

**RHODE ISLAND GOVERNMENT REGISTER**  
**PUBLIC NOTICE OF PROPOSED RULEMAKING**

---

---

**AGENCY:** EAST PROVIDENCE WATERFRONT COMMISSION

**RULE IDENTIFIER:** 885-RICR-00-00-1

**REGULATION TITLE:** Calculation, Payment and Use of Fees In-Lieu of Affordable Housing

**RULEMAKING ACTION:** Proposed Rulemaking

**TYPE OF FILING:** Adoption

**TIMETABLE FOR ACTION ON THE PROPOSED RULE:**

*Public notice date:* 6/25/2018

*Hearing date:* 8/27/2018

*End of comment period:* 9/4/2018

**SUMMARY OF PROPOSED RULE:**

The East Providence Waterfront Commission Rules and Regulations establish the calculation, payment and use of fees in-lieu of constructing affordable housing units in the East Providence Waterfront Special Development District (District). The purpose of these regulations is to increase the stock of low- and moderate-income housing in East Providence with a priority on units located within the District, to meet the state goal of ten percent (10%) of housing units affordable to households of low and moderate income. The proposed rule identifies the procedure for a developer to request a fee in lieu of constructing affordable housing units in the District and identifies the procedure for disbursement of in lieu fees to a developer of affordable housing for gap financing.

**COMMENTS INVITED:**

All interested parties are invited to submit written or oral comments concerning the proposed regulations by September 4, 2018 to the addresses listed below.

**ADDRESSES FOR PUBLIC COMMENT SUBMISSIONS:**

**Mailing Address:** Pamela Sherrill, Executive Director  
East Providence Waterfront Commission  
City Hall  
145 Taunton Ave, Room 206  
East Providence RI 02914

**Email Address:** [psherrill@cityofeastprov.com](mailto:psherrill@cityofeastprov.com)

**WHERE COMMENTS MAY BE INSPECTED:**

East Providence Waterfront Commission  
City Hall  
145 Taunton Ave, Room 206  
East Providence RI 02914

**PUBLIC HEARING INFORMATION:**

**Public Hearing Date & Time:** 8/27/2018 @ 6:30 pm

**Public Hearing Location:**

East Providence City Hall  
Room 306  
145 Taunton Avenue  
East Providence, RI 02914

The place of the public hearing is accessible to individuals who are handicapped. If communication assistance (readers/interpreters/captioners) is needed, or any other accommodation to ensure equal participation, please call 401-435-7500, ext. 11155 or RI Relay 711 at least three (3) business days prior to the meeting so arrangements can be made to provide such assistance at no cost to the person requesting.

**FOR FURTHER INFORMATION CONTACT:**

Pamela Sherrill, Executive Director

East Providence Waterfront Commission

City Hall

145 Taunton Ave, Room 206

East Providence RI 02914

**Telephone:** 401-435-7500, ext. 11155

**Email Address:** [psherrill@cityofeastprov.com](mailto:psherrill@cityofeastprov.com)

## **SUPPLEMENTARY INFORMATION:**

### **Regulatory Analysis Summary and Supporting Documentation:**

The proposed rule benefits society by identifying the procedures to request a fee in-lieu of providing affordable housing on-site and identifies the process for use of said funds for gap financing for construction of affordable units. Costs for in-lieu fees are established annually by RI Housing. Other costs are procedural for a developer to partner with an affordable housing developer and to request approval for fee in lieu of constructing on-site affordable units, and for an affordable housing developer to request use of fees for gap financing. The overall societal benefit is to increase the number of units affordable to households of low and moderate income.

For full regulatory analysis or supporting documentation see agency contact person above.

**Authority for This Rulemaking:** R.I. Gen. Laws §§ [45-24-46.1](#) and [45-53-3](#)

### **Regulatory Findings:**

In the development of the proposed adoption, no alternative approach, duplication, or overlap was identified based upon available information.

