

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 ~~80%~~110% of area median income. 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 affordable housing is affordable to households with incomes at or below 80% of area median income (AMI) 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. ~~25% of new housing to be affordable, although the Department may approve a lesser percentage where necessary for the financial feasibility of a housing development.~~

In order to take advantage of the program a city or town ~~shall~~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. ~~predominantly commercial with high business or commercial use.~~ The plan ~~shall~~must show the need for multi-unit housing in the designated area and ~~shall~~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 ~~shall~~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).

Affordable Housing - rental or ~~ownership cooperative~~ housing units which are restricted to and occupied by households with incomes at or less than ~~80%-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 a UCH-TIF Agreement is entered into between the Owner and the ~~Municipality~~ 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~~ 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. ~~A Commercial Center shall have a high population density during the daytime or during regular business hours, when compared with its non-business hours or with the daytime population of surrounding developed areas of similar size. Daytime automobile traffic and parking in a commercial center shall be higher, when compared to its automobile traffic and parking during non-business hours or with the daytime automobile traffic and parking in surrounding developed areas of similar size. A commercial center shall also have a need for multi-unit residential properties.~~

Concept Plans - ~~architectural plans for a building, engineering plans for infrastructure, and landscape plans. The plans need not be construction plans but must be sufficient, in conjunction with associated specifications, for Site plan, building elevations, and such other information as may be required to determine~~ determination of the location, appearance and cost of development, including redevelopment, infrastructure and landscaping, whether public 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.

~~Municipality - a city or town.~~

Owner - the person(s) ~~or entity(ies)~~ who ~~or that~~ hold(s) the fee interest in a Property and who ~~or that~~ is legally empowered and entitled to make the commitments required for a 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(ies) - a parcel(s) of real property and the personal property situated thereon that is located in the UCH-TIF zone.

Sources and Uses Budget - a ~~detailed~~ *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 a 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.

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 58.102.

UCH-TIF Plan or Plan - a plan for a 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+2.

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+2.

58.04: Local Approval Process

(1) Designation of UCH-TIF Zone and Preparation of UCH-TIF Plan. The Chief Executive of a ~~Municipality~~ *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. ~~Executed Agreements shall then be made part of the proposed 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~~ *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 Agreements 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 ~~and the UCH-TIF Agreements~~ shall become effective as of the date of when the Department's issues a notice of approval, and the notice is upon recording of the notice with the appropriate registry of deeds ~~and/or~~ land court registry.

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

The Zone, and Plan, including the approved form of and Agreements, once effective, shall be final and cannot be amended without written approval by the Department as provided in 760 CMR 58.124. All notices of approvals of major amendments shall not be effective until they are recorded with the appropriate registry of deeds and/or land court registry. Recording shall be undertaken by and at the expense of the municipality or the Owner.

(7) Disapproval and Resubmission. If the Department disapproves some material part or parts of the Plan, Zone and/or form of the Agreements, 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, ~~or~~ Zone or form of the Agreement. and the parties may make amendments to the Agreements. The Plan, Zone and/or form of the Agreements, as so amended, may then be resubmitted for the Department's approval.

(8) Additional UCH-TIF Agreements. Following negotiation and execution of any additional UCH-TIF Agreements, each such additional Agreement shall be submitted to the Department for approval as provided in 760 CMR 58.125(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 58.152(5). Additional All UCH-TIF Agreements must be in compliance with the UCH-TIF Plan.

58.05: The UCH-TIF Zone

(1) The documentation of an 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 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 58.0912. 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: (i) an unemployment rate that exceeds the statewide average by at least 25%; (ii) a commercial vacancy rate of 15% or more; (iii) 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: (i) blighted open area, (ii) decadent area or (iii) 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(a) , and also shall contain a the following:

~~(1) Objectives of the Plan. A statement describing how implementation of the Plan will encourage increased residential growth, affordable housing and/or commercial growth within the locally designated UCH-TIF Zone.~~

~~(2) Parcel Description, Coverage and Zoning. Detailed, to scale plans of the UCH TIF Zone showing the locus within the municipality of streets and ways; parcels of land and other areas; ownership of the parcels and their uses; a detailed description of all existing improvements and buildings and their condition, and of infrastructure, including a detailed description of its capacity and condition.~~

~~(3) Specification of Development and Useful Life of Housing. A detailed description, Concept Plans, and specifications for all construction, reconstruction, rehabilitation, remodeling and any related activities (including landscaping), both public and private, planned for the Zone; specification of the useful life of planned Affordable Housing within the Zone, and the method for determining the useful life.~~

~~(4) Compliance with Zoning. A description of existing zoning. A statement of whether any proposed projects will be in noncompliance with any applicable zoning or ordinances and any other applicable laws, bylaws, ordinances, rules and regulations. A description of how noncompliance will be addressed, including proposed new zoning.~~

