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402 CMR 1.00 RESERVED

2.00 ECONOMIC DEVELOPMENT INCENTIVE PROGRAM

3.00 DISTRICT IMPROVEMENT FINANCING

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WILLIAM FRANCIS GALVIN
Secretary of the Commonwealth

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402 CMR: ECONOMIC ASSISTANCE COORDINATING COUNCIL

(402 CMR 1.00: RESERVED)

402 CMR: ECONOMIC ASSISTANCE COORDINATING COUNCIL

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402 CMR 2.00: ECONOMIC DEVELOPMENT INCENTIVE PROGRAM

Section

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2.01: Purpose

The purpose of 402 CMR 2.01 through 2.18 is to establish the procedures by which the Economic Assistance Coordinating Council (EACC) will administer those portions of the Economic Development Incentive Program (EDIP) relating to the designation of areas of the Commonwealth as Economic Target Areas (ETAs) and Economic Opportunity Areas (EOAs) and to provide for the certification of projects to be undertaken by businesses within an EOA, thereby entitling those businesses to receive certain tax benefits. 402 CMR 2.00 also establishes the procedures by which EOA designations, project certifications, and Tax Increment Financing (TIF) plans may be revoked by the EACC and further clarify that the failure of a municipality or participating business to follow proper reporting procedures and to provide requested information to the EACC may result in such revocation.

2.02: Scope and Applicability of the EDIP

(1) The EDIP provides a mechanism by which municipalities can stimulate economic development in locally designated areas by attracting new businesses into those areas and by encouraging existing businesses to expand. There is a three-step process that municipalities and businesses must follow to benefit from ETA and EOA designation. The first step requires the municipality to request the EACC to designate the municipality as an Economic Target Area. This designation is based on income, unemployment, and other economic characteristics of the area, and may also be appropriate where the area contains certain special features, as identified in M.G.L. c. 23A, § 3D and in 402 CMR 2.05. The number of ETAs that can exist at any one time in the Commonwealth is limited by state law, as set forth in M.G.L. c. 23A, § 3E and in special acts of the Legislature.

(2) The second step requires the municipality to identify appropriate locations for economic development and to request the EACC to designate these targeted development areas within the ETA as EOAs. There are no limits to the numbers of EOAs that may be designated within an ETA. 402 CMR 2.00 outlines the procedures and criteria required to obtain ETA and EOA designation. Since an area must be designated as both an ETA and an EOA before the benefits made available under the EDIP can be realized, municipalities may request both ETA and EOA designation in a single application to the EACC.

(3) The third step requires a business intending to develop or expand a project within an EOA to request the EACC to designate a particular project to be undertaken by the business as a "certified project," thereby allowing the business to benefit from the various tax relief programs made available by the EDIP.

2.02: continued

- (4) The EDIP provides a business with a variety of economic incentives and benefits relating to a "certified project," including:
- (a) an investment tax credit of 5% that may be applied to the corporate excise or personal income tax as provided in M.G.L. c. 63, § 38N, or M.G.L. c. 62, § 6(g)(1);
 - (b) a corporate excise deduction or a personal income tax deduction equal to 10% of the cost of renovating an abandoned building within an EOA, as provided under M.G.L. c. 63, § 38O, or M.G.L. c. 62, § 3B(10);
 - (c) the real property tax benefits available under a tax increment financing plan established pursuant to M.G.L. c. 40, § 59, or, as an alternative, a special real property tax assessment schedule developed pursuant to M.G.L. c. 23A, § 3E(3)(b); or
 - (d) the tax exemption for personal property situated at a parcel receiving a tax increment financing exemption, as provided for in M.G.L. c. 59, § 5, clause 51.

2.03: Definitions

As used in 402 CMR 2.00, the following words shall, unless the context clearly requires otherwise, have the following meanings:

Blighted Open Area - a predominantly open area which is detrimental to the safety, health, welfare or sound growth of a community and which is predominantly open because it is unduly costly to develop it soundly through the ordinary operations of private enterprise. Factors which might make an area unduly expensive to develop include, but are not limited to, existence of hazardous materials or other contaminants; existence of ledge, rock, unsuitable soil, or other physical conditions; need for unduly expensive excavation, fill or grading; need for unduly expensive foundations or retaining walls; need for unduly expensive waterproofing, drainage or flood prevention measures; need for unduly expensive measures to protect adjacent areas and the water tables therein; need for unduly expensive measures incident to building around or over rights-of-way through the area; existence of obsolete, inappropriate or otherwise faulty platting or subdividing; deterioration of site improvements of facilities; division of the area by rights-of-way; diversity of ownership; inadequate transportation facilities; inadequate utility systems; tax and special assessment delinquencies; a substantial change in business or economic conditions or practices; an abandonment or cessation of work begun on improvements; any combination of the above; or any other condition or conditions which are detrimental to the safety, health, or sound growth of a community.

Business - a private business corporation, partnership, firm, unincorporated association or other entity engaging or proposing to engage in economic activity within the Commonwealth, and any affiliate thereof, the income of which is subject to taxation under M.G.L. c. 62 or M.G.L. c. 63.

Certified Project - a project that has been approved for certification by the EACC pursuant to 402 CMR 2.09.

Control - the power to direct the management and policies of a business or a facility thereof, directly or indirectly, through the exercise of voting rights, by contract, or otherwise.

Controlling Business - a business which controls a business or a facility thereof; provided that in the event that the ownership of a business, the operation of real estate, and/or the employment of employees is divided among entities under a common control, then the EACC may treat one or more of such entities as the controlling business for purposes of 402 CMR 2.00.

Decadent Area - an area which is detrimental to the safety, health, welfare or sound growth of a community because of the existence of buildings which are out of repair, physically deteriorated, unfit for human habitation, obsolete, or in need of major maintenance or repair, or because much of the real estate in recent years has been sold or taken for non-payment of taxes or upon foreclosure of mortgages; or because buildings have been torn down and not replaced and in which under existing conditions it is improbable that the buildings will be replaced; or because of a substantial change in business or economic conditions; or because of inadequate light, air, or open space; or because of excessive land coverage; or because diversity of ownership, irregular lot sizes, or obsolete street patterns makes it improbable that the area will be redeveloped by the ordinary operations of private enterprise; or by reason of any combination of the foregoing conditions.

2.03: continued

Director - the Director of the Department of Business and Technology.

Distress Factor - a fraction, the numerator of which is the sum of:

- (a) the municipality's average unemployment rate for the most recent three year period divided by the Commonwealth's average unemployment rate for the same period; and
- (b) the Commonwealth's per capita personal income divided by the municipality's per capita personal income; and the denominator of which is two.

Economic Assistance Coordinating Council or EACC - the Council established pursuant to M.G.L. c. 23A, § 3B.

Economic Development Incentive Program or EDIP - a program of various economic development incentives established pursuant to M.G.L. c. 23A, and related to the tax increment financing provisions of M.G.L. c. 40, § 59, to promote increased business development and expansion in Economic Target Areas of the Commonwealth.

Economic Opportunity Area or EOA - an area of the Commonwealth, located wholly within an Economic Target Area, which is designated as such by the EACC pursuant to 402 CMR 2.08.

Economic Target Area or ETA - an area of the Commonwealth designated as such by the EACC pursuant to 402 CMR 2.06.

Employee - A person who is in an employment relationship with an employer subject to, and within the meaning of, the Massachusetts unemployment insurance statute, M.G.L. c. 151A, § 1 *et seq.*

Full-time Employee - an employee, as defined in 402 CMR 2.03: Employee who has been paid by an employer during its taxable year an amount equal to at least the maximum amount of "wages" with respect to which an employer is required to make contributions under M.G.L. c. 151A, § 14.

Metropolitan Area - a metropolitan statistical area ("MSA") or a primary metropolitan statistical area ("PSMA"), as defined by the U.S. Bureau of the Census.

Municipal Application - an application submitted by a municipality to the EACC requesting the designation of an area as either an ETA or an EOA, or both.

Municipality - a city or town in the Commonwealth or, in a case in which two or more cities or towns are acting jointly hereunder, then all cities and towns participating in such joint effort.

Permanent Full-time Employee - a person who:

- (a) Satisfies the definition of "full-time employee" as set forth above; and
- (b) at the inception of the employment relationship,
 1. does not have a termination date which is either a date certain or determined with reference to the completion of some specified scope of work; and
 2. receives employee benefits at least equal to those provided to other similarly situated full-time employees of the business.

