

870-RICR-30-00-9

TITLE 870 – RHODE ISLAND COMMERCE CORPORATION

CHAPTER 30 – TAX CREDITS AND EXEMPTIONS

SUBCHAPTER 00 – N/A

PART 9 – Rules and Regulations for the City of Pawtucket Downtown Redevelopment Project Act

9.1 Purpose

These Rules and Regulations are promulgated to set forth the principles, policies and practices of the Rhode Island Commerce Corporation in implementing and administering the program pursuant to the Act, as defined herein.

9.2 Authority

These Rules, as defined herein, are promulgated by the Rhode Island Commerce Corporation pursuant to R.I. Gen. Laws §§ 45-33.4-1(13) and 42-64-7. These Rules have been prepared in accordance with the requirements of the Rhode Island Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35.

9.3 Scope

These Rules shall apply to any Application for an Award under the Act. Notwithstanding anything contained in these Rules to the contrary, the Rhode Island Commerce Corporation shall have and may exercise all general powers set forth in the Corporation Act that are necessary or convenient to effect its purposes, and these Rules shall be liberally construed so as to permit the Rhode Island Commerce Corporation to effectuate the purposes of the Act, the public interest, and other applicable State laws and Regulations. The Rhode Island Commerce Corporation, upon an affirmative vote of the Board, 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 Rhode Island Commerce Corporation delineating the reasons for such exemption. The Corporation will provide notice of such exemption to the Division.

9.4 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.

9.5 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 45-33.4.
 2. "Applicant" means an entity and the City or Pawtucket Redevelopment Agency that jointly apply for Certification pursuant to these Rules, or, upon written authorization from the Corporation, the City or the Pawtucket Redevelopment Agency without joinder of another party.
 3. "Application" means a document and additional materials in the form prescribed by the Corporation submitted by the Applicant to the Corporation as provided in this Part.
 4. "Award" shall mean the award by the Board of an amount of Baseline Revenue.
 5. "Baseline revenue" means the combined amount of existing tax revenues realized in the Districts pursuant to R.I. Gen. Laws § 45-33.4-1(13), as established by the Division.
 6. "Board" means the Board of Directors of the Corporation, or, at the election of such directors, a committee thereof.
 7. "Certification" means the document issued to an Applicant by the Corporation certifying to the State Division of Taxation the amount of the Award and taxable year(s) in which such Award is payable, and such other information deemed appropriate by the Corporation.
 8. "City" means the City of Pawtucket.
 9. "Corporation" means the Rhode Island Commerce Corporation.
 10. "Corporation act" means R.I. Gen. Laws Chapter 42-64.
 11. "Districts" means the arts district, the ballpark district and the growth center district as defined in R.I. Gen. Laws § 45-33.4-1.
 12. "Division" means the Division of Taxation within the Department of Revenue.
 12. "Incentive agreement" means an agreement between the Corporation and an Applicant setting forth the terms and conditions of an Award.
 13. "Placed in service" means the earlier of:

- a. Substantial construction or rehabilitation work has been completed which would allow for occupancy of an entire structure or some identifiable portion of a structure, as determined by the Corporation and set forth in the Incentive Agreement;
 - b. Receipt by an Applicant, of a certificate, permit or other authorization allowing for occupancy of the Project or some identifiable portion of the Project issued by the municipal or State authority having jurisdiction; or
 - c. For public improvements, as determined by the Corporation and set forth in the Incentive Agreement.
14. "Project" shall have the same meaning as set forth in the Act.
15. "State" means the State of Rhode Island.

9.6 Application

- A. An Application shall be made by the Applicant in the format prescribed by the Corporation. In order for the Corporation to determine whether an Applicant is compliant with R.I. Gen. Laws § 45-33.4-1(13), the Applicant must submit, the following information in the Application:
- 1. The name, address and principal contact for the Applicant;
 - 2. State and Federal tax identification numbers;
 - 3. The location of the Project;
 - 4. The status of control of the entire Project area shown for each plat and lot as indicated on the municipal assessor's tax map(s);
 - 5. A construction schedule for the Project or each phase of the Project;
 - 6. A detailed itemization of the estimated Project costs for the Project;
 - 7. A detailed description of the financing for the Project including, among other things, all sources and amounts of funding, projected internal rate of return, net margin, return on investment and cash on cash yield;
 - 8. A *pro forma* demonstrating that the Project is likely to be realized with the provision of Baseline Revenue requested but is not likely to be accomplished in the State by private enterprise without the Baseline Revenue;
 - 9. A list and status of all required Federal, State and/or municipal approvals and/or permits required for the Project;

