

760 CMR 58.00: URBAN CENTER HOUSING TAX INCREMENT FINANCING (UCH-TIF) PROGRAM

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58.01: Purpose

760 CMR 58.00 establishes rules, standards and procedures for the Urban Center Housing Tax Increment Financing (UCH-TIF) Program created in M.G.L. c. 40, § 60. The Department of Housing and Community Development (Department) is the regulatory agency for the program and is authorized to issue regulations to explain and to implement its operation.

58.02: Program Overview

The UCH TIF Program gives cities and towns the ability to promote residential and commercial development in commercial centers within areas of concentrated development through tax increment financing that provides for property tax exemptions on all or part of the increased value of improved real estate. Tax increment financing may be combined with grants and loans from other local, state and federal development programs. The municipalities and owners may agree on betterments and special assessments to pay all or part of the cost of public infrastructure necessary for the development.

An important purpose of the program is to increase the amount of affordable housing for households with incomes at or below 110% of area median income (AMI). Therefore, improvements to real property undertaken as part of a city or town's UCH TIF Program shall be primarily residential. To the extent such housing is affordable to households with incomes at or below 80% of area median income it will count toward the municipality's goal of 10% low or moderate income housing on the Department's Subsidized Housing Inventory in accordance with Department guidelines. The UCH TIF Program requires owners receiving an exemption to meet certain affordability thresholds in accordance with M.G.L. c. 40, § 60.

In order to take advantage of the program a city or town must adopt a detailed urban center housing tax increment financing plan for certain designated areas which are commercial centers within an area of concentrated development. The plan must show the need for multi-unit housing in the designated area and must contain detailed development plans for the area, including executed agreements with the owners who will be undertaking new development and who will be receiving tax increment exemptions. The Department must approve each designated area and each plan, as well as each agreement with owners, in order to ensure compliance with program requirements set out in the statute, the regulations and associated guidelines.

58.03: Definitions

Adjustment Factor shall have the meaning set forth in M.G.L. c. 40, § 60(a)(iii).

58.03: continued

Affordable Housing. Rental or ownership housing units which are restricted to and occupied by households with incomes at or less than 110% of area median income as determined by the U.S. Department of Housing and Urban Development (HUD) adjusted for household size. Rents or sales prices of affordable housing shall meet standards set by HUD or by the Department in guidelines for determination of affordable rents or sales prices.

Affordable Housing Restriction. Limits on rents or sales prices that an Owner may charge for occupancy or purchase of an Affordable Housing unit, or a limit on the household income of tenants or purchasers seeking to qualify to lease or purchase Affordable Housing. Restrictions shall remain in place for 30 years or for the term of any municipal bonds issued to finance the construction, reconstruction, or rehabilitation of such development, whichever is shorter as specified in the recorded restriction.

Base Value. The assessed value of Property for the fiscal year in which an UCH-TIF Agreement is entered into between the Owner and the municipality with respect to the Property.

Chief Executive. The mayor in a city and the board of selectmen in a town, unless some other municipal office is designated to be the chief executive officer under the provisions of a local charter.

Commercial Center. An area in a municipality used primarily for commerce or business, which may include but need not be limited to sales of or provision of goods or services, including medical and educational services and services provided by profit and nonprofit entities.

Concept Plans. Site plan, building elevations, and such other information as may be required to determine the location, appearance and cost of development, including redevelopment, infrastructure and landscaping, whether publicly or privately funded.

Increment. The then current assessed value of Property less the Base Value as adjusted by the Adjustment Factor for fiscal years following the fiscal year in which Base Value was established.

Inflation Factor shall have the meaning set forth in M.G.L. c. 40, § 60(a)(iii).

Mixed Use. Use of a Property for both residential and commercial purposes.

Owner. The person(s) who hold(s) the fee interest in a Property and who is legally empowered and entitled to make the commitments required for an UCH-TIF Agreement for the required time periods. A lessee of real property under a long term lease or holder of a restriction shall be deemed an Owner in association with the holder of the fee interest if necessary for such commitments to be effectively made and enforced.

Property. A parcel of real property and the personal property situated thereon that is located in the UCH-TIF zone.

Sources and Uses Budget. A *pro forma* line item budget for a project that identifies the nature and amount of each element of the funding and the related costs.

Special Assessment. An assessment upon one or more Properties to pay for a benefit to real property in an UCH-TIF Zone that is distinct from the general benefit to the municipality arising from a designated public improvement. A Special Assessment may also be referenced as a Betterment.

Subsidized Housing Inventory (SHI) Eligible Housing. Housing units which are eligible to be listed on the SHI, which is a list compiled by the Department containing the count of Low or Moderate Income Housing units by city or town. *See* 760 CMR 56.02(2).

