

310-RICR-60-35-1

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TITLE 310 - EXECUTIVE OFFICE OF HOUSING

CHAPTER 60 - PILOT PROGRAMS

SUBCHAPTER 35 - TRANSIT-ORIENTED DEVELOPMENT PILOT PROGRAM

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

1.1 Purpose

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

1.2 Authority

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

1.3 Scope

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

1.4 Severability

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

1.5 Definitions

- A. "Affordable Housing." A housing unit will be considered Affordable if:

1. It is subject to an affordable housing restriction with a term of no less than 30 years;

2. For a rental unit, the tenant is required to be an individual or household whose annual income is less than or equal to 80% of the Area Median Income and the monthly rent, plus a reasonable allowance for applicable utilities, is less than or equal to 30% of one-twelfth of 80% the Area Median Income; and

3. For a homeownership unit, the purchaser is required to be an individual or household whose annual income is less than or equal to 120% of the Area Median Income and the maximum sale price at initial sale and resale is less than or equal to a level affordable to households at or below 110% of the Area Median Income assuming that the household would not expend more than 30% of monthly income for the total of mortgage principal and interest, property taxes, hazard insurance, private mortgage insurance, and condominium, co-op or homeowner association payments.

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

C. "Approved TOD Pilot Program District" means a district for which Transit-Oriented Development (TOD) Zoning has been adopted by a Municipality and for which a Certificate of Final District Approval has been issued by the Executive Office.

D. "Area Median Income" means the area-wide median income as determined by HUD, adjusted for household size and using HUD's rules for attribution of income to assets.

E. "As-of-right" means a residential development allowed within the TOD Pilot District without the need for a special permit, variance, zoning amendment, discretionary waiver, or other form of zoning relief.

F. "Certificate of Final District Approval" means a certificate issued by the Executive Office to a Municipality confirming that the TOD Pilot Program District meets the requirements of the Act and these Rules.

G. "Days" means calendar days.

H. "Developable Land" means all land within a District that can be feasibly developed into residential or Mixed-use Development Projects. Developable Land shall not include:

1. Substantially Developed Land;

2. Protected Open Space;

3. The rights-of-way of existing public streets, ways, and transit lines; or

4. Land currently in use for governmental functions (except to the extent that such land qualifies as Underutilized Land).

I. "Easing" as the term relates to dimensional restrictions and parking requirements means a reduction/lessening, or, in cases where the underlying zoning already met the TOD Pilot Program District standards, that such elements continue to meet the standards.

J. "Executive Office" means The Rhode Island Executive Office of Housing established pursuant to R.I. Gen. Laws § 42-167-1.

K. "HUD" means the United States Department of Housing and Urban Development.

L. "Letter of Compliance" means a letter issued by the Executive Office to a Municipality confirming that the Executive Office is withdrawing a Letter of Noncompliance, and that is filed with the town or city clerk of the Municipality.

M. "Letter of Noncompliance" means a letter issued by the Executive Office to a Municipality stating that the actions of the Municipality preclude compliance with the requirements set forth in the Act and these Rules, or that the Municipality has adopted amendments to the TOD Pilot Program District or TOD Pilot Program Zoning that render(s) a TOD Pilot Program District noncompliant with the Act or these Rules, and which shall be filed with the town or city clerk of the Municipality.

N. "Letter of Preliminary District Approval" means a letter issued by the Executive Office to a Municipality prior to its adoption of a TOD Pilot Program District confirming that the proposed District would meet the requirements of the Act and these Rules.

O. "Low Impact Development (LID) Techniques" means strategies suitable to a particular site that protect the natural features of the site, including, without limitation:

1. Natural resource-oriented site design;

2. Appropriately scaled and decentralized stormwater management techniques that limit the rate of off-site storm water runoff (both peak and non-peak flows) to levels substantially similar to natural hydrology (or, in the case of a redevelopment site, that reduce such flows from pre-existing conditions), through means including but not limited to bioretention/rain gardens, infiltration/permeable pavements, stormwater planters, vegetated swales, vegetated buffers, cisterns, rain barrels, and green roofs; and

3. Appropriately scaled roads as promoted by Complete Streets (see R.I. Gen. Laws § 24-16).

P. "Mixed-use Development" means a Project containing a mix of residential uses, together with commercial, institutional, industrial, or other non-residential uses; in which the applicable residential densities set forth in this Rule apply.

Q. "Municipality" means any Rhode Island city or town.

R. "Notice of Deficiencies" means a letter issued by the Executive Office to a Municipality stating its determination that a proposed TOD Pilot Program District does not satisfy all the criteria as set forth in the Act and these Rules and shall identify the deficiencies on which the determination was made.

S. "Notice of Revocation" means a letter issued by the Executive Office to a Municipality revoking a Certificate of Final District Approval or Letter of Compliance and which shall be filed with the town or city clerk of the Municipality and shall be appended to the relevant zoning map of the Municipality.

T. "Prior Zoning" means, for a TOD Pilot District created through base zoning regulations, the zoning requirements for the TOD Pilot District that were in place immediately prior to the adoption of a TOD Pilot District through base zoning.

