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Enterprise Zone Program
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# Rules of Procedure of The Rhode Island Enterprise Zone Council *

**Amended and Restated Through January 25, 2011**

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*AUTHORITY:

Pursuant to Rhode Island General Laws 42-63-1 which establishes the Rhode Island Commerce Corporation, 42-64-3-1, as amended, which establishes Enterprise Zones and 42-35 relating to the Administrative Procedures Act, the Rhode Island Enterprise Zone Council has promulgated the Rules of Procedure herein. This document incorporates all prior changes made to the rules of procedures and supercedes all prior drafts. Public Hearing held on December 28, 2010 - Approved on January 25, 2011 by Rhode Island Enterprise Zone Council.

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# RULE I

## RULES OF PROCEDURE: ORGANIZATION AND OPERATION OF THE ENTERPRISE ZONE COUNCIL

The following are the rules for organization and operation of the Enterprise Zone Council as required by R.I.G.L. § 42-64.3-3.1(d).

**Section 1: Name**

The name of this Council shall be the Enterprise Zone Council as established by R.I.G.L. § 42-64.3-3.1(a).

**Section 2: Organization and Purpose**

2.01 Chapter 42-64.3 of the General Laws of 1956 entitled "Enterprise Zones" was amended by Chapter 340 of the Public Laws of 1991 to create an Enterprise Zone Council within the Rhode Island Commerce Corporation. The Council is responsible for promulgating rules and regulations for the Enterprise Zone Program, designating the Zones, and certifying Qualified Businesses.

The Council is supported by staff from the Rhode Island Commerce Corporation, the Division of Planning and the Division of Taxation in the Department of Administration, and the Governor's Policy Office.

2.02 The objective of the Rhode Island Enterprise Zone Program is "to undertake an experimental program to stimulate economic revitalization, promote employment opportunities, and encourage business development and expansion in distressed areas" by providing or encouraging:

a. Improved local revitalization efforts that emanate from private, non-profit and public commitment to the area through the coordinated targeting of available resources;

b. Tax incentives at the state and local level; and

c. Actions to reduce and/or streamline state and local regulatory processes.

**Section 3: Definitions**

3.01 The following words and terms shall have the following meanings wherever used in these rules.

3.02 "Act" means the Rhode Island Enterprise Zone Act (Chapter 64.3 of Title 42 of the General Laws of Rhode Island, as amended).

3.03 “Census Tract” shall have the same meaning as defined in the United States Department of Commerce, Bureau of the Census, Census of Population and Housing Users Guide.

3.04 “Corporation” means the Rhode Island Commerce Corporation created and organized under Rhode Island General Laws § 42-64-1.

3.05 “Council” shall mean the Enterprise Zone Council as provided for in R.I.G.L. § 42.64.3-3.1.

3.06 “Enterprise zone” or “Zone” means (a) an economically distressed United States Bureau of the Census division or delineation, in need of expansion of business and industry and the creation of jobs, which is determined by the Council to be qualified for the benefits of this program and (b) effective July 2, 1998, federal empowerment zones or federal enterprise communities “Rhode Island” as such terms are defined in 26 U.S.C.§1391 et. seq., notwithstanding such statute’s expiration on December 31, 2004

3.07 “Governing authority” means the governing body of a city or town within which a qualifying United States Bureau of the Census division or delineation lies.

3.08 “Qualified business” or “business facility” means any business corporation, sole proprietorship, partnership, limited partnership or limited liability company which meets certain requirements as set forth in R.I.G.L. §42-64.3(4) as amended.

3.09 “Eligible Applicant or applicant” shall mean any legally registered for-profit business corporation, sole proprietorship, partnership, limited partnership or limited liability company that is operating in the enterprise zone and that applies to the Corporation to become an Enterprise Zone Member Business.

3.10 “Enterprise Zone Member Business” or “Member Business” means any eligible applicant that has applied for and received Enterprise Zone Member Business status from the Council.

3.11 “Executive Coordinator” means the individual responsible for the coordination of the Rhode Island Enterprise Zone Program, and is a staff person from the Corporation.

3.12 “Certification Officer” means the individual responsible for making recommendations to the Council for approval of Enterprise Zone Member Business applications and for certification of Member Businesses and is a staff person from the Corporation.

3.13 “Local Enterprise Zone Official” means the local official designated as the official signatory on the Enterprise Zone Member Business Application. The Local Enterprise Zone Official is responsible for the submission of complete applications, and for verifying the location of the applicant. Local Enterprise Zone Officials or their designee may conduct site visits in order to verify the accuracy of the application process.

3.14 “Date of Application” shall refer to the actual date that the authorized company official signs the Enterprise Zone Member Business Application. The employment benchmark must be established by the applicant on the Date of Application, subject to Section 3.15 below. The application must also be properly notarized (in accordance with the Rhode Island General Laws relating to notarization) prior to its submission to the Local Enterprise Zone Official.

3.15 “Employment Benchmark” shall mean the total number of full-time employees at the time the applicant submits its Enterprise Zone Member Business Application, provided however,-with respect to a Member Business which commences its operation within the year of its application, the Employment Benchmark shall mean the total number of full-time employees on the earlier of either (i) the Date of Application or (ii) the date in which the Member Business files its articles of incorporation, organization or legal existence, as applicable, with the Rhode Island Secretary of State, provided such date is not more than sixty (60) days from the Date of Application. Employment Benchmark is the point from which the Council measures whether or not a business has satisfied the 5% new or additional jobs test by December 31 of the calendar year. To make a determination, the Corporation will compare the employment benchmark to the total year end full-time employment count as of December 31. The total year end full-time employment count submitted by the Enterprise Zone Member Business shall be the new Employment Benchmark for the next program year. Businesses will not be allowed to change the employment benchmark once it has been submitted. In the event that a qualified business changes its operating structure from one form of entity to another (i.e. corporation to limited liability company) but continues to operate substantially in the same manner, the Employment Benchmark of the new entity shall be the Employment Benchmark of the former entity.

Eligible applications should note the following examples:

Example 1. A company located in a specific Zone with several facilities in that Zone and which uses the same FEIN for those facilities must combine the employees from each facility to establish the Employment Benchmark on the membership application.

Example 2 A company with locations in more than one Zone but which uses the same FEIN for those locations must submit an individual application and individual year-end benchmarks for each location.

Example 3. A group of companies whose component entities use different FEIN’s must treat each company/entity separately according to its FEIN and submit applications and year-end benchmarks in accordance with 1 and 2 above. Applications and year-end benchmarks cannot be submitted for more than one legal entity or FEIN.

Example 4. A company files articles of incorporation with the Secretary of State on January 2, 20XX. It has no employees when it files with the Secretary of State. On January 15, 20XX, the company hires five (5) employees. On January 20, 20XX, the company signs and files an Enterprise Zone Member Business Application. Because the company is commencing operation in the year of its application, the Employment Benchmark for this start-up company is 0 because it filed its article of incorporation within sixty (60) days of the Date of Application. If however, the company had signed and dated the Enterprise Zone Member Business Application

on March 15, 20XX, the Employment Benchmark would be the number of employees of the company on March 15, 20XX, because the date of its incorporation is more than sixty (60) days from the Date of Application.

3.16 "Certification" shall occur at the end of the program year after the Enterprise Zone Member Business has submitted a Certification Documentation Package to the Corporation in accordance with the Annual Certification Procedures and has been approved by the Council.

3.17 "Certification Requirements" refers to six basic requirements that the Enterprise Zone Member Business must fulfill in order to receive certification from the Council. In order to be designated a Qualified Business, the Enterprise Zone Member Business must:

a. Document that it has created and hired a minimum of five percent (5%) new or additional enterprise jobs or in the case of a company having twenty (20) employees or less, created and hired one (1) new or additional enterprise job from the date of application or renewal to end of calendar year;

b. Document that its total Rhode Island wages for the membership year, including those Rhode Island wages for additional enterprise jobs, exceeds the total Rhode Island wages paid to its employees in the prior calendar year;

c. Submit certificates of good standing from the Rhode Island Division of Taxation, the Corporation Division of the Rhode Island Secretary of State and the appropriate municipal authority;

d. Sign an affidavit stating under oath that the entity seeking Certification has not, within the preceding twelve (12) months, from the date of application, changed its legal status for the purpose of gaining favorable treatment under the provisions of the law;

e. Is not an entity which elects to pass income, losses, deductions and credits through their individual shareholders/members for federal and state income tax purposes and/or is not an entity which elects to be taxed as a partnership or disregarded entity;

f. Meet all other requirements set forth by the Council; and

g. Has received Certification from the Council pursuant to these rules and regulations.