UCH-TIF Agreement or Agreement. A binding written agreement that meets the standards and requirements of 760 CMR 58.07.

58.03: continued

UCH-TIF Exemption. An annual real estate tax exemption that meets the standards and requirements of M.G.L. c. 40, § 60(a)(iii) and 760 CMR 58.10.

UCH-TIF Plan or Plan. A plan for an UCH-TIF Zone that meets the requirements of 760 CMR 58.06 and has been approved by the Department in accordance with 760 CMR 58.09.

UCH-TIF Zone or Zone. An area that meets the standards and conditions of 760 CMR 58.05, and has been approved by the Department in accordance with 760 CMR 58.09.

58.04: Local Approval Process

(1) Designation of UCH-TIF Zone and Preparation of UCH-TIF Plan. The Chief Executive of a municipality or other authorized officer or entity shall designate a qualifying Commercial Center as a proposed UCH-TIF Zone and shall prepare a proposed UCH-TIF Plan meeting the requirements of 760 CMR 58.05. UCH-TIF Agreements need not be attached to the Plan at this time.

(2) Public Hearing. The Chief Executive, other authorized officer or entity, or the designee of such officer or entity, shall hold a public hearing to receive public comment on the proposed Zone and the Plan. Notice of the hearing shall be given in a newspaper of general circulation in the city or town in each of two successive weeks, the last publication being at least three days prior to the hearing.

(3) Approval by the Municipal Legislative Body. Following the public hearing, comments shall be considered, and the proposed Zone and the proposed Plan shall be finalized. The legislative body of the municipality (*i.e.*, the town meeting, town council, city council or board of aldermen) may make amendments to the Zone or the Plan. Approval of the proposed Zone and the proposed Plan, as they may have been amended, by a majority vote of the legislative body is a prerequisite to approval of the same by the Department. The legislative body's approval shall include the authority to implement Tax Increment Exemptions as well as the maximum percentage of the costs of any public project that can be recovered through Special Assessments.

(4) Negotiation of UCH-TIF Agreements. Following approval of the proposed Zone and the proposed Plan by the municipal legislative body, UCH-TIF Agreements shall be negotiated with any Owners specified in the proposed UCH-TIF Plan. The Agreements shall be executed by a municipal designee or any other officer or entity as may be specified in the UCH-TIF Plan. The Agreements shall provide that they are subject to the approval of the Department without which they shall not go into effect. The municipality is not required to enter into Agreements for all Properties within the Zone prior to submitting the Zone and Plan to DHCD for approval provided that its application to the Department meets the standard set forth at 760 CMR 58.07(7).

(5) Application to the Department. Following negotiation and execution of UCH-TIF Agreements, the Chief Executive of the municipality shall submit jointly the proposed UCH-TIF Zone, the proposed UCH-TIF Plan, and the proposed form of the UCH-TIF Agreement to the Department with an application for their approval. The application shall be in such form as may be specified by the Department.

(6) Time and Effect of Approval. The UCH-TIF Zone and the UCH-TIF Plan shall become effective when the Department issues a notice of approval, and the notice is recorded with the appropriate registry of deeds or land court registry.

Any UCH-TIF Agreement shall become effective upon the later of the recording of the UCH-TIF Agreement together with the Department's notice of approval of the UCH-TIF Agreement or the effective date of the UCH-TIF Plan.

The Zone and Plan, including the approved form of Agreement, once effective, shall be final and cannot be amended without written approval by the Department as provided in 760 CMR 58.12. All notices of approvals of major amendments shall not be effective until they are recorded with the appropriate registry of deeds or land court registry. Recording shall be undertaken by and at the expense of the municipality or the Owner.

## 58.04: continued

(7) Disapproval and Resubmission. If the Department disapproves some material part or parts of the Plan, Zone and/or form of Agreement, it shall notify the municipality. With respect to the issues raised by the Department, the legislative body of the municipality by majority vote may make amendments to the Plan, Zone or form of Agreement. The Plan, Zone and/or form of Agreement, as so amended, may then be resubmitted for the Department's approval.

(8) UCH-TIF Agreements. Following negotiation and execution of any UCH-TIF Agreements, each such Agreement shall be submitted to the Department for approval as provided in 760 CMR 58.12(5). Upon the recording of the Department's notice of approval with the appropriate registry of deeds and/or land court registry, the Agreement shall be effective and final and cannot be amended without written approval by both the municipality and the Department, as provided in 760 CMR 58.12(5). All UCH-TIF Agreements must be in compliance with the UCH-TIF Plan.

