchy according to function within a road system, that is, types of vehicles served and anticipated volumes, for the purposes of promoting safety, efficient land use and the design character of neighborhoods and districts. Local classifications use the following as major categories:

(a) Arterial. A major street that serves as an avenue for the circulation of traffic into, out of, or around the municipality and carries high volumes of traffic.

(b) Collector. A street whose principal function is to carry traffic between local streets and arterial streets but that may also provide direct access to abutting properties.

(c) Local. Streets whose primary function is to provide access to abutting properties.

(51) Subdivider. Any person who (1) having an interest in land, causes it, directly or indirectly, to be divided into a subdivision or who (2) directly or indirectly sells, leases, or develops, or offers to sell, lease, or develop, or advertises to sell, lease, or develop, any interest, lot, parcel, site, unit, or plat in a subdivision, or who (3) engages directly or through an agent in the business of selling, leasing, developing, or offering for sale, lease, or development a subdivision or any interest, lot, parcel, site, unit,

or plat in a subdivision.

(52) Subdivision. The division or re-division, of a lot, tract or parcel of land into two or more lots, tracts, or parcels. Any adjustment to existing lot lines of a recorded lot by any means is considered a subdivision. All re-subdivision activity is considered a subdivision. The division of property for purposes of financing constitutes a subdivision.

(53) Technical review committee. A committee appointed by the planning board for the purpose of reviewing, commenting, and making recommendations to the planning board with respect to approval of land development and subdivision applications.

(54) Temporary improvement. Improvements built and maintained by a developer during construction of a development project and prior to release of the improvement guarantee, but not intended to be permanent.

(55) Vested rights. The right to initiate or continue the development of an approved project for a specified period of time, under the regulations that were in effect at the time of approval, even if, after the approval, the regulations change prior to the completion of the project.

(56) Waiver of requirements. See [§ 45-23-62](#).

§ 45-23-33 General provisions – Required contents of local regulations. – The local regulations consist of the regulations and other text, together with charts, graphs, appendices and other explanatory material. All local regulations include, at a minimum, the elements listed below and as further described in this chapter:

(1) Statement of enabling authority for land development and subdivision derived from [§ 45-23-25](#) et seq.;

(2) Statement of the city or town enabling ordinance as specified in [§ 45-23-51](#);

(3) Statement of purpose and consistency with the comprehensive plan, the zoning ordinance and other federal, state and local land use regulations;

(4) Definitions;

(5) General provisions;

(6) Special provisions;

(7) Procedures for review and approval of plats and plans;

(8) Procedures for recording of plats and plans;

(9) Procedures for guarantees of public improvements;

(10) Procedures for waivers and modifications;

(11) Procedures for enforcement and penalties;

(12) Procedures for the adoption of the regulations and amendments;

(13) Procedures for the administration of the regulations and amendments;

- (14) Procedures for appeals;
- (15) Design and public improvement standards for all districts within the municipality;
- (16) Construction specifications for improvement standards; and
- (17) Specification of all application documents and oth

§ 45-23-34 General provisions – Definitions. – Local regulations adopted pursuant to this chapter shall provide definitions for words or phrases contained in the regulations as is deemed appropriate. Where words or phrases used in any local regulations, whether or not defined in those regulations, are substantially similar to words or phrases defined in § 45-23-32 of this chapter, or § 45-22.2-4 of the Comprehensive Planning and Land Use Act or § 45-24-31 of the Zoning Enabling Act of 1991 the words or phrases shall be construed according to the definitions provided in those sections of the law.

§ 45-23-35 General provisions – Pre-application meetings and concept review. – (a) One or more pre-application meetings shall be held for all major land development or subdivision applications. Pre-application meetings may be held for administrative and minor applications, upon request of either the municipality or the applicant. Pre-application meetings allow the applicant to meet with appropriate officials, boards and/or commissions, planning staff, and, where appropriate, state agencies, for advice as to the required steps in the approvals process, the pertinent local plans, ordinances, regulations, rules and procedures and standards which may bear upon the proposed development project.

(b) At the pre-application stage the applicant may request the planning board or the technical review committee for an informal concept plan review for a development. The purpose of the concept plan review is also to provide planning board or technical review committee input in the formative stages of major subdivision and land development concept design.

(c) Applicants seeking a pre-application meeting or an informal concept review shall submit general, conceptual materials in advance of the meeting(s) as requested by municipal officials.

(d) Pre-application meetings aim to encourage information sharing and discussion of project concepts among the participants. Pre-application discussions are intended for the guidance of the applicant and are not considered approval of a project or its elements.

(e) Provided that at least one pre-application meeting has been held for major land development or subdivision application or sixty (60) days has elapsed from the filing of the pre-application submission and no pre-application meeting has been scheduled to occur within those sixty (60) days, nothing shall be deemed to preclude an applicant from thereafter filing and proceeding with an application for a land development or subdivision project in accordance with § 45-23-36.

§ 45-23-36 General provisions – Application for development and certification of completeness. – (a) *Classification.* The administrative officer shall advise the applicant as to which approvals are required and the appropriate board for hearing an application for a land development or subdivision project. The following types of applications, as defined in § 45-23-32, may be filed:

- (1) Administrative subdivision;
- (2) Minor subdivision or minor land development plan; and

(3) Major subdivision or major land development plan.

(b) *Certification of a complete application.* An application shall be complete for purposes of commencing the applicable time period for action when so certified by the administrative officer. Every certification of completeness required by this chapter shall be in writing. In the event the certification of the application is not made within the time specified in this chapter for the type of plan, the application is deemed complete for purposes of commencing the review period unless the application lacks information required for these applications as specified in the local regulations and the administrative officer has notified the applicant, in writing, of the deficiencies in the application.

(c) Notwithstanding subsections (a) and (b) of this section, the planning board may subsequently require correction of any information found to be in error and submission of additional information specified in the regulations but not required by the administrative officer prior to certification, as is necessary to make an informed decision.

(d) Where the review is postponed with the consent of the applicant, pending further information or revision of information, the time period for review is stayed and resumes when the administrative officer or the planning board determines that the required application information is complete.

§ 45-23-37 General provisions – Administrative subdivision. – (a) Any applicant requesting approval of a proposed administrative subdivision, as defined in this chapter, shall submit to the administrative officer the items required by the local regulations.

(b) The application shall be certified, in writing, as complete or incomplete by the administrative officer within a fifteen (15) day period from the date of its submission according to the provisions of [§ 45-23-36\(b\)](#).

(c) Review process:

(1) Within fifteen (15) days of certification of completeness, the administrative officer, or the technical review committee, shall review the application and approve, deny or refer it to the planning board with recommendations. The officer or committee shall report its actions to the planning board at its next regular meeting, to be made part of the record.

(2) If no action is taken by the administrative officer or the technical review committee within the fifteen (15) days, the application shall be placed on the agenda of the next regular planning board meeting.

(d) If referred to the planning board, the board shall consider the application and the recommendations of the administrative officer and/or the technical review committee and either approve, approve with conditions, or deny the application within sixty-five (65) days of certification of completeness. Failure of the planning board to act within the prescribed period constitutes approval of the administrative subdivision plan and a certificate of the administrative officer as to the failure of the planning board or committee to act within the required time and the resulting approval shall be issued on request of the applicant.

(e) Denial of an application by the administrative officer and/or the technical review committee is not appealable and requires the plan to be submitted as a minor subdivision application.

(f) Any approval of an administrative subdivision shall be evidenced by a written decision which shall be filed and posted in the office of the city or town clerk.

(g) Approval of an administrative subdivision expires ninety (90) days from the date of approval unless within that period a plat in conformity with that approval is submitted for signature and recording as specified in § 45-23-64.

§ 45-23-38 General provisions – Minor land development and minor subdivision review. – (a) *Review stages.* Minor plan review consists of two (2) stages, preliminary and final; provided, that if a street creation or extension is involved, a public hearing is required. The planning board may combine the approval stages, providing requirements for both stages are met by the applicant to the satisfaction of the planning officials.

(b) *Submission requirements.* Any applicant requesting approval of a proposed minor subdivision or minor land development, as defined in this chapter, shall submit to the administrative officer the items required by the local regulations.

(c) *Certification.* The application shall be certified, in writing, complete or incomplete by the administrative officer within twenty-five (25) days or within fifteen (15) days if no street creation or extension is required, according to the provisions of § 45-23-36(b). The running of the time period set forth in this section 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.

(d) *Technical review committee.* The technical review committee, if established, will review the application and will comment and make recommendations to the planning board. The application will be referred to the planning board as a whole if there is no technical review committee. When reviewed by a technical review committee:

(1) If the land development or subdivision plan is approved by a majority of the committee members, the application is forwarded to the planning board with a recommendation for preliminary plan approval without further review.

(2) If the plan is not approved by a majority vote of the committee members, the minor land development and subdivision application is referred to the planning board.

(e) *Re-assignment to major review.* The planning board may re-assign a proposed minor project to major review only when the planning board is unable to make the positive findings required in § 45-23-60.

(f) *Decision.* If no street creation or extension is required, the planning board will approve, deny, or approve with conditions, the preliminary plan within sixty-five (65) days of certification of completeness, or within any further time that is agreed to by the applicant and the board, according to the requirements of § 45-23-63. If a street extension or creation is required, the planning board will hold a public hearing prior to approval according to the requirements in § 45-23-42 and will approve, deny, or approve with conditions, the preliminary plan within ninety-five (95) days of certification of completeness, or within any specified time that is agreed to by the applicant and the board, according to the requirements of § 45-23-63.

(g) *Failure to act.* Failure of the planning board to act within the period prescribed constitutes approval of the preliminary plan and a certificate of the administrative officer as to the failure of the planning board to act within the required time and the resulting approval will be issued on request of

the application.

(h) *Final plan.* The planning board may delegate final plan review and approval to either the administrative officer or the technical review committee. The officer or committee will report its actions, in writing to the planning board at its next regular meeting, to be made part of the record.

(i) *Expiration of approval.* Approval of a minor land development or subdivision plan expires ninety (90) days from the date of approval unless within that period a plat or plan, in conformity with approval, and as defined in this act, is submitted for signature and recording as specified in § 45-23-64. Validity may be extended for a longer period, for cause shown, if requested by the application in writing, and approved by the planning board.

§ 45-23-39 General provisions – Major land development and major subdivision review stages. – (a) Major plan review is required of all applications for land development and subdivision approval subject to this chapter, unless classified as an administrative subdivision or as a minor land development or a minor subdivision.

(b) Major plan review consists of three stages of review, master plan, preliminary plan and final plan, following the pre-application meeting(s) specified in § 45-23-35. Also required is a public informational meeting and a public meeting.

(c) The planning board may vote to combine review stages and to modify and/or waive requirements as specified in § 45-23-62. Review stages may be combined only after the planning board determines that all necessary requirements have been met by the applicant.

§ 45-23-40 General provisions – Major land development and major subdivision – Master plan. – (a) Submission requirements.

(1) The applicant shall first submit to the administrative officer the items required by the local regulations for master plans.

(2) Requirements for the master plan and supporting material for this phase of review include, but are not limited to: information on the natural and built features of the surrounding neighborhood, existing natural and man-made conditions of the development site, including topographic features, the freshwater wetland and coastal zone boundaries, the floodplains, as well as the proposed design concept, proposed public improvements and dedications, tentative construction phasing, and potential neighborhood impacts.

(3) Initial comments will be solicited from (i) local agencies including, but not limited to, the planning department, the department of public works, fire and police departments, the conservation and recreation commissions; (ii) adjacent communities; (iii) state agencies, as appropriate, including the departments of environmental management and transportation, and the coastal resources management council; and (iv) federal agencies, as appropriate. The administrative officer shall coordinate review and comments by local officials, adjacent communities, and state and federal agencies.

(b) *Certification.* The application must be certified in writing, complete or incomplete by the administrative officer within sixty (60) days, according to the provisions of § 45-23-36(b). 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.

(c) Technical review committee. The technical review committee, if established, shall review the application and shall comment and make recommendations to the planning board.

(d) Informational meeting.

(1) A public informational meeting will be held prior to the planning board decision on the master plan, unless the master plan and preliminary plan approvals are being combined, in which case the public informational meeting is optional, based upon planning board determination.

(2) Public notice for the informational meeting is required and must be given at least seven (7) days prior to the date of the meeting in a newspaper of general circulation within the municipality. Postcard notice must be mailed to the applicant and to all property owners within the notice area, as specified by local regulations.

(3) At the public informational meeting the applicant will present the proposed development project. The planning board must allow oral and written comments from the general public. All public comments are to be made part of the public record of the project application.

(e) Decision. The planning board shall, within one hundred and twenty (120) days of certification of completeness, or within a further amount of time that may be consented to by the applicant, approve of the master plan as submitted, approve with changes and/or conditions, or deny the application, according to the requirements of [§ 45-23-63](#).

(f) Failure to act. Failure of the planning board to act within the prescribed period constitutes approval of the master plan, and a certificate of the administrative officer as to the failure of the planning board to act within the required time and the resulting approval will be issued on request of the applicant.

(g) Vesting.

(1) The approved master plan is vested for a period of two (2) years, with the right to extend for two (2) one year extensions upon written request by the applicant, who must appear before the planning board for the annual review. Thereafter, vesting may be extended for a longer period, for good cause shown, if requested by the applicant, in writing, and approved by the planning board. Master plan vesting includes the zoning requirements, conceptual layout and all conditions shown on the approved master plan drawings and supporting materials.

(2) The initial four (4) year vesting for the approved master plan constitutes the vested rights for the development as required in [§ 45-24-44](#).

§ 45-23-41 General provisions – Major land development and major subdivision – Preliminary plan. – (a) *Submission requirements.*

(1) The applicant shall first submit to the administrative officer the items required by the local regulations for preliminary plans.

(2) Requirements for the preliminary plan and supporting materials for this phase of the review

include, but are not limited to: engineering plans depicting the existing site conditions, engineering plans depicting the proposed development project, a perimeter survey, all permits required by state or federal agencies prior to commencement of construction, including permits related to freshwater wetlands, the coastal zone, floodplains, preliminary suitability for individual septic disposal systems, public water systems, and connections to state roads.

(3) At the preliminary plan review phase, the administrative officer shall solicit final written comments and/or approvals of the department of public works, the city or town engineer, the city or town solicitor, other local government departments, commissions, or authorities as appropriate.

(4) Prior to approval of the preliminary plan, copies of all legal documents describing the property, proposed easements and rights-of-way.

(b) *Certification.* The application will be certified as complete or incomplete by the administrative officer within sixty (60) days, according to the provisions of § 45-23-36(b). 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 shall the administrative officer be required to certify a corrected submission as complete or incomplete less than fourteen (14) days after its resubmission.

(c) *Technical review committee.* The technical review committee, if established, shall review the application and shall comment and make recommendations to the planning board.

(d) *Public hearing.* Prior to a planning board decision on the preliminary plan, a public hearing, which adheres to the requirements for notice described in § 45-23-42, must be held.

(e) *Public improvement guarantees.* Proposed arrangements for completion of the required public improvements, including construction schedule and/or financial guarantees shall be reviewed and approved by the planning board at preliminary plan approval.

(f) *Decision.* A complete application for a major subdivision or development plan shall be approved, approved with conditions or denied, in accordance with the requirements of §§ 45-23-60 and 45-23-63, within one hundred twenty (120) days of the date when it is certified complete, or within a further amount of time that may be consented to by the developer.

(g) *Failure to act.* Failure of the planning board to act within the prescribed period constitutes approval of the preliminary plan and a certificate of the administrative officer as to the failure of the planning board to act within the required time and the resulting approval shall be issued on request of the applicant.

(h) *Vesting.* The approved preliminary plan is vested for a period of two (2) years with the right to extend for two (2) one year extensions upon written request by the applicant, who must appear before the planning board for each annual review and provide proof of valid state or federal permits as applicable. Thereafter, vesting may be extended for a longer period, for good cause shown, if requested, in writing by the applicant, and approved by the planning board. The vesting for the preliminary plan approval includes all general and specific conditions shown on the approved preliminary plan drawings and supporting material.

§ 45-23-42 General provisions – Major land development and major subdivision – Public

hearing and notice. – (a) A public hearing is required for a major land development project or a major subdivision or where a street extension or creation requires a public hearing for a minor land development project or minor subdivision.

(b) *Notice requirements.* Public notice of the hearing shall be given at least fourteen (14) days prior to the date of the hearing in a newspaper of general circulation within the municipality following the municipality's usual and customary practices for this kind of advertising. Notice shall be sent to the applicant and to each owner within the notice area, by certified mail, return receipt requested, of the time and place of the hearing not less than ten (10) days prior to the date of the hearing. Notice shall also be sent to any individual or entity holding a recorded conservation or preservation restriction on the property that is the subject of the application. The notice shall also include the street address of the subject property, or if no street address is available, the distance from the nearest existing intersection in tenths (1/10's) of a mile. Local regulations may require a supplemental notice that an application for development approval is under consideration be posted at the location in question. The posting is for informational purposes only and does not constitute required notice of a public hearing.

(c) *Notice area.*

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

(2) *Watersheds.* Additional notice within watersheds shall also be sent as required in [§ 45-23-53\(b\) and \(c\)](#).

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

(d) *Notice cost.* The cost of all notice shall be borne by the applicant.

§ 45-23-43 General provisions – Major land development and major subdivision – Final plan.

– (a) *Submission requirements.*

(1) The applicant shall submit to the administrative officer the items required by the local regulations for the final plan, as well as all material required by the planning board when the application was given preliminary approval.

(2) Arrangements for completion of the required public improvements, including construction schedule and/or financial guarantees.

(3) Certification by the tax collector that all property taxes are current.

(4) For phased projects, the final plan for phases following the first phase, shall be accompanied by copies of as-built drawings not previously submitted of all existing public improvements for prior phases.

(b) *Certification.* The application for final plan approval shall be certified complete or incomplete by the administrative officer in writing, within twenty-five (25) days, according to the provisions of [§ 45-23-36\(b\)](#). This time period may be extended to forty-five (45) days by written notice from

the administrative officer to the applicant where the final plans contain changes to or elements not included in the preliminary plan approval. The running of the time period set forth herein shall be deemed stopped upon the issuance of a certificate of incompleteness of the application by the administrative officer and shall recommence upon the resubmission of a corrected application by the applicant. However, in no event shall 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 complete and does not require submission to the planning board as per subsection (c) below, the final plan shall be considered approved.

(c) *Referral to the planning board.* If the administrative officer determines that an application for final approval does not meet the requirements set by local regulations or by the planning board at preliminary approval, the administrative officer shall refer the final plans to the planning board for review. The planning board shall, within forty-five (45) days after the certification of completeness, or within a further amount of time that may be consented to by the applicant, approve or deny the final plan as submitted.

(d) *Failure to act.* Failure of the planning board to act within the prescribed period constitutes approval of the final plan and a certificate of the administrative officer as to the failure of the planning board to act within the required time and the resulting approval shall be issued on request of the applicant.

(e) *Expiration of approval.* The final approval of a major subdivision or land development project expires one year from the date of approval with the right to extend for one year upon written request by the applicant, who must appear before the planning board for the annual review, unless, within that period, the plat or plan has been submitted for signature and recording as specified in § 45-23-64. Thereafter, the planning board may, for good cause shown, extend the period for recording for an additional period.

(f) *Acceptance of public improvements.* Signature and recording as specified in § 45-23-64 constitute the acceptance by the municipality of any street or other public improvement or other land intended for dedication. Final plan approval shall not impose any duty upon the municipality to maintain or improve those dedicated areas until the governing body of the municipality accepts the completed public improvements as constructed in compliance with the final plans.

(g) *Validity of recorded plans.* The approved final plan, once recorded, remains valid as the approved plan for the site unless and until an amendment to the plan is approved under the procedure stated in § 45-23-65, or a new plan is approved by the planning board.

§ 45-23-44 General provisions – Physical design requirements. – (a) All local regulations shall specify, through reasonable, objective standards and criteria, all physical design requirements for subdivisions and land development projects which are to be reviewed and approved pursuant to the regulations. Regulations shall specify all requirements and policies for subdivisions and land development projects which are not contained in the municipality's zoning ordinance.

(b) Nothing in this section shall be construed to restrict a municipality's right, within state and local regulations, to establish its own minimum lot size per zoning district in its town or city.

(c) The slope of land shall not be excluded from the calculation of the buildable lot area or the minimum lot size, or in the calculation of the number of buildable lots or units.

(d) The requirements and policies may include, but are not limited to, requirements and policies for rights-of-way, open space, landscaping, connections of proposed streets and drainage systems with those of the surrounding neighborhood, public access through property to adjacent public property, and the relationship of proposed developments to natural and man-made features of the surrounding neighborhood.

(e) The regulations shall specify all necessary findings, formulas for calculations and procedures for meeting the requirements and policies. These requirements and policies apply to all subdivisions and land development projects reviewed and/or administered under the local regulations.

§ 45-23-45 General provisions – Public design and improvement standards. – (a) Public design and improvement standards for development projects shall be specified, through reasonable, objective standards and criteria, in the design and improvement standards section of the local regulations. Appropriate public improvement standards shall be specified for each area or district of the municipality. Standards may include, but are not limited to, specifications for rights-of-way, streets, sidewalks, lighting, landscaping, public access, utilities, drainage systems, fire protection, and soil erosion control.

(b) All public improvements required in a land development project or subdivision by a municipality shall reflect the physical character and design for that district which is specified by the municipality's adopted comprehensive plan. Public improvement requirements and standards need not be the same in all areas or districts of a municipality. The technical details of the improvement standards may be contained in an appendix to the local regulations but shall be considered part of the regulations.

§ 45-23-46 General provisions – Construction and/or improvement guarantees. – (a) The local regulations shall require planning board approval of agreements for the completion of all required public improvements prior to final plan approval in the form of (1) completion of actual construction of all improvements, (2) improvement guarantees, or (3) combination thereof.

(b) Where improvements are constructed without a financial guarantee, the work is to be completed prior to final approval. All construction shall be inspected and approved under the direction of the administrative officer and according to local regulations.

(c) Improvement guarantees shall be in an amount and with all necessary conditions to secure for the municipality the actual construction and complete installation of all the required improvements, within the period specified by the planning board. The amount shall be based on actual cost estimates for all required public improvements and these estimates shall be reviewed and approved by the planning board. The board may fix the guarantee in a reasonable amount in excess of the estimated costs to anticipate for economic or construction conditions. Local regulations may include provisions for the review and/or upgrade of guarantees.

(d) The security shall be in the form of a financial instrument acceptable to the approving authority and shall enable the municipality to gain timely access to the secured funds, for cause.

(e) The local regulations shall establish procedures for the setting of improvement guarantee amounts, for inspections of improvements, for acceptance of improvements by the municipality and for the release of the improvement guarantees to the applicant. Procedures may include provisions for partial releases of the guarantees as stages of the improvements are completed, inspected and approved under the coordination of the administrative officer and reported to the planning board.

(f) In the cases of developments and subdivisions which are being approved and constructed in phases, the planning board shall specify improvement guarantee requirements related to each particular phase.

(g) The planning board may also require maintenance guarantees to be provided for a one year period subsequent to completion, inspection and acceptance of the improvement(s) unless there are extenuating circumstances.

(h) Procedures for the acceptance of required improvements shall stipulate that all improvements, once inspected and approved, shall be accepted by the municipality or other appropriate municipal agency for maintenance and/or part of the municipal system.

(i) The municipality is granted the power to enforce the guarantees by all appropriate legal and equitable remedies.

§ 45-23-47 General provisions – Requirements for dedication of public land – Public improvements and fees. – Where a municipality requires, as a condition of approval of a proposed land development or subdivision project, dedication of land to the public, public improvements, payment-in-lieu of dedication or construction, or payment to mitigate the impacts of a proposed project, local regulations must require the following:

(1) All required public improvements must reflect the character defined for that neighborhood or district by the community's comprehensive plan;

(2) The need for all dedications of land to the public and for payments-in-lieu of dedications must be clearly documented in the adopted plan of the community, i.e., the comprehensive plan and the capital improvement plan;

(3) No dedications of land to the public or payments-in-lieu of dedications may be required until the need for the dedications are identified and documented by the municipality, the land proposed for dedication is determined to be appropriate for the proposed use, and the formulas for calculating a payment-in-lieu of dedication have been established in the local regulations;

(4) All dedications, improvements, or payments-in-lieu of dedication or construction, for mitigation of identified negative impacts of proposed projects must meet the previously stated standards. Furthermore, the significant negative impacts of the proposed development on the existing conditions must be clearly documented. The mitigation required as a condition of approval must be related to the significance of the identified impact; and

(5) All payment-in-lieu of dedication or construction to mitigate the impacts of the proposed development shall be kept in restricted accounts and shall only be spent on the mitigation of the identified impacts for which it is required.

§ 45-23-48 Special provisions – Phasing of projects. – (a) A municipality may provide for the preliminary and final review stages, and for the construction of major land developments and subdivisions, to be divided into reasonable phases.

(b) When local regulations allow development phasing, the regulations must require the following:

(1) Approval of the entire site design first as a master plan. Thereafter the development plans may be submitted for preliminary and/or final review and/or approval by phase(s).

(2) General standards and regulations for determining physical limits of phases, completion schedules, and guarantees, for allowing progression to additional phases, for allowing two (2) or more phases to proceed in review or construction simultaneously, for interim public improvements or construction conditions, for changes to master or preliminary plans and may include other provisions as necessitated by local conditions.

(3) The master plan documents may contain information on the physical limits of the phases, the schedule and sequence of public improvement installation, improvement guarantees, and the work and completion schedules for approvals and construction of the phases.

(c) *Vesting*. The master plan remains vested as long as it can be proved, to the satisfaction of the planning board, that work is proceeding on either the approval stages or on the construction of the development as shown in the approved master plan documents. Vesting extends to all information shown on the approved master plan documents.

§ 45-23-49 Special provisions – Land development projects. – (a) If municipalities provide for land development projects, as defined in § 45-24-47 of the Rhode Island Zoning Enabling Act of 1991, the projects are subject to the local regulations.

(b) In these instances, the local regulations must include all requirements, procedures and standards necessary for proper review and approval of land development projects to ensure consistency with the intent and purposes of this chapter and with § 45-24-47 of the Rhode Island Zoning Enabling Act of 1991.

§ 45-23-49.1 Farmland residential compounds. – (a) The general assembly finds and declares that multiple dwelling units were historically common on farms because farming was a multi-generational way of life and because farm workers needed to be close to the land they worked; that this historical development pattern is centuries old, and that it is in the interest of the state to provide for the continuation of this development pattern as a means of preserving and enhancing agriculture and promoting sound development in rural areas of the state.

(b) Farmland residential compounds may be provided for by municipal ordinance as a minor land development project, consistent with the special provisions of this subdivision, which ordinances may treat farmland residential projects as a specific form of cluster development for purposes of zoning.

(1) Such farmland residential compounds shall only be allowed on agricultural operations, as defined in subsection 42-82-2(3), that have a net annual income of twenty thousand dollars (\$20,000) or more for the most recent three (3) consecutive years preceding the date of the application for the farmland residential compound, which income is directly attributable to said agricultural operations.

(2) Such farmland residential compounds shall be limited to one dwelling unit for the first twenty (20) acres and one dwelling unit for each additional twenty (20) acres to a maximum of five (5) dwelling units, which shall be allowable without subdivision of the farmland parcel into separate lots and without meeting frontage requirements.

(3) Any road necessary to provide access to the dwelling units shall be constructed in accordance with applicable standards for private roads and shall be owned and maintained by the agricultural operation.

(4) Water supply and waste water treatment (ISDS) for the farmland residential compound shall comply with standards for residential systems.

(c) The dwelling units of a farmland residential compound need not be located in a single area on the farm and may be constructed in phases consistent with the limitations and provisions set forth in subdivision (b) of this section.

(d) Approval of a farmland residential compound shall not affect eligibility to participate in programs for farmland preservation or for taxation of farm, forest and open space land.

(e) For any agricultural operation, farmland residential compounds shall be permitted only to the limits set forth in subdivision (b)(2) of this section; in the event that the agricultural operation is subsequently divided into two (2) or more agricultural operations, no additional farmland residential compound shall be permitted until ten (10) years after the date of the approval of the application for the prior farmland residential compound, and all of the requirements for a farmland residential compound shall apply to each farmland residential compound; in the event that the agricultural operation ceases and the farmland is subdivided, a parcel at least equal to the minimum residential lot size for the zone times the number of dwelling units in the farmland residential compound plus the road in which the farmland residential compound is located shall be dedicated to the farmland residential compound, which overall parcel shall include the water supply and waste water treatment systems for the farmland residential compound.

§ 45-23-50 Special provisions – Development plan review. – (a) Municipalities may provide for development plan review, as defined in **§ 45-24-49** of the Rhode Island Zoning Enabling Act of 1991, to be subject to part of the local regulations.

(b) In these instances, local regulations must include all requirements, procedures and standards necessary for proper review and recommendations of projects subject to development plan review to ensure consistency with the intent and purposes of this chapter and with **§ 45-24-49** of the Rhode Island Zoning Enabling Act of 1991.