In the event that a Member Business seeking Certification meets the criteria of 3.17(a), 3.17(c), 3.17(d), 3.17(e), 3.17(f) and 3.17(g) set forth above, but fails to meet the requirements of 3.17(b) solely because the amount of wages paid to the owner or owners of said business has decreased from the prior calendar year, the Council may, for good cause shown, certify said Member Business as a Qualified Business. The Member Business shall have the burden to show, notwithstanding its failure to meet the requirements of 3.17(b) above, that the Member Business has met the intent of the Act. For the purposes of this provision, owner shall mean a person who has at least twenty percent (20%) of the indicia of ownership of said Member

Business. A Member Business that has failed to qualify as a Qualified Business because it has failed to meet the wage test set forth in 3.17(b), but has otherwise met the Council's requirements may either request a declaratory ruling from the Council or appeal its denial in accordance with the rules set forth herein.

3.18 "Full-time Employee" shall mean an employee of an Enterprise Zone Member Business who works a minimum of 30 hours per week. Employees on unpaid leave of any type as well as employees receiving worker's compensation or any other wage continuation shall not be considered full-time employees for purposes of establishing the Employment Benchmark at the time of application. These employees may be considered new or additional jobs if and when they return to work. Employees serving on active duty in the United States Armed Services and employees on paid maternity or paternity leave shall be considered full-time employees for purposes of establishing the Employment Benchmark.

3.19 "Enterprise Job Employee" shall mean those full-time employees (1) whose business activity originates and terminates from within the Enterprise Zone Member Business and facility on a daily basis, (2) who are domiciled residents of the State of Rhode Island, and (3) who are hired and employed by the Enterprise Zone Member Business in the Enterprise Zone after the date of application.

For the purpose of determining who are domiciliaries of an Enterprise Zone for the purpose of R.I.G.L. § 42-64.3-6(2), the Member Business shall determine the domicile of an employee based upon the best available information, which determination may be subject to verification by the Council.

The Council shall apply an interpretation of "originates and terminates within an Enterprise Zone" to reflect the fact that in our current economy, businesses have employees that frequently work outside of the enterprise zone for definitive periods of time. The fact that a person occasionally conducts his or her business activity outside the Enterprise Zone Member Business facility shall not disqualify such person from being an Enterprise Job Employee provided such outside business activity is (i) sporadic and (ii) in furtherance of the employee's business activity being conducted within the Enterprise Zone member Business facility. An employee who is hired and terminated during the calendar year does not constitute an Enterprise Job Employee.

An Enterprise Job Employee does not have to be a Rhode Island domiciled resident at the date of hire, but must be a Rhode Island domiciliary by December 31st of the certification year provided however, for the purposes R.I.G.L. § 42-64.3-6(2), an Enterprise Job Employee must be a domiciliary of a Zone on the date of hire.

3.20 "New or Additional Jobs" means any Enterprise Job Employee hired by an Enterprise Zone Member Business after its date of application.

For the purpose of determining which Enterprise Job Employees are to be used in calculating the requirements of R.I.G.L.§ 42-64.3-6, when several departures follow several new hires during the Certification year, the Member Business may determine, in its business

judgment, which new or additional job employees should be utilized, provided the Member Business had complied with the provisions of the Act and meets all of the requirements thereof, including without limitation, the requirement that the Member Business has created and hired a minimum of five (5%) percent new or additional Enterprise Job Employees.

In calculating which employees to count pursuant to the requirement under R.I.G.L. § 42-64-3-6, the following process is delineated:

1. The Member Business will have a benchmark determined by Certification date, continuation date (subsequent business entity), or date of program membership.

2. In order to satisfy the requirements, the Member Business must add at least 5% Enterprise Jobs Employees by the end of the calendar year.

3. In preparing its certification information, the Member Business compares its benchmark to the number of employees at the end of the calendar year to determine the net increase in employment. The number of employees to be listed for purposes of the 5% test cannot exceed the net increase in employment.

4. The Member Business then reviews those individual hired during the year and still employed at the end of the calendar year to determine which Enterprise Jobs Employees are.

5. The Member Business then chooses which of the newly-hired Enterprise Jobs workers will be used in the five percent (5%) test.

By way of examples ranging from simple to complex:

Example 1. ABC company has a benchmark of one hundred (100) employees. In order to be certified at the end of the year, ABC must add at least five (5) Enterprise Jobs Employees. At the end of the year, ABC has one hundred seven (107) employees, making a net increase of seven (7). If all of the seven (7) are Enterprise Jobs Employees, then ABC will have satisfied the five percent (5%) test and all seven (7) will be listed on its certification form.

Example 2. Using the same example but making the assumption that one (1) of the seven (7) employees is a Massachusetts resident (and thus NOT an Enterprise Jobs Employee), ABC will have only those six (6) Enterprise Jobs Employees listed on the certification form.

Example 3. Using the same example but making the assumption that two (2) of the seven (7) employees are Massachusetts residents (and thus NOT Enterprise Jobs Employees), ABC will have satisfied the five percent (5%) test (5% of 100=5) and only those five (5) Enterprise Jobs Employees will be listed on the certification form.

Example 4. Using the same example but making the assumption that three (3) of the seven (7) employees are Massachusetts residents (or otherwise do NOT qualify as Enterprise

Jobs Employees), ABC WILL NOT have satisfied the five percent (5%) test (5% of 100=5) and ABC will NOT be certified for that year.

Example 5. The following example uses the same assumption of a benchmark of one hundred (100) and one hundred seven (107) at the end of the year for a net increase of seven (7) employees. During the year four (4) of ABC's original one hundred (100) employees left and were replaced with Enterprise Jobs Employees. Additionally, seven (7) more employees who were Enterprise Jobs Employees were hired. All eleven (11) new hires are still employed by ABC at December 31st. ABC needs at least five (5) Enterprise Jobs Employees to satisfy the test (5% of 100 = 5). ABC may choose from any of the eleven (11) newly-hired Enterprise Jobs Employees to satisfy the five percent (5%) test but cannot claim more than the net increase in employment of seven (7).

Example 6. Using the above situation, if some of the eleven (11) new employees were NOT Enterprise Jobs Employees, ABC may still choose any employees from the remaining number who WERE Enterprise Jobs Employees to determine if it satisfied the five percent (5%) test and cannot claim more that the net increase in the employment of seven (7).

The Enterprise Zone Member Business must create and hire a minimum of five percent (5%) new or additional jobs in the respective Enterprise Zone. In the case of an Enterprise Zone Member Business with other Enterprise Zone locations but utilizing the same FEIN, the new or additional jobs requirement must be met at each location in order for the Member Business to qualify for Enterprise Zone Certification, except that a Member Business which has separate manufacturing facilities in two (2) separate Enterprise Zones may use the net addition of new employees at both sites combined to satisfy the additional job requirement.

Employees transferred from an in-state location to an Enterprise Zone location will not be counted as a new or additional job for the purpose of this program. Employees transferred from a business facility outside the State of Rhode Island may be considered as a new or additional jobs in the Enterprise Zone facility.

An employee who is officially on lay off status at the time the business submits its Enterprise Zone Member Business Application cannot be included in the employment benchmark. Such employee may be considered a new or additional job upon re employment with the Enterprise Zone Member Business.

A part-time employee who is upgraded to a full-time employee after the date of application is considered a full-time employee for the period of time after the actual upgrade.