Poverty Rate - the poverty rate, as defined by the Bureau of the Census, using the most recent census data available as of the date of submission of a municipal application.

Project - a facility which is located, or is to be located, within an EOA.

- (a) In the case of a facility which is already located in an EOA, the term "project" shall refer only to a facility for which there is proposed an expansion of the number of permanent full-time employees, which expansion shall represent
 1. an increase in the number of permanent full-time employees employed by the business within the Commonwealth; and
 2. not a replacement or relocation of permanent full-time employees (as defined in 402 CMR 2.03) by the business at any other facility located within the Commonwealth;

2.03: continued

(b) In the case of a facility to be located within an EOA after the project proposal date, the term "project" shall refer only to a facility which is:

1. the first facility of the business to be located within the Commonwealth; or
2. a new facility of such business and not a replacement or relocation of an existing facility within the Commonwealth; or
3. an expansion of an existing facility of the controlling business which results in an increase in permanent full-time employees.

Project Proposal – a proposal submitted by a controlling business to the EACC pursuant to M.G.L. c. 23A, § 3F for designation of a project as a certified project.

Replacement or Relocation of Permanent Full-time Employees – Any transfer and/or substitution of permanent full-time employees by a participating business where there is no net increase in the number of permanent full-time employees of the business in the commonwealth. Such term shall not include any situation where there is a net gain in the number of permanent full-time employees of a business in the commonwealth as a result of a certified project, even though certain employees may have moved from one facility of the business to another facility within the commonwealth.

Substandard Area - an area wherein dwellings predominate which, by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light, or sanitation facilities, or any combination of these factors, are detrimental to safety, health, welfare or sound growth of a community.

2.04: Procedure for Soliciting Applications for Designation of an ETA or EOA

- (1) The EACC shall develop standard application forms for use by municipalities in applying for designation of an area as either an ETA or an EOA.
- (2) If requested to do so by the Director, the EACC shall solicit municipal applications for designation of ETAs and EOAs on a periodic basis and shall develop application procedures that operate on either a regional basis or a statewide basis.

2.05: Application Procedure for Designation of an ETA

- (1) Any municipality may submit an application to the EACC for designation of an area within the municipality's jurisdiction to be an ETA. There are, however, limits on the total number of ETAs that can exist in Massachusetts at any one time, as established by M.G.L. c. 23A, § 3E and by special acts of the Legislature.
- (2) Two or more municipalities may jointly file an application with the EACC for designation of an area as an ETA if the area in question falls within the land areas of two or more contiguous municipalities. A single application may request designation of more than one ETA, and a single application may also request simultaneous designation of both an ETA and an EOA.
- (3) Each municipal application must include the municipality's certification, accompanied by documentary and statistical information, as appropriate, that the area proposed for designation:
 - (a) is comprised of three or more contiguous census tracts or one or more contiguous municipalities; and
 - (b) meets one of the following requirements:
 1. the area has an unemployment rate that exceeds the statewide average by at least 25%, provided that such rates shall be based on the unemployment rates for the most recent four quarters for which data is available;
 2. the area is located in a metropolitan area and at least 51% of the households in the area proposed for designation have household incomes that are below 80% of the median household income in the metropolitan area in which the area is located;
 3. the area is not located in a metropolitan area and at least 51% of the households in the area proposed for designation have household incomes that are below 80% of the median household income in either the Commonwealth or a non-metropolitan area category established by the EACC;

2.05: continued

4. based on the most recent statistics of the U.S. Bureau of Census, the area has a poverty rate which is at least 20% higher than the average poverty rate for the Commonwealth;
5. the municipality in which the area is located has experienced a plant closing, permanent layoffs, or a military base closing resulting in the cumulative job loss of 2,000 or more within the four years prior to designation as an ETA;
6. the area is located in a community or labor market area with a distress factor greater than 1.33;
7. the area is owned by a state agency or authority, exceeds 50 acres and has, within ten years of the date of the ETA application, been used to manufacture or repair maritime vessels and is zoned for development or industrial use and is not being developed or used by such agency or authority;
8. the area has a commercial vacancy rate of 20% or more for the 12 month period preceding the application date.
9. the area has sited within it a generation facility, as defined pursuant to M.G.L. c. 164, § 1, which has a market value at the time of sale that is at least 50% less than its current net book value;
10. the area has sited within it a facility of at least 1,000,000 square feet that would qualify as an abandoned building under M.G.L. c. 63, § 38O; or
11. the area has sited within it a development project of at least 200 acres to be used for the establishment of a regional technology center with the capacity of supporting the build-out of 3,000,000 square feet of commercial or industrial space. The EACC shall interpret 402 CMR 2.05(3)(b)11. in light of 402 CMR 2.05(4).

For the purposes of 402 CMR 2.05, "median household income" shall be determined based on the most recent statistics available from the U.S. Bureau of the Census as of the date of application.

(4) In determining whether an ETA application satisfies the criteria stated in 402 CMR 2.05(3)(b)11., the EACC shall give weight to the factors listed in 402 CMR 2.05(4)(a) through (m). An application need not necessarily be viewed favorably under all of the factors in order for such application to be granted. The list of factors is as follows:

- (a) Whether the application relates to an ongoing or future "development project" or instead focuses on pre-existing businesses or entities in the area;
- (b) Whether the "development project" or "regional technology center" has a name and whether such name is consistent with the concept of a "regional technology center";
- (c) Whether the "development project" has a physical and/or functional "center";
- (d) Whether the various features or structures of the "center" are physically or functionally connected;
- (e) Whether such "center" is focused on technology-based industries or initiatives;
- (f) Whether an organization or apparatus is in place or being developed to coordinate and support the aims of the "center";
- (g) The precise layout of the 200 or more acres on which the "center" is located, including whether the 200 or more acres for the "center" are contiguous and situated in a manner that is consistent with the concept of a "regional technology center";
- (h) In the event that the 200 or more acres for the "center" are not wholly contiguous, whether such acres can still be properly considered part of a "regional technology center";
- (i) Where multiple municipalities are part of the "center," whether such communities intend to work together to support the aims of the "center";
- (j) Where the "center" is located in only one community, whether such "center" can truly attain a "regional" focus;
- (k) Whether the "center" has the capability of supporting the build-out of at least 3,000,000 square feet of commercial or industrial space;
- (l) Whether the "center" has a marketing plan, and whether such plan is regional in nature and directed at technology-based industries or associations; and
- (m) Whether there is existing infrastructure in place capable of supporting and sustaining the center.

2.05: continued

- (5) In addition to providing information that meets the minimum requirements listed in 402 CMR 2.05(3), the applicant should provide extensive supplemental information in support of its application. Such information should include, but is not limited to, the following:
- (a) financial reports and analyses documenting the likely effect of ETA designation on the area, the municipality and the region;
 - (b) a financial evaluation of the likely effect of ETA designation on the receipt of local and state tax revenue;
 - (c) the anticipated effect of ETA designation on the expansion of permanent employment opportunities in the ETA, the municipality, the region, and the Commonwealth;
 - (d) correspondence from businesses and regional business associations evidencing support for designation;
 - (e) statistical and economic data to support ETA designation;
 - (f) analysis of the existing roads, utilities, and other infrastructure in the area and changes required in the infrastructure, including costs and funding sources available for such changes, should designation be approved; and
 - (g) any other information describing special circumstances that justify or support the application.

2.06 Review and Approval of ETA Applications

- (1) The EACC shall review applications for designation of an ETA based on the following process:
- (a) the EACC shall review each application to determine whether it meets the minimum criteria set forth in 402 CMR 2.05(3); and
 - (b) the EACC, after determining that the application has met the minimum criteria, shall further evaluate each application on its own merits or in comparison to other applications that have been submitted to the EACC in order to determine whether granting of the applications will further the goals of the EDIP and promote the economic development of the commonwealth.
- (2) If the EACC approves the designation of an ETA, it shall provide written notice to the municipality and may attach specific conditions to such designation as it determines appropriate.
- (3) If the EACC does not approve the ETA application, it shall provide written notice to the municipality and include a statement of the reasons for the EACC's decision not to make such designation.
- (4) Any municipality whose application was not designated may resubmit its application at a later date and the EACC may work with each such municipality to improve the merits of its application.

