



Commonwealth of Massachusetts

DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT

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M.G.L. CHAPTER 121A - URBAN REDEVELOPMENT CORPORATIONS PREPARATION GUIDE

1. WHAT IS CHAPTER 121A?

Massachusetts General Laws Chapter 121A and Massachusetts Regulations 760 CMR 25.00 authorize the creation of single-purpose, project-specific, private Urban Renewal Corporations for undertaking residential, commercial, civic, recreational, historic or industrial projects in areas which are considered to be decadent, substandard or blighted open space. The statute and regulations authorize the exemption of 121A developments from real and personal property taxes, betterments and special assessments. They set forth procedures for negotiating an alternative tax payment on these developments and allow private developers to exercise the power of eminent domain to assemble development sites in specified circumstances.

By allowing tax exemptions, 121A agreements are used to encourage development in areas with high property tax rates or in areas that are minimally marketable as locations for private investments. The ability of a municipality to offer what is essentially a tax break, and accept a substitute reduced tax, provides the municipality with at least some tax revenue on property that would otherwise have been undeveloped. At the same time, 121A agreements provide certainty to developers in the amount of taxes they will pay for the duration of the agreement.

A 121A agreement must serve a public purpose. Although, the most frequent application of c.121A has been in the construction of housing for low and moderate income families, the opportunity exists to use this tool for economic development.

2. WHAT IS AN URBAN REDEVELOPMENT CORPORATION?

Urban Redevelopment Corporations are private limited dividend entities that are formed to develop 121A projects. The corporation may not undertake more than one project nor engage in any other type of activity. Under c.121A, a private entity bears the responsibility for planning and implementing the project and owns the project throughout its existence. Procedures for establishing an Urban Redevelopment Corporation are detailed in c.121A and 760 CMR 25.00.

3. WHO MAY ENTER INTO A 121A AGREEMENT?

Non-profit corporations, for-profit corporations, joint ventures or public/private partnerships may make use of 121A agreements. Insurance companies and banks also qualify under special statutory provisions of the law.

4. WHAT IS THE DURATION OF A 121A AGREEMENT?

The standard duration of a 121A agreement is a minimum of 15 years. This period may be extended by up to an additional 25 years -- for a total of 40 years -- if the developer agrees to include certain “amenities” in the project. Among the types of amenities earning an extension of the 121A agreement are handicapped facilities, the employment of minorities or neighborhood residents, the preservation of open space and the rehabilitation of historic buildings. Subsidized housing for low and moderate-income persons is always eligible for a 40-year agreement.

5. WHAT TYPES OF TAX PAYMENTS MUST BE PAID UNDER THE 121A AGREEMENT?

Urban Redevelopment Corporations are exempt from real and personal property taxes, betterments and special assessments. Instead, these 121A entities must make three types of substitute payments.

- 1. Minimum Statutory Payment:** Chapter 121A entities must pay a specified minimum excise tax to the State Department of Revenue. The minimum statutory payment is equal to 1% of the valuation of the property plus 5% of the gross income of the project from all sources (see c.121A, Section 10, for the formula). This excise payment is collected by the state and returned to the municipality where the project is located (i.e., returned to the municipality’s general fund).
- 2. Negotiated Payments:** Under the statute, a municipality is authorized to negotiate a payment above the minimum statutory payment. This payment is made directly to the municipality and local officials have wide latitude in determining the amount of this payment.
- 3. Excess Income Payment:** Chapter 121A entities are “limited dividend corporations” and, by law, may earn no more than an 8% return on investment. Any excess profits, after all eligible deductions have been accounted for, must be returned to the municipality up to the level of tax that would have been assessed if the property were a non-121A entity. Any additional excess income must be applied to project expenses as approved by DHCD for reduction of indebtedness, renovating and improving the property, installing additional facilities for tenants or the acquisition or development of additional property which could be subject to c.121A restrictions.

Property that is under a 121A agreement does not have its value counted in assessments of municipal land.

6. WHAT ACTIVITIES MAY BE UNDERTAKEN UNDER A 121A AGREEMENT?

Urban Redevelopment Corporations are authorized to:

- Acquire, sell and hold land, including the taking of land by eminent domain (in specified circumstances);

- Manage property;
- Construct and improve facilities;
- Borrow money and issue bonds, notes or other evidence of indebtedness;
- Receive exemption from real and personal property tax.

7. WHAT IS THE 121A AGREEMENT APPROVAL PROCESS?

The Department of Housing and Community Development (DHCD) is responsible for the administration of the 121A program for all cities and towns with the exception of Boston. In Boston, the Boston Redevelopment Authority (BRA) administers the 121A program. The formation of a 121A entity, with the exception of Boston, must be authorized by DHCD and the municipality within which the proposed project is to be located.

The statute and regulations assign specific responsibilities to a number of different local officials. The local chief executive officer, the City Council, the Board of Assessors, and the Planning Board all have legally defined roles in the c.121A process. Generally, the Board of Assessors has played the dominate role in negotiating the level of payments to be made under Section 6A of c.121A.

The statute and regulations make several important distinctions between cities and towns in terms of the local approval process. The basic difference is that in a city, the City Council acts as the local governing body and the Mayor or City Manager acts as the chief executive officer. In a town, the Planning Board plays the role of the local governing body and the Board of Selectmen act as the chief executive officer.

The approval process consists of:

- Developer submits an initial application to DHCD or the BRA.
- Once reviewed by DHCD or the BRA (approximately 60 days), the application is transmitted to the chief executive officer of the municipality who, in turn, transmits the application to the city council (city) or planning board (town).
 - Within 45 days of receipt of the application, the municipality must hold a public hearing.
- Within 45 days of the public hearing or within 90 days of receipt of the application, the city council (city) or the planning board (town) must issue a report to the chief executive officer.
- Within 30 days of receipt of the report, the chief executive officer must report back to DHCD or the BRA, indicating either approval or disapproval of the application.
- DHCD or the BRA will review and approve the developer's application, as amended and approved by the municipality
- The Secretary of State of the Commonwealth makes final approval on the formation of the Urban Redevelopment Corporation.

8. WHAT IS THE 121A AGREEMENT?

A 121A entity is required to sign two agreements: one with the municipality and one with DHCD. The agreement signed with the municipality is known as a 6A Agreement because it is

described in Section 6A of c.121A. The agreement signed with DHCD is known as the 18C Regulatory Agreement because it is described in Section 18C of c.121A.

SECTION 6A AGREEMENT: Following application approval, the developer must execute a contract, the 6A Agreement, with the municipality agreeing to carry out the 121A project in accordance with the approved application. While Section 10 of c.121A establishes a minimum statutory payment, Section 6A allows a municipality to negotiate a payment above the minimum. In almost all cases, the minimum statutory payment is exceeded by a negotiated amount. The 6A Agreement is the agreement between the developer and the municipality describing the tax payment to be made by the developer and includes the duration of the agreement, the schedule of any payments above the statutory minimum and any special conditions which have been negotiated with respect to parking, resident employment, exterior design treatment or other aspects of the project. The 6A Agreement may also include an escalation clause, a provision for an increase in the tax payment over the length of the agreement. The 6A Agreement is submitted to DHCD for review and recording.

By careful negotiation, a municipality can determine the level of payment to be made over time by the developer. Negotiating a 121A agreement involves balancing the financial viability of a proposed development with the best interests of the municipality. There is no mathematical formula to produce this figure. The negotiation of the 6A Agreement is likely to be highly individualized in each municipality. The municipality should be satisfied that the project would not be feasible without the 121A agreement. However, the municipality should also seek a payment, which is the highest possible without jeopardizing the project's viability.

SECTION 18C REGULATORY AGREEMENT: Following submission of the 6A Agreement, the developer must execute a contract, the 18C Regulatory Agreement, with DHCD. The 18C Regulatory Agreement sets forth the project cost and method of financing, limits cumulative annual return on investment to 8% of the amount invested in the project, mandates the payment of excise as prescribed and requires the prior approval of DHCD in the event that the project is to be transferred, assigned or sold (see #9 below for additional information on changes to the agreement).

After DHCD has reviewed and approved the application, the 18C Regulatory Agreement is executed, the letter of approval is issued and the Secretary of State approves the formation of the Urban Redevelopment Corporation. DHCD must, at this time, also approve any request for additional tax benefits based upon the provision of amenities.

9. CAN A 121A AGREEMENT BE CHANGED?

Under 760 CMR 25.03, "Application for Changes in Approved Projects," a developer must receive written approval from the municipality and DHCD for changes to a 121A agreement and/or an approved project. Please note that some changes made to the agreement (e.g., financing) may not affect the physical project while some physical changes made to the project (e.g., configuration of property or landscaping) may not affect the agreement.

The procedures followed by developers are different depending on whether or not the change is considered a material change. DHCD will determine whether a change is material or not material. A change that is not considered a material change may be approved by the municipality and DHCD without a public hearing. A change that is considered a material change is processed in the same manner as the initial application.

A material change is one that relates to matters which were required to be, or might properly have been, the subject of deliberation by the municipality and DHCD, including, but not limited to, changes in the project area, the use of the project, the amenities (which might result in changes in the period of exemption from tax payments), the legal or equitable ownership of the project or adjustments to the amounts to be received by the municipality under its 6A Agreement in addition to the excise prescribed by Section 10 of c. 121A. **Material changes to the 121A agreement require written amendments to the 6A Agreement and/or 18C Regulatory Agreement, as appropriate.**

It is important that all relevant parties -- local assessors, the Department of Revenue's Division of Local Services and the Department of Housing and Community Development's Urban Renewal Program -- be notified of all changes to 121A agreements especially as they relate to changes in ownership.

- **Change in property ownership:** The real estate transfer of the 121A project does not automatically transfer the 121A agreement to the new property/project owner. A transfer of property *requires the execution of a change in assignment* such that the new property owner assumes full responsibility for the contractual obligations associated with the 121A agreement and is subject to its restrictions and limitations. The municipality is responsible for ensuring that DHCD is notified of all changes in project ownership and that appropriate documentation is submitted verifying transfer of the 121A agreement. DHCD will notify the Department of Revenue of this change in ownership.

10. CAN A 121A AGREEMENT BE TERMINATED?

Tax exemptions are directly related to the developer's obligation to comply with the restrictions imposed by c.121A; at the expiration of the developer's period of tax exemption, the 121A agreement is no longer subject to the restrictions of the statute and terminates by the terms of the original contracts.

A 121A agreement may be terminated before the approved period of tax exemption has expired.

- Pursuant to Section 16A of c. 121A, termination of 121A agreements may occur as a result of foreclosure or a lien upon a project. The mortgage holder of the foreclosed project (including HUD or MHFA) has the option of (1) holding the property subject to all the terms and conditions of the 121A agreement, (2) conveying the property to a purchaser who agrees as part of the terms of the conveyance or release to hold the property subject to the 121A agreement, (3) terminating the 121A agreement or (4) conveying the property free of 121A

restrictions and limitations. **The municipality, DHCD and the Department of Revenue must all be notified in a timely fashion of the option chosen.**

The procedure for terminating a 121A agreement before the period of exemption has expired *may or may not* be included as part of the 6A Agreement and/or the 18C Regulatory Agreement.

- If the 6A Agreement and/or 18C Regulatory Agreement includes a clause which allows the project owner to terminate the 121A agreement before the period of tax exemption has expired, the owner can terminate the agreement in accordance with the terms of the agreement. The municipality must notify DHCD when a 121A agreement is terminated. DHCD will notify the Department of Revenue.
- If there is no specific termination language in the 121A agreement, then the project owner and municipality must comply with 760 CMR 25.08, "Termination of M.G.L. c.121A Designation Before Period of Exemption Has Expired," which includes the submission of a written request for termination to DHCD by the municipality and justification that the public benefit will be served by the termination.

Following termination of a 121A agreement, it is the assessor's responsibility to assure that the property returns to the local tax rolls in accordance with applicable law.

11. CAN A 121A AGREEMENT BE EXTENDED BEYOND ITS EXPIRATION DATE?

There is no provision in either the statute or regulations that would allow for an extension of an existing 121A Agreement. Instead, a developer would have to submit a new application 121A designation for both local and state approval. A new 6A Contract and 18C Regulatory Agreement would also need to be executed.

12. ARE THERE OTHER TAX INCENTIVE PROGRAMS AVAILABLE TO STIMULATE DEVELOPMENT?

The passage of Proposition 2 ½ resulted in a dramatic decrease in applications for 121A agreements because taxes are automatically limited by statute accomplishing much of c.121A's original intent. Tax Increment Financing (TIF) is an alternative tax incentive to stimulate local development. The ability of a municipality to offer what is essentially a tax break on all or a portion of new development provides the municipality with at least some tax revenue on property that would otherwise have been undeveloped or underutilized. The tax savings is passed on to the property owner for reinvestment in project development. In exchange for the tax savings, the property owners assumes the development risk. The Commonwealth operates two TIF Programs that support housing and economic development.

- The [Urban Center Housing-Tax Increment Financing Program \(UCH-TIF\)](#) under M.G.L. c. 40 Section 60 authorizes communities to use TIF to promote multi-unit housing and commercial development, including affordable housing, in commercial centers. New development must be primarily residential and 25% of the housing must be affordable.

DHCD administers the UCH-TIF Program. The TIF is available to both residential and commercial development.

<http://www.mass.gov/hed/community/planning/uch-tif.html>

- The [Economic Development Incentive Program \(EDIP\)](#) under M.G.L. c. 23A authorizes communities to use TIF to stimulate business growth and foster job creation in locally targeted development areas. Businesses may also be entitled to an additional 5% Investment Tax Credit and 10% Abandoned Building Tax Deduction on their Massachusetts state tax returns. The Massachusetts Office of Business Development administers the EDIP. The TIF under this program is only available for economic development.

<http://www.mass.gov/hed/economic/cohed/bd/econ-development/about/>

- The [Housing Development Incentive Program HDIP](#), established as M.G.L., Chapter 40V, provides the Commonwealth's Gateway Cities with a development tool to increase residential growth, expand diversity of housing stock, support economic development, and promote neighborhood stabilization in designated areas. The program provides two tax incentives to developers to undertake substantial rehabilitation of properties for lease or sale as multi-unit market rate housing: (1) a local-option real estate tax exemption on all or part of the increased property value resulting from improvements of no less than 10% and no more than 100% of the increment on market rate units in a project for no less than five years and no more than 20 years, and (2) state tax credits for Qualified Substantial Rehabilitation Expenditures (QSREs) of up to \$2 million, not to exceed 10% of the QSREs of the market rate units.

<http://www.mass.gov/hed/community/planning/housing-development-incentive-program-hdip.html>

FOR MORE INFORMATION CONTACT (617) 573-1400