3.21 "Certificate of Good Standing" shall be the name of the document which the Enterprise Zone Member Business must obtain from the Rhode Island Division of Taxation, the Corporations Division of the Rhode Island Secretary of State and the appropriate municipal authority as a requirement of certification. Certificates of Good Standing from the municipal authority shall mean a form designated by the municipality which provides evidence that the applicant has satisfied its obligations to the city or town where it conducts business.

3.22 “Total Rhode Island Wages” shall mean those wages, tips and other compensation as defined in the Internal Revenue Code of 1986, paid by an employer to its employees that are located within the State of Rhode Island.

3.23 “Public Supported Improvement Project” provision repealed effective January 1, 2004.

3.24 “Manufacturing” shall mean any business which reports its primary business activity as Standard Industrial Classification (SIC) code 20 through 39 inclusive as defined by the most recent *Standard Industrial Classification Manual* published by the Executive Office of the President, Office of Management and Budget.

3.25 “Effective Date of Certification” shall mean the date upon which the Qualified Business meets the test imposed in R.I.G.L. § 42-64.3-3 and applies to the calendar year for which these tests were performed.

3.26 “Carry Forward” shall mean, that pursuant to R.I.G.L. § 42-64.3(6), the tax credits established pursuant hereto may be carried forward for a period of three (3) years if in each of the three (3) calendar years a business which has qualified for tax credits under this section (a) does not reduce the number of its employees from the last Effective Date of Certification; (b) obtains certificates of good standing from the Rhode Island Division of Taxation, the corporations division of the Rhode Island Secretary of State and the appropriate municipal tax collector; (c) provides the Council an affidavit under oath that this business has not within the preceding twelve (12) months changed it legal status for the purpose of gaining favorable treatment under the provision of R.I.G.L. § 42-64.3; (d) meets any other requirements of the Council; and (e) has received Carry Forward Certification from the Council pursuant to these rules and regulations.

**Section 4: Powers and Duties**

4.01 The Enterprise Zone Council is empowered with the following powers and duties to implement Chapter 42-64.3 of the General Laws of Rhode Island.

(a) Promulgate rules and regulations to implement the Act;

(b) Promulgate criteria for designation of Enterprise Zones;

(c) Designate and redesignate Enterprise Zones;

(d) Encourage and coordinate the utilization of available state and federal resources;

(e) Monitor progress in achieving the intent of the Act;

(f) Certify Member Businesses;

(g) Establish requirements for Enterprise Jobs Employees; and

(h) Revoke Enterprise Zone designation.

4.02 Other duties of the Council are prescribed from time to time by state statute, executive order, written or oral direction by the Governor.

4.03 The powers and duties of the Council are executed in accordance with these Rules for Organization and Operation insofar as possible.

**Section 5: Members and Terms of the Council**

5.01 The membership of the Council is established by R.I.G.L. § 42-64.3-3. 1 (a) of the General Laws which provides that the Council shall consist of five (5) members to be appointed by the Governor, one of whom the Governor shall designate as Chair of the Council;

-- one member shall be the director of the Rhode Island Commerce Corporation;

-- one member who shall represent the Urban league of Rhode Island;

-- one member who shall represent the Rhode Island League of Cities and Towns;

-- and two members from the general public.

5.02 The terms of the Council are established by R.I.G.L. § 42-64.3-3.1 (b) which provides that "The members shall be appointed for terms of five (5) years each, provided, however, of the members originally appointed, one shall be appointed for a term of one year, one shall be appointed for a term of two (2) years, one shall be appointed for a term of three (3) years, one shall be appointed for a term of four (4) years and one shall be appointed for a term of five (5) years."

**Section 6: Officers of the Council**

6.01 The Governor shall designate one member to serve as Chair of the Council as provided in R.I.G.L. § 46-64.3-3.1.

6.02 The Council shall annually elect a Vice Chairperson and a Secretary among its members.

**Section 7: Duties of Officers**

7.01 The Chairperson shall make arrangements for all meetings of the Council, shall notify all members thereof, and shall prepare an agenda for each meeting. The Chairperson shall preside at all meetings of the Council. In his or her absence, the Vice Chairman or the Secretary shall preside. The officer presiding shall call for each item in the order appearing on the agenda,

unless otherwise determined by vote of the Council. The officer presiding shall recognize members desiring to speak and may, at his/her discretion, authorize any other person to address the Council. He/she shall receive motions and seconds, conduct votes on each question, and determine the prevailing side. The officer presiding shall vote on each question.

7.02 The Vice Chairperson shall perform the duties and exercise the powers of the Chairperson in the absence or incapacity of the Chairperson. In case of the resignation or death of the Chairperson, the Vice Chairperson shall perform the duties and exercise the powers of the Chairperson until such time as a new Chairperson is appointed.

7.03 The Secretary shall keep accurate and complete records of attendance and of the proceedings of the Council, recording all votes and performing all duties incident to this office. The Secretary shall also keep written minutes of the Council meetings, and shall certify actions of the Council.

**Section 8: Attendance**

8.01 Members who miss more than three consecutive meetings without having submitted to the Chairperson a notice of any reason for such absence shall be asked by letter to become more active on the Council. In the event of further absence, the Council may decide by majority vote to send a recommendation to the Governor, asking that the appointment be reconsidered.

8.02 Each Council member may appoint not more than one designee to represent the member at Council meetings. Designees of members shall have full voting privileges. The name of the designee must be submitted in writing to the Secretary by the member to be represented.

**Section 9: Meetings**

9.01 Meetings shall be held at the call of the Chairperson; however, the Council shall meet not less than once in any calendar year. The time and place of the meetings shall be determined by the Chairperson. A quorum shall be a majority of the membership.

9.02 Prior to each meeting, the Chairperson shall prepare an agenda. The agenda for each regular meeting shall include the following:

1. Approval of the minutes of the previous meeting
2. Items for action or discussion
3. Other business

Any member of the Council may place an item on the agenda of any regular meeting, under the heading “Other Business.” Members of the staff, federal or state agencies, local government, and the public may request to have an item placed on the agenda. Such request must be submitted to the Chairperson in writing no later than two weeks before a scheduled

meeting. Copies of the agenda shall be sent to each Council member at least 10 days before a Council meeting. Agendas shall also be sent to any person or organization requesting them.

9.03 All persons appearing before the Council, either on their own behalf or in a representative capacity, shall conform to standards of reasonable and orderly conduct. If any person does not conform to such standards, the Council may decline to permit such person to appear before it in any proceeding.

**Section 10: Meeting Records and Voting**

10.01 Minutes of each Council meeting shall be compiled by the Secretary no later than two weeks after the meeting.

10.02 The Secretary shall record the names of all members of the Council present or absent at each meeting as part of the minutes of that meeting.

10.03 Actions of the Council shall require a majority vote of those members present.

10.04 A member voting on the prevailing side of a question may move for reconsideration of that question. Such motion shall be made and acted upon not later than adjournment of the first meeting following the meeting at which the question was initially decided.

10.05 In accordance with R.I.G.L. §42-46-7, the minutes of each meeting of the Council shall be electronically transmitted to the Rhode Island Secretary of State.

**Section 11: Filling a Vacancy**

Should a vacancy occur on the Council either through resignation or for other reasons, the Chairperson shall notify the Governor. The Council may suggest the names of persons to the Governor to fill any vacancy.

**Section 12: Procedures for Council Action**

12.01: Rules of Procedure

12.01.01 A draft of any proposed rules of procedure or amendments thereto shall be submitted to the Chairperson of the Council no later than 15 days before a meeting of the Council in order to be considered for review at that meeting.

12.01.02 The Chairperson shall place the draft rules of procedure or amendment on the agenda of the next meeting. The Chairperson shall mail a copy or a summary of the draft to each member of the Council no later than 10 days before the Council meeting at which the draft is to be reviewed. The Chairperson will notify interested parties of the date of the Council meeting at which the draft will be presented.

12.01.03 The draft shall be presented to the Council by the staff. The Council may vote to receive the draft for the purpose of further review or of holding a public hearing thereon.

12.01.04 One or more public hearings shall be held on each proposed Section or amendment.

12.01.05 A revised draft of the rules of procedure which incorporates such modifications as are derived from the public hearing and other review of the draft shall be mailed to the Council members. At the following Council meeting, the Council shall move to adopt, reject, modify and adopt, or defer action on the proposed rules of procedure.

