Mayor of Providence

Angel Taveras

February 28, 2014

TO THE HONORABLE PROVIDENCE CITY COUNCIL:

I write this letter to affirm my strong support of affordable housing. Growing up on the South Side of Providence, my family and I were fortunate to live in an affordable housing development that provided us with a safe and financially accessible home. As an Associate Judge on the Providence Housing Court, I was pleased to lead efforts to improve code enforcement and hold negligent landlords accountable to city residents. And, during my time as Mayor of Providence, I have been proud to support the continued development of affordable housing in Providence. When the United States Department of Housing & Urban Development ("HUD") suspended Providence's participation in the HOME Investment Partnerships Program, for example, my administration worked diligently to resolve the issues in order to renew the City's ability to fund new affordable housing projects. Last year, I was proud to work with you, members of the City Council, to allocate over $1 million of Community Development Block Grant funding to organizations that are bringing foreclosed and abandoned properties back to life throughout our City. Simply put, I understand the need for both newly constructed and substantially rehabilitated affordable housing in Providence neighborhoods.

The proposed addition of Article XVI to Chapter 21 of the City of Providence's Code of Ordinances is well intentioned, but for the reasons outlined below, maintains loopholes so significant that, if enacted, it would put the City of Providence at substantial risk. For this reason, pursuant to Article III, Sections 302(f) and 412 of the City of Providence Home Rule Charter, I transmit, with my disapproval, the proposed addition of Article XVI to Chapter 21 of the City of Providence's Code of Ordinances.

As you know, R.I.G.L. Sec. 44-5-13.11 stipulates that properties that meet certain criteria are eligible for an alternative tax rate equal to 8% of their previous years' gross scheduled rental income. In order to be eligible for this alternative tax rate, properties must be used for residential purposes, have received an occupancy permit on or after January 1st, 1995, have received the occupancy permit after "substantial rehabilitation" as defined by HUD, and be encumbered by a covenant recorded in the land records in favor of a governmental unit or Rhode Island housing and mortgage finance corporation restricting either or both the rents that may be charged to tenants of the property or the incomes of the occupants of the property. It is the opinion of the City's Solicitor's Office that a plain reading of this statute excludes newly constructed property from application of this special tax treatment. As a creative solution, my administration has proposed twenty-year tax stabilization agreements – the longest allowed by state law – that *exactly mirror* the tax treatment that newly constructed affordable housing developments would otherwise receive if they were eligible for the special tax treatment described under R.I.G.L. Sec. 44-5-13.11 for certain projects.

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Indeed, my administration recently proposed a tax stabilization of this nature in order to support a proposal from the West Elmwood Housing Community Development Corporation for a fifty-unit, newly constructed affordable housing complex. This proposed development, the Sankofa Apartments, would transform several blighted vacant lots in Providence's West End into safe and affordable town houses. I strongly support this development and believe that my administration's willingness to enter into a 20-year tax stabilization agreement with the developer that mirrors the 8% tax treatment demonstrates my strong commitment to community development in our neighborhoods.

We proposed this stabilization in part because Rhode Island Housing, the administrator of low income housing tax credits in the State of Rhode Island, indicated that doing so would make the Sankofa Apartments a more competitive applicant in 2014 tax credit application process. We were surprised, therefore, when Rhode Island Housing reversed course and instead urged the Council to enact this ordinance. It is the opinion of the City's Solicitor's Office that because state law has addressed the issue of tax treatment for substantially rehabilitated deed restricted rental properties, the City of Providence is expressly preempted from unilaterally reinterpreting this law. For this reason, it is our opinion that the ordinance is illegal on its face and that the City of Providence cannot and should not abide by its requirements if enacted.

Beyond this fundamental question of legality, the ordinance maintains multiple loopholes and oversights that put the City of Providence at substantial risk. For example:

- Developers who enter into tax stabilization agreements with the City are typically bound by performance milestones that require project owners to obtain necessary permits and approvals and achieve substantial completion within a fixed period of time. Similarly, tax stabilization agreements typically describe what actions the City may take if an owner fails to make payments as agreed upon. This ordinance makes no mention of performance milestones, and contains no such clawback provisions.

- Providence's tax stabilizations typically require owners to make good faith efforts to award no less than 10% of the dollar value of the construct costs to minority- and women-owned business enterprises ("MWBEs"). This ordinance makes no mention of procurement from MWBEs.

- Similarly, Providence's tax stabilizations have historically required owners to ensure that a certain percentage of the hours worked on the project be performed by trade construction subcontractors who have or are affiliated with registered apprenticeship programs, and that a certain percentage of the hours worked by subcontractor's employees are completed by apprentices. This ordinance makes no mention of apprenticeship requirements.

- Providence's tax stabilizations typically make explicit the City's expectation that project owners enter into a First Source agreement regarding the hiring of employees necessary to complete the project. This ordinance makes no mention of the City's First Source program.