58.05: The UCH-TIF Zone

(1) The documentation of a UCH-TIF Zone designation shall contain sufficient description to show the exact delineation of the Zone. The documentation shall establish with reasonable certainty that the area so delineated is a Commercial Center and qualified to be a Zone as provided in M.G.L. c. 40, § 60(a)(i). If the Zone is to include areas in more than one municipality, these areas shall be contiguous and the description shall delineate the entire Zone together with the municipal boundaries. The designation of a Zone, if separate from the Plan, shall be approved by the Department in conjunction with approval of a Plan as provided in 760 CMR 58.09. Additional documentation required for the designation of a Zone may be set out in guidelines issued by the Department.

(2) To support a finding of public benefit based on residential and commercial growth in an urban center, at least one of the following conditions must be met:

- (a) The UCH-TIF zone has either:
  - 1. an unemployment rate that exceeds the statewide average by at least 25%;
  - 2. a commercial vacancy rate of 15% or more;
  - 3. an average household income below 115% of the AMI;
- (b) At least 51% of the land area within the UCH-TIF zone is located within a qualified census tract, as defined in Section 42(d)(5) of the Internal Revenue Code of 1986; or
- (c) At least 51% of the land area within the UCH-TIF zone constitutes a:
  - 1. blighted open area;
  - 2. decadent area; or
  - 3. sub-standard area, as defined in M.G.L. c. 121A, § 1.

58.06: The UCH-TIF Plan

The UCH TIF Plan shall focus on residential and Mixed Use development as a means of achieving the objectives of the UCH-TIF Program, shall meet the standards and requirements of M.G.L. c. 40, § 60, shall contain a specification of the building typology, and number of Affordable Housing units to be created on each Property, and also shall contain such other information and documentation as set out in guidelines issued by the Department. Each UCH-TIF Plan shall include a requirement that housing units to be created on each Property in an UCH-TIF Zone pursuant to development or redevelopment for which the Owner will receive UCH-TIF Exemptions shall satisfy one of the following affordability thresholds:

- (a) At least 15% of the housing units assisted by the UCH-TIF agreement shall be affordable to occupants or families with incomes at or below 80% of the AMI where the city or town is located, as defined by the United States Department of Housing and Urban Development;
- (b) At least 25% of the housing units assisted by the UCH-TIF agreement shall be affordable to occupants or families with incomes at or below 110% of the AMI; or
- (c) The property shall satisfy the requirements of an existing inclusionary zoning ordinance or by-law in the city or town, under which the property owner is required to make a portion of the housing units assisted by the UCH-TIF agreement affordable to low and moderate income households.

58.06: continued

- (2) Housing units that meet affordability thresholds shall be subject to use restrictions as provided in 760 CMR 58.08.
- (3) Other Material. Other material required to be included in an UCH-TIF Plan may be specified in guidelines issued by the Department.

58.07: The UCH-TIF Agreement

Each UCH-TIF Agreement shall require that an Owner undertake development or redevelopment of the parcels(s), including the provision of Affordable Housing as specified in the UCH-TIF Plan, and to maintain the Property as developed or redeveloped in good, decent, safe and sanitary condition, in partial consideration of an UCH-TIF Exemption. Each UCH-TIF Agreement shall meet the standards and requirements set forth in M.G.L. c. 40, § 60(a)(v), and shall also contain such other information and documentation as set out in guidelines issued by the Department.

58.08: Affordable Housing Restrictions

Affordable Housing Restrictions shall meet the standards and requirements of M.G.L. c. 40, § 60(e) and shall contain the following:

- (1) Household Income. Each Affordable Housing Restriction shall provide that household income shall be computed in the manner provided by the federal Section 8 Program or as otherwise specified by the Department in guidelines. For purposes of meeting the Owner's annual certification obligation under M.G.L. c. 40, § 60(f), each Affordable Housing Restriction shall require that each lease for an Affordable Housing rental unit shall impose the obligation on tenant households to provide to the Owner (or municipal monitoring agent) all information reasonably necessary for a reliable determination of household income. If the municipal monitoring agent does not receive the information directly, the Owner shall provide the income certification to a municipal officer or office as specified in the Affordable Housing Restriction. The certifications and information submitted by the tenant households shall be treated as personal information under M.G.L. c. 66A and shall be appropriately safeguarded by the Owner (or monitoring agent) and the municipality.
- (2) Noncompliance. Each Affordable Housing Restriction shall provide that each lease for an Affordable Housing unit shall provide that failure of a tenant household to provide requisite information in a timely manner to the Owner (or monitoring agent) shall be good cause for eviction of the tenant household, and that the Owner shall seek to evict a tenant household for such noncompliance.
- (3) Increase of Household Income. Each Affordable Housing Restriction shall provide that if a tenant household's income shall increase so as to exceed the allowable income limits, the Owner shall lease the next available unit to an income eligible household.
- (4) Other Requirements. Other requirements related to affordable housing restrictions may be specified in guidelines issued by the Department.