2.07: Application Procedure for Designation of an EOA

- (1) A municipality may submit an application to the EACC for designation of an area within an ETA as an EOA. Municipalities may simultaneously submit a single application requesting designation of both an ETA and an EOA. A municipality may apply for designation of more than one EOA within a designated ETA.
- (2) Municipal applications for designation of an EOA may be submitted to the EACC at any time unless the EACC determines to solicit and review applications on a competitive basis, in which event the timelines for submission, review, and designation of EOAs shall be as provided in such solicitation.
- (3) A municipal application for designation of an EOA must request such designation for a specified period of years, not less than five years and not more than 20 years, and must include the municipality's certification, supported by documentary and statistical evidence, that:
- (a) the area proposed for designation is within the municipality and is wholly within an area that has either been designated as an ETA or has an application pending before the EACC for designation as an ETA; and
 - (b) the area proposed for designation either:

2.07: continued

1. meets the definition of a "Blighted Open Area", "Decadent Area", or "Substandard Area" as defined in 402 CMR 2.03;
 2. is an area within which there has been a plant closing or permanent layoffs which have resulted in a cumulative job loss of 2,000 or more full-time employees within the previous four years; or
 3. has sited within it a generation facility, as defined pursuant to M.G.L. c. 164, § 1, which has a market value at the time of sale that is at least 50% less than its current net book value.
- (4) The application must provide any additional information and meet such additional requirements as prescribed by the EACC.
- (5) The application must also contain the following documentary materials:
- (a) a detailed map of the area proposed for designation, which clearly delineates and identifies the area and which depicts, with particularity, existing streets, highways, waterways, natural boundaries, and other physical features;
 - (b) a statement describing the economic development goals of the municipality for the area proposed for designation during the first five year period that the EOA would be in effect;
 - (c) a statement which describes the manner and extent to which the municipality intends to provide for an increase in the efficiency of the delivery of local services within the area proposed for designation;
 - (d) a plan, if any exists, that would link the municipality's choice of banking institutions to the performance of such institutions in complying with the requirements of the Community Reinvestment Act of 1977, 12 U.S.C. § 2901 *et seq.*; and
 - (e) the identity of the person who shall be authorized to review and approve project proposals for and on behalf of the municipality and the standards and procedures to be employed by such person.
- (6) Whenever a municipal application is submitted by a municipality with a population that exceeds 50,000 people according to the most recent United States Census, the application must also include an economic development plan which contains the following elements:
- (a) a proposal for streamlined licensing procedures for certified projects within the area proposed for designation;
 - (b) a proposal for the provision of adequate infrastructure support, including transportation access, water and sewer hook-ups, lighting, and other utilities, to and for certified projects within the area proposed for designation;
 - (c) a description of the municipality's intentions to secure access to publicly or privately sponsored training programs for employees of certified projects, or others who reside in the ETA;
 - (d) a plan to increase the level of involvement by private persons and community development organizations in the economic revitalization of the area proposed for designation, which may include commitments from private persons to provide jobs and job training to residents and employees who work, or who will work, for certified projects in the area proposed for designation.
- (7) Every municipal application must include a binding written offer from the municipality to provide to certified projects within the EOA either tax increment financing or a special tax assessment as follows:
- (a) if tax increment financing is proposed, the offer shall contain a tax increment financing plan adopted in accordance with the provisions of M.G.L. c. 40, § 59, and 760 CMR 22.00.
 - (b) if a special tax assessment is proposed, the offer shall set forth the following assessment schedule for the land and improvements for a certified project:
 1. in the first year, an assessment of 0% of the actual assessed valuation of the parcel; provided, that such assessment shall be granted for the year designated in the binding written offer;
 2. in the second year, an assessment of up to 25% of the actual assessed valuation of the parcel;
 3. in the third year, an assessment of up to 50% of the actual assessed valuation of the parcel;

2.07: continued

4. in the fourth year, an assessment of up to 75% of the actual assessed valuation of the parcel; and
5. in subsequent years, assessments of up to 100% of the actual assessed valuation of the parcel.

(8) Each municipality is encouraged to include in its application specific information outlining the efforts that will be undertaken to take advantage of other local, state, or federal programs to contribute to the success of the proposed EOA, including, but not limited to:

- (a) the use of other federal, state, and local economic development incentives;
- (b) the use of appropriate employment and training programs which will increase the probability that residents of the ETA will be able to benefit from the full measure of employment opportunities to be presented by the creation of the proposed EOA;
- (c) the manner and extent to which the application is consistent with any federally initiated enterprise zone programs; and
- (d) Municipalities should identify the names and nature of businesses that have indicated an intention to locate or expand in a proposed EOA and are encouraged to include with their applications letters of intent from such businesses, outlining the number of jobs that would likely be created if EOA designation occurs and a timetable for the development of a project within the proposed EOA.

2.08: Review of EOA Applications and Designation of EOAs

(1) The EACC shall review each EOA application to determine whether it has met the mandatory criteria set forth in 402 CMR 2.07. The EACC may, at any time, require an applicant to submit additional information relating to the application and may conduct independent reviews as it determines appropriate.

(2) Upon a determination that the application has met the mandatory criteria, the EACC shall further evaluate each application based on the non-mandatory information submitted with the application.

(3) The EACC shall consider the relative merits and overall quality of each application in comparison to:

- (a) other pending applications;
- (b) prior approved applications; and
- (c) competing applications submitted in the context of a group solicitation application.

(4) In evaluating municipal applications, the EACC shall consider more favorably those applications that demonstrate the following:

- (a) a thorough planning effort by the municipality indicating the municipality's ability to provide actual economic benefits to the designated EOA;
- (b) identification of serious proposals from businesses that have indicated an intention to locate or expand in the EOA within a specific time period;
- (c) establishment of a realistic timetable for the flow of economic benefits that are expected to result from EOA designation;
- (d) the timely creation of new jobs; and
- (e) a heightened need for economic development.

(5) In order for the EACC to approve the designation of an EOA, it must be satisfied that:

- (a) there is a reasonable probability that businesses will be induced to locate or expand in the area proposed for designation; and
- (b) designation will increase the prospects of achieving economic stability and reduce chronic unemployment in the area proposed for designation.

(6) If the EACC approves the designation of an EOA, it shall determine the term of the EOA which shall not exceed the term requested by the municipality. The EACC shall provide written notice to the municipality and may attach specific conditions to such designation as it deems appropriate.

2.08: continued

- (7) If the EACC does not approve the EOA application, it shall provide written notice to the municipality, and shall include a statement of the reasons for the EACC's decision not to make such a designation.
- (8) Any municipality whose EOA application was not designated may, at its discretion, resubmit its application at a later date and the EACC may work with each such municipality to improve the merits of its application.
- (9) The EACC shall review the designation of each EOA at least once every two years and, in its discretion, may revoke or suspend an EOA in accordance with the provisions of 402 CMR 2.12. With respect to those EOAs for which the EACC has received no evidence of a material deviation from the approved obligations and representations of the participating municipality, the receipt and review by the EACC of an EOA's annual report shall be sufficient to satisfy the EACC's obligations under 402 CMR 2.08(9).

2.09: Certification of Projects

- (1) Businesses that intend to locate or expand their operations in an EOA may submit a project proposal to the EACC for certification of such project under the EDIP. The EACC shall develop standard forms to be used by businesses that request project certification.
- (2) Any business which controls a facility that is located or which intends to locate in an EOA may file a project proposal with the EACC.
- (3) To be considered for designation as a certified project, the project proposal must meet the following mandatory requirements:
 - (a) If the project proposal relates to a facility that is already located, as of the date of the proposal, in a designated EOA, the proposal must provide for a proposed expansion of permanent full-time employees at such facility, which expansion will:
 1. increase the number of permanent full-time employees at the facility by at least 25% over the five-year period following certification of the project; and
 2. not constitute a replacement or relocation of permanent full-time employees of the business who work at other facilities located in the Commonwealth.
 - (b) If the project proposal relates to a facility that is to be located within an EOA after the date of the proposal, the proposal must be either:
 1. the business' first facility within the Commonwealth; or
 2. a new facility and not a replacement or relocation of an existing facility already located in the Commonwealth; or
 3. an expansion of an existing facility that will increase the number of permanent full-time employees of the controlling business in the Commonwealth.