~~(5) Schedule and Cost of Public Construction. Concept plans and specifications, a Sources and Uses Budget, project implementation schedule(s), and a schedule of the amounts, dates and purpose of any Special Assessments, for the public construction. A maximum percentage of the costs of the public construction recoverable through Special Assessments shall be specified. [MC(1)]~~

~~(6) Affordable Housing. Specification of the building typology, tenure 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 There shall include be a requirement that 25% of all 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 shall satisfy one of the following affordability thresholds: be Affordable Housing; provided that a lower percentage may be specified if detailed and verifiable data set out in the UCH TIF Plan reliably establish that development on a Property(ies) is not financially feasible without the lower percentage of Affordable Housing specified in the Plan.~~

~~(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 area median income where the city or town is located, as defined by the United States Department of Housing and Urban Development, hereafter referred to as AMI;~~

~~(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.~~

~~(2) Housing units that meet affordability thresholds shall be subject to use restrictions as provided in 760 CMR 58.08.~~

~~(7) UCH TIF Agreements. That the The form of UCH TIF Agreements submitted with the application are consistent with the Plan and evidence that there are a sufficient number of Properties within the Zone such that it is likely that the municipality can make meaningful progress in implementing its Plan.~~

~~(8) Municipal Signatory Power. A municipal delegation of power to execute UCH TIF Agreements to a municipal board, agency or officer. Such power may be made subject to~~

~~approval of the chief executive of the municipality.~~[MC(2)]

(93) Other Material. Other material required to be included in a 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(ies) as developed or redeveloped in good, decent, safe and sanitary condition, in partial consideration of a UCH-TIF Exemption. ~~The Agreement shall be effective on the first day of the fiscal year (July 1st) following the date of execution of the Agreement by the Owner and the municipality, provided that the Agreement has been approved by the Department and the notice of approval has been recorded with the appropriate registry of deeds and land court registry.~~ 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. ~~including but not limited to the requirements related to default and associated remedies, and also shall contain the following:~~

~~(1) Description of the Improvements By Owner. Specification of the location of the project(s) and specification of the construction, reconstruction, rehabilitation, remodeling and related activity, which shall be primarily residential, to be undertaken by the Owner, including a timetable, and sources and uses budget.~~

~~(2) Description of Municipal Improvements and Special Assessments. Specification of the public construction to be undertaken by the municipality, including an implementation schedule and a Sources and Uses Budget for such projects. Any Special Assessments to be levied on the Owner to pay costs of such public construction shall be specified. There shall be prohibitions on Special Assessments if they are not specified in the UCH-TIF Agreement. In accordance with 760 CMR 58.14, public construction that could not reasonably be anticipated at the time of Plan approval shall not be subject to this prohibition.~~

~~(3) Tax Increment Financing. Specification of the tax increment financing to be granted to the Owner, including the term and the applicable Exemption Percentage for each fiscal year.~~

~~(4) Affordable Housing. Specification of the building typology, tenure and number of Affordable Housing units to be created on the Property(ies) subject to the Agreement. Requirements that the Owner complies with the responsibilities imposed by the Affordable Housing Restriction including that the marketing and resident selection for the Affordable Housing shall comply with the Department's Affirmative Fair Housing and Civil Rights Policy. A provision for monitoring of the required restriction(s) during their term and for enforcement of the restriction(s) in the event of any material noncompliance. Copies of the form of proposed Affordable Housing Restriction, shall be attached to the contract or otherwise specifically identified. Such Affordable Housing Restrictions shall satisfy the provisions of 760 CMR 58.08.~~

~~(5) Material Representations and Commitments. All material representations and any other commitments made by either the Owner or the municipality and relied on by the other in entering the Agreement.~~

~~(6) Other Requirements. Other requirements for UCH-TIF Agreements may be specified in guidelines issued by the Department.~~[MC(3)]

58.08: Affordable Housing Restrictions

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

~~(1) Municipal, State or Federal Monitoring. Provision for monitoring and enforcement during its term by an agent or employee of the municipality. The monitoring agent or employee shall be specifically empowered and required to provide such monitoring and~~

~~enforcement, and adequate municipal resources shall be provided during the term of the Affordable Housing Restriction so that monitoring and enforcement are effective. In the event that Affordable Housing is created under a federal or state housing production program in which such monitoring and enforcement are provided through the program, such federal or state monitoring and enforcement shall suffice.~~

~~(2) Resident Selection. Requirement that selection of income qualified tenants shall be made in accordance with the provisions and requirements of all applicable state and federal fair housing laws including the Department's Affirmative Fair Housing and Civil Rights Policy.~~ [MC(4)]

~~(3) Department's Option to Purchase. An option to purchase the property under the terms provided in 760 CMR 58.09.~~

~~(4) Department's Right of First Refusal. A right of first refusal under the terms provided in 760 CMR 58.10.~~

