

**Rules Implementing
The Rhode Island Low and Moderate Income Housing Act
Established Pursuant to R.I.G.L. 45-53
Amendments Approved January 2006**

1.00 Purpose and Authority

- 1.01 The General Assembly hereby finds and declares that there exists an acute shortage of affordable, accessible, safe and sanitary housing for its citizens of low and moderate income, both individuals and families; that it is imperative that action be taken immediately to assure the availability of affordable, accessible, safe and sanitary housing for these persons; that it is necessary that each city and town provide opportunities for the establishment of low and moderate income housing; and that the provisions of this chapter are necessary to assure the health, safety and welfare of all citizens of this state and that each citizen enjoys the right to affordable, accessible, safe and sanitary housing. It is further declared to be the purpose of this chapter to provide for housing opportunities for low and moderate income individuals and families in each city and town of the state.
- 1.02 Authority to establish rules and regulations is given to the chair of the State Housing Appeals Board pursuant to R.I.G.L. 45-53.

2.00 Definitions

Whenever used in these rules, the following terms shall be construed as follows:

- 2.01 **“Affordable housing plan”** means a component of a housing element, as defined in section 45-22.2-4(33), to meet housing needs in a city or town that is prepared in accordance with guidelines adopted by the state planning council, and/or to meet the provisions of subsections 45-53-4 (b)(1) and (c).
- 2.02 **“Approved affordable housing plan”** means an affordable housing plan that has been approved by the director of administration as meeting the guidelines for the local comprehensive plan as promulgated by the state planning council; provided, however, that state review and approval, for plans submitted by December 31, 2004, shall not be contingent on the city or town having completed, adopted, or amended its comprehensive plan as provided for in sections 45-22.2-8, 45-22.2-9, or 45-22.2-12.
- 2.03 **“Aggrieved person”** means (i) any person or persons or entity or entities who can demonstrate that their property will be injured by a decision of any officer or agency responsible for administering the zoning ordinance of a city or town; or (ii) anyone requiring notice pursuant to R.I.G.L. 45-53.
- 2.04 **“Calculation of the percentage of low and moderate income housing units”** means the calculation of low and moderate income year round housing units that shall be made annually by Rhode Island Housing and Mortgage Finance Corporation. The Executive Director of the Corporation shall determine and

**Rules Implementing
The Rhode Island Low and Moderate Income Housing Act
Established Pursuant to R.I.G.L. 45-53
Amendments Approved January 2006
(continued)**

certify such percentages. The percentage determination for each city and town shall be revised annually to accurately reflect the percentage of low and moderate income units in each city and town. In addition to the percentage calculation for each community, the Executive Director shall publish a chart showing the number of eligible units for each community, the basis for the determination of each type of unit and any other information the Executive Director deems relevant. The chart shall then be forwarded for review to each community, which shall then have thirty days to suggest modifications or revisions. Thereafter, and after review of any proposed modifications, the Executive Director shall, in writing, certify the chart for that year. The chart, together with supporting documentation, shall be kept in the possession of the Rhode Island Housing and Mortgage Finance Corporation, and shall be available for public inspection and copying.

- 2.05 **“Certificate of Completeness”** is a notice issued by the Administrative Officer in accordance with the provisions of R.I.G.L. 45-23-36 informing an applicant that the application is complete and meets the requirements of the checklist, and that the applicant may proceed with the approval process.
- 2.06 **“Community residence”** means a home or residential facility where children and/or adults reside in a family setting and may or may not receive supervised care as defined in R.I.G.L. 45-24-31.15.
- 2.07 **“Completed application”** means a single application consisting of all forms, accompanying documents, exhibits and fees required pursuant to these rules submitted to request relief from the provisions of local ordinances in lieu of separate applications to the applicable local boards.
- 2.08 **“Comprehensive permit”** means a single application for a special exception to build low and moderate income housing in lieu of separate applications to applicable boards.
- 2.09 **“Comprehensive plan”** means a comprehensive plan adopted and approved by a city or town pursuant to R.I.G.L. 45-22.2 and 45-22.3
- 2.10 **“Consistent with local needs”** means
 - (i) reasonable in view of:
 - (a) the State's need for low and moderate income housing;
 - (b) the number of low income persons in the city or town affected;
 - (c) the need to protect the health and safety of the occupants of the proposed housing or of the residents of the city or town;
 - (d) the need to promote better site and building design in relation to the surroundings or to preserve open space; and if

