

870-RICR-30-00-2

## **TITLE 870 – RHODE ISLAND COMMERCE CORPORATION**

### **CHAPTER 30 – TAX CREDITS AND EXEMPTIONS**

#### **SUBCHAPTER 00 – N/A**

PART 2 – Rules and Regulations for the Tax Stabilization Incentive Program

#### **2.1 Purpose**

These rules and regulations (the “Rules”) are promulgated to set forth the principles, policies and practices of the Rhode Island Commerce Corporation (the “Corporation”) in implementing and administering R.I. Gen. Laws Chapter 42-64.22, the Tax Stabilization Incentive act (the “Act”).

#### **2.2 Authority**

These Rules are promulgated pursuant to R.I. Gen. Laws Chapter 42-64.22. These Rules have been prepared in accordance with the requirements of R.I. Gen. Laws Chapter 42-35, the Rhode Island Administrative Procedures Act.

#### **2.3 Scope**

- A. These Rules shall apply to any application for an incentive under the Act. Notwithstanding anything contained in these Rules to the contrary, the Corporation shall have and may exercise all general powers set forth in the Act that are necessary or convenient to effect its purposes and these Rules shall be liberally construed so as to permit the Corporation to effectuate the purposes of the Act and other applicable state laws and regulations. The Corporation, upon an affirmative vote of its board of directors, may provide exemption from the application of such portion of these Rules as may be warranted by extenuating circumstances arising from such application, based upon the written recommendation of the staff of the Corporation delineating the reasons for such exemption. An applicant seeking an exemption under this provision must demonstrate extenuating circumstances by showing either:
1. that the application of a component of these Rules is inconsistent with a requirement of federal, state, or local law; or
  2. that the application of a component of these Rules is not feasible or appropriate for the given project type.

- B. Under no circumstances will lack of time or ability be deemed extenuating circumstances. The Corporation will only grant such exemptions as it determines are authorized by law and consistent with the safeguarding of public funds. The Corporation shall have no obligation to grant an exemption in any case, even if extenuating circumstances exist.

## **2.4 Severability**

If any provision of these Rules, or the application thereof to any person or circumstance, is held invalid by a court of competent jurisdiction, the validity of the remainder of the Rules shall not be affected thereby.

## **2.5 Definitions**

- A. The following words and terms, when used in these Rules, shall have the following meanings, unless the context clearly indicates otherwise:
1. “Act” means R.I. Gen. Laws Chapter 42-64.22 known as the Tax Stabilization Incentive.
  2. “Adaptive reuse” means the conversion of an existing structure from the use of which it was constructed to a new use by maintaining elements of the structure and adapting such elements to a new use.
  3. “Affiliate” means an entity that directly or indirectly controls, is under common control with, or is controlled by a Business. Control exists in all cases in which the entity is a member of a controlled group of corporations as defined pursuant to § 1563 of the Internal Revenue Code of 1986 (26 U.S.C. § 1563) or the entity is an organization in a group of organizations under common control as defined pursuant to subsection (b) or (c) of § 414 of the Internal Revenue Code of 1986 (26 U.S.C. § 414). A taxpayer may establish by clear and convincing evidence, as determined by the tax administrator, that control exists in situations involving lesser percentages of ownership than required by those statutes. An affiliate of a Business may contribute to meeting either the Capital Investment or Full-Time Job requirements for a grant of incentives under these Rules.
  4. “Affordable housing” means housing for sale or rent with combined rental costs or combined mortgage loan debt service, property taxes, and required insurance that do not exceed thirty percent (30%) of the gross annual income of a household earning up to eighty percent (80%) of the Providence-Fall River, RI-MA metropolitan area median income, as defined annually by the United States Department of Housing and Urban Development.