10. A delineation of any other Federal, State or local incentives, grants, tax credits, charitable contributions, or other aid that will or may be received or requested by the Applicant in relation to the Project;
 11. If applicable, demonstration that the Project will expand the Rhode Island full-time employee workforce of an existing business that would otherwise have been unable to achieve such expansion;
 12. If applicable, demonstration that the business is at substantial risk of relocating to a viable location out-of-State;
 13. Pursuant to R.I. Gen. Laws §§ 45-33.4-1(13)(i) and (ii), an attestation under oath from the Chief Executive Officer, or equivalent Officer of an Applicant other than the City or the Pawtucket Redevelopment Agency or, if there is no joint Applicant with the City or the Pawtucket Redevelopment Agency, the Chief Executive Officer, or equivalent Officer of an affected business acceptable to the Corporation:
 - a. With respect to any portion of the Project that is financing municipal or public facilities, that the Project is needed and that the financing of the project is in the public interest; or
 - b. With respect to any portion of the Project providing financing for industrial or commercial development purposes that unemployment or the threat of unemployment exists in the City of Pawtucket or that security against future unemployment is required, that the Project is needed, that it will provide employment or security against loss of employment, including the approximate number of new jobs that should be created or preserved, construction and non-construction, their approximate wage rates, what types of fringe benefits such as healthcare or retirement benefits there will be, and the projected increase in personal income taxes to the State, all having a reasonable relationship to the probable cost of acquiring, establishing, improving, or rehabilitating the facilities in which the employment is to be provided or maintained.
- B. The Corporation may require supplemental information in addition to § 9.6(A) of this Part, above, in order to determine compliance with R.I. Gen. Laws § 45-33.4-1(13).

9.7 Fees

- A. An Applicant shall be charged a one (1) time, non-refundable Application fee and may be charged fees for ongoing administration in relation to an approved Application and a termination fee upon exit from the Program. The Corporation shall not less than annually publish a fee schedule on its website commencing on or before December 31st of each year.

- B. An Applicant may be required to make advance payment to the Corporation of the full amount of direct fees and costs paid to third (3rd) parties by the Corporation in relation to the consideration of the Applicant's Application.

9.8 Review Process

- A. Prior to consideration by the Board, each Application shall be reviewed to confirm compliance with the Corporation Act, 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 incomplete or deficient Application or the revision of an Application and may permit the resubmission of an Application rejected as being incomplete or deficient.
- C. Prior to recommending an Award to the Board for approval, the Corporation shall:
 - 1. Review each Project to determine if it meets one (1) of the eligibility requirements set forth in R.I. Gen. Laws § 45-33.4-1(13). This review shall include testing the validity of Project related financial information and assumptions through the use of financial models and, to the extent necessary, seeking input from third (3rd) party consultants; and
 - 2. Notify the Division of any recommendation prior to making such recommendation to the Board of an Award for approval. The Division shall confirm that the recommended Award does not exceed the amount of available Baseline Revenue within five (5) business days from receipt of notice from the Corporation.
- D. After submission of a complete Application and review by the Corporation in accordance with the requirements of the Corporation Act, the Act and these Rules, the Corporation will determine whether to recommend to the Board that it approve an Award for a Project. In developing a recommendation, the Corporation may take into account, as applicable and in consideration with other factors deemed relevant by the Corporation:
 - 1. The evaluation of the Applicant's *pro forma*;
 - 2. The Project's catalytic impact, impact on private investment, employment, and State and local revenues, provision of public improvements and overall impact on the State;
 - 3. Whether the Project furthers State or municipal planning and development objectives, or both;
 - 4. Whether the Project maximizes the value of vacant, dilapidated, outmoded, or underutilized property; and

5. Whether there exists an opportunity for the State or the Corporation to recoup or receive a return on all or a portion of the Award to be issued to the Applicant by virtue of a receipt of an equity stake or other interest in or return from the Project.
- E. If the Corporation determines that it will not recommend an Application to the Board for approval of an Award, it shall notify the Applicant in writing of such decision.

9.9 Discretion and Condition to Awards

- A. The Corporation shall not have any obligation to make any Award or grant any benefits under the Act or these Rules.
- B. Any Award is subject to available funding from tax revenue collections, appropriation of funds and the execution of an economic activity taxes agreement, as defined in R.I. Gen. Laws § 45-33.4-1(8).