- Providence's tax stabilizations typically require owners to make good faith efforts to acquire construction materials from economically competitive and qualified vendors located within the City of Providence. This ordinance makes no mention of the City's "Buy Providence" initiative.

- Providence's tax stabilizations typically authorize the City to impose a fine of $500.00 per day for each day of non-compliance with any instance of noncompliance related to the requirements

referenced above. This ordinance fails to authorize the City to impose any penalties for noncompliance with these or other requirements.

These types of requirements and accountability measures help ensure that city residents directly benefit from instances of preferential tax treatment, in addition to the long-term benefits associated with the economic development that the stabilization is designed to facilitate. Yet, on all of these important requirements, this ordinance is silent. For these reasons, I am concerned that, if enacted, developers could use this ordinance as a vehicle for avoiding these important requirements. And, by removing the ability of the City to impose fees on noncompliant project owners, this ordinance would forfeit the City's ability to hold developers accountable to such requirements.

Further, the ordinance maintains no distinctions for mixed-use and/or mixed-income developments. Consider a multi-level development that incorporates retail units, market rate rental units and a limited number of deed restricted rental units. Under this ordinance, the City must treat the *entire* development based on the projected rental income of a single rent-restricted rental unit. Indeed, representatives from Rhode Island Housing indicated such during their testimony to the Special Committee on Ways & Means hearing on Monday, January 27, 2014 when he testified that his organization would approve 8% eligibility for an entire development if as few as 30% of the units in that development were dedicated to affordable housing.

Similarly, the ordinance maintains no distinction between for-profit and non-profit developers. Using the example above, any for-profit developer located anywhere in the United States could come to Providence, erect a new mixed-use development using out of state workers from an out of state construction company, incorporate a small number of deed-restricted rental units and enjoy a subsidy windfall from Providence taxpayers.

Worse still, the ordinance includes no guidance on the scope of deed restrictions required for eligibility. For example, there is no requirement that applicants participate in a tax credit program that restricts rents to a reasonable percentage of area median income. In other words, under this ordinance, the small number of deed-restricted rental units imagined above need only be "restricted" to 99% of area median income for the for-profit developer to qualify for this tax treatment. In this scenario, this ordinance would provide a substantial tax break to a for-profit developer while doing nothing to promote affordable housing.

Because the ordinance does not enable the City of Providence to do any due diligence on potential applicants, the City cannot verify that preferential tax treatment is either needed or appropriate. A developer could, for example, participate in HUD's project-based housing voucher program. This program allows developers to combine below market rents with HUD subsidies to create a revenue stream equal to the typical market rate rent. HUD created this program to encourage developers to build affordable housing while earning the same profits that their competitors in the full price housing market earn. This ordinance would allow these developers to add a huge tax break on top of HUD's already generous subsidy thus allowing them to earn far greater profits than the full housing market. In these instances, the City would be providing an unnecessary subsidy that would eventually diminish the City's ability to invest in other types of community development programs.

Take, for an example, the new rental development under construction at 257 Thayer Street on Providence's East Side. This development is projected to yield approximately $500,000 in property taxes

annually, once complete. Under this ordinance, a project such as this one could incorporate a nominal deed restriction into a small percentage of units and enjoy a tax break equal to approximately 60% of the total projected tax revenue, all while waiving the types of requirements and clawback provisions that typically accompany tax stabilizations, such as the utilization of apprenticeship programs and the ability to penalize a non-compliant developer.

Setting aside these worrisome loopholes, there may also be wisdom in maintaining a special incentive for the rehabilitation of existing housing stock. Given that the cost of rehabilitation frequently exceeds the cost of new construction, this ordinance may provide a disincentive for developers to continue refreshing our existing housing stock. This would be unfortunate, given the demonstrable need for our existing foreclosed and abandoned properties to be rehabilitated and put back to productive use.

Clearly, this ordinance could benefit from more thorough analysis. It is my understanding that this ordinance, which was approved by the Special Committee on Ways & Means by a two-to-zero vote on the night of its first and only hearing, was not accompanied by any evaluation of its financial implications for the City of Providence. No national experts in the area of affordable housing were asked to submit comments to understand why no other state has a similar tax subsidy, nor did the Council require a fiscal note examining the size and impact of lost tax revenue to the city from this proposal. Furthermore, the Council did not consult the opinion of any economic experts to fully understand the potential economic consequences on the city's real estate market of enacting this ordinance. For these reasons, it would seem prudent to me that a full study of the economic implications of this ordinance as well as the potential impact on city finances should be commissioned before moving forward.

It is my opinion that the General Assembly should work to clarify R.I.G.L. Sec. 44-5-13.11. I would be pleased to work with the City Council and with advocates from the affordable housing community to submit or support legislation to this effect. This ordinance, if enacted, would lock Providence into a tax rate and assessment practice that could change for the rest of Rhode Island if the General Assembly acts on this issue this year. Senate Bill 2018, for example, proposes once again to raise the rate of taxation from 8% to 10%, a change that passed the General Assembly last year and that Providence may be exempted from if this ordinance is enacted.