§ 45-23-51 Local regulations – Authority to create and administer regulations. – The city or town council shall empower, by ordinance, the planning board to adopt, modify and amend regulations and rules governing land development and subdivision projects within that municipality and to control land development and subdivision projects pursuant to those regulations and rules.

§ 45-23-52 Local regulations – Procedure for adoption and amendment. – (a) The local planning board, once authorized by the ordinance required under **§ 45-23-51**, shall adopt or repeal, and provide for the administration, interpretation, and enforcement of land development and subdivision review regulations.

(b) Provisions of the local regulations and appendices shall be presented in text and may incorporate maps, and other technical and graphic material. The local regulations, and all of their amendments, shall be consistent with all provisions of this chapter as well as the municipality's comprehensive plan and zoning ordinance.

§ 45-23-53 Local regulations – Public hearing and notice requirements. – (a) No local regulations shall be adopted, repealed, or amended until after a public hearing has been held upon the question before the city or town planning board. The city or town planning board shall first give notice of the public hearing by publication of notice in a newspaper of general circulation within the municipality at least once each week for three (3) successive weeks prior to the date of the hearing, which may include the week in which the hearing is to be held. At this hearing opportunity shall be given to all persons interested on being heard upon the matter of the proposed regulations. Written notice, which may be

a copy of the newspaper notice, shall be mailed to the statewide planning program of the Rhode Island department of administration at least two (2) weeks prior to the hearing. The newspaper notice shall be published as a display advertisement, using a type size at least as large as the normal type size used by the newspaper in its news articles, and shall:

- (1) Specify the place of the hearing and the date and time of its commencement;
- (2) Indicate that adoption, amendment or repeal of local regulations is under consideration;
- (3) Contain a statement of the proposed amendments to the regulations that may be printed once in its entirety, or may summarize or describe the matter under consideration;
- (4) Advise those interested where and when a copy of the matter under consideration may be obtained or examined and copied; and
- (5) State that the proposals shown on the notice may be altered or amended prior to the close of the public hearing without further advertising, as a result of further study or because of the views expressed at the public hearing. Any alteration or amendment must be presented for comment in the course of the hearing.

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

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

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

(e) The requirements in this section are to be construed as minimum requirements.

§ 45-23-54 Local regulations – Publication and availability. – (a) Printed copies of the local regulations are available to the general public and shall be revised to include all amendments. Any appendices are also available. A reasonable charge may be made for copies.

(b) Upon publication of local regulations and any amendments to the local regulations, the municipality shall send a copy to the department of administration's statewide planning program and to the state law library.

§ 45-23-55 Administration – The administrative officer. – (a) Local administration of the local regulations is under the direction of the administrative officer, who reports to the planning board.

(b) The local regulations specify the process of appointment and the responsibilities of the administrative officer who oversees and coordinates the review, approval, recording and enforcement provisions of the local regulations. The administrative officer serves as the chair of the technical review

committee, where established. The local regulations state minimum qualifications for this position regarding appropriate education, training or experience in land use planning and site plan review.

(c) The administrative officer is responsible for coordinating reviews of proposed land development projects and subdivisions with adjacent municipalities as is necessary to be consistent with applicable federal, state and local laws and as directed by the planning board.

(d) Enforcement of the local regulations is under the direction of the administrative officer. The officer is responsible for coordinating the enforcement efforts of the zoning enforcement officer, the building inspector, planning department staff, the city or town engineer, the department of public works and other local officials responsible for the enforcement or carrying out of discrete elements of the regulations.

§ 45-23-56 Administration – Technical review committee. – (a) The planning board may establish a technical review committee of not fewer than three (3) members, to conduct technical reviews of applications subject to their jurisdiction. Where a technical review committee is established, the administrative officer shall serve as chairperson. Membership of this subcommittee, to be known as the technical review committee, may include, but is not limited to, members of the planning board, planning department staff, other municipal staff representing departments with responsibility for review or enforcement, conservation commissioners or other duly appointed local public commission members.

(b) If the planning board establishes a technical review committee, the board shall adopt written procedures establishing the committee's responsibilities.

(c) Reports of the technical review committee to the planning board shall be in writing and kept as part of the permanent documentation on the development application. In no case shall the recommendations of the technical review committee be binding on the planning board in its activities or decisions. All reports of the technical review committee shall be made available to the applicant prior to the meeting of the planning board meeting at which the reports are first considered.

§ 45-23-57 Administration – The board of appeal. – The city or town council shall establish the city or town zoning board of review as the board of appeal to hear appeals of decisions of the planning board or the administrative officer on matters of review and approval of land development and subdivision projects.

§ 45-23-58 Administration – Administrative fees. – Local regulations adopted pursuant to this chapter may provide for reasonable fees, in an amount not to exceed actual costs incurred, to be paid by the applicant for the adequate review and hearing of applications, issuance of permits and recordings of subsequent decisions.

§ 45-23-59 Administration – Violations and penalties. – (a) Local regulations adopted pursuant to this chapter shall provide for a penalty for any violation of the local regulations, or for a violation of any terms or conditions of any action imposed by the planning board or of any other agency or officer charged in the regulations with enforcement of any of the provisions.

(b) Violation of the regulations include any action related to the transfer or sale of land in unapproved subdivisions. Any owner, or agent of the owner, who transfers, sells or negotiates to sell any land by reference to or exhibition of, or by other use, a plat of the subdivision before the plat has been approved by the planning board and recorded in the municipal land evidence records, is in

violation of the local regulations and subject to the penalties described in this chapter.

(c) The penalty for violation shall reasonably relate to the seriousness of the offense, and shall not exceed five hundred dollars (\$500) for each violation, and each day of existence of any violation is deemed to be a separate offense. Any fine shall inure to the municipality.

(d) The municipality may also cause suit to be brought in the supreme or superior court, or any municipal court, including a municipal housing court having jurisdiction in the name of the municipality, to restrain the violation of, or to compel compliance with, the provisions of its local regulations. A municipality may consolidate an action for injunctive relief and/or fines under the local regulations in the superior court of the county in which the subject property is located.

§ 45-23-60 Procedure – Required findings. – (a) All local regulations shall require that for all administrative, minor, and major development applications the approving authorities responsible for land development and subdivision review and approval shall address each of the general purposes stated in § 45-23-30 and make positive findings on the following standard provisions, as part of the proposed project's record prior to approval:

(1) The proposed development is consistent with the comprehensive community plan and/or has satisfactorily addressed the issues where there may be inconsistencies;

(2) The proposed development is in compliance with the standards and provisions of the municipality's zoning ordinance;

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

(4) The subdivision, as proposed, 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. (See definition of Buildable lot). Lots with physical constraints to development may be created only if identified as permanent open space or permanently reserved for a public purpose on the approved, recorded plans; and

(5) All proposed land developments and all subdivision lots have adequate and permanent physical access to a public street. Lot frontage on a public street without physical access shall not be considered in compliance with this requirement.

(b) Except for administrative subdivisions, findings of fact must be supported by legally competent evidence on the record which discloses the nature and character of the observations upon which the fact finders acted.

§ 45-23-61 Procedure – Precedence of approvals between planning board and other local permitting authorities. – (a) *Zoning board.*

(1) Where an applicant requires both a variance from the local zoning ordinance and planning board approval, the applicant shall first obtain an advisory recommendation from the planning board, as well as conditional planning board approval for the first approval stage for the proposed project, which may be simultaneous, then obtain conditional zoning board relief, and then return to the planning board for subsequent required approval(s).

(2) Where an applicant requires both a special-use permit under the local zoning ordinance and

planning board approval, the applicant shall first obtain an advisory recommendation from the planning board, as well as conditional planning board approval for the first approval stage for the proposed project, which may be simultaneous, then obtain a conditional special-use permit from the zoning board, and then return to the planning board for subsequent required approval(s).

(b) *City or town council.* Where an applicant requires both planning board approval and council approval for a zoning ordinance or zoning map change, the applicant shall first obtain an advisory recommendation on the zoning change from the planning board, as well as conditional planning board approval for the first approval stage for the proposed project, which may be simultaneous, then obtain a conditional zoning change from the council, and then return to the planning board for subsequent required approval(s).

§ 45-23-62 Procedure – Waivers – Modifications and reinstatement of plans. – (a) *Waiver of development plan approval.*

(1) A planning board may waive requirements for development plan approval where there is a change in use or occupancy and no extensive construction of improvements is sought. The waiver may be granted only by a decision by the planning board finding that the use will not affect existing drainage, circulation, relationship of buildings to each other, landscaping, buffering, lighting and other considerations of development plan approval, and that the existing facilities do not require upgraded or additional site improvements.

(2) The application for a waiver of development plan approval review shall include documentation, as required by the planning board, on prior use of the site, the proposed use, and its impact.

(b) *Waiver and/or modification of requirements.* The planning board has the power to grant waivers and/or modifications from the requirements for land development and subdivision approval as may be reasonable and within the general purposes and intents of the provisions for local regulations. The only grounds for waivers and/or modifications are where the literal enforcement of one or more provisions of the regulations is impracticable and will exact undue hardship because of peculiar conditions pertaining to the land in question or where waiver and/or modification is in the best interest of good planning practice and/or design as evidenced by consistency with the municipality's comprehensive plan and zoning ordinance.

(c) Local regulations shall include provisions for reinstatement of development applications when the deadlines set in the local regulations and approval agreements for particular actions are exceeded and the development application or approval is therefore rendered invalid. Where an approval has expired, the local regulations shall specify the point in the review to which the application may be reinstated.

(d) *Decision.* The planning board shall approve, approve with conditions or deny the request for either a waiver or modification as described in subsection (a) or (b) in this section, according to the requirements of § 45-23-63.

§ 45-23-63 Procedure – Meetings – Votes – Decisions and records. – (a) All records of the planning board proceedings and decisions shall be written and kept permanently available for public review. Completed applications for proposed land development and subdivisions projects under review by the planning board shall be available for public review.

(b) Participation in a planning board meeting or other proceedings by any party is not a cause for civil action or liability except for acts not in good faith, intentional misconduct, knowing violation

of law, transactions where there is an improper personal benefit, or malicious, wanton, or willful misconduct.

(c) All final written comments to the planning board from the administrative officer, municipal departments, the technical review committee, state and federal agencies, and local commissions are part of the permanent record of the development application.

(d) *Votes.* All votes of the planning board shall be made part of the permanent record and show the members present and their votes. A decision by the planning board to approve any land development or subdivision application requires a vote for approval by a majority of the current planning board membership.

(e) All written decisions of the planning board shall be recorded in the land evidence records within thirty-five (35) days after the planning board vote. A copy of the recorded decision shall be mailed within one business day of recording, by any method that provides confirmation of receipt, to the applicant and to any objector who has filed a written request for notice with the administrative officer.

§ 45-23-63.1 Procedure – Tolling of expiration periods. – (a) Notwithstanding any other provision set forth in this chapter, all periods pertaining to the expiration of any approval issued pursuant to the local regulations promulgated under this chapter shall be tolled until June 30, 2013. For the purposes of this section, “tolling” shall mean the suspension or temporary stopping of the running of the applicable permit or approval period.

(b) Said tolling need not be recorded in the land evidence records to be valid; however, a notice of the tolling must be posted in the municipal planning department and near the land evidence records.

(c) The tolling shall apply only to approvals or permits in effect on November 9, 2009 and those issued between November 9, 2009 and June 30, 2013, and shall not revive expired approvals.

(d) The expiration dates for all permits and approvals issued before the tolling period began will be recalculated as of July 1, 2013 by adding thereto the number of days between November 9, 2009 and the day on which the permit or approval would otherwise have expired. The expiration dates for all permits and approvals issued during the tolling period will be recalculated as of July 1, 2013 by adding thereto the number of days between the day the permit or approval was issued and the day the permit or approval otherwise would have expired.

§ 45-23-64 Procedure – Signing and recording of plats and plans. – (a) All approved final plans and plats for land development and subdivision projects are signed by the appropriate planning board official with the date of approval. Plans and plats for major land developments and subdivisions are signed by the planning board chairperson or the secretary of the planning board attesting to the approval by the planning board. All minor land development or subdivision plans and plats and administrative plats are signed by the planning board chairperson or secretary or the board’s designated agent.

(b) Upon signature, all plans and plats are submitted to the administrative officer prior to recording and filing in the appropriate municipal departments. The material to be recorded for all plans and plats include all pertinent plans with notes thereon concerning all the essential aspects of the approved project design, the implementation schedule, special conditions placed on the development by the municipality, permits and agreements with state and federal reviewing agencies, and other information required by the planning board.

(c) Other parts of the applications record for subdivisions and land development projects, including all meeting records, approved master plan and preliminary plans, site analyses, impact analyses, all legal agreements, records of the public hearing and the entire final approval set of drawings are permanently kept by the municipal departments responsible for implementation and enforcement.

(d) The administrative officer shall notify the statewide «911» emergency authority and the local police and fire authorities servicing the new plat with the information required by each of the authorities.

§ 45-23-65 Procedure – Changes to recorded plats and plans. – (a) For all changes to the approved plans of land development projects or subdivisions subject to this act, an amendment of the final development plans is required prior to the issuance of any building permits. Any changes approved in the final plan shall be recorded as amendments to the final plan in accordance with the procedure established for recording of plats in [§ 45-23-64](#).

(b) Minor changes, as defined in the local regulations, to a land development or subdivision plan may be approved administratively, by the administrative officer, whereupon a permit may be issued. The changes may be authorized without additional public hearings, at the discretion of the administrative officer. All changes shall be made part of the permanent record of the project application. This provision does not prohibit the administrative officer from requesting a recommendation from either the technical review committee or the planning board. Denial of the proposed change(s) shall be referred to the planning board for review as a major change.

(c) Major changes, as defined in the local regulations, to a land development or subdivision plan may be approved, only by the planning board and must follow the same review and public hearing process required for approval of preliminary plans as described in [§ 45-23-41](#).

(d) *Rescission procedure.* The planning board, only upon application by all landowners of the plat to be affected, may determine that the application for plat rescission is not consistent with the comprehensive community plan and is not in compliance with the standards and provisions of the municipality's zoning ordinance and/or land development and subdivision review regulations and shall hold a public hearing, which adheres to the requirements for notice described in [§ 45-23-42](#). The planning board shall approve, approve with conditions or modifications, or deny the application for rescission of the plat according to the requirements of [§ 45-23-63](#). If it is necessary to abandon any street covered under chapter 6 of title 24, the planning board shall submit to the city or town council the documents necessary for the abandonment process. Once the required process for rescission or for rescission and abandonment has been completed, the revised plat shall be signed and recorded as specified in [§ 45-23-64](#).

§ 45-23-66 Appeals – Right of appeal. – (a) Local regulations adopted pursuant to this chapter shall provide that an appeal from any decision of the planning board, or administrative officer charged in the regulations with enforcement of any provisions, except as provided in this section, may be taken to the board of appeal by an aggrieved party. Appeals from a decision granting or denying approval of a final plan shall be limited to elements of the approval or disapproval not contained in the decision reached by the planning board at the preliminary stage, providing that a public hearing has been held on the plan pursuant to [§ 45-23-42](#).

(b) Local regulations adopted pursuant to this chapter shall provide that an appeal from a decision of the board of appeal may be taken by an aggrieved party to the superior court for the county in which the municipality is situated.

§ 45-23-67 Appeals – Process of appeal. – (a) An appeal to the board of appeal from a decision or action of the planning board or administrative officer may be taken by an aggrieved party to the extent provided in **§ 45-23-66**. The appeal must be taken within twenty (20) days after the decision has been filed and posted in the office of the city or town clerk.

(b) The appeal shall be in writing and state clearly and unambiguously the issue or decision which is being appealed, the reason for the appeal, and the relief sought. The appeal shall either be sent by certified mail, with a return receipt requested, or be hand-delivered to the board of appeal. The city or town clerk shall accept delivery of an appeal on behalf of the board of appeal, if the local regulations governing land development and subdivision review so provide.

(c) Upon receipt of an appeal, the board of appeal shall require the planning board or administrative officer to immediately transmit to the board of appeal, all papers, documents and plans, or a certified copy thereof, constituting the record of the action which is being appealed.

§ 45-23-68 Appeals – Stay of proceedings. – An appeal stays all proceedings in furtherance of the action being appealed.

§ 45-23-69 Appeals – Public hearing. – (a) The board of appeal shall hold a public hearing on the appeal within forty-five (45) days of the receipt of the appeal, give public notice of the hearing, as well as due notice to the parties of interest. At the hearing any party may appear in person, or be represented by an agent or attorney. The board shall render a decision within ten (10) days of the close of the public hearing. The cost of any notice required for the hearing shall be borne by the applicant.

(b) The board of appeal shall only hear appeals of the actions of a planning board or administrative officer at a meeting called especially for the purpose of hearing the appeals and which has been so advertised.

(c) The hearing, which may be held on the same date and at the same place as a meeting of the zoning board of review, must be held as a separate meeting from any zoning board of review meeting. Separate minutes and records of votes as required by **§ 45-23-70(d)** shall be maintained by the board of appeal.

§ 45-23-70 Appeals – Standards of review. – (a) As established by this chapter, in instances of a board of appeal's review of a planning board or administrative officer's decision on matters subject to this chapter, the board of appeal shall not substitute its own judgment for that of the planning board or the administrative officer but must consider the issue upon the findings and record of the planning board or administrative officer. The board of appeal shall not reverse a decision of the planning board or administrative officer except on a finding of prejudicial procedural error, clear error, or lack of support by the weight of the evidence in the record.

(b) The concurring vote of three (3) of the five (5) members of the board of appeal sitting at a hearing, is necessary to reverse any decision of the planning board or administrative officer.

(c) In the instance where the board of appeal overturns a decision of the planning board or administrative officer, the proposed project application is remanded to the planning board or administrative officer, at the stage of processing from which the appeal was taken, for further proceedings before the planning board or administrative officer and/or for the final disposition, which shall be consistent with the board of appeal's decision.

(d) The board of appeal shall keep complete records of all proceedings including a record of all votes

taken, and shall put all decisions on appeals in writing. The board of appeal shall include in the written record the reasons for each decision.

§ 45-23-71 Appeals to the superior court. – (a) An aggrieved party may appeal a decision of the board of appeal, to the superior court for the county in which the municipality is situated by filing a complaint stating the reasons of appeal within twenty (20) days after the decision has been recorded and posted in the office of the city or town clerk. The board of appeal shall file the original documents acted upon by it and constituting the record of the case appealed from, or certified copies of the original documents, together with any other facts that may be pertinent, with the clerk of the court within thirty (30) days after being served with a copy of the complaint. When the complaint is filed by someone other than the original applicant or appellant, the original applicant or appellant and the members of the planning board shall be made parties to the proceedings. The appeal does not stay proceedings upon the decision appealed from, but the court may, in its discretion, grant a stay on appropriate terms and make any other orders that it deems necessary for an equitable disposition of the appeal.

(b) The review shall be conducted by the superior court without a jury. The court shall consider the record of the hearing before the planning board and, if it appear to the court that additional evidence is necessary for the proper disposition of the matter, it may allow any party to the appeal to present evidence in open court, which evidence, along with the report, shall constitute the record upon which the determination of the court shall be made.

(c) The court shall not substitute its judgment for that of the planning board as to the weight of the evidence on questions of fact. The court may affirm the decision of the board of appeal or remand the case for further proceedings, or may reverse or modify the decision if substantial rights of the appellant have been prejudiced because of findings, inferences, conclusions or decisions which are:

- (1) In violation of constitutional, statutory, ordinance or planning board regulations provisions;
 - (2) In excess of the authority granted to the planning board by statute or ordinance;
 - (3) Made upon unlawful procedure;
 - (4) Affected by other error of law;
 - (5) Clearly erroneous in view of the reliable, probative, and substantial evidence of the whole record;
- or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

§ 45-23-72 Appeals to the superior court – Enactment of or amendment of local regulations.
– (a) Any appeal of an enactment of or an amendment of local regulations may be taken to the superior court for the county in which the municipality is situated by filing a complaint, as stated in this section, within thirty (30) days after the enactment, or amendment has become effective. The appeal may be taken by any legal resident or landowner of the municipality or by any association of residents or landowners of the municipality. The appeal does not stay the enforcement of the local regulations, as enacted or amended, but the court may, in its discretion, grant a stay on appropriate terms, which may include the filing of a bond, and make any other orders that it deems necessary for an equitable disposition of the appeal.

(b) The complaint shall state with specificity the area or areas in which the enactment or amendment is not consistent with the Comprehensive Planning Act, chapter 22.2 of this title; the Rhode Island Zoning Enabling Act of 1991, § 45-24-27 et seq.; the municipality's comprehensive plan; or the municipality's zoning ordinance.

(c) The review shall be conducted by the court without a jury. The court shall consider whether the enactment or amendment of the local regulations is consistent with the Comprehensive Planning Act, chapter 22.2 of this title; the Rhode Island Zoning Enabling Act of 1991, § 45-24-27 et seq.; the municipality's comprehensive plan; or the municipality's zoning ordinance. If the enactment or amendment is not consistent, then the court shall invalidate the enactment or the amendment, or those parts of the enactment or amendment which are not consistent. The court shall not revise the local regulations to be consistent, but may suggest appropriate language as part of the court decision.

(d) The court may in its discretion, upon motion of the parties or on its own motion, award reasonable attorney's fees to any party to an appeal, as stated herein, including a municipality.

§ 45-23-73 Appeals to the superior court – Priority in judicial proceedings. – Upon the entry of any case or proceeding brought under the provisions of this chapter, including pending and future appeals taken to the court, the court shall, at the request of either party, advance the case, so that the matter is afforded precedence on the calendar and be heard and determined with as little delay as possible.

§ 45-23-74 Severability. – If any provision of this chapter or of any rule, regulation or determination made under this chapter, or the application of the provisions to any person, agency or circumstances, is held invalid by a court of competent jurisdiction, the remainder of the chapter, rule, regulation, or determination and the application of the provisions to other persons, agencies, or circumstances shall not be affected by the invalidity. The invalidity of any section or sections of this chapter shall not affect the validity of the remainder of the chapter.

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MAPPED STREETS

{ RIGL § 45-23.1 }



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§ 45-23.1-1 Establishment of official maps. – The city or town council of any city or town having a plan commission established pursuant to chapters 22 and 23 of this title or pursuant to any special act applicable to certain cities or towns, is authorized and empowered to establish an official map of the city or town identifying and showing the location of the streets of the city or town existing and established by law as public streets and the exterior lines of other streets deemed necessary by the city or town council for sound physical development. A public hearing in relation to the map shall precede the adoption, at which parties in interest and citizens shall have an opportunity to be heard. At least ten (10) days' notice of a public hearing shall be published in a newspaper of general circulation in the city or town. Before adoption of the ordinance, the city or town council shall refer the matter to the plan commission for a report on the map, but if the plan commission does not make its report within forty-five (45) days of the reference, the necessity for the report may be deemed to be waived. The city or town council shall certify the fact of the establishment of an official map to the city or town recorder.

§ 45-23.1-1.1 Establishment or opening of streets not implied. – (a) The placing of any street or street line upon the official map does not in and of itself constitute nor is it deemed to constitute the opening or establishment of any street or the taking or acceptance of any land for street purposes; provided, that in the town of North Kingstown, regularly performed maintenance by the town, upon any paved mapped street of at least forty feet (40') in width, for a period of not less than twenty (20) years, constitutes the opening or establishment of a street as a public way.

(b) For the purposes of this section the term «regularly performed maintenance» is construed to include snow plowing and salting and sanding operations, and any type of repair work regularly undertaken by the city or town.

§ 45-23.1-2 Additions and changes. – (a) A city or town council is authorized and empowered to make, from time to time, additions to or modifications of the official map by placing on it the exterior lines of planned new streets or street extensions, widenings, narrowings, or vacations.

(b) No changes become effective until after a public hearing in relation to the changes, at which parties in interest and citizens shall have an opportunity to be heard.

(c) At least ten (10) days' notice of a public hearing shall be published in a newspaper of general circulation in the city or town.

(d) Before making additions or changes, the city or town council shall refer the matter to the plan commission for a report, but if the plan commission shall not make its report within forty-five (45) days of the reference, the necessity for the report may be deemed to be waived.

(e) The locating, widening, or closing, or the approval of the locating, widening, or closing of streets by the city or town, under provisions of law other than those contained in this chapter, are deemed to be changes or additions to the official map, and are subject to all the provisions of this chapter except provisions relating to public hearing and referral to the plan commission.

§ 45-23.1-3 Regulation of buildings in bed of mapped streets. – (a) For the purpose of preserving the integrity of the official map of a city or town, the city or town council is authorized and empowered to provide by ordinance that no permit shall be issued for any building in the bed of any street shown on the official map except as provided in this section.

(b) Whenever one or more parcels of land upon which is located the bed of a mapped street cannot yield a reasonable return to the owner unless a building permit is granted, the zoning board of review

in a city or town which has established a board, or the city or town council in any city or town which has not established a board, may, in a specific case after public hearing for which reasonable notice has been given to all interested parties and at which parties in interest and others have an opportunity to be heard, grant a permit for a building in the bed of the mapped street which will, as little as practicable, increase the cost of opening the street, or tend to cause a minimum change of the official map, and the board or council, as the case may be, may impose reasonable requirements as a condition of granting the permit to promote the health, safety, morals, and general welfare of the public.

(c) The board or council shall refer the application to the plan commission for a report and a recommendation before taking action, and shall refuse a permit where the applicant will not be substantially damaged by placing his or her building outside the mapped street.

§ 45-23.1-4 Buildings not on mapped streets. – (a) A city or town council is authorized and empowered to provide by ordinance that no permit for the erection of any building shall be issued unless the building lot abuts a street which has been placed on the official map giving access to the proposed structure, and that before a permit is issued, the street has been certified to be suitably improved, or suitable improvements have been assured by means of a performance guarantee, in accordance with rules and regulations adopted in the same manner as rules and regulations for subdivisions as provided in chapter 23 of this title.

(b) Where the enforcement of this section would entail practical difficulty or unnecessary hardship, or where the circumstances of the case do not require the structure to be related to a street, the board or council may, in a specific case and after a public hearing for which reasonable notice has been given to all interested parties and at which parties in interest and others have an opportunity to be heard, make reasonable exceptions and issue a permit subject to conditions that will assure adequate access for firefighting equipment, ambulances, and other emergency vehicles necessary for the protection of health and safety and that will protect any future street layout shown on the official map.

§ 45-23.1-5 Appeals. – (a) Any person aggrieved by any decision of the board or council may present to the supreme court a verified petition stating that the decision is illegal in whole or in part and specifying the grounds of illegality. The petition shall be presented to the court within thirty (30) days after the filing of the decision.

(b) Upon presentation of the petition, the court may allow a writ of certiorari directed to the board or council to review the decision of the board or council, and shall prescribe in the writ the time within which a return shall be made, which shall not be less than ten (10) days and may be extended by the court. The allowance of the writ does not stay proceedings upon the decision appealed from, but the court may, on application, on due cause shown, grant a restraining order.

(c) The board or council is not required to return the original papers acted on by it, but it is sufficient to return certified or sworn copies of the original papers, or portions of them, as may be called for by the writ. The return shall concisely state other facts that may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(d) If upon the hearing, it appears to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a master to take evidence as it may direct, and report the evidence to the court with his or her findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made.

(e) The court may reverse or affirm wholly or partly or may modify the decision brought up for

review.

§ 45-23.1-6 Purpose. – This chapter is declared to be for the purpose of conserving and promoting the public health, safety, morals, and general welfare.

§ 45-23.1-7 Severability. – If any provision of this chapter or the application of this chapter to any person or circumstance is held invalid, the remainder of this chapter or the application of the provision to other persons or circumstances shall not be affected by the invalidity.

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RHODE ISLAND ZONING ENABLING ACT

{ RIGL § 45-24 }



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§ 45-24-1 – 45-24-26. Repealed.. –

§ 45-24-27 Title. – Sections 45-24-27 through 45-24-72 shall be known as the “Rhode Island Zoning Enabling Act of 1991”.

§ 45-24-28 Continuation of ordinances – Supercession – Relation to other statutes. – (a) Any zoning ordinance or amendment of the ordinance enacted after January 1, 1992, shall conform to the provisions of this chapter. All lawfully adopted zoning ordinances shall be brought into conformance with this chapter by December 31, 1994. Each city and town shall review its zoning ordinance and make amendments or revisions that are necessary to bring it into conformance with this chapter.

(b) All zoning ordinances adopted under authority of **§§ 45-24-1 through 45-24-26** or any special zoning enabling act that is in effect on June 17, 1991, shall remain in full force and effect until December 31, 1994, unless earlier amended so as to conform to the provisions of this chapter, except that **§ 45-24-37** and **§ 45-24-44** shall become effective on January 1, 1992.

(c) Former **§§ 45-24-1 through 45-24-26** and all special zoning enabling acts, including, but not limited to, chapter 2299 of the public laws of 1922, as amended (town of Westerly); chapter 1277 of the public laws of 1926, as amended (town of Narragansett); chapter 2065 of the public laws of 1933, as amended (town of West Warwick); chapter 2233 of the public laws of 1935, as amended (town of Johnston); chapter 2079 of the public laws of 1948, as amended (town of North Kingstown); chapter 3125 of the public laws of 1953, as amended (town of New Shoreham); chapter 101 of the public laws of 1973, as amended (town of South Kingstown); are repealed effective December 31, 1994. All provisions of zoning ordinances adopted under authority of the provisions of former **§§ 45-24-1 through 45-24-26** or of any special act are repealed and are null and void as of December 31, 1994, unless amended so as to conform to the provisions of this chapter.