12.02: Nominations

12.02.01 The Council is charged with the designation of enterprise zones. It shall receive nominations for designation in accordance with Section III: Enterprise Zone Designation Process.

12.02-02 The Chairperson shall provide each member of the Council a copy of each nomination at least one (1) week prior to the meeting at which said nomination will be considered.

12.02.03 The Council shall receive a staff report on each nomination. At the discretion of the Council, governing authorities requesting designation may be permitted to address the Council, however, all governing authorities responding to a particular request for nominations shall be afforded equal opportunity to address the Council.

12.02.04 The determination of the Council on a nomination shall be in writing and stated in the record.

12.03: Certification of Qualified Business

12.03.01 -- Eligibility Requirements. The only eligible applicants for Enterprise Zone Member Business Certification are those for-profit businesses that pay business taxes pursuant to Chapter 11, Chapter 30, Chapter 13 (except the taxation of tangible personal property under R.I.G.L. § 44-13-13.1), Chapter 14 or Chapter 17 of Title 44 of the Rhode Island General Laws of 1956, as amended. Businesses applying for Enterprise Zone Member Business status must be physically located in a designated Enterprise Zone, must still be in the zone at the end of the calendar year and must agree to the terms and conditions contained in the Enterprise Zone Member Business Application. Failure to meet the certification requirements will constitute voiding any agreement (any understanding) through which the business is eligible for tax benefits pursuant to Chapter 64.3 of Title 42 of the Rhode Island General Laws of 1956, as amended.

12.03.02 -- Application Period Process. Companies located in Enterprise Zones may submit an Enterprise Zone Member Business Application to the Local Enterprise Zone Official

no later than 4:30 P.M. EST on the last business day of November of the calendar year for which the applicant seeks membership.

12.03.03 -- Business Location. The Local Enterprise Zone Official shall verify that the physical location of the business is 100 percent within the bounds of the designated Enterprise Zone. If such verification cannot be made, a hearing before the Council may be requested to show cause why the application should be accepted.

12.03.04 -- Annual Certification Procedures. All Enterprise Zone Member Businesses shall be certified annually during the period of the zone's eligibility provided they fulfill the certification requirements for each year that they remain in the program. An Enterprise Zone Member Business that receives certification will be automatically enrolled in the Enterprise Zone Program as an Enterprise Zone Member Business starting January 1 for the next calendar year. An Enterprise Zone Member Business that does not receive certification may remain in the program by completing the section entitled "Program Continuation" in the Employment Verification Section of the EZ Certification Package, or may submit a new Enterprise Zone Member Business Application for any subsequent year.

The Certification Officer shall issue an EZ Certification Package to each Enterprise Zone Member Business no later than January 31st of the subsequent calendar year. Failure of the Corporation to issue the EZ Certification Package or failure of the Enterprise Zone Member Business to receive the EZ Certification Package shall not alter the certification period nor relieve the Enterprise Zone Member Business of the obligation to submit a timely EZ Certification Package. The completed EZ Certification Package must be received by the Corporation no later than March 15th of the subsequent calendar year. Any EZ Certification Package received after March 15th will not be accepted by the Council unless the failure to comply was beyond the control of the Enterprise Zone Member Business and such Member Business shall include a letter declaring its reasons for non-compliance with the March 15th deadline. The Corporation will review the EZ Certification Package for compliance and completion and will make a recommendation to the Council.

12.03.05 -- Conditions for Denial or Revocation. Enterprise Zone Member Business Applications and EZ Certification Packages that do not meet the minimum requirements will be recommended for denial to the Council. An Enterprise Zone Member Business must notify the Corporation within thirty (30) days of any change in its ownership, control, management, location, or status as an ongoing business. The Council may automatically deny or rescind Enterprise Zone Member Business Status or certification status, if, during or after the application process, it finds that the applicant has submitted false, inaccurate or misleading information regarding its employment, physical location or any other information relevant to its certification.

Companies that are denied membership as an Enterprise Zone Member Business, denied certification, or whose membership or certification is about to be revoked shall be notified by certified return receipt requested United States mail. Said notice shall state the reason(s) for the action and shall offer the business the opportunity to appeal pursuant to Section 12.03.06 herein.

12.03.06 -- Appeal Procedures. The following shall constitute the appeal procedure to be followed by businesses upon notification that membership in the program is about to be revoked or certification has been denied:

a. request for appeals pursuant to Section 12.03.07 infra shall be in writing and addressed to the Chairperson of the Council and received by said Chairperson within thirty days of receipt of notice of probable denial or denial;

b. said written notice shall contain a brief explanation of the appellant's basis for appeal;

c. appeals presented to the Council pursuant to Section 12.03.07 infra shall be reviewed by the Council on a case by case basis;

d. appeals properly requested shall be heard by the Council at the Council's next regularly scheduled meeting or at a special meeting properly scheduled by he Council;

e. the Council shall send written notice informing the appellant of the date for the Council to hear said appeal.

12.03.07 -- Incomplete and Illegible Applications. Incomplete and illegible applications will be returned by the Corporation to the Local Enterprise Zone Official and may be resubmitted.

12.03.08 -- Notification of Status. The Corporation will notify all applicants in writing of their status and of any actions taken by the staff and the Council. The Corporation will notify the Local Enterprise Zone Official and the Rhode Island Division of Taxation of all applicants' ongoing status.

12.03.09 -- Reporting Requirements. Enterprise Zone Member Businesses may be required to submit information to the Council, including the number of new jobs created, the number of Enterprise job employees and information regarding its eligibility for and receipt of Enterprise Zone benefits.

12.04: Establishing Income Requirements for Enterprise Workers (Reserved)

12.05: Revocation of Zone Designation (Reserved)

**Section 13: Emergency Procedures**

The Council may waive or modify any provision of Section 12 when, in its judgment, such action would be in the best interest of the people of the state. If a mandatory public hearing or the minimum notice thereof is waived, any action taken as a result of such waiver shall be

effective for a maximum of 120 days. An action so taken may subsequently be repeated and given full effect if the applicable requirements for public hearings are observed in their entirety.

**Section 14: Public Hearings**

14.01 Public hearings shall be conducted in accordance with the Administrative Procedures Act and the Rules for Public Hearings adopted by the Council, and shall be held before the Council adopts, amends, or repeals Council Rules of Procedure.

14.02 Public hearings may be scheduled as part of Council meetings or at other times as directed by the Council. When appropriate, a public hearing shall be held in the general area particularly affected by the action under consideration.

**Section 15: Rules of Order**

Robert's Rules of Order shall be followed in those situations where these Rules for Organization and Operation are silent.

**Section 16: Amendments**

These Rules may be amended in accordance with Section 12.01.

**Section 17: Access to Files and Records**

17.01 It is the policy of the Council that its files and records shall be available for inspection by the public to fullest possible extent consistent with the Program's ability to pursue effectively its activities, with the rights of individuals to privacy, with the rights of persons to necessary confidentiality of proprietary information, and with the need of the Council for frank policy deliberations.

17.02 All files and records of the Council are available for public inspection unless they are specifically exempted by these rules or unless their disclosure is prohibited by state or federal law or by order of a court of competent jurisdiction.

17.03 The following categories of files and records, or information in such files and records, of the Council shall not be available for inspection:

17.03.01 Trade secrets and other proprietary information shown by their provider, to the satisfaction of the Chairperson, to be of such character that their confidentiality should be maintained in order to preserve the provider's competitive position in industry, or that their disclosure would detrimentally affect the provider's business. If the Chairperson and the provider fail to agree as to the applicability of this exception to certain materials, those materials, along with any nomination, application or other material to which they might be appended, will be returned to the provider. no such material shall subsequently be brought before the Council as the basis for appeal or reconsideration of any action taken.

17.03.02 Notes and records relating to negotiations relative to contractual arrangements for consulting services, until a contract is executed.