9.10 Board Consideration of Application

- A. Prior to Board consideration for approval of any Award, the following conditions shall be satisfied:
 1. The Applicant has submitted a completed Application; and
 2. The Chief Executive Officer of the Corporation has provided written confirmation to the Board of the satisfaction of one (1) or more of the eligibility criteria set forth in the Act.
- B. Within thirty (30) days after satisfaction of the requirements of § 9.10(A) of this Part, or such later date as the next meeting of the Board is convened, the Board shall undertake review and consideration of the approval of an Award for the Project.
- C. In addition to those findings required under R.I. Gen. Laws § 42-64-10(a), the Board shall make the following findings in connection with approval of an Award under the Act and these Rules:
 1. That Project meets one (1) or more of the eligibility criteria set forth in the Act, and
 2. That the Chief Executive or equivalent Officer of an Applicant or, as applicable, an affected business acceptable to the Corporation has provided written verification required by the Act.
- D. If the Board makes an Award, the Corporation must provide notification of the Award to the Division within five (5) business days of the Award decision.

9.11 Incentive Agreement

- A. Upon approval of an Award by the Board 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 an Applicant will enter into an Incentive Agreement, which shall include, among others, the following terms:
1. A description of the Project;
 2. The total amount of the Award;
 3. The annual amount of Award payments to be made on account of the Award;
 4. A requirement that payments of Baseline Revenue shall not commence prior to the Project being Placed in Service unless otherwise provided for by the Board in its approving resolution;
 5. If applicable, and at the Corporation's discretion, a provision requiring that the receipt of annual payments on account of an Award for any year be subject to an Applicant meeting any job creation or retention requirements or any other conditions that the Corporation, shall set as a condition of its approval or the disbursement of the Award.
 6. Evidence that the Applicant is in good standing with the Secretary of State and Division of Taxation at the time of execution of the Incentive Agreement. This provision shall not be applicable to governmental entities;
 7. A provision indicating that the Award is allowed as a payment from the State subject to annual appropriation;
 8. At the Corporation's discretion, a provision requiring the Applicant to pay the Corporation's reasonable costs, including attorneys' fees, incurred in connection with the negotiation, execution and enforcement of the Incentive Agreement;
 9. Indemnification and insurance requirements;
 10. Default and remedies including events, if any, that would trigger forfeiture, revocation, and/or repayment of the Award;
 11. Reporting and auditing requirements;
 12. The imposition of such restrictions or covenants upon the Project as may be necessary to ensure continued compliance with the Act and the Rules;

13. The procedure by which an Applicant may pledge and assign as security for any financing, any or all of its rights, title and interest in and to the Award; and
 14. A Certification procedure, which may include, but not be limited to, the following:
 - a. Representations that the Project complies with all applicable laws and Regulations;
 - b. Evidence that the Applicant is in good standing with the Secretary of State and the Division of Taxation at the time the Applicant files its request for Certification. This provision will not be applicable to governmental entities;
 - c. A requirement that the Applicant submit, prior to issuance of any Award, satisfactory evidence of the actual Project cost, as certified by a Certified Public Accountant. If the actual Project cost is less than the estimated Project cost forming the basis for the approval of the Award, then the Award shall be reduced;
 - d. Evidence that the Project has been Placed in Service and/or meets such other criteria as imposed by the Board in its approving resolution; and
 - e. If applicable, evidence that the Applicant has met any additional job creation or retention requirements or any other conditions that the Corporation, in its sole discretion, set as a condition of its approval of the Award.
- B. The Incentive Agreement does not relieve the City and/or the Pawtucket Redevelopment Agency from executing an economic activity taxes agreement, as defined in R.I. Gen. Laws § 45-33.4-1(8), with the Department of Revenue.

9.12 Administration and Examination of Records

The Corporation may examine any books, paper, records or memoranda bearing upon the approval of an Award or the administration of the Program, and may require the attendance of any person executing any Application, report or other statement, or of any Officer or employee of any taxpayer receiving funds from an Award, and may examine such person under oath respecting any matter which the Corporation deems pertinent or material in determining eligibility claimed under the Act or in any way related to the administration of the Program.

9.13 Inspection Rights

- A. The Corporation shall have the right at reasonable times to make an inspection and to enter upon any property that is the subject of an Application whether the

Project is ongoing, or completed, and during the term of an Incentive Agreement to verify compliance with the Act, the Rules and such other conditions imposed by the Corporation.

- B. The Corporation may share documents collected and/or submitted during the Application, Award, Certification, and Incentive Agreement process with the Division.

9.14 Forms

The Corporation may from time to time promulgate forms required to be used by Applicants or others in relation to the Corporation's administration of the Program.

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