(d) Chapter 24.1 of this title, entitled «Historical Area Zoning», and chapter 3 of title 1, entitled «Airport Zoning», are not superseded by this chapter; provided, that any appeal to the superior court pursuant to chapter 24.1 of this title, entitled «Historical Area Zoning», or pursuant to chapter 3 of title 1, entitled «Airport Zoning», is taken in the manner provided in **§ 45-24-69**.

(e) Nothing in this chapter shall be construed to limit the authority of agencies of state government to perform any regulatory responsibilities.

§ 45-24-29 Legislative findings and intent. – (a) The general assembly recognizes and affirms in **§§ 45-24-27 through 45-24-72** that the findings and goals stated in **§ 45-22.2-3** present findings and goals with which zoning must be consistent.

(2) The general assembly further finds that:

(i) The zoning enabling statutes contained in **§§ 45-24-1 through 45-24-26**, repealed as of December 31, 1994, were largely enacted in 1921;

(ii) The character of land development and related public and private services have changed substantially in the intervening years;

(iii) It is necessary to provide for innovative land development practices to enable cities and towns to adequately regulate the use of land and employ modern land development practices;

(iv) It is necessary to take full account of the requirement that each city and town amend its zoning

ordinance to conform to and be consistent with its comprehensive plan adopted pursuant to chapter 22.2 of this title, and to all the elements contained therein; and

(v) A substantial updating and revision of the original statutory zoning enabling authority is required to meet these changed conditions.

(3) It is therefore found that the preparation and implementation of zoning ordinances is necessary to address the findings and needs identified in this section; to protect the public health, safety, and general welfare; to allow the general assembly to carry out its duty to provide for the conservation of the natural resources of the state and to adopt all means necessary and proper by law for the preservation, regeneration, and restoration of the natural environment of the state in accordance with R.I. Const., art. 1, §§ 16 and 17; to promote good planning practice; and to provide for sustainable economic growth in the state.

(b) Therefore, it is the intent of the general assembly:

(1) That the zoning enabling authority contained in this chapter provide all cities and towns with adequate opportunity to address current and future community and statewide needs;

(2) That the zoning enabling authority contained in this chapter require each city and town to conform its zoning ordinance and zoning map to be consistent with its comprehensive plan developed pursuant to chapter 22.2 of this title;

(3) That the zoning enabling authority contained in this chapter empower each city and town with the capability to establish and enforce standards and procedures for the proper management and protection of land, air, and water as natural resources, and to employ contemporary concepts, methods, and criteria in regulating the type, intensity, and arrangement of land uses, and provides authority to employ new concepts as they may become available and feasible;

(4) That the zoning enabling authority contained in this chapter permit each city and town to establish an economic impact commission whose duties would be to advise municipalities on the economic impact new zoning changes would have on cities and towns and private property owners, and to assist municipalities in determining financial impacts when new or changed zoning adversely affects business climate, land use, property value, natural and historic resources, industrial use, or development of private property; and may permit the use of land and buildings within the groundwater protection zones for agricultural purposes and shall encourage the use of farmland in a manner which is consistent with the protection of groundwater resources; and

(5) That each city and town amend its zoning ordinance to comply with the terms of this chapter.

§ 45-24-30 General purposes of zoning ordinances. – Zoning regulations shall be developed and maintained in accordance with a comprehensive plan prepared, adopted, and as may be amended, in accordance with chapter 22.2 of this title and shall be designed to address the following purposes. The general assembly recognizes these purposes, each with equal priority and numbered for reference purposes only.

(1) Promoting the public health, safety, and general welfare.

(2) Providing for a range of uses and intensities of use appropriate to the character of the city or town and reflecting current and expected future needs.

- (3) Providing for orderly growth and development which recognizes:
- (i) The goals and patterns of land use contained in the comprehensive plan of the city or town adopted pursuant to chapter 22.2 of this title;
 - (ii) The natural characteristics of the land, including its suitability for use based on soil characteristics, topography, and susceptibility to surface or groundwater pollution;
 - (iii) The values and dynamic nature of coastal and freshwater ponds, the shoreline, and freshwater and coastal wetlands;
 - (iv) The values of unique or valuable natural resources and features;
 - (v) The availability and capacity of existing and planned public and/or private services and facilities;
 - (vi) The need to shape and balance urban and rural development; and
 - (vii) The use of innovative development regulations and techniques.
- (4) Providing for the control, protection, and/or abatement of air, water, groundwater, and noise pollution, and soil erosion and sedimentation.
- (5) Providing for the protection of the natural, historic, cultural, and scenic character of the city or town or areas in the municipality.
- (6) Providing for the preservation and promotion of agricultural production, forest, silviculture, aquaculture, timber resources, and open space.
- (7) Providing for the protection of public investment in transportation, water, stormwater management systems, sewage treatment and disposal, solid waste treatment and disposal, schools, recreation, public facilities, open space, and other public requirements.
- (8) Promoting a balance of housing choices, for all income levels and groups, to assure the health, safety and welfare of all citizens and their rights to affordable, accessible, safe, and sanitary housing.
- (9) Providing opportunities for the establishment of low and moderate income housing.
- (10) Promoting safety from fire, flood, and other natural or unnatural disasters.
- (11) Promoting a high level of quality in design in the development of private and public facilities.
- (12) Promoting implementation of the comprehensive plan of the city or town adopted pursuant to chapter 22.2 of this title.
- (13) Providing for coordination of land uses with contiguous municipalities, other municipalities, the state, and other agencies, as appropriate, especially with regard to resources and facilities that extend beyond municipal boundaries or have a direct impact on that municipality.
- (14) Providing for efficient review of development proposals, to clarify and expedite the zoning approval process.
- (15) Providing for procedures for the administration of the zoning ordinance, including, but not limited to, variances, special-use permits, and, where adopted, procedures for modifications.

(16) Providing opportunities for reasonable accommodations in order to comply with the Rhode Island Fair Housing Practices Act, chapter 37 of title 34, the United States Fair Housing Amendments Act of 1988 (FHAA), the Rhode Island Civil Rights of Persons with Disabilities Act, chapter 87 of title 42, and the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101 et seq.

Provided, however, that any zoning ordinance in which a community sets forth standards or requirements for the location, design, construction, or maintenance of on-site sewage disposal systems shall first be submitted to the director of the department of environmental management and the department of health for approval as to the technical merits of the ordinance. In addition, any zoning ordinance in which a municipality sets forth standards regarding wetland setbacks or requirements, shall first be submitted to the director of the department of environmental management for approval as to the technical merits of the ordinance.

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

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

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

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

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

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

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

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

(ii) Anyone requiring notice pursuant to this chapter.

(5) Agricultural Land. «Agricultural land», as defined in [§ 45-22.2-4](#).

- (6) Airport Hazard Area. «Airport hazard area», as defined in § 1-3-2.
- (7) Applicant. An owner or authorized agent of the owner submitting an application or appealing an action of any official, board, or agency.
- (8) Application. The completed form or forms and all accompanying documents, exhibits, and fees required of an applicant by an approving authority for development review, approval, or permitting purposes.
- (9) Buffer. Land which is maintained in either a natural or landscaped state, and is used to screen and/or mitigate the impacts of development on surrounding areas, properties, or rights-of-way.
- (10) Building. Any structure used or intended for supporting or sheltering any use or occupancy.
- (11) Building Envelope. The three-dimensional space within which a structure is permitted to be built on a lot and which is defined by regulations governing building setbacks, maximum height, and bulk; by other regulations; and/or by any combination thereof.
- (12) Building Height. The vertical distance from grade, as determined by the municipality, to the top of the highest point of the roof or structure. The distance may exclude spires, chimneys, flag poles, and the like.
- (13) Cluster. A site planning technique that concentrates buildings in specific areas on the site to allow the remaining land to be used for recreation, common open space, and/or preservation of environmentally, historically, culturally, or other sensitive features and/or structures. The techniques used to concentrate buildings shall be specified in the ordinance and may include, but are not limited to, reduction in lot areas, setback requirements, and/or bulk requirements, with the resultant open land being devoted by deed restrictions for one or more uses. Under cluster development there is no increase in the number of lots that would be permitted under conventional development except where ordinance provisions include incentive bonuses for certain types or conditions of development.
- (14) Common Ownership. Either:
- (i) Ownership by one or more individuals or entities in any form of ownership of two (2) or more contiguous lots; or
 - (ii) Ownership by any association (ownership may also include a municipality) of one or more lots under specific development techniques.
- (15) Community Residence. A home or residential facility where children and/or adults reside in a family setting and may or may not receive supervised care. This does not include halfway houses or substance abuse treatment facilities. This does include, but is not limited, to the following:
- (i) Whenever six (6) or fewer children or adults with retardation reside in any type of residence in the community, as licensed by the state pursuant to chapter 24 of title 40.1. All requirements pertaining to local zoning are waived for these community residences;
 - (ii) A group home providing care or supervision, or both, to not more than eight (8) persons with disabilities, and licensed by the state pursuant to chapter 24 of title 40.1;
 - (iii) A residence for children providing care or supervision, or both, to not more than eight (8) children including those of the care giver and licensed by the state pursuant to chapter 72.1 of title 42;

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

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

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

(18) Day Care – Family Day Care Home. Any home other than the individual's home in which day care in lieu of parental care or supervision is offered at the same time to six (6) or less individuals who are not relatives of the care giver, but may not contain more than a total of eight (8) individuals receiving day care.

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

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

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

(22) District. See «zoning use district».

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

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

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

(26) Family. A person or persons related by blood, marriage, or other legal means. See also «Household».

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

- (28) Floodplains, or Flood Hazard Area. As defined in § 45-22.2-4.
- (29) Groundwater. «Groundwater» and associated terms, as defined in § 46-13.1-3.
- (30) Halfway House. A residential facility for adults or children who have been institutionalized for criminal conduct and who require a group setting to facilitate the transition to a functional member of society.
- (31) Hardship. See § 45-24-41.
- (32) Historic District, or Historic Site. As defined in § 45-22.2-4.
- (33) Home Occupation. Any activity customarily carried out for gain by a resident, conducted as an accessory use in the resident's dwelling unit.
- (34) Household. One or more persons living together in a single dwelling unit, with common access to, and common use of, all living and eating areas and all areas and facilities for the preparation and storage of food within the dwelling unit. The term «household unit» is synonymous with the term «dwelling unit» for determining the number of units allowed within any structure on any lot in a zoning district. An individual household shall consist of any one of the following:
- (i) A family, which may also include servants and employees living with the family; or
 - (ii) A person or group of unrelated persons living together. The maximum number may be set by local ordinance, but this maximum shall not be less than three (3).
- (35) Incentive Zoning. The process whereby the local authority may grant additional development capacity in exchange for the developer's provision of a public benefit or amenity as specified in local ordinances.
- (36) Infrastructure. Facilities and services needed to sustain residential, commercial, industrial, institutional, and other activities.
- (37) Land Development Project. A project in which one or more lots, tracts, or parcels of land are developed or redeveloped as a coordinated site for one or more uses, units, or structures, including, but not limited to, planned development and/or cluster development for residential, commercial, institutional, recreational, open space, and/or mixed uses as provided in the zoning ordinance.
- (38) Lot. Either:
- (i) The basic development unit for determination of lot area, depth, and other dimensional regulations; or
 - (ii) A parcel of land whose boundaries have been established by some legal instrument such as a recorded deed or recorded map and which is recognized as a separate legal entity for purposes of transfer of title.
- (39) Lot Area. The total area within the boundaries of a lot, excluding any street right-of-way, usually reported in acres or square feet.
- (40) Lot Area, Minimum. The smallest land area established by the local zoning ordinance upon which a use, building or structure may be located in a particular zoning district.

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

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

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

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

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

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

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

(45) Lot Size, Minimum. Shall have the same meaning as «minimum lot area» defined herein.

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

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

(48) Mere Inconvenience. See [§ 45-24-41](#).

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

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

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

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

(ii) Nonconforming by dimension: a building, structure, or parcel of land not in compliance with the dimensional regulations of the zoning ordinance. Dimensional regulations include all regulations of the zoning ordinance, other than those pertaining to the permitted uses. A building or structure

containing more dwelling units than are permitted by the use regulations of a zoning ordinance is nonconforming by use; a building or structure containing a permitted number of dwelling units by the use regulations of the zoning ordinance, but not meeting the lot area per dwelling unit regulations, is nonconforming by dimension.

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

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

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

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

(56) Plant Agriculture. The growing of plants for food or fiber, to sell or consume.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(71) Zoning Ordinance. An ordinance enacted by the legislative body of the city or town pursuant to this chapter and in the manner providing for the adoption of ordinances in the city or town's legislative or home rule charter, if any, which establish regulations and standards relating to the nature and extent of uses of land and structures, which is consistent with the comprehensive plan of the city or town as defined in chapter 22.2 of this title, which includes a zoning map, and which complies with the provisions of this chapter.

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

§ 45-24-32 Contents of zoning ordinances. – The zoning ordinance consists of the ordinance and other text, together with all charts, graphs, and other explanatory material, and the zoning map together with any explanatory matter shown on the ordinance. All municipal zoning ordinances shall include at a minimum the following provisions listed below and further described in this chapter:

- (1) A statement of purpose and consistency with the comprehensive plan;
- (2) Definitions;
- (3) General provisions;
- (4) Special provisions;
- (5) Procedures for the adoption of the ordinance or amendments;

- (6) Procedures for the administration of the ordinance or amendments;
- (7) Procedures for the appeal of the ordinance or amendments; and
- (8) A zoning map and supporting documentation.

§ 45-24-33 Standard provisions. – (a) A zoning ordinance addresses each of the purposes stated in § 45-24-30 and addresses, through reasonable objective standards and criteria, the following general provisions which are numbered for reference purposes only:

(1) Permitting, prohibiting, limiting, and restricting the development of land and structures in zoning districts, and regulating those land and structures according to their type, and the nature and extent of their use;

(2) Regulating the nature and extent of the use of land for residential, commercial, industrial, institutional, recreational, agricultural, open space, or other use or combination of uses, as the need for land for those purposes is determined by the city or town's comprehensive plan;

(3) Permitting, prohibiting, limiting, and restricting buildings, structures, land uses, and other development by performance standards, or other requirements, related to air and water and groundwater quality, noise and glare, energy consumption, soil erosion and sedimentation, and/or the availability and capacity of existing and planned public or private services;

(4) Regulating within each district and designating requirements for:

- (i) The height, number of stories, and size of buildings;
 - (ii) The dimensions, size, lot coverage, floor area ratios, and layout of lots or development areas;
 - (iii) The density and intensity of use;
 - (iv) Access to air and light, views, and solar access;
 - (v) Open space, yards, courts, and buffers;
 - (vi) Parking areas, road design, and, where appropriate, pedestrian, bicycle, and other circulator systems;
 - (vii) Landscaping, fencing, and lighting;
 - (viii) Appropriate drainage requirements and methods to manage stormwater runoff;
 - (ix) Public access to waterbodies, rivers, and streams; and
 - (x) Other requirements in connection with any use of land or structure;
- (5) Permitting, prohibiting, limiting, and restricting development in flood plains or flood hazard areas and designated significant natural areas;
- (6) Promoting the conservation of energy and promoting energy-efficient patterns of development;
- (7) Providing for the protection of existing and planned public drinking water supplies, their tributaries and watersheds, and the protection of Narragansett Bay, its tributaries and watershed;

- (8) Providing for adequate, safe, and efficient transportation systems; and avoiding congestion by relating types and levels of development to the capacity of the circulation system, and maintaining a safe level of service of the system;
- (9) Providing for the preservation and enhancement of the recreational resources of the city or town;
- (10) Promoting an economic climate which increases quality job opportunities and the overall economic well-being of the city or town and the state;
- (11) Providing for pedestrian access to and between public and private facilities, including, but not limited to schools, employment centers, shopping areas, recreation areas, and residences;
- (12) Providing standards for and requiring the provision of adequate and properly designed physical improvements, including plantings, and the proper maintenance of property;
- (13) Permitting, prohibiting, limiting, and restricting land use in areas where development is deemed to create a hazard to the public health or safety;
- (14) Permitting, prohibiting, limiting, and restricting extractive industries and earth removal and requiring restoration of land after these activities;
- (15) Regulating sanitary landfill, except as otherwise provided by state statute;
- (16) Permitting, prohibiting, limiting, and restricting signs and billboards, and other outdoor advertising devices;
- (17) Designating airport hazard areas under the provisions of chapter 3 of title 1, and enforcement of airport hazard area zoning regulations under the provisions established in that chapter;
- (18) Designating areas of historic, cultural, and/or archaeological value and regulating development in those areas under the provisions of chapter 24.1 of this title;
- (19) Providing standards and requirements for the regulation, review, and approval of any proposed development in connection with those uses of land, buildings, or structures specifically designated as subject to development plan review in a zoning ordinance;
- (20) Designating special protection areas for water supply and limiting or prohibiting development in these areas, except as otherwise provided by state statute;
- (21) Specifying requirements for safe road access to developments from existing streets, including limiting the number, design, and location of curb cuts, and provisions for internal circulation systems for new developments, and provisions for pedestrian and bicycle ways; and
- (22) Reducing unnecessary delay in approving or disapproving development applications, through provisions for preapplication conferences and other means.
- (23) Providing for the application of the Rhode Island Fair Housing Practices Act, chapter 37 of title 34, the United States Fair Housing Amendments Act of 1988 (FHAA), the Rhode Island Civil Rights People with Disabilities Act, chapter 37 of title 42, and the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101 et seq.
- (24) Regulating drive-through windows of varied intensity of use when associated with land use

activities and providing standards and requirements for the regulation, review and approval of the drive-through windows, including, but not limited to:

(i) Identifying within which zoning districts drive-through windows may be permitted, prohibited, or permitted by special use permit;

(ii) Specifying requirements for adequate traffic circulation; and

(iii) Providing for adequate pedestrian safety and access, including issues concerning safety and access for those with disabilities.

(b) A zoning ordinance may include special provisions for any or all of the following:

(1) Authorizing development incentives, including, but not limited to, additional permitted uses, increased development and density or additional design or dimensional flexibility in exchange for:

(i) Increased open space;

(ii) Increased housing choices;

(iii) Traffic and pedestrian improvements;

(iv) Public and/or private facilities; and/or

(v) Other amenities as desired by the city or town and consistent with its comprehensive plan. The provisions in the ordinance shall include maximum allowable densities of population and/or intensities of use and shall indicate the type of improvements, amenities, and/or conditions. Conditions may be made for donation in lieu of direct provisions for improvements or amenities;

(2) Establishing a system for transfer of development rights within or between zoning districts designated in the zoning ordinance; and

(3) Regulating the development adjacent to designated scenic highways, scenic waterways, major thoroughfares, public greenspaces, or other areas of special public investment or valuable natural resources.

(c) Slope of land shall not be excluded from the calculation of the buildable lot area or the minimum lot size, or in the calculation of the number of buildable lots or units.

(d) Nothing in this section shall be construed to restrict a municipality's right, within state and local regulations, to establish its own minimum lot size per zoning district in its town or city.

§ 45-24-34 General provisions – Purpose and consistency with comprehensive plan. – (a) A zoning ordinance adopted pursuant to this chapter shall provide a statement of its purposes. Those purposes shall be consistent with **§ 45-24-30**. A zoning ordinance adopted or amended pursuant to this chapter shall include a statement that the zoning ordinance is consistent with the comprehensive plan of the city or town adopted pursuant to chapter 22.2 of this title, or as otherwise provided below and shall provide that in the instance of uncertainty in the construction or application of any section of the ordinance, the ordinance shall be construed in a manner that will further the implementation of, and not be contrary to, the goals and policies and applicable elements of the comprehensive plan.

(b) The city or town shall bring the zoning ordinance or amendment into conformance with

its comprehensive plan as approved by the chief of the division of planning of the department of administration or the superior court in accordance with its implementation schedule as set forth in said plan. A zoning ordinance shall address and specify requirements for the coordination between contiguous communities, the state, and other agencies, as required by chapter 22.2 of this title.

§ 45-24-35 General provisions – Definitions. – A zoning ordinance adopted pursuant to this chapter shall provide definitions for words or terms contained in the ordinance where it is deemed appropriate. Words or terms contained in any zoning ordinance, whether or not defined in the ordinance, that are substantially similar to words or terms defined in **§ 45-24-31** shall be construed according to the definitions provided in this chapter.

§ 45-24-36 General provisions – Division into districts. – A zoning ordinance divides a city or town into zoning use districts, which may include overlay districts and floating zone districts, of the number, kind, type, shape, and area suitable to carry out the purposes of this chapter. Regulations and standards shall be consistent for each land use, type of development, or type of building or structure within a district, but may differ from those in other districts. Zoning use districts shall be depicted by type and location on the zoning map.

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

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

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

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

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

(e) Notwithstanding any other provision of this chapter, an accessory family dwelling unit in an owner-occupied, single-family residence shall be permitted as a reasonable accommodation only for family members with disabilities. The appearance of the structure shall remain that of a single-family residence and there shall be an internal means of egress between the principal unit and the accessory family dwelling unit. If possible, no additional exterior entrances should be added. Where additional

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

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

(g) Notwithstanding any other provisions of this chapter, plant agriculture is a permitted use within all zoning districts of a municipality, including all industrial and commercial zoning districts, except where prohibited for public health or safety reasons or the protection of wildlife habitat.

§ 45-24-38 General provisions – Substandard lots of record. – Any city or town adopting or amending a zoning ordinance under this chapter shall regulate the use or uses of any single substandard lot of record or contiguous lots of record at the effective date of adoption or amendment of the zoning ordinance notwithstanding the failure of that lot or those lots to meet the dimensional and/or quantitative requirements, and/or road frontage or other access requirements, applicable in the district as stated in the ordinance. Provisions may be made for the merger of contiguous unimproved, or improved and unimproved, substandard lots of record in the same ownership to create dimensionally conforming lots or to reduce the extent of dimensional nonconformance. The ordinance shall specify the standards, on a district by district basis, which determine the mergers. The standards include, but are not to be limited to, the availability of infrastructure, the character of the neighborhood, and the consistency with the comprehensive plan.

§ 45-24-39 General provisions – Nonconforming development. – (a) Any city or town adopting or amending a zoning ordinance under this chapter shall make provision for any use, activity, structure, building, or sign or other improvement, lawfully existing at the time of the adoption or amendment of the zoning ordinance, but which is nonconforming by use or nonconforming by dimension. The zoning ordinance may regulate development which is nonconforming by dimension differently than that which is nonconforming by use.

(b) The zoning ordinance shall permit the continuation of nonconforming development; however, this does not prohibit the regulation of nuisances.

(c) A zoning ordinance may provide that, if a nonconforming use is abandoned, it may not be reestablished. Abandonment of a nonconforming use consists of some overt act, or failure to act, which leads one to believe that the owner of the nonconforming use neither claims nor retains any interest in continuing the nonconforming use unless the owner can demonstrate an intent not to abandon the use. An involuntary interruption of nonconforming use, as by fire and natural catastrophe, does not establish the intent to abandon the nonconforming use; however, if any nonconforming use is halted for a period of one year, the owner of the nonconforming use is presumed to have abandoned the nonconforming use, unless that presumption is rebutted by the presentation of sufficient evidence of intent not to abandon the use.

§ 45-24-40 General provisions – Alteration of nonconforming development. – (a) A zoning ordinance may permit a nonconforming development to be altered under either of the following conditions:

(1) The ordinance may establish a special-use permit, authorizing the alteration, which must be approved by the zoning board of review following the procedure established in this chapter and in the zoning ordinance; or

(2) The ordinance may allow the addition and enlargement, expansion, intensification, or change in use, of nonconforming development either by permit or by right and may distinguish between the foregoing actions by zoning districts.

(b) The ordinance may require that the alteration more closely adheres to the intent and purposes of the zoning ordinance.

(c) A use established by variance or special use permit shall not acquire the rights of this section.

§ 45-24-41 General provisions – Variances. – (a) An application for relief from the literal requirements of a zoning ordinance because of hardship may be made by any person, group, agency, or corporation by filing with the zoning enforcement officer or agency an application describing the request and supported by any data and evidence as may be required by the zoning board of review or by the terms of the ordinance. The zoning enforcement officer or agency shall immediately transmit each application received to the zoning board of review and a copy of each application to the planning board or commission.

(b) A zoning ordinance provides that the zoning board of review, immediately upon receipt of an application for a variance in the application of the literal terms of the zoning ordinance, may request that the planning board or commission and/or staff report its findings and recommendations, including a statement on the general consistency of the application with the goals and purposes of the comprehensive plan of the city or town, in writing, to the zoning board of review within thirty (30) days of receipt of the application from that board. The zoning board shall hold a public hearing on any application for variance in an expeditious manner, after receipt, in proper form, of an application, and shall give public notice at least fourteen (14) days prior to the date of the hearing in a newspaper of general circulation in the city or town. Notice of hearing shall be sent by first class mail to the applicant, and to at least all those who would require notice under **§ 45-24-53**. The notice shall also include the street address of the subject property. A zoning ordinance may require that a supplemental notice, that an application for a variance is under consideration, be posted at the location in question. The posting is for information purposes only and does not constitute required notice of a public hearing. The cost of notification shall be borne by the applicant.

(c) In granting a variance, the zoning board of review requires that evidence to the satisfaction of the following standards is entered into the record of the proceedings:

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

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

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

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

(d) The zoning board of review shall, in addition to the above standards, require that evidence is entered into the record of the proceedings showing that: (1) in granting a use variance the subject land or structure cannot yield any beneficial use if it is required to conform to the provisions of the zoning ordinance. Nonconforming use of neighboring land or structures in the same district and permitted use of lands or structures in an adjacent district shall not be considered in granting a use variance; and (2) in granting a dimensional variance, that the hardship suffered by the owner of the subject property if the dimensional variance is not granted amounts to more than a mere inconvenience. The fact that a use may be more profitable or that a structure may be more valuable after the relief is granted is not grounds for relief. The zoning board of review has the power to grant dimensional variances where the use is permitted by special use permit if provided for in the special use permit sections of the zoning ordinance.

§ 45-24-42 General provisions – Special-use permits. – (a) A zoning ordinance shall provide for the issuance of special-use permits approved by the zoning board of review.

(b) The ordinance shall:

(1) Specify the uses requiring special-use permits in each district;

(2) Describe the conditions and procedures under which special-use permits, of each or the various categories of special-use permits established in the zoning ordinance, may be issued;

(3) Establish criteria for the issuance of each category of special-use permit, that shall be in conformance with the purposes and intent of the comprehensive plan and the zoning ordinance of the city or town;

(4) Provide for public hearings and notification of the date, time, place, and purpose of those hearings to interested parties. Public notice shall be given at least fourteen (14) days prior to the date of the hearing in a newspaper of general circulation in the city or town. Notice of hearing shall be sent by first class mail to the applicant, and to all those who would require notice under **§ 45-24-53**. The notice shall also include the street address of the subject property. A zoning ordinance may require that a supplemental notice, that an application for a special use permit is under consideration, be posted at the location in question. The posting is for information purposes only and does not constitute required notice of a public hearing. The cost of notification shall be borne by the applicant;

(5) Provide for the recording of findings of fact and written decisions; and

(6) Provide that appeals may be taken pursuant to **§ 45-24-70**.

(c) The ordinance additionally may provide that an applicant may apply for, and be issued, a dimensional variance in conjunction with a special use. If the special use could not exist without the dimensional variance, the zoning board of review shall consider the special use permit and the dimensional variance together to determine if granting the special use is appropriate based on both the special use criteria and the dimensional variance evidentiary standards.

§ 45-24-43 General provisions – Special conditions. – In granting a variance or in making any determination upon which it is required to pass after a public hearing under a zoning ordinance, the zoning board of review or other zoning enforcement agency may apply the special conditions that may, in the opinion of the board or agency, be required to promote the intent and purposes of the comprehensive plan and the zoning ordinance of the city or town. Failure to abide by any special conditions attached to a grant constitutes a zoning violation. Those special conditions shall be based on competent credible evidence on the record, be incorporated into the decision, and may include, but are not limited to, provisions for:

- (1) Minimizing the adverse impact of the development upon other land, including the type, intensity, design, and performance of activities;
- (2) Controlling the sequence of development, including when it must be commenced and completed;
- (3) Controlling the duration of use or development and the time within which any temporary structure must be removed;
- (4) Assuring satisfactory installation and maintenance of required public improvements;
- (5) Designating the exact location and nature of development; and
- (6) Establishing detailed records by submission of drawings, maps, plats, or specifications.

§ 45-24-44 General provisions – Creation of vested rights. – (a) A zoning ordinance provides protection for the consideration of applications for development that are substantially complete and have been submitted for approval to the appropriate review agency in the city or town prior to enactment of the new zoning ordinance or amendment.