17.03.03 If a record contains both disclosable and nondisclosable information, the disclosable portion will be disclosed unless that portion cannot reasonably be segregated from the rest of such record.

17.03.04 A request for inspection of records shall reasonably describe the records sought in a way that will permit their identification and location by the Council; such request need not be in any particular form. The custodian of the records may require the request to be in writing if necessary for orderly administration. If the description of records sought in the request is not sufficient to allow the Council to identify and locate the requested records, the Chairperson will notify the requester that additional information is needed. The Council will make every reasonable effort to assist in the identification and description of records sought and to assist the requester in formulating his request. Inspection of records shall be during regular business hours of the Rhode Island Commerce Corporation, unless other arrangements are made with the Chairperson.

17.05 A denial of inspection of records sought under these regulations may be appealed to the Council, in writing.

17.06 If copies of records are provided, fees for reproduction shall be charged at the rate of $0.15 per page of stationery of legal-size documents if ten or more pages are copied.

**Section 18: <u>Request for Declaratory Ruling:</u>**

18.01 In accordance with R.I.G.L. § 42-35-8, a person may petition the Council and request a ruling with respect to the Act and the regulations promulgated thereunder and how they apply to a specific set of facts set forth in a request. A ruling issued by the Council has precedential value and may be generally relied on by all persons with respect to subsequent like transactions, provided the Act and/or regulations promulgated thereunder have not changed.

18.02 Each request for a Declaratory Ruling must contain the following information:

(a) The name, address and employer identification number (if applicable) of the person requesting the Declaratory Ruling.

(b) A carefully detailed statement of all relevant facts relating to the transaction;

(c) a true copy of all relevant documents bearing on the issue or issues; and

(d) a statement of the Declaratory Ruling requested and the petitioner's argument in support of its request including relevant authority for such request.

18.03 A Declaratory Ruling will not be issued:

(a) if the Act and/or the regulations are clear and unambiguous with respect to the requested ruling;

(b) in response to inquiries concerning hypothetical situations;

(c) if the requested ruling is not within the jurisdiction of the Council;

(d) if the same or similar issue has been addressed in a previous Declaratory Ruling by the Council; or

(e) if the Council in its judgment, determines that the request is not appropriate for a Declaratory Ruling.

18.04 Upon receipt of a request for a Declaratory Ruling, the Chairperson may refer the request to a subcommittee of the Council appointed by Chairperson. The subcommittee shall make a recommendation to the Council for appropriate action. The Council shall approve by majority vote the issuance of a Declaratory Ruling and each Declaratory Ruling shall be signed by the Chairperson or Secretary of the Council and shall contain a notation that it was approved by the Council at a meeting held on [date].

18.05 A Declaratory Ruling represents the position of, and is binding on, the Council with respect to (1) a particular transaction (and subsequent like transactions) involving the persons identified as interested parties in the request for issuance of the Declaratory Ruling and (2) other transactions involving persons other than those identified as interested parties in the request for issuance of the Declaratory Ruling, but such other persons have the burden of establishing that the facts and circumstances involved in their transactions are substantially the same and are not materially different from the facts and circumstances involved in the transaction on which the Declaratory Ruling is based.

18.06 With respect to the petitioner to which a Declaratory Ruling was originally issued or a person identified as an interested party in the request therefor, a Declaratory Ruling is not binding on the Council if:

a. there has been a misstatement or omission of material facts;

b. the facts subsequently developed are materially different from the facts on which the Declaratory Ruling was based.

18.07 A Declaratory Ruling is not binding on the Council (on a prospective basis) if:

a. there has been a change in the applicable law or regulations;

b. a decision on point is issued by the Rhode Island or Federal courts.

18.08 With respect to any other person, a Declaratory Ruling is not binding on the Council if the facts and circumstances involved in such other petition's transactions are not substantially the same or are materially different from the facts and circumstances involved in the transaction on which the Declaratory Ruling is based.

18.09 Declaratory Rulings disposing of petitions have the same status as agency orders in contested cases in accordance with R.I.G.L. § 42-35-9.

18.10 A petitioner may withdraw a request for issuance of a Declaratory Ruling at any time prior to the issuance thereof.

18.11 Persons requesting the issuance of Declaratory Rulings must do so on the basis that the text thereof will be open to public inspection. A person requesting the issuance of Declaratory Rulings waives all copyrights, rights to privacy and similar rights to prevent disclosure of the text thereof, except such rights as are provided herein.

## RULE II

## RULES OF PROCEDURE: PUBLIC HEARINGS

The following are the rules for public hearings required to be held by the Enterprise Zone Council under the provisions of Chapter 42-35 of the General Laws of Rhode Island.

### Section 1: Organization and Purpose

1.01 Chapter 42-64.3 of the General Laws of 1956 entitled “Enterprise Zones” was amended by Chapter 340 of the Public Laws of 1991 to create an Enterprise Zone Council within the Rhode Island Commerce Corporation. The Council is responsible for promulgating rules and regulations for the enterprise zone program, designating the zones, and certifying qualified businesses.

The Council is supported by staff from the Rhode Island Commerce Corporation, the Division of Planning in the Department of Administration, and the Governor’s Policy Office.

1.02 The objective of the Rhode Island Enterprise Zone Program is “to undertake an experimental program to stimulate economic revitalization, promote employment opportunities, and encourage business development and expansion in distressed areas” by providing or encouraging:

a. Improved local revitalization efforts that emanate from private, non-profit and public commitment to the area through the coordinated targeting of available resources;

b. Tax incentives at the state and local level; and

c. Actions to reduce and/or streamline state and local regulatory processes.

**Section 2: Definitions**

2.01 Except as otherwise provided herein, all capitalized terms used herein shall have the same meaning as set forth in Section 3 of Rule I hereof.

**Section 3: Practice Before the Council**

3.01 Any individual may be heard on his behalf or by his representative, or the individual may file a written statement with the Chairperson of the Council.

3.02 All persons appearing before the Council either on their own behalf or in a representative capacity shall conform to the standards of ethical conduct required of attorneys before courts of Rhode Island. If any such person does not conform to such standards, the Council may decline to permit such person to appear before it in any proceeding.

**Section 4: Hearings**

4.01: General

Hearings required by law or executive order shall be conducted in accordance with these rules and regulations. Where no hearing is required by law or executive order, the Chairperson (or his or her designee) may nevertheless at his/her discretion conduct informal hearings or investigations in such manner and according to such procedures as he/she may deem appropriate.

4.02 The Council before holding required hearings shall:

(a) Give at least a 30 day notice of its action. Such notice will contain a statement of either the terms or substance of the action or description of the issues, the time of hearing, and the place of the hearing. The notice shall also state the particular manner in which interested persons may present their views. This notice shall be placed in a newspaper or papers of general circulation.

(b) All interested persons shall be given a reasonable opportunity to give their views on the subject of the hearing to the Council. These views may be presented orally or in writing.

(c) If the Council finds there is an imminent peril to the public health, safety or welfare it can adopt rules or regulations without a prior 30 day notice or with a notice period shorter than 30 days. In such cases a Section so promulgated is effective for up to 120 days with the option to renew it for an additional 90 day period. In any event any plan so promulgated can later be adopted in accordance with the rules outlined herein.

(d) The proposed rules or regulations on which the hearing is to be held shall be available for public review in the office of the Corporation from the

date notice of the hearing is given to the date of the hearing, during normal business hours.

(e) Any notice of a public hearing given may be withdrawn by publishing notice to that effect in a newspaper or paper of general circulation.

4.03: Rules of Evidence

Irrelevant, immaterial, or unduly repetitious evidence shall be excluded by the Chairman. The rules of civil procedure used in the Superior Court of Rhode Island may be followed, but the Chairman shall not be bound to follow these rules when there are facts not susceptible of proof under the civil rules of procedure; provided, however, such facts are of a type commonly relied upon by reasonably prudent men.

(a) Documentary evidence may be received in copy form when originals are not available.

(b) Notice can be taken of judicially cognizable facts as well as facts of generally recognized technical or scientific facts within the agency's specialized knowledge; but parties must be notified of such actions.