**Rules Implementing
The Rhode Island Low and Moderate Income Housing Act
Established Pursuant to R.I.G.L. 45-53
Amendments Approved January 2006
(continued)**

- (e) local zoning or land use ordinances, requirements and regulations are applied as equally as possible to both subsidized and unsubsidized housing.
 - (ii) local zoning and land use ordinances, requirements or regulations for a particular city or town are consistent with local needs when imposed by a city or town after a comprehensive hearing in a city or town where:
 - a) Low and moderate income housing exists which according to the last decennial census is:
 - (i) in the case of an urban city or town which has at least 5000 occupied year round rental units, and the units comprise 25% or more of the year round housing units, is in excess of 15% of the total occupied year round rental units, or
 - (ii) in the case of all other cities and town is in excess of 10% of the year round housing units
 - b) the comprehensive plan of the city or town and the zoning and land use ordinances, requirements and regulations to implement the comprehensive plan provide for low and moderate income units in excess of the ten percent (10%) of the year round housing units or in excess of fifteen percent (15%) of the year round occupied rental units as provided in R.I.G.L. 45-53-3(2)(i)(A) as provided in (ii)(a) above.
- 2.11 **“Denial”** means the Local Review Board:
- (i) refuses to grant a comprehensive permit; or
 - (ii) extends the hearing without reasonable cause.
- 2.12 **“Final plan”** means the final plan as defined in R.I.G.L. 45-23.
- 2.13 **“Housing unit”** means a house, an apartment, a group of rooms or a single room occupied as a separate living quarters and as the occupants' usual place of residence or, if vacant, intended for occupancy as a separate living quarters. Separate living quarters are those in which the occupants live and eat separately from other persons in the building and which have direct access from the outside of the building or through a common hall. The occupants may be a single family, one person living alone, two or more families living together, or any other group of related or unrelated persons who share living arrangements (U.S. Census Bureau definition).
- 2.14 **“Infeasible”** means any conditions attached to the approval of the comprehensive permit, which make it impossible for a public agency or

**Rules Implementing
The Rhode Island Low and Moderate Income Housing Act
Established Pursuant to R.I.G.L. 45-53
Amendments Approved January 2006
(continued)**

non-profit organization or limited equity housing cooperative to build or operate low or moderate income housing:

- (i) without financial loss due to the requirements of the subsidizing state or federal agency in regard to the size and character of the development or the nature of the subsidy or limits imposed on tenant eligibility, rent levels or permissible income and
- (ii) without substantially changing the proposed rent levels and unit sizes.

- 2.15 **“Letter of eligibility”** means a letter issued by the Rhode Island Housing and Mortgage Finance Corporation in accordance with subsection 42-55-5.3(a).
- 2.16 **“Limited equity housing cooperative”** means a cooperative housing association or corporation organized and operated primarily for the benefit of low and moderate income persons, having articles of incorporation and whose equity, after allowance for maximum transfer value of its stock, is permanently dedicated to providing housing to persons of low and moderate income or to a charitable purpose.
- 2.17 **“Local board”** means any town or city official, zoning board of review, planning board or commission, platting board of review, or building inspector; or the officer or board of appeal or zoning enforcement officer, local conservation commission, historic district commission, or other municipal board having supervision of the construction of buildings or the power of enforcing municipal building, land use regulations, such as subdivision, or zoning laws.; or the city council or town council.
- 2.18 **“Local review board”** means the planning board as defined by section 45-22.2-4(24), or if designated by ordinance as the board to act on comprehensive permits for the town, the zoning board of review established pursuant to section 45-24-56.
- 2.19 **“Low and moderate income housing”** means any housing whether built or operated by any public agency or nonprofit organization or by limited equity housing cooperative or any private developer, that is subsidized by a federal, state or municipal government subsidy 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 or deed restriction for ninety-nine years or such other period that is either agreed to by the applicant and the town or prescribed by the federal, state or municipal government subsidy program but that is not less than thirty (30) years from initial occupancy.
- 2.20 **“Major and minor land development plan and major and minor subdivision”** means the major and minor land development and major and minor subdivision as defined in R.I.G.L. 45-23.