(b) Zoning ordinances or other land development ordinances or regulations specify the minimum requirements for a development application to be substantially complete for the purposes of this section.

(c) Any application considered by a city or town under the protection of this section shall be reviewed according to the regulations applicable in the zoning ordinance in force at the time the application was submitted.

(d) If an application for development under the provisions of this section is approved, reasonable time limits shall be set within which development of the property must begin and within which development must be substantially completed.

§ 45-24-45 General provisions – Publication and availability of zoning ordinances. – (a) Printed copies of the zoning ordinance and map(s) of a city or town shall be available to the general public and revised to include all amendments. A reasonable charge may be made for copies to reflect printing and distribution costs.

(b) Upon publication of a zoning ordinance and map, and any amendments to them, the city or town clerk shall send a copy, without charge, to the statewide planning program of the department of administration and to the state law library.

§ 45-24-46 Special provisions – Modification. – (a) A zoning ordinance may provide for the issuance of modifications or adjustments from the literal dimensional requirements of the zoning

ordinance in the instance of the construction, alteration, or structural modification of a structure or lot of record. If the ordinance allows modifications then the zoning enforcement officer is authorized to grant modification permits. The zoning ordinance establishes the maximum percent allowed for a modification, which shall not exceed twenty-five percent (25%), of any of the dimensional requirements specified in the zoning ordinance. A modification does not permit moving of lot lines. The zoning ordinance shall specify which dimensional requirements or combinations of these requirements are allowable under a modification. These requirements may differ by use or zoning district. Within ten (10) days of the receipt of a request for a modification, the zoning enforcement officer shall make a decision as to the suitability of the requested modification based on the following determinations:

- (1) The modification requested is reasonably necessary for the full enjoyment of the permitted use;
- (2) If the modification is granted, neighboring property will neither be substantially injured nor its appropriate use substantially impaired;
- (3) The modification requested is in harmony with the purposes and intent of the comprehensive plan and zoning ordinance of the city or town; and
- (4) The modification requested does not require a variance of a flood hazard requirement.

(b) Upon an affirmative determination, the zoning enforcement officer shall notify, by registered or certified mail, all property owners abutting the property which is the subject of the modification request, and shall indicate the street address of the subject property in the notice, and shall publish in a newspaper of general circulation within the city or town that the modification will be granted unless written objection is received within thirty (30) days of the public notice. If written objection is received within thirty (30) days, the request for a modification shall be denied. In that case the changes requested will be considered a request for a variance and may only be issued by the zoning board of review following the standard procedures for variances. If no written objections are received within thirty (30) days, the zoning enforcement officer shall grant the modification. The zoning enforcement officer may apply any special conditions to the permit as may, in the opinion of the officer, be required to conform to the intent and purposes of the zoning ordinance. The zoning enforcement officer shall keep public records of all requests for modifications, and of findings, determinations, special conditions, and any objections received. Costs of any notice required under this subsection shall be borne by the applicant requesting the modification.

§ 45-24-46.1 Inclusionary zoning. – A zoning ordinance requiring the inclusion of affordable housing as part of a development shall provide that the housing will be affordable housing, as defined in **§ 42-128-8.1(d)(1)**, that the affordable housing will constitute not less than ten percent (10%) of the total units in the development, and that the units will remain affordable for a period of not less than thirty (30) years from initial occupancy enforced through a land lease and/or deed restriction enforceable by the municipality and the state of Rhode Island.

§ 45-24-46.2 Special provisions – Transfer of development rights – North Kingstown. – (a) In addition to other powers granted to towns and cities by this chapter to establish and administer transfer of development rights programs, the town council of the town of North Kingstown may provide by ordinance for the transfer of development rights, as a voluntary program available to developers and property owners, in the manner set forth in this section.

(b) The establishment, as provided for by this section, of a system for transfer of development rights within or between zoning districts, or a portion thereof, designated in the zoning ordinance shall be:

(1) For the purpose of providing developers and property owners the ability to establish, certify, purchase, sell, convey, and/or hold land development rights; and

(2) For one or more of the following purposes:

(i) Preserving sensitive resource areas in the community such as groundwater reserves, wildlife habitat, agricultural lands, and public access to surface waters;

(ii) Directing development away from sensitive resource areas to places better suited to increased levels of development such as established or proposed mixed use, commercial, village, or residential centers;

(iii) Directing development to areas served by existing infrastructure such as established roadways, public water supply systems, centralized sewer collection systems, public transit and other utilities; or

(iv) Shaping and balancing urban and rural development; and/or promoting a high level of quality in design in the development of private and public facilities and spaces.

(c) For purposes of this section the following terms shall have the following meaning:

(1) «Receiving area district» means a zoning district, which is established and mapped pursuant to a transfer of development rights ordinance and superimposed on one or more zoning use districts or portions thereof that is eligible to receive development rights through a major land development project review. As may be necessary or desirable to achieve the intended uses, density and intensity of use, a receiving area district may allow for additional development capacity and for increased lot building coverage and building envelope that are greater than those of the underlying zoning.

(2) «Sending area district» means a zoning district, which is established and mapped pursuant to a transfer of development rights ordinance and superimposed on one or more zoning use districts or a portion thereof, that is eligible to establish development rights that may eventually be transferred to a receiving area.

§ 45-24-46.3 Special provisions – Transfer of development rights – Exeter. – (a) In addition to other powers granted to towns and cities by this chapter to establish and administer transfer of development rights programs, the town council of the town of Exeter may provide by ordinance for the transfer of development rights, as a voluntary program available to developers and property owners, in the manner set forth in this section.

(b) For purposes of this section the following terms shall have the following meaning:

(1) «Receiving area district» means a zoning district, which is established and mapped pursuant to a transfer of development rights ordinance and superimposed on one or more zoning use districts or portions thereof, that is eligible to receive development rights through a major land development project review. As may be necessary or desirable to achieve the intended uses, density and intensity of use, a receiving area district may allow for additional development capacity and for increased lot building coverage and building envelope that are greater than those of the underlying zoning.

(2) «Sending area district» means a zoning district, which is established and mapped pursuant to a transfer of development rights ordinance and superimposed on one or more zoning use districts or a portion thereof, that is eligible to establish development rights that may eventually be transferred to a receiving area.

(c) The establishment, as provided for by this section, of a system for transfer of development rights within or between zoning districts, or a portion thereof, designated in the zoning ordinance shall be:

(1) For the purpose of providing developers and property owners the ability to establish, certify, purchase, sell, convey, and/or hold land development rights; and

(2) For one or more of the following purposes:

(i) Preserving sensitive resource areas in the community such as groundwater reserves, wildlife habitat, agricultural lands, and public access to surface waters;

(ii) Directing development away from sensitive resource areas to places better suited to increased levels of development such as established or proposed mixed use, commercial, village, or residential centers;

(iii) Directing development to areas served by existing infrastructure such as established roadways, public water supply systems, centralized sewer collection systems, public transit and other utilities; or

(iv) Shaping and balancing urban and rural development, and/or promoting a high level of quality in design in the development of private and public facilities and spaces.

§ 45-24-47 Special provisions – Land development projects. – (a) A zoning ordinance may provide for land development projects which are projects in which one or more lots, tracts, or parcels of land are to be developed or redeveloped as a coordinated site for a complex of uses, units, or structures, including, but not limited to, planned development and/or cluster development for residential, commercial, institutional, industrial, recreational, open space, and/or mixed uses as may be provided for in the zoning ordinance.

(b) A zoning ordinance adopted pursuant to this chapter which permits or requires the creation of land development projects in one or more zoning districts shall require that any land development project is referred to the city or town planning board or commission for approval, in accordance with the procedures established by chapter 23 of this title, including those for appeal and judicial review, and with any ordinances or regulations adopted pursuant to the procedures, whether or not the land development project constitutes a «subdivision», as defined in chapter 23 of this title. No land development project shall be initiated until a plan of the project has been submitted to the planning board or commission and approval has been granted by the planning board or commission. In reviewing, hearing, and deciding upon a land development project, the city or town planning board or commission may be empowered to allow zoning incentives within the project; provided, that standards for the adjustments are described in the zoning ordinance, and may be empowered to apply any special conditions and stipulations to the approval that may, in the opinion of the planning board or commission, be required to maintain harmony with neighboring uses and promote the objectives and purposes of the comprehensive plan and zoning ordinance.

(c) In regulating land development projects, an ordinance adopted pursuant to this chapter may include, but is not limited to, regulations governing the following:

(1) A minimum area or site size for a land development project;

(2) Uses to be permitted within the development;

(3) Ratios of residential to nonresidential uses where applicable;

(4) Maximum density per lot and maximum density for the entire development, with provisions for adjustment of applicable lot density and dimensional standards where open space is to be permanently set aside for public or common use, and/or where the physical characteristics, location, or size of the site require an adjustment, and/or where the location, size, and type of housing, commercial, industrial, or other use require an adjustment, and/or where housing for low and moderate income families is to be provided, or where other amenities not ordinarily required are provided, as stipulated in the zoning ordinance. Provision may be made for adjustment of applicable lot density and dimensional standards for payment or donation of other land or facilities in lieu of an on-site provision of an amenity that would, if provided on-site, enable an adjustment;

(5) Roads, driveways, utilities, parking, and other facilities; regulations may distinguish between those facilities intended to remain in private ownership or to be dedicated to the public; and

(6) Buffer areas, landscaping, screening, and shading.

(d) A zoning ordinance requiring open land in a cluster development or other land development project for public or common use, shall provide that such open land either: (i) be conveyed to the city or town and accepted by it for park, open space, agricultural, or other specified use or uses, or (ii) be conveyed to a nonprofit organization, the principal purpose of which is the conservation of open space or resource protection, or (iii) be conveyed to a corporation or trust owned or to be owned by the owners of lots or units within the development, or owners of shares within a cooperative development. If such a corporation or trust is used, ownership shall pass with conveyances of the lots or units, or (iv) remain in private ownership if the use is limited to agriculture, habitat or forestry, and the city or town has set forth in its community comprehensive plan and zoning ordinance that private ownership is necessary for the preservation and management of the agricultural, habitat or forest resources.

(2) In any case where the land is not conveyed to the city or town:

(i) A restriction, in perpetuity, enforceable by the city or town or by any owner of property in the cluster or other land development project in which the land is located shall be recorded providing that the land is kept in the authorized condition(s) and not built upon or developed for accessory uses such as parking or roadway; and

(ii) The developmental rights and other conservation easements on the land may be held, in perpetuity, by a nonprofit organization, the principal purpose of which is the conservation of open space or resource protection.

(3) All open space land provided by a cluster development or other land development project shall be subject to a community approved management plan that will specify the permitted uses for the open space.

§ 45-24-48 Special provisions – Preapplication conference. – A zoning ordinance may provide for a preapplication conference for specific types of development proposals. A preapplication conference is intended to allow the designated agency to:

(1) Acquaint the applicant with the comprehensive plan and any specific plans that apply to the parcel, as well as the zoning and other ordinances that affect the proposed development;

(2) Suggest improvements to the proposed design on the basis of a review of the sketch plan;

(3) Advise the applicant to consult appropriate authorities on the character and placement of public

utility services; and

(4) Help the applicant to understand the steps to be taken to receive approval.

§ 45-24-49 Special provisions – Development plan review. – (a) A zoning ordinance may permit development plan review of applications for uses requiring a special-use permit, a variance, a zoning ordinance amendment, and/or a zoning map change. The review shall be conducted by the planning board or commission and shall be advisory to the permitting authority.

(b) A zoning ordinance may permit development plan review of applications for uses that are permitted by right under the zoning ordinance, but the review shall only be based on specific and objective guidelines which must be stated in the zoning ordinance. The review body shall also be set forth in and be established by the zoning ordinance. A rejection of the application shall be considered an appealable decision pursuant to **§ 45-24-64**.

(c) Nothing in this subsection shall be construed to permit waivers of any regulations unless approved by the permitting authority pursuant to the local ordinance and this act.

§ 45-24-50 Adoption – Power of council to adopt – Consistency with comprehensive plan. – (a) For the purpose of promoting the public health, safety, morals, and general welfare, a city or town council has the power, in accordance with the provisions of this chapter, to adopt, amend, or repeal, and to provide for the administration, interpretation, and enforcement of, a zoning ordinance. The provisions of a zoning ordinance are stated in text and map(s), and may incorporate charts or other material.

(b) A zoning ordinance, and all amendments to it, must be consistent with the city or town's comprehensive plan, as described in chapter 22.2 of this title, and provide for the implementation of the city or town comprehensive plan.

(c) A zoning ordinance adopted or amended during the pendency of the approval of a municipality's comprehensive plan must be consistent with that plan, until the zoning ordinance is brought into full compliance with the Comprehensive Planning Act, subdivision **45-22.2-5(a)(4)**.

(d) The city or town must bring the zoning ordinance or amendment into conformance with its comprehensive plan as approved by the chief of the division of planning of the department of administration or the superior court in accordance with its implementation schedule as set forth in said plan.

§ 45-24-51 Adoption – Procedure for adoption or amendment. – The city or town shall designate the officer or agency to receive a proposal for adoption, amendment, or repeal of a zoning ordinance or zoning map(s). Immediately upon receipt of the proposal, the officer or agency shall refer the proposal to the city or town council, and to the planning board or commission of the city or town for study and recommendation. The planning board or commission shall, in turn, notify and seek the advice of the city or town planning department, if any, and report to the city or town council within forty-five (45) days after receipt of the proposal, giving its findings and recommendations as prescribed in **§ 45-24-52**. Where a proposal for adoption, amendment, or repeal of a zoning ordinance or zoning map is made by the city or town planning board or commission, the requirements for study by the board may be waived; provided, that the proposal by the planning board includes its findings and recommendations pursuant to **§ 45-24-52**. The city or town council shall hold a public hearing within sixty-five (65) days of receipt of a proposal, giving proper notice as prescribed in **§ 45-24-53**. The city or town council shall render a decision on any proposal within forty-five (45) days after the date of completion of the public

hearing. The provisions of this section pertaining to deadlines shall not be construed to apply to any extension consented to by an applicant.

§ 45-24-52 Adoption – Review by planning board or commission. – Among its findings and recommendations to the city or town council with respect to a proposal for adoption, amendment, or repeal of a zoning ordinance or zoning map, the planning board or commission shall:

(1) Include a statement on the general consistency of the proposal with the comprehensive plan of the city or town, including the goals and policies statement, the implementation program, and all other applicable elements of the comprehensive plan; and

(2) Include a demonstration of recognition and consideration of each of the applicable purposes of zoning, as presented in **§ 45-24-30**.

§ 45-24-53 Adoption – Notice and hearing requirements. – (a) No zoning ordinance shall be adopted, repealed, or amended until after a public hearing has been held upon the question before the city or town council. The city or town council shall first give notice of the public hearing by publication of notice in a newspaper of general circulation within the city or town at least once each week for three (3) successive weeks prior to the date of the hearing, which may include the week in which the hearing is to be held, at which hearing opportunity shall be given to all persons interested to be heard upon the matter of the proposed ordinance. Written notice, which may be a copy of the newspaper notice, shall be mailed to the statewide planning program of the department of administration, and, where applicable, to the parties specified in subsections (b), (c), (d), and (e) of this section, at least two (2) weeks prior to the hearing. The newspaper notice shall be published as a display advertisement, using a type size at least as large as the normal type size used by the newspaper in its news articles, and shall:

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

(2) Indicate that adoption, amendment, or repeal of a zoning ordinance is under consideration;

(3) Contain a statement of the proposed amendments to the ordinance that may be printed once in its entirety, or summarize and describe the matter under consideration;

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

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

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

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

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

(2) Written notice of the date, time, and place of the public hearing and the nature and purpose of the hearing shall be sent to all owners of real property whose property is located in or within not less than two hundred feet (200') of the perimeter of the area proposed for change, whether within the city or town or within an adjacent city or town. Notice shall also be sent to any individual or entity holding a recorded conservation or preservation restriction on the property that is the subject of the amendment. The notice shall be sent by registered or certified mail to the last known address of the owners, as shown on the current real estate tax assessment records of the city or town in which the property is located.

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

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

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

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

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

(g) Costs of any notice required under this section shall be borne by the applicant.

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

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

§ 45-24-54 Administration – Administration and enforcement of zoning ordinance. – A zoning ordinance adopted pursuant to this chapter must provide for the administration and enforcement of its provisions pursuant to this chapter. The zoning ordinance must designate the local official or agency and specify minimum qualifications for the person or persons charged with its administration and enforcement, including: (1) the issuing of any required permits or certificates; (2) collection of required fees; (3) keeping of records showing the compliance of uses of land; (4) authorizing commencement of uses or development under the provisions of the zoning ordinance; (5) inspection of suspected violations; (6) issuance of violation notices with required correction action; (7) collection of fines for violations; and (8) performing any other duties and taking any actions that may be assigned in the ordinance. In order to provide guidance or clarification, the zoning enforcement officer or agency shall, upon written request, issue a zoning certificate or provide information to the requesting party as to the determination by the official or agency within fifteen (15) days of the written request. In the event that no written response is provided within that time, the requesting party has the right to appeal to the zoning board of review for the determination.

§ 45-24-55 Administration – Maintenance of zoning ordinance. – The city or town clerk is the custodian of the zoning ordinance and zoning map or maps created under the ordinance. A zoning ordinance designates:

- (1) The officer(s) or agency(ies) responsible for the maintenance and update of the text and zoning map comprising the zoning ordinance. Changes which impact the zoning map shall be depicted on the map within ninety (90) days of the authorized change(s); and
- (2) The office or agency responsible for the review of the zoning ordinance at reasonable intervals; and, whenever changes are made to the comprehensive plan of the city or town, for the identification of any changes necessary and for the forwarding of these changes to the city or town council.

§ 45-24-56 Administration – Zoning board of review – Establishment and procedures. – (a) A zoning ordinance adopted pursuant to this chapter shall provide for the creation of a zoning board of review and for the appointment of members, including alternate members, and for the organization of the board, as specified in the zoning ordinance, or, in cities and towns with home rule or legislative charters, as provided in the charter. A zoning ordinance may provide for remuneration to the zoning board of review members and for reimbursement for expenses incurred in the performance of official duties. A zoning board of review may engage legal, technical, or clerical assistance to aid in the discharge of its duties. The board shall establish written rules of procedure, a mailing address to which appeals and correspondence to the zoning board of review are sent, and an office where records and decisions are filed.

(b) The zoning board of review consists of five (5) members, each to hold office for the term of five (5) years; provided, that the original appointments are made for terms of one, two (2), three (3), four (4), and five (5) years, respectively. The zoning board of review also includes two (2) alternates to be designated as the first and second alternate members, their terms to be set by the ordinance, but not to exceed five (5) years. These alternate members shall sit and may actively participate in hearings. The first alternate shall vote if a member of the board is unable to serve at a hearing and the second shall vote if two (2) members of the board are unable to serve at a hearing. In the absence of the first alternate member, the second alternate member shall serve in the position of the first alternate. No member or alternate may vote on any matter before the board unless they have attended all hearings

concerning that matter. Where not provided for in the city or town charter, the zoning ordinance shall specify procedures for filling vacancies in unexpired terms of zoning board members, and for removal of members for due cause.

(c) Notwithstanding the provisions of subsection (b), the zoning board of review of the town of Jamestown consists of five (5) members, each to hold office for the term of five (5) years; provided, that the original appointments are made for terms of one, two (2), three (3), four (4) and five (5) years respectively. The zoning board of review of the town of Jamestown also includes three (3) alternates to be designated as the first, second, and third alternate members, their terms to be set by the ordinance, but not to exceed five (5) years. These alternate members shall sit and may actively participate in hearings. The first alternate shall vote if a member of the board is unable to serve at a hearing; the second shall vote if two (2) members of the board are unable to serve at a hearing; and the third shall vote if three (3) members of the board are unable to serve at a hearing. In the absence of the first alternate member, the second alternate member shall serve in the position of the first alternate. No member or alternate may vote on any matter before the board unless they have attended all hearings concerning that matter. Where not provided for in the town charter, the zoning ordinance shall specify procedures for filling vacancies in unexpired terms of zoning board members, and for removal of members for due cause.

(d) Members of zoning boards of review serving on the effective date of adoption of a zoning ordinance under this chapter are exempt from the provisions of this chapter respecting terms of originally appointed members until the expiration of their current terms.

(e) The chairperson, or in his or her absence, the acting chairperson, may administer oaths and compel the attendance of witnesses by the issuance of subpoenas.

(f) Notwithstanding the provisions of subsection (b) of this section, the zoning board of review for the town of Little Compton shall consist of five (5) members, each to hold office for the term of five (5) years. The zoning board of review for the town of Little Compton shall also include three (3) alternates to be designated as the first, second and third alternate members, their terms to be set by the ordinance, but not to exceed five (5) years. These alternate members shall sit and may actively participate in the hearings. The first alternate shall vote if a member of the board is unable to serve at a hearing; the second shall vote if two (2) members of the board are unable to serve at a hearing; and the third shall vote if three (3) members of the board are unable to serve at a hearing. In the absence of the first alternate member, the second alternate member shall serve in the position of the first alternate. No member or alternate may vote on any matter before the board unless they have attended all hearings concerning that matter. Where not provided for in the town charter, the zoning ordinance shall specify procedures for filling vacancies in unexpired terms of zoning board members, and for removal of members for due cause.

(g) Notwithstanding the provisions of subsection (b) of this section, the zoning board of review for the town of Charlestown shall consist of five (5) members, each to hold office for the term of five (5) years. The zoning board of review for the town of Charlestown shall also include three (3) alternates to be designated as the first, second, and third alternate members, their terms to be set by the ordinance, but not to exceed five (5) years. These alternate members shall sit and may actively participate in the hearings. The first alternate shall vote if a member of the board is unable to serve at a hearing; the second shall vote if two (2) members of the board are unable to serve at a hearing; and the third shall vote if three (3) members of the board are unable to serve at a hearing. In the absence of the first alternate member, the second alternate member shall serve in the position of the first alternate. No

member or alternate may vote on any matter before the board unless they have attended all hearings concerning that matter. Where not provided for in the town charter, the zoning ordinance shall specify procedures for filling vacancies in unexpired terms of zoning board members, and for removal of members for due cause.

(h) Notwithstanding the provisions of subsection (b) of this section, the zoning board of review for the town of Scituate shall consist of five (5) members, each to hold office for the term of five (5) years. The zoning board of review for the town of Scituate shall also include three (3) alternates to be designated as the first, second and third alternate members, their terms to be set by the ordinance, but not to exceed five (5) years. These alternate members shall sit and may actively participate in the hearings. The first alternate shall vote if a member of the board is unable to serve at a hearing; the second shall vote if two (2) members of the board are unable to serve at a hearing; and the third shall vote if three (3) members of the board are unable to serve at a hearing. In the absence of the first alternate member, the second alternate member shall serve in the position of the first alternate. No member or alternate may vote on any matter before the board unless they have attended all hearings concerning that matter. Where not provided for in the town charter, the zoning ordinance shall specify procedures for filling vacancies in unexpired terms of zoning board members, and for removal of members for due cause.

(i) Notwithstanding the provisions of subsection (b) of this section, the zoning board of review of the town of Middletown shall consist of five (5) members, each to hold office for a term of five (5) years. The zoning board of review of the town of Middletown shall also include three (3) alternates to be designated as the first (1st), second (2nd) and third (3rd) alternate members, their terms to be set by ordinance but not to exceed (5) years. These alternate members shall sit and may actively participate in the hearing. The first alternate shall vote if a member of the board is unable to serve at the hearing; the second alternate shall vote if two (2) members of the board are unable to serve at the hearing; and the third alternate shall vote if three (3) members of the board are unable to serve at the hearing. In the absence of the first alternate member, the second alternate member shall serve in the position of the first alternate. No member or alternate may vote on any matter before the board unless they have attended all hearings concerning that matter. Where not provided for in the town charter the zoning ordinance shall specify procedures for filling vacancies in unexpired terms of zoning board members and for removal of members for due cause.

(j) Notwithstanding the provisions of subsection (b) of this section, the zoning board of review of the city of Cranston shall consist of five (5) members, each to hold office for a term of five (5) years. The zoning board of review of the city of Cranston shall also include four (4) alternates to be designated as the first (1st), second (2nd), third (3rd), and fourth (4th), alternate members, to be appointed for a term of one year. These alternate members shall sit and may actively participate in all zoning hearings. The first alternate shall vote if a member of the board is unable to serve at the hearing; the second alternate shall vote if two (2) members of the board are unable to serve at the hearing; the third alternate shall vote if three (3) members of the board are unable to serve at the hearing; and the fourth alternate shall vote if four (4) members of the board are unable to serve at the hearing. In the absence of the first alternate member, the second alternate member shall serve in the position of the first alternate. No member or alternate may vote on any matter before the board unless they have attended all hearings concerning that matter. Where not provided for in the city charter, the zoning ordinance shall specify procedures for filling vacancies during the unexpired terms of zoning board members and for removal of members for due cause.

§ 45-24-57 Administration – Powers and duties of zoning board of review. – A zoning ordinance

adopted pursuant to this chapter shall provide that the zoning board of review shall:

(1) Have the following powers and duties:

(i) To hear and decide appeals in a timely fashion where it is alleged there is an error in any order, requirement, decision, or determination made by an administrative officer or agency in the enforcement or interpretation of this chapter, or of any ordinance adopted pursuant hereto;

(ii) To hear and decide appeals from a party aggrieved by a decision of an historic district commission, pursuant to §§ 45-24.1-7.1 and 45-24.1-7.2;

(iii) To hear and decide appeals where the zoning board of review is appointed as the board of appeals for airport zoning regulations, pursuant to § 1-3-19;

(iv) To authorize, upon application, in specific cases of hardship, variances in the application of the terms of the zoning ordinance, pursuant to § 45-24-41;

(v) To authorize, upon application, in specific cases, special-use permits, pursuant to § 45-24-42, where the zoning board of review is designated as a permit authority for special-use permits;

(vi) To refer matters to the planning board or commission, or to other boards or agencies of the city or town as the zoning board of review may deem appropriate, for findings and recommendations;

(vii) To provide for the issuance of conditional zoning approvals where a proposed application would otherwise be approved except that one or more state or federal agency approvals which are necessary are pending. A conditional zoning approval shall be revoked in the instance where any necessary state or federal agency approvals are not received within a specified time period; and

(viii) To hear and decide other matters, according to the terms of the ordinance or other statutes, and upon which the board may be authorized to pass under the ordinance or other statutes; and

(2) Be required to vote as follows:

(i) Five (5) active members are necessary to conduct a hearing. As soon as a conflict occurs for a member, that member shall recuse himself or herself, shall not sit as an active member, and shall take no part in the conduct of the hearing. Only five (5) active members are entitled to vote on any issue;

(ii) The concurring vote of three (3) of the five (5) members of the zoning board of review sitting at a hearing are necessary to reverse any order, requirement, decision, or determination of any zoning administrative officer from whom an appeal was taken; and

(iii) The concurring vote of four (4) of the five (5) members of the zoning board of review sitting at a hearing are required to decide in favor of an applicant on any matter within the discretion of the board upon which it is required to pass under the ordinance, including variances and special-use permits.

§ 45-24-58 Administration – Application procedure. – The zoning ordinance establishes the various application procedures necessary for the filing of appeals, requests for variances, special-use permits, development plan reviews, site plan reviews, and other applications that may be specified in the zoning ordinance, with the zoning board of review, consistent with the provisions of this chapter. The zoning ordinance provides for the creation of appropriate forms, and for the submission and resubmission requirements, for each type of application required. A zoning ordinance may establish that a time period of a certain number of months is required to pass before a successive similar application may be

filed.

§ 45-24-59 Administration – Fees. – A zoning ordinance adopted pursuant to this chapter may provide for reasonable fees, in an amount not to exceed actual costs incurred, to be paid by the appellant or applicant for the adequate review and hearing of applications, the issuance of zoning certificates, and for the recording of the decisions.

§ 45-24-60 Administration – Violations. – (a) A zoning ordinance adopted pursuant to this chapter provides for a penalty for any violation of the zoning ordinance, or for a violation of any terms or conditions of any action imposed by the zoning board of review or of any other agency or officer charged in the ordinance with enforcement of any of its provisions. The penalty for the violation must reasonably relate to the seriousness of the offense, and not exceed five hundred dollars (\$500) for each violation, and each day of the existence of any violation is deemed to be a separate offense. Any fine inures to the city or town.

(b) The city or town may also cause suit to be brought in the supreme or superior court, or any municipal court, including a municipal housing court having jurisdiction, in the name of the city or town, to restrain the violation of, or to compel compliance with, the provisions of its zoning ordinance. A city or town may consolidate an action for injunctive relief and/or fines under the ordinance in the superior court of the county in which the subject property is located.

§ 45-24-61 Administration – Decisions and records of zoning board of review. – (a) Following a public hearing, the zoning board of review shall render a decision within a reasonable period of time. The zoning board of review shall include in its decision all findings of fact and conditions, showing the vote of each participating member, and the absence of a member or his or her failure to vote. Decisions shall be recorded and filed in the office of the city or town clerk within thirty (30) working days from the date when the decision was rendered, and is a public record. The zoning board of review shall keep written minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating that fact, and shall keep records of its examinations, findings of fact, and other official actions, all of which shall be recorded and filed in the office of the zoning board of review in an expeditious manner upon completion of the proceeding. For any proceeding in which the right of appeal lies to the superior or supreme court, the zoning board of review shall have the minutes taken either by a competent stenographer or recorded by a sound-recording device.