Until such time that the state takes action to clarify this law, I believe the most prudent way to treat proposals for newly constructed affordable housing is for the City's tax assessor to meet with developers individually, review the relevant financial information and fully understand the proposed development prior to offering a tax-stabilization equal or similar to the tax treatment they would otherwise receive if they were eligible for R.I.G.L. Sec. 44-5-13.11.

For the foregoing reasons, I respectfully urge your support of this veto.

Angel Taveras,
Mayor

OVERRIDDEN

City of Providence
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CHAPTER 2014-3

No. 109 **AN ORDINANCE IN AMENDMENT OF CHAPTER 21, "REVENUE AND FINANCE," TO ADD ARTICLE XVI, "AFFORDABLE HOUSING TAX RATE"**

EFFECTIVE March 4, 2014

Be it ordained by the City of Providence:

WHEREAS, The City of Providence recognizes the need for affordable housing and the imperative to establish consistent policies and ordinances that support the development of affordable housing in the city; and

WHEREAS, Rhode Island General Laws §44-5-12 (a) (1) and 44-5-13.11 provides for an assessment and taxation of low-income housing that is "encumbered by a covenant recorded in the land records in favor of a governmental unit or Rhode Island housing and mortgage finance corporation restricting either or both the rents that may be charged to tenants of the property or the incomes of the occupants of the property"; and

WHEREAS, The tax that municipalities shall collect on affordable housing so encumbered, as provided for in R.I.G.L. § 44-5-13.11, is eight percent (8%) or a lesser percentage of the property's previous year's gross scheduled rental income; and

WHEREAS, The City of Providence has applied the so-called "8% tax treatment" to deed-restricted affordable housing projects, including both newly constructed affordable housing units and rehabilitated affordable housing units.

NOW THEREFORE, BE IT ORDAINED BY THE CITY OF PROVIDENCE:

SECTION 1. The Code of Ordinances of the City of Providence is hereby amended to add Article XVI, "Affordable Housing Tax Rate," to Chapter 21, "Revenue and Finance."

Sec. 21-260. Findings and Purpose

(a) Ensuring the development of affordable, healthy, and safe housing for the residents is a priority for the City of Providence
(b) Development of affordable housing requires complex financing and deed restrictions that limit both the amount of rent that may be charged, and the income levels of tenants, making predictability in operating expenses crucial for the success and viability of affordable housing projects.

(c) Deed-restricted affordable housing projects require public and private investment, and the application of the so-called "8% tax treatment" prescribed in R.I.G.L. § 44-5-13.11 represents the City's investment in such affordable housing projects.

Sec. 21-261. Definitions.

The following definitions shall apply to this article:

(a) Qualifying Affordable Housing means newly constructed or rehabilitated residential rental units that are "encumbered by a covenant recorded in the land records in favor of a governmental unit or Rhode Island housing and mortgage finance corporation restricting either or both the rents that may be charged to tenants of the property or the incomes of the occupants of the property" as referenced in R.I.G.L. § 44-5-13.11.

(b) Eight Percent Tax means eight percent (8%) of a qualifying affordable housing property's previous year's gross scheduled rental income.

Sec. 21-261. Administration.

(a) Owners of qualifying affordable housing properties shall make annual tax payments that equal eight percent of the property's previous year's gross scheduled rental income.

(b) Tax payments shall be made in a lump sum during the first quarter of the applicable tax year, or in equal quarterly installments. If quarterly payments are to be made, they shall be due on the same dates that quarterly taxes are due for all other taxpayers in the city.

(c) Ninety (90) days prior to the end of the fiscal year, owners of qualifying affordable housing properties shall submit to the tax assessor documentation of the previous year's gross scheduled rental income.

(d) The tax assessor shall review the documentation required in subsection (c), and determine the dollar amount of the eight percent tax due to be collected from the qualifying affordable housing property owner.

(e) The tax assessor shall forward to the tax collector the eight percent tax assessment data in the same form and manner as for other taxpayers in the city.

Sec. 21-262. Noncompliance and Revocation of Tax Rate.

(a) Owners of qualifying affordable housing properties who do not submit the proper documentation within 30 (thirty) days of the deadline shall be assessed at the tax rate that applies to the property's standard classification. Upon submission of proper documentation, the eight percent rate shall be reapplied prospectively.

(b) Should the property no longer maintain the deed restriction to define it as qualifying affordable housing, the property shall be assessed at the tax rate that applies to the property's standard classification.

IN CITY COUNCIL
MAR 04 2014
READ AND MAYOR'S VETO
NOT SUSTAINED
CLERK

SECTION 2. This ordinance shall take effect upon passage.

VETO
I HEREBY DISAPPROVE AND VETO.

Mayor

Date: 2/28/14

IN CITY COUNCIL
FEB 06 2014
FIRST READING
READ AND PASSED
CLERK

IN CITY COUNCIL
FEB 20 2014
FINAL READING
READ AND PASSED
PRESIDENT
CLERK ACTING