East Providence Waterfront Commission proposes to adopt **885-RICR-00-00-1** as follows:

## 885-RICR-00-00-1

# TITLE 885 – EAST PROVIDENCE WATERFRONT COMMISSION

## CHAPTER 00 – N/A

## SUBCHAPTER 00 – N/A

### PART 1 - Calculation, Payment and Use of Fees In-Lieu of Affordable Housing

#### 1.1 Authority

The East Providence Waterfront Commission hereby promulgates Rules and Regulations to establish the calculation, payment and use of fees in-lieu of constructing affordable housing units in the East Providence Waterfront Special Development District (the District). These Regulations have been established in accordance with Sections 19-485(4) and (9) of the City of East Providence Revised Ordinances, R.I. Gen. Laws §§ 45-24-46.1 and 45-53-3, and the East Providence Waterfront Special Development District By-Laws as amended. Nothing hereunder shall be construed to modify, alter or amend any of the statutory powers, duties or authority of the Commission or of the regulations that these were established in accordance with.

#### 1.2 Purpose

The purpose of these regulations is to increase the stock of low- and moderate-income housing in East Providence with a priority on units located within the District, to meet the state goal of ten percent (10%) of housing units affordable to households of low and moderate income.

#### 1.3 Definitions

- A. “Affordable housing” means residential housing that has a sales price or rental amount that is within the means of a household that is moderate income or less. In the case of dwelling units for sale, housing that is affordable means housing in which principal, interest, taxes, which may be adjusted by state and local programs for property tax relief, and insurance constitute no more than thirty percent (30%) of the gross household income for a household with less than one hundred and twenty percent (120%) of area median income, adjusted for family size. In the case of dwelling units for rent, housing that is affordable means housing for which the rent, heat, and utilities other than telephone constitute no more than thirty percent (30%) of the gross annual household income for a household with eighty percent (80%) or less of area median income, adjusted for family size. Affordable housing shall include all types of year-round housing, including, but not limited to, manufactured housing, housing originally constructed for workers and their families, accessory dwelling units, housing

accepting rental vouchers and/or tenant-based certificates under 42 U.S.C. § 1437f, as amended, and assisted living housing, where the sales or rental amount of such housing, adjusted for any federal, state, or municipal government subsidy, is less than or equal to thirty percent (30%) of the gross household income of the low and/or moderate income occupants of the housing.

B. “Fractional unit” means the remainder of a whole unit that is obtained when calculating the number of affordable housing units based on the percent of affordable units required out of the total approved number of units. Payment of a fractional unit of in lieu fee shall be made to the East Providence Waterfront District Commission Affordable Housing Fund and is subject to the rules and regulations provided herein only when in-lieu fees are sought for all or a portion of the required onsite affordable housing in Section 19-485 of the City of East Providence Revised Ordinances.

C. “Low or moderate income housing” or “LMI” 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 the federal, state, or municipal government 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 subsidy program but that is not less than thirty (30) years from initial occupancy.

D. “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 R.I. Gen. Laws § 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.

## **1.4 Applicability**

A. The Regulations set forth herein apply to:

1. new residential developments in the East Providence Waterfront District which are subject to the inclusionary zoning requirement of Section 19-485 of the City of East Providence Revised Ordinances and are eligible to apply for fees in-lieu of constructing or providing affordable housing within the District, and
2. affordable housing developers interested in utilizing in-lieu fees for “gap” financing of affordable housing that meets the statutory requirement of long term affordability for rental units (<80% area median income) or

ownership (less than 120% of area median income) as defined in § 1.3 of this Part.

B. Approval of in-lieu fees shall be subject to establishing a verified and credible affordable housing developer partner where such fees provide necessary gap financing. Affordable housing projects shall meet the requirements of R.I. Gen. Laws Chapter 45-53. Developers requesting fee in-lieu designation are encouraged to work with the East Providence Community Development office, Rhode Island Housing, non-profit Community Development Corporations, and affordable housing developers, among others, to identify partners where in-lieu funding would provide necessary gap financing for local projects. Affordable housing partners shall develop new deed restricted housing in East Providence, with a priority for projects located within the East Providence Waterfront District.

## **1.5 Calculation of In-Lieu Fees**

A. A fee in-lieu of the construction or provision of affordable housing shall be applied on a per-unit basis and determined annually. The per-unit fee shall be the difference between the current maximum affordable sales price for a family of four (4) earning eighty percent (80%) of the area median income, as determined annually by the U.S. Department of Housing and Urban Development, and the average cost of developing a single unit of affordable housing, as determined by Rhode Island Housing in the most recently available Fee In Lieu By Municipality for East Providence.