(b) Any decision by the zoning board of review, including any special conditions attached to the decision, shall be mailed to the applicant and to the zoning enforcement officer of the city or town. Any decision evidencing the granting of a variance, modification, or special use shall also be recorded in the land evidence records of the city or town.

§ 45-24-61.1 Procedure – Tolling of expiration periods. – (a) Notwithstanding any other provision set forth in this chapter, all periods pertaining to the expiration of any approval issued pursuant to the local ordinances promulgated under this chapter shall be tolled until June 30, 2013. For the purposes of this section, “tolling” shall mean the suspension or temporary stopping of the running of the applicable permit or approval period.

(b) Said tolling need not be recorded in the land evidence records to be valid, however, a notice of the tolling must be posted in the municipal planning department, and near the land evidence records.

(c) The tolling shall apply only to approvals or permits in effect on November 9, 2009 and those issued between November 9, 2009 and June 30, 2013 and shall not revive expired approvals.

(d) The expiration dates for all permits and approvals issued before the tolling period began will be recalculated as of July 1, 2013 by adding thereto the number of days between November 9, 2009 and the day on which the permit or approval would otherwise have expired. The expiration dates for all permits and approvals issued during the tolling period will be recalculated as of July 1, 2013 by adding thereto the number of days between the day the permit or approval was issued and the day the permit or approval otherwise would have expired.

§ 45-24-62 Administration – Judicial aid in enforcement. – The supreme court and the superior court, within their respective jurisdictions, or any justice of either of those courts in vacation, shall, upon due proceedings in the name of the city or town, instituted by its city or town solicitor, have power to issue any extraordinary writ or to proceed according to the course of law or equity or both:

(1) To restrain the erection, alteration, or use of any building, structure, sign, or land erected, altered, or used in violation of the provisions of any zoning ordinance enacted under the authority of this chapter, and to order its removal or abatement as a nuisance;

(2) To compel compliance with the provisions of any zoning ordinance enacted under the authority of this chapter;

(3) To order the removal by the property owner of any building, structure, sign, or improvement existing in violation of any zoning ordinance enacted under the provisions of this chapter and to authorize some official of the city or town, in the default of the removal by the owner, to remove it at the expense of the owner;

(4) To order the reimbursement for any work or materials done or furnished by or at the cost of the city or town;

(5) To order restoration by the owner, where practicable; and/or

(6) To issue fines and other penalties.

§ 45-24-63 Appeals – Right of appeal. – (a) A zoning ordinance adopted pursuant to this chapter shall provide that an appeal from any decision of an administrative officer or agency charged in the ordinance with the enforcement of any of its provisions may be taken to the zoning board of review by an aggrieved party.

(b) A zoning ordinance adopted pursuant to this chapter shall provide that an appeal from a decision of the zoning board of review may be taken by an aggrieved party to the superior court for the county in which the city or town is situated.

§ 45-24-64 Appeals – Appeals to zoning board of review. – An appeal to the zoning board of review from a decision of any other zoning enforcement agency or officer may be taken by an aggrieved party. The appeal shall be taken within a reasonable time of the date of the recording of the decision by the zoning enforcement officer or agency by filing with the officer or agency from whom the appeal is taken and with the zoning board of review a notice of appeal specifying the ground of the appeal. The officer or agency from whom the appeal is taken shall immediately transmit to the zoning board of review all the papers constituting the record upon which the action appealed from was taken. Notice of the appeal shall also be transmitted to the planning board or commission.

§ 45-24-65 Appeals – Stay of proceedings. – An appeal shall stay all proceedings in furtherance of the action appealed from, unless the zoning enforcement officer or agency from whom the appeal is taken

certifies to the zoning board of review, after an appeal has been filed, that by reason of facts stated in the certificate a stay would in the officer's or agency's opinion cause imminent peril to life or property. In that case, proceedings shall not be stayed other than by a restraining order, which may be granted by a court of competent jurisdiction on application and upon notice to the officer or agency from whom the appeal is taken on due cause shown.

§ 45-24-66 Appeals – Public hearing by zoning board of review. – The zoning board of review shall fix a reasonable time for the hearing of the appeal, and shall give public notice, at least fourteen (14) days prior to the date of the hearing in a newspaper of general circulation in the city or town. Notice of the hearing, which shall include the street address of the subject property, shall be sent by first class mail, postage prepaid, to the appellant and to those requiring notice under **§ 45-24-53**. The zoning board of review shall decide the matter within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney. The cost of any notice required for the hearing shall be borne by the appellant.

§ 45-24-67 Appeals – Participation in zoning hearing. – Participation in a zoning hearing or other proceeding by a party is not a cause for civil action or liability except for acts not in good faith, intentional misconduct, a knowing violation of law, transactions where there is an improper personal benefit, or malicious, wanton, or willful misconduct.

§ 45-24-68 Appeals – Decisions and records of zoning board of review. – In exercising its powers the zoning board of review may, in conformity with the provisions of this chapter, reverse or affirm wholly or partly and may modify the order, requirement, decision, or determination appealed from and may make any orders, requirements, decisions, or determinations that ought to be made, and to that end has the powers of the officer from whom the appeal was taken. All decisions and records of the zoning board of review respecting appeals shall conform to the provisions of **§ 45-24-61**.

§ 45-24-69 Appeals – Appeals to superior court. – (a) An aggrieved party may appeal a decision of the zoning board of review to the superior court for the county in which the city or town is situated by filing a complaint stating the reasons of appeal within twenty (20) days after the decision has been recorded and posted in the office of the city or town clerk. The decision shall be posted in a location visible to the public in the city or town hall for a period of twenty (20) days following the recording of the decision in the office of the city or town clerk. The zoning board of review shall file the original documents acted upon by it and constituting the record of the case appealed from, or certified copies, together with other facts that may be pertinent, with the clerk of the court within thirty (30) days after being served with a copy of the complaint. When the complaint is filed by someone other than the original applicant or appellant, the original applicant or appellant and the members of the zoning board are made parties to the proceedings. The appeal shall not stay proceedings upon the decision appealed from, but the court may, in its discretion, grant a stay on appropriate terms and make any other orders that it deems necessary for an equitable disposition of the appeal.

(b) If, before the date set for the hearing in the superior court, an application is made to the court for leave to present additional evidence before the zoning board of review and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for the failure to present it at the hearing before the zoning board of review, the court may order that the additional evidence be taken before the zoning board of review upon conditions determined by the court. The zoning board of review may modify its findings and decision by reason of the additional evidence and file that evidence and any new findings or decisions with the superior court.

(c) The review shall be conducted by the superior court without a jury. The court shall consider the record of the hearing before the zoning board of review and, if it appears to the court that additional evidence is necessary for the proper disposition of the matter, it may allow any party to the appeal to present that evidence in open court, which evidence, along with the report, constitutes the record upon which the determination of the court is made.

(d) The court shall not substitute its judgment for that of the zoning board of review as to the weight of the evidence on questions of fact. The court may affirm the decision of the zoning board of review or remand the case for further proceedings, or may reverse or modify the decision if substantial rights of the appellant have been prejudiced because of findings, inferences, conclusions, or decisions which are:

- (1) In violation of constitutional, statutory, or ordinance provisions;
 - (2) In excess of the authority granted to the zoning board of review by statute or ordinance;
 - (3) Made upon unlawful procedure;
 - (4) Affected by other error of law;
 - (5) Clearly erroneous in view of the reliable, probative, and substantial evidence of the whole record;
- or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

§ 45-24-69.1 Appeals – Notice of appeals to superior court. – (a) Whenever an aggrieved party appeals a decision of a zoning board of review to the superior court pursuant to the provisions of **§ 45-24-69**, the aggrieved party shall also give notice of the appeal to those persons who were entitled to notice of the hearing set by the zoning board of review. The persons entitled to notice are set forth and described in **§ 45-24-53**.

(b) Notice of the appeal shall be mailed to those parties described in **§ 45-24-53** within ten (10) business days of the date that the appeal is filed in superior court not counting Saturdays, Sundays, or holidays. Notice shall be sent by first class mail, postage prepaid, and the cost of the notice shall be borne by the aggrieved party filing the appeal in superior court.

(c) The notice sent for an appeal to the superior court as described in this section shall include and contain:

- (1) The caption and civil action number of the case;
- (2) The date the case was filed in the superior court;
- (3) The county in which the appeal to superior court was filed;
- (4) The name, address and telephone number of the attorney filing the appeal on behalf of the aggrieved party, or, the name, address, and telephone number of the aggrieved party if the aggrieved party is not represented by counsel;
- (5) Language in bold type notifying the person(s) receiving the notice that an appeal has been filed in the superior court;

(6) Language indicating that the aggrieved party will serve the named defendants;

(7) Language indicating that the persons receiving the notice may retain counsel and/or participate in the appeal insofar as the law allows;

(8) Language indicating that an appeal of a decision of a zoning board to the superior court is governed by § 45-24-69 and this section; and

(9) The date of the notice shall be contained on the notice.

(d) Within twenty (20) days after a notice as described in this section is sent, the aggrieved party shall file an affidavit with the court indicating and/or containing:

(1) A complete list of all the names and addresses of the intended recipients of the notice of the hearing;

(2) The date the notice was sent;

(3) An affirmative statement verifying the notice was sent by first class mail, postage prepaid;

(4) An affirmative statement verifying that each notice was sent in an envelope containing a return address and indicating the return address on the envelope;

(5) A statement identifying all notices that were returned to the return address or not delivered for whatever reason and/or an affirmative statement indicating that all other notices have not been returned as of the date and time of the affidavit; and

(6) A copy of the form of the notice shall be attached to the affidavit.

§ 45-24-70 Appeals – Priority in judicial proceedings. – Upon the entry of any case or proceeding brought under the provisions of this chapter, including pending appeals and appeals subsequently taken to the court, the court shall, at the request of either party, advance the case, so that the matter is afforded precedence on the calendar and shall be heard and determined with as little delay as possible.

§ 45-24-71 Appeals – Appeal of enactment of or amendment to zoning ordinance. – (a) An appeal of an enactment of or an amendment to a zoning ordinance may be taken to the superior court for the county in which the municipality is situated by filing a complaint within thirty (30) days after the enactment or amendment has become effective. The appeal may be taken by an aggrieved party or by any legal resident or landowner of the municipality or by any group of residents or landowners whether or not incorporated, of the municipality. The appeal shall not stay the enforcement of the zoning ordinance, as enacted or amended, but the court may, in its discretion, grant a stay on appropriate terms, which may include the filing of a bond, and make other orders that it deems necessary for an equitable disposition of the appeal.

(b) The complaint shall state with specificity the area or areas in which the enactment or amendment does not conform with the comprehensive plan and/or the manner in which it constitutes a taking of private property without just compensation.

(c) The review shall be conducted by the court without a jury. The court shall first consider whether the enactment or amendment of the zoning ordinance is in conformance with the comprehensive plan. If the enactment or amendment is not in conformance with the comprehensive plan, then the court shall invalidate the enactment or the amendment, or those parts of the enactment or amendment

which are not in conformance with the comprehensive plan. The court shall not revise the ordinance to conform with the comprehensive plan, but may suggest appropriate language as part of the court decision.

(d) In the case of an aggrieved party, where the court has found that the enactment or amendment of the zoning ordinance is in conformance with the comprehensive plan, then the court shall next determine whether the enactment or amendment works as a taking of property from the aggrieved party. If the court determines that there has been a taking, the court shall remand the case to the legislative body of the municipality, with its findings that a taking has occurred, and order the municipality to either provide just compensation or rescind the enactment or amendment within thirty (30) days.

(e) The superior court retains jurisdiction, in the event that the aggrieved party and the municipality do not agree on the amount of compensation, in which case the superior court shall hold further hearings to determine and to award compensation. The superior court retains jurisdiction to determine the amount of an award of compensation for any temporary taking, if that taking exists.

(f) The court may, in its discretion, upon the motion of the parties or on its own motion, award reasonable attorney's fees to any party to an appeal, including a municipality.

§ 45-24-72 Severability. – If any provision of this chapter or any rule, regulation, or determination made under this chapter, or the application to any person, agency, or circumstance, is held invalid by a court of competent jurisdiction, the remainder of the chapter, rule, regulation, or determination and the application of the provisions to other persons, agencies, or circumstances shall not be affected thereby. The invalidity of any section or sections of this chapter shall not affect the validity of the remainder of the chapter.

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HISTORICAL AREA ZONING

{ RIGL § 45-24.1 }



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§ 45-24.1-1 Declaration of purpose. – The preservation of structures of historic and architectural value and historic cemeteries, wherever located within a city or town, are declared to be a public purpose, and any city or town council has the power by ordinance to regulate the construction, alteration, repair, moving, and demolition of these structures within the limits of the city or town. It is recognized that the purpose of the ordinance is to:

- (1) Safeguard the heritage of the city or town by preserving a district in a city or town which reflects elements of its cultural, social, economic, political, and architectural history;
- (2) Stabilize and improve property values in that district;
- (3) Foster civic beauty;
- (4) Strengthen the local economy;
- (5) Promote the use of the historic districts for the education, pleasure, and welfare of the citizens of the city or town; and
- (6) Provide, where feasible, that in these historic districts housing, including, but not limited to, limited equity cooperative housing, be made available to low and/or moderate income residents.

§ 45-24.1-1.1 Definitions. – The following terms have the following respective meanings unless a different meaning clearly appears from the context:

- (1) «Alteration» means an act that changes one or more of the exterior architectural features of a structure or its appurtenances, including, but not limited to, the erection, construction, reconstruction, or removal of any structure or appurtenance.
- (2) «Appurtenances» means features other than primary or secondary structures which contribute to the exterior historic appearance of a property, including, but not limited to, paving, doors, windows, signs, materials, decorative accessories, fences, and historic landscape features.
- (3) «Certificate of appropriateness» means a certificate issued by a historic district commission established under this chapter indicating approval of plans for alteration, construction, repair, removal, or demolition of a structure or appurtenances of a structure within a historic district. Appropriate for the purposes of passing upon an application for a certificate of appropriateness means not incongruous with those aspects of the structure, appurtenances, or the district which the commission has determined to be historically or architecturally significant.
- (4) «Construction» means the act of adding to an existing structure or erecting a new principal or accessory structure or appurtenances to a structure, including, but not limited to, buildings, extensions, outbuildings, fire escapes, and retaining walls.
- (5) «Demolition» means an act or process that destroys a structure or its appurtenances in part or in whole.
- (6) «Historic district» means a specific division of a city or town as designated by ordinance of the city or town pursuant to this chapter. A historic district may include one or more structures.
- (7) «Removal» means a relocation of a structure on its site or to another site.
- (8) «Repair» means a change meant to remedy damage or deterioration of a structure or its

appurtenances.

(9) «Structure» means anything constructed or erected, the use of which requires permanent or temporary location on or in the ground, including, but not limited to, buildings, gazebos, billboards, outbuildings, decorative and retaining walls, and swimming pools.

§ 45-24.1-2 Historic district zoning authorized. – In order to carry out the purposes of this chapter, each city and town has the authority to establish, change, lay out, and define districts, which are deemed to be of historical or architectural value, in the same manner as those cities and towns are presently empowered to establish or change areas and classifications of zoning.

§ 45-24.1-3 Creation of commission authorized – Membership appointment – Term of office.
– (a) In order to carry out the purposes of this chapter any city or town council shall have the authority to create a commission called the historic district commission. The membership of a commission in a city shall consist of seven (7) qualified members, and in a town shall consist of not less than three (3) nor more than seven (7) qualified members, whose residence is located in the city or town; and provided, that the historic district commission of the city of Providence shall consist of eleven (11) qualified members, two (2) of whom shall be members of the city council elected by the city council from its councilmanic members to serve for a term of four (4) years. In a city the members shall be appointed by the mayor, except as provided in the case of the historic district commission of the city of Providence, and in a town, by the president of the town council. Members of an historic district commission shall be residents of the city or town.

(b) The appointed members of the commission shall be appointed for three (3) year terms, except the initial appointments of some of the members shall be for less than three (3) years so that the initial appointments are staggered and so that subsequent appointments do not reoccur at the same time.

(c) Any city or town has the right to name an auxiliary member of the commission appointed in addition to the regular members of the commission; provided, that the city of Newport shall have the right to appoint two (2) auxiliary members to its historic district commission. An auxiliary member shall sit as an active member, upon the request of the chair, when and if a regular member of the commission is unable to serve at any meeting of the commission.

(d) Appointed members of the commission are eligible for reappointment, and, upon the expiration of their term, shall continue to serve until replaced unless otherwise provided for in local law.

(e) In the event of a vacancy on the commission, interim appointments of appointed members may be made by the appointing authority to complete the unexpired term of the position.

(f) Organized and existing preservation societies may present to the appointing authority of a city or town a list of qualified citizens, from which list the appointing authority may select members of the commission for his or her respective city or town.

(g) Members of a commission shall serve without compensation.

§ 45-24.1-3.1 Present appointments unaffected. – Nothing contained in § 45-24.1-3, in any way alters any other part or provision of this title, chapter, or section, or any appointments made thereunder, all of which remain in full force and effect.

§ 45-24.1-3.2 Legislative findings. – The general assembly hereby recognizes that gas regulators or gas meters located anywhere on the exterior of historic buildings or buildings located in a historic

district may create a visual intrusion to the property and to the surrounding historic district, and it is the intent of this chapter to provide procedures for any public utility proposing to locate or relocate such devices on residential historic buildings.

§ 45-24.1-4 Permit required to construct, alter, or demolish structure – Application – Written decisions of commission – Powers of commission. – (a) The commission shall, within twelve (12) months of the date the local historic district zoning ordinance takes effect:

(1) Adopt and publish all rules and regulations necessary to carry out its functions under the provisions of this chapter; and

(2) Publish standards as necessary to inform historic district residents, property owners, and the general public of those criteria by which the commission determines whether to issue a certificate of appropriateness. The commission may amend these standards as reasonably necessary, and it shall publish all amendments.

(b) Before a property owner or public utility as defined in subdivision **39-1-2(20)** that is installing a gas regulator or gas meter may authorize or commence construction, alteration, repair, removal, or demolition affecting the exterior appearance of a structure or its appurtenances within a historic district or affecting a historic cemetery wherever located within a city or town, the owner or public utility must apply for and receive a certificate of appropriateness from the commission. In applying, the owner or public utility must comply with application procedures established by the commission pursuant to this chapter and the applicable local ordinance. The commission shall require the owner or public utility to submit information which is reasonably necessary to evaluate the proposed construction, alteration, repair, removal, or demolition, including, but not limited to, plans, drawings, photographs, or other information. The owner of the property or the public utility must obtain a certificate of appropriateness for the project whether or not state law requires that he, she or it also obtain a permit from the local building official. The building official shall not issue a permit until the commission has granted a certificate of appropriateness.

(c) In the case of a historic cemetery, the owner must comply with all provisions of law and make suitable and appropriate provisions for the reinterment of any human remains in an established cemetery. Original or existing headstones and markers shall be preserved and installed at the site of the reinterment.

(d) In reviewing plans, the commission shall give consideration to:

(1) The historic and architectural significance of the structure and its appurtenances;

(2) The way in which the structure and its appurtenances contribute to the historical and architectural significance of the district; and

(3) The appropriateness of the general design, arrangement, texture, materials, and siting proposed in the plans.

The commission shall pass only on exterior features of a structure and its appurtenances and shall not consider interior arrangements.

(e) All decisions of the commission shall be in writing. The commission shall articulate and explain the reasons and bases of each decision on a record, and, in the case of a decision not to issue a

certificate of appropriateness, the commission shall include in the bases for its conclusion that the proposed activity would be incongruous with those aspects of the structure, appurtenances, or the district which the commission has determined to be historically or architecturally significant. The commission shall send a copy of the decision to the applicant.

(f) In the case of an application for construction, repair, alteration, removal, or demolition affecting the exterior appearance of a structure, or its appurtenances, which the commission deems so valuable to the city, town, state, or nation, that the loss of that structure will be a great loss to the city, town, state, or nation, the commission shall endeavor to work out with the owner an economically feasible plan for the preservation of that structure. Unless the commission is satisfied that the retention of the structure constitutes a hazard to public safety, which hazard cannot be eliminated by economic means available to the owner, including the sale of the structure to any purchaser willing to preserve the structure, or unless the commission votes to issue a certificate of appropriateness for the proposed construction, alteration, repair, removal, or demolition, the commission shall file with the building official or duly delegated authority its rejection of the application. In the absence of a change in the structure arising from casualty, no new application for the same or similar work shall be filed within one year after the rejection.

(g) In the case of any structure deemed to be valuable for the period of architecture it represents and important to the neighborhood within which it exists, the commission may file with the building official, or other duly delegated authority its certificate of appropriateness for an application if any of the circumstances under which a certificate of appropriateness might have been given under subsection (6) are in existence or if:

(1) Preservation of the structure is a deterrent to a major improvement program which will be of substantial benefit to the community;

(2) Preservation of the structure would cause undue or unreasonable financial hardship to the owner, taking into account the financial resources available to the owner, including the sale of the structure to any purchaser willing to preserve the structure; or

(3) The preservation of the structure would not be in the interest of the majority of the community.

(h) When considering an application to demolish or remove a structure of historic or architectural value, the commission shall assist the owner in identifying and evaluating alternatives to demolition, including the sale of the structure and its present site. In addition to any other criteria, the commission also shall consider whether there is a reasonable likelihood that some person or group other than the current owner is willing to purchase, move, and preserve the structure, and whether the owner has made continuing, bona fide, and reasonable efforts to sell the structure to any purchaser willing to move and preserve the structure.

(i) No less than fifteen (15) days after receiving an application to demolish or to remove an historic cemetery, the commission shall forward the application to the commission to study historic cemeteries. The commission shall also immediately forward to the commission to study historic cemeteries its finding of fact, if any, together with its action on the application.

§ 45-24.1-5 Avoiding demolition through owner neglect. – A city or town may by ordinance empower city or town councils in consultation with the historic district commission to identify structures of historical or architectural value whose deteriorated physical condition endangers the preservation of the structure or its appurtenances. The council shall publish standards for maintenance

of properties within historic districts. Upon the petition of the historic district commission that a historic structure is so deteriorated that its preservation is endangered, the council may establish a reasonable time not less than thirty (30) days within which the owner must begin repairs. If the owner has not begun repairs within the allowed time, the council shall hold a hearing at which the owner may appear and state his or her reasons for not commencing repairs. If the owner does not appear at the hearing or does not comply with the council's orders, the council may cause the required repairs to be made at the expense of the city or town and cause a lien to be placed against the property for repayment.

§ 45-24.1-6 Public meetings. – All meetings of the commission are open to the public, and any person or his or her duly constituted representative is entitled to appear and be heard on any matter before the commission before it reaches its decision. The commission shall keep a record, open to public view, of its resolutions, proceedings, findings, decisions, and actions. The commission shall provide notice of its meetings and comply in all respects with the requirements of the open meetings law.

§ 45-24.1-7 Certificate of appropriateness or rejection of plans – Period within which commission to act. – The commission shall file with the building official or other duly delegated authority its certificate of appropriateness or rejection of all plans submitted to it for review. No work shall begin until the certificate has been filed, but, in the case of rejection the certificate is binding upon the building official or other duly delegated authority and no permit shall be issued in such a case. The failure of the commission to act within forty-five (45) days from the date of an application filed with it, unless an extension is agreed upon mutually by the applicant and the commission, is deemed to constitute approval. In the event, however, that the historic district commission makes a finding of fact that the circumstances of a particular application require further time for additional study and information than can be obtained within the period of forty-five (45) days, then the commission has a period of up to ninety (90) days within which to act upon the application.

§ 45-24.1-7.1 Right of appeal. – Any person, or persons jointly or severally, aggrieved by a decision of the historic district commission has the right of appeal, concerning the decision, to the zoning board, and a further right of appeal from the zoning board to the superior court, in the same manner provided in § 45-24-69 and from the superior court to the supreme court by writ of certiorari.

§ 45-24.1-7.2 Scope of review by zoning board. – When hearing appeals from commission decisions, the zoning board of review shall not substitute its own judgment for that of the commission, but must consider the issue upon the findings and record of the commission. The zoning board of review shall not reverse a commission decision except on a finding of prejudicial procedural error, clear error, or lack of support by the weight of the evidence in the record. The zoning board of review shall put all decisions on appeal in writing. The zoning board of review shall articulate and explain the reasons and bases of each decision on the record, and the zoning board of review shall send a copy of the decision to the applicant and to the historic district commission.

§ 45-24.1-8 Exceptions to applicability of chapter. – Nothing in this chapter shall be construed to prevent ordinary maintenance or repair of any structure within the historic district; provided, that any maintenance or repair does not result in any change of design, type of material, or appearance of the structure or its appurtenances. Nothing in this chapter shall be construed to prevent the construction, alteration, repair, moving, or demolition of any structure under a permit issued by the building official prior to the passage of an ordinance.

§ 45-24.1-9 Appeals. – A person or persons jointly or severally aggrieved by a decision of a historic district commission has the right to appeal the decision to the zoning board of review. When

hearing appeals from commission decisions, the zoning board of review shall not substitute its own judgment for that of the commission, but must consider the issue upon the findings and record of the commission. The zoning board of review shall not reverse a commission decision except on a finding of prejudicial procedural error, clear error, or lack of support by the weight of the evidence in the record. The zoning board of review shall put all decisions on appeal in writing. The zoning board of review shall articulate and explain the reasons and bases of each decision on the record, and the zoning board of review shall send a copy of the decision to the applicant and to the historic district commission.

§ 45-24.1-10 Enforcement. – (a) Any authorized local official or any local building official may bring an action against any property owner who fails to comply with the requirements of **§ 45-24.1-4**. Actions shall be brought in the superior court having jurisdiction where the violation occurred or is likely to occur; provided, that where the violation has occurred, or is likely to occur in the city of Providence, the action shall be brought in the municipal housing court in the city. Plaintiffs may seek restraining orders and injunctive relief to restrain and enjoin violations or threatened violations of this chapter.

(b) Provided, further, that every person who shall have any historical building, or portion of a historical building demolished without the requisite permits as required by chapter **45-24.1** shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding five hundred dollars (\$500) and/or imprisonment of up to one year.

§ 45-24.1-11 – 45-24.1-19. Repealed.. –

§ 45-24.1-20 Preservation of historic structures in Pawtucket. – In addition to all other powers granted by the provisions of this chapter, the city of Pawtucket is authorized by ordinance to establish, upon recommendation of its historic district commission, a list of specified buildings or structures which are deemed to be of historic or architectural value, and, from time to time, to add or delete from the list in the same manner as it is presently empowered, to establish or change areas of classification of zoning, and to regulate the construction, alteration, repair, moving, and demolition of buildings and structures.

§ 45-24.1-21 Preservation of historical structures in Narragansett. – In addition to all other powers granted by the provisions of this chapter, the town of Narragansett is authorized by ordinance to establish, upon recommendation of its historic districts commission, a list of specified buildings or structures which are deemed to be of historic or architectural value, and, from time to time, to add to or delete from the list in the same manner as it is presently empowered; to establish or change areas of classification of zoning; and to regulate the construction, alteration, repair, moving, and demolition of buildings and structures.

§ 45-24.1-22 Preservation of historical structures in New Shoreham. – In addition to all other powers granted by provisions of this chapter, the town of New Shoreham is authorized by ordinance to establish, upon recommendation of its historic district commission, a list of specified buildings or structures which are deemed to be of historic or architectural value, and, from time to time, to add to or delete from the list in the same manner as it is presently empowered, to establish or change areas of classification of zoning, and to regulate the construction, alteration, repair, moving, and demolition of buildings and structures.

CONSERVATION COMMISSIONS

{ RIGL § 45-35 }



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§ 45-35-1 Authority to create commission – Purpose. – City or town councils have the authority to create a commission, to be called the conservation commission, the purpose of which is to promote and develop the natural resources, protect the watershed resources, and preserve natural esthetic areas within municipalities. The commission shall conduct researches into its local land areas and seek to coordinate the activities of unofficial bodies organized for similar purposes, and may advertise, prepare, print, and distribute books, maps, charts, plans, and pamphlets which in its judgment it deems necessary for its work. It shall make and keep an index of all open spaces within the city or town, publicly or privately owned, including open marshlands, swamps, and other wetlands for the purpose of obtaining information on the proper use of those areas. It may recommend to municipal councils, boards, or agencies, a program for the better promotion, development, utilization, or preservation of open areas, streams, shores, wooded areas, roadsides, swamps, marshlands, and natural esthetic areas. It shall keep accurate records of its meetings and actions and file an annual report. It has power to appoint, subject to any personnel procurement program ordained by the city or town, clerks and other employees it may from time to time require.