~~(5) Priority of the Restriction. Each Affordable Housing Restriction shall have priority over mortgages and other liens on the property, provided that in the event that the municipality and the Department determine that such priority of the Affordable Housing Restriction will prevent mortgage lending by state and national banks, state or federal savings and loan associations, cooperative banks, mortgage companies, trust companies, insurance companies and other institutional lenders, then a first mortgage from an institutional lender may have provision that the Affordable Housing Restriction may be subordinated in the event of foreclosure (or other similar remedial action under the mortgage), provided that any such subordination shall be reasonably necessary for protection of the lender's financial interest.~~

~~(6) 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(e), 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.~~

~~(7) 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. 58.08: continued~~

~~(8) Increase of Household Income. Each Affordable Housing Restriction shall provide that if a tenant household's income shall increase so as to exceed 80% the allowable income limits of area median income for a similarly sized household, 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: Department's Option to Purchase (Option)~~

~~The Department shall have an option to purchase a Property that is subject to an Affordable Housing Restriction in accordance with the standards and requirements of M.G.L. c. 40, § 60(d)(1) and the following additional provisions:~~

~~(1) Appraisers.~~

~~(a) In the event that either the Department or the Owner shall fail to designate a~~

~~professional within the 30-day period required by M.G.L. c. 40, § 60(d)(1), then the sole designated professional shall select the two qualified impartial real estate appraisers.~~

~~(b) The Department shall pay the reasonable cost of these appraisals, or, if the Owner so elects, the cost shall be shared.~~

~~(c) Each appraiser shall provide copies of the appraiser's appraisal to the Department or its assignee and the Owner.~~

~~(2) Terms of Closing. Apart from price, the terms and time of sale shall be agreed by the parties, or absent agreement, shall be as determined by an arbitrator named by the Greater Boston Real Estate Board and paid for by the parties. Closing shall occur promptly after the terms of sale are determined.~~

~~58.10: Department's Right of First Refusal~~

~~The Department shall have a Right of First Refusal on a Property that is subject to an Affordable Housing Restriction in accordance with the standards and requirements of M.G.L. c. 40, § 60(d)(2) through (4) and the following additional provisions:~~

~~(1) Owner's Notice. The Owner shall give notice of the Owner's intention to sell, transfer or otherwise dispose in a written notice which shall be mailed to the Department both by regular mail and by certified mail, return receipt requested. The notice shall include the name and address of the Owner, a description of the premises, including a title reference, and shall specify an intent to sell, convey or dispose, and shall reference the first refusal option and shall include a copy of the purchase and sale agreement.~~

~~(2) Bona Fide Offer. A *bona fide* offer shall be evidenced by a purchase and sale agreement entered in good faith by two unrelated parties on terms usual for the sale of similar real estate and reflecting the value of the real property, taking into consideration the Affordable Housing Restriction for its unexpired term. If the Department shall determine that a purchase and sale agreement does not contain a *bona fide* offer, it shall provide written notice to the Owner pursuant of the purchase price that the Department believes represents a *bona fide* offer and the basis for such determination. The Owner may dispute the Department's determination in arbitration by an arbitrator named by the Greater Boston Real Estate Board and paid for by the parties, and the arbitrator's decision shall be binding upon the parties. If the Owner does not dispute the Department's determination of purchase price, then the Owner shall proceed with the purchase by the Department at the price determined by the Department to be a *bona fide* purchase price.~~

~~(3) Exercise of Right of First Refusal; Notice. The Department's notice exercising the Right of First Refusal shall reference the Owner, the property, including a title reference, a statement that the right of first refusal will be exercised, and the price. If the Department has assigned its Right of First Refusal, the notice shall also state the name and address of the assignee and the terms and conditions of the assignment.~~

~~(4) Nonexercise of Right of First Refusal. In the event that the Department shall determine not to exercise the first refusal option, the Department may notify the Owner in writing. The notice of no exercise shall reference the Owner, the property, including a title reference, and state that the first refusal option will not be exercised; the Owner shall record such notice with the appropriate registry of deeds or registry of the Land Court.~~

~~(5) Time to Complete Purchase. Apart from price, the terms and time of sale shall be agreed to by the parties, or, absent agreement, shall be as determined by an arbitrator named by the Greater Boston Real Estate Board and paid for by the parties. By mutual consent, the parties may agree to extend the 120 day period established by M.G.L. c. 40, § 60(d)(2). The extension shall be evidenced by a writing signed by the Owner and the Department and recorded with the appropriate registry of deeds or registry of the Land Court. If the Owner disputes the Department's determination of a *bona fide* offer pursuant to 760 CMR 58.10(2), then the 120 day period shall be extended by the number of days that lapse between the Department's notice to Owner pursuant to 760 CMR 58.10(2) and the date of the arbitrator's decision.~~