U. "Protected Open Space" means land dedicated in perpetuity to protect one or more of the following: land for existing and future well fields, aquifers, and recharge areas; watershed land; agricultural land; grasslands; fields; forest land; fresh and saltwater marshes and other wetlands; ocean, river, stream, lake and pond frontage; beaches, dunes, and other coastal lands; lands to protect scenic vistas; land for wildlife or nature preserves; land for active or passive recreational use; parklands, plazas, playgrounds, and reservations; and cemeteries. Protected Open Space may be in public or private ownership.

V. "Smart Growth" means a principle of land development that furthers, on balance, the following goals:

1. Increasing the availability of affordable housing by creating a range of housing opportunities in neighborhoods;
2. Emphasizing mixing land uses;
3. Taking advantage of compact design;
4. Providing walkable neighborhoods incorporating complete streets design pursuant to R.I. Gen. Laws § 24-16;
5. Fostering distinctive and attractive communities;

6. Preserving open space, farmland, natural beauty, and critical environmental areas; by prioritizing higher density development in town/city centers, where infrastructure already exists;

7. Providing accessibility to a variety of transportation choices;

8. Making development decisions predictable, fair, and cost effective.

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W. "Substantially Developed Land" means land that is currently developed, and which does not qualify as Underutilized Land.

X. "Suitable for Families" means residential development comprised of dwelling units that are not age-restricted housing, and for which there are no zoning requirements for age-restricted housing and no restrictions on the number of bedrooms, the size of bedrooms, or the number of occupants.

Y. "Transit-Oriented Development (TOD)" means the creation of compact, walkable, pedestrian-oriented, mixed-use communities centered around transit nodes that support vibrant, sustainable, and equitable communities.

Z. "TOD Pilot Program District" means an established overlay district or other zoning provisions that create a district within a Municipality that meets the following requirements and for which the Executive Office has issued a Certificate of Final District Approval:

1. Meets the requirements of § 45-24-77 of the Act;

2. Increases density as compared to the Underlying Zoning or Prior Zoning;

3. Eases the parking ratio for residential uses as compared to the Underlying Zoning or the Prior Zoning, provided that the maximum parking allowed does not exceed 1.5 parking spaces per unit of housing. For the purposes of calculating maximum parking spaces, fractions shall be rounded up to the nearest integer.

4. Eases dimensional restrictions as compared to the Underlying Zoning or Prior Zoning;

5. Incorporates Smart Growth principles; and

6. Meets the requirements for TOD Pilot Program Zoning.

7. TOD Pilot Program Districts may allow commercial, institutional, mixed-use, open space, or other reasonable land uses, but only eligible residential and mixed-use projects may apply for funding under the TOD Pilot Program.

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

1.6 TOD Pilot Program District Approval Process

A Application for Preliminary District Approval

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

B. Preliminary District Approval Review Process

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

C. Final District Approval Submittal

1. Upon adoption of the TOD Pilot Program Zoning, or to certify an existing zone as a TOD Pilot Program District, a Municipality shall submit to the Executive Office a request for Final District Approval. The request for Final District Approval shall include proof of such adoption and:
 - a. Certification by the chief executive of the Municipality or duly authorized designee that the TOD Pilot Program Zoning has not changed since the Executive Office issued a Letter of Preliminary District Approval; or

- b. If any element of the TOD Pilot Program District or TOD Pilot Program Zoning has changed since the Executive Office issued a Letter of Preliminary District Approval, the Municipality shall identify those elements and provide materials related to such changes, including but not limited to the TOD Pilot Program Zoning and TOD Pilot Program District map, that enable the Executive Office to determine that the TOD Pilot Program District as adopted meets the requirements of the Act and these Rules; or
- c. In the case of certifying an existing zone as a TOD Pilot Program District, the applicant must submit all items listed in §§ 1.6(A)(1)-(4) and (7).

D. Final District Approval Review

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

E. Appeals

- 1. A Municipality may appeal the Executive Office's decision to issue a Notice of Deficiencies by requesting that the Secretary of Housing review the Notice. The request shall be in writing to the Secretary not later than thirty (30) days after receipt of the Notice of Deficiencies and shall set out the reasons that Notice of Deficiencies should be revoked and a Certificate of Final District Approval issued to the Municipality. The Secretary shall respond to the appeal in writing within sixty (60) days of receipt of the appeal, or such other reasonable time period as the Secretary may establish by written notice to the Municipality.

F. Amendments to Certified TOD Pilot Program Districts

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

G. Repeals

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

1.7 TOD Pilot Program Funding Process

A. Application for Funding

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

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

B. Funding Application Review

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

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

- 1. Alignment with the Housing 2030 strategic plan or any successor plan;
- 2. The total number of residential units proposed;
- 3. The density of units proposed;
- 4. The total number of affordable units proposed;
- 5. Qualifications and experience of the development team;
- 6. The degree to which Smart Growth Principles, parking minimization, and LID Techniques are integrated into the proposal;
- 7. Financial feasibility of the proposal;
- 8. Frequency and accessibility of current and future transit service; and
- 9. Readiness to proceed.

1.8 Annual Report

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

1.9 Noncompliance

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

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

1.10 Waiver

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