§ 45-35-2 Appointment of commission members. – The commission shall consist of three (3) to seven (7) members appointed by the mayor with the advice and consent of the city council, or by the town council, or by any authority designated in its city or town charter. The members of the commission shall be appointed for three (3) year terms, except the initial appointments of some of the members shall be for less than three (3) years to the end that the initial appointments shall be staggered and so that all subsequent vacancies shall not reoccur at the same time. In the event of a vacancy, interim appointments may be made by the appointing authority to complete the unexpired term of the position. Duly incorporated and existing wildlife, conservation, sportsmen's, horticultural, or like organizations may present to the appointing authority a list of qualified citizens from which lists the appointing authority must select at least three (3) members of the commission and from which list the appointing authority may select the remainder.

§ 45-35-3 Acquisitions – Free access to public land not restricted. – Subject to the approval of the city or town council and financial town meeting, the commission may receive gifts of funds, lands, buildings, or other properties in the name of the municipality, and may also acquire by gift, purchase, grant, bequest, devise, lease, or otherwise, the fee in those lands or water rights or any lease interest, development right, easement, covenant, or other contractual right, including conveyances, and, shall manage these gifts and acquisitions in accordance with the purposes established in this chapter. However, nothing in this chapter shall be construed to deny to the people access to the lands for all legitimate purposes. No city or town may deny or restrict to the people free access to the lands, or to any other land held by or for the city or town for recreation purposes.

§ 45-35-4 Meetings – Records. – All meetings of the commission are open to the public and any person or that person's duly constituted representative is entitled to appear and be heard on any matter before the commission before it reaches its decision. All records of its proceedings, resolutions, and actions are open to public view.

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SOIL EROSION AND SEDIMENT CONTROL

{ RIGL § 45-46 }



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§ 45-46-1 Legislative findings. – The general assembly finds that excessive quantities of soil are eroding from certain areas of the state that are undergoing development for certain nonagricultural uses as housing developments, industrial areas, recreational facilities, commercial facilities, and roads. Erosion occurring in these areas makes necessary costly repairs to gullies, washed out fills, roads, and embankments. The resulting sediment clogs storm sewers and road ditches, roils streams, and deposits silt in ponds and reservoirs. In some of the state’s waters, silt resulting from erosion has become a major water pollutant and threatens water supply, recreational, aesthetic, and wildlife habitat values associated with these waters. The general assembly finds that certain agricultural lands also experience extensive erosion and sedimentation. The general assembly directs the department of environmental management division of agriculture and the Rhode Island state conservation committee to work with landowners on these lands to implement conservation plans and/or activities.

§ 45-46-2 Declaration of purpose. – The purpose of this chapter is to authorize the cities and towns of the state to adopt, in accordance with the provisions of the model local ordinance provided in this chapter, ordinances and programs to control erosion and sedimentation and to prevent erosion-related damage to the man-made and natural features of the state.

§ 45-46-3 Powers of councils. – The city or town council of any city or town is authorized to adopt, pursuant to the purposes of this chapter, the provisions of the model erosion and sediment control ordinance as provided in § 45-46-5. To assist in the implementation of ordinances and programs adopted pursuant to this chapter, a city or town council may adopt an erosion and sediment control plan.

§ 45-46-4 Provisions of local ordinances – Model ordinances. – (a) A city or town adopting an erosion and sediment control ordinance under this chapter shall incorporate, in the ordinance, the provisions contained in the model ordinance in § 45-46-5, and, may further specify performance and other standards and adopt additional definitions that are not inconsistent with this chapter; provided, that the ordinance provides reasonable and prudent provisions for addressing soil and sediment control measures for existing uses and facilities, other than those exempt under this chapter, including a reasonable time table for the submission of plans and documentation.

(b) The ordinance shall require that applications for plan approval under an erosion and sediment control ordinance shall be made to the building official, and that approval is issued through the building official. Councils may, however, in adopting an erosion and sediment control ordinance authorize the building official to designate all duties and responsibilities required under the model ordinance, provided in § 45-46-5, to appropriate officials and agencies in the context of the local government’s structure and in a manner consistent with applicable charter provision and public law. The building official and/or his or her designee reviewing soil erosion and sediment control plans shall have the following qualifications:

(1) Be a registered engineer, surveyor, or landscape architect, or a soil and water conservation society certified erosion and sediment control specialist, or

(2) Have attended a soil erosion and sediment control training session sponsored by the United States Department of Agriculture Soil Conservation Service and conservation districts.

(c) The building official and his or her designee shall be granted the necessary authority to administer the model ordinance, including entry onto private property when necessary for periodic inspections to ensure compliance with provisions of the approved soil erosion and sediment control plan.

§ 45-46-5 Model ordinance – Soil erosion and sediment control. – ARTICLE I

Section 1. Purpose.

(a) The (city or town) council finds that excessive quantities of soil are eroding from certain areas that are undergoing development for non agricultural uses such as housing developments, industrial areas, recreational facilities, and roads. This erosion makes necessary costly repairs to gullies, washed out fills, roads, and embankments. The resulting sediment clogs the storm sewers and road ditches, muddies streams, leaves deposits of silt in ponds and reservoirs, and is considered a major water pollutant.

(b) The purpose of this ordinance is to prevent soil erosion and sedimentation from occurring as a result of non agricultural development within the city or town by requiring proper provisions for water disposal, and the protection of soil surfaces during and after construction, in order to promote the safety, public health, and general welfare of the city or town.

ARTICLE II

Section 1. Applicability.

This ordinance is applicable to any situation involving any disturbance to the terrain, topsoil or vegetative ground cover upon any property within the city or town of xxxxxx after determination of applicability by the building official or his or her designee based upon criteria outlined in article III. Compliance with the requirements as described in this ordinance shall not be construed to relieve the owner/applicant of any obligations to obtain necessary state or federal permits.

ARTICLE III

Section 1. Determination of applicability.

(a) It is unlawful for any person to disturb any existing vegetation, grades, and contours of land in a manner which may increase the potential for soil erosion, without first applying for a determination of applicability from the building official or his or her designee. Upon determination of applicability, the owner/applicant shall submit a soil erosion and sediment control plan for approval by the building official or his or her designee, as provided in article IV. The application for determination of applicability shall describe the location, nature, character, and time schedule of the proposed land disturbing activity in sufficient detail to allow the building official or his or her designee to determine the potential for soil erosion and sedimentation resulting from the proposed project. In determining the applicability of the soil erosion and sediment control ordinance to a particular land disturbing activity, the building official or his or her designee shall consider site topography, drainage patterns, soils, proximity to watercourses, and other information deemed appropriate by the building official or his or her designee. A particular land disturbing activity shall not be subject to the requirements of this ordinance if the building official or his or her designee finds that erosion resulting from the land disturbing activity is insignificant and represents no threat to adjacent properties or to the quality of any coastal feature or watercourse, as defined in Article IX. The current «Rhode Island Soil Erosion and Sediment Control Handbook,» U.S. department of agriculture soil conservation service, R.I. department of environmental management, and R.I. state conservation committee shall be consulted in making this determination.

(2) This ordinance shall not apply to existing quarrying operations actively engaged in excavating rock but shall apply to sand and gravel extraction operations.

(b) No determination of applicability is required for the following:

(1) Construction, alteration, or use of any additions to existing single family or duplex homes or related structures; provided, that the grounds coverage of addition is less than one thousand (1,000) square feet, and construction, alteration and use does not occur within one hundred (100) feet of any watercourse or coastal feature, and the slopes at the site of land disturbance do not exceed ten percent (10%).

(2) Use of a home garden in association with onsite residential use.

(3) Accepted agricultural management practices such as seasonal tilling and harvest activities associated with property utilized for private and/or commercial agricultural or silvicultural purposes.

(4) Excavations for improvements other than those described in subsection (b)(1) of this section which exhibit all of the following characteristics:

(i) Does not result in a total displacement of more than fifty (50) cubic yards of material;

(ii) Has no slopes steeper than ten feet (10) vertical in one hundred feet (100) horizontal or approximately ten percent (10%); and

(iii) Has all disturbed surface areas promptly and effectively protected to prevent soil erosion and sedimentation.

(5) Grading, as a maintenance measure, or for landscaping purposes on existing developed land parcels or lots; provided, that all bare surface is immediately seeded, sodded or otherwise protected from erosive actions, and all of the following conditions are met:

(i) The aggregate area of activity does not exceed two thousand (2,000) square feet; and

(ii) The change of elevation does not exceed two feet (2) at any point; and

(iii) The grading does not involve a quantity of fill greater than eighteen (18) cubic yards; except where fill is excavated from another portion of the same parcel and the quantity does not exceed fifty (50) cubic yards.

(6) Grading, filling, removal, or excavation activities and operations undertaken by the city or town under the direction and supervision of the director of public works for work on streets, roads, or rights-of-ways dedicated to public use; provided, that adequate and acceptable erosion and sediment controls are incorporated, in engineering plans and specifications, and employed. Appropriate controls apply during construction as well as after the completion of these activities. All work shall be undertaken in accordance with the performance principles provided for in Article V, Section 1(c) and the standards and definitions that may be adopted to implement the performance principles.

ARTICLE IV

Section 1. Provisions of plan – Procedures.

(a) *Plan.*

(1) To obtain approval for a land disturbing activity as found applicable by the building official or his or her designee under article III, an applicant shall first file an erosion and sediment control plan

signed by the owner of the property, or authorized agent, on which the work subject to approval is to be performed. The plan or drawings, as described in article V, shall include proposed erosion and sediment control measures to be employed by the applicant or the applicant's agent.

(2) R.I. Freshwater Wetlands Permit: Where any portion of a proposed development requires approval under any provision of the general laws approved by the general assembly or where the approval contains provisions for soil erosion and sediment controls, that approved plan shall be a component of the overall soil erosion and sediment control plan required under this ordinance for the development.

(b) Fees.

The city or town adopting this ordinance may collect fair and reasonable fees from each applicant requesting approval of a soil erosion and sediment control plan for the purposes of administering this ordinance.

(c) Plan review.

(1) Within five (5) working days of the receipt of a completed plan, the building official or his or her designee shall send a copy of the plan to the review authorities which may include the public works department, the planning board or planning department, and conservation commission for the purpose of review and comment. The building official or his or her designee may also, within five (5) working days, submit copies of the plan to other local departments or agencies, including the conservation district that services their county, in order to better achieve the purposes of this chapter. Failure of these review authorities to respond within twenty-one (21) days of their receipt of the plan shall be deemed as no objection to the plan as submitted.

(2) The time allowed for plan review shall be commensurate with the proposed development project, and shall be done simultaneously with other reviews.

(d) Plan approval.

(1) The building official or his or her designee shall take action in writing, either approving or disapproving the plan, with reasons stated within ten (10) days after the building official has received the written opinion of the review authorities.

(2) In approving a plan, the building official or his or her designee may attach conditions deemed reasonably necessary by the review authorities to further the purposes of this ordinance. The conditions pertaining to erosion and sediment control measures and/or devices, may include, but are not limited to, the erection of walls, drains, dams, and structures, planting vegetation, trees and shrubs, furnishings, necessary easements, and specifying a method of performing various kinds of work, and the sequence or timing of the work. The applicant/owner shall notify the building inspector, or his or her designee, in advance of his or her intent to begin clearing and construction work described in the erosion and sediment control plan. The applicant shall have the erosion and sediment control plan on the site during grading and construction.

(e) Appeals.

(1) Administrative procedures: (A) If the ruling made by the building official or his or her designee is unsatisfactory to the applicant/owner, the applicant/owner may file a written appeal. The appeal of plans for soil erosion and sediment control shall be to the zoning board of review or other appropriate board of review, as determined by the city or town council.

(B) Appeal procedures shall follow current requirements for appeal to the above-mentioned boards.

(C) During the period in which the request for appeal is filed, and until the time that a final decision is rendered on the appeal, the decision of the building official or his or her designee remains in effect.

(2) Expert opinion: The official, or his or her designee, the zoning board of review, or other board of review, may seek technical assistance on any soil erosion and sediment control plan. The expert opinion must be made available in the office of the building official, or his or her designee, as a public record prior to the appeals hearing.

ARTICLE V.

Section 1. Soil Erosion and Sediment Control Plan.

(a) Plan preparation.

The erosion and sediment control plan shall be prepared by a registered engineer, or landscape architect or a soil and water conservation society certified erosion and sediment control specialist, and copies of the plan shall be submitted to the building official or his or her designee.

(b) Plan contents.

The erosion and sediment control plan shall include sufficient information about the proposed activities and land parcels to form a clear basis for discussion and review and to assure compliance with all applicable requirements of this chapter. The plan shall be consistent with the data collection, data analysis, and plan preparation guidelines in the current «Rhode Island Soil Erosion and Sediment Control Handbook,» prepared by the U.S. department of agriculture, soil conservation service, R.I. department of environmental management, R.I. state conservation committee, and at a minimum, shall contain:

(1) A narrative describing the proposed land disturbing activity and the soil erosion and sediment control measures and stormwater management measures to be installed to control erosion that could result from the proposed activity. Supporting documentation, such as a drainage area, existing site, and soil maps shall be provided as required by the building official or his or her designee.

(2) Construction drawings illustrating in detail existing and proposed contours, drainage features, and vegetation; limits of clearing and grading, the location of soil erosion and sediment control and stormwater management measures, detail drawings of measures; stock piles and borrow areas; sequence and staging of land disturbing activities; and other information needed for construction.

(3) Other information or construction plans and details as deemed necessary by the building official or his or her designee for a thorough review of the plan prior to action being taken as prescribed in this chapter. Withholding or delay of information may be reasons for the building official or his or her designee to judge the application as incomplete and providing grounds for disapproval of the application.

(c) Performance principles.

The contents of the erosion and sediment control plan shall clearly demonstrate how the principles, outlined in this subsection, have been met in the design and are to be accomplished by the proposed development project.

- (1) The site selected shall show due regard for natural drainage characteristics and topography.
- (2) To the extent possible, steep slopes shall be avoided.
- (3) The grade of created slopes shall be minimized.
- (4) Post development runoff rates should not exceed pre development rates, consistent with other stormwater requirements which may be in effect. Any increase in storm runoff shall be retained and recharged as close as feasible to its place of origin by means of detention ponds or basins, seepage areas, subsurface drains, porous paving, or similar technique.
- (5) Original boundaries, alignment, and slope of watercourses within the project locus shall be preserved to the greatest extent feasible.
- (6) In general, drainage shall be directed away from structures intended for human occupancy, municipal or utility use, or similar structures.
- (7) All drainage provisions shall be of a design and capacity so as to adequately handle stormwater runoff, including runoff from tributary upstream areas which may be outside the locus of the project.
- (8) Drainage facilities shall be installed as early as feasible during construction, prior to site clearance, if possible.
- (9) Fill located adjacent to watercourses shall be suitably protected from erosion by means of riprap, gabions, retaining walls, vegetative stabilization, or similar measures.
- (10) Temporary vegetation and/or mulching shall be used to protect bare areas and stockpiles from erosion during construction; the smallest areas feasible shall be exposed at any one time; disturbed areas shall be protected during the non growing months, November through March.
- (11) Permanent vegetation shall be placed immediately following fine grading.
- (12) Trees and other existing vegetation shall be retained whenever feasible; the area within the dripline shall be fenced or roped off to protect trees from construction equipment.
- (13) All areas damaged during construction shall be resodded, reseeded, or otherwise restored. Monitoring and maintenance schedules, where required, shall be predetermined.

(d) Existing uses and facilities.

- (1) The building official and/or his or her designee shall accept plans for existing uses and facilities which by their nature may cause erosion and sedimentation, such as excavation and quarrying operations; provided, that this section shall not apply to article III, section 1(a)(1). Plans or satisfactory evidence to demonstrate that the existing operations accomplish the objectives of the section shall be submitted to the building official and/or his/her designee within one hundred twenty (120) days from the date of the determination of applicability. Implementation of the plan shall be initiated upon approval of the plan.
- (2) When the preexisting use is a gravel extraction operation, the property owner shall conduct the operation in a manner so as not to devalue abutting properties; to protect abutting property from wind erosion and soil erosion due to increased runoff, sedimentation of reservoirs, and drainage systems; and to limit the depth of extraction so as not to interfere with the existing nearby water table.

ARTICLE VI. Enforcement.

Section 1. Performance bond.

(a) Performance bond.

(1) Before approving an erosion sediment control plan, the building official or his or her designee may require the applicant/owner to file a surety company performance bond, deposit of money, negotiable securities, or other method of surety, as specified by the building official or his or her designee. When any land disturbing activity is to take place within one hundred feet (100') of any watercourse or coastal feature or within an identified flood hazard district, or on slopes in excess of ten percent (10%), the filing of a performance bond shall be required. The amount of the bond, as determined by the public works department, or in its absence, the building official or his or her designee, shall be sufficient to cover the cost of implementing all erosion and sediment control measures as shown on the plan.

(2) The bond or negotiable security filed by the applicant shall be subject to approval of the form, content, amount, and manner of execution by the public works director and the city or town solicitor.

(3) A performance bond for an erosion sediment control plan for a subdivision may be included in the performance bond of the subdivision. The posting of the bond as part of the subdivision performance bond does not, however, relieve the owner of any requirements of this ordinance.

(b) Notice of default on performance secured by bond.

(1) Whenever the building official or his or her designee finds that a default has occurred in the performance of any terms or conditions of the bond or in the implementation of measures secured by the bond, written notice shall be made to the applicant and to the surety of the bond by the municipal solicitor. The notice shall state the nature of default, work to be done, the estimated cost, and the period of time deemed by the building official or his or her designee to be reasonably necessary for the completion of the work.

(2) Failure of the applicant to acknowledge and comply with the provisions and deadlines outlined in the notice of default means the institution, by the city or town solicitor, without further notice of proceedings whatsoever, of appropriate measures to utilize the performance bond, to cause the required work to be completed by the city or town, by contract or by other appropriate means as determined by the city or town solicitor.

(c) Notice of default on performance secured by cash or negotiable securities deposit.

If a cash or negotiable securities deposit has been posted by the applicant, notice and procedure are the same as provided for in subsection (b) of this section.

(d) Release from performance bond conditions.

The performance bonding requirement shall remain in full force and effect for twelve (12) months following completion of the project, or longer if deemed necessary by the building official or his or her designee.

Section 2. Approval – Expiration – Renewal.

(a) Every approval granted in this ordinance shall expire at the end of the time period established in the conditions. The developer shall fully perform and complete all of the work required within the

specified time period.

(b) If the developer is unable to complete the work within the designated time period, he or she shall, at least thirty (30) days prior to the expiration date, submit a written request for an extension of time to the building official or his or her designee, stating the underlying reasons for the requested time extension. If the extension is warranted, the building official or his or her designee may grant an extension of time up to a maximum of one year from the date of the original deadline. Subsequent extensions under the same conditions may be granted at the discretion of the building official.

Section 3. Maintenance of measures.

Maintenance of all erosion sediment control devices under this ordinance shall be the responsibility of the owner. The erosion sediment control devices shall be maintained in good condition and working order on a continuing basis. Watercourses originating and located completely on private property shall be the responsibility of the owner to their point of open discharge at the property line or at a communal watercourse within the property.

Section 4. Liability of applicant.

Neither approval of an erosion and sediment control plan nor compliance with any condition of this chapter shall relieve the owner/applicant from any responsibility for damage to persons or property, nor impose any liability upon the city or town for damages to persons or property.

ARTICLE VII.

Section 1. Inspections.

(a) Periodic inspections.

The provisions of this ordinance shall be administered and enforced by the building official or his or her designee. All work shall be subject to periodic inspections by the building official, or his or her designee. All work shall be performed in accordance with an inspection and construction control schedule approved by the building official or his or her designee, who shall maintain a permanent file on all of his or her inspections. Upon completion of the work, the developer or owner shall notify the building official or his or her designee that all grading, drainage, erosion and sediment control measures and devices, and vegetation and ground cover planting has been completed in conformance with the approval, all attached plans, specifications, conditions, and other applicable provisions of this ordinance.

(b) Final inspection.

(1) Upon notification of the completion by the owner, the building official or his or her designee shall make a final inspection of the site in question, and shall prepare a final summary inspection report of its findings which shall be retained in the department of inspections, and in the department of public works' permanent inspections file.

(2) The applicant/owner may request the release of his or her performance bond from the building official or his or her designee twelve (12) months after the final site inspection has been completed and approved. In the instance where the performance bond has been posted with the recording of a final subdivision, the bond shall be released after the building official or his or her designee has been notified by the city or town planning director of successful completion of all plat improvements by the

applicant/owner.

ARTICLE VIII. Notification.

Section 1. Noncompliance.

If, at any stage, the work in progress and/or completed under the terms of an approved erosion and sediment control plan does not conform to the plan, a written notice from the building official or his or her designee to comply shall be transmitted by certified mail to the owner. The notice shall state the nature of the temporary and permanent corrections required, and the time limit within which corrections shall be completed as established in section 2(b) of this article. Failure to comply with the required corrections within the specified time limit is considered a violation of this ordinance, in which case the performance bond or cash or negotiable securities deposit is subject to notice of default, in accordance with sections 1(b) and 1(c) of article VI.

Section 2. Penalties.

(a) Revocation or suspension of approval.

The approval of an erosion and sediment control plan under this chapter may be revoked or suspended by the building official and all work on the project halted for an indefinite time period by the building official after written notification is transmitted by the building official to the developer for one or more of the following reasons:

- (1) Violation of any condition of the approved plan, or specifications pertaining to it;
- (2) Violation of any provision of this ordinance or any other applicable law, ordinance, rule, or regulation related to the work or site of work; and
- (3) The existence of any condition or the performance of any act constituting or creating a nuisance, hazard, or endangerment to human life or the property of others, or contrary to the spirit or intent of this ordinance.

(b) Other penalties.

In addition, whenever there is a failure to comply with the provisions of this ordinance, the city or town has the right to notify the applicant/owner that he or she has five (5) days from the receipt of notice to temporarily correct the violations and thirty (30) days from receipt of notice to permanently correct the violations. Should the applicant owner fail to take the temporary corrective measures within the five (5) day period and the permanent corrective measures within the thirty (30) day period, the city or town then has the right to take whatever actions it deems necessary to correct the violations and to assert a lien on the subject property in an amount equal to the costs of remedial actions. The lien shall be enforced in the manner provided or authorized by law for the enforcement of common law liens on personal property. The lien shall be recorded with the records of land evidence of the municipality, and the lien does incur legal interest from the date of recording. The imposition of any penalty shall not exempt the offender from compliance with the provisions of this ordinance, including revocation of the performance bond or assessment of a lien on the property by the city or town.

(c) In addition to any other penalties provided in this section, a city or town is authorized and empowered to provide by local ordinance for penalties and/or fines of not more than two hundred fifty dollars (\$250) for failure to submit plans on or before the date on which the plan must be submitted,

as stated in the determination of applicability. Each day that the plan is not submitted constitutes a separate offense.

ARTICLE IX.

Section 1. Definition of selected terms.

(a) *Applicant*: Any persons, corporation, or public or private organization proposing a development which would involve disturbance to the natural terrain as defined in this ordinance.

(b) *Coastal feature*: Coastal beaches and dunes, barrier beaches, coastal wetlands, coastal cliffs, bluffs, and banks, rocky shores, and manmade shorelines as defined in “The State of Rhode Island Coastal Resources Management Program” as amended June 28, 1983.

(c) *Cut*: An excavation. The difference between a point on the original ground and a designated point of lower elevation on the final grade. Also, the material removed in excavation.

(d) *Development project*: Any construction, reconstruction, demolition, or removal of structures, roadways, parking, or other paved areas, utilities, or other similar facilities, including any action requiring a building permit by the city or town.

(e) *Erosion*: The removal of mineral and/or organic matter by the action of wind, water, and/or gravity.

(f) *Excavate*: Any act by which earth, sand, gravel, or any other similar material is dug into, cut, removed, displaced, relocated, or bulldozed, and includes the resulting conditions.

(g) *Fill*: Any act by which earth, sand, or other material is placed or moved to a new location above ground. The fill is also the difference in elevation between a point of existing undisturbed ground and a designated point of higher elevation of the final grade.

(h) *Land disturbing activity*: Any physical land development activity which includes such actions as clearance of vegetation, moving or filling of land, removal or excavation of soil or mineral resources, or similar activities.

(i) *Runoff*: The surface water discharge or rate of discharge of a given watershed after a fall of rain or snow, and including seepage flows that do not enter the soil but run off the surface of the land. Also, that portion of water that is not absorbed by the soil, but runs off the land surface.

(j) *Sediment*: Solid material, both mineral and/or organic, that is in suspension, is being transported, or has been moved from its site or origin by wind, water, and/or gravity as a product of erosion.

(k) *Soil erosion and sediment control plan*: The approved document required before any person may cause a disturbance to the natural terrain within the city or town as regulated by this ordinance. Also, referred to as erosion and sediment control plan, approved plan.

(l) *Watercourse*: The term watercourse means any tidewater or coastal wetland at its mean high water level, and any freshwater wetland at its seasonal high water level, including, but not limited to, any river, stream, brook, pond, lake, swamp, marsh bog, fen, wet meadow, or any other standing or flowing body of water. The edge of the watercourse shall be used for delineation purposes.

§ 45-46-6 Severability. – If any provision of this chapter or any rule or determination made under

this chapter, or application to any person, agency, or circumstances, is held invalid by a court of competent jurisdiction, the remainder of this chapter and its application to any person, agency, or circumstances shall not be affected thereby. The invalidity of any section or sections of this chapter shall not affect the validity of the remainder of this chapter.

§ 45-46-7 Continuation of ordinances. – All lawfully adopted soil erosion and sediment control ordinances shall be brought into conformance with this chapter by July 1, 1991. Each city and town shall review its soil erosion and sediment control ordinance and make amendments or revisions that are necessary to bring it into conformance with this chapter.

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RHODE ISLAND LOW AND MODERATE INCOME HOUSING ACT

{ RIGL § 45-53 }



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§ 45-53-1 Short title. – This chapter shall be known as the “Rhode Island Low and Moderate Income Housing Act”.

§ 45-53-2 Legislative findings and intent. – The general assembly finds and declares that there exists an acute shortage of affordable, accessible, safe, and sanitary housing for its citizens of low and moderate income, both individuals and families; that it is imperative that action is taken immediately to assure the availability of affordable, accessible, safe, and sanitary housing for these persons; that it is necessary that each city and town provide opportunities for the establishment of low and moderate income housing; and that the provisions of this chapter are necessary to assure the health, safety, and welfare of all citizens of this state, and that each citizen enjoys the right to affordable, accessible, safe, and sanitary housing. It is further declared to be the purpose of this chapter to provide for housing opportunities for low and moderate income individuals and families in each city and town of the state and that an equal consideration shall be given to the retrofitting and rehabilitation of existing dwellings for low and moderate income housing and assimilating low and moderate income housing into existing and future developments and neighborhoods.

§ 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 subdivision **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 subsection **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 sections **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 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, 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 (2)(i).

(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 subsection [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 subdivision [45-22.2-4\(26\)](#), or if designated by ordinance as the board to act on comprehensive permits for the town, the zoning board of review established pursuant to section [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
- (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 on 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) 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.

§ 45-53-5 Appeals to state housing appeals board – Judicial review. – (a) Whenever an application filed under the provisions of § 45-53-4 is denied, or is granted with conditions and requirements that make the building or operation of the housing infeasible, the applicant has the right to appeal to the state housing appeals board established by § 45-53-7, for a review of the application. The appeal shall be taken within twenty (20) days after the date of the notice of the decision by the local review board by filing with the appeals board a statement of the prior proceedings and the reasons upon which the

appeal is based.

(b) The appeals board shall immediately notify the local review board of the filing of the petition for review and the latter shall, within ten (10) days of the receipt of the notice, transmit a copy of its decision and the reasons for that decision to the appeals board.

(c) The appeal shall be heard by the appeals board within twenty (20) days after the receipt of the applicant's statement. A stenographic record of the proceedings shall be kept and the appeals board shall render a written decision and order, based upon a majority vote, stating its findings of fact, and its conclusions and the reasons for those conclusions, within thirty (30) days after the termination of the hearing, unless the time has been extended by mutual agreement between the appeals board and the applicant. The decision and order may be appealed in the superior court within twenty (20) days of the issuance of the decision. The review shall be conducted by the superior court without a jury. The court shall consider the record of the hearing before the state housing appeals board and, if it appears to the court that additional evidence is necessary for the proper disposition of the matter, it may allow any party to the appeal to present that evidence in open court, which evidence, along with the report, constitutes the record upon which the determination of the court is made.

(d) The court shall not substitute its judgment for that of the state housing appeals board as to the weight of the evidence on questions of fact. The court may affirm the decision of the state housing appeals board or remand the case for further proceedings, or may reverse or modify the decision if substantial rights of the appellant have been prejudiced because of findings, inferences, conclusions, or decisions which are:

- (1) In violation of constitutional, statutory, or ordinance provisions;
 - (2) In excess of the authority granted to the state housing appeal board by statute or ordinance;
 - (3) Made upon unlawful procedure;
 - (4) Affected by other error of law;
 - (5) Clearly erroneous in view of the reliable, probative, and substantial evidence of the whole record;
- or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(e) Any appeal from the superior court to the supreme court pursuant to this section shall be by writ of certiorari.