4.04: Decisions and Orders

Any final decision of the Council shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings if proposed finding shall include in its decision rulings upon each proposed finding. Any finding or decision of the Council shall be made available to the public.

4.05: Record of the Hearing

A record shall be taken, and kept on file at the offices of the Corporation. of each hearing held by the Council. Such record shall include, but is not limited to, a list of those attending the hearing and a summary of the oral statements made. All written statements received by the Council in accordance with Section 4, Section 4.02(2) shall be appended to the record.

4.06: Statements - Written or Oral

All statements, comments, and or questions, whether written or oral, must be directed to the Chairperson (or his or her designee) of the Council.

**Section 5: Construction**

These rules shall be interpreted and applied in a manner consistent with the purpose of the public hearings required by Chapter 42-35 of the General Laws of Rhode Island.

## RULE III

## RULES OF PROCEDURE: ENTERPRISE ZONE DESIGNATION PROCESS

The following are the rules for review of and action upon nominations for designation of enterprise zones as required by R.I.G.L. § 42-64.3-3.1.(d), as amended.

### Section 1: Purpose

Legislation establishing a Rhode Island Enterprise Zone program was originally enacted as Chapter 42.64.3 of the General Laws in 1982. The program was never implemented because the law stipulated that "...designation shall not operate or be implemented independently of federal enterprise zone legislation." The Rhode Island law was amended by Chapter 340 of the Public Laws of 1991 to, among other things, delete that stipulation and permit the designation of up to five enterprise zones. The amendment also created an Enterprise Zone Council and directed it to promulgate rules and regulations necessary to implement the intent of the act.

### Section 2: Definitions

2.01 Except as otherwise provided herein, all capitalized terms used herein shall have the same meaning as set forth in Section 3 of Rule I hereof.

### Section 3: Administrative Organization

§ 42-64.3-3.1 of the General Laws creates an Enterprise Zone Council within the Rhode Island Commerce Corporation. The Council is responsible for promulgating rules and regulations for the enterprise zone program, designating the zones, and certifying qualified businesses.

The Council is supported by staff from the Corporation, the Division of Planning in the Department of Administration, and the Governor's Policy Office.

### Section 4: Program Objectives

The objective of the Rhode Island Enterprise Zone Program is "to undertake an experimental program to stimulate economic revitalization, promote employment opportunities, and encourage business development and expansion in distressed areas" by providing or encouraging:

a. Improved local revitalization efforts that emanate from private, non-profit and public commitment to the area through the coordinated targeting of available resources;

b. Tax incentives at the state and local level; and

c. Actions to reduce and/or streamline state and local regulatory processes.

**Section 5: Eligible Communities**

All Rhode Island cities and towns are eligible to submit nominations for enterprise zone designation, however, it must be noted that the program is intended to stimulate economic activity in the State's distressed areas.

Two or more cities and towns may submit joint nominations for designation if the nominated area crosses their common boundaries.

**Section 6: Limit On Designation Of Enterprise Zone**

The Council shall not designate more enterprise zones than as are provided by R.I.G.L. §42-64.3-4, as the same may be amended from time to time.

Joint nominations by any two or more governing authorities shall count as one regional zone.

**Section 7: Configuration And Maximum Size**

Except as provided in the Act, Enterprise Zones may not exceed five (5) contiguous census tracts in size. However, delineation does not have to conform to the respective census tract boundaries nor do the boundaries have to be contiguous as long as the configuration is within the boundaries of not more than five (5) census tracts. Distress criteria will be calculated for each entire census tract that the proposed enterprise zone includes.

The boundaries of an approved zone may be amended, either increased or decreased, by the Council on its own motion or upon petition from the governing authority on forms provided by the Council.

**Section 8: Nominations For Zone Designation**

8.01 The Council will establish a time period and procedures for the submission of Nominations for Designation of an Enterprise Zone. The submission deadline and other pertinent details will be published as a Request for Nominations in a newspaper of statewide circulation. A minimum of sixty (60) days from the date of publication of the Request for Nominations shall be provided for submission of nominations.

8.02 A city or town may submit more than one nomination, or, in the case of joint nominations, more than one joint nomination; however, each nomination must be for a separate and distinct geographic area.

8.03 Prior to submitting a nomination to the Council the respective city or town must:

a. Convene a public hearing to obtain views of citizens on the delineation of the prospective zone(s).

b. Provide the local planning board or commission with an opportunity to review the proposed zone(s) for conformance with the local comprehensive plan.

c. By resolution, the local governing authority must make commitments to each nominated zone as specified in R.I.G.L. § 42-64.3-4(a).

8.04 Completed nominations shall be submitted to the Council's staff at the Corporation on forms approved-and provided by the Council by the required deadline. One original and ten copies of each nomination shall be submitted.

**Section 9: Nomination Evaluation System**

9.01 Enterprise Zone Council Review

Nominations will be reviewed by the Council, assisted by the staff, for content and quality, including:

a. General completeness, including compliance with Section 8.03.

b. Accuracy of distress factor calculations.

c. Presentations of local course of action and coordination of available public and private resources.

d. Local management plan for the nominated zone.

9.02 To assist the Council in its review of the nominations, an evaluation scoring system will be used with assignment of points in the following areas:

Part I Distress Criteria
Part II Course of Action
Part III Regionalization
Part IV Management Plan

9.03 Each nomination will be scored by the Corporation, the Division of Planning and the Governor's Policy Office. These scores will be made available to the Council and shall be considered as part of the nomination process.

9.04 Evaluation Scoring System

*Part I -- Distress Criteria* (35 Points)

A. Poverty (10 points)
Percent of Households in below poverty level
0 to 10 points - low percent to high percent

B. Unemployment (15 points)
Percent of labor force in zone that is unemployed
0 to 15 points - low percent to high percent

C. Overcrowded Housing (5 points)
Percent of occupied housing units with one or more persons per room
0 to 5 points - low percent to high percent

D. Population Loss (5 points)
Percent decrease in population between 1980 - 1990
0 to 5 points - low percent to high percent

*Part II* -- *Course of Action* (up to 50 points)

The job generation and/or retention potential of the course of action as demonstrated by specific actions, such as:

-- Amount and type of federal and state funds targeted to zone;
-- Specific increase in public services targeted to zone;
-- Specific procedures for expediting state and local regulations;
-- Level of commitment of non-governmental agencies and organizations to the course of action:
-- Special programs to promote minority and female opportunities;
-- Special programs to assist income disadvantaged individuals and businesses; and
-- Other special programs

*Part III* -- *Regionalization* (up to 5 points)

Degree to which the course of action and or delineation promotes a regional use of resources.

*Part IV* -- *Management Plan* (up to 10 points)

Level of local commitment to promote, monitor and evaluate the enterprise zone and work with the Council to implement the program effectively.

**Section 10: Designation**

10.01 A determination by the Council as to the pending designation of an area as an enterprise zone shall published in a newspaper of statewide circulation. A governing authority that receives a pending designation shall be notified in writing of said designation and its effective date. A governing authority that does not receive a requested designation shall be so notified in writing.

10.02 Those governing authorities that do not receive a designation may appeal the decision to the Council. Said appeal must be filed with the Chairperson of the Council within ten (10) business days of the date of the notification of nondesignation. Appeals shall be limited to the original nomination and shall be based upon an interpretation of the original nomination materials. The Council shall hear and render a decision on appeals within thirty (30) days of the filing of said appeal. Any additional appeals are limited solely to affected governing authorities and shall be filed and disposed of in the same manner.

10.03 Those State agencies that provide tax incentives and other assistance as identified in the respective course of action shall be notified of the designation and its effective date.

**Section 11: Redesignation**

One hundred and eighty (180) days prior to the expiration of a zone's designation the governing authority shall submit a request for redesignation to the Council on forms supplied by the Council. The Council shall render a decision ninety (90) days prior to the expiration of original designation.

**Section 12: Annual Report**

A governing authority receiving a designation shall submit an annual report to the Council within thirty (30) days of each anniversary date of the zone's designation in such form and containing such information as shall be established by the Council.