**Rules Implementing
The Rhode Island Low and Moderate Income Housing Act
Established Pursuant to R.I.G.L. 45-53
Amendments Approved January 2006
(continued)**

- 2.21 **“Master plan”** means the requirements for a master plan as defined in R.I.G.L. 45-23.
- 2.22 **“Meeting housing needs”** means adoption of the implementation program of an approved affordable housing plan and the absence of unreasonable denial of applications that are made pursuant to an approved affordable housing plan in order to accomplish the purposes and expectations of the approved affordable housing plan.
- 2.23 **“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 subsection 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.
- 2.24 **“Nonprofit organization”** means a nonprofit corporation which has tax exempt status as determined by the United States Internal Revenue Service.
- 2.25 **“Public agency”** means any state, municipal or other governmental entity or public body or its agency or instrumentality.
- 2.26 **“Rehabilitation”** means substantial upgrade or modification of the interior or exterior of the structure, correction of substandard conditions and/or replacement of major housing systems in danger of failure, but excluding repairs of owner-occupied units and privately-owned rental units unless they, remain as low or moderate income housing for a period of not less than thirty (30) years from initial occupancy after rehabilitation as cited in R.I.G.L. 45-53-4.
- 2.27 **“Site control”** means evidence that the developer has control of the property in question: a copy of a properly executed deed, purchase and sale agreement, option agreement or lease agreement indicating the term of the lease.
- 2.28 **“State Housing Appeals Board”** means the board which hears appeals of denials or conditioned approvals from applicants filing an application for a comprehensive permit to construct or rehabilitate low or moderate income housing under the provisions of R.I.G.L. 45-53. The Board shall consist of seven voting members and one alternate, to be appointed by the Governor, who shall include:
- (i) four **(4)** local officials, who shall not be from the same city or town; two (2) of whom shall be from a city or town with a population of less than twenty-five thousand (25,000); and two (2) of whom shall be from a city or town with a population of twenty-five thousand (25,000) or greater, and shall include one local zoning board member, one local planning board member, one city council member, and one town council member,
 - (ii) one **(1)** affordable housing developer

**Rules Implementing
The Rhode Island Low and Moderate Income Housing Act
Established Pursuant to R.I.G.L. 45-53
Amendments Approved January 2006
(continued)**

- (iii) one **(1)** affordable housing advocate
- (iv) one **(1)** representative of the business community, and
- (v) one **(1)** attorney knowledgeable in land use regulation, who should be chairperson of the board.

One of the local official members shall be designated by the Governor as the alternative local official member who shall be a voting member of the board only in the event that one or more of the other three (3) local officials is unable to serve at a hearing.