The EACC recognizes the large variety of employment situations that may arise in modern businesses. If a project proponent is uncertain as to whether a particular employment situation meets the definitions contained in 402 CMR 2.00, it is encouraged to include a description of the employment situation and an explanation of why particular employees should be afforded a certain status under 402 CMR 2.00, and the EACC will consider such issue on a case-by-case basis.
- (4) The project proposal shall provide detailed information describing the following:
 - (a) the location of the project;
 - (b) the nature and purpose of the project;
 - (c) the number of permanent full-time jobs that are expected to be created if the project proceeds, including a designation of the number of jobs that will likely be given to residents in the project ETA, accompanied by a description of the affirmative action goals and recruitment techniques that will be utilized to fill the newly created jobs;
 - (d) a description of the economic benefits to the project and the business that will result if the project is certified; and
 - (e) any agreements between the business and area banking institutions relating to the intentions of the business to deposit funds in those banks and the banks' intentions to commit a portion of such deposits to fund loans to businesses in the EOA, pursuant to the Small Business Capital Access Program established by M.G.L. c. 23A, § 57.

2.09: continued

(5) The project proposal received from the business must be accompanied by a written approval of the proposal by the municipality in which the EOA is located. The municipal approval shall confirm that the application submitted by the business meets the requirements of 402 CMR 2.09(3), and shall also state the following:

- (a) the project, as proposed, is consistent with and can reasonably be expected to benefit significantly from inclusion in the EOA;
- (b) the project, together with all other projects previously certified for the EOA, will not overburden the municipality's infrastructure and utilities servicing the EOA; and
- (c) the project as described in the proposal will have a reasonable chance of increasing employment opportunities for residents of the project ETA, thereby reducing blight, economic depression and reliance on public assistance.

(6) The project proposal shall also contain a request, accompanied by a written approval from the municipality, that the project be designated as a certified project for a specific number of years, which shall not be less than five years nor more than 20 years, provided that the period of project certification may, in no event, exceed the duration of the EOA in which the project is located.

(7) The EACC may designate the project as a certified project if it finds the following:

- (a) the project proposal meets the mandatory criteria required in 402 CMR 2.09(3) and (4), and contains the municipal approvals required in 402 CMR 2.09(5) and (6); and
- (b) the project, if certified, will have a reasonable chance of increasing employment opportunities for residents of the project ETA, thereby reducing conditions of blight, economic depression, and widespread reliance on public assistance.

(8) The EACC may decline to certify a project if the amount of the tax benefit that the business would receive if the project were certified is disproportionately high in relation to

- (a) the number of permanent full-time jobs that are expected to be created by the project, or
- (b) other benefits provided by the project to the municipality or to the state.

(9) The EACC shall evaluate, grant, or deny certification of a project proposal within 90 days of its receipt of such proposal; provided, however, that if the EACC determines that a project proposal is incomplete, it may either reject such proposal and return it to the applicant or request additional information to complete the proposal. If the EACC requests additional information, the 90 day review period shall commence upon receipt of the additional information requested.

(10) If the EACC fails to act on a project proposal within the 90 day period as described in the foregoing paragraph, the project proposal shall be considered to have been approved and the EACC shall take the necessary procedural steps to designate the project as a certified project for a period of five years.

(11) Transfer of Facility Ownership. A facility that has been designated a certified project shall not lose its certified project status upon a transfer of ownership of such facility provided that:

- (a) an instrument of assignment is duly executed between the business that originally owned the facility and the successor business, which instrument of assignment shall contain a written acceptance by the successor business of the duties and obligations of the original business including, without limitation, the duties and obligations as such are represented in the EACC's terms of approval of said facility as a certified project; and
- (b) the EACC approves by resolution said assignment, such approval to be based on a determination of the EACC that said successor business has the intention and capacity to carry out the duties and obligations of the original business.

402 CMR 2.00 does not govern the amount of tax benefits or credits that may be generated by a project or the availability of such credits or benefits to the owners of facilities that have been transferred in accordance with 402 CMR 2.09(11), or the possible recapture of such credits or benefits. For guidance on these issues, *see* 830 CMR 63.38N.1, promulgated by the Department of Revenue.

2.09: continued

(12) Leasing of Property. 402 CMR 2.00 does not govern the amount or availability of tax credits or benefits that may or may not be available to a lessor or lessee when real property associated with a certified project is leased. For guidance on these issues, *see* 830 CMR 63.38N.1, promulgated by the Department of Revenue.

(13) Relation to Tax Laws. The EACC does not administer or interpret the tax laws of the Commonwealth, and businesses using or considering the use of the EDIP cannot rely on the EACC or its staff for advice or guidance in regard to tax matters. Such businesses are advised to consult their tax advisors and the Massachusetts Department of Revenue on all tax matters relating to the EDIP.

2.10 Certification of Tax Increment Financing Plans

Tax increment financing (TIF) plans shall be certified by the EACC in accordance with the provisions of 760 CMR 22.00.

2.11: Reporting Procedures

(1) The EACC will develop procedures for monitoring its designations of ETAs and EOAs, its certification of projects and its approval of TIF plans to ensure that such designations, certifications and approvals continue to meet the requirements and further the purposes of the EDIP program and the statutes and regulations governing the EDIP program and TIF plans.

(2) Such monitoring procedures will require municipalities and businesses to submit information to the EACC, including information concerning whether employment targets have been met, in response to both routine compliance requests and requests for special information. The procedures may specify the form and substance of the information that may be required by the EACC and may require that such information be submitted under the pains and penalties of perjury.

(3) Satisfactory compliance by municipalities and businesses with the EACC's monitoring procedures is deemed to be a continuing condition to the designation of an ETA and an EOA, the designation of a project as a Certified Project, and the approval of a TIF plan.

2.12: Revocation and Suspension of EOA Designation

(1) The designation of an EOA may be revoked by the EACC under the following circumstances:

(a) upon the petition of the municipality, which shall be granted by the EACC as a matter of course, provided that the municipality describe its reasons for seeking to revoke an EOA; or

(b) if the EACC determines, based on its own investigation, that plans and commitments originally incorporated with the municipal application are materially at variance with the conduct of the municipality subsequent to the designation and such variance is found to frustrate the public purpose which such designation was intended to advance.

(2) If a municipality fails to provide the EACC with information requested by it pursuant to 402 CMR 2.11 within the time frame identified by the EACC, or otherwise fails to comply with designated reporting procedures, such failure shall be grounds for revoking the designation of such EOA.

(3) In addition, if a municipality fails to provide the EACC with information requested by it pursuant to 402 CMR 2.11 or otherwise fails to comply with designated reporting procedures, the EACC may suspend the designation of an EOA until such failure is rectified. During such suspension, the EACC will not certify any projects within such EOA.

(4) Any revocation of an EOA shall only apply prospectively to deny certification to any projects that are not certified prior to such revocation and shall not apply to, nor revoke any benefits due to or which may become due to, any certified project already in existence in an EOA.

2.12: continued

(5) Prior to revoking the designation of an EOA, the EACC shall provide the appropriate municipality or municipalities with reasonable notice and an opportunity to be heard on the matter. Any hearing provided pursuant to 402 CMR 2.12(5) shall be conducted in a manner directed by the EACC.

2.13: Revocation of the Certification of a Project

- (1) The certification of a project may be revoked by the EACC upon:
 - (a) the petition of the municipality or the petition of the Director; and
 - (b) the independent investigation and determination of the EACC that representations made by the business in its project proposal are materially at variance with the conduct of the business subsequent to the certification and such variance frustrates the public purposes which such certification was intended to advance. When the actual number of permanent full-time employees employed by the business at the project from among residents of the project ETA is less than 50% of the number of such permanent full-time employees who were projected to be employed in the project proposal, it shall be deemed a material variance for the purposes of a revocation determination; provided, however, that the EACC must still be satisfied that such variance frustrates the public purposes which such certification was intended to advance before revoking the project.
- (2) In determining whether to revoke a project certification, the EACC may consider whether the amount of the tax benefit that the business is receiving pursuant to the certification is disproportionately high in relation to
 - (a) the number of permanent full-time jobs that have been created by the project, or
 - (b) other benefits provided by the project to the municipality or the state.
- (3) If a business fails to provide the EACC with information requested by it pursuant to 402 CMR 2.11 or otherwise fails to comply with designated reporting procedures, such failure shall be grounds for revoking the certification of such project.
- (4) Any such revocation shall only be applied prospectively and shall not apply to nor revoke any benefits due to the project prior to the year in which the revocation determination is made, unless the EACC determines that the business made a material misrepresentation in its project proposal, in which case both the Commonwealth and the municipality shall have causes of action against the business for the value of any economic benefits received subsequent to the date on which such material misrepresentation was made.
- (5) Prior to revoking the certification of a project, the EACC shall provide the project proponent with reasonable notice and an opportunity to be heard on the matter. Any hearing provided pursuant to 402 CMR 2.13(5) shall be conducted in a manner directed by the EACC.