5. “Applicant” means a Qualifying Community or Hope Community applying for an incentive under these Rules.
6. “Application” means the application promulgated by the Corporation, which must be completed and submitted by an Applicant pursuant to the requirements of the Act and these Rules.
7. “Business” means a corporation as defined in R.I. Gen. Laws § 44-11-1(4), or a partnership, an S corporation, a non-profit corporation, a sole proprietorship, or a limited ability corporation. A Business shall include an Affiliate of the Business if that Business applies for a tax stabilization agreement based upon any Capital Investment made by an Affiliate.
8. “Capital investment” means expenses by a Business or any Affiliate of the Business in a Qualified Development Project incurred after application for a tax stabilization agreement for:
  - a. site preparation and construction, repair, renovation, improvement, equipping, or furnishing on real property or of a building, structure, facility, or improvement to real property; and/or
  - b. obtaining and installing furnishings and machinery, apparatus, or equipment, including but not limited to material goods for the operation of a business on real property or in a building, structure, facility, or improvement to real property.
  - c. In addition to the foregoing, if a Business acquires or leases a Qualified Development Project, the capital investment made or acquired by the seller or owner, as the case may be, if pertaining primarily to the premises of the Qualified Development Project, shall be considered a capital investment by the Business and, if pertaining generally to the Qualified Development Project being acquired or leased, shall be allocated to the premises of the Qualified Development Project on the basis of the gross leasable area of the premises in relation to the total gross leasable area in the Qualified Development Project. The capital investment described herein may include any capital investment made or acquired within twenty-four (24) months prior to the date of Application so long as the amount of capital investment made or acquired by the Business, any Affiliate of the Business, or any owner after the date of Application equals at least fifty percent (50%) of the amount of capital investment, allocated to the premises of the Qualified Development Project being acquired or leased on the basis of the gross leasable area of such premises in

relation to the total gross leasable area in the Qualified Development Project made or acquired prior to the date of Application.

9. "Certified historic structure" means a property which is located in the State and is:
  - a. listed individually on the national register of historic places; or
  - b. listed individually in the State register of historic places; or
  - c. located in a registered historic district and certified by either the Rhode Island Historical Preservation & Heritage Commission or Secretary of the Interior as being of historic significance to the district.
10. "Corporation" means the Rhode Island Corporation established pursuant to R.I. Gen. Laws Chapter 42-64.
11. "Commercial" means non-residential development.
12. "Developer" means a person, firm, corporation, partnership, association, political subdivision, or other entity that proposes to divide, divides, or causes to be divided real property into a subdivision or proposes to build, or builds a building or buildings or otherwise improves land or existing structures, which division, building, or improvement qualifies for benefits under this Part.
13. "Eligibility period" means the period in which a Qualifying Community and/or Hope Community may apply for reimbursement under the Act and these Rules. The eligibility period shall be subject to the term defined in the Qualifying Tax Stabilization Agreement granted by said community. The amounts subject to reimbursement shall cease upon any termination or cessation of the underlying Qualifying Tax Stabilization Agreement.
14. "Forgone tax revenue" means the amount of revenue that a municipality would have received from a Qualified Development Project had a tax stabilization agreement not been in place, less the amount of revenue the municipality would be expected to receive from that Qualified Development Project with a Qualifying Tax Stabilization Agreement in place; the Corporation shall have the sole discretion to determine the Forgone Tax Revenue for a Qualified Development Project.
15. "Full-time job" means a position for which a person is employed by a Business for consideration for a minimum of at least thirty-five (35) hours

per week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, or who is employed by a professional employer organization pursuant to an employee leasing agreement between the Business and the professional employer organization for a minimum of thirty-five (35) hours per week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, and whose wages are subject to withholding.