3.0 General Provisions of the State Housing Appeals Board

- 3.01 The State Housing Appeals Board shall maintain official records of all proceedings and maintain a file of all papers submitted to it for every proceeding to which these rules apply.
- 3.02 The principal office of the State Housing Appeals Board is located within the offices of Rhode Island Housing and Mortgage Finance Corporation. The office shall be open from 8:30 am to 5:00 pm daily, except Saturdays, Sundays and legal holidays.
- 3.03 All communications should be addressed to the State Housing Appeals Board, c/o Rhode Island Housing and Mortgage Finance Corporation.
- 3.04 All communications shall be deemed to be filed or received on the day on which they are actually received in the offices of Rhode Island Housing and Mortgage Finance Corporation.
- 3.05 Computation of any period of time referred to in these rules shall begin with the first day following the day upon which the action initiating such time period occurs. The last day of the period being computed is to be included unless it is a day on which the office of Rhode Island Housing and Mortgage Finance Corporation is closed, in which event the period shall run until the end of the next following business day.
- 3.06 Every application, statement and other document shall be signed by the filing party or at the discretion of the Board it shall not be reviewed.

4.0 Conditions under which an Appeal may be Filed

- 4.01 An appeal may be filed with the State Housing Appeals Board if the application to the Local Review Board was filed in accordance with these rules and whenever such application is:
 - (i) denied or
 - (ii) granted with such conditions and requirements as to make the building or operation of such housing infeasible.

5.0 Procedure for Filing an Appeal with the State Housing Appeals Board

5.01 Such appeal shall be taken within twenty (20) days after the date of the notice of the decision of the Local Review Board by filing with the State Housing Appeals Board the following documents and information:

- (i) a statement from the applicant describing the prior proceedings and the reasons upon which the appeal is based; and
- (ii) a copy of a completed Comprehensive Permit application as it was submitted to the Local Review Board including:
 - (a) a letter of eligibility issued by the Rhode Island Housing Mortgage Finance Corporation, or in the case of projects primarily funded by the U.S. Department of Housing and Urban Development or other state or federal agencies, an award letter indicating the subsidy, or application in such form as may be prescribed for a municipal government subsidy; and
 - (b) a written request to the local review board to submit a single application to build or rehabilitate low or moderate income housing in lieu of separate applications to the applicable local boards. The written request shall identify the specific sections and provisions of applicable local ordinances and regulations from which the applicant is seeking relief; and
 - (c) a proposed timetable for the commencement of construction and completion of the project; and
 - (d) a sample land lease or deed restriction with affordability liens that will restrict use as low and moderate income housing in conformance with the guidelines of the agency providing the subsidy for the low and moderate income housing, but for a period of not less than thirty (30) years; and
 - (e) identification of an approved entity that will monitor the long-term affordability of the low and moderate income units; and
 - (f) a financial pro-forma for the proposed development; and
 - (g) for comprehensive permit applications: (A) not involving major land developments or major subdivisions including, but not limited to, applications seeking relief from specific provisions of a local zoning ordinance, or involving administrative subdivisions, minor land developments or minor subdivisions, or other local ordinances and regulations: those items required by local regulations promulgated pursuant to applicable state law, with the exception of evidence of state or federal permits; and for comprehensive permit applications; and (B) involving major land developments and major subdivisions, unless otherwise agreed to by the applicant and the town; those items included in

**Rules Implementing
The Rhode Island Low and Moderate Income Housing Act
Established Pursuant to R.I.G.L. 45-53
Amendments Approved January 2006
(continued)**