2.14: Revocation of a TIF Plan

- (1) The EACC may revoke the certification of a TIF Plan in accordance with the procedures set forth in 760 CMR 22.08.
- (2) If a party to a TIF Plan and to the TIF agreements incorporated in the TIF Plan fails to provide the EACC with information requested by it pursuant to 402 CMR 2.11 or otherwise fails to comply with designated reporting procedures, such failure shall be grounds for revoking the approval of all or a relevant portion of such TIF Plan.

2.15: Changes in Statistical Criteria

- (1) The statistical criteria employed by the EACC in making any decision related to an application for designation of an ETA or EOA or a proposal for designation of a certified project shall be the most recent data available as of the date of such application or proposal.
- (2) The EACC shall be under no obligation to revoke or modify any designation or certification because of changes in statistical data which are published subsequent to a designation decision.

2.15: continued

(3) In the event the statistical categories incorporated by reference in M.G.L. c. 23A, §§ 3D through 3F, and 402 CMR 2.00 are subsequently materially altered or superceded, the EACC may develop or employ new categories of statistical criteria which most nearly comport with the aforesaid referenced criteria; provided, that said new categories of statistical criteria shall become effective when approved by the Director.

2.16: Designation of "Exceptional Opportunity" Areas

Pursuant to M.G.L. c. 40, § 59 and 760 CMR 22.04, the Director of the Department of Business and Technology may designate certain areas of the Commonwealth as "presenting exceptional opportunities for increased economic development," thereby permitting the designation of a TIF Zone within such area. In making such designation, the Director shall consider whether there is a strong likelihood that one more of the following will occur within the area in question within a specific and reasonably proximate period of time:

- (a) a significant influx or growth in business activity,
- (b) the creation of a significant number of new jobs and not merely a replacement or relocation of current jobs within the Commonwealth, and
- (c) a significant increase in the prospects of achieving economic stability. The Director may seek the advice and assistance of the EACC prior to making a designation under 402 CMR 2.16.

2.17: Miscellaneous

- (1) The EACC and its director shall work with interested municipalities and businesses to assist such municipalities and businesses to understand the purpose and requirements of the application and proposal processes and to minimize the administrative burden associated with such application process.
- (2) The EACC may adopt by-laws to govern its own affairs.
- (3) The EACC shall seek to continually revise and amend its procedures and 402 CMR 2.00 to reflect changed circumstances and its experiences in program implementation.
- (4) The provisions of 402 CMR 2.00 are severable, and if any of the provisions herein are held by a court of competent jurisdiction to be contrary to law, such decision shall not impair any of the remaining provisions.

2.18: Emergency Waiver of Regulations

The EACC has full power and authority to waive and decline to follow any portion of 402 CMR 2.00 if it determines that such action is necessary and appropriate to further the goals of the Economic Development Incentive Program or is in the public interest; provided, however, that:

- (1) Such waiver is accomplished by a vote of the EACC;
- (2) The EACC issues a written statement of its reasons for such waiver; and
- (3) The EACC may not waive any requirements or criteria that are mandated by any general or special law.

402 CMR: ECONOMIC ASSISTANCE COORDINATING COUNCIL

2.19: Related Regulations and Administrative Guidance

As of March 12, 2004, 402 CMR 2.00 relates to other aspects of the Economic Development Incentive Program: 760 CMR 22.00 (Tax Increment Financing Regulation); 830 CMR 63.38 N.1 (Department of Revenue Regulations for the Economic Opportunity Area Credit). See also Department of Revenue Informational Guideline Release No. 94-201.

REGULATORY AUTHORITY

402 CMR 2.00: M.G.L. c. 23A, §§ 3A through 3F; c. 40, § 59.

402 CMR 3.00: DISTRICT IMPROVEMENT FINANCING

Section

- 3.01: Purpose and Scope
- 3.02: Overview and Applicability of District Improvement Financing Program
- 3.03: Definitions
- 3.04: Local Approval Process
- 3.05: General Procedures Governing Filing and Review of DIF Applications
- 3.06: Applying for Approval of a Development District
- 3.07: Approval of Proposed Development Districts
- 3.08: Applying for Approval of a Development Program
- 3.09: Approval of Proposed Development Programs
- 3.10: Amendments to Development Districts and Development Programs
- 3.11: Written and Oral Comments From Interested Parties
- 3.12: Status Reports
- 3.13: Public Participation During Implementation of Development Program
- 3.14: Noncompliance By Municipality
- 3.15: Municipal Recordkeeping
- 3.16: Technical Assistance
- 3.17: Miscellaneous
- 3.18: Emergency Waiver

3.01: Purpose and Scope

The purpose of 402 CMR 3.01 through 3.18 is to establish the procedures by which the Economic Assistance Coordinating Council (EACC) will administer the District Improvement Financing (DIF) program codified in M.G.L. c. 40Q. Specifically, pursuant to M.G.L. c. 40Q, § 2, the EACC is responsible for reviewing and approving proposed "development districts" and "development programs" that are adopted by cities and towns in the Commonwealth seeking to take advantage of the DIF program. 402 CMR 3.00 describes:

- (a) certain requirements that must be met by towns and cities in obtaining local approval of a development district and development program;
- (b) the procedures that towns and cities should follow in applying for EACC approval of development districts and development programs;
- (c) the procedures, criteria and considerations that will govern the EACC's determination of whether to approve a particular development district and development program; and
- (d) related procedural and administrative issues pertaining to the EACC's role in the DIF program.

3.02: Overview and Applicability of District Improvement Financing Program

(1) In General. The District Improvement Financing program is available to all cities and towns in the Commonwealth. The program provides municipalities with a variety of tools to promote development in targeted geographic areas. In particular, the DIF program enables municipalities to finance public works and infrastructure projects in a designated area by "capturing" the increase in property tax revenues derived from new housing, commercial or industrial activity in that area and applying such revenues towards the municipality's development program. Such incremental revenues can either directly pay for the planned municipal improvements (from year to year) or they can be estimated and pledged in advance towards the repayment of bonds to be issued by the municipality to pay for the municipal improvements.

(2) Basic Process. Under the program, a municipality may propose a specific "development program" that it intends to undertake within an identified "development district." All of the development districts within a municipality may not together comprise more than 25% of the total area of the municipality. Each such development district and development program must be approved by the EACC.

3.02: continued

Within each development district and consistent with its development program, municipalities are afforded certain powers under the DIF statute, including the power to acquire real property by eminent domain, enter into contracts, receive grants, make relocation payments, lay out roads, and take other actions in furtherance of its development activities. Moreover, municipalities can designate (with the approval of the EACC) a particular development district as an "invested revenue district" and a development program within such district as an "invested revenue district development program". Municipalities undertaking development programs within an invested revenue district may, but not limited to, finance such programs by issuing general obligation or revenue bonds which are to be repaid by some or all of the "program revenues" received by the municipality. The "tax increment" is the property taxes paid upon the "captured assessed value" of the property in the revenue district; *i.e.*, the amount by which the current improved value of an invested revenue district exceeds the "original assessed value" of the district, as defined in 402 CMR 3.03. A municipality can choose to pledge all or a portion of the tax increment (as well as other revenues) towards repayment of the bonds that it issues.

3.03: Definitions

As used in 402 CMR 3.00, the following words shall have the following meanings unless the context clearly requires otherwise:

Affordable Housing. Housing facilities which are affordable to households with incomes at or below 80% of the median income for the area in which the city or town is located as defined by the U.S. Department of Housing and Urban Development and adjusted for household size.

Base Date. The last assessment date of the real property tax immediately preceding the creation of a development district.

Captured Assessed Value. The valuation amount by which the current assessed value of an invested revenue district exceeds the original assessed value of the district.

Development District. A specified area within a city or town that is to be developed by the municipality under a development program, subject to the approval of the EACC under 402 CMR 3.07. A development district may consist of one or more parcels of land, whether or not contiguous, or one or more buildings or structures, whether or not adjacent. The total area of all development districts shall not exceed 25% of the total area of a city or town.