**Section 13: Revocation of Designation**

13.01 The Council may revoke the designation of an Enterprise Zone for cause. Just cause for revocation shall be defined as the governing authority's failure to implement the course of action, which can be evidenced by- failure to pass necessary amendments to local regulations and ordinances, failure to increase services within the zone and/or failure to provide necessary coordination and management services.

13.02 The Council shall notify the governing authority of commencement of probationary status pending action to revoke designation. Notice shall include: date the probationary term begins" duration; deficiencies; and, date and location of a hearing for a determination of cause.

13.03 The Council shall conduct a public hearing within forty five (45) days of the probationary notice to receive evidence and testimony regarding revocation of designation. The hearing will be conducted within the boundaries of the enterprise zone and notice of such hearing shall be published in a newspaper of general circulation within the zone.

13.04 The Council shall attempt to develop a mutually acceptable plan of corrective action with the governing authority. Failure to agree on a plan of corrective action shall result in revocation of enterprise zone designation and such revocation shall be published in a newspaper

of general circulation within the subject zone at least twenty one (21) days prior to its effective date.

## RULE IV

## RULES OF PROCEDURE: RHODE ISLAND MILL BUILDING AND ECONOMIC REVITALIZATION ACT

### Section 1: Authority and Purpose

1.01 Chapter 42-64.7 of the General Laws of 1956 entitled "Rhode Island Mill Building and Economic Revitalization Act" (the "Mill Building Act") was enacted by the Rhode Island General Assembly in its January, 1996 Session. Pursuant to R.I.G.L. §42-64.7-16, the Council shall promulgate appropriate rules and regulations with respect to the building certification process and the certification of eligible business, and shall advise the tax administrator of the same and shall promulgate such other rules and regulations as may be necessary to carry out the provisions of the Mill Building Act. Pursuant to R.I.G.L. §42-64.7-4(6), the Council is empowered with same authority and given the same responsibilities under the Mill Building Act as provided in R.I.G.L. §42-64.3-3.1. The rules set forth herein are being promulgated pursuant to the authority provided to the Council in R.I.G.L. §42-64.7-16.

1.02 The purpose of the Mill Building Act is to create economic incentives for the purpose of stimulating the redevelopment and reuse of Rhode Island's historic industrial mill structures.

1.03 The provisions of Rule I and Rule II of the Enterprise Zone Council Rules of Procedure concerning organization, operation and public hearings shall apply to matters concerning the Mill Building Act and are incorporated herein by reference.

### Section 2: Definitions.

2.01 Except as otherwise provided herein, all capitalized terms used herein shall have the same meaning as set forth in Section 3 of Rule I hereof. In addition, the following words and terms shall have the following meanings whenever used in these rules.

2.02 "Certifiable Building" means a mill complex or building:

- (a) that was constructed prior to January 1, 1950; and
- (b) having at least two (2) floors, excluding a basement, and
- (c) which is or will be used primarily for manufacturing and/or wholesale trade and/or other commercial purposes; and
- (d) the use of which conforms to the comprehensive plan and local land use management ordinances of the Municipality in which the building is located; and
- (e) that is proposed for Substantial Rehabilitation (as defined herein); and

(f) that has been at a minimum seventy-five (75%) vacant for a minimum of twenty-four (24) months at the time of submission by the Municipality; and

(g) that is designated by the Municipality for consideration as a Certifiable building; and

(h) meets other requirements as established by the Council; and

(i) designated by the Council as a Certified Building pursuant to the requirements of R.I.G.L. §42-64.7-5.

A building which is or will be used primarily for manufacturing and/or wholesale trade and/or other commercial purposes as provided in Section 2.02(c) hereof means a building in which more than sixty (60%) percent in the aggregate of said building's useable floor space is used for manufacturing and/or wholesale trade and/or other commercial purposes. Floor space used for bathrooms, cafeterias and lounges is not useable floor space.

For the purposes of this provision, a Mill Complex (as defined herein) or some of the buildings in a Mill Complex may qualify as a Certifiable Building provided such Mill Complex or portion thereof meets all other requirements of the Mill Building Act and the provisions of these regulations.

2.03 "Certification of an Eligible Business" means an annual process taking place on a calendar year basis to certify entities as Eligible Business. Businesses certified as Eligible Businesses hereunder which may also be eligible for certification as Certified Business under the provisions of section 42-64.3-3(d) of the Act must elect certification under only one designation of each certification year. This election must be made for each certification year provided that the business continues to be eligible for both designations on a year-to-year basis.

2.04 "Certified Building" means a building which has received final designation by the Council as a Certified Building pursuant to the requirements of R.I.G.L. § 42-64.7-5. A portion of a building may be treated as a separate building for purposes of these regulations if:

(i) it consists of a clearly identifiable part of a certifiable building, including without limitation, one or more wings, stories, or other separable portions of a Certifiable Building;

(ii) it is held by a single owner, regardless of form of ownership, including in fee or as a condominium, cooperative or leasehold interest; and

(iii) at least one Eligible Business reasonably could be operated within the confines of such portion.

2.05 "Certified Building Owner" means an individual, partnership, corporation or other entity which is listed in the appropriate municipal records of land evidence as the owner of a Certifiable Building and may include one or more successors in title to the owner of the building at the time the building received written notice of final designation as a certified building pursuant to Section 42-64.7-6. A certified building owner may include the owner of a

leasehold interest with a minimum term of fifty (50) years, with respect to which a memorandum of lease has been received in the land evidence records.

2.06 "Eligible Business" means any business, corporation, sole proprietorship, partnership, limited partnership or limited liability company which:

(a) is located in a Certified Building after said building has undergone Substantial Rehabilitation (as hereinafter defined); and
(b) is engaged principally in manufacturing or wholesale trade or other commercial business activity, as such activities are defined and listed in the Standard Industrial Classification manual prepared by the Technical Committee on Industrial Classification, Office of Statistical Standards, Executive Office of the President, United States Bureau of the Budget, as revised from time to time; and
(c) whose total Rhode Island Salaries and Wages exceed the total Rhode Island Salaries and Wages paid to its employees in the prior calendar year; and
(d) has received certification from the Enterprise Zone Council pursuant to the rules and regulations promulgated by the Council; and
(e) which, as part of its annual certification: (i) obtains certificates of good standing from the Rhode Island Division of Taxation, the Corporations Division of the Rhode Island Secretary of State, and the appropriate Municipal authority; and (ii) provides the Council an affidavit stating under oath that the entity seeking certification as a Qualified Business has not within the preceding twelve (12) months from the date of application for certification changed its legal status or location solely for the purpose of gaining favorable treatment under the provision of the law; and (iii) meets certain other requirements set forth by the Council.

2.07 "Mill Building Act" means the Rhode Island Mill Building and Economic Revitalization Act (Chapters 64.7 of Title 42 of the General Laws of Rhode Island, as amended).

2.08 "Mill Complex" means one or more mill buildings owned by one owner and being located on the same or contiguous parcels of land, each of which, at one time, had the same owner(s).

2.09 "Municipality" means any city or town within the State of Rhode Island, whether now existing or hereafter created.

2.10 "Qualified Employee" means a full-time employee of an Eligible Business whose (i) business activity originates and terminates from within the Eligible Business and Certified Building on a daily basis, and (ii) who is employed by the Eligible Business at the end of the calendar year, and who is a domiciled resident of the State of Rhode Island.

The Council shall apply a interpretation of **"**originates and terminates**"** within an Eligible Business and Certified Building to reflect the fact that in our current economy, business have

employees that frequently work outside of the Certified Building for definitive periods of time. The fact that a person occasionally conducts his or her business activity outside the Certified Building shall not disqualify such person from being a Qualified Employee provided such outside business activity is (i) sporadic and (ii)in furtherance of the employee's business activity being conducted within the Certified Building. An employee who is hired and terminated during the calendar year does not constitute a Qualified Employee.

2.11 "Salaries and wages" means salaries, wages, tips and other compensation as defined in the Internal Revenue Code of 1986.