B. The average cost of developing a single unit of affordable housing shall be determined annually based on the average, per-unit development cost of affordable homes financed by Rhode Island Housing over the previous three (3) years, excluding existing units that received preservation financing.

C. Notwithstanding anything in these Regulations to the contrary, in no case shall the per-unit fee be less than forty-two thousand dollars (\$42,000).

D. If, in the calculation of the inclusionary zoning/affordable housing requirement for a development subject to these Regulations, a fractional unit requirement is obtained, a fee in lieu shall be provided equal to the applicable fractional cost of a full housing unit.

## **1.6 Application and Authority to Approve In-Lieu Fees**

A. A written request for in-lieu payments shall be made to the East Providence Waterfront District Commission Executive Director prior to requesting a building permit from the East Providence City Building Official. Consideration of a written request for in-lieu payments made after issuance of a building permit shall require approval of the Commission to initiate staff review, Hearing Panel recommendation and final Waterfront Commission approval as described herein.

- B. The request shall identify the affordable housing partner/developer that could receive in-lieu payments as gap financing for new construction. The affordable housing partner shall submit a proforma for proposed development with the developer request for in-lieu payment. The waterfront developer may also be the developer of affordable housing units.
- C. The Executive Director shall review the written request with the Planning Director and Community Development Coordinator. Staff shall consider how the designated affordable housing partner/developer would leverage in-lieu funds to provide gap financing for construction of affordable housing in East Providence, with a priority for projects within the Waterfront District. Staff shall review the affordable housing proforma and consider project timelines since gap funding must be utilized within two years in accordance with R.I. Gen. Laws § 45-24-46.1. The Executive Director shall review the request for consistency with the goals and objectives of the 2003 East Providence Waterfront Special Development District Plan. The Community Development Coordinator shall review the request for consistency with the East Providence Strategic Housing Plan. If an affordable housing partner is not identified, staff shall so report. Staff findings shall be forwarded to the Hearing Panel.
- D. The Executive Director shall refer all requests for fee in-lieu funding, together with the staff report, to the Hearing Panel for a recommendation to the Waterfront Commission. The Hearing Panel shall consider at a minimum the following in its recommendation to the Waterfront Commission: staff findings including the viability of an affordable housing partner, consistency with the 2003 Waterfront District Plan principals and goals, as well as the following identified in Section 19-485(3) of the City of East Providence Revised Ordinances: the reasons the applicant desires to pay the in-lieu fee; the types of housing proposed for the development; the difference in price between the affordable units and the market priced units; and the public benefit that would be obtained by not building the units on-site.
- E. The Hearing Panel shall make an advisory opinion to the Waterfront Commission which shall make its determination based on § 1.6(C) of this Part, among others, above.
- F. The Waterfront Commission Executive Director shall not approve any application for a building permit unless or until the applicable in-lieu payment has been received by the East Providence Waterfront District Commission. For projects in which in-lieu payments were approved following issuance of a building permit per § 1.6(A) of this Part, payment must be received prior to issuance of a certificate of occupancy. For phased projects, applicant may petition the Waterfront Commission for approval to pay a prorated fee for payment in full prior to the application for the first building permit for each phase or prior to issuance of certificate of occupancy if approval was granted by the Waterfront Commission following issuance of a building permit. All checks for in-lieu payments shall be

payable to the East Providence Waterfront District Commission Affordable Housing Fund.