16. “Hope community” means a municipality for which the five (5) year average percentage of families with income below the federal poverty level exceeds the State five (5) year average percentage, both as most recently reported by the U.S. Department of Commerce, Bureau of the Census.
17. “Project cost” means the costs incurred by a Developer in connection with the Qualified Development Project until the issuance of a permanent certificate of occupancy, or until such other time specified by the Corporation including, but not limited to, costs for lands, buildings, improvements, real and personal property or any interest therein, including the site, space or air rights, acquired, owned, developed or redeveloped, constructed, reconstructed, rehabilitated or improved, and any environmental remediation costs, plus reasonable soft costs as determined by the Corporation, and ancillary infrastructure projects and infrastructure improvements, as permitted in the sole discretion of the Corporation.
18. “Recognized historical structure” means a property which is located in the State and is commonly considered to be of historic or cultural significance as determined by the Corporation in consultation with the State Historic Preservation Officer.
19. “Qualifying communities” are those municipalities within the State that are not defined as a Hope Community.
20. “Qualified development project” includes:
  - a. Rehabilitation of an existing structure where the total cost of the development budget exceeds fifty percent (50%) of adjusted basis in the proposed project as of the date that the Developer applied for a Qualifying Tax Stabilization Agreement; or
  - b. Construction of a new building wherein:

- (1) the subject community has issued a tax stabilization agreement, as set forth herein and pursuant to R.I. Gen. Laws § 44-3-9 as well as other applicable rules, regulations and, procedures;
  - (2) construction commences within twelve (12) months of the subject tax stabilization agreement being approved; and
  - (3) completion of the proposed project occurs within thirty-six (36) months, subject to the approval of Qualifying or Hope Communities.
21. “Qualifying tax stabilization agreement” are those tax stabilization agreements with a minimum term of twelve (12) years, granted by a Qualifying and/or Hope Community in connection with a Qualified Development Project.
22. “State” means the State of Rhode Island and Providence Plantations.
23. “Workforce housing” means housing for sale or rent with combined rental costs or combined mortgage loan debt service, property taxes, and required insurance that do not exceed thirty percent (30%) of the gross annual income of a household earning between eighty percent (80%) and one hundred and forty percent (140%) of the Providence-Fall River, RI-MA metropolitan area median income, as defined annually by the United States Department of Housing and Urban Development.

## **2.6 Eligibility**

- A. Subject to appropriation, a Qualifying Community may be eligible to receive an incentive of up to ten percent (10%) of the Foregone Tax Revenue for a Qualifying Tax Stabilization Agreement for a Qualified Development Project that
1. results in the creation of at least fifty (50) new Full-Time Jobs, and for which the Developer shall commit a Capital Investment of not less than Ten Million Dollars (\$10,000,000.00) towards the Project Cost; or
  2. involves an Adaptive Reuse of a Recognized Historical Structure; or
  3. results in the creation of at least twenty (20) units of Residential housing; provided that at least twenty percent (20%) of the Residential units are for Affordable or Workforce Housing; or
  4. involves an Adaptive Reuse of a Certified Historic Structure, if such project:

- a. has been certified by the State Historic Preservation Officer that the Adaptive Reuse will be consistent with the standards of the Secretary of the United States Department of the Interior for rehabilitation; and
  - b. results in the creation of at least twenty (20) units of Residential housing; provided that at least twenty percent (20%) of the Residential units are for Affordable or Workforce Housing.
- B. Subject to appropriation, a Hope Community may be eligible to receive an incentive of up to ten percent (10%) of the Foregone Tax Revenue for a Qualifying Tax Stabilization Agreement for a Qualified Development Project that
  1. results in the creation of at least twenty-five (25) new Full-Time Jobs, and for which the Developer shall commit a Capital Investment of not less than Five Million Dollars (\$5,000,000.00) towards the Project Cost; or
  2. results in the creation of at least twenty (20) units of Residential housing.
- C. An Applicant need not have entered into or approved the Qualifying Tax Stabilization Agreement prior to filing an Application for an incentive in relation to that Agreement, though approval and execution of the Qualifying Tax Stabilization Agreement is a condition to the receipt of an incentive under the Act.