58.09: Action by the Department

Information related to the processing of applications, the findings made by DHCD, and conditional approvals will be provided in guidelines issued by the Department.

58.10: Determination of the Annual Amounts of the UCH-TIF Exemption

- (1) Amount of the Exemption. The annual amount of the UCH-TIF Exemption to be given to an Owner of a parcel of real property in an UCH-TIF Zone shall be annually determined during the term of the exemption by computing the tentative real estate tax on the Increment under the then current real estate tax rate and by applying the Exemption Percentage to such tentative tax.

## 58.10: continued

(2) The Exemption Percentage. The Exemption Percentage shall be a percentage between one and 100% inclusive, negotiated by the municipality and each Owner, and shall be specified in each UCH-TIF Agreement. The Exemption Percentage need not be the same for all Owners and may change from year to year during the term of the UCH-TIF Exemption. The Exemption Percentage shall be calculated to provide a reasonable amount of total real estate tax exemption in consideration of completion of agreed improvements and fulfillment of other commitments as provided in UCH-TIF Agreements.

(3) Term of Exemption. The term of years for which an UCH-TIF Exemption shall be available to an Owner shall not exceed 20 and shall be specified in the UCH-TIF Agreement. The terms of UCH-TIF Exemptions need not be the same for all Owners, but each term, when considered in conjunction with the Exemption Percentage(s), shall reflect a determination of reasonable amounts of real estate tax exemption in consideration of completion of agreed improvements.

(4) Adjustments to Base Value. The Base Value shall not reflect the improvements constructed pursuant to the UCH-TIF Agreement. The Base Value shall be adjusted by the Inflation Factors for subsequent fiscal years. The annual adjustments by the Inflation Factors shall be cumulative; the adjusted Base Value which has been computed for any particular fiscal year, shall be further adjusted by use of the Inflation Factor in order to compute adjusted Base Value for the succeeding fiscal year.

58.11: Special Assessments

Special Assessments on an Owner of real property for public construction in an UCH-TIF Zone, as described in an UCH-TIF Plan, shall be imposed in accordance with the provisions of the UCH-TIF Agreement. Owners who have not executed UCH-TIF Agreements shall not be subject to Special Assessments. In the event that, in the future, public construction, which was unforeseen at the time the UCH-TIF Plan was approved, becomes necessary, and the cost of which is legally recoverable through a special assessment pursuant to M.G.L. c. 80, § 1, such a special assessment may be levied in the manner provided in M.G.L. c. 80.

58.12: Amendment

(1) Amendments to the Zone or Plan. In the event that a municipality shall desire to change the UCH-TIF Zone or the UCH-TIF Plan, an application for amendment of the Zone or Plan, signed in accordance with the Municipal Signatory Authority established in the Plan, shall be submitted to the Department for its approval. The application shall be in such form as may be specified by the Department and shall set out a detailed description of the proposed amendment, the reasons for the amendment, the affect the proposed amendment will have on projects described in the Plan, and shall classify the amendment as minor or major. The Department shall determine whether a proposed amendment is minor or major. A copy of pertinent revisions to the Zone or Plan originally approved by the Department shall be submitted to reflect the proposed amendment.

(2) Minor Amendments. A minor amendment is a change that does not significantly alter any of the basic or material elements of the UCH-TIF Zone or UCH-TIF Plan; if a municipality submits an application for an amendment classified by the municipality as a minor amendment, then the Department shall have 60 days to determine whether such amendment is a minor amendment and to approve the amendment if it determines that the amendment is reasonable under the circumstances. If the Department needs additional information for these determinations, it shall request such information, and the time for acting on the amendment shall be suspended until the additional information has been received by the Department. If the Department shall determine that the amendment is a major amendment and has been misclassified as a minor amendment, the Department shall return the amendment to the municipality for a public hearing and approval by the legislative body of the municipality.

58.12: continued

(3) Major Amendments. A major amendment is a change that significantly alters any of the material elements of an UCH-TIF Zone or the UCH-TIF Plan. Prior to submitting an application for a major amendment to the Department, a public hearing shall be held, and the legislative body of the municipality shall approve the amendment in the manner provided by 760 CMR 58.04. Within 60 days following receipt of a complete application for a major amendment, the Department shall take action under the procedure and subject to the standards set out in 760 CMR 58.09(1) through (3).