Development Program. A statement of means and objectives adopted by the municipality, and subject to the approval of the EACC under 402 CMR 3.09, that is designed to improve the quality of life, physical facilities and structures and the quality of pedestrian and vehicular traffic control and transportation within a development district. A development program may also include a statement of means and objectives designed to increase or improve affordable and market rate housing within a development district. A development program submitted to the EACC for approval must contain the information described in 402 CMR 3.08.

Financial Plan. A statement of the costs and sources of revenues required to accomplish a development program, including the:

- (a) the cost estimates for the development program;
- (b) the amount of indebtedness to be incurred; and
- (c) sources of anticipated capital.

Inflation Factor. A ratio:

- (a) the numerator of which is the total assessed value of all parcels of all residential and commercial real estate that are assessed at full and fair cash value for the current fiscal year minus the new growth adjustments factor for the current fiscal year attributable to the residential and commercial real estate as determined by the commissioner of revenue pursuant to M.G.L. c. 59, § 21C, paragraph (f); and
- (b) the denominator of which shall be the total assessed value for the preceding fiscal year of all the parcels included in the numerator. This ratio, however, shall not be less than 1.

3.03: continued

Invested Revenue District. A development district, or a portion of a development district, that uses tax increment financing, as defined in 402 CMR 3.03: Development District.

Invested Revenue District Development Program. A development program adopted by the municipality that contains information and statements of intention regarding the municipality's use of tax increment financing to fund the projects in such development program. An invested revenue district development program submitted to the EACC must contain the specific information described in 402 CMR 3.08(3)(e), as well as the other information described in 402 CMR 3.08, where applicable.

Material Change to a Development District. A change to a development district relating to matters which were required to be, or might properly have been, the subject of a development district application approved locally pursuant to 402 CMR 3.04 and approved by the EACC pursuant to 402 CMR 3.06 and 3.07. Any development district boundary change(s), other than technical corrections, is(are) material.

Material Change to a Development Program. A change to a development program relating to matters which were required to be, or might properly have been, the subject of a development program application approved locally pursuant to 402 CMR 3.04 and approved by the EACC pursuant to 402 CMR 3.08 and 3.09. A material change will vary program by program and should be judged according to the "reasonable person" standard. No changes are permissible which would impair any liability, either current or future, including but not limited to any outstanding indebtedness or other obligations. Any program change(s) that alter(s) the stated public purpose, primary usage, and/or reasonable probability of success is(are) material. Municipalities may further define material change in the development program application with specific criteria, which must be approved by the municipality and the EACC.

Original Assessed Value. The aggregate assessed value of the development district as of the base date, increased each year by a percentage equal to the inflation factor. The original assessed value shall be increased or decreased annually as a result of a change in the tax-exempt status of the property.

Project. A project to be undertaken in accordance with a development program.

Project Costs. Any expenditure made or estimated to be made, or monetary obligations incurred or estimated to be incurred with respect to a project that is part of a development program, including, but not limited to, costs associated with a municipality's application for approval of a development district or development program, public works costs, acquisition costs, costs associated with the construction or rehabilitation of land or improvements for sale or lease to residential, commercial or industrial users within a development district plus any costs incidental to those improvements. Various types of projects costs are described in M.G.L. c. 40Q, § 1 and M.G.L. c. 40Q, § 2(c). Project costs, however, shall not include the cost of a building or a portion of a building used predominantly for the general conduct of government, such as a city hall, courthouse, jail, police or fire station or other state or local government office buildings.

Project Revenues. Receipts of a city or town with respect to a project including, without limitation, tax increments, investment earnings and proceeds from insurance or the disposition of property.

Public Purpose. Public purpose encourages increased residential, industrial and commercial activity in the Commonwealth.

Tax Increment. The portion of all real and personal property taxes assessed by a city or town upon the captured assessed value of property in a development district.

3.04: Local Approval Process

- (1) A municipality shall designate a public or private entity that will be responsible for developing a proposed development district and development program and seeking local approval for such development district and development program.
- (2) A municipality shall hold a public hearing on a proposed development district and development program prior to seeking municipal approval of such district and program, and shall also provide the public with an opportunity to submit written comments to the municipality on such district and program. A municipality may hold a single public hearing to simultaneously address a related development district and development program. The municipality shall create a written record of the public hearing, which shall include a description of the testimony offered by persons at such hearing.
- (3) A municipality shall provide the public including, but not limited to, the chief elected officers and the chairpersons of the legislative bodies of abutting cities and/or towns and the EACC, with reasonable notice of all public hearings and opportunities to provide written comments pertaining to a proposed development district and/or development program. Such notice shall be published in one or more local newspapers of general circulation, shall be posted in the municipality's main governmental building, and shall be sent to any person or group of persons who have requested notification. The notice shall be issued no less than 14 days prior to the public hearing or to the close of the comment period, as applicable. In addition, the information to be submitted to the municipality's governing body pursuant to 402 CMR 3.04(5) and (6) shall be made available to the public upon request prior to any public hearing and comment period.
- (4) The municipality must make a reasonable effort to provide all owners of real property that is to be acquired by the municipality as part of a proposed development program with direct written notice of any public hearings and opportunities to provide written comments pertaining to such development program.
- (5) When a proposed development district is presented to a municipal governing body for approval, all information identified in 402 CMR 3.06(2)(a) through (j) must be submitted to the governing body as part of such approval process.
- (6) When a proposed development program is presented to a municipal governing body for approval, all information identified in 402 CMR 3.08(3) must be submitted to the governing body as part of such approval process.

3.05: General Procedures Governing Filing and Review of DIF Applications

- (1) Municipal applications to the EACC for approval of a development district and for approval of a development program within such development district shall be jointly and simultaneously submitted to the EACC. A municipality's governing body, however, may approve a development district and a related development program either simultaneously or at different times.
- (2) Applications for approval of a development district and a development program shall be reviewed by the EACC, subject to the following provisions:
 - (a) The EACC may declare any application to be incomplete and may request that a municipality supplement its application with additional information.
 - (b) The EACC may request assistance from the Massachusetts Office of Business Development, the Massachusetts Department of Housing and Community Development, or any other state agency or instrumentality in evaluating an application for approval of a development district.
 - (c) The EACC may request that representatives from a municipality appear before the EACC to present the municipality's application, and to answer questions from the EACC regarding the application.

3.05: continued

(d) To the extent necessary and reasonable, the EACC may solicit reports or information from consultants and other third parties in evaluating an application for approval of a development district or development program, and may require the applicant to pay in advance the cost of obtaining such reports or information.

(3) The EACC shall meet to consider completed applications for approval of a development district and development program within 65 days of receiving such applications.

3.06: Applying for Approval of a Development District

(1) A development district designated and approved by a municipality will not become effective unless and until it is approved by the EACC. The EACC shall develop a standard application form for use by municipalities in applying for approval of an area as a development district.

(2) Applications by municipalities for approval of a development district shall contain the following:

(a) Plans or maps of the proposed development district and the immediately surrounding area, showing:

1. Boundaries of the development district and any significant district features that help define the nature and scope of the district which may include, but are not limited to, topographical, natural or environmental (including hazardous environmental) features;
2. Property lines and the foot-print of buildings and parking areas on each existing parcel of land;
3. Existing uses and ownership of each parcel, including identification of land in mixed uses and land in public use;
4. The current zoning of each parcel within the development district; and
5. All existing thoroughfares, public rights of way and easements.

(b) A listing of the assessed value of each parcel of real estate within the district, the most recent annual property tax levy on each such parcel, and any taxes past due and unpaid on each such parcel.

(c) Whether the proposed development district will contain an invested revenue district and, if so, the geographic boundaries of such invested revenue district;

(d) In those instances where the proposed development district will contain an invested revenue development district:

1. A statement identifying parcels, if any, within the invested revenue development district that are subject to a Tax Increment Financing (TIF) agreement pursuant to M.G.L. c. 40, § 59, an Urban Center Housing Tax Increment Financing (UCH-TIF) agreement pursuant to M.G.L. c. 40, § 60, or a special tax assessment pursuant to M.G.L. c. 23A, § 3E(3);
2. For those parcels identified in 402 CMR 3.06(2)(d)1. that are subject to a TIF agreement or UCH-TIF agreement, a copy of such agreements, as amended;
3. A statement describing the anticipated impact that the creation of the proposed invested revenue district will have upon any existing TIF or UCH-TIF agreements and upon the ability of the municipality to grant TIF or UCH-TIF agreements in the future and to take advantage of the Economic Development Incentive Program pursuant to M.G.L. c. 23A, § 3A *et seq.*

(e) A statement describing why the municipality has defined the boundaries of the development district (and any invested revenue development district therein) in the manner that is proposed.