## **2.7 Application**

- A. Each Application made by an Applicant shall include, at a minimum, the following information:
  1. The name, address and principal contact for the Applicant;
  2. The location of the Qualified Development Project;
  3. The terms of an existing or anticipated Qualifying Tax Stabilization Agreement;
  4. For a Commercial or Mixed Use project, identification of prospective businesses that will occupy the project location, type of businesses, and principal products and services (if applicable or known);
  5. For a Residential or Mixed Use project, a description of unit sizes/layouts projected sales/lease pricing, and affordability mix;
  6. A construction schedule for the Qualified Development Project or each phase of such project;

7. A detailed itemization of the estimated Project Cost, if applicable;
8. A detailed itemization of the Capital Investment, if applicable;
9. A delineation of any other federal, State or local incentives, grants, tax credits or other aid that will or may be received or requested by the Business or an Affiliate of the Business in relation to the Project; and
10. Such other information as the Corporation deems appropriate.

## **2.8 Application Review and Approval**

- A. Each Application shall be reviewed to confirm compliance with the Act and these Rules, and the Corporation may reject any incomplete or deficient Application.
- B. The Corporation may require the submission of additional information in connection with any Application or the revision of an Application, and may permit the resubmission of an Application rejected as being incomplete or deficient.
- C. After submission of a complete Application and review by the Corporation in accordance with the requirements of the Act and these Rules, the Corporation will determine whether to award an incentive to the Applicant. In approving an incentive, the Corporation shall make the following findings in connection with approval of any award of incentives under the Act and these Rules:
  1. that the total amount of the award to the Applicant is not more than ten percent (10%) of the Forgone Tax Revenue in relation to the Qualified Development Project; and
  2. that the award of incentives is subject to the availability of funding from annual appropriations.
- D. In determining whether to approve an award of incentives under the Act, the Corporation may take into account, in consideration with other factors deemed relevant by the Corporation, the following:
  1. The catalytic impact of the Qualified Development Project;
  2. Whether the Qualified Development Project furthers State or municipal planning and development objectives, or both;
  3. Whether the provision of an incentive under the Act is a material factor in the decision of the municipality to grant the Qualifying Tax Stabilization Agreement; and

4. Whether the Qualified Development Project maximizes the value of vacant, dilapidated, outmoded, or underutilized property.
- E. If the Corporation determines that it will not award an incentive to an Applicant who has submitted a complete Application, it shall notify the Applicant in writing of such decision.
- F. The Corporation may set periodic Application deadlines that will be published on the Corporation's web site from time to time.

## **2.9 Incentive Agreement**

- A. Upon approval of an award to an Applicant and in order to safeguard the expenditure of public funds and ensure that the disbursement of funds furthers the objectives of the Act, the Corporation and the Applicant will enter into an Incentive Agreement, which shall include, among others, the following terms:
  1. The maximum amount of incentives awarded;
  2. A provision that the incentives shall cease upon any termination or cessation of the Qualifying Tax Stabilization Agreement or upon exhaustion of funds appropriated for the program;
  3. If applicable, a provision requiring that the receipt of the incentives for any given year be subject to the Qualified Development Project meeting any job creation requirements or any other conditions that the Corporation, in its sole discretion, shall set as a condition of its approval of an award to the Applicant;
  4. Default and remedies including events, if any, that would trigger forfeiture, revocation, termination, and/or repayment of the awarded incentives;
  5. Indemnification, insurance and other customary protective requirements;
  6. Reporting requirements including, but not limited to, any requirements under the Act;
  7. A certification procedure to insure that the Qualified Development Project meets the relevant eligibility criteria and any other criteria imposed by the Corporation in approving an award of incentives; and
  8. Any other provisions that the Corporation determines are appropriate.

## **2.10 Discretion and Judicial Review**

- A. The Corporation shall not have any obligation to make any award or grant any benefits under the Act or these Rules.
  
- B. A review of an Application shall not constitute a “contested case” under R.I. Gen. Laws § 42-35-9, the Administrative Procedures Act, and no opportunity to object to an Application shall be afforded, nor shall judicial review be available from a decision rendered by the Corporation in connection with any Application.

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