§ 45-53-6 Power of state housing appeals board. – (a) The state housing appeals board shall have the powers to: (i) adopt, amend and repeal rules and regulations that are consistent with this chapter and are necessary to implement the requirements of §§ 45-53-5, 45-53-6, and 45-53-7; (ii) receive and expend state appropriations; and (iii) establish a reasonable fee schedule, which may be waived, to carry out its duties.

(b) In hearing the appeal, the state housing appeals board shall determine whether: (i) in the case of the denial of an application, the decision of the local review board was consistent with an approved affordable housing plan, or if the town does not have an approved affordable housing plan, was reasonable and consistent with local needs; and (ii) in the case of an approval of an application

with conditions and requirements imposed, whether those conditions and requirements make the construction or operation of the housing infeasible and whether those conditions and requirements are consistent with an approved affordable housing plan, or if the town does not have an approved affordable housing plan, are consistent with local needs.

(c) In making a determination, the standards for reviewing the appeal include, but are not limited to:

(1) The consistency of the decision to deny or condition the permit with the approved affordable housing plan and/or approved comprehensive plan;

(2) The extent to which the community meets or plans to meet housing needs, as defined in an affordable housing plan, including, but not limited to, the ten percent (10%) goal for existing low and moderate income housing units as a proportion of year-round housing;

(3) The consideration of the health and safety of existing residents;

(4) The consideration of environmental protection; and

(5) The extent to which the community applies local zoning ordinances and review procedures evenly on subsidized and unsubsidized housing applications alike.

(d) If the appeals board finds, in the case of a denial, that the decision of the local review board was not consistent with an approved affordable housing plan, or if the town does not have an approved affordable housing plan, was not reasonable and consistent with local needs, it shall vacate the decision and issue a decision and order approving the application, denying the application, or approving with various conditions consistent with local needs. If the appeals board finds, in the case of an approval with conditions and requirements imposed, that the decision of the local review board makes the building or operation of the housing infeasible, and/or the conditions and requirements are not consistent with an approved affordable housing plan, or if the town does not have an approved affordable housing plan, are not consistent with local needs, it shall issue a decision and order, modifying or removing any condition or requirement so as to make the proposal no longer infeasible and/or consistent, and approving the application; provided, that the appeals board shall not issue any decision and order that would permit the building or operation of the housing in accordance with standards less safe than the applicable building and site plan requirements of the federal Department of Housing and Urban Development or the Rhode Island housing and mortgage finance corporation, whichever agency is financially assisting the housing. Decisions or conditions and requirements imposed by a local review board that are consistent with approved affordable housing plans and/or with local needs shall not be vacated, modified, or removed by the appeals board notwithstanding that the decision or conditions and requirements have the effect of denying or making the applicant's proposal infeasible.

(e) The appeals board or the applicant has the power to enforce the orders of the appeals board by an action brought in the superior court. The local review board shall carry out the decision and order of the appeals board within thirty (30) days of its entry and, upon failure to do so, the decision and order of the appeals board is, for all purposes, deemed to be the action of the local review board, unless the applicant consents to a different decision or order by the local review board. The decision and order of the appeals board is binding on the city or town, which shall immediately issue any and all necessary permits and approvals to allow the construction and operation of the housing as approved by the appeals board.

(f) The state housing appeals board shall:

(1) Upon an appeal of the applicant prior to August 1, 2004, rule on December 1, 2004, on the substantial completeness of applications as of February 13, 2004, that were affected by the moratorium established by § 45-53-4(b).

(i) The determination of substantial completeness shall be based on whether there was on or before February 13, 2004, substantial completeness of substantially all of the following:

(A) A written request to the zoning board of review to submit a single application to build or rehabilitate low or moderate income housing in lieu of separate applications to the application local boards;

(B) A written list of variances, special use permits and waivers requested to local requirements and regulations, including local codes, ordinances, by-laws or regulations, including any requested waivers from the land development or subdivisions regulations, and a proposed timetable for completion of the project;

(C) Evidence of site control;

(D) Evidence of eligibility for a state or federal government subsidy, including a letter from the funding agency indicating the applicant and the project;

(E) Site development plans showing the locations and outlines of proposed buildings; the proposed location, general dimensions and materials for street, drives, parking areas, walks and paved areas; proposed landscaping improvements and open areas within the site; and the proposed location and types of sewage, drainage and water facilities;

(F) A report on existing site conditions and a summary of conditions in the surrounding areas, showing the location and nature of existing buildings, existing street elevations, traffic patterns and character of open areas, including wetlands and flood plains, in the neighborhood;

(G) A tabulation of proposed buildings by type, size (number of bedrooms, floor area) and ground coverage and a summary showing the percentage of the tract to be occupied by buildings, by parking and other paved vehicular areas and by open spaces;

(H) A master plan, if the development proposal is for a major or minor land development plan or a major or minor subdivision;

(I) A sample land lease or deed restrictions with affordability liens that will restrict use as low and moderate income housing units for a period of not less than thirty (30) years; and

(J) The list of all persons entitled to notice in accordance with § 45-24-53.

(ii) Notwithstanding the provisions of paragraph (i) of this subdivision, if the zoning board of review determined the application to be substantially complete and/or acted in manner demonstrating that it considered the application substantially complete for the purposes of reviewing the application, the state housing appeals board shall consider the application substantially complete.

(2) Remand for hearing in accordance with the provisions of § 45-53-4 applications which are determined to be substantially complete, which hearings may be conducted (or resume) under the provisions in effect on February 13, 2004, unless the applicant and the board shall mutually agree

that the hearing shall proceed under the provisions in effect on December 1, 2004, which hearings may commence on or after January 1, 2005, but shall commence not later than January 31, 2005, on applications in the order in which they were received by the town, unless a different commencement date is mutually agreed to by the applicant and the local board hearing the applications; the local review board shall not be obligated to hear, and may deny, any application affected by the moratorium unless it was determined to be substantially complete in accordance with the provisions of subdivision (1) of this subsection, and the local review board may require such additional submissions as may be specified by the town or necessary for the review of the application.

(3) Hear and decide appeals, other than those covered by subdivision (1) of this subsection, for which it took jurisdiction on or before May 1, 2004.

(4) Continue to hear and decide appeals filed by nonprofit organizations.

(5) Conduct such other business as may be reasonable and appropriate in order to facilitate an orderly transfer of activities to the state housing appeals board as it shall be constituted after January 1, 2005.

§ 45-53-7 Housing appeals board. – (a) There shall be within the state a housing appeals board consisting of seven (7) voting members to be appointed by the governor, who shall include four (4) local officials, who shall not be from the same city or town; two (2) of whom shall be from a city or town with a population of less than twenty-five thousand (25,000); and two (2) of whom shall be from a city or town with a population of twenty-five thousand (25,000) or greater, and shall include one local zoning board member, one local planning board member, one city council member and one town council member, one of the local official members shall be designated by the governor as the alternative local official member who shall be a voting member of the board only in the event that one or more of the other three (3) local officials is unable to serve at a hearing; one affordable housing developer; one affordable housing advocate; one representative of the business community; and one attorney knowledgeable in land use regulation, who should be chairperson of the board.

(2) Those members of the board as of July 2, 2004 who were appointed to the board by members of the general assembly shall cease to be members of the board on July 2, 2004, and the governor shall thereupon nominate four (4) new members each of whom shall serve for the balance of the current term of his or her predecessor.

(3) All other members of the commission as of July 2, 2004 shall continue to serve for the duration of their current terms.

(4) All gubernatorial appointments made under this section after July 2, 2004 shall be subject to the advice and consent of the senate.

(b) All appointments are for two (2) year terms; except as otherwise provided in subsection (a)(2) of this section, the terms of members appointed after December 31, 2004, shall be for three (3) years. Each member who is duly appointed or continued in office after January 1, 2005, shall hold office for the term for which the member is appointed and until the member's successor shall have been appointed and qualified, or until the member's earlier death, resignation, or removal. A member shall receive no compensation for his or her services, but shall be reimbursed by the state for all reasonable expenses actually and necessarily incurred in the performance of his or her official duties. The board shall hear all petitions for review filed under [§ 45-53-5](#), and shall conduct all hearings in accordance with the rules and regulations established by the chair. Rhode Island housing shall provide space, and clerical and other assistance, as the board may require.

§ 45-53-8 Severability. – If any provision of this chapter or of any rule, regulation, or determination made under this chapter, or its application to any person, agency, or circumstances, is held invalid by a court of competent jurisdiction, the remainder of the chapter, rule, regulation, or determination, and the application of the provision to other persons, agencies, or circumstances, shall not be affected thereby. The invalidity of any section or sections, or part of any section or sections, of this chapter shall not affect the validity of the remainder of the chapter.

AIRPORT ZONING ACT

{ RIGL § 1-3 }



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§ 1-3-1 Short title. – This chapter shall be known and may be cited as the “Airport Zoning Act”.

§ 1-3-2 Definitions. – As used in this chapter, unless the context otherwise requires:

(1) «Airport» means any area of land or water, or both, designed and set aside for the landing and taking off of aircraft and utilized or to be utilized in the interest of the public for those purposes. An airport is «publicly owned» if the portion used for the landing and taking off of aircraft is owned, operated, controlled, leased to or leased by the United States, or any agency or department of the United States, this state, or any other state, or any municipality or other political subdivision of this state, or any other state, or any other governmental body, public agency or other public corporation.

(2) «Airport hazard» means any electronic transmission device or structure, which, as determined by the federal aviation administration, interferes with radio communication between airport and aircraft approaching or leaving the airport, or any structure or tree or use of land which obstructs the airspace required for the flight of aircraft in landing or taking off at any airport or is otherwise hazardous to the landing or taking off of aircraft.

(3) «Airport hazard area» means any area of land or water upon which an airport hazard might be established if not prevented as provided in this chapter.

(4) «Obstruction» means any tangible, inanimate physical object, natural or artificial, protruding above the surface of the ground.

(5) «Person» means any individual, firm, co-partnership, corporation, company, association, joint stock association, or body politic, and includes any trustee, receiver, assignee or other similar representative.

(6) «Political subdivision» means any city or town or any other public corporation, authority or district, or any combination of two (2) or more, which is currently empowered to adopt, administer and enforce municipal zoning regulations.

(7) «Structure» means any object constructed or installed by humans, including, but without limitation, buildings, towers, smokestacks, and overhead transmission lines, including the poles or other structures supporting the object.

(8) «Tree» means any object of natural growth.

(9) «Airport corporation» means the Rhode Island Airport Corporation.

§ 1-3-3 Declaration of policy. – It is found and declared that an airport hazard endangers the lives and property of users of the airport and of occupants of land and other persons in its vicinity and also, if of the obstruction type, in effect reduces the size of the area available for the landing, taking off and maneuvering of aircraft, thus tending to destroy or impair the utility of the airport and the public investment in the airport. Accordingly, it is declared:

(1) That the creation or establishment of an airport hazard is a public nuisance and an injury to the community served by the airport in question.

(2) That it is necessary in the interest of the public health, safety and general welfare that the creation or establishment of airport hazards be prevented.

(3) That this should be accomplished, to the extent legally by proper exercise of the police power, without compensation.

(4) That the prevention of the creation or establishment of airport hazards, and the elimination, removal, alteration, mitigation, or marking and lighting of existing airport hazards are public purposes for which the state and its political subdivisions may raise and expend public funds, and acquire land or property interests.

(5) That any obstructions to the use of navigable airspace destroy and impair the safe use of such airspace thereby endangering aircraft and are not in the interest of public health, public safety or general welfare.

§ 1-3-4 Airport approach plans. – The airport corporation shall formulate, adopt and revise, when necessary, an airport airspace plan for each publicly owned airport in the state. Each plan shall indicate the circumstances in which structures and trees are or would be airport hazards, the area within which measures for the protection of the airport's navigable airspace, including aerial approaches, should be taken, and what the height limits and other objectives of those measures should be. In adopting or revising any airspace plan, the airport corporation shall consider, among other things, the character of flying operations expected to be conducted at the airport, the traffic pattern and regulations affecting flying operations at the airport, the nature of the terrain, the height of existing structures and trees above the level of the airport, and the possibility of lowering or removing existing obstructions. The airport corporation may obtain and consider the views of the agency of the federal government charged with the fostering of civil aeronautics, as to the aerial approaches and other regulated airspace necessary to safe flying operations at the airport.

§ 1-3-5 Zoning powers of political subdivisions. – (1) In order to prevent the creation or establishment of airport hazards, every political subdivision having an airport hazard area wholly or partly within its territorial limits shall adopt, administer, and enforce, under the police power and in the manner and upon the conditions prescribed, airport zoning regulations for that part of the airport hazard area which is within its territorial limits, which regulations may divide the airport hazard area into zones, and, within those zones, specify the land uses permitted and regulate and restrict the height to which structures and trees may be erected or allowed to grow.

(2) A political subdivision which includes an airport hazard area created by the location of a public airport shall adopt, administer, and enforce zoning ordinances pursuant to this chapter if the existing comprehensive zoning ordinance for the political subdivision does not provide for the land uses permitted, and regulate and restrict the height to which structures may be erected or objects of natural growth may be allowed to grow in, an airport hazard area.

(3) A political subdivision which includes an airport hazard area created by the location of a public airport shall adopt, either in full or by reference, the provisions of part 77 of title 14 of the code of federal regulations, entitled «Objects Affecting Navigable Airspace» hereinafter known as part 77.

§ 1-3-6 Joint zoning boards. – Where an airport is owned or controlled by a political subdivision or where any other publicly owned airport is in one or more political subdivisions and where any airport hazard area appertaining to that airport is located outside the territorial limits of the political subdivision or subdivisions, the political subdivisions in which the airport and airport hazard area or areas are located may, by ordinance or resolution adopted, create a joint airport zoning board. The board shall have the same power to adopt, administer, and enforce airport zoning regulations applicable to the airport hazard area or areas in question as that vested by § 1-3-5 in the political subdivision within which the area is located. Each joint board shall have as members two (2)

representatives appointed by the city or town council or other legislative body of each political subdivision participating in its creation or addition. Another member is to be chairperson, elected by a majority of the members appointed.

§ 1-3-7 Airspace plans to be considered in zoning. – In adopting, administering, and enforcing any airport zoning regulations under this chapter, the political subdivision or subdivisions shall consider the airport airspace plan prepared by the airport corporation and the further considerations outlined in § 1-3-4.

§ 1-3-8 Reasonableness of zoning regulations. – All airport zoning regulations adopted under this chapter shall be reasonable and none shall impose any requirement or restriction which is not reasonably necessary to effectuate the purpose of the chapter. In addition, each political subdivision and zoning board shall consider the regulations or standards promulgated by the Federal Aviation Administration in zoning the use of land and structures in areas over which jurisdiction is assumed.

§ 1-3-9 Continuance of existing uses. – No airport zoning regulations adopted under this chapter shall require the removal, lowering or other change or alteration of any structure or tree not conforming to the regulations when adopted or amended, or otherwise interfere with the continuance of any nonconforming use, except as provided in §§ 1-3-14 – 1-3-16.

§ 1-3-10 Purchase or condemnation of air rights. – In any case in which:

- (1) It is desired to remove, lower, or otherwise terminate a nonconforming use; or
- (2) The approach protection necessary cannot, because of constitutional limitations, be provided by airport zoning regulations under this chapter; or
- (3) It appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations,

the political subdivision within which the property or nonconforming use is located or the political subdivision owning the airport or served by it may acquire, by purchase, grant, or condemnation in the manner provided by the law under which political subdivisions are authorized to acquire real property for public purposes, any air right, easement, or other estate or interest in the property or nonconforming use in question as may be necessary to effectuate the purposes of this chapter.

§ 1-3-11 Procedure for adoption of regulations. – No airport zoning regulations shall be adopted, amended or changed under this chapter except by action of the legislative body of the political subdivision in question, or the joint board provided for in § 1-3-6, after a public hearing in relation to these zoning regulations, at which parties of interest and citizens shall have an opportunity to be heard. At least fifteen (15) days' notice of the hearing shall be published in an official paper, or a paper of general circulation, in the political subdivision or subdivisions in which the airport or airport hazard areas are located.

§ 1-3-12 Incorporation in general zoning regulations. – In the event that a political subdivision has adopted or adopts a comprehensive zoning ordinance regulating, among other things, the height of buildings, any airport zoning regulations adopted for the same area or portion of the area under this chapter may be incorporated in those general zoning regulations, and be administered and enforced in connection with those regulations, but those general zoning regulations shall not limit the effectiveness of the regulations adopted under this chapter.

§ 1-3-13 Conflict with general zoning regulations. – In the event of conflict between any airport

zoning regulations adopted under this chapter and any other regulations applicable to the same area, whether the conflict is with respect to the height of structures or trees, the use of land, or any other matter, and whether those regulations were adopted by the political subdivision that adopted the airport zoning regulations or by some other political subdivision, the more stringent limitation or requirement shall govern.

§ 1-3-14 Permits to construct, change, or repair structures – Removal of nonconforming uses.

– (a) Where advisable to facilitate the enforcement of zoning regulations adopted pursuant to this chapter, any political subdivision in which an airport or airport hazard area is located shall establish a system for the granting of permits to establish or construct new structures and other uses and to replace existing structures and other uses or to make substantial changes or substantial repairs.

Each person seeking a permit to construct or alter a structure within an airport hazard area under this section shall file a form 7460-1 with the federal aviation administration, (FAA), as required under part 77. Furthermore, each person shall file a copy of the form 7460-1 and the FAA part 77 determination with the airport corporation and with the political subdivision or joint zoning board. A political subdivision or joint zoning board shall consider the FAA part 77 determination before granting any permit.

(b) Before any nonconforming structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher, or replanted, a permit must be secured from the administrative agency authorized by the political subdivision to administer and enforce the regulations, authorizing the replacement, change, or repair. No permit shall be granted that would allow the structure or tree in question to be made higher or become a greater obstruction and/or hazard to air navigation than it was when the applicable regulation was adopted. Whenever the administrative agency authorized by the political subdivision determines that a nonconforming structure has been abandoned or more than eighty percent (80%) torn down, destroyed, deteriorated, or decayed:

(1) No permit shall be granted that would allow the structure or tree to exceed the applicable height limit established by the airport's airspace plan or otherwise deviate from the zoning regulations;

(2) Whether application is made for a permit under this section or not, the administrative agency authorized by the political subdivision may by appropriate action compel the owner of the nonconforming structure or tree, at his or her own expense, to lower, remove, reconstruct, or equip the object as may be necessary to conform to the regulations or, if the owner of the nonconforming structure or tree fails to comply with the order for ten (10) days after notice, the agency may proceed to have the object so lowered, removed, reconstructed, or equipped and assess the cost and expense upon the owner of object or the land where it is or was located.

(c) Unless an assessment is paid within ninety (90) days from the service of notice on the agent or owner of the object or land, the sum shall bear interest at the rate of ten percent (10%) per annum until paid, and shall be collected in the same manner as are general taxes.

(d) [Deleted by P.L. 1999, ch. 462, § 1.]

§ 1-3-15 Variances. – Any person desiring to erect any structures, increase the height of any structure, permit the growth of any tree, or otherwise use his or her property in violation of airport zoning regulations adopted under this chapter may apply to the board of appeals, as provided in §§ 1-3-18 – 1-3-26, for a variance from the zoning regulations in question. Variances shall be allowed where a literal application or enforcement of the regulations would result in practical difficulty or

unnecessary hardship and the relief granted would not be contrary to the public interest but do substantial justice and be in accordance with the spirit of the regulations of this chapter.

§ 1-3-16 Obstruction markers. – In granting any permit or variance under §§ 1-3-14 – 1-3-16, the administrative agency or board of appeals may, if it deems the action advisable to effectuate the purposes of this chapter and reasonable in the circumstances condition the permit or variance as to require the owner of the structure or tree in question to permit the political subdivision, at its own expense, to install, operate, and maintain suitable obstruction markers and obstruction lights or the structure or trees.

§ 1-3-17 Delegation of administration and enforcement duties. – The legislative body of any political subdivision adopting airport zoning regulations under this chapter may delegate the duty of administering and enforcing those regulations to any administrative agency under its jurisdiction, or may create a new administrative agency to perform the duty, but the administrative agency shall not be, or include any member of, the board of appeals. The duties of the administrative agency shall include that of hearing and deciding all permits under § 1-3-14, but the agency shall not have or exercise any of the powers delegated to the board of appeals.

§ 1-3-18 Powers of board of appeals. – Airport zoning regulations adopted under this chapter shall provide for a board of appeals to have and exercise the following powers:

- (1) To hear and decide appeals from any order, requirement, decision, or determination made by the administrative agency in the enforcement of this chapter or of any ordinance adopted;
- (2) To hear and decide special exceptions to the terms of the ordinances which the board may be required to pass under the ordinance; and
- (3) To hear and decide specific variances under § 1-3-15.

§ 1-3-19 Composition of board of appeals. – Where a zoning board of appeals or adjustment already exists, it may be appointed as the board of appeals. Otherwise, the board of appeals shall consist of five (5) members, each to be appointed for a term of three (3) years and to be removable for cause by the appointing authority upon written charges and after a public hearing.

§ 1-3-20 Rules, meetings, and witnesses of board of appeals. – The board shall adopt rules in accordance with the provisions of any ordinance adopted under this chapter. Meetings of the board shall be held at the call of the chairperson and at any other times that the board may determine. The chairperson, or in his or her absence the acting chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be public.

§ 1-3-21 Parties entitled to appeal – Filing. – Appeals to the board may be taken by any person aggrieved, or by any officer, department, board, or bureau of the political subdivision affected, by any decision of the administrative agency. An appeal must be taken within a reasonable time, as provided by the rules of the board, by filing with the agency from which the appeal is taken and with the board, a notice of appeal specifying the grounds. The agency from which the appeal is taken shall transmit to the board all the papers constituting the record upon which the action appealed from was taken.

§ 1-3-22 Stay of proceedings by appeal. – An appeal shall stay all proceedings in furtherance of the action appealed from, unless the agency from which the appeal is taken certifies to the board, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would, in its opinion, cause imminent peril to life or property. In the latter case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board or by a court of record on

application on notice to the agency from which the appeal is taken and on due cause shown.

§ 1-3-23 Hearing of appeals. – The board shall fix a reasonable time for the hearing of the appeal, give public notice and due notice to the parties in interest, and decide the appeal within a reasonable time. Upon the hearing, any party may appear in person, by agent, or by attorney.

§ 1-3-24 Decisions by board of appeals. – The board may, in conformity with the provisions of this chapter, reverse or affirm, wholly or partly, or modify, the order, requirement, decision, or determination appealed from and may make any order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the administrative agency from which the appeal is taken.

§ 1-3-25 Majority vote of board of appeals. – The concurring vote of a majority of the members of the board shall be sufficient to reverse any order, requirement, decision, or determination of the administrative agency, or to decide in favor of the applicant on any matter upon which it is required to pass under any ordinance, or to effect any variation in an ordinance.

§ 1-3-26 Records of board of appeals. – The board shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating that fact, and shall keep records of its examinations and other official actions, all of which shall be filed immediately in the office of the board and shall be a public record.

§ 1-3-27 Judicial review. – Any person or persons jointly or severally aggrieved by any decision of the board of appeals, or any taxpayer, or any officer, department, board, or bureau of the political subdivision, or the airports division, may appeal to the superior court in the manner prescribed by s and the provisions of that section shall in all respects be applicable to the appeal.

§ 1-3-28 – 1-3-30. Repealed.. –

§ 1-3-31 Costs against board of appeals. – Costs shall not be allowed against the board of appeals unless it appears to the court that it acted with gross negligence, in bad faith, or with malice, in making the decision appealed from.

§ 1-3-32 Penalty for violations – Enforcement by injunction. – Each violation of this chapter or of any regulations, order, or ruling promulgated or made pursuant to this chapter, shall constitute a misdemeanor and shall be punishable by a fine not exceeding five hundred dollars (\$500) or imprisonment not exceeding ninety (90) days, or by both, and each day a violation continues to exist shall constitute a separate offense. In addition, the political subdivision or agency adopting zoning regulations under this chapter may institute in any court of competent jurisdiction, an action to prevent, restrain, correct or abate any violation of this chapter, or of airport zoning regulations adopted under this chapter, or of any order or ruling made in connection with their administration or enforcement, and the court shall adjudge to the plaintiff any relief, by way of injunction, which may be mandatory, or otherwise, as may be proper under all the facts and circumstances of the case, in order to fully effectuate the purposes of this chapter and of the regulations adopted and orders and ruling made pursuant to this chapter.

§ 1-3-33 Severability. – If any provision of this chapter or the application of this chapter to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

OPEN MEETINGS ACT

{ RIGL § 42-46 }



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§ 42-46-1 Public policy. – It is essential to the maintenance of a democratic society that public business be performed in an open and public manner and that the citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy.

§ 42-46-2 Definitions. – As used in this chapter:

(1) «Meeting» means the convening of a public body to discuss and/or act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power. As used herein, the term «meeting» expressly includes, without limiting the generality of the foregoing, so-called «workshop,» «working,» or «work» sessions.

(2) «Open call» means a public announcement by the chairperson of the committee that the meeting is going to be held in executive session and the chairperson must indicate which exception of § 42-46-5 is being involved.

(3) «Public body» means any department, agency, commission, committee, board, council, bureau, or authority or any subdivision thereof of state or municipal government or any library that funded at least twenty-five percent (25%) of its operational budget in the prior budget year with public funds, and shall include all authorities defined in § 42-35-1(b). For purposes of this section, any political party, organization, or unit thereof meeting or convening is not and should not be considered to be a public body; provided, however, that no such meeting shall be used to circumvent the requirements of this chapter.

(4) «Quorum» , unless otherwise defined by applicable law, means a simple majority of the membership of a public body.

(5) «Prevailing plaintiff» includes those persons and entities deemed «prevailing parties» pursuant to 42 U.S.C. § 1988.

(6) «Open forum» means the designated portion of an open meeting, if any, on a properly posted notice reserved for citizens to address comments to a public body relating to matters affecting the public business.

§ 42-46-3 Open meetings. – Every meeting of all public bodies shall be open to the public unless closed pursuant to §§ 42-46-4 and 42-46-5.

§ 42-46-4 Closed meetings. – (a) By open call, a public body may hold a meeting closed to the public upon an affirmative vote of the majority of its members. A meeting closed to the public shall be limited to matters allowed to be exempted from discussion at open meetings by § 42-46-5. The vote of each member on the question of holding a meeting closed to the public and the reason for holding a closed meeting, by a citation to a subdivision of § 42-46-5(a), and a statement specifying the nature of the business to be discussed, shall be recorded and entered into the minutes of the meeting. No public body shall discuss in closed session any public matter which does not fall within the citations to § 42-46-5(a) referred to by the public body in voting to close the meeting, even if these discussions could otherwise be closed to the public under this chapter.

(b) All votes taken in closed sessions shall be disclosed once the session is reopened; provided, however, a vote taken in a closed session need not be disclosed for the period of time during which its disclosure would jeopardize any strategy, negotiation or investigation undertaken pursuant to

discussions conducted under § 42-46-5(a).

§ 42-46-5 Purposes for which meeting may be closed – Use of electronic communications – Judicial proceedings – Disruptive conduct. – (a) A public body may hold a meeting closed to the public pursuant to § 42-46-4 for one or more of the following purposes:

(1) Any discussions of the job performance, character, or physical or mental health of a person or persons provided that such person or persons affected shall have been notified in advance in writing and advised that they may require that the discussion be held at an open meeting.

Failure to provide such notification shall render any action taken against the person or persons affected null and void. Before going into a closed meeting pursuant to this subsection, the public body shall state for the record that any persons to be discussed have been so notified and this statement shall be noted in the minutes of the meeting.

(2) Sessions pertaining to collective bargaining or litigation, or work sessions pertaining to collective bargaining or litigation.

(3) Discussion regarding the matter of security including, but not limited to, the deployment of security personnel or devices.

(4) Any investigative proceedings regarding allegations of misconduct, either civil or criminal.

(5) Any discussions or considerations related to the acquisition or lease of real property for public purposes, or of the disposition of publicly held property wherein advanced public information would be detrimental to the interest of the public.

(6) Any discussions related to or concerning a prospective business or industry locating in the state of Rhode Island when an open meeting would have a detrimental effect on the interest of the public.

(7) A matter related to the question of the investment of public funds where the premature disclosure would adversely affect the public interest. Public funds shall include any investment plan or matter related thereto, including, but not limited to, state lottery plans for new promotions.

(8) Any executive sessions of a local school committee exclusively for the purposes: (i) of conducting student disciplinary hearings; or (ii) of reviewing other matters which relate to the privacy of students and their records, including all hearings of the various juvenile hearing boards of any municipality; provided, however, that any affected student shall have been notified in advance in writing and advised that he or she may require that the discussion be held in an open meeting.

Failure to provide such notification shall render any action taken against the student or students affected null and void. Before going into a closed meeting pursuant to this subsection, the public body shall state for the record that any students to be discussed have been so notified and this statement shall be noted in the minutes of the meeting.

(9) Any hearings on, or discussions of, a grievance filed pursuant to a collective bargaining agreement.

(10) Any discussion of the personal finances of a prospective donor to a library.