(4) Amended Agreements. In the event that a municipality and an Owner desire to change an UCH-TIF Agreement, an amended Agreement executed by the municipality and the Owner shall be submitted to the Department for approval with a separate written specification of each change and the reason for the change. The amended Agreement shall meet all the requirements specified in 760 CMR 58.07. Prior to approval of an amended agreement the Department shall make the findings required by 760 CMR 58.09(4). The Department shall render its decision within 60 days of receipt of the amended Agreement once complete.

(5) New Agreements. In the event that a municipality and an Owner shall desire to enter into an UCH-TIF Agreement with respect to a Property not subject to an existing Agreement, an Agreement executed by the municipality and the Owner shall be submitted to the Department for approval. The UCH-TIF Agreement shall meet all the requirements specified in 760 CMR 58.07. Prior to approval, the Department must make the findings required by 760 CMR 58.09(4). The Department shall render its decision within 60 days of receipt of the UCH-TIF Agreement.

58.13: Municipal Reports

On or before March 1<sup>st</sup> of each year, each municipality for which an UCH-TIF Zone and Plan has been approved shall submit to the Department copies of certifications of household income of tenant households in Affordable Housing. With the annual certifications the municipality shall include an annual report about its progress in the prior year in meeting the objectives of its Plan. The report shall contain such material information as may be specified by the Department without imposing an undue burden on the municipality. Annual reports shall include such information as the number of new housing units created, both Affordable Housing and market rate, the completion of other development projects described in the Plan, including new commercial development, an account of Special Assessments levied on Property with UCH-TIF Agreements, and the amount of new tax revenue generated in the Zone. Failure of a municipality to provide the requisite certifications or to submit an adequate annual report in a timely manner shall result in the Affordable Housing not being counted as such on the Department's Subsidized Housing Inventory unless the Department shall determine that good cause exists for the municipality's failure to comply. The obligation of a municipality to provide certifications and to make an annual report shall be a continuing obligation and shall be specifically enforceable by the Department in the Superior Court department of the Trial Court.

58.14: Plan Revocation

A municipality may revoke its UCH-TIF Plan subject to the conditions and requirements of M.G.L. c. 40, § 60(c).

58.15: Records and Documents

The municipality shall maintain accurate records and accounts of all activities carried out under the approved UCH-TIF Plan in the designated UCH-TIF Zone. Such documents shall include, but not be limited to, application for approval for a Zone and Plan; requests for amendments to an existing Zone and/or Plan; income certification of Affordable Housing; status reports and annual reports; and orders or resolutions from municipal governing councils or boards pertaining to a Zone or Plan. All project records shall be maintained and kept for a period of seven years following project completion or three years following the date of final resolution of all legal claims, whichever occurs later. The municipality shall permit the Director of the Department, and staff or auditors reporting to the Director, to examine all records and accounts of the UCH-TIF Plan, as requested.

58.16: Time Periods, Notice

(1) Time Periods. Unless expressly stated otherwise, all time periods set forth in M.G.L. c. 40, § 60 or 760 CMR 58.00 shall be calculated in calendar days, except as otherwise set forth in 760 CMR 58.00. A time period shall not expire until the first day in which state offices are open.

(2) Notice. Unless expressly stated otherwise, any notice required by M.G.L. c. 40, § 60 or 760 CMR 58.00 shall be deemed to have been provided when delivered in person or mailed by certified or registered mail, return receipt requested, to the party to whom notice is required. The envelope of any notice provided to the Department shall state, in 12-point all caps letters, "ATTENTION: UCH-TIF NOTICE."

58.17: Amendments; Waivers

(1) Amendments. 760 CMR 58.00 may be amended in accordance with the provisions of M.G.L. c. 40, § 60.

(2) The Director of the Department may waive, in writing, any provision of 760 CMR 58.00 not required by M.G.L. c. 40, § 60 on findings that such waiver is consistent with the purposes set out in M.G.L. c. 40, § 60 and 760 CMR 58.00 and that desirable relief in the public interest will be accomplished through such waiver. A request for waiver shall be in writing to the Associate Director of Community Services, Department of Housing and Community Development, 100 Cambridge Street, Suite 300, Boston, MA 02114, and shall contain a reliable showing that the waiver meets all the requirements of 760 CMR 58.17. Prior to making a determination relative to a requested waiver, the Department may request such further information as it may find necessary or useful from any party. In making its determination, the Department shall consider any written comments that it receives within ten days of receipt of the waiver request or before the determination is made, whichever is longer.

REGULATORY AUTHORITY

760 CMR 58.00: M.G.L. c. 40, § 60 and c. 23B.

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