- the checklist for the master plan in the local regulations promulgated pursuant to R.I.G.L. section 45-23-40; and
 - (h) the list of all persons entitled to notice in accordance with R.I.G.L. 45-24-53.); and
 - (i) A certificate of completeness issued by the Administrative Officer of the municipality in which the appeal was filed; and
 - (j) notwithstanding the submission requirements set forth above, the State Housing Appeals Board may request additional, reasonable documentation throughout the public hearing, including, but not limited to, opinions of experts, credible evidence of application for necessary federal and/or state permits, statements and advice from other local boards and officials.
- 6.0 The State Housing Appeals Board shall forthwith notify the Local Review Board and all persons on the applicant's list filed pursuant to R.I.G.L 45-53-4 (1)(vii) of the filing of the appeal and shall post the notice of appeal in the City or Town hall in which the Local Review Board is located for a period of not less than 10 days.
- 7.0 The Local Review Board shall, within ten (10) days of the receipt of such notice, transmit to the State Housing Appeals Board a transcript describing its decision, the reasons for the decision, who was present and a record of their vote and a finding of facts. The Chair of the State Housing Appeals Board may waive submission for good cause.
- 8.0 Upon timely application any person or persons who can demonstrate that their property will be injured by a reversal or modification of the decision of the Local Review Board shall be permitted to move to intervene. Such person or persons may move to intervene by submitting a letter to the State Housing Appeals Board setting forth the basis for their intervention no later than 10 days after the date of the sending by the State Housing Appeals Board of notice pursuant to 6.0 of these regulations. The State Housing Appeals Board shall rule on all motions to intervene.
- 9.0 The State Housing Appeals Board may require reasonable fees from the filing party in an amount not to exceed actual costs incurred including, but not limited to, the costs associated with the provision of staffing, legal services, and a stenographic record of its proceedings, postage and photocopying.
 - 9.01 The following fee schedules shall apply to all appeals filed to the State Housing Appeals Board:
 - (i) **For-profit developers:** - \$6,000 basic fee for projects up to 25 units plus \$30 for each unit above the base of 25 units
 - (ii) **Non-profit developers:** - \$2,000 basic fee for projects up to 25 units **and public agencies,** plus \$10 for each unit above the base of 25 units
 - 9.02 The fee shall be paid in full upon the filing of the appeal by check payable to Rhode Island Housing and Mortgage Finance Corporation.

**Rules Implementing
The Rhode Island Low and Moderate Income Housing Act
Established Pursuant to R.I.G.L. 45-53
Amendments Approved January 2006
(continued)**

- 9.03 Applicant may file a motion requesting that the State Housing Appeals Board reduce the applicable filing fee. The motion must accompany the filing of the appeal, and a minimum fee of 10% of the total fee or \$500, whichever is greater, must be paid at that time. In reviewing the motion, the State Housing Appeals Board will determine the appropriate filing fee after weighing good cause specifically cited by the applicant.

10.0 Procedure for Hearing an Appeal

- 10.01 Any party appearing before the State Housing Appeals Board shall submit an original and nine (9) copies of any motion, memorandum, appendix, or any other written filing to be considered as part of the adjudication of the appeal. In lieu of the filing of hard copies of documents, the State Housing Appeals Board reserves the right to require the parties to make an electronic filing of documents.
- 10.02 The appeal shall be heard by the State Housing Appeals Board within twenty (20) days of the receipt of the applicant's statement and completed application.
- 10.03 At the hearing, the State Housing Appeals Board shall determine:
- (i) whether the appeal is properly brought before the State Housing Appeals Board, and
 - (ii) if the State Housing Appeals Board determines that the appeal is properly brought before the State Housing Appeals Board, it may:
 - (a) review the record as presented to the State Housing Appeals Board and make a decision thereon;
 - (b) request written briefs on points of law raised by the appeal and establish a briefing schedule for their submission by the parties;
 - (c) request further information from the parties to the appeal, including but not limited to a stenographic transcript of the proceedings before the Local Review Board;
 - (d) request a staff analysis of the appeal and its associated documentation from Rhode Island Housing;
 - (e) allow, in its discretion, the presentation by any party to the appeal of additional evidence in open hearing, which shall be added to the record for the purpose of considering the appeal;
 - (f) allow for the appointment of a hearing officer;
 - (g) allow the submission of pre-filed testimony;
 - (h) permit abutters and other interested parties, without being a party to the appeal and to the extent the State Housing Appeals Board allows, to present information pertinent to the appeal;
 - (i) order that additional evidence be taken before the Local Review Board upon conditions determined by the State Housing Appeals Board, where the State Housing Appeals Board, either on its own motion or motion of a party, has concluded that additional evidence would be material and there was good cause for the

**Rules Implementing
The Rhode Island Low and Moderate Income Housing Act
Established Pursuant to R.I.G.L. 45-53
Amendments Approved January 2006
(continued)**

- failure to present it at the original hearing before the Local Review Board;
- (j) designate an arbitrator approved by the Superior Court arbitration program to conduct a mediation session between the parties to the appeal and the Local Review Board to determine whether the appeal can be resolved short of a full hearing, and to report on the results of the mediation session to the State Housing Appeals Board.