(b) No meeting of members of a public body or use of electronic communication, including telephonic communication and telephone conferencing, shall be used to circumvent the spirit or

requirements of this chapter; provided, however, these meetings and discussions are not prohibited.

(1) Provided, further however, that discussions of a public body via electronic communication, including telephonic communication and telephone conferencing, shall be permitted only to schedule a meeting.

(2) Provided, further however, that a member of a public body may participate by use of electronic communication or telephone communication while on active duty in the armed services of the United States.

(3) Provided, further however, that a member of that public body, who has a disability as defined in chapter 87 of title 42 and:

(i) Cannot attend meetings of that public body solely by reason of his or her disability; and

(ii) Cannot otherwise participate in the meeting without the use of electronic communication or telephone communication as reasonable accommodation, may participate by use of electronic communication or telephone communication in accordance with the process below.

(4) The governor's commission on disabilities is authorized and directed to:

(i) Establish rules and regulations for determining whether a member of a public body is not otherwise able to participate in meetings of that public body without the use of electronic communication or telephone communication as a reasonable accommodation due to that member's disability;

(ii) Grant a waiver that allows a member to participate by electronic communication or telephone communication only if the member's disability would prevent him/her from being physically present at the meeting location, and the use of such communication is the only reasonable accommodation; and

(iii) Any waiver decisions shall be a matter of public record.

(c) This chapter shall not apply to proceedings of the judicial branch of state government or probate court or municipal court proceedings in any city or town.

(d) This chapter shall not prohibit the removal of any person who willfully disrupts a meeting to the extent that orderly conduct of the meeting is seriously compromised.

§ 42-46-6 Notice. – (a) All public bodies shall give written notice of their regularly scheduled meetings at the beginning of each calendar year. The notice shall include the dates, times, and places of the meetings and shall be provided to members of the public upon request and to the secretary of state at the beginning of each calendar year in accordance with subsection (f).

(b) Public bodies shall give supplemental written public notice of any meeting within a minimum of forty-eight (48) hours before the date. This notice shall include the date the notice was posted, the date, time and place of the meeting, and a statement specifying the nature of the business to be discussed. Copies of the notice shall be maintained by the public body for a minimum of one year. Nothing contained herein shall prevent a public body, other than a school committee, from adding additional items to the agenda by majority vote of the members. School committees may, however, add items for informational purposes only, pursuant to a request, submitted in writing, by a member of the public during the public comment session of the school committee's meetings. Said informational items may

not be voted upon unless they have been posted in accordance with the provisions of this section. Such additional items shall be for informational purposes only and may not be voted on except where necessary to address an unexpected occurrence that requires immediate action to protect the public or to refer the matter to an appropriate committee or to another body or official.

(c) Written public notice shall include, but need not be limited to, posting a copy of the notice at the principal office of the public body holding the meeting, or if no principal office exists, at the building in which the meeting is to be held, and in at least one other prominent place within the governmental unit, and electronic filing of the notice with the secretary of state pursuant to subsection (f); however, nothing contained herein shall prevent a public body from holding an emergency meeting, upon an affirmative vote of the majority of the members of the body when the meeting is deemed necessary to address an unexpected occurrence that requires immediate action to protect the public. If an emergency meeting is called, a meeting notice and agenda shall be posted as soon as practicable and shall be electronically filed with the secretary of state pursuant to subsection (e) and, upon meeting, the public body shall state for the record and minutes why the matter must be addressed in less than forty-eight (48) hours and only discuss the issue or issues which created the need for an emergency meeting. Nothing contained herein shall be used in the circumvention of the spirit and requirements of this chapter.

(d) Nothing within this chapter shall prohibit any public body, or the members thereof, from responding to comments initiated by a member of the public during a properly noticed open forum even if the subject matter of a citizen's comments or discussions were not previously posted, provided such matters shall be for informational purposes only and may not be voted on except where necessary to address an unexpected occurrence that requires immediate action to protect the public or to refer the matter to an appropriate committee or to another body or official. Nothing contained in this chapter requires any public body to hold an open forum session, to entertain or respond to any topic nor does it prohibit any public body from limiting comment on any topic at such an open forum session. No public body, or the members thereof, may use this section to circumvent the spirit or requirements of this chapter.

(e) A school committee may add agenda items not appearing in the published notice required by this section under the following conditions:

(1) The revised agenda is electronically filed with the secretary of state pursuant to subsection (f), and is posted on the school district's website and the two (2) public locations required by this section at least forty-eight (48) hours in advance of the meeting;

(2) The new agenda items were unexpected and could not have been added in time for newspaper publication;

(3) Upon meeting, the public body states for the record and minutes why the agenda items could not have been added in time for newspaper publication and need to be addressed at the meeting;

(4) A formal process is available to provide timely notice of the revised agenda to any person who has requested that notice, and the school district has taken reasonable steps to make the public aware of this process; and

(5) The published notice shall include a statement that any changes in the agenda will be posted on the school district's web site and the two (2) public locations required by this section and will be electronically filed with the secretary of state at least forty-eight (48) hours in advance of the meeting.

(f) All notices required by this section to be filed with the secretary of state shall be electronically transmitted to the secretary of state in accordance with rules and regulations which shall be promulgated by the secretary of state. This requirement of the electronic transmission and filing of notices with the secretary of state shall take effect one year after this subsection takes effect.

(g) If a public body fails to transmit notices in accordance with this section, then any aggrieved person may file a complaint with the attorney general in accordance with § 42-46-8.

§ 42-46-7 Minutes. – (a) All public bodies shall keep written minutes of all their meetings. The minutes shall include, but need not be limited to:

- (1) The date, time, and place of the meeting;
- (2) The members of the public body recorded as either present or absent;
- (3) A record by individual members of any vote taken; and
- (4) Any other information relevant to the business of the public body that any member of the public body requests be included or reflected in the minutes.

(b) A record of all votes taken at all meetings of public bodies, listing how each member voted on each issue, shall be a public record and shall be available, to the public at the office of the public body, within two (2) weeks of the date of the vote. The minutes shall be public records and unofficial minutes shall be available, to the public at the office of the public body, within thirty-five (35) days of the meeting or at the next regularly scheduled meeting, whichever is earlier, except where the disclosure would be inconsistent with §§ 42-46-4 and 42-46-5 or where the public body by majority vote extends the time period for the filing of the minutes and publicly states the reason.

(c) The minutes of a closed session shall be made available at the next regularly scheduled meeting unless the majority of the body votes to keep the minutes closed pursuant to §§ 42-46-4 and 42-46-5.

(d) All public bodies within the executive branch of the state government and all state public and quasi-public boards, agencies and corporations shall keep official and/or approved minutes of all meetings of the body and shall file a copy of the minutes of all open meetings with the secretary of state for inspection by the public within thirty-five (35) days of the meeting; provided that this subsection shall not apply to public bodies whose responsibilities are solely advisory in nature.

(e) All minutes required by this section to be filed with the secretary of state shall be electronically transmitted to the secretary of state in accordance with rules and regulations which shall be promulgated by the secretary of state. This requirement of the electronic transmission and filing of minutes with the secretary of state shall take effect one year after this subsection takes effect. If a public body fails to transmit minutes in accordance with this subsection, then any aggrieved person may file a complaint with the attorney general in accordance with § 42-46-8.

§ 42-46-8 Remedies available to aggrieved persons or entities. – (a) Any citizen or entity of the state who is aggrieved as a result of violations of the provisions of this chapter may file a complaint with the attorney general. The attorney general shall investigate the complaint and if the attorney general determines that the allegations of the complaint are meritorious he or she may file a complaint on behalf of the complainant in the superior court against the public body.

(b) No complaint may be filed by the attorney general after one hundred eighty (180) days from the

date of public approval of the minutes of the meeting at which the alleged violation occurred, or, in the case of an unannounced or improperly closed meeting, after one hundred eighty (180) days from the public action of a public body revealing the alleged violation, whichever is greater.

(c) Nothing within this section shall prohibit any individual from retaining private counsel for the purpose of filing a complaint in the superior court within the time specified by this section against the public body which has allegedly violated the provisions of this chapter; provided, however, that if the individual has first filed a complaint with the attorney general pursuant to this section, and the attorney general declines to take legal action, the individual may file suit in superior court within ninety (90) days of the attorney general's closing of the complaint or within one hundred eighty (180) days of the alleged violation, whichever occurs later.

(d) The court shall award reasonable attorney fees and costs to a prevailing plaintiff, other than the attorney general, except where special circumstances would render such an award unjust. The court may issue injunctive relief and declare null and void any actions of a public body found to be in violation of this chapter. In addition, the court may impose a civil fine not exceeding five thousand dollars (\$5,000) against a public body or any of its members found to have committed a willful or knowing violation of this chapter.

(e) Nothing within this section shall prohibit the attorney general from initiating a complaint on behalf of the public interest.

(f) Actions brought under this chapter may be advanced on the calendar upon motion of the petitioner.

(g) The attorney general shall consider all complaints filed under this chapter to have also been filed under § 38-2-8(b) if applicable.

§ 42-46-9 Other applicable law. – The provisions of this chapter shall be in addition to any and all other conditions or provisions of applicable law and are not to be construed to be in amendment of or in repeal of any other applicable provision of law, except § 16-2-29, which has been expressly repealed.

§ 42-46-10 Severability. – If any provision of this chapter, or the application of this chapter to any particular meeting or type of meeting, is held invalid or unconstitutional, the decision shall not affect the validity of the remaining provisions or the other applications of this chapter.

§ 42-46-11 Reported violations. – Every year the attorney general shall prepare a report summarizing the complaints received pursuant to this chapter, which shall be submitted to the legislature and which shall include information as to how many complaints were found to be meritorious and the action taken by the attorney general in response to those complaints.

§ 42-46-12 Notice of citizen's rights under this chapter. – The attorney general shall prepare a notice providing concise information explaining the requirements of this chapter and advising citizens of their right to file complaints for violations of this chapter. The notice shall be posted in a prominent location in each city and town hall in the state.

§ 42-46-13 Accessibility for persons with disabilities. – (a) All public bodies, to comply with the nondiscrimination on the basis of disability requirements of R.I. Const., Art. I, § 2 and applicable federal and state nondiscrimination laws (29 U.S.C. § 794, chapter 87 of this title, and chapter 24 of title 11), shall develop a transition plan setting forth the steps necessary to ensure that all open meetings of said public bodies are accessible to persons with disabilities.

(b) The state building code standards committee shall, by September 1, 1989 adopt an accessibility of meetings for persons with disabilities standard that includes provisions ensuring that the meeting location is accessible to and usable by all persons with disabilities.

(c) This section does not require the public body to make each of its existing facilities accessible to and usable by persons with disabilities so long as all meetings required to be open to the public pursuant to chapter 46 of this title are held in accessible facilities by the dates specified in subsection (e).

(d) The public body may comply with the requirements of this section through such means as reassignment of meetings to accessible facilities, alteration of existing facilities, or construction of new facilities. The public body is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section.

(e) The public body shall comply with the obligations established under this section by July 1, 1990, except that where structural changes in facilities are necessary in order to comply with this section, such changes shall be made by December 30, 1991, but in any event as expeditiously as possible unless an extension is granted by the state building commissioner for good cause.

(f) Each municipal government and school district shall, with the assistance of the state building commission, complete a transition plan covering the location of meetings for all public bodies under their jurisdiction. Each chief executive of each city or town and the superintendent of schools will submit their transition plan to the governor's commission on disabilities for review and approval. The governor's commission on disabilities with assistance from the state building commission shall approve or modify, with the concurrence of the municipal government or school district, the transition plans.

(g) The provisions of §§ 45-13-7 – 45-13-10, inclusive, shall not apply to this section.

§ 42-46-14 Burden of proof. – In all actions brought under this chapter, the burden shall be on the public body to demonstrate that the meeting in dispute was properly closed pursuant to, or otherwise exempt from the terms of this chapter.

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ACCESS TO PUBLIC RECORDS ACT

{ RIGL § 38-2 }



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§ 38-2-1 Purpose. – The public’s right to access to public records and the individual’s right to dignity and privacy are both recognized to be principles of the utmost importance in a free society. The purpose of this chapter is to facilitate public access to public records. It is also the intent of this chapter to protect from disclosure information about particular individuals maintained in the files of public bodies when disclosure would constitute an unwarranted invasion of personal privacy.

§ 38-2-2 Definitions. – As used in this chapter:

(1) «Agency» or «public body» means any executive, legislative, judicial, regulatory, or administrative body of the state, or any political subdivision thereof; including, but not limited to, any department, division, agency, commission, board, office, bureau, authority, any school, fire, or water district, or other agency of Rhode Island state or local government which exercises governmental functions, any authority as defined in § 42-35-1(b), or any other public or private agency, person, partnership, corporation, or business entity acting on behalf of and/or in place of any public agency.

(2) «Chief administrative officer» means the highest authority of the public body.

(3) «Public business» means any matter over which the public body has supervision, control, jurisdiction, or advisory power.

(4) «Public record» or «public records» shall mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, magnetic or other tapes, electronic data processing records, computer stored data (including electronic mail messages, except specifically for any electronic mail messages of or to elected officials with or relating to those they represent and correspondence of or to elected officials in their official capacities) or other material regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. For the purposes of this chapter, the following records shall not be deemed public:

(A) All records relating to a client/attorney relationship and to a doctor/patient relationship, including all medical information relating to an individual in any files.

(b) Personnel and other personal individually-identifiable records otherwise deemed confidential by federal or state law or regulation, or the disclosure of which would constitute a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. § 552 et. seq.; provided, however, with respect to employees, and employees of contractors and subcontractors working on public works projects which are required to be listed as certified payrolls, the name, gross salary, salary range, total cost of paid fringe benefits, gross amount received in overtime, and any other remuneration in addition to salary, job title, job description, dates of employment and positions held with the state, municipality, employment contract, or public works contractor or subcontractor on public works projects work location, and/or project, business telephone number, the city or town of residence, and date of termination shall be public. For the purposes of this section “remuneration” shall include any payments received by an employee as a result of termination, or otherwise leaving employment, including, but not limited to, payments for accrued sick and/or vacation time, severance pay, or compensation paid pursuant to a contract buy-out provision.

(II) Notwithstanding the provisions of this section, or any other provision of the general laws to the contrary, the pension records of all persons who are either current or retired members of any public retirement systems as well as all persons who become members of those retirement systems after June 17, 1991 shall be open for public inspection. «Pension records» as used in this section shall

include all records containing information concerning pension and retirement benefits of current and retired members of the retirement systems and future members of said systems, including all records concerning retirement credits purchased and the ability of any member of the retirement system to purchase retirement credits, but excluding all information regarding the medical condition of any person and all information identifying the member's designated beneficiary or beneficiaries unless and until the member's designated beneficiary or beneficiaries have received or are receiving pension and/or retirement benefits through the retirement system.

(B) Trade secrets and commercial or financial information obtained from a person, firm, or corporation which is of a privileged or confidential nature.

(C) Child custody and adoption records, records of illegitimate births, and records of juvenile proceedings before the family court.

(D) All records maintained by law enforcement agencies for criminal law enforcement and all records relating to the detection and investigation of crime, including those maintained on any individual or compiled in the course of a criminal investigation by any law enforcement agency. Provided, however, such records shall not be deemed public only to the extent that the disclosure of the records or information (a) could reasonably be expected to interfere with investigations of criminal activity or with enforcement proceedings, (b) would deprive a person of a right to a fair trial or an impartial adjudication, (c) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (d) could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority, or any private institution which furnished information on a confidential basis, or the information furnished by a confidential source, (e) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions or (f) could reasonably be expected to endanger the life or physical safety of any individual. Records relating to management and direction of a law enforcement agency and records or reports reflecting the initial arrest of an adult and the charge or charges brought against an adult shall be public.

(E) Any records which would not be available by law or rule of court to an opposing party in litigation.

(F) Scientific and technological secrets and the security plans of military and law enforcement agencies, the disclosure of which would endanger the public welfare and security.

(G) Any records which disclose the identity of the contributor of a bona fide and lawful charitable contribution to the public body whenever public anonymity has been requested of the public body with respect to the contribution by the contributor.

(H) Reports and statements of strategy or negotiation involving labor negotiations or collective bargaining.

(I) Reports and statements of strategy or negotiation with respect to the investment or borrowing of public funds, until such time as those transactions are entered into.

(J) Any minutes of a meeting of a public body which are not required to be disclosed pursuant to chapter 46 of title 42.

(K) Preliminary drafts, notes, impressions, memoranda, working papers, and work products;

provided, however, any documents submitted at a public meeting of a public body shall be deemed public.

(L) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment or promotion, or academic examinations; provided, however, that a person shall have the right to review the results of his or her examination.

(M) Correspondence of or to elected officials with or relating to those they represent and correspondence of or to elected officials in their official capacities.

(N) The contents of real estate appraisals, engineering, or feasibility estimates and evaluations made for or by an agency relative to the acquisition of property or to prospective public supply and construction contracts, until such time as all of the property has been acquired or all proceedings or transactions have been terminated or abandoned; provided the law of eminent domain shall not be affected by this provision.

(O) All tax returns.

(P) All investigatory records of public bodies, with the exception of law enforcement agencies, pertaining to possible violations of statute, rule, or regulation other than records of final actions taken provided that all records prior to formal notification of violations or noncompliance shall not be deemed to be public.

(Q) Records of individual test scores on professional certification and licensing examinations; provided, however, that a person shall have the right to review the results of his or her examination.

(R) Requests for advisory opinions until such time as the public body issues its opinion.

(S) Records, reports, opinions, information, and statements required to be kept confidential by federal law or regulation or state law, or rule of court.

(T) Judicial bodies are included in the definition only in respect to their administrative function provided that records kept pursuant to the provisions of chapter 16 of title 8 are exempt from the operation of this chapter.

(U) Library records which by themselves or when examined with other public records, would reveal the identity of the library user requesting, checking out, or using any library materials.

(V) Printouts from TELE – TEXT devices used by people who are deaf or hard of hearing or speech impaired.

(W) All records received by the insurance division of the department of business regulation from other states, either directly or through the National Association of Insurance Commissioners, if those records are accorded confidential treatment in that state. Nothing contained in this title or any other provision of law shall prevent or be construed as prohibiting the commissioner of insurance from disclosing otherwise confidential information to the insurance department of this or any other state or country, at any time, so long as the agency or office receiving the records agrees in writing to hold it confidential in a manner consistent with the laws of this state.

(X) Credit card account numbers in the possession of state or local government are confidential and shall not be deemed public records.

(Y) Any documentary material, answers to written interrogatories, or oral testimony provided under any subpoena issued under Rhode Island general law § 9-1.1-6.

§ 38-2-3 Right to inspect and copy records – Duty to maintain minutes of meetings – Procedures for access. – (a) Except as provided in § 38-2-2(5), all records maintained or kept on file by any public body, whether or not those records are required by any law or by any rule or regulation, shall be public records and every person or entity shall have the right to inspect and/or copy those records at such reasonable time as may be determined by the custodian thereof.

(b) Any reasonably segregable portion of a public record excluded by subdivision 38-2-2(4) shall be available for public inspection after the deletion of the information which is the basis of the exclusion. If an entire document or record is deemed non-public, the public body shall state in writing that no portion of the document or record contains reasonable segregable information that is releasable.

(c) Each public body shall make, keep, and maintain written or recorded minutes of all meetings.

(d) Each public body shall establish written procedures regarding access to public records but shall not require written requests for public information available pursuant to R.I.G.L. § 42-35-2 or for other documents prepared for or readily available to the public.

These procedures must include, but need not be limited to, the identification of a designated public records officer or unit, how to make a public records request, and where a public record request should be made, and a copy of these procedures shall be posted on the public body's website if such a website is maintained and be made otherwise readily available to the public. The unavailability of a designated public records officer shall not be deemed good cause for failure to timely comply with a request to inspect and/or copy public records pursuant to subsection (e). A written request for public records need not be made on a form established by a public body if the request is otherwise readily identifiable as a request for public records.

(e) A public body receiving a request shall permit the inspection or copying within ten (10) business days after receiving a request. If the inspection or copying is not permitted within ten (10) business days, the public body shall forthwith explain in writing the need for additional time to comply with the request. Any such explanation must be particularized to the specific request made. In such cases the public body may have up to an additional twenty (20) business days to comply with the request if it can demonstrate that the voluminous nature of the request, the number of requests for records pending, or the difficulty in searching for and retrieving or copying the requested records, is such that additional time is necessary to avoid imposing an undue burden on the public body.

(f) If a public record is in active use or in storage and, therefore, not available at the time a person or entity requests access, the custodian shall so inform the person or entity and make an appointment for the person or entity to examine such records as expeditiously as they may be made available.

(g) Any person or entity requesting copies of public records may elect to obtain them in any and all media in which the public agency is capable of providing them. Any public body which maintains its records in a computer storage system shall provide any data properly identified in a printout or other reasonable format, as requested.

(h) Nothing in this section shall be construed as requiring a public body to reorganize, consolidate, or compile data not maintained by the public body in the form requested at the time the request to inspect the public records was made except to the extent that such records are in an electronic format

and the public body would not be unduly burdened in providing such data.

(i) Nothing in this section is intended to affect the public record status of information merely because it is stored in a computer.

(j) No public records shall be withheld based on the purpose for which the records are sought, nor shall a public body require, as a condition of fulfilling a public records request, that a person or entity provide a reason for the request or provide personally identifiable information about him/herself.

(k) At the election of the person or entity requesting the public records, the public body shall provide copies of the public records electronically, by facsimile, or by mail in accordance with the requesting person or entity's choice, unless complying with that preference would be unduly burdensome due to the volume of records requested or the costs that would be incurred. The person requesting delivery shall be responsible for the actual cost of delivery, if any.

§ 38-2-3.1 Records required. – All records required to be maintained pursuant to this chapter shall not be replaced or supplemented with the product of a “real-time translation reporter”.

§ 38-2-3.2 Arrest logs. – (a) Notwithstanding the provisions of subsection **38-2-3(e)**, the following information reflecting an initial arrest of an adult and charge or charges shall be made available within forty-eight (48) hours after receipt of a request unless a request is made on a weekend or holiday, in which event the information shall be made available within seventy-two (72) hours, to the extent such information is known by the public body:

- (1) Full name of the arrested adult;
- (2) Home address of the arrested adult, unless doing so would identify a crime victim;
- (3) Year of birth of the arrested adult;
- (4) Charge or charges;
- (5) Date of the arrest;
- (6) Time of the arrest;
- (7) Gender of the arrested adult;
- (8) Race of the arrested adult; and
- (9) Name of the arresting officer, unless doing so would identify an undercover officer.

(b) The provisions of this section shall apply to arrests made within five (5) days prior to the request.

§ 38-2-3.16 Compliance by agencies and public bodies. – Not later than January 1, 2013, and annually thereafter, the chief administrator of each agency and each public body shall state in writing to the attorney general that all officers and employees who have the authority to grant or deny persons or entities access to records under this chapter have been provided orientation and training regarding this chapter. The attorney general may, in accordance with the provisions of chapter 35 of title 42, promulgate rules and regulations necessary to implement the requirements of this section.

§ 38-2-4 Cost. – (a) Subject to the provisions of **§ 38-2-3**, a public body must allow copies to be made or provide copies of public records. The cost per copied page of written documents provided to

the public shall not exceed fifteen cents (\$.15) per page for documents copyable on common business or legal size paper. A public body may not charge more than the reasonable actual cost for providing electronic records or retrieving records from storage where the public body is assessed a retrieval fee.

(b) A reasonable charge may be made for the search or retrieval of documents. Hourly costs for a search and retrieval shall not exceed fifteen dollars (\$15.00) per hour and no costs shall be charged for the first hour of a search or retrieval. For the purposes of this subsection, multiple requests from any person or entity to the same public body within a thirty (30) day time period shall be considered one request.

(c) Copies of documents shall be provided and the search and retrieval of documents accomplished within a reasonable time after a request. A public body upon request, shall provide an estimate of the costs of a request for documents prior to providing copies.

(d) Upon request, the public body shall provide a detailed itemization of the costs charged for search and retrieval.

(e) A court may reduce or waive the fees for costs charged for search or retrieval if it determines that the information requested is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

§ 38-2-5 Effect of chapter on broader agency publication – Existing rights – Judicial records and proceedings. – Nothing in this chapter shall be:

(1) Construed as preventing any public body from opening its records concerning the administration of the body to public inspection;

(2) Construed as limiting the right of access as it existed prior to July 1, 1979, of an individual who is the subject of a record to the information contained herein; or

(3) Deemed in any manner to affect the status of judicial records as they existed prior to July 1, 1979, nor to affect the rights of litigants in either criminal or civil proceedings, including parties to administrative proceedings, under the laws of discovery of this state.

§ 38-2-6 Repealed. –

§ 38-2-7 Denial of access. – (a) Any denial of the right to inspect or copy records, in whole or in part provided for under this chapter shall be made to the person or entity requesting the right in writing giving the specific reasons for the denial within ten (10) business days of the request and indicating the procedures for appealing the denial. Except for good cause shown, any reason not specifically set forth in the denial shall be deemed waived by the public body.

(b) Failure to comply with a request to inspect or copy the public record within the ten (10) business day period shall be deemed to be a denial. Except that for good cause, this limit may be extended in accordance with the provisions of subsection 38-2-3(e) of this chapter. All copying and search and retrieval fees shall be waived if a public body fails to produce requested records in a timely manner; provided, however, that the production of records shall not be deemed untimely if the public body is awaiting receipt of payment for costs properly charged under **§ 38-2-4**.

(c) A public body that receives a request to inspect or copy records that do not exist or are not within

its custody or control shall, in responding to the request in accordance with this chapter, state that it does not have or maintain the requested records.

§ 38-2-8 Administrative appeals. – (a) Any person or entity denied the right to inspect a record of a public body may petition the chief administrative officer of that public body for a review of the determinations made by his or her subordinate. The chief administrative officer shall make a final determination whether or not to allow public inspection within ten (10) business days after the submission of the review petition.

(b) If the custodian of the records or the chief administrative officer determines that the record is not subject to public inspection, the person or entity seeking disclosure may file a complaint with the attorney general. The attorney general shall investigate the complaint and if the attorney general shall determine that the allegations of the complaint are meritorious, he or she may institute proceedings for injunctive or declaratory relief on behalf of the complainant in the superior court of the county where the record is maintained. Nothing within this section shall prohibit any individual or entity from retaining private counsel for the purpose of instituting proceedings for injunctive or declaratory relief in the superior court of the county where the record is maintained.

(c) The attorney general shall consider all complaints filed under this chapter to have also been filed pursuant to the provisions of **§ 42-46-8(a)**, if applicable.

(d) Nothing within this section shall prohibit the attorney general from initiating a complaint on behalf of the public interest.

§ 38-2-9 Jurisdiction of superior court. – (a) Jurisdiction to hear and determine civil actions brought under this chapter is hereby vested in the superior court.

(b) The court may examine any record which is the subject of a suit in camera to determine whether the record or any part thereof may be withheld from public inspection under the terms of this chapter.

(c) Actions brought under this chapter may be advanced on the calendar upon motion of any party, or sua sponte by the court made in accordance with the rules of civil procedure of the superior court.

(d) The court shall impose a civil fine not exceeding two thousand dollars (\$2,000) against a public body or official found to have committed a knowing and willful violation of this chapter, and a civil fine not to exceed one thousand dollars (\$1,000) against a public body found to have recklessly violated this chapter and shall award reasonable attorney fees and costs to the prevailing plaintiff. The court shall further order a public body found to have wrongfully denied access to public records to provide the records at no cost to the prevailing party; provided, further, that in the event that the court, having found in favor of the defendant, finds further that the plaintiff's case lacked a grounding in fact or in existing law or in good faith argument for the extension, modification, or reversal of existing law, the court may award attorneys fees and costs to the prevailing defendant. A judgment in the plaintiff's favor shall not be a prerequisite to obtaining an award of attorneys' fees and/or costs if the court determines that the defendant's case lacked grounding in fact or in existing law or a good faith argument for extension, modification or reversal of existing law.

§ 38-2-10 Burden of proof. – In all actions brought under this chapter, the burden shall be on the public body to demonstrate that the record in dispute can be properly withheld from public inspection under the terms of this chapter.

§ 38-2-11 Right supplemental. – The right of the public to inspect public records created by this

chapter shall be in addition to any other right to inspect records maintained by public bodies.

§ 38-2-12 Severability. – If any provision of this chapter is held unconstitutional, the decision shall not affect the validity of the remainder of this chapter. If the application of this chapter to a particular record is held invalid, the decision shall not affect other applications of this chapter.

§ 38-2-13 Records access continuing. – All records initially deemed to be public records which any person may inspect and/or copy under the provisions of this chapter, shall continue to be so deemed whether or not subsequent court action or investigations are held pertaining to the matters contained in the records.

§ 38-2-14 Information relating to settlement of legal claims. – Settlement agreements of any legal claims against a governmental entity shall be deemed public records.

§ 38-2-15 Reported violations. – Every year the attorney general shall prepare a report summarizing all the complaints received pursuant to this chapter, which shall be submitted to the legislature and which shall include information as to how many complaints were found to be meritorious and the action taken by the attorney general in response to those complaints.

