

402 CMR: ECONOMIC ASSISTANCE COORDINATING COUNCIL

402 CMR 3.00: DISTRICT IMPROVEMENT FINANCING

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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.

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 are 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 4.02 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.

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 chair persons 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)-(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.

(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 3.04(d)(1) that are subject to a TIF agreement or UCH-TIF agreement, a copy of such agreements, as amended; and
    - 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.
- (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; and

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.

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 if any are 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 1 year, 5 years, 10 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.

(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 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 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. chapters 79 or 80A and subject to the confidentiality requirements as set forth in M.G.L. chapter 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. These changes 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 Section 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
  - (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 shall 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;
- (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 (7) years following the expiration of such development district and development program or three (3) 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, the following:

- (1) Applications for approval of a development district or development program;
- (2) Requests for amendments to an existing development district or development program;
- (3) Status reports and other information submitted to the EACC pursuant to 402 CMR 3.12; and
- (4) 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