10.04 A stenographic record of the proceedings shall be kept.

10.05 The State Housing Appeals Board shall render a written decision and order, based upon a majority vote of the membership of the Board, stating the findings of fact, its conclusions and the reasons for its decision within thirty (30) days after the termination of the hearing unless such time is extended by mutual agreement between the State Housing Appeals Board and the applicant. Such decision and order may be appealed in the Supreme Court.

11.0 Powers of the State Housing Appeals Board

11.01 In hearing the appeal, the State Housing Appeals Board shall determine whether:

- (i) in the case of a denial of the application, the decision of the Local Review Board was consistent with an approved affordable housing plan, or if the town does not have an approved affordable housing plan, was reasonable and consistent with local needs; and
- (ii) in the case of an approval of an application with conditions or requirements imposed, whether those conditions and requirements make the construction or operation of such housing infeasible and whether the conditions and requirements are consistent with an approved affordable housing plan, or if the town does not have an approved affordable housing plan, are consistent with local needs.

11.02 Standards for Reviewing Appeals

Standards for reviewing the appeal shall include, but not be limited to:

- (i) consistency of the decision to deny or to condition the permit, with the approved affordable housing plan and/or approved comprehensive plan;
- (ii) the extent to which the community meets or plans to meet housing needs as defined in an affordable housing plan including but not limited to the ten percent (10%) goal for existing low and moderate income units or the fifteen percent (15%) standard for occupied rental units as provided in R.I.G.L. 45-53-3(2)(i)(A); as a proportion of year round housing;
- (iii) the consideration of the health and safety of existing residents;
- (iv) the consideration of environmental protection;

**Rules Implementing
The Rhode Island Low and Moderate Income Housing Act
Established Pursuant to R.I.G.L. 45-53
Amendments Approved January 2006
(continued)**

- (v) the extent to which the community applies local zoning ordinances and review procedures evenly on subsidized and unsubsidized housing applications alike; and
 - (vi) the extent to which the decision is consistent with local needs as defined in section 2.10 of these rules.
- 11.03 Calculation of the percentage of low and moderate income housing units shall be based on the most recent certified calculation by Rhode Island Housing.
- 11.04 If the State Housing Appeals Board finds:
 - (i) in the case of a denial, that a decision of the Local Review Board was not consistent with an approved affordable housing plan or if the town does not have an affordable housing plan, was not reasonable and consistent with local needs, it shall vacate such decision and order the Local Review Board to approve the application with conditions as appropriate; or
 - (ii) in the case of an approval with conditions and requirements imposed, that the decision of the Local Review Board makes the building or operation of the housing infeasible and/or the conditions and requirements are not consistent with an approved affordable housing plan or if the town does not have an approved affordable housing plan are not consistent with local needs, it shall issue a decision and order the Local Review Board to modify or remove any such condition or requirement so as to make the proposal no longer infeasible and/or approve the application.
- 11.05 Land development or subdivision regulations not waived by the Local Review Board or the State Housing Appeals Board and not inconsistent with R.I.G.L. 45-53 shall be in effect and governed by the rules, regulations, procedures and codes that would govern such activities in situations not involving a comprehensive permit under R.I.G.L. 45-53, including inspections and certifications by appropriate municipal personnel and the issuance of building permits and certificates of occupancy. Both the Chair of the Local Review Board and the Chair of the planning board shall sign the final plan.
- 11.06 The State Housing Appeals Board shall retain jurisdiction over land development and subdivision projects for which it has issued a decision in order to resolve procedural ambiguities and disputes between the municipality and the developer.
- 11.07 The State Housing Appeals Board shall not issue any decision and order that would permit the building or operation of such housing in accordance with standards less safe than the applicable building and site requirements of the federal Department of Housing and Urban Development or the Rhode Island Housing and Mortgage Finance Corporation, whichever agency is financially assisting such housing or any other agency assisting such housing.