(f) A map of the municipality identifying all existing and proposed development districts within the municipality, and indicating the percentage of the area of the municipality comprised by each such district.

(g) A certification from the municipality that all development districts, both current and proposed, do not exceed 25% of the total area of the municipality.

(h) A statement identifying the duration of the proposed development district (not to exceed 30 years) and a name for the proposed development district.

(i) A certification from the municipality that it has fully complied with the local approval requirements specified in 402 CMR 3.04 with regard to the proposed development district.

3.06: continued

- (j) A copy of the written record of the public hearing (relating to the development district) created by the municipality pursuant to 402 CMR 3.04(2), and any written comments that have been provided to the municipality by members of the public concerning the development district.
- (k) A certified copy of a formal, duly enacted order of the city council or town council of a municipality with evidence of approval by the mayor or city manager where such approval is otherwise required by law, or vote of the town meeting of a municipality, whichever is applicable, identifying and approving the proposed development district and identifying the entities and/or individuals who may act on behalf of the municipality in implementing a development program within such district.

3.07: Approval of Proposed Development Districts

- (1) The EACC shall approve a proposed development district if it determines that:
 - (a) The application for such development district is complete;
 - (b) The total area of all development districts within the municipality does not exceed 25%;
 - (c) The municipality has duly approved the development district;
 - (d) Approval of the development district will significantly further the public purpose of encouraging increased residential, industrial and commercial activity in the Commonwealth, as required by M.G.L. c. 40Q, § 2(a); and
 - (e) It is reasonably probable that the municipality will achieve its goals in creating the district.
- (2) If the EACC does not approve a municipality's application for a development district, it shall provide written notice to the municipality and a statement of reasons for denial of the application. A municipality that receives such a denial may subsequently re-apply to the EACC for approval of a development district in accordance with re-application procedures to be developed by the director of the EACC.

3.08: Applying for Approval of a Development Program

- (1) A municipality may not undertake any work in furtherance of a development program, including an invested revenue district development program, unless such program has been approved by the EACC and is within a development district that has been approved by the EACC. The EACC shall develop a standard application form for use by municipalities in applying for approval of a development program.
- (2) Each development district may contain only one development program.
- (3) An application for approval of a development program shall contain the following:
 - (a) Objectives. A statement of the objectives of the development program;
 - (b) Means. A statement describing how these objectives will be achieved through the proposed development program, including:
 - 1. A description of proposed development activities and projects within the designated development district, specifically identifying which activities and projects will be undertaken by public entities and which will be undertaken by private entities;
 - 2. Plans or maps illustrating changes to be made to the development district pursuant to the proposed development program, and specifically identifying:
 - a. Proposed property lines and the foot-print of buildings and parking areas on each parcel within the development district;
 - b. Proposed uses and zoning of all parcels within the development district;
 - c. Proposed thoroughfares, public rights of way and easements;
 - d. Those parcels to be acquired by the municipality;
 - e. Those parcels to be sold or disposed of by the municipality; and
 - f. Buildings or structures to be demolished, rehabilitated, or constructed.
 - 3. A list of buildings or structures to be constructed or renovated in connection with the development program, with a description of such construction or renovation, including who will be undertaking it.

3.08: continued

4. A list of buildings or structures to be demolished, either in whole or in part, in connection with the development program and by whom.
5. A description of how public ways and other infrastructure will be affected by the development program;
6. A description of streetscaping measures to be undertaken within the development district, including but not limited to, coordinated signage, façade and sidewalk improvements, beautification steps, and coordination plans.
7. A description of how transportation facilities and resources will be affected by the development program.
8. A description of provisions if any exist or if any are to be established to govern densities, land coverage, land uses, setbacks, offstreet parking and loading, and building height and bulk;
9. A statement describing how the development program will improve:
 - a. the overall quality of life within the development district;
 - b. the physical facilities and structures within the development district;
 - c. the quality of pedestrian and vehicular traffic control within the development district; and
 - d. the transportation facilities and resources within the development district.
10. An estimate of the number of jobs that will be created, retained, and eliminated as a result of the development program, and the wages and benefits associated with such jobs.

In describing a proposed development program, the municipality shall distinguish between those projects that will be undertaken and paid for by public entities and those projects that will be undertaken and paid for by private entities.

(c) Zoning. A statement describing whether, and to what extent, proposed projects to be undertaken within the development district would be in compliance with existing zoning laws and ordinances. With respect to proposed development that would not be in compliance with existing zoning laws and ordinances, the municipality shall explain how such compliance will be achieved, including a specification of the zoning changes that will be necessary to implement the development program.

(d) Financial Plan. A detailed financial plan, as defined in 402 CMR 3.03. The financial plan must explicitly identify sources of revenue that are sufficient to pay all project costs.

(e) Invested Revenue District Development Program. If the development program includes an invested revenue district development program, a statement containing the following:

1. Estimates of the captured assessed value of the invested revenue district, including projections of original assessed value and projected assessed value after one year, five years, ten years, 15 years, 20 years, 25 years, and 30 years, as applicable;
2. The portion of the captured assessed value to be applied to the development program and projected tax increments in each year of the program;
3. The specific projects, either in the invested revenue development district or in the development district as a whole, that will be funded by the tax increments; the timing and amount of such funding through tax increments; and what percentage portion of each project will be funded through tax increments;
4. The method of calculating the tax increments together with any provisions for adjustment of the method of calculation;
5. A projection of the tax revenues to be derived from the invested revenue district in the absence of a development program;
6. The board or officer of the city or town responsible for calculating the tax increment;
7. A description of the bond issuances or other debt obligations contemplated by the municipality in connection with the invested revenue district development program, including the terms and conditions of such issuances or obligations, and whether the bonds issued shall be general or special obligation bonds;
8. If the municipality intends to issue revenue bonds in support of the invested revenue district development program, a letter from the municipality's financial advisor or underwriter stating that the municipality's financial plan is sound and viable; and
9. A statement of the estimated impact of tax increment financing on all taxing jurisdictions in which the district is located.

3.08: continued

- (f) Housing. A description of plans, if any, for the development of housing, both affordable and market rate, as part of the development program, including the number of housing units that will be created as a result of the program.
- (g) Training. A description of workforce training or workforce development activities, if any is/are, to be undertaken in connection with the development program.
- (h) Municipal Acquisition of Properties. If a municipality intends to acquire property in connection with its development program, a statement identifying:
 1. all properties to be acquired by the municipality within the development district;
 2. the mode of acquisition of each property, including whether the property will be acquired by eminent domain, negotiated sale, or other means;
 3. the owner of such properties;
 4. the estimated cost of each property to be acquired and the basis for such estimate (which will be held confidential pursuant to M.G.L. c. 66);
 5. identification of any property to be acquired by the municipality in which any officer or employee of the municipality who, on account of an interest in the acquisition, would be required to make disclosure under M.G.L. c. 268A;
 6. the current and planned use of such properties; and
 7. plans for the relocation of persons displaced by the municipality's acquisition of such properties. Such plans shall conform to all applicable requirements in M.G.L. c. 79A and the regulations and guidelines thereunder.
- (i) Eminent Domain. If a municipality proposes to take property by eminent domain, pursuant to M.G.L. chs. 79 or 80A and subject to the confidentiality requirements as set forth in M.G.L. c. 66, it shall provide a statement as to why the property must be acquired in this manner. A municipality shall not take property by eminent domain unless there shall be a public purpose warranting such taking. The EACC may require, at the expense of the applicant paid for in advance, the written opinion of qualified independent counsel as to whether an application establishes the requisite public purpose.
- (j) Schedule and Duration. A schedule for implementing the development program containing a description of anticipated events during each of the first five years of the development program, and for each five-year period thereafter, and a statement identifying the duration of the development program. A development program may not exceed 30 years from the date of the approval of the development district by the EACC.
- (k) Interested Parties. The names and addresses of persons or entities that may have a direct interest in whether the proposed development program is approved by the EACC. If it is not practicable for the applicant to name these persons or entities individually, the municipality may refer to groups of persons or entities, provided that this is accomplished with a reasonable degree of specificity.
- (l) Name. A name for the development program.
- (m) Local Approval Requirements.
 1. A certification from the municipality that it has fully complied with the local approval requirements specified in 402 CMR 3.04 with respect to the development program;
 2. A copy of the record of the public hearing (relating to the development program) created by the municipality pursuant to 402 CMR 3.04(2) and any written comments that have been provided to the municipality by members of the public concerning the development program;
 3. A description of expected public participation during the execution of the development program; and
 4. A certified copy of a formal, duly enacted order of the city council or town council of a municipality with evidence of approval by the mayor or city manager where such approval is otherwise required by law, or vote of the town meeting of a municipality, whichever is applicable, identifying and approving the proposed development program and identifying the entities and/or individuals who may act on behalf of the municipality in implementing the development program.
- (n) Material Change Criteria. Municipalities choosing to further define material change shall propose the definition at the time of application.