## **1.7 Administration and Use of In-Lieu Fees**

- A. The Executive Director shall deposit all affordable housing in-lieu payments into the East Providence Waterfront District Commission Affordable Housing Fund, a dedicated account whose proceeds shall be restricted to the creation of affordable housing that result in a net gain of affordable housing units within the City of East Providence. Dollars contributed to the fund must be spent exclusively on the provisioning of affordable housing and may be used for new developments or any other manner which creates additional low or moderate income housing as defined in R.I. Gen. Laws §§ 45-53-3(9) and 45-24-46.1.
- B. Award of funding from the East Providence Waterfront District Commission Affordable Housing Fund must meet the following criteria: affordable housing shall meet the definition of affordable as established by the US Department of Housing and Urban Development (HUD) and shall count toward the statutory goal of 10 percent affordable housing units for the City of East Providence; affordable housing units shall be created either through the construction of new affordable units or the renovation of existing housing stock with a 30-year deed restriction in accordance with HUD requirements; and annual compliance monitoring shall be conducted by the East Providence Community Development Division or other agency approved by HUD or Rhode Island Housing. Priority shall be given to the use of funds for affordable housing projects or programs within the Waterfront District with a secondary priority given to opportunities identified in the East Providence Strategic Housing Plan. Development of affordable units shall be encouraged near areas with municipal services, access to public transportation, and safe walkability to schools, local community services, retail, and other services. Award of funding shall be consistent with the East Providence Strategic Housing Plan as adopted by the City of East Providence City Council.
- C. Funding may be used to provide gap financing for new construction of rental or for sale units or for rehabilitation of existing market rate housing with imposition of a deed restriction in accordance with Section 19-485(10) of the City of East Providence Revised Ordinances and R.I. Gen. Laws § 45-24-46.1. Gap financing provided through the East Providence Waterfront District Commission Affordable Housing Fund shall be considered a “municipal government subsidy” as defined in R.I. Gen. Laws § 45-53-3(11).
- D. Affordable housing developers interested in using in-lieu fees for gap financing shall meet with the Executive Director of the Commission, Planning Director, and the Community Development Coordinator, and a representative of the East Providence Affordable Housing Commission to review project details. Staff shall review applicant’s history of providing affordable housing units (including references from Rhode Island Housing or other affordable housing funding

source); location of proposed development; housing type (rental or for sale units) and other on-site mixed use development; targeted low income market (<80% LMI for rental or <120% LMI for sales); zoning; a detailed proforma including current and proposed federal, state, city, and non-profit funding sources; identification of financing “gap;” and how the proposed project meets the criteria and other factors identified in § 1.7(B) of this Part

- E. Distribution of in-lieu funds shall require the approval of the Commission.
- F. Requested fees shall be awarded as follows: 10% upfront at Commission approval for project soft costs including design, permitting, and site preparation but excluding property acquisition; 80% at issuance of a building permit; and 10% at issuance of a certificate of occupancy. In the event of phased construction, funding awarded at the building permit stage shall be proportional to the number of affordable units under construction. The East Providence Affordable Housing Commission shall provide affordable housing construction oversight, including approval of invoices for payment by the Waterfront Commission Affordable Housing In-lieu Fund.
- G. Rental applications for affordable housing units shall be reviewed and approved by the East Providence Community Development Division or other independent monitoring agent approved by HUD with report back to the Waterfront Commission upon rental of an affordable unit. Applicants for purchase of for sale affordable housing units shall be pre-screened by the East Providence Community Development Division or other independent monitoring agent approved by HUD with documentation forwarded to the Waterfront Commission executive director upon sale. Annual compliance monitoring shall be conducted by the East Providence Community Development Division or other agency approved by HUD. or Rhode Island Housing.
- H. The Waterfront Commission reserves the right to transfer fee-in-lieu income to the Rhode Island Housing Resources Commission or Rhode Island Housing for the purposes of developing affordable housing within East Providence if in-lieu funding is not committed within two years of receipt in accordance with R.I. Gen. Laws § 45-24-46.1 or if the Commission so votes.
- I. The Executive Director shall report to the Commission and Rhode Island Housing annually on available funding and status of affordable housing projects underway utilizing in-lieu funding.
- J. In the event that the affordable housing partner’s development using in-lieu fees for gap financing does not reach its goal to provide affordable housing units in East Providence, the in-lieu fees shall be reimbursed in full to the East Providence Waterfront Commission Affordable Housing In-lieu Fund. At project award, a lien shall be recorded in the land evidence records naming the Commission as a creditor in the event that awarded funds do not lead to construction of certified affordable housing units. Said lien to be discharged upon

issuance of a certificate of occupancy for the last affordable housing unit constructed.

## **1.8 Severability**

These Regulations and their various parts are hereby declared to be severable. If any section, clause, provision or portion of these Regulations is declared invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of either these Regulations as a whole or any parts not declared invalid or unconstitutional.