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## Rhode Island Legislature Approves Affordable Housing Investments, Reforms



The end of the 2023 Rhode Island legislative session ushered in sweeping reforms and investments designed to increase affordable housing development throughout the state. Notably, the FY2024 budget that Governor Dan McKee signed into law on June 18th establishes the state's first low-income housing tax credit (LIHTC). The FY2024 budget also includes significant funds for affordable housing development and preservation and, lastly, the general assembly passed zoning and permitting reforms with significant implications for affordable housing developers.

### New State Tax Credit

The new low-income housing tax credit, which resembles that of Massachusetts, is available through June 30, 2028, subject to an annual cap of \$30,000,000 per fiscal year. The credit may be claimed over a five-year period by a state taxpayer with an ownership interest in a "qualified low-income housing project" under Section 42 of the Internal Revenue Code; that is, a project with at least twenty percent (20%) of units reserved for households earning at or below fifty percent (50%) of area median income, or at least forty percent (40%) of units reserved for households earning at or below sixty percent (60%) of area median income. The project must also maintain its affordability for not less than forty-five (45) years.

Unused portions of the credit may be carried forward for five subsequent taxable years; transferred, sold, or assigned; or redeemed by the Department of Housing, subject to funding availability. Additional program guidelines for the new state LIHTC will be created by the Department of Housing in consultation with the Division of Taxation.

### FY2024 Funds for Affordable Housing

Other financing highlights from the FY2024 budget, which incorporates substantial federal funds from the American Rescue Plan Act, are as follows:

- **\$55,000,000 for Affordable Housing Development**
  - \$45,000,000 to finance affordable housing development in conjunction with general obligation bonds and other available financing sources, according to the guidelines issued by the Housing Resources Commission



- \$10,000,000 for a pilot program to support low-income public housing through project-based rental assistance vouchers and financing for pre-development, improvement, and housing production costs
- Funds will be administered by the Rhode Island Housing
- **\$31,000,000 for Targeted Housing Development**
  - \$27,000,000 for housing developed in target areas and/or priority projects, including, but not limited to, permanent supportive housing, housing for vulnerable populations, housing for individuals transitioning out of state care, and housing for extremely low-income individuals
  - \$4,000,000 will be allocated for transit-oriented development projects within a one-quarter mile radius of a regional mobility hub or a one-eighth mile radius of a frequent transit stop, each as defined by Rhode Island's Transit Master Plan
  - Funds will be administered by the Department of Housing
- **\$10,000,000 for Site Acquisition**
  - For the acquisition of properties that will be redeveloped into affordable and/or supportive housing that will be deed-restricted for not less than thirty (30) years
  - Funds will be administered by Rhode Island Housing
- **\$8,000,000 for Workforce Housing**
  - For units serving households that earn up to 120% of area median income (AMI)
  - Funds will be administered by Rhode Island Housing
- **\$7,500,000 for Predevelopment Work**
  - For predevelopment work that increases the pipeline of affordable housing projects and/or expands the capacity of local affordable housing developers
  - Funds will be administered by Rhode Island Housing
- **\$5,000,000 for Acquisition and Revitalization**
  - For units serving households that earn up to 80% of AMI and commercial/community spaces that serve the needs of residents in a census tract comprised of at least 51% low- and moderate-income households
  - Funds will be administered by Rhode Island Housing
- **\$4,300,000 for Housing Infrastructure**
  - For the predevelopment and development of site-related infrastructure that supports the creation of affordable housing
  - Funds will be administered by the Rhode Island Infrastructure Bank, according to criteria established by the Department of Housing
- **\$500,000 for Affordable Unit Preservation**
  - For the preservation of affordable homeownership units at risk of blight or foreclosure
  - Funds will be administered by Rhode Island Housing

## Other Affordable Housing Legislation

Thirteen of the housing bills passed by the general assembly were originally championed by Speaker K. Joseph Shekarchi, who has identified increasing unit production as one of his top policy priorities. The legislative package has significant implications for development planning and management.

- **Repeal of the State Housing Appeals Board (H6083)**
  - The State Housing Appeals Board, which adjudicates comprehensive permit appeals under Rhode Island's Low- and Moderate-Income Housing Act, will be disbanded on January 1st, 2024



- Appeals will continue to be processed as usual through December 31st of this year, after which time existing matters shall be transferred to, and new matters must be filed in, Superior Court
- Another of the Speaker's bills, H6060, directs the Superior Court to create a dedicated calendar for land use cases, including comprehensive permit appeals
- Zoning and Process Reforms (H6081)
  - *Dedicated Zoning Protections and Incentives for Affordable Housing*
  - Cities and towns must allow units up to three bedrooms in size
  - Cities and towns may not require more than one (1) off-street parking space per unit for studio, one-bedroom, and two-bedroom units
  - Cities and towns may not impose minimum floor area requirements (e.g., a certain number of square feet per bedroom) beyond what is already required by the state maintenance and occupancy code
  - Affordable housing developments are eligible for a by-right density bonus that scales based on project affordability
  - For properties connected to public water and sewer, the density bonus ranges from five (5) to twelve (12) dwelling units per acre (DU/A) above what would otherwise be allowed by local ordinance
  - For properties not connected to public water and sewer, the density bonus ranges from three (3) to eight (8) DU/A above what would otherwise be allowed by local ordinance
- New Comprehensive Permit Process
  - The comprehensive permit process has been reduced from three application stages to two (preliminary and final plan review)
  - Final plan review will be conducted administratively, without the need for additional public hearings, unless a submission includes major modifications from or does not satisfy the conditions previously attached to preliminary plan approval
  - A comprehensive permit application must be reviewed by a local planning board, not a zoning board
  - Any comprehensive permit applicant (not just non-profit ones) may challenge conditions to approval that render a project "financially or logistically impracticable"
- Revised Criteria for Project Approval/Denial
  - A comprehensive permit applicant no longer needs to affirmatively prove that a proposed development will not have a significant negative environmental impact (although an application may still be denied if such evidence arises)
  - A city or town must demonstrate that at least twenty percent (20%) of the total residential units approved during a calendar year were low- or moderate-income housing in order to deny a comprehensive permit on the grounds that its affordable housing plan is already "meeting local housing needs"
- Legalizing Adaptive Reuse Projects (H6090)
  - Cities and towns must allow the adaptive reuse of existing commercial buildings as a residential or mixed-use development, provided that the project converts at least fifty percent (50%) of the building's gross floor area into residential units
  - A local zoning ordinance may not require adaptive reuse projects to provide more than one (1) parking space per unit
  - An adaptive reuse project may utilize the maximum residential density permitted by local ordinance or, if the project contains at least twenty percent (20%) low- or moderate-income housing and meets certain other development criteria, a density of up to fifteen (15) DU/A
- Rental Application Fees Banned (H6087)
  - Landlords and property management companies may no longer require prospective tenants to pay a rental application fee

- An applicant may be charged the actual cost of obtaining a credit report and/or official state criminal background check provided that (1) the applicant does not already have a report or background check obtained within the last ninety (90) days, and (2) he or she is provided with a copy of the results

The flurry of legislation represents a coordinated response to the state's severe and ongoing housing shortage. According to the Rhode Island Association of Realtors, the median price of a single-family home increased in May to \$427,250—a record high—while the median condominium price rose to \$392,500, a 19.6% year-over-year increase. The median price for a multifamily home hit \$440,000, a 2.3% year-over-year increase.

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