2.12 "Substantial Rehabilitation" means rehabilitation or reconstruction costs of a Certified Building in a dollar amount that equals or exceeds twenty percent (20%) of the market value of the Certified Building prior to rehabilitation or reconstruction, as said prior market value is determined by a Rhode Island licensed and certified appraiser who is independent of the Certified Building owner or owners and their affiliated corporations, and/or any tenants of the Certified Building and their affiliated corporations.

(a) A Certified Building shall be treated as having been substantially rehabilitated only if the reconstruction and rehabilitation expenditures incurred during the twenty-four (24) months period selected by the Certified Building owner and ending with or within the taxable year in which the rehabilitated Certified Building is first placed in service by the Certified Building owner meet the definition of "substantial rehabilitation" set forth in Section 42-64.7-4(12). For purposes of determining whether the requirements of Section 42-64.7-4(12) have been met, the market value of the Certified Building shall be determined at the beginning of the 1st day of such twenty-four (24) month period.

(b) In the case any rehabilitation which may reasonably be expected to be completed in phases set forth in architectural plans and specifications completed before the rehabilitation begins, clause (a) above shall be applied by substituting "sixty (60) month period" for "twenty-four (24) month period".

2.13 "Rehabilitation and Reconstruction Costs" means and includes only those amounts incurred and paid by the Certified Building owner, after issuance of the notice of final designation of the building, solely and exclusively for the rehabilitation of said Certified Building and which are incurred and paid by the Certified Building owner to acquire tangible personal property and structural components of the said Certified Building which:

(a) are depreciated pursuant to chapter 26, section 167 of the United States Code; and
(b) have a useful life of three (3) years or more as evidenced by the tax depreciation method taken-and shown on the federal tax return of the Certified Building owners; and
(c) are acquired by purchase as defined In chapter 26, Section 179(d) of the United States Code.

Rehabilitation and Reconstruction Costs do not include amounts incurred or paid with respect to tangible personal property and structural components of the said Certified Building which the Certified Building owner leases from any other person or corporation. For the purposes of the preceding sentence, any contract or agreement to lease or rent or for a license to use the property shall be considered a lease unless the contract or agreement is treated for the federal income tax purposes of the Certified Building owner as an installment purchase rather than a lease.

**Section 3: Building Certification Process.**

3.01 Not later than December 1, 2000, a Municipality shall submit to the Council a list of industrial mill structures located within the Municipality for consideration by the Council as to whether any such structures qualify as Certifiable Buildings. The Council shall notify the Municipality as to which structures qualify as Certifiable Buildings. The list submitted by the Municipality to the Council shall be on forms provided by the Council. After the Municipality has submitted its list of Certifiable Buildings, no further buildings or lists of buildings shall be submitted to the Council by such Municipality for consideration as to whether any such structures qualify as Certifiable Buildings.

3.02 Prior to submitting a list of industrial mill buildings to the Council for consideration by the Council as to whether any such structures qualify as Certifiable Buildings, the Governing authority of the Municipality shall conduct a public hearing to give all interested persons reasonable opportunity to give their views on the list to be submitted by the Governing authority to the Council. The public hearing shall be conducted in accordance with the rules and regulations established by the Governing authority but, at a minimum, shall comply with the provisions of the Open Meetings Act (R.I.G.L. 42-46).

3.03 On or before May 1, 2001, any building designated by the Council as a Certifiable Building may be submitted by the Municipality to the Council for preliminary designation as a Certified Building provided that such Municipality has given notice to the Council:

3.03.01 That the building conforms to the area restriction of R.I.G.L. §42-64.7-5(d) that the aggregate square footage of all Certified Buildings within any Municipality shall not exceed the average of three hundred thousand (300,000) gross square feet per Certified Building; and

3.03.02 That within six (6) months of such designation, the Governing authority of the Municipality agrees to:

(a) Promulgate local regulations and ordinances providing favorable local property tax treatment for Certified Buildings which are Substantially Rehabilitated; and
(b) Promulgate local regulations and ordinances to expedite the building permit review and approval process required in the Municipality for the rehabilitation of Certified Buildings; and

(c) Promulgate local regulations and ordinances waiving all building permit fees of the Municipality for the rehabilitation of Certified Buildings, and

(d) Promulgate local regulations and ordinances adopting design standards in the Municipality which encourage historic preservation of Certified Buildings, or alternatively, adopt such design standards as are developed and recommended by the Rhode Island Historic Preservation Commission; and

(e) Promulgate local regulations and ordinances requiring that the advice of the Rhode Island Historic Preservation Commission will be obtained for the rehabilitation of any Certified Building in the Municipality; and

(f) Establish a program for Eligible Businesses which coordinates the economic development activities of state and local business assistance programs and agencies, including but not limited to, the Ocean State Business Development Authority, the Rhode Island Small Business Development Center, the Rhode Island Export Assistance Center, the applicable private industry Council, and the applicable chamber of commerce.

3.04 The Council's preliminary designation of Certified Buildings within any Municipality shall be limited to the following:

3.04.01 One (1) Certified Building per Municipality having a population according to the most recent federal census of less than twenty-five thousand (25,000), provided, however, the event one (1) or more Enterprise Zones have been designated in the Municipality, it may be permitted two (2) Certified Buildings, in which event, at least one (1) of the Certified Buildings shall be located within the Municipality's boundaries of an Enterprise Zone.

3.04.02 Two (2) Certified Buildings per Municipality having a population according to the most recent federal census of between twenty-five thousand and one (25,001) and seventy-five thousand (75,000), provided, however, that in the event one (1) or more Enterprise Zones have been designated in the Municipality it may be permitted three (3) Certified Buildings, in which event, at least one (1) of the Certified Buildings shall be located within the boundaries of an Enterprise Zone.

3.04.03 Four (4) Certified Buildings per Municipality having a population according to the most recent federal census in excess of seventy-five thousand and one (75,001), provided, however, that in the event one (1) or more Enterprise Zones have been designated in the Municipality, it may be permitted six (6) Certified Buildings, in which event, at least two (2) of the Certified Buildings shall be located within the boundaries of an Enterprise Zone.

3.05 Upon notice to the Council that the Municipality has satisfied the requirements of R.I.G.L. §42-64.7-5(b)(2)(A) through (F), the Council shall provide to the Municipality and to the Certified Building Owner a written notice of final designation, which notice shall include a statement that an independent appraisal is required to comply with the

provisions of the Mill Building Act. The notice shall also provide that the certification of said building and the benefits accruing thereto shall apply for no more than five (5) years from date of final designation from the Council (except in the case of the carryover of unused specialized investment tax credits as provided by the R.I.G.L. §44-31-2) and in no case shall the benefits accruing be applied retroactively.

3.06 The Council shall notify the Rhode Island Division of Taxation of the final designation of a Certified Building.

**Section 4: Revocation of Certification - Certified Building**

4.01 The Council shall have the power, for good cause, to revoke the certification of any building certified in accordance herewith Good Cause to revoke the certification of any building certified may include, but not be limited to, the failure to meet the requirements of the Mill Building Act, these regulations or any condition imposed on the certification of the building by the applicable Municipality. Owners whose building is about to be revoked shall be notified by certified, United States mail, return receipt requested, said notice shall state the reason for the action and shall offer the owner of said building the opportunity to appeal said revocation pursuant to Section of 12.03.06 of Rule I of the Rules and Procedures of the Rhode Island Enterprise Zone Council.

**Section 5: Revocation of Certification - Eligible Business**

The Council shall have the power, for good cause to revoke the certification of any Eligible Business. Good Cause to revoke the certification of any may include, but not limited to, the failure of the Eligible Business to comply with the requirements of the Mill Building Act and the rules and regulations set forth herein. Companies whose certification is about to be revoked shall be notified by certified, United States mail, return receipt requested, said notice shall state the reason(s) for the action and shall offer the business the opportunity to appeal said revocation pursuant to Section 12.03.06 of Rule I of the Rules of Procedures of the Rhode Island Enterprise Zone Council.

**Section 6: Expiration of the Provisions of the Mill Building Act**

The provisions of the Mill Building Act and the rules and regulations promulgated thereunder shall expire on August 6, 2003, unless the same has been extended by action of the Rhode Island General Assembly.