3.09: Approval of Proposed Development Programs

- (1) The EACC shall approve a proposed development program if it determines that:
 - (a) The application for such development program is complete;
 - (b) The development program is to be undertaken within a development district approved by the municipality and by the EACC;
 - (c) The development program has been duly approved by the municipality;
 - (d) The municipality has, in accordance with M.G.L. c. 40Q, § 1, presented satisfactory assurances and evidence to the EACC that the development program will improve the quality of life, the physical facilities and structures, and the quality of pedestrian and vehicular traffic control and transportation within a development district;
 - (e) Approval of the development program will further the public purpose of encouraging increased residential, industrial and commercial activity in the Commonwealth, as required by M.G.L. c. 40Q, § 2(a); and
 - (f) There is a reasonable probability that the municipality's financial plan, development strategies, and other project plans will allow it to achieve the stated goals of the development program.
- (2) If the EACC does not approve a municipality's application for a development program, it shall provide written notice to the municipality and a statement of reasons for denial of the application. A municipality that receives such a denial may subsequently re-apply to the EACC for approval of a development program in accordance with re-application procedures to be developed by the director of the EACC.

3.10: Amendments to Development Districts and Development Programs

- (1) A municipality shall only make a material change(s) or amendment(s) to an approved development district or development program by complying with the local approval process specified in 402 CMR 3.04, as applicable for this change or amendment, and by receiving final approval from the EACC specified in 402 CMR 3.07 and 402 CMR 3.09, as applicable for this change or amendment.

Municipalities seeking to make a change(s) or amendment(s) to an approved development district or development program may obtain a determination from the EACC that such a change or amendment is or is not material. The EACC will respond within 30 days of receipt of a written request for clarification.

Municipalities shall send notice of any change(s) or amendment(s) to an approved development district or development program to the EACC. This/these change(s) or amendments are subject to EACC review for materiality. If the EACC deems such change(s) or amendment(s) to be material and has not been asked to approve it/them, the municipality shall be subject to 402 CMR 3.14: *Noncompliance by Municipality*.

- (2) The EACC will create a standard form to be used by municipalities in seeking EACC approval of an amendment to a development district or development program.
- (3) Applications for approval of an amendment to a development district or development program must, in addition to any other information required by the EACC, contain the following:
 - (a) A detailed description of the proposed amendment;
 - (b) The reason(s) for the amendment;
 - (c) The costs of the amendment, if any, and the method of financing such costs;
 - (d) The effect of the amendment on project activities;
 - (e) The impact of the amendment on any program of tax increment financing implemented by the municipality;
 - (f) A certification from the municipality that it has complied with the local approval requirements specified in 402 CMR 3.04, as applicable, with respect to the proposed amendment;
 - (g) A copy of the record of the public hearing (relating to the amendment) created by the municipality pursuant to 402 CMR 3.04(2) and any written comments that have been provided to the municipality by members of the public concerning the amendment; and

3.10: continued

(h) A certified copy of a formal, duly enacted order of the city council or town council of a municipality with evidence of approval by the mayor or city manager where such approval is otherwise required by law, or vote of the town meeting of a municipality, whichever is applicable, identifying and approving the proposed amendment.

(4) The EACC will review and, where appropriate, approve such proposed amendments in accordance with the procedures and criteria stated in 402 CMR 3.07 and 3.09, to the extent applicable.

3.11: Written and Oral Comments from Interested Parties

The EACC may establish a procedure for accepting the submission of comments by interested parties on a proposed development district or development program. In addition, pursuant to M.G.L. c. 23A, the EACC may schedule one or more hearings to provide interested parties with an opportunity to be heard on a proposed development district or development program.

3.12: Status Reports

Each municipality implementing an approved development program shall provide an annual status report to the EACC describing all significant activities, projects and events during the preceding year in furtherance of the program, including but not limited to, a list of properties acquired by the municipality by eminent domain during the preceding year, an update on the costs and financing of the program, including the status of tax increment financing for the program, and a schedule for the program containing a description of anticipated events during each of the next five years, and for each five-year period thereafter. Such reports shall be submitted on or before each anniversary of the development program's approval by the EACC. In addition, the EACC may, from time to time, request other information from municipalities implementing approved development programs, and such municipalities shall respond to such inquiries as directed by the EACC.

3.13: Public Participation During Implementation of Development Program

The EACC may issue guidelines or directives requiring a municipality that is implementing a development program to provide for public participation in the implementation process. Such guidelines or directives may, for example, require a municipality to issue periodic public notices or hold periodic public meetings or hearings.

3.14: Noncompliance By Municipality

(1) Following the EACC's approval of a development district and development program, the EACC shall have the continuing authority to monitor and enforce a municipality's compliance with representations made by the municipality in its development district and development program applications, as well as its compliance generally with 402 CMR 3.00 and M.G.L. c. 40Q. In particular, the EACC may take appropriate remedial actions where a municipality has:

- (a) Undertaken or demonstrated an intention to undertake a material change to a development district or development program previously approved by the EACC without obtaining EACC approval of such change through the amendment process described in 402 CMR 3.09;
- (b) Has failed to comply with the requirements of 402 CMR 3.12 after receiving initial written notice of such non-compliance and an opportunity to cure such non-compliance; or
- (c) Has otherwise contravened the requirements of 402 CMR 3.00 or M.G.L. c. 40Q;

(2) Such remedial actions may include, but are not limited to:

- (a) Revoking the approval, or suspending the implementation, of a development program, except where such program involves bond financing, commercial lending or other development financing;

3.14: continued

- (b) The issuance of an order by the EACC directing the municipality to adhere to an approved development district and/or development program or to comply with 402 CMR 3.00 and/or M.G.L. c. 40Q, and the referral of such order to the Office of the Massachusetts Attorney General for enforcement, if necessary;
- (c) Declining to approve any further amendments to a development district or development program proposed by that municipality; and
- (d) Declining to approve subsequent applications by that municipality for approval of a development district or development program.

3.15: Municipal Recordkeeping

All documents directly related to the EACC's approval and oversight of a development district or development program shall be maintained and kept for a period of seven years following the expiration of such development district and development program or three years following the date of final resolution of all legal claims relating to the development district or development program, whichever is longer. Such documents shall include, but not necessarily be limited to:

- (a) Applications for approval of a development district or development program;
- (b) Requests for amendments to an existing development district or development program;
- (c) Status reports and other information submitted to the EACC pursuant to 402 CMR 3.12; and
- (d) Orders or resolutions from municipal governing councils or boards pertaining to a development program or development district.

3.16: Technical Assistance

Municipalities may request assistance from the EACC concerning the establishment and the implementation of prospective or current development districts or programs. Subject to available resources, the EACC, or its staff, may provide such assistance in conjunction with the Massachusetts Office of Business Development and the Massachusetts Department of Housing and Community Development.

3.17: Miscellaneous

- (1) The EACC shall seek to revise and amend its procedures and 402 CMR 3.00 from time to time to reflect changed circumstances and its experiences in program implementation.
- (2) The provisions of 402 CMR 3.00 are severable, and if any of the provisions herein are held by a court of competent jurisdiction to be contrary to law, such decision shall not impair any of the remaining provisions.

3.18: Emergency Waiver

The EACC may waive any provision in 402 CMR 3.00 if it determines that such action is necessary and appropriate to further the goals of the DIF Program or is in the public interest; provided, however, that:

- (1) Such waiver is accomplished by a vote of the EACC;
- (2) The EACC issues a written statement of its reasons for such waiver; and
- (3) The EACC may not waive any requirements or criteria that are mandated by any general or special law.

REGULATORY AUTHORITY

402 CMR 3.00: M.G.L. c. 40Q.

NON-TEXT PAGE