**Rules Implementing
The Rhode Island Low and Moderate Income Housing Act
Established Pursuant to R.I.G.L. 45-53
Amendments Approved January 2006
(continued)**

- 11.08 Decisions or conditions and requirements imposed by the Local Review Board that are consistent with local needs shall not be vacated, modified or removed by the State Housing Appeals Board notwithstanding that such decision or conditions and requirements have the effect of denying or making the applicant's proposal infeasible.

12.0 Enforcement of the State Housing Appeals Board Decision

- 12.01 The State Housing Appeals Board or the applicant shall have the power to enforce the orders of the State Housing Appeals Board by action brought in Supreme Court.
- 12.02 The State Housing Appeals Board shall immediately notify the Local Review Board of its decision and order and the Local Review Board shall carry out the decision and order of the State Housing Appeals Board within thirty (30) days of its decision.
- 12.03 Upon failure to carry out the decision of the State Housing Appeals Board within the thirty (30) day period cited in section 13.02 of these rules, the decision and order of the State Housing Appeals Board shall, for all purposes, be deemed to be the action of the Local Review Board unless the applicant consents to a different decision or order by such Local Review Board.
- 12.04 The decision of the State Housing Appeals Board shall be binding on the city or town which shall forthwith issue any and all necessary permits and approvals to allow the construction and operation of the housing as approved by the State Housing Appeals Board.

13.0 Terms and Conditions of Membership of the State Housing Appeals Board

- 13.01 All members appointed after December 31, 2004 shall serve a term of three (3) years. All members shall hold office for the term for which the member was appointed and until the member's successor shall have been appointed and qualified, or until the member's death, resignation or removal.
- 13.02 A member shall receive no compensation for his/her services, but shall be reimbursed by the state for all reasonable expenses actually and necessarily incurred in the performance of his/her actual duties.
- 13.03 The State Housing Appeals Board shall hear all petitions for review filed under R.I.G.L. 45-53-5.
- 13.04 Rhode Island Housing and Mortgage Finance Corporation shall provide such space and clerical and other assistance as the State Housing Appeals Board may require.

**Rules Implementing
The Rhode Island Low and Moderate Income Housing Act
Established Pursuant to R.I.G.L. 45-53
Amendments Approved January 2006
(continued)**

14.0 Ethics and Conflict of Interest Standards for Members of the State Housing Appeals Board

- 14.01 It is the policy of the state of Rhode Island that public officials and employees must adhere to the highest standards of ethical conduct, respect the public trust and the rights of all persons, be open, accountable and responsive, avoid the appearance of impropriety, and not use their position for private gain or advantage.
- 14.02 The members of the State Housing Appeals Board are bound by the Rhode Island Code of Ethics, R.I.G.L. 36-14.
- 14.03 The alternate member of the State Housing Appeals Board shall act in the place of any other municipal member representing a city council, town council, planning board or zoning board who has recused herself or himself from voting or otherwise participating in the State Housing Appeals Board's consideration and disposition of the matter at issue, including but not limited to, consideration of and voting on an appeal brought to the State Housing Appeals Board which involves the city or town where the municipal member resides.

15.0 Changes and Waivers of Regulations

- 15.01 These rules and regulations may be amended from time to time in accordance with the provisions of the Administrative Procedures Act, R.I.G.L. 42-35-3.
- 15.02 Provisions of these rules and regulations may be waived for good cause by a majority vote of the seven member State Housing Appeals Board. In the event of such waiver, the Chair shall file with the record of the case a statement of the facts on which such a waiver is based. No waiver shall be made if it conflicts with any mandatory provisions of the statute.

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