~~(6) Extension of Term of Affordability. In the event that the Department shall purchase a~~

~~Property subject to an Affordable Housing Restriction pursuant to an exercise of its right of first refusal hereunder, the remaining term of the Affordable Housing Restriction, if less than 40 years at the date of purchase, shall be extended so that the term of the restriction is no less than 40 years from the date of purchase. Any such extended term of the Affordable Housing Restriction shall be evidenced by a legally effective amendment of the Affordable Housing Restriction recorded with the appropriate registry of deeds or registry of the Land Court.~~

~~58.11: Assignment of Option, Right of First Refusal~~

~~The Department may select a developer to act on its behalf with respect to the Option or the Right of First Refusal. The Department shall select an assignee in the manner provided by its guidelines. The Department shall enter into a written agreement with its selected assignee and upon execution of such agreement, the assignee shall assume all rights and responsibilities attributable to the Department under the Option.~~

~~58.0912: 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.~~

~~(1) Processing Applications. A Municipal application for approval of a UCH TIF Zone shall be submitted together with, or included as, part of an application for approval of a UCH TIF Plan accompanied by the UCH TIF Agreements that have been executed as of the date of submission. Following receipt of the application(s), the Department shall review it. The Department may request assistance from the Department of Revenue and the Massachusetts Office of Business Development in its review. To the extent necessary and reasonable, the Department may solicit reports or information from consultants or other third parties. In the event that the Department shall determine an application to be incomplete or insufficient, the Department may require supplementation of the application by the municipality. So long as such supplementation results in no material change in an application, as determined by the Department, the municipal chief executive or authorized designee may provide such supplementation, which shall thereby become part of the application without further action by the legislative body of the municipality. Within 60 days of receipt of a complete application, as it may be so supplemented, the Department shall give a notice of approval or notice of disapproval to the municipality. The Department may also give a notice of conditional approval, which shall be an approval subject to satisfaction of specified conditions.~~

~~(2) Findings on Approval of UCH TIF Zone. Prior to approval of a UCH TIF Zone the Department shall find that the area comprising the proposed zone meets the statutory and regulatory requirements for a UCH TIF Zone.~~

~~(3) Findings on Approval of UCH TIF Plan. Prior to approval of a UCH TIF Plan the Department shall find that the Plan is complete and meets the statutory and regulatory requirements for a UCH TIF Plan; that the Plan employs sound planning principles; that the financial assumptions and projections for the various private projects appear sound and that there are sufficient UCH TIF Agreements executed so as to create a likelihood that the proposed projects will be completed and substantial compliance with the Plan achieved; that the financial assumptions and projections for public construction appear sound and that there is a likelihood that the public projects will be timely completed; and that implementation of the Plan will encourage increased residential growth, affordable housing and/or commercial growth in the designated UCH TIF Zone.~~

~~(4) Findings on Approval of UCH TIF Agreements. Prior to approval of a UCH TIF Agreement, the Department shall find that the Agreement is in proper form; that the Agreement is consistent with the Zone and Plan, that adequate provision is made for a qualifying, primarily residential development in accordance with the UCH TIF Plan; that the UCH TIF Exemption for this development is warranted under the standards in 760 CMR 58.13(2) in view of the representations and commitments set out in the Agreement.~~

~~(5) Conditional Approval of UCH TIF Zone and UCH TIF Plan. A Municipality may~~

~~request that the Department conditionally approve a Zone and Plan subject to the submission of UCH-TIF Agreements. Such approval shall be subject to the standards and requirements in 760 CMR 58.12(1) through (3). Upon submission of Agreements that meet the standards of 760 CMR 58.06(7) and 58.12(4), DHCD shall approve the Zone, Plan and Agreements.~~^{MC(S)}

58.103: 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 a 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.

(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 a 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.

58.114: Special Assessments

Special Assessments on an Owner of real property for public construction in a UCH-TIF Zone, as described in a 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.

58.125: Amendment

(1) Amendments to the Zone or Plan. In the event that a ~~Municipality~~^{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~~^{municipality} submits an application for an amendment classified by the ~~Municipality~~^{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.

(3) Major Amendments. A major amendment is a change that significantly alters any of the material elements of a 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 58.0912(1) through (3).

(4) Amended Agreements. In the event that a Municipality and an Owner desire to change a 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 58.0912(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 58.0912(4). The Department shall render its decision within 60 days of receipt of the UCH-TIF Agreement.

58.136: Municipal Reports

On or before March 1st of each year, each Municipality for which a 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.

58.147: Plan Revocation

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

58.158: 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 ~~Zone 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.

58.169: 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."

58.1720: 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 Director, 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 58.1720. 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: MGL c. 40, § 60 and c. 23B-, St. 2016, c. 219 §§24-28, amending M.